

PENCE APPEAL
SANTA RITA VALLEY AG., INC.
CANNABIS CULTIVATION
(OUTDOOR)

19APL-00000-00032



#31



Project Summary

- Land Use Permit (LUP) to allow 32 acres of outdoor cannabis cultivation on 42.5-acre AG-II zoned parcel
- Processing of cannabis will take place at another licensed facility - location of “off site processing” is not provided
- 8-foot chain link security fence encompassing the cultivation area with grapevines planted in front
- Proposed landscaping of 6 coast live oaks, 19 olive trees, and lavender along Highway 246; 8 olive trees and lavender along the western property line
- Four motion-sensor, hooded light fixtures mounted 12 feet high near the entry gate
- 2,200 square-foot barn (for cannabis storage) onsite
- 4-5 regular employees and 40-50 employees during harvest periods, 6:00 a.m. to 6:00 p.m. from Monday through Saturday
- Two harvest periods per year, each lasting ~ three weeks
- 2-3 security personnel, 24 hours a day, 7 days a week, for 2 months prior to harvest and during harvests

Key Cannabis Issues

- Precedent: This Project sets a precedence countywide, and likely statewide
- Permit runs with the land: The permit is a permanent entitlement that does not run with the operator; is a permanent land use entitlement that is *not revoked in line with the associated business license*
- Operators are only bound by the four corners of the permit: Assertions about operations that are not enumerated as a Project condition are not binding or enforceable upon Applicant or future operators
- Odor abatement: Mitigation on AG-II parcels is now feasible after amendments to the County's Right to Farm Ordinance

Board Discretion & Applicability of CEQA

- Land Use Permits can be either "discretionary" or "ministerial" permits
 - "Discretionary" =
 - A project that requires the exercise of judgment or deliberation in deciding to approve or disapprove a particular project
 - "Ministerial" =
 - A project that requires little or no personal judgment in deciding to approve or disapprove a particular project
 - Involves only the use of fixed standards or objective measurements, and cannot use personal, subjective judgment or exercise discretion to mitigate environmental impacts
- This Project permit is **discretionary** and **CEQA applies** to discretionary permits

CEQA Requires Project Denial

- Board cannot legally approve the Project until CEQA review has been completed if there is substantial evidence supporting a fair argument that either of the following are true:
 - **Substantial changes** have occurred which result in: significant effects that were not examined by the PEIR, or the effects examined in the PEIR will be substantially more severe, or mitigation measures previously found not to be feasible would now be feasible.
 - **New information**, which was not known and could not have been known at the time the PEIR was certified as complete, is available.
- Substantial Evidence =
 - **Expert opinion** if supported by facts, even if not based on specific observations as to the site under review. Where such expert opinions clash, the County should require preparation of a tiered EIR.
 - Relevant **personal observations** of area residents on nontechnical subjects.

CEQA Checklist

- To determine if site-specific operations were covered in the PEIR, CEQA Checklists must:
 - Evaluate the site
 - Assess the activities
 - Compare impacts to those considered in PEIR

Here, the Checklist just mirrors PEIR Mitigation Measures and fails to identify Project-specific impacts or site-specific characteristics

County “Pattern and Practice” of avoiding CEQA in Cannabis Permitting Program

- Rare instance of program administration that systematically avoids CEQA compliance across a number of similar permits or actions
- County has relied, in this permit as in every other permit, on the PEIR and the narrow, truncated analysis in the CEQA Checklist
- To date, every Cannabis permit has been approved in reliance on the Checklist
- Constitutes a policy of avoiding CEQA and causing significant impacts upon receiving communities in administering this permit program

