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To: sbcob
Subject: Public Comment item # 3 - West Coast Farms 4-21-20
Attachments: Pence Comment Letter SB West Coast 4-17-2020.pdf; Dr Underwood comments West Coast 4-17-2020.pdf

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Clerk – please accept the attached comment letter and memo from Dr. Underwood for this item

Best regards

Marc

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A PROFESSIONAL CORPORATION

ENVIRONMENTAL LAW



April 17, 2020

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

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

**RE: Santa Barbara Westcoast Farms – 19LUP-00000-00064
Applicant’s Appeal of Denial – 19APL-00000-00036**

Chair Hart and Honorable Supervisors,

Our offices represent Blair Pence and the Pence Winery, which appealed this Project to the Planning Commission. Mr. Pence resides, and the Pence Winery is located, in the Santa Rita Hills AVA at 1909 West Highway 246, approximately 3 miles west of the City of Buellton. The Pence Vineyard and Winery has focused on producing Burgundian-inspired wines and organically farms 38 acres of world-class Pinot Noir, Syrah, Gamay and Chardonnay grapes. The Santa Barbara Westcoast Farms Cannabis Cultivation operation is located across Highway 246 and approximately 500 feet east of the Pence Winery, and is one of nearly 50 cannabis cultivation and processing operations currently proposed or approved in the Santa Rita Valley between Buellton and Lompoc.

The Planning Commission conducted a careful review of the Project and denied the Project because the site is not appropriate for this use, citing conflicts between the cannabis operation and surrounding agricultural land uses, including viticulture. The Applicant’s appeal requests that the Board ignore the Planning Commission’s determination. The Commission thoughtfully deliberated to determine that the proposed project did not conform to the applicable provisions of the Comprehensive Plan, including the provisions of the Agricultural Element and Santa Ynez Valley Community Plan. The Commission made this determination based on the Project’s disturbance to visual and aesthetic resources, incompatibility with adjacent agricultural operations, and inadequate odor control. Further, the Commission considered and expressed serious concern regarding the cumulative impacts of this Project in light of the other proposed cannabis projects nearby.

We respectfully request that the Board deny the Westcoast Farms Project and uphold the Planning Commission’s action.

Should the Board contemplate approving this Project at any scale, a new project-level environmental document is required because (among other things) Board-initiated amendments

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to the County's Uniform Rules after PEIR certification gutted protections for neighboring agricultural operations that the PEIR expressly relied on to reduce impacts to agriculture.

Alternatively, the Board could direct that this Project be processed as a CUP based on its adjacency to an EDRN and the routing of Project traffic through an EDRN, and undergo Project-level environmental review. We believe that review, in addition to being required by law, is necessary to ensure that the Project will be compatible with neighboring uses (both agricultural and residential) and mitigate aesthetic and visual, agricultural resources, air quality, and odor impacts of the Project as well as cumulative impacts from multiple outdoor cannabis cultivations permit approvals. The County is well within its discretion to insist on stringent conditions to protect the public health, safety, and general welfare, and to reduce the environmental impacts of the cannabis operation on the environment.

Key Cannabis Issues

This Project sets a precedent countywide, and likely statewide:

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

- The largest cannabis project in the County to be heard by the Board to date (50 acres)
- The largest cannabis project proposed in the Santa Ynez Valley Community Plan Overlay
- Second largest cannabis project proposed in the Santa Ynez Valley of the 23 proposed (average proposed in SYV is 30 acres)

The significance of these facts cannot be understated in light of a clear trend by the Planning Commission, County staff, and cannabis project applicants to look to prior approved projects for guidance on acceptable scope, standards, and conditions for cannabis projects in Santa Barbara County. It has become common for subsequent projects to refer to prior project approvals (and chiefly this specific Project) to find commonalities to support a similar approval, and recent news media confirms all eyes are on Santa Barbara County so it is not hyperbole to state the County's approvals have statewide significance. As such, clear precedent will be set with this appeal vis-à-vis future cannabis projects in AG-II zones and beyond. Of note, there are 21 pending cannabis projects and one approved in the Santa Rita Valley area, all of which we anticipate County staff will review in light of the direction you give during this appeal hearing.

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

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

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County's ability to require more effective control technologies at the permit renewal step, narrowing the Applicant's claim of vested rights.

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

It is a common practice to limit the term of land use permits in California, and to require reapplication and renewal based on future and changed conditions. In fact, the County has other uses that require renewal. This proposed limited duration permit and renewal process for commercial cannabis use permits is similar to the LUDC's requirements for LUPs for Homestays articulated in §35.42.193.E1¹, as well as MCUPs for trailers (§35.42.260.G.3). The rationale for requiring a permit renewal process for a Homestay LUP was: S[hort] T[erm] R[ental]s located in the area that would be subject to the...annual renewal with the approval of a LUP. This process will allow staff to monitor the use and give neighbors potential recourse through the permit renewal process."² The same rationale applies to cannabis cultivation permits.

¹ E. Renewal of permit [Homestays].

1. A Land Use Permit issued for a Homestay shall only be valid for one year commencing upon the effective date of the Land Use Permit, except as provided below in Subsection 3.

2. The owner or long-term tenant shall submit an application to renew the Land Use Permit to the Department for review and approval on an annual basis as directed below.

a. The renewal application shall be processed pursuant to the requirements set forth in Section 35.82.110 (Land Use Permits).

b. The Land Use Permit application for the initial renewal and any subsequent renewal shall be submitted no later than 30 days prior to the expiration of the previous Land Use Permit.

3. If the approval of a Land Use Permit for the renewal of a Land Use Permit for a Homestay has been appealed, then the validity of the Land Use Permit shall be extended until processing of the appeal(s) has been completed.

² Board Letter p. 5 (10/3/2017).

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

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

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

Scope of Board's Discretion and Applicability of CEQA

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

Here, as a discretionary permit, the Board must exercise its judgment and deliberate when deciding whether to approve, disapprove, or require modifications to this Project. The Board's discretion under the ordinance is broad, since the Cannabis Ordinance establishes the "minimum land use requirements" for cannabis cultivation. Compliance with zoning laws does not necessarily entitle one to a permit.⁶ The Board has the authority and obligation to impose such other requirements needed "to protect public health, safety and welfare, enact strong and effective regulatory and enforcement controls, . . . and minimize adverse impacts on people,

³ LA County Cannabis Ordinance §§ 8.04.1310.D and 8.04.1315, available at https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT8COPRBU_WARE_DIV1PUHELI_CH8.04PUHELI_PT7COCAAC

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

⁵ 22.40.050(B)(2)...All land use permits issued for cannabis cultivation shall expire in five years from the approval date. Within a twelve (12) month period prior to expiration, the applicant may request the land use permit be renewed for an additional five-year period." Available at:

[https://www.slocounty.ca.gov/getattachment/6d93f812-df15-4203-b033-7d802c5c9cf0/Inland-Land-Use-Ordinance-\(Title-22\).aspx](https://www.slocounty.ca.gov/getattachment/6d93f812-df15-4203-b033-7d802c5c9cf0/Inland-Land-Use-Ordinance-(Title-22).aspx)

⁶ Guinnane v. San Francisco City Planning Com., (1989) 209 Cal.App.3d 732, 736.

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communities and the environment”. § 35.42.075.A.1.⁷ “In reviewing a proposed project, the administrative body is entitled to consider subjective matters such as the spiritual, physical, aesthetic and monetary effect the project may have on the surrounding neighborhood.”⁸

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. Thus, additional CEQA review of this Project is clearly required. The Board is barred by law from approving this Project until such CEQA review has been completed if there is *substantial evidence* supporting a *fair argument* that either of the following are true:

Substantial changes have occurred which result in new significant environmental effects of a substantial increase in the severity of previously identified significant effects.⁹

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.¹⁰

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

Expert opinion if supported by facts, even if not based on specific observations as to the site under review.¹¹ Where such expert opinions clash, the County should require preparation of a tiered EIR.¹²

Relevant personal observations of area residents on nontechnical subjects.¹³

⁷ Planning commissions and boards of supervisors are often called upon to determine "the suitability of the project within the affected neighborhood." *Id.*

⁸ *Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328-329.

⁹ Cal. Pub. Resources Code at § 21166(b); CEQA Guidelines § 15162(a) (1-2).

¹⁰ *Id.* at § 21166(c); CEQA Guidelines § 15162(a) (3)

¹¹ *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).

¹² *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).

¹³ *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.

