

ATTACHMENT 5: APPEAL LETTER DATED MAY 24, 2021



Appeal to the Board of Supervisors or Planning Commission (County or Montecito)

APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of:

- All Discretionary projects heard by one of the Planning Commissions
- Board of Architectural Review decisions
- Coastal Development Permit decisions
- Land Use Permit decisions
- Planning & Development Director's decisions
- Zoning Administrator's decisions

THIS PACKAGE CONTAINS _____

- ✓ APPLICATION FORM
- ✓ SUBMITTAL REQUIREMENTS

AND, IF ✓'D, ALSO CONTAINS _____

<p>South County Office 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030</p>	<p>North County Office 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258</p>	<p>Clerk of the Board 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax: (805) 568-2249</p>
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CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

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RECEIVED

SUBMITTAL REQUIREMENTS

- X 3 Copies of the attached application. *1 hard copy; 1 electronic copy*
- 8 Copies of a written explanation of the appeal including:
- If you are not the applicant, an explanation of how you are an “**aggrieved party**” (“Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.”);
 - A clear, complete and concise statement of the **reasons or grounds for appeal**:
 - Why the decision or determination is consistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; or
 - There was error or abuse of discretion;
 - The decision is not supported by the evidence presented for consideration;
 - There was a lack of a fair and impartial hearing; or
 - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- X 1 Check payable to County of Santa Barbara.

Note: There are additional requirements for certain appeals including:

- a. **Appeals regarding a previously approved discretionary permit** – If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit’s conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).
- b. **Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: 5645 Santa Rosa Road, Buellton, CA 93427

ASSESSOR PARCEL NUMBER: 083-150-013

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

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

Are there previous environmental (CEQA) documents? no [X] yes numbers: 17EIR-00000-00003

1. Appellant: Santa Barbara Coalition for Responsible Cannabis Phone: FAX:

Mailing Address: Post Office Box 278, Santa Barbara, CA 93102 E-mail: info@sbcountycoalition.com
Street City State Zip

2. Owner: Phone: FAX:

Mailing Address: E-mail:
Street City State Zip

3. Agent: Phone: FAX:

Mailing Address: E-mail:
Street City State Zip

4. Attorney: Law Office of Marc Chytilo Phone: (805) 682-0585 FAX: (805) 682-2379

Mailing Address: P.O. Box 92233, Santa Barbara, CA 93190 E-mail: marc@lomcsb.com
Street City State Zip

COUNTY USE ONLY

Case Number: Companion Case Number:
Supervisor: District: Submittal Date:
Applicable Zoning Ordinance: Receipt Number:
Project Planner: Accepted for Processing:
Zoning Designation: Comp. Plan Designation:

RECEIVED
MAY 24 P 3:31
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Central Coast Agriculture, LLC Cannabis Operation

Case No. 19LUP-00000-00480

Date of Action: May 12, 2021

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

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? County

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

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

See Attached.

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

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

See Attached.

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


- a. _____
- b. _____
- c. _____
- d. _____

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

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

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

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

	
Law Office of Marc Chytilo	5/24/2021


Print name and sign – Firm Date

	
Law Office of Marc Chytilo	5/24/2021

Print name and sign – Preparer of this form Date

Print name and sign – Applicant Date

Print name and sign – Agent Date

	
Santa Barbara Coalition for Responsible Cannabis	5/24/21

Print name and sign – ~~Landowner~~ Aggrieved Party Date

May 24, 2021

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

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

RE: Appeal of Central Coast Agriculture LLC Cannabis Cultivation (19CUP-00000-00005, 19DVP-00000-00010) at 5645 Santa Rosa Road

Chair Nelson and Honorable Supervisors:

Please accept this appeal of the Planning Commission's approval of the above-referenced permit for the Central Coast Agriculture, LLC outdoor cannabis cultivation and processing operation located at 5645 Santa Rosa Road in Buellton ("Project"). This appeal is filed on behalf of the Santa Barbara Coalition for Responsible Cannabis ("Coalition").

The Coalition is an aggrieved party to this permit. It 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 Project, and are concerned about odor impacts of the Project on adjacent land uses, including in residential areas nearby and within the City of Buellton, and a failure of the County to comply with the Comprehensive Plan, Land Use and Development Code ("LUDC"), and the California Environmental Quality Act ("CEQA").

The Planning Commission lacked substantial evidence to support required findings for approval including that the property is in compliance with all laws when it plainly has undergone substantial illegal expansion, that the Project is consistent with the Comprehensive Plan despite clear inconsistencies, and that there is adequate water to serve the Project when the Applicant's shallow wells are within the Santa Ynez River alluvial riparian basin from which diversion for cannabis during summer months is prohibited by the State Water Resources Control Board ("SWRCB").

The Planning Commission was not informed that the Project has illegally operated large diesel generators on the site as primary power for nearly a year, possibly longer, and that the Project is designed to be operated in conjunction with processing facilities at 8701 Santa Rosa Road that rely on an extensive network of illegal diesel generators to process product from 5645 Santa Rosa Road. Enforcement proceedings have apparently been initiated against the Project Operators by the Santa Barbara County Air Pollution Control District ("APCD"). These illegal acts have caused significant emissions of ozone precursors, likely contributing to the region's nonattainment status and/or exposing residents of Buellton and the unincorporated County to unhealthy air pollution. There is no indication that approval of the project will affect the Project's eligibility for grid service or any upgrades. The unpermitted expansion of the cultivation predated the installation and use of the illegally operated Project generators.

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. The PEIR and CEQA Checklist moreover do not address the Project's impacts to water resources. Due to these and other deficiencies, substantial evidence does not support the required finding 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).)

