



Alexander, Jacquelyne

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**From:** SB Coalition for Responsible Cannabis <coalition4responsiblecannabis@gmail.com>  
**Sent:** Monday, April 8, 2019 11:33 AM  
**To:** sbcob  
**Cc:** Lenzi, Chelsea; Allen, Michael (COB)  
**Subject:** BOS 4/9/19 A-13 Cannabis Licensing Amendments- comment letter  
**Attachments:** CRC FINAL BOS LETTER 3-29-19.pdf; Provisional Adult and Med SB COUNTY 040719.xlsx

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Dear Supervisors,

Thank you for the opportunity last week to convey to you our Coalition's grave concerns about the impact of the County's Cannabis Ordinances (both land use and licensing) on the quality of life for County residents. We appreciate your response to our request to combine the two agenda items on April 2, 2019 concerning cannabis.

We appreciate that the majority of you, in particular Supervisor Adam, seem to acknowledge the unrelenting impacts that the "legal" non-conforming and unregulated cannabis cultivation sites continue to inflict upon residents and communities ranging from Tepesquet to Carpinteria.

Unfortunately, the proposed amendments to the Cannabis Ordinance, A-13, do not address the crux of the issue, which is the continued acceptance on the part of the county of these nonconforming and in most cases expanded uses. **We request that you revise and further amend the ordinance so it does not imply the nonconforming uses can continue.**

Here are pertinent excerpts, enumerated and excerpted from the letter we sent to you last week [attached]. We continue to request that you amend the ordinance to include these important actions:

**2. The Board should direct staff to review and investigate unlawful expansions and changes to those grows determined to be Legal Nonconforming Uses, and terminate them.**

**3. The Board should clarify that only those legitimately designated and continuing nonconforming uses which have an application called complete for**

*processing under the Land Use and Development Code (LUDC) and Article II by P&D prior to 2016 should be processed.*

*4. For all applications which have not been called complete by P&D, the Board should direct staff to order termination of nonconforming uses as of the dates described in the ordinance.*

**We also urge you and your staff to be cognizant of the fact that both Article II and the LUDC provide:**

“Upon recommendation of the Planning Commission, or upon petition by a person or persons affected by a nonconforming use of buildings or land or both, or on its own initiative, the Board of Supervisors may set a date for, and call a public hearing to determine whether or not a nonconforming use of land or buildings or both, or an unpermitted expansion of or change in such use should not be ordered terminated.”

***We continue to request that the Board acknowledge that this specific rule applies to cannabis grows under the Nonconforming Use provisions of Section 1003*** (which was not certified by the Coastal Commission to apply in the coastal zone in the first place, because it is outside of the LCP). Any unpermitted expansion or change in a nonconforming use, both within and outside of the coastal zone must be terminated.

Finally, we would like to draw your attention to the fact that as of close of business on Sunday, April 7, the State of California had issued **651 Provisional Licenses** statewide since late February--411 Adult Use Provisional Licenses, and 240 Medicinal Provisional licenses, all valid for another year. Of those, **244 Adult Use provisional licenses and 26 "Medicinal Provisional" licenses were issued to Santa Barbara County growers, the majority in Carpinteria. This comprises approximately 60% of the total** issued Statewide. We have attached the public list, available at the CDFA website, for your reference.

We are puzzled about how the County could have authorized the issuance by the State of these Provisional licenses when none of the sites have actually gone through the County permitting and licensing process-- in fact, most have incomplete applications, according to the County Planning website. Some of these locations and business names do not even exist in the County planning public website. We ask that you direct staff to review the completeness of land use applications and CEQA review **prior** to informing the State that a grower is eligible for a Provisional license.

Supervisors, we implore you to take the actions necessary to insure that your **stated** intent to mitigate the impacts of unpermitted cannabis operations is addressed **immediately**. Please incorporate the language we provided you last week, enumerated above!

