

January 31, 2018

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Santa Barbara County Board of Supervisors
Attention: Clerk of the Board
105 East Anapamu Street
Santa Barbara, CA 93101-2058

RE: Public Comment re Draft County Cannabis Land Use Ordinance and Licensing Program
to be Considered by Board of Supervisors on February 6, 2018

Dear Chair Williams and Members of the Board:

Our office represents the Cate School (Cate), a boarding/day school with an on-campus population of 390 located in the rural foothills north of Carpinteria in the County of Santa Barbara (County). On behalf of Cate, we are submitting this updated letter to address the Planning Commission's recommended Draft Cannabis Land Use Ordinance and Licensing Program as amended on January 24, 2018 (Draft Ordinance). Due to Cate's immediate adjacency to extensive agriculturally designated lands in the unincorporated area of the County, expanded cannabis-related operations in and around the Carpinteria Valley will directly and uniquely impact Cate, its students and faculty.

While Cate does not support the County's Cannabis Program, Cate recognizes the Board of Supervisor's (Board) interest in approving an Ordinance that encourages commercial cannabis businesses to operate legally and safely. Cate also appreciates the thoughtful amendments made by the Planning Commission this month. However, Cate is extremely disappointed that the Draft Ordinance continues to allow an unlimited number of commercial cannabis operations, including outdoor cultivation, distribution and manufacturing in Ag-1 zones without appropriate odor controls, despite numerous environmental studies that recognize this will result in significant, Class I impacts to prime agricultural soils, air quality (greenhouse gas emissions), noise, transportation and traffic. The Proposed Ordinance is far less stringent than those adopted or being considered by other jurisdictions, including neighboring Ventura and San Luis Obispo Counties, and, Los Angeles, Santa Cruz and San Bernardino Counties. If the Ordinance is adopted as currently drafted, it will make it very difficult for the County to scale back the industry if mitigation measures prove ineffective and the severe impacts forecast in the County's Environmental Impact Report (EIR) materialize.

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I. COMMENTS ON DRAFT ORDINANCE

A. Impacts on Cate and the Public

The recent conversion of greenhouses from cultivation of cut-flowers to cannabis in the Carpinteria Valley has already significantly impacted Cate's daily operations with its powerful odor which is present throughout the campus and the surrounding area day and night. Numerous complaints have been filed with the County concerning the nuisance, quality of life, and health effects of excessive exposure to cannabis operations. If cannabis becomes more prevalent in this region, as other counties move to restrict cannabis operations, the associated impacts, including odor, traffic, light pollution, distribution locations, criminal activity and potential health concerns in this county will only increase. The cultivation and processing of cannabis in the vicinity of Cate presents a significant concern for the health and well-being of the young people in Cate's care.

B. Support for Specific Provisions of Planning Commission's Recommended Draft Ordinance

We appreciate the Planning Commission's work in reviewing and amending the draft Ordinance at the January 24, 2018 Hearing.¹ In sum, we strongly support the following amendments:

- Increase in the buffer from schools, day care centers, and youth centers located in the Coastal Zone to 1000 feet (rather than 600 feet).
- Improvement in odor regulations, including the addition of (1) the requirement that under the Odor Abatement Plan, staff can visit a property "without notice" to inspect property; and (2) the strengthening of revocation standards, e.g., If three verified complaints are received during any 365-day period, then the application shall submit to the Department a report...which sets forth corrective actions and the timing for such actions to mitigate the odor. Upon verification of third complaint, Department will initiate revocation proceedings.
- Notification provided to residents located within 1000 feet of a proposed cannabis operation when a permit application is filed.
- Requirement that Distribution in AG-I requires Major CUP (Change from Minor CUP).
- Prohibition of on-site consumption at retail facilities.

C. Deficiencies in Draft Ordinance

While the Amended Draft Ordinance is more protective than the earlier version, there are still numerous deficiencies that will adversely impact the quality of life in Carpinteria Valley (and throughout the County).

¹ The County has not yet posted the Planning Commission's Recommended Ordinance, but this letter is based on the Commission's Motion to Recommend an Amended Ordinance to the Board at last week's hearing.

