Attachment F Addendum 4

Public Comment – Written

March 18, 2021 after 9:45 AM

Through

March 18, 2021

Planning Commission

Public Hearing

The attachments to the following letter are too voluminous to remediate as per Section 508 of the Rehabilitation Act of 1973 requiring government agencies to make electronic information accessible to people with disabilities.

As such, the attachments are not available online, but are available to the public upon request.

To receive a link to the attachments, email McCall Miller at Cannabis@sonoma-county.org.

Note: the attachments include the letter and exhibits to the letter, totaling 369 pages.

From:	Sara L. Breckenridge
To:	Cannabis
Cc:	Susan Gorin; David Rabbitt; district3; district4; district5; Andrew Smith; Scott Orr; Tennis Wick; Jennifer Klein; Greg Carr; Cameron Mauritson; Pamela Davis; Larry Reed; Gina Belforte; PlanningAgency; Joseph D. Petta; Aaron M. Stanton; Carmen J. Borg
Subject:	Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment and Draft Subsequent Mitigated Negative Declaration
Date:	Thursday, March 18, 2021 10:32:47 AM
Attachments:	FMWW Letter Re 2021 SMND for Cannabis Land Use Ordinance Update and GPA.PDF

EXTERNAL

Dear Commissioners:

Please find attached a letter from Joseph Petta, Aaron Stanton and Carmen Borg, on behalf of Friends of Mark West Watershed (FMWW), regarding the Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment. Due to large file size, the exhibits can be downloaded from the OneDrive link below. Please confirm your receipt of this letter and the exhibits. Thank you. Link to letter with exhibits: https://shutemw-my.sharepoint.com/:b:/g/personal/breckenridge_smwlaw_com/EZSoTnlmxMVFjzyGiMdueCEBnQrp8827SdZ8Yn7SXxo8bw?e=rczQeh

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March 18, 2021

Via E-Mail Only

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c/o McCall Miller, Department Analyst,
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Re: Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment and Draft Subsequent Mitigated Negative Declaration

Dear Commissioners:

This firm represents the Friends of Mark West Watershed ("FMWW") in connection with the Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment ("Project"). This firm concurrently represents Save Our Sonoma Neighborhoods and will submit separate comments on their behalf. FMWW believes that approval and implementation of the Project as presented will result in the reduction of streamflow in Mark West Creek below the critical levels necessary to sustain spawning and rearing of federally- and state-listed endangered salmon, resulting in a "take" of these species. The SMND does not adequately describe and analyze these impacts or provide mitigations that will prevent their occurrence. Therefore, the County must prepare a full EIR for the Project. In addition, FMWW contends that the approval of individual cannabis production projects requires the exercise of judgement and discretion by the permitting agency and cannot qualify as ministerial action.

The purpose of this letter is to inform Sonoma County that the Subsequent Mitigated Negative Declaration ("SMND") for the Project fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14,

§ 15000 et seq. ("Guidelines"). As detailed below, numerous inadequacies and omissions in the SMND render it insufficient as an environmental review document.

The SMND fails to disclose, analyze, and propose adequate mitigation for significant environmental impacts related to hydrology and water quality, groundwater supply, and loss of habitat for endangered fish species, among others. What analysis the SMND does present is fraught with errors. As a result, the SMND fails to describe measures that could avoid or substantially lessen the Project's numerous significant impacts. In addition, the SMND fails to provide any meaningful analysis of allowing events at cannabis cultivation sites. As set forth in this letter, the California Environmental Quality Act ("CEQA") requires the preparation of an environmental impact report ("EIR") before the County may approve the Project.

In addition, the Project conflicts with Sonoma County's General Plan in violation of State Planning and Zoning Law, Govt. Code § 65000 et seq. As described in more detail below, the Project would conflict with multiple policies designed to protect the County's natural and agricultural resources.

Finally, based on the Project's significant environmental impacts and its inconsistency with the County's General Plan, the County must exclude the Mark West Watershed and any other similarly impaired watersheds from the Cannabis Ordinance. As detailed below, the state of California has determined that the Mark West Watershed is impaired and the cannabis operations authorized by the Project would exacerbate the already fragile nature of this important ecosystem. Therefore, the County must exclude the Mark West Watershed and other similarly impaired watersheds from areas where cannabis operations would be permitted in the County.

