de la Guerra, Sheila

Group 1

LATE DIST

#2

From: Courtney Taylor <me@courtneyetaylor.com>
Sent: Friday, March 29, 2019 6:42 AM
To: sbcob
Subject: Comment RE 4/2/2019 Agenda Item #2
Attachments: Dierberg - Cannabis Letter to BOS.pdf

Clerk of the Board:

Please find attached a letter from Tyler Thomas, Managing Director for Dierberg Vineyard and Star Lane Vineyard, regarding Board of Supervisors Departmental Agenda Item #2 for April 2, 2019 regarding further amendments to cannabis regulations.

Thank you,
Courtney Taylor

Courtney E. Taylor
1005 Court Street #310, San Luis Obispo, CA 93401
p: 805.316.1278 | ***c:*** 805.234.2706 | ***w:*** courtneyetaylor.com
Legal Counsel to the **Alcohol Beverage Industry**

3/28/2019

Re: Comment on proposed amendments to Cannabis Ordinance – Hearing date April 3, 2019.

Honorable Supervisors:

Below is the rationale for our suggestion that the ordinance include something like the following:

- Limiting one cannabis license per parcel as intended by the state law.
- Outdoor cannabis grows in Ag-II should be required to contain nuisance aromas within their property boundaries.
- Reasonable conditions should be in place to limit grows where it is obvious ahead of time that nuisance will occur based on data currently available regarding volatile terpenes oils and their impact on crops such as wine grapes.
- Limit outdoor grow sizes on Ag-II parcels to 1 acre.
- Increase definition of sensitive receptor to include wine grapes and other ingested crops.
- Create reasonable setbacks from such sensitive receptors.

Dierberg vineyard is on Drum Canyon Road. It is a 130 acre parcel with 66 acres of Pinot noir and Chardonnay grapes. There is an open air winery with a tasting room on the parcel. Currently, on two sides there is enough cannabis requested to supply all of California's estimated cannabis requirements (https://www.sacbee.com/news/politics-government/capitol-alert/article228120439.html). These grows are unprecedented. One, immediately adjacent to and north of our property would immediately be the largest grow in Santa Barbara County, which would make it the largest in the state, and the largest in North America (https://growersnetwork.org/industry/largest-cannabis-producers-in-north-america-2018/).

This grow is requested by a company based in Sonoma County (company is Tierra Timbor Cannabis Cultivation but Ned (Edward) Fussel of CannaCraft is behind the project). It is obvious from the aromatic impact of currently active grows (even indoor grows which are considerably smaller) that these proposed outdoor grows with no odor restrictions would have a material and devastating impact on the grapes grown on our nearby vineyard. Not to mention the winery, employees, and tasting room guests.

It is well established that the 'skunky' aromas are associated with desirable strains of cannabis because they are thought to produce a quality 'high'. Therefore the cannabis industry has incentive to grow stinky varieties of cannabis. It is also well established

that these aromas are at least in part derived from volatile terpene oils produced by the plant. It is well established in peer reviewed literature that another non-grapevine plant, eucalyptus – which shares the production of volatile terpenes - is capable of impacting the quality of grapes and subsequent wine grown near the trees (one example: https://pubs.acs.org/doi/abs/10.1021/jf204499h). There have even been peer reviewed studies performed to determine the "rejection threshold" of eucalyptus in wine by consumers. This clearly implies that a point exist at which negative impressions are associated with the eucalyptus odor. Eucaplytus is not unpleasant in certain lower level concentrations when one is around trees, so the fact that a quantity can be reached in wine to create "rejection" is noteworthy because cannabis volatile terpenes which create the skunk aromas are not pleasant even in small quantities. Therefore, it is not a stretch to be concerned about even small amounts getting on the grapes and into the wine.

It is obvious to the standard observer that cannabis grows are much more potent than eucalyptus trees (e.g. it's much easier to smell cannabis in Carpinteria than eucalyptus at various points of highway 101). Similarly, cannabis is more potent than broccoli (a beloved Santa Barbara County crop), which while not entirely pleasant when growing, shows no sign of getting into wines. There is more than probable evidence already, that the grapes grown near cannabis grows (like those we farm for ourselves and for sale to others) will be materially impacted and make it unprofitable to continue. There is probable evidence that – *save containment of odor* – cannabis grows will have a direct impact on our existing business. Odors will impact grape quality, wine quality during open air fermentation (unsealed open top fermentations acquired smoke taint in Sonoma and Napa Valley during devasting fires from a couple of years ago), guest experience of the aromas of our wine (ie purchasing decisions), and reviews of the visitation of our tasting room.

