

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW



April 30, 2021

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

By email to sbcob@co.santa-barbara.ca.us

RE: Appeal of Central Coast Agriculture LLC Cannabis Cultivation (19CUP-00000-00005, 19DVP-00000-00010) at 8701 Santa Rosa Road

Chair Nelson and Honorable Supervisors:

This letter is submitted on behalf of the Santa Barbara Coalition for Responsible Cannabis (“Coalition”), Appellant in this matter. The Coalition is a community-based advocacy organization seeking to promote the development of a cannabis industry in Santa Barbara County that respects surrounding land uses and existing businesses. Its members live and operate various business within the vicinity of the Central Coast Agriculture, LLC outdoor cannabis cultivation and processing operation located at 8701 Santa Rosa Road in Buellton (“Project”), and are concerned about the enforceability of permit conditions to address odor impacts of the Project on adjacent land uses, including in residential areas nearby and within the City of Buellton, and the County’s failure to comply with the Comprehensive Plan, Land Use and Development Code (LUDC), and the California Environmental Quality Act (“CEQA”).

The Project includes 29.45 acres of cannabis cultivation on a 68.18-acre parcel (44% of the parcel area), 22 acres under 12-ft.-tall hoop structures, and approximately 30,000 square feet of structural development including outdoor and 13,594 square feet of mixed-light nurseries, a 3,100 square foot processing building, a 4,200 square foot distribution building, a new 3,900 square foot storage addition and shade structures, composting area with mobile dumpsters, 6-ft.-tall fencing, mobile windscreens, exterior lighting, and security building. The Project proposes to process cannabis, with up to 80% of the cannabis grown off site. Nearly all of the Project was developed without permits, including the 22 acres of hoop structures and most or all of the cultivated cannabis. Discussed below and in our Appeal Letter (Board Letter, Attachment 5), this operation represents **one of the most flagrant abuses of the County’s prohibition on expanding and converting legal nonconforming cannabis operations**. The Board Letter not only ignores this issue entirely, further signaling to growers that the County’s land use regulations are negotiable so long as tax revenue is involved, but suggests that because it is existing or as-built, that much of the Project is beyond the Board’s purview. This is plainly not the case. Rather, to approve the Project the Board must affirmatively find that the proposed development, *including* previously unpermitted structures and activities, complies with the County’s policies and cannabis regulations.

Unlike most cannabis cultivation projects in the Santa Ynez Valley and Buellton outskirts, the Project at 8701 Santa Rosa Road requires a Conditional Use Permit (CUP) and Development

Plan (DVP). Accordingly, to lawfully approve this Project the Board must find, based on substantial evidence in the record, that the project will not be *detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood* and is *compatible with the surrounding area*. The Planning Commission approved the Project, but in its deliberations cited issues with the Project's onsite as-built storage containers and their ability to make the CUP and DVP Findings related to compatibility of the Project with surrounding areas and its impact to the comfort and convenience of the neighbors. Nearby residents and businesses have already endured extensive odor, visual, traffic, and agricultural land use impacts from the unauthorized cannabis activities occurring at the site, and the proposed Conditions of Approval are patently inadequate to address the Project's incompatibility with the neighborhood and surrounding area. Under these circumstances, and for reasons further discussed below and in our Appeal Letter (Board Letter, Attachment 5), substantial evidence does not support the findings required for CUP and DVP approval.

In addition to the lack of substantial evidence to support the permit Findings, a new project-level environmental document is required for this Project because (among other things) Board-initiated amendments to the County's Uniform Rules after Program Environmental Impact Report for the County's Cannabis Ordinance ("PEIR") certification gutted protections for neighboring agricultural operations that the PEIR expressly relied on to reduce impacts to agriculture. In fact, the PEIR did not address the negative impacts odors have on tourism or adjacent agriculture, specifically how cannabis odors would negatively impact wine-tourism where tasting activities cannot be conducted when malodors are present and the impacts that agricultural land use conflicts would have on adjacent agricultural operations and Williamson Act contracts, and on agricultural viability in the region more broadly. Unless and until these issues are adequately addressed, the Board would prejudicially abuse its discretion in approving the Project.

1. Illegal Expansion of a Nonconforming Cannabis Operation

The Coalition's Appeal squarely raised the issue that the Project illegally expanded well beyond what Article X and the LUDC allow. Specifically, medical cannabis operations that were legal on January 19, 2016 are allowed to continue until they receive entitlements, including a business license, for an expanded operation *provided they do not expand*. This is "black letter" law for which there is no applicable exception and the County lacks discretion to develop a contrary interpretation of the law. Article X § 35-1003 provides that operators of non-conforming cultivation sites "may continue to operate their **same existing** nonconforming medical marijuana cultivation site while their permit application is being processed, as long as the operator continues to manage the cultivation location in compliance with the requirements of article X, state law, and . . . LUDC § 35.101.020." LUDC § 35.101.020.B.3 states: "No existing nonconforming use of land outside structures, or not involving structures, shall be enlarged, extended, or increased **to occupy a greater area of land** than was occupied at the time that the use became nonconforming, or moved to any portion of the lot not currently occupied by the nonconforming use."

The Coalition's Appeal included the below image, showing the magnitude of the post-January 19, 2016 expansion:



Rather than address the clear violation of County law articulated in the Appeal, the Board Letter takes the position that as long as “there had been cultivation on-site prior to January 19, 2016” the operation is considered legal nonconforming. (See Board Letter p. 11.) This position entirely ignores the *scope* issue, namely that the cannabis operation as of January 19, 2016 (assuming it indeed existed) was a *tiny fraction* of the operation that exists today. The above photos demonstrate this clearly, and no evidence to the contrary has been presented. The Applicant’s evidence of cultivation at the Project site consists largely of receipts for another cannabis cultivation operation in Fresno! County law does not tolerate *any expansion*, meaning nearly the entire operation exceeds the scope of the very limited allowance for the continuance of legal nonconforming operations.

