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VIA ELECTRONIC MAIL

Mr. Andrew Trippel
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City of Santa Rosa
100 Santa Rosa Avenue, Room 3
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Re: The Santa Rosa Farm Group – Responses to Comments on Initial Study/Mitigated
Negative Declaration – SCH No. 2020060603

Dear Mr. Trippel:

As you know, the Santa Rosa Farm Group proposes to redevelop an industrially-zoned parcel with an approximately 120,000-square-foot cannabis facility ("Project") in the City of Santa Rosa ("City"). The Project is located at the southwest corner of the intersection of Yolanda Avenue and Petaluma Hill Road ("Project Site").

The City prepared an Initial Study/Mitigated Negative Declaration ("MND") to analyze the potential impacts of Project. The City published the MND on June 30, 2020 for a 30-day public review period that ended on July 30, 2020. Comments on the MND were submitted to the City by a few agencies and individuals.

The California Environmental Quality Act ("CEQA") Guidelines, Section 15074(b) provides that prior to approving the Project, the City shall consider the MND together with any comments received during the public review process. CEQA does not require the City to formally respond to comments on the MND. Nonetheless, we provide the responses below for the record and to help inform the City's consideration of the Project during the final steps of administrative review.

The responses below are organized by the agencies and individuals that commented on the MND. Please add our letter to the administrative record. We look forward to advancing the Project to the hearing phase of approval at the earliest opportunity.

A. Agencies

1. Bay Area Air Quality Management District (“BAAQMD”)

On July 30, 2020, BAAQMD submitted a comment letter on the MND to the City. The letter begins by noting that BAAQMD appreciates and supports the applicant’s efforts to incorporate best practices into the Project’s design to minimize air quality and climate impacts. It then raises three substantive comments relating to on-site solar panels, emissions impacts, and permitting requirements. We address each comment below.

On-Site Solar Panels

BAAQMD encourages the Project “to install onsite solar panels for a portion or all of the Project’s energy consumption” to help meet the State’s carbon neutrality and clean energy goals.

The applicant supports the State’s carbon neutrality and clean energy goals and it has designed the Project accordingly. The Project is voluntarily incorporating sustainability features, including a water reclamation system and an on-site natural gas cogeneration system. Additionally, the Project will comply with the City’s Climate Action Plan (“CAP”), which ensures that the City is contributing substantial progress towards the State’s goals. The Project incorporates a wide variety of CAP measures, including CalGreen Tier 1 standards, PG&E’s Smart Meter System, cool paving materials, incentives for non-vehicular transportation, electric vehicle charging systems, water meters and onsite meter separation, outdoor electrical outlets, low water use landscaping, diversion of construction waste, electric construction equipment and/or alternative fuels, and other construction measures to reduce greenhouse gas (“GHG”) emissions. The sustainability features and CAP compliance measures ensure that all energy, air quality, and GHG impacts are less than significant.

The request for on-site solar panels is not warranted, and not feasible, given the Project’s energy demands. The Project will require up to 5,000 kW of power for cultivation operations and ancillary equipment (lighting, heating, ventilation, and HVAC). Due to current technological and cost limitations, the Project cannot meet all or even a substantial portion of its energy needs using on-site solar power. The two feasible options for meeting energy demand are cogeneration power or grid connections for electricity and natural gas. The applicant selected an on-site natural gas cogeneration system because it is the most environmentally sensitive option. The MND analyzes the energy, air quality, and GHG impacts of the Project, specifically including the cogeneration system, and demonstrates that all are less than significant.

Although it is neither required, nor feasible, for the cannabis operation to rely on solar power at this time, the Project proposes to pre-wire and pre-plumb the building for solar thermal or photovoltaic systems. This will allow the Project or future users of the site to readily implement solar power if conditions change. For example, if solar technology improves and becomes a feasible option for the Project, pre-wiring will allow the applicant to easily incorporate solar thermal or photovoltaic systems. Similarly, if a new land use later replaces the cannabis use, pre-wiring will allow the future user to easily incorporate solar thermal or photovoltaic systems into the building.

Emissions Impacts

BAAQMD recommends that the MND analyze potential cumulative impacts and health risks from the Project on nearby residents, including risks associated with toxic air contaminants (TACs) and fine particulate matter (PM_{2.5}). As discussed below, the MND did analyze these issues based on substantial evidence and in relation to surrounding uses.