1. Inadequate Evidence in the Record to Support Approval Findings

The County can only lawfully approve the Project if substantial evidence in the record supports the necessary approval findings. Findings that apply to this Project's Land Use Permit (LUP) include that the property is in compliance with all laws, that the Project is consistent with the Comprehensive Plan and Development Code, and that adequate public services are available to serve the project, and among other findings. (See LUDC §§ 35.82.110.E.1 (LUP Findings), 35.30.100 (Infrastructure, Services, Utilities and Related Facilities).) Additionally, the Board must make specific CEQA findings, which also must be supported by substantial evidence in the record (Pub. Res. Code § 21081, CEQA Guidelines §§ 15162, 15168).

The record before the Planning Commission is vague and incomplete with respect to a number of key issues, including the adequacy of water and road access, and whether the Project 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 Appeal should be granted and the Project should be denied.

a. Illegal Expansion of Nonconforming Cannabis Operation

To approve the Project's LUP the County must find "[t]he *subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement fees and processing fees have been paid.*" (LUDC §§ 35.82.110.E.1.c.) The Applicant has exceeded its legal nonconforming status and the Project site is not in compliance with all laws, regulations, and rules pertaining to uses and no zoning violation enforcement or processing fees have been paid. Thus, this finding cannot be made.

The record and associated evidence demonstrate that this site was not used for cultivation of recreational cannabis in 2016, and indeed, much of the site was not used for cannabis at all. The applicant illegally expanded its nonconforming use well-beyond what was

existing in January 2016. The enclosed aerial photos clearly depict the systematic expansion of cultivation activities on the parcel between December 28, 2015 and October 2019.

Section 35.101.010.B of the LUDC establishes that the County's intent concerning nonconforming uses is to "Prevent nonconforming uses and structures from being enlarged, expanded, or extended."

Section 35.101.020.B prohibits any expansion of a nonconforming use of land: "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 the use became nonconforming, or moved to any portion of the lot not currently occupied by the nonconforming use." Moreover, "[a] use lawfully existing without the approval of a discretionary permit that would be required by this Development Code, shall be deemed conforming only to the extent that it previously existed (e.g., maintain the same site area boundaries, hours of operation)." (LUDC § 35.101.080.A.)

Art. X moreover specifically addresses nonconforming cannabis operations. "Legal Nonconforming Uses Exemption. Medical marijuana cultivation locations already existing on January 19, 2016, if they are legal under California state law; these are legal nonconforming uses." § 35-1003.B. "[O]perators of nonconforming medical marijuana cultivation locations that have submitted a complete application to the Santa Barbara County Planning and Development Department to permit their nonconforming cultivation site by the termination date [7/6/2019] listed above **may continue to operate their same existing nonconforming medical marijuana cultivation site** while their permit application is being processed, **so long as the operator continues to manage the cultivation location in compliance with the requirements of article X**, state law, and the applicable provision of [the LUDC]."

The only safe harbor for an existing, non-permitted cultivator is the "same existing . . . cultivation site" so long as the site is "managed" in compliance with Art X and the LUDC. LUDC § 35.101.020.B sanctions nonconforming uses conforming only to the extent that it previously existed (e.g., maintaining the same site area boundaries, hours of operation) and prohibits expanding structures and uses. Expanding beyond "the same existing" cultivation site is disallowed. The photographic evidence clearly establishes the operators expanded beyond the scope of the "same existing" operations present in January 2016. The applicant's financial submittals include 2016 receipts from a cultivation site in Fresno that have no bearing on the claimed operations in Santa Barbara County. There is no legal basis for the County to ignore the clear and convincing evidence that this operator has substantially expanded the scale, size and footprint of any medical cannabis operation in existence on January 19, 2016. The Applicant's "Raw Garden" products are openly offered for sale in local recreational markets and at adult recreational use dispensaries throughout Lompoc.

Additionally, the Commission's Findings ignore LUDC requirements for assessing fees and penalties for permits seeking to validate unpermitted uses. This approach incentivizes bad actors to unlawfully expand their operations, then procure land use entitlements for the expanded use without repercussion. This practice is inconsistent with how other zoning

violations and expansions of legal nonconforming uses are treated by the County, the intent of the Cannabis Ordinance, and State law.

