#4

Ramirez, Angelica Public Comment

From: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Sent: Tuesday, September 14, 2021 9:32 PM
To: Board Letters
Cc: Monica R. Briseno
Subject: Letter In Support of Appeal No. 21APL-00000-00031,
Attachments: 9.14.21 Letter to Board of Supervisors ISO Appeal(4296577.1).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Ramirez,

Attached please find correspondence in support of Appeal No. 21APL-00000-00031.

Regards,
Ernest

Ernest J. Guadiana
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Ref: 14100-0001

September 14, 2021

VIA ELECTRONIC MAIL ONLY

Angelica Ramirez
Clerk of the Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240
E-Mail: boardletters@countyofsb.org

Re: Appeal No. 21APL-00000-00031, an appeal of the Planning Commission's June 9, 2021 approval of the Santa Rita Agriculture, Inc., Cannabis Cultivation Project (Case No. 19CUP-00000-00018) (the "Project")

Dear Supervisors:

Our office represents JCCrandall LLC ("**Appellant**"), the owner of that certain real property consisting of 237 acres commonly known as Santa Barbara County Assessor Parcel Nos. 099-110-006 and 099-110-016 (the "**Crandall Property**").

Appellant brings forth this appeal because the County of Santa Barbara ("**County**") Planning Commission's decision to approve the Project was in error. The Project is not consistent with the County's Land Use and Development Code ("**LUDC**"), including section 35.42.075 (the "**Cannabis Regulations**"), or applicable State law. Moreover, the County Planning Commission decisions are not supported by the evidence in the record, and the truncated nature of the County Planning Commission hearing for the Project deprived the Appellant of a fair and impartial hearing. For these reasons, and as detailed below, the County Board of Supervisors must reverse the County Planning Commission's June 9, 2021 approval of the Project.

I. Project Background

On June 9, 2021, the County of Santa Barbara (the "**County**") Planning Commission heard the application for a Conditional Use Permit ("**CUP**") 19CUP-00000-00018 for proposed cannabis cultivation over approximately 2.6 acres, placement of sheds, and use of an existing non-

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conforming residence for related cannabis operations (the "**Project**") at the real property commonly known as Santa Barbara County Assessor Parcel No. 099-110-060 (the "**Hughes Property**").

The Property is owned by Hughes Land Holding Trust ("**Hughes**"), of which Appellant understands Kim Hughes is the trustee. Appellant further understands that Hughes leases the Property to Santa Rita Holdings, Inc. (the "**Applicant**"). Importantly, the Property is not served by public roadways. Instead, the sole means of access is through a private roadway over a deeded easement entered into by three property owners in the immediate area, which includes the Crandall Property.

As created by that certain *Deed of Easement and Agreement Among Land Owners*, recorded as Document No. 88-061812 in the Official Records of the County (the "**Easement Deed**"), the deeded easement begins at a gate located on the real property commonly identified as Santa Barbara County Assessor Parcel No. 099-110-015 (the "**Jackson Property**"), which is owned by Jackson Family Investments III LLC (the "**Jackson Family**"), then traverses the Crandall Property, until eventually ending at the Hughes Property.[1]

Hughes and the Applicant are well aware of the landlocked nature of the Property. They also were informed of the California requirement requiring that owners of real property consent to cannabis activities on their lands, further discussed below. Neither Hughes nor the Applicant sought such consent from the Appellant or the Jackson Family. When Appellant raised this issue during the June 9, 2021 hearing, Planning Commissioners based their opinion on the incorrect assumption that the issue of underlying easement holder consent was something that must have come up numerous times. It has not. This is a novel issue. Neither the Commissioner nor County counsel provided any example or reference to a prior instance of such a situation. As further discussed below, the County's failure to request such consent violates State law.

In addition to brushing aside important novel issues and perhaps a catalyst to such rushed discussions, during the June 9, 2021 hearing, County Planning Commissioners indicated that they had to decide the item by a certain time given personal commitments, in all approximately less than thirty minutes. These personal commitments led to Commissioners brushing over issues and reducing the time allotted to consider the same. For example, the Appellant's counsel could not clarify a point of order during the public comment period. More egregious, several Commissioners appeared to be sleeping during the public hearing, which was clearly visible to those attending as

[1] We enclose as Exhibit A to this letter an annotated aerial map and survey showing the easement as it traverses the Jackson Property, Crandall Property, and Hughes Property.

the meeting screens allowed views of each Commissioner. Given the nature of the zoom meeting and the rushed nature of the hearing, it was not possible to point out these blatant violations.; Appellant's objections were neither heard nor considered.

The County Planning Commission approved the Project and further determined that the previously certified Programmatic Environmental Impact Report ("**PEIR**") (17EEIR0000000003) was adequate and that no subsequently environmental review was required. Appellant appealed the decision on June 18, 2021.

II. Appeal Arguments

A. The Project Violates State Law

As explained in the initial appeal documents, California law requires that owners of real property consent to cannabis activities being conducted on their lands. Bus. & Prof. Code § 26051.5(a)(2) ("**An applicant** for any type of state license issued pursuant to this division **shall**... **provide a statement from the landowner of real property** or that landowner's agent where the commercial cannabis activity will occur, **as proof** to demonstrate the **landowner has** acknowledged and **consented to permit commercial cannabis activities** to be conducted **on the property**....").

The Property is in the uncommon situation that requires the use of adjacent parcels owned by separate owners to reach the Project. Based on such a particular location, the Project requires the consent of all applicable landowners whose property the Project must use to proceed with cannabis activities. During the hearing, counsel for Appellant raised the issue that Business & Professions Code section 26051.5(a)(2) requires that the Project applicant provide consent from the underlying easement holder (Appellant) for the use of the private easement road for cannabis operations. The County Planning Commission Chair requested clarification on this issue from the County staff. County counsel responded with the following:

> "One of the **public commentators addressed State licensing requirements to obtain consent to conduct cannabis activities on the property. To emphasize that is a state licensing requirement** and what the public commentator offered was an interpretation of that statute. Locally, the **County**, as with other projects, **does not require consent** of the underlying property owner for an easement holder to use that easement to access a property."

As such, at the hearing, the County Planning Commission took the position that it could disregard Business & Professions Code section 26051.4(a)(2), explaining that it is a State issue.

Following the June 9, 2021 hearing and the above comment, the Appellant contacted the State Department of Cannabis Control regarding the issue. According to their department, the State responded that the State had deferred this matter to County staff and was not within its jurisdiction.[2] As it stands, with the County stating it is a State issue and the State stating it is a County issue, neither is enforcing the consent requirement necessary for an applicant to conduct cannabis activities over the land. This is unacceptable.

As stated in the Notice of Public hearing for this appeal, the Project approvals specifically allow the Project to conduct activities over the Crandall Property. The approval requires that "[c]annabis product . . . be loaded onto refrigerated trucks and . . . be transported offsite . . . [t]rucks that contain cannabis will not be stored onsite overnight . . . [and] harvested cannabis [must] be trucked offsite for processing daily during harvests, and no drying, trimming, curing, or processing will occur onsite." The only way to comply with these requirements of the CUP is for the Project to transport cannabis, in commercial refrigerated trucks, over the Crandall Property. Therefore, the County is forcing the Crandall Property, without owner consent and over clear owner objection, to endure cannabis operations over its property. The County cannot force the Appellant to take on the risk of such actions, which subject the Appellant to forfeiture under federal law and also subject the Appellant to being charged with aiding and abetting a violation of the Controlled Substances Act given the current federal prohibition on cannabis.

The County cannot continue to punt on this issue under the pretense that it is a State issue. The State has clearly stated that this is a County issue. The County Planning Commission decision to approve the Project is a direct violation of Business and Professions Code section 26051.5(a)(2), which, in turn, also violated the County Cannabis regulations, which require that all commercial cannabis activities comply with State laws.

We emphasize that County Planning Commissioners noted that this issue appeared likely to have come up before and is not novel. However, that statement was neither supported with evidence or other facts. This issue is, in fact, novel and not something faced by the County or State previously. This matter of first impressions for the County is critical to correct.

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[2] Correspondence between counsel for Appellant and the State Department of Cannabis Control is attached as Exhibit B.

B. The Planning Commission Decision Is Not Supported by the Evidence

In addition to violating State law, the Project does not conform to applicable County regulations.

1. The Project Site Is Not Adequate in Terms of Location or Physical Characteristics to Accommodate the Project

To approve a CUP, the County must, among other things, find that the "site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed."[3] The County cannot make such a finding here. Unresolved access and water issues simply do not support the making of this required finding.

As discussed above, the Hughes Property has only one access point over a private easement. The easement, however, cannot support federally prohibited activities, such as cannabis cultivation and transportation. *See Cottonwood Duplexes, LLC v. Barlow* (2012) 210 Cal.App.4th 1501, 1510 ("the owner of a dominant tenement may be enjoined from using an easement where that use is illegal"); *Baccouche v. Blankenship* (2007) 154 Cal.App.4th 1551, 1559 (dominant tenant not entitled to enforce easement for keeping horses because the horses were kept in violation of law); *Gonzales v. Raich* (2005) 545 U.S. 1, 26 (confirming that the federal government can enforce the restrictions of the Controlled Substances Act on intrastate activities). Without the use of the easement, the Project has no legal access.

Although the Easement Deed provides the owner of the Hughes Property with certain non-exclusive access rights over the easement, the Appellant continues to own the fee interest in the portion that traverses the Crandall Property, and the Jackson Family continues to own the fee interest in the portion of the easement that traverses the Jackson Property. As a result, and as explained in Section A above, the County must require the express consent to the transportation of cannabis over the easement from all owners. Without such consent, the County cannot make the finding that the "site for the Proposed Project is adequate . . . to accommodate the type of use and level of development proposed."

In addition to failing to comply and address access issues, the Project also has failed to demonstrate that it has the water necessary to support the approved cannabis cultivation. The Applicant requested confirmation from the Vista Hills Mutual Water Co. that it had "sufficient

[3] County Cannabis Regulation § 35.82.060.E.1.a.

water supply available to serve the Proposed Project."[4] In response, the Vista Hills Mutual Water Co. advised the Applicant and the County that it was "beyond its experience" to determine whether there is sufficient water for the Project, nor could it affirm that the Project has sufficient water credit. The Vista Hills Mutual Water Co. clarified that the Applicant did not provide a project description nor offer a forecasted water demand. The Vista Hills Mutual Water Co. concluded that it could not attest that the Project will have sufficient water. It requested a survey to further evaluate. It also provided that water delivery is a variable quantity, and that a "decade of drought and other constraints compel [the Vista Hills Mutual Water Co.] to maintain flexibility in the allotment [it] assign[s]." And, "in the face of unforeseen problems, [its'] focus must always remain on household and domestic use over agricultural interests." Based on these contentions and the lack of any subsequent submission of requested materials to the Vista Hills Mutual Water Co., it remains unclear whether there is sufficient water allocation to support the Project. As with lack of access, without evidence to support adequate water to the Project, the County cannot make the finding that the "site for the Proposed Project is adequate . . . to accommodate the type of use and level of development proposed."

