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February 5, 2018

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Re: Agenda Item: D-3
Board Hearing Date: February 6, 2018
Subject: Cannabis Land Use Ordinance and Licensing Program

Dear Chair Williams and Honorable Supervisors:

This office represents the Cannabis Business Council of Santa Barbara County as well as several individual cannabis growers with operations located throughout the County. I am writing on behalf of both the Business Council and my other industry clients to express concern regarding the following four subjects:

1. Proposed amendments to the Uniform Rules which are not supported by the findings in the EIR and if adopted will effectively weaken the County's Agricultural Preserve Program. We recommend postponing action on this item and directing staff to solicit input from the Industry and return to the Board at a later date.

2. Proposed setbacks from sensitive receptors which lack evidentiary support indicating that setbacks are necessary or will be effective mitigating significant impacts. The setbacks proposed are unwarranted and would require existing, local, State-licensed operations to shut down. We recommend adopting a minimum distance measurement from the *premise* of the cannabis activity to the property line of the sensitive receptor.

3. Proposed Minor CUP requirements for distribution licenses in the AG-1 zone which will prove overly-burdensome and unnecessary given the pre-existing and minimalistic nature of distribution license activities. We recommend requiring a Zoning Clearance for distribution licenses in the AG-1 zone.

4. Proposed restriction that a minimum of 50% of the cannabis manufactured or distributed onsite shall be sourced from material cultivated on the same lot - which will result in the proliferation of new manufacturing and distribution development. This restriction is not supported by the EIR and could lead to unintended consequences. We recommend removing the 50% restriction and reducing it to 10%, as recommended by the Planning Commission, or as an alternative to adopting a minimum percentage, your Board could preclude manufacturing and distribution facilities located within the County from sourcing cannabis plant material cultivated outside the County.

1. Proposed Amendments to the Uniform Rules

On December 1, 2017, the Agricultural Preserve Advisory Committee (APAC) recommended that the Board adopt amendments to the County's Uniform Rules in order to specify the conditions under which cannabis uses would be allowed on lands that are subject to Williamson Act contracts.

The County's 2017 Cannabis Registry identifies 39 respondents who indicated they are currently cultivating on Williamson Act lands, which represents approximately 44 percent of the total existing County acreage under active cultivation. This suggests cultivation sites on Williamson Act contracted parcels may comprise nearly half of all existing cannabis production in the County. (EIR Section 4.2.3, p. 4-36.) Any changes that the Board makes to the Uniform Rules will drastically impact a large percentage of existing operations in the County. Care must be taken to avoid unintended consequences

The recommended amendments would severely restrict cannabis cultivation and related activities from occurring on Williamson Act contracted land. If adopted, the amendments would have a twofold effect: (1) encourage existing cultivation operations in compliance with State law to decentralize and disperse, relocating to other agricultural lands in the County; and (2) encourage landowners who wish to cultivate cannabis to withdraw their lands from the County's Agricultural Preserve Program through contract non-renewal and/or petitions for cancellation. The end result would be a proliferation of small cultivation operations on both contracted and non-contracted lands; a gradual withdrawal of lands from the County's Agricultural Preserve Program; and increased pressure to convert agricultural lands to urban uses.

Under the proposed new rules, cannabis would not be considered an "agricultural commodity," and lands used for the purpose of cultivating, producing, or manufacturing cannabis and cannabis

products would not be considered an "agricultural use." And while cannabis cultivation and related activities may be considered a compatible use on contracted lands, these uses could not be counted toward minimum commercial agricultural production requirements necessary to maintain eligibility under the Williamson Act. This means that landowners desiring to cultivate cannabis would be precluded from relying on cannabis as their principal crop, and instead would have to grow another crop to maintain compliance with minimum eligibility requirements. The majority of my clients are currently cultivating cannabis as their principal crop, and do not grow other agricultural products.

In addition, the proposed new rules severely restrict the amount of non-prime, prime and superprime land that can be dedicated to cannabis cultivation and ancillary uses. For prime and non-prime lands, all cannabis cultivation and ancillary facilities located outside the development envelope are limited to 5% of the premises or 5 acres, whichever is less. If the County restricts cultivation to only 5% or 5 acres, this would require my clients to shut down or relocate the majority of their existing, compliant cultivation operations. This proposal could result in over 100 acres of cultivation *canopy* being displaced. (EIR, Section 4.2.3, p. 4-36.)