This letter is submitted along with the report prepared by our expert consultant, Greg Kamman, Senior Ecohydrologist with CBEC Ecoengineering, whose letter dated March 16, 2021 is attached as Exhibit 1 ("Kamman Report").

I. The County may not approve the Project without preparing an environmental impact report under CEQA.

CEQA is designed to ensure that "the long-term protection of the environment shall be the guiding criterion in public decisions." *Friends of College of San Mateo Gardens v. San Mateo County Community College District* (2017) 11 Cal.App.5th 596, 604 [hereinafter "*San Mateo Gardens II*"] (quoting *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 74). Thus, the statute requires an agency evaluating a project to develop an EIR whenever "substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'" *Committee for Re-Evaluation of T-*

Line Loop v. San Francisco Municipal Transportation Agency (2016) 6 Cal.App.5th 1237, 1245-46 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123).

When an agency approves changes to a previously approved project studied in a prior negative declaration, additional subsequent environmental review is required when "whenever there is substantial evidence to support a fair argument that proposed changes 'might have a significant environmental impact not previously considered . . . .'" *San Mateo Gardens II*, 11 Cal.App.5th at 606 (quoting *Friends of College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 959 ["*San Mateo Gardens I*"]; *see also San Mateo Gardens I*, 1 Cal.5th at 953. In other words, an agency *must* prepare a subsequent EIR if substantial evidence supports a fair argument that the proposed changes to the project may result in a significant environmental impact. *San Mateo Gardens II*, 11 Cal.App.5th at 606-07. Proposed changes might have a significant impact "when there is some competent evidence to suggest such an impact, even if other evidence suggests otherwise."[1] *Id.* at 607.

The fair argument standard establishes a "low threshold" for requiring a lead agency to prepare an EIR. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928. Courts "owe no deference to the lead agency's determination," and judicial review must show "*a preference for resolving doubts in favor of environmental review.*" *Id.* (italics in original). Further, where the agency fails to study an entire area of environmental impacts, deficiencies in the record "enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

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[1] The relevant analysis under CEQA's subsequent review provisions concerns the changes since the original Medical Cannabis Land Use Ordinance was adopted in 2016, and not only the changes since the 2018 amendments to allow adult use cannabis. This is because the 2016 ordinance was studied in a negative declaration, while the Board of Supervisors determined that the 2018 amendments were exempt from CEQA. *See* Resolution No. 18-0442 (Oct. 16, 2018). CEQA's subsequent review provisions apply only when there has been a prior *environmental review*. *See* Pub. Res. Code § 21166 (applies "[w]hen an environmental impact report has been prepared for a project"); Guidelines § 15162 (applies "[w]hen an EIR has been certified or a negative declaration adopted for a project"). In any event, the development potential allowed by the 2018 Amendments has not been fully realized. *See* SMND 18. To the extent the Project would facilitate new development in areas opened to cannabis in 2018, that new development potential must be analyzed as a foreseeable effect of this Project.

Substantial evidence supporting a fair argument may consist of personal observations of local residents on nontechnical subjects, *Oro Fino Gold Mining Corp. v. Cty. of El Dorado* (1990) 225 Cal. App. 3d 872, 882; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1152, as well as expert opinion supported by facts—even if that opinion is not based on a specific analysis of the project at issue, *Pocket Protectors*, 124 Cal.App.4th at 928. In marginal cases, where it is not clear whether there is substantial evidence that a project may have a significant impact and there is a disagreement among experts over the significance of the effect on the environment, the agency "must treat the effect as significant" and prepare an EIR. CEQA Guidelines § 15064(g); *City of Carmel-By-The-Sea v. Board of Supervisors*, (1986) 183 Cal.App.3d 229, 245.

As explained further below, ample evidence supports a "fair argument" that the Project may result in significant environmental impacts that were not studied in the 2016 Negative Declaration. These impacts would include, but not be limited to: hydrology and water quality, groundwater supply, and loss of sensitive aquatic habitat, among others. Because the Project has the potential to result in significant impacts, the County is required to prepare an EIR before it may approve the Project.