The MND fully analyzes the Project's cumulative impacts from emissions of TACs and PM_{2.5}, including the potential for health impacts on nearby residents. The MND discloses that nearby sensitive receptors include residences directly adjacent to the south and southwest of the Project site boundaries. The MND calculates the Project's emissions using the standard CalEEMod modeling program. Applying BAAQMD's thresholds of significance, the MND then analyzes the Project's construction and operational emissions. It concludes that all impacts would be less than significant with mitigation measures and mandatory regulatory compliance.

As to PM_{2.5}, the MND notes that the broader region is in nonattainment, and that existing conditions have the potential to cause health impacts, including respiratory irritation, reduced lung function, aggravation of cardiovascular disease, and cancer. However, the Project's PM_{2.5} emissions, during both construction and operation, will not exceed BAAQMD's significance thresholds. Additionally, the Project will incorporate BAAQMD's recommended construction best management practices and adhere to applicable regulatory compliance measures set forth in BAAQMD Rule 2 (New Source Review), Section 2-2-301 (Best Available Control Technology Requirement). As a result, the Project's incremental contribution to adverse health impacts will be less than significant, and the Project would not harm the nearby residents.

As to TACs, the MND explains that TACs are a diverse group of air pollutants that may cause or contribute to an increase in deaths or serious illness or that may pose a present or potential hazard to human health. TAC impacts are described by carcinogenic risk, and by chronic (i.e., of long duration) and acute (i.e., severe but of short duration) adverse effects on human health. Unlike criteria pollutants, however, BAAQMD has not established ambient air quality standards for TACs. Therefore, the MND analyzes the Project's TAC impacts in light of other regulatory and permitting requirements. The MND explains that the proposed cogeneration system includes a natural gas combustion engine that would be a stationary source of TACs. The cogeneration system would therefore require an Authority to Construct and Permit to Operate from BAAQMD. In order to receive this approval, the Project would be required to implement Best Available Control Technology (BACT) and to comply with cancer risk standards. Adherence to these existing regulations and permit requirements would ensure that the Project would not expose sensitive receptors to substantial or harmful pollutant concentrations. Therefore, impacts would be less than significant.

Permitting Requirements

BAAQMD recommends that the MND demonstrate how the Project will comply with Air District Regulation 2, Rule 5 (New Source Review of Toxic Air Contaminants) for the cogeneration systems. The MND already includes a detailed explanation of BAAQMD's permitting requirements for the cogeneration system and of how the Project will comply with them.

The MND explains that as required by BAAQMD Rule 1 (General Requirements), the applicant would be required to obtain an Authority to Construct and Permit to Operate from BAAQMD for the proposed cogenerator system. Pursuant to BAAQMD Rule 2 (New Source Review), in order to obtain this approval, the cogenerator system would be required to implement Best Available Control Technology (BACT) to control criteria pollutant emissions, if it would emit pollutants in an amount of 10 or more pounds per day. (Rule 2, Section 2-2-301). The proposed cogenerator system would emit more than 10 pounds per day each of NOX, CO, and volatile organic compounds (VOCs). Therefore, the Project will be required to comply with BAAQMD Rule 2 by implementing BACT. The MND's stationary source analysis takes into account this mandatory regulatory compliance measure and stationary emissions estimates are based on emission factors with BACT in place (selective catalytic reduction [SCR] or oxidation catalyst system).

The MND further notes that the proposed cogenerator system includes a natural gas combustion engine that would be a stationary source of TACs. Therefore, BAAQMD's Regulation 2, Rule 5 (New Source Review of Toxic Air Contaminants) will separately require the applicant to obtain an Authority to Construct and Permit to Operate. The MND lists this approval as one of the required approvals for the Project. The MND also notes that Rule 5 specifies the permit requirements and criteria that the cogenerator system will need to comply with. In relevant part, Section 2-5-302.1 (Project Risk Requirement) requires the Air Pollution Control Officer to deny an Authority to Construct or Permit to Operate for any new source of TACs, if the projected cancer risk exceeds 10.0 in one million. Adherence to these permit requirements will ensure that the Project will not expose sensitive receptors to substantial or harmful pollutant concentrations.

2. California Department of Fish and Wildlife ("CDFW")

On August 4, 2020, CDFW provided a comment letter to the City. The City did not receive this comment letter during the statutory public review period, which ended on July 30, 2020. However, for informational purposes, we have provided the responses below for the record. CDFW's comments start on page 3 of its letter and focus on: (1) the California tiger salamander; (2) migratory birds and nesting raptors; and (3) fencing hazards. We address each point in turn below.

