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Re: Supplemental Comments on the Proposed Mitigated Negative Declaration for the City Boy Farms Cannabis Project (DRC2017-00123)

Dear Mr. Savage, Mr. Keith, Mr. Landreth, Ms. Hedges:

We write on behalf of Californians for Sustainable Communities to provide supplemental comments on the proposed Mitigated Negative Declaration ("MND")[1] and Initial Study[2] prepared by the County of San Luis Obispo ("the County"), pursuant to the California Environmental Quality Act ("CEQA"),[3] for the City Boy Farms Cannabis Project, Conditional Use Permit DRC2017-00123 ("Project"). Since

[1] County of San Luis Obispo, Department of Planning and Building, Negative Declaration & Notice of Determination: City Boy Farms, Conditional Use Permit; DRC2017-00123 (Aug. 16, 2019) (*hereinafter* "MND").
[2] County of San Luis Obispo, Department of Planning and Building, Initial Study - Environmental Checklist: City Boy Farms, Conditional Use Permit DRC2017-00123 (ED19-0043) (Aug. 16, 2019) (*hereinafter* "Initial Study").
[3] Pub. Resources Code § 21000 *et seq.*

the submission of our initial Comment Letter on September 19, 2019,[4] we reviewed the MND, Initial Study and its exhibits, and available reference documents with the assistance of our technical consultant, Gregory A. House, AFM, ARA, CCA, CPAg.[5] Based on our review, we find further inadequacies with these CEQA documents.

Specifically, the Initial Study fails to adequately describe the baseline groundwater use. In addition, the County fails to properly analyze the Project's potentially significant impacts on groundwater in the Paso Robles Groundwater Basin ("PRGWB"). Such an analysis would reveal that the Project may have significant impacts to critical groundwater resources. Finally, the measures proposed in the MND fail to mitigate the Project's potentially significant groundwater impacts.

The County cannot undertake any further actions concerning the proposed Project until it prepares an environmental impact report ("EIR") analyzing the Project's potentially significant direct, indirect, and cumulative impacts, and incorporates all feasible mitigation measures to minimize these impacts to less than significant.

Moreover, the County is prohibited from issuing a conditional use permit for the Project because it is inconsistent with County's General Plan and Land Use Ordinance provisions applicable to cannabis activities. Specifically, the Project's proposed groundwater use is inconsistent with the Agriculture Element and the Conservation and Open Space Element ("COSE") because it does not avoid a net increase in water use in the PRGWB. In addition, the Project's proposed offset plan is inconsistent with the Land Use Ordinance's requirements for water use at cannabis cultivation and nursery sites. Therefore, the County must deny the conditional use permit.

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[4] Letter from Andrew J. Graf, Adams Broadwell Joseph & Cardozo to Guy Savage, San Luis Obispo County, et al. re: Comments on the Proposed Mitigated Negative Declaration for the City Boy Farms Cannabis Project (DRC2017-00123) (Sept. 19, 2019) (hereinafter "Comment Letter").
[5] Letter from Gregory A. House, House Agricultural Consultants to Andrew J. Graf, Adams Broadwell Joseph & Cardozo re: CB Cannabis Project, San Luis Obispo County (Oct. 1, 2019) (*hereinafter* "House Comments") (Attachment A).

I. THE COUNTY MUST PREPARE AN ENVIRONMENTAL IMPACT REPORT ANALYZING THE PROJECT'S IMPACTS ON GROUNDWATER

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.[6] The law contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard, which mandates that a lead agency prepare an EIR whenever substantial evidence supports a fair argument that a project may have a significant effect on the environment.[7]

Courts have held that if "no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR."[8] The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration.[9] An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.[10]

"Substantial evidence" required to support a fair argument is "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."[11] "[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is

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[6] *See* Pub. Resources Code § 21000; CEQA Guidelines § 15002.
[7] Pub. Resources Code §§ 21080(d), 21082.2(d); 14 Cal. Code Regs. ("CEQA Guidelines") §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.
[8] *See, e.g., Communities for a Better Environment. v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.
[9] *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.
[10] *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ("If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact").
[11] CEQA Guidelines § 15384(a).

disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR."[12]

As detailed below, substantial evidence supports a fair argument that the Project may result in significant impacts to critical groundwater supplies. Therefore, the County must prepare an EIR analyzing the Project's potentially significant impacts and adopt all feasible mitigation measures to reduce those impacts to a less than significant level.