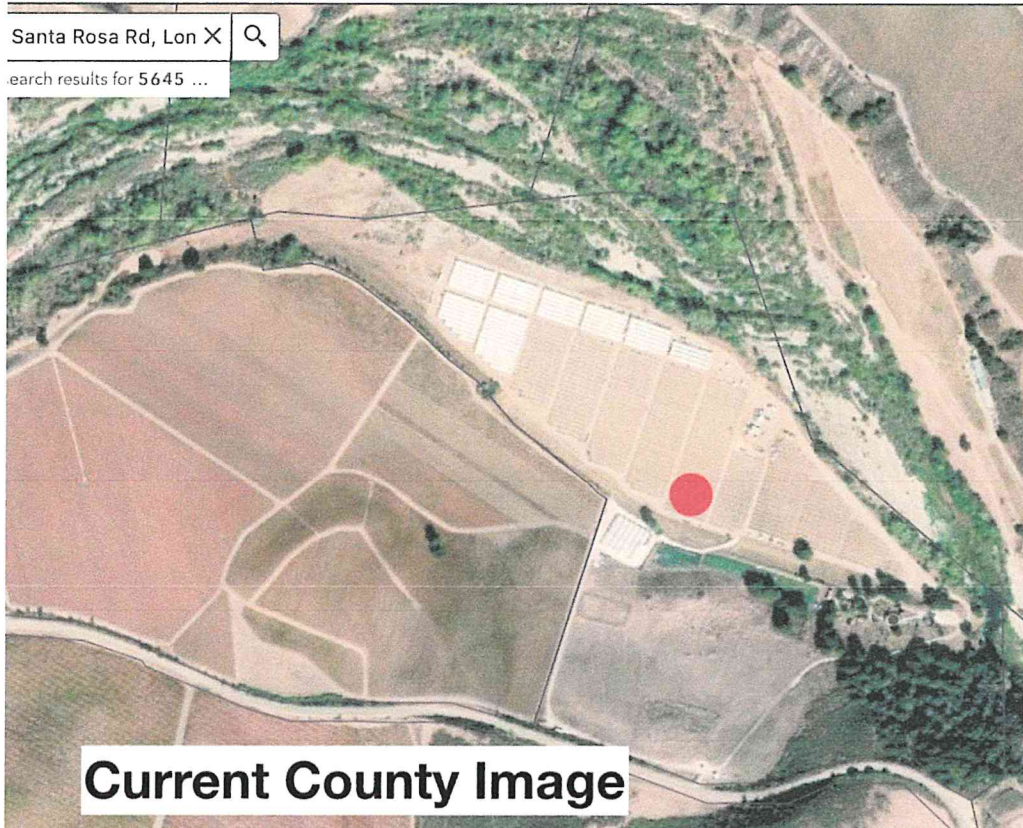
LUDC § 35.108.070.D requires the assessment of administrative fees to recover the County's costs for the enforcement action. § 35.108.080 mandates the imposition of a processing fee penalty for "Any person who shall alter, construct, enlarge, erect, maintain, or move any structure, or institute a use for which a permit is required by this Development Code without first having obtained the permit, shall, if subsequently granted a permit for that structure or use, or any related structure or use on the property, first pay an additional penalty permit processing fee for after the fact authorization of development, in compliance with the Board's current Fee Resolution." The Applicant's 2016 medical cannabis cultivation operation, if it even existed, has expanded grossly and the instant permit triggers the need to impose the LUDC's sanctions for after-the-fact permitting. The failure to do so is arbitrary and capricious.

The gravity of this expansion is multiplied as this led to the operation of a series of illegal and unpermitted diesel generators on this site and at the associated site at 8701 Santa Rosa Road, where product from this site was transported and processed. Operating large unpermitted generators for electrical generation purposes is a serious violation of local ordinance, state and federal law, entailing civil and potentially criminal charges, depending in part on whether the acts and emissions were knowing violations. The installation of the generators and the electrical infrastructure for whatever these generators powered occurred without permits required under the Land Use and Development Code. As such, the sanctions for after-the-fact permitting apply.

Comparing the aerial photos of this site in December 2015, three weeks before Article X's January 19, 2016 Lock-in date, and the current status of the operation, shows the Applicant has expanded its cannabis operation substantially AFTER January 19, 2016, in violation of LUDC Section 35.101.020.B.



Planning & Development Interactive Map for... [Click here to review the Adop](#)



b. Failure to Demonstrate Adequate Water Supply

The Project cannot be approved without a finding, based on substantial evidence in the record, that “adequate public or private services and resources (e.g., water, sewer, roads) are available to serve the proposed development.” (LUP Finding 2.1.1; LUDC § 35.30.100.A) “Lack of available public or private services or resources shall be grounds for denial of a project”. (LUDC § 35.30.100.B.)

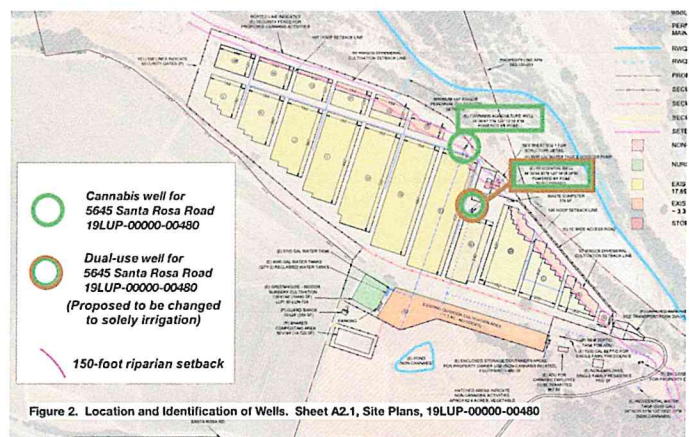
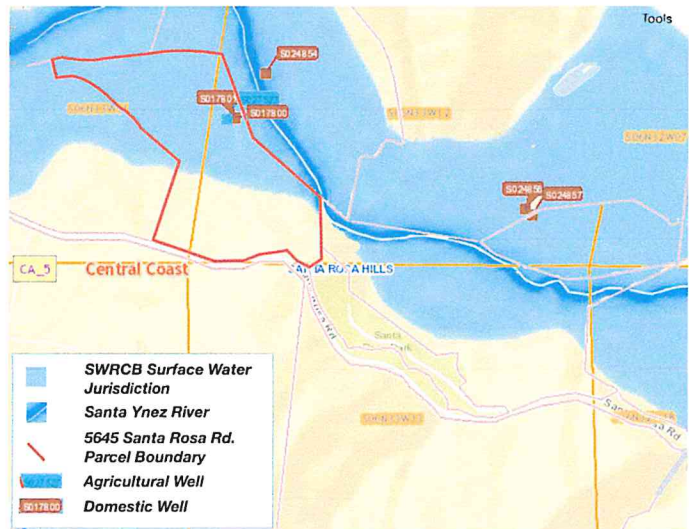
Project Location and SWRCB Jurisdiction

The Project’s cannabis cultivation acreage and the wells it draws from is located within easternmost portion of the Santa Ynez Water Conservation District GSA’s Western Management Area, within the identified Santa Ynez Alluvial basin and within the jurisdiction of the SWRCB for the water it contains, as noted in Figure 1. Indeed, the Project’s wells are located approximately 200 feet from the visible surface flow of the Santa Ynez River (Fig 2).