California Tiger Salamander

As a basic matter, CDFW pointed out that the California tiger salamander ("CTS") has the potential to occur on the site and impacts will need to be analyzed. The MND contains a thorough analysis of potential impacts on CTS, including several technical studies of the Project Site focused on CTS. Specifically, the Biological Assessment prepared by Wiemeyer Ecological Sciences ("Biological Assessment") and the California Tiger Salamander Impact Analysis prepared by Monk & Associates Inc. ("CTS Report") found that the Project would not impact CTS and would not require CTS mitigation. These reports are substantial evidence that the Project would not have a direct or indirect significant impact on CTS.

CDFW noted that the Biological Assessment identified a few gopher burrows in the grassland areas of the Project Site. CDFW thus recommended a buffer of at least 30 feet around small mammal burrow openings to avoid impacts to CTS potentially residing in underground burrows.

CDFW also indicated that utility improvements may occur adjacent to Petaluma Hill Road, which as described below, is unlikely to occur as part of the Project.

First of all, it is important to clarify that all of the biology reports contained in the MND concluded that there are no CTS on the Project Site and it is not suitable habitat to support CTS. Second, the Project is designed to avoid grassland areas, both during construction and operation, and thus would be highly unlikely to impact burrow areas. The Biological Assessment and the CTS Report point out that the Project footprint would be contained to hard pack areas. The reports also confirmed that migration of CTS onto the Project Site would not occur for several reasons, including but not limited to: (1) intervening development and urban infrastructure barriers; (2) distance to known breeding sites; (3) the tainted nature of certain ponds in the vicinity of the Project Site; and (4) the basic lack of suitable habitat on the Project Site. Third, the grassland areas on the Project Site are regularly disked which further reduces (but does not eliminate) the possibility of CTS occurring anywhere on the Project Site. Therefore, in any case, construction and operation of the Project would not have a significant impact on CTS.

We recognize, however, the CDFW would prefer the applicant to avoid small mammal burrow openings if feasible. Thus, the applicant will confer with the City (as Lead Agency) and consider accepting a condition of approval regarding burrow avoidance if feasible. The condition could be as follows, subject to the City's consideration: "If construction activities occur on non-native annual grassland areas on the eastern portion of the Project Site, then the applicant shall identify mammal burrow openings in such areas during a pre-construction site assessment and flag those areas for avoidance if feasible." To be clear, the MND concluded, based on substantial evidence, that CTS mitigation was not required for the Project. Accordingly, the suggested condition of approval is voluntary – and the Project would not result in a significant impact to CTS – with or without the condition of approval.

With respect to Petaluma Hill Road, the Project does not propose improvements along that road alignment. The Project specifically avoided any disturbance of the grasslands located along Petaluma Hill Road because, in part, the U.S. Army Corps of Engineers ("USACE") claimed jurisdiction over a seasonal ditch crossing the southeast portion of the property in 2009. The applicant also purposely avoided grassland areas on the eastern portion of the Project to reduce potential environmental impacts. The applicant has discussed the sidewalk improvement issue with the City and anticipates that the City will permit the Project in a manner consistent with Chapter 18-12 of the Santa Rosa City Code, which does not require physical improvement of Petaluma Hill Road for several reasons. Therefore, the Project would not impact areas on the Project Site along the linear alignment of Petaluma Hill Road.

Migratory Birds and Nesting Raptors

CDFW commented on tree removal associated with the Project. As a reminder, the MND analyzed tree removal impacts in accordance with the applicable threshold of significance, which is, in part, whether the Project would conflict with any local policies or ordinances such as a tree preservation policy or ordinance. The MND clearly explains that the Project would comply with the City of Santa Rosa Tree Preservation Ordinance, which governs the alternation, removal and relocation of trees. The ordinance requires the applicant to replace certain trees in compliance

with the City's applicable standards. This mandatory compliance with the Lead Agency's regulation is sufficient to mitigate potential impacts to trees on the Project Site. Therefore, the Project is not required to implement the tree replacement ratios, or other suggestions contained in the CDFW letter, regarding tree replacement.

CDFW also suggested a mitigation measure for nesting birds, and states that two surveys should be conducted instead of one. We point out that during at least two prior field surveys of the Project Site no active bird nest were observed. Still, due to the potential for nesting activity, the MND includes Mitigation Measure BIO-1, which requires a qualified biologist to perform a pre-construction survey for nesting birds before any ground breaking occurs. If any nesting birds are found the biologist shall establish suitable buffers that are clearly marked and remain in place until the young have fledged or the nest has been abandoned. As a result, any nesting birds on the site would be identified and adequately avoided.