Our primary concerns are:

- It does not require an Odor Abatement Plan developed by operators to reduce odors experienced by schools or residences located in Ag-1 zones.
- It allows outdoor cultivation on Ag-1 parcels that are larger than 20 acres. This is problematic because there are many 20+ acre parcels along the 2.5 mile stretch of Highway 192 between Carpinteria High School and Cate School that would be permitted to grow cannabis outdoors or in hoop houses without being subject to odor abatement requirements.
- It allows distribution and manufacturing (including volatile manufacturing) activities in Ag-1 zones,² thereby permitting cannabis businesses to impact schools and residences located in or near Ag-1 zones.
- It does not place a cap on the number of permits that the County can issue for commercial cannabis operations.
- The environmental documents do not sufficiently analyze impacts on public safety, housing, or waste disposal.
 - The EIR does not adequately analyze whether the Carpinteria Sheriff Substation will be sufficiently staffed to handle cannabis-related crime.
 - Data has shown that quantities of cannabis byproduct waste are much larger than anyone has anticipated.
 - Santa Barbara County's housing crisis will only be exacerbated by an influx of additional people into this region.
- It ignores the recent shift in federal law regarding cannabis. (See Attorney General Jeff Sessions January 4, 2018 Memorandum rescinding previous federal prosecutorial guidance issued during the Obama administration.)
- It favors the interests of the cannabis industry over local residents and the public health, safety, and welfare of the community.

II. **RECOMMENDATIONS TO PROTECT THE COMMUNITY**

As the EIR recognizes, the Ordinance, as written, will have a number of severe impacts on air quality, transportation and prime soils. While we commend the County for attempting to address unregulated and illegal cannabis activities, the solution is not to allow an unlimited number of cannabis operations in the County. This is short-sited and favors the interests of the cannabis industry over local residents and the public health, safety, and welfare of the community.

² This is inconsistent with the prohibition on outdoor cultivation on private residences because many private residences back up to Ag-1 land.

Cate does not support legalization of commercial cannabis operations in the County, but in the event the County approves a Cannabis Program, it must consider the following recommendations, many of which have been adopted by other jurisdictions.

A. Strengthening the Odor Abatement Plan

While we appreciate that the odor abatement requirements apply to “cultivation, nursery, manufacturing (volatile and non-volatile), microbusiness, and/or distribution permits,” this requirement appears to be moot because the regulation further provides that the “Odor Abatement Plan must [only] reduce odors that are experienced within residential zones...” (Cannabis Regulations, §35.42.075(C)(7), emphasis added.) This regulation seems to exclude operations that will impact non-residentially zoned districts from having to develop a plan with any teeth. Further, because the Ordinance allows outdoor cultivation on Ag-1 parcels over 20 acres, and it is impossible to sequester odors from outdoor cultivation, the Ordinance, as written, appears to allow outdoor growers to operate without a functioning odor abatement plan. This is highly problematic for sensitive receptors, such as Cate, which are located outside residentially zoned districts but are currently experiencing noxious odors in Ag-1 zones.

Based on the attached map, there are at least 15 parcels on either side of the 2.5 mile stretch of Highway 192 between Carpinteria High School and Cate School that, while zoned Ag-1-20 or Ag-1-10, are greater than 20 acres.³ Without any odor abatement reduction requirements for operations that do not impact residential areas or for outdoor operations located on Ag-1 parcels over 20 acres, particularly in the Coastal Zone, Cate, and the surrounding Carpinteria community, will continue to be plagued with strong, noxious odors.

Further, as written the standard that requires odors to be reduced “as determined by the Director” is too subjective. (Cannabis Regulations, §35.42.075(C)(7).) As discussed at the January 10 and 24th Planning Commission Hearings, the Odor Abatement Plan must include a provision that limits odors from leaving cannabis properties to protect sensitive receptors. In the event that the Board does not include this language, the Odor Abatement Plan requirements to reduce odors must, at a minimum, apply to operations located within all Ag-1 zones, not just to operations that impact residential zones.

