



**PLANNING & DEVELOPMENT
APPEAL FORM**

SITE ADDRESS: _____

ASSESSOR PARCEL NUMBER: _____

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

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

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

1. **Appellant:** _____ Phone: _____ FAX: _____

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

2. **Owner:** _____ Phone: _____ FAX: _____

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

3. **Agent:** _____ Phone: _____ FAX: _____

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

4. **Attorney:** _____ Phone: _____ FAX: _____

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

COUNTY USE ONLY

Case Number: _____ Companion Case Number: _____

Supervisorial District: _____ Submittal Date: _____

Applicable Zoning Ordinance: _____ Receipt Number: _____

Project Planner: _____ Accepted for Processing _____

Zoning Designation: _____ Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE:

_____ BOARD OF SUPERVISORS

_____ PLANNING COMMISSION: _____ COUNTY _____ MONTECITO

RE: Project Title _____

Case No. _____

Date of Action _____

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

_____ Board of Architectural Review – Which Board? _____

_____ Coastal Development Permit decision

_____ Land Use Permit decision

_____ Planning Commission decision – Which Commission? _____

_____ Planning & Development Director decision

_____ Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

_____ Applicant

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

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

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

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

- a.

- b.

- c.

- d.

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

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

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

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



Print name and sign – Firm

Date



Print name and sign – Preparer of this form

Date

Print name and sign – Applicant

Date

Print name and sign – Agent

Date

Print name and sign - Landowner

Date

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

April 12, 2021

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

*By email to sbcob@co.santa-barbara.ca.us
and by hand delivery*

**RE: Appeal of Planning Commission Approval
Suarez Outdoor Cannabis Cultivation (19LUP-00000-00327)**

Chair Nelson and Honorable Supervisors:

Please accept this appeal of the Planning Commission's approval of the above-referenced permit for the Suarez Outdoor Cannabis Cultivation Project ("Project") located at 2225 Foothill Road in the Cuyama Valley. This appeal is filed on behalf of Jean Gaillard ("Appellant"), owner of *Cuyama Homegrown*, a small-scale environmentally friendly farm providing fresh produce, poultry, eggs, and honey to the Cuyama Valley and surrounding areas. Mr. Gaillard's farm is located at 1381 Foothill Road, 1.5 miles west of the Project site. We reserve the right to further supplement this appeal including with technical comments prepared by experts.

Mr. Gaillard is an aggrieved party to this permit. Mr. Gaillard timely appealed Planning and Development's approval of the Land Use Permit ("LUP") for the Project to the Planning Commission. At the Planning Commission, Mr. Gaillard raised concerns regarding how the Project will impact his farm and the environment of the broader Cuyama Valley. Mr. Gaillard and his representatives further raised the inadequacy of the County's California Environmental Quality Act ("CEQA") review, the Project's inconsistency with the County's General Plan including Comprehensive Plan Groundwater Resources policies, and the inability to make the required findings of approval under the Land Use and Development Code ("LUDC") and CEQA.

The Project proposes to irrigate 34.7 acres of cannabis with groundwater from the Cuyama Groundwater Basin, the only groundwater basin in the County in a state of Critical Overdraft. Two additional cannabis cultivation projects proposed by the same Operator ("Cuyama Farms Cannabis Cultivation" and "Castro Canyon Outdoor Cannabis Cultivation") propose an additional 108.62 acres of irrigated cannabis within 1 mile of Appellant's farm.

Groundwater is the exclusive source of water in the Cuyama Valley, and without adequate groundwater agriculture and human habitation would not be possible. Not only is the arid landscape of the Cuyama Valley akin to a desert, the Cuyama Valley is also a *food desert* where nearly all agricultural crops produced in the Valley are trucked away for sale elsewhere, and nearly all food consumed in Cuyama Valley is imported from outside the Valley and generally of less quality and freshness than experienced elsewhere in the County. Maintaining

