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Ramirez, Angelica Public Comment

LATE DIST

From: Steinfeld, Amy <ASteinfeld@bhfs.com>
Sent: Friday, December 10, 2021 11:58 AM
To: sbcob
Cc: Steinfeld, Amy
Subject: Canna Rios Applicant Letter to the Board of Supervisors, Dec. 14 Hearing: Agenda Item 4 Case No. 21APL-00000-00027 for LUP19-00000-00116
Attachments: BOS Canna Rios Appeal Response-final(22705107.3) (003).docx

Dear Clerk of the Board,

Attached is Canna Rios' letter for the Board of Supervisors regarding Departmental Agenda Item 4 Case No. 21APL-00000-00027 for LUP19-00000-00116.

Exhibits referenced in the letter are included at the following link: https://bhfs.sharefile.com/d-s1a62d20b49244645a18c22766fad8b38

Best regards, Amy Steinfeld

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December 10, 2021

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VIA E-MAIL

Santa Barbara County Board of Supervisors
123 East Anapamu Street
Santa Barbara, CA 93101

RE: APPLICANT RESPONSE TO CANNABIS LUP APPEAL OF CANNA RIOS, LLC—CANNABIS CULTIVATION (19LUP-0000-00116)

Dear Chair Nelson and Honorable Supervisors:

On behalf of Brandon Gesicki (**Exhibit A)**, Canna Rios, LLC (Canna Rios) and Abel Maldonado, landowner and Project partner (Landowner)[1] (collectively, Applicant), we submit this letter and the enclosed documents in support of the Land Use Permit (LUP) approved by the County Planning and Development Department (P&D) on February 8, 2021. The Santa Barbara County Planning Commission (Planning Commission) denied the appeal by Bien Nacido Vineyards (Appellant) by a unanimous vote, affirming P&D's determination that the Canna Rios project (Project) complies with all state and local laws, regulations, ordinances and rules. The sole appellant has now appealed that decision to your Board (Appeal). We address the issues raised in the appeal letters dated May 14 (May Letter), September 23 (Sept. Letter), November 24 (Nov. Letter), and December 7 (Dec. Letter).[2]

We understand Appellant is concerned that cannabis cultivation (an agricultural use) will impact its proposed wine tasting operation (a compatible use currently under construction).[3] To address Appellant's concerns, Canna Rios made several changes to the Project and voluntarily continued this hearing from October 19 to December 9, 2021 to address Appellant's air quality concerns raised in their September Letter. Abel, as a vineyard owner and member of the Santa Barbara County Vintners Association, strongly supports the wine industry and the development of tasting rooms in the Santa Maria region, including Bien Nacido's. The Project is compatible with vineyards and will not adversely impact the tasting room which, with the revised siting of the cannabis cultivation, will now be located over 1000 feet from the cultivation area. In fact,

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[1] The Farm is owned by The Maldonado Companies.
[2] Applicant's May 2021 Letter to the Planning Commission and exhibits is incorporated by reference into this letter.
[3] While the Appellant applied for a tasting room permit at its Santa Maria property in 2006, 15 years later the tasting room is still under construction. Appellant's existing tasting rooms are located in downtown Santa Barbara (J. Wilkes) and Los Olivos (Bien Nacido & Solomon Hills Estate Wines).

Applicant previously cultivated approximately 100 acres of hemp on the Project site in 2018 and 2019, and Appellant never communicated with Applicant or filed any complaints with the County regarding that cultivation. Rather, Bien Nacido's 2018 and 2019 estate wines received numerous awards, and tests of the wine revealed no terpenes were present.[4] Nonetheless, the proposed Project will drastically shrink the hemp's historical footprint on this ranch and introduce setbacks from property lines and extensive landscape screening.

I. PROJECT HIGHLIGHTS AND HISTORY

This Project is located on a family-owned farm[5] founded by Abel Maldonado. For three generations the family has farmed vegetables and strawberries. In 2008 the family became captivated by the Santa Maria Valley AVA and planted a vineyard to cultivate grapes for wine production. Abel and his daughter, Erika operate Runway Vineyards. More recently, Brandon, Abel, and Abel's three sons took an interest in cannabis and hemp, working closely with Allan Hancock College and its students. These new crops have diversified farming operations, and will allow the Farm to continue to thrive. Ultimately, Applicant hopes to open their Farm to agri-tourism and community education.

The Project has been granted a LUP to cultivate a total of 47.74 acres of cannabis: 46.29 acres of flowering outdoor area[6] and 1.45 acres of non-flowering nursery cultivation. The Project is located on a roughly 431-acre lot, designated AG-II-100 in the inland area of Santa Barbara County. This lot is adjacent to another large parcel owned by the Maldonados, which is located in San Luis Obispo County. The Project is ideally located on a flat, historically cultivated parcel approximately 5-6 miles outside the City of Santa Maria.

This Farm has been in continuous use for large scale agriculture for more than 40 years. This property is part of the historical ranchos that date back to the 1890s. The new cannabis cultivation will have a smaller impact on the soil and water use than the row crops and hemp it is replacing. In fact, this Project will have numerous environmental benefits as compared to the historic onsite farming operations which used significantly more water, pesticides, and fertilizers.

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[4] Several bottles of Runway wine, made from grapes grown adjacent to 100 acres of hemp, were tested at a certified laboratory and no cannabis terpenes were detected (including the major terpenes referenced by Oberholster, such as d-limonene, along with a-Pinene, linalool, B-caryophyllene, a-humulene.) (**See Exhibit B**.) A Runway 2018 Chardonnay and Runway 2018 Pinot Noir were tested. In addition, Bien Nacido Estate 2018 Chardonnay, Syrah and Pinot Noir were also tested. Again, no cannabis terpenes were detected in any of the wines. (**See Exhibit B** .) Additionally, all three wines received accolades and multiple point ratings above 90. (**See Exhibit C**.) The 2018 Estate Chardonnay was also recognized as one of year's best California Chardonnays by Wine & Spirits. An estate wine is made entirely from grapes owned by the winery and the wine is made entirely on the winery's property meaning that the grapes used in the estate wines were also grown in close proximity to 100 acres of hemp. This speculative and mythical "terpene taint" issue has been oft repeated by a few wineries to stigmatize cannabis.

[5] The Farm straddles Santa Barbara and San Luis Obispo Counties; however, the parcel on which the Project is proposed is located in Santa Barbara County .

[6] This premise areas includes roads, rows, and hoops. (See Project Site Plan.)

A. Project Highlights & Proposed Changes

- In an attempt to address Appellant's concerns, a substantial portion of the proposed cultivation is now proposed to be relocated north, away from Appellant's proposed tasting room, the compost area was reduced, the flash freezer was removed, and Well No. 2, which is further from the rivers, will supply the Project with groundwater.
- The cultivation area only comprises 11% of the Santa Barbara County portion of the Farm.
- The Maldonado family resides on the Farm.
- The remainder of the Farm will continue to be used for growing a variety of row crops (berries, cauliflower, lettuce, celery), wine grapes, honeybees and livestock, and avocados.
- Cannabis will be cultivated on historically cultivated prime soil and limited to two crops per year.
- There is no onsite proposed drying, processing (trimming), or storage of cannabis; plants will be taken offsite immediately after harvest.
- The Project setbacks far exceed the minimum requirements.
- The cultivation area will be located approximately 180 feet from the Appellant's closest grape vines, over 1,000 feet from the proposed tasting room, and over 1,500 feet from the nearest residence on Appellant's property.
- There is no operational tasting room on Appellant's property.
- The Project will be screened by 127,899 square feet of landscaping along the western, eastern and southern Project boundaries, which will beautify the region.
- The Project will reduce net water use and increase setbacks from the Sisquoc River.

B. Project and Applicant Background

The Farm has been historically farmed for a wide variety of crops and livestock. The Maldonados have been committed to agricultural innovation on this multi-generationally managed family farm since they purchased it twenty years ago, soon after Abel completed his term as California's Lieutenant Governor. Abel and his wife Laura have deep roots in the Santa Maria Valley, as this is where they were born and raised their four children—Erika, Nick, Marcus and Dino. The Maldonado children have all pursued careers in farming to carry on the family's legacy. Abel, his daughter Erika, and son Nick all attended Cal Poly San Luis Obispo, where they studied Crop

Science, Agri-business, and Agricultural Communications. Erika and Abel co-operate Runway Vineyards.[7]

Marcus and Nick currently live onsite and have been assisting in the hemp and existing legal-non-conforming cannabis operation, and will also be a part of the larger Project with Abel and Brandon. Over the past three to four years, the Farm's operations have exclusively utilized organic methods. The hemp has rejuvenated the soil and removed heavy metals and legacy pesticides from the soil. Although not certified organic, the Project will comply with the strictest organic growing practices of any commercially grown crop in the world.