Proposed Language: All cannabis operations, including cultivation, shall be sited and/or operated in a manner that prevents cannabis nuisance odors from being detected offsite.

Alternative Language: The Odor Abatement Plan must reduce odors that are experienced by sensitive receptors in all zoning districts, including schools and residences, to the maximum extent feasible as determined by the Director.

Support: At the January 24, 2018 Planning Commission Hearing there was consensus among the Commissions that the Odor Abatement Plan requirements would apply to all cannabis operations, regardless of zoning designation or impact. However, the motion that was approved did not include this amendment to the Odor Abatement Plan. We believe it was an oversight

³ Examples of these parcel sizes are 24.92 acres, 21.87 acres, 25.72 acres, 31.08 acres, 30.38 acres, 34.93 acres, 25.40 acres. They are located on either side of Highway 192 on the way to Cate.

because sensitive receptors, such as schools that are located in Ag-1 zone districts, must be protected from noxious odors. Also, see San Luis Obispo Cannabis Ordinance, §22.40.050(D)(8).

B. Prohibition on Outdoor Cultivation and Manufacturing and Distribution in Ag-1 Zone Districts (Alternative 1)

As explained above, outdoor cannabis growers (including the use of hoop houses) have not demonstrated they can sequester odors. Outdoor cultivation, manufacturing and distribution also present significant public safety and fire concerns for neighboring properties in Ag-1 zones. Specifically, allowing volatile manufacturing in Ag-1 zones (including the South Coast foothills), where we have experienced several fires over the past decade is evidence that these areas should be protected from the additional risks that would be introduced by the use of flammable materials in the manufacturing process.

Proposed Language: Outdoor cultivation, Manufacturing and Distribution shall not be permitted in Ag-1 Zone Districts in the Coastal Zone regardless of parcel size.

Support: This was already fully analyzed in the EIR as Alternative 1. The EIR found compared to the Project, Alternative 1 would lessen impacts within the urbanized areas of the County and reduce land use compatibility impacts, especially impacts on sensitive receptors in the Coastal Zone where there is a higher density of residential and institutional uses than in other parts of the County. (See DEIR, 4-18 to 4-34.) Alternative 1 is a win-win solution because it would reduce potential environmental impacts associated with the Project, specifically those related to odor and land use compatibility. Under this Alternative, cannabis cultivation, manufacturing, and distribution activities would continue to be allowed in rural agricultural areas (AG-II zone district only), commercial, and industrial zone districts.

C. Cap and Phasing of Cannabis Cultivation Operations (Alternative 3)

The Draft Ordinance rejects the EIR alternative that would result in substantial reductions in the severity of many impacts by limiting the number of permits that the County can issue (Alternative 3). Cate supports Alternative 3 (Reduced Registrants), which would permanently cap the total number of cannabis permits. In addition, the County should consider limiting the number of cannabis permits that it issues on a sub-regional basis (e.g. Carpinteria Valley). This will reduce the concentration of impacts in certain areas, ensure that no one region is unduly impacted by cannabis businesses, and prevent a runaway industry that replaces traditional agriculture. We also recommend that the County phase-in the issuance of permits so that it has time to evaluate the impacts and efficacy of the proposed mitigation measures.

Proposed Language: The maximum number of cannabis operations in the County shall be limited to 962 (with specific caps per region). The County shall only issue 30 permits per year.

Support: The cap on permits was already analyzed in the EIR as Alternative 3. The EIR found compared to the project, Alternative 3 would result in fewer severe impacts by limiting the extent of cannabis development. Accordingly, the EIR identified Alternative 3 as the Environmentally Superior Alternative. In addition, the EIR provides, "Alternative 3 would give the County the flexibility and opportunity to bring a much more limited cannabis industry into compliance with the

County Code and the County Comprehensive Plan while minimizing adverse effects to the environment.” (DEIR, ES-8.)

