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Sent:	Monday, March 19, 2018 1:29 PM
To:	Williams, Das; Hartmann, Joan; Adam, Peter; Wolf, Janet; Lavagnino, Steve
Cc:	sbcob; Bozanich, Dennis; Fogg, Mindy; Klemann, Daniel; Metzger, Jessica; Hartley, Johannah
Subject:	Cannabis Amendments to the Uniform Rules - Agenda Item D-3 - Board Hearing March 20, 2018
Attachments:	Hollister & Brace Ltr to BOS (03-19-18).pdf

Chair Williams and Honorable Supervisors,

Please see the attached public comment letter, written on behalf of the Cannabis Business Council of SBC, addressing issues scheduled to be heard under Agenda Item D3, tomorrow March 20, 2018.

Thank you for your time and attention to this matter. Feel free to contact me if you have questions or wish to discuss.

-Peter

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March 19, 2018

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Re: Agenda Item: D-3
Board Hearing Date: March 20, 2018
Subject: Cannabis Amendments to Uniform Rules

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 two options being presented to your Board for amending the Uniform Rules to address cannabis uses and related development on lands subject to agricultural preserve contracts.

The first option being presented is the recommendation of the Agricultural Preserve Advisory Committee (APAC), which my clients have previously gone on record opposing. The reasons for our opposition are stated in my prior letter to the Board dated February 5, 2018, and are summarized briefly below. The Business Council and my other clients remain opposed the APAC recommendation and request that each of the issues and concerns raised in my February 5, 2018 letter be incorporated herein by reference.

The second option being presented to your Board is a P&D staff recommendation. This option was put together by P&D staff following a meeting with industry stakeholders on February 26, 2018. The P&D staff recommendation is similar to the APAC recommendation referenced above, except that under the P&D staff recommendation cannabis cultivation and

ancillary facilities would not be subject to acreage limitations. My clients appreciate the greater flexibility afforded by the P&D staff recommendation and support removal of the acreage limitations. However, for the same reasons we oppose the APAC recommendation, we cannot support the other aspects of the P&D staff recommendation which seek to accomplish the following:

1. Exclude cannabis from the definitions of "agricultural commodity" and "agricultural use."
2. Specify that cannabis cultivation and ancillary facilities in support of cannabis cultivation are compatible - but not qualifying - uses on contracted land.
3. Specify that processing, distribution, and manufacturing of cannabis from off-site sources shall be limited to no more than 49 percent of the total volume of cannabis that is processed, distributed, and manufactured on the premises.

1. Cannabis As the Principal Use

Under both the APAC and P&D staff recommended options, 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 (or graze cattle) to maintain compliance with minimum eligibility requirements. The majority of my clients currently cultivate cannabis as their principal crop, and most do not have the flexibility to grow other agricultural products. For many, it is neither practical nor profitable to grow a non-cannabis crop as the principal use of their property.

As we have stated in the past, there is no reason to treat 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 PEIR 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. (PEIR, Section 3.2.2, p. 3.2-4.) The PEIR concluded that cultivation activities constitute an agricultural use of land with the resultant cannabis products an agricultural product. (PEIR, Section 3.2.4, p. 3.2-17.)[1] The County now has extensive development standards in place through the Cannabis Land Use Ordinance amendments to mitigate the potential for noise, odor,

[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).).

security and other neighborhood impacts. Given these controls, there is no reason to treat cannabis cultivation and related use as anything other than a qualifying use on contracted land and counted toward minimum eligibility requirements.

If the Board were to amend the Uniform Rules in a manner which precludes cannabis operations from being counted toward minimum commercial agricultural production requirements, it will displace existing medicinal cannabis cultivation operations and encourage landowners wishing to cultivate cannabis to terminate their contracts. The practical effect of either the APAC or P&D staff recommendations would be to 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 will be a gradual withdrawal of lands from the Agricultural Preserve Program, and a weakening of the County's program overall. This in turn could result in increased pressure to convert agricultural lands to urban uses.

2. Inconsistency of Proposed Amendments With County Agricultural Element and Key Williamson Act Principles

The Cannabis Land Use Ordinance amendments, adopted by your Board on February 6, 2018, were found to be consistent with the policies and development standards of the Comprehensive Plan, including the Land Use and Agricultural Elements. The Agricultural Element contains goals and policies which require the protection of agricultural lands, the reservation of prime soils for agricultural uses, and the preservation of a rural economy. These goals and policies are consistent with key Williamson Act principles of maintaining a viable agricultural economy, discouraging the premature and unnecessary conversion of agricultural lands, and discouraging discontinuous urban development patterns. (Government Code § 51220.) The Agricultural Element requires the County to do all of the following:

- Assure and enhance the continuation of agriculture as a major viable production industry in the County (Agricultural Element, Goal I);

- Recognize the rights of operation, freedom of choice as to the methods of cultivation, choice of crops, rotation of crops, and all other functions within the traditional scope of agricultural management decisions (Agricultural Element, Policy IB); and

- Protect agricultural lands from adverse urban influence (Agricultural Element, Goal II).

If the Board were to adopt Uniform Rules which displace existing medicinal cannabis cultivation operations and encourage landowners wishing to cultivate cannabis to terminate their contracts (by precluding cannabis operations from being counted toward minimum commercial agricultural production requirements), the Uniform Rules would be working against the goals and policies of the Agricultural Element and key Williamson Act principles. Landowners would be restricted in their free choice of crops and discouraged from continuing their participation in

the Agricultural Preserve Program. This would lead to a long-term degradation of the program in the County and a gradual increase in pressure from adverse urban influence.

