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Via E-Mail

Santa Barbara County Board of Supervisors
c/o Jacquelyne Alexander
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Dear Chair Hart and Honorable Board of Supervisors:

We are submitting this letter in advance of the June 2, 2020 Board hearing to address concerns with the County Planning Commission-recommended Ordinances to amend the County Land Use and Development Code (LUDC) and the Article II Coastal Zoning Ordinance (Article II), to implement new development standards and permit requirements regarding certain commercial cannabis activities. We have reviewed the materials posted in connection with the proposed amendments carefully, and we see a number of problems that make the proposed amendments legally indefensible in current form, as well as practically ill-advised under the circumstances.

The failure to exempt farms with approved permits and vested rights will undermine the County's goals and lead to more litigation.

The first concern we have is the failure of the Planning Commission to draft an ordinance to clearly exempt cannabis farms that have permitted and vested rights. For example, our client West Coast Farms has incurred significant expenses and spent a substantial amount of time in the development of its farm on Highway 246 west of Buellton. For several years now, our client has relied on the existing ordinance to invest in valuable real property, and to engage a variety of consultants to develop a plan for an excellent project of the precise type the County had in mind when the ordinance was passed. West Coast Farms has hired land use planners, building architects, landscape architects and other scientific experts as part of its application for a land use permit to cultivate cannabis outdoors. After winning approval of its permit by the Planning Department, West Coast Farms had to incur even more expenses for additional scientific consulting services for more odor control analysis and wind studies, landscaping expertise, pre-cultivation work, and legal fees, to defend the attacks from the local groups who have opposed virtually every cannabis project in the County.

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While these groups have coalesced to routinely challenge permit applicants, there is very little evidence of their involvement when the land use ordinance and the PEIR were originally passed. Despite their failure to act in a timely manner at the early stages, they have effectively slowed down the current permitting process while relying on years-old academic studies and unsubstantiated and unreliable anecdotal theories about the alleged impacts of cannabis. Despite the efforts of the opponents to muddy the record and to seemingly protect an agricultural monopoly in favor of wine, the Board of Supervisors has followed the law and approved permits for a number of farms that are proceeding with their projects and which will soon be generating much-needed tax revenues and additional economic impact for the County.

So, setting aside the deficiencies in the proposed ordinance amendment, there should be at a minimum a clear exemption for those applicants who relied on the current law and proceeded diligently through approval by the Board of Supervisors. This would avoid unconstitutional retrospective application of a new ordinance that deprives these permittees of vested rights without due process of law. See *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 646. Such exemptions are allowed under the law and the County should make them now during the public process rather than leaving it to further litigation to determine the extent and scope of these permittees' vested rights. See *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 551–552 (discussing exempted uses as nonconforming uses and providing the basis for vested rights as to such uses in order to avoid questions as to the constitutionality of their application to those uses). Importantly, "[t]he usual exercises of police power in the land use context" that might apply in the context of the proposed amendments here do not justify the impairment of a vested right because they "are not directly related to danger or potential danger to the health and safety of the public." *Davidson*, 49 CalApp.4th at 649–650. Even if new regulations are arguably justified by the public welfare in its broader sense, only regulations "reasonably necessary to prevent ... a danger or nuisance to the public" justify the impairment of a vested right. *Id.*; see also *Stewart Enterprises, Inc. v. City of Oakland* (2016) 248 Cal. App.4th 410, 422-23 (explaining the legal deficiencies of the evidence promoted by parties advocating for a new CUP requirement where, like here, "the vast majority of the evidence" . . . "were concerns about what impacts the [project] *might* have on the public and local businesses" but failing to identify evidence that the project "*in particular* posed a danger to public health.") If these exemptions are not granted now, the likelihood of ongoing litigation from a variety of stakeholders is almost guaranteed, and the easily foreseeable result would be a cascading effect of expenses on all sides while impeding the ability of the County to generate revenues.

The proposed new standard for odor abatement is hopelessly vague and ambiguous and will lead to paralysis in the permitting process.

The proposed amendment to the LUDC suggests removing the Planning Department Director's ability to determine the adequacy of an odor abatement plan and replacing it with a standard that appears to be subject to the whims of any person intent on keeping cannabis from being grown in the County. Given the voices in opposition to cannabis in Santa Barbara County, including many of those who are simply "against" this now legal crop, as well as certain winemakers whose motivations are transparently anti-competitive, the proposed new standard for odor abatement will be impossible for anyone to satisfy. Rather than allowing for objective

odor-abatement plan determinations made by the Director, the amendments appear to allow for an unlimited variety of subjective determinations and biased challenges which would destroy the opportunity for new projects to get approved, and would almost certainly lead to further litigation between neighbors and including the County.

The proposed amendments are poorly drafted to appease opponents of cannabis who are already suing the County and others in multiple suits and who are relying on unsubstantiated "science" to drive anticompetitive motivations.

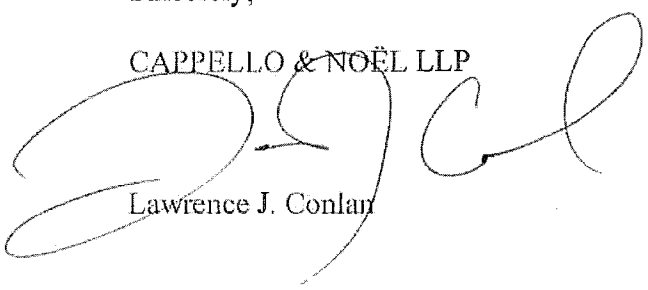
The Board knows well by now that the group funding and organizing the most opposition to cannabis in the County is led by Blair Pence. That same group, the "Coalition" is actively soliciting support and funding to oppose cannabis across the County. It is behind a lawsuit concerning properties in Carpinteria, and has recently sued the County in connection with two different approvals of fully-compliant and well developed projects outside of Buellton. The evidence put forth in support of their opposition is unreliable and highly speculative. The assertions about compatibility, terpene drift, odor abatement and so-called cumulative impacts are unsubstantiated.

We believe the Board should proceed with due caution before considering amendments that are plainly driven by these opponents. While their motivations are diverse, ranging from outdated social and cultural beliefs about cannabis to unfair efforts to promote one agricultural commodity to the detriment of another, their goal is common – to prevent cannabis from being grown in Santa Barbara County. Under the current circumstances, when the positive projections for tax revenues and the far reaching economic impacts of cannabis are so critical to the budgetary needs of the County and the community as a whole, the proposed amendments to the LUDC are simply ill-advised.

We ask that the Board decline to adopt any proposed amendments to the ordinance unless they are fair to all parties involved, expressly protect the vested rights of current permittees and other applicants, and are drafted to advance the economic goals of the County rather than to undermine them.

Sincerely,

CAPPELLO & NOËL LLP



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