Since 2016, Brandon has been a co-owner in a partnership with the Maldonado family. Brandon has managed all compliance and business management for Canna Rios LLC, while the Maldonado's have successfully managed all farming related activities for their state licensed cannabis business in Santa Barbara County holding 18 cultivation licenses, one nursery license, and one processing license.

Prior to entering the cannabis space, Brandon spent over 20 years as a leading political strategist and trusted advisor on numerous congressional, state legislative, county, and city campaigns. His astute counsel was highly regarded by many elected officials, notably serving as Chief of Staff and Senior Advisor to former California Lieutenant Governor Abel Maldonado. In his service, Brandon become a policy expert in federal, state, and local agriculture, land use and environmental issues. As the President and CEO of Capitol Consulting and Public Relations since 2004, he has managed multi-million dollar political campaigns, developed substantial legislative, political, and public relations experience and is well-rehearsed in project management, setting targets, advanced communication skills, budgeting, and research.

Since 2014, Brandon has also been a dynamic presence in the emerging cannabis industry. His input was pivotal on the path to legalization in the Monterey County area. In 2016, Brandon was chief consultant managing a bi-partisan effort for Monterey County cannabis legalization efforts, managing both the Yes on Measure Y Cannabis Ordinance and Tax campaign (which passed with 75% of the vote) and the Yes on Measure J King City Cannabis tax measure (which passed with 80% of the vote). Brandon worked closely with local law enforcement, policy makers and various stake holders. Brandon's extensive knowledge of cultivation, processing, regulation, and research has kept him in high regard among industry leaders for advice and counsel, which is evidenced by the numerous letters of support for this Project, including from the Mayor of Salinas and Sheriff of Monterey County.

C. The Project Will Diversify Farm Operations

This farm is a testament to the fact that cannabis cultivation is not incompatible with conventional agriculture. Rather, as this Farm proves, cannabis can augment and diversify traditional crops. The operations at the Farm currently include strawberries, avocado trees, honeybees, and livestock. Since 2018, the Maldonados have cultivated up to 350 acres of research hemp on this Farm or the adjacent parcel in a partnership with Allan Hancock College and the University of

[7] https://runwayvineyards.com/.

California at Davis (UC Davis). While cultivating hemp and cannabis, there were zero odor complaints registered with the County or received from neighbors, including Appellant. At the Farm, they also cultivate wine grapes, which they turn into wine and sell under the family's popular branded wine label, Runway.

The Maldonados plan to cultivate cannabis in close proximity to their existing wine grapes and adjacent to rows of new wine grapes. Based on several years of experience, they are not concerned that these grapes will be "tainted" by terpenes. In contrast, the Project will support the continued agricultural use of this Farm.

Cannabis cultivation at this site represents further diversification of the Maldonado family's agricultural enterprises. Cannabis cultivation presents a unique opportunity to maintain economic viability and continue to diversify agricultural activities on this family farm. Cannabis will support better-paying jobs for their current employees as well as support the hiring of new Santa Maria-based employees. The Project also opens the door for creativity and innovation in this new, fast-developing commercial crop. Applicant has been working with neuro-science researchers from the Technion Institution located in Haifa, Israel and UC Davis to develop medical research regarding hemp-derived cannabinoids. Further, Applicant has developed hemp-infused honey and other healing products and are voting members of the California State Beekeepers Association, and members of the Beekeepers Guild of Santa Barbara County.

Mr. Maldonado's background in farming and community leadership provides a sound basis for a successful operation. The management support provided by his sons have already proven successful. This family takes pride in operating the business in a way that honors their community's farming heritage while pioneering new agricultural markets such as hemp and cannabis.

Mr. Maldonado has deep and longstanding relationships in our community. As mayor of Santa Maria, one of his proudest achievements was his leadership in the founding of a youth center where youth can access safe activities and support when not in school. That center is now named the Abel Maldonado Community Youth Center.

The Maldonados take pride in their water-efficient irrigation systems and the fact that their cannabis cultivation creates no runoff into the river. The Maldonado family has always maintained a good neighbor policy.

II. THE BUSY BEE DECISION BY THE SANTA BARBARA SUPERIOR COURT

This past Spring, Judge Thomas Anderle finalized his Santa Barbara Superior Court decision in the Busy Bee Organics case (*Santa Barbara Coalition for Responsible Cannabis, Inc. v. County of Santa Barbara, et al.*). For your convenience, we are including a copy of this decision as **Exhibit D** to this letter. Relevant to the issues raised by appellant in their May Letter, the court held:

- The County developed a robust and legally defensible Cannabis Ordinance and PEIR. The time has long passed to challenge the PEIR.

- Cannabis is agriculture and a primary use under the County's Uniform Rules (Williamson Act). Cannabis is not a secondary or supportive use (like wine tasting rooms).

- Terpene "taint" of grapes is not real; it's speculative. And even if it were real, it is not an environmental impact.

- Requiring farmers to switch to less toxic pesticides or to ensure more precise application methods to avoid pesticide overspray (as required by California law) is not an environmental impact under CEQA.

III. GENERAL RESPONSES TO APPEAL

A. There Are No Nearby Sensitive Receptors

As noted above, this Farm is ideally located in a farming community outside the City of Santa Maria and surrounded by other large agriculturally zoned parcels. There are no nearby residentially zoned areas and the nearest operational tasting room (Cambria Wines) is nearly three miles away. The Project will not adversely impact human health or create air quality impacts.

According to the County's definition of the term "sensitive receptor"—which is the proper usage —the Applicant's plans for the Project were complete and correct regarding existence of nearby sensitive receptors. There are is only one—Blockman Union School District—and that is approximately two miles from the edge of the proposed cultivation site. The existing developed rural neighborhood (EDRN) known as North Garey is 2,500 feet from the southern edge of the proposed cultivation site.

With respect to the proximity of the cultivation to Bien Nacido's proposed tasting room, it is important to note that this tasting room is not currently a licensed operating business. Appellant applied for a tasting room in 2006, obtained a land use permit in 2014, and building permits in 2014 and 2018, and has made numerous revisions to the project, but has not completed construction of the tasting room. This proposed tasting room is also located directly adjacent to Bien Nacido's repair yard and across the street from a large cement quarry sited on a 92-acre parcel of land owned by the Miller Family.[8] The Miller's lease that property to CalPortland, which operates the Garey Asphalt Plant and the Garey Aggregate Plant on the site. These plants produce aggregate materials and manufacture asphalt. The Appellant has raised no complaints regarding the use of this site, even considering the potential air quality, odor, and viewshed impacts that the uses of the parcel pose. It also shows that this area is not as pristine as the Appellant has described it to be in previous letters.

Unlike cannabis, which is an agricultural use under the Williamson Act, tasting rooms are a merely supportive use to agriculture. Nonetheless, Applicant supports the development of Bien Nacido's tasting room and believes that this Project will create a win-win, with Appellant benefitting from an increase in tourism to the area.

[8] 4680 Santa Maria Mesa Road (APN 129-110-001).

B. Applicant Is a Vintner, Supports the Wine Industry, and Rejects Baseless Rumors

Appellant states that "any impacts to this vineyard due to cannabis cultivation directly adjacent, whether from real impacts due to terpene taint or perceived impacts by its wine grape buyers, will materially impact the vineyard's reputation, Appellant's ability to sell wine grapes in the future, and the success of their tasting room."[9]

As a vintner, Applicant hopes the County will refrain from responding to and thereby amplifying the vagaries, unsubstantiated rumors, and baseless misperceptions in the marketplace. As is discussed below and has been addressed numerous times in front of the Board, there is simply no hard evidence of "real" impacts to wine grapes from nearby cannabis cultivation. As to the assertion that "perceived impacts" may impact Appellant's vineyard's reputation, it is unfortunate that this myth is being perpetuated in this public forum. To the contrary, numerous studies demonstrate that cannabis and wine can co-exist and increase agri-tourism.

In fact, proof that cannabis and wine can co-exist was demonstrated by Santa Barbara County's 2021 Wine Star Award for Wine Region of the Year by Wine Enthusiast—the same year in which the County had hundreds of acres of legal cannabis growing next to some of the best wineries in the world. This award considers wine regions from around the world and is one of the wine industry's top honors. The award recognizes Santa Barbara County for having "an appellation and grape variety for every palate, thanks to a unique geography of valleys that open directly onto the cold Pacific Ocean." The award also recognizes Santa Barbara County as a leader in sustainability, being home to some of the first organic, biodynamic and regenerative vineyards, and diversity. Tim Snider, board member of Santa Barbara Vintners and president of Fess Parker Winery notes: "In my opinion, the overall quality and balanced style of Santa Barbara wines has never been better." (**Exhibit E**.)

In keeping with Applicant's unceasing pursuit of agricultural innovation, this Project will serve as a shining example of co-location and branding of two sun-grown Santa Barbara County specialty crops—grapes and cannabis—which both thrive in this region. A double win for the County and its economy.

