

March 13, 2020

Amy M. Steinfeld  
Attorney at Law  
805.882.1409 tel  
805.965.4333 fax  
asteinfeld@bhfs.com

**VIA EMAIL TO SBCOB@CO.SANTA-BARBARA.CA.US**

Santa Barbara County Board of Supervisors  
Attn: Clerk of the Board  
105 E. Anapamu Street  
Santa Barbara, CA 93101-2058

**SUBJECT: BUSY BEE'S ORGANICS' CANNABIS LUP (18LUP-00000-00496)  
APPEAL, 1180 W. Hwy 246, Buellton, CA; APN 099-240-072  
(Case No.: 19APL-00000-00030) AND RESPONSE TO APPEAL  
(Case No. 19APL-00000-00031)**

Dear Chair Hart and Honorable Board Members:

We submit this letter on behalf of husband and wife Sara Rotman and Nate Diaz, owners of Busy Bee's Organics farm (collectively, "Busy Bee"). This Project has the support of the County Planning Commission ("Commission"), the community and the City of Buellton, and serves as an exemplary model for all (sun-grown, pesticide free) outdoor cannabis farms.

On November 7, 2019, the Commission unanimously approved Busy Bee's application for a Land Use Permit ("LUP"), 18LUP-00000-00496, with thirty-five conditions. Through this appeal, Busy Bee does not challenge the Commission's approval of the LUP, and accepts the large majority of the conditions imposed on the project. By this appeal, we are requesting only four specific conditions be revised to provide clarity, or removed to avoid conflict or redundancy.

We also address the allegations in the appeal filed by Ms. Sharyne Merritt and the SB County Coalition for Responsible Cannabis. Merritt, the aggrieved, neighboring party in the initial Commission hearing, withdrew her Appeal to the Board of Supervisors ("Board") in February 2020. The SB County Coalition for Responsible Cannabis

(“Appellant”)<sup>1</sup> did not state how it is an “aggrieved party,” as required by the “Appeal to the Board Form.” Appellant also did not sign the appeal, filed on November 18, 2019. (See Attachment 9 to Staff Letter to the Board.)

Accordingly, we respectfully request that you grant Busy Bee’s appeal by revising or removing the four specified conditions of approval as addressed below and uphold the remaining conditions and the Commission’s decision to approve the LUP, and deny the Appellant’s appeal.

## **I. SUMMARY**

To reiterate, Busy Bee accepts the large majority of the thirty-five conditions imposed on the LUP for Busy Bee’s cannabis farm (the “Project”) by the Commission, including the new buffer requirement which is not required by the Cannabis Ordinance. Busy Bee is only appealing the following four conditions adopted by the Commission as part of its approval of Busy Bee’s LUP:

- 1) **Condition 25. Director Review.** – Requiring the Director to review the Project two years after issuance of the LUP to “assess the effectiveness of the project conditions that address odor control and potential pesticide related conflicts with adjacent agricultural operations,” and report back to the Commission on any required modifications to the conditions of approval.
- 2) **Condition 3. Reduction in Hoop Structures.** – Requiring Busy Bee to reduce its hoop houses to five acres, and requiring hoop houses along the eastern and western edges of the Project’s cannabis cultivation.
- 3) **Condition 4. Reduction in Planted Cannabis Area.** – Reducing the total area of planted cannabis from 22 to 18 acres.
- 4) **Condition 15. Odor Abatement Plan.** – Adding infeasible, uneconomical, ambiguous, and internally inconsistent requirements to Busy Bee’s “Zoning Approved” Odor Abatement Plan.

These four conditions conflict with other Santa Barbara County (“County”) and State requirements on cannabis operations, impair agricultural productivity on Busy Bee’s site, and will severely limit, or worse, decimate the economic viability of Busy Bee’s cannabis farm. If similar conditions are imposed on other projects, the County will no longer be a workable option for other cannabis farms—this cannot be what this Board intended when it adopted the ordinance to regulate commercial cannabis operations. Busy Bee requests

---

<sup>1</sup> Although Busy Bee appeals four of the conditions imposed by the Commission, for simplicity, we will refer to the SB County Coalition for Responsible Cannabis as the “Appellant” where appropriate.

that the Board remove Condition 25, and remove or revise Conditions 3, 4 and 15 to ensure agricultural viability on Busy Bee's (AG Preserve contracted) property and achievable compliance with the conditions.

Turning to Appellant's appeal, the majority of Appellant's concerns are so general and not project-specific that they appear verbatim in the appeal of Santa Rita Valley Ag., Inc.'s cannabis cultivation LUP filed by Blair Pence and the Pence Winery. It is noteworthy that the Chief Executive Officer of the Coalition for Responsible Cannabis is Blair Pence. Nearly all of the issues Appellant raises involve the County's Cannabis Ordinance and the related environmental review, and cannabis cultivation in the County generally. Appellant had every opportunity to comment on the Ordinance and the sufficiency of the Programmatic Environmental Impact Report ("PEIR") when the Board adopted the ordinance to regulate commercial cannabis. It is now too late to challenge the PEIR or Ordinance.

To the extent Appellant raises Project-specific concerns or issues related to the Commission's specific approval of the LUP relevant here, each of Appellant's is without merit. The Project conforms to the County's Land Use & Development Code ("LUDC"), applicable provisions of the Santa Ynez Valley Community Plan, and complies with all state and local laws, regulations, ordinances and rules. Moreover, the Project complies with the California Environmental Quality Act ("CEQA"), and Appellant has failed to demonstrate that additional environmental review is required. Lastly, nowhere in its appeal does Appellant even acknowledge that the County imposed thirty-five Revised Conditions of Approval on the LUP—including conditions that directly address its stated concerns.

Busy Bee's Project not only meets, but exceeds standards. The applicant has expended a significant amount of time, energy and resources ensuring that its Project is well-designed, safe, and secure for its employees, neighbors, the community, and the surrounding environment. Over the past five years, Busy Bee remediated acres of heavily degraded and polluted soil, planted over 4000 trees along the property lines, installed a state-of-the-art irrigation system, obtained over 85 letters of support, retained three independent odor experts to study odor and air quality, co-founded a community group, built bridges with women-led businesses, brought the wine and cannabis industries together for a productive discussion, and developed a model agreement with its neighboring farmer to avoid pesticide overspray.


Busy Bee is an independent, family-run operation. Nate and Sara reside on the property and conduct a quiet, low odor cannabis operation, which has had no noise, odor or other complaints during the entire time that cannabis has grown on the Property. The Project is also not adjacent to any other existing or proposed cannabis project. Lastly, Sara and Nate have been featured both locally and nationally in the press and media for their unique journey and passionate commitment to excellence. They have not only opened

their home farm to the community but also their hearts to help those less fortunate who live and work in the greater Lompoc Valley.

As such, we respectfully request that the Board support the Commission's approval of the subject LUP and deny Appellant's appeal.

For your consideration and for ease of reading, we have divided our detailed responses and additional information into three attachments: (1) Project Background is addressed in Attachment A; (2) Busy Bee's appeal is addressed Attachment B; and (3) our response to Appellant's appeal is addressed in Attachment C.

Sincerely,



Amy M. Steinfeld

# **ATTACHMENT A**

## **Project Background and Procedural History**

### **I. PROJECT HISTORY AND INFORMATION ABOUT THE APPLICANT**

Busy Bee’s cannabis farm (“Project”) is located on a 63-acre parcel,<sup>2</sup> designated AG-II, in the inland area of Santa Barbara County. The Project is located on a flat, historically cultivated parcel in the Agricultural Preserve Program, approximately 0.54 miles from the proposed nearest proposed cannabis farm (not yet issued a LUP) and approximately one mile away from the city limits of the City of Buellton. The City Manager of the City of Buellton voiced his support for the Project’s voluntary Odor Abatement Plan at the Commission hearing, and has written a letter of no objection for the Board.

In 2014, Ms. Sara Rotman and her husband, Nate Diaz, purchased and moved onto the Project site (“Property”). The Property is their “forever” home where they plan to live for the rest of their lives.

For decades, the Property has been farmed with row crops. After purchasing the Property, Sara and Nate learned that the soil was heavily loaded with chemical pesticides and fertilizers from the many decades of conventional farming. Along with creating a medical cannabis collective, Sara and Nate spent the next several years working the entire farm—improving and augmenting the soil with organic materials, including purchasing approximately 1,100 chickens and goats to graze the soil in preparation for planting cannabis. As commonly found on older farms, the soils on the Property were depleted, making them less productive than they have become under Sara’s and Nate’s management. Although not certified organic,<sup>3</sup> the Project complies with the strictest organic growing practices of any commercially grown crop in the world.<sup>4</sup>

The Project proposes to plant cannabis on about 1/3 of the Property—not border to border—a 22-acre licensed cultivation site on the 63-acre parcel. Twenty-two (22) acres of irrigated crop cultivation constitutes the minimum amount of cultivated acreage required to qualify for a prime Williamson Act contract under the County’s Agricultural Preserve Uniform Rules. (See Attachment 14 to Staff Letter to the Board.)