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When there is doubt or uncertainty as to whether there is *substantial evidence* supporting a *fair argument*, all doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, **notwithstanding the existence of contrary evidence**. CEQA provides that the Board merely need enough relevant information and reasonable inferences that a *fair argument* can be made to support a conclusion, even though other conclusions might also be reached.¹⁴ Specifically, as explained in more detail below, the Project presents five impacts that require substantive and meaningful review and mitigation:

- (1) changed circumstances with respect to the County's Uniform Rules for Agricultural Preserves leading to new and substantially more severe impacts to agriculture;
- (2) the new potentially significant impact of terpene taint on wine grapes grown nearby;
- (3) the now known significant and more severe impacts of pesticide migration on the future viability of legacy agriculture near the Project;
- (4) extent and severity of the land use incompatibility with adjacent agriculture; and
- (5) the severity of cumulative impacts of concentration of cannabis projects west of Buellton.

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

For the reasons explained above and further detailed below, Mr. Pence respectfully requests that the Board uphold the Commission's decision on the appeal and deny the Project. Alternatively, the Board should direct the Applicant and County staff to undertake appropriate environmental review under CEQA,¹⁵ and to process this project under a Conditional Use Permit. With such action, we request the Board provide direction to staff that all cannabis projects require site-specific CEQA review of the key impacts presented in this appeal.

1. As Recognized by the Commission, 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 Appellants have experienced first-hand just how impactful these operations are, and

¹⁴ CEQA Guidelines, § 15384 (a).

¹⁵ 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).

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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.

In the appeal hearing, the Commission recognized that the record does not support any assertion that the PEIR is adequate to address the impacts of this project. Further, the Commission affirmed the existence of changed circumstances and new information showing that the Project’s impacts will be substantially more severe than shown in the PEIR. Discussed below and in our previously submitted appeal materials, there is substantial evidence supporting a fair argument that the Project specifically will have one or more impacts that are either new or substantially more severe than those examined in the PEIR, and accordingly, the Board must direct additional environmental review or deny the Project.¹⁶

Additionally, described at length in our previously submitted appeal materials, 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. We request that the Board direct immediate changes to the County’s process for evaluating the environmental impact of commercial cannabis projects to ensure that it complies with CEQA and that the significant impacts of cannabis operations are fully disclosed to the public and decisionmakers and mitigated.

a. Additional Environmental Review Is Required

i. Applicable Standard of Review

After a Program EIR has been prepared, subsequent activities in the program like this Project must be examined in light of the PEIR to determine whether additional environmental review is necessary. (CEQA Guidelines¹⁷ § 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 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.

¹⁶ CEQA does not apply to projects which a public agency rejects or disapproves. (CEQA Guidelines § 15270 (a).)

¹⁷ 14 CCR 15000 et seq.

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

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

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

The fact-based opinions of agency staff and decisionmakers, stemming from experience in their respective fields, are also considered substantial evidence for a fair argument. (*Pocket Protectors*, 124 Cal.App.4th at 932; *Stanislaus Audubon Society*, 33 Cal. App. 4th at 155 (probable impacts recognized by the planning department and at least one member of the planning commission, based on professional opinion and consideration of other development projects, constituted substantial evidence supporting a fair argument that the project would have significant growth inducing impacts).) Moreover, "[r]elevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument."

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(*Pocket Protectors*, 124 Cal.App.4th at 928, citing *Ocean View Estates Homeowners Ass'n Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402.) Additionally, “[i]f substantial evidence supports a fair argument that the proposed project conflicts with policies [adopted for the purpose of avoiding or mitigating an environmental effect] this constitutes grounds for requiring an EIR.” (*Pocket Protectors*, 124 Cal.App.4th at 930; Guidelines, App. G, § IX (b).)

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

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

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

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

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

The Department of Conservation assists all levels of government and landowners in the interpretation of the Williamson Act related government code. The Department also researches, publishes, and disseminates information regarding the policies, purposes, procedures, and administration of the Williamson Act according to government code. Participating counties and cities are required to establish their own rules and regulations regarding implementation of the Williamson Act within their jurisdiction. These rules include, *inter alia*, which uses are deemed agricultural production versus those that are deemed secondary uses.

Santa Barbara County implemented an Agricultural Preserve Program to support the long term conservation of agricultural and open space lands. The program enrolls land in Agricultural

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

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

1. The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.

2. The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.

3. The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use. In evaluating compatibility the Board of Supervisors shall consider the impacts on non-contracted lands in the agricultural preserve or preserves.

(Uniform Rules p. 25, § 2-2.1.)

The County’s Agricultural Preserve Advisory Committee (“APAC”) is responsible for administering the County’s Agricultural Preserve Program and the Uniform Rules. Its duties include reviewing applications and making recommendations for creating agricultural preserves, entering new contracts, making revisions to existing preserves or contracts, termination of contracts and disestablishing preserves. In conjunction with these duties, the APAC is responsible for monitoring and enforcement of the Agricultural Preserve Program, including by conducting the foregoing compatibility review for proposed projects where the proposed use is deemed “compatible” under the Uniform Rules.

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

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

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

Both options [APAC and County staff recommendations to classify cannabis cultivation as a compatible use] described in this Board Letter and shown in the attached Uniform Rules amendments (Attachments 2 and 3) are adequately covered by the Program EIR.

County staff cautioned against the Board's definition, stating:

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

The Board disregarded staff's admonishment, including staff's determination that additional CEQA analysis would be required for the Board's chosen amendment,¹⁸ and voted 4-1 (Wolf) to define cannabis cultivation as agricultural production for purposes of the Uniform Rules. (Board

¹⁸ 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.

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

There are at least two practical consequences of the Board's decision that affect cannabis projects proposed on contracted land that were not considered in the PEIR. First, because cannabis is treated as agricultural production, APAC does not review applications for cannabis cultivation to assess whether they are compatible with agriculture occurring on other contracted lands as expressly assumed and relied on in the PEIR's environmental analysis. Second, the minimum production requirements in the Uniform Rules for agricultural production uses can 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 subsequent adoption of an acreage limit on cannabis countywide, the requirement to increase grow sizes on Williamson Act contracted lands will likely result in a concentration of larger grows in a smaller area for the first generation of permittees and a less equitable and distributed pattern of cultivation. These represent a substantial change in circumstances with potentially significant impacts.

When the PEIR was certified on February 6, 2018 the County Uniform Rules did not allow cannabis activities. (PEIR p. 3.9-30.) While the PEIR assumed that the Uniform Rules would be amended to allow cannabis activities in some form, the options being considered at the time all assumed that cannabis would be considered a "compatible" use. (*See* Exhibit 1; PEIR p. 2-1 and "Alternative 2" p. 4-34) The PEIR's analysis relied on the expectation that APAC would review cannabis applications to ensure their compatibility with adjacent agricultural crops, and 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. Attachment 12 contains APAC's hearing minutes of April 19, 2019, which indicate that APAC reviewed the Project and determined that it was consistent with the Uniform Rules which include the Principles of

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Compatibility. However, APAC did not review the proposed cultivation for compatibility with adjacent agriculture, including issues concerning terpene taint and pesticide migration. (Board Letter, Attachment 12, APAC Minutes 4/19/19, Item 10).

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.¹⁹ First, where “[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report.”²⁰ 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.”²¹ 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.”²² 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 this 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.²³ Due

¹⁹ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317.

²⁰ Cal. Pub. Resources Code, § 21166(a).

²¹ *Id.* at § 21166(b).

²² *Id.* at § 21166(c).

²³ CEQA Appendix G § II (b, e); PEIR pp. 3.2-18.

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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 (many contracts in place for 50+ years) including Agricultural Preserve Contracts adjacent to the north: 69A1055, 69AP056 – including Pence Winery (70AP006); and others adjacent to the south: 83AP013 and 03AP027.²⁴ Any indication by County staff that this review occurred is incorrect. Agricultural conflicts would be addressed through APAC compatibility review but for the change. See the March 6, 2020 letters from the Grower Shipper Association (reporting the experience of their members reflecting cannabis' incompatibility with organic and conventional Central Coast agriculture) and Santa Barbara County Agricultural Advisory Committee (asking for delay in Board action pending ordinance revisions and if not, imposition of additional Project conditions "to address predictable conflicts that have arisen in many situations in the County").

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

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

This change is consistent with how cannabis is treated pursuant to existing State law. For example, cannabis is not an agricultural commodity under the Food and Agricultural Code and Government Code. Proposition 64 and subsequently, Business & Professions Code Section 26069(a), specify that cannabis is an "agricultural commodity" only for the purposes of the BPC regulations. If cannabis were treated as an agricultural commodity under any other circumstances, including Food and Agricultural Code or Government Code, all of the existing requirements for agricultural commodities would apply to cannabis, which they do not.²⁵ Most notably, cannabis has a State licensing structure that operates on an annual basis – no other agricultural commodity has annual licensing requirements. This is a similar legal framework that is applied to timber, which also is not an agricultural commodity under State law and is subject to its own statutory framework pursuant to the California Timberland Productivity Act of 1982.²⁶

²⁴ See GIS map of Williamson Act parcel, available at:

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

²⁵ See California laws governing seeds, nursery licensing, and produce dealers and handlers.

