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de la Guerra, Sheila

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From:	Courtney Taylor <me@courtneyetaylor.com>
Sent:	Friday, January 25, 2019 4:34 PM
To:	sbcob
Subject:	Departmental Item No. 1 // Cannabis Regulations
Attachments:	BOS 2019-01-25 Ltr RE Cannabis Ordinance Amendments.pdf; BOS 2019-01-25 Ltr fr CET RE Cannabis Ordinance Amendments.pdf

Dear Clerk of the Board:

Attached please find for the record correspondence regarding Departmental Item No. 1 on the Board of Supervisors' agenda for January 19, 2019 regarding the Cannabis Regulations.

Best regards,
Courtney Taylor

Courtney E. Taylor
1005 Court Street #310, San Luis Obispo, CA 93401
p: 805.316.1278 | ***c:*** 805.234.2706 | ***w:*** courtneyetaylor.com
Legal Counsel to the **Alcohol Beverage Industry**

Grimm Estates
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Santa Ynez, CA 93460

VIA EMAIL
sbcob@co.santa-barbara.ca.us.

January 25, 2019

Clerk of the Board
County Santa Barbara, Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Departmental Item No. 1
Cannabis Regulations

Dear Supervisors:

We have lived on Kentucky Road in Happy Canyon since 2010 and are writing regarding the County Executive Office's recommended updates to the Cannabis Regulations currently outlined in Section 35.42.075 of the Santa Barbara County Land Use and Development Code. We find the recommendations set forth by the County's Executive Office to be insufficient to address known issues and adverse consequences of the current Cannabis Regulations as approved for the following reasons:

1. **Ordinance and recommendations do not require odor abatement in AG-II zones or a CUP:** We are very concerned that an odor abatement requirement in AG-II zoning was recommended by both the Planning Commission and Ag Advisory Committee, but was not adopted by the Board nor is a line item in the Executive Office's recommendations for amendments to the Board. All counties that have authorized cannabis cultivation have odor abatement requirements for any outdoor cultivation, without reference to parcel size, zoning, or any other factors. In keeping with best practices established by other California counties, the Board should consider odor abatement requirements on any parcel applying to cultivate cannabis.

   Further, as drafted, there is no complaint process for issues related to odor in AG-II parcels. Section 35.42.075(6)(h) of the existing ordinance states that the Department must receive three verified complaints regarding odor events in any 365-day period prior to requiring corrective action to comply with the odor abatement requirements. The odor abatement requirements apply only to AG-I zones, so it can be assumed that AG-II zones can complain, but there is no corrective action that County can require without an odor abatement plan to serve as baseline. The parameters for odor abatement should be set by the Department, and the cannabis grow operations should be required to comply, just like with any

permit condition. Any deviations from these set requirements should be corrected via an enforcement action by the Department regardless of the parcel's zoning as AG-I or AG-II. If the odor is a nuisance, AG-II parcels cannot be prejudiced and excluded from recourse merely due to their larger parcel size, particularly when the ordinance does not require setbacks from neighboring residential uses and those uses are near the property lines.

The EIR specifically states that Cannabis Regulations "*would not permit cannabis activities within residential areas, due to potential conflicts between commercial operations and residential living such as from odors, traffic, noise, and employee trips.*" The EIR itself acknowledges the issue of odor generally when cultivation is near "residential areas", yet odor abatement is not required on AG-II parcels despite potential projects being located adjacent to residential uses.

The EIR further acknowledges that "*land use compatibility review would be part of the CUP process to address any public concern regarding the compatibility of commercial cannabis cultivation proximate to mixed residential, residential ranchette, and agricultural uses that occur...*" The public process is completely circumvented in AG-II zones given the Land Use Permit approval is ministerial without a public hearing. This is true despite projects' close proximity to residential and agricultural uses that are impacted by cannabis cultivation. As such, the ordinance needs to address these potential impacts to both AG-I and AG-II zones and the residents that reside on these parcels.

2. **Ordinance and recommendations do not require setbacks from residential uses in AG-I or AG-II zones:** Recommendation #2 does not address issues on AG-II parcels regarding setback, odor, noise, etc. that are similar to AG-I zones. As such, we suggest a setback requirement of at least 1,500 feet from existing residences and existing developed agriculture (i.e. vineyards and orchards) located on an adjacent lot to be consistent with AG-I requirements. This setback requirement also acknowledges that residential development is not always classified as an Existing Developed Rural Neighborhood (EDRN) (and thus triggering a CUP) or as an urban-rural boundary (which also requires a CUP). Any neighborhoods not formally designed as EDRN or urban-rural boundary have no forum to voice concerns through the LUP ministerial approval process, as a CUP is not required under any circumstances. If development is proposed within that 1,500 foot setback from an existing residence, a CUP should be required per the EIR "*to address any public concern regarding the compatibility of commercial cannabis cultivation proximate to mixed residential, residential ranchette, and agricultural uses that occur...*".

