

# CANNABIS

## RESPONSE TO SANTA BARBARA COUNTY GRAND JURY REPORT

September 22, 2020 | County Executive Office



COUNTY OF SANTA BARBARA

- The challenge of developing regulations for the newly legalized cannabis industry has been significant
- Responsibility for implementation is spread among several departments, but primarily P&D (Chapter 35), the CEO's Office (Chapter 50) and County Counsel
- The state's decision to place responsibility for implementation on each county has created some confusion and uncertainty
- The County's objective has been to develop responsible policies and move entities into a regulatory program of restrictions and controls

## Background

# Report Summary

- Published June 30, 2020
- The Grand Jury released their report “Cannabis”, which contains the results of their review of the County’s processes in implementing the program of legalized cannabis cultivation
- The Board of Supervisors is named as a responder to all Findings (1-12) and all 19 Recommendations

# Finding 1

“ *The impact of cannabis production on the health and welfare of Santa Barbara County residents was inadequately weighted and considered by the Santa Barbara County Board.* ”

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## **The Board disagrees wholly with this finding.**

- The PEIR evaluated health and welfare impacts
- Over 60 public meetings; extensive testimony and Board deliberation
- The Program is in full compliance with CEQA
- The Board adopted a statement of overriding considerations that considered benefits and impacts

## Recommendation 1a

“ That the Santa Barbara County Board direct the Santa Barbara County Planning and Development Director to prepare Environmental Impact Reports addressing each region of Santa Barbara County after holding public hearings to evaluate public concerns.

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**This recommendation will not be implemented as it is not warranted.**

The County's Cannabis Land Use Ordinance fully complies with California Planning & Zoning law as well as CEQA.

## Recommendation 1b

“ That the Santa Barbara County Board direct the Santa Barbara County Planning and Development Director to develop Project Objectives for the Environmental Impact Reports that reflect a balance between cannabis, traditional agriculture and the residents of Santa Barbara County.

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**This recommendation will not be implemented as it is not warranted.**

The County's Cannabis Land Use regulations fully comply with California Planning & Zoning law as well as CEQA.

## Finding 2

“ *The Creation of a non-Brown Act Ad Hoc Sub Committee that was not open to the public led to a lack of transparency and distrust by Santa Barbara County Residents.* ”

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### **The Board disagrees partially with this finding.**

- The Ad-hoc committee was created in Open Session on 2/14/2017
- The committee complied with all applicable laws and regulations
- The committee held three public outreach meetings and complied with all applicable laws and regulations
- The committee reported to the entire Board who made all final decisions

## Recommendation 2

“ *That the Santa Barbara County Board require all future Ad Hoc Sub Committees be open to the public and subject to the Brown Act.*

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**This recommendation will not be implemented as it is not necessary.**

The use of Ad-Hoc committees to study complex issues is a common practice and complies fully with the Brown Act.



## Finding 3

“ *The Board granted nearly unfettered access to cannabis growers and industry lobbyists that was undisclosed to the public during the creation of the cannabis ordinances.* ”

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### **The Board disagrees partially with this finding.**

The Board provided access to all interested parties as is common practice and complied with all laws related to disclosure.

## Recommendation 3

“ That the Santa Barbara County Board develop standards that require Santa Barbara County Board members to publicly disclose all access granted to lobbying individuals or groups, especially while a matter involving these individuals or groups is before the Board.

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**This recommendation will not be implemented as it is not warranted.**

- Implementing the proposed recommendation would have a chilling effect on the deliberative process.
- Reference: *Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325*

## Finding 4

“ *The conflict between cannabis production and traditional agriculture is a major concern for the continued existence of certain segments of traditional agriculture in Santa Barbara County.* ”

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### **The Board disagrees partially with this finding.**

- There is tension between cannabis operations and certain segments of the agricultural community.
- There is no evidence that cannabis threatens the existence of those segments.
- Ag Commissioner created an advisory committee.

## Recommendation 4a

“ *That the Santa Barbara County Board amend the Land Use and Development Code and Article II, the Coastal Zoning Ordinance to require all pending cannabis land use permit applications to be subject to a Conditional Use Permit Review.*

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**This recommendation will not be implemented as it is not reasonable.**

- The Board amended the LUDC twice in the last year to address community concerns.
- On July 14, 2020 the Board addressed concerns of EDRN residents and the agricultural community.