²⁶ See Gov. Code Section 51100 et. al.

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The definition of “agricultural use” under the Williamson Act²⁷ is predicated on the use furthering the production of an “agricultural commodity”²⁸. As discussed, *infra*, cannabis is not an agricultural commodity under State law and thus it cannot be included as “agricultural production” under the Williamson Act. SB527 makes this designation clear. Local jurisdictions do not have discretion to deviate from the determination of which crops are agricultural commodities and which are not.

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

iii. New Information on Terpene Taint Triggers Additional Environmental Review

In our appeal, we identified a new potentially significant impact associated with terpenes from cannabis grown in close proximity to wine grapes, such as Appellant’s vineyard which is located immediately across Highway 246 from the proposed Project. Specifically, concentrated air-borne terpenes released by cannabis plants in low wind conditions and during inversions (that are common in the Project vicinity) have been shown, in testing conducted in Santa Barbara County, to be absorbed by 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, 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

²⁷ Gov. Code Section 51201(b)

²⁸ Gov. Code Section 51201(a)

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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".²⁹ However, in 2019 Food and Wine magazine reported that an Oregon vineyard has been allowed to move forward with a lawsuit against a nearby marijuana business, claiming their operation caused at least one customer to fear their grapes would have unwanted notes of cannabis. Instead of "smoke taint," call it "smoking taint."³⁰ 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 Vizquete 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.³¹

In addition to her October 28, 2019 letter, Dr. Oberholster prepared an additional letter dated March 3, 2020 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. Vizquete'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 Vizquete 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.³²

²⁹ <https://hightimes.com/news/california-businessman-believes-the-smell-of-marijuana-hurts-wine-grapes/>

³⁰ <https://www.foodandwine.com/wine/wine-grapes-marijuana-odor-lawsuit-oregon>

³¹ Dr. Vizquete's report on the proposed Hacienda project makes a number of assumptions that render its claimed conclusions both highly unreliable and inapplicable to the instant project. Dr. Vizquete 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 this project most likely has a plant density of 10,000 to 12,000 plants per acre.

³² Exhibit 3, Underwood Report for West Coast Farms Cannabis Development (11/4/19)

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While the research necessary to quantify open field cannabis terpene emissions rates, grape absorption rates, and the magnitude of terpene exposure required for wine taint upon locally-produced grapes has not been completed, there is substantial evidence that wine quality can be affected by exposure to airborne terpenes from cannabis cultivation. Substantial evidence in the record includes the fact-based expert opinion of Dr. Oberholster, and testing results in Santa Barbara County, each of which establish that terpene migration is occurring and that terpenes can cause wine taint. This substantial evidence supports a fair argument that the Westcoast Farms Project *may* result in terpene taint to nearby wine grapes including the Pence Vineyard, leading to a significant incompatibility between these two agricultural land uses. Evidence of this impact is far from speculation, and is being taken seriously by the Agricultural Commissioner, who is currently investigating funding sources for, and researchers who are qualified to conduct, a study if wine grapes can absorb cannabis terpenes (Board Letter for Santa Rita Valley Ag. Cannabis Cultivation Appeal (3/10/20)³³, p. 9). Further, a letter submitted by the County's Ag Advisory Committee (AAC) for this appeal urges the Board to continue the appeal of this Project specifically until the Planning Commission and Board resolves amendments to the Cannabis Zoning Ordinance, including amendments intended to address this very issue of terpene taint. These expert opinions constitute substantial evidence supporting a fair argument of a potentially significant impact and thus cross the threshold of mandating additional environmental review for this project.

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

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

Since the PEIR's certification, new information of a new potentially significant impact to agriculture resulting from the conflict experienced between traditional agriculture and cannabis cultivation with respect to pesticide migration has come to light. 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

³³ Available at: <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=4387318&GUID=198F6748-DE28-44EB-B82F-C7C46A3CA7C2&Options=&Search=>

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adjacent agricultural land and result in the loss of agricultural land uses from non-viability.³⁴ 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.³⁵ This fact has been recognized recently 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 other than a reference document that thus far has not been effective in resolving this issue.³⁶

The Board Letter asserts pesticide drift is not allowed under pesticide use regulations. (Board Letter, p. 6.) However, the seminal case on the issue of pesticide drift, *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.*³⁷ clearly establishes that not all drift is illegal, including volatilization and air dispersal, but all drift gives affected parties tort claims that are not barred by pesticide statutes. The facts of *Jacobs* are directly analogous to the cannabis cultivation context. In *Jacobs*, the defendant sprayed pesticides which volatilized and moved in the fog to plaintiff neighbor's organic herb crops of rosemary, dill, and cilantro which, like cannabis, have a zero tolerance threshold established by the Environmental Protection Agency (EPA). The agricultural commissioner found the defendant had applied pesticides in accordance with law. The defendant then voluntarily switched materials (and used a drift retardant) and told their herb-growing neighbor each time they sprayed; however, materials still drifted and agricultural commissioner again found no violations. Plaintiff sued defendant, alleging that pesticides defendant applied to fields near plaintiff's farm migrated to plaintiff's land, contaminated plaintiff's herb crop, and rendered the crop unmarketable. Plaintiff ultimately won on theories of negligence, trespass, and nuisance. As part of a preliminary injunction, defendant agreed not to apply the subject pesticides on two fields closest to plaintiff's fields, leaving a 1.5-mile buffer zone surrounding plaintiff's crop.

The Commission acknowledged that at the time the PEIR was prepared and certified, the extent of this 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*"³⁸ revealed:

³⁴ See PEIR, pp. 3.2-19-3.2-23.

³⁵ *Id.* at pp. 3.2-24-25.

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

³⁷ *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502

³⁸ *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).

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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.³⁹ In various interviews with Scott Van Der Kar, an avocado grower in the Carpinteria foothills, Mr. Van Der Kar explains that many Oxnard-based pest control companies that treat the avocado crop would no longer spray the insecticides that work best on avocados, for fear of contaminating cannabis crops with the slightest trace of residue and getting sued. Thresholds for cannabis are as little as one microgram per gram, or 0.1 part per million.⁴⁰

As the Commission further recognized in their deliberations, 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. Under CEQA, a potentially significant impact to the environment occurs where a project may “convert prime farmland, unique farmland, or farmland of statewide importance to non-agricultural use,” “conflict with existing zoning for agricultural use,” or “involve other changes in the existing environment which, due to their location or nature, could individually or cumulatively result in the conversion of farmland to non-agricultural use.”⁴¹

This issue is exacerbated in the area between Buellton and Lompoc along Highway 246 and near the Project site because of an early morning inversion specific to this area. See the comments of Dr. Ken Underwood, TBS Systems, April 17, 2020, detailing the much higher frequency of calm wind conditions in the project area than predicted by the SESPE study

³⁹ 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.

⁴⁰ 16 CFR 42, § 5719, p. 108.

⁴¹ CEQA Guidelines. Appendix G, § II.

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submitted by the applicant. Calm winds (less than 3 mph) that Dr. Underwood establishes occur in the area allow the accumulation of odors as well as volatilized VOCs and pest control materials in air packets that can then migrate considerable distances across property lines and drop out or be detected on other properties some distance from the source. The inversion was identified in the PEIR, and the air basin where the inversion occurs is further supported by the County Fire Department's Burn Permit Zone map, which identifies the "Santa Ynez Valley air basin zone" and indicates an air basin overlays the Santa Ynez Valley from Highway 246 just west of the Project, east to Lake Cachuma.⁴² During an inversion, as the air temperature increases above the soil surface and the coldest, densest air is at the surface. Its density steadily decreases with increasing height. The result is a very stable stratification of air that limits vertical air motion. When an applicator introduces spray droplets into very stable air (as during an inversion), the smaller droplets fall slowly and may float along with the air for long distances.⁴³ Temperature inversions are favorable to long distance pesticide migration. With the cool, humid conditions found during a temperature inversion, small droplets can remain suspended above the sprayed area for a long time. Just as morning fog slowly moves into lower elevations, the concentrated cloud of droplets can move down slope with the layer of cool air and cause damage or contamination for miles. Sloped areas are not the only concern during temperature inversions. As winds pick up, suspended droplets can be carried great distances from level application sites as well.⁴⁴

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

Due to the inevitable occurrence of drift, the morning inversion, and the immense potential liability and economic damages to conventional agriculture for accidental migration onto nearby cultivated cannabis, farmers and vintners in the vicinity of the Project will be

⁴² See GIS map at <https://sbc-gis.maps.arcgis.com/apps/PublicInformation/index.html?webmap=7d8f1e27f37340248b654363d1569e1f>.