Project Description is Deficient

Project Description: Santa Rita Valley Ag., Inc., the Applicant, requests a Land Use Permit (LUP) to allow 32 acres of outdoor cannabis cultivation. Processing of cannabis will take place at another licensed facility. The application involves permitting a new fuel storage tank for a tractor and a new eight-foot chain link security fence encompassing the cultivation area. The Applicant is proposing to remove an existing barbed wire fence and to install a four-foot, redwood colored post rail fence to extend the length of the north side of the property along Highway 246 and on both sides of the driveway. Proposed landscaping will consist of adding a minimum of six coast live oaks (*Quercus agrifolia*), 19 olive trees (*Olea europaea*), and lavender along Highway 246, and eight olive trees (*Olea europaea*) and lavender along the western property line. In addition, grapevines (*Vitis*) are proposed to be planted in front of the proposed chain link security fence along Highway 246 and along the western property line to mask the security fence. There will be four motion-sensor, hooded light fixtures mounted 12 feet high near the entry gate for security purposes. There is an existing 483 square-foot agricultural tool shed, a 1,180 square-foot single-family dwelling, and a 2,200 square-foot barn (for storage) onsite that will be affiliated with the cannabis operation. The single-family dwelling and barn pre-date County permit requirements (constructed before 1958). The agricultural tool shed will be permitted through the requested LUP. No grading or tree removal is proposed. There will be 4-5 regular employees and 40-50 employees during harvest periods (two harvest periods per year, each lasting roughly three weeks). In addition to the agricultural workers, there will be 2-3 security personnel to monitor the property. The hours of operations will be from 6:00 a.m. to 6:00 p.m. from Monday through Saturday for agricultural workers. The security personnel will work 24 hours a day, 7 days a week, for approximately two months prior to harvest and during harvest. The parcel is served by a private well and private septic system. The regular employees would use a bathroom in the existing single-family dwelling and the Applicant would provide portable toilets for seasonal employees (during harvest periods). The Santa Barbara County Fire Department will continue to serve the site. Access will continue to be provided off of Highway 246. The property is a 42.5-acre parcel zoned AG-II-100 and shown as Assessor's Parcel Number 099-230-012, located at 7680 West Highway 246, Buellton, Third Supervisorial District.

- Omits details about staggered grow cycles, workers' facilities, security details and facilities
- No other operational or physical detail is provided to indicate "ample security"
- Lack of detail for perimeter lighting

Project Impacts

- New potentially significant impact of **terpene taint** on wine grapes grown nearby;
- Changes to the County's Right to Farm Ordinance which now make **odor mitigation** on AG-II zones and this Project feasible;
- Now known significant and more severe impacts of **pesticide migration** on the future viability of legacy agriculture near the Project;
- Extent and severity of the land use **incompatibility with adjacent agriculture**; and
- Severity of **cumulative impacts of concentration** of cannabis projects west of Buellton.

Terpene Taint

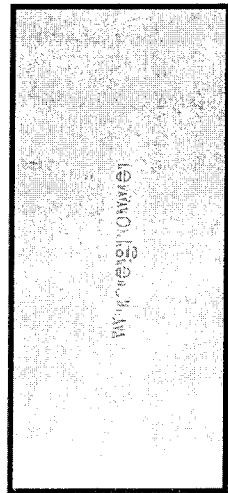
- Wine grapes are sensitive to surrounding air quality and absorb volatile phenols in the air
- Research shows negative impacts from the following if located near winegrapes:
 - *Eucalyptus* trees → terpenes called “1-8, cineole”
 - Smoke from fires → volatile phenols from thermal degradation of lignin in wood
 - *Artemisia verlotiorum* → eucalyptol
 - Monterey cypress → α -pinene
- What we know:
 - Certain plants emit volatile phenols that travel in the air and are absorbed by grape clusters
 - Thresholds exist where negative impressions are associated with the eucalyptus terpenes and smoke taint
 - Wines are typically defective
- Impacts:
 - Cannabis contains numerous terpenes, including cineole, which also travel in the air
 - Winemaking → impacts to wine production quality during open air fermentation
 - Wine drinking is contingent upon smell → guest experience of the aromas
 - **Loss of agricultural viability for wine industry**

Odor Mitigation Now Feasible

- PEIR determined that any odor abatement mitigation should not apply in the AG-II areas such as this Project site
 - *Agricultural operations are not typically monitored for their odors and are generally protected from odor related and other complaints under the County's Right to Farm Ordinance"*
- On May 8, 2018, the County Board of Supervisors approved the amendment to the Right to Farm Act to exclude cannabis from its protections
- Right to Farm Act now does not protect AG-II cannabis cultivation from County odor regulations
- This is new information that a mitigation measure previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of this Project

