Public Comment

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August 16, 2019

Via Email: sbcob@co.santa-barbara.ca.us

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

Re: Appeal of G&K Farms/K&G Flower Cannabis Cultivation Project
Board of Supervisors Hearing Date: August 20, 2019
Agenda Item No. D-2
Case No. 19APL-00000-000018

Chair Lavagnino and Honorable Supervisors:

This office represents Magu Farms, LLC, and G&K Farms/K&G Flower. Magu Farms, LLC is the owner of the subject property. G&K Farms/K&G Flower is the proposed operator of the site and the project applicant.

I.
BACKGROUND

1. Project Site and History

The cannabis cultivation application of G&K Farms/K&G Flower (Case No. 18CDP-00000-00077) (hereinafter "G&K Project") is as straightforward and clean as any cannabis cultivation application the County is likely to encounter.

The subject property is a 14.66-acre fully developed agricultural site with 5 existing greenhouses. The existing greenhouses were approved as part of a Final Development Plan by the County Planning Commission on September 14, 1983. The existing greenhouses are currently vacant and are not being used for any type of commercial cannabis activity. The G&K Project proposes simply

to shift the type of plant historically grown in the greenhouses (cymbidium orchids to cannabis). No new structures are necessary or being proposed.

As a fully developed site, the property has a substantial permit history, the most recent being a Development Plan Amendment in 2018 (13AMD-00000-00003 to 82-DP-030) that authorized the as-built increase of the height of the existing greenhouses, the as-built construction of a restroom, and the as-built construction of a water well that provides water for irrigation. In addition, the property has existing security fencing and mature landscaping all around it which screens the property preventing it from being seen from public viewing areas.

The property is comprised of a single valid legal lot, which means no certificate of compliance is required. The property contains no prime soils, and is not subject to an agricultural preserve contract. From the standpoint of biological and archeological constraints, there are none. In terms of services, the site contains ample parking, ample water, and ample septic.

The location of the property is ideal for cannabis cultivation. The parcel is an interior lot nestled among other agricultural greenhouse properties well removed from most residential structures, the closest being around 800 feet to the southwest. Beyond that, some homes exist about 4,000 feet to the southeast or about ¾ of a mile away. The City of Carpinteria's municipal boundary is similarly about ¾ of a mile away. The closest school is over 1½ miles away.

2. The Planning Director's Approval of the Project

All proposed cannabis operations located in the Coastal Zone are required to meet a strict set of land use policies and development standards adopted by your Board on February 27, 2018.[1] These policies and development standards are codified in Article II, Section 35-144U (the Coastal Zoning Ordinance). These policies and development standards were adopted through a robust public process – open to all stakeholders – consisting of more than 30 public meetings and countless hours of public comment. The regulatory program adopted by your Board addresses all of the negative concerns normally associated with commercial cannabis operations, including those related to odors, enforcement, compatible land uses, and eliminating the underground cannabis economy.

On March 6, 2019, the Director of the Planning and Development Department (P&D) approved the G&K Project. The Director's approval was granted based upon a comprehensive review of the

[1] The land use policies and development standards adopted as part of the Cannabis Land Use Ordinance and Licensing Program were certified by the California Coastal Commission on October 10, 2018.

project, and a finding that the proposed cannabis operation complies with all applicable policies and development standards set forth in Article II, Section 35-144U.

Since adoption of the Cannabis Land Use Ordinance and Licensing Program in February 2018, the County has worked diligently to eliminate illegal grow operations in the Carpinteria Valley. Despite these efforts, the community remains frustrated with the negative impacts attributable to these grows, and that frustration is now being borne out in the context of this appeal. The cannabis cultivation application of G&K Farms is the first CDP application for cannabis to be approved by the Planning Director in the Carpinteria Valley. Regardless of the project's merits, and the fact the operator held back and waited for permits before commencing cultivation operations, the project has become a symbol of community frustration and the focal point of attack.

3. Concerned Carpinterians' Appeal to the Planning Commission

On March 18, 2019, Maureen Foley Claffey, on behalf of Concerned Carpinterians, submitted an appeal package challenging the Planning Director's approval of the G&K Project. For the most part, the appeal package contained a laundry list of alleged zoning violations appellants claimed existed on the property. These assertions were unfounded, based largely on either misinformation, or aerial photographs appellants obtained illegally (by flying a drone over the property in violation of Civil Code § 1708.8(a)). In addition, appellants raised concerns regarding the adequacy of the proposed Odor Abatement Plan, including the adequacy of the regulatory standards pursuant to which the Odor Abatement Plan was approved.

On June 5, 2019, the Planning Commission conducted a hearing on the issues raised by Ms. Claffey in her appeal. The Planning Commission voted 5-0 to deny the appeal and uphold the Director's approval.

4. Concerned Carpinterians' Appeal to the Board

Ms. Claffey and Concerned Carpinterians now appeal to your Board *de novo*. Their strategy has shifted since being denied at the Planning Commission, abandoning their claims regarding alleged zoning violations and substituting them for claims regarding alleged CEQA noncompliance. Their appeal letter to your Board, dated June 17, 2019, criticizes P&D's decision not to prepare a tiered environmental impact report (EIR) for the G&K Project. They allege lack of analysis or mitigation of air quality impacts, inadequacy of the odor mitigation measures, and failure to analyze land use compatibility issues. They make these claims in an effort to convince your Board that further environmental review of the G&K Project is required. But similar to their appeal to the Planning Commission, they are unable to offer much in the way of substantial evidence (facts, reasonable assumptions predicated on facts, or expert opinions supported by facts). The purpose of this letter is to address each of the CEQA issues they have raised on appeal, and demonstrate how each of

these issues was adequately addressed in the Final Programmatic Environmental Impact Report (Case No. 17EIR-00000-00003).