A review of the site plans and other documents for 19LUP-00000-00480 noted that the applicant has proposed to use the existing agricultural well on the property for irrigating cannabis (Figure 2), recorded as a riparian claim under an Initial Application and Statement of Diversion and Use by Chris Cadwell and John De Friel on March 31, 2017¹. The Initial Application and Statement as well as the Supplemental Statement of 2018² states that the agricultural well is being used for cannabis irrigation.

A review of the Santa Barbara County Planning Commission's document portal revealed that the applicant has revised the project to include the conversion of the existing domestic well to agricultural use^{3,4}. A review of the SWRCB documents associated with the wells' records revealed both an agricultural well and a domestic well with the same coordinates. This dual-use well is proposed to become solely agricultural irrigation⁵.

The proposed switch to agricultural use in the context of State Water Resources Control Board commercial cannabis policies also represents *significantly changed circumstances* from the time of the Project's approval as it relates to the SWRCB's Cannabis Cultivation Policy and availability of riparian water for commercial cannabis.



Water Rights and Riparian Claims

Riparian waters, whether flowing above or below ground, are classified as surface waters. For domestic wells or *non-cannabis* agriculture such as pasture, hay, vegetables or tree crops to

¹ SWRCB completed application S027527, Initial Statement of Water Diversion and Use, October 31, 2017

² SWRCB completed Supplemental Statement of Water Diversion and Use, June 28, 2018

³ County Staff Report dated May 4, 2021. 5.1 Site Information, p. 4

⁴ CEQA Checklist for 19LUP-00000-00480. 6. Project Description, p. 2

⁵ CEQA Checklist for 19LUP-00000-00480. 6. Project Description, p. 2

establish a right to use surface riparian water, a Statement of Diversion and Use is filed by the applicant with the SWRCB's Department of Water Rights claiming the right^{6,7}. The SWRCB does not investigate these riparian claims, nor issue a permit nor grant a right, merely records the claim of the applicant and location of the well⁸. The applicant then has a responsibility to report certain data metrics surrounding the use of the water, but essentially there is no limit to the amount that can be used for *non-cannabis* crops^{9,10}.

Riparian water claims do not run with the land. They are attached instead to the individual person, the water diverter^{11,12}. In the case of 5645 Santa Rosa Rd., the claims to surface water through their Statement of Diversion and Use are attached to Chris Cadwell, as the property owner and John De Friel, as tenant and water diverter¹³. These wells on this parcel have been associated with a series of riparian claims dating back decades and have historically utilized the subflow surface waters of the Santa Ynez River.

For surface water used for the purpose of cultivating commercial cannabis, the SWRCB has established strict policies regulating its diversion and use. On October 17, 2017, the SWRCB adopted the *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation*, along with the *Cannabis Cultivation General Order*, each document establishing rules and regulations regarding water issues and waste discharge issues, respectively. On February 5, 2019, the SWRCB adopted proposed updates to both of these documents¹⁴.

⁶ SWRCB Staff, San Luis Obispo Office, (805) 594-6194. Personal communication, April 29, 2021

⁷ Dr. Norman N. Brown, Ph.D, Water Resource Consultant, Santa Barbara, CA, (805) 722-0900. Personal Communication, May 4, 2021

⁸ SWRCB Staff, San Luis Obispo Office, (805) 594-6194. Personal communication, April 29, 2021

⁹ Ibid.

¹⁰ Dr. Norman N. Brown, Ph.D, Water Resource Consultant, Santa Barbara, CA, (805) 722-0900. Personal Communication, May 4, 2021

¹¹ Ibid.

¹² SWRCB Staff, San Luis Obispo Office, (805) 594-6194. Personal communication, April 29, 2021

¹³ SWRCB completed application S027527, Initial Statement of Water Diversion and Use, October 31, 2017

¹⁴ https://www.waterboards.ca.gov/water_issues/programs/cannabis/cannabis_water_quality.html

State Water Resources Control Board Cannabis Policy

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 viability throughout the dry season, including adequate dissolved oxygen concentrations, low stream temperatures, and high rates of invertebrate drift from riffles to pools¹⁵.”

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 website¹⁶ summarizes these regulations as follows:

“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.](#)¹⁷

- 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).

¹⁵ California State Water Resources Control Board Cannabis Cultivation Policy, Principles and Guidelines for Cannabis Cultivation. February 5, 2019, p. 11

¹⁶

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

¹⁷

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

- **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 5645 Santa Rosa Road’s parcel using SWRCB’s GIS mapping tool¹⁸ notes that water diversion is not authorized for the date of May 6, 2021. This both identifies the agricultural well on this parcel as within the jurisdiction of the SWRCB, and also means no use of riparian water from the agricultural well located at 5645 Santa Rosa Road is allowed for cannabis on that particular day based on the disparity between the Previous Day’s Average Flow and the Minimum Instream Flow Requirement as noted in Figure 3.



Figure 3. SWRCB Cannabis Compliance Daily Water Allowance for 5645 Santa Rosa Rd.

¹⁸ 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 water is 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 Chris Cadwell and John De Friel of Central Coast Agriculture, LLC in 2017¹⁹ and the Supplemental Statement of 2018²⁰ state that no riparian irrigation water is being stored.

A review of the recent documents and plans associated with 19LUP-00000-00480 revealed that the Project is proposing to rely on five 5,000 gallon storage tanks for cannabis cultivation. This supply would be entirely inadequate to supply water to 24.45 acres of cannabis plants during the 7-month forbearance period when no water is allowed to be diverted from the riparian basin.

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

The wells on this parcel have historically been associated with the utilization of the subterranean surface waters of the Santa Ynez River and their use duly recorded by the SWRCB for domestic use and the irrigation of non-cannabis agricultural crops.

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 5645 Santa Rosa Road²¹, effectively canceling their riparian claim. On March 24, 2021, Lindsay Cokeley, Compliance Manager for Central Coast Agriculture, LLC, emailed the SWRCB and stated that they would be deactivating their Statement, as "*the point of diversion is not located within a delineated subterranean stream per the Instream Flows Policy Development*" along with a reference (Figure 4). However, the SWRCB link referenced with this statement by CCA concerns a 2008 Technical Memorandum for SWRCB to update and re-map surface waters of coastal

¹⁹ SWRCB completed application S027527, Initial Statement of Water Diversion and Use, October 31, 2017

²⁰ SWRCB completed Supplemental Statement of Water Diversion and Use for S02757, June 28, 2018

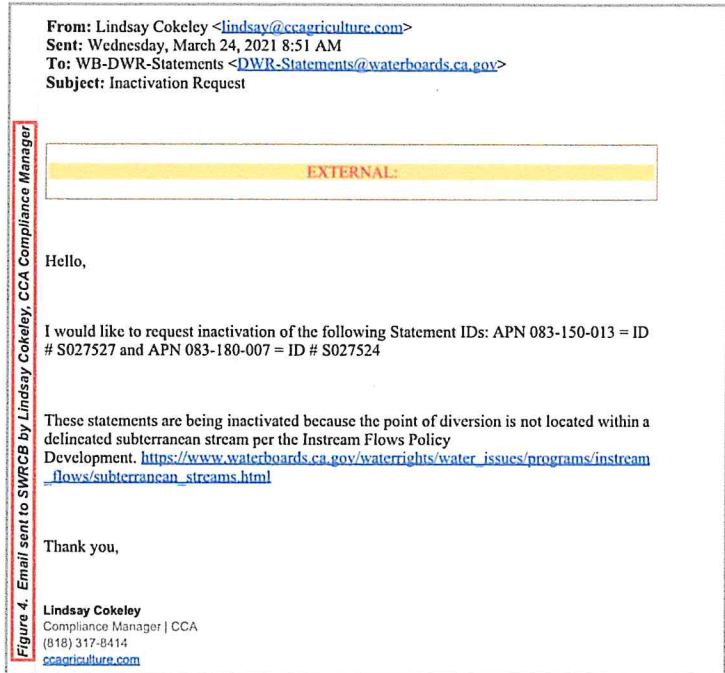
²¹ SWRCB Staff, San Luis Obispo Office, (805) 594-6194. Personal communication, April 29, 2021

Northern California²², and is not intended to describe the totality of surface water rights and responsibilities within the State of California. Conversation with SWRCB staff determined that the SWRCB's concerns regarding cannabis and instream impacts were focused on Northern California first²³ and would work down the State, as evidenced by the recent Technical Memoranda developed for the Santa Ynez River.

The Santa Barbara County Planning Commission's most recent update to the document portal²⁴ for 19LUP-00000-00480 was accessed on May 6, 2021. The site plans, Staff

Report, and the biological resources report were reviewed and discovered all documents indicate this agricultural well is proposed as a source of water for the Project's cannabis cultivation. The second well, noted in the SWRCB documents to be dual-use for domestic and agricultural production and currently proposed for conversion to cannabis irrigation supply, is not discussed by the Staff Report as being subject to any additional authority or regulation for its use in cultivating commercial cannabis.

As the location of the Project's wells 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.



²² Stetson Engineers, Inc. Final Technical Memorandum, February 28, 2008. Approach to Delineate Subterranean Streams and Determine Potential Streamflow Depletion Areas. Policy for Maintaining Instream Flows in Northern California Coastal Streams. https://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/subterranean_streams.html

²³ SWRCB Staff, San Luis Obispo Office, (805) 594-6194. Personal communication, April 29, 2021

²⁴

<https://cosantabarbara.app.box.com/s/q97rv82305oyfnbdjhcyxrrdhu3dgkqy/folder/13680363794>

This conclusion is supported by the draft Western Management Area Hydrologic Conceptual Model prepared by consultants to the Santa Ynez Valley Water Conservation District.²⁵ In describing the Santa Ynez River alluvium, which the applicants have claimed supply their project's water, the Water District's consultants, Stetson Engineers, state: "*The water flowing through the alluvium, in a known and defined channel, is considered surface water by the California State Water Resources Control Board and is not subject to the SGMA.*"

The result of the cancellation of the S027527 Statement of Diversion and Use is the cancellation of riparian rights and the use of all water from this well. The SWRCB's Electronic Water Rights Information Management System (eWRIMS) database notes that the well associated with S027527 is 'Inactive (3/24/21)²⁶.'

For these reasons, the Applicant has not demonstrated an adequate water supply to serve the Project, which requires denial of the Project (LUDC § 35.30.100.B).

c. The Project Fails to Comply with the Comprehensive Plan

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

Discussed above, there 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.

²⁵ <https://www.santaynezwater.org/western-gsa>

²⁶ https://ciwqs.waterboards.ca.gov/ciwqs/ewrims/EWServlet?Page_From=EWWaterRightSearchResults.jsp&Redirect_Page=EWPublicAppSummary.jsp&Purpose=getEwrimsPublicSummary&wrWaterRightID=66101&applicationID=66249

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 water from the Santa Ynez Alluvial basin, which is currently in overdraft²⁷, 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.

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

²⁷ 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.

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 20 acres of cultivated cannabis, along with fencing, lighting, a new 2,500 sq. ft. staging structure, 384 sq. ft. security building, and two new 5,000-gallon water tanks, 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.

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.

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

2. 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).

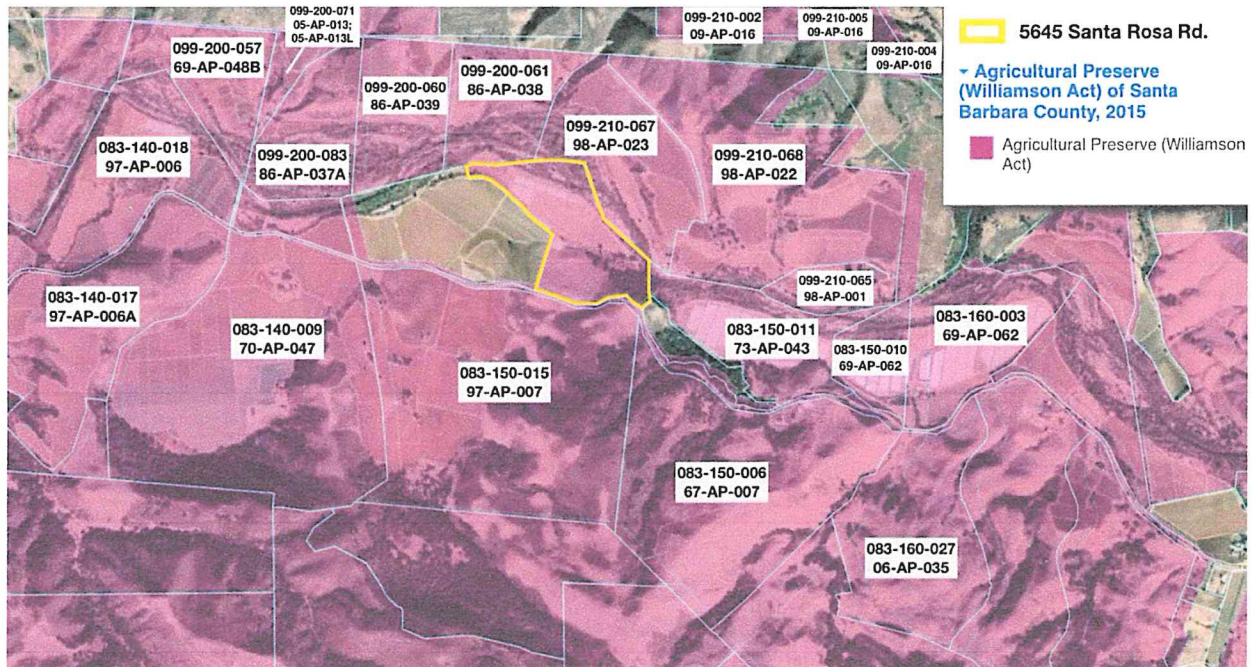
The Cannabis PEIR is “a Program EIR pursuant to Section 15168 of the State CEQA Guidelines, *which attempted to address the impacts of a countywide program with eligible land over hundreds of thousands of acres and potential effects on five major regions, eight cities, and 24 unincorporated communities.*” (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 to the Planning Commission²⁸, 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.

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

²⁸ SBCRC Appeal to Planning Commission, 2/18/21, Planning Commission Staff Report Attachment E, available at <https://cosantabarbara.app.box.com/s/q97rv82305oyfnbdjhecyrrdhu3dgkqy/folder/136803637945> and incorporated fully herein by reference.

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 operations²⁹. The County's failure to evaluate how individual cannabis permits impact adjacent agricultural operations is not only inconsistent with CEQA but also with the County's own thresholds and past practices.

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

²⁹ 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.*")

sometimes several miles away. Crop types that have been embroiled in conflicts have included broccoli, wine grapes, avocado orchards, and citrus orchards. Local businesses and community members that have been impacted by this conflict include farmers, harvesters, rural residents, shippers, custom machine operators, materials applicators, and farm labor contractors.

(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).)

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. Changed Circumstances Regarding Project Water Use

The PEIR requires the positive demonstration of water supply in accordance with State and local policies. Central Coast Agriculture’s cannabis cultivation operation at 5645 Santa Rosa Road has not fulfilled the entirety of its burden of demonstration of water supply in compliance with local and State regulations.

Additionally, the applicant’s actions regarding their riparian water rights claim have created *significantly changed circumstances* surrounding the water supply for the applicant’s cannabis cultivation on this parcel. These changes would necessitate major revisions to the Project to comply with State laws and regulations.

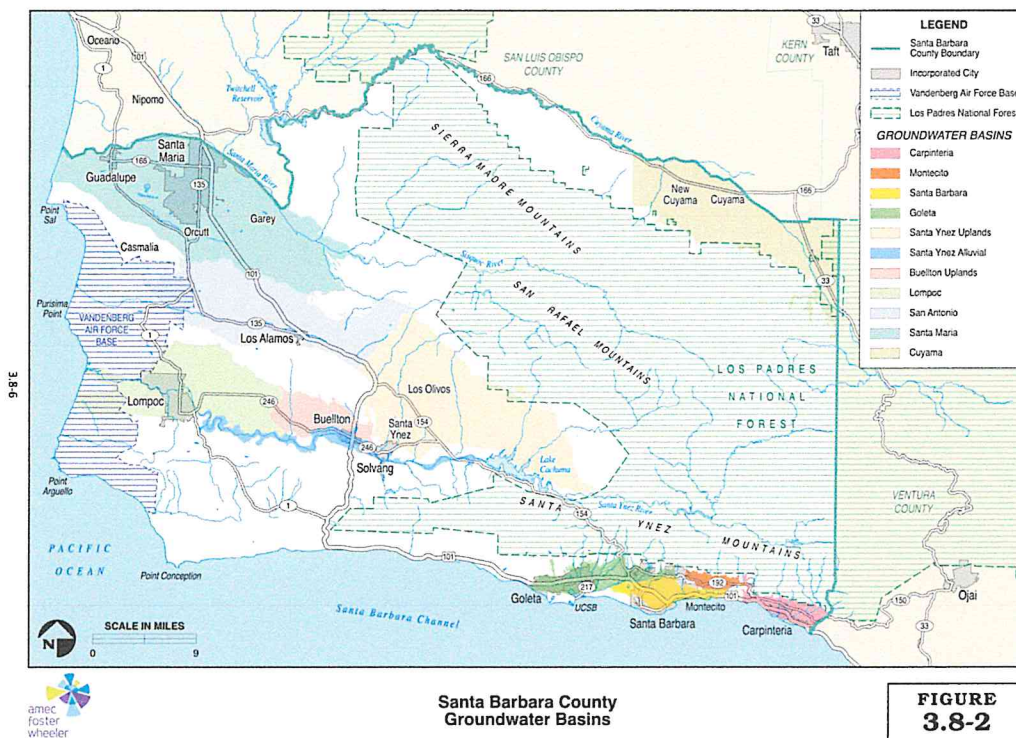
PEIR Mis-Identification of Water Resources and Implied Regulatory Obligations



5645 Santa Rosa Road is located in an area designated the Santa Ynez Alluvium, as identified by PEIR³⁰. 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 subterranean surface water and subject to California’s State Water Resources Control Board (SWRCB) and its regulations.

³⁰ Final Environmental Impact Report (EIR) for the Cannabis Land Use Ordinance and Licensing Program (PEIR), Section 3.8 Hydrology and Water Resources.

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 conflict with current SWRCB policies on cannabis and riparian water.



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 (above). Geologically, it consists of a relatively shallow, non-water bearing impermeable channel overlaid by alluvial deposits of sand and gravel³¹ described as “*thin, unconsolidated sedimentary layers of younger alluvium directly over non-water-bearing, consolidated geologic units. Non-water-bearing consolidated geologic units also form the lateral boundaries as exposed bedrock in this area.*”³² The non-water-bearing nature of the lateral geologic deposits creates a barrier to other groundwater basins, noted “*as such, there is no underlying aquifer in this reach upstream of Lompoc Narrows...and consequently no*

³¹ Young, Matt, Santa Barbara County Water Agency. Personal Communication, April 28, 2021.

³² Stetson Engineers, Inc., October 2020. Draft Hydrogeologic Conceptual Model (HCM) Technical Memorandum. Prepared for Western Management Area Groundwater Sustainability Agency. Section 1.3.1, Santa Ynez Alluvium, p. 6-7.

*interconnected surface water with groundwater*³³.” In essence, this unique geology functions independently of the upland groundwater basins, analogous to a concrete drainage channel passing through other geologic formations and basins³⁴. As such, it is not considered groundwater but surface water that happens to flow through porous alluvial infill³⁵. 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 Cachuma³⁶.

The subterranean flow of the Santa Ynez River is exclusively managed and regulated through the California State Water Resources Control Board³⁷. Stetson’s Draft Hydrogeologic Conceptual Model (HCM) Technical Memorandum of October 2020 states “*The Santa Ynez River is governed and regulated by the California State Water Resources Control Board as part of regional surface water rights. The water flowing through the alluvium, in a known and defined channel, is considered surface water by the California State Water Resources Control Board and is not subject to the SGMA.*”³⁸.

Further, Stetson’s Draft Western Management Area Groundwater Conditions Technical Memorandum of February 2021 states “*In the WMA upstream of the Lompoc Narrows, as discussed in the HCM, the Santa Ynez River Alluvium is considered part of the subflow of the river, which is regulated by the SWRCB. Because subflow is considered surface water, the Santa Ynez River Alluvial deposits upstream of the Lompoc Narrows would not be classified as a principal aquifer or managed by a GSP under SGMA.*”³⁹

For example, a portion of the well-publicized annual summer water releases from Bradbury Dam and Lake Cachuma is in response to the SWRCB’s policy of downstream alluvial

³³ Stetson Engineers, Inc., February 2021. Draft Western Management Groundwater Conditions (GCTM) Technical Memorandum. Prepared for Western Management Area Groundwater Sustainability Agency, Section 6.1.1, Santa Ynez River Alluvium Subarea, p. 33.

³⁴ Young, Matt, Santa Barbara County Water Agency. Personal Communication, April 28, 2021.

³⁵ Final Environmental Impact Report (EIR) for the Cannabis Land Use Ordinance and Licensing Program (PEIR), Section 3.8 Hydrology and Water Resources

³⁶ Ibid.

³⁷ Young, Matt, Santa Barbara County Water Agency. Personal Communication, April 28, 2021.

³⁸ Stetson Engineers, Inc., October 2020. Draft Hydrogeologic Conceptual Model (HCM) Technical Memorandum. Prepared for Western Management Area Groundwater Sustainability Agency. Section 1.3.1, Santa Ynez Alluvium, p. 6-7.

³⁹ Stetson Engineers, Inc., February 2021. Draft Western Management Groundwater Conditions (GCTM) Technical Memorandum. Prepared for Western Management Area Groundwater Sustainability Agency, Section 6.1.1, Santa Ynez River Alluvium Subarea, p. 33

basin recharge⁴⁰ as its recharge does not occur through proximity to or transfer from any of the upland basins⁴¹.

The designation of The Santa Ynez Alluvial basin as subterranean surface water places it outside the jurisdiction and regulatory framework of the various County agencies such as the Santa Barbara County Water Agency⁴², local Groundwater Sustainability Agencies of the Santa Ynez River Water Conservation District, and the Sustainable Groundwater Management Act (SGMA), and relies solely on the application of the policies and regulatory framework of the SWRCB.

The SWRCB uses the term ‘diversion’ when discussing utilization of designated surface waters to differentiate it from the ‘extraction’ of groundwater, irrespective of where this surface water is located.

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, the County Staff Report, and attendant documents are clearly inadequate in addressing the complexities surrounding water supply, diversion and use in the Santa Ynez Alluvial basin. The actual and intended practices of the applicant 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.

The County’s Staff Report for the 19LUP-00000-00480 dated May 4, 2021 states: *‘Water supply for the Proposed Project has been demonstrated to be adequate. County Environmental Health Services (EHS) reviewed the domestic water service for Proposed Project and found it consistent with all applicable environmental health requirements⁴³.’*

It should be noted that the statement above from County Environmental Health concerns the **domestic water supply**, not agricultural water. No mention is made of ‘water supply’ as related to volume, quantity, or legal right for cannabis cultivation. As of March 24, 2021, Central Coast Agriculture has no active riparian rights for cannabis irrigation and no legal right to the water diverted from the Santa Ynez Alluvial basin through the main agricultural well at 5645 Santa Rosa Road, formerly under SWRCB S027527.

⁴⁰ Young, Matt, Santa Barbara County Water Agency. Personal Communication, April 28, 2021.

⁴¹ Stetson Engineers, Inc., February 2021. Draft Western Management Groundwater Conditions (GCTM) Technical Memorandum. Prepared for Western Management Area Groundwater Sustainability Agency, Section 6.1.1, Santa Ynez River Alluvium Subarea, p. 33.

⁴² Young, Matt, Santa Barbara County Water Agency. Personal Communication, April 28, 2021.

⁴³ County Staff Report dated May 4, 2021. Appeal Issue 8, Staff Response p. 24

For the dual use agricultural/domestic well described under SWRCB S017801, proposed as agricultural irrigation, 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 or if the basin's water flow is determined to be below the pumping threshold as defined by the SWRCB Cannabis Cultivation Policy. Surface water diverted during the appropriate wet season to the Project's proposed five 5,000 gallon tanks is inadequate to supply 24.45 acres of cannabis in the hot, dry valley summers.

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 the Santa Ynez Alluvial basin.

The CEQA checklist for this Project concerns itself entirely with the SWRCB Cannabis Waste Discharge Policy, and does not consider the source of water or its jurisdiction of administration and regulation, and ignores the SWRCB's 2017 Cannabis Cultivation Policy and its 2019 update's strictures, rules, policies and regulations regarding the diversion and use of surface water and cannabis cultivation.



Changed Circumstances Mean LUP Revisions Are Necessary and the Appeal Should Be Upheld

A Land 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 of the year.* This lack of legal entitlement to the water needed to support the cannabis operation precludes the vesting of the LUP and its appeal should be upheld.

Central Coast Agriculture's cancellation of their Statement of Diversion and Use for their main agricultural well under S027527 *cancel their riparian water rights.* With no riparian rights for this well, water *can not* be diverted from the Santa Ynez Alluvial basin using this agricultural well. Their remaining well, now noted to be dual-use and proposed for cannabis irrigation under this LUP, *can not* be used for cannabis irrigation without submitting a new the Statement of Diversion and Use to include a Special Use addendum and become subject to the forbearance strictures of the SWRCB on the use of surface water for cannabis cultivation.

The applicant's false statement, unintentional or otherwise, to the SWRCB that the Project now relies 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.

The cancellation of the applicant's riparian claim represents a substantial change in the circumstances of the proposed Project, as does the proposed change of a dual-use well to irrigation. Additional review of these developments is necessary to properly evaluate the Project's compliance with local and State laws and regulations.

3. Conclusion

For reasons stated herein, we respectfully request that the Board uphold the appeal and deny the CCA LLC Cannabis Cultivation Project at 5645 Santa Rosa Road.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC



Marc Chytilo



COUNTY OF SANTA BARBARA

X2143846

COB

Department

Date 5/24/2021

Received from Law Office of Marc Chytilo

In Payment of Land-use Appeal; Central Coast Ag. LLC handling fee

Seven-hundred one &

and 06 Dollars \$ 701.06
100

Received original of the above numbered receipt

CREDIT CARD	
CASH	
CHECK	✓

N/A

SIGNATURE OF PAYOR

#1433

A. Ramirez

AUTHORIZED SIGNATURE

Law Office of Marc Chytilo
A Professional Corporation
Post Office Box 92233
Santa Barbara, CA 93190
805 682-0585

1433

90-4433/1222

DATE 5/24/21

PAY TO THE ORDER OF County of Santa Barbara \$ 701.06
Seven hundred and one and 06/100 DOLLARS

America Riviera Bank
1033 Anacapa Street
Santa Barbara, CA 93101

FOR CCA 5645 BOS Appeal

[Signature]

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