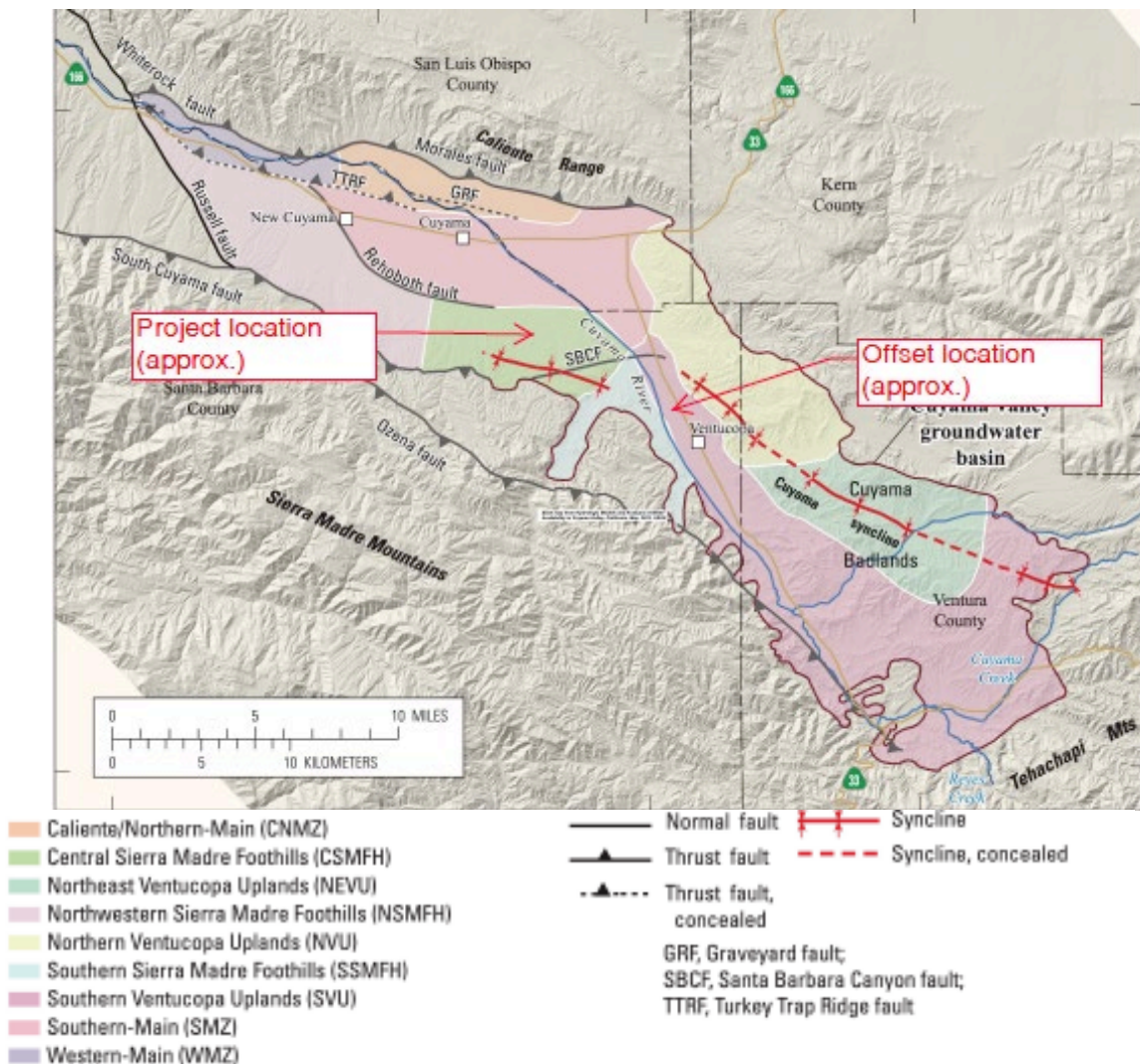
viable local food production, such as Appellant’s farm, is critical to reducing disparities that contribute to Cuyama’s status as a disadvantaged community.

The Planning Commission accepted the Applicant’s position that fallowing 28.5 acres of irrigated agricultural land in the Ventucopa region miles away from the Project would offset the Project’s groundwater usage and resolve the Project’s groundwater impacts. The evidence however does not support this position. For reasons discussed below, and as will be further supported with technical comments that Appellant will submit in advance of the Board hearing, the proposed 1:1 offset is inadequate to avoid significant impacts to Cuyama’s groundwater basin and to the food production wells along Foothill Road, and clearly conflicts with County policy requirements and LUP requirements.

1. The Proposed Water Offset Is Patently Inadequate to Resolve the Project’s Groundwater Impacts to the Cuyama Groundwater Basin

The Cuyama Groundwater Basin is comprised of nine groundwater subregions. (Hydrologic Models and Analysis of Water Availability in Cuyama Valley, California, May 2015, United States Geological Service (“USGS 2015”)¹, p. 127.) The below USGS map, marked with the approximate locations of the Project at 2225 Foothill and the proposed Ventucopa offset location, shows how these locations are in separate basin subregions. Importantly, the below map also shows that the Project and offset location are separated by the Santa Barbara Canyon fault (SBCF).

¹ Available at <https://pubs.usgs.gov/sir/2014/5150/pdf/sir2014-5150.pdf>



(USGS 2015, p. 44.)

As described in the Cuyama GSP, the SBCF forms a barrier to groundwater flow between Ventucopa and the main basin:

The SBCF is a normal, subsurface fault that runs 5 miles perpendicular to the Santa Barbara Canyon. The fault is east-west striking and offsets basin deposits with impermeable Eocene-Cretaceous marine rocks (typically the Simmler and Vaqueros Formations) (Bazeley, 1988). Evidence of the fault comes from reported seasonal springs, a steep hydraulic gradient in the southeastern part of the Cuyama Valley near the fault, and the truncation of distinct gravel beds (Singer and Swarzenski, 1970). Water levels in the Ventucopa area have been reported 98 feet higher than water levels to the north (Singer and Swarzenski, 1970). The fault is considered a barrier to groundwater flow as it prevents groundwater flow from moving across the boundary bounded by the marine rocks (USGS, 2015). The USGS in 2013 also concluded that the SBCF was a barrier to

groundwater flow: “Relatively small amount of vertical offset in the SBCF indicates changes in water levels across the fault documented in previous studies are perhaps the result of distinct fault-zone properties rather than juxtaposition of units of differing water-transmitting ability” (USGS, 2013a).

Cuyama GSP, p. 2-21 (underline added).

Groundwater conditions generally vary in different parts of the Basin. Data from wells in the Ventucopa area show that groundwater levels in this area respond to climatic patterns, with groundwater levels responding to drought conditions but recovering in wetter years. GSP, p. 2-62. Data from wells in the central portion of the basin by contrast show groundwater levels consistently declining since 1950, with wells in the area just northwest of the SBCF showing groundwater levels 600 feet below ground level (bgl). (*Id.* pp. 2-62 - 2-63). There is no fault or other barrier to groundwater flow between the Project location and this portion of the central basin. (*See* USGS 2015, p. 44.)

Subsidence data indicates that approximately 12 inches of subsidence has occurred in the vicinity of New Cuyama since monitoring began in 1999. (GSP, p. 2-95.) The rate of subsidence at the Cuyama Valley High School (CVHS) station, which is measured daily, showed an average 1.3 inch decline between 2017 and 2018. The rate of subsidence on the Ventucopa station was 0 inches over the same period (GSP p. 3-7) and the 19 years of monitoring data shows subsidence is not occurring in the Ventucopa area (*id.*, p. 2-95.)

