Public Comment

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July 6, 2019
To the Board of Supervisors
For the County of Santa Barbara

Email directed to the following:

Board of Supervisors in care of the clerk of the board
Supervisor Joan Hartmann
Supervisor Steve Lavagnino
Supervisor Das Williams
Supervisor Peter Adam
Counsel Michael C. Ghizzoni
Deputy CEO Dennis Bozanich

Relevant to the Cannabis-related issues raised in
hearing number 2, assigned identification number 19-00536 and
hearing number 3, assigned identification number 19-00616
on the agenda for the meeting of July 9, 2019

Meeting: July 9, 2019

Position: Advocating changes to cope with the passage of AB 97

Honorable Supervisors and County staff:

AB 97, signed by the governor on June 27, 2019 is a game changer.

No longer will an applicant for a State Provisional license be required to have or to have held a valid temporary license.

Once again CEQA compliance need only meet the undefined standard of being "underway."

Now compliance with local ordinances and regulations need only be "underway." This usage is also undefined.[1]

These provisional licenses allow growers to continue to operate without track or trace for two additional years, expiring on January 1, 2022.[2] Without track or trace there is no control on where the cannabis is sold. One study cited by Dennis Bozanich, SBCO Deputy Executive Officer, places 7/8 of the California cannabis production being sold out of state. This allows the illegal and purportedly legal growers, to avoid the saturated California market and sell out of state. Any taxes they pay, if any, would be based on what they claim their income is, without evidentiary support.

What will the County of Santa Barbara's response be?

If actions in the past two years continue, the interpretation and action by the County will be only to blow the flood gates for provisional licenses in the County off their hinges. They are already wide open. The current level of 671 provisional licenses as of July 1, 2019, is the largest of any county in the state by far.[3] This could increase enormously.

However, the County is facing a revolution, with numerous law suits being filed by homeowners, vintners, avocado growers, and others suffering from the impact of the negative and unanticipated consequences of cannabis legalization. These issues, often cited by complainants, are

- no or ineffective odor control,
- the proliferation of illegal grows, some producing hundreds of millions of dollars,[4]
- traffic problems in narrow canyons,
- increased fire hazard,
- an increase in the presence of criminals in the business who are not converting to legitimate citizens but continue to act as scofflaws,
- increased theft in rural areas for the same reason,
- failure to contribute to small rural community well maintenance while using enormous amounts of water,
- usage and production of dangerous chemicals especially chemically altered propane,
- hazardous waste issues,
- a threat to the local water table from so much usage,
- illegal grading possibly eradicating native American archaeological sites and making it impossible for archaeological studies to discover and report these sites,
- failure to adhere to labor laws for employees,
- arrogant and exploitive behavior,
- crossing Los Padres National Forest properties transporting Cannabis, a Federally schedule 1 drug without authorization (and denying a grower even needs an easement to cross the LPNF to transport a Schedule 1 drug),
- threatening to sue avocado growers for damage to their cannabis crop from insecticides which may put the growers out of business because companies are refusing to spray the insecticides under this threat.
- The list is virtually endless.

It is sad to say, but wherever there are growers there are problems, often existential for neighbors. I would be happy to acknowledge any exception, but I have yet to find solid evidence of any. Simple claims by growers I find laughable.

It is time for the County to change its approach.

Wholesale acceptance of questionable affidavits is not acceptable. Any and all affidavits or declarations under penalty of perjury put forth by any applicant for a

land use permit, CUP or business license should be grounds for prompt denial of the respective permit or license. This should apply regardless of the date filed. This would not be subject to the provision against ex post facto laws set forth in the US. Constitution.[5]

The failure to promptly shut down clearly illegal grow sites, despite having a special unit for enforcement is not acceptable. New ones are opening in Tepusquet Canyon, blatantly flouting the law. This should be quite clear to law enforcement which is capable of flying over the areas where these sites are located and spotting them themselves. Many can be spotted using Google Earth and latitude and longitude information the County has readily available on its property reports for each parcel in the County, listed by APN. Once reported or spotted from the air, follow up should be relatively simple for new grow sites with no possibility of legal standing.

It should be made clear to all commercial cannabis growers that permission to grow for any new grow site is contingent upon completion of the county LUDC permit process and the business permit process, not just being "underway" as per state law regarding provisional licenses.

Search and seizure standards as per the 4th amendment protection against unreasonable searches and seizures should be developed which meet the special nature of cannabis cultivation. Previous notice prior to inspection simply allows the growers to move the plants, which for the most part are in buckets, off the premises. These standards apparently already allow warrantless searches of open fields, in part because they are easily visible from the air and don't merit the same privacy protection as homes.[6] If this does not already apply to cannabis grows, it might well be expanded through litigation so that it would apply to mountainous areas like Tepusquet Canyon. This makes sense and should be a determined goal of the Office of the District Attorney. Perhaps an articulated standard for conditions for a warrantless search without notice could be developed by County Counsel to be included in both the LUDC and the business license ordinance. Certainly parallels to the open fields doctrine could be made to grows like those found in Tepusquet Canyon.

The blanket approval of CEQA clearance being "underway" is not acceptable. Criteria, such as that proposed by the Coalition for Responsible Cannabis in its proposed new ordinances should be adopted.

A blanket acceptance of a bare bones application for a land use permit or CUP or business license as meeting the "being underway" standard is not acceptable. If the County does not specify a strong enforceable standard regarding this, it is likely the courts or state will. The result might be completely unacceptable to the County Board of Supervisors and we residents.

Unlimited licenses per parcel is not acceptable. One is reasonable.

Allowing Cannabis business activity in rural residential areas such as Cebada Canyon and Tepusquet Canyon is not acceptable. Cannabis business activity is incompatible with rural residential use in these access-restricted areas.