This will require the closure of our tasting room because of the overwhelming skunk odor which the cannabis neighbors will not be able to contain on their property. (Imagine how it smells when you pass the small grows currently dotting the county, then scale that up to an unprecedented 147 acre grow). Sensory science of wine has long established the need to avoid confounding aromas (like perfume…or skunk) in order to properly appreciate and understand a wine. (A well-established faux pas in the industry is when an industry insider makes a habit of wearing cologne or perfume, especially to a significant degree). We ask our hospitality employees to be cognizant of their deodorants, perfumes, cologne, and hand soap scents. Environment (read air quality) free of confounding aromas is necessary for us to build guest confidence, sell our wine, and gain references for continued business. 70% of the taste of our wines comes from our wine's aromatics.

Our winemaker has experienced both eucalyptus taint and smoke taint from his time in Sonoma. Anecdotally, he has known producers who have produced wines at varying distances from eucalyptus trees in order to demonstrate to the grower that they must either 1) cut down the trees, or 2) permit the winery to be released of their contractual obligations due to the material and negative impact of the terpene compounds. This demonstrates how other industry partners are likely to view the value of our grapes if the grows surrounding our property are unable to contain the aromas from their cannabis plants within their own property. And these anecdotal examples are not 140 acre groves of eucalyptus. It is a row of a few trees at the border of a property. Therefore it does not require much imagination to understand that if the largest single grow in north America is permitted to continue near our property, it would significantly devalue our grapes such to render them unprofitable. To allow the grow would send the signal that the county is "picking winners" in the agriculture world that are the likes of feed lots, dairy farms, and meat processing plants. In other words, highly odorous businesses not usually reserved for bucolic rural areas with existing agro-tourism business.

While certainly there is no direct peer reviewed research regarding cannabis aromas impacting grapevines, this should not be taken as commentary on the probability of impact. That there are no studies is simply an indication of federal funds preventing the legal investment in such research by federally funded institutions (e.g. UC, Davis). It is only until the past few months that researchers with interest in cannabis and grape relations have been legally permitted to endeavor to answer these questions. However, most reasonable scientists like our winemaker (M.S. in Botany, & M.S. in Viticulture and Enology) and our Viticulturist (PhD in Plant Pathology) - if familiar with the data regarding eucalyptus and wine – would certainly assume that cannabis, with its much more potent skunk aromas and larger grow sizes, is going to have a large impact on grape and wine flavor.

Furthermore, the intensity of cannabis from outdoor grows will have an impact on our business even if only two cycles of crops are obtained per year and the smell is during a "limited time" (an argument our neighbor has made). First, as fellow farmers, we must assume that growers will stagger planting as much as reasonably possible since it would be logistically difficult to get all 147 acres in the ground at once and harvested at once (it is our understanding the process is not heavily mechanized and therefore is susceptible to labor available, and speed). All extra days over 1 day to plant all 147 acres increases the length of time one expects to experience the "2 week" skunky aromas. So the rule of thumb of "2 weeks" ignores farming logistics. It also ignores plant physiology and the fact that aroma production will likely be normally distributed over a period of time. Even if an average of two weeks which is highly suspect, at what timing 1 or 2 standard deviations from the mean does meaningful production – ie odor

thresholds for people - of the terpene occur? Add that to staggered planting, and large acreage, plus two cycles a year and we still arrive at something which will create a material impact on our existing business: several months of odor.

We believe that the cannabis business licenses should have reasonable restrictions to protect not only ourselves but the general public. We believe only one license should exist per parcel. Not only will cannabis have a direct negative impact on our ability to carry on our historical business, cannabis is also a nuisance, and we should be protected against this nuisance. We like to eat meat, but we don't want a meat packing plant in our community. We should be protected from their unfairly taking our property rights, as well as the enjoyment and freedom of use of our property without significant and persistent nuisance.

The reasonable consideration is for growers to contain odor impact within their own property which could otherwise harm our assets. This is only probable with maximum grow size limitations and significant set backs away from other food-crops or eliminating all outdoor grows completely as they cannot properly filter aromas. The state of CA already intended to limit grow sizes by not permitting large licenses until 2023. The stacking of license within more than one parcel directly contradicts the spirit of the law and is allowing unprecedented outdoor grows for which we have limited understanding of their economic impacts to neighboring crops. If we are made to be the test case for such grows, we believe there is more than enough circumstantial evidence to suggest we will lose 100% of our investment. More research is needed to understand these limitations and setbacks, but if other California county actions are any guide, 1 acre maximum grow sizes is appropriate in addition to limiting one license to one parcel.

Sincerely,

Tyler Thomas

Managing Director for Dierberg Vineyard and Star Lane Vineyard
PO Box 217
Santa Ynez, CA 93460
tyler@dierbergvineyard.com
805.697.1454

Cc: Jim Dierberg

de la Guerra, Sheila

From: Denice Fellows <fellowsfam@cox.net>
Sent: Friday, March 29, 2019 8:50 AM
To: Denice Fellows
Subject: Cannabis

Good day: I am writing to you to voice my concerns regarding the health and welfare of our neighborhoods that border AG-2 properties. I know you are looking at making revisions to AG-1 regarding Cannabis, and I am very concerned about our foothill home values and quality of life issues that would be very negatively impacted by cannabis growth on the AG-2 properties. The citizens of Carpenteria and Tempesque have been complaining for months regarding the many negative side effects of marijuana grows in their communities. We do not want the health of our families who live in some cases less than 50 feet from the AG-2 properties to be effected. Would you want your children living next door to a cannabis grow? The smell is wretched and it travels for great distances as well as the concern for traffic and safety. Santa Barbara is all about living a healthy outdoor lifestyle, but this would be significantly affected by cannabis growing nearly in our backyards as the regulations currently stand.

I live in Rancho Del Ciervo a neighborhood off of North Patterson and I and most of my neighbors are against the counties current regulations for cannabis. Cannabis is not an agricultural product it is an illegal drug according to Federal law! There are currently NO protections for homeowners. Our home values could be cut in half by living next to cannabis. Our quality of life would plummet along with our safety. We hope that the Supervisors will come up with protections for us. We are your constituents not the marijuana industry! Please do not let our communities be decimated by cannabis growth. Please put some major setbacks, preferably over a mile in place to protect our children, our health, and our home values. We are known as the Goodland, the American Riviera, and paradise. This will not be the case if you allow cannabis growth on AG-1 and AG-2 sites that border our beautiful neighborhoods. Please help us and put some major restrictions on where cannabis growth will be allowed.

Respectfully,
Denice Fellows
Concerned Citizen

de la Guerra, Sheila

From:	SB Coalition for Responsible Cannabis <coalition4responsiblecannabis@gmail.com>
Sent:	Friday, March 29, 2019 1:05 PM
To:	sbcob
Cc:	Allen, Michael (COB); Lenzi, Chelsea
Subject:	4/2/19 BOS HEARING RE CANNABIS- COMMENT LETTER FROM COALITION
Attachments:	CRC FINAL BOS LETTER 3-29-19.pdf; CRC Letter to PC 3-29-19 FINAL.pdf

Dear Clerk of the Board,
Please forward the attached letters to Board members, and make part of the public record for the 4/2/19 public hearing on Cannabis Licensing, listed on agenda as #D2.
Thank you.
Coalition for Responsible Cannabis

March 28, 2019

TO: Santa Barbara County Board of Supervisors

Re: Comment on proposed amendments to Chapter 50- Hearing Date: April 2, 2019

Dear Honorable Supervisors:

AS you know, County residents, vintners, business owners, avocado growers and schools have repeatedly expressed their concerns about the manner in which temporary (and now provisional) licenses have been issued for cannabis cultivation pending development of a permanent cannabis program. Additionally worrying is the inappropriate determinations of legal nonconforming use status, which have resulted in continuing untenable living conditions for affected residents across the County. These derelict authorizations of unpermitted cultivation in the Coastal Zone, specifically the Carpinteria Valley, have drastically impacted the quality of life for residents, visitors and businesses. Significant impacts to residents and businesses have been felt in the mid and north county due to unpermitted, unlimited and unconditioned cultivation on Ag 1 and Ag-2 parcels surrounding vineyards, wineries, other agricultural operations and rural neighborhoods.

We appreciate that the currently proposed amendments may move the permitting system in the right direction, but we believe that additional clarifications and changes are necessary now, to begin to alleviate the many nuisance impacts of ongoing unpermitted marijuana cultivation. We are concerned that if these amendments are adopted as written, these nuisance and health impacts will continue into the foreseeable future causing damage to residents, businesses, other Ag concerns and tourism. The Board, however, has the authority to remedy this situation now; easily done with a few changes to the proposed amendments to Chapter 50, and with *clear direction to staff.*

The Board letter states the purpose of the proposed amendments as follows:

"Staff included several other minor edits that improve the effectiveness of the Chapter 50. At Section 50- 7A1, **we amended the language approved by the Board in April 2018 to be consistent with the language certified by the California Coastal Commission in November 2018**." (emphasis added)

However, the language proposed, in combination with the CEO's ongoing incorrect interpretation of additional language defining application completeness, is ***not sufficient to meet the intent of the Coastal Commission modification***, because it could be read to exclude existing, legal (sic) nonconforming outdoor sites from the prohibition on outdoor cultivation for a further, indeterminate period of time, when it is clear that many of these sites cannot and will not meet the certified standard, and should therefore be shut down immediately, now. The Commission's certification did not include consideration or approval of the County's procedures under Chapter 50, because it is not a part of the certified Local Coastal Plan (LCP). However, it is reasonably foreseeable that if presented with the issue in a dispute resolution proceeding, the Commission would not agree to the County's past interpretations insofar as they implicate the coastal development permit process.

Section 50-7 is currently proposed to be amended to state: *Limits on Cannabis Business Licenses. a) Limits on Cannabis Cultivation, Nursery and Microbusiness Licenses. To avoid visual impacts and nuisances associated with significant concentrations of cannabis cultivation: 1. No outdoor cultivation, nurseries or microbusinesses with outdoor cultivation will be licensed in the Coastal Zone. In addition, no*

outdoor cultivation, nurseries or microbusinesses with outdoor cultivation will be licensed within two (2) miles of the Urban Rural Boundary limit line or city boundary in the Coastal Zone.

However, as written, the proposed language would *continue* to exclude legal nonconforming sites from the prohibition on outdoor cultivation, beyond the expiration of the so-called amortization period which ends, in the coastal zone, not later than April 10, 2019.

The language continues:

"i. This limitation shall not apply to legal nonconforming cannabis cultivation sites operating in compliance with County Code § 35-1003, until said sites are terminated as legal nonconforming uses."

In addition, the proposed language fails to address the fact that many sites in the coastal zone never had, or have lost their legal, nonconforming status. Therefore, in order to fully implement the prohibition on outdoor cultivation in the coastal zone, and to finally begin to remedy ongoing nuisance impacts from existing operations, ***the amendment should read as follows***:

This limitation shall ~~not~~ apply to ~~legal~~ nonconforming cannabis cultivation sites in the coastal zone, notwithstanding whether they have operated in compliance with County Code § 35- 1003, ~~until said sites are terminated as legal nonconforming uses. ,~~ as follows: (1) Owners and operators of outdoor cultivation sites shall cease operations and apply for a Coastal Development Permit for Demolition and Restoration not later than May 1, 2019. (2) Any cultivation on premises where the operation has been enlarged or expanded or there has been a change in use or intensity of use since September 2016 shall no longer be considered legal, nonconforming. Failure to cease cultivation shall result in enforcement proceedings.

Without these changes, operators could assert that they may continue to operate so long as they have submitted an application to P&D to continue cultivation, and paid the application fee. However, we have been advised that in certifying temporary and provisional licenses to the State, the County Executive office has been including all applications for which fees have been paid, regardless of whether they have been determined or deemed to be complete by Planning and Development (P&D). As a result, a search of the State's licensing website on March 29, 2019 revealed that beginning in late February 2019, **180 "Adult Use Provisional Licenses" were issued to Santa Barbara County cannabis cultivators, comprising 61% of all Adult Use Provisional licenses issued in the State**. ***This is contrary to the intent and the express language of the legal nonconforming uses exemption, as well as the State regulations.***

Furthermore, we are requesting that the Board rectify any erroneous legal interpretations made in the past, as follows:

1. **The Board is requested to correct the erroneous designation of growers as entitled to legal, nonconforming status.**

   Sec. 35-1003. - Prohibited acts and exemptions states.

A.

"Prior Prohibition of Medical Marijuana Cultivation. Under a prior ordinance (Ordinance No. 4954), medical marijuana cultivation was prohibited in all zones, districts, properties, and areas within the unincorporated areas of Santa Barbara County with an exception for legal nonconforming uses that remains in subsection B, below, until terminated as provided in subsection C., below. (sic)

Legal Nonconforming Uses Exemption. Medical marijuana cultivation locations already existing on January 19, 2016, **if they are legal under California state law**; these are legal nonconforming uses."

Cultivation was extremely limited under the Compassionate Care Act of 1996. It was allowed only by individuals who had a prescription for medicinal use, or by their caregiver. California Health and Safety Code Section 11358 states that, other than when accepted by law, it is illegal to:

- Plant
- Harvest
- Cultivate
- Dry; or
- Process any marijuana or part of a marijuana plant.

The exception to the law is for those who have been prescribed marijuana for medical use. Medicinal marijuana can legally be cultivated in California by the person to whom it was prescribed or by that person's primary caregiver.

Because the Board failed to adopt the Planning Commission's recommendation for a transparent, orderly process to determine which pre-existing grows were legal under the law in effect in 2016, if any, (17 ORD-00000-00007), and instead 'opted' for the Affidavit process, the public does not know – nor does the Board- whether any of the holders of temporary or provisional licenses were ever legal, nonconforming, as opposed to unpermitted, and *unpermittable* under prior law. The Board must now 'weed out' those who never should have received temporary or provisional licenses as legal nonconforming, and correct those records with the CDFA.

The County has apparently failed to track or capture those legal nonconforming operations which have altered, enlarged or expanded since 2016. Because the Board failed to adopt the Planning Commission's recommended ordinance establishing a transparent process for determination of legal non-conforming sites, and instead authorized the County Executive Office (CEO) to accept 'Affidavits' without supporting documentation, scores of licenses have been authorized without adequate documentation. **This needs to stop.** ***The County must terminate all nonconforming uses,*** and must review the applications to determine whether they have lost their legal nonconforming status. If so, the application for zoning permit must be summarily denied.