The consequences of this tolerated illegal expansion are neither technical nor minor. The County’s failure to enforce its own land use laws has exposed County residents and businesses to a range of impacts over the past **five years** that would have been negligible had the operation maintained its January 19, 2016 scope until securing County permits to operate. The County’s refusal to even acknowledge the issue when squarely and clearly presented in a permit appeal

follows a clear pattern and practice of allowing cannabis applicants unwarranted and unfair leniency at the expense of County residents and non-cannabis businesses.

The Board is under no obligation to approve the Project as proposed merely because much of it already exists. If the Board agrees that scaling back the cultivation footprint, hoop structure use, and/or processing and storage activities is required to ensure consistency with the Comprehensive Plan, SYVCP, and/or LUDC, it is entirely within the Board’s purview to do so. Moreover, discussed below, the fact that much of the Project already exists is manifestly not substantial evidence of the Project’s compatibility with the neighborhood and area. To the contrary, the Project has demonstrated its clear *incompatibility*, discussed further below, and the record contains no substantial evidence to the contrary.

2. Inadequate Evidence in the Record to Support Approval Findings

The Board can only lawfully approve the Project if substantial evidence in the record supports the necessary approval findings. For this Project, which requires both a CUP and DVP, these findings include “that the proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area”, that adequate public services are available to serve the project, and that the Project is consistent with the Comprehensive Plan and Development Code, among other findings. (See LUDC § 35.82.060.E.1 (a-g) (CUP Findings) and § 35.82.080.E.1 (a-h) (DVP Findings).) Additionally, the Board must make specific California Environmental Quality Act (CEQA) findings, which also must be supported by substantial evidence in the record (Public Resources Code § 21081, CEQA Guidelines §§ 15162, 15168).

The record before the Board is vague and incomplete with respect to a number of key issues, including the adequacy of water and road access, whether the proposed cultivation is compatible with adjacent agricultural operations including Williamson Act contracted parcels. Discussed below, substantial evidence does not support the findings required for approval, and accordingly the Commission cannot lawfully approve the Project at this time.

a. The Project Is Detrimental to the Comfort, Convenience, General Welfare, Health, and Safety of the Neighborhood

The Project cannot be approved if it will “be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood”. LUDC § 35.82.060.E.1.e (CUP Finding) and § 35.82.080.E.1 (e) (DVP Finding) (Board Findings 2.1.5 and 2.2.5 respectively).

The proposed Findings point to the Odor Abatement Plan (OAP) and Transportation Demand Management Plan (STDMP) to support this finding, however each are inadequate for reasons articulated in our Appeal Letter. The OAP has several flaws that preclude its effectiveness and thus fails to protect Buellton residents through clear and enforceable response protocols. Most concerning, the Project does not required analysis of best available control technology (or BACT) – it merely lists BACT as one of several potential responses the applicant may choose to make in

the face of odor complaints, presumably as written, in the applicant’s sole discretion. The County must require BACT analysis be conducted if odors are detected from this projects in residential areas. The STDMP lacks specificity, an internal review process and performance standards to actually demonstrate achieving trip diversion. As compared to other other larger employers in the county operating under an approved CUP, it is inadequate and must be strengthened to support mandatory findings.

b. The Project Is Incompatible with the Scenic Rural Character of the Area

The Project must “be compatible with the surrounding area” (LUDC §§ 35.82.060.E.1.e, 35.82.080.E.1.e) and “be compatible with and subordinate to the rural and scenic character of the area” (LUDC §§ 35.82.060.E.1.g, 35.82.080.E.1.g).

The Project site is bounded by the Santa Ynez River and West Buellton EDRN to the north, agricultural crop lands to the east and west, and Santa Rosa Road and mountainous terrain to the south.

The evidence to support the proposed Findings of compatibility (See Finding 2.1.5 and 2.1.7) is that many of Project features are “existing” and thus the Project is compatible with surrounding uses. The Board should note that these “existing” features do not obviate the County’s duty to review all elements of the Project in order to find it compatible with the surrounding areas – in fact, the only reason such features are “existing” (and thus their impacts mostly ignored by the draft language supporting the Findings) is because applicant illegally expanded its nonconforming use well-beyond what was existing in January 2016 (see discussion above). The enclosed aerial photos clearly depict the systematic expansion of cultivation activities on the parcel between December 28, 2015 and October 2019.

The applicant has illegally installed extensive structural development and utility infrastructure on the site, without the benefit of permits, planning process compliance, or code inspections. These wanton illegal acts have prejudiced the surrounding community with extensive impacts, and have clearly demonstrated the *incompatibility* of this operation with the surrounding area and its scenic and rural character.

The proposed Landscape and Screening Plan (Board Letter, Attachment 9) is inadequate in this special area because it does not account for the various findings and requirements of the SYVCP, particularly in light of the multiple projects sited for cannabis cultivation along Santa Rosa Road. The proliferation of the landscaping required to screen cannabis cultivation clustered along Santa Rosa Road (as required by mitigation “MM AV-1. Screening Requirements”) will impair lines of sight of landscapes on this scenic route and significantly change the visual character of this important gateway to the Santa Ynez Valley.

The Project is located directly on Santa Rosa Road, an identified scenic rural road, and thus the various elements of the Project (i.e. development of hoop structures, fencing, landscaping, and lighting) are also located along Santa Rosa Road. This results in impacts to this scenic corridor

and merits heightened design consideration by the County. Further, the Landscape and Screening Plan is inconsistent and do not conform to the following goals, policies, and development standards of the SYVCP:

DevStd VIS-SYV-1.9: The design of future discretionary development shall, **at minimum**, include the components listed below. The project’s architectural guidelines shall be included as notes on the project plans.