A. Substantial Evidence Supports a Fair Argument the Project May Cause Potentially Significant Impacts to Groundwater Supplies

The roadmap for assessing a project's potentially significant impacts on groundwater supplies in an overdrafted groundwater basin is outlined in *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99. In that case, an applicant proposed to build a residential development on a 21-acre section of a large property in Monterey County.[13] The development's water needs would be served by on-site wells, which pumped groundwater from the Carmel Valley aquifer.[14] It was undisputed that the groundwater supply in this groundwater subbasin suffered from critical recharge problems.[15]

Because historical water use data for the property was limited, the draft EIR calculated the existing water use at 45 acre-feet per year ("AFY") based on the assumption that the applicants were "establishing pasture on 21 acres" of the property. Water demand for the development was calculated at 61.15-acre feet per year ("AFY"), which resulted in an increase of approximately 16.15 AFY over the existing estimated usage.[16] The draft EIR concluded the groundwater basin could supply the increased water demand during wet or normal weather conditions, but the aquifer would be vulnerable during a sustained drought of more than five years.

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[12] *Id.* § 15064(g).
[13] *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 108.
[14] *Ibid.*
[15] *Ibid.*
[16] *Id.* at p. 110.

The draft EIR also found that the increased pumping from the project could delay the subsurface groundwater recharge to the Central Valley aquifer.[17]

Even though the project's anticipated water use would be a small percentage of the overall groundwater recharge in the Carmel Valley, the draft EIR acknowledged that "any impact reducing flow to the Carmel Valley aquifer is potentially significant" given the severity of the groundwater issues in that sub-basin.[18] To mitigate the impact of increased pumping, the draft EIR concluded that the applicant would either have to (1) limit the water project demand to the baseline of 45 AFY, either by reducing density or by instituting conservation measures, or (2) provide an offsetting pumping reduction of 16.2 AFY elsewhere within the same groundwater basin.[19]

The planning commission rejected the estimated usage in favor of the property's most recent actual water production records, which showed an existing water use of 26.34 AFY.[20] The board of supervisors rejected the draft EIR and planning commission's calculations, ultimately selecting a baseline water use of 51 AFY based on average water use for the three reporting years prior to its consideration of the matter.[21]

On appeal, the court was tasked with determining, *inter alia*, (1) the baseline water use against which water demands of the project are to be measured and (2) whether the EIR adequately analyzed off-site pumping reduction as mitigation of any increased water usage over baseline.[22] The court summarized the first issue as follows:

> The EIR in this case recognized the serious water concerns in the Carmel Valley and acknowledge the state and local policies seeking to limit any new development that would result in increased water pumping affecting the Carmel Valley alluvial aquifer. In consideration of these concerns, the analysis of water issues in the EIR rested on the premise that any increase in water pumping above preproject levels would constitute an adverse and significant

[17] *Id*. at p. 113.
[18] *Ibid*.
[19] *Ibid*.
[20] *Ibid.*
[21] *Id*. at p. 115.
[22] *Id*. at pp. 118-19.

> environmental impact mandating mitigation. No one disputes this general premise. Rather it is the determination of the preproject or baseline water use, against which the water demands of the project are to be measured, that is at the center of the controversy here.[23]

The court emphasized that the proper baseline for impact assessment was *actual* historic groundwater usage, not increased levels commenced for the first time after the environmental review process had begun.[24] The court expressed its concern about the county's reliance on information from the applicant, and its failure to take steps to verify the information at issue.[25] The court also disproved of relying on figures that reflected increased water usage after the development application was filed.[26] The court held that the county violated CEQA by relying on baseline figures that not only failed to reflect actual agricultural usage, but were also created after the filing of the project application as a means of inflating the baseline.[27]

The court also addressed whether groundwater pumping offsets could be used as mitigation.[28] Prior to the hearing, the applicants revealed they had purchased the rights to pump 32 AFY from a separate property in the general vicinity of the project site.[29] The applicants asserted that pumping on the other property could be reduced if mitigation of the impact for water use was necessary.[30] The court was unpersuaded that the offset on the separate property was hydrologically linked to the groundwater basin underlying the project.[31] Since there was no evidence to conclude the basins were hydrologically connected, the offset would provide no guarantee of mitigation.[32]

As described below, the MND and Initial Study suffer from the same fatal deficiencies because the CEQA documents fail to (1) adequately describe the baseline groundwater conditions, (2) properly analyze groundwater impacts

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[23] *Id*. at pp. 119-20.
[24] *Id*. at pp. 120-22 (emphasis added).
[25] *Id*. at p. 122.
[26] *Id*. at p. 123.
[27] *Id*. at p. 126.
[28] *Id*. at pp. 112-13.
[29] *Ibid*.
[30] *Ibid*.
[31] *Id*. at p. 130.
[32] *Ibid*.

compared to the baseline, and (3) propose feasible mitigations to reduce potentially significant groundwater impacts to a level of insignificance.

1. The Baseline Groundwater Use for the Project Site Is Zero (0) Acre Feet Per Year

The County fails to articulate the actual historical groundwater use at the Project site at the time the application was submitted. Instead, the Initial Study simply states: "Currently there are no activities on the site that would generate a water demand; the single family residence was destroyed by fire, and the walnut and almond trees have historically been dry farmed."[33] The record supports this conclusion as it does not include any evidence that the property either used groundwater or was actively farmed in the years prior to the submission of the land use application.[34]

Even assuming the existing almond and walnut orchard was actively farmed, the County cannot rely on the water used by these trees for determining the baseline use because the orchards did not rely on groundwater. Although the Initial Study does not describe the water use of the on-site orchards, other than to state that it is dry-farmed,[35] the water use of the orchards is identified in the Water Demand, Offset and Conservation Plan ("Offset Plan").[36] The Offset Plan concludes that removal of approximately 10 acres of almond trees will result in a 20 AFY offset.[37] The Offset Plan arrives at 20 AFY number by claiming that the orchards currently consume 2 AFY per acre.[38]

As explained by Mr. House, dry-farming is defined as "the raising of crops in arid climates without the application of irrigation water; the practice also includes techniques to reduce evaporation of soil moisture from the soil surface, typically by shallow cultivation with a disc plow for trees combined with a wide spacing between

[33] Initial Study at pp. 4, 23 ("The project site is located within the Agriculture land use category and has been used for the dry farming of almond and walnut trees. There are currently no active farming operations on site.").
[34] House Comments at p. 2; Initial Study. at pp. 4, 23.
[35] Initial Study at pp. 4, 23.
[36] City Boy Farms, Water Demand, Offset, and Conservation Plan (undated) (*hereinafter* "Offset Plan").
[37] *Ibid*
[38] *Ibid*.

trees that allow the trees adequate area for root development in the several top feet of soil."[39] As such, the almond and walnut orchards do not consume "groundwater" within the ordinary meaning of the term.[40] Since the crops were not irrigated with groundwater, the water consumption of the orchards cannot be considered in the determination of the existing groundwater use.

The Initial Study correctly concludes the property does not have any actual historical groundwater use.[41] Despite the lack of documentation, it is reasonable to assume the Project's actual groundwater use is zero (0) AFY because there are no existing structures on the property which use the groundwater and the on-site orchards are neither actively farmed, nor require groundwater.

2. <u>The Project's Use of Groundwater for Project Activities May Cause a Significant Impact on the Paso Robles Groundwater Basin</u>

The County omits any analysis of whether the Project's anticipated water demand of 7.29 AFY would substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin, as required by CEQA.[42] Rather, the Initial Study describes various measures to be implemented by the Project through conditions of approval.[43] Even if the County undertakes an analysis of these impacts, it would conclude that the Project would have the same significant impacts as those described in *Save Our Peninsula Committee.*

The County acknowledges the "project site is located within the Paso Robles Groundwater Basin (LOS III Basin) and within an Area of Severe Decline."[44] But the Initial Study does not adequately describe the current status of groundwater resources in the PRGWB. Although not finalized, the draft Paso Robles Subbasin Groundwater Sustainability Plan ("Draft GSP") sheds light on the PRGWB's considerable groundwater problems.[45]

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[39] House Comments at p. 2.
[40] *Ibid.*
[41] *Id.* at pp. 2-3
[42] CEQA Guidelines, appen. G, IX, b.
[43] Initial Study at pp. 68-69.
[44] *Id.* at p. 67.
[45] Groundwater Sustainability Agencies, Draft Paso Robles Subbasin Groundwater Sustainability Plan (Aug. 14, 2019) pp. 6-1 to 6-31, *available at* https://www.slocounty.ca.gov/Departments/Public-