C. Changes to the County's Uniform Rules Do Not Trigger Additional Environmental Review

Appellant argues that when the County amended its Uniform Rules to allow cannabis activities on Williamson Act contracted lands and define cannabis cultivation as commercial production of an "agricultural commodity" on Agricultural Preserve contracts, the County triggered a need for reevaluation of the impacts to existing agriculture in a new environmental impact report (EIR).

This issue has now been settled in court. As summarized by Judge Anderle, "This argument is based on the false premise that the PEIR assumed that cannabis cultivation would be defined as a compatible use rather than an agricultural use under the Williamson Act."[10] Applicant's claim

[9] May Appeal Letter, pp. 2, 13.
[10] Exhibit D, p. 17.

regarding the County violating its own rules in this instance is a leap in logic that is neither substantial by the law or common sense.

Firstly, it should be noted that the Appellant did not challenge this revision of the Uniform Rules during the 90-day statutory period. (Gov. Code Section 65009(c); Code Civ. Proc., Section 1094.6). It is too late for Appellant to make the challenge now.

Second, the Uniform Rules amendment did not in fact constitute a substantial change. A change in regulation does not trigger the need to prepare a new EIR under Public Resources Code section 21166. (*See Concerned Dublin Citizens v City of Dublin* (2013) 214 Cal.App.4th 1301, 1320 [new greenhouse gas (GHG) guidelines not significant new information]; *Fort Mojave Indian Tribe v Department of Health Servs.* (1995) 38 Cal.App.4th 1574, 1605 [new regulation designating critical habitat for an endangered species is not significant new information where issue of impacts to the species addressed in the original EIR].)

Thirdly, Appellant fails to establish how the change to the Uniform Rules resulted in any new significant impact to agricultural resources that would trigger the need for a new EIR for the Project. The County lawfully classified cannabis cultivation as an agricultural use under the Williamson Act, and agricultural uses are by definition compatible; so no compatibility findings are required, and no impact results from cannabis cultivation on Williamson Act lands. Appellant also ignores that the PEIR repeatedly states that cannabis cultivation qualifies as an agricultural use.[11] Substantial evidence therefore supports the County's conclusion that the change to the Uniform Rules did not trigger a requirement to prepare a new Programmatic EIR or Project specific EIR.

Both the Final Environmental Impact Report for the County's Cannabis Land Use Ordinance and Licensing Program (PEIR) and the Uniform Rules consider cannabis cultivation an agricultural use. Accordingly, the Project will not result in the conversion of agricultural land to non-agricultural uses, which is the agricultural resource impact considered by both the California Environmental Quality Act (CEQA) and the Williamson Act. To the contrary, the Project will support the continuation of agriculture as a major viable production industry in the County.

Appellant cites CEQA Guidelines Section 15162 as requiring an assessment of whether there are changed circumstances requiring supplemental environmental review but then fails to present substantial evidence supporting its argument that such alleged changes have occurred.

Further, as noted by the County in the Project Staff Report, the presence of wine tasting rooms in the County was plainly known when the PEIR was drafted, although as noted above, there are currently no tasting rooms adjacent to this Project; Appellant's proposed tasting room is located

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[11] See [stating "cannabis cultivation is considered an agricultural use" and explaining that "utilizing a license to grow cannabis would ensure agricultural purposes are carried out" and discussing the definition of "agricultural use" under the Williamson Act and that "nothing in the Williamson Act prohibits the growth of cannabis on land enrolled in the Williamson Act"] PEIR Vol. 2. 8-77 and discussed in Section 2.2.4 Current Agricultural Context of Cannabis, Section 3.2 Agricultural Resources.

over 1,000 feet away from the Project and, if ever completed, would be an ancillary use to agriculture.

IV. THE PROJECT WAS FULLY ANALYZED AND COMPLIES WITH CEQA

A. Appeal of This Project Is an Improper Forum to Challenge the PEIR

Appellant argues that the PEIR prepared for the Cannabis Ordinance and used to support approval of this Project is fatally flawed and that the County must direct additional environmental review or deny the Project.

The County adopted the cannabis Ordinance and certified the associated PEIR on February 27, 2018 after more than two years of drafting and numerous public hearings and meetings and public outreach. The PEIR has now been challenged in court and emerged unscathed. The Appellant did not timely challenge the PEIR or the Ordinance. The appeal of a single project is an improper manner to challenge the County's validly approved and ratified PEIR.

B. The County Conducted Additional Environmental Review and Extensive Analysis when Approving the Project.

The County carefully complied with Public Resources Code section 21166 and CEQA Guidelines section 15162. (See Staff Report; CEQA Checklist.) When doing so, the County considered the PEIR's analysis and assessed the potential impacts of the Project and found that it would not cause any additional significant impacts that had not already been considered in the PEIR. This conclusion was supported by substantial evidence in the administrative record including scientific studies, engineering reports, site inspections, and the Project plans. The County evaluated issues such as potential air quality impacts (including odor and terpene impacts), biological impacts, and water, traffic, and land use impacts.

Appellant states that the County should deny this project because, Appellant alleges, this Project has been inadequately reviewed. Appellant alleges there is substantial evidence supporting a conclusion that the Project, if approved, may cause new and substantially more severe impacts that require new review and mitigation. However, Appellant fails to demonstrate that any of the information presented falls outside of the scope of the PEIR.

The following sections provide responses to the claims raised by Appellant. Appellant's allegations are unsupported and ignore the careful evaluation of the Project performed by P&D staff, various state agencies, existing studies, and subject-matter experts.

At the outset, it's important to note that the Applicant has mischaracterized several aspects of cannabis cultivation, including harvest practices, composting, and yields. First of all, many of their "consultant"[12] assumptions base the Project on 48 acres of flowering canopy. However, they ignore that the 46.29 cultivation premises area set forth on the site plans include roads, rows and

[12] Many of Appellant's claims are allegedly "supported" by letters written by attorneys. However, an attorneys' unqualified opinion on scientific or technical matters is not substantial evidence. (CEQA Guidelines, § 15384 [unsubstantiated opinion is not substantial evidence].)

hoop houses. (See Project Site Plans.) It would be impossible to farm 46.29 contiguous acres of cannabis. To illustrate this, the site plan demonstrates that it would only have 745,620 square feet—17.12 acres—of state canopy licenses.

1. The Project Will Not Divert Surface Water and Will Reduce Overall Water Use

The Project proposes cultivating cannabis on a property historically irrigated for agriculture. Wells on the Project site have historically produced water from the underlying Santa Maria River Valley Groundwater Basin ("Basin") for agricultural uses, and from 2010 through 2020, pumped 273.8 acre feet per year on average. (See Board Letter, Attachment 9.) The Project will require significantly less water than the historical average—105.6 acre feet per year—resulting in a net 168.2 acre feet per year reduction in water demand on site as compared to prior uses. (See Board Letter, Attachment 9.) Average water use on the property will decrease with the implementation of this project because of the overall reduction in cultivated acreage, the reduced crop density of cannabis vis-à-vis hemp, and implementation of state-of-the-art irrigation technology described in the LUP. Due to Appellant concerns over the use of Well No. 1, the Applicant has updated its Project to use Well No. 2 to serve the Project.

The PEIR analyzes potential impacts associated with cultivation under the County's cannabis ordinance, including potential impacts related to groundwater production. More particularly, the PEIR analyzes whether cannabis cultivation will have a potentially adverse effect on surface water quality, groundwater quality, groundwater supplies and recharge, and drainage patterns. (PEIR, pp. 3.8-28-35.) The PEIR then imposes the following mitigation measures to ensure any impacts associated with groundwater production for cannabis cultivation are mitigated to less than significant: (1) Mitigation Measure HWR-1 requires compliance with the State Water Resources Control Board's ("State Board") Cannabis Cultivation Policy; and (2) Mitigation Measure HWR-3 requires the preparation of a water conservation landscape and irrigation plan for cultivation projects. (PEIR, pp. 3.8-35-37.)

The County has codified these mitigation measures in its Land Use Development Code (§ 35.42.075.D.1.c ‖ 35.42.075.D.1.j) and incorporated them into the Project's LUP (Conditions 16 & 17). The County determined, based on substantial evidence, that: (1) the potential impacts of the Project are within the scope of the PEIR, and (2) no further environmental document is required to review the Project. (See September 28, 2021 State CEQA Guidelines § 15168(c)(4) Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications.) Accordingly, as analyzed and mitigated in the PEIR, the Project will implement measures to ensure any impacts associated with its groundwater production is less than significant.