## Recommendation 4b

“ That the Santa Barbara County Board amend the County’s Uniform Rules for Agricultural Preserves and Farmland Security Zones [collectively, “Uniform Rules”] to declare that cannabis cultivation and related facilities are compatible uses on contracted land instead of as an agricultural use.

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**This recommendation will not be implemented as it is not warranted.**

- Cannabis cultivation is “agriculture” pursuant to the County’s Comprehensive Plan.
- The Board adopted amendments to the Uniform Rules to establish rules for cannabis development on contracted lands.

## Finding 5

“ *The amount of cannabis production allowed under the current cannabis ordinances is excessive and has led to overconcentration in some portions of Santa Barbara County.* ”

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### **The Board disagrees wholly with this finding.**

- The Board set acreage caps in both the Coastal and Inland Zones
- July 14, 2020: Numerous amendments to the Land Use Code

## Recommendation 5a

“ That the Santa Barbara County Board require all applicants with cannabis use and development permit applications and licenses pending, who claim legal non-conforming status, to prove their claimed status before the Santa Barbara County Planning Commission.

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**This recommendation will not be implemented as it is not warranted.**

- Those operations with legal non-conforming status will be phased out of this status as they work through the permit process.
- The CEO's Office has a process for reviewing cases where there is compelling evidence that such falsification occurred.

## Recommendation 5b

“ That the Santa Barbara County Board direct the Santa Barbara County Planning and Development Department Director, in conjunction with the Santa Barbara County Sheriff’s Office, to eradicate all cannabis grown on acreage claimed under Legal Non-Conforming status when the cannabis operator fails to demonstrate to the Santa Barbara County Planning Commission that the planting of cannabis occurred prior to January 19, 2016.

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**This recommendation will not be implemented as it is not reasonable.**



## Recommendation 5c

“ That the Santa Barbara County Board direct the Santa Barbara County Planning and Development Department Director to deny permits for the growth of cannabis on acreage claimed under Legal Non-Conforming status when the cannabis operator fails to demonstrate to the Santa Barbara County Planning Commission that the planting of cannabis occurred prior to January 19, 2016.

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**This recommendation will not be implemented as it is not reasonable.**

The Board and staff will use existing enforcement tools.

## Finding 6

“ *The approval by the Santa Barbara County Board of an unverified affidavit system does not require proof of prior cannabis operations to establish eligibility to continue to grow cannabis as a legal non-conforming use.* ”

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### **The Board agrees with this finding.**

- Growers operating under Legal Non-Conforming status must comply with state law and County inland and coastal land use codes.
- Growers must make steady progress through the land use permit process.

## Recommendation 6

“ That the Santa Barbara County Board require all applicants with cannabis use and development permit applicants and licenses pending, who claim legal non-conforming status, to prove their claimed status before the Santa Barbara County Planning Commission.

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**This recommendation will not be implemented as it is not reasonable.**

The CEO's Office, in conjunction with Planning and Development, has implemented a process for reviewing cases where there is compelling evidence that the affidavits were falsified.

## Finding 7

“ *The affidavit system does not require proof of prior scope of the cannabis acreage.* ”

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**The Board agrees with this finding.**

## Recommendation 7a

“ That the Santa Barbara County Board direct the Santa Barbara County Planning and Development Department Director, in conjunction with the Santa Barbara County Sheriff’s Office, to eradicate all cannabis grown on acreage claimed under Legal Non-Conforming status when the cannabis operator fails to demonstrate to the Santa Barbara County Planning Commission that the planting of cannabis occurred prior to January 19, 2016.

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**This recommendation will not be implemented as it is not reasonable.**

See the response to Recommendation 5a.

## Finding 8

“ *The option taken by the Santa Barbara County Board to tax cannabis cultivation using a Gross Receipts method was less reliable than the square footage method used by the vast majority of California Counties.*

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### **The Board disagrees with this finding.**

The Board selected from among four methodologies for taxing commercial cannabis operations. All have positive and negative attributes.