3. Limitations on Ancillary Operations Are Inconsistent With Compatibility Principles

My client group has similar concerns regarding proposed limits on the processing, distribution, and manufacturing of cannabis from off-site sources. Under both the APAC and P&D staff recommendations, no more than 49% of the total volume of cannabis that is processed, distributed, and manufactured on land under Williamson Act contract can be sourced from off-site. This means a minimum of 51% of the total volume of cannabis that is processed, distributed, and manufactured on the premises must be grown on the premises.

We believe the requirements set forth in the Uniform Rules applicable to offsite sourcing of cannabis should match the requirements that your Board adopted in the Cannabis Land Use Ordinance amendments. In other words, a minimum of 10% of the total volume of cannabis that is processed, distributed, and manufactured on the premises must be grown on the premises. Your Board found that such a requirement was consistent with the goals and policies of the Agricultural Element of the Comprehensive Plan, and would promote agricultural values in the County. A 10% minimum allows flexibility of operations while at the same time ensuring the property remains dedicated to production of the crop.

If the Board amends the Uniform Rules in a manner which places unreasonable limits on the volume of cannabis that can be processed, distributed, and manufactured from off-site sources, it will prevent consolidation of operations on key agricultural parcels appropriate for such use. It will reduce the opportunities available to smaller cultivation operations for having their product processed locally. It will force individual operators with lands that may not be appropriate for such ancillary uses to seek permits for such uses. It will create pressure for a proliferation of small processing, manufacturing, and distribution facilities throughout agricultural areas of the County. This in turn could displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcels. It could also significantly compromise the long-term productive agricultural capability of the subject contracted parcels, in direct contravention of key compatible use criteria. If unreasonable limits are placed on the volume of cannabis that can be processed, distributed, and manufactured from off-site sources, it would encourage the exact opposite of what the compatibility principles set forth in Government Code 51238.1(a) are intend to promote.

The Alternatives Analysis of the PEIR rejected Alternative 2, which similar to both the APAC and P&D staff recommendations, severely restricted opportunities for cannabis ancillary uses on Williamson Act contracted lands. The PEIR 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. (PEIR, Section 4.2.3, p. 4-35 to 4-36.) In light of these findings, it is in the best interest of the County to encourage flexibility in the processing, distribution and manufacturing of

cannabis from off-site sources, and to encourage, not restrict, utilization of pre-existing agricultural infrastructure for this purpose. By encouraging the use of existing infrastructure, the County would be encouraging the consolidation of operations on key agricultural parcels, while discouraging the proliferation of small processing, manufacturing and distribution facilities throughout agricultural areas.

4. Preferred Option For Addressing Cannabis Uses on Contracted Lands – Contract Abeyance

The Business Council and my other clients believe another option exists for addressing cannabis uses and related development on contracted lands, an option that is preferable to amending the Uniform Rules because it avoids the policy implications of amendments. The option recognizes that the Williamson Act sets forth a framework based on traditional contract law principles whereby landowners enter into voluntary arrangements with the local agency restricting their land to agricultural use in exchange for the land being valued, for property tax purposes, according to its agricultural production rather than fair market value. Because the arrangement is based on contract, and traditional contract law principles apply, both the landowner and local agency could voluntarily agree to hold the terms of the contract in abeyance and thereby suspend its operative effect.

The suspension contemplated would remain in effect from year to year for as long as the operator remained in compliance with all state and local requirements. During this period, the operator would pay property taxes based on the fair market value of the contracted land, not on the value of its agricultural production. Under this type of approach, landowners could avoid seeking termination of their contracts, and the integrity of the County's Agricultural Preserve Program would remain intact. Nothing in the Williamson Act prohibits local agencies and landowners from pursuing such an approach, and given the mitigation controls already in place as a result of the Cannabis Land Use Ordinance amendments, such an approach could be found consistent with key Williamson Act principles of maintaining a viable agricultural economy, discouraging the premature and unnecessary conversion of agricultural lands, and discouraging discontinuous urban development patterns. (Government Code § 51220.).

5. Alternative Uniform Rule Amendments

As an alternative, in the event the Board decides it must amend the Uniform Rules, my client group supports the following package of Uniform Rule amendments:

1. Cannabis is not excluded from the definitions of "agricultural commodity" and "agricultural use."

2. Cannabis cultivation is a qualifying use on contracted land (i.e., counted toward minimum commercial agricultural production requirements necessary to maintain eligibility under the Williamson Act).

3. Ancillary facilities supporting the processing, manufacturing and distribution of cannabis products are compatible uses on contracted land.

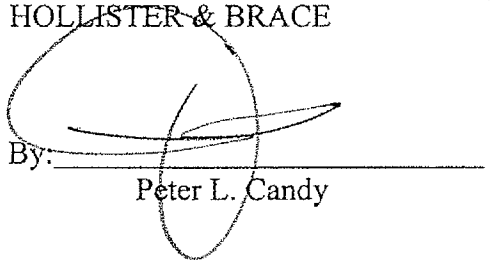
4. A minimum of 10% of the total volume of cannabis that is processed, distributed, and manufactured on the premises must be grown on the premises.

5. No compatibility determination is required when the processing, distribution, or manufacturing operation proposes use of pre-existing already permitted infrastructure.

We believe the best way to preserve and enhance long-term agriculture in Santa Barbara County is to allow cannabis cultivation, extraction and distribution without arbitrary and impractical limits. Feel free to contact me, or have your staff contact me, if you have any questions regarding the strategies recommended herein.

Respectfully submitted,

HOLLISTER & BRACE



By: _____
Peter L. Candy

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