⁴³ Thostenson, A., et al. 2017. *Air Temperature Inversions Causes, Characteristics and Potential Effects on Pesticide Spray Drift*. North Dakota State University.

⁴⁴ NC State University NSF Center for Integrated Pest Management. *Pesticide Drift*. <https://pesticidestewardship.org/pesticide-drift>

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

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

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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.

i. Land Use Incompatibility

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

Additionally, projects that conflict with local policies or ordinances entail a potentially significant impact for which environmental review is required. CEQA Guidelines Appendix G, § IV (e); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (“[I]f substantial evidence supports a fair argument that the proposed project conflicts with policies [adopted for the purpose of avoiding or mitigating an environmental effect] this constitutes grounds for requiring an EIR.”) 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 SYVCP.⁴⁸ The County's CEQA Checklist moreover does not examine land use impacts resulting from policy inconsistencies. Discussed below, the Planning Commission determined that the Project is inconsistent with the SYVCP and with the Comprehensive Plan's Agricultural Element. Because of the Planning Commission's expertise regarding County policy, this constitutes substantial evidence supporting a fair argument that the Project may significantly impact the environment. (*Pocket Protectors*, 124 Cal.App.4th at 932; *Stanislaus Audubon Society*, 33 Cal. App. 4th at 155.)

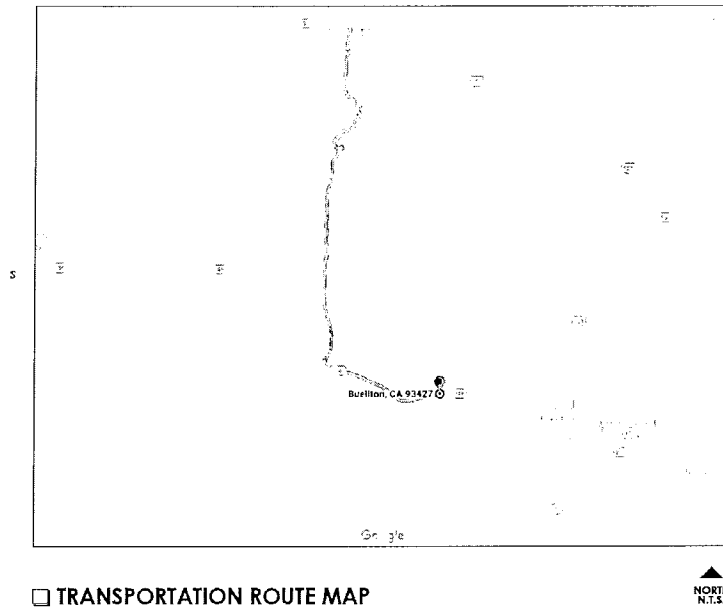
⁴⁷ *Santa Barbara County's Environmental Thresholds and Guidance Manual*, p. 118; PEIR, p. 3.9-32.

⁴⁸ 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.

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TRANSPORTATION ROUTE NOTES:

1. ROUTE 1(GREEN) -
 - 1.1. TRAFFIC DEPARTS FROM PROJECT SITE VIA DRIVEWAY DIRECTLY CONNECTED TO CA-246. TRAFFIC SHALL TRAVEL EAST ON CA-246, THEN MERGE NORTH OR SOUTH ONTO U.S.-101.
 - 1.2. TRAFFIC ARRIVES TO PROJECT SITE VIA DRIVEWAY DIRECTLY CONNECTED TO CA-246. TRAFFIC SHALL EXIT U.S.-101, THEN HEAD WEST ON CA-246, THEN SOUTH ONTO DRIVEWAY.
2. ROUTE 2(BLUE) -
 - 2.1. TRAFFIC DEPARTS FROM PROJECT SITE VIA DRIVEWAY DIRECTLY CONNECTED TO CA-246. TRAFFIC SHALL TRAVEL WEST ON CA-246, THEN NORTH ON DRUM CANYON ROAD, AND THEN EAST ON CA-135 MERGING ONTO U.S.-101.
 - 2.2. TRAFFIC ARRIVES TO PROJECT SITE VIA DRIVEWAY DIRECTLY CONNECTED TO CA-246. TRAFFIC SHALL EXIT U.S.-101, THEN HEAD WEST ON CA-135, THEN SOUTH ON DRUM CANYON ROAD, AND THEN EAST ON CA-246.

1. Traffic and Circulation Issues

a. Site Transportation Management Plan Adequacy

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

The Applicant’s Site Transportation Demand Management Plan (STDMP) is Sheet 1.13 to Attachment 13. This one page plan shows the entrance and basic site circulation features, but details are sparse and insufficient to describe this aspect of the project or the means to gauge its impact. No bicycle facilities are provided, and transit stops are far away.

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

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

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

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

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

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

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

The applicant has identified Drum Canyon Road as a transportation path to avoid admitting the obvious exclusive use of Highway 246, through an EDRN, at access the site, and thereby avoid the Conditional Use Permit requirement under the county's ordinance.

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

The Applicant's chosen routing for Project traffic – Drum Canyon Road – is a very poorly maintained road with unpaved sections, a number of single lane sections, steep, windy, with limited site distance and extensive recreational bicycle traffic that fails to meet basic

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roadway standards for the Project's uses. Consequently § 35.30.100.A Findings may not be made:

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

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

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

iv. Cumulative Impacts of Project Clusters

State CEQA Guidelines Section 15130 require that an agency analyze cumulative impacts in an EIR when the resulting impacts are "cumulatively considerable" and, therefore, potentially significant. Cumulative impacts refer to the combined effect of project impacts with the impacts of other past, present, and reasonably foreseeable future projects.⁴⁹ Generally,

⁴⁹ 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."

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projects that are located within geographical proximity to each other (e.g., two or more projects utilizing the same roadways) have the potential to contribute to cumulative impacts to an environmental resource or issue area. The impacts of a project and related projects are considered “cumulatively considerable” when “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (CEQA Guidelines, § 15065(a)(3).)

Currently, there are 22 pending outdoor cannabis cultivation projects and one approved in the Santa Rita Valley area that are pending approval or that have been approved (and appealed), averaging 30 acres each. For context, Sonoma County has capped cannabis cultivation at 1 acre per parcel, with 88 growers currently operating, totaling 88 acres countywide. Note: the first project approved in Sonoma County is for 1 acre and was approved with 133 conditions the operator must follow and they must return to the board after two years to discuss how the smell is impacting neighbors.⁵⁰ These 23 projects total 615 acres of outdoor cannabis cultivation, or 39% of Santa Barbara County’s 1,575 acres cannabis production cap. This is 55% of the total 1,100 acres of cannabis estimated as needed to supply the entire State of California. Of 5 the projects that surround Pence Winery on adjacent parcels, there is 155 acres proposed. The PEIR does not analyze or examine cumulative impact of this proliferation of cannabis cultivation projects in AG-II zones between Buellton and Lompoc along Highway 246, within the Santa Rita Hills American Viticultural Area and a scenic corridor that is considered the gateway to the Valley.

There are specific impacts to cannabis cultivation sited near vineyards and tasting rooms, specifically with regard to odor. 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. Pence Winery is located directly across Highway 246 from the proposed cultivation site for this Project, and cumulatively with the other adjacent outdoor cannabis cultivation sites nearby, will be significantly impacted by the aggregate odors that emanate from the outdoor cannabis projects, including this Project. Further, the majority of the land in the Santa Rita Hills American Viticultural Area and other areas where cannabis projects are proposed are subject to Williamson Act contracts, implicating the CEQA issues discussed previously with regard to the Uniform Rules and conflicts with State law.

The Board Letter claims that the PEIR adequately covered the issue, and no substantial changes, changed circumstances, or new information lead to new or substantially increased impacts. (Board Letter, pp. 8-9.) However, the PEIR did not anticipate either the number or size of the potential cultivation operations in this area, or the magnitude of their impact to visual impacts. Moreover, the Board Letter does not even claim that the PEIR identified or examined the potential cumulative impact to agriculture including from pesticide migration or terpene taint associated with this intensity of cannabis cultivation in this important wine producing region. Further, land use conflicts between wine tasting rooms including odor impacts are not discussed

⁵⁰ See <https://www.pressdemocrat.com/news/9711880-181/sonoma-county-begins-to-process?sba=AAS>.