Roofing and Feature Color and Material. Development shall include darker, earth tone colors on structure roofing and other onsite features to lessen potential visual contrast between the structures and the natural visual backdrop of the area, as applicable. Natural-appearing building materials and colors compatible with surrounding terrain (earth tones and non-reflective paints) shall be used on exterior surfaces of all structures, including fences.

Compatibility with Adjacent Uses. The design, scale, and character of the project architecture shall be compatible with the scale of existing development adjacent to the site, as applicable.

c. Failure to Demonstrate Adequate Water Supply

To approve the Project, the Board must find that there is adequate water supply to serve the proposed project (LUDC §§ 35.82.060.E.1.d and 35.82.080.E.1.d). The PEIR moreover requires the positive demonstration of water supply in accordance with State and local policies. Central Coast Agriculture’s cannabis cultivation operation at 8701 Santa Rosa Road has not fulfilled the entirety of its burden of demonstration of water supply in compliance with local and State regulations.

i. PEIR Mis-Identification of Water Resources and Implied Regulatory Obligations

8701 Santa Rosa Road is located in an area designated the Santa Ynez Alluvium, as identified by PEIR. However, the PEIR has oversimplified the water issues surrounding the Santa Ynez River, and erroneously identifies this water-bearing basin as ‘groundwater.’ In fact, the water-bearing soils of the alluvial plain surrounding the Santa Ynez River are *not* considered groundwater, but surface water and subject to California’s State Water Resources Control Board (SWRCB) and its regulations.

This mislabeling of these has caused considerable confusion about the correct procedure, rights, and responsibilities of the growers in this region, and in this case has allowed the Project’s water use to become unregulated by any controlling agency and the Project’s current and proposed use of water, equipment and structures conflict with current SWRCB policies on cannabis and riparian water.

ii. Hydrogeology of the Santa Ynez Riparian Corridor and its Implications

The Santa Ynez Alluvial basin is a section bordering the Santa Ynez River channel, extending 36 miles from the Bradbury Dam to the Lompoc Plain as depicted in Figure 3.8-2, p. 3.8-6 of the PEIR (below). Geologically, it consists of a relatively shallow impermeable shale bedrock overlaid by alluvial deposits of sand and gravel¹. In essence, this unique geology functions independently of the upland groundwater basins, analogous to a concrete drainage channel passing through other geologic formations and basins. This shallow riparian corridor is highly responsive to and primarily recharged by the Santa Ynez River's flow and various tributary streams along with rainfall percolation and periodic releases of water from Lake Cachuma².

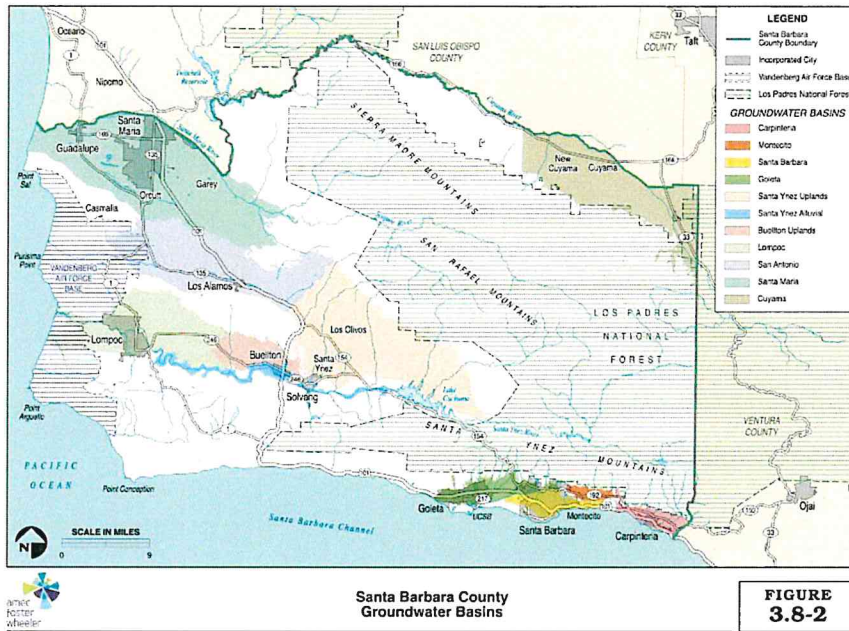
As such, it is considered not considered groundwater but surface water that happens to flow through porous alluvial infill, and is exclusively managed and regulated through the California State Water Resources Control Board¹. For example, a portion of the annual water releases from Bradbury Dam and Lake Cachuma is in response to the SWRCB's policy of downstream recharge when monitoring wells indicate dropping water levels¹, as recharge does not occur through proximity to or transfer from any of the upland basins.

Discussions of utilization of designated surface waters generally use the term 'diversion' to differentiate it from the 'extraction' of groundwater, irrespective of where this surface water is located.

The designation of The Santa Ynez Alluvial basin as surface water places it outside the jurisdiction and regulatory framework of the various County agencies, such as the Santa Barbara County Water Agency, local Groundwater Sustainability Agencies, the Santa Ynez Water Districts, and the Sustainable Groundwater Management Act (SGMA), and relies solely on the application of the policies and regulatory framework of the SWRCB¹.

¹ Young, Matt, Santa Barbara County Water Agency. Personal Communication, April 28, 2021.

² Final Environmental Impact Report (EIR) for the Cannabis Land Use Ordinance and Licensing Program (PEIR), Section 3.8 Hydrology and Water Resources.



iii. Riparian Water Rights and Cannabis

With respect to water rights and permits, the SWRCB website states:

“A water right permit is an authorization to divert water and develop a project. Once the project development is complete, the Division of Water Rights determines whether a water right license can be issued. A water right license is the final confirmation of the water right and remains effective as long as its conditions are fulfilled, and water continues to be reasonably and beneficially used. A water right permit or license for an appropriative water right may be acceptable for cannabis cultivation if it: (1) includes irrigation as a purpose of use; and (2) provides for adequate storage of water to irrigate during the forbearance period.³”

The SWRCB recognizes the potential for cannabis operations to negatively impact riparian environments and their inhabitants.

