

January 6, 2022

**VIA EMAIL AND U.S. MAIL**

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Clerk of The Board  
County of Riverside  
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**Re: City of Murrieta's Opposition to Fuego Farms-Defective Mitigated Negative Declaration for Cannabis Grow Facility**

Dear County Supervisors,

Our office is City Attorney for the City of Murrieta and the City is opposed to the approval of the Fuego Farms ("Project") Conditional Use Permit ("CUP") and the adoption of a Mitigated Negative Declaration ("MND") for the Project. The City Council directed our office to issue this letter in opposition at a City Council meeting on December 21, 2021. We understand that this item is on the County Board agenda for January 11, 2022.

First, the County has failed to properly notice the proposed adoption of the MND as required by CEQA Guidelines Section 15072. The City of Murrieta never received notice and as such the County is prohibited from taking action until it properly fulfills the notice requirements of CEQA. The City should have received notice due to impacts from the project on City transportation facilities, and that an analysis on City transportation facilities was not included pursuant to the requirements of CEQA at Public Resources Code section 21092.4 and CCR Title 14 Section 15072, which states in relevant part:

**(e)** For a project of statewide, regional, or areawide significance, the lead agency *shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site. The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project. (emphasis added)*

A description of the local major arterial is as follows:

{Client Files/4540/105/CO/S0674158.DOCX}

Cherry Street between Adams Avenue and I-15 is designated in the City's General Plan as an Arterial and is 4.5 miles at its nearest extent to the project, and 4.9 miles from the project at its furthest extent. Additionally, the French Valley Parkway exit from I-15 is also located at 4.9 miles from the project and could be used as an exit for delivery vehicles transiting to the project. This is an important transportation facility serving south Murrieta and north Temecula. The County should have provided a CEQA notice to the City of Murrieta as a result of the proximity of Cherry Street's proximity to the project, and an analysis of the project's transportation impacts should have been performed for the French Valley Parkway exit (a CalTrans facility located within 5 miles of the project) which also services a regional medical center (Kaiser Permanente) and hundreds of small businesses in Murrieta.

The daily addition of hundreds of trucks to local major arterials located within 5-miles of the project would further worsen local air quality to sensitive receptor uses such as the nearby regional medical center located approximately ½ mile from the intersection of Cherry Street and the French Valley Parkway I-15 off-ramp.

In addition, the MND is inadequate to safeguard the community's health and safety and the natural resources surrounding the Project site. As stated below, there is a fair argument that the Project, as proposed, will have a significant impact on the environment and therefore the County is required to prepare an Environmental Impact Report ("EIR") instead of the adopting an MND. In sum, the MND fails to adequately address the environmental impacts associated with the Project and greatly understates the significant environmental impacts that will be generated by the Project.

The Project will have significant environmental impacts from the construction of its industrialized grow houses and its operations will create a continuing nuisance to the local residents of Murrieta due to the odor generated from the growing of cannabis. Additionally, the traffic generated from the site will adversely impact the rural nature of the community and the facilities grow lights will transform a rural area into an industrial area. Further, the very nature of the operations will serve as a magnet for criminal activities. None of these environmental impacts were adequately addressed in the MND.

All California Courts recognize that California Environmental Quality Act ("CEQA") was enacted to advance four related purposes:

- (1) inform the government and public about a proposed activity's potential environmental impact;
- (2) identify ways to reduce, or avoid, environmental damage;

- (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and
- (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment.”

(*Building Industry, supra*, 62 Cal.4th at p. 382, 196 Cal.Rptr.3d 94, 362 P.3d 792.)

Here, the MND fails on all four counts. The MND underestimates the industrialization of prime agricultural land, it fails to properly inform the Supervisors of the true environmental impact associated with a massive grow operation, it fails to reduce environmental damage, and it fails to disclose significant environmental impacts. As a result, the MND must be set-aside and an EIR must be prepared to address these and other environmental issues.

An agency's decision to rely on a negative declaration or a mitigated negative declaration under CEQA “ ‘is reviewed for abuse of discretion under the “fair argument” standard.’ ” (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 886, 233 Cal.Rptr.3d 278; see also *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 939, 102 Cal.Rptr.3d 19.) The Supreme Court has stated: “[A] reviewing court may not uphold an agency's decision [not to prepare an initial EIR under the fair argument test] ‘merely because substantial evidence was presented that the project would not have [a significant environmental] impact. The [reviewing] court's function is to determine whether substantial evidence support[s] the agency's conclusion as to whether the prescribed “fair argument” could be made. If there [is] 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 [can] be “fairly argued” that the project might have a significant environmental impact. Stated another way, if the [reviewing] court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed “in a manner required by law.” (*Berkeley Hillside Preservation v. City of Berkeley, supra*, 60 Cal.4th at p. 1112, 184 Cal.Rptr.3d 643, 343 P.3d 834.) **“The fair argument standard thus creates a low threshold for requiring an EIR, reflecting the legislative preference for resolving doubts in favor of environmental review.** (*Covina Residents for Responsible Development v. City of Covina, supra*, 21 Cal.App.5th at p. 723).

