

LATE  
DIST

#3

de la Guerra, Sheila

---

**From:** Ana Citrin <Ana@lomcsb.com>  
**Sent:** Friday, March 8, 2019 11:59 AM  
**To:** sbcob  
**Subject:** Hoop Structures - letter for Board  
**Attachments:** LOMC to BOS\_Hoops\_3-8-19\_FINAL.pdf

**Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.**

Dear Clerk, attached please find a letter for the Board on the hoop structures item, submitted by this office on behalf of CLAWS and GCC.

Best regards,  
Ana

--  
Ana Citrin  
Law Office of Marc Chytilo, APC  
P.O. Box 92233  
Santa Barbara, CA 93190  
Phone: (805) 570-4190  
Fax: (805) 682-2379

\*\*\*\*\*  
If you believe you have received this message in error, please notify sender immediately.  
\*\*\*\*\*

# LAW OFFICE OF MARC CHYTILO, APC

---

ENVIRONMENTAL LAW

March 8, 2019

Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, California 93101

*By email to [sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)*

RE: Hoop Structure Ordinance Amendment; Agenda Item No. 3

Chair Lavagnino and Supervisors,

This office has been engaged with the Hoop Structures Ordinance amendment process from the start, representing the Committees for Land, Air, Water and Species (CLAWS) as well as the Gaviota Coast Conservancy (GCC) urging the County to follow the normal ordinance amendment process, conduct environmental review, and mitigate any significant environmental impacts of the amendment to the maximum extent feasible. The Planning Commission, responding to concerns raised by the Grower-Shipper Association and Agricultural Advisory Committee (AAC), weakened or eliminated many of the mitigation measures the Environmental Impact Report (EIR) concluded were necessary to reduce the Project's significant impacts. Community groups, wine and tourism industry representatives, and concerned neighbors pushed back against the evisceration of the EIR's mitigation measures, recognizing that the virtual lack of controls would severely impact community character, the environment, and the local economy.

The Planning Commission attempted to strike a compromise by re-integrating some of the mitigation measures and establishing a maximum slope criterion to qualify for an exemption, however they did not satisfy the California Environmental Quality Act (CEQA) requirement that significant impacts be mitigated to the maximum extent feasible (CEQA Guidelines § 15091). There is at least one feasible change the Board could make to the ordinance to help achieve compliance with CEQA. Namely, the Board could reduce the slope requirement for exempt hoop structures from 20% to 10%, to ensure that visually impactful hillside hoops receive County review. **To mitigate the Project's Class I visual impacts to the maximum extent feasible as CEQA requires, we strongly urge the Board to modify the Ordinance so the exemption is only available for hoops on slopes of 10% or less.**

Additionally, it became clear at the Planning Commission that the overwhelming majority of stated concerns regarding hoop structures relate to the cannabis industry, not traditional agriculture. To help address these concerns, we urge the Board to **clarify in the Hoop Structures Ordinance that the hoop structure exemption does not apply to cannabis operations**, which require discretionary review under the County's Cannabis regulations.

## 1. The Planning Commission's CEQA Findings Are Not Supported by Substantial Evidence

To approve a Project with significant environmental effects, the agency must find that mitigation measures have been required that avoid or substantially lessen the significant environmental effects. (CEQA Guidelines § 15091(a).) This finding must be supported by substantial evidence in the record (*Id.*,

subd. (b)). An agency *shall not* decide to approve or carry out a project with significant environmental effects unless the agency has “Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091”. (CEQA Guidelines § 15092.)

Here, the Planning Commission’s findings are inadequate in two respects. First, the findings rejecting visual mitigation measures are not supported by substantial evidence as required, and second, additional feasible mitigation capable of further reducing Class I visual impacts is not required.

The EIR identified Mitigation Measure VIS-1 (Height and Setback Requirements) as necessary to reduce the Project’s Class I impact to visual resources. As described in the EIR Revision Document, “Planning Commissioners commented that such a requirement may have negative consequences for cultivated agriculture while it would not significantly reduce impacts to aesthetics/visual resources.” (Board Letter Attachment 5, PC Action Letter, p. 29.) Evidence of infeasibility referred to in the EIR Revision Document and Findings is limited to comments submitted by the Grower-Shipper Association and Agricultural Advisory Committee claiming that MM-VIS-1 may create an economic burden on farmers. (*Id.*) While some of the Grower-Shipper and AAC comments point to potential inefficiencies, they do not provide substantial evidence of actual *infeasibility* (See CEQA Guidelines § 15364 (def. Feasible)). Instead the main basis for rejecting this mitigation measure is that it would only be marginally effective in reducing visual impacts. (*Id.* pp. 20-30.) The discussion at the Planning Commission centered around observations that hoop structures close to roadways are frequently less visually impactful than hoop structures located on far-away hillsides. While this clearly indicates the need to develop additional mitigation to address hoop structures on hillsides, it does not establish that MM-VIS-1 is infeasible and may simply be deleted.