2. The Board should direct staff to review and investigate unlawful expansions and changes to those grows determined to be Legal Nonconforming Uses, and terminate them.

Both Article II and the LUDC provide:

"Upon recommendation of the Planning Commission, or upon petition by a person or persons affected by a nonconforming use of buildings or land or both, or on its own initiative, the Board of Supervisors may set a date for, and call a public hearing to determine whether or not a nonconforming use of land or buildings or both, or an unpermitted expansion of or change in such use should not be ordered terminated."

We hereby request that the Board acknowledge that this specific rule applies to marijuana grows under the Nonconforming Use provisions of Section 1003 (which was not certified by the Coastal Commission to apply in the coastal zone in the first place, because it is outside of the LCP). Any unpermitted expansion or change in a nonconforming use, both within and outside of the coastal zone must be terminated.

Since any change in use or intensity of use requires a new permit, any change or increase in intensity of use since 2016 would turn a legal nonconforming use (if any ever existed under the Compassionate Care Act of 1996) into an *illegal* (or, unpermitted) nonconforming use which is not permittable under the CZO.

3. The Board should clarify that only those legitimately designated and continuing nonconforming uses which have an application called complete for processing under the Land Use and Development Code (LUDC) and Article II by P&D prior to 2016 should be processed.

This issue raised in Para. 1 and 2, above, are compounded by the proposed revised language because the County has been erroneously sending "letters of authorization" for provision of licenses to the State on the basis of submittal of application and payment of fees, thus incorrectly classifying numerous operations as 'non-conforming' and eligible to continue until a permit is received (or denied). The ordinance specifically states:

If the county cannabis ordinance referenced above allows for cultivation of medical cannabis but requires a zoning permit to do so, operators of nonconforming medical marijuana cultivation locations that ***have submitted a complete application to the Santa Barbara County Planning and Development Department to permit their nonconforming cultivation site by the termination date listed above may continue to operate*** *their same existing nonconforming medical marijuana cultivation site while their permit application is being processed, as long as the operator continues to manage the cultivation location in compliance with the requirements of article X, state law, and the applicable provision of either the County Land Use and Development Code Section 35.101.020 (Nonconforming Uses of Land and Structures), the Montecito Land Use and Development Code Section 35.491.020 (Nonconforming Uses of Land and Structures), or article II, the coastal zoning ordinance section 35-161 (Nonconforming Uses of Land, Buildings, and Structures****). It is solely within the department's discretion to determine if it has received a complete permit application.***

If the permit application is denied, the applicant shall cease all cannabis cultivation operations until a permit is obtained."

Consistent with Supervisor Williams' direction at the 1/29/2019 hearing, the Board should direct staff to reject and/or summarily deny all applications that include outdoor cultivation in the coastal zone, or have not been found complete, under the planning and zoning laws, by P&D, which has the exclusive authority to make this determination.

Application of California Environmental Quality Act (CEQA)/Program EIR

The California Department of Food and Agriculture (CDFA), the State agency overseeing cannabis cultivation rules and permitting, requires not only that applications be called complete, but that "if CEQA compliance is not completed, is there evidence that it is underway?" ***The determination of what environmental document to require must be made after an application is called or deemed complete.*** The County apparently assumes that it is able to use the PEIR to exempt applications from additional review for the purposes of authorizing the grower to obtain a State License (Temporary or, more recently, Provisional). **This cannot be assumed.** An initial study or other basis for determination of exemption must first be performed. A random look at the public access site https://aca.sbcountyplanning.org/CitizenAccess/ at applications submitted to the County as of 3/22/2019 discloses that many of these applications will indeed require additional site-specific environmental review, for a variety of reasons, including that unpermitted structures will be incorporated into the project description for validation.

4. For all applications which have not been called complete by P&D, the Board should direct staff to order termination of nonconforming uses as of the dates described in the ordinance:

a.

In the inland areas (i.e., the areas located outside of the coastal zone of Santa Barbara County), either (1) six months after the board of supervisors' action on February 6, 2018, regarding a county cannabis cultivation ordinance, or (2) 18 months from December 15, 2017, the effective date of Ordinance No. 5019, whichever is longer; and

b.

In the Coastal Zone, either (1) six months after the Coastal Commission certifies the board-adopted amendments to the local coastal program regarding the cannabis cultivation ordinance, pursuant to Public Resources Code Section 30514, or (2) if the board does not adopt a county cannabis cultivation ordinance on February 6, 2018, then 18 months from December 15, 2017, the effective date of Ordinance No. 5019, whichever is longer.

The Commission took action to certify on October 10, 2018. **Therefore, the so called 'amortization' period for applications in the coastal zone ends not later than April 10, 2019, and in the inland areas ends June 15, 2019.**

For any case where the amortization period has expired, the continuing cultivation, without compliance with the requirements of the ordinance- most especially odor abatement plans constitutes - a public nuisance which must now be abated. The burden of the delays of a new permit process to implement development standards where appropriate, and to prohibit continuation of cultivation while new applications come through should be borne not by the general public, but by the applicants.