2. Existing Streets Are Not Adequate to Carry the Type and Quantity Generated by the Project

To approve a CUP, the County must find that "streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use."[5] As with the above, the County cannot satisfy this requirements because, as discussed above, the Property does not have legal access to the proposed Project and lacks the necessary information to identify true traffic impacts even if the easement were to allow for such a use.

Moreover, as explained above, an easement is unenforceable if it would allow a use in violation of the law.[6] Cannabis cultivation remains illegal at the federal level. As such, the Project is in violation of federal law, and the Applicant cannot make use of, or seek to enforce the use of, the easement created by the Easement Deed for cannabis cultivation purposes. It, therefore, cannot rely on such access for the Project, and without the easement, the Project has no legal access.

In addition, even if the easement were to allow for the unlawful use (it does not), the existing dirt road cannot sustain the commercial activities proposed by the Project. We attach as

[4] We attach a copy of the Vista Hills Mutual Water Co. letter dated August 11, 2020, and submitted in support of the Project as Exhibit C.
[5] County Code § 35.82.060.E.1.b.
[6] *Baccouche, supra*, 154 Cal.App.4th at 1559.

Exhibit D photos of the current damage caused by commercial trucks coming to and from the Hughes Property.[7] The Project proposes an operation that will only increase the commercial activity over the existing dirt road. That increased use will only serve to deteriorate the road without any condition for improvements or repairs. The County cannot find, based on the evidence presented, that the streets are adequate to carry the type and quantity of traffic generated by the Project.

3. Significant Environmental Impacts Are Not Mitigated to the Maximum Extent Feasible

In addition to the above-referenced findings, the County must also find that "significant environmental impacts will be mitigated to the maximum extent feasible."[8] However, the County Planning Commission overlooked significant environmental issues, including issues not addressed in the Cannabis Ordinance PEIR, further discussed in Exhibit E. Staff also failed to address identified deficiencies in the County's CEQA Checklist, which incorrectly states that the applicant submitted documentation from the State Water Resources Control Board ("**SWRCB**") to demonstrate compliance with the comprehensive Cannabis Cultivation Policy, and that the applicant submitted a Phase I cultural study. The County cannot indicate compliance with these requirements for purposes of the checklist without the benefit of the materials. The materials are necessary to properly evaluate the impact of the Project compared to the PEIR.

Additionally, in connection with the lack of access to water discussed above, it is important to note that, as stated by the Vista Hills Mutual Water Co., the Project shares a common infrastructure with two dozen homes. Given the complete lack of information in connection with the expected water demand of the Project, it is not possible to fully evaluate the impact that the Project will have on the environment. If the Vista Hills Mutual Water Co. did not have sufficient information to make this determination, the County, without the same information, cannot make this finding.

C. The Truncated and Rushed Hearing Deprived Appellant of a Fair Hearing

As explained above, the County Planning Commissioners announced before the start of the hearing on the Project that they had prior personal commitments, which required them to finish

[7] These photos also show that the Applicant is using the road for commercial cannabis activities outside the permitted hours, which limit operations between 6:00 a.m., and 4:00 p.m.
[8] County Code § 35.82.060.E.1.b.

the meeting in the next thirty minutes. That led to decisions that limited the public, including Appellant's ability to be heard.

"A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public. . . ." *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51. Here, Appellant and the public were deprived of a fair hearing given the rushed nature of the hearing, with Commissioners indicating that they had to decide the issue by a certain time given personal commitments. Such outside circumstances led to issues being brushed over, including the Appellant's counsel not being allowed to clarify a point of order during the public comment period. Additionally, and most egregiously, several Commissioners appeared to be asleep during public hearing. Such actions fall sort of the required skill, zeal and diligence required of public officers.

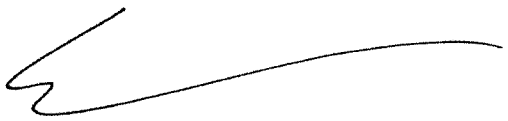
D. Existing Operations at the Hughes Property Exceed the Project

The Applicant has continued to plant, grow, and harvest cannabis at the Hughes Property since the June 9, 2021 hearing. Such growth, however, exceeds that proposed by the Project. In this regard, not only is cannabis overflowing from the State permit boundary, but the Applicant also is growing cannabis over a leach field that is located entirely within the 50-foot setback. We attach as Exhibit F aerials showing the plantings within the required setbacks. These actions show the lack of conformance with the proposed Project, which Appellant believes will only exacerbate should the incorrect approval of the Project remain.

III. Conclusion

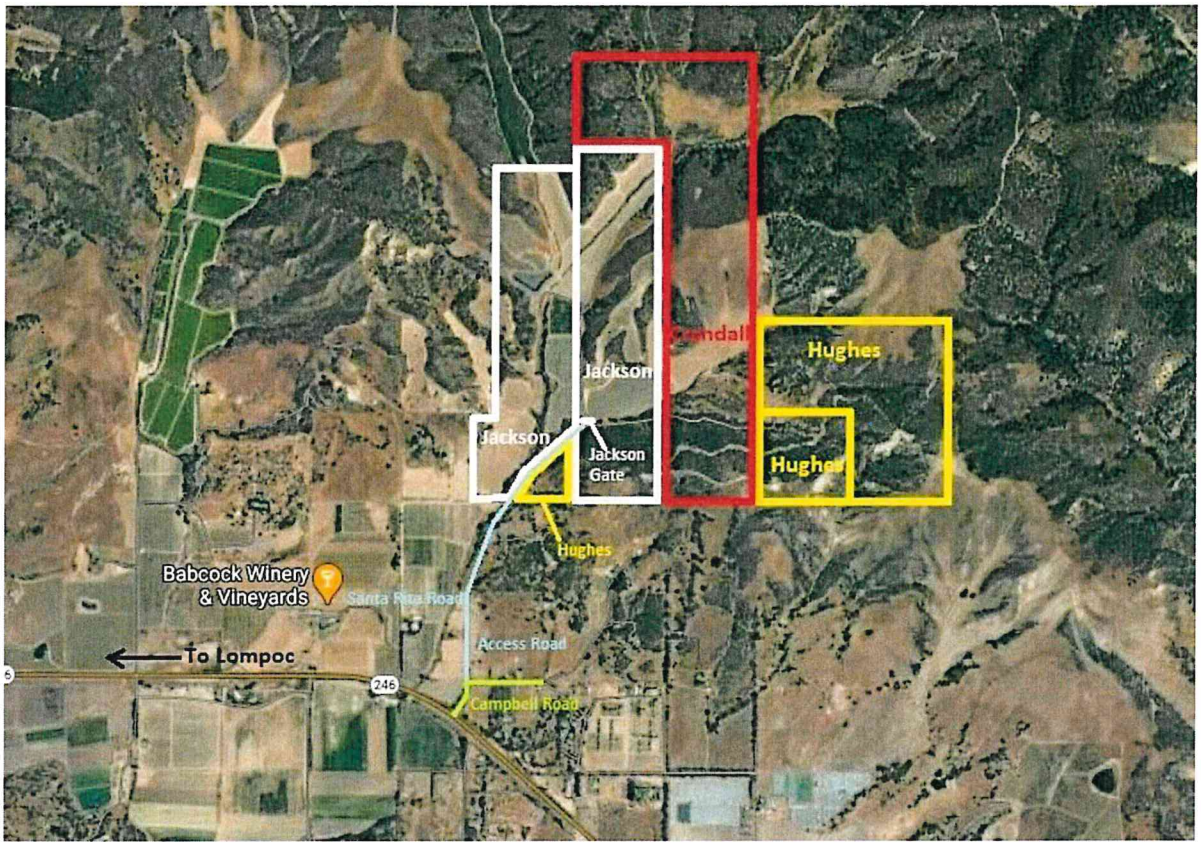
As detailed above, the Project, as approved by the County Planning Commission, violates State law and County Cannabis Regulations and fails to meet various LUDC provisions for, among other reasons, lack of sufficient water and failure to obtain consent of private easement owners. The County's findings are clearly unsupported by evidence, and the County's Planning Commission actions failed to provide a fair public hearing. The Board of Supervisors must reverse the Project approval.