The EIR does not support an approach which treats cannabis cultivation as something other than an agricultural use, and cannabis processing, manufacturing, and distribution differently from other agricultural support operations in the County. The EIR found that many of the techniques used to cultivate, process, manufacture, and distribute cannabis and cannabis products involve the same techniques used in other agricultural operations throughout the County. (EIR, Section 3.2.2, p. 3.2-4.) The EIR concluded that cultivation activities constitute an agricultural use of land with the resultant cannabis products an agricultural product. (EIR, Section 3.2.4, p. 3.2-17.)[1]

The EIR rejected Alternative 2, which similar to the proposed Uniform Rule amendments: (i) declined to treat cannabis as an "agricultural commodity," (ii) declined to treat lands used for the purpose of cultivating, producing, or manufacturing cannabis as an "agricultural use," and (iii) limited the amount of contracted land that could be placed under cannabis cultivation. The EIR rejected Alternative 2 on grounds it would force the relocation or abandonment of major known cannabis operations located on Williamson Act lands, causing a redistribution of the concentration of these businesses throughout the County. (EIR, Section 4.2.3, p. 4-35 to 4-36.)

If the Board amends the Uniform Rules in a manner which precludes cannabis operations from being counted toward minimum commercial agricultural production requirements, it will encourage landowners wishing to cultivate cannabis to terminate their contracts. Similarly, if the Board amends the Uniform Rules in a manner which severely restricts the amount of contracted land that can be dedicated to cannabis operations, it will encourage a proliferation of new small

[1] The approach adopted in the EIR is consistent with State law, specifically SB 94, as subsequently amended by AB133 (2017), the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The MAUCRSA treats cannabis is an "agricultural product" for purposes of the State cannabis licensing program. (Business & Professions Code § 26069(a).).

cultivation, manufacturing and distribution operations throughout the County, with the resulting potential to displace existing or reasonably foreseeable "non-cannabis" agricultural operations.

Given these concerns, we request additional time to work with staff on amendments that will strengthen, not weaken, the County's Agricultural Preserve Program. As it stands, many of our clients are having difficulty obtaining copies of their agricultural preserve contracts from the County. Without these contracts, it is difficult to calculate the percentage of existing cultivation that would need to disperse and relocate to other agricultural lands to remain in business. Nor can we calculate the percentage of processing, manufacturing and distribution that may be permitted.

This is a complex policy discussion, which warrants additional time and analysis, and more comprehensive input from the industry. We ask that that the Board postpone action on proposed amendments to the Uniform Rules, and direct staff to work with the industry on revised amendments. Our intention is to work with staff and the APAC on a set of proposed amendments that will strengthen the existing Agricultural Preserve Program and return to the Board with options at a later date.

2. Setbacks From Sensitive Receptors

The Draft Ordinance proposes the following specific setbacks from sensitive receptors:

- For commercial cannabis cultivation, nursery, non-volatile manufacturing, distribution, or retail uses, the cannabis operation shall not be located within 600-feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center; and

- For volatile-manufacturing uses, the cannabis operation shall not be located within 1,200-feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center.

In both cases, distance is measured as the horizontal distance in a straight line from the property line of the lot on which the sensitive receptor is located to the closest property line of the lot on which the cannabis activity is to be located. (See Attachment 2 to the Board Letter, LUDC Amendments.)

Our client group has serious concerns regarding the distances specified in the proposed setbacks, as well as the default approach the County is taking toward measurement. The adoption of setbacks will have the effect of precluding landowners located within the setback areas certain property rights. Such action must be based on substantial evidence in the record indicating (i) that a proposed setback is necessary, and (ii) that an increase in the proposed setback would have the effect of mitigating a specific identified impact. No such evidence exists in the record before the Board.

The Draft Ordinance incorporates development standards and other mitigation controls intended to reduce neighborhood compatibility impacts to the maximum extent feasible. The development standards apply to all commercial cannabis activities and address issues related to site fencing, lighting, noise, odor, and security requirements. The setbacks are proposed in addition to the development standards to provide buffer areas for schools, day care centers, and youth centers. However, there is no evidence in the EIR or otherwise which indicates the setbacks provide effective additional mitigation, or that increasing the setbacks would have the effect of reducing significant impacts to a less than significant level.

The EIR found that, through the implementation of specific development standards and mitigation measures, impacts to air quality, noise, traffic and visual resources would be reduced to the maximum extent feasible. The EIR did not find that either of the proposed setbacks were necessary, or that an increase in the setbacks would have the effect of mitigating a specific impact further. Given that property owners located within the setback areas are precluded from exercising certain property rights, any proposed increase must be based on substantial evidence. Public comment from neighbors voicing ill-defined fears and conjecture regarding unwanted impacts does not constitute substantial evidence. As it stands, there is no evidence in the record indicating (i) that the proposed setbacks are necessary, or (ii) that an increase in the setbacks would have the effect of mitigating a specific impact.

The MAUCRSA is clear that local governments have complete authority and discretion to adopt whatever setback standards work best for their jurisdiction. This includes the flexibility to specify a setback radius that is less than the 600-foot default radius set forth by statute (Business & Professions Code § 26054(b)), or no setback radius at all. It also includes the flexibility to specify a different approach to measuring setbacks than the default "property-line to property-line" approach referenced in Section 26054(b).

