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Alexander, Jacquelyne

From: Steinfeld, Amy <ASteinfeld@bhfs.com>
Sent: Friday, January 19, 2018 6:11 PM
To: Villalobos, David; Cannabis Info
Cc: sbcob
Subject: Comment Letter to Planning Commission re Cannabis Ordinance (January 23, 2018 Hearing)
Attachments: Cate Letter to SB County PC re Cannabis Ordinance.pdf
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Good afternoon,

Attached for the Planning Commission's consideration in advance of next week's hearing on the County's Cannabis Land Use Ordinance is a comment letter from the Cate School.

Best regards, Amy Steinfeld

Amy M. Steinfeld
Brownstein Hyatt Farber Schreck, LLP
1020 State Street
Santa Barbara, CA 93101
805.882.1409 tel
805.335.0614 cell
ASteinfeld@bhfs.com

[bio](#) | [vcard](#) | [bhfs](#)

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January 19, 2018

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

VIA E-MAIL cannabisinfo@countyofsb.org, dvillalo@co.santa-barbara.ca.us

Santa Barbara County Planning Commission
Attention: Jessica Metzger
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Public Comment re Draft County Cannabis Land Use Ordinance

Dear Honorable Members of the Planning Commission:

Our office represents the Cate School (Cate), a boarding/day school with an on-campus population of 390 located in the rural foothills north of Carpinteria in the County of Santa Barbara (County). On behalf of Cate, we have reviewed the Revised Draft Cannabis Land Use Ordinance and Licensing Program (Draft Ordinance) released on January 3, 2018. Due to Cate's immediate adjacency to extensive agriculturally designated lands in the unincorporated area of the County, expanded cannabis-related operations in and around the Carpinteria Valley will directly and uniquely impact Cate, its students and faculty.

While Cate does not support the County's Cannabis Program, Cate recognizes the Planning Commission has an interest in recommending an Ordinance that encourages commercial cannabis businesses to operate legally and safely. However, Cate is extremely disappointed that the Draft Ordinance allows an unlimited number of commercial cannabis operations, including outdoor cultivation, distribution and manufacturing in Ag-1 zones, despite numerous environmental studies that recognize this will result in significant impacts to prime agricultural soils, air quality (greenhouse gas emissions), noise, transportation and traffic. The Proposed Ordinance is far less stringent than those adopted or being considered by other jurisdictions, and, if adopted as drafted, will make it very difficult for the County to scale back the industry if mitigation measures prove ineffective and the severe impacts forecast in the County's Environmental Impact Report (EIR) materialize.

I. COMMENTS ON DRAFT ORDINANCE

A. Impacts on Cate and the Public

The recent conversion of greenhouses from the cultivation of cut-flowers to cannabis in the Carpinteria Valley has already significantly impacted Cate's daily operations with its powerful odor which is present throughout the campus and the surrounding area day and night. Numerous complaints have been filed with the County concerning the nuisance, quality of life, and health

1020 State Street
Santa Barbara, CA 93101-2711
main 805.963.7000

effects of excessive exposure to cannabis operations. If cannabis becomes more prevalent in this region, the associated impacts, including odor, traffic, light pollution, distribution locations, criminal activity and potential health concerns will only increase. The cultivation and processing of cannabis in the vicinity of Cate presents a significant concern for the health and well-being of the young people in Cate's care.

B. Deficiencies in Draft Ordinance

In its current form, the Draft Ordinance and recommendation will adversely impact the quality of life in Carpinteria Valley (and throughout the County). Our primary concerns are:

- It favors the interests of the cannabis industry over local residents and the public health, safety, and welfare of the community.
- It does not place a cap on the number of permits that the County can issue for commercial cannabis operations.
- It allows outdoor cannabis cultivation and distribution and manufacturing activities in Ag-1 zones, thereby permitting cannabis businesses to locate in close proximity to schools and residences.
- It does not require a permittee's Odor Abatement Plan to reduce odors experienced in Ag-1 zones.
- The County's permitting process for new cannabis businesses is unclear. Specifically, there does not appear to be an opportunity for public input from interested parties when an application for a new cannabis permit is filed with the County.
- The environmental documents do not sufficiently analyze impacts on public safety, housing, or waste disposal.
 - The EIR does not adequately analyze whether the Carpinteria Sheriff Substation will be sufficiently staffed to handle cannabis-related crime.
 - Data has shown that quantities of cannabis byproduct waste are much larger than anyone has anticipated.
 - Santa Barbara County's housing crisis will only be exacerbated by an influx of additional people into this region.
- It ignores the recent shift in federal law regarding cannabis. (See Attorney General Jeff Sessions January 4, 2018 Memorandum rescinding previous federal prosecutorial guidance that had been issued during the Obama administration.)

II. RECOMMENDATIONS TO PROTECT THE COMMUNITY

As the EIR recognizes, the Ordinance, as written, will have a number of severe impacts on air quality, transportation and prime soils. While we commend the County for attempting to

address unregulated and illegal cannabis activities, the solution is not to allow an unlimited number of cannabis operations in the County. This is short-sited and favors the interests of the cannabis industry over local residents and the public health, safety, and welfare of the community.

Cate does not support legalization of commercial cannabis operations in the County, but in the event the County approves a Cannabis Program, it must consider the following:

A. Cap and Phasing of Cannabis Cultivation Operations (Alternative 3)

The Draft Ordinance rejects the EIR alternative that would result in substantial reductions in the severity of many impacts by limiting the number of permits that the County can issue (Alternative 3). Cate supports Alternative 3 (Reduced Registrants), which would permanently cap the total number of cannabis permits. In addition, the County should consider limiting the number of cannabis permits that it issues on a sub-regional basis (e.g. Carpinteria Valley). This will reduce the concentration of impacts in certain areas, ensure that no one region is unduly impacted by cannabis businesses, and prevent a runaway industry that replaces traditional agriculture. We also recommend that the County phase-in the issuance of permits so that it has time to evaluate the impacts and efficacy of the proposed mitigation measures.

Proposed Language: The maximum number of cannabis operations in the County shall be limited to 962 (with specific caps per region). The County shall only issue 30 permits per year.

Support: The cap on permits was already analyzed in the EIR as Alternative 3. The EIR found compared to the project, Alternative 3 would result in fewer severe impacts by limiting the extent of cannabis development. Accordingly, the EIR identified Alternative 3 as the Environmentally Superior Alternative. In addition, the EIR provides, "Alternative 3 would give the County the flexibility and opportunity to bring a much more limited cannabis industry into compliance with the County Code and the County Comprehensive Plan while minimizing adverse effects to the environment." (DEIR, ES-8.)

At the January 10 Planning Commission Hearing, there was a brief discussion about why Alternative 3 could not be adopted. In essence, there was concern it would not meet the main objective of the Project—to facilitate a "robust and sustainable legal industry." This is false. First, this is based on the flawed assumption that Objective 1 is the main objective of the Project. The EIR does not provide so, and this rationale ignores the nine other key Project Objectives, including protection of the community. Second, there is no evidence in the record that capping the number of permits would hamper the cannabis industry, which, as the HDL Fiscal Analysis provides, may even be contracting. In addition, we were informed that less than 30 applications were filed with the State for cannabis permits within the County. Even the Fiscal Analysis commissioned by the County assumes that there would only be 157 to 626 cultivation operations in the County at buildout. (HDL Fiscal Analysis, p. 27.) It is unclear why the County would consider allowing an unlimited number of permits on day 1 when a conservative program that limits and phases-in cannabis operations would protect existing operators, result in new revenue to County, and reduce impacts. This should not be an "all-or-nothing" approach.

Contrary to what we heard on January 10, it is well within the County's discretion to approve Alternative 3, which was fully analyzed in the EIR. It is concerning that the Planning Commission

is considering recommending a slightly-modified version of the Project, which will still result in five Class 1 significant and unavoidable impacts, instead of the “Environmentally Superior Alternative.” We understand the County needs additional funding, but at what cost? Putting the community at risk to support an industry that will provide the County with an unknown quantity of revenue¹ and will result in numerous significant and unavoidable impacts is unwise and near-sighted.

In addition, other jurisdictions have placed reasonable caps on the number of permits issued. (See San Luis Obispo County Cannabis Ordinance, §22.40.050(A)(2) (capping no. of cultivation operations at 141).) In addition, alcohol is regulated in a similar fashion. Since 1939 the number of liquor licenses has been limited. At present, the ratio is one on-sale general license for each 2,000 persons in the county in which the premises are situated and one off-sale general license for each 2,500 persons. (See California Alcohol Beverage Control Regulations, § 23817.5.) The County of Los Angeles is also considering a “Strategic Permitting Phase-in” of cannabis activities where it would permit in the first three years a maximum of 10 cultivators, 10 manufacturers, 10 distributors, and 10 testing laboratories. (See January 23, 2018, Los Angeles Board of Supervisors Recommendation, available at <http://cannabis.lacounty.gov/proposed-policies/>.) If the County adopts a lax Ordinance (that is less stringent than its neighbors) with no limits or phasing period, growers from throughout the state may flock to this County before the County has time to study the impacts of this industry or dedicate the resources needed to carefully review each application.

B. Prohibition on Outdoor Cultivation and Manufacturing and Distribution in Ag-1 Zone Districts (Alternative 1)

Outdoor cannabis growers have not demonstrated they can sequester odors. Outdoor cultivation, manufacturing and distribution also presents significant safety concerns for neighboring properties in Ag-1 zones.

Proposed Language: Outdoor cultivation, Manufacturing and Distribution shall not be permitted in Ag-1 Zone Districts.

Support: This was already fully analyzed in the EIR as Alternative 1. The EIR found compared to the Project, Alternative 1 would lessen impacts within the urbanized areas of the County and reduce land use compatibility impacts. (See DEIR, 4-18 to 4-34.) Alternative 1 is a win-win solution because it would reduce potential environmental impacts associated with the Project, specifically those related to odor and land use compatibility. Under this Alternative, cannabis cultivation, manufacturing, and distribution activities would continue to be allowed in rural agricultural areas (AG-II zone district only), commercial, and industrial zone districts.

C. Anti-Concentration Regulation to Prevent Concentration or Clustering

Cannabis should be regulated like any other “vice” industry (i.e. adult bookstores) by requiring that operations not be sited near each other to avoid concentration of adverse impacts.

¹ The HDL Fiscal Analysis predicts that revenue from legal cannabis operations could generate between \$4 to 64 million/year but concedes it is not possible to know what percentage of those businesses will “actually succeed in this emerging industry.” (HDL Fiscal Analysis, p. 37.)

Cannabis operations, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated thereby having a deleterious effect upon the adjacent areas. Special regulation of these businesses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding lands. The primary purpose of these regulations is to prevent the concentration or clustering of these businesses in any one area.

Proposed Language: No new Cannabis Business shall be permitted to locate within 500 feet of an existing Cannabis Business. (This could be coupled with an exemption for existing legal operations.)

Support: The County of Santa Barbara currently has a non-concentration law applicable to Sexually Oriented Businesses. (See Chapter 35 of the Santa Barbara County Code, § 35-805). Cannabis businesses should be regulated no differently than adult businesses.

D. Strengthening the Odor Abatement Plan

As written the standard that requires odors to be reduced to “[t]he maximum extent feasible as determined by the Director” is too subjective. (See Development Standard, C(7).) As discussed at the January 10 Planning Commission Hearing, to protect sensitive receptors, the Odor Abatement Plan must include a provision that limits odors from leaving the property. In the event that the Planning Commission does not include this language, the Odor Abatement Plan must apply in Ag-1 zones, not just to odors experienced in residential zones.

Proposed Language: All cannabis cultivation shall be sited and/or operated in a manner that prevents cannabis nuisance odors from being detected offsite.

Support: See San Luis Obispo Cannabis Ordinance, §22.40.050(D)(8).

E. Increase in Buffer

Based on existing medical cannabis cultivation operations in the Carpinteria Valley, it is clear that the 600 foot buffer is insufficient to prevent odors at schools. The setback from schools should be increased to 1000 feet to reduce the identified impacts on schools. The County’s own “Odor Abatement Plan,” which requires that contact information be provided to all owners of property located within 1,000 feet from a cannabis operation, demonstrates that 600 feet is insufficient to protect sensitive receptors. (See General Development Standards, h.)

Proposed Language: Cannabis cultivation and cannabis nurseries shall not be located within one thousand (1,000) feet from any pre-school, elementary school, junior high school, high school, library, park, playground, recreation or youth center, licensed drug or alcohol recovery facility, or licensed sober living facility.