---

<sup>2</sup> One parcel is 62.45 acres, and the smaller parcel (-010) is 0.51 acres for a total of 62.96 acres.

<sup>3</sup> Because cannabis remains illegal at the federal level, it cannot be federally certified as organic.

<sup>4</sup> See 7 CFR § 205.202 (specifying that, in addition to compliance with other strict management practices (see 7 CFR §§ 205.203–205.206), the land used to grow organic crops may not have any prohibited substance applied to it for a period of at least 3 years immediately preceding harvest of the crop).

## **A. The Founding of Busy Bee's Organics**

Sara and her husband Nate, a product of multiple generations of Carpinteria-based avocado farmers, have grown medical marijuana on their Buellton-area ranch since 2015. Sara began cultivating cannabis for medicinal purposes after being diagnosed with Crohn's disease, an inflammatory bowel disease for which there is no cure. Standard pharmaceuticals either don't work for Sara or cause significant side effects that affect her ability to function normally. Not only is Crohn's disease painful and debilitating when it flares up, it is extremely disruptive to a normal, productive lifestyle. Following her diagnosis, Sara learned that cannabis-derived cannabidiol (CBD) can provide effective relief of Crohn's symptoms. She was relieved to find CBD's effectiveness in controlling her Crohn's symptoms.

After having grown medical cannabis on the Project site for years, Sara applied for and obtained temporary licenses from the State for the commercial growing of cannabis in a timely manner (the deadline for obtaining a Temporary License was January 1, 2019). In November 2018, Sara filed her LUP application with the County. P&D approved the LUP on May 7, 2019.

Busy Bee has always practiced a good neighbor policy and has received over 85 letters of support from adjacent property owners to the east, west and north of the farm; local farmers; business owners; and residents of Buellton, including letters of support from the City of Buellton and the Mayor of Lompoc. Sara is engaged in several community organizations that advocate for positive community engagement with the cannabis industry, including serving as the secretary of the Lompoc Valley Cannabis Association, co-founding the North County Farmer's Guild and participating in the collective, Good Farmers Great Neighbors. Additionally, Sara has been doing extensive local outreach and development for women-led businesses as well as other agriculturalists. She is a passionate, public advocate for the concept of agritourism in North County. Sara has hosted several events to build bridges among the different stakeholders in the community to promote cross-pollination and to drive positive consumer awareness and traffic to each of the respective businesses.

## **B. Busy Bee's Farming Operations**

Cannabis cultivation for Sara and Nate is a small, independent, family-run operation that provides a unique opportunity to maintain economic viability on a small farm, providing well-paid jobs for area residents and long-term protection of productive agricultural lands. The Project opens the door for creativity and innovation in this new, fast-developing commercial crop. With Sara's background in business and marketing, and Nate's multi-generational family background in farming, their very different skill sets and expertise provide a sound basis for a successful operation. Nate is the hands-in-the-soil farmer; Sara is the business overseer and market innovator. They both take pride in operating

the business in a way that supports social equity and gender equality and provides a living wage for their employees.

Their years of medical cannabis cultivation gave Nate and Sara a great education in best management practices. They comply with the strictest organic growing practices of any commercially grown crop in the world and have designed their farming to operate in harmony with the environmentally sensitive habitat along the Santa Ynez River. The river runs through the southerly portion of their parcel and provides a lush and healthy riparian corridor on the Property—serving as their own nature preserve. They have no intention of disturbing the riparian vegetation and their cannabis grow is set back from the edge of the riparian canopy. In fact, the entire proposed grow site is on historically farmed land.

Sara and Nate take pride in their innovative, state-of-the-art water-efficient irrigation systems and the fact that their cannabis cultivation creates no runoff into the Santa Ynez River. The same cannot be said of other commercial crops irrigated on other properties in North County.

### **C. The Project**

To echo the sentiment of several Commissioners, Busy Bee is an exemplary project that complies with the stringent local and state requirements, and voluntarily exceeds these requirements in several cases. For example, Sara and Nate planted thousands of trees in anticipation of cultivating cannabis on their property and stand out for their natural landscape buffers. Additionally, Busy Bee provided a voluntary tiered Odor Abatement Plan, with contingencies extending well beyond the Odor Abatement Plan requirements outlined in the Santa Ynez Valley Community Plan. The project plans go into detail about the site security plan, noise plan, and transportation demand management plan, which comply with the Development Standards outlined the Cannabis Ordinance.

Busy Bee requested an LUP for the following:

- Cultivation: 22 acres of outdoor cannabis cultivation under 10 foot tall hoop structures, including 11,200 square feet of existing outdoor cultivation under 10 foot tall hoop structures;
- Greenhouse: 2,700 square feet of mixed-light and nursery cultivation within an existing greenhouse;
- Shade Structure: One new 1,080-square-foot shade structure to protect a new well pump and fertigation system;
- Buildings: Two new 3,000-square-foot buildings for processing; and

- Existing Buildings: One 240-square-foot agricultural storage building (not related to cannabis); two 320-square-foot connex storage buildings.

Busy Bee currently holds the following provisional licenses for the Project:

- 31 small outdoor cultivation licenses
- 1 medium outdoor cultivation license
- 1 processing license
- 1 nursery license

**D. Complete State Review and Approvals**

To obtain State cultivation and processing licenses, the Project underwent a lengthy application process that included approvals and site visits from the California Department of Food and Agriculture (“CDFA”), the State Water Resources Control Board (“SWRCB”), the Regional Water Quality Control Board (“RWQCB”), and the California Department of Fish & Wildlife (“CDFW”).

To obtain its State licenses, Busy Bee completed the following:

- (1) provided a compliant cultivation plan (property and premise diagrams), water-source documentation, pest-management plan, and waste-management plan to CDFA ;
- (2) enrolled in the Central Coast RWQCB Cannabis Cultivation General Order via submittal of a Site Management Plan and Nitrogen Management Plan, and enrolled in the annual Monitoring and Reporting Program;
- (3) obtained a written verification from CDFW that a Lake or Streambed Alteration agreement (LSA agreement) was not required for operation on the Property; and
- (4) obtained a Weights and Measures License from the CDFA Weights and Measures Division, to comply with METRC (the Marijuana Enforcement, Tracking, Reporting, and Compliance system).



Busy Bee was one of the first operators in Santa Barbara County to be fully compliant with the State’s METRC system, which uses a software program to track all plants leaving the Property.<sup>5</sup>

The Project is also fully compliant with the CDFA’s environmental protection measures for cannabis cultivation. The CDFA implements stringent requirements on legal cannabis cultivators, imposed by Proposition 64. CDFA’s licensing branch<sup>6</sup> has a team of field scientists who accompany special investigators on field inspections of licensed cultivation sites. The field scientists ensure that cultivators are following all environmental protection measures outlined in CDFA’s cannabis cultivation regulations.

## **II. PROCEDURAL BACKGROUND**

On May 7, 2019, the County Planning and Development Department (“P&D”) approved Busy Bee’s LUP and determined that Busy Bee’s project (Project) conforms to the County’s Land Use & Development Code (“LUDC”) Cannabis Regulations (LUDC 35.42.075), applicable provisions of the Comprehensive Plan including the Santa Ynez Valley Community Plan (“SYVCP”), and all applicable State and local laws, regulations, ordinances and rules pertaining to cannabis cultivation and related activities.

On May 8, 2019, Busy Bee submitted a revised project description, which included 22 acres of cultivation under hoop structures (i.e., the revised project altered the description from 22 acres of open field cannabis to 22 acres of outdoor cultivation under 12 foot tall hoop houses), two new 3,000-square-foot agricultural buildings for processing and one new 1,080-square-foot three-sided shade structure to be used as a protective cover for a new well pump and fertigation system. Staff reviewed the revised project description and found it to be consistent with the Santa Barbara County Comprehensive Plan, the SYVCP, and the LUDC, including Section 35.42.075 (“Cannabis Regulations”).

On May 16, 2019, Sharyne Merritt filed an appeal of P&D’s approval of the LUP. On October 30, 2019, the Commission held its first of two hearings on the appeal.

After over seven hours of staff and consultant presentations, argument, and public comment, Chair Parke stated that he believed that the Project could be approved with the following conditions: (1) decrease the area of hoop houses from 22 acres; (2) have the Project’s tiered mitigation approach as set forth in its Odor Abatement Plan required as a project condition; (3) reduce the amount of cannabis cultivated from 22 acres to 17 acres; and (4) condition the LUP with a two-to-three-year time duration.