“Absent restrictions on water diversion, the individual and cumulative effects of water diversions for cannabis cultivation during the dry season are likely to significantly decrease instream flow and, in some instances, reduce hydrologic connectivity or completely dewater the stream. Minimum flows that provide habitat connectivity are needed to maintain juvenile salmonid passage conditions in late spring and early summer. Instream flows are also needed to maintain habitat conditions necessary for juvenile salmonid

³ https://www.waterboards.ca.gov/water_issues/programs/cannabis/cannabis_water_rights.html

viability throughout the dry season, including adequate dissolved oxygen concentrations, low stream temperatures, and high rates of invertebrate drift from riffles to pools⁴.”

As a protection measure against these adverse impacts, the SWRCB has adopted forbearance limitations to diversions based on both calendar dates and instream flow gages calculating riparian water flow. The SWRCB website⁵ states:

“Below is a summary of some of the Cannabis Policy Requirements Related to Cannabis Surface Water Divisions. [Full text of the requirements below is available here.](#)⁶

- Cannabis cultivators who are diverting surface water are required to check this website for their compliance gage assignment at least daily and prior to diverting water to ensure water is available to divert at that gage (i.e., the prior day’s average flow is greater than the Numeric Flow Requirement at the assigned compliance gage).
- The diversion season is from December 15 of each year to March 31 of the succeeding year, **providing the prior day’s daily average flow is greater than the applicable minimum instream flow requirement.**
 - For the period of November 1 through December 15 of each year, diversion may be authorized under certain circumstances. (Attachment A, Section 3, Requirement 5).
- **Cannabis cultivators shall not divert surface water for cannabis cultivation activities at any time from April 1 through October 31 of each calendar year.**
 - During the 2018 surface water forbearance period, certain exceptions may apply to those who are diverting under a water right that does not include storage. (Attachment A Section 3, Requirement 4).
- The cannabis cultivator shall install and maintain a measuring device(s) for surface water or subterranean stream diversions. Cannabis cultivators shall maintain daily diversion records for water diverted for cannabis cultivation. Daily diversion records shall be retained for a minimum of five years. (Attachment A, Section 2, Requirement 85).
- Under certain circumstances, Retail Water Suppliers who deliver water for cannabis must comply with the instream flow requirements. (Attachment A, Section 3, Requirements 2 and 9).”

For example, a review of 8701 Santa Rosa Road’s parcel using SWRCB’s GIS mapping tool⁷ notes that water diversion is not authorized for the date of April 29, 2021. This means no use of riparian water from the agricultural well located at 8701 Santa Rosa Road is allowed for that particular day, based on the disparity between the Previous Day’s Average Flow and the Minimum Instream Flow Requirement as noted in the image below.

⁴ California State Water Resources Control Board Cannabis Cultivation Policy, Principles and Guidelines for Cannabis Cultivation. February 5, 2019, p. 11

⁵ https://www.waterboards.ca.gov/water_issues/programs/cannabis/online_mapping_tool.html#summary

⁶ https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/combined_policy_excerpts.pdf

⁷ https://www.waterboards.ca.gov/water_issues/programs/cannabis/online_mapping_tool.html



For those days, weeks, and months that surface water diversion for cannabis is unauthorized and unavailable, it would be necessary for all irrigation water for the cannabis crop to be sourced from riparian water drawn and stored during the permissible wet season. This authorization of wet season draw is still dependent upon daily average flow being greater than the minimum instream flow requirements.

Storage

To comply with the requirements for irrigation during a dry season/low flow forbearance period, a Statement of Water Diversion and Use must include information about storage type and capacity, such as tanks and reservoirs. Both the Initial Statement of Water Diversion and Use filed by John De Friel of Central Coast Agriculture, LLC in 2017⁸ and De Friel's Supplemental Statement of 2018⁹ state that no riparian irrigation water is being stored. Despite these Statements to the SWRCB, however, the current Project Description states that two existing 20,000 gallon water tanks are used for irrigating the cannabis crop. Given the extensive cannabis cultivation acreage proposed by the Project, these two tanks are inadequate to provide supply for the entire forbearance period, when water cannot be diverted from the Santa Ynez Alluvial basin.

iv. Current State of Central Coast Agriculture Statement of Water Diversion and Use

A conversation with the staff of the SWRCB, San Luis Obispo office revealed that the applicant has canceled his application and Statement of Diversion and Use for 8701 Santa Rosa

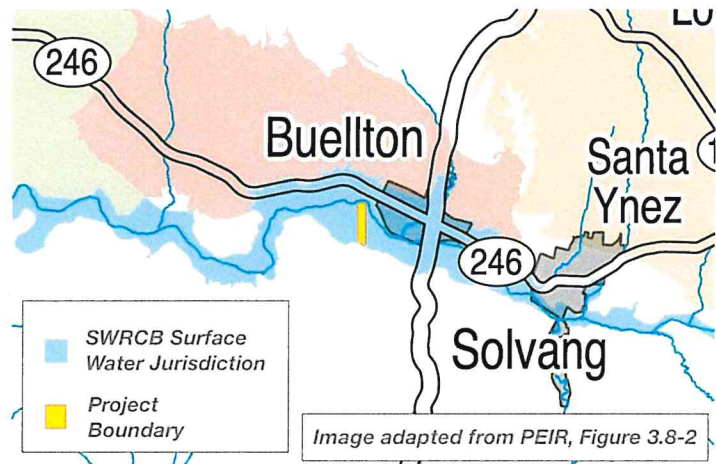
⁸ SWRCB completed application S027524, Initial Statement of Water Diversion and Use, October 31, 2017

⁹ SWRCB completed Supplemental Statement of Water Diversion and Use, June 28, 2018

Road¹⁰. On March 24, 2021, Lindsay Cokeley, Compliance Manager for Central Coast Agriculture, LLC, emailed the SWRCB and stated that they would be inactivating their Statement, as they were now using groundwater¹¹.