5. The Final Programmatic Environmental Impact Report

The Final Programmatic Environmental Impact Report (PEIR) prepared for the Cannabis Land Use Ordinance and Licensing Program (Case No. 17EIR-00000-00003) was certified by your Board on February 6, 2018. The PEIR evaluated both the direct and indirect environmental impacts, as well as the project-specific and cumulative impacts, expected to result from implementation of the Cannabis Land Use Ordinance and Licensing Program. The PEIR identified a number of significant impacts and set forth feasible mitigation measures. These mitigation measures were codified as development standards in the County's Land Use & Development Code (Article II, Section 35-144U - Coastal Zoning Ordinance). Impacts in the issue areas of aesthetics, visual resources, agricultural resources, air quality, biological resources, cultural resources, geology, energy conservation, public services, water resources, hazards and public safety, land use, and noise, were found to be reduced to less than significant levels with mitigation. Class I impacts (significant and unavoidable) were identified as follows:

- Impact AG-2. *Cumulative cannabis-related development would potentially result in theloss of prime agricultural soils.*

- Impact AQ-1. *Cannabis activities could be potentially inconsistent with the Clean Air Plan and County Land Use Element Air Quality Supplement.*

- Impact AQ-3. *Emissions from operations of cannabis activities could potentially violate an air quality standard or substantially contribute to an air quality violation, and result in a cumulatively considerable net increase of a criteria pollutant for which the County is in nonattainment.*

- Impact AQ-4. *Cannabis activities could be potentially inconsistent with the Energy and Climate Action Plan.*

- Impact AQ-5. *Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people.*

- Impact NOI-2. *Cannabis cultivation, distribution, manufacturing, processing, testing, and retail sales facilities would result in long-term increases in noise from traffic on vicinity roadways and from cultivation operations.*

- Impact TRA-1. *Cannabis activities may result in increases of traffic and daily vehicle miles of travel that affect the performance of the existing and planned circulation system.*

- Impact TRA-2. *Cannabis activity operations may result in adverse changes to the traffic safety environment.*

Your Board adopted a Statement of Overriding Considerations for the foregoing Class I impacts on February 6, 2018. The Statement of Overriding Considerations was essentially a finding made by your Board that the Cannabis Land Use Ordinance and Licensing Program, despite its environmental risks, had overriding benefits which outweighed the risks. The Statement reflects a reasoned decision made by your Board that the environmental risks identified in the PEIR were "acceptable" and could be tolerated in light of the Program benefits. (14 CCR § 15043.)

Approximately 30-days after certification, the statute of limitations set forth in CEQA for challenging the legal adequacy of the PEIR expired. No legal action was filed within the statutory time period. As a result, appellants are now time-barred from challenging the analytical approach and conclusions drawn in the PEIR. (Public Resources Code § 21167(c); 14 CCR 15112(c).) If appellants are to demonstrate that additional site-specific environmental review is required, they must come forward with substantial evidence. The substantial evidence must show that the G&K Project will cause or contribute to significant effects that were not addressed in the PEIR, or that, since the time the PEIR was certified, substantial changes have occurred in the circumstances under which the project is to be undertaken triggering the need for further environmental review.

II.
LEGAL BACKGROUND

1. Definition and Purposes of a Programmatic Environmental Impact Report

Under 14 CCR §15168(a), a Program EIR is an EIR prepared for a series of actions that can be characterized as one large project and are related either:

- Geographically;

- As logical parts in the chain of contemplated actions;

- In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or

- As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

Preparation of a Program EIR allows a public agency to characterize the overall program as the project that is proposed for approval. If a sufficiently comprehensive and specific Program EIR is prepared, the agency may dispense with further environmental review of activities within the program that are adequately covered. (14 CCR §15168(c); *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 CA4th 214, 233; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 CA4th 1036.)

2. Determining When Additional Environmental Review Is Required

When a Program EIR is used as the EIR for subsequent activities within the program, the lead agency must examine those activities as they come up for approval to determine whether additional environmental review is required. If the lead agency determines that the activity's significant environmental effects were examined in the Program EIR, and that no new unexamined significant effects will occur, the agency may approve the activity as being within the scope of the project covered by the Program EIR, and no additional environmental documentation is required. (14 CCR §15168(c)(1)-(2), (e).)

According to the CEB Practice Guide on CEQA, a lead agency's evaluation of the sufficiency of a Program EIR for later approval of a program activity involves a two-step process:

First, the agency considers whether the later activity is covered by the Program EIR by determining whether it will result in environmental effects that were not examined in the EIR. (14 CCR § 15168(c)(1).) If the activity involves site-specific operations, the agency must evaluate the site and the activity to determine whether the environmental effects were covered in the Program EIR. If the lead agency determines the activity would not have environmental effects that were not covered in the Program EIR, it may document its findings by a checklist or other means. (14 CCR §15168(c)(4).) If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or a negative declaration to address those effects. (14 CCR §15168(c)(1).) (See CEB, *Practice Under the Environmental Quality Act*, § 10.16, pp. 10-21 to 10-22 (2019).)

Second, if the agency determines the activity is covered by the Program EIR, it then considers whether any new environmental effects could occur, or new mitigation measures would be required due to events occurring after the program EIR was certified. (14 CCR § 15168(c)(2).) To do so, the agency determines whether any of the three conditions set forth in 14 CCR § 15162

trigger the need for further CEQA review. (14 CCR § 15168(c)(2).) These triggering conditions are the following:

- Substantial changes occur in the project that will require major revisions of the EIR;
- Substantial changes occur in circumstances under which the project is being undertaken that will require major revisions in the EIR; or
- New information of substantial importance to the project that was not known and could not have been known when the EIR was certified as complete becomes available.

(Public Resources Code §21166; 14 CCR §15162.) (See also CEB, *Practice Under the Environmental Quality Act*, § 10.16, pp. 10-21 to 10-22 (2019).)

If the agency concludes that no new significant effects could occur and no new mitigation measures are necessary, it can approve the activity as being within the scope of the project covered by the Program EIR, and no additional environmental documentation is required. (14 CCR § 15168(c)(2).)

In *Citizens for Responsible Equitable Envt'l Dev. v. City of San Diego Redev. Agency* (2005) 134 CA4th 598, the court considered arguments that a project-specific EIR must be prepared for all activities proposed for approval after a Program EIR is certified. Based on the language of 14 CCR § 15168(c), the court rejected the arguments, and held that a Program EIR may serve as the EIR for a subsequent activity that is within the scope of the Program EIR. Requiring additional project-specific environmental review in all cases would be inconsistent with the basic streamlining purpose of Program EIRs. (134 CA4th at p. 615.) See also *Concerned Dublin Citizens v. City of Dublin* (2013) 214 CA4th 1301, 1316; *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 CA4th 214, 239.

3. Lead Agencies Are Prohibited From Requiring Additional Environmental Review Unless One of the Three Triggering Conditions Are Met.