Any claims that medical marijuana is being grown or sold should be extremely carefully scrutinized, and shut down immediately if not in compliance.

A moratorium on cannabis growing in greenhouses in the Carpinteria area should take place immediately. Odor control is either not in place or clearly not effective. Unless and until it is, no indoor, outdoor or greenhouse cannabis grows should be permitted in the area. I personally know people who have moved from Carpinteria, selling their home, because of the odor.

Unless the County Board of Supervisors takes prompt action, an individual in Tepusquet Canyon will be able to obtain a number of provisional licenses on one of his parcels without making any effort to complete the bare bones County CUP application he filed much earlier this year. The application was unaccompanied by a single piece of the supporting documentation required by the county. None had been filed a couple of months later, the time I last checked. There is no state requirement that an applicant must be diligent in processing local permit and license applications, only applications for state licenses.

We have seen a complete failure of the Board of Supervisors to reasonably limit cannabis activity in this county. Unless the Board acts now, the future of this county may be entirely different and much less appealing for all, with cannabis severely harming if not destroying the wine industry and the avocado industry, the general tourist appeal of the County, the lifestyle of those of us who live here and the legitimacy of government in the county. The last faces the challenges of a bottomless pit of funds in the hands of people who are used to operating in clear violation of the law.

The strange thing is that most of the people I have talked to who are up in arms about the unanticipated consequences of legalization, myself included, voted for Proposition 64. Neither they nor I voted for what is happening in Santa Barbara County now.

Dave Clary
Attorney at Law
I am a current resident of Tepusquet Canyon and have been for 22 years.

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1. California Business and Professions Code Section 26050.2.

" (a) A licensing authority may, in its sole discretion, issue a provisional license to an applicant if the ~~following conditions are met:~~ *applicant has submitted a completed license application to the licensing authority, including the following, if applicable:*
~~(1) The applicant holds or held a temporary license for the same premises and the same commercial cannabis activity for which the license may be issued pursuant to this section.~~
~~(2)~~ *(1)* ~~The applicant has submitted a completed license application to the licensing authority, including evidence that~~ *If* compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) is *not complete, evidence that compliance is* underway.
(2) If compliance with local ordinances enacted pursuant to Section 26200 is not complete, evidence that compliance is underway."

The citation above is taken from the California Legislature website on 7/5/2019 from the AB 97 (2018-2019 legislature) page identified as "Today's Law as Amended."

2. California Business and Professions Code Section 26050.2
"....
~~(e)~~ *(i)* This section shall remain in effect only until January 1, ~~2020,~~ *2022,* and as of that date is repealed.
...."

The citation above is taken from the California Legislature website on 7/5/2019 from the AB 97 (2018-2019 legislature) page identified as "Today's Law as Amended."

3. List of provisional licenses issued to cannabis businesses in Santa Barbara County as of July 1, 2019 provided by the State of California to the Coalition for Responsible Cannabis which provided the list to me. I converted the list from Excel to Filemaker Pro. The latter provided an accurate count.

4. One illegal grower near Buellton, when recently shut down, had 20 tons of processed marijuana and 350,000 growing plants, most ready to harvest. The value of the confiscated cannabis, at the lowest end of the value reported in Cannabis Benchmarks for 6/21/2019 would be $853 per pound. Marijuana plants classified as outdoor but grown in hoop houses, the likely growing system in this case, would produce between approximately a half pound to a pound per plant, perhaps more. At an average of ¾ pound per plant, this would amount to a sum of approximately 250 million dollars of cannabis from the plants ready to harvest. The 20 tons of processed and ready to sell cannabis would be valued at approximately 34 million dollars. And this is the low end of the Cannabis Benchmarks value (one standard deviation). Also the 350,000 plants constitute only one grow out of three to four grows per year in hoop houses. People can argue about the specific numbers, but there is no doubt this is an enormous and unbelievably valuable grow.

5. In *Oliver v. United States*, Kentucky State Police investigated reports that Thornton and Oliver were raising marijuana on Oliver's farm. The police drove past

Oliver's house to a locked gate with a "No Trespassing" sign, followed a path around one side of the fence, and walked down the path until they discovered a field of marijuana over a mile from Oliver's home. "No Trespassing" signs were posted along the path, and the marijuana field was surrounded by woods, fences, and embankments and was not visible from any location accessible to the public. The U.S. Supreme Court held that the Fourth Amendment protection of "persons, houses, places and effects" from unreasonable searches and seizures is not intended to protect open fields. Open fields consequently possess no expectation of privacy, and the Kentucky police acted reasonably in entering and seizing the marijuana without a search warrant.

The Supreme Court explained that there are good reasons why open fields are not provided with Fourth Amendment protection and lack an expectation of privacy (*Oliver v. United States*, 466 U.S. 170 [1984]).

Purpose. The Fourth Amendment is intended to protect "intimate" activities. There is no interest in protecting the type of activities that typically take place in open fields, such as the cultivation of crops.

Access. Open fields are more accessible to the public than are houses or offices and are easily monitored from aircraft.

The Supreme Court also held that Oliver did not have an expectation of privacy in the open field despite the warnings to trespassers and efforts to conceal the marijuana plants. The Court explained that declaring that open fields lacked an expectation of privacy despite the "no trespassing" signs avoided placing the police in the position of having to decide on a case-by-case basis whether a particular open field merited Fourth Amendment protection.

The above analysis was provided by the Sagepub website dealing with search and seizure law. It looks like an educational site for people interested in search and seizure law. See also the Cornell Law School Legal Institute website for an analysis of *Oliver v. United States*. The case is cited above.