The Santa Barbara County Board of Supervisor’s Legistar document portal¹² was accessed on April 29, 2021 for 8701 Santa Rosa Road. The Project Description was reviewed and discovered that no change was proposed for the Project’s water supply, and that the same existing agricultural well was indicated to be the source of water for the Project’s cannabis cultivation.

As the location of the Project’s well and the boundaries of the Project remain entirely within the Santa Ynez Alluvial riparian basin, and the Santa Ynez Alluvial basin remains under the jurisdiction of the SWRCB, it appears that on March 24, 2021 the applicant was relying on the erroneous statement of the PEIR that the water underneath the parcel is groundwater and therefore not subject to the SWRCB’s policies.



d. The Project Fails to Comply with the Comprehensive Plan and Santa Ynez Valley Community Plan

All land use approvals must be consistent with the Comprehensive Plan and the Board must specifically find that “the proposed project will comply with all applicable provisions of the Comprehensive Plan, including any applicable community or area plan”. (LUDC §§ 35.82.060.E.1.f, 35.82.080.E.1.f).

The Project is within the Santa Ynez Valley Community Plan (SYVCP) area, and accordingly must have comply with the SYVCP including Policy LUG-SYV-8, which provides:

Policy LUG-SYV-8: The public shall be protected from air emissions and odors that could jeopardize health and welfare.

¹⁰ SWRCB Staff, San Luis Obispo Office, (805) 594-6194. Personal communication, April 29, 2021

¹¹ SWRCB Staff, San Luis Obispo Office, (805) 594-6194. Personal communication, April 29, 2021

¹² <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=4928864&GUID=E83A4F74-4A2E-4F16-BFF9-94C838A70643&Options=&Search=>

The Project, including the Odor Abatement Plan (OAP) does not protect the public as required by this policy. The project area, including the City of Buellton, has experienced sustained odor episodes lasting weeks at a time (see attached odor complaint, Exhibit 1, in which odors from 8701 Santa Rosa Road were reported at 330 W. Highway 246, well within the City of Buellton), and odors have been reported in the adjacent EDRN and on nearby public roads.

The OAP has improved from its initial form and references to the use of best available control technology (BACT) without express commitment, yet it remains a disjointed set of documents instead of a single cohesive plan. It needs reformatting to clarify and clearly state all applicable requirements.

A deodorant dispensing system is intended to treat malodors transported by westerly winds, but will only be used on an as-needed basis, and lacks any testing requirement to confirm its effectiveness to control off site odors.

In order to make findings the Project will not be detrimental to the comfort, convenience, general welfare, health and safety of the neighborhood and compatible with the surrounding area, at a minimum, the following additions to the OAP are needed.

1. The applicant told the Planning Commission it developed “low odor” strains as part of its odor control strategy, but their OAP doesn’t require them. **Make the use of low odor cannabis strains a mandatory part of the odor plan.**
2. There is no verification of odor control effectiveness, no demonstration that odors would stay on the cannabis premises as required by the PEIR, and no way to isolate odor sources, and many other uncertainties. Other cannabis projects have had conditions imposed and/or a specific Project Description element detailing process for an audit of the project’s emissions, testing for odors with analytical equipment at the property line and in downwind communities at peak emissions periods (harvest) during the first two years of operation.

Fenceline or property line testing is essential for enforceability. County enforcement officials have established that odor complaints in areas with multiple grows cannot be effectively investigated and enforced without the ability to assess conditions at the property line.

3. Community involvement is important to monitoring and improving odor controls. The OAP only requires notification of residents within 1000’, and those that have filed complaints (the “Community Outreach List” or “COL”). The information provided to the COL is bi-annual updates. The COL should be expanded to include all that request inclusion, and the information shared should be expanded to an annual schedule of projected harvest periods and Odor Investigation Reports.
4. Corrective actions in response to odor episodes should be expanded and made specific, and specifically include restrictions on the use of high odor strains.

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

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

The Project proposes hoop structures over 22 acres, along with fencing, lighting, and a guard station that will be visible from Santa Rosa Road and adjacent properties, which are incompatible with the character of the surrounding natural environment. The proposed landscape plan does not demonstrate that these visual impacts will be adequately mitigated.

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

GOAL I. Santa Barbara County shall assure and enhance the continuation of agriculture as a major viable production industry in Santa Barbara Country. Agriculture shall be encouraged. Where conditions allow, (taking into account environmental impacts) expansion and intensification shall be supported.

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

The *Agricultural Element* further provides that the project must minimize the effects of the project, including odor in particular:

Policy I.E. The County shall recognize that the generation of noise, smoke, **odor**, and dust is a natural consequence of the normal agricultural practices provided that agriculturalists exercise reasonable measures to minimize such effects.

Moreover, discussed above, there has been no demonstration of adequate water to serve the proposed development. In addition to precluding a finding under LUDC §§ 35.82.060.E.1.d and 35.82.080.E.1.d, the failure to demonstrate available water is further inconsistent with *Comprehensive Plan Land Use Development Policy 4*, which states:

Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are

available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.

In addition, the Comprehensive Plan Conservation Element Groundwater Policies apply, and have not been analyzed in the Board Letter or elsewhere in the record. Specifically:

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

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

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

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

Discussed above, the Project's water source is unclear and uncertain. To the extent the Project may rely on groundwater from the Santa Ynez Alluvial basin, which is currently in overdraft¹³, these groundwater policies apply and the Board must ensure that the approval of this discretionary land use decision does not lead to the substantial overcommitment from the groundwater basin.