Despite these facts, Appellant claims that the Project's groundwater production prevents issuance of the LUP arguing there is "substantial evidence supporting a conclusion that there is not adequate water to serve the proposed Project." Appellant reasons that the Project's groundwater production will be restricted by the State Board's Cannabis Cultivation Policy, which prohibits diversion of surface water for cannabis cultivation from April 1 through October 31, and, as such, the "Project will not have adequate water." (Dec. Letter, p. 2.) Appellant misunderstands the law and the facts.

First, the State Board does not have permitting jurisdiction over production of percolating groundwater. (See Wat. Code, §§ 1200, 1201.) The State Board's authority is limited to surface water and "subterranean streams flowing through known and definite channels." (*Ibid.*) The State Board's Cannabis Cultivation Policy acknowledges this is lack of jurisdiction. The Policy only imposes forbearance periods on surface water diversions. (Policy, Attachment A, pp. 48-56, 65-68.) While the Policy grants the Director of the Division of Water Rights to implement forbearance periods for groundwater diversions, such forbearance periods are only permitted to "ensure groundwater diversions do not have a negative impact on the surface water flows." (Policy, p. 11-13, Attachment A, pp. 68.)

Here, the Policy does not apply to the Project's groundwater production. The Hydrology Report prepared by Walch Geosciences for the Project in 2019 and recently updated found that: "There is no hydraulic connection between the deeper aquifer (Lower Paso Robles and Careaga formations) and Cuyama and Sisquoc River alluvium, and the top of groundwater in both the shallow and deep aquifers is well below the streambed. Therefore, pumping groundwater from either aquifer will not affect flow of water in the stream or the amount or rate of infiltration of surface water into the subsurface and, thus, will have no impact on the adjacent rivers." (**Exhibit F, Hydrology Report, pp. 7-8.**) In other words, Well 2, which is located over 2,000 feet from the nearest surface water course, will produce percolating groundwater, not water from a "subterranean stream," and there is no connection between this groundwater and the overlying surface water course.

Second, Appellant submits a letter from Lynker Technologies ("Lynker Letter") and claims that:

> Based on the location of the well within the Sisquoc River alluvium, the descriptions of the local hydrogeologic setting, and the well completion report and driller's log (Well 0001567) it is presumed that this well produces water that meets the criteria of connected groundwater that is administered conjunctively with surface water by the State Water Resources Control Board.
>
> With respect to the well construction, the intended hydraulic isolation afforded by the shale-clay layer is essentially short-circuited by the annular sand pack in the well. In other words, as shown in Figure 2, above the highly permeable saturated alluvium layers above the shale-clay layers are hydraulically connected to the deeper well intake screen via the well filter pack sand.

(Dec. Letter, p. 3; Attachment A.) Appellant is mistaken.

For one, the Lynker Letter analyzes the wrong location for Well 2, assuming it is located where Well 1 is located on Page W2 of the Site Plan. That is not the case. Well 2 is located adjacent to the proposed cannabis location and over 2,000 feet from the nearest surface water course, whereas Well 1 is located within approximately 100 feet of the surface water course.

Moreover, the Lynker Letter fails to address the Hydrology Report's finding that that the top of groundwater in both the shallow and deep aquifers is well below the streambed, meaning

production from either aquifer would (a) not be considered production of surface water and (b) not impact surface water. Rather, it "presumes" that the water to be produced is connected to the surface water. (See Dec. Letter, Attachment A, pp. 12, 17.) This "presumption" is not evidence, however, and is based on a flawed assumption that the Sisquoc River is a gaining stream near the Project site. As explained in the Hydrology Report, that is not the case—the Sisquoc River is a losing stream in the Project vicinity, there is no flow in the river during the months of July, August, and September and minimum flow for the months of April through December, and data shows a minimum of 50 feet of unsaturated sediments between the stream bed and the top of groundwater. (**Exhibit F,** Hydrology Report, p. 8.) In other words, there is no evidence to support a finding that Well 2 will produce water from a subterranean stream or will produce groundwater that is connected to a surface water course.

Third, the County does not have jurisdiction to determine this issue—i.e., whether the Project's pumping will fall within the purview of the Cannabis Cultivation Policy. That jurisdiction rests with the State Board in its implementation of the Cannabis Cultivation Policy. However, the County can rest assured that the Project will comply with the Policy as both the LUP for the Project and the LUDC mandate compliance.

2. The Project's Compost and Waste Areas Comply with All Applicable Laws

(a) Appellant Mischaracterizes the the Waste Management Plan

Appellant grossly mischaracterizes the scope of the composting activities that will occur onsite. Ms. Strange's and Mr. Haan's waste calculations (Dec. Letter and Nov. Letter) do not account for Project-specific practices. As a foundational matter, when growing <u>outdoor</u> cannabis, more of the plant (including trim) is used for oil production (and therefore shipped offsite) than in indoor grows, which focus exclusively on flower (bud) production and therefore creates more onsite green waste. Here, some of the cannabis plant waste (green waste) will be left in the field and tilled into the soil.[13] This includes leaves pruned off the plant weeks prior to harvest to improve plant structure and air flow through plant (as discussed above, pruning is not considered trimming or processing). Following harvest, the main stalk of the cannabis plant along with large twigs will be transferred to the compost area (brown waste). There the brown plant matter will dry over a period of weeks and will then be chipped and tilled back into the soil. No compost will leave the cannabis premises. Ms. Strange's estimation that there will be 1,025 pounds of green waste per acre that must be composted or hauled offsite is unsubstantiated and overestimated based on Project-specific practices for outdoor farming, including tilling material back into the soil.

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[13] The state allows for four types of waste management methods to dispose of cannabis waste: 1) onsite composting, 2) collection and processing of cannabis waste by a local agency, a waste hauler franchised or contracted by a local agency, or a private waste hauler, 3) self-hauling, and 4)" <u>reintroduction of cannabis waste back into agricultural operation through on- premises organic waste recycling methods including, but not limited to, tilling directly into agricultural land and no-till farming."</u> (Cal. Code. Regs. Sec. 17223.) Here, Canna Rios is using a combination of on-site composting (no. 1) and reintroduction (no. 4).

The Project proposes a fenced, 0.66 ac (29,115.09 sf) waste and composting area which is 200 feet from the Santa Maria River's top of bank. Half of this area, or 0.33 ac, is fenced off for composting activities; the other half is dedicated to non-organic waste (i.e. trash, recycling) that will be self-hauled to the County dump. All compost will be used onsite and no compost will be hauled offsite or sold.

(b) The Waste and Compost Area Comply with the Water Boards Waste Discharge Requirements

The purpose of the Cannabis Cultivation Policy is to ensure that the discharge of waste associated with cannabis cultivation does not negatively impact water quality and riparian habitat. (Cannabis Cultivation Policy, p. 6.) Cannabis cultivators in Santa Barbara County must demonstrate compliance with the State Board's comprehensive Cannabis Cultivation Policy. (LUDC Sec. 35.42.075.D.1.c.) This is demonstrated by providing the County proof of enrollment as a Waste Discharger under the Cannabis Regulatory Program with the Regional Water Quality Control Board (RWQCB) during the land use entitlement process. As part of this process, the Applicant submits a Site Management Plan (SMP) which describes how they will implement the best practical treatment or control (BPTC) measures. The Water Boards reviews this document to confirm compliance with the Cannabis General Order.

Claims that the Project fails to comply with the County's condition regarding Cannabis Waste Discharge Requirements are wrong. The Project is enrolled as a Waste Discharger under the RWQCB's Cannabis Regulatory Program and is subject to the General Order requirements. (See Exhibit G.) The Project must prevent discharge that would negatively impact the Santa Maria River by implementing the requisite BPTC's. Examples of BPTC measures include disposal of trash/refuse in a closeable container and covering the compost pile prior to any precipitation event. The Project also complies with all State Board setback requirements. The State Board classifies the Santa Maria River as a perennial or Class I watercourse that is subject to a 150 foot riparian setback. All cannabis land disturbances, which includes the compost and waste area, must be outside of this area. All land disturbing activities are at least 200 feet from the edge of the river top of bank, which puts it well out of the State Board riparian setback. The General Order requires that operators implement winterization measures between November 15 to April 1 to ensure there avoid water quality degradation caused by land disturbance activities. In short, cultivation activities like composting, are prohibited during the winter period without prior authorization from the State Board. (Cannabis General Order, Appendix A, Section 1, No. 6) Any activities within the cannabis area that will occur during the winter period, or the time when there is the greatest potential for runoff, will be closely regulated by the RWQCB.

The Appellant also argues that there is not sufficient information to determine if the Project is subject to enrollment under the State Board's Compost General Order. Agricultural sites are exempt from the Compost General Order if "(1) the facility receives, processes, and stores less than 25,000 cubic yards of material on site at any given time; (2) feedstocks consist of vegetative agricultural materials, green materials, and/or manure, all of which are generated by agricultural and/or similar activities; (3) the resulting compost product is returned to the same site, or a property owned by the owner of the composting activity and applied at an agronomic rate; and (4) no more than 5,000 cubic yards of compost product is given away or sold annually. To remain

exempt, best management practices must be implemented." (Compost General Order Finding 30.)