At the January 10 Planning Commission Hearing, there was a brief discussion about why Alternative 3 could not be adopted. In essence, there was concern it would not meet the main objective of the Project—to facilitate a “robust and sustainable legal industry.” This is false. First, this is based on the flawed assumption that Objective 1 is the main objective of the Project. The EIR does not provide so, and this rationale ignores the nine other key Project Objectives, including protection of the community. Second, there is no evidence in the record that capping the number of permits would hamper the cannabis industry, which, as the HDL Fiscal Analysis provides, may even be contracting. In addition, we were informed that less than 30 applications were filed with the State for cannabis permits within the County. Even the Fiscal Analysis commissioned by the County assumes that there would only be 157 to 626 cultivation operations in the County at buildout. (HDL Fiscal Analysis, p. 27.) It is unclear why the County would consider allowing an unlimited number of permits on day 1 when a conservative program that limits and phases-in cannabis operations would protect existing operators, result in new revenue to County, and reduce impacts. This should not be an “all-or-nothing” approach.

Contrary to what we heard on January 10, it is well within the County’s discretion to approve Alternative 3, which was fully analyzed in the EIR. It is concerning that the Board would consider recommending a Project which would result in five Class 1 significant and unavoidable impacts, instead of considering approving the “Environmentally Superior Alternative.” We understand the County needs additional funding, but at what cost? Putting the community at risk to support an industry that will provide the County with an unknown quantity of revenue⁴ and will result in numerous significant and unavoidable impacts is unwise and near-sighted.

In addition, other jurisdictions have placed reasonable caps on the number of permits issued. (See San Luis Obispo County Cannabis Ordinance, §22.40.050(A)(2) (capping no. of cultivation operations at 141).) The County of Los Angeles is also considering a “Strategic Permitting Phase-in” of cannabis activities where it would permit in the first three years a maximum of 10 cultivators, 10 manufacturers, 10 distributors, and 10 testing laboratories. (See January 23, 2018, Los Angeles Board of Supervisors Recommendation, available at <http://cannabis.lacounty.gov/proposed-policies/>.) Alcohol is regulated in a similar fashion. Since 1939 the number of liquor licenses has been limited. At present, the ratio is one on-sale general license for each 2,000 persons in the county in which the premises are situated and one off-sale general license for each 2,500 persons. (See California Alcohol Beverage Control Regulations, § 23817.5.)

⁴ The HDL Fiscal Analysis predicts that revenue from legal cannabis operations could generate between \$4 to 64 million/year but concedes it is not possible to know what percentage of those businesses will “actually succeed in this emerging industry.” (HDL Fiscal Analysis, p. 37.) In addition, we have not located an analysis of the County’s out-of-pocket costs to employ additional employees to review and enforce its Cannabis Program. We are concerned that revenue will be less than the cost to administer the County’s Program.

If the County adopts a lax Ordinance (that is less stringent than its neighbors) with no limits or phasing period, growers from throughout the state may flock to this County before the County has time to study the impacts of this industry or dedicate the resources needed to carefully review each application.

D. Annual Survey and Monitoring Report.

The Ordinance should include a requirement that the County conduct a comprehensive annual survey and monitoring report to ensure that licensed cultivators are abiding by license and permit conditions, and to identify and take actions to address illegal cannabis activities. This addition, combined with a “go-slow” phased approach, will allow the County to monitor and amend their Cannabis Program annually to protect the public.

Language: Comprehensive annual survey and monitoring activities shall be conducted, and conveyed in an Annual Survey and Monitoring Report to the Board, with recommendations regarding enforcement staffing and resources. At least 50 percent of licensed cultivation and manufacturing sites shall be evaluated and reported upon each year in an Annual Survey and Monitoring Report. The survey shall be implemented by the Cannabis Licensing Office once per year, and the list of monitored and surveyed items shall be approved by the County Cannabis Licensing Official, Planning Director and Agricultural Commissioner within one year of adoption of the proposed Program.

At completion of the annual survey and monitoring efforts, the data shall be assembled into an Annual Report available for review by the County Board. The Annual Report shall contain recommendations regarding enforcement and staffing resources, to provide a feasible level of funding for an effective enforcement program.