Finally, we have attached for your reference our S.B. County Coalition's letter to the Planning Commission for their consideration at their April 3, 2019 hearing.

Very Truly Yours,

Santa Barbara County Coalition for Responsible Cannabis

Cc:

Offices of:

Assemblymember Monique Limon

State Senator Hannah-Beth Jackson

Congressman Salud Carbajal

March 28, 2019

Santa Barbara County Planning Commission

RE: Hearing of April 3, 2019

Dear Commissioners:

We represent a coalition of **residents, vintners, avocado growers, students and neighborhood** groups throughout Santa Barbara County, from Tepesquet to Carpinteria, and all parts in between. While we may differ in economic status, political party and other demographic distinctions, we share a concern about the environmental and health impacts of unabated cannabis cultivation, impacts that we have felt and observed for at least the past two years. **AND WE FEAR THAT WORSE IS COMING**.

At your hearing of April 3, 2019, we ask that you recommend additional specific changes to the cannabis program to the Board of Supervisors to address unforeseen consequences of the program as it currently exists. Board member comments prior to the vote on January 29, 2019 indicated discomfort with the current rules, and a willingness to look for solutions to ameliorate the harm done by past decisions.

The implementation of the cannabis program, to date, has disclosed problems far more complex and severe than we, as residents, vintners and business owners, had imagined. As much as we feared the proliferation of inadequately regulated cannabis grow sites, we have been dismayed to learn that **our County, representing less than 2% of the State population, currently holds 31% (or 3,063) of *all* temporary and provisional permits issued by the State in the past year**. It is especially alarming to see that as of March 27, 2019, Santa Barbara County cannabis cultivators were issued 180 of the 285, or 63%, of the "Adult Use Provisional" State Licenses- all issued in the past six weeks, following the last Board of Supervisors hearing. These numbers are growing each day. We were stunned to learn that our County allows the stacking and hoarding of permits based on "letters of authorization"- *which were handed out for free*. One grower alone, who had not yet completed the County's permitting and licensing process, was issued an astounding 57 provisional licenses in the past ten days. This is **without precedent and unacceptable.** Santa Barbara County is *the **only county in the state*** that has no caps on number of licenses issued within the county or to individual growers and no restrictions on number of acres that can be cultivated/per parcel. We can no longer tolerate this dubious distinction.

We believe that the Board's failure to implement a transparent process for determination of the scope and extent of legal nonconforming uses (*as your Commission recommended),* and its allowance of licenses based on completely unsubstantiated "Affidavits," is irresponsible and negligent. This is a significant failure of leadership, resulting in numerous deleterious effects of cannabis cultivation unabated which are being endured by residents throughout the County. At every turn, over the last two years, when the Board has had the opportunity to protect the public health, safety and welfare through rigorous review and control, it has instead opted to maximize growth opportunities for this untested industry. We therefore request your consideration of the following remedies:

A. Recommend that the Board review and terminate nonconforming uses which have obtained approvals through misrepresentation of lawful use under Compassionate Care Act[1], and/or which have expanded or altered the documented pre-existing use.

We are requesting that you recommend, specifically, measures to investigate unlawful expansions of so called 'legal' nonconforming uses: (1) by reviewing all nonconforming uses which obtained licenses via the "Affidavit" process to require backup evidence of pre-existing use [2]and (2) by reviewing all nonconforming uses for any alteration to the nonconforming use, including expansion and/or a change in intensity of use.

Some Board members apparently believe that residents should continue to be subjected to ongoing ill effects (odor, fumes and respiratory problems, traffic safety on rural roads, crime, increased fire hazard, geological hazard caused by illegal grading and possible destruction of archaeological sites by illegal grading) until individual permits are approved. They erroneously **contend** that there is no enforcement available until that occurs. ***This is simply untrue:*** County has the authority to terminate any (legal) nonconforming use which is alleged to have been expanded. Illegal uses are nuisances subject to *immediate* abatement. The County did not adopt Ordinance 17 ORD-00007, but also did not repeal its generally applicable provisions on addressing nonconforming uses and abatement of nuisance. Furthermore, it is a basic principle of planning law that any permission granted based on fraud or misrepresentation can lawfully be revoked.

Both the LUDC and Article II provide:

"Upon recommendation of the Planning Commission, or upon petition by a person or persons affected by a nonconforming use of buildings or land or both, or on its own initiative, the Board of Supervisors may set a date for, and call a public hearing to determine whether or not a nonconforming use of land or buildings or both, or an unpermitted expansion of or change in such use should not be ordered terminated."