II. The Project description is inadequate.

A. The Project description is incomplete, inaccurate, and inconsistent.

In order for a CEQA document to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, (1994) 27 Cal.App.4th 713, 730. As a result, courts have found that even if an environmental document is adequate in all other respects, the use of a "truncated project concept" violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. Id. at 729-30. Furthermore, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." Id. at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

As an initial matter, the SMND does not provide a meaningful description of the "development potential"—i.e., the scope and extent of cannabis cultivation and other commercial cannabis activities—that may be permitted by the proposed updates to the cannabis ordinance ("Ordinance"). The CEQA Guidelines define "project" as "the whole of an action" that may result in a direct or reasonably foreseeable indirect change in the

environment, and require the lead agency to fully analyze each "project" in a single environmental review document. CEQA Guidelines § 15378(a); *see also* Guidelines §§ 15165, 15168. CEQA further requires environmental review to encompass future actions enabled or permitted by an agency's decision. *Christward Ministry v. Superior County* (1986) 184 Cal.App.3d 180, 194; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 ("An evaluation of a 'first phase-general plan amendment' must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment.").

Here, the SMND purports to provide an outer limit on possible development. The SMND states that "a maximum of up to 65,753 acres" could be subject to future cannabis cultivation. SMND at16, 19. This acreage is 10% of the 657,534 acres in the County that are both zoned for agricultural uses and located on parcels larger than 10 acres, likely to reflect the Project's limit on outdoor cannabis cultivation area to 10% of a parcel. *Id.* As explained below, the SMND's description of the Project's development potential is misleading and inadequate to allow the public and decisionmakers to accurately assess the potential effects of the ordinance.

Troublingly, the SMND omits any analysis of the possible extent of cannabis cultivation in existing permanent structures. The ordinance itself contains *no limits* on indoor and greenhouse cultivation canopy in existing permanent structures. *See* proposed § 38.12.030(A)(2) ("Indoor cultivation and greenhouse cultivation canopy in an existing permanent structure is not limited."). The SMND should include a description—or at least an estimate—of the number and extent of existing permanent structures in the County that may be converted to cannabis cultivation and their square footage. The SMND should also analyze how much cannabis may be grown in such indoor spaces—especially since indoor cultivation can occur on shelved units, potentially *quadrupling* the canopy area possible in an existing structure. This existing permanent structure loophole could portend significant impacts on the environment that have not been analyzed. Because the Ordinance allows an unknown, but potentially massive, amount of indoor cannabis cultivation, the corresponding impacts (in terms of increased water usage, energy usage, VMTs, greenhouse gas emissions, etc.) are similarly unknown, and potentially massive.

The Ordinance also apparently allows indoor cultivation in existing permanent structures *in addition to* both (1) indoor cultivation in up to 43,560 square feet of new or expanded permanent structures *and* (2) outdoor cultivation of 10% or less of a parcel. *See* proposed § 38.12.030(B) (limitations on indoor cultivation apply to "all *new* building coverage," not to *total* building coverage). For example, a grower on a 10 acre parcel could have 1 acre of outdoor cannabis cultivation, in addition to 43,560 square feet of cultivation in a new or expanded permanent structure, plus additional indoor cultivation

in existing permanent structures currently on the parcel. As a result, the County's assumption that cannabis activities would occur on no more than 10% of the 657,534 eligible acres is incorrect. The Project could result in converting significantly greater acreage to cannabis cultivation.

The County's incomplete and inaccurate estimate of the Project's full development potential could conceal significant potential impacts. For example, the SMND's hydrology analysis concludes that groundwater supply impacts would likely be less than significant because of "the relatively low quantities of water use (from .002 to 1.8 acre-feet per year)."[2] SMND at 69. The SMND then explains that the size limitations—10 percent of a parcel for outdoor grows and no more than one acre of *new* building coverage—would limit water use at individual sites. SMND at 69. This analysis, however, does not take into account the fact that each site can apparently include outdoor cultivation, indoor cultivation in new structures, and additional indoor cultivation in existing structures; or that indoor cultivation can be multi-tiered or stacked for greater growing area in the same building footprint. Thus, because of the flawed Project description, the SMND's analysis could be significantly underestimating the amount of water demand that could be created by the Project, which could impact both hydrological and biological resources.

In addition to the flaw identified above, and as described at greater length below, the SMND incorrectly describes a central feature of the Project as the conversion of commercial cannabis permitting in agricultural and resource zones from a discretionary to a ministerial process. SMND at 5, 8. The SMND further asserts that various proposed provisions in Article 12 of Chapter 38 set forth standards that do not require the exercise of discretion. SMND at 8-13.