Support: See Santa Cruz Cannabis EIR, MM AT-1.3b (Annual Survey and Monitoring Report).

E. Anti-Concentration Regulation to Prevent Concentration or Clustering

All cannabis operations (not just retail) should be regulated like any other “vice” industry (i.e. adult bookstores) by requiring that operations not be sited near each other to avoid concentration of adverse impacts. Cannabis operations, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated thereby having a deleterious effect upon the adjacent areas. Special regulation of these businesses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding lands. The primary purpose of these regulations is to prevent the concentration or clustering of these businesses in any one area.

Proposed Language: No new Cannabis Business (including retail, cultivation, manufacturing or distribution) shall be permitted to locate within 500 feet of an existing Cannabis Business. (This could be coupled with an exemption for existing legal operations.)

Support: The County currently has a non-concentration law applicable to Sexually Oriented Businesses. (See Chapter 35 of the Santa Barbara County Code, § 35-805). Cannabis businesses should be regulated no differently than adult businesses.

F. Further Public Safety Studies

Before approval, the County must determine if the Carpinteria Sheriff Substation will be sufficiently staffed to handle cannabis-related crime, including increased drug cartel activities due to the fact that cannabis is very profitable and is a cash-based economy. At the January 24 Planning Commission hearing, the local sheriff testified that there had been an increase in cannabis-related crime in the County, including theft, but most crimes were not reported.

G. Additional Information on Permit Issuance

At the January 24 Meeting, the Planning Commission clarified the permitting process and included a requirement that the County provide adequate public notice (to all owners of property located within 1,000 feet) before each new cannabis permit approval. However, it is unclear whether the approval of a permit for cultivation in Ag-1 is a discretionary or ministerial action and whether there will be a formal opportunity for public comment on a permit-by-permit basis. In addition, it is unclear whether an on-site inspection will be required before issuance of a permit.

Proposed Language: CUPs are required for cannabis cultivation and nurseries within Ag-1 zones. An on-site inspection shall be required before issuance of a permit for any cannabis operation.

Support: The County of Los Angeles is considering developing the following smart permitting policies, which we request the County consider: (1) Establishing a five-member Cannabis Commission to conduct public hearings for cannabis business applications; and (2) The Commission would exercise discretion to approve, conditionally approve, or deny applications, and would be authorized to impose conditions of approval as necessary to mitigate impacts associated with a proposed cannabis business. (See <http://cannabis.lacounty.gov/proposed-policies/>.)

III. CONCLUSION

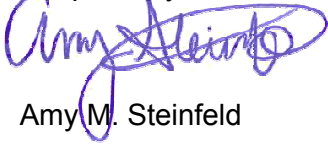
We are struggling to understand why our County has decided to push forward one of the most permissive Cannabis Ordinances in the entire state while neighboring counties adopt more reasonable regulations. The best interests of the County are served by initially adopting a very conservative approach to all aspects of cannabis cultivation, processing and sales. The ink is hardly dry on the state guidelines or EIR and this is completely new territory for all permitting agencies. A process allowing the legitimization of existing illegal cannabis operations and the creation of new cannabis operations before the proper regulatory controls are in effect could exacerbate current impacts on Carpinteria residents and lead to future complications the County may not be anticipating.

The entire County is at risk if the Ordinance recommended by the Planning Commission is approved by the Board on February 6, 2018. We ask the Board to take a hard look at the Ordinance and incorporate the above much-needed safeguards and conduct additional analyses. We understand the Board is anxious to put a Cannabis Program in place, but the Board must recognize that many South County residents have been severely impacted by the fires and mudslides and thereby need additional time to process and understand this Ordinance before it is finalized. In light of the extraordinary circumstances, it would violate due process to move forward

without providing additional time for public input. A month-long extension for the Board to consider an Ordinance with long-term consequences will not materially impact existing illegal operations in the County.

Cate appreciates the Board's consideration of these comments and suggested edits to the Ordinance and regulations. Should you have any questions or require additional information, I can be reached at 805-882-1409.

Respectfully Submitted,



Amy M. Steinfeld

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