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in the PEIR. Discussed above, new information revealed substantial evidence of these impacts, and accordingly additional environmental review is required.

b. The CEQA Checklist is Flawed

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

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 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,⁵¹ that an initial study is required, and if not, to disclose data or evidence supporting their findings.⁵²

As discussed above, there are numerous impacts associated with the Project that were not examined by the PEIR, that are not addressed in the Checklist. For example, the checklist omits any discussion of impacts to adjacent agricultural operations, only addressing whether the Project will result in loss of prime soils, which is only one of several potentially significant agricultural impacts. Discussed above, conflicts with Williamson Act contracts, and agricultural conflicts leading to lost agricultural viability are recognized CEQA impacts, and substantial evidence supports a fair argument that this Project may result in new and substantially increased impacts in those areas.

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. 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.

⁵¹ *Sierra Club, supra*, 6 Cal.App.4th at 1319.

⁵² *Citizens Ass'n for Sensible Dev., supra*, 172 CA3d at 171.

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

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

c. Sensitive Receptors

The PEIR also did not identify residential areas and neighborhoods as sensitive receptors and thus did not examine the impact of air pollution from cannabis operations on residents and business that serve the public near Buellton, nearby EDRNs, or along Highway 246. The Project is located across Highway 246 from the North Highway 246 EDRN, approximately 2,000 feet from the West Buellton EDRN and Buellton city limits, and other nearby residences that are no part of a formalized EDRN. The PEIR references visitors to "outdoor facilities" as sensitive "users", but does not assess impacts to such users in the PEIR. The Project is immediately across Highway 246 from the Pence Winery and tasting room, and from residential uses in the adjacent EDRN. 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).

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

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

Id., Project Objectives, § 2.3.2.

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

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

Downtown Fresno, Slip. Op. at 39.

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

“**Odors** [¶] . . . [¶]

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

Id., at p. 46-47.

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

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

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

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

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

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

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

Terpene	Secondary Toxin	Action	
Linalool	Hydroperoxide a-, b- unsaturated aldehyde	Sensitizer; contact allergens	Skold M et al. 2004 Api, et al, 2015
A-pinene	Pinonaldehyde Acetone Formaldehyde Formic Acid Hydroxyl radical Ozone	Atmospheric pollutants Major irritants Toxic substance	Atkinson and Arey,2003 Orlando et al, 2000

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Terpene	Secondary Toxin	Action	
B-Pinene	Acetone Formaldehyde Formic acid	Atmospheric pollutants Toxic substance Major irritants	Orlando et al, 2000
Terpinolene	Aldehydic acid Acetone Formaldehyde	Atmospheric pollutants Major irritants Toxic substance	Ma and Marston, 2009 Orlando et al. 2000
d-Limonene	Acetone (R)-(-)-carvone Cis/trans isomers of (+)-limonene oxide	Atmospheric pollutant OSHA-listed hazardous material/solvent Potent allergen sensitizers	Karlberg, et al 1992 Reissell, et al, 1999
Myrcene	Acetone Formaldehyde Formic acid	Atmospheric pollutants Toxic substance Major irritants	Orlando et al. 2000

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⁵³ 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.

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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.

A study of chemically sensitive individuals established that terpenes do react with other airborne chemicals to cause adverse health effects, and that terpenes can be triggering agents for chemical sensitivity. The Project's terpene emissions could exacerbate adverse health conditions experienced by chemically sensitive individuals.⁵⁴ These effects were not addressed in the PEIR, which only examined (and found a significant impact) from nuisance odors.

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

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

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

Reissell, Anni, Harry, Cheryl, Aschmann, Sara M., Atkinson, Roger, Arey, Janet, 1999. Formation of acetone from the OH radical- and O₃-initiated reactions of a series of monoterpenes. *Journal of Geophysical Research, Papers on Atmospheric Chemistry*. 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)

⁵⁴ Rea, William, et. Al., 2015. Terpenes and Terpenoids in Chemical Sensitivity, *Alternative Therapies*, Vol. 21, No. 4, Jul/Aug 2015, p. 12-17. ("The study found a potential source of sensitivity to terpenes in pine, mountain cedar, and tree terpenes as air pollutants. A particular patient was discussed in the case study who showed a

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

e. Odor Abatement Plan Inadequacy

The Odor Abatement Plan is fatally flawed due to its reliance on synthetic, predicted meteorological conditions, rather than actual meteorological data from the site, or even nearby. The synthetic data grossly underestimates the percentage of calm winds (less than 3 mph) when odors and terpenes can accumulate and move as an air “packet” across property lines, causing odor episodes.⁵⁵ The Project’s synthetic wind data rely on incorrect wind direction predictions, understating the Project’s effects on the Pence Winery and other surrounding land uses. Yet this data is the stated underpinning of the location and operation of the vapor phase odor control system that is the core element of the Project’s Odor Abatement Plan.

Neither the Project materials nor the PEIR address the effect of airborne transport and ground deposition of the odor control system’s Ecosorb reagent(s)⁵⁶ on downwind properties and agricultural operations. Although details for the location of the emitting pipes are sketchy, it appears they will be suspended eight feet above the ground on the chain link fence posts. When compared to the Busy Bee Vapor phase system, which sited emitter pipes 24” above the ground, it is evident the design of this system will have greater impacts to more distant properties, including the Pence Winery. The odor abatement system’s use of Ecosorb is expected to have at least 3 known types of adverse impacts – to soils, grapes and wine tasting.

Ecosorb that falls out and is deposited on soils is known to increase salinity levels. Like most sophisticated wineries, the Pence Winery takes great care to monitor and manage soil chemistry to achieve the flavor and production results sought for premium wines. Regular or even aperiodic operation of a system that delivers airborne salts from across the street and deposits them on the vineyard soils will have a significant and deleterious effect on management of soils at the Pence winery and other agricultural operations that is neither considered in the environmental review process nor addressed in the applicant’s materials or staff’s analysis.

Ecosorb neutralizes terpenes generated from cannabis operations through a series of different “essential oils” that include terpenes and other VOCs and BVOCs, as well as a

significant frequency of symptoms from chronic inhalant exposure to air in which camphor was made from a combination of α - or β -pinene and acetic acid in her home’s environment. The case study showed that camphor was toxic and compromised the patient’s daily activities and exacerbated her chemical sensitivity. Further research on this topic is recommended.”)

⁵⁵ See comments of Dr. Ken Underwood, TBS Systems, April 17, 2020, submitted under separate cover.

⁵⁶ The Project Description and Odor plans identify several different Ecosorb formulations for use on this site – its anyone’s guess which will be employed.

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chemical food grade surfactant. While the Project's presumed intention is for all Ecosorb to mix and neutralize all cannabis terpenes that cause odors, its use along a 3,875 foot property line in highly dynamic and shifting wind conditions ensures that not every molecule of Ecosorb will have its reaction potential exhausted before travelling onto adjacent properties, including the Pence Winery. Grapes themselves generate terpenes, albeit different terpenes, at much lesser concentrations, in different configurations and intensity. The unique configuration of these grape terpenes play a central role in defining the flavor and essence of each wine. Airborne Ecosorb that travels onto the Pence vineyards and onto grapes will cause unknown but likely dramatic and significant impacts to grape and thus wine characteristics and quality. As with Ecosorb's variable impact to soil characteristics, so too will the Project's odor abatement system jeopardize the quality and characteristics of grapes grown while exposed. The cumulative effect of grapes both grown in Ecosorb-affected soils and exposed to airborne Ecosorb on wine quality and characteristics is completely untested and unknown, but likely at least additive in combined adverse impact.

Finally, the presence of airborne Ecosorb wafting from the Project site onto the Pence Winery tasting areas is completely unknown, but likely significant. Wine tasting is primarily an olfactory experience, and in Santa Barbara is typically conducted outside or in areas open to outside air. The addition of ambient concentrations of an odor neutralizing agent in the air where wine is being tasted to discern subtle flavors and characteristics is a significant problem. Since most revenue that sustains Santa Barbara County wineries is direct to consumer, and typically based on the consumer's affinity to a particular wine gained at tasting, the interference with tasting functions is a significant impact to winery financial sustainability.

In short, the Odor Abatement Plan is predicated on faulty data and is further likely to cause significant conflicts with the Pence Winery. The site is not suited for the proposed use and the Project should be denied or subjected to environmental review.

2. The Project Is Inconsistent with the Comprehensive Plan

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

The Project is located within the Santa Ynez Valley Community Plan (SYVCP) and in a Design Control 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, 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

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consistent. Any modifications made through Conditions of Approval must be enforceable mitigation and standards that are specific, precise, and enforceable by the County. If the Project cannot be feasibly modified to comport with the SYVCP, the Board on must uphold the appeal and deny the Project, as it cannot make the following finding:

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

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

Protect prominent scenic viewsheds from extensive structural development.