We recognize, however, that CDFW would prefer a more onerous survey method. The applicant will therefore confer with the City (as Lead Agency) and determine whether it would slightly modify Mitigation Measure BIO-1 to read as follows: "The Project sponsor shall retain a qualified biologist to perform a pre-construction survey for nesting birds within 14 days prior to ground-breaking at the Project site; and a second survey for nesting birds within 48 hours prior to the start of construction, if construction activities will take place between February 1 and August 31. If nesting birds are found, the qualified biologist shall establish suitable buffers prior to ground-breaking activities. To prevent encroachment, the established buffer(s) shall be clearly marked by highly visibility material. The established buffer(s) shall remain in effect until the young have fledged or the nest has been abandoned as confirmed by the qualified biologist." The underlined text is the language that could be added to Mitigation Measure BIO-1. This added text is not necessary to reduce impacts to less than significant because the MND already concluded, based on substantial evidence, that impacts to nesting birds would be less than significant. Nonetheless, the applicant would be willing to accept this modified survey methodology if the City chooses to adjust the mitigation measure accordingly. In no circumstance, would this minor modification of Mitigation Measure BIO-1 trigger recirculation of the MND or any other processes in CEQA. The City could clarify this minor textual change in its staff report before hearings.

Finally, CDFW hypothesized that the Project may use open pipes as fence posts, property line stakes or signs, and suggested that hollow posts and pipes be capped to prevent wildlife entrapment. This comment is not germane to the impact analysis in the MND. The applicant acknowledges this comment and will consider it during construction and operation of the Property.

B. Individuals

1. Chris Dibartolo

The commenter lives at 304 Burt Street in the City, which is approximately 250 yards from the Project Site. There are existing homes and a large open field between the commenter's location and the Project. First, the commenter states that he opposes the Project because it may bring down home values. That position is speculative and unsubstantiated. Also, this economic issue is not an environmental issue relevant in CEQA review. We also point out that the Project is

consistent with the zoning and land use designation of the Project Site and that there are several industrial and commercial uses in the vicinity. Thus, the Project is consistent with existing uses and applicable zoning.

Next, the commenter claims he may be able to smell the Project. That position is also speculation. We note that the MND analyzed, pursuant to the applicable CEQA threshold of significance, whether the Project would result in odors affecting a substantial number of people. The MND explains that the Project requires an Odor Control Plan that would establish a protocol to continuously sample representative effluent air. If the filtration system alone is not adequate in obtaining the control efficiency determined under the Odor Control Plan, then odor control abatement will be enhanced through one of several means. Additional controls may include, but not be limited to, mist eliminators via spray application, oxidation using hydrogen peroxide or ozone and/or other neutralizing agents. All added controls and their guarantee efficiency would be backed by vendor suppliers. In addition, the MND includes Mitigation Measure AQ-1: Odor Control Plan, which requires that prior to final certificate of occupancy, the Project sponsor shall prepare an Odor Control Plan and submit it to the City for review and approval. Implementation of the plan shall ensure that Project operations will not expose a substantial number of people or neighboring properties to objectionable cannabis odors. Therefore, odor impacts would be reduced to a less than significant level.

The commenter also states that “the City has not upgraded Yolanda Avenue to deal with increased traffic nor has it upgraded the intersection of Yolanda Avenue and Petaluma Hill Road to deal with any more traffic so this project would only compound the problems there.” We note for the record two points relevant to this comment. First, the MND includes a comprehensive Transportation Impact Analysis Report prepared by Fehr & Peers. That report analyzed existing conditions, potential traffic impacts, and future conditions that include roadway improvements and cumulative traffic in the area due to the Project and other developments that are reasonably foreseeable. The conclusion was that the Project would not result in significant traffic impacts. Second, the applicant would likely improve a portion of Yolanda Avenue (along the frontage of the Project Site) in accordance with applicable City codes, which would benefit the vicinity and improve existing conditions.

2. Linda Metesh

The commenter had a basic question regarding the location of the Project Site compared to her property. The City staff clarified the location of the Project Site for the commenter on July 1, 2020 and no further comments were received.

3. Jan Vazquez (July 30, 2020)

The commenter submitted a comment dated July 30, 2020 and a second comment dated July 31, 2020. The second comment was received by the City on August 3, 2020 and was not submitted during the statutory review period. We address the comments below regardless. We also note for the City that the commenter owns the property at 2431 Summercreek Drive (near the Project Site) in Santa Rosa, but resides in the City of San Rafael approximately thirty miles away.