Business & Professions Code § 26054(b) provides that a licensed cannabis business:

> "shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, *unless a licensing authority or a local jurisdiction specifies a different radius*. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code *unless otherwise specified by law*."

The MAUCRSA thus preserved the flexibility of local governments with respect to siting of adult-use and medical cannabis businesses. In so doing, the Legislature recognized that, consistent with the intent of Proposition 64, a one-size-fits-all minimum distance requirement of 600-feet is not appropriate for every locality, nor is it necessarily appropriate for each license type.

Our client group strongly requests that the Board consider adopting a "premise-boundary to property–line" approach to measuring the setbacks (as opposed to the statutory default "property-line to property-line approach"). Measuring from the property line of the cannabis activity to property line of the sensitive receptor is arbitrary, especially when the cannabis business activity is located on a parcel nowhere near the property line closest to the sensitive receptor. We believe measuring distance from the boundary of the cannabis premise to the property line of the sensitive receptor is more narrowly tailored to accomplishing the desired mitigation. It is also more protective of the property rights of those impacted by the setback.

3. Permitting Requirements for Distribution Licenses in the AG-1 Zone

The MAUCRSA requires that the transportation of cannabis and cannabis products may only be conducted by persons holding a distributor license. In other words, growers cannot transport their product to a secondary location for packaging, extraction or testing without a distribution license. Growers are also precluded from transporting their finished product to a retailer (to facilitate sales) without a distribution license. Existing State-licensed local growers are currently unable to legally prepare their product for market or sell their product due to the County's existing prohibition on distribution activities. As currently written, the Draft Ordinance requires a Minor-CUP for distribution licenses in the AG-1 zone. (See Attachment 2 to the Board Letter, LUDC Amendments.) The Draft Ordinance does not distinguish between Type 11 and Type 13 "transport-only" distributor licenses.

The Type 11 distributor license authorizes transportation of cannabis goods to a *retailer* and involves quality assurance review for compliance with testing, labeling, and packing requirements. In contrast, the Type 13 "transport-only" distributor license authorizes transport of cannabis goods only between licensees and was added by State regulators to more accurately reflect the operational realities of most cultivators wishing to simply move cannabis product from one location to another for processing, extraction or testing. In either case, but especially in the case of a Type 13 "transport-only" license, my client group requests the Board to replace the Minor-CUP requirement in the AG-1 zone with a Zoning Clearance (ZC). The majority of existing, local growers urgently need a distribution license to transport their product to a secondary location where it will be prepared for market (Type 13) and/or to transport their product directly to a retailer to facilitate legal sales (Type 11).

Cannabis product distribution consists primarily of preparing the product for transport, and physically loading it into appropriate transport vehicles. Similar to other agricultural industries, distribution is a necessary agricultural support use to cannabis cultivation. The total area typically used for a commercial distribution center to accommodate 10 to 20 acres of cannabis cultivation is estimated at 5,000 sq. ft, or less. (EIR, Project Description, Section 2.2.5, p. 2-27.) Due to the small size and light weight of the product, transport of cannabis products is generally not conducted via large semi-trucks. Vehicles used for distribution of cannabis products within the County are typically small trucks and/or vans with security. (EIR, Project Description,

Section 2.2.5, p. 2-27.) This is in contrast to other agricultural industries, which typically require the use of large semi-trucks to transport their product, such as the cut flower industry.

It is important to recognize that transportation and distribution activities have been occurring lawfully in the County on AG-1 parcels as a necessary appurtenance to legal non-conforming cultivation cultivation under Article X (Santa Barbara County Code Section 35-1003). Operators have been loading their flower product onto what are typically small trucks or Sprinter vans for transportation over County roads to regional markets under the previous medical collective model. Growers have been using pre-existing agricultural buildings on their AG-1 zoned farms to store product, and load cannabis goods into vehicles for transportation. This has been occurring as a baseline condition in the County on AG-I lands since before January 19, 2016. It is not a new activity which will contribute significantly to new neighborhood compatibility issues or community impacts, or require construction of new buildings or expansion of footprint.

The EIR does not discuss impacts attributable to distribution licenses specifically. The EIR instead addresses the combined impacts of all commercial cannabis license types on County resources, including air quality, noise, traffic, circulation, aesthetics and agriculture. The EIR concludes that implementation of the Draft Ordinance will result in Class I significant impacts in each of these resource categories. The EIR proposes mitigation to reduce these impacts to the maximum extent feasible. The mitigation has been incorporated into the Draft Ordinance in the form of development standards and permit requirements. These development standards and permit requirements will apply to Type 11 and Type 13 distributor operations regardless of whether a ZC, LUP or Minor CUP is required.