The County's description of the "ministerial" nature of the permit review process established by the Ordinance is inaccurate and misleading: the Ordinance establishes a process that *requires* County officials and staff to exercise discretion. For example, the SMND implies that the County does not need to exercise discretion in evaluating

[2] By the SMND's own explanation of how to convert inches per year to acre-feet, SMND 69 at fn. 1, these figures appear incorrect. If cannabis requires 25-35 inches per year of water for outdoor grows and 20-25 inches per year for indoor grows, SMND 69, then, assuming a cultivation area of one acre, water use should be approximately 2-3 acre feet per year. Of course, this estimate does not account for possible cultivation on areas considerably larger than one acre. And, as explained at greater length by hydrologist Greg Kamman, these figures appear to be gross underestimates. *See* Exhibit 1, Letter from Greg Kamman (Mar. 16, 2021) (citing estimates of water use from cannabis that are 172%-746% higher than those estimates provided in the SMND).

biological resources because permit applications must include "a biotic resource assessment prepared by a qualified biologist that demonstrates," among other things, that the activity subject to the permit "will not impact sensitive or special status species habitat." SMND 39. The Ordinance also requires discretionary review of a permit application if the qualified biologist recommends mitigation measures. *Id.* The Project, however, does not include any objective standards to guide County officials in determining whether the biologist's assessment is adequate. Thus, County officials will have to exercise their discretion in making these determinations. *People v. Department of Housing & Community Development* (1975) 45 Cal.App.3d 185, 193-94 (holding that a permit process granting officials broad power to determine whether particular elements were sufficient or adequate required the exercise of discretion). The Project contains many similar examples of plans, studies, and reports prepared by experts, each of which suffers from the same defect. *See,* for example, Exhibit 1, Letter from Greg Kamman (Mar. 16, 2021) (discussing hydrogeologic reports required for cannabis supply wells located in a priority groundwater basin: "It is my opinion that report/plan review is a discretionary process integral to the authorization of a cannabis cultivation permit that can't be done under a ministerial process.").

The SMND also contains an incomplete and inconsistent description of the special events that may be permitted as part of the Project. For example, the SMND states that the Project would no longer prohibit cannabis-related tours and events, SMND 5, and that such events would "be *subject to existing regulations* in the Zoning Code," SMND 13 (emphasis added). The SMND also states, however, that the County is developing a "Winery Events Ordinance" that may address cannabis-related special events. SMND 18. This assertion that events would be governed by regulations currently under development directly contradicts the prior statement that events would be subject to *existing* regulations. Additionally, because the SMND contains no additional details about the planned winery events ordinance, it is impossible for the public to determine what events may be permitted, let alone whether those events will cause or contribute to a significant environmental impact (e.g., by increasing noise, traffic, greenhouse gas emissions, or vehicle miles traveled).

The SMND is similarly inconsistent and inaccurate in its description of the relationship between cannabis cultivation and other forms of agriculture. A core feature of the Project is the revision of the General Plan to include cannabis cultivation within the definition of agricultural land use. SMND 6. To support this change, the SMND asserts that cannabis cultivation "functions similarly to other agricultural operations." SMND 14. The SMND, however, repeatedly contradicts this conclusion. For example, the SMND states that, "*due to the unique characteristics of cannabis operations*, under the updated Ordinance *provisions applicable to traditional agriculture are expressly not*

applicable to cannabis cultivation." SMND 25 (emphasis added). The SMND also describes the unique impacts cannabis may have on the environment compared to traditional forms of agriculture. For example, the SMND states that cannabis cultivation and processing operations "generate distinctive odors" that can be "reminiscent of skunks, rotting lemons, and sulfur." SMND 33; *see also* SMND 34 (acknowledging that cannabis cultivation "can generate particularly strong odors" compared to other agricultural land uses). Cannabis cultivation also involves different aesthetic, energy, and hazardous materials practices compared to traditional agriculture. *See* SMND 19 (explaining that cannabis "often involves the use of visible structures"); SMND 23 (stating that cannabis may include new light sources in otherwise dark areas); SMND 48 (describing cannabis's uniquely significant energy demands); SMND 62 (describing hazardous components of high-powered lights used in cannabis operations). Cannabis cultivation is an intensive land use, involving intensive water and energy use, and energy and other infrastructure demands, that is more similar to industrial uses than to traditional agriculture. The SMND's inconsistent and inaccurate characterization of cannabis as similar to traditional agriculture is misleading to the public and decisionmakers and serves to conceal cannabis's unique features (water demand, energy demand, odors etc.) that could contribute to the Project's significant environmental impacts.