According to Public Resources Code §21166, once an EIR has been certified for a project, the lead agency may not require preparation of a subsequent or supplemental EIR unless one of the three triggering conditions set forth in the statute exists.[2] (See *Melom v. City of Madera* (2010) 183

[2] (1) Substantial changes occur in the project that will require major revisions of the EIR; or (2) Substantial changes occur in circumstances under which the project is being undertaken that will require major revisions in the EIR; or (3) New information of substantial importance to the project that was not known and could not have been known when the EIR was certified as complete becomes available. (Public Resources Code §21166.)

CA4th 41, 48-49.) The reason for such a rule is clear. The process of preparing an EIR is invariably expensive and time consuming. To give a degree of finality to the results, CEQA includes a presumption against requiring any further environmental review once an EIR has been prepared for a project. (Public Resources Code § 21166; *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 C5th 937, 949; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 C4th 924, 934; *Melom v. City of Madera* (2010) 183 C4th 41, 48; *Moss v. County of Humboldt* (2008) 162 CA4th 1041, 1049.)

As the court explained in the leading case of *Bowman v. City of Petaluma* (1986) 185 CA3d 1067, 1073,

> "[S]ection 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired [§21167(c)], and the question is whether circumstances have *changed* enough to justify *repeating* a substantial portion of the process."

III.
APPELLANTS' ARGUMENTS REGARDING NONCOMPLIANCE WITH CEQA

1. Appellants Argue The County Failed to Conduct an Adequate Initial Study

Appellants argue that an initial study must be prepared whenever a lead agency is faced with determining whether additional environmental review is required for a site-specific activity falling within the scope of a previously certified Program EIR. This is inaccurate, and not consistent with the applicable CEQA Guideline (14 CCR §15168). According to the Guideline, an initial study is only required when the lead agency finds that the site-specific activity in question would have effects that were not examined in the Program EIR. In these situations, an initial study is necessary to assist the lead agency determine what type of additional environmental documentation may be required. (14 CCR §15168(c)(1).)

In all other situations, where a lead agency determines based on its evaluation of the site and the proposed activity, that all environmental effects of the activity were adequately covered in the Program EIR, a lead agency is authorized to document its findings by a checklist or other similar means. (14 CCR §15168(c)(4)).) No initial study is required.

In the instant case, P&D made a determination that the site-specific G&K Project presents no additional impacts that were not identified in the PEIR. The project clearly falls within the definition of an indoor mixed-light and nursery cannabis operation evaluated within the PEIR. The location of the project was determined to be an appropriate location upon certification of the PEIR and adoption of amendments to Article II, Section 35-144U. No significant changes to the project description were necessary and the environmental setting of the project site had not changed since the PEIR was certified. Previously identified mitigation measures remained applicable and

adequate to reduce potential impacts to less than significant levels where feasible. Where Class I impacts were identified, a Statement of Overriding Considerations had been adopted. The mitigation measures identified in the PEIR and incorporated into Article II, Section 35-144U had been applied to the project as conditions of approval. The County documented its findings by means of a CEQA Checklist and Addendum as authorized by 14 CCR §§15168(c)(4) and 15164.

2. Appellants Argue the G&K Project Will Have A Significant Adverse Effect on Air Quality

Appellants argue additional environmental review is required because the PEIR did not sufficiently analyze or mitigate air quality impacts. In support of their argument, appellants point to several factors which they claim were not addressed in the PEIR. When these factors are vetted in the full light of day, it becomes clear they do not amount to much.

For example, appellants claim that residential areas and neighborhoods were not identified as sensitive receptors, and therefore the PEIR did not examine the air quality impacts of cannabis activities on residential areas and neighborhoods. They also claim that no reference or connection was made in the PEIR to the links between cannabis terpenes and adverse health effects. In addition, appellants claim the PEIR failed to examine the cumulative effect of cannabis activities on air quality due to increased traffic.

As discussed in detail below, a careful review of the PEIR demonstrates that each of these issue areas was fully addressed. Any claims by appellants to the contrary are patently false.

a. The PEIR Discussion of Residential Areas as Sensitive Receptors.

PEIR Section 3.3.2.2, discussed Air Quality in the context of "Sensitive Receptors." Residential land uses were specifically identified as "sensitive receptors." PEIR Section 3.3.2.2 states:

> "Residential land uses are considered sensitive to poor air quality because people in residential areas are often at home for extended periods and are therefore subject to extended exposure to the type of air quality present at the residence." (PEIR, Section 3.3.2.2, p.3.3-2.)

Section 3.3.2.2 goes on to state:

> "Sensitive receptors affected by the proposed Project would be primarily residences, parks, and school land uses." (PEIR, Section 3.3.2.2, pp.3.3-2 to 3.3-3.)

In discussing Impact AQ-5, the PEIR states:

> "The Project requires cannabis cultivation sites to be setback by 600 feet from sensitive receptors such as schools, daycare centers, and youth centers. However, the Project does not currently require setbacks for cannabis activities from other known sensitive receptors or land uses, including hospitals, nursing homes, residential land uses, and recreational land uses." (PEIR, Impact AQ-5, pp. 3.3-22 to 3.3-23.)

For this reason, among others, the PEIR concluded that Impact AQ-5 was significant and unavoidable (Class I):

> "Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people." (PEIR, Impact AQ-5, p. 3.3-23.)

Based on the foregoing, it is difficult to see how appellants can credibly claim that residential areas and neighborhoods were not identified as sensitive receptors, and the PEIR did not examine the air quality impacts of cannabis activities on residential areas and neighborhoods.

b. The PEIR Discussion of Links Between Cannabis and Health Effects.

PEIR Section 3.3.2.2, discussed Air Quality in the context of "Sensitive Receptors." Individuals with pre-existing health problems were specifically identified as "sensitive receptors." PEIR Section 3.3.2.2 states:

> "Individuals with pre-existing health problems, those who are close to the emissions source, or those who are exposed to air pollutants for long periods of time are considered more sensitive to air pollutants than others." (PEIR, Section 3.3.2.2, p.3.3-2.)

Further on in the Air Quality Section, when discussing Impact AQ-5, the PEIR states:

> "[S]ome residents proximate to cannabis cultivation have stated that they have adverse physical reactions to the odor. Although the scent of cannabis plants [terpenes] is not necessarily widely considered to be harmful to human health, in some instances, exposure to cannabis odors has been reported to result in headaches, eye and throat irritation, nausea, discomfort, and mental stress (Denver Environmental Health 2016). Similar symptoms are also experienced by individuals with specific allergies such as pollen." (PEIR, Impact AQ-5, p. 3.3-22.)

For this reason, among others, the PEIR concluded that Impact AQ-5 was significant and unavoidable (Class I):

> "Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people." (PEIR, Impact AQ-5, p. 3.3-23.)

Based on the foregoing, it is difficult to see how appellants can credibly claim the PEIR made no reference or connection to the links between cannabis terpenes and adverse health effects.

c. The PEIR Discussion of Cumulative Effect of Cannabis Activities on Air Quality Due to Increased Traffic

The PEIR, in discussing Impact AQ-1, states:

> "Cannabis activities may result in the generation of air pollutants through the use of heavy equipment, tilling operations, waste burning, operation of gasoline or diesel-fuel equipment such as generators and well pumps, vehicle trips to and from a licensed cannabis site by employees and customers, and truck trips to and from a site by vendors and transporters." (PEIR, Impact AQ-1, p. 3.3-18.)

The discussion of Impact AQ-1goes on to state:

> "This rural employment increase would have a commensurate increase in vehicle trips and emissions from both new employee trips as well as trips from existing employees in the County that would need to commute further to the rural areas." (PEIR, Impact AQ-1, p. 3.3-18.)

Further on in the Air Quality Section, when discussing Impact AQ-3, the PEIR states:

> "Operational emissions would occur due to the increased mobile emissions generated by vehicle trips from employees and customers of new or expanded cannabis activities sites, as well as from the transportation of cannabis products to and from these sites." (PEIR, Impact AQ-3, p. 3.3-20.)

The discussion of Impact AQ-1goes on to state:

> "Under the proposed Project, cannabis activities would induce vehicle trips generated by employees, shipments and deliveries, and customers from each type of operation associated with an eligible cannabis license." (PEIR, Impact AQ-3, p. 3.3-21.)

Finally, in Section 3.3.4.1 discussing Air Quality Cumulative Impacts, the PEIR states:

> "[I]t is expected that overall increases in emissions would occur given the potential for growth in the agricultural and manufacturing industries under the Project." (PEIR, Section 3.3.4.1, Air Quality Cumulative Impacts, p. 3.3-23.)

On this basis, among others, cumulative impacts to air quality were considered significant and unavoidable (Class I):

> "[I]nconsistency with the CAP is considered a significant cumulative adverse air quality impact. Projects that are not consistent with the CAP have not been accommodated in the CAP's projections and would have a significant cumulative impact on regional air quality unless emissions are totally offset. Since the Project is inconsistent with the CAP and ECAP, and the County is anticipated to remain in non-attainment, the Project's contribution to cumulative air quality would be *significant and unavoidable* (Class I)."

Based on the foregoing, it is difficult to see how appellants can credibly claim the PEIR failed to examine the cumulative effect of cannabis activities on air quality due to increased traffic.

The legal time period for challenging perceived inadequacies of the PEIR has long since passed. If appellants are to demonstrate that additional site-specific environmental review is required, they must come forward with substantial evidence. The substantial evidence must demonstrate that the site-specific activity proposed (G&K Project) will cause or contribute to effects that were not addressed in the PEIR, and/or that one of the three triggering conditions set forth in Public Resources Code §21166 and 14 CCR §15162 exists. Mere accusations and unsupported assertions do not constitute substantial evidence. In the absence of substantial evidence that new or substantially increased environmental effects will occur, no further environmental review can be required.

3. Appellants Argue BVOC Emissions From Cannabis Plants Have the Potential to Form Ground-Level Ozone

Appellants raised for the first time at the hearing before the Planning Commission on appeal (June 5, 2019) a new issue not previously heard regarding the project. The issue concerned a claim that biogenic volatile organic compound (BVOC) emissions from cannabis plants have the potential to be precursors for ground-level ozone and thereby contribute to harmful air pollution. Appellants raised the claim in further support of their argument that the PEIR did not sufficiently analyze or mitigate air quality impacts, and further environmental review is required.

Appellants provide a single reference source in support of their claim, namely a letter written by Patricia A. Holden, Ph.D. dated June 4, 2019. In the letter, Ms. Holden states that "*Cannabis* terpenes, like other biogenic terpenes, have the potential to be precursors of ground level ozone,

which is regarded by the U.S. Environmental Protection Agency (U.S. EPA) as a serious human health threat." On this basis, Ms. Holden recommends specific air quality mitigation measures, and adoption of a systematic scientific basis for determining health and environmental impacts. However, her letter stopped short of claiming that the G&K Project, in conjunction with other cannabis activities in the Carpinteria area, would lead to a significant increase in the formation of ground-level ozone over and above the pre-existing baseline.

Ms. Holden is a professor at the UCSB Bren School of Environmental Science & Management. Her letter states that she was writing on behalf her concerned neighbors in the More Mesa Eastern Goleta Valley area of Santa Barbara, but the letter was placed on Bren School letterhead. Ms. Holden makes no statement in the letter or otherwise that UCSB authorized, approved, or sanctioned her letter. Moreover, the description she provides of her background and expertise raises questions regarding whether she is qualified to render an opinion on the subject of BVOCs from cannabis plants interacting with other air pollutants (primarily NOX) to form ground-level ozone.

Ms. Holden states that she leads research in environmental problem solving, and teaches courses in waste treatment, pollution remediation, environmental microbiology, and biochemistry. She has degrees in Civil and Environmental Engineering, and a Ph.D. in Soil Microbiology. Her doctoral dissertation dealt with mechanisms of biodegradation of VOCs in soil environments, not air. There is no indication she has done any work in the field of air quality or air pollution. There is nothing in her letter which suggests she has knowledge, background or experience in the air quality issues surrounding cannabis.

An agency's determination whether information in the record constitutes "substantial evidence" boils down to a determination not only that the information is relevant and material, but also that it is sufficiently reliable to have solid evidentiary value. Opinions can constitute substantial evidence when they are provided by a witness who is qualified to render an opinion on the subject. An opinion offered by a person who is not competent to render an opinion on a subject does not amount to substantial evidence. *Jensen v. City of Santa Rosa* (2018) 23 CA5th 877, 894; *Cathay Mortuary, Inc. v. San Francisco Planning Comm'n* (1989) 207 CA3d 275. It does not appear based on the information Ms. Holden provided in her letter that she is qualified to render an opinion on the subject of BVOCs from cannabis plants and ground level ozone.

Irrespective of Ms. Holden's qualifications, and assuming her letter constitutes substantial evidence of a potential environmental effect, it does not render the PEIR inadequate for purposes of approving the G&K Project, nor does it automatically trigger the need for additional environmental review. The G&K Project must first be shown to have effects that were not examined in the PEIR. (14 CCR 15168(c)(1).) As described below, a careful review of the PEIR reveals that the effect of cannabis operations on ground-level ozone formation was an issue

thoroughly analyzed and addressed in the PEIR. VOCs and terpenes were discussed in the PEIR and considered contributing factors to Class I air quality impacts.

The Air Quality Section of the PEIR, Section 3.3.2.6, addressing "Cannabis Odors," discussed terpenes: PEIR Section 3.3.2.6 states:

> "Cannabis cultivation and, to a lesser degree, manufacturing, are often accompanied by strong odors. Odors can vary by variety, ranging from pepper, balsamic vinegar, pine, citrus, and skunk. Most of the pungent aromas of cannabis come from a class of chemicals called terpenes. Terpenes are among the most common compounds produced by flowering plants; they, vary widely between plants, and are responsible for the fragrance of nearly all flowers. Cannabis produces over 140 different terpenes. These terpenes are found in varying concentrations in different cannabis varieties." (PEIR, Section 3.3.2.6, p. 3.3-7.)

The Air Quality Section of the PEIR, Section 3.3.2.5, addressing "Common Air Pollutants," discussed the formation and effects of ground-level ozone. PEIR Section 3.3.2.5 states that:

> "Bad'[ground-level] ozone is a photochemical pollutant, and is formed from complex chemical reactions involving volatile organic compounds (VOCs), nitrogen oxides (NOx), and sunlight; therefore, VOCs and NOx are ozone precursors. *VOCs and NOx are emitted from various sources throughout the County.* Significant ozone formation generally requires an adequate amount of precursors in the atmosphere and several hours in a stable atmosphere with strong sunlight. High ozone concentrations can form over large regions when emissions from motor vehicles and stationary sources are carried hundreds of miles from their origins [emphasis added]." (PEIR, Section 3.3.2.5, p. 3.3-6.)

Section 3.3.2.5 goes on to state:

> "Many respiratory ailments, as well as cardiovascular disease, are aggravated by exposure to high ozone levels. Ozone also damages natural ecosystems (e.g., forests and foothill plant communities) and damages agricultural crops and some human-made materials (e.g., rubber, paint, and plastics). Societal costs from ozone damage include increased healthcare costs, the loss of human and animal life, accelerated replacement of industrial equipment, and reduced crop yields." (PEIR, Section 3.3.2.5, p. 3.3-6.)

On this basis, among others, the PEIR identified Impact AQ-1 as significant and unavoidable (Class I):

> "Cannabis activities under the Project could be potentially inconsistent with the Clean Air Plan and County Land Use Element Air Quality Supplement." (PEIR, Section 3.3.4.2, Impact AQ-1, p. 3.3-17.)

In addition, the PEIR identified Impact AQ-3 as significant and unavoidable (Class I):

> "Emissions from operations of cannabis activities could potentially violate an air quality standard or substantially contribute to an air quality violation, and result in a cumulatively considerable net increase of a criteria pollutant for which the County is in nonattainment." (PEIR, Section 3.3.4.2, Impact AQ-3, p. 3.3-17.)

The legal time period for challenging perceived inadequacies of the PEIR has passed. If appellants are to demonstrate that additional site-specific environmental review is required, they must come forward with substantial evidence showing the G&K Project will cause or contribute to effects that were not addressed in the PEIR, and/or that one of the three triggering conditions set forth in Public Resources Code § 21166 (and 14 CCR §15162) exists. VOCs, terpenes, and ozone formation were each discussed in the PEIR and considered contributing factors to Class I air quality impacts. Appellants have proffered no substantial evidence indicating that the G&K Project, in conjunction with other cannabis projects in and around the Carpinteria area, will increase ground-level ozone over the pre-existing baseline. Accusations, unsupported assertions, and speculation do not constitute substantial evidence. (14 CCR §§ 15064(f)(5) and 15384.) In the absence of substantial evidence that new or substantially increased environmental effects will occur, no further environmental review can be required.

A key piece of research Ms. Holden relies on in support of her statement that cannabis BVOCs have the potential to be precursors of ground-level ozone is a study entitled "Leaf Enclosure Measurements For Determining Volatile Organic Compound Emission Capacity from Cannabis," *Atmospheric Environment*, Volume 199, pages 80-87, February 2019. The study was authored by William Vizuete, Ph.D., among others. The study looked for the first time at terpene emission rates from four commercial cannabis strains as a first step in demonstrating the potential impacts of terpene emissions from the cannabis industry. A further study was performed by Mr. Vizuete to model regional ozone impacts from cannabis terpene emissions in the Denver area, where ambient BVOCs from surrounding plant life is documented to be relatively low.

Mr. Vizuete was contacted by the project applicant to perform essentially the identical modeling study for the Carpinteria area. Mr. Vizuete will be present at the Board hearing on August 20th and available to present a report on his findings. Mr. Vizuete's report constitutes substantial evidence to support a finding that terpene emissions expected with full implementation of the Cannabis Land Use Ordinance and Licensing Program will not cause or contribute to the formation of ground-level ozone over and above the pre-existing baseline for the Carpinteria area. Nor will full implementation of the program cause or contribute to air quality impacts in the Carpinteria area of a greater degree or severity than those previously disclosed in the PEIR.

4. **Appellants Argue the PEIR Failed to Adequately Assess Whether Approved Odor Mitigation Measures Are Actually Effective in Reducing Environmental Impacts**

Appellants claim the Byers System is ineffective because, by the applicant's own admission, it will reduce odors by only 90%. They claim the Byers System is unsound from an engineering perspective. They claim the system will create new odors. They claim that no studies have been done or data collected regarding the long-term effects of using the Byers System. They claim that nothing is known about Ecosorb CNB 100, the proprietary formula used in the Byers System, and without information on the product, the County cannot assess the effects the system might have on the environment.

The potential odor impacts of the Cannabis Land Use Ordinance and Licensing Program were evaluated and certified in the PEIR. Mitigation measures for these impacts were incorporated into the PEIR and codified as development standards in Article II, Section 35-144U (the Coastal Zoning Ordinance). One such mitigation measure was the ability of permit applicants to employ vapor-phase odor abatement technologies on their properties as a means to reduce the potential effects of nuisance odors. Appellants did not participate in the hearings on the PEIR, and did not challenge the adequacy of these vapor-phase odor abatement systems at the time the PEIR was certified. Now, one and half years later, appellants attempt to raise the issue for the first time in the context of a site-specific activity seeking to implement the approved mitigation requirement.

The time has passed for challenging the legal adequacy of a mitigation measure evaluated in the PEIR and subsequently incorporated as a development standard into Article II, Section 35-144U. Appellants are time-barred pursuant to Public Resources Code § 21167(c) from challenging the analytic approach or conclusions drawn in the PEIR regarding the efficacy of vapor-phase odor abatement systems. If appellants are to raise the issue now in the context of a site-specific project for purposes of requiring further environmental review, they must come forward with new information of substantial importance regarding the efficacy of vapor-phase odor abatement systems that was not known and could not have been known at the time the EIR was certified as complete. (Public Resources Code § 21166; 14 CCR § 15162.) Because they have not, no further environmental review of this issue can be required.

Irrespective of the time-bar, the analytic approach and conclusions drawn in the PEIR were appropriate. Appellants claim that the Byers System is unsound from an engineering perspective, and because it may not control 100% of all odors generated at the site, it cannot be considered effective mitigation. This claim is inaccurate. CEQA requires that an EIR discuss mitigation measures that will minimize the project's significant impacts by reducing or avoiding them. (Public Resources Code §§ 21002, 21100.) Mitigation measures need only be designed to

minimize significant environmental impacts, not necessarily to eliminate them. (Public Resources Code § 21100(b)(3); 14 CCR § 15126.4(a)(1).)

Courts generally defer to an agency's assessment of the effectiveness of the mitigation measures proposed in an EIR. As the court explained in *Sacramento Old City Ass'n v. City Council* (1991) 229 CA3d 1011, 1027:

> "For projects for which an EIR has been prepared, where substantial evidence supports the approving agency's conclusion that mitigation measures will be effective, courts will uphold such measures against attacks based on their alleged inadequacy."

A long line of appellate decisions has applied this deferential approach. See *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376, 407 (reviewing courts do not weigh conflicting evidence on effectiveness of mitigation; EIR's conclusion that adverse impacts of relocated biomedical laboratory would be mitigated was supported by evidence in record and inferences from it). See also *Association of Irritated Residents v. County of Madera* (2003) 107 CA4th 1383, 1398 (while there were differing opinions on question of whether project would affect kit fox and whether EIR's mitigation measure would be effective, agency was entitled to resolve conflict and conclude that mitigation measures would be sufficient).

There is ample evidence in the administrative record supporting certification of the PEIR regarding the efficacy of vapor-phase odor abatement systems. In Appendix-F, *Cannabis Odor Control*, the PEIR described vapor-phase systems as follows:

> "[A] deodorizing liquid comprised of essential oils in the citrus and pine family are placed inside a vaporizing mechanism. The vapor travels through a distribution pipe that is suspended high up in the greenhouse and runs along its entire perimeter. The vapor escapes from holes in the distribution pipe and a curtain a vapor along the perimeter is produced. The vapor interacts with and changes the chemistry of cannabis malodors. The result is an odor-neutralizing, not an odor-masking technology." (PEIR, Appendix-F, *Cannabis Odor Control*, p. 3.)

Appendix-F went on to state:

> "The Landfill Operations Program Manager for the City of San Diego's Department of Environmental Services (San Diego Manager), was contacted by phone on November 30, 2017. The San Diego Manager stated that the City of San Diego uses the technology produced by the interviewed manufacturer, but uses a different blend of the same essential oils that is specific to the malodors resulting from landfills. The San Diego Manger, along with the San Diego Air Pollution Control District (APCD) and the Solid Waste Local

> Enforcement Agency (LEA), performed a pilot study of the technology's effectiveness at the Miramar landfill. The San Diego Manger noted that he, along with the officials from APCD and LEA, could not smell the landfill within 25-30 feet of the device and that the technology was effective in reducing odor in nearby communities." (PEIR, Appendix-F, *Cannabis Odor Control*, p. 3.)

On this basis, the PEIR concluded "Vapor-phase systems have been proven to be effective for outdoor odor mitigation by the City of San Diego's Department of Environmental Services, Air Pollution Control District, and Solid Waste Local Enforcement Agency." (PEIR, Appendix-F, *Cannabis Odor Control*, p. 1.)

Your Board was entitled to rely on the PEIR's conclusion regarding the effectiveness of vapor-phase odor abatement systems in determining these systems were a feasible approach to minimizing significant impacts related to odor. CEQA did not require that your Board find vapor-phase odor abatement systems to be 100% effective in controlling all odors generated at project sites. Your Board amended the Coastal Zoning Ordinance to allow permit applicants the ability to employ vapor-phase systems as one option on their properties to reduce potential nuisance odors. A mitigation plan is sufficient if it identifies methods that will be used to mitigate the impact and sets out standards that the agency commits to meet. *North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 CA4th 614, 647. Performance standards for vapor-phase odor abatement systems were built into Article II, Section 35-144U. The PEIR found air quality impacts resulting from cannabis odors to be significant and unavoidable despite feasible mitigation (Class I). Your Board adopted a Statement of Overriding Considerations. No further environmental review is required.

5. Ecosorb CNB 100

Brief mention should be made of the claim appellants make that nothing is known about Ecosorb CNB 100, the proprietary odor neutralization formula used in the Byers System. This claim, like most of appellants' claims, is false.

In June 2019, the Santa Barbara County Air Pollution Control District (APCD) contacted OMI Industries, the manufacturer of Ecosorb CNB 100, requesting information to determine if the chemicals used in the odor neutralization formula contain toxic air contaminants as defined by the State of California. The APCD has procedures in place for handling confidential information for cases where the chemical makeup of odor control products is proprietary information (e.g., trade secret). Because of this, OMI was comfortable forwarding to APCD both the confidential and redacted formulation information for Ecosorb CNB 100. Based on APCD's review, staff confirmed that none of the ingredients in Ecosorb CNB 100 are considered toxic air contaminants

(TACs) as identified by the State of California. A confirming email was forwarded by Aeron Arlin Genet, Air Pollution Control Officer for Santa Barbara County APCD, to County P&D on July 8, 2019.

6. **Appellants Argue the PEIR Failed to Assess the Impact of Cannabis Operations on Existing Land Uses and Agricultural Operations in the Carpinteria Area.**

a. Aesthetic and Visual Resources.

Appellants claim that greenhouses detract from the aesthetics of the Carpinteria Area and therefore approval of the G&K Project, in conjunction with other site-specific projects, will significantly impact the visual character of the Carpinteria Area. Appellants claim that the visual impact of greenhouses was not adequately studied in the PEIR and therefore additional site-specific environmental review is required. As with most of appellants claims, careful review of the PEIR demonstrates the claim is false.

The Aesthetics and Visual Resources Section of the PEIR, addressing Impact AV-1, discussed the potential adverse visual impacts of greenhouses and other related development. PEIR Section 3.1.4.2, Impact AV-1, states that:

> "Cannabis cultivation could create visual impacts by altering scenic vistas or degrading scenic resources through the introduction of fencing, security equipment (e.g., gates, wire, cameras, and lights), greenhouses, hoop structures, buildings, accessory structures, lighting, and other development directly related to cannabis cultivation. Cannabis cultivation could occur throughout the County within zoning districts that are eligible under the Project." (PEIR, Section 3.1.4.2, Impact AV-1, pp.3.1-18 to 3.1-19.)

PEIR Section 3.1.4.2, Impact AV-1, goes on to state that:

> "Greenhouses and indoor grows may require clearing and grading to create level pads, which could result in changes to existing visual character and topography, as well as the incremental loss of open space and conversion of undeveloped land. Construction of new buildings for greenhouse, hoop structure, and indoor grows would potentially be visible from public viewing areas, such as Scenic Highways and public parks, and could obstruct scenic views of the Pacific Ocean, mountains, foothills, rivers, and creeks within the County. However, design criteria in the LUDC, MLUDC, CLUP, and CZO provide guidelines for siting development when proposed in a potentially scenic area to reduce visual inconsistencies between new development and the existing character of scenic resources." (PEIR, Section 3.1.4.2, Impact AV-1, p.3.1-20.)

> "Greenhouses are currently used for cultivation in County, particularly within the eastern-most portions of the South Coast region surrounding the City of Carpinteria, which supports one of the largest and most concentrated agricultural greenhouse districts in the County. As stated in the CA Overlay regulations set forth in CZO Sections 35-102F.2 through 102F.5, the total amount of new greenhouse area that could be constructed in unincorporated Carpinteria is limited, and the LUDC greenhouse development standards limit development of greenhouse development to 20,000 square feet in this area. Given the existing permitting requirements that apply to greenhouse development in the County, it is unlikely that the Project would result in extensive new greenhouse development." (PEIR, Section 3.1.4.2, Impact AV-1, p.3.1-20.)

On this basis, the PEIR concluded:

> "Limited greenhouse development and widespread implementation of hoop structures have the potential to obstruct or degrade the view of the County's scenic resources, interfere with the public's enjoyment of visually important areas (e.g., mountainous areas and scenic travel corridors), and have the potential to conflict with the policies set forth in the CLUP and Comprehensive Plan. Thus, the impact of such structures and facilities to aesthetic and visual resources is *potentially significant*." (PEIR, Section 3.1.4.2, Impact AV-1, p.3.1-20.)

Given the foregoing, appellants cannot claim with any credibility that the visual impact of greenhouse development in the Carpinteria Valley was not adequately studied in the PEIR. Moreover, the G&K Project proposes no new greenhouse development, but instead will utilize the five existing greenhouses already located on the property. With this in mind, the G&K Project, in conjunction with other projects, will not result in any significant visual impacts from new greenhouse development that were not previously examined in the EIR. (14 CCR §15168(c)(1).) Nor have appellants come forward with new information of any importance that was not known and could not have been known at the time the EIR was certified as complete. (Public Resources Code §21166; 14 CCR § 15162.) For these reasons, no further environmental review of this subject is required.

b. Increased Intensity of Use on Agricultural Lands

Appellants claim cannabis activities will significantly increase the intensity of use of agricultural lands, including increased numbers of employees on the land, which will have negative effects on existing land uses. Appellants claim these impacts were not adequately studied in the PEIR and therefore additional site-specific environmental review is required. A careful review of the PEIR demonstrates that this particular assertion is false.

Land use compatibility issues resulting from the proliferation of a vibrant cannabis industry in Santa Barbara County, including the Carpinteria Valley, were addressed at length in the PEIR. This included increased intensity of use of agricultural lands, and increased numbers of employees on the land. The physical environmental impacts which comprise one's quality of life (e.g., noise, air quality, traffic impacts) were assessed within Sections 3.3, *Air Quality and Greenhouse Gas Emissions*, 3.10, *Noise*, and 3.12, *Transportation and Traffic*. Each of these sections identified significant and unavoidable physical environmental impacts (Class I) that could not be fully mitigated despite the inclusion of feasible mitigation measures. Similarly, the cumulative impact of cannabis-related development on agricultural lands was assessed in Section 3.2, *Agricultural Resources*, and determined to be significant and unavoidable (Class I), despite the inclusion of feasible mitigation measures.

The PEIR provided a more detailed discussion of land use compatibility issues in Section 3.9, entitled *Land Use and Planning*. Impact LU-2 found that cannabis cultivation, manufacturing, testing, distribution, and retail could all result in adverse quality of life effects to existing communities due to increases in traffic, odors, noise, or other physical environmental impacts.

As stated in PEIR, Section 3.9.4.2, Impact LU-2:

> "The direct impacts to existing nearby residential communities and to agricultural, commercial, and industrial areas or business parks could result from land use conflicts related to the cultivation of cannabis plants, manufacturing of cannabis products, and related licensing activities (e.g., processing, transportation, distribution, testing). Impacts to existing communities could result from land use conflicts related to the construction of new cannabis cultivation facilities, such as indoor facilities, greenhouse and permanent agricultural structures, and outdoor cultivation facilities (e.g., hoop structures). Indirect impacts to existing communities could also result from land use conflicts related to site improvements associated with vegetation clearing, grading, installation of water infrastructure, new roads, as well as utilities to support cannabis cultivation and manufacturing sites. Cannabis cultivation and manufacturing activities occurring within or adjacent to existing communities could also potentially cause quality of life and business issues." (PEIR, Section 3.9.4.2, Impact LU-2, p. 3.9-47.)
>
> "While cannabis cultivation can be both an indoor and outdoor use, it can generate a distinct odor that could potentially cause impacts on neighboring properties, thereby resulting in compatibility issues. Nearby residents may perceive a change in the quality of life if they were to experience an ongoing and notable difference in odor, and/or traffic and noise-related issues that may not be a significant threshold issue pursuant to CEQA, but nonetheless result in perceived or nuisance-related quality of life concern(s) with the

established neighborhood due to due to cannabis cultivation and manufacturing activities." (PEIR, Section 3.9.4.2, Impact LU-2, p. 3.9-47.)

"Similar to other agricultural crop harvesting cycles, with industry harvests generally occurring 3 to 5 times per year, cannabis activities may also result in temporary increases of traffic and limited parking at cannabis cultivation sites during harvesting and product batching. In particular, residents have expressed concerns relating to crime; population increases; and nuisance-based traffic, parking, odors, noise, water pollution; and decreased home values near cannabis operations associated with the Project during the scoping period for this EIR." (PEIR, Section 3.9.4.2, Impact LU-2, p. 3.9-47 to 3.9-48.)

Given the foregoing, appellants cannot claim with any credibility that the PEIR did not address increased intensity of use of agricultural lands and the possible negative effects this could have on neighboring land uses, including adjacent agricultural properties. The physical environmental impacts which comprise one's quality of life (e.g., noise, air quality, traffic, etc.) were all analyzed in depth resulting in most cases in the identification of Class I impacts. The G&K Project, in conjunction with other projects, will not result in any significant compatibility impacts that were not previously examined in the EIR. (14 CCR §15168(c)(1).) Nor have appellants come forward with new information of any importance that was not known and could not have been known at the time the EIR was certified as complete. (Public Resources Code §21166; 14 CCR § 15162.) For these reasons, no further environmental review of this subject can be required.

c. Pesticide Drift

Appellants claim that approval of the G&K Project, in conjunction with other projects, prevents avocado farmers and other orchard operators from spray protecting their crops due to liability concerns from pesticide drift. This issue was raised for the first time at the appeal hearing before the Planning Commission on June 5, 2019. The claim focuses on the extensive testing requirements for cannabis products and the fact that pesticide drift from neighboring agricultural activities could potentially contaminate cannabis operations exposing neighboring landowners and pesticide applicators to significant liability. Appellants claim the issue was never addressed in the PEIR and therefore must be addressed now in the context of the G&K Project approval.

In making this assertion, appellants conveniently ignore the fact that pesticide drift from agricultural operations in California is illegal. California Food & Agriculture Code § 12972 prohibits the use of any pesticide by any person in such a manner that causes pesticides to drift to nontarget areas. The regulations implementing this law prohibit the discharge of a pesticide onto the property of another without the consent of the owner or operator of the property. (3 CCR § 6616.) The regulations require best management practices as well (3 CCR § 6614):

> "(a) An applicator prior to and while applying a pesticide shall evaluate the equipment to be used, meteorological conditions, the property to be treated and surrounding properties to determine the likelihood of harm or damage.
>
> (b) Notwithstanding that substantial drift will be prevented, no pesticide application shall be made or continued when:
>
> > (1) There is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process;
> >
> > (2) There is a reasonable possibility of damage to nontarget crops, animals or other public or private property; or
> >
> > (3) There is a reasonable possibility of contamination of nontarget public or private property, including the creation of a health hazard, preventing normal use of such property. In determining a health hazard, the amount and toxicity of the pesticide, the type and uses of the property and related factors shall be considered." (3 CCR § 6614.)

Despite California's clear legal prohibition on pesticide drift, and corresponding mandate to implement best management practices, appellants ask your Board to protect agricultural operators who are causing drift by treating their potential liability, and the consequences flowing therefrom, as an environmental impact under CEQA.

The potential liability that agricultural operators face from pesticide drift, including the fact pesticide applicators are having difficulty obtaining insurance, is not an "environmental" impact of the G&K Project, and not an issue that CEQA requires be considered. It a social and/or economic consequence stemming from the fact State law considers pesticide drift illegal.

An EIR is required to evaluate only the environmental impacts of a project. (Public Resources Code § 21100.) "Environment" is defined as the physical conditions that exist within an area affected by a proposed project, including land, air, water, minerals, flora and fauna, noise, and objects of historic or aesthetic significance. (Public Resources Code §21060.5; 14 CCR § 15360.) Economic and social consequences are not "environmental" impacts, especially those that result from pre-existing legal requirements imposed on neighboring property owners. Because they are not "environmental" impacts, they need not be evaluated in an EIR. (14 CCR § 15131(a).) No environmental review of this subject can be required.

IV.

CONCLUSION

The subject appeal is clearly an expression of the frustration many Carpinteria residents feel toward the proliferation of unlawful cannabis in the area. Appellants attack the project even though it played no role in creating or contributing to the disruptive conditions at the source of their frustrations. Appellants attack the project even though it clearly meets all applicable policies and development standards set forth in Article II, Section 35-144U. The regulatory program adopted by your Board was intended to address the negative effects identified around cannabis cultivation, including concerns such as odor, enforcement, and compatible land uses. Developing a regulatory environment for a new industry takes time and requires patience.

There have been no substantial changes or changed circumstances under which the G&K Project is to be undertaken since the PEIR was certified. No new significant environmental effects or substantial increases in the severity of impacts previously identified in the PEIR would result from the G&K Project. Nor have appellants come forward with new information of any importance that was not known and could not have been known at the time the PEIR was certified. The analysis contained in the PEIR addresses the cumulative impacts associated with the G&K Project in conjunction with other similar cannabis projects in the Carpinteria area. The PEIR identified mitigation measures that were adopted as development standards in Article II, Section 35-144U and have been applied to the project as conditions of approval. The time for challenging the legal adequacy of the PEIR has passed. None of the conditions which would trigger further environmental review currently exist.

We ask that your Board deny the appeal and approve the G&K Project. In doing so, your Board will be allowing the regulatory program to take effect and accomplish what it was intended to accomplish.

Respectfully submitted,

HOLLISTER & BRACE

A Professional Corporation

By _____

Peter L. Candy

PLC/cr