The LUDC states that the purpose and intent of a CUP (including a Minor CUP) is to provide for uses that are essential or desirable but cannot be readily classified as allowed uses "by reason of their special character, uniqueness of size or scope, or possible effect on public facilities or surrounding uses." (LUDC § 35.82.060.) There is nothing in the EIR which suggests distribution licenses qualify for this treatment. There is nothing in the EIR which indicates distribution licenses warrant heightened scrutiny because of their special character, uniqueness of size or scope, or possible effect on public facilities or surrounding uses. There is nothing in the EIR to suggest distribution licenses cannot be readily classified as an allowed use in the AG-1 zone.

The only discussion in the EIR specific to distribution licenses suggests these license types involve small-footprint, low-impact operations, and are a necessary agricultural support use to cultivation. (See EIR, Project Description, Section 2.2.5, p. 2-27.) Given the existing record, if the Board were to adopt a Minor CUP (or CUP) requirement for distribution licenses in the AG-1 zone, such action would be entirely lacking in evidentiary support.

In light of the foregoing, our clients request that the Board abandon the Minor CUP requirement in the AG-1 zone and replace it with a ZC. As the LUDC states, the purpose and intent of a ZC is to ensure compliance with the Comprehensive Plan, any applicable community or area plan, the LUDC, and any conditions established by the County. (LUDC §§35.82.210 - *Zoning Clearance.*)

The County thus would retain full discretion to impose requirements and conditions through the ZC process. Requiring applicants to secure a Minor CUP will delay the local industry's compliance with State law and slow local grower's ability to legally prepare their product for market and make sales.

4. Manufacturing and Distribution as Ancillary to Cultivation

The Draft Ordinance includes Specific Use Development Standards that would only permit manufacturing and distribution on AG-I and AG-II as an accessory use to cannabis cultivation. The proposal states that a minimum of 50% of the cannabis product distributed or manufactured shall be sourced from the cannabis plant material cultivated on the same lot on which the distribution or manufacturing activities will occur. This standard is problematic because it would result in the proliferation of new development on farms to support manufacturing and distribution.

The Ordinance assumes, without evidentiary support, that cannabis manufacturing and distribution are neither an agricultural operation nor an agricultural use of land. There is no evidence to conclude that these activities are incompatible with agriculturally zoned lands. Rather, manufacturing and distribution are an integral part of and necessary to production of cannabis. These uses support the use of the surrounding land for agricultural purposes. Preparation of cannabis for the legal commercial market involves both manufacturing and distribution, including packaging, labeling, extraction and transportation of cannabis.

Growers who do not have supporting agricultural infrastructure at their cultivation site will need to identify a secondary location to process, extract and transport their product. The strong preference of the industry is to utilize pre-existing agricultural infrastructure. Growers without on site infrastructure will be looking for opportunities in close proximity to their cultivation site. If the 50% limitation applies, the local facilities will quite often be small and unable to accommodate their product. This will force these growers to pursue applications for new manufacturing and distribution facilities on their existing cultivation sites. Alternatively, they may have to seek a location out of county to manufacture or distribute their product, which will increase vehicular traffic impacts in and out of Santa Barbara County. In this instance, the County will not capture the revenue from these agricultural support uses.

Requiring a grower to distribute or manufacture a minimum of 50% of product grown onsite is arbitrary and inflexible and will result in negative unintended consequences for the County. We recommend that your Board adopt the recommendation from the Planning Commission: reduce the minimum percentage requirement from 50% to 10%. This is a more reasonable standard that still requires cultivation to be the principal use of the property and ensures that distribution and manufacturing are subordinate and incidental to the cultivation use of the lot. As an alternative to adopting a minimum percentage, your Board could preclude manufacturing and distribution facilities that are located within the County from sourcing cannabis plant material cultivated outside the County.

5. Conclusion

For the reasons stated herein, we respectfully request that the Board:

- Postpone action on the proposed Uniform Rule amendments and direct staff to work with the industry on revised amendments that will strengthen the County's Agricultural Preserve Program;

- Adopt a "premise-boundary to property-line approach" to measuring distance from sensitive receptors (as opposed to a "property-line to property-line" approach), or adopt a setback policy that allows existing State-licensed operations to be grandfathered for purposes of securing local permits and licenses;

- Abandon the Minor CUP requirement for distribution licenses in the AG-1 zone and replace it with a ZC requirement; and

- Eliminate the restriction that a minimum of 50% of cannabis manufactured or distributed onsite shall be sourced from material cultivated on the same lot, and reduce the restriction to 10%, as recommended by the Planning Commission, or in the alternative preclude manufacturing and distribution facilities located within the County from sourcing cannabis plant material cultivated outside the County.

Feel free to contact me, or have your staff contact me, if you have any questions or wish to discuss.

Respectfully submitted,

HOLLISTER & BRACE

By: _____
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