Between 1981 and 2011, the PRGWB experienced a net loss of groundwater storage of about 390,000 AF, with an annual average loss of approximately 12,600 AF.[46] More recently, the PRGWB suffered an estimated net loss of groundwater in storage of about 327,000 AF, with annual average loss of approximately 65,400 AF.[47] The projected future groundwater budget shows the PRGWB will continue to suffer from recharge problems. In fact, the Draft GSRP identifies "a long-term imbalance between inflows and outflows, with projected groundwater inflows of about 69,500 AFY and project groundwater outflows of about 83,200 AFY. The projected future imbalance indicates an average annual decrease in groundwater storage of 13,700 AFY."[48]

The COSE recognizes that (1) "[p]rotecting the quantity and quality of groundwater resources is critical to a reliable supply,"[49] (2) "[g]roundwater overdraft is a significant and growing problem for the county,"[50] and (3) "[c]onserving the county's limited water supply is one method to reduce the strain on local water resources."[51] In 2015, the County adopted specific amendments to the General Plan and County ordinances to implement, among other things, the water neutral new development ("WNND") component of the Countywide Water Conservation Program ("CWWCP").[52] "The WNND component is intended to serve as an interim measure to substantially reduce increases in groundwater extraction and lowering of groundwater levels in certified LOS III groundwater basins until the adoption of a Groundwater Sustainability Plan occurs."[53]

The WNND component requires all new or expanded irrigated agriculture in the PRGWB to offset new water use at a 1:1 ratio through the Agricultural Offset

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Works/Forms-Documents/Committees-Programs/Sustainable-Groundwater-Management-Act-(SGMA)/Paso-Robles-Groundwater-Basin/Draft-GSP/Paso-Draft-GSP-Volume-1-Ch-1-6.aspx.

[46] *Id*. at p. 6-14.

[47] *Id*. at p. 6-25.

[48] *Id*. at p. 6-31.

[49] County of San Luis Obispo General Plan, Conservation and Open Space Element (2010) p. 10.3 (*hereinafter* "COSE").

[50] *Ibid.*

[51] *Ibid.*

[52] Transmittal from Rob Fitzroy, Planning and Building to County of San Luis Obispo, Board of Supervisors re: Countywide Water Conservation Program(Oct. 27, 2015) pp. 5-6 (*hereinafter* "Resolution 2015-288").

[53] *Id*. at p. 6.

program.[54] This program is "an implementation tool for the WNND irrigated agriculture offset requirement, and is intended to substantially reduce increase in groundwater extraction and lowering of groundwater in the Paso Robles Groundwater Basin (excluding the Atascadero Sub-basin) only."[55] As part of the implementation of the WNND, the County amended COSE Policy WR 1.14 to state:

> Avoid a net increase in ~~non-agricultural~~ water use in groundwater basins that are ~~recommended or~~ certified ~~as~~ at Level of Severity II or III for water supply. In addition, place ~~Place~~ limitations on further land division in these areas and establish and implement water offset programs for all groundwater users until plans are in place and funded to ensure that the safe yield will not be exceeded.[56]

Despite the severity of the PRGWB's current recharge problems, the County concludes, without any supporting evidence, the Project would have a less than significant impact on groundwater because it would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge.[57] The County cannot reach this conclusion because it has not actually evaluated whether the 7.62 AFY increase in groundwater use would (1) substantially decrease groundwater supplies or (2) interfere substantially with groundwater recharge. Like *Save Our Peninsula Committee*, any groundwater use above existing conditions would exacerbate groundwater recharge problems in the PRGWB. Because the Project's water demand is a net increase over baseline conditions, the Project may have significant impacts on groundwater recharge.

3. The Proposed Measures Fail to Reduce the Groundwater Impacts to a Level of Insignificance

The MND does not identify any mitigation to reduce the potentially significant impacts caused by the Project's groundwater pumping for irrigation to less than significant. Instead, the Initial Study claims the Project's impacts are less than significant because (1) the Project will comply with the 2:1 water offset ratio requirement imposed by Land Use Ordinance sections 22.40.050(D)(5)(a) and 22.40.060(D)(5)(a) "by paying an in-lieu water offset fee based on a future water

[54] *Ibid.*
[55] *Ibid.*
[56] *Id.*, attach. 1, exhibit C.
[57] Initial Study at p. 66.

demand of 7.29 AFY,"[58] (2) the Project's water use will be metered, and if the metered water demand exceeds the projected water use, "the permittee will be required to take corrective measures to bring water demand within the permitted amount,"[59] and (3) the project will be conditioned to apply best management practices for water conservation to maintain water use at or below the projected water use.[60] Even assuming the County actually conducted an analysis of whether the Project would substantially decrease groundwater supplies or interfere substantially with groundwater recharge, as required by CEQA, the County provides no evidence that these proposed measures for complying with the Land Use Ordinance would reduce the Project's impacts to a level of insignificance.