---

<sup>5</sup> CalCannabis Cultivation Licensing, a division of the CDFA, is responsible for licensing cultivators of medicinal and adult-use (recreational) cannabis and implementing a track-and-trace system to record the movement of cannabis through the distribution chain.

<sup>6</sup> More information is available at: <https://www.cdfa.ca.gov/calcannabis/licensing.html>.

On November 7, 2019, the Commission held a second hearing on the appeal. After nearly three hours of additional staff presentations, argument, public comment, and deliberations, the Commission voted 5-0 to uphold P&D's approval of Busy Bee's LUP subject to thirty-five conditions of approval.

## **ATTACHMENT B**

### **Busy Bee's Appeal**

Busy Bee accepts the large majority of the conditions imposed on the Project by the County and Commission, but specifically addresses and appeals four specific conditions as adopted by the Commission as part of its approval of Busy Bee's application for an LUP. As addressed below, these four conditions should be revised or removed from the LUP's conditions of approval in their entirety.

#### **A. Condition 25. Director Review.**

The Commission imposed a two-year review period on the LUP. That condition states:

The Director shall review the Proposed Project two years after issuance of the Land Use Permit Case No. 18LUP-00000-00496. The purpose of this review is to assess the effectiveness of the project conditions that address odor control and potential pesticide related conflicts with adjacent agricultural operations. The Director may make modifications to the conditions as deemed necessary. The Director shall report back to the Planning Commission on the efficacy of these conditions and any required modifications to the conditions of approval.

1. A Two-Year Review Period of the LUP is Overly Burdensome on Busy Bee and on County Staff.

First, Busy Bee's owners have spent an enormous amount of resources on the Project and on this LUP. It has taken Busy Bee over one year to get to this point with no final decision on the LUP. If a two year time limit is imposed on the LUP, Busy Bee will be forced into a constant loop of applications, review, and appeals for the LUP alone.

As this Board and the Commission have acknowledged, the cannabis licensing and approval process has been a constantly moving target, and requiring Busy Bee, upon the Director's report, to return to the Commission in just than two years would provide Busy Bee no certainty in its business viability—such insecurity would not be workable for any practical business.

Second, such a condition would not be a good use of staff resources. County staff is already limited by the large number of cannabis-related LUP applications and appeals, and creating a cycle of renewable LUPs would multiply the time and resources required of staff. And most importantly, the County's Business License process is an annual process—if there are violations or problems with a project failing to meet its conditions, those issues will be addressed *each year* during the Business License review process. All cannabis projects must be re-approved by the following 6 departments: Planning & Development, Sheriff's Office, Environmental Health Services, Fire Department, Sustainability Division, and the Agricultural Commissioner. Many of these departments require site visits in order to obtain an approval. The Cannabis Business License is the

County's opportunity to weigh in on the project's condition adequacy and compliance with County policies.

Third, such a condition is unprecedented for ministerial LUPs. Imposing this burdensome condition on this project, and presumably all cannabis projects that are appealed, unfairly conditions only projects that have been appealed, and not all cannabis LUPS. In order to enforce such a condition on all LUPs, would require multiple public hearings, formal readings of the proposed amendment language, and support from the Commission and Board. No such process has occurred, and this condition should be removed.

2. A Term Limit on the LUP is Unnecessary Because Cannabis Business License Review Occurs Annually.

We understand that the objective of Condition 25 is to ensure the effectiveness of certain conditions of approval designed to minimize impacts to the community and conflicts with adjacent agricultural operations. However, there are already existing codified regulations contained in Chapter 50, Licensing of Cannabis Operations that meet this objective.

The code currently requires that an operator obtain a business license every year from the County. As part of the annual business license review, the operation is reviewed by P&D staff, EHS, Fire, County Sheriff, and the AG Commissioner's Office to ensure that it complies with Chapter 50, Chapter 35 (including the Cannabis Development Standards), and the project conditions, among other standards. Annual reporting and review are also required at the State level by the SWRCB and CDFA.

The renewal of a license can be denied pursuant to Santa Barbara County Code Section 50.20, Denial of renewal licenses, and Section 50-17, Grounds for denial of a business license. Sec. 50-17, Grounds for Denial of a License, includes the following criteria:

“(d) The applicant's operations, energy conservation, equipment, inventory control, quality control, security waste management or cultivation plans, or other information in the application are determined to be insufficient to maintain the health, safety and general welfare of employees or the public or fail to comply with state law or the County Code by staff from the agricultural commissioner, fire, planning and development, community services, public health or sheriff's departments.”

We believe that Chapter 50 is sufficiently broad to allow for the denial of a business license renewal if the County Executive Office's ("CEO") office, with other departments, determines that the standards imposed upon the operation are "insufficient to maintain the health, safety, and general welfare of employees or the public."<sup>7</sup>

---

<sup>7</sup> Staff agreed with this interpretation as represented in their November 5, 2019 staff memo to the Commission.

Furthermore, Sec. 50-26 Suspension or revocation of a cannabis business license allows the CEO's office to suspend or revoke a business license, based on substantial evidence, if the land use entitlement is suspended or revoked or if the operator is "engaging in conduct that constitutes a nuisance, where the licensee has failed to abate the nuisance." The CEO oversees business licensing and has broad authority to revoke or deny permits.

The business license renewal process was specifically designed to continuously monitor operations and to ensure that the operator conform to the project's required conditions and ordinance standards and that impacts to the surrounding community and uses are avoided or minimized. Each cannabis business license expires one year after its issuance date. A business license may be renewed only if "[t]he licensee has allowed any County staff necessary to determine compliance with [the Cannabis Business License Chapter], to conduct site inspections of the cannabis operation to verify licensee's compliance." Any application for a Business License renewal must provide authorization "for an onsite inspection of the premises during standard business hours."

Busy Bee's business license was deemed complete in late 2019 and it was added to the County's eligibility list in the unincorporated area . In order to obtain a Business License, the County Sheriff, Agricultural Commissioner, Fire Department, Planning & Development Department, and Environmental Health and Safety Department each must conduct a site visit of Busy Bee's farm to confirm that the Project complies with the LUP and the business license requirements.<sup>8</sup>

In sum, the business license process, coupled with the other conditions imposed on the LUP (addressed below), are more than adequate to demonstrate that this Project meets (and exceeds) all County Ordinance requirements and is operating in compliance with the conditions of the LUP now and on an annual basis. Accordingly, a two-year term limit or review period is completely unnecessary for the LUP, and we request that the condition be removed.

---

<sup>8</sup> As part of the Revised Conditions for Approval imposed on the LUP, Busy Bee is required to "obtain, and maintain in good status . . . a valid County business license, as required by the County Code Chapter 50." (See Attachment 2A to Staff Letter to the Board ("Revised Conditions of Approval"), Condition 6.) Because the business license process requires annual compliance with both state law and the County Code, it is worth noting here that Appellant's claim that "[t]he absence of a temporal limit on the cultivation entitlement has the potential to vest a right to continue operating as permitted despite revisions to the County's ordinances, changes in state law and chances in air pollution control and other mitigation technologies that are inevitable" is wholly without merit. If Busy Bee cannot demonstrate compliance with state and local law, it will be denied a business license from the County—which could in turn result in revocation of its LUP.

3. Condition 25 is Unnecessary as Other Mitigation and Monitoring Conditions are Equally, If Not More, Effective.

Though the Commission seemed to believe that Condition 25 was necessary to address (possible) unknown, future impacts to the community and conflicts with adjacent agricultural operations, other conditions imposed on the Project are more than adequate to address the Commission's concerns. Other conditions (general and Project-related) imposed on the LUP that indirectly or specifically relate to monitoring odor control and "potential pesticide related conflicts with adjacent agricultural operations" include:

- Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.<sup>9</sup>
- All plans (e.g., Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County.<sup>10</sup>
- A 100 ft. buffer, within which no planted cannabis may be located, shall be provided along the eastern and western property boundaries to minimize the potential conflicts with adjacent agricultural operations. Additionally, a 60 ft. buffer, within which no planted cannabis may be located, shall be provided along the northern right-of-way boundary. . . . The project plans shall be revised to be consistent with this condition prior to issuance of the Land Use Permit. . . . Prior to issuance of this Land Use Permit, the Applicant shall submit a revised site plan that conforms to this condition. Permit Compliance staff shall monitor the project site to ensure compliance with this revised site plan.<sup>11</sup>
- The Applicant shall implement the Fencing and Security Plan prior to the issuance of final building and/or grading inspection and/or throughout operation of the Project, as applicable. The Applicant shall maintain the Project site in compliance with the Fencing and Security Plan, throughout the life of the Project. . . . P&D compliance staff inspects the Project site to confirm that all components of the Fencing and Security Plan are installed and maintained pursuant to the requirements of this condition.<sup>12</sup>

---

<sup>9</sup> *Id.*, Condition 1.