Land Use Incompatibility

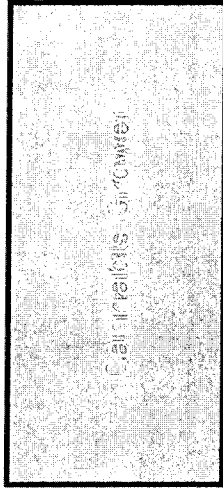
Key Land Use Conflict



Terpene Contamination



Pesticide Migration



Pesticide Migration

- **Context:**
 - BCC regulations prohibit cannabis from containing traces of listed pesticides
 - Many listed are critical to existing ag operations (mildew and mealy bugs)
 - Pesticides can migrate despite responsible applications
- **Impacts:**
 - Trace amounts subject existing agriculture (and their applicators) to liability
 - Crop loss due to inability to spray effective materials
 - Not be viable to maintain any agriculture that utilizes pesticides in the vicinity of cannabis operations

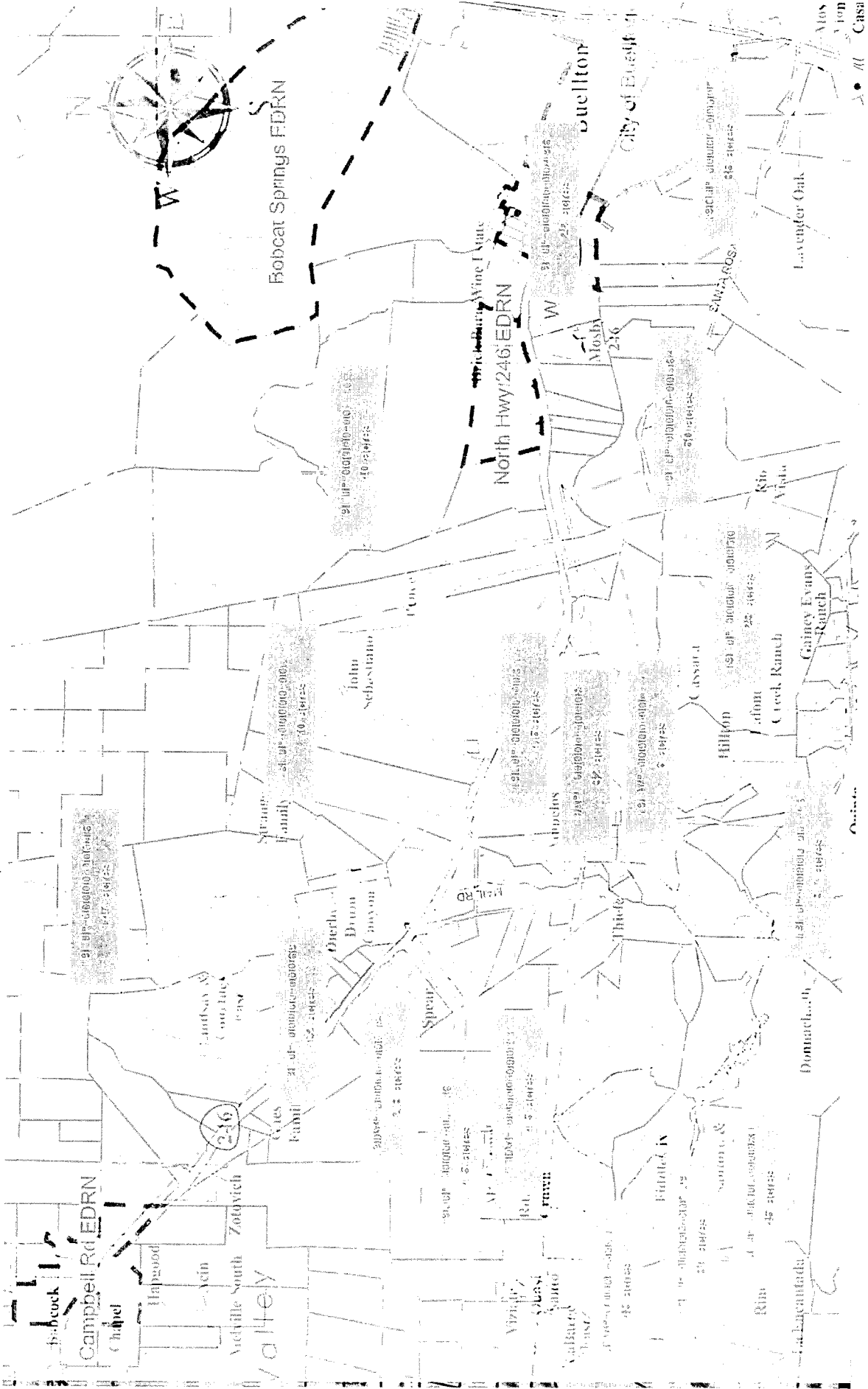
SW Air Basin Boundaries



Cumulative Impacts

- 19 pending outdoor cannabis cultivation projects in the Santa Rita Valley area
- Average 30 acres each
- Total 610 acres of outdoor cannabis cultivation, or 39% of Santa Barbara County's 1,575 acres cannabis production cap