As discussed in our Comment Letter, the County's assertion that it can meet the Land Use Ordinance's water offset requirements by either (1) removing existing almond and walnut trees[61] or (2) by paying an in-lieu water offset fee[62] is incorrect.[63] Mr. House further elaborates on why the proposed offset plan cannot satisfy the requirements imposed by the Land Use Ordinance for participation in the CWWCR for the PGRWB.[64]

First, Mr. House concludes the proposed offset plan is not applicable to the project site or the Project, because the property has not been irrigated for many years, if ever.[65] As discussed in our Comment Letter, to be eligible to participate in the CWWCR, there must be "existing irrigation" on the property within the 5 years prior to submission of the land use application.[66] The record does not contain any evidence that the property has been irrigated.

To the contrary, the County states that the property has been dry-farmed.[67] As Mr. House clarifies, the practice of dry-farming means the absence of irrigation.[68] Therefore, the Project cannot participate in the CWWCR, and the

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[58] *Id*. at pp. 68-69.
[59] *Id*. at p. 69.
[60] *Ibid*.
[61] Offset Plan at p. 1.
[62] Initial Study at pp. 68-69.
[63] Comment Letter at pp. 32-35.
[64] *See generally* House Comments.
[65] *Id*. at p. 1.
[66] Comment Letter at p. 33-34; *see also* Land Use Ordinance § 22.30.204.E.
[67] Initial Study at pp. 4, 23.
[68] House Comments at p. 2.

measure fails to reduce the Project's potentially significant impacts to a level of insignificance.

Second, Mr. House explains the proposed offset plan is inapplicable because the property has not been actively farmed in the 5 years prior to the application.[69] Mr. House identifies several items he would expect to review if the property were in fact actively farmed.[70] Since the Initial Study did not include any evidence of active farming, and the County admits that "[t]here are currently no active farming operations on site,"[71] the Project cannot participate in the CWWCR.[72] Therefore, the Project's potentially significant impacts on groundwater are not reduced to a level of insignificance.

Third, Mr. House emphasizes the proposed offset plan is inapplicable, because almonds and orchards are not eligible for consideration as part of the CWWCR.[73] Land Use Ordinance section 22.30.204(G) allows an agriculture offset only when certain conditions have been met. One of those conditions is a requirement that the applicant calculate the water demand for the proposed irrigated crop production based on "crop-specific applied water figures as specified in Table 2 and Table 3 below.[74] Table 2 identifies specific crop groups and commodities used for the agricultural demand analysis.[75] Cannabis, almonds, and walnuts are not listed in Table 2, and do not fall within any of the categories identified in the table.[76]

Similarly, the ordinance and Table 3 specifies that the water demand analysis is based on "applied water."[77] Mr. House explains that since the almond and walnut trees are dry-farmed, the orchard derives its moisture from rainfall not "applied water" (i.e., irrigation).[78] Therefore, the Project cannot participate in the

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[69] *Ibid.*
[70] *Ibid.*
[71] Initial Study at p. 23.
[72] *See also* Comment Letter at pp. 32-35.
[73] House Comments at p. 2.
[74] Land Use Ordinance § 22.30.204.G.3.
[75] *Ibid.*
[76] House Comments at p. 2.
[77] Land Use Ordinance § 22.30.204.G.3.
[78] House Comments at p. 2.

CWWCR and the measure fails to reduce the Project's potentially significant impacts to a level of insignificance.

Finally, Mr. House explains that the on-site orchards do not naturally consume groundwater because of the restrictive layer at the project site.[79] Since the on-site orchards are neither irrigated, nor naturally consume groundwater, the offset plan cannot rely on the orchards to meet the 2:1 offset requirement.

Mr. House's expert opinion that the Project's proposed measures do not adequately reduce the groundwater impacts to a level of insignificances is enough to trigger the mandate to prepare an EIR. "[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR."[80] Given the lack of analysis of potentially significant groundwater impacts in the Initial Study and the numerous deficiencies identified with the proposed offset plan under the Land Use Ordinance, the County must prepare an EIR.