The Project description is also muddled by the County's adoption of an entirely new Chapter 26 of the zoning code on February 9, 2021. While the current Project includes revisions to Chapter 26, the revisions released with the SMND show changes to the *old* Chapter 26, rather than changes to the *new* Chapter 26 adopted on February 9. The competing versions of Chapter 26 make reviewing the Project more complicated and confusing. Furthermore, they hinder the public's ability to conduct a meaningful review of the changes the proposed Project would cause to the County Code text, implementation of the permitting regime, and the physical environment. As a result, it is not possible to determine the full scope or extent of the physical impacts that would result from the Project, which violates CEQA. The County must prepare an EIR that shows the changes that would result as applied to the *new* Code, and include an analysis of the cumulative impact of the Project with the Board's recent action to update Chapter 26.

B. The SMND's description of the environmental setting is inadequate.

The SMND also fails to describe the Project setting as required by CEQA and the CEQA Guidelines. An environmental document "must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if a notice of preparation is not published, at the time environmental analysis is commenced, from both a local and regional perspective." CEQA Guidelines § 15125(a). This description of the environmental setting constitutes the baseline physical conditions by which a lead agency determines the significance of an

impact. *Id.* "Knowledge of the regional setting is critical to the assessment of environmental impacts." CEQA Guidelines § 15125(c). Without such an understanding, any impacts analysis or proposed mitigation becomes meaningless.

The environmental setting section of the SMND consists of four paragraphs and a single map describing (1) the location and extent of lands zoned for agriculture, (2) the number of agricultural acres located on parcels larger than 10 acres, (3) the right-to-farm ordinance, and (4) the number of cannabis permits currently issued and in process. SMND at 16-18.

This bare description of land uses falls far short of the description of physical environmental conditions in the vicinity of the project that is required.

For example, the environmental setting entirely lacks a description of where the County's water resources are located. Although the SMND later acknowledges that "[o]ver 80% of the county is designated in marginal Class 3 or 4 zones where groundwater supplies are limited and uncertain," SMND at 69, there is no map or overlay showing where these zones are located and whether (and how) they overlap with areas in which cannabis cultivation may be permitted. This omission makes it difficult to assess whether the Project will have a substantial impact on groundwater supplies.

The same flaw is duplicated as to sensitive waterways and riparian habitats. The SMND does not describe how the County's sensitive waterways may overlap with areas that could be subject to cannabis cultivation.[3] This omission conceals what is likely to be a significant impact of the Project. For example, a comparison of maps of the Mark West Watershed and County zoning maps shows that most of the watershed is covered by the LIA, LEA, and RRD zoning designations, in which the Project would ministerially permit cannabis cultivation. *See* Exhibit 2, Integrated Surface and Groundwater Modeling and Flow Availability Analysis for Restoration Prioritization Planning, Upper Mark West Creek Watershed, Sonoma County, CA (Dec. 2020), Figure E1, Page 2. The SMND also fails to consider or describe the likely linkages between surface water features and groundwater. To fully and accurately analyze whether the Project will have an effect on stream flows—and species and habitats dependent on those flows—in sensitive waterways, the County should describe the relationships between the County's groundwater basins, its surface waterways, and the areas where cannabis cultivation may be permitted. *See* Exhibit 3, Letter from Robert Coey, National Marine Fisheries Service

[3] While the Project includes required setbacks from riparian corridors, SMND at 40, to assess the effectiveness of those setbacks, the public and decisionmakers must know the extent of cannabis cultivation that may be permitted near waterways.

(Feb. 26, 2021) (explaining that groundwater use by cannabis cultivators may affect surface streams and their resident threatened and endangered species).