First, the commenter claims the MND is “faulty because the project description excludes identification of the future use of the 2.24 acre eastern portion of the lot and, consequently, does not provide any analysis of the cumulative impact of the full development of the lot. To quote from the AEP CEQA Portal, “For a phased development project, even if details about future phases are not known, future phases must be included in the project description if they are a reasonably foreseeable consequence of the initial phase and will significantly change the initial project or its impacts.” This comment is factually and legally inaccurate.

The project description in the MND explains that the eastern portion of the Project Site would not be developed as part of the Project. The MND analyzes the whole of the action that has the potential to result in a direct or indirect physical change to the environment. To be clear, this is not a phased project as the commenter speculates. The eastern portion of the Project Site is simply not part of the Project and the applicant is not contemplating future redevelopment on the eastern portion of the Project Site at this time. It is common industry practice to identify portions of a project site as “not a part” when those areas are not included as elements of a project. That is the accurate method to inform the public and the decision makers of the extent of a project’s physical footprint. The Project is a wholly-contained facility surrounded by a perimeter wall. Moreover, even if future redevelopment were to occur on the eastern side of the Project Site (which is not contemplated at this time) such an activity would be subject to review by the City and additional review pursuant to CEQA. Therefore, the MND has accurately illustrated and described the Project for purposes of impact analysis.

Second, the commenter states that “the site plan does not show the area of the lot which has been delineated by the Corp of Engineers. The IS does not analyze the constraints to development caused by that delineation.” We point out for the commenter that the Figure 11-5 in the MND shows the entire area of the lot, which is delineated by a black dashed line. This is the extent of the applicant’s fee interest ownership. Also, the Biological Assessment specifically identifies, and discusses the USACE jurisdictional features on the Project Site. The Project is intentionally designed to avoid these features, and the eastern portion of the property generally. Thus, the Project would have no direct or indirect impact on this potential USACE jurisdictional feature.

Third, the commenter states that “the photometric analysis of the project does not analyze the glare coming from the 15 foot tall light located at the southwest corner of the lot to the second floor bedrooms of the adjacent houses on Summercreek Drive. The proposed concrete wall along the property line will not block the light at these second floor levels.” We note that the MND analyzed whether the Project would create a new source of substantial light or glare. Specifically, the photometric analysis of the proposed lighting plan concluded that the Project will not result in substantial light spillover along the south property line, which is where the commenter’s property is located. We also note that in the existing condition there appears to be large shade trees between the Project Site and second floor of the adjacent structure that could obscure light sources. Also, importantly, as with all projects in the City, the Project must adhere to Section 20-30.080 of the code, which requires lighting fixtures on private property to be shielded to reduce light bleed to adjoining properties by ensuring the light source is not visible from off the site and confining glare and reflections to within the boundaries of the site to the extent feasible. The Project would comply with these requirements.

Fourth, the commenter claims that “the single photo simulation of the proposed development showing its massing is inadequate to assess the project’s compliance with the General Plan and design guidelines goals for neighborhood compatibility. The view is from bird’s eye level, which is to say drone level, never seen by the passing public. The perspective foreshortens the height of the building.” We point out that the MND contains a detailed description of the Project including square footage, heights and other dimensions. This narrative and the other site plans included in the MND adequately inform the public and decision makers about the size of the Project. In addition, Section 11 of the MND analyzes consistency between the Project and the General Plan and other applicable zoning and land use policies. Furthermore, the MND points out that the Project would be required to meet certain conditions for approval under the Comprehensive Cannabis Policy Ordinance, including appropriate design. Also, as part of the City’s permit application review procedure, the City’s Design Review Board would review the design aspects of the Project (e.g., building design, landscaping, site planning and development, and signs) for compliance with the City’s Design Guidelines (SRCC Section 20-52.030). This would occur prior to construction of the building. Therefore, the Project would not have significant aesthetic or lighting impacts. The commenter’s suggestions for further visual simulations are noted but not necessary to proceed with the Project.

In closing, we appreciate the City’s consideration of the responses and information provided in this letter. We respectfully request that the City timely exercise its discretion and proceed to a hearing to approve the MND and Project.

Regards,

A handwritten signature in blue ink that reads "James E. Pugh". The signature is fluid and cursive, with the first name "James" and last name "Pugh" clearly legible.

James E. Pugh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP