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ADAMSKI MOROSKI MADDEN CUMBERLAND & GREEN LLP

ATTORNEYS AT LAW

Post Office Box 3835 • San Luis Obispo, California 93403-3835
T 805-543-0990 • F 805-543-0980 • *www.ammcglaw.com*

July 13, 2020

VIA EMAIL

Gregg Hart, Supervisor & Chairman, 2nd District
County of Santa Barbara Board of Supervisors
105 East Anapamu Street
Santa Barbara 93101
ghart@countyofsb.org
cao@co.santa-barbara.ca.us
Clerk of the Board: sbcob@countyofsb.org

Re: Proposed Amendments to the LUDC-Cannabis
Planning Item 3)

Dear Supervisor Hart:

This firm represents several commercial cannabis growers within the Tepusquet Canyon Area Existing Developed Rural Neighborhood ("EDRN").[1] On behalf of those growers, we strongly object to the proposed amendments to the Cannabis Ordinance, particularly those that would impact property within an EDRN and, in line with the recently issued Grand Jury Report, demand that the County conduct itself in a measured manner in considering cannabis regulations. Our clients, along with many other EDRN growers in the County, meticulously adhered to the rules and regulations established by the County for cannabis cultivation. The County's inexplicably rushed actions threaten their livelihoods and violate State law on at least four grounds: (i) a supplemental environmental impact report should be prepared to consider the "new" information on which the County purports to rely for the amendments; (ii) the action is arbitrary and capricious in that there is no basis for singling out EDRNs from other cannabis growers; (iii) the action would pick winners and losers within the cannabis industry without any legitimate basis or justification; and (iv) the action would result in a taking of the property of all EDRN growers. If the County gets this wrong, it will not only ruin the economic lives of EDRN growers but will result in the County spending millions of dollars defending legal actions and, ultimately being held liable for cumulative damages that could well be in the nine-figure range. Given the potentially devastating consequences to individuals and the public interest, it is incredible that the County seems intent on fast tracking the proposed amendments.

Initially, we turn to a fatal procedural error in the County's process. The County proposes sweeping changes to cannabis regulation and relies on an environmental impact report that is over

[1] TEP 1 Cultivation, LLC, TEP 2 Cultivation, LLC, TEP 5 Cultivation, LLC, TEP 6 Cultivation, LLC, Tepusquet Farms, LLC, 805 Ag Holdings, LLC and Santa Maria Highland Farms, LLC

two years old. It is the County's position that the old EIR is adequate because there have been no substantial changes in two years since certification. This is preposterous on its face because in the two years since certification, there has been a plethora of new information based on the actual impacts, positive and negative, of commercial cannabis cultivation. In fact, the very reason the County is proposing these amendments is the misguided belief that conditions have changed in the EDRN areas that warrant (i) eliminating cultivation; and (ii) redistributing the cannabis allocations already held by EDRN growers, to other growers within the AG-1 area. In fact, we are advised that there are already applications coming in from the AG-1 area to swoop up the rights lost by the unfortunate EDRN growers.

When there are new and material changes in conditions or when new information becomes available, CEQA requires the preparation of a supplemental EIR. CEQA Guidelines, Section 15162. Again, the mere fact that the County, for some reason feels compelled to make sweeping changes to the EDRN areas, demonstrates that there is the need for a supplemental EIR. There is no question that a supplemental EIR should be prepared before the County considers or takes action on the proposed amendments.

A supplemental EIR is particularly appropriate when the underlying basis of CEQA is considered. The dual purposes of CEQA are to ensure that the decision makers have the most relevant information on which to base their decisions and to ensure that the public is aware of the information on which the decision makers are acting. Neither purpose of CEQA is respected by the current proposed actions of the Board. It is not made clear anywhere in the record why EDRN areas are singled out. If there is a basis for such unique treatment, it must be based on real facts and impacts. Those facts and impacts have not been analyzed or considered anywhere in the CEQA process. Certainly, the County would not approve of a private entity attempting to amend its project in such a material way without a supplemental EIR. The fact that the contemplated action is being taking by the County itself does not eliminate the requirement for future environmental review. In fact, given the controversial and obviously political nature of the proposed decision, the need for an impartial analysis is heightened.

More specifically, there is no correlation between any of the information in the earlier EIR to the Board's attempt to single out EDRN growers. In fact, the little effort to provide a justification of singling out EDRN growers is misleading. According to the "findings" attached to the staff report, the Board's action will result in taking 39 square miles out of availability for cannabis cultivation. In the same breath, the findings admit that most of the property within the EDRN area is not suitable for cannabis production anyway. The findings fail to consider that, at least for the Tepusquet growers, the impact on the surrounding properties is minimal with less than 10% of any property being used for cannabis production.[2] Further, and probably most damning is supporting

[2] The environmental analysis also fails to consider that many properties where cannabis is grown within an EDRN are relatively large (40 plus acres). The analysis assumes that cannabis

that consideration of the proposed amendments to the EDRN areas, the very limited environmental analysis by the County fails to discuss or consider that other areas within the County, areas which have experienced real issues from cannabis cultivation, will now be eligible to apply for the County's quota of cannabis cultivation. Those trouble areas will now have the ability for denser cannabis cultivation which would only exasperate existing issues. In fact, we are now looking into the real possibility that some A-1 growers have already applied to receive a share of the reallocation from EDRN to A-1. This type of suspicion and seemingly favorable treatment of one class over another (EDRN vs. A-1 growers), is one of the primary reasons CEQA requires a full discussion and analysis. The County has woefully failed to meet its obligations in this regard. At a minimum, the proposed decision should be delayed until a supplemental EIR is prepared and both the Board and the public are made aware of the actual factual basis on which any decision is made. As it stands, the sole basis for the County's decision seems to be a vocal anti-cannabis group that has the inclination and time to continually bring their anti-cannabis campaign to the Board. Mollification of that vocal minority is not justification for ignoring the requirements for meaningful environmental analysis.

Even more puzzling is that the Board's rush to action without proper support is being considered despite the fact that the County Planning Commission conducted a series of cannabis workshops which resulted in a certain set of recommendations. **None of the Planning Commission workshop recommendations called for the singling out of EDRN growers. Nothing in the Planning Commission recommendations even hinted that changes unique to EDRN areas should be considered. Nothing in the recommendations suggested or justifies any action within an EDRN that should not, if adopted, be applied across the board to all cannabis growers.**

What makes the Board's desire to rush the proposed amendments through, without any meaningful consideration of the actual facts and flying in the face of the recommendations that came out of the Planning Commission workshops, is that the Board would be picking winners and losers in the cannabis cultivation industry on little more than a whim. Why should EDRN growth be eliminated while A-1 growth is allocated added capacity? What facts or impacts justify treating an EDRN differently from the other areas where cannabis growth is allowed within the County? Certainly, there are other areas within the County which are much more intertwined with existing residences and on-going agriculture. Nevertheless, if the proposed amendments are adopted, growers outside an EDRN will prosper while those within an EDRN will be financially ruined. There is simply no justification or purpose to playing favorites among the cannabis industry.

Finally, the most obvious and glaring result of the County's proposed actions will be to effect a taking of property with respect to those growers who have acquired property within an

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cultivation is all taking place on the smallest parcels allowed.

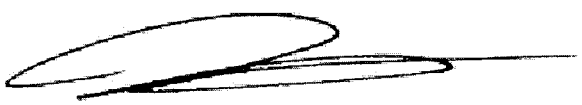
EDRN (at inflated prices) and invested literally millions of dollars in meeting State and County standards to vest their interests as legitimate members of the economy of the County of Santa Barbara. Those negatively impacted owners trusted that government would follow State and local rules and regulations to protect individual property rights. They trusted that they would be treated fairly by government and not fall victim to political pressures. If the County follows through on the proposed amendments, it can be expected that the impact growers in all EDRNs, will pursue their rights against the County. They simply will have no choice. Those actions will result in millions of public dollars being expended simply in defense. If, as we believe, the EDRN growers will be successful in their actions, the County will face judgments for the resultant lost profits, lost property values and, in the case of a taking, attorney fees spent in the prosecution of the actions. While we have not undertaken a quantitative analysis, this liability will be another significant arrow to the County's already wounded budget. In the interest of the public coffers and in fairness to the impacted growers, these amendments should not be adopted unless and until the County has an ironclad, independent legal opinion that the County actions are appropriate and in compliance with all applicable laws. We see no evidence of any such analysis to support this hurried action and, based on our legal analysis, we do not expect that such an opinion will be forthcoming.

We also question that proper notice was given for this hearing. In this hearing you are considering changes to zoning which will impact the use of many properties and falls under those powers set forth in Government Code Section 65850. Actions under Section 65850, require ten (10) days' notice. (Government Code, Section 65090.) This hearing was set with seven (7) days' notice.

In closing, we do not understand why, at a time when the Co-Vid 19 crisis has negatively impacted the timing of almost any project requiring government input, these amendments seem to be pushed through at breakneck speed and consequences be damned. What is the sudden rush? We understand that cannabis is a controversial topic and that emotions can run high. We also know that such controversy and emotional considerations dictate a measured and well considered approach. We urge the Board to adopt such an approach in considering these amendments.

Very truly yours,

ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP



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cc: County Counsel, adebruin@co.santa-barbara.ca.us
Das Williams, Supervisor, 1st District, dwilliams@countyofsb.org
Joan Hartmann, Supervisor, 3rd District, jhartmann@countyofsb.org
Peter Adam, Supervisor, 4th District, peter.adam@countyofsb.org
Steve Lavagnino, Supervisor, 5th District, steve.lavagnino@countyofsb.org