- 55% of the total 1,100 acres of cannabis estimated as needed to supply the entire State of California
- PEIR does not analyze or examine cumulative impact of this proliferation of cannabis cultivation projects in AG-II zones between Buellton and Lompoc along Highway 246, within the Santa Rita Hills American Viticultural Area and a scenic corridor that is considered the gateway to the Valley
 - *PEIR did not anticipate either the number or size of the potential cultivation operations in this area, or the magnitude of their impact to visual impacts*
 - *Potential cumulative impact to agriculture including from pesticide migration or terpene taint associated with this intensity of cannabis cultivation in this important wine producing region*







5,000+ linear feet of frontage on Highway 246



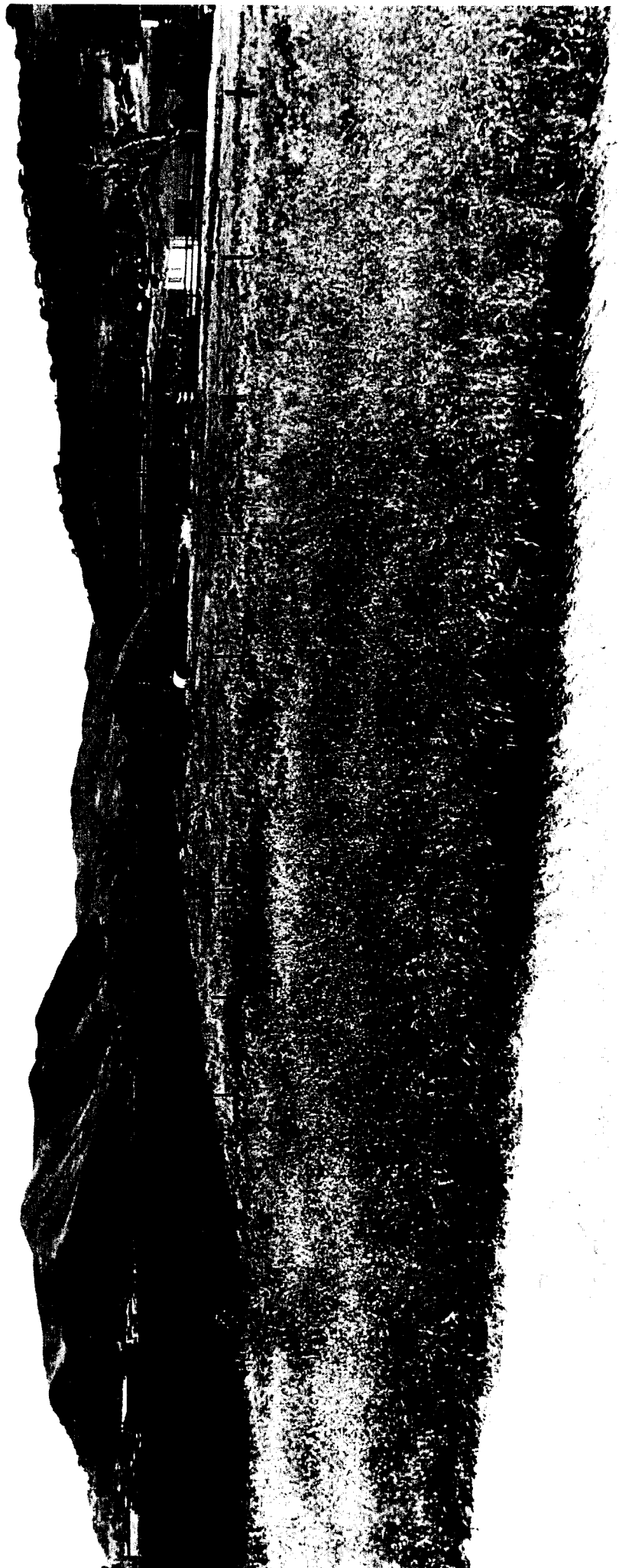
**Cumulative Impacts:
Sphere of Influence and Impacts**