B. Substantial Evidence Supports a Fair Argument the Project May Cause a Significant Environmental Impact Due to a Conflict with COSE Policy WR 1.14 Adopted for the Purpose of Mitigating Impacts to Groundwater

The MND concludes the Project will have a less than significant impact on land use because it does not conflict with any "policy and/or regulatory documents relating to the environment and appropriate land uses."[81] However, the County fails to acknowledge the subsequent amendments to the General Plan. As discussed in Section I.A.2. above, COSE Policy WR 1.14 was amended to require that all new development, including agriculture, that will use groundwater in a basin at a Level of Severity III, avoid a net increase in water use.[82] The amendments to this policy were adopted to avoid significant impacts on groundwater in the PRGWB.[83]

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[79] *Id*. at pp. 2-3.
[80] CEQA Guidelines § 15064(g).
[81] Initial Study at p. 71.
[82] Resolution 2015-288, attach. 1, exhibit C.
[83] *Id.*, attach. 1, exhibit A.

The County acknowledges the "project site is located within the Paso Robles Groundwater Basin (LOS III Basin) and within an Area of Severe Decline."[84] Because the anticipated groundwater use of the Project exceeds the baseline conditions, it will have a net increase in groundwater use. Therefore, the proposed Project is conflicts with COSE Policy WR 1.14, which was adopted for the purpose of mitigating environmental impacts to groundwater. Because the MND does not include mitigation measures to reduce this impact to less than significant, the County must prepare an EIR.

II. THE PROJECT IS INCONSISTENT WITH THE GENERAL PLAN

Each local agency must adopt a comprehensive, long-term general plan for its physical development.[85] State law prohibits a county from issuing a conditional use permit for a project unless the project is consistent with the general plan.[86] The County also requires consistency with the General Plan.[87]

Although precise conformity with the general plan is not necessary, a finding of consistency requires that the proposed project be compatible with the objectives, policies, and general land uses, and programs specified in the applicable plan.[88] Courts have interpreted this provision as requiring that a project be "in agreement or harmony with" the terms of the applicable general plan.[89] An agency's determination of whether a project is consistent with a general plan must be supported by substantial evidence based on the record as a whole.[90] In applying this standard, "the nature of the policy and the nature of the inconsistency are

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[84] Initial Study at p. 67.
[85] *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806.
[86] Gov't Code § 65359; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184-86.
[87] Land Use Ordinance § 22.01.020(B) ("The Land Use Ordinance is the primary tool used by San Luis Obispo County to carry out the goals, objectives, and policies of the San Luis Obispo County General Plan. … The Board of Supervisors intends that the Land Use Ordinance be consistent with the General Plan, and that any land use, subdivision, or development approved in compliance with the Land Use Ordinance will also be consistent with the General Plan.")
[88] *Save Our Heritage Organization v. City of San Diego* (2015) 237 Cal. App.4th 163, 185-86.
[89] *Ibid.*
[90] *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677,695-96.

critical factors to consider."[91] If an inconsistency with a "fundamental, mandatory and specified land use policy is clear," the project must be rejected.[92]

The proposed Project is inconsistent with the General Plan's Agriculture Element and COSE. As discussed in Section I.A.2. above, the Agriculture Element and COSE were amended to deal with growing concerns regarding groundwater recharge in the PRGWB. Specifically, the County made the following changes when implementing the WNND component of the CWWCR:[93]

> **AG1: Support County Agricultural Production**
> d. Develop agricultural permit processing procedures that are rapid and efficient. Do not require permits for agricultural practices and improvements that are currently exempt, with the exception of a groundwater offset program in the Paso Robles Groundwater Basin, excluding the Atascadero sub-basin, as shown in Figure 2-2. Keep the required level of permit processing for non-exempt projects at the lowest possible level consistent with the protection of agricultural resources, ~~and~~ sensitive habitats, and groundwater supply.[94]
>
> **Agricultural Policies (AGP)**
> To the maximum extent possible, the following policies, implementation measures and programs try to balance protection of open space resources and the needs of production agriculture, and minimize the impacts to ongoing production agriculture. It is the intent to **not** require permits for agriculturally-related projects that are currently exempt (with the exception of a groundwater offset program in the Paso Robles Groundwater Basin excluding the Atascadero Sub-basin), and to **keep** the required level of permit processing for non-exempt projects at the lowest possible level consistent with the protection of agricultural resources, ~~and~~ sensitive habitats, and groundwater supply. The policies and recommended implementation measures apply to discretionary land use permits for new development (see Glossary for definition of development) and proposed land divisions.[95]