Because of the vastly different conditions on either side of the SBCF, pumping in the Project area and offset areas have different implications for sustainable groundwater management. Under the Sustainable Groundwater Management Act (“SGMA”) “‘Sustainable groundwater management’ means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.” (Cal. Water Code § 10721 (v).)

“Undesirable result” means one or more of the following effects caused by groundwater conditions occurring throughout the basin:

- (1) Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and groundwater recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.
- (2) Significant and unreasonable reduction of groundwater storage.
- (3) Significant and unreasonable seawater intrusion.
- (4) Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.
- (5) Significant and unreasonable land subsidence that substantially interferes with surface land uses.
- (6) Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

(Cal. Water Code § 10721 (x); *see* GSP, p. 3-1). Further, in enacting SGMA the Legislature specifically sought to “avoid or minimize subsidence” (*see* Cal. Water Code § 10720.1(e)).

“If groundwater levels were to reach Undesirable Results levels, the Undesirable Results could cause potential de-watering of existing groundwater infrastructure, starting with the shallowest wells, could potentially adversely affect groundwater dependent ecosystems, and could potentially cause changes in irrigation practices, crops grown, and adverse effects to property values. Additionally, reaching Undesirable Results for groundwater levels could adversely affect domestic and municipal uses, including uses in disadvantaged communities, which rely on groundwater in the Basin.” (GSP p. 3-2.) Land subsidence, tied to groundwater pumping resulting in dewatering of compressible clays in the subsurface, can cause damage to infrastructure, including water conveyance facilities and flood control facilities roads, utilities, buildings, and pipelines. (GSP p. 3-5.)

Groundwater pumping for the Project will contribute to the already chronic lowering of groundwater levels in the central portion of the basin and vicinity of the Project [*see* GSP pp. 2-62 - 2-63 *see* Cuyama Figures 4-46 and 2-4 (showing an approximate 20-30 foot drop in the Project area in only 3 years)]. Meanwhile, the offset will reduce pumping in an area without chronic lowering where groundwater levels respond to climatic patterns. (GSP pp. 2-62 - 2-63). Further, groundwater pumping for the Project will contribute to land subsidence, while the offset reduces pumping in an area without subsidence (*see* GSP p. 2-95). Accordingly, the offset will not directly reduce the Undesirable Results of the Project.

2. Lack of Available Water Precludes Approval

The Project cannot be approved unless the Board finds, based on substantial evidence in the record, that “adequate public or private services and resources (e.g., water, sewer, roads) are available to serve the proposed development.” (LUP Finding 2.1.1; LUDC § 35.30.100.A) “Lack of available public or private services or resources shall be grounds for denial of a project”. (LUDC § 35.30.100.B)

The Project would allow 34.7 acres of cannabis cultivation under hoop structures on land historically used to graze livestock. The Project would draw water from the Cuyama Groundwater Basin which is in a state of Critical Overdraft, with groundwater extraction proceeding at two to three times the rate of groundwater recharge. Explained at length in the Appeal Report submitted to the Planning Commission by Appellants on March 26, 2021 (incorporated herein by reference) and documented with recent data on groundwater levels in the Project area, there is inadequate water to support the proposed conversion of rangeland to irrigated cannabis. Further, discussed above, the proposed offset is an apples-for-oranges exchange, and does not directly make water available for the Project or offset the harm that the Project’s pumping will likely cause to shallow wells on Foothill Road currently used to produce food and domestic needs.

3. The Project Fails to Comply with Applicable Comprehensive Plan and LUDC Provisions

All land use approvals must be consistent with the Comprehensive Plan and the Commission must specifically find that the proposed project will comply with all applicable provisions of the Comprehensive Plan and the LUDC. (LUP Finding 2.1.2 (LUDC § 35.82.110.E.1.a.)

Discussed above, there is a lack of available water in the Critical Overdraft Cuyama Groundwater Basin to serve the Project. In addition to precluding a finding under LUDC § 35.30.100, this lack of available water is also inconsistent with Comprehensive Plan Land Use Development Policy 4, which states:

Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.

The Comprehensive Plan Conservation Element also includes a Groundwater Resources Section which was entirely ignored in the Planning Commission Staff Report and received short shrift at the hearing. These policies and actions identify the County's duty with respect to land use decisions in seriously overdrafted groundwater basins like the Cuyama GWB.

POLICY 3.5: In coordination with any applicable groundwater management plan(s), the County shall not allow, through its land use permitting decisions, any basin to become seriously overdrafted on a prolonged basis.

ACTION 3.5.1: Based on input from the County Water Agency and P&D, the Board, in coordination with the responsible water purveyor(s), shall designate any basins within the county as "seriously overdrafted" if the following conditions are present: Prolonged overdraft which results or, in the reasonably foreseeable future (generally within ten years) would result, in measurable, unmitigated adverse environmental or economic impacts, either long-term or permanent. Such impacts include but are not limited to seawater intrusion, other substantial quality degradation, land surface subsidence, substantial effects on riparian or other environmentally sensitive habitats, or unreasonable interference with the beneficial use of a

basin's resources. The County's fundamental policy shall be to prevent such overdraft conditions.

ACTION 3.5.2: In seriously overdrafted basins, the County shall not approve discretionary development permits if such development requires new net extractions or increases in net extractions of groundwater, pending development and County acceptance of a basin management plan, consistent with the Groundwater Management Act or other applicable law, which adequately addresses the serious overdraft.

POLICY 3.6: The County shall not make land use decisions which would lead to the substantial overcommitment of any groundwater basin.