<sup>10</sup> *Id.*, Condition 2.

<sup>11</sup> *Id.*, Condition 5 (emphasis added).

<sup>12</sup> *Id.*, Condition 7.

- The Landscape and Screening Plan must comply with the requirements of the Land Use and Development Code (§ 35.42.075.C.3). The Applicant shall file a performance security in an amount sufficient to ensure the installation and maintenance of the landscaping for two years, as determined by a landscape architect and approved by P&D compliance staff. . . . The Applicant shall submit one copy of the approved Landscaping and Screening Plan to P&D staff and deposit the performance security, prior to issuance of this permit. The Applicant shall install all components of the Landscaping and Screening Plan prior to issuance of final building and/or grading inspection and/or throughout operation of the project, as applicable. The Applicant shall maintain the landscaping and screening in compliance with the Landscape and Screening Plan, throughout the life of the Project. . . . P&D compliance staff inspects the Project site to confirm that all components of the Landscape and Screening Plan are installed and maintained pursuant to the requirements of this condition. P&D compliance staff releases said performance security upon a written statement from the Department that the landscaping, in accordance with approved Landscape Plan and Screening Plan has been installed and maintained for two years.<sup>13</sup>
- The Applicant shall submit two copies of the approved Lighting Plan to P&D compliance staff, prior to issuance of this permit. All components of the Lighting Plan must be installed prior to final inspection. The Applicant shall maintain the Project site in compliance with the Lighting Plan, throughout the life of the Project. . . . P&D compliance staff inspects the Project site to confirm that all components of the Lighting Plan are installed, maintained, and operated pursuant to the requirements of this condition.<sup>14</sup>
- The Applicant shall implement the Odor Abatement Plan prior to issuance of final building and/or grading inspection and/or throughout operation of the Project as applicable. The Applicant shall maintain the Project site in compliance with the Odor Abatement Plan, throughout the life of the Project. . . . P&D compliance staff inspects the Project site to confirm that all components of the Odor Abatement Plan are installed, operated, and maintained pursuant to the requirements of this condition. Upon implementation of the odor abatement plan and twice per year thereafter for one year, Permit Compliance staff will conduct an inspection of the odor abatement plan to assess its compliance with the Santa Ynez Valley Community Plan. As part of each inspection, the County will retain a certified industrial hygienist, at the Applicant's expense, to certify that the odor abatement plan meets the requirements of this condition and the Santa Ynez Valley Community Plan.<sup>15</sup>

---

<sup>13</sup> *Id.*, Condition 8.

<sup>14</sup> *Id.*, Condition 9.

<sup>15</sup> *Id.*, Condition 15 (emphasis added).

The Revised Conditions of Approval require that Busy Bee sign a separate agreement to pay for all compliance monitoring costs and remit a security deposit prior to issuance of the LUP.<sup>16</sup> According to the Revised Conditions of Approval, compliance monitoring costs will be invoiced monthly and may include costs for P&D to hire and manage outside consultants when deemed necessary by P&D staff (e.g. non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance.<sup>17</sup>

The Project has been issued provisional state licenses from the CDFA-CalCannabis branch, indicating that all necessary State permit requirements have been met. The Revised Conditions of Approval require Busy Bee to “obtain, and maintain in good status (1) a valid County business license, as required by the County Code Chapter 50, and (2) a valid State cannabis license, as required by the California Business and Professions Code, for the cannabis activities that are the subject” of the LUP.<sup>18</sup>

Accordingly, the Revised Conditions of Approval provide more than adequate monitoring of the Project, and the P&D compliance team will conduct frequent inspections of the Project site. In the event that Busy Bee violates any condition as part of the Project’s approval, the LUP may be revoked.<sup>19</sup>

**B. Condition 3. Reduction in Hoop Houses.**

The Commission imposed a condition requiring that Busy Bee reduce its hoop houses to five acres, covering the planted cannabis areas along the eastern and western edges of the Project’s cannabis cultivation. This condition was revised by the Commission at its last hearing on the Project. The final version of that condition states:

The total amount of hoop structures shall be reduced to 5 acres. Hoop structures shall cover the planted cannabis areas along the eastern and western edges of the cannabis cultivation. Additional hoop structures may be allowed within the interior planted cannabis areas so long as the total acreage of 5 hoop structures is not exceeded. The project plans shall be revised to be consistent with this condition prior to issuance of the Land Use Permit.

---

<sup>16</sup> *Id.*, Condition 33.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, Condition 6.

<sup>19</sup> *Id.*, Condition 33; see also LUDC §§ 35.82.110(H), 35.84.060(A).



We understand that the intent of the condition is two-fold: 1) to protect the eastern and western edges of cannabis cultivation from pesticide overspray that might drift to the site from neighboring spraying operations, and 2) to limit total area of hoops to 5-acres.

The problem with the condition, as adopted, is that the eastern and western edges of cannabis cultivation run an intermittent linear length of approximately 2,300 and 2,400 feet. Compliance with the condition, assuming the property's standard hoop length of 200-feet along the eastern and western edges of cannabis cultivation, would result in a total of approximately 9 to 10 acres of hoops, exceeding the condition's 5-acre limit. The two different components of the condition are not aligned, and therefore, render the condition infeasible.

In addition, the Commission imposed 100-foot buffers along the eastern and western property boundaries, within which no planted cannabis may be located.<sup>20</sup> Busy Bee has accepted this condition and will comply with the 100-foot buffers along the eastern and western property boundaries, intended to address the issue of compatibility with neighboring agricultural operations. Therefore, the requirement to also install hoop structures along the eastern and western edges of cannabis cultivation is redundant and is not aligned with Busy Bee's farming practices. In addition, hoop structures along the eastern and western edges of the middle field (Field "B") would be the most visible from HWY 246. Busy Bee's Organics has no intention of installing hoop structures on Field B.

During the hearing before the Commission, Busy Bee requested that the Commission allow hoops on the upper field and the lower fields identified as Fields "A", "D", and "E" in addition to the existing hoops in Area "F" (totaling 14-acres) because these areas are the most productive fields. More importantly, Busy Bee also requested that the Commission allow hoops on the upper field and the lower fields because these areas cannot be easily viewed from off-site as these fields are substantially screened from public views from HWY 246 by tall, dense landscaping and by the site's topography. Busy Bee has worked with the neighboring farming operations to address concerns and potential impacts of pesticide overspray, and does not believe that hoops along the entire eastern and western boundaries is necessary to address this concern.

Therefore, we request that the condition be revised to limit hoops to Fields A, D, E, and Area F with a maximum of 14-acres of hoop structures.

**C. Condition 4. Reduction in Planted Cannabis Area.**

The Commission imposed a condition requiring that Busy Bee reduce the total area of planted cannabis from 22 to 18 acres. That condition states:

---

<sup>20</sup> See Revised Conditions of Approval, Condition 5.

The total area of planted cannabis shall be reduced to 18 acres. The project plans shall be revised to be consistent with this condition prior to issuance of the Land Use Permit.

At its last hearing on the project, the Commission imposed this condition on the project. The problem with this reduction is that the County's Uniform Rules for Agricultural Preserves require that this property, which is contracted under the Agricultural Preserve Program and contains prime soils, must maintain 50 percent of the premises (minus area that is considered a sensitive resource or other constraint) in commercial agricultural production. This equates to 22 acres for the Busy Bee property, which is why the LUP was originally approved for 22 acres of cultivation.

Given that the primary commercial crop will be cannabis, it will be extremely challenging to commercially farm something other than cannabis at this property to make up the 4 - acre difference and remain in conformance with the County's Uniform Rules.

It should be noted that the County's Cannabis Business License requires detailed information regarding all agricultural employees associated with the cannabis operation, including FBI And DOJ Live Scans; we are not certain if this condition would raise conflicts or issues for the non-cannabis agricultural employees on the premises based on the Business License requirements.

Therefore, we request that the condition be revised to limit the total area of planted cannabis to 22 acres. This represents approximately 35% of the total property acreage.

**D. Condition 15. Odor Abatement Plan.**

In keeping with its good-neighbor policies, Busy Bee submitted an Odor Abatement Plan that goes above and beyond the requirements of the County Ordinance and the Santa Ynez Valley Community Plan. During its last hearing on the project, the Commission added the following condition to the applicant-offered Odor Abatement Plan:

The Applicant shall implement the Odor Abatement Plan stamped "Zoning Approved" (Attachment K to the Staff Report dated October 10, 2019). The Applicant shall follow the methods for reducing odors outlined in the Odor Abatement Plan, as follows:

1. The Applicant shall not dry cannabis onsite.
2. The Applicant shall harvest fresh plants and immediately flash freeze them in temporary freezers on wheels or to box and ship them as fresh cut flowers upon harvest.
3. All plant material shall either be vacuum-sealed and flash frozen or shipped offsite within two hours of harvest.

4. The Applicant shall not stagger harvest periods throughout the property.

5. The Applicant shall grow genetics that feature citrus, pine and floral flavor profiles, reducing the potential for the 'skunk' odor anecdotally associated with cannabis cultivation.

6. The only indoor cultivation onsite shall occur within the one existing greenhouse and is for plants in vegetative state only. These plants shall not be scheduled to mature to the flower stage and therefore shall not emit any odor.

These conditions, as presently written, could significantly impair agricultural operations in the future and are impractical for Busy Bee's operation. Therefore, we request the following changes be made to the above conditions:

Condition as Written	Proposed Revised Condition
1. The Applicant shall not dry cannabis onsite.	1. The Applicant may dry cannabis onsite if the drying operations occur indoors within a sealed building with appropriate filtering to prevent the escape of odors.

Although Busy Bee currently uses flash freezing for preservation, that technique could become infeasible or uneconomical (e.g., the freezer fails during harvest) and new technologies likely will be developed to expedite drying. The purpose of the condition is to control odor and drying indoors with discharge air being properly filtered meets that objective.

Conditions as Written	Proposed Revised Condition
<p>2. The Applicant shall harvest fresh plants and immediately flash freeze them in temporary freezers on wheels or to box and ship them as fresh cut flowers upon harvest.</p> <p>3. All plant material shall either be vacuum-sealed and flash frozen or shipped offsite within two hours of harvest.</p>	<p>2-3. The Applicant shall have a variety of options upon harvesting the crop, either (a) flash freezing them in temporary freezers; or (b) boxing and shipping them as fresh cut flowers upon harvest; or (c) placing in a sealed building with odor control for drying; or, (d) any combination of the foregoing methods. Regardless of the harvest method used, the crop shall be weighed within two hours of cutting in order to comply with State regulations.</p>

The conditions as adopted, because of their frequent use of the word “shall,” are internally conflicting. If an applicant “shall” flash freeze, that precludes fresh flower shipping or indoor drying, and vice versa. The proposed condition combines all potential harvest treatments and includes a two-hour requirement addressing odor concerns.

Further, the Commission requirement to complete shipping offsite within two hours of harvest is impractical. This temporal restriction likely arose out of the State requirements pertaining to weighing within two hours of harvest—a requirement that is actually feasible and mandatory.

Condition as Written	Proposed Revised Condition
4. The Applicant shall not stagger harvest periods throughout the property.	4. The Applicant shall conduct no more than three (3) harvests per year, each for an approximate 2-week period.

As written, the condition is ambiguous, and we do not understand what is meant by “stagger harvest periods throughout the property”. Does it mean that the harvest crews can’t move around the property as they harvest, working in different spots on different days and even different spots on the same day? The condition as proposed is clear, consistent with the approved Project Description (see Condition 1), and is enforceable.

**E. Conclusion**

Accordingly, Busy Bee requests that the Board uphold Busy Bee’s appeal. In doing so, Busy Bee requests that the Board adopt the required findings that the Project fully complies with all applicable County requirements and CEQA, determine that the previously certified PEIR constitutes adequate environmental review and no subsequent environmental review is required, and grant de novo approval of the Project subject to the proposed revised conditions of approval as set forth above.

## **ATTACHMENT C**

### **Response to Appellant's Appeal**

#### **A. Appellant Fails to Specifically Address the Project and the Commission's Conditions of Approval.**

Appellant's appeal appears to mostly raise general objections to cannabis cultivation in the County—Appellant argues that “the County’s permitting process failed to address the majority of the critical and mandatory issues that must be considered in approving this use”; “[t]he public has no opportunity to engage in permitting until permits are issued”; “the County’s review and approval process is not transparent”; and “[t]he mitigation plans are inadequate and both [sic?] fail to implement standards deemed necessary by the PEIR and ignore many site-specific and operation-specific issues.” (Attachment 9 to Staff Letter to the Board (“Appellant’s Appeal Letter”), at p. 2.) These concerns, however, are so general and not project-specific that they appear verbatim in the appeal of Santa Rita Valley Ag., Inc.’s cannabis cultivation LUP filed by Blair Pence and the Pence Winery.

For instance, Appellant laments that cannabis cultivation requires, among other things, strict restrictions on the size of grows; generous buffers and setbacks to avoid conflicts with surrounding uses agricultural operations; extensive landscaping; term limits on permit life to ensure regular review of facilities and permit compliance. (Appellant’s Appeal Letter, at pp. 1–2.) Nowhere in its appeal does Appellant even acknowledge that the Commission imposed thirty-five Revised Conditions of Approval on the LUP—including conditions that directly address these concerns.

Notably, Appellant had every opportunity to comment on the LUDC procedures when the Board adopted the ordinance to regulate commercial cannabis operations within the County's unincorporated area, including the regulations governing issuance of permits for cannabis cultivation. To the extent Appellant raises Project-specific concerns or issues related to the Commission’s specific approval of the LUP for the Busy Bee Project (and not generalized grievances regarding cannabis in the County), Busy Bee addresses those arguments below.<sup>21</sup>

#### **B. The Project Complies with CEQA.**

CEQA is California’s environmental review statute, purposed with protecting the environment and providing for informed decision-making. (CEQA Guidelines § 15002(a).) An environmental impact report is “the heart of CEQA;” it “alerts the public and its responsible officials to environmental changes before they have reached ecological points of no return” and it demonstrates that an agency has “analyzed and considered

---

<sup>21</sup> To the extent Appellant plans to supplement and/or add additional arguments that were not set forth in its November 18, 2019 Appeal, Busy Bee incorporates by reference the materials and submissions to the Commission submitted on October 25, and November 4 and 5, 2019.

the ecological implications of its action.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) Once an EIR has been certified, CEQA provides finality to the environmental review process, implying a presumption that no further environmental review is required unless under specific circumstances. (See Pub. Res. Code § 21166; CEQA Guidelines § 15162; *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949.)

The County has complied with CEQA in its approval of the Project. It certified the Final Environmental Impact Report (“PEIR”) for the Cannabis Land Use Ordinance and Licensing Program (“Cannabis Program”) in 2018, and the County confirmed that the Project’s environmental impacts were analyzed in the PEIR. There is no evidence that any further environmental review is required and any suggestion by Appellant to the contrary is unfounded.

#### 1. The Cannabis Program PEIR

On February 6, 2018, the Board certified the PEIR for the Cannabis Program. The PEIR evaluated the direct, indirect, and cumulative environmental impacts expected to result from implementation of the Cannabis Program. The PEIR identified a number of significant impacts and set forth feasible mitigation measures, which were codified as development standards in the County’s LUDC (Section 35.42.070).<sup>22</sup> Impacts associated with aesthetics, visual resources, agricultural resources, biological resources, cultural resources, geology, energy conservation, public services, water resources, hazards and public safety, land use, and noise, were found to be reduced to less than significant levels with mitigation.<sup>23</sup>

In addition, the PEIR identified eight significant and unavoidable impacts with respect to agricultural resources, air quality and greenhouse gas emissions, odor, noise, and transportation and traffic. Under CEQA Guidelines section 15043, the lead agency may approve a project despite significant impacts if it finds that there is no feasible way to lessen or avoid the significant impacts and the benefits of the project outweigh the policy of reducing or avoiding the project’s significant environmental impacts.

On February 6, 2018, this Board did just that, adopting a Statement of Overriding Considerations for these significant and unavoidable impacts and finding that the benefits of the Cannabis Program outweigh the significant and unavoidable impacts.

---

<sup>22</sup> See Attachment 11 to Staff Letter to the Board (“PEIR”), pp. 2-41–2-42.

<sup>23</sup> See PEIR, pp. ES-9–ES-14.

## 2. Environmental Review After the PEIR

Under CEQA Guidelines section 15168(a), a PEIR may be prepared for a series of actions that can be characterized as one large project and are related either:

- 1) Geographically;
- 2) As logical parts in the chain of contemplated actions;
- 3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or
- 4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

Where, as here, a PEIR is prepared and approved, the lead agency need not conduct further environmental review for activities within the program that the lead agency determines are adequately covered by the PEIR.<sup>24</sup> If the lead agency determines, based upon “substantial evidence”<sup>25</sup> in the record, that the significant environmental effects of a subsequent activity were examined in a PEIR and that no new unexamined significant effects will occur, the agency may approve the activity as being within the scope of the PEIR, and no additional environmental documentation is required.<sup>26</sup>

In making this determination, the agency first considers whether the activity is covered by the PEIR by determining whether it will result in environmental effects that were not examined in the PEIR.<sup>27</sup> The lead agency’s examination and findings that the activity would not have environmental effects that were not covered in the PEIR may be documented in a checklist.<sup>28</sup> Second, if the lead agency determines that the activity is covered by the PEIR, then it must consider whether any of the following conditions set forth in CEQA Guidelines section 15162 trigger the need for further CEQA review:

---

<sup>24</sup> See CEQA Guidelines § 15168(c).

<sup>25</sup> “Substantial evidence” is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (CEQA Guidelines § 15384.) “Argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence.” (CEQA Guidelines §§ 15384, 15064(f)(5); Pub. Res. Code §§ 21080(e), 21082.2(c).)

<sup>26</sup> See CEQA Guidelines §15168(c)(1)-(2), (e).

<sup>27</sup> CEQA Guidelines § 15168(c)(1).

<sup>28</sup> CEQA Guidelines § 15168(c)(4).

- a) Substantial changes are proposed in the project that will require major revisions of the EIR;
- b) Substantial changes occur in circumstances under which the project is being undertaken that will require major revisions in the EIR; or
- c) New information of substantial importance to the project that was not known and could not have been known when the EIR was certified becomes available.<sup>29</sup>

With respect to the last of the three triggers, the CEQA Guidelines explain that “new information” includes information that was not known and could not have been known when the EIR was certified and which demonstrates that: (1) the project will have one or more significant effects not discussed in the EIR, (2) significant effects previously examined will be substantially more severe than shown in the previous EIR, or (3) that feasible un-adopted mitigation measures or alternatives would substantially reduce one or more significant impact of the project.<sup>30</sup>

Where none of the three triggering conditions are applicable, the lead agency is prohibited from requiring additional environmental review.<sup>31</sup> In other words, where the lead agency concludes that a subsequent activity was examined in a PEIR, there are no new significant effects and no new mitigation measures are necessary, it may approve the activity as being within the scope of the project covered by the PEIR, and no additional environmental documentation is required.

Finally, an agency’s decision that an activity falls within the scope of a PEIR and no further environmental review is required must be upheld unless an opponent can prove that the decision is not supported by substantial evidence.<sup>32</sup>

---

<sup>29</sup> Pub. Res. Code § 21166; CEQA Guidelines § 15162.

<sup>30</sup> CEQA Guidelines § 15162(a)(3).

<sup>31</sup> Pub. Res. Code § 21166.

<sup>32</sup> See *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036; *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689; *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192.



3. The County Properly Found the Project Does Not Require Further Environmental Review

County staff and the Commission properly followed the procedure provided by CEQA, and found the Project's environmental impacts were analyzed in the PEIR and no additional environmental review is required.

On May 7, 2019, County staff reviewed the Project pursuant to its CEQA Guidelines § 15168(c)(4) Checklist for Commercial Cannabis Land Use Entitlement and Licensing Applications. Based on this review, the County concluded that: "All of the environmental impacts of the proposed commercial cannabis operation are within the scope of the PEIR, and a subsequent environmental document is not required to evaluate the environmental impacts of the proposed commercial cannabis operation." The County also identified in the Checklist the mitigation measures to be implemented by the Project to lessen or avoid significant environmental impacts identified in the PEIR (e.g., a landscape and screening plan, a transportation demand management plan and an odor abatement plan). Staff expanded the Checklist in October 2019, re-reviewed potential project impacts, and again found that all potential Project impacts fall within the scope of the PEIR.

Based on this review, the County concluded that: "All of the environmental impacts of the proposed commercial cannabis operation are within the scope of the PEIR, and a subsequent environmental document is not required to evaluate the environmental impacts of the proposed commercial cannabis operation." The County also identified in the Checklist the mitigation measures to be implemented by the Project to lessen or avoid significant environmental impacts identified in the PEIR (e.g., a landscape and screening plan, a transportation demand management plan and an odor abatement plan, etc.).

Appellant fails to point out any instance or any issue pertaining to the Project, or any Project impacts, that do not fall within the scope of the environmental impacts analyzed in the PEIR. Appellant's arguments generally do not focus on any site-specific concerns with the Project. Rather, Appellant almost entirely raises general concerns with cannabis operations in the County. These arguments do not make the showing that additional site-specific environmental review is required for the Project or that there is no substantial evidence supporting staff's determination that the Project is covered by the PEIR. Appellant bears the burden to demonstrate that the County's decision the Project is covered by the PEIR is not supported by substantial evidence. Appellant has not and cannot make this required showing.

Further, the statute of limitations for any challenge to the PEIR has now run.<sup>33</sup> Accordingly, any argument Appellant may have as to the sufficiency of the PEIR's analysis is strictly time-barred.

**C. APPELLANT FAILS TO PROVE ADDITIONAL ENVIRONMENTAL REVIEW IS REQUIRED.**

Appellant raises several general “concerns” arising from the Project’s cannabis operations. As addressed below, each of these concerns is unfounded—either unsupported by any evidence or already addressed by the PEIR and the Project’s implementation actions. Accordingly, the Appeal should be denied.

1. Cannabis Odors and Air Quality Impacts Were Adequately Studied in the PEIR.

Appellant claims that “Terpenes emitted during the cultivation and processing of cannabis are known to drift in ambient air beyond property boundaries. Evidence shows that wine grapes grown near cannabis operations can absorb cannabis terpenes, including some specific terpenes that have been proven to taint the flavor of wine.” (Appellant’s Appeal Letter, p. 2.) Appellant argues that the PEIR failed to analyze this issue. This claim is unfounded.

First, Appellant fails to state how it is aggrieved by terpenes’ supposed effect on grapes. This argument appears to be better suited for the Pence Winery Appeal, as this argument appears verbatim in that appeal, and has no business being raised between these parties. In fact, the Busy Bee Project is directly adjacent to a vineyard and over the past five years growing cannabis, Busy Bee has had no issues with their neighbor.

Second, the PEIR describes cannabis odors and terpenes in detail.<sup>34</sup> Appellant fails to acknowledge this analysis or explain in any way how its concerns are not addressed in the PEIR’s Air Quality and Greenhouse Gas Emissions section.

Third, Appellant provides no actual evidence to support its claims. But moreover, the same argument was raised to the Commission in this matter, and to the Commission and to the Board in the G&K Farm/K&G Flower Cannabis Cultivation Appeal, Case No. 19APL-00000-00018, a Carpinteria Valley cannabis operation. In response to the G&K Farm appeal, the staff report to the Board noted that two strains of cannabis emit between “4.5 and 8.6 micrograms of carbon (terpenes) per gram of plant per hour,” while

---

<sup>33</sup> Pub. Res. Code § 21167(c); CEQA Guidelines § 15112(c).

<sup>34</sup> PEIR, p. 3.3-7-8.

pine trees emit approximately two to four times that amount.<sup>35</sup> The report found that: (1) this information was known at the time the PEIR was prepared; and, (2) “VOCs and terpenes” are adequately discussed in the PEIR as “part of the Class 1 air quality impacts.” The Board agreed with the report and denied the appeal on August 20, 2019.

Fourth, Busy Bee retained three independent odor experts to study odor and air quality as it might apply to the Project (described further below). No odors were detected at any of the test locations throughout the Buellton community. The Odor Study concluded that odor from the Project should not adversely affect the surrounding community. In keeping with its good-neighbor policies, Busy Bee also submitted an Odor Abatement Plan (OAP) that goes above and beyond the requirements of the County Ordinance and the Santa Ynez Valley Community Plan. P&D compliance staff will inspect the Project site to confirm that all components of the OAP are installed, operated, and maintained as detailed in the approved OAP. Upon implementation of the OAP and twice per year thereafter for one year, Permit Compliance staff will conduct an inspection of the OAP to assess its compliance with the SYVCP. As part of each inspection, the County will retain a certified industrial hygienist, at Busy Bee's expense, to certify that the OAP meets the requirements of this condition and the SYVCP.

Further, there has been no incidence of "terpene taint" in this County, no evidence of potential "terpene taint," and a recent scientific study demonstrated that the level at which terpenes must be present in wine grapes for sensory detection is far greater than the levels at which airborne terpenes from cannabis cultivation activities could become deposited on wine grapes.<sup>36</sup> Further, wine that has been grown near cannabis has been tested and no cannabis terpenes were detected.

Accordingly, Appellant's concerns are baseless. There is no evidence that additional environmental review is required or that the Project's operations do not fall within the environmental analysis provided in the PEIR.

2. Conflicts Between Agricultural Operations Were Raised in the PEIR, and Are Not New Environmental Impacts Required to be Addressed Through Additional Environmental Review.

Appellant argues that the PEIR failed “to identify, consider and address conflicts between proposed cannabis cultivation and adjacent and nearby conventional and existing agricultural operations” and “pest control materials applied to non-cannabis crops, including materials approved for organic use, have been demonstrated to migrate to

---

<sup>35</sup> Exhibit 1, August 20, 2019 Staff Letter to the Board on G&K Farm/K&G Flower Cannabis Cultivation Appeal, at pp. 8-9.

<sup>36</sup> Exhibit 2, Dec. 6, 2019 Study by Pacific Environmental Analytics submitted in support of the Hacienda Appeal.

other parcels through volatilization, adherence to wind-borne soil particles and other pathways, even during fully compliant and legal application episodes. There are a number of instances of Santa Barbara County cannabis cultivators lodging complaints and raising informal objections to nearby conventional agricultural operations from pesticide migration, . . .[and] [m]any Pest Control Advisors now refuse to apply even registered organic materials at farms in proximity to cannabis operations, jeopardizing the continued viability of many local farms and agricultural operations. This issue was not addressed in the PEIR.” (Appellant’s Appeal Letter, at p. 2.)

First, the PEIR describes potential incompatibility between cannabis growers and traditional agricultural operations: “due to extensive testing requirements for cannabis products, it is a benefit for cannabis cultivators to be located further away from agricultural operations which utilize potentially hazardous pesticides, such as grape and strawberry harvesters.”<sup>37</sup> Appellant fails to acknowledge this analysis or explain in any way how its concerns were not addressed in the PEIR’s discussion of potential impacts to agricultural resources. Further, the statute of limitations for any challenge to the PEIR has now run.<sup>38</sup> As such, any argument Appellant may have as to the sufficiency of the PEIR’s analysis regarding this impact is time-barred.

Second, as this impact was already raised in the PEIR, Appellant cannot successfully argue that it is a new impact requiring additional environmental review. Where an activity was examined in a PEIR and there are no new significant effects, the Lead Agency is prohibited from conducting additional environmental review.

Third, during the October 30 hearing before the Commission, it became clear that the Commission is extremely concerned with so-called ag-to-ag conflict—specifically, regarding potential overspray liability for traditional ag farmers.<sup>39</sup> The Commission was so

---

<sup>37</sup> PEIR, p. 3.3-20.

<sup>38</sup> Pub. Res. Code § 21167(c); CEQA Guidelines § 15112(c).

<sup>39</sup> Appellant’s concern that the County’s Agricultural Preserve Advisory Committee (“APAC”) is no longer required to review cannabis projects for compatibility with adjacent agriculture is odd. (See Appellant’s Appeal Letter, at p. 3.) Both APAC and the Central Board of Architectural Review (“CBAR”) unanimously approved the Project. (See, e.g., Attachment 14 to Staff Letter to the Board.) More importantly, any issue of whether the PEIR’s impact analysis and mitigation measures relied on cannabis’ classification as a “compatible” or “principal” use should have been raised by Appellant before May 1, 2018 when the Board adopted the ordinance amending the Uniform Rules for Agricultural Preserves and adopted the required findings, or within the applicable statute of limitations thereafter. The statute of limitations for any challenge to the sufficiency of the PEIR’s analysis related to these amendments has now run. (Pub. Res. Code § 21167(c); CEQA Guidelines § 15112(c).)

concerned that it included Conditions 5 (imposing a 100ft buffer) and 25 (permitting the Director to review the Project within two years to determine whether the other project conditions are adequately addressing potential pesticide related conflicts with adjacent agricultural operations) as a condition of approval on the LUP. Appellant fails to even address these conditions of approval.

**D. The Project Will Not Create “Ag-to-Ag” Conflicts**

It bears mentioning—pesticide overspray is illegal under state law. California law is clear that pesticide and herbicide application cannot be continued when there is a reasonable possibility of damage to non-target crops or a reasonable possibility of damage to or contamination of non-target private property.<sup>40</sup> The State law regime is robust, and is not limited to civil, common law claims between neighboring parties.<sup>41</sup> This also isn't solely a cannabis issue—the same issues would arise if an organic farm was located next to a farm that applies pesticides in a way that violates the law.<sup>42</sup> Even if pesticide application is performed via an approved method, California law **requires** applicators to evaluate, prior to and while applying the pesticide, the meteorological conditions and the surrounding properties to determine the likelihood of harm or damage.<sup>43</sup>

Busy Bee has worked closely with its neighbors to implement mitigation measures that have eliminated any pesticide issues with its neighbors. Its current site plan and farming practices and operations eliminate the need for additional buffers between neighboring farms. For example, Busy Bee's has implemented the following:

- Buffers of 25 to 150 feet on the west side of the property (separating grape farm);
- Buffers of 75 to 120 feet on the east side of the property (separating broccoli farm);

---

<sup>40</sup> Cal. Food & Ag. Code § 12972; 3 Cal. Code Regs. §§ 6614, 6616.

<sup>41</sup> Violation of any provision of either Division 6 or 7 of the Food and Agricultural Code “or any associated regulation is a misdemeanor subject to fines and imprisonment or civil penalties.” (*Jacobs Farm/Del Cabo, Inc. v. W. Farm Serv., Inc.* (2010) 190 Cal.App.4th 1502, 1519 [citing Food & Ag. Code §§ 11891–11895, 12996–12999].)

<sup>42</sup> In *Jacobs Farm/Del Cabo, Inc. v. W. Farm Serv., Inc.*, *supra*, the defendant's pesticide application permits authorized its application of pesticides to a Brussels sprouts field. (190 Cal.App.4th at 1532.) The plaintiff, a neighboring farm and grower of organic crops including culinary herbs such as rosemary, dill, and cilantro, sued the pesticide applicator, alleging that the pesticides defendant applied to fields near plaintiff's farm migrated to plaintiff's land, contaminated plaintiff's crop, and rendered the crop unmarketable. (*Id.* at p. 1510–11.)

<sup>43</sup> 3 Cal. Code Regs. § 6614(a).

- Trees planted in tiers along the ENTIRE west and east property lines to create a living windscreen that provides an effective screen that stops dust and, yes, even drifting spray, from entering the property.

In over five years of cultivation, Busy Bee has only had one issue with the tenant of a neighboring farm and its pesticide applicator regarding overspray. That issue was addressed and peaceably resolved, but for full transparency, we provide the following information concerning that incident.

On Monday, May 20, 2019, Ms. Rotman observed a spraying rig owned by Nutrien Ag<sup>44</sup> Solutions exiting her neighbor's property, indicating that Nutrien Ag had sprayed the property that morning. The weather that day was extremely windy, causing Ms. Rotman to be concerned that her cannabis plants would be contaminated by overspray or drift. Ms. Rotman later confirmed that the following products were sprayed on the property for three hours that morning: Makaze (glyphosate), Reglone (diquat), Herbimax (petroleum hydrocarbon), and Choice Weather Master (phosphate ester). These are dangerous herbicides and processing chemicals that could catastrophically damage cannabis plants. As a result, we informed Nutrien Ag Solutions of California's strict residual pesticide, solvent and processing chemical standards for cannabis, and that chemical overspray could render the cannabis crop useless and unmarketable.

After Busy Bee and Nutrien Ag discussed the issue, Nutrien Ag agreed not to spray during windy conditions. We requested that in the future, Nutrien Ag Solutions refrain from spraying the neighboring crops on windy days that may reasonably result in such chemicals drifting onto the Busy Bee property. In addition, we requested that Nutrien Ag Solutions provide us and Ms. Rotman with advance notice each time the property would be sprayed. Since May 2019, we have had no issues or concerns with neighboring pesticide application on windy days. And in over five years of cultivation of medicinal and commercial cannabis, Busy Bee's crops (and the fence line) have been tested and have never violated the State's strict residual pesticide, solvent and processing chemical standards for cannabis.<sup>45</sup>

On June 13, 2019, Busy Bee sent a letter to Mr. Ray Amboy, the owner of the abutting property to the East, himself a farmer, explaining the situation with Nutrien Ag and committing to not hold Mr. Amboy, his tenant, or any pesticide sprayer liable for any pesticide application or resulting overspray so long as the spray is applied consistently with State and County laws and regulations. (See Exhibit 3.)

---

<sup>44</sup> Busy Bee also uses Nutrien Ag to apply nutrients to its farm because it is a responsible applicator.

<sup>45</sup> Busy Bees, at its own expense, tests its fence line regularly to confirm that there have been NO pesticides from neighboring farms entering its property.

The collaboration has been a complete success—there has been no illegal spraying, and as a result, no conflict.