Support: On November 27, 2017, San Luis Obispo County approved a 1000 foot setback from schools and other sensitive receptors. (See San Luis Obispo Cannabis Ordinance 22.40.060(D)(1) and 23.08.424 (d)(1)). The County of Los Angeles is also considering a 1000 foot buffer from schools. (See <http://cannabis.lacounty.gov/proposed-policies/>.)

F. Further Public Safety Studies

Before approval, the County must determine if the Carpinteria Sheriff Substation will be sufficiently staffed to handle cannabis-related crime, including increased drug cartel activities due to the fact that cannabis is very profitable and is a cash-based economy.

G. Annual Survey and Monitoring Report.

The Ordinance should include a requirement that the County conduct a comprehensive annual survey and monitoring report to ensure that licensed cultivators are abiding by license and permit conditions, and to identify and take actions to address illegal cannabis activities.

Language: Comprehensive annual survey and monitoring activities shall be conducted, and conveyed in an Annual Survey and Monitoring Report to the Board of Supervisors, with recommendations regarding enforcement staffing and resources. At least 50 percent of licensed cultivation and manufacturing sites shall be evaluated and reported upon each year in an Annual Survey and Monitoring Report. The survey shall be implemented by the Cannabis Licensing Office once per year, and the list of monitored and surveyed items shall be approved by the County Cannabis Licensing Official, Planning Director and Agricultural Commissioner within one year of adoption of the proposed Program.

At completion of the annual survey and monitoring efforts, the data shall be assembled into an Annual Report available for review by the County Board of Supervisors. The Annual Report shall contain recommendations regarding enforcement and staffing resources, to provide a feasible level of funding for an effective enforcement program.

Support: See Santa Cruz Cannabis EIR, MM AT-1.3b (Annual Survey and Monitoring Report).

H. Additional Information on Permit Issuance

As discussed at the January 10 Meeting, it is unclear whether the approval of a permit is a discretionary or ministerial action and whether there will be a formal opportunity for public comment on a permit-by-permit basis. The Ordinance simply provides that most cannabis operations have to obtain a "Permit determined by Specific Use Regulations." We look forward to hearing the staff presentation on this issue that was requested by the Planning Commissioners on January 10.

We recommend that the County require a hearing and provide adequate public notice (to all owners of property located within 1,000 feet) before each new cannabis permit approval. We also recommend that CUPs be required for cannabis cultivation, nursery, microbusinesses and manufacturing operations within Ag-1 zones, not just within an EDNR.

Support: The County of Los Angeles is considering developing the following smart permitting policies, which we request the County consider: (1) Establishing a five-member Cannabis Commission to conduct public hearings for cannabis business applications; and (2) The Commission would exercise discretion to approve, conditionally approve, or deny applications, and would be authorized to impose conditions of approval as necessary to mitigate impacts

associated with a proposed cannabis business. (See <http://cannabis.lacounty.gov/proposed-policies/>.)

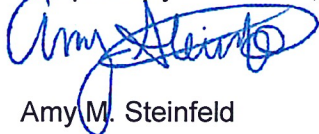
III. CONCLUSION

The best interests of the County are served by initially adopting a very conservative approach to all aspects of cannabis cultivation, processing and sales. The ink is hardly dry on the state guidelines or EIR and this is completely new territory for all permitting agencies. A process allowing the legitimization of existing illegal cannabis operations and the creation of new cannabis operations before the proper regulatory controls are in effect could exacerbate current impacts on Carpinteria residents and lead to future complications the County may not be anticipating.

The entire County is at risk if the Ordinance, as drafted, is sent by the Planning Commissioners to the Board of Supervisors on January 23. We ask that the Commissioners take a hard look at the Ordinance and incorporate much-needed safeguards and conduct additional analysis. We understand the Board is anxious to put a Cannabis Program in place, but the Planning Commission and Board must recognize that many South County residents have been severely impacted by the fires and mudslides and thereby need additional time to process and understand this Ordinance before it is finalized. In light of the extraordinary circumstances, it would violate due process to move forward without providing additional time for public input. A month-long extension for the Board to consider an Ordinance with long-term consequences will not materially impact existing illegal operations in the County.

Cate thanks the Commissioners for considering these comments and suggested edits to the Draft Ordinance. Should you have any questions or require additional information, I can be reached at 805-882-1409.

Respectfully Submitted,



Amy M. Steinfeld

cc: County Board of Supervisors, sbcob@co.santa-barbara.ca.us

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