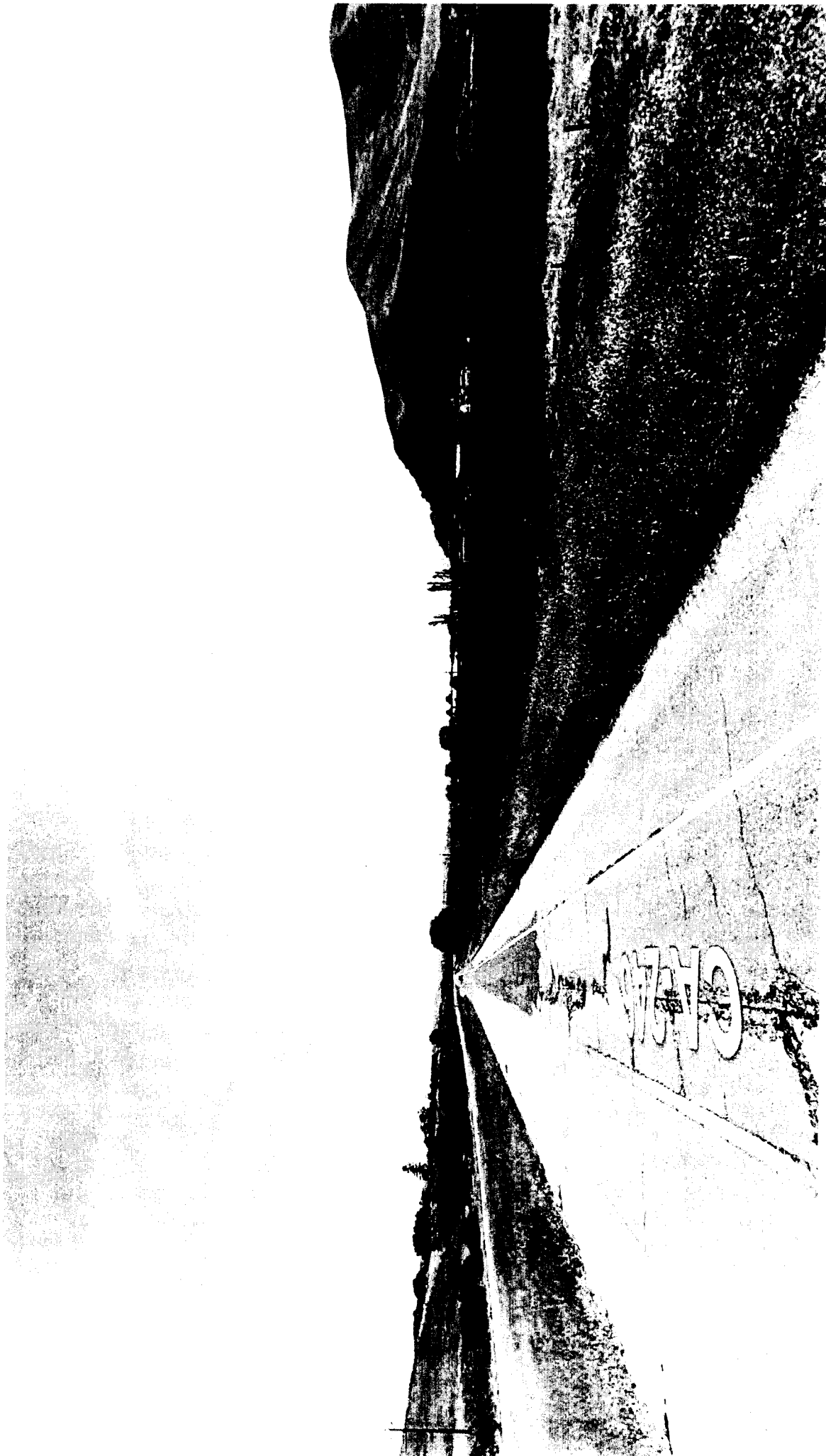
- Project does not take into account the sheer size of these parcels – APN 099-240-067 is nearly 1/2 mile long. If plants are grown over the entire parcel, edge-to-edge, the impact begins at the edge of the parcel and not a single-point source
- Many large grows close together will compound and widen these impacts.
- 25 neighboring homes affected within 1/2 mile radius
- 54 neighboring homes affected within a 1 mile radius
- Number of persons affected may not include agricultural employees of neighboring farms