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

The SYVCP further recognizes that:

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

The SYVCP defines areas along Highway 246 as the “gateway parcels”, and this topic has been an important planning issue for Santa Barbara County.⁵⁷ These so called gateway parcels are considered important because they are: “focal points” for visitors and residents, provide vistas that establish the Santa Ynez Valley as a unique region, and thus ensure an “inviting and aesthetically pleasing entrance to the community”. Further, the SYVCP states that the “most impressive views of the Valley can be seen from its points of entry along major highways”; the western entry to the Valley is from Highway 246. Visitors and residents traveling from the east, enter the Valley via Highway 246 and pass by the Project site. The Project site is currently the closest proposed to the western edge of the City of Buellton, and is squarely within this gateway.

⁵⁷ Santa Ynez Valley Community Plan at p. 199.

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

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

The Project was reviewed by the Central Board of Architectural Review (CBAR) five (5) months after the appeal to the Planning Commission was filed. We remain unclear how the County previously exempted the Project from CBAR review until an appeal was filed. The muddled procedural posture of the Project, revised after approved, has confounded the design review process. Regardless, the County has confirmed the scope of the Board’s review on appeal is *de novo* and includes review of CBAR’s approval of the Project’s design elements and consistency with Design Control Overlay standards.

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

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

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

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

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- 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.

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

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

The Planning Commission determined that the project’s landscaping, in conjunction with adjacent operations with similar landscape plans, would establish a nearly 5,000-foot long vegetation screen along Highway 246. The Planning Commission found that the project would obstruct views of scenic areas and, as a result, the proposed project would alter the character of the agricultural expanse along Highway 246 located near the western gateway to the Santa Ynez Valley. (Board Letter, p. 8.) Moreover, one-time vegetative screening is not effective or generally accepted to mitigate visual impacts to sensitive visual environments, therefore any reliance on vegetative screening must include a duty to maintain such screening for so long as the Project is operational, supported by a performance bond.

Further, the Project (including the Landscape Plan) is 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.

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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.

Most of the Project is located within the SYVCP's designated Flood Hazard Area, and development, including the parking area and well facilities at risk. SYVCP Figure 21. SYVCP DevStd FLD-SYV-1.1 prohibits development in floodplains, including designated flood Hazard Areas, unless certain findings of necessity are made. No such findings are included nor is there publicly available evidence that a flood control analysis was performed. The need for this policy and findings on this particular site are evident upon review of the impacts of the 1969 floods:

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As noted above, the Odor Abatement Plan is fundamentally flawed, and as such, fails to conform to SYVCP Policy LUG-SYV-8 which requires protection of the public from both air emissions and odors that could jeopardize health and welfare. The Byers system will discharge air pollutants as defined by State Law.⁵⁸ The public's welfare is broadly defined in the context of land use compatibility and provides the Board with a responsibility and the authority to consider impacts of the Project's emissions on surrounding properties and deny the project on that basis. Regarding public safety, the chronic health effects of exposure to Ecosorb have not been assessed, or if they have, have not been made available, and the effect of Ecosorb exposure on chemically sensitive individuals has likewise not been assessed. Based on the *Rea* study referenced herein, chemically sensitive individuals are expected to have significant adverse reactions to exposure to Ecosorb's essential oils and terpenes.

Due to these policy conflicts, the Board should reject the Applicant's appeal and deny the Westcoast Farms Project.

⁵⁸ Health and Safety Code § 39013.

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b. Comprehensive Plan

As determined by the Planning Commission, the Project is inconsistent the Agricultural Element of the County's Comprehensive Plan. 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 Williamson Act contracts and 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 these agricultural operations and the viability of the wine industry as a production industry in Santa Barbara County.

Moreover, the Project is inconsistent with the Scenic Highway, Environmental Resource Management, and Open Space elements. As such, the Project cannot be approved. Additionally, discussed above, 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, resulting in new significant land use impacts that require site-specific environmental review.

The County's analysis of Comprehensive Plan consistencies of the Cannabis Ordinance and found that 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.⁵⁹

The County's Comprehensive Plan *Scenic Highway Element* contains preservation measures for eligible scenic routes.⁶⁰ Such measures include the application of the Design Control Overlay District to require design review of structures or other development, additional grading and

⁵⁹ CPC Attachment I, January 10, 2018, page 12.

⁶⁰ County of Santa Barbara 2009a

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landscaping regulations, and control of outdoor signage. As stated previously, the Project is located in a Design Control Overlay District.

The Project is also inconsistent with the County's Comprehensive Plan. Namely, the *Environmental Resource Management Element (ERME)* identifies "Drum Canyon Road: Los Alamos-Lompoc-Buellton link" as scenic corridor where development should be subject to project plan review and imposition of specific conditions to preserve the integrity of the land and environment. The Project identifies Drum Canyon Road as one of two routes for all Project traffic. Attachment 13, revised Plan Set, TDM Page. The effect of a large volume of Project traffic and its aesthetic and visual impacts were not reviewed by the County in light of it being located in a scenic corridor pursuant to the ERME.⁶¹

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.⁶² 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.⁶³

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".⁶⁴ 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.⁶⁵

The results of the County's assessment found that only 10.6% of the County is classified as having "high scenic value", with the Santa Ynez Valley having the highest percentage of all the land classified in the high level (20.4%). Highway 246 was found to be a "moderately scenic" corridor⁶⁶ which should be "should be treated with care if development is permitted".⁶⁷

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

⁶¹ Environmental Resource Management Element (ERME), Adopted 1980, Republished May 2009 at p. 10.

⁶² Open Space Element, Adopted 1979, Republished 2009 at p. 16.

⁶³ *Id.* at 38.

⁶⁴ *Id.* at 22.

⁶⁵ *Id.* at 22.

⁶⁶ *Id.* at Table 3.

⁶⁷ *Id.* at 42.

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“clear image of the city’s identity”.⁶⁸ As such, the Element suggests that scenic areas and urban perimeters should be subjected to heightened design review before development permission is granted. The Project and all development associated with Project (e.g. fencing, landscaping, structural development) is within the area identified in the County’s Comprehensive Plan as a scenic corridor with high scenic value (and are all entirely within the identified 2,000-foot area on the side of Highway 246) that should be subject to heightened review prior to approving development on parcels in this area.

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 deny the Project.

3. The PEIR and Board’s Actions Establish the Need for a CUP for Cannabis Adjacent to EDRNs.

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

“The PEIR recognized this incompatibility issue, and recommended the requirement of a Conditional Use Permit for cannabis activity within an EDRN.

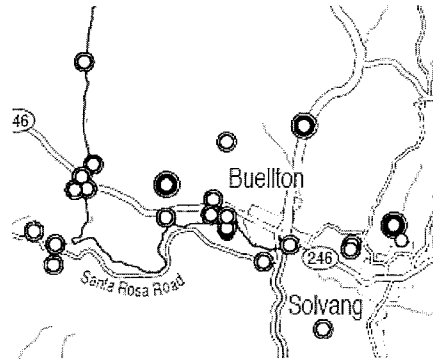
To further address potential land use compatibility conflicts between existing rural residential neighborhood areas and expanded cannabis activities with commercial purposes, staff will recommend to the decision makers that the Project be modified to require heightened discretionary review for any planned cannabis activity within an EDRN.

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

⁶⁸ *Id.* at 42.

PEIR, MCR-3, p. 8-11 (underlining added).

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



PEIR, figure 2-2.