Thank you.  
SB Coalition for Responsible Cannabis

**March 28, 2019**

**TO: Santa Barbara County Board of Supervisors**

**Re: Comment on proposed amendments to Chapter 50- Hearing Date: April 2, 2019**

Dear Honorable Supervisors:

AS you know, County residents, vintners, business owners, avocado growers and schools have repeatedly expressed their concerns about the manner in which temporary (and now provisional) licenses have been issued for cannabis cultivation pending development of a permanent cannabis program. Additionally worrying is the inappropriate determinations of legal nonconforming use status, which have resulted in continuing untenable living conditions for affected residents across the County. These derelict authorizations of unpermitted cultivation in the Coastal Zone, specifically the Carpinteria Valley, have drastically impacted the quality of life for residents, visitors and businesses. Significant impacts to residents and businesses have been felt in the mid and north county due to unpermitted, unlimited and unconditioned cultivation on Ag 1 and Ag-2 parcels surrounding vineyards, wineries, other agricultural operations and rural neighborhoods.

We appreciate that the currently proposed amendments may move the permitting system in the right direction, but we believe that additional clarifications and changes are necessary now, to begin to alleviate the many nuisance impacts of ongoing unpermitted marijuana cultivation. We are concerned that if these amendments are adopted as written, these nuisance and health impacts will continue into the foreseeable future causing damage to residents, businesses, other Ag concerns and tourism. The Board, however, has the authority to remedy this situation now; easily done with a few changes to the proposed amendments to Chapter 50, and with *clear direction to staff*.

The Board letter states the purpose of the proposed amendments as follows:

“Staff included several other minor edits that improve the effectiveness of the Chapter 50. At Section 50- 7A1, **we amended the language approved by the Board in April 2018 to be consistent with the language certified by the California Coastal Commission in November 2018.**” (emphasis added)

However, the language proposed, in combination with the CEO’s ongoing incorrect interpretation of additional language defining application completeness, is ***not sufficient to meet the intent of the Coastal Commission modification***, because it could be read to exclude existing, legal (sic) nonconforming outdoor sites from the prohibition on outdoor cultivation for a further, indeterminate period of time, when it is clear that many of these sites cannot and will not meet the certified standard, and should therefore be shut down immediately, now. The Commission’s certification did not include consideration or approval of the County’s procedures under Chapter 50, because it is not a part of the certified Local Coastal Plan (LCP). However, it is reasonably foreseeable that if presented with the issue in a dispute resolution proceeding, the Commission would not agree to the County’s past interpretations insofar as they implicate the coastal development permit process.

Section 50-7 is currently proposed to be amended to state: *Limits on Cannabis Business Licenses. a) Limits on Cannabis Cultivation, Nursery and Microbusiness Licenses. To avoid visual impacts and nuisances associated with significant concentrations of cannabis cultivation: 1. No outdoor cultivation, nurseries or microbusinesses with outdoor cultivation will be licensed in the Coastal Zone. In addition, no*

*outdoor cultivation, nurseries or microbusinesses with outdoor cultivation will be licensed within two (2) miles of the Urban Rural Boundary limit line or city boundary in the Coastal Zone.*

However, as written, the proposed language would *continue* to exclude legal nonconforming sites from the prohibition on outdoor cultivation, beyond the expiration of the so-called amortization period which ends, in the coastal zone, not later than April 10, 2019.

The language continues:

*“i. This limitation shall not apply to legal nonconforming cannabis cultivation sites operating in compliance with County Code § 35-1003, until said sites are terminated as legal nonconforming uses.”*

In addition, the proposed language fails to address the fact that many sites in the coastal zone never had, or have lost their legal, nonconforming status. Therefore, in order to fully implement the prohibition on outdoor cultivation in the coastal zone, and to finally begin to remedy ongoing nuisance impacts from existing operations, ***the amendment should read as follows:***

***This limitation shall ~~not apply to legal nonconforming cannabis cultivation sites in the coastal zone, notwithstanding whether they have operated in compliance with County Code § 35-1003, until said sites are terminated as legal nonconforming uses.~~, as follows: (1) Owners and operators of outdoor cultivation sites shall cease operations and apply for a Coastal Development Permit for Demolition and Restoration not later than May 1, 2019. (2) Any cultivation on premises where the operation has been enlarged or expanded or there has been a change in use or intensity of use since September 2016 shall no longer be considered legal, nonconforming. Failure to cease cultivation shall result in enforcement proceedings.***

