

ENVIRONMENTAL LAW

March 13, 2020

Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, California 93101

*By email to [sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)*

**RE: Busy Bee's Organics Cannabis Cultivation Project 19APL-000000-00031 – SBCRC  
Response to Applicant Appeal**

Chair Hart and Honorable Supervisors,

Our offices represents Santa Barbara Coalition for Responsible Cannabis (SBCRC) , Appellant in this matter. A separate letter supporting Appellant SBCRC's appeal details the evidence and arguments supporting a conclusion that the Board may not lawfully approve the Busy Bee Organics, Inc. project – 19LUP-00000-00496 Cannabis Development Project ("Project" or "Proposed Project"). This letter specifically responds to the issues raised in the Applicant's appeal.

The Planning Commission conducted a careful review of the Project and crafted conditions to help address conflicts between the cannabis operation and surrounding agricultural land uses including viticulture. These conditions include reducing the planted acreage, more stringent odor control requirements, and Director review after two years to assess the effectiveness of conditions to reduce odor and pesticide related conflicts with adjacent agricultural operations. The Applicant's appeal requests that the Board substantially weaken these and other conditions the Planning Commission determined were necessary given the magnitude of the Project's impacts to surrounding land uses.

While the conditions imposed by the Planning Commission are far from adequate, we strongly oppose the Board weakening those conditions as proposed by the Applicant.

1. Reduction in Planted Cannabis Area

Applicant's appeal objects to the reduction in acreage from 22 to 18, on grounds that 22 acres is necessary to meet the minimum production requirements of the Uniform Rules. The Planning Commission anticipated that the Applicant plant 4 acres of row crops to meet the 22 acre requirement as the Uniform Rules do not require cannabis applicants to meet the acreage threshold solely by cannabis cultivation; traditional crops meet the requirement. The Applicant now alleges it would be "extremely challenging to commercially farm something other than

cannabis at this property to make up the 4-acre difference and remain in conformance with the County's Uniform Rules". (Applicant Appeal, p. 2.)

In our letter addressing the evidence and argument supporting the SBCRC appeal (3/13/20) and in our appeal itself, we explained that the Board-directed amendments to the Uniform Rules which identified commercial cannabis cultivation as a qualifying use on Agricultural Preserve contracted lands in the County is contrary to State law. The California Farm Bureau recently informed the County through both the Planning Commission and Agricultural Preserve Advisory Committee (APAC) of this fact, stating in a 1/17/20 letter to the Planning Commission that "the current Santa Barbara County 'Uniform Rules for Agricultural Preserves and Farmland Security Zones' are not compliant with existing law." Specifically, Government Code §51231(b) only authorizes the County to identify commercial cannabis cultivation as a "compatible use" on contracted lands.

Accordingly, the underlying problem is not that the Planning Commission reduced the acreage of planted cannabis, rather that the APAC *increased* that acreage in the first instance based on a provision in the County's Uniform Rules that violates State law. The Board should initiate amendments to the Uniform Rules to rectify this situation immediately, and remand the Project to APAC for review consistent with the Williamson Act.

## 2. Odor Abatement Plan Changes

The Applicant also objects to changes to the conditions of approval that the Planning Commission imposed to improve the effectiveness of the Odor Abatement Plan. The Planning Commission recognized the difficulty in controlling odors from cannabis cultivation and processing, and based on the applicant's testimony, incorporated additional provisions including that no cannabis drying would occur onsite, that immediately upon harvest fresh plants either undergo flash freezing or be shipped off-site within two hours, and that harvests would not be staggered. These specific concrete measures will greatly reduce odor emissions from harvest and drying, "which are often acknowledged as the most odor producing stages of the cannabis cultivation process". (Board Letter, p. 6.)

The Applicant requests that the Board modify these conditions to grant the Applicant considerably more flexibility, which in turn, jeopardizes the effectiveness of these measures. In lieu of off-site drying only, the Applicant now proposes onsite drying "within a sealed building with appropriate filtering on any vents to prevent the escape of odors". (Applicant Appeal Letter, p. 3.) However, containing cannabis odors in this fashion has proven challenging, and the Applicant's proposal is vague and difficult to enforce. The Planning Commission's condition is easier to enforce, and would mitigate the odor from drying to the maximum extent feasible as required by CEQA. The Board should reject the Applicant's request to allow onsite drying, and retain requirements that harvested cannabis be immediately flash frozen or transported offsite.

Additionally the Applicant objects to the prohibition on staggering harvests, however the condition imposed by the Planning Commission comes directly from the Applicant's Odor Abatement Plan which states "Harvests will not be staggered in order to reduce potential odors." (Applicant Odor Abatement Plan, Attachment K to the Planning Commission Staff Report dated 9/18/19, p. 2.) The Applicant's proposed change to require instead no more than 3 harvests per year is entirely redundant with the Project Description which states "Harvests will occur up to three times per year and will last up to approximately two weeks, depending on whether conditions." (Conditions of Approval, Condition 1, Project Description.) The Board should retain the prohibition on staggered harvests to reduce odor during harvest.

### 3. Director Review

The Planning Commission was receptive to public concerns that permits needed to be renewed periodically to ensure utilization of the best available control technology and to limit vested rights, but upon protestations from staff, approved a partial measure. Recognizing that the science and technology regarding cannabis odors and how to effectively control them is still developing, and the current lack of proven effective solutions to pesticide migration, the Planning Commission determined it was essential that the County to revisit the efficacy of the conditions after Project implementation. The Director Review condition provides an avenue for the conditions of approval to be re-evaluated, modified if deemed necessary by the Director, as well as reported back to the Planning Commission.

The Applicant claims the Director Review condition is unnecessary, because "there are already existing codified regulations contained in Chapter 50, Licensing of Cannabis Operations that meet this objective." (Applicant Appeal Letter, p. 4.) However, as explained in the Board Letter, "the provisions in Chapter 50 do not afford the Director the authority to modify the conditions of approval of the LUP". (Board Letter, p. 8.) The LUP for this Project runs with the land and the conditions approved (including whether the permit must be reviewed periodically and adjusted as needed) are perpetual and stay with this parcel regardless of the review processes in Chapter 50. Additionally, the report back to the Planning Commission on the efficacy of the conditions and any required modifications provides public transparency, which is a critical component in effectively resolving land use conflicts. Chapter 50 provides no mechanism to allow for public transparency.

For reasons explained in our other submittals, SBCRC urges the Board to deny the Project or alternatively direct that it be processed as a CUP and undergo Project-level environmental review. However if the Board decides to approve the Project, it is essential that the conditions already imposed by the Planning Commission are not weakened. The County is well within its discretion to insist on stringent conditions to protect the public health, safety, and general welfare, and to reduce the environmental impacts of the cannabis operation on the environment.

Respectfully submitted,

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