The burden is on the individual claiming legal nonconforming status to prove the extent of their right to continue to operate. It was a serious error for the Board to accept Affidavits of pre -existing use without investigation and opportunity for public hearing. The Board failed to adopt the ordinance recommended by the Planning Commission, leading to this County having 31% of all licenses in the State, and an inadequate procedure and inadequate standards for mitigation of impacts of cannabis.

Even if the County had the authority to allow *illegal* grows which existed before 2016 to continue – which we dispute- **it must now provide its citizens interim relief. *This does not depend on the D.A. 'enforcing', it depends on the Board directing its staff and County Counsel to exercise its own authority***. If the State has authority to require additional information regarding pre-existing operations under Section 8111 of the regulations, ***so does the County.***

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[1]Cultivation other than by a medicinal marijuana patient or caregiver was not lawful under the Compassionate Care Act of 1996. See Health and Safety Code Section 11538.

[2] The State regulations specifically allow the Department to request additional information on operations under the Compassionate Care Act in its consideration of annual licenses. See, Reg. 8111.

It is clear from the State regulations that the program was intended to heavily regulate and monitor this industry, both at the outset and throughout operations. The state regulation, Section § 8205. Physical Modification of Premises requires:

"A licensee shall not make a physical modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises from as specified in the premises diagram originally filed with the license application without the prior written approval of the department. (a) The following premises modifications require approval in writing from the department prior to modification: (1) Modification to any area described in the licensee's cultivation plan including, but not limited to, the removal, creation, or relocation of canopy, processing, packaging, composting, harvest storage, and chemical storage areas; (2) Change in water or power source(s); and (3) Modifications or upgrades to electrical systems at a licensed premises shall be performed by a licensed electrician. A copy of the electrician's license shall be submitted with any premises modification requests for electrical systems. (b) A licensee shall request approval of a physical change, alteration, or modification in writing to the department, and the request shall include a new premises diagram and/or cultivation plan."

The County must require that P&D review ALL physical modifications, and where they require approval in writing from the State, they must be reviewed for substantial conformity with local zoning permits. Any use which is altered or extended, or where there has been a change in intensity of use, or land or water, *loses its nonconforming status and must be abated*.

B. The existing permitting system is not adequate to protect the health, safety and general welfare of County residents, or the agricultural and environmental resources of the County.

It is past time to recommit to bring this industry under meaningful control, and we therefore request that you recommend the Board **not** to delete existing requirements, but instead to add necessary restrictions and controls, such as the following:

1. **Require, at minimum, a minor CUP for *all cannabis development***, to guarantee a reasonably transparent process with notice and public hearing. New agriculture in the coastal zone is subject to permits, and where the use is not the *principal* permitted use, or the development is located within a certain distance of a beach, bluff, stream, wetland or ESHA, it must be appealable to the Coastal Commission;

2. **Require a CUP on AG-II-parcels.** The current regime assumes without evidence that there are no impacts to sensitive receptors. In addition, given the unique and powerful odor nuisance impacts to humans of all ages limiting the buffers to schools is insufficient. Buffers should be established from all existing residential uses, including nursing facilities, as well as places where humans congregate, such as houses of worship.

3. **Require odor abatement in all zone districts using substances or chemicals tested to be non-toxic.** The PEIR purported to justify the failure to require odor control in AG-II zones as follows: "The OAP would not apply to AG-II areas, given the extensive protections for agricultural practices within these areas, the absence of urban, inner-rural, or EDRN areas with associated residential uses, and the prevalence of more intensive agricultural practices already allowed within this

zoning district." However, the PEIR failed to recognize the potential for overconcentration of grows in discrete areas, and the conflicts with existing agricultural practices on existing parcels. Further, the Board of Supervisors made the decision NOT to apply the "right to farm" policies to cannabis cultivation.

4. Specify that **measurement of buffers** from sensitive receptors must be consistent with Health and Safety Code requirements: under the State regulations, distance to be measured as in H&S Code 11362.738- (c) "The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school **to the closest property line of the lot** on which the medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures."

5. **Limit** the number of licenses to **one** license per legal parcel. Require owner of parcel to defend and indemnify for any licensee's failure to comply with conditions of approval.

6. **Duration**: Limit duration of permits to ***one year*** to coincide with State's annual license requirement. Specify that permits do not run with the land, as in conditional use permits. (See, also RWQCB requirement that the Water Boards must be notified when there is a change of ownership, and owners may be required to submit new Reports of Waste Discharge).

7. **Waste Discharge requirements**: Require evidence of enrollment per Regulation 8102(r) prior to CDP approval. "For all cultivator license types except Processor, evidence of enrollment in an order or waiver of waste discharge requirements with the State Water Resources Control Board or the appropriate Regional Water Quality Control Board. Acceptable documentation for evidence of enrollment can be a Notice of Applicability letter. Acceptable documentation for a Processor that enrollment is not necessary can be a Notice of Non-Applicability." History has taught that differences of opinion between and among EHS, RWQCB, and P&D can complicate the issuance of permits unless water quality issues are resolved prior to approval.