¹³ Final Environmental Impact Report (EIR) for the Cannabis Land Use Ordinance and Licensing Program (PEIR), Section 3.8 Hydrology and Water Resources, Table 3.8-2.

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

3. Substantial Evidence Does Not Support Required CEQA Findings

To approve the Project consistent with CEQA, the Board must find, based on substantial evidence in the record, that the Project is within the scope of the Cannabis PEIR and the effects of the Project were examined in the PEIR. (Pub. Res. Code § 15168 (c), Finding 1.1). A program EIR may serve as the environmental review document for a later activity in the program, but only to the extent it contemplates and adequately analyzes all potential environmental impacts of the later activity. *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 234 Cal.App. 4th 214, 233. Before approving a later activity in the program, the lead agency must examine that activity “in light of the Program EIR to determine whether an additional environmental document must be prepared.” CEQA Guidelines § 15168 (c). Where, as with this Project, the later activity involves site-specific operations, the agency “should use a written checklist or similar device document the evaluation of the site and activity to determine whether the environmental effects of the operation were within the scope of the program EIR.” CEQA Guidelines § 15168 (c)(4). “If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration. That later analysis may tier from the program EIR...” CEQA Guidelines § 15168 (c)(1). Public Resources Code § 21081, CEQA Guidelines §§ 15162, 15168).

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

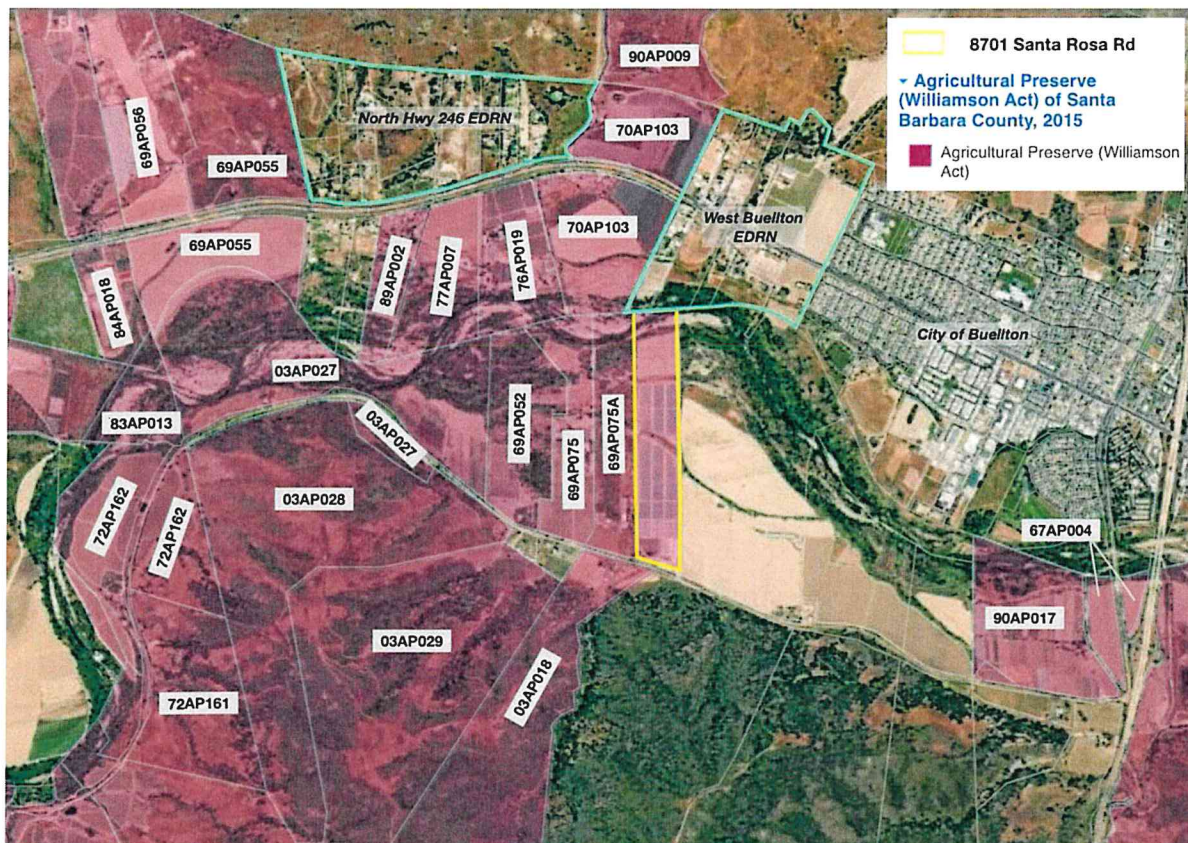
As a Program EIR, the level of detail included in the project description and methodology for impact analysis is relatively more general than a Project-level EIR, as individual cannabis site-level details are not available for all current license applications as well as for an unknown number of future license applications occurring in the County, rendering some analyses too speculative for detailed evaluation. This approach allows the County Board of Supervisors to consider broad implications and impacts associated with the Project while not requiring a detailed evaluation of individual properties. Methods to analyze the Program’s environmental effects consider cumulative cannabis cultivation and manufacturing site development under the Project, or a reasonable worst-case scenario for a resource area. (See Section 3.0, Environmental Impact Analysis.) This EIR may be

incorporated by reference in subsequent CEQA review documents to describe regional influences, secondary effects, cumulative impacts, and other factors that apply to the Project as a whole.