Visual Impacts

- Highly visible from Highway 246
- Significant change to existing landscape and viewsheds











ERME and Agricultural Elements

- Environmental Resource Management Element (ERME)
 - Identifies “Drum Canyon Road: Los Alamos-Lompoc-Buellton link” as scenic corridor where development should be subject to project plan review and imposition of specific conditions to preserve the integrity of the land and environment
- Agricultural Element
 - GOAL 1. Santa Barbara County shall assure and enhance the continuation of agriculture as a major viable production industry in Santa Barbara County. Agriculture shall be encouraged. Where conditions allow, (taking into account environmental impacts) expansion and intensification shall be supported.
 - Evidence that the Project, individually and cumulatively, will impair or preclude the continuation of grape and related agriculture in the Project vicinity.

Open Space Element

- Scenic Corridors = High quality scenic areas that should be preserved to retain the present quality of life and to ensure the future of the tourist sector of the economy
 - *Only 10.5% of all is classified as having high scenic value, with the Valley having the highest percentage of all the land classified in the high level (20.4%)*
 - *Scenic value is gauged by intrinsic beauty and in terms of the number of people who see the area (i.e. sites visible from highways and close to urban centers)*
 - Highway travel gives residents and visitors the greatest exposure to the County's visual attributes
 - 2,000 feet on either side of a road or around an urban area "is the most important in the view of a person traveling through the area, or of a resident, because it usually is the portion of the vista most easily seen and remembered"
 - *Highway 246 is a scenic corridor which should be "should be treated with care if development is permitted"*
- Urban Perimeters = The perimeter zones surrounding developed areas which are visually important...peripheral open space conveys to arriving travelers a clear image of the city's identity
- Scenic areas and urban perimeters should be subjected to design review before development permission is granted

CEQA Finding Proposed by Staff

- The County Board of Supervisors considered the previously certified PEIR for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003 (Attachment 9 to the Board Letter dated March 10, 2020, and incorporated herein by reference), the CEQA Checklist prepared pursuant to CEQA Guidelines Section 15168(c)(4) (Attachment 3 to the Board Letter dated March 10, 2020, and herein incorporated by reference), along with the proposed project which is an activity within the scope of the PEIR. Staff prepared a written checklist in compliance with State CEQA Guidelines Section 15168(c) to document the evaluation of the site and the activity to determine that the environmental effects of the operation are covered in the PEIR (Attachment 3 to the Board Letter dated March 10, 2020 and incorporated herein by reference). As shown in the written checklist, the **proposed project is within the scope of the PEIR** and the **effects of the proposed project were examined in the PEIR**. Therefore, on the basis of the whole record, including the written checklist, the previously certified PEIR, and any public comments received, the Board of Supervisors finds that **the proposed project will not have effects that were not examined in the PEIR and will not create any new significant effects or a substantial increase in the severity of previously identified significant effects** on the environment, and **will not present new information** of substantial importance pursuant to State CEQA Guidelines Section 15162, thereby warranting the preparation of a new environmental document for the proposed project

Permit Findings

- The proposed Development **conforms**: (1) To the applicable provisions of the **Comprehensive Plan** including any applicable community or area plan

Summary

CEQA requires project denial

- PEIR has gaps from changed circumstances (Right to Farm, severity of impacts from project clustering, severity of incompatibility)
- PEIR has gaps from new information (terpene taint)
- PEIR does not have project-specific analysis
- Checklist is fatally flawed
- Project entails potentially significant impacts
- Project-specific Initial Study and either ND or EIR is required

Project does not conform to the General Plan

- Significant revisions are needed
- Major reduction in size and scale
- Protections for surrounding agriculture, visual resources, air quality are required