3. **Ordinance and recommendations do not require maximum acreage or cap the number of grower licenses for parcels:** The ordinance as currently adopted does not set maximum acres for cultivation indoor or outdoor, and does not cap the number of cultivation permits that can be issued. All neighboring counties have implemented acreage caps that range from 10,000 square feet to 2 acres, per parcel regardless of parcel size. With no set maximum acreage in the current

ordinance, there could be tens of thousands of acres of cannabis cultivation approved in Santa Barbara County. The EIR conducted for the ordinance only assumed up to 1,126 acres of cultivation, which grossly underestimates the total that may be approved with no maximum acreage in place for each parcel and no aggregate tracking of the acreage in cultivation. Further, by implementing acreage caps on the cultivation per parcel, the County can prevent "license stacking", where one grower may apply for an unlimited number of licenses for "small" cannabis canopies, which are 10,000 square feet each. The Board should note that the maximum acreage allowed in aggregate on one parcel in Mendocino County is 10,000 square feet.

4. **Recommendations do not address process for in progress land use permits for cannabis cultivation**: The current recommendations from the County's Executive Office do not in any way acknowledge or address that there are numerous pending land use permits for cannabis cultivation currently under review by the County Planning Department staff. The Board should request a moratorium on such reviews until an updated ordinance has been adopted as some of these pending permits may be denied under revised regulations.

5. **The EIR conducted for the approved ordinance does address actual acreage:** As mentioned previously, the acreage studied in the EIR assumed approximately 1,126 total acres of cannabis cultivation in Santa Barbara County. With unlimited acreage on parcels and unlimited "small" cannabis permits available from the State, it is very likely this number is highly underestimated and the EIR should either be revisited, or the County should track acreage at each permitted site to ensure the aggregate acres of cannabis cultivation does not grossly exceed the EIR's studied parameters. Currently, in Santa Barbara County there are 508 acres of permitted cannabis via temporary licenses from CalCannabis.

   Further, when considering the potential for significant effects in the EIR, the EIR assumed the "majority of cultivation predicted to occur within existing greenhouses or hoop houses, resulting from a change in crop type on already cultivated land or from conversions of grazing land to cultivated land. This would substantially limit the acreage of conversion of currently undeveloped native habitats to cannabis grows or associated activities." The analysis of the potential loss of, and other impacts to, biological resources was based on these facts. The Cannabis Regulations in no way address existing or previous uses of the subject parcels to confirm alignment with the assumption in the EIR that cannabis cultivation uses will be parcels with existing greenhouse or hoop houses, or that are not currently undeveloped native habitats. The EIR used this same assumption to conclude that "potential for tree removal is anticipated to be limited" and that there would be "limiting changes in runoff and potential for added surface water pollution." There is no language in the ordinance to confirm that native tree habitats will not be disturbed and that runoff and surface water pollution will not be increased, in each case in favor of cannabis cultivation.

6. **Ordinance, recommendations, and enforcement measures do not address illegally obtained temporary permits:** There has been no enforcement of illegally obtained temporary permits, which were obtained by landowners who knowingly falsified statements to the County that medical cannabis was under cultivation on or before January 19, 2016. In many cases, this statement was not true. These temporary permits will automatically convert to provisional permits if the applicant has applied for and paid fees associated with the applicable land use permit. The County should review the temporary permit affidavits to confirm accuracy prior to confirming that CEQA compliance is "underway" and allowing cultivation permits to proceed to approval.

7. **Recommendation "C" does not require Business License approval:** This recommendation defines CEQA being "underway" for applications for provisional licenses as the applicant has simply submitted an application for a land use permitting process to County Planning (and paid associated fees), or has their land use permit and applied for the Business License. We do not agree that these activities are sufficient to authorize CalCannabis to issue provisional licenses to applicants, even if on a temporary basis pending approval of permanent licenses. The County should not authorize issuance of provisional licenses from CalCannabis without full review of the application and issuance of both a land use permit and Business License.

Lastly, we support the following options for the other recommendations of the County's Executive Office:

1. Option #2 in Recommendation #3 regarding Live Scan requirements for all employees to, as the original ordinance intended, ensure all persons with access to the premises and cannabis product do not have any felonies prohibited by California law.

2. Option #1 in Recommendation #6 regarding mandatory enforcement criteria for permit renewals as we agree the current language does not provide the Department with sufficient authority and direction to address non-compliant operators.

3. Option #2 in Recommendation #7 regarding the prohibition on generators for security lighting as the original ordinance correctly sought to avoid exposure to incompatible noise and is in compliance with the Santa Barbara County Noise Element.

In summary, our recommendations are as follows:

1. Cap outdoor cannabis cultivation at 1 acre per parcel and cap indoor cannabis cultivation at 22,000 square feet per parcel.
1. Require odor abatement on any cultivation, regardless of zoning.
2. Cap overall cannabis cultivation in our county at a level that is consistent with the EIR.

3. Eliminate LUPs for cultivation and require CUPs for all cultivation.
4. Adjudicate all legal non-conforming affidavits before allowing them to get a business license.
5. Do not accept the Executive Office's recommendation of allowing operators to get provisional state licenses without first getting county land use permits and business licenses.

Sincerely,

Rick and Aurora Grimm

LAW OFFICE OF
COURTNEY E. TAYLOR
A PROFESSIONAL CORPORATION

VIA EMAIL
sbcob@co.santa-barbara.ca.us

January 25, 2019

Clerk of the Board
County Santa Barbara, Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Departmental Item No. 1
Cannabis Regulations

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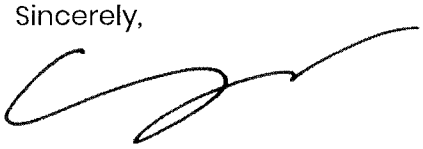
Sincerely,



Courtney E. Taylor
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