The environmental setting's discussion of the current status of cannabis cultivation operations in the County is also inadequate. The SMND notes that 78 ministerial permits and 32 conditional use permits have been issued, and 78 ministerial and 55 conditional use permits are in process. SMND at 18. But particularly because, as the SMND notes, these permits may include renewals, may involve activities other than cultivation, and may include more than one license for the same location, these figures do not convey any meaningful information about the scope of cannabis activity currently permitted in the County. At the very least, the SMND should state the total acreage permitted for cultivation, broken down by the zoning district in which it is located. This data is needed to inform the County's analysis of cumulative impacts, as well as to reveal the scope of potential new development that may be allowed by the Project.

The SMND's discussion of cannabis operations in the County is also inadequate because it almost entirely ignores illegal cultivation, including its extent and its associated impacts. The SMND notes, without further elaboration or detail, that "[m]any cannabis operations have been operating illegally within the RRD land use areas." SMND at 67. It does not provide even an *estimate* of the number, extent, or actual impacts of these illegal cultivation operations. The extent of illegal operations in the County is an important part of the existing environmental baseline. As the SMND itself acknowledges, unregulated cannabis cultivation can be extremely damaging to the environment. Illegal cannabis cultivation: "has been associated with impacts to biological resources," including to sensitive species and their habitats, SMND at 38; has caused negative impacts to waterways, SMND at 55; and creates "high fire risk" related to "inadequate or improper electrical equipment" and explosions "due to the use of volatile chemicals," all located in "high fire hazard areas due to steep slopes, dense vegetation, and insufficient emergency services due to a lack of safe emergency vehicle access," SMND at 67.

Indeed, the conversion of illegal operations to permitted grows and the associated reduction in environmental impacts was a significant assumption underlying the County's determinations that (1) the 2016 Ordinance would not have a significant impact and (2) the 2018 Amendments were exempt from CEQA. *See* 2016 Negative Declaration, p. 2 ("This Ordinance would provide a regulatory structure, with operational standards, to allow existing operators to become permitted."); Resolution 18-0442, p. 3 ("[T]he Ordinance expands regulation of the County's cannabis industry to encompass adult-use for the full supply chain, encouraging illegal cannabis cultivators to come into compliance with the environmental protection standards provided for in the Ordinance."). The 2016 Negative Declaration estimated that there were as many as *ten thousand*

existing (unregulated) cultivators, the majority of which were located in the RRD zone. 2016 Negative Declaration at 2. According to the 2016 Negative Declaration, "[u]nregulated cannabis cultivation is associated with habitat destruction, pollution of waterways, illegal road construction causing erosion and increased sedimentation, unauthorized use of pesticides, illegal water diversion, large amounts of trash, human waste, non-biodegradable waste, and excessive water and energy use," as well as "offensive odor, security and safety concerns," and "use of hazardous materials." *Id.*

To accurately assess the Project's impacts on the current environment, the County must provide data and analysis concerning current status of illegal operations on the County. The County and the public must be able to determine whether the current regulations have succeeded in converting illegal operations to permitted grows or if, in fact, the legal, regulated regime has grown up alongside and in addition to the prior illegal regime. Without this information, it is impossible for the County and the public to assess the Project's impacts, including (1) whether the Project will reduce impacts of illegal grows by bringing cultivators into compliance, or (2) whether the County's environmental baseline is significantly off because it fails to account for the impacts associated with thousands of illegal operations.

In short, the SMND's incomplete description of the Project and its environmental setting frustrates the core goals of CEQA: to provide a vehicle for intelligent public participation and to provide an adequate environmental impact analysis. See *County of Inyo v. City of Los Angeles*, (1977) 71 Cal.App.3d 185, 197.

III. The SMND's analysis impermissibly focuses solely on the impacts of individual permits and fails to adequately analyze the impacts of the Project as a whole.

The CEQA Guidelines define a "project" as "*the whole of an action*" that may result in a direct or reasonably foreseeable indirect change in the environment. Guidelines § 15378(a). "'Project' is given a broad interpretation in order to maximize protection of the environment." *McQueen v. Bd. of Directors* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds). The analysis of a project's environmental effects must occur at the earliest discretionary approval. *See, e.g.*, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396 (EIR must analyze future action that is a "reasonably foreseeable consequence" of the initial action that would "likely change the scope or nature" of the effects of the initial action).