Approval of this discretionary Project in the critically overdrafted Cuyama Groundwater Basin, with only a 1:1 offset from a different subregion without the Undesirable Results caused by pumping groundwater in the Project area, is directly contrary to these policies. Despite this facial conflict, the Planning Commission was not afforded any analysis of the application of these policies to the Project.

The Project also entails substantial visual changes that conflict with County's visual resource protection policy. Comprehensive Plan Land Use Element, Visual Resources Policy 2 provides:

In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment, except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape; and shall be sited so as not to intrude into the skyline as seen from public viewing places.

The Project proposes hoop structures over the entire 34.7 acres, and "The cannabis operation would be fully enclosed by 8 foot tall no-climb deer fencing. Security lighting would be provided by 12 fully-shielded, downward-facing, motion-sensor activated lights mounted on 8 foot tall wooden posts or at 8 feet on the security kiosk." Conditions of Approval, p. 1. The landscape buffer proposed to screen the project from public views from Foothill Road will have little effect in reducing the visual impact in the Project area with the topography and relative lack of significant vegetation.

Additionally, the Project conflicts with the County's *Agricultural Element*. The *Agricultural Element* provides as its first goal:

GOAL I. Santa Barbara County shall assure and enhance the continuation of agriculture as a major viable production industry in Santa Barbara Country.

Agriculture shall be encouraged. Where conditions allow, (taking into account environmental impacts) expansion and intensification shall be supported.

Discussed below, the proposed large-scale outdoor cannabis cultivation project jeopardizes the continuation of traditional agriculture in the vicinity of the Project area, and as such is inconsistent with the primary goal of the County’s Agricultural Element to ensure the viability of agriculture in the County.

Due to these clear conflicts with Comprehensive Plan policies, the required findings of approval cannot be made, and the Project must be denied.

4. Subsequent Environmental Review Is Required to Analyze and Mitigate the Project’s Significant Environmental Effects

The PEIR lacked site-specific information on individual cannabis cultivation operations, so deferred the site-specific analysis that CEQA plainly requires to later review of individual cannabis projects. Staff approved the Suarez Cannabis Cultivation Project however without adequate site-specific assessment of groundwater impacts, and with no assessment of agricultural land use conflicts including whether the Project would conflict with operations on adjacent farms including Appellant’s, and no assessment of environmental justice impacts associated with directing Cuyama’s limited water away from traditional crops to support cannabis cultivation that in turn produces noxious odors and degrades the visual environment with security fencing, lighting, and extensive hoop structure arrays. Further, since the PEIR’s certification, changed circumstances in the management of the Cuyama Groundwater Basin, and new information regarding actual conflicts between existing land uses and other agricultural operations, show the Project will result in substantially more severe impacts than evaluated in the PEIR, and subsequent Project-level environmental review is plainly required.

a. CEQA Framework Applicable to Later Activities Approved Using a Program EIR

“Under Guidelines section 15168, program EIR’s are used for a series of related actions that can be characterized as one large project.” *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal. App. 4th 1156, 1171. “A program EIR does not always suffice for a later project.” *NRDC v. City of L.A.* (2002) 103 Cal.App.4th 268, 282. “A program EIR will be most helpful in dealing with later activities if it provides a description of planned activities that would implement the program and deals with the effects of the program as specifically and comprehensively as possible.” CEQA Guidelines § 15168 (c)(4). Designating an EIR as a program EIR does not by itself decrease the level of analysis required; what is critical is that decision makers have sufficient analysis to intelligently consider the environmental consequences of the project under consideration. *See Cleveland National Forest Foundation v. SANDAG* (2017) 17 Cal.App.5th 413, 426. Accordingly, a program EIR may serve as the environmental review document for a later activity in the program, but only to the extent it contemplates and adequately analyzes all potential environmental impacts of the later activity. *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 234 Cal.App. 4th 214, 233.

Before approving a later activity in the program, the lead agency must examine that activity “in light of the Program EIR to determine whether an additional environmental document must be prepared.” CEQA Guidelines § 15168 (c). Where, as with this Project, the later activity involves site-specific operations, the agency “should use a written checklist or similar device document the evaluation of the site and activity to determine whether the environmental effects of the operation were within the scope of the program EIR.” CEQA Guidelines § 15168 (c)(4). “If a later activity 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. That later analysis may tier from the program EIR...” CEQA Guidelines § 15168 (c)(1). The agency “can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document would be required” only if the agency finds that no subsequent EIR would be required under CEQA Guidelines § 15162. *Id.* subd. (c)(2).

Pursuant to Guidelines § 15162 (a)(1-2) a subsequent EIR is required 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.” A subsequent EIR is also be 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 the previous EIR was certified, shows either that: a) the project will have one or more significant effects not discussed in the previous EIR; 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. Guidelines § 15162 (a)(3); *see* Public Resources Code § 21166 (c).

b. The Environmental Effects of the Project Are Not Within the Scope of the PEIR

The Cannabis PEIR is “a Program EIR pursuant to Section 15168 of the State CEQA Guidelines, which attempted to address the impacts of a countywide program with eligible land over hundreds of thousands of acres and potential effects on five major regions, eight cities, and 24 unincorporated communities.” (PEIR 8-71.) The PEIR was completed in its entirety over a short 10-month period. The PEIR is clear that it does not include a site-level analysis of individual cannabis permit applications, and expressly contemplates the preparation of “subsequent CEQA review documents” and “further CEQA review ... to determine site-specific impacts”. (PEIR 1-4, 1-5.) The PEIR describes the scope of its analysis as follows:

As a Program EIR, the level of detail included in the project description and methodology for impact analysis is relatively more general than a Project-level EIR, as individual cannabis site-level details are not available for all current license applications as well as for an unknown number of future license applications occurring in the County, rendering some analyses too speculative for detailed evaluation. This approach allows the County Board of Supervisors to consider broad implications and impacts associated with the Project while not requiring a detailed evaluation of individual properties. Methods to analyze the Program’s environmental effects

consider cumulative cannabis cultivation and manufacturing site development under the Project, or a reasonable worst-case scenario for a resource area. (See Section 3.0, Environmental Impact Analysis.) This EIR may be incorporated by reference in subsequent CEQA review documents to describe regional influences, secondary effects, cumulative impacts, and other factors that apply to the Project as a whole.

In accordance with the State CEQA Guidelines Section 15168(c), if subsequent cannabis site development would have effects that were not examined in the EIR, further CEQA review would be required to determine site-specific impacts, determined on a case-by-case basis, and in accordance with the use permit or development plan process applicable to the subject site. (PEIR 1-4, 1-5.)

In the case of groundwater impacts, the PEIR states **“water resources are evaluated by the County on a project-by-project basis, using the Environmental Thresholds and Guidelines Manual, which describes the adopted County methodology for estimating the safe yield of bedrock aquifers.”** PEIR p. 3.8-5 (emphasis added). Further, the PEIR provides:

individual cannabis developments would be subject to extensive review under the County’s Land Use Permit and Development Plan processes, which would ensure compliance with Comprehensive Plan policies and LUDC development standards, in addition to water use approvals and conservation measures, which would continue to prevent the significant loss or degradation of important water resources within the County. PEIR p. 3.8-35 (emphasis added).

The PEIR Requires affirmative “receipt and demonstration” of both physical availability of water and either a legally adjudicated right or demonstration of service from a municipal water district (typically “Can and Will Serve” Letter). PEIR 3.8-32. “Given those requirements, impacts to groundwater supplies are not anticipated.” Id. Table 3.13-1 establishes that the Cuyama CSD has zero water available to supply new uses. PEIR, 3.13-3. Cuyama Groundwater Basin “extraction is currently occurring at double the rate of recharge to the basin, resulting in effects such as groundwater quality degradation and subsidence, which vary depending on the location and depth of withdrawals.” PEIR 3.8-12. The PEIR did not apply the County’s CEQA threshold used for determining the significance of impacts on the Cuyama Valley’s groundwater of 31 AFY (CEQA Thresholds and Guidelines Manual, Table 2) to the projected 100+ AF/y required for cannabis cultivation in arid Cuyama Valley. (See PEIR pp. 3.8-4 – 3.8-14.) This clearly shows that project-specific analysis of Cuyama cannabis projects was anticipated by the PEIR and is plainly required in this case. Moreover, Mitigation Measure MM HWR-3, the only mitigation measure addressing water supply, is only “recommended” and does not appear in the County’s CEQA Checklist for individual cannabis projects including the Suarez Cannabis Cultivation Project. PEIR 3.8-36, CEQA Checklist p. 6.

The PEIR broadly recognizes that “potential conflicts with existing land uses or other agricultural operations” may be considered a significant impact on agricultural resources. PEIR p. 3.2-18. The PEIR analyzed agricultural resource impacts at the programmatic level only, looking broadly at the impacts of anticipated increases in licensed cannabis operations on different regions of the

County. PEIR p. 8-71. The overwhelming focus of the agricultural impact analysis concerns how non-agricultural cannabis activities and structural development may impact prime agricultural land. *See id.*, pp. 3.2-19-3.2-24. Accordingly, the mitigation proposed for agricultural resource impacts is limited to MM-AG-1 (Cannabis Cultivation Prerequisite to Ancillary Use Licenses) and MM-AG-2 (New Structure Avoidance of Prime Soils). PEIR p. 3.2-24-3.2-25. The PEIR’s agricultural impact discussion references the Land Use section, which in turn refers to the Air Quality section, for additional analysis of land use conflicts. *Id.* at 3.2-19, 3.9-48. However, the analysis of land use and air quality impacts addresses how cannabis activities including cultivation may impact *residential uses*, not agricultural uses (*see Id.* at 3.9-47, 3.3-22 – 3.3-23) MM-AQ-5 (Odor Abatement Plan) protects “residentially-zoned neighborhoods” and does not apply in the AG-II zones (PEIR p. 3.3-24) so does not even purport to address odors impacting sensitive receptors on agricultural parcels including rural homes, agricultural and other businesses, or agricultural workers in the field. No mitigation measure identified in the PEIR addresses land use conflicts between cannabis cultivation and other agricultural land uses.

c. The County Failed to Perform Necessary Site-Specific Environmental Review of the Project’s Groundwater Impacts and Agricultural Land Use Conflicts

The written checklist for site-specific activities like the Project serves 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). The “CEQA Checklist” prepared for the Project “lists the specific mitigation measures set forth in the PEIR ... [and] further includes questions to determine the scope of the potential environmental impacts of a project.” CEQA Checklist p. 3. The CEQA Checklist lists no mitigation measures that address either water supply or agricultural land use conflicts. *Id.*, pp. 3-10.

The CEQA Checklist’s only discussion of water supply is the following:

water usage as well as the proposed activities were evaluated in the PEIR. As discussed in the Planning Commission Staff Report dated March 23, 2021, the Proposed Project is located in the Cuyama Groundwater Basin, a basin that has been designated as critically overdrafted by the Department of Water Resources. The Proposed Project includes a program that will offset all groundwater used for irrigation of cannabis and landscaping on a 1:1 basis for the duration of the Project. A Hydrogeologic Evaluation and Hydrologic Analysis (included as Attachments H and G of the Staff Report and herein incorporated by reference) was prepared for the proposed project and indicates that the 1:1 offset program may result in a net benefit to the Cuyama Groundwater Basin. Based on this information, the project location within a critically overdrafted groundwater basin would not be considered unusual or unique and no additional CEQA review is required beyond the PEIR.

CEQA Checklist, p. A-2. The CEQA Checklist does not apply the County’s 31 AFY threshold for the Cuyama groundwater basin (CEQA Thresholds and Guidelines Manual, Table 2). The Project - with an estimated water demand of 104.1 AFY— ***exceeds the County’s threshold by over three fold.*** (*See* Water Offset Program Memo (3/23/21, p. 3 (emphasis added))). Reliance

on a proposed voluntary offset does not substitute for actual site-specific environmental review. Moreover, there is insufficient analysis of the offset program itself to determine whether it actually mitigates the Project's groundwater impacts. Discussed above, the Undesirable Results of groundwater pumping are significantly more pronounced in the Project area than in the offset area, indicating that the environmental impacts of the Project's pumping *are not* avoided or fully mitigated by the offset. The impacts of fallowing alfalfa fields includes reduced feed for local livestock operations, and increased dust and water erosion. Further, as discussed in the Appellant's Report to the Planning Commission, the offset may in fact complicate the GSA's efforts to achieve groundwater sustainability in the Cuyama Valley.

The Project sites is surrounded by field crops to the north, east, and west, and pasture grazing land to the south. (Staff Report, p. 3.) However, the County has not evaluated the Project's potential to conflict with these operations. The CEQA Checklist did not cover the topic of agricultural land use conflicts at all, omitting the site-specific review of agricultural land use conflicts the PEIR assumed would occur when the County evaluated later activities. The only discussion of impacts or mitigation for agricultural resources concerns avoidance of prime soils while agricultural conflicts were not addressed or resolved.

d. Substantially Increased Significant Impacts of Cannabis Cultivation on Groundwater and Agricultural Land Uses Arising from Post-PEIR Changes and New Information

The County is required to prepare a subsequent EIR where major changes to the prior EIR are necessary due to substantial changes in the project, the circumstances under which the project is undertaken, or where new information that was previously unavailable lead to new significant environmental effects or a substantial increase in the severity of previously identified significant effects. *See* Guidelines § 15162 (a)(1-3); PRC § 21166 (a-c). Where any of the conditions for a subsequent EIR are met, "a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration [which] ... may tier from the program EIR..." Guidelines § 15168 (c)(1-2). Discussed below, changes in Cuyama's groundwater sustainability thresholds and new well data, as well as new information showing actual conflicts between existing land uses and other agricultural operations, demonstrate the Project will result in substantially more severe groundwater impacts and agricultural land use conflicts than evaluated in the PEIR.

Since the PEIR's certification in February 2018, changed circumstances and new information have come to light showing that the Project's impacts in the areas of groundwater and agricultural conflicts will be substantially increased.

With respect to groundwater, in January 2020, the Cuyama Valley Groundwater Sustainability Agency submitted Cuyama Valley's Groundwater Sustainability Plan (GSP) to the State Department of Water Resources. The GSP details the water pumping restrictions and water allocations that will allow the Cuyama Valley Groundwater Basin to emerge from critical overdraft including a 5% annual pumping reduction, and minimum thresholds (well level as of

2015) below which groundwater levels may not drop.² In addition, well monitoring data published in January 2021 (Cuyama Valley GSA Groundwater Condition Report) shows that 50% of the Central Basin wells are below the minimum threshold. Wells #95 and #96, located in the “Orange Zone” where the Project site is located, are being drawn down at an annual rate of 18 ft and 4 ft, respectively. (See Appellant Report, Appendix I). Discussed above, two other Cuyama Farms cannabis cultivation projects are proposed in the immediate area, raising the total irrigated acreage just by this Applicant to 143.22 acres, which will add to the decline of the groundwater table and cause additional well drawdown in the Central Basin. In all, approximately 700 acres of cannabis has been proposed for the Cuyama Valley. These changed circumstances and new information show that groundwater impacts in the Cuyama Valley are substantially more severe than acknowledged in the PEIR.

The County relies on the proposed 1:1 water offset to address the Project’s significant groundwater impact, however the offset is only “voluntary”, and results in more pumping in deficit areas and less pumping in wells with better recharge performance. Cannabis projects should be located in those areas where water is available, and denied where overdrafts are extreme. The water offset also directly displaces traditional agriculture to allow for cannabis, leading to additional land use conflicts between agricultural users, and increased odor and safety impacts in an already disadvantaged community. A new Initial Study and tiered EIR is necessary to evaluate and mitigate these groundwater and environmental justice impacts. See Guidelines § 15162 (a)(1-3); PRC § 21166 (a-c); Guidelines § 15168 (c)(1-2).

With respect to agriculture, since the PEIR’s certification, new information of substantial importance has come to light showing that agricultural land use conflicts will be substantially more severe than the PEIR anticipated (see Guidelines § 15162 (a)(3); PRC § 21166 (c)). Actual conflicts have occurred throughout the County between cannabis cultivators and traditional agricultural operations that have existed for decades. The Grower Shipper Association of Santa Barbara and San Luis Obispo Counties which represents over 170 growers, shippers, farm labor contractors, and supporting agribusinesses, reported the experiences of their members, including:

disputes over normal cultivation activities, such as land cultivation, application of plant protection materials, application of fertilizers, and threatened litigation; other conflicts have included harvest crews reporting concerns from strong odors sometimes several miles away. Crop types that have been embroiled in conflicts have included broccoli, wine grapes, avocado orchards, and citrus orchards. Local businesses and community members that have been impacted by this conflict include farmers, harvesters, rural residents, shippers, custom machine operators, materials applicators, and farm labor contractors.

Exhibit 1. The Grower Shipper Association concluded “[b]ased on the best information we have available and the extent of conflict that our members and others in the agricultural community have experienced in trying to grow near hemp and cannabis, we do not believe that hemp or cannabis

² <https://cuyamabasin.org/assets/pdf/public-final-gsp/Cuyama-Final-GSP-Chapter-5.pdf>

cultivation is compatible with organic or conventional Central Coast agriculture.” Id. Furthermore, the Santa Barbara County Agricultural Advisory Committee previously asked for a delay in the Board’s action on pending cannabis cultivation projects until ordinance revisions or additional project conditions can “address predictable conflicts that have arisen in many situations in the County”.

Exhibit 2. Local media reports further document conflicts between cannabis and avocado cultivation in Carpinteria, including that pest control companies would no longer spray the insecticides that work best on avocados for Carpinteria avocado farmers.³ The Agricultural Commissioner’s office even convened a private working group to review, analyze, and propose solutions to mitigate pesticide-related land use conflicts between cannabis and traditional crops. Exhibit 3.

The above new information supports a conclusion that a substantial increase in the severity of agricultural land use conflicts will occur for the Project. The Findings, CEQA Checklist, Staff Report, and other Project documents do not identify any substantial evidence that supports a conclusion that these effects were covered in the PEIR, or that they are not substantial, or do not require major revisions to the PEIR. Accordingly, the County must at a minimum prepare an Initial Study, and likely a tiered EIR, to evaluate the Project’s agricultural land use conflicts arising from new information. (*See* Guidelines § 15168 (c)(1-2).)

5. Improper Receipt and Failure to Disclose Ex Parte Evidence

The County’s procedures mandating the reporting and disclosure of evidence and argument collected by decisionmaking officials during site visits and ex parte meetings were not followed. Prohibitions in Resolution 91-333, Exhibit A, § IX against receipt of evidence and argument by the applicant were ignored, and the applicant reportedly made “presentations” on the project to individual Planning Commission members during site visits. Planning Commission members merely noted the fact of certain communications with the applicant and others, and failed to disclose the evidence they did receive and consider. These defects materially prejudiced the Appellant and the public in this matter.

6. Conclusion

For reasons stated herein, we respectfully request that the Board uphold this appeal and deny the Suarez Outdoor Cannabis Cultivation LUP.

³ 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.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in blue ink, appearing to read 'Marc Chytilo', with a stylized flourish at the end.

Marc Chytilo
For Appellant Jean Gaillard

Exhibits

Exhibit 1: Grower Shipper Association Letter to County, March 6, 2020

Exhibit 2: Agricultural Advisory Committee Letter, March 6, 2020

Exhibit 3: Agricultural Commissioner Pesticide Drift Working Group Recommendations

Public Comment



#3

March 6, 2020

County of Santa Barbara
Board of Supervisors

Re: Upcoming Appeals of Cannabis Cultivation Projects, including March 10, 2020 Item #D3, Santa Rita Valley Ag., Inc. Cannabis Cultivation Appeal; March 17, 2020, Busy Bee Organics, Inc.; and March 24, 2020 Santa Barbara West Coast Farms

Dear Chair Hart and Supervisors:

The Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties represents over 170 growers, shippers, farm labor contractors, and supporting agribusinesses. Our members grow diverse field and nursery crops such as broccoli, strawberries, wine grapes, vegetable transplants, flowers, and tree fruit. We appreciate the opportunity to comment on the Board's consideration of projects related to cannabis cultivation in the County and have participated in the Planning Commission proceedings and Agricultural Advisory Committee (AAC) meetings on this important topic.

The Association advocates for thoughtful policy that anticipates and minimizes predictable land use conflicts. Our members have experienced similar conflicts with both hemp and cannabis (marijuana). Both hemp and cannabis cultivation have been the source of significant conflict with established Central Coast agriculture.

Based on the best information we have available and the extent of conflict that our members and others in the agricultural community have experienced in trying to grow near hemp and cannabis, we do not believe that hemp or cannabis cultivation is compatible with organic or conventional Central Coast agriculture.

Our Board of Directors and members have engaged in extensive, focused discussions since August. These extensive discussions and the experience of our members growing in close proximity to hemp and cannabis through a full production cycle have better informed our current policy position. Our policy position has evolved as we have become better informed on the specifics of hemp and cannabis cultivation, end uses, regulatory context, and experience of nearby agricultural operations. The Association believes in the value of a diverse, vibrant, and robust agricultural economy and communities and we support different types of Central Coast agriculture. We further believe that innovation and adaptation is essential to support agriculture and allow for future generations to continue to be viable in domestic agriculture in the face of increasing challenges related to labor, water, market, and the cumulative effect of regulatory and economic pressures. For these reasons we are open to opportunities that complement and secure a future for agriculture on the Central Coast and are mindful of the potential precedential implications of policy decisions. **However, based on the experience of our members operating in real-world Central Coast conditions, all evidence suggests that cannabis is not similarly situated to agricultural crops and these differences are driving severe conflicts.**

Hemp and cannabis are fundamentally different from other agricultural crops. Unlike any other crop, hemp and cannabis have demonstrated that it is virtually impossible to farm next to even when exercising best management practices in a manner consistent with proper and accepted customs and standards and local, State, and Federal rules and regulations.