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

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

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

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

a. Highway 246 Does Not Defeat the CUP Requirement

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

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

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

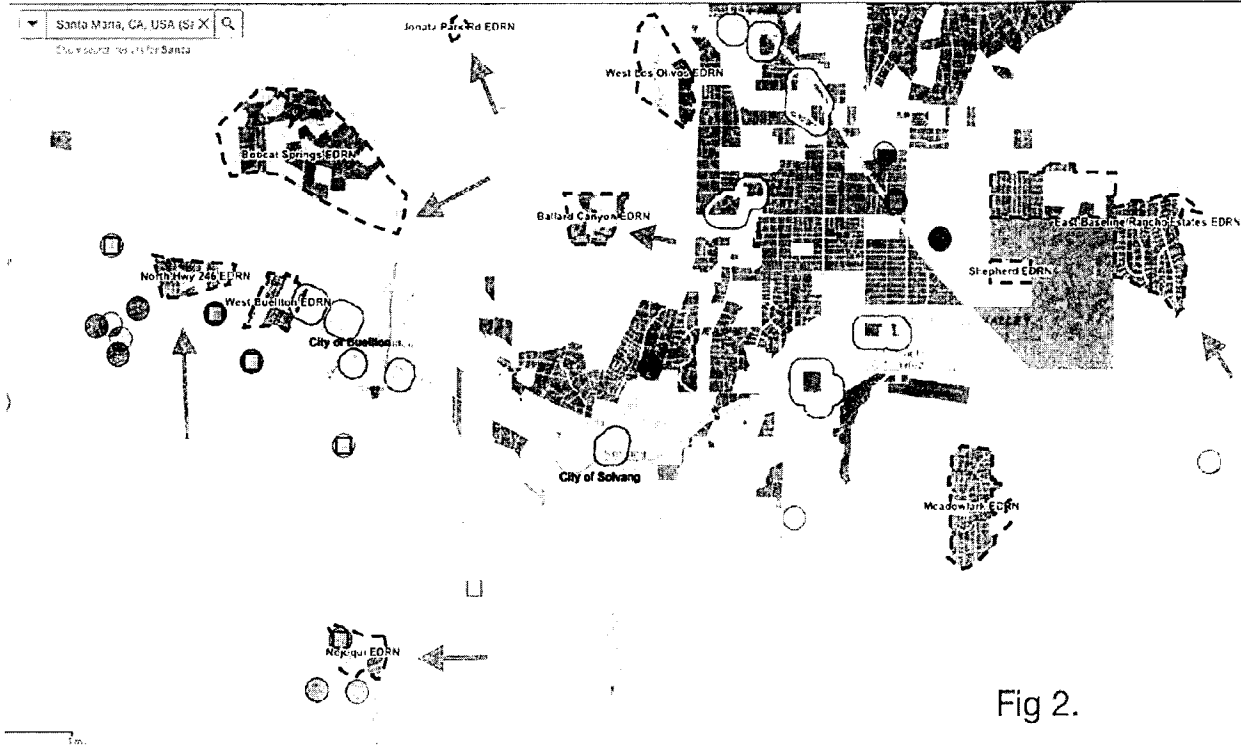


Fig 2.

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to Carpinteria:



Staff has processed the Project as an LUP, presumably due to an interpretation holding that the existence of a roadway at the edge of an EDRN (a routine situation throughout the County) is sufficient to defeat the requirement of a Conditional Use Permit. The Board should overturn this interpretation and direct the Applicant to apply for a Conditional Use Permit for the Project. The existence of the roadway does not eliminate the incompatibility issues between cannabis activities and EDRNs that were identified in the PEIR and repeated during the ordinance adoption process. “The County committed to ensuring that a legal cannabis industry should operate in a manner that minimizes or avoids impacts on surrounding communities and has designed the Project and analysis within the EIR to achieve this goal.” PEIR Vol. II 1.54-2, p. 8-398 (emphasis added).

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

b. A Conditional Use Permit is Appropriate for this Use

In comparing a Land Use Permit with a Conditional Use Permit, it is evident that the cannabis use in question adjacent to an EDRN requires a Conditional Use Permit. Whereas a Conditional Use Permit entails a process and findings for uses with “special character” or that may affect

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surrounding uses, the Land Use Permit looks more narrowly to the General Plan, zoning ordinance and other conditions established by the County.

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

35.82.110 - Land Use Permits

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

35.82.060 - Conditional Use Permits

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

Findings compared:

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

Findings for all Land Use Permits:

- a. The proposed development conforms:
 - (1) To the applicable provisions of the Comprehensive Plan including any applicable community or area plan; and
 - (2) With the applicable provisions of this Development Code or falls within the limited exception allowed in compliance with Chapter 35.101 (Nonconforming Uses, Structures, and Lots).
- b. The proposed development is located on a legally created lot.
- c. The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement and processing fees have been paid.

Findings required for all Conditional Use Permits:

- a. The site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed;
- b. Environmental impacts – that significant environmental impacts will be mitigated to the maximum extent feasible.

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- b. Streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.
- c. There will be adequate public services, including fire protection, police protection, sewage disposal, and water supply to serve the proposed project.
- d. The proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area.
- e. The proposed project will comply with all applicable requirements of this Development Code and the Comprehensive Plan, including any applicable community or area plan.
- f. Within Rural areas as designated on the Comprehensive Plan maps, the proposed use will be compatible with and subordinate to the rural and scenic character of the area.

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

The approval of a use permit for cannabis activities adjacent to an EDRN specifically requires assurances of compatibility between the land uses. A Conditional Use Permit involves a process and requires findings that address compatibility; the Land Use Permit does not. In light of the PEIR's acknowledgement of the need for enhanced procedures to achieve compatibility for cannabis activity near EDRNs, your prior endorsement of this goal, the Board should reject the argument that the presence of a roadway between a cannabis use and an EDRN defeats the adjacency of the parcels and, unless the Board denies the Project, direct the applicant to submit application for a Conditional Use Permit.

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

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

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

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

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

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1. Summary and Conclusion

As the largest outdoor cannabis grow proposed in the Santa Ynez Valley Community Plan Area and upwind of the City of Buellton, the Board's careful and judicious review of this proposed Project is critical.

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

Additionally, the County's amendment to the Uniform Rules subsequent to PEIR certification has a number of important implications for this Project and the County's Cannabis Program more broadly, both legal and practical. Specifically, the PEIR assumed that all cannabis projects would undergo a compatibility review process whereby APAC would assess each project's 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, and in the materials submitted concurrently with our appeal, approval of this 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.

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Accordingly we urge the Board to reject the applicant's appeal, and deny the Project, consistent with the reasoned action of your Planning Commission.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read 'M. Chytilo', written in a cursive style.

Marc Chytilo
Ana Citrin

LAW OFFICE OF COURTNEY TAYLOR, APC

A handwritten signature in black ink, appearing to read 'Courtney Taylor', written in a cursive style.

Courtney Taylor

Technical & Business Systems

environmental research associates

25570 Rye Canyon Road Unit J • Valencia, California 91355 • (661)-294-1103 fax (661)-294-0236

Date: 17 April 2020
To: Santa Barbara County Board of Supervisors
From: Kenneth H. Underwood, Ph.D., C.C.M
T&B Systems, Valencia CA
Subject: West Coast Farms Cannabis Odor Study

I have been retained by the Law Office of Marc Chytilo, APC to provide comments on the meteorological data and Odor Study submitted by SESPE Consulting, Inc. as part of the Odor Abatement Plan for Santa Barbara West Coast Farms.

On November 4, 2019, I submitted comments on the SESPE cannabis odor modeling report dated 5 August 2019. In this document, I am submitting my additional comments to their follow on report dated 4 November 2019.

In summary, my prior observations and conclusions are unchanged: the SESPE Odor Study is deeply flawed from the use of computer generated predicted meteorological conditions, and actual data collected near the site indicates odor episodes are likely to be much more common and substantial in severity than SESPE has predicted.

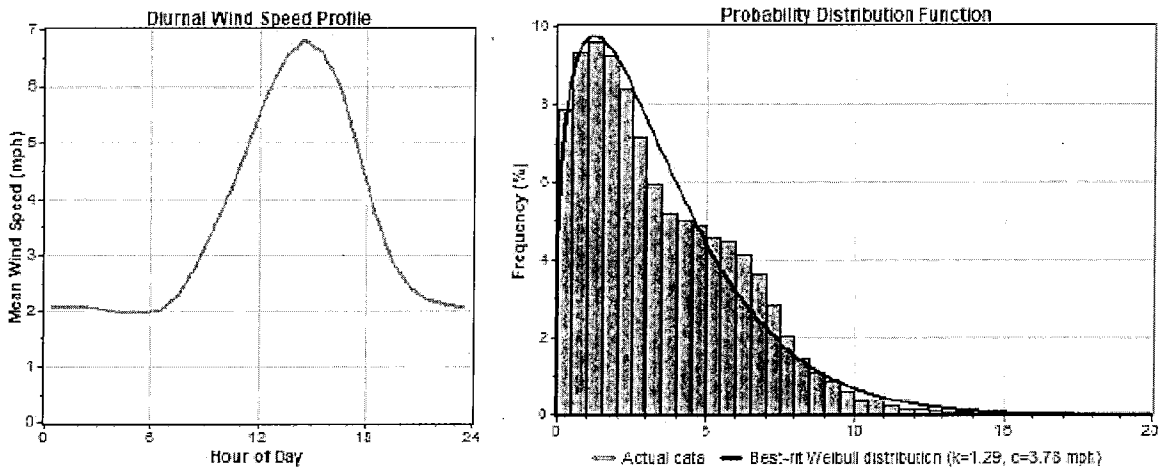
The SESPE analysis utilized a data set created by Lake Environment that was derived and synthesized from the following sources:

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

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

As stated in the 4 November 2019 document, it is desirable to have data sets more representative of the local meteorology especially since this is a situation where a local source of odors and air pollution could significantly impact the local community. In this situation the SESPE discussion is focused on sources and receptors that are separated by less than one (1) mile. To assure there will be no odor episodes, monitoring at the fence line is required to demonstrate that the emissions from the source property are always below the detectable threshold. Then any transport of the odor (terpenes) outside the property can be expected to never impact the surrounding community. There is no such requirement in this situation.