8. Identify all water sources identified and labeled for beneficial use type, including but not limited to, irrigation, domestic, fire protection, power, fish and wildlife preservation and enhancement, and/or recreation;

9. **Include Notification regarding misrepresentation on all permits. Per Regulations § 8115.** "Notification and Grounds for Denial of License; Petition for Reconsideration. (a) The department shall notify the applicant in writing if the application is denied with the reasons for denial. (b) In addition to the reasons for denial in section 26057 of the Business and Professions Code, a license may be denied for Page 23 of 80 the following reasons: (1) The applicant's premises does not fully comply with standards pursuant to this chapter; (2) The applicant denied the department access to the premises to verify compliance with this chapter; (3) **The applicant made a material misrepresentation on the application**; ..."

10. **Process concerns:** Please direct Planning and Development staff to provide a briefing on the CEQA process on individual applications, and rules of application completeness, and how they relate to the State licensing process. ***It is clear from the applications filed that the PEIR cannot be relied on to exempt subsequent permits from CEQA; rather, there must a site-specific analysis via an initial study to determine what additional environmental document is needed.*** It is insufficient and inappropriate for the issuance of State license to be authorized by someone in the County Executive Office telling CDFA that an application has been "accepted". This is a determination that should be made solely by the Planning Department based upon a ***completed application*** and CEQA review.

    "8102(r) Evidence of exemption from, or compliance with, division 13 (commencing with section 21000) of the Public Resources Code, California Environmental Quality Act (CEQA). The evidence provided shall be one of the following: (1) A copy of the applicant's license, permit, or other authorization and any accompanying documentation or permitting package from the local jurisdiction used for discretionary review pursuant to CEQA, if the local jurisdiction has adopted an ordinance, rule, or regulation pursuant to section 26055(h) of the Business and Professions Code that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity and evidence of discretionary review conducted by the local jurisdictions A signed copy of a project specific Notice of Determination or Notice of Exemption and a copy of the associated CEQA document, or reference to where it may be located electronically, a project description, and/or any accompanying permitting documentation from the local jurisdiction used for review in determining site specific environmental compliance;

    Under the final Regulations, "if an applicant does not have the evidence specified in subsections (1) or (2), or if the local jurisdiction did not prepare a CEQA document, the applicant will be responsible for the preparation of an environmental document in compliance with CEQA that can be approved or certified by the department, unless the department specifies otherwise."

11. **Clarify** that cultivation of cannabis is **NOT** a principally permitted use for purposes of appeal to the Coastal Commission. The PEIR acknowledged that treating cannabis grows as agriculture has its limits:

    The EIR states: at p 8-14- As discussed under the proposed Project, cannabis would be considered an agricultural product, commercially grown, operated, and sold within the County; cannabis activities conducted in agriculturally developed areas in line with the Project would be conducted in a manner consistent with accepted agricultural customs and standards. **However, the County intends to treat cannabis differently from any other agricultural crop or product, due to the necessity for land use permits, business licenses, and associated taxation of the crop. Additionally, these actions include the decisions to regulate odor, lighting, noise, and allowing for continued nuisance actions (CZO § 35-144U.A.2). Though California defines medical and adult-use (nonmedical) cannabis as an agricultural product, CalCannabis has indicated that this identification as an agricultural product does not extend to other areas of the law. CalCannabis**

has stated that, "for example, cannabis is not an agricultural product with respect to local 'right to farm' ordinances"

This is extremely important in situations where the areal extension of cultivation is involved. Even in cases of traditional agriculture, the Coastal Commission has always interpreted the law to require permits when specific areas have not historically been farmed, where an expanded operation impacts an environmentally sensitive habitat, and also where there is an increase in the intensity of use of land, or water.

Based on these obvious distinctions with traditional agriculture, cannabis cultivation should always be treated as a conditionally permitted use, subject to the more rigorous review and appeal processes accorded such uses, especially in the coastal one.

The above is a non-exhaustive list of measures that can and should be taken IMMEDIATELY to protect the public- INCLUDING THE WELL-ESTABLISHED BUSINESSES AND FARMERS THAT HAVE MADE SANTA BARBARA PROSPEROUS AND WHAT IT IS TODAY. **We urge your Commission, as the statutorily designated planning agency, to recommend a comprehensive review of the Ordinance and license provisions to address the (un) intended consequences of the decisions the Board has taken to date.** Further delays in addressing ongoing impacts of operations that should never have been allowed to begin or expand should be unacceptable to the County, and it is certainly unacceptable to your constituents.

Very truly yours,
Santa Barbara County Coalition for Responsible Cannabis

Cc: all members, Board of Supervisors

State Senator Hannah-Beth Jackson

Assemblymember Monique Limon

Congressman Salud Carbajal