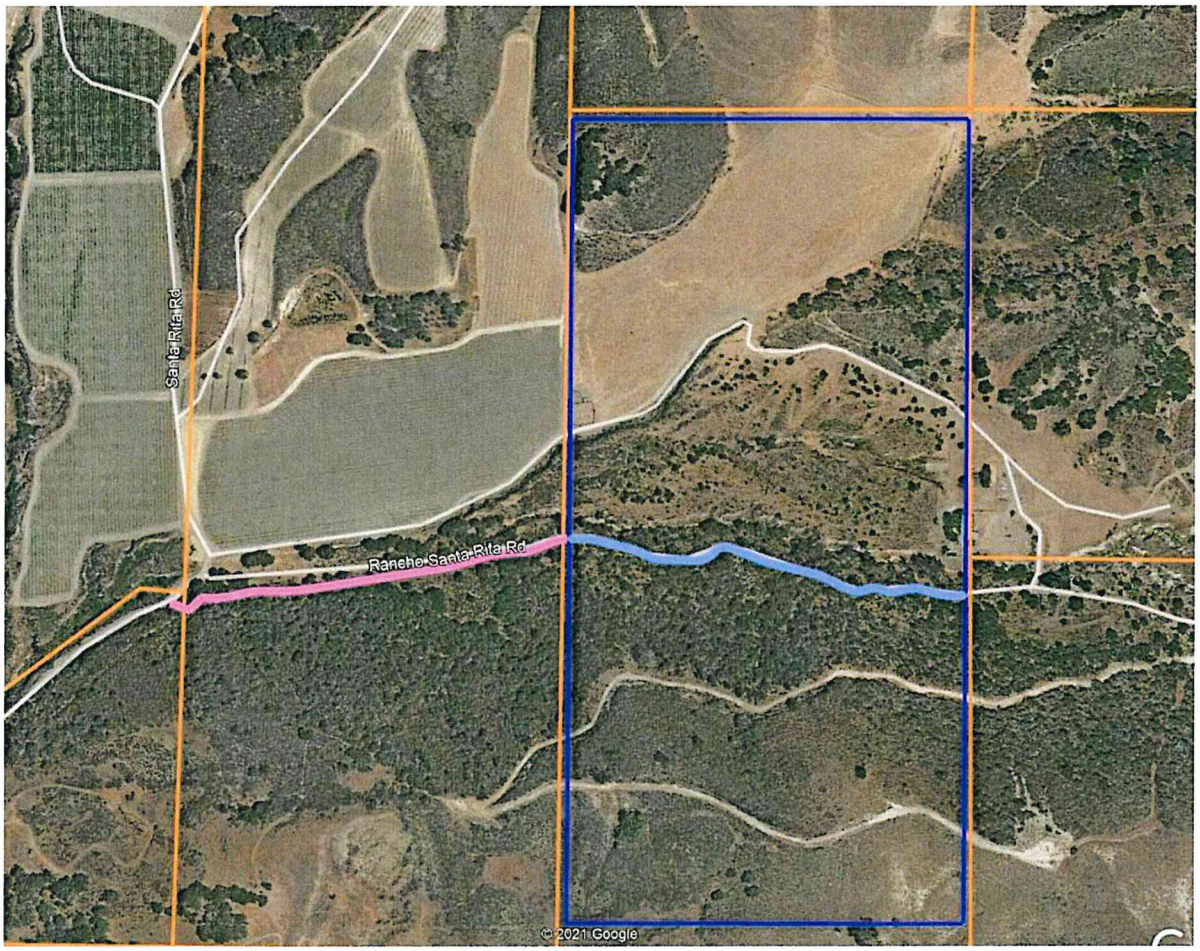
Very truly yours,



ERNEST J. GUADIANA
Elkins Kalt Weintraub Reuben Gartside LLP

EXHIBIT A


Jackson
Jackson
Jackson Gate
Hughes
Hughes
Hughes
Babcock Winery & Vineyards
Santa Rita Road
To Lompoc
Access Road
246
Campbell Road


Santa Rita Rd
Rancho Santa Rita Rd
© 2021 Google

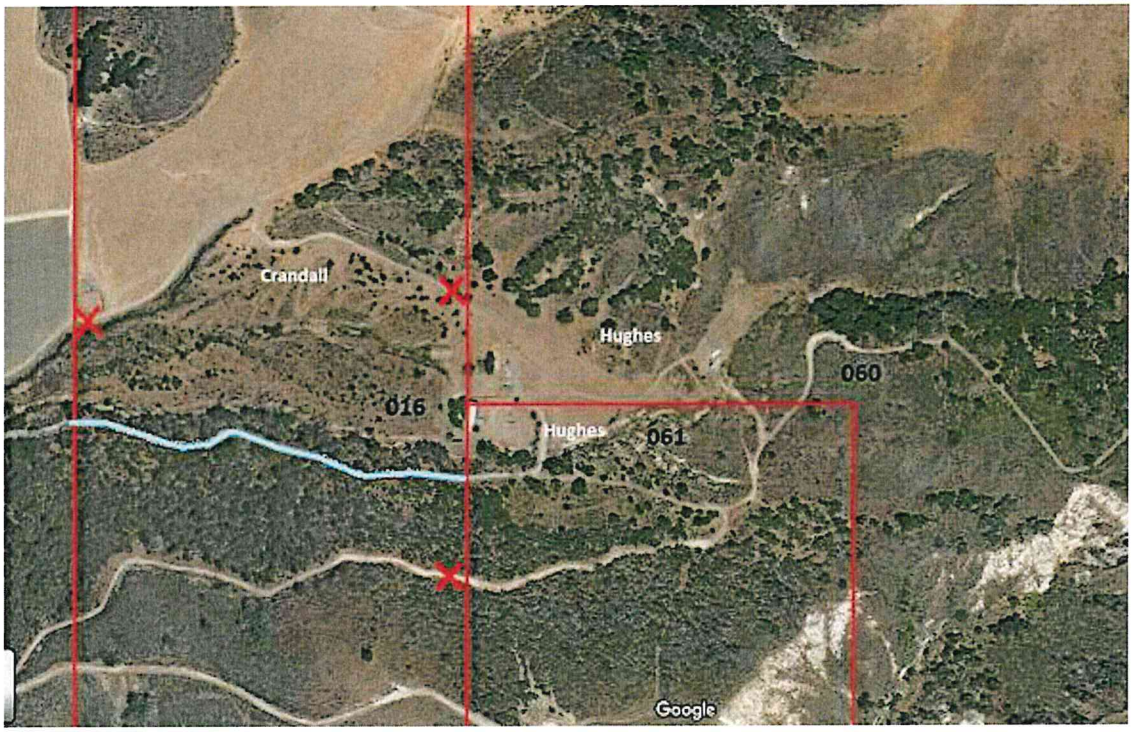

Crandall
Hughes
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EXHIBIT B

Monica R. Briseno

From: Voss, Harley@Cannabis <Harley.Voss@cannabis.ca.gov>
Sent: Monday, July 26, 2021 2:01 PM
To: Monica R. Briseno
Cc: Ernest J. Guadiana; Gutierrez, Tristani@Cannabis
Subject: RE: re ENF21-0001476

External Sender

Thanks you Ms. Briseno, I understand your predicament. I will refer this to our legal for review and follow up with you after they provide an oponion.

Harley Voss
Supervising Special Investigator – Region 4

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Department of Cannabis Control
CALIFORNIA

From: Monica R. Briseno <MBriseno@elkinskalt.com>
Sent: Monday, July 26, 2021 11:21 AM
To: Voss, Harley@Cannabis <Harley.Voss@cannabis.ca.gov>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>; Gutierrez, Tristani@Cannabis <Tristani.Gutierrez@cannabis.ca.gov>
Subject: RE: re ENF21-0001476

[EXTERNAL]: mbriseno@elkinskalt.com

CAUTION: THIS EMAIL ORIGINATED OUTSIDE THE DEPARTMENT OF CANNABIS CONTROL!
DO NOT: click links or open attachments unless you know the content is safe.
NEVER: provide credentials on websites via a clicked link in an Email.

Ms. Voss,

Thank you for your email. It's interesting to hear that the matter was referred to the County of Santa Barbara, as the County made it clear during a recent hearing on a Santa Rita Holdings land use permit that the issue of consent for the use of the easement is a State matter.

You can find the hearing video here, with the relevant information at the 8:01:27 to 8:02:39 mark.

For context, on behalf of our client, Mr. Guadiana commented during the public hearing that Business & Professions Code section 26051.5(a)(2) requires that the tenant applicant provide consent from the underlying easement holder (our client) for the use of the private road for cannabis operations. Having failed to do so, the applicant was not in conformance with State law. The County Planning Commission Chair requested clarification on this issue from the County staff. County counsel responded with the following:

"One of the **public commentators addressed State licensing requirements to obtain consent to conduct cannabis activities on the property. To emphasize that is a state licensing requirement** and what the public commentator offered was an interpretation of that statute. Locally, the **County**, as with other projects, **does not require consent** of the underlying property owner for an easement holder to use that easement to access a property."

As you can see from the County counsel's response, the County's position essentially amounts to a disregard of Business & Professions Code section 26051.4(a)(2), explaining that it is a State issue. As a result of these conflicting positions, with your email below noting that this is a County issue, and the County stating it is a State issue, we are at a point where it appears that neither the State nor the County is enforcing the consent requirement necessary for an applicant to conduct cannabis activities over the land of another.

We again reiterate our position that the State must revoke all State licenses granted to Santa Rita Holdings because it does not have the consent of all landowners over whose properties Santa Rita Holdings is conducting cannabis operations – a requirement under Business & Professions Code section 26051.4(a)(2). Contrary to current law, our client's property continues to be used for a cannabis operation without her consent - something completely unacceptable.

Monica R. Briseno
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From: Voss, Harley@Cannabis <Harley.Voss@cannabis.ca.gov>
Sent: Tuesday, July 20, 2021 5:14 PM
To: Monica R. Briseno <MBriseno@elkinskalt.com>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>; Gutierrez, Tristani@Cannabis <Tristani.Gutierrez@cannabis.ca.gov>
Subject: RE: re ENF21-0001476

External Sender

Good afternoon Ms. Briseno, thank you for your time on this matter.

I agree that the regulations do not include any specific provisions relating to private roads. To date we have referred this matter to Santa Barbara staff who have concluded, with the support of their counsel, that travel over the private road is consistent with the ingress/egress rights defined by the recorded easement agreement (this opinion is consistent with other counties as well). Should Santa Barbara staff reevaluate this matter and agree that the cannabis transportation over the private road is inconsistent with the recorded easement agreement they can then choose to pursue local permit revocation. This path is likely your best alternative to consider.

However, if you would like to provide me with a concise email summarizing your position I will send it along for further review. If you would like me to call and discuss the matter with you directly please let me know and we can select a time.

Thank you in advance.

Harley Voss
Supervising Special Investigator – Region 4

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Department of Cannabis Control
CALIFORNIA

From: Monica R. Briseno <MBriseno@elkinskalt.com>
Sent: Tuesday, July 20, 2021 1:18 PM
To: Gutierrez, Tristani@Cannabis <Tristani.Gutierrez@cannabis.ca.gov>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

Tristani,

The Cannabis Regulations fail to include any specific provision regarding private roads, or, more specifically, how those private roads may be used for ingress and egress. Nonetheless, the drafters of the Cannabis Regulations clearly understood that use of roads would be needed for cannabis transportation and specifically prohibited municipal agencies from prohibiting cannabis transportation on public roads (see Bus. & Prof. Code § 26080(b)). However, unlike public roads, the Cannabis Regulations do not specifically require private road owners to allow cannabis transportation over their private property, and therefore the general rules regarding use of another's property should apply (since the use of a private road is, in essence, the use of another's property). Business & Professions Code section 26051.5(a)(2), which applies to a tenant applicant such as Santa Rita Holdings, provides that the tenant applicant must provide "evidence of the legal right to occupy and use the proposed location and provide a statement from the landowner of real property or that landowner's agent where the commercial cannabis activity will occur, as proof to demonstrate the landowner has acknowledged and consented to permit commercial cannabis activities to be conducted on the property

by the tenant applicant." Here, the tenant applicant proposes to perform a commercial cannabis activity (the transportation of cannabis) over my clients' property. The tenant applicant has shown the legal right to use my clients' property by providing the Private Road Agreement. However, Business & Professions Code section 26051.5(a)(2) still requires the tenant applicant to provide a statement from my client consenting to the cannabis transportation over my clients' property, which has not occurred. Accordingly, the tenant applicant's permits must be revoked until they either cease using my clients' property for commercial cannabis activities or obtain my clients' consent.

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From: Gutierrez, Tristani@Cannabis <Tristani.Gutierrez@cannabis.ca.gov>
Sent: Wednesday, July 14, 2021 4:12 PM
To: Monica R. Briseno <MBriseno@elkinskalt.com>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

External Sender

Good afternoon,

After discussion with my supervisor, the following information is requested for his review:

The section that was referred to is for tenant usage, not ingress or egress issues. Can you please provide the relevant code sections or prior rulings that relate to ingress or egress that excludes cannabis traffic?

Thank you.

Tristani Gutierrez
Special Investigator

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Department of
Cannabis Control
CALIFORNIA

From: Monica R. Briseno <MBriseno@elkinskalt.com>
Sent: Wednesday, July 14, 2021 2:12 PM
To: Gutierrez, Tristani@Cannabis <Tristani.Gutierrez@cannabis.ca.gov>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

[EXTERNAL]: mbriseno@elkinskalt.com

Yes, please see below and attached for an explanation of the access rights and issues.

Santa Rita Holdings contends it has access to the property housing the cannabis operation (the "Hughes Property") from the public right-of-way (Santa Rita Road) through a private road (the "Private Road"). That Private Road was created through that certain *Deed of Easement and Agreement Among Land Owners*, recorded as Document No. 88-061812 in the County's Official Records (the "Private Road Agreement"). Attached is a copy of the Private Road Agreement.

The Private Road created by the Private Road Agreement begins at a gate located at the Jackson Property (APN 099-110-015), then traverses the Crandall Property until it ends at the Hughes Property. Attached is a diagram showing the properties for reference.

The Private Road Agreement provides the owner of the Hughes Property with certain non-exclusive access rights over the Private Road. However, the Crandalls continue to be the landowner of the portion of the Private Road that crosses over the Crandall Property. The same is true for the owners of the Jackson Property.

State law requires the express consent of each landowner of real property where commercial cannabis activities will occur. Bus. & Prof. Code § 26051.5(a)(2) ("An applicant for any type of license issued pursuant to this division shall . . . provide a statement from the landowner of real property or that landowner's agent where the commercial cannabis activity will occur, as proof to demonstrate the landowner has acknowledged and consented to permit commercial cannabis activities to be conducted on the property . . . .") Santa Rita Holdings' commercial cannabis activities will necessarily occur over the portions of the Private Road that cross the Crandall Property and the Jackson Property, which is the only means of ingress and egress from Santa Rita Road. However, the Private Road Agreement does not expressly authorize or consent to the transportation of cannabis over the Private Road, and neither the Crandalls nor the Jackson Property owner have agreed to allow cannabis transportation over the portions of the Private Road traversing their properties.

Here, the rights Santa Rita Holdings has to use the Crandall Property are akin to the rights Santa Rita Holdings has to use the Hughes Property, namely through a written agreement. In the same manner that the State required Santa Rita Holdings to obtain consent from the owner of the Hughes Property, the State also must require Santa Rita Holdings to obtain consent from the Crandalls and the owner of the Jackson Property before Santa Rita Holdings may transport Cannabis over these properties. Moreover, to the extent the Private Road grants an interest in the Crandall Property and the Jackson Property to the owner of the Hughes Property, such interest does not vest complete ownership in the Private Road to the owner of the Hughes Property. Accordingly, since Bus. & Prof. Code § 26051.5(a)(2) requires the consent from all the owners of the real property where cannabis activities will occur, the State must obtain the consent from the Crandalls and the owner of the Jackson Property prior to allowing Santa Rita Holdings to transport cannabis over these properties.

We also urge you to note the express distinction between a public road and a private road. Under Business and Professions Code § 26080(b), public roads are expressly allowed to be utilized for cannabis transportation activities. However, the legislature made no such authorization over private roads, and therefore consent of the property owners that own the underlying fee interest in the private road still is required before such private road may be utilized for cannabis transportation activities. In this regard, landowner consent is crucial and required due to the risk undertaken by those participating in cannabis operations. As you are aware, cannabis operations remain illegal under federal law, and cannabis remains categorized as a Schedule I drug. 21 U.S.C. ss 801 *et seq*. Under federal law, property used to facilitate the cultivation, distribution, and manufacturing of cannabis is subject to federal asset forfeiture laws, creating a risk that the federal government could seize such property. 21 U.S.C. §§ 853, 881; 18 U.S.C. §§ 983, 985. Therefore, the

California legislature required each property owner's authorization as a prerequisite to allowing cannabis activities over their property.

Despite such clear statutory requirements requiring that Santa Rita Holdings obtain the consent of the Crandalls, Santa Rita does not have such consent. Santa Rita Holdings' licenses must therefore be revoked.

Monica R. Briseno
MBriseno@elkinskalt.com
Direct Dial: (310) 746-4479 | Fax: (310) 746-4499

Elkins Kalt Weintraub Reuben Gartside LLP
www.elkinskalt.com
From: Gutierrez, Tristani@Cannabis <Tristani.Gutierrez@cannabis.ca.gov>
Sent: Tuesday, July 13, 2021 11:29 AM
To: Monica R. Briseno <MBriseno@elkinskalt.com>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

External Sender

Good Afternoon,

So that I may better understand the scenario and discuss with my supervisor, can you provide the paperwork that displays that the owner of Santa Rita Holdings cannot use the road for cannabis activities?

Thank you,

Tristani Gutierrez
Special Investigator

From: Monica R. Briseno <MBriseno@elkinskalt.com>
Sent: Tuesday, July 13, 2021 11:22 AM
To: Gutierrez, Tristani@CDFA <Tristani.Gutierrez@cdfa.ca.gov>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

[EXTERNAL]: tristani.gutierrez@cdfa.ca.gov

CAUTION: THIS EMAIL ORIGINATED OUTSIDE THE DEPARTMENT OF CANNABIS CONTROL!
DO NOT: click links or open attachments unless you know the content is safe.
NEVER: provide credentials on websites via a clicked link in an Email.

CAUTION : [External Email] - This email originated from outside of our CDFA organization. Do not click links or open attachments unless you recognize the sender and know the content is expected and is safe.

Tristani – I am following up on the below.

As mentioned, the owner of Santa Rita Holdings must traverse the private property of two separate owners to reach its operation and transport any product. Our client owns the property immediately adjacent to the property occupied by Santa Rita Holdings. Please note that the portion of the private road on our client's property can only be traversed by the adjacent owner (Santa Rita Holdings' landlord) and no other parties. Neither Santa Rita Holdings nor its landlord has

obtained consent from our client to use their private property for cannabis activities. We look forward to your response to this issue and welcome an opportunity to discuss this further.

Please do not hesitate to reach out.

Best,

Monica R. Briseno
MBriseno@elkinskalt.com
Direct Dial: (310) 746-4479 | Fax: (310) 746-4499

Elkins Kalt Weintraub Reuben Gartside LLP
www.elkinskalt.com

From: Monica R. Briseno
Sent: Wednesday, July 7, 2021 2:31 PM
To: Gutierrez, Tristani@CDFA <Tristani.Gutierrez@cdfa.ca.gov>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

The private road is used by three owners pursuant to that certain easement deed attached to the letter. Based on Business & Profession Code sections 26051.5(a)(2) and 206080(b), to the extent any portion of a private road will be utilized for cannabis activities, consent from the owner of that portion of the private road must be obtained. Such consent was not received by Santa Rita Holdings, which must traverse over the property of two separate owners to reach its operation and transport any product from its operation.

Monica R. Briseno
MBriseno@elkinskalt.com
Direct Dial: (310) 746-4479 | Fax: (310) 746-4499

Elkins Kalt Weintraub Reuben Gartside LLP
www.elkinskalt.com

From: Gutierrez, Tristani@CDFA <Tristani.Gutierrez@cdfa.ca.gov>
Sent: Wednesday, July 7, 2021 2:06 PM
To: Monica R. Briseno <MBriseno@elkinskalt.com>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

External Sender

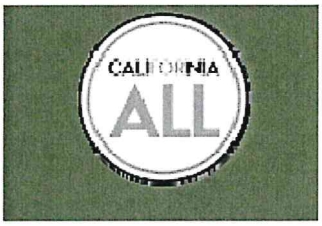
Hello,

Are you referencing this code section to apply it to the private road utilized by multiple parties?

TRISTANI GUTIERREZ
Compliance & Enforcement Branch
Special Investigator

CalCannabis Cultivation Licensing Division
California Department of Food and Agriculture

Tristani.Gutierrez@cdfa.ca.gov
(916) 576-6404



From: Monica R. Briseno <MBriseno@elkinskalt.com>
Sent: Wednesday, July 7, 2021 1:55 PM
To: Gutierrez, Tristani@CDFA <Tristani.Gutierrez@cdfa.ca.gov>
Cc: Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: RE: re ENF21-0001476

Thank you for the response, Tristani. To confirm, the June 9, 2021 letter submitted raised several issues in connection with the state licenses, including the lack of compliance with Business & Profession Code § 26051.5(a)(2). Is such lack of compliance with state law not within CalCannabis' jurisdiction? Attached is a copy of the letter for your reference. Thank you in advance for your help.

Monica R. Briseno
MBriseno@elkinskalt.com
Direct Dial: (310) 746-4479 | Fax: (310) 746-4499

Elkins Kalt Weintraub Reuben Gartside LLP
www.elkinskalt.com
From: Gutierrez, Tristani@CDFA <Tristani.Gutierrez@cdfa.ca.gov>
Sent: Wednesday, July 7, 2021 12:50 PM
To: Monica R. Briseno <MBriseno@elkinskalt.com>
Subject: RE: re ENF21-0001476

Good Afternoon Ms. Briseno,

I am reaching out regarding the complaints that were submitted regarding Santa Rita Holdings. The issues that were brought to CDFA are local issues that were referred to the local agency. Despite the alleged complaints, the licensee has maintained local compliance and therefore has active state licenses at this time.

If in the future, local authorization is evaluated and changed, the state licenses will be evaluated based on this new information.

Thank you.

Respectfully,

TRISTANI GUTIERREZ
Compliance & Enforcement Branch
Special Investigator

CalCannabis Cultivation Licensing Division
California Department of Food and Agriculture

Tristani.Gutierrez@cdfa.ca.gov
(916) 576-6404

From: Monica R. Briseno <MBriseno@elkinskalt.com>
Sent: Wednesday, July 7, 2021 10:57 AM
To: CDFA CalCannabis Enforcement@CDFA <CDFA.CalCannabis_Enforcement@cdfa.ca.gov>
Cc: Cornell, Margaret@CDFA <margaret.cornell@cdfa.ca.gov>
Subject: RE: re ENF21-0001476

Hello,

Following up on the below, is there someone that I can speak to regarding the status of the review and substance of the correspondence provided?

Monica R. Briseno
MBriseno@elkinskalt.com
Direct Dial: (310) 746-4479 | Fax: (310) 746-4499

Elkins Kalt Weintraub Reuben Gartside LLP
www.elkinskalt.com

From: Monica R. Briseno
Sent: Wednesday, June 9, 2021 11:13 AM
To: Calcannabis_enforcement@cdfa.ca.gov
Cc: Cornell, Margaret@CDFA <margaret.cornell@cdfa.ca.gov>; Ernest J. Guadiana <EGuadiana@elkinskalt.com>
Subject: re ENF21-0001476

To whom it may concern,

Attached, please find correspondence relating to the above-referenced enforcement case. Please contact our office with any questions.

Best,

Monica R. Briseno
MBriseno@elkinskalt.com
Direct Dial: (310) 746-4479 | Fax: (310) 746-4499 | Download VCard

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ELKINS KALT

Harley Voss
Supervising Special Investigator – Region 4

844-61-CA-DCC (844-612-2322)
info@cannabis.ca.gov
www.cannabis.ca.gov

Department of
Cannabis Control
CALIFORNIA

EXHIBIT C

August 11, 2020

Kim Hughes
5423 Santa Rita Rd
Lompoc, CA 93436

Re: Water Service

We have received recent communication from your tenant, Jason Hillenbrand, regarding a proposed project for an "*outdoor cannabis cultivation operation*" with a service address at your property, 5423 Rancho Santa Rita Road in Lompoc. One presumes he represents you in this matter and that our reply is properly directed to you as owner at that address.

In answer to his request, let me affirm that you do own 15 shares in the water company and are entitled to service at that address – as defined within our governing documents. The *"Proposed Project located at 5436 Santa Rita Road"* is not familiar to us and is not listed in our documents. Perhaps you can clarify this point. It would be helpful.

Moreover, some language within Jason's request was not entirely acceptable to us. It is beyond our experience, for example, to determine if we have "*sufficient water supply available to serve the Proposed Project.*" Nor can we affirm in our limited role if "*the project parcel has adequate 'water credit' for the forecasted demand associated with the Proposed Project.*" We observe that your project description does not offer a forecasted demand. Again, it would be helpful.

Let me add that water delivery to your property is a variable quantity, an allotment determined annually and listed on your water bill. A decade of drought and other constraints compel us to maintain flexibility in the allotment we assign to each share of ownership. Beyond that, you share a common infrastructure with two dozen homes, and in the face of unforeseen problems, our focus must always remain on household and domestic use over agricultural interests.

So again, let me affirm that you are entitled to water service at your property consistent with our governing documents. We might hope your allotment at 15 shares is sufficient to the project you describe, but we cannot in good faith attest that it is. We simply don't have the agricultural experience or savvy to make that call. Perhaps a more detailed survey would be useful to us all.

That said, you might consider that shareholders with agricultural interests can always drill their own ag well to additionally serve their property. And, of course, one can purchase additional shares to increase their allotment if they're already close to meeting their goals. Just a thought.

Anyway, do keep us in the loop; we genuinely wish you all the best.

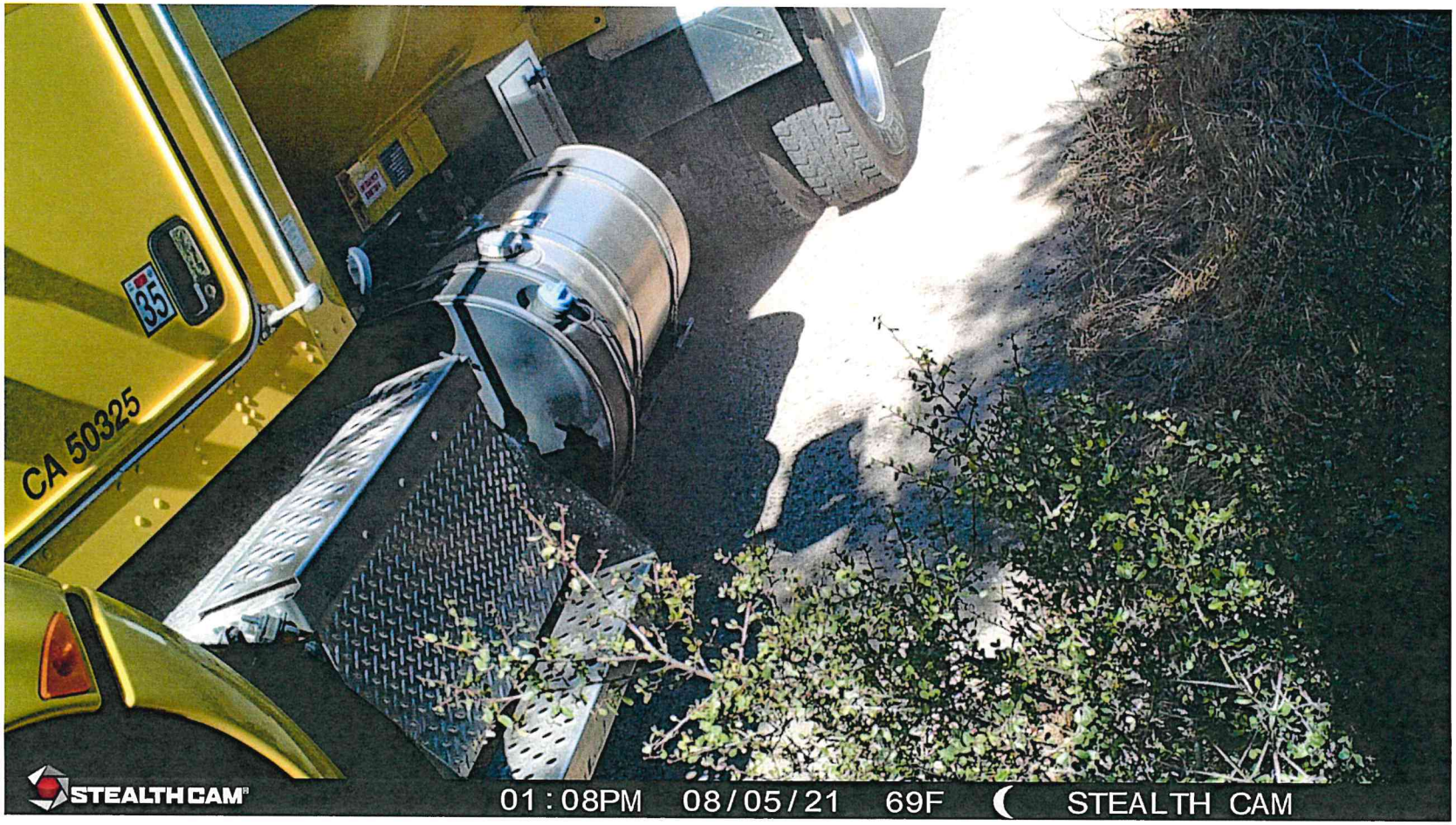
J. Edwin Fields

J. Edwin Fields (jedwinfields@gmail.com)
President, Vista Hills Mutual Water Co.
5423 Campbell Road, Lompoc, CA 93435

cc: Santa Barbara County Planning Department

EXHIBIT D


STEALTH CAM
11:41PM 08/16/21 62F
STEALTH CAM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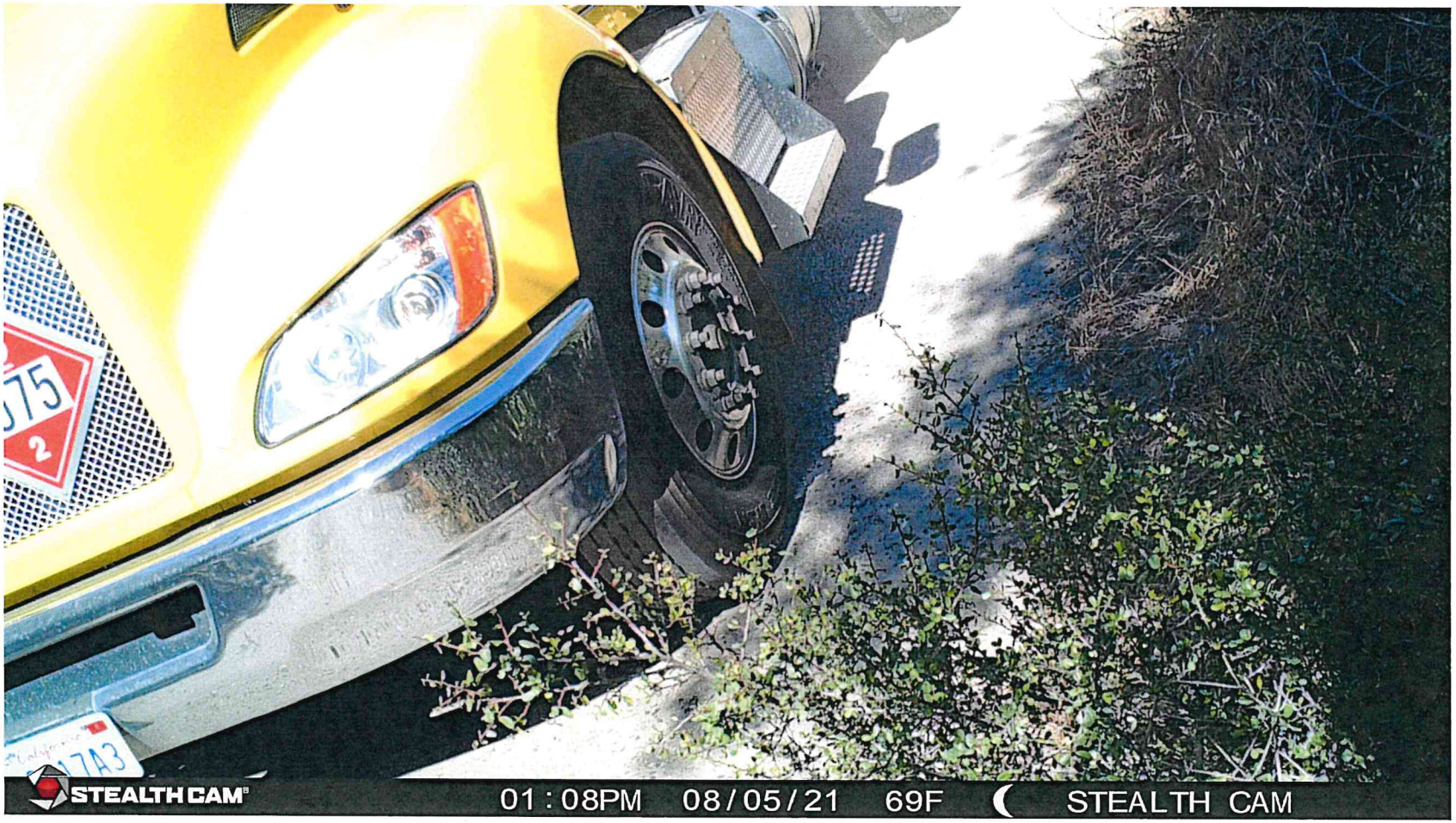
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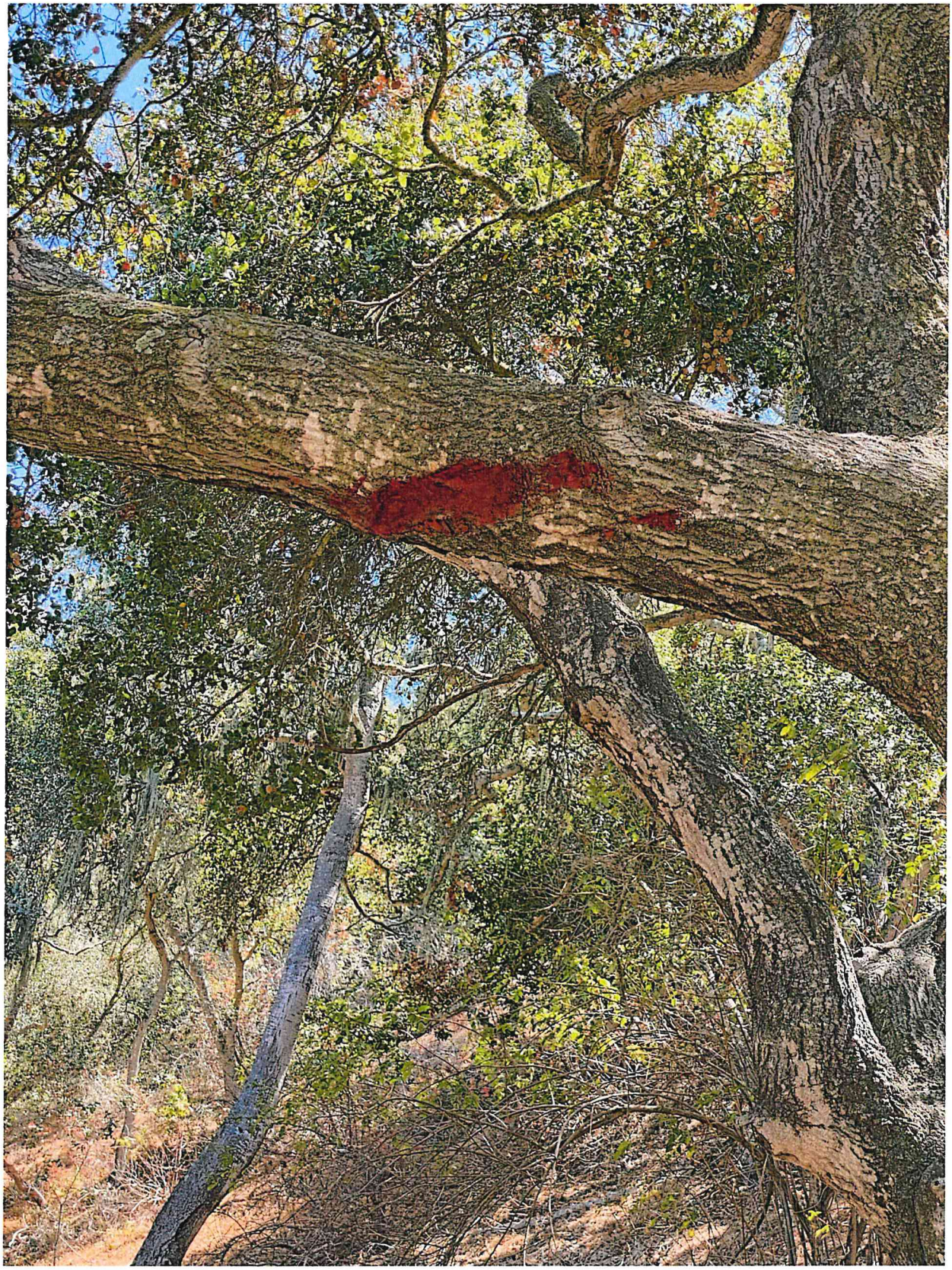

EXHIBIT E

ELKINS KALT

Ernest J. Guadiana
D: 310.746.4425
EGuadiana@elkinskalt.com
Ref: 14100-0001

June 7, 2021

VIA ELECTRONIC MAIL ONLY

Santa Barbara County Planning Commission
c/o Planning and Development, Hearing Support
123 East Anapamu Street
Santa Barbara, CA 93101
E-Mail: dvillalo@co.santa-barbara.ca.us

Re: Santa Rita Holdings Cannabis Cultivation Project/19CUP-00000-00018; Santa Barbara County Planning Commission June 9, 2021 Hearing

Dear Commissioners:

Our office represents Bradford Crandall Sr. and JCCrandall LLC (the "**Crandall Family**"), the owners of that certain real property commonly known as Santa Barbara Assessor Parcel Nos. 099-110-006 and 099-110-016 (the "**Crandall Parcel**"), which is immediately to the West and Northwest of the Property. We submit this letter in opposition to the Project, which seeks a conditional use permit ("**CUP**") for proposed cannabis cultivation over approximately 2.6 acres, placement of sheds, and use of an existing residence for related cannabis operations (the "**Project**") at the real property commonly known as Santa Barbara Assessor Parcel Nos. 099-110-060 (the "**Property**").

As further detailed below and in prior correspondence, the Santa Barbara County Planning Commission must deny the Project. The Project fails to comply with applicable State law and the County of Santa Barbara's ("**County**") Land Use & Development Code section 35.42.075 (the "**Cannabis Regulations**"). Additionally, the Project applicant has engaged in extensive misrepresentations with both the County and the State of California in an attempt to continue an improperly licensed and unlawfully operated cannabis operation. Such actions should not only be reprimanded, but they result in a Project that cannot be lawfully approved.

The County Planning Commission must deny the Project.

310.746.4400 | 310.746.4499
10345 W. Olympic Blvd, Los Angeles, CA 90064 | elkinskalt.com

I. Background

The Property is owned by Hughes Land Holding Trust ("**Hughes**"), of which we understand Kim Hughes is the trustee. We further understand that Hughes leases the Property to Santa Rita Holdings, Inc. (the "**Applicant**"). Importantly, the Property is landlocked. The sole means of access is through a private roadway over an easement entered into by three property owners in the immediate area, including the Crandall Family.

As created by that certain *Deed of Easement and Agreement Among Land Owners*, recorded as Document No. 88-061812 in the Official Records of the County (the "**Easement Deed**"), the easement begins at a gate located on the real property commonly identified as Santa Barbara County Assessor Parcel No. 099-110-015 (the "**Jackson Property**"), which is owned by Jackson Family Investments III LLC (the "**Jackson Family**"), then traverses the Crandall Property, until eventually ending at the Property.[1]

Both Hughes and the Applicant are aware of the landlocked nature of the Property and California law's requirement that owners of real property consent to cannabis activities being conducted on their lands.[2] Despite such clear requirements, neither Hughes nor the Applicant sought such consent from the Crandall Family, whose property they have to use for cannabis operations at the Property. Instead, Hughes engaged in deceptive practices to impede access by the Crandall Family onto the Crandall Parcel, falsely claiming to the Crandall Family that the Crandall Parcel did not have legal access.[3] In this manner, Hughes and Applicant hid the nature of their operations from the Crandall Family.[4]

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[1] For your reference, we enclose as **Enclosure 1** to this letter annotated aerial maps and an annotated survey showing the easement as it traverses the Jackson Property, Crandall Property, and Hughes Property.

[2] Bus. & Prof. Code § 26051.5(a)(2).

[3] Hughes was aware of the advanced age of Mr. Crandall Sr., who is 86 years old, and his limited ability to confirm Hughes' falsities, using such to his advantage.

[4] At no point before the Crandall Family learned of certain CUP applications did Hughes, Applicant, or the County inform adjacent landowners, including the Crandall Family, of the true nature of the cannabis operations. Nor did the Crandall Family or the Jackson Family receive notice from the County Executive Office that it intended and did issue a letter on behalf of Applicant to the State Licensing Authority stating that the Applicant's cannabis activities were a legal non-conforming use. The Crandall Family did not receive a copy of such letter until Friday,

These deceptive practices culminated in the submission of both State and County applications for cannabis operations on the Crandall Property without the knowledge or consent of the Crandall Family.[5] This highlights the deceptive practices that pervade the actions taken by the Applicant and Hughes, including for this CUP application.[6]

The current Project, revised after failing to process an initial application that sought operations on the Crandall Parcel, proposes cultivation operations that include outdoor cultivation, hoop house cultivation, and a nursey. The Project provides that it will not erect additional structures but will use existing structures at the Property, namely an existing tractor shade structure.[7] The Property also contains a nonconforming single-family residence. The Project claims this residence will serve as housing for three regular employees, but will not be used for any cannabis activities, including administration. The idea that the Applicant (who we understand is one of the full-time employees) will not use the residence for cannabis activities defies common sense, especially considering that there are no other structures that can house the administrative operations. The only other available structure is a 120 sq. ft. shed with no utility hook-ups that will also be used for pest management equipment, nutrients, records, and materials. It is unclear why the County is willing to entertain such false and misleading statements, looking past such apparent deficiencies.[8]

June 4, 2021, thereafter noting that the letter is for Santa Barbara Assessor Parcel No. 099-110-061, and not the Property.

[5] For your reference, we enclose copies of maps submitted to the County and State showing cannabis operations on the Crandall Parcel as **Enclosure 2** to this letter.

[6] We note that the one letter of support from the Project comes from Babcock Winery, which is located over 2.1 miles by road from the Property, does not share any access roads, and is generally separated by distance and various other uses. We enclose a map showing the distance between Babcock Wineries and the Property as **Enclosure 3**.

[7] We note that the initial Project description called for the use of an unpermitted barn that has since been demolished due to its encroachment onto the Crandall Parcel. Yet another example of the deceptive practices employed by the Applicant – building an unpermitted structure on the Crandall Parcel.

[8] We enclose photos of an unpermitted outhouse and camping trailer near the boundary of the Property and the Crandall Parcel as **Enclosure 4**. These unpermitted structures are not part of the Project plans, but are at the Property and used by the Applicant, highlighting another example of misrepresentations.

Ultimately, the Project does not comply with State law, the requirements of the Cannabis Regulations, or County standards for CUPs. The County Planning Commission must deny the Project.

II. The Project Violates State Law

A State license is required to engage in commercial cannabis activity in California. The Applicant currently holds twelve cannabis cultivation licenses from the California Department of Food and Agriculture, CalCannabis Cultivation Licensing Division ("**CDFA**"). Eleven licenses are provisional licenses for small outdoor cultivation, meant for outdoor cultivation sites between 5,001 and 10,000 sq. feet of total canopy.[9] One of the licenses is a provisional license for a nursery, defined as a site that "conducts only cultivation of clones, immature plants, seeds, and other agricultural products used specifically for the propagation of cultivation of cannabis."[10] The licenses, taken together, could allow cultivation of approximately 100,000 sq. ft., or 2.29 acres, of the total canopy, which is problematic for several reasons.

First, six of the twelve licenses improperly include adjacent parcels as part of the operation's "property" and/or "premises" in underlying application materials, raising the issue of the validity of those licenses.[11] Given the inaccurate nature of six of the licenses, the County should not permit the Project's request for cultivation as proposed until the Applicant clarifies the validity of its licenses. The six remaining licenses could only allow maximum cultivation of 60,000 sq. ft., or 1.37 acres, much less than what Applicant requests in this CUP.

Second, even if all twelve licenses were valid, the Project requests cultivation of 2.54 acres, which is more than the maximum allowed under the Property's provisional licenses. The County requires that "[a]ll commercial cannabis activities [] comply with . . . all State laws."[12] The Project, as proposed, does not comply with State law as it is not permitted for the cultivation of 2.54 acres.

Finally, although the CDFA may allow multiple licenses for one property under certain circumstances, regulations provide that "[l]icensees are **prohibited from transferring** any

---

[9] 3 CCR § 8201(c)(1).
[10] 3 CCR §8201(e).
[11] For your reference, we enclose copies of maps submitted to the State purporting to show cannabis operations on the Crandall Parcel as well as a list of those applications as **Enclosure 5** to this letter. The Crandall Family is evaluating options to correct the inaccuracies presented in connection with the cannabis licenses purporting to encompass the Crandall property.
[12] Cannabis Regulations, § 35.42.075.

commercially cultivated cannabis or nonmanufactured **cannabis products from their licensed premises. All transfers of cannabis** and nonmanufactured cannabis product **from a licensed cultivation premises must be conducted by a distributor licensed by the bureau** [Bureau of Cannabis Control]."[13] Premises, in turn, is defined as "the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one license."

Based on the number of licenses, the Applicant has six to twelve distinct premises on the Property. However, the Project proposes to operate the licenses as one operation, with the product harvested on the field and transported to the one existing shed, where it will be weighed and tagged. Applicant then proposes to load product onto refrigerated trucks. There is no separation between the various cultivation sites. Applicant has confirmed to the County that it is not a distributor licensed by the Bureau of Cannabis Control. It, therefore, cannot move cannabis products within the Property. The comingling of product between the distinct premises of the Project violates CDFA regulations and, therefore, also violates the County Cannabis Regulations, which require that all commercial cannabis activities comply with State laws. The County must deny the Project.

III. The Project Does Not Conform to County Cannabis Regulations or County Standards for Conditional Use Permits

In addition to violating State law, the Project does not conform to applicable County regulations.

A. The Project Site Is Not Adequate in Terms of Location or Physical Characteristic to Accommodate the Project

To approve a CUP, the County must find that the "site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed."[14] The County cannot make such a finding here.

The Property has only one access point over a private easement. This easement, however, cannot support federally prohibited activities, such as cannabis cultivation and transportation. *See Cottonwood Duplexes, LLC v. Barlow* (2012) 210 Cal.App.4th 1501, 1510 ("the owner of a dominant tenement may be enjoined from using an easement where that use is illegal"); *Baccouche v. Blankenship* (2007) 154 Cal.App.4th 1551, 1559 (dominant tenant not entitled to enforce

[13] 3 CCR §8202(d).
[14] County Cannabis Regulation § 35.82.060.E.1.a.

easement for keeping horses because the horses were kept in violation of law); *Gonzales v. Raich* (2005) 545 U.S. 1, 26 (confirming that the federal government can enforce the restrictions of the Controlled Substances Act on intrastate activities). Without the use of the easement, the Project has no legal access.

Notably, although the Easement Deed provides the owner of the Hughes Property with certain non-exclusive access rights over the easement, the Crandall Family continues to own the fee interest in the portion of the easement that traverses the Crandall Property and the Jackson Family continues to own the fee interest in the portion of the easement that traverses the Jackson Property.

California law requires the express consent of each real property owner where commercial cannabis activities will occur. The Easement Deed does not expressly authorize or consent to the transportation of cannabis over the easement, and neither the Crandall Family nor the Jackson Family have consented to allow cannabis transportation over the portions of the easement traversing their properties. Accordingly, since the County's Cannabis Regulations require all commercial cannabis activities to comply with California law, the County must deny the CUP until the Applicant obtains the express consent of the Crandall Family and the Jackson Family to use the easement to transport cannabis. Without such consent, the County cannot make the finding that the "site for the Proposed Project is adequate . . . to accommodate the type of use and level of development proposed."[15]

B. Significant Environmental Impacts Are Not Mitigated to the Maximum Extent Feasible

In addition to the above, the County also must find that "significant environmental impacts will be mitigated to the maximum extent feasible." County Code § 35.82.060.E.1.b. The County cannot do that here because, as further explained in section IV below, there's been a complete failure to analyze the Project's environmental impacts at the project level, especially concerning the impact on adjacent animal uses and improper use of the CEQA Checklist. Unaddressed impacts include the possible migration of pest control products used by the cannabis operations and erosion caused by the unauthorized use of paths cut into the Crandall Parcel. Additionally, the Applicant has not provided documentation from the State Water Resources Control Board demonstrating compliance with the comprehensive Cannabis Cultivation Policy as required by

[15] We incorporate by reference and respectfully request consideration of previously submitted correspondence on this issue dated May 24, 2021, and part of the public comment record. Such correspondence is enclosed as **Enclosure 6** to this letter.

Cannabis Regulations § 35.42.075.D.1.d. The County cannot make the required findings that impacts are mitigated to the maximum extent feasible without such information.

C. Existing Streets Are Not Adequate to Carry the Type and Quantity Generated by the Project

To approve a CUP, the County must find that "streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use." County Code § 35.82.060.E.1.b. The County cannot satisfy this requirement here because, as further explained in Section II.A above, the Property does not have legal access to the proposed Project and lacks the necessary information to identify true traffic impacts even if the easement were to allow for such use.

Additionally, an easement is unenforceable if it would allow a use in violation of the law.[16] Although cannabis cultivation is legal at the local and State level, federal law still prohibits cannabis-related activities within the State's borders because marijuana is a Schedule I drug under the federal Controlled Substances Act of 1970.[17] As such, the Project is in violation of federal law, and the Applicant cannot make use of, or seek to enforce the use of, the easement created by the Easement Deed for cannabis cultivation purposes. It, therefore, cannot rely on such access for the CUP, and without the easement, the Project has no legal access.

In addition, even if the easement were to allow for the unlawful use (it does not), the existing road is not built or maintained to sustain the commercial cultivation activities proposed by the Project. Unlike the surrounding cattle grazing activities, the Project will create additional traffic to transport not only cannabis, but also employees, especially during harvest season. It will introduce new vehicle impacts from large refrigerated trucks. The Project proposes to address this by summarily providing that employees will carpool and trucks will only be on site for a few days. Here, further detail for such a proposal is required. For example, the Project must provide incentive programs aimed at promoting carpooling. In addition, the Project provides that it will have up to fifteen employees (including three full-time employees), but this does not appear to take into account the refrigerated trucks or any other specific transport/delivery, etc. The staff report provides that the refrigerated trucks will remain onsite for up to three days during harvests, yet fails to analyze the logical impacts resulting from these activities. For instance, are drivers of

---

[16] *Baccouche v. Blankenship* (2007) 154 Cal.App.4th 1551, 1559 (dominant tenant not entitled to enforce easement for the keeping of horses when such use is in violation of applicable law).

[17] See also *Gonzales v. Raich* (2005) 545 U.S. 1, 26 (confirming that the federal government can enforce the restrictions of the Controlled Substances Act on intrastate activities).

the refrigerated trucks staying overnight at the Property? Where will the drivers stay if the house is not part of the operation? Will they drive additional cars? Where will these additional cars park? Are the drivers additional employees over the 15 employee limit? The Project fails to provide any such information.

As proposed, the Project does not provide sufficient information to support the required finding that "[s]treets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use." On the contrary, evidence supports the lack of legal access to the Project.

D. The Project Will Be Detrimental to the Comfort, Convenience, General Welfare, Health, and Safety of the Neighborhood and Is Not Compatible with the Surrounding Area

As stated in section II.A. above and previously submitted correspondence, the Project is not compatible with the surrounding area. Additionally, the Project, which proposes new lighting, traffic, and necessary security, will be detrimental to the neighborhood's comfort and convenience, general welfare, health, and safety, which contains cattle grazing.

E. The Project Must Undergo CEQA Review

The staff report overlooks significant environmental issues, including issues not addressed in the Cannabis Ordinance Programmatic Environmental Impact Report ("**PEIR**"). Additionally, the County's use of the checklist does not correctly evaluate the Project's environmental effects. The County must prepare a new initial study for the Project.

Pursuant to CEQA Guidelines § 15168(c)(1), "[i]f a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared." Here, the PEIR does not address conflicts between the proposed cannabis cultivation and the adjacent and nearby conventional and existing agricultural operations, including animal grazing.

Additionally, the County's CEQA Checklist incorrectly states that the applicant submitted documentation from the State Water Resources Control Board ("**SWRCB**") to demonstrate compliance with the comprehensive Cannabis Cultivation Policy, and that the Applicant submitted a Phase I cultural study.[18] Neither document was included in the submitted materials. We note that the Project conditions require the submittal of SWRCB documentation prior to issuance of the CUP, but this is not sufficient and only supports the lack of adequate environmental review of the

[18] See CEQA Checklist, pg. 5; County Cannabis Regulations §§ 35.42.075.C.1; 35.42.075.D.1.c.

Project. The County cannot indicate compliance with these requirements for purposes of the checklist without the benefit of the materials. The materials are necessary to properly evaluate the impact of the Project compared to the PEIR.

Finally, the Project also provides insufficient information to justify a reduced setback from lot lines. The Project description provides that "[n]o cultivation will occur within the 50-foot setback from the top of the ephemeral drainage (a reduction from the 100-foot requirement in a rural setting substantiated in the Biological Resource Assessment)," but further analysis is required to support such reduction. Cannabis Regulations require a setback of 100-feet from the top-of-bank or edge of riparian vegetation streams and creeks. Cannabis Regulations § 35.42.140.C.3.(4). The Biological Assessment confirms that there is potential for the use of the ephemeral drainage by the yellow warbler, a special status animal that could be found foraging in ephemeral drainage habitat.[19] Given such findings, additional information is necessary to justify the reduction in setback proposed by the Project.

IV. Conclusion

The Applicant's various violations and inaccuracies cannot continue or provide any basis for the approval of a Project riddled with unresolved issues, which include but are not limited to:

- Applicant's misrepresentation of Property and premises location to State licensing authority and the County.
- Applicant's seeking of cultivation permits for the Crandall Parcel, misleading the Crandall Family to hide its activities.
- Applicant's lack of a State distribution permit for required for operation of the proposed Project.
- Applicant's lack of legal access to the Property for the Project, which is a use contrary to federal law that exposes the Crandall Family and the Jackson Family to forfeiture under federal law and subjects them to being charged with aiding and abetting a violation of federal law.

[19] Although the Biological Assessments provide that hoops will maintain a 100-foot setback, the Plan Set provided does not adhere to such setbacks, showing the proposed cultivation area in hoop houses next to the 50-foot ESH setback.

- Lack of proper environmental review, and the need for a new initial study since the Project raises effects not examined in the PEIR, and the County cannot rely on the incomplete CEQA Checklist.

Given the above unresolved issues and the Project's inability to meet the required findings for issuance of a CUP, the County must deny the Project.

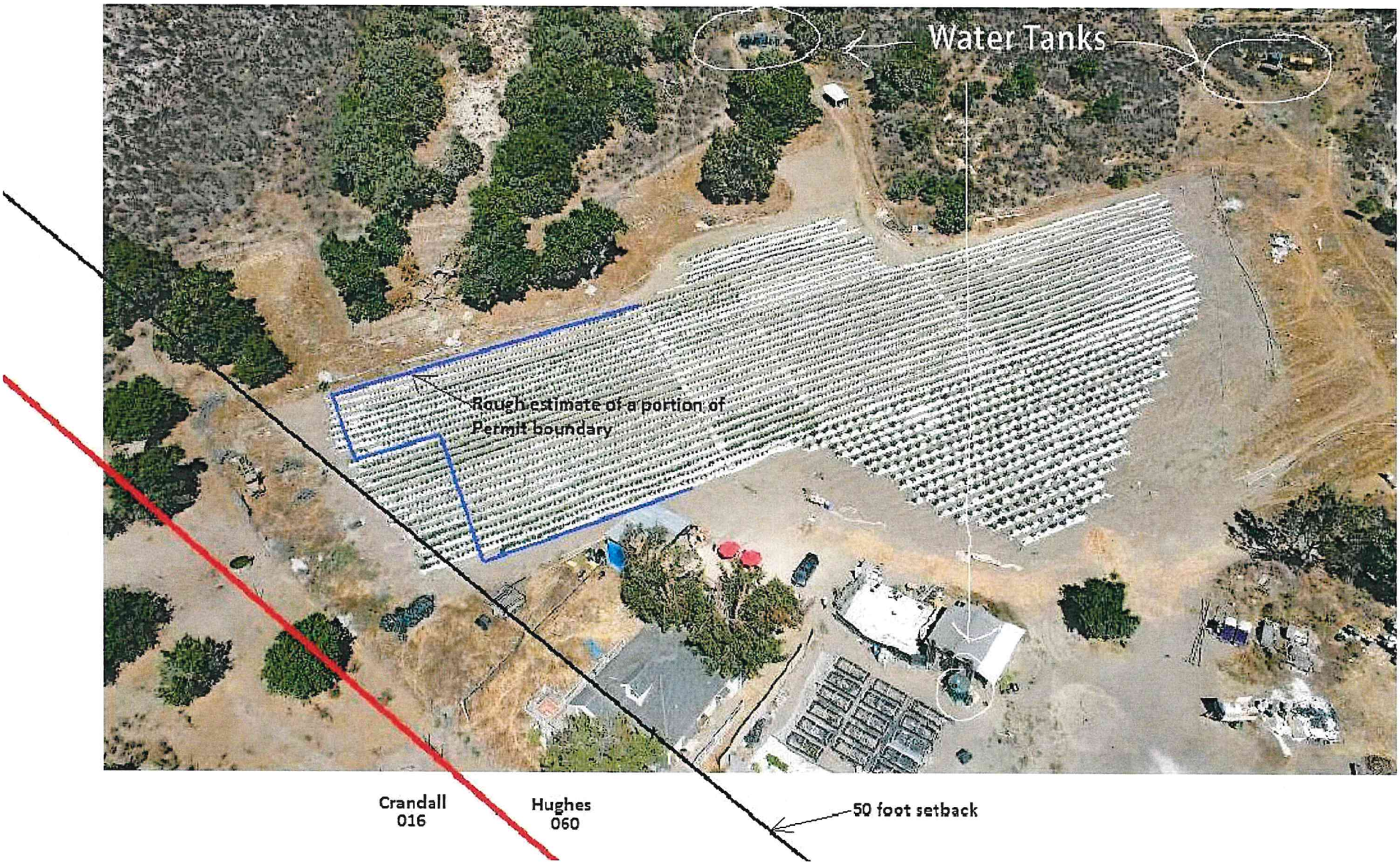
Very truly yours,

ERNEST J. GUADIANA
Elkins Kalt Weintraub Reuben Gartside LLP

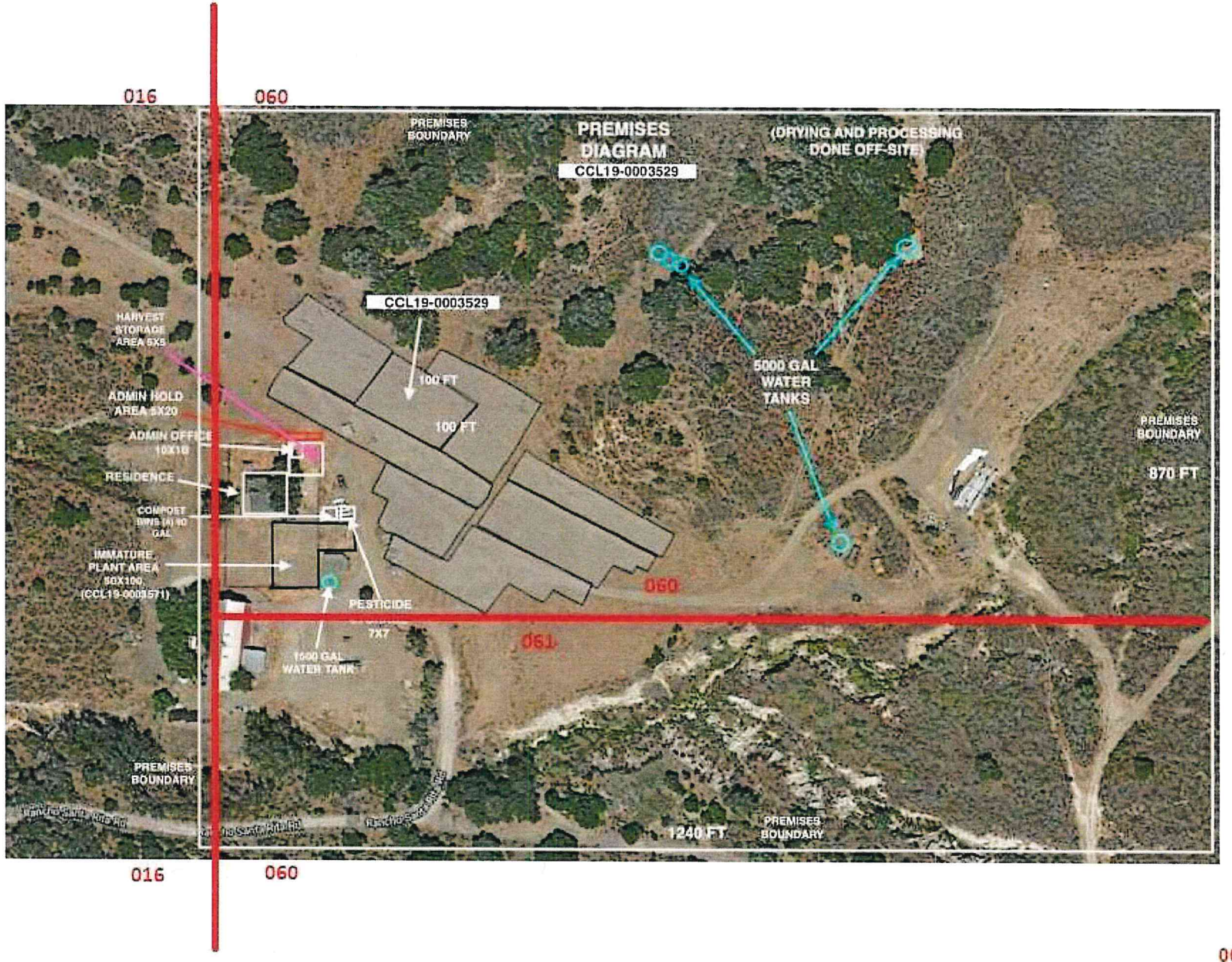
EJG

cc: Gwen Beyeler

EXHIBIT F


Water Tanks
Rough estimate of a portion of
Permit boundary
Crandall
016
Hughes
060
50 foot setback


Leach field per Site Plan


016
060
PREMISES BOUNDARY
PREMISES DIAGRAM
CCL19-0003529
(DRYING AND PROCESSING DONE OFF-SITE)
CCL19-0003529
HARVEST STORAGE AREA 5X5
ADMIN HOLD AREA 5X20
ADMIN OFFICE 10X10
RESIDENCE
COMPOST BINS (4) 60 GAL
IMMATURE PLANT AREA 50X100 (CCL19-0003571)
100 FT
100 FT
5000 GAL WATER TANKS
PREMISES BOUNDARY
870 FT
060
PESTICIDE 7X7
061
1000 GAL WATER TANK
PREMISES BOUNDARY
1240 FT
PREMISES BOUNDARY
016
060

0001