The odor receptor denoted on the SESPE Odor Map (denoted Exhibit 1 to the SESPE 11/4/19 Odor Study) is approximately 1/3 of a mile from the center of the odor source. The distance from the odor source to the nearest downwind fence line is 0.2 mile. These are very short distances over which any detectable odor at the source or fence line must dissipate quickly so that it would not be detectable at the receptor location. The atmospheric transport and mixing of detectable odor needed to dilute odors below the detection level must be extremely efficient in all atmospheric conditions. This is not likely to occur. In my 4 November 2019 memorandum, I submitted the following graphs of the local wind speed measurements and the frequency distribution of those wind speeds. These measurements and wind data were obtained in the vicinity of the Pence Vineyard and are graphed below:



The figure to the left is the average wind speed plotted as a function of the time of day. Lower wind speeds are observed in the morning until sunrise and return in the evening around sunset. Low wind speed conditions occur (on average) 10 to 12 hours each day. During these low wind speed conditions the local atmosphere is often said to be stable. These conditions reflect the difference between local air flow from on-site wind data and the regional and synoptic wind patterns observed at upper air monitoring sites such as Vandenburg AFB that were the basis for the SESPE Odor Study and its conclusions.

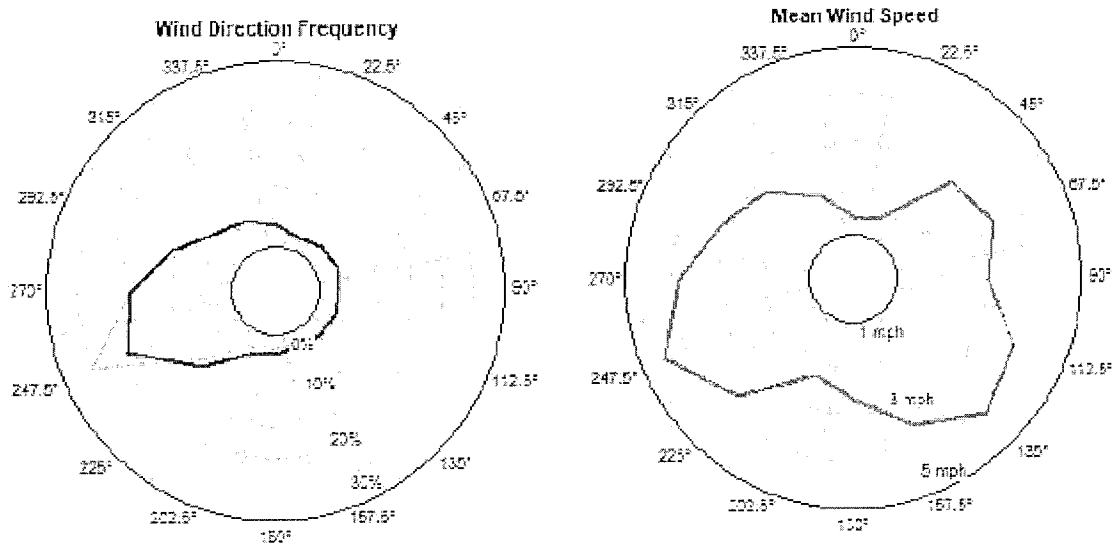
The local wind patterns in these conditions may exhibit significant deviations from surface monitoring stations significantly distant from the locale of interest (in this case the West Coast property). The AERMOD model used by SESPE for West Coast Farms does consider the local terrain and foliage in an attempt to synthesize the local wind patterns. The accuracy of these synthetic data is difficult to

evaluate based only on the wind rose. There is no information on the diurnal change to the wind speeds or the wind directions for comparison with locally monitored parameters.

It is very significant that they have reported that calm wind conditions (defined as .97 knots or 1.15 mph) occur less than 0.51% of the time. In comparison, the local data as graph on the right shown above is the frequency distribution of wind speeds. It is to be compared to the Wind Class Frequency Distribution plot in the SESPE report (see page 15). The local observations clearly show that the wind speeds are below 1 mile per hour more than 15% of the time, conflicting with the prediction of the 0.51% calm conditions in the Lakes Environmental data relied on in the SESPE report. This means that the stable atmospheric conditions under which the modeling results are predicated are not properly characterized to determine local odor impacts and substantially understate those potential impacts. Based on the frequency of occurrence, it can be extrapolated to the first order that it is feasible that the odor estimates could be 15 times higher than presented in the SESPE report. In stable conditions there is little organized atmospheric motion to transport and dilute odors. In these cases, the odor may just accumulate locally and cause much more significant odor episodes in the area around the Project. These conditions and processes can also allow the formation of "packets" of air containing higher concentrations of other volatile organic compounds (VOCs), including volatilized pest control materials, that can then migrate considerable distances across property lines and drop out or be detected on other properties some distance from the source.

It is important to also note that the higher wind speeds later in the morning are the result of solar driven mixing of the upper level winds to the surface through the thermally driven mixing process. Driven by thermal mixing means that the accumulated surface odors would be mixed both upward and downwind as part of the transition dynamics from a stable atmosphere to the late morning neutral or unstable atmospheric conditions. This type of process could result in a fumigation condition or increased odors at the surface due to the downward mixing of the elevated residual odors produced during stable atmospheric conditions which would enhance the impact on the local area.

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



These data are complimentary to the wind data presented earlier. At this location which is approximately 4 miles WSW of the Pence Vineyard, the wind direction frequency is seen to be a maximum from the WSW direction with an average or mean wind speed of 3 mph about 30% of the time from that same WSE direction. But more importantly, these wind rose plots show that the lowest average wind speeds (2-3 mph) include a substantial relative frequency of South and South South East wind directions. These calm winds would allow the accumulation of odors from the West Coast facility and transport these odors toward the Pence Winery.

The following table summarizes the local wind speed measurements in 45° sectors. The wind speeds in mph are listed in the rows and the columns are the frequency of those wind speeds in the direction sector.

WD (°)	0 to 45	45 to 90	90 to 135	135 to 180	180 to 225	225 to 270	270 to 315	315 to 360	All
WS (mph)									
0 to 1	2.2%	1.2%	0.8%	0.7%	1.5%	4.0%	3.7%	3.1%	17.2%
1 to 2	1.6%	1.3%	1.1%	1.0%	1.6%	4.1%	4.4%	3.8%	18.9%
2 to 3	0.7%	1.3%	1.2%	1.1%	1.2%	5.0%	3.7%	1.4%	15.6%
3 to 4	0.2%	1.2%	0.9%	0.9%	0.7%	4.5%	2.4%	0.3%	11.1%
4 to 5	0.1%	1.0%	0.5%	0.6%	0.5%	5.0%	1.8%	0.2%	9.9%

5 to 6	0.1%	0.7%	0.3%	0.3%	0.4%	5.6%	1.4%	0.2%	9.0%
6 to 7	0.1%	0.5%	0.2%	0.2%	0.2%	5.2%	1.2%	0.3%	7.8%
7 to 8	0.1%	0.2%	0.1%	0.2%	0.0%	3.1%	0.9%	0.3%	4.9%
8 to 9	0.0%	0.1%	0.1%	0.2%	0.0%	1.2%	0.7%	0.2%	2.5%
9 to 10	0.0%	0.1%	0.1%	0.1%	0.0%	0.6%	0.5%	0.1%	1.4%
10 to 11	0.0%	0.0%	0.1%	0.1%	0.0%	0.2%	0.3%	0.0%	0.7%
11 to 12	0.0%	0.0%	0.1%	0.0%	0.0%	0.1%	0.2%	0.0%	0.4%
12 to 13	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%	0.0%	0.3%
13 to 14	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%	0.0%	0.2%
14 to 15	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
15 to 16	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
16 to 17	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
17 to 18	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
18 to 19	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
19 to 20	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
All	5.1%	7.6%	5.7%	5.4%	6.1%	38.6%	21.6%	9.9%	100.0%

This table highlights the differences between the actual local measurements and the synthetic wind. Calm wind speeds (less than or equal to 1 mph) are not correctly characterized with 0.5% occurrence. The measured calm wind speeds occur 17% of the time. Clearly the modeled odor impact is significantly underestimated.

Summary

Because the odor source and the odor receptor are so close together, local wind data is necessary for the determination of odor impacts. The synthetic data set is not representative of the low wind speed conditions during which the high odor impact conditions exist. Furthermore the diurnal variation of these wind speeds which was not presented in the SESPE report is extremely important to properly characterize the probability and severity of odor episodes.