Here, the MND is simply inappropriate for a large-scale industrialized growing operation. The Project is not a farm in the traditional sense, instead it is a large industrial complex that is inappropriate for its proposed location, in fact, requiring an on-site armed guard. There are seventeen (17) bunker like grow facilities, a large steel building and two (2) of the proposed

growing facilities would be 96 feet long and 32 feet wide (3,072 sf per greenhouse), and fifteen (15) grow buildings would be 120 feet long and 32 feet wide (3,840 sf per greenhouse), for a combined total of 63,744 sf of manufacturing type facilities. The idea that this Project is an extension of ongoing agriculture activities is not only misleading, it is the foundational assumption that results in its understated environmental impact. The Project is not some pastoral farming operation, rather, it is a high-tech manufacturing complex designed to produce high volume product. In sum, it is a manufacturing facility placed in an agricultural zone.

Moreover, to clear the way for this complex, 4.3 acres of productive agricultural lands will be permanently displaced and 22,761 cubic yards of cut-and-fill will be required to create the building pads for the grow buildings.

Like most industrial complexes, the Project requires significant exterior lighting consisting of thirty-five (35) exterior flood lights on poles adjacent to the proposed 14-foot-tall grow facilities and eight (8) exterior wall sconces around the steel buildings. This will result in the transformation of agricultural land to a manufacturing type of operation. A photo-metric analysis, is needed to demonstrate lighting conformance. The MND simply states that the lighting will conform to code requirements, but does not identify the measurements of the lighting impact, nor how the lighting will be verified. Given the number of proposed lights, the public should be provided with technical information to substantiate the claims in the MND. Further, there is an inconsistency between in the Initial Study and the MND; in Section 2.a. of the Initial Study, under Mt. Palomar Observatory, it states 'no impact', yet the MND concludes that the impact is 'less than significant'.

Similar to the appearance of a military base, the grow manufacturing facilities will be surrounded by security cameras and barbed wire will be placed on top of its perimeter chain-link fences. Yet, the MND portrays the Project as if it is a typical agricultural operation. The MND also fails to analyze the impact of artificial lights on wildlife resources. Accordingly, an EIR must be prepared to address these and other impacts on biological resources.

Chemical use at these facilities were glossed over in the MND. The MND failed to analyze both the long-term and short-term impacts from using highly concentrated chemical fertilizers over a long period of time at high volume rates. The MND failed to analyze the impact to soil and groundwater from the use of these chemicals. The Project does not demonstrate that the design of the stormwater facilities can treat fertilizers. The CEQA document states "Runoff from upper greenhouse areas would drain to self-retaining decomposed granite areas to be constructed as part of the proposed Project. Paved areas and lower portions of the site would drain to a cistern tank and modular wetlands for flow mitigation and treatment before being discharged to

adjacent permeable areas.” The MND should have identified how routing fertilizer laden discharges through permeable areas is an effective treatment option for the volume of fertilizers to be used. The City is concerned with potential impact to the groundwater aquifer and overall watershed given the sensitive nature of the surrounding area, having on-site and off-site jurisdictional waters. In addition, the on-site agricultural pesticide uses were not disclosed in the MND, which will likely warrant a review for cumulative impacts, given the amount of chemicals and fertilizers to be used and discharged on the property.

The MND does, however, recognize that no wastewater treatment plant will be in operation at the facility, but casts this lack of a wastewater treatment plant as if it is a positive for the environment and as if one is not needed.

The MND notes that the project applicant will implement odor reduction measures to ensure compliance with County ordinances. However, the MND provides no supporting evidence that the control technologies will in fact prevent odor related nuisances and, in some sections, refers to ‘odor-reducing’, but not elimination of the odors. Moreover, there was no specific identification of the type of equipment that will be used to control the odor generated from these operations or the performance specifications of such equipment. Instead, the MND simply provides conclusory statements that underestimate the odor related impact to the surrounding communities.

Further, the MND contains no biological surveys of endangered species that might be located at the Project site. Instead, the MND relies on a biological consistency analysis that simply states that the site has a degraded habitat from ongoing agricultural operations. Further analysis is needed.

This Project will be a high-value target for criminal activity. There is little doubt that this industrial cannabis grow operation will attract criminal opportunists. Yet, the MND provides little to no assurances that local and regional police will be able to counter what is likely to become an ongoing source of criminal activity. Furthermore, grow houses have had a significant history of fires, accordingly, the MND should address the burdens the Project will place on local fire protection resources and determine if fire sprinklers should be required within the grow houses.

In summary, the issue for this Project is not associated with legal cannabis in general; rather, the concern is with the “size” and “fit” of the proposed operation within the community. There are homes located close to the facility that the City believes will be negatively impacted by the presence of the cultivation facility. The City joins with the residents who have also voiced their opposition to this CUP outlining the negative impacts it could have on the rural residential

neighborhood and the Santa Rosa Plateau/De Luz, which include traffic, noise, lighting, odors, and potential increases in criminal activity impacting police and fire resources.

There is a fair argument that this project will have unmitigated impacts to public resources, biology, water quality, and air quality. Therefore, it is recommended that the Board of Supervisors not adopt the MND for this Project and that the CUP be denied. Instead, an EIR should be prepared that fully addresses the short comings of the present MND. The County needs to properly notice their proposed actions, which at this point did not include the City of Murrieta receiving notice of this matter.

For these reasons, the City would like to be on record as opposing CUP No. 190038. The City respectfully requests that at the very least, the County conduct additional outreach, education and analysis regarding this CUP before taking any action.

Sincerely,

DEVANEY PATE MORRIS & CAMERON, LLP



Jeffery A. Morris

JAM/ams

cc: Murrieta City Council

Kim Summers  
City Manager  
City of Murrieta