Without these changes, operators could assert that they may continue to operate so long as they have submitted an application to P&D to continue cultivation, and paid the application fee. However, we have been advised that in certifying temporary and provisional licenses to the State, the County Executive office has been including all applications for which fees have been paid, regardless of whether they have been determined or deemed to be complete by Planning and Development (P&D). As a result, a search of the State’s licensing website on March 29, 2019 revealed that beginning in late February 2019, **180 “Adult Use Provisional Licenses” were issued to Santa Barbara County cannabis cultivators, comprising 61% of all Adult Use Provisional licenses issued in the State. This is contrary to the intent and the express language of the legal nonconforming uses exemption, as well as the State regulations.**

Furthermore, we are requesting that the Board rectify any erroneous legal interpretations made in the past, as follows:

- 1. The Board is requested to correct the erroneous designation of growers as entitled to legal, nonconforming status.**

Sec. 35-1003. - Prohibited acts and exemptions states.

A.

“Prior Prohibition of Medical Marijuana Cultivation. Under a prior ordinance (Ordinance No. 4954), medical marijuana cultivation was prohibited in all zones, districts, properties, and areas within the unincorporated areas of Santa Barbara County with an exception for legal nonconforming uses that remains in subsection B, below, until terminated as provided in subsection C., below. (sic)

Legal Nonconforming Uses Exemption. Medical marijuana cultivation locations already existing on January 19, 2016, **if they are legal under California state law**; these are legal nonconforming uses.”

Cultivation was extremely limited under the Compassionate Care Act of 1996. It was allowed only by individuals who had a prescription for medicinal use, or by their caregiver. California Health and Safety Code Section 11358 states that, other than when accepted by law, it is illegal to:

- Plant
- Harvest
- Cultivate
- Dry; or
- Process any marijuana or part of a marijuana plant.

The exception to the law is for those who have been prescribed marijuana for medical use. Medicinal marijuana can legally be cultivated in California by the person to whom it was prescribed or by that person’s primary caregiver.

Because the Board failed to adopt the Planning Commission’s recommendation for a transparent, orderly process to determine which pre-existing grows were legal under the law in effect in 2016, if any, (17 ORD-00000-00007), and instead ‘opted’ for the Affidavit process, the public does not know – nor does the Board- whether any of the holders of temporary or provisional licenses were ever legal, nonconforming, as opposed to unpermitted, and *unpermissible* under prior law. The Board must now ‘weed out’ those who never should have received temporary or provisional licenses as legal nonconforming, and correct those records with the CDFA.

The County has apparently failed to track or capture those legal nonconforming operations which have altered, enlarged or expanded since 2016. Because the Board failed to adopt the Planning Commission’s recommended ordinance establishing a transparent process for determination of legal non-conforming sites, and instead authorized the County Executive Office (CEO) to accept ‘Affidavits’ without supporting documentation, scores of licenses have been authorized without adequate documentation. **This needs to stop. The County must terminate all nonconforming uses**, and must review the applications to determine whether they have lost their legal nonconforming status. If so, the application for zoning permit must be summarily denied.

**2. The Board should direct staff to review and investigate unlawful expansions and changes to those grows determined to be Legal Nonconforming Uses, and terminate them.**

Both Article II and the LUDC provide:

“Upon recommendation of the Planning Commission, or upon petition by a person or persons affected by a nonconforming use of buildings or land or both, or on its own initiative, the Board of Supervisors may set a date for, and call a public hearing to determine whether or not a nonconforming use of land or buildings or both, or an unpermitted expansion of or change in such use should not be ordered terminated.”

***We hereby request that the Board acknowledge that this specific rule applies to marijuana grows under the Nonconforming Use provisions of Section 1003*** (which was not certified by the Coastal Commission to apply in the coastal zone in the first place, because it is outside of the LCP). Any unpermitted expansion or change in a nonconforming use, both within and outside of the coastal zone must be terminated.

Since any change in use or intensity of use requires a new permit, any change or increase in intensity of use since 2016 would turn a legal nonconforming use (if any ever existed under the Compassionate Care Act of 1996) into an *illegal* (or, unpermitted) nonconforming use which is not permissible under the CZO.