Not all green waste generated by the site will be transferred to the compost area. Some green waste will be left in the field and tilled back into the soil to improve soil health. Larger cannabis stalks and twigs will be transferred into the compost area to dry. Thus, the total green waste in the compost area will be substantially less than what is estimated by the Appellant, who has no experience cultivating cannabis. Plant matter from the compost area will be chipped and then reintroduced back into the cultivation area. No compost will leave the cultivation premises or be sold. The quantity of green waste will be far lower than the thresholds for exemptions. Because the Project will comply with the Cannabis General Order, there will be BPTCs in place to prevent negative impacts to water quality and riparian habitats as a result of the composting activities and all other cannabis land disturbances on the site. Therefore, the Project meets all the criteria for an agricultural exemption from the Compost General Order.

(c) The Project Provides a Sufficient Setback from the Santa Maria River

The Applicant claims the Project does not comply with the requirements of County Code Chapter 15B because the compost and waste area is not sufficiently setback from the Santa Maria River. County Code section 15B-3 prohibits construction or development within 200 feet from the top of bank of the Santa Maria River. The Building Official can increase this setback if new development would "significantly reduce the capacity of existing watercourses, realign stream beds or otherwise adversely affect other properties by increasing stream velocities or depths, or by diverting the flow; or... would not be reasonably safe from flow-related erosion or would cause flow-related erosion hazards or otherwise aggravate existing flow-related erosion hazards..." (County Code, §. 15B-7.) The compost area is 205 feet from the top of bank of the Santa Maria River. This is greater than the required setback for developments along watercourses. None of the conditions that would necessitate an extended setback are present. So the baseline setback is sufficient to comply with Chapter 15B requirements.

(d) The Compost Area is Not Subject to the Requirements for a Solid Waste Facility

The Applicant claims that the site does not comply with the County's requirements for commercial solid waste and composting as described in Chapter 17 of the County Code. It is unclear which requirement the Appellant believes the Applicant does not comply with. A majority of the Chapter 17 requirements are applicable to solid waste enterprises which offer solid waste handling services. This site is not commercially handling solid waste and does not accept waste from outside of the cannabis premises. Even if this site would be considered a solid waste handler, a permit for unscheduled solid waste handling services wouldn't be required because the operator is "engaging in... agricultural operations which produce agricultural solid waste." (County Code, § 17-44(k).) Also, the site does not meet the state's criteria for a compostable materials handling operation or facility because the compost area is handling agricultural material, derived from an agricultural site, and returns a similar amount of material..." to the cultivation area from which it came from. (Cal. Code Regs., tit. 14, § 17855(a)(1).)

(e) The Project Complies with the Clean Water Act

The Appellant claims that the compost area is a potential "point source" of pollution into the Santa Maria River and violates the Clean Water Act. Water quality of jurisdictional waters will be protected by State Board policies. The purpose of the State Board's Cannabis Policy is to ensure that the discharge of waste associated with cannabis cultivation does not negatively impact water quality and riparian habitat. The County and state require that cannabis operators enroll for coverage under the State Board Cannabis General Order. The Applicant is enrolled for coverage at this Property and must demonstrate the Project will not negatively impact water quality. This is described in the SMP that is reviewed and approved by the RWQCB. The BPTC's as outlined in the SMP will prevent discharge which would negatively impact water quality.

(f) The Compost Area on the Site Is Part of an Agricultural Operation

According to the Appellant, an Authority to Construct or Permit to Operate from Santa Barbara Air Pollution Control District (SBAPCD) is required to operate the composting area. Agricultural Operations, which mean "the growing and harvesting of crops... for the primary purpose of making a profit [or] providing a livelihood", are conditionally exempt from SBAPCD requirements. (SBAPCD Rule 102 & 201.D.3.) Composting to utilize plant matter is part of an ongoing agricultural operation and is therefore exempt from this requirement. Conversations with SBAPCD staff indicate they would consider the composting an activity that is part of the agricultural operation.

Even if the composting does not qualify for agricultural operations exemption, the activities may qualify for a stationary source permit exemption. A permit is not required if "the uncontrolled actual emissions of each individual affected pollutant from the entire stationary source are below 1.00 ton per calendar year." (SBAPCD Rule 201.D.7.) The Appellant assumes a quantity of green waste that will be generated and the compost method. The green waste onsite will not be processed in the Berkeley Hot Compost method cited by the Appellant. Some parts of the cannabis plant will be tilled back into the soil within the cultivation area. Stalks and larger twigs will be transferred to the compost area to dry out. Plant matter will be chipped and reintroduced into the soil. Thus, it is safe to assume that the Appellant's calculations are not accurate.

(g) Composting Is a Beneficial Practice for Plant Health and the Environment

It is ironic that Appellant is claiming that composting for onsite use will have an adverse environmental impact. In fact, regular use of compost and mulch provide organic matter and plant nutrients to the soil, leading to improved plant growth and health. Compost and mulch can also improve soil health via micro-organisms, reduce erosion, increase the water holding capacity of soil and lead to carbon sequestration. (**Exhibit H**, Compost and Mulch Use in Agriculture: Organic Materials Management, CalRecycle, Average Levels of Compost Nutrients: Organic Materials Management, CalRecycle.) Cannabis and hemp crops not only benefit from the use of compost and mulch but also can be used as compost and mulch themselves. When cannabis stalks are used as mulch, the soil is able to hold moisture more effectively and soil temperatures are moderated. (Adesina I, Bhowmik A, Sharma H, Shahbazi A. A Review on the Current State of Knowledge of Growing Conditions, Agronomic Soil Health Practices and Utilities of Hemp in the

United States. Agriculture. 2020; 10(4):129. https://doi.org/10.3390/agriculture10040129) Cannabis waste can be used as compost providing many of the benefits that traditional compost brings. When hemp compost was added to soil, the water infiltration rate increased as the percentage of hemp compost increased and led to improved plant growth and yields (Bound, Sally. (2011). Hemp compost as a component for potting media. https://www.researchgate.net/publication/275025979_Hemp_compost_as_a_component_for_potting_media). Using cannabis or hemp waste as compost also supports greenhouse gas reductions by reducing the volume of biodegradable materials that end up in landfills off-gassing methane (Analysis of the Barriers and Opportunities for the Use of Compost in Agriculture, 2018, http://sevengenerationsahead.org/wp-content/uploads/2019/02/White-Paper-Analysis-of-the-Barriers-and-Opportunities-for-the-Use-of-Compost-in-Agriculture-2018.pdf). When used in compost, this waste stream can act as a sink for GHG emissions rather than being a source.

3. No Onsite Trimming or Processing will Occur Onsite

Appellant asserts that the Project does not meet the odor abatement requirements of LUDC Section 35.42.075.D.1.o as pertaining to "the drying, curing, and/or trimming of harvested cannabis."[14] However, no drying, curing, and/or trimming of harvested cannabis will occur onsite and therefore this section of the LUDC is inapplicable.

Applicant's harvest will be boxed onsite and shipped by truck the same day to Applicant's licensed processing facility in King City, California. Both cryo-frozen and boxed harvest will be stored in King City prior to processing. Applicant's two building facility (Testa Sol) is licensed for manufacturing, distribution, processing, and delivery operations. Operations opened in mid-June of 2021.

In its November Letter, Appellant appears to misunderstand routine cultivation practices as described by the Applicant during the May 5th, 2021 Planning Commission hearing as a processing activity. Cutting plants during its growth cycle up to the point of harvest is normal practice for any crop that is grown on a plant, tree, or a vine. Nor can processing activities, as defined by state and County Code, reasonably occur before harvest and/or before the plant is dry. Thus, routine cultivation activities do not constitute processing.

Appellant's interpretation of trimming fails to acknowledge that cultivation activities can also involve cutting plants. Appellant presumes the act of cutting "any material from the plant," even if in the ground or wet, constitutes a regulated processing activity. This absurd interpretation of trimming would deprive any cannabis grower the right to engage in basic and accepted agricultural activities during a plant's growth cycle to maintain or improve plant health and yield. The Applicant's activities as described at the Planning Commission hearing are consistent with plant pruning. The Applicant explained that several days prior to harvest, leaves may be removed to air the plant, improve the plant structure, and expose the parts of the plant that will be harvested. Certain leaves will be removed while the plant is still alive and in the ground. Pruning is a well understood and well utilized horticultural technique to improve plant growth and flowering without the use of additional inputs such as fertilizers. Per the University of California Cooperative Extension, pruning can be used to "control [plant] shape and size, influence flowering and fruiting,

[14] May Letter, p. 4.

invigorate stagnant growth, and remove damaged or pest-infested growth." (Retrieved from https://ucanr.edu/sites/UrbanHort/files/80117.pdf) Since this practice is well-understood as a routine activity associated with growing plants, the state and County cannabis regulations are silent on this cultivation activity. Cultivators must be able to cut plants at any stage of the growth cycle to successful cultivate cannabis.