This type of neighbor-to-neighbor agreement gives assurances to neighboring conventional farmers and allows all farms and crops to co-exist peacefully. It also encourages responsible pesticide application. More to the point—the neighbors resolved the issue between themselves—conduct that we think this Board should encourage.

We hope that this information addresses any concerns regarding the pesticide overspray or wind drift issue. As the trees planted along the Busy Bee property continue to grow, the efficiency of the windscreen will increase, providing even further mitigation and avoiding future conflict.

**E. The Project and its Odor Abatement Plan Comply with the County's General Plan Policies and the SYVCP Land Use Policies, and Fully Address All Odor Concerns.**

Appellant erroneously and summarily claims that the Project does not comply with the Santa Ynez Valley Community Plan or the County's General Plan policies.

Regarding the General Plan, Appellant did not raise this issue before the Commission, and has failed to provide sufficient detail for Busy Bee to adequately address Appellant's vague complaint at this time.

In four separate letters, P&D analyzed the Project and concluded that it complies with the SYVCP. County staff's approval of the LUP includes a finding of compliance with the SYVCP requirements, including specific outdoor lighting regulations, biological resource policies and Odor Abatement Plan ("OAP") requirements.

As for the OAP, according to the County's current Cannabis Regulations, Development Standard 6, properties zoned AG-II that apply for an LUP for cannabis cultivation are exempt from an OAP requirement. (LUDC 35.42.075.C.6.) On the other hand, the SYVCP requires odor generators to provide additional information and details about the Project to the County. To avoid being caught in a potential conflict of County policies, Busy Bee voluntarily submitted a Project OAP as part of the LUP application. (See Exhibit 4, Attachment K to Planning Commission Staff Report.) As a result, the Project complies with all applicable SYVCP goals, policies, and development standards.

Additionally, in an abundance of caution, Busy Bee retained three independent odor experts to study odor and air quality as it might apply to the Project.

First, Bosarge Environmental, LLC, an odor expert and chemical engineer, performed an Odor Assessment Study for the Project using a Nasal Ranger Olfactometer. No odors were detected at any of the test locations throughout the Buellton community. The Odor

Assessment Study concludes that odor from the Project should not adversely affect the surrounding community. (See Exhibit 5 and Exhibit 6, Attachments K2 and K3 to Planning Commission Staff Report.) This report was updated on October 24, 2019 to include data from Borsage’s October 7-9, 2019 site visit. (See Exhibit 7, Updated Borsage Report and Attachments.)

Second, Sespe Consulting, Inc. performed an independent air quality analysis and modeling to independently evaluate the Project’s potential to generate odor. Its report concludes that the model results are consistent with the history of the Project site—odor has not and should not be present under most conditions. (See Exhibit 8, Attachment K4 to Planning Commission Staff Report.)

Third, SCS Engineers assessed the relative emissions of odors from the Project by collecting samples and sending them to trained and screened odor panel of eight individuals. The SCS team conducted odor samples upwind from the property, at the project site, and at multiple locations downwind. The report concluded that Busy Bee was not a source of nuisance odor conditions downwind from its operations at the time of sampling (flowering plants). SCS Engineers was also retained to assess emissions of Volatile Organic Carbons (“VOC”) from the Project. They measured the concentration of specific air pollutants relative to cannabis operations both at cultivation areas of flowering plants as well as downwind from these areas. Their report concluded that measured concentrations do not indicate the presence of a possible health concern in relation to employees or receptors downwind from the facility. (See Exhibit 9, SCE Engineering Report and Attachments.)

**F. The County Properly Processed and Approved the Project Application as an LUP Because the Project is Not “Adjacent” to an Existing Developed Rural Neighborhood.**

Appellant alleges that the Project requires a Conditional Use Permit (“CUP”) because it is adjacent to the North Highway 246 Existing Developed Rural Neighborhood (“EDRN”). Only an LUP, however, is required for the Project.

The Cannabis Ordinance states that a CUP is required for a project located on lots that: (i) are in an EDRN; or, (ii), are adjacent to an EDRN; or (iii) or use a roadway located within an EDRN as the sole means of access.<sup>46</sup> Section 35.110.020 of the LUDC defines “adjacent” as “[t]o physically touch or border upon; or to share a common property line.”

State Highway 246 is a separate legal parcel, owned in fee by the State, and lies between the Project site and the nearby EDRN. Therefore, the Project is not adjacent to an EDRN. Neither is it located within an EDRN.

---

<sup>46</sup> LUDC 35.42.075. 35.42.075.B.4 Table Note 3.



Further, the Project site has two access routes—a direct route from 1180 W Highway 246 to Highway 101 and a route from 1180 W Highway 246 to Drum Canyon Road to US Highway 101. Neither bisects an EDRN. A map showing the alternative route through Drum Canyon Road is shown on the enclosed plans. (See Attachment 13 to Staff Letter to the Board, sheet A104 Site Transportation Demand Management Plan.) Additionally, the Santa Barbara County Planning & Development Interactive Map for Cannabis identifies the Project parcel as exempt from a CUP (i.e. purple “CUP required” layer is not applicable).

### **G. The Project Is Legal Non-Conforming**

Appellant incorrectly claims the Project improperly expanded beyond its legal nonconforming use. Article X defined legal non-conforming uses as those “medical marijuana cultivation locations already existing on January 19, 2016” and which are legal under state law. (County Code, § 35-1003(B).) The state defines “Medical marijuana cultivation” as “any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.” (Bus. & Prof. Code, § 19300.5(l) [repealed in 2017; emphasis added].)

By adopting Article X, the County also recognized that cannabis cultivation was considered a legal use prior to January 2016 because the LUDC did not specifically prohibit the use. As such, the County concluded medical cultivation fell within the category of “Cultivated Agriculture” uses, which includes, among other crops, field crops and flowers and seeds, and “crop preparation services and harvesting activities, such as mechanical soil preparation, irrigation system construction, spraying, and crop processing.” (LUDC, § 35.110.020; see County Staff Presentation to Board of Supervisors, January 19, 2016, p. 6 [“Existing County Regulations – Prohibit dispensaries – Do not regulate deliveries – Allow cultivated agriculture, greenhouses, agricultural accessory structures”].)

The definitions of “cultivated agriculture” and “medical marijuana cultivation” encompass activities related to planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, but which are not precisely those activities. (See Merriam Webster, involve [“to have within or as part of itself,” “to require as a necessary accompaniment,” “to relate closely”].) Indeed, the state definition specifically includes grading and the LUDC specifically defines “cultivated agriculture” to include soil preparation and irrigation system construction as a part of the permitted use.

Busy Bee’s cannabis cultivation falls squarely within this definition of legal non-conforming uses. In 2014, Sara purchased the farm to grow organic cannabis. After purchasing the farm, she learned that the soil was highly contaminated with pesticides and fertilizers from decades of conventional farming practices, meaning the soil would need to be rehabilitated before commencing medical cannabis cultivation as the product

would be provided to sick patients. Over the following several years, Sara took the necessary steps to restore the soil to organic growing condition — she disced all arable acreage of the Farm, planted a cover crop to regenerate the soil, and grazed thousands of farm animals to restore soil. In 2015, Ms. Rotman retained an attorney and formed a Medical Collective. Busy Bee also received its Seller's Permit in 2015. After the significant work restoring the Farm and obtaining the necessary state approvals, Busy Bee began planting cannabis seeds throughout the farm in July 2015. Busy Bee's medical cannabis cultivation continued for several years.

Prior to approval of the Project, on April 29, 2019, the County received a complaint from Ms. Courtney Taylor alleging that Busy Bee's cannabis cultivation did not qualify as a legal non-conforming use or had expanded under the County Code. In response, the County opened a Zoning Violation case in early May (19ZEV-00000-00148) and sent a letter to Busy Bee concerning the complaint. On May 22, 2019, Analise Merlo, Senior Planner conducted an onsite inspection of the farm with a member of the County Cannabis Enforcement team. At that date, Busy Bee provided the County with numerous documents confirming its legal-non conforming status. The County did not request any additional information. Further this issued was raised to the Commission by the Appellant, but at the hearing the Planning Director responded that land preparation and other activities constituted medical cultivation and the Commission unanimously approved the Project. These allegations have since resurfaced by the Santa Barbara Coalition for Responsible Cannabis.

Because Busy Bee began cultivating all of the arable acreage on the farm beginning in 2014, it is a legal non-conforming use pursuant to Article X of the County Code.

### **CONCLUSION**

Accordingly, Busy Bee requests that the Board deny Appellant's appeal. In doing so, Busy Bee requests that the Board adopt the required findings that the Project fully complies with all applicable County requirements and CEQA, determine that the previously certified PEIR constitutes adequate environmental review and no subsequent environmental review is required, and grant de novo approval of the Project.