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

a. Substantially Increased Agricultural Land Use Conflicts Following Uniform Rules Change

Discussed in our Appeal Letter, the Project results in conflicts with adjacent agricultural operations including those under Williamson Act contract, leading to new and/or substantially increased significant impacts that were not evaluated in the PEIR. The below map depicts the Williamson Act contracts on and surrounding the subject parcel.



The PEIR anticipated that conflicts between agricultural users would be evaluated by APAC on a case-by-case basis, but for this and other cannabis cultivation Projects this compatibility review has not occurred. This results in not only an undisclosed CEQA impact but also a conflict with the Williamson Act. Our Appeal Letter explains this issue in detail and attaches evidence documenting the agricultural land use conflicts that have occurred between cannabis cultivation projects like this one, and established agricultural operations including vineyards.

The Board Letter claims that the “Board-adopted amendment to the Uniform Rules to classify cannabis as a principle use rather than a compatible use does not constitute a substantial unanticipated change to the circumstances under which the Project will be undertaken or new information requiring further environmental review.” (Board Letter, p. 8.) To support this claim, the Board Letter makes a telling admission:

At the time the PEIR was certified, if a cannabis project were proposed on a parcel under agricultural preserve contract, APAC would have evaluated compatibility of the cannabis project with the subject contracted parcel and other contracted lands in the vicinity that are under agricultural preserve contracts.

(*Id.*, emphasis added.) The Board Letter makes the strained argument that because “proposed cannabis projects were not and are not limited to contracted parcels[, i]t is clear the PEIR did not rely on APAC review under the Uniform Rules to ensure compatibility with existing agricultural uses, because not all proposed cannabis projects would have been subject to APAC review.” (*Id.*) Of course, the vast majority of agriculturally zoned lands in the Santa Ynez Valley are subject to agricultural preserve contracts, as the PEIR acknowledged (PEIR p. 3.2-2). Here, the Project parcel is subject to an agricultural preserve contract, as are numerous additional parcels in the vicinity (*see above*).

Moreover, the CEQA Thresholds utilized in the PEIR which are based on the CEQA Appendix G Guidelines, specifically identify conflicts with Williamson Act contracts as potentially significant impacts to agricultural resources (PEIR p. 3.2-18; CEQA Guidelines Appendix G, § II (c)).

Additionally, the County’s own CEQA Thresholds and Guidelines Manual and previous County environmental review documents demonstrate that conflicts with nearby agricultural operations are potentially significant impacts regardless of the parcel’s Williamson Act status. Specifically, the County’s CEQA Thresholds for agricultural resources are used “to determine whether a proposed project’s impact on loss or impairment of agricultural resources will be considered to have a potentially significant impact.” Where points assigned to relative characteristics of a site’s agricultural productivity “total 60 or more, the following projects would have a potentially significant impact: . . . [d]iscretionary projects that may result in substantial disruption of surrounding agricultural operations.” (PEIR p. 3.2-18, County Thresholds and Guidelines Manual, p. 11). CEQA documents for other Projects reviewed by the County expressly

evaluate whether the project would impact adjacent agricultural operations¹⁴, and the County’s failure to do so for individual cannabis permits is not only inconsistent with CEQA but also with the County’s own thresholds and past practices.

Neither the PEIR nor the County’s CEQA Checklist for the Project undertook any effort to either determine whether the Project would conflict with Williamson Act contracts on nearby parcels, whether the subject parcel or neighboring affected parcels total 60 points or more (which they would appear to given their site characteristics) and if so whether this discretionary CUP and DVP may result in substantial disruption of surrounding agricultural operations.

Appellant has introduced into the record substantial evidence showing that outdoor cannabis cultivation does substantially disrupt surrounding agricultural operations. For example, the Grower Shipper Association of Santa Barbara and San Luis Obispo Counties which represents over 170 growers, shippers, farm labor contractors, and supporting agribusinesses, reported the experiences of their members, including:

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

¹⁴ See e.g. *Ventucopa GPS Rock Plant EIR*, available at <https://cosantabarbara.app.box.com/s/o9fp2865sykaqn98s0702plaa96xj7t5/file/444821908731> and incorporated herein by reference (“*Disturbance of Adjacent Agriculture. ... The existing mining area and proposed replacement pit area are not located adjacent to actively cultivated fields. As such, fugitive dust from mobile equipment is not expected to be conveyed to nearby fields. In contrast, the processing area and access road from the mine to the processing area are located directly adjacent to cultivated fields. There is a potential for fugitive dust to be deposited on these fields, particularly if there are high winds. This impact is expected to be less than significant (Class III impact) due to the daily watering of working areas and material stockpiles at the processing area which reduce dust emissions to the extent practicable.*”); *Cuyama Solar Facility EIR*, available at <https://cosantabarbara.app.box.com/s/o9fp2865sykaqn98s0702plaa96xj7t5/file/444792129131> and incorporated herein by reference (“*Construction and operation of the Gen Tie-Line and Switchyard would not create Right-to-Farm or nuisance impacts to adjacent productive agricultural operations because these facilities would not result in a significant amount of particulates after the construction phase is complete, would include a weed abatement program, and would tolerate dust, pesticides, and herbicides from nearby agricultural operations.*”); see also *Isla Vista Master Plan EIR*, available at <https://cosantabarbara.app.box.com/s/o9fp2865sykaqn98s0702plaa96xj7t5/file/444774139716> and incorporated herein by reference (“*The proposed project would also not result in a disruption to any surrounding agricultural operations.*”)

include farmers, harvesters, rural residents, shippers, custom machine operators, materials applicators, and farm labor contractors.

(Appeal Letter Exhibit 4, Board Letter Attachment 5 at p. 64). The Grower Shipper Association concluded “[b]ased on the best information we have available and the extent of conflict that our members and others in the agricultural community have experienced in trying to grow near hemp and cannabis, we do not believe that hemp or cannabis cultivation is compatible with organic or conventional Central Coast agriculture.” (*Id.* (bold in original).)

If anything, the Board Letter confirms that the PEIR was changed in a way that substantially increased the severity of the Cannabis Program on non-cannabis agricultural land uses. The classification of cannabis as an agricultural use does not automatically relieve the County of the obligation to ensure that uses approved on contracted lands are consistent with the Williamson Act’s Principles of Compatibility, including that “[t]he use will not significantly displace or impair current or reasonably foreseeable agricultural operations ... on other contracted lands in agricultural preserves” (Gov. Code, § 51238.1, subd. (a).) The PEIR did not undertake this analysis, nor did APAC, and the Board is without legal authority to approve the Project under these circumstances.

b. Water Supply: Inadequate Project Description, Lack of Demonstration of Water Supply, Reliance on an Inadequate PEIR and CEQA Checklist

The Central Coast Agriculture LLC’s Project Description is clearly inadequate in addressing the complexities surrounding water supply, diversion and use in the Santa Ynez Alluvial basin. The actual and intended practices and statements to regulatory agencies differ greatly from the Project Description and preclude an accurate evaluation of adverse impacts of this Project’s cannabis operation.

SWRCB’s restrictions on the utilization of riparian surface water for cannabis cultivation effectively halt diversions during the periods of highest demand between April 1 and October 31 of any given year, and may extend beyond these dates during droughts. This would severely restrict the water available to this Project and any finding of adequate water supply cannot be made.

The PEIR’s oversimplification and blurring of the distinction between surface water and groundwater and its attendant regulatory jurisdictions creates confusion as to the rights and responsibilities of water users in this riparian basin.

The CEQA Checklist for the Project relied on the water report from Kear Groundwater. This report, while acknowledging that “*the existing well extracts from a shallow alluvial aquifer that may be classified as part of the “subterranean stream” of the Santa Ynez River flow*

system...¹⁵ it erroneously identifies the proximity to the Buellton Upland Groundwater Basin as a potential for recharge of the Project site. The PEIR acknowledges that the Santa Ynez Alluvial basin is currently in overdraft¹⁶. The Project's CEQA Checklist omits any discussion or demonstration of the legal right to water for the lifetime of the Project.

Moreover, revisions to the CUP Project Description are necessary. A Conditional Use Permit must rely on an accurate Project Description and the adherence of the Project to the laws and policies of the authoritative bodies of the State and the County. As written, the Project anticipates using and thus relies on water sources unavailable for cannabis irrigation for approximately 7 months out of the year. This lack of legal entitlement to the water needed to support the cannabis operation precludes the vesting of the CUP and its appeal should be upheld.

Central Coast Agriculture's cancellation of their Statement of Diversion and Use and claim of the Project's reliance on groundwater has effectively placed itself outside of any regulatory agency's framework and created a situation where each agency would claim no responsibility for the oversight of water diversion on this parcel. Additional review of these developments are necessary to properly evaluate the Project's compliance with local and State laws and regulations.

4. Conclusion

For reasons stated herein, we respectfully request that the Board uphold the appeal and deny the CCA LLC Cannabis Cultivation Project at 8701 Santa Rosa Road.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC



Marc Chytilo

LAW OFFICE OF COURTNEY E. TAYLOR, APC



Courtney E. Taylor

Exhibit 1: Odor Complaint (October 23, 2020)

¹⁵ County of Santa Barbara State CEQA Guidelines § 15168(c)(4) Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications for 19CUP-00000-00005 and 19DVP-00000-00010

¹⁶ Final Environmental Impact Report (EIR) for the Cannabis Land Use Ordinance and Licensing Program (PEIR), Section 3.8 Hydrology and Water Resources, Table 3.8-2.

Cannabis Complaint Form

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, October 23, 2020 2:24:42 PM
Last Modified: Friday, October 23, 2020 2:37:17 PM
Time Spent: 00:12:35

Page 1: Location Information

Q1

Assessor Parcel Number (APN), if you know it:

083-180-007

Q2

Property Owner, if you know it:

Central Coast Agriculture

Q3

Address of the Problem that you are reporting:

Street Address	8701 Santa Rosa Road
City	BUELLTON
ZIP Code	93427

Q4

If reporting odor complaints, enter the location where the odor is being experienced:

Street Address	330 W Highway 246 Spc 115
City	BUELLTON
ZIP Code	93427-9429
Date of Observation	October 15 through present
Time of Observation	From about 10am through nightfall, peaking in the afternoons.

Page 2: Reporting Party Confidential Information

EXHIBIT 1

Cannabis Complaint Form

Q5

Your information:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Q6

Would you like us to follow up with you regarding this communication?

Yes

Page 3: File a Complaint

Q7

What is the general nature of your complaint

Odor

Q8

Description of the Complaint

Cannabis odors, severe at times, throughout the western Buellton area including my neighborhood, Jonata School, the Albertson's shopping center, and area parks.

Q9

Is this an urgent issue that is creating an immediate hazard?

Unknown

Q10

In your judgment, is there cause for concern for the safety of our personnel when they inspect the property or contact the occupant to investigate this complaint?

Unknown

Q11

Has the Sheriff or other enforcement agency responded recently?

Unknown

Cannabis Complaint Form

Q12

No

Have you contacted the property owner or other responsible party about this issue?

Q13

What steps have you already taken to try to resolve this problem?

I have filed a previous complaint, contacted Joan Hartmann, the City of Buellton, WE Watch, Buellton Recreation, and the SB Coalition for Responsible Cannabis.

Q14

How is this violation detrimentally impacting you?

Given that I am sequestered at home due to COVID-19 risks, I find that I must leave the area to seek cleaner air due to burning eyes, sinus irritation, sore throat and headaches - all of which resolve when I am in an environment with cleaner air.

Q15

Respondent skipped this question

Attachments.