Appellant also claims that cutting wet plants, even if in the ground, constitutes a violation of the County's limits on harvesting activities. The LUDC requires that drying, curing, and/or trimming of harvested cannabis occur within "an enclosed structure which utilizes best available control technology, or includes techniques and/or equipment (e.g., the use of freeze drying techniques/equipment and immediate packaging of harvested cannabis in the field) that shall achieve an equivalent or greater level of odor control as could be achieved using an enclosed structure which utilizes best available control technology." The purpose of this requirement is to minimize cannabis odors by limiting the duration of harvest and prohibiting the activities that generate the greatest perceived odors. Removing extra leaves and/or any other undesired part of the plant does not intensify the odors associated with mature, fresh, flowering plants at harvest. Additionally, odors are perceived to be the strongest during drying of the flower and subsequent processing activities where the dried flower is disturbed. Contrary to the Appellant's claims, the Project complies with the limits on harvesting activities because harvested, wet cannabis will be boxed and shipped away the same day and any intense odors associated with dried flower will occur off-site.

Appellant further claims that the state and County code do not distinguish between trimming before or after harvest. This is untrue—state requirements for cultivation licenses indicate that processing can only occur after the plant has been harvested. Pursuant to California Code of Regulations, title 4, section 16300(d), processing of harvested plant can only occur within the areas designated for processing per the approved cultivation plan. Therefore, processing is an action that only happens after harvest. Thus, cannabis that will be processed cannot be in the ground because a harvest by dictionary definition is the act of gathering a crop. By the same definition, cutting the non-flowering parts of the plant while it is still alive does not constitute a harvest. Additionally, the state and County acknowledge unwanted parts of the cannabis plant will be disposed of, which is why a Waste Management Plan is required. The Appellant makes the ludicrous assertion that processing must occur because there would be no need for an onsite composting facility if the whole plant was moved off site. This demonstrates a lack of understanding of the state and local cannabis requirements. First, there is no requirement that the entire plant must be removed from the site. Second, the state and County require a designated cannabis waste area whether it is a secure container for a licensed cannabis waste hauler or mulching. Neither the County nor the state limit a maximum quantity of cannabis that can be disposed of.

Appellant also contends that the definition of processing does not distinguish between the trimming of wet or dry plants. However, all the activities as described in the state and local definition of processing can only reasonably occur once the plant is detached from the ground, or dead, and in the process of drying. The state and County's Cannabis Regulations similarly define processing as "all activities associated with drying, curing, trimming, storing, packaging , and labeling of nonmanufactured cannabis products." (Cal. Code Regs.,tit. 4, §15000(eee) and LUDC

Sec. 35.110.020.) These activities cannot occur if the plant is wet/fresh or still attached to the ground. Also, it is reasonable to assume that the activities described in the definition of processing are listed in the order in which activities occur in the processing process. For example, the cannabis must be dried before it is cured. Both these actions must happen before trimming flowers, which is commonly understood as the moment the dried cannabis flower is separated from branches and stems. This is followed by storage of the dried flower, so on and so forth. So processing cannot precede drying. And in the County drying can only occur if the plant is in an enclosed facility. Thus, no processing (as regulated by the state and county code) will occur onsite.

4. Applicant Did Not Unlawfully Modify the Cuyama River

Appellants baselessly allege that the County cannot approve the Land Use Permit for the Project because the Project site contains "earthen berms" that cross the Cuyama River. Appellants argue that these berms constitute a continuing violation of the Federal Rivers and Harbors Act. However, there is no evidence supporting that claim. Mr. Maldonado has owned the Property since 2000 and has no knowledge of an illegal modification to the Cuyama Riverbed since that time. The County and the Department of Fish and Wildlife inspected the entirety of the Project site, including the riverbed, and raised no such concerns. And a biological study was prepared for the Project, which thoroughly investigated biological resources in the riverbeds but raised no concerns about any illegal modifications.

Appellants argue that these "earthen berms" must be illegal because the United States Army Corps of Engineer responded to a Freedom of Information Act Request for "information regarding impoundment at and resulting diversion of the Cuyama River" by stating they had "no responsive documents." That is not evidence of a violation of the Federal Rivers and Harbors Act. Furthermore, and perhaps most significantly, the Google Earth image showing these alleged "earthen berms" in Appellants' letter shows that these "berms" are located on the property north of the Project site, outside of the County's jurisdiction.

5. There is No New Information Regarding Agricultural Compatibility

(a) Odor Impacts Were Addressed in PEIR and the Project's Location, Setbacks, Hoops and Design Features Will Reduce Odor

Appellant asserts that "the PEIR also did not address the negative impacts odors have on both tourism and tasting room visits and sales on agriculturally zoned parcels, or how cannabis odors would negatively impact tourism and sales to generated (*sic*) at local wine tasting rooms and the long-term impacts this would have on agricultural viability in the region."

Appellant claims that the Project's analysis of odor impacts is insufficient and will adversely impact its proposed tasting room as well as its unpermitted outside tasting area. First, the PEIR, which addressed the Ordinance's impact on tourism, found that cannabis cultivation would have a significant air quality impact as a result of odors and the Board adopted a Statement of Overriding Considerations concluding that the benefits of the Ordinance outweigh the unavoidable adverse environmental effects. Second, as noted by the County, this Project, which is located on an Ag-II parcel, is not required to adopt an odor abatement plan.

Judge Anderle's response to the same assertion about odor impacts/incompatibility is clear: "This is not so. Petitioner simply disagrees with the conclusion in the PEIR that there are no conflicts."[15] None of Appellant's cited claims that odors from outdoor cannabis could impact wine related activities rise, per Judge Anderle, to the level of substantial evidence.

In fact, at over 643 pages, the PEIR includes extensive analysis of potential impacts of the cannabis Ordinance. It considered potential impacts associated with commercial cannabis cultivation in the County due to the proposed cannabis Ordinance, including odor related impacts (see PEIR 3.3.2.6 "Cannabis Odors"). The PEIR makes it clear —as is required by CEQA—that further CEQA review for permits associated with cultivating individual sites would only be required "if subsequent site development would have effects that were not examined the PEIR," however the Project does not propose subsequent site development so further environmental review is not merited.

Appellant claims that the Project's analysis of odor impacts is insufficient and will adversely impact the tasting room, meriting project-specific environmental review. But the PEIR, which addressed the Ordinance's impact on tourism, found that cannabis cultivation would have a significant air quality impact as a result of odors and the Board adopted a Statement of Overriding Considerations concluding that the benefits of the Ordinance outweigh the unavoidable adverse environmental effects. Second, as noted by the County, this Project, which is located on an Ag-II parcel, will not process, dry or store cannabis onsite, and therefore no odor abatement is required under the County Cannabis Ordinance.

Further, this Project will not significantly impact surrounding uses as a result of odors due to setbacks from the adjacent neighbors, landscape screening, and the location of the cultivation area over 1,000 feet from the Appellant's proposed tasting room. Further, immature plants create little to no odors and cannabis is grown seasonally. It's clear that odor from a flowering plant intensifies as the cannabis plant matures and is only present in the final two (2) weeks before harvest, not year-round. Lastly, Canna Rios will not process, dry, or store cannabis onsite.

While Appellant claims that it was adversely impacted by Applicant's previous hemp and cannabis operations, Appellant never communicated with Applicant or filed any complaints with the County. Nonetheless, substantial evidence indicates this Project will not significantly impact surrounding uses as a result of odors due to setbacks from the adjacent neighbors and ample new landscape screening.

To wit, several recent studies demonstrate that odor from outdoor cannabis will not impact adversely adjacent uses.

- Bosarge Environmental, LLC conducted an Odor Assessment Study at an 18-acre outdoor cannabis farm near Buellton, California with 50-100 foot property line setbacks. (See **Exhibit I**.) The Study was conducted during the full flowering stage of the cultivation, which represents a worst-case scenario as that is the stage of the plant's life cycle with the greatest terpene emissions. Five offsite ambient odor surveys were conducted over a three-day period, along with two studies within the

[15] Exhibit D, p. 15

property lines of the project And the Study concluded that "no discernible cannabis odor was detected outside of the property's boundaries and is barely recognizable at the perimeter of the property and should not adversely affect the surrounding community." (Ibid.)

- Sespe Consulting, a firm with extensive air quality engineering expertise, also performed a Cannabis Odor Modeling Analysis for the same property in Buellton using air quality dispersion modeling methods. The Modeling Analysis found that "detection of odor by [offsite] occupants is considered unlikely" with the greatest odor index rating at a residence being "0.45 O.I., which is exceeded less than 0.2% of the time." In other words, "[g]iven the range of odor indices at residences, detection of odor by occupants [was] considered unlikely resulting in compliance with APCD's Nuisance Rule . . . and corresponding to a less than significant impact due to odorous emissions from the Project site." (See **Exhibit J**.)