Our members have reported conflicts with neighbors growing both hemp and/or cannabis in a variety of crops and locations in Santa Barbara and San Luis Obispo Counties. The conflicts that our members have experienced are not isolated to one particular location, individual, or crop type. Although there are some limited locations that have not generated conflict, the majority of our members operating near hemp and/or cannabis have experienced significant and acrimonious conflict. The types of conflict include disputes over normal cultivation activities, such as land cultivation, application of plant protection materials, application of fertilizers, and threatened litigation; other conflicts have included harvest crews reporting concerns from strong odors sometimes several miles away. Crop types that have been embroiled in conflicts have included broccoli, wine grapes, avocado orchards, and citrus orchards. Local businesses and community members that have been impacted by this conflict include farmers, harvesters, rural residents, shippers, custom machine operators, materials applicators, and farm labor contractors. Given the great extent and diversity of intrinsic conflicts, we restate that these experiences of conflict are not isolated events and should give pause to the future of hemp and cannabis cultivation on the Central Coast.

Although the significance of advocating for regulations weighs heavily on our Association, we cannot remain silent in the face of continued increases in the number of members whose ability to exercise best management practices is crippled by their proximity to hemp or cannabis cultivation.

Until we have evidence to the contrary we urge a conservative approach be exercised to maintain the viability of the established, diverse agriculture and a future for food crops on the Central Coast. Examples of policy and information gaps include broader State and Federal licensing of plant protection materials for hemp or cannabis cultivation and better understanding of odor concerns. We further believe that addressing liability protection for agriculturalists exercising best agricultural practices and their right to farm is a key component for compatibility between hemp or cannabis and other agricultural food crops.

In light of this information we urge you to consider the widespread and significant conflicts that hemp and cannabis cultivation have generated on the Central Coast demonstrating their incompatibility with existing food crops in Santa Barbara County.

Sincerely,



Claire Wineman, President



COUNTY OF SANTA BARBARA
AGRICULTURAL ADVISORY COMMITTEE

March 6th, 2020

Hon. Gregg Hart
Santa Barbara County Board Of Supervisors
105 East Anapamu St.
Santa Barbara, CA 93101

RE: March 10th Cannabis Cultivation Appeal Case # 19APL00000-00032

Dear Chair Hart and Honorable Members of the Board

On March 5, the Ag Advisory Committee (AAC) discussed the Board's upcoming consideration of several precedential projects related to cannabis land use. The AAC voted 8-1 to submit the following letter.

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

If this is not possible, we urge the Board to consider applying the following conditions to the above permits to address predictable conflicts that have arisen in many situations in the County.

1. Require release from liability for legally applied crop management materials, tools, and practices
2. Prohibit detectable offsite odor
3. Apply limits on term of the land use permits

We appreciate the Board's consideration of our comments and Concerns in addressing predictable land use conflicts between cannabis and agriculture.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Van Leer".

Paul Van Leer, Chair

Pesticide Drift Mitigation Considerations

Pesticide spray drift is the movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended.

Pre-Spray Site Evaluation & Pesticide Drift Mitigation Pre-planning

Evaluate the site and surrounding areas.

- Prevailing wind direction and speed pattern
- Topography & air flow evaluation
- Vegetation & fencing screening
- Distance to adjacent crops & growth stage
- Distance to houses & work areas
- Adjacent property fieldworker activities
- Distance to streams & sensitive habitat areas
- Distance to bees

Examples:

Can an untreated buffer be left adjacent to property? Use drift cards to assist in development.

Can the treated area be changed/moved?

Can site roads or structures be used as a buffer?

Can vegetation be planted or a fence built?

Can the application time be changed?

Site modifications:

Communication Plan:

- Get to know your neighbors & their crops or property uses
- Crop protection plan discussed w/adjacent neighbors (necessity, pests to be controlled, protection chemicals under consideration)
- Neighbors notified of pesticide application in time to take precautions to protect workers, crops, etc.

Site Communication Plan:

Application Method & Equipment Evaluation:

- Determine best method: Air/Ground/Hand Application equipment: Combination?
- Choose the best equipment (boom, air-blast, shielded, etc.). Learn how to operate new equipment.

- Choose the correct nozzle type & boom configuration for optimum droplet size:
 - Number of nozzles and spacing
 - Nozzle Orifice Size
 - Nozzle spray pattern angle
- Determine optimum boom height and spray pressure
- Insure adequate carrier volumes & agitation
- Determine accurate tractor speed

Method & Equipment:

Applicator Training: Does your applicator understand the interaction of factors associated with pesticide drift?

Applicator must be able to:

- Perform a calibration test
- Identify equipment, including nozzles, that needs repair
- Use weather monitoring equipment and have access to real-time weather data (wind speed & direction, temperature, relative humidity)
- Identify weather conditions that indicate an inversion
- Re-access when weather conditions change
- Use only pest control equipment in good repair and safe to operate.
- Perform all pest control in a careful and effective manner.
- Use only methods and equipment that insures proper application of pesticides.
- Perform all pest control under proper weather conditions
- Exercise all reasonable precautions to avoid contamination of the environment.
- Stop the application when drift is likely to occur.

Applicator(s) Name & training:

Pesticide Evaluation:

- Application consistent with IPM
- Alternatives considered
- Least persistent and lowest toxicity
- Optimum formulation & volatility that provides coverage and mitigates drift
- Additives & drift retardants considered
- Tank mix compatibility tested & evaluated for drift

Pesticides Under Consideration:

Pesticide Labeling Requirements & County Permit Conditions

- Follow labeling and county permit condition drift mitigation/prevention statements:
Ex: specific nozzle/droplet size, equipment specifications, mandatory buffer zones, other site restrictions as described on the permit
- Weather conditions
- Equipment specifications
- Application timing requirements

Labeling Requirements:

Post Application Evaluation:

Supervisor's Notes:

Disclaimer: The information in this document is intended to assist the applicator and grower in recognizing the potential for pesticide spray drift. The interaction of many equipment and weather related factors determine the potential for spray drift. The applicator and the grower are responsible for considering all these factors when making decisions.