The Planning Commission, led by Commissioners Parke and Ferini, undertook a reassessment of what potential mitigation measures would more effectively reduce impacts and address community concerns, and identified a Steep Slope Criterion as a potential limitation to further reduce impacts. Discussed below, as drafted the limitation on exempt hoops on slopes 20% or greater would further reduce impacts but would not reduce them to insignificant levels. Reducing the slope criterion to apply to slopes of 10% or greater would substantially increase the reduction in visual impacts, and could feasibly be accomplished without undermining the first objective in the EIR of simplifying the permit process to allow more efficient agricultural operations.

## 2. Additional Feasible Mitigation Can Further Reduce Significant Impacts

The EIR Revision Document includes an analysis of adding a steep slope criterion for the exemption of crop protection structures (Attachment 5, PC Action Letter, p. 14), which provides:

The County Planning Commission recommended the project description be revised to add steep slopes as an additional criterion to determine when crop protection structures would be exempt from a permit. Pursuant to this change, crop protection structures located on slopes averaging where the proposed area to be developed averages 20% or less would be considered exempt if they meet all other exemption criteria; structures located on slopes averaging greater than 20% would require a permit. . . .

Limiting the permit exemption to areas with no slopes or lesser slopes (averaging 20% or less) would reduce impacts to aesthetic/visual resources as it would prevent an unlimited exemption of the use of crop protection structures on much of the steeply sloping lands throughout the County, which are highly visible from public roadways and generally less suited to cultivation of crops that rely on the use of crop protection structures. As crop protection structures could still be allowed on steeper slopes with a permit (instead of an exemption), the change to the project description would not substantially increase the severity of impacts to aesthetics/visual resources. On steeper slopes where a permit is required, additional staff review would be conducted, including the need to make the relevant Land Use Permit or Development Plan findings, and potentially additional CEQA review, depending upon the proposed project. Thus, while beneficial to the protection of aesthetics/visual resources (and reducing impacts), impacts would continue to be significant and unavoidable (Class I).

However, **it is feasible to mitigate the Class 1 impact more effectively by reducing the slope requirement from 20% to 10%.** The slope map presented to the Planning Commission shows that a substantial increase in visual resource protection could be attained by reducing the slope requirement for exempt hoop structures from 20% to 10%. (See <http://sbcountyplanning.org/PDF/boards/CntyPC/01-30-2019/17ORD-00000-00005/Slope%20Maps.pdf>.) At the January 30, 2019 Planning Commission hearing County Staff explained that the predominant use of hoop houses for berry growers were on slopes of 5-10% or less. While some farmers expressed a desire to have flexibility to grow berries on steeper slopes in the future, there was no substantial evidence presented that applying a 10% slope criterion is infeasible. Accordingly we urge the Board to incorporate a 10% slope criterion into the Ordinance to reduce visual impacts to the maximum extent feasible.

### 3. Clarify that Cannabis Cannot Be Eligible for Exemption Under the Ordinance

It became clear at the Planning Commission that the overwhelming majority of stated concerns regarding hoop structures involve the cannabis industry, not traditional agriculture. First, discussions at the Planning Commission hearings clarified that hoop structures located on hillsides are the most visually impactful, and are much more likely to be shielding cannabis than berries and other traditional crops. Second, concerns over odor impacts, and unauthorized lighting and generators, all exclusively concern cannabis grows. It is our understanding that under the County's Cannabis regulations, discretionary permit review is required for all cannabis operations including those proposing to use hoop structures. However, it is not sufficiently clear in the Hoop Structure Ordinance that an exemption cannot be used for cannabis operations. To increase clarity both for cannabis growers and the affected community, we request that the Board include clarifying language in the Hoop Structure Ordinance that hoops associated with cannabis cultivation are not exempt from permit.

### 4. Conclusion

For the above stated reasons, we respectfully request that the Board direct Staff to incorporate a steep slope criterion of 10% for the hoop exemption, and to include clarifying language in the ordinance that cannabis operations are not eligible for the hoop structure exemption.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read 'Ana Citrin', written over a horizontal line.

Ana Citrin  
Marc Chytilo  
For CLAWS and GCC