A lead agency considering an ordinance or a general plan amendment must analyze the impacts of all the potential activity that may be permitted by or could foreseeably result from those actions. *See Terminal Plaza Corp. v. City and County of*

San Francisco (1986) 177 Cal.App.3d 892, 905 (City was required to prepare an EIR to analyze the reasonably foreseeable effects of an ordinance). This analysis is required even though enacting an ordinance or general plan amendment is, in itself, an action that occurs largely on paper. *See* Guidelines § 15378(c) ("The term 'project' refers to the activity which is being approved" and not "each separate governmental approval.").

CEQA documents must analyze an ordinance's full potential level of development. As the court in *City of Redlands v. County of San Bernardino* explained, "an evaluation of a 'first phase-general plan amendment' must necessarily include a consideration of the larger project, i.e., the *future development permitted* by the amendment." (2002) 96 Cal.App.4th 398, 409 (emphasis added). Environmental review of the development allowed by a planning enactment must take place regardless of whether that development will actually materialize. *See Bozung v. Local Agency Formation Comm'n of Ventura County* (1975) 13 Cal.3d 263, 279, 282; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194–95 ("The fact future development is not certain to occur and the fact the environmental consequences of a general plan amendment changing a land use designation are more amorphous does not lead to the conclusion no EIR is required"); *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229, 235 (EIR for rezoning must be prepared even though "no expanded use of the property was proposed"). The lead agency's obligation to *fully* review an activity's potential environmental effects applies even when the activity is subject to later discretionary approvals. *Laurel Heights*, 47 Cal.3d at 396. That obligation is especially important, however, when the later approvals would be ministerial and would not present an opportunity for further environmental review or mitigation.

Here, the SMND fails to analyze the impacts of the Project as a whole—i.e., whether the sum of all potential activities that may be allowed by the Ordinance would have a significant environmental impact. Instead, the SMND repeatedly bases its analysis of the Project's impacts on whether *each individual permit* that may be issued under the Ordinance would have a significant effect or violate a threshold of significance. This type of analysis is impermissible. *Cf. Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-84 ("[E]nvironmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences."). The County's analysis is equivalent to determining that a massive shopping center development would not have a significant impact on the environment because the impacts of each individual store would be less than significant. This type of analysis does not inform the public or decisionmakers about the effects of the Project as a whole.

For example, the SMND's analysis of biological resources is improperly focused on the impacts of individual permits rather than the Project as a whole. The Project requires each applicant to include a biotic resource assessment that "demonstrates that the cannabis cultivation area and related structures and development will not impact sensitive or special status species habitat." SMND at 39. Each assessment, however, will focus on the impacts from "the cannabis cultivation area" associated with an individual permit, and not the combined potential impacts of all of the cannabis permits allowed by the Project. The SMND concludes that these assessments, combined with exclusions from limited biotic habitat combining zones and setbacks from riparian corridors, would result in a less than significant impact to sensitive species and riparian habitat. SMND at 40-41.

This myopic analysis misses significant potential impacts of the Project as a whole. The SMND acknowledges that cannabis activities will rely on a combination of surface or well water sources. SMND at 69. It then concludes that it is unlikely that cultivators using groundwater would result in overdraft. *Id.* This conclusion, however, is not explained and is based on unsupported estimates of groundwater usage from cannabis cultivators. *See* Exhibit 1, Letter from Greg Kamman (Mar. 16, 2021) (criticizing the SMND's conclusion). But even assuming that each individual cultivator's water usage is not enough, on its own, to reduce water supplies in a way that threatens sensitive species and riparian habitat, a group of cultivators all drawing water from the same surface water source, from hydrologically-linked surface water sources, or from hydrologically-linked groundwater basins could significantly decrease the water available for in-stream flows despite required setbacks, potentially harming the plant and animal species that rely on those flows.

The combined impact of multiple cultivators drawing upon limited groundwater supplies could have significant impacts on biological resources. For example, a recent analysis of streamflow in the Mark West Watershed prepared for the Sonoma Resource Conservation District and California Wildlife Conservation Board emphasized the importance of groundwater to providing habitat for sensitive species. According to the streamflow analysis, groundwater discharge "represents the primary process responsible for generating summer streamflow" in the watershed. Exhibit 2, Jeremy Kobor, et al., Integrated Surface and Groundwater Modeling and Flow Availability Analysis for Restoration Prioritization Planning, Upper Mark West Creek Watershed, Sonoma County, CA (Dec. 2020) at 3. The report also showed that human consumption of groundwater