## Recommendation 8

“ *That the Santa Barbara County Board amend Ordinance 5026 to tax cannabis cultivation using the Square Footage method.* ”

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**This recommendation will not be implemented as it is not reasonable.**

The current structure was approved by a vote of the people and any change would require resubmission to the voters. The Board may wish to evaluate this in the future.

## Finding 9

“ *The Santa Barbara County Treasurer-Tax Collector was not included in the creation of the tax portions of the cannabis ordinance.* ”

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**The Board disagrees partially with this finding.**

The County Treasurer concurred with the Board Letters of January 23, 2018 and February 6, 2018 related to cannabis taxation.



## Recommendation 9

“ *That the Santa Barbara County Board require that all future ordinances that involve taxation require the Santa Barbara County Treasurer-Tax Collector be involved in the creation of the ordinance.*

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**This recommendation will be implemented as future situations arise.**

## Finding 10

“Members of the Santa Barbara County Chief Executive Officer’s Office and Santa Barbara County Planning and Development staffs unduly and without apparent Board knowledge successfully sought changes to the April 26, 2019 Cannabis Advisory from the Santa Barbara County air Pollution Control District, an independent agency, eliminating a one mile buffer recommendation.

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**The Board disagrees wholly with this finding.**

The APCD Advisory included recommendations that were outside of their purview and worked with Planning and Development to make corrections.

# Finding 11

“ *There has not been effective odor control at the boundary of cannabis cultivation and related activities resulting in significant public outcry about odor, quality of life and health concerns.* ”

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## **The Board disagrees partially with this finding.**

- Odor control has proven to be one of the most challenging issues associated with legalization.
- Both the permitting and business licenses processes carry stringent odor control requirements.
- The Business License process calls for annual reviews and odor control compliance will be a significant part of that review.

## Recommendation 11

“ *That the Santa Barbara County Board suspend all County unpermitted cannabis operations until proof of odor control at the boundary of their operation is accepted by the Santa Barbara County Planning Commission.*

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**This recommendation will not be implemented as it is not warranted.**

See the response to Recommendation 5a.

# Finding 12

“ *The Santa Barbara County Board does not have a written Code of Ethics to formalize its ethical standards and guide its decision-making process.* ”

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## **The Board disagrees wholly with this finding.**

- SB County Conflict of Interest Code (reviewed bi-annually)
- Political Reform Act (Gov. Code 81000 et seq.)
- Statement of Economic Interests, Form 700
- Bi-Annual Ethics training

## Recommendation 12a

“ *That the Santa Barbara County Board establish, staff and empower an independent Ethics Commission with oversight over the Board and its staff members.*

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**This recommendation will not be implemented as it is not warranted.**

See Finding 12.

## Recommendation 12b

“ *That the independent Ethics Commission develop a Code of Ethics, review Board activities on a periodic and as needed basis for compliance, and share its findings with the public.*

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**This recommendation will not be implemented as it is not warranted.**

See response to Finding 12.

## Recommendation 12c

“ *That the Santa Barbara County Board require all its members to publicly disclose receipt of campaign contributions which have matters pending a decision by the Board.*

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**This recommendation will not be implemented as it is not warranted.**

The Board fully complies with the Political Reform Act (Gov. Code 81000 et seq.) which addresses the issues and requirements pursuant to campaign contributions.



## Recommendation 12d

“ That the Santa Barbara County Board require those members receiving campaign contributions from donors with matters pending a decision, to recuse themselves from those matters or return the campaign contributions.

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**This recommendation will not be implemented as it is not reasonable.**

- See response to Finding 12.
- California Supreme Court: *Woodland Hills Residents Association v. City Council of Los Angeles (1980)*

- a) Consider and adopt the responses in Attachment A as the Board of Supervisors' response to the 2020 Grand Jury report entitled "Cannabis", Attachment B; and
- b) Authorize the Chair to sign the letter included in Attachment A and forward the letter and responses to the Presiding Judge of Santa Barbara County Superior Court; and
- c) Determine pursuant to CEQA Guidelines 15378(b)(5) that the above actions are not a project subject to CEQA review, because it is a government administrative activity that does not result in direct or indirect physical changes to the environment.

## Recommended Actions