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[91] *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1341.
[92] *Id*. at p. 1342.
[93] Words containing an underline were added to the General Plan; whereas, words containing a ~~strikethrough~~ were deleted from the General Plan.
[94] Resolution 2015-288, attach. 1, exhibit B; *id*., attach. 2; *see also* County of San Luis Obispo, Agriculture Element (2015) p. 2-16 (*hereinafter* "Agriculture Element").
[95] Resolution 2015-288, attach. 1, exhibit B; *id*., attach. 2; *see also* Agriculture Element at p. 2-22.

AGP10: Water Conservation

c. In the Paso Robles Groundwater Basin (excluding the Atascadero Sub-basin), require new agricultural water use to be offset through mechanisms such as a water offset program.[96]

Discussion: Land area, the water falling on it, and groundwater stored beneath its surface are inseparable in determining agricultural values and productivity in the County. Other than the land itself, water is the most precious resource for agriculture. Conserving water can benefit agriculture by reducing groundwater pumping. Uncontrolled runoff can contribute to soil loss, reduced water quality in streams, and increased impacts on riparian habitat, decreased opportunity for groundwater recharge and degradation of the general productivity of the watershed. The Paso Robles Groundwater Basin (excluding the Atascadero Sub-basin) requires special conservation measures to address unique issues within the basin.[97]

2. Encourage farmers to use the best management practices in order to best promote the efficient use of water. Best management practices could include, but are not limited to the following:

a. Increased adoption of crop water status monitoring, such as soil moisture monitoring technology
b. More precise irrigation scheduling
c. Enhanced irrigation monitoring practices
d. Use of tail water return systems for any surface water application
e. Use of covers or other evaporation reducing systems for agricultural irrigation ponds
f. Use of wind machines for frost protection, rather than overhead sprinklers where feasible.[98]

3. The County Department of Agriculture should participate in educational efforts for farmers and the general public regarding water conservation. These efforts should be developed cooperatively by the Resource Conservation Districts, Consolidated Farm Services Agency, U.C. Cooperative Extension, and the U.S. Natural Resources Conservation Service. Educational efforts should utilize all available information and avoid duplication of effort. These efforts could include, but may not be limited to:

[96] *Ibid.*
[97] *Ibid.*
[98] *Ibid.*

a. Online and/or printed educational materials
b. Expansion of "Ag in the Classroom" program
c. Farm tours for elected and other key officials
d. Other existing programs and collaborative efforts[99]

AGP11: Agricultural Water Supplies
d. In the Paso Robles Groundwater Basin (excluding the Atascadero Sub-basin) require all groundwater users to conserve water through programs tied to permit applications.[100]

Discussion: The purpose of this policy is to strongly promote agricultural uses and to preserve limited groundwater supplies. Where urban development uses groundwater supplies, surrounding agricultural uses are often eventually displaced. By maintaining groundwater supplies primarily for irrigated agriculture uses, the county can encourage continued and expanded agricultural uses. In addition, this could reduce the chances that urban and suburban development will diminish recharge, deplete agricultural water supplies, degrade water quality, or make those supplies uneconomical for agriculture to use.[101]

Policy WR 1.7 Agricultural operations
Groundwater management strategies will give priority to agricultural operations. Protect agricultural water supplies from competition by incompatible development through land use controls. In groundwater basins certified at LOS II or III for water supply, establish groundwater management strategies (including adjudications) that consider all groundwater use.[102]

Implementation Strategy WR 1.7.1 Protect agricultural water supplies
Consider adopting land use standards, such as growth management ordinance limits, water offset programs for ~~non-agriculturally-related~~ proposed development on ~~certain rural areas~~, larger minimum parcel sizes in certain rural areas, and merger of substandard rural parcels, in order to protect agricultural water supplies from competing land uses.[103]

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[99] *Ibid*.
[100] Resolution 2015-288, attach. 1, exhibit B; *id*., attach. 2; *see also* Agriculture Element at p. 2-23.
[101] *Ibid*.
[102] Resolution 2015-288, attach. 1, exhibit C; *id*., attach. 3; *see also* COSE at p. 10.7.
[103] Resolution 2015-288, attach. 1, exhibit C; *id*., attach. 3; *see also* COSE at p. 10.8.

> **Policy WR 1.14 Avoid net increase in water use**
> Avoid a net increase in ~~non-agricultural~~ water use in groundwater basins that are ~~recommended or~~ certified ~~as~~ at Level of Severity II or III for water supply. In addition, place ~~Place~~ limitations on further land divisions in these areas and establish and implement water offset programs for all groundwater users until plans are in place and funded to ensure that the safe yield will not be exceeded.[104]

The proposed Project is inconsistent with the changes made to the General Plan because it fails to avoid a net increase in groundwater use from the PRGWB. As detailed in Section I.A. above, the Project intends to use groundwater from the PRGWB. Prior to submission of the land use permit application, the Project site did not use any groundwater.[105] Since the Project's use of groundwater will be a net increase over the site's historical groundwater use, the Project is inconsistent with AG Policy 10, AG Policy 11, COSE Policy WR 1.7, and COSE Policy 1.14. Therefore, the County must deny the conditional use permit.

III. THE PROJECT IS INCONSISTENT WITH THE LAND USE ORDINANCE APPLICABLE TO CANNABIS ACTIVITIES

Land Use Ordinance section 22.40 establishes the minimum land use requirements for cannabis activities.[106] "These standards cannot be waived or modified through Conditional Use Permit approval, except as specifically noted."[107] Among the requirements applicable to cannabis activities is the mandate that cannabis cultivation and nursery sites which require a land use permit and are in a groundwater basin at a Level of Severity III provide "a detailed description of how the new water demand will be offset."[108] "All water demand within an identified Area of Severe Decline ***shall*** offset at a minimum 2:1 ratio, unless a greater offset is required through a land use permit approval. Offset clearance ***shall*** be obtained through a County-approved water conservation program for the respective groundwater basin."[109] Moreover, "[i]rrigation water supplies for cannabis cultivation ***shall not*** include water transported by vehicle from off-site sources."[110]

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[104] Resolution 2015-288, attach. 1, exhibit C; *id*., attach. 3; *see also* COSE at p. 10.11.
[105] Initial Study at pp. 4, 23.
[106] Land Use Ordinance § 22.40.010.
[107] *Ibid.*
[108] *Id*. §§ 22.40.050.D.5.a., 22.40.060.D.5.a.
[109] *Ibid* (emphasis added).
[110] *Id*. §§ 22.40.050.D.5.b., 22.40.060.D.5.b. (emphasis added).

The Initial Study acknowledges the Project is in the PRGWB, which is a groundwater basin classified as Level of Severity III and in an Area of Severe Decline.[111] Therefore, the Project must have a minimum water use offset of 2:1, which is obtained through a County-approved water conservation program for the PRGWB. For the same reasons expressed in our initial Comment Letter,[112] Mr. House's comments,[113] and Section I.A. above, the Project cannot meet these requirements.

Specifically, the proposed offset plan is not applicable to the project site or the Project, because the property has not been irrigated for many years, if ever, and has not been actively farmed in the 5 years prior to the application.[114] Also, almonds and orchards are not eligible for consideration as part of the CWWCR. [115] Finally, the on-site orchards do not naturally consume groundwater because of the restrictive layer at the project site.[116] Because the Land Use Ordinance does not permit any deviation from the water use standards applicable to cannabis cultivation and nursery sites, the County must deny the conditional use permit.

IV. CONCLUSION

The Initial Study and MND are inadequate because the CEQA documents fail to adequately describe the Project, establish the existing environmental setting, and identify, analyze, and mitigate all potentially significant impacts. Due to these deficiencies, the County cannot conclude the Project's impacts are mitigated to a less than significant level.

CEQA requires an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.[117] As discussed in our initial Comment Letter and explained further above, substantial evidence supports a fair argument the Project could result in significant adverse impacts.

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[111] Initial Study at p. 67.
[112] Comment Letter at pp. 32-35.
[113] *See generally* House Comments.
[114] *Id*. at p. 1.
[115] *Id*. at p. 2.
[116] *Id*. at pp. 2-3.
[117] CEQA Guidelines § 15063(b)(1).

Moreover, substantial evidence supports a fair argument the Project's proposed measures will not reduce potentially significant impacts to a level of insignificance.

We urge the County to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the issues raised by comments in the record. This is the only way the County, decisionmakers, and the public can ensure the Project's significant environmental, public health and safety impacts are mitigated to less than significant levels.

Sincerely,

Andrew J. Graf
Associate

AJG:acp
Attachments