**3. The Board should clarify that only those legitimately designated and continuing nonconforming uses which have an application called complete for processing under the Land Use and Development Code (LUDC) and Article II by P&D prior to 2016 should be processed.**

This issue raised in Para. 1 and 2, above, are compounded by the proposed revised language because the County has been erroneously sending “letters of authorization” for provision of licenses to the State on the basis of submittal of application and payment of fees, thus incorrectly classifying numerous operations as ‘non-conforming’ and eligible to continue until a permit is received (or denied). The ordinance specifically states:

*If the county cannabis ordinance referenced above allows for cultivation of medical cannabis but requires a zoning permit to do so, operators of nonconforming medical marijuana cultivation locations that **have submitted a complete application to the Santa Barbara County Planning and Development Department to permit their nonconforming cultivation site by the termination date listed above may continue to operate** their same existing nonconforming medical marijuana cultivation site while their permit application is being processed, as long as the operator continues to manage the cultivation location in compliance with the requirements of article X, state law, and the applicable provision of either the County Land Use and Development Code Section 35.101.020 (Nonconforming Uses of Land and Structures), the Montecito Land Use and Development Code Section 35.491.020 (Nonconforming Uses of Land and Structures), or article II, the coastal zoning ordinance section 35-161 (Nonconforming Uses of Land, Buildings, and Structures). **It is solely within the department's discretion to determine if it has received a complete permit application.***

*If the permit application is denied, the applicant shall cease all cannabis cultivation operations until a permit is obtained.”*

Consistent with Supervisor Williams’ direction at the 1/29/2019 hearing, the Board should direct staff to reject and/or summarily deny all applications that include outdoor cultivation in the coastal zone, or have not been found complete, under the planning and zoning laws, by P&D, which has the exclusive authority to make this determination.

Application of California Environmental Quality Act (CEQA)/Program EIR

The California Department of Food and Agriculture (CDFA), the State agency overseeing cannabis cultivation rules and permitting, requires not only that applications be called complete, but that “if CEQA compliance is not completed, is there evidence that it is underway?” ***The determination of what environmental document to require must be made after an application is called or deemed complete.*** The County apparently assumes that it is able to use the PEIR to exempt applications from additional review for the purposes of authorizing the grower to obtain a State License (Temporary or, more recently, Provisional). ***This cannot be assumed.*** An initial study or other basis for determination of exemption must first be performed. A random look at the public access site <https://aca.sbcountyplanning.org/CitizenAccess/> at applications submitted to the County as of 3/22/2019 discloses that many of these applications will indeed require additional site-specific environmental review, for a variety of reasons, including that unpermitted structures will be incorporated into the project description for validation.

**4. For all applications which have not been called complete by P&D, the Board should direct staff to order termination of nonconforming uses as of the dates described in the ordinance:**

a.

In the inland areas (i.e., the areas located outside of the coastal zone of Santa Barbara County), either (1) six months after the board of supervisors' action on February 6, 2018, regarding a county cannabis cultivation ordinance, or (2) 18 months from December 15, 2017, the effective date of Ordinance No. 5019, whichever is longer; and

b.

**In the Coastal Zone, either (1) six months after the Coastal Commission certifies** the board-adopted amendments to the local coastal program regarding the cannabis cultivation ordinance, pursuant to Public Resources Code Section 30514, or (2) if the board does not adopt a county cannabis cultivation ordinance on February 6, 2018, then 18 months from December 15, 2017, the effective date of Ordinance No. 5019, whichever is longer.

The Commission took action to certify on October 10, 2018. **Therefore, the so called 'amortization' period for applications in the coastal zone ends not later than April 10, 2019, and in the inland areas ends June 15, 2019.**

For any case where the amortization period has expired, the continuing cultivation, without compliance with the requirements of the ordinance- most especially odor abatement plans constitutes - a public nuisance which must now be abated. The burden of the delays of a new permit process to implement development standards where appropriate, and to prohibit continuation of cultivation while new applications come through should be borne not by the general public, but by the applicants.

Finally, we have attached for your reference our S.B. County Coalition's letter to the Planning Commission for their consideration at their April 3, 2019 hearing.

Very Truly Yours,

Santa Barbara County Coalition for Responsible Cannabis

Cc:

Offices of:

Assemblymember Monique Limon

State Senator Hannah-Beth Jackson

Congressman Salud Carbajal