In short, notwithstanding the County's Statement of Override, substantial evidence supports the conclusion that the Project's cannabis cultivation will not result in significant odor impacts.

(b) Terpene Taint Does Not Constitute a Significant New CEQA impact

Appellant raises the specter of terpenes tainting Santa Barbara County wines as a newly discovered issue "which was not known and could not have been known with the exercise of reasonable diligence at the time the PEIR was certified."

As Judge Anderle stated: "There is no evidence that terpene taint of grapes, even if it were shown to exist, would lead to the conversion of vineyards to urban uses due to unprofitability."[16] Alleged "terpene taint" impacts, if they existed, would be "economic impacts that are not considered under CEQA."[17]

In repeating this claim, Appellant ignores that terpene taint was raised as a possible issue during the scoping process for development of the PEIR. The PEIR also analyzed agricultural concerns related to cannabis cultivation extensively and described cannabis odors and terpenes in detail. (See PEIR Section 3.3.2.6 *Cannabis Odors* ["Cannabis produces over 140 different terpenes'] Vol. 1. 3.3-7; ["Cannabis odors can spread through the air and be sensed by surrounding receptors"] Vol1. 3.3-8.) Appellant does not acknowledge this analysis nor explain how its concerns are not addressed in the PEIR's Air Quality and Greenhouse Gas Emissions section. Having failed to timely challenge the PEIR and now having lost a challenge to the PEIR in Superior Court, Appellant cannot be permitted to use this appeal to attack the PEIR.

There has been no incidence of "terpene taint" in this County and Appellant provides no such evidence. Appellant's 2019 and 2020 letters from Anita Oberholster, PhD, an associate in UC Davis' Viticulture extension program, seeks to address "concerns regarding the adverse effect that high concentrations of certain terpenes can have on wine flavor…" but provides no evidence that high concentrations of terpenes would emanate from the Project or that impacts to wine

[16] Busy Bee Decision, p. 22.
[17] Busy Bee Decision, p.16.

flavor is an environmental impact. (Appeal Letter, Exh. 9.) Instead, she simply cites to literature finding that "smoke taint" of grapes may occur where "large amounts of volatile phenols are released into the air large during wildfires due to the thermal degradation of lignin in wood" (*Id.*) and that Eucalyptol (1, 8-cinelole) from Eucalyptus trees have tainted grapes. (*Id.*) Oberholster notes that "research is needed to determine if any other cannabis-specific terpene can adversely affect wine flavor." (*Id.*)

Further, the claim that new information on terpene taint requires additional environmental review is false because information was known, or could have been known, at the time the PEIR was prepared. Oberholster's 2019 and 2020 letters contain several references, most of which pre-date the PEIR and date back to 2008. (*Id.*) Thus, the time to have voiced this concern has passed and does not trigger additional review. The fact that the letters reference a 2019 Volatile Organic Compound (VOC) study not provided to the County (*Id.*) does not transform it into "new information of substantial importance," because it does not demonstrate the Project will have a significant effect not addressed in the PEIR or in site-specific studies. (CEQA Guidelines § 15162(a)(3).)

In fact, Dr. William Vizuete of Pacific Environmental Analytics conducted a study at another cannabis farm in the County which demonstrated that the level at which terpenes must be present in wine grapes for sensory detection is far greater than the levels at which airborne terpenes from cannabis cultivation activities could become deposited on wine grapes. (See Board Letter, Attachments 12, 13, 14.) Further, Vizuete also noted that eucalyptol "is the only monoterpene to be identified as potentially causing wine taint. No other monoterpenes (such as beta-myrcene, alpha-terpinene, and terpinolene) have been found in peer reviewed studies to cause taint." Dr. Vizuete's later testimony pointed out that "Dr. Oberholster's letter does not specify target concentrations in the grape tissue which they allege could produce adverse effects." (See Board Letter, Attachments 12, 13, 14.)

In response to community concerns regarding "terpene taint" of wine grapes, CannaCraft, a cannabis company based in Sonoma County worked with Santa Rosa Junior College professors near CannaCraft's headquarters to study whether and/or to what degree cannabis-related VOCs can "taint" nearby agricultural crops. Researchers planted cannabis sativa L plants with less than 0.3% THC ("hemp") in close proximity to a vineyard and collected samples from the vineyard over a five-week period when both the cannabis sativa plants, and wine grapes were nearing harvest. Overall, the hemp plants contained high levels of terpenes. However, there were no detectable levels of hemp terpenes on the wine grapes or the resultant wine made from the vines in this study. (**See Exhibit K.)**

To put this issue to rest, several bottles of Santa Barbara County wine made by Blair Pence from grapes grown next door to 50 acres of cannabis, were tested at a certified laboratory and no cannabis terpenes were detected (including the major terpenes referenced by Oberholster, such as eucalyptol and d-limonene, along with a-Pinene, linalool, B-caryophyllene, B-humulene.) (**See Exhibit L**.)This speculative and mythical "terpene taint" issue has been oft repeated by a few wineries to stigmatize cannabis.

Nonetheless, the Project is sited 180 feet from the Appellant's vineyards (at the closest point), is limited to 2 harvests, and uses hoops on 35.95 acres of cannabis, all of which reduce the risk of

terpene taint, if it were a real phenomenon. Plus, the cannabis will be grown adjacent to the applicant's own grape vines, which are used to make the family's popular wine, Runway. Clearly, taint is not an issue as this family would never jeopardize their established vineyards and wine brand. In fact, in an abundance of caution, Canna Rios conducted a site specific study to determine if the proposed Project cannabis plants could ever "taint" Bien Nacido's grapes. This was a worst case scenario, because as described above, the cannabis cultivation premise area of approximately 47 acres is much higher than the actual canopy, which will be grown because the large premise area contains roads and rows. As you can see, Dr. Vizuete found even under a "worst" case scenario, it would take 234-2,339 continual days of cannabis strains that have eucalyptol (not all strains have eucalyptol) emitting at the highest rate, without real world losses (such as photochemistry), to result in grape absorption of this monoterpene at the consumer rejection threshold value of 39.7 ug/kg. **(Exhibit P.)**

6. No New Information Regarding the Agricultural Impact of Pesticide Migration

Having lost this claim in Santa Barbara County Superior court, Appellant's lawyer nonetheless persists in claiming that pesticide drift's impact on the viability of agricultural land is a new and unanalyzed environmental impact that will result in the loss of agricultural land. The Board is now aware that movement of pesticide sprayed by one neighbor onto another neighbor's property is not a protected activity, regardless of whether the movement of said chemical is termed overspray, volatilization, migration, movement, dispersal or any other term. In short, pesticide overspray is, at minimum, negligent, as in the *Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* cited by Appellant.

Appellant states that "Appellant's ability to exercise best management practices will be crippled by their proximity to Appellant's (*sic*) cannabis cultivation due to the physical migration of pesticides across property lines" threatening Appellant's operations. "These," Appellant continues, "are not the sort of purely economic impacts that the law and CEQA are unconcerned with."[18] Judge Anderle ruled precisely to the contrary:

> *The 'agricultural land use conflicts' argued by Petitioner are not environmental impacts under CEQA. Social and economic effects are not to be considered a significant environment effect and need be considered only to the extent that they are relevant to an anticipated physical change in the environment or, on the basis of substantial evidence, are reasonably likely to result in physical change to the environment.*[19]

CEQA does not require the lead agency to speculate as to the possibility that nearby owners, such as Appellant, may decide to break the law or act negligently. (See CEQA Guidelines §§ 15384 ["Argument, speculation, unsubstantiated opinion or narrative . . . does not constitute substantial evidence."], 15064(f)(5), 15145; see also Pub. Res. Code §§ 21080(e), 21082.2(c).) The California Supreme Court has made clear that CEQA requires an analysis of the impacts of a project on the environment; it does not require agencies to analyze the environment's effects on a project. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62

[18] May Appeal Letter, 2.
[19] Exhibit D, p. 16.

Cal.4th 369, 387.) Moreover, "CEQA does not generally require an agency to analyze how existing hazards or conditions might impact a project's users or residents." (Id. at 392.) Here, illegal or negligent pesticide overspray from neighboring properties is a speculative impact. Even if neighboring farmers have to adjust spraying practices to avoid contaminating cannabis, that is a speculative economic impact not required to be analyzed. (CEQA Guidelines §15131.)

Applicant again quotes the relevant Busy Bee case:

> *Petitioner claims that pesticide drift from other properties onto the Project should be analyzed under CEQA. This is the Reverse CEQA analysis that has been rejected. (Emphasis added.) (See Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection (2008) 43 Cal.4th 936, 955-956 (discussing potential effects of herbicides use by proposed project on aquatic environment, soils, animals, and plants).) Petitioner cites no evidence that the Project exacerbates the adverse environmental impacts of pesticides. To the contrary, Petitioner's allegation is that the Project will lead to more targeted and/or less toxic pesticide application by other agricultural operations.*[20]

Instead of referencing the above, Appellant cites "third-party pesticide applicators (used for decades and necessary for much of the County's economically productive avocado, grape and citrus production) have refused to apply materials to either conventional or organic avocado crops due to incompatibility with nearby cannabis cultivation operations." Appellant fails to mention that the incidents took place in Carpinteria only, are irrelevant to this specific Project, and do not constitute substantial evidence. (Pub. Res. Code § 21082.2(c).)

Appellant also claims that Santa Barbara County farmers have lost crops after switching to other less effective pest management products to reduce potential liability from the legal application of pesticides. This is an unsubstantiated claim. The County correctly concluded that an additional EIR was not required for this Project. Further, this Project includes large setbacks from neighboring vineyards and will utilize hoops on 35.95 acres of their plants to protect the cannabis plants from overspray. Hoop houses not only allow growers to extend their growing season, shield crops from severe weather, improve soil quality, and better manage water demand but also help protect cannabis plants from pesticide drift and overspray.[21]

Appellant claims that at the time the PEIR was prepared and certified, the extent of potential conflict was not known. Later in the same paragraph Appellant acknowledges that the PEIR's agricultural impact analysis states "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.) In other words, the prospect of conventional agricultural operators needing to be more cognizant of their pesticide applications when in proximity to cannabis was precisely contemplated in the PEIR. It is not new information that cannabis testing thresholds render cannabis particularly sensitive to pesticides. There is no reasonable argument that new

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[20] Exhibit D, p. 17. (emphasis added).
[21] USDA Natural Resources Conservation Service, High Tunnel System Initiative, https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/?cid=stelprdb1046250.

information suggests agriculture being negatively impacted in unanticipated ways because of cannabis' sensitivity to pesticides.

Nonetheless, in a good faith effort to further reduce the chance that chemical overspray from Bien Nacido's vineyards will (unlawfully) taint the cannabis plants, the Project proposes to:

- Incorporate a buffer of one hundred eighty feet (180') from the property line, which is more than 3x the legal requirement of 50 feet.

- Plant landscaping that that is optimized to reduce likelihood of overspray from neighboring agricultural operations.

- Cultivate wine grapes as an additional buffer in between the cannabis canopy and the proposed overspray inhibiting landscaping.

C. There is No New Information Regarding Site-Specific Air Quality Impacts

Appellant claims that there is new information regarding air quality impacts that must be analyzed in a further environmental review document. Appellant is wrong.

First, Appellant notes that in 2019 the Grand Jury cited a quickly amended online advisory from the Air Pollution Control District ("APCD") that "strongly encourage[ed] large buffer zones" from cannabis cultivation. However, this advisory was quickly retracted and is legally non-existent.

Second, Appellant claims the Project will have a significant impact on human health and safety. As you are by now likely aware, terpenes are biogenic volatile organic compounds (VOCs), which are produced by all types of plants, including various types of trees, vegetables, fruits, and cannabis. There is substantial data indicating that terpenes are harmless.

SCS Engineers conducted an assessment of emissions of VOCs from a twenty two (22) acre outdoor cannabis farm when the cannabis plants were at peak flowering – and therefore terpene emitting – stage. They measured the concentration of specific VOCs relative to cannabis operations both at cultivation areas of flowering plants as well as downwind from these areas. The report concluded that measured concentrations do not indicate the presence of a possible health concern in relation to employees or receptors downwind from the facility. This report is further evidence that VOC emissions from cannabis cultivation do not create a threat to the health of plants, animals or humans. (**See Exhibit M.**) Further, the report demonstrates that terpenes dissipate rapidly.

Furthermore, a Carpinteria-based greenhouse cannabis cultivation project retained SCS Engineers to conduct two analyses of potential health risks from volatile organic compounds ("VOC") and microbials emitted by their cannabis operations on two separate dates, reflecting different weather conditions. (**See Exhibit N.**) The studies conclusively found that all areas sampled (including outside the greenhouses) had VOCs below the limits of detection or significantly below established regulatory standards, indicating there is no possible health concern for employees at the facility or for receptors down-wind from the Property. An important

contextual note is that SCS Engineers took air samples inside a processing facility, filled with dried plants, where the terpene concentration was significantly higher than outside levels. Even then, VOCs were significantly below established health regulatory standards. (**See Exhibit N.**)

Third, Appellant suggests the County prepare an air quality impact analysis "assessing the *likely location* (emphasis added) of sensitive receptors, including tasting rooms and evaluate the Project's potentially significant impacts on them." The phrase "likely location" is of note, since if the County were to endeavor upon such a study, it would likely document the actual location of actual sensitive receptors. Applicant suggests that the Appellant's tasting room would not likely be included in such a study.

Fourth, Appellant argues that additional environmental review is required because the following "new information of substantial importance" has become available: (1) "studies . . . indicating that biogenic VOC emissions from" cannabis cultivation contribute to ozone and other air pollution; (2) a portion of San Luis Obispo County lying north of the Project site has been designated nonattainment for ozone; and, (3) the County has been downgraded from attainment to nonattainment for ozone. (Appeal Letter, p. 4.) Appellant is wrong; the Project's potential air quality impacts are within the scope of the PEIR and no further environmental review is required.

The PEIR analyzed potential air quality impacts from cannabis cultivation and found that "[e]missions from operations of cannabis activities could potentially violate an air quality standard or substantially contribute to an air quality violation, and result in a cumulatively considerable net increase of a criteria pollutant for which the County is in nonattainment." (PEIR, p. 3.3-17.) The PEIR concluded that this impact was significant and unavoidable. (*Ibid.*) Any VOC emissions from cannabis cultivation would fall within this impact analysis and finding; to the extent they exist, such emissions and any change in attainment status are not new information. (CEQA Guidelines, § 15162(a)(3); *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 531-32 [finding information about greenhouse gas emissions and climate change was not "new information" because the information was available before the original EIR was certified]; *Fort Mojave Indian Tribe v. Department of Health Servs.* (1995) 38 Cal.App.4th 1574, 1605.)

Despite not requiring additional environmental review, the Applicant has undertaken additional studies to assuage any concerns Appellant has about VOCs produced by cannabis cultivation. (**See Exhibit P.**) Specifically, Dr. William Vizeute, the Chief Scientific Officer for Byers Emissions Analysis, conducted a site specific study to predict the ozone impacts on the region due to VOCs emitted by the Project. The study utilized the Community Multiscale Air Quality model and site and project specific location to determine how the Project's VOC emissions would impact ozone in the Project's vicinity. The study concluded that the Project would have "negligible impacts on ambient daily eight (8) hour maximum ozone concentrations from cannabis cultivation emissions"—the modelling actually shows that the Project could improve ozone levels in the Project vicinity. Accordingly, there is no evidence that the Project's emissions of VOCs would create any create a new significant effect or make any significant effect substantially more severe. (CEQA Guidelines, § 15162(a)(3).)

Furthermore, the Applicant retained an expert consultant to quantify and analyze any GHG emissions caused by the Project. The expert's study is attached hereto as **Exhibit O** and

concludes, based on the most conservative scenario, that the Project would fall significantly below the County's GHG significance thresholds. In other words, the Project would not cause any impacts with respect to GHG emissions.

V. LEGAL NON-CONFORMING OPERATION

Appellant incorrectly claims Applicant expanded its legal nonconforming use and therefore the County should not have issued an LUP. Petitioner bases its claim on Google Earth photos taken during the winter when outdoor cannabis farms are fallow and on photos showing installation of hoop houses (that do not reflect the cultivated area). (See Appeal Letter, p. 27-28.) Applicant has been growing cannabis at the Farm, on a much smaller scale than the Proposed Project, since 2015 under a Medical Collective. It obtained state licenses for its 180,000 square feet of legal-nonconforming cannabis canopy (approximately 4.13 acres over a larger footprint) as soon as they were available in 2018. No complaints have been filed against the medical marijuana operation. Applicant has worked closely with the State to license its 4.13 acres of cannabis canopy, and to obtain a LUP and County Business License that will allow it to legally increase the size of its cannabis operation to 46.29 acres of outdoor cultivation.

VI. CONCLUSION

In conclusion, the Project complies with CEQA and the Santa Barbara County LUDC, and is compatible surrounding agricultural operations and the preservation of the Cuyama and Sisquoc Rivers. The Project will have no significant environmental impacts and will ensure that this multi-generational family farm remains agriculturally productive into the future.

We respectfully ask that your Board deny this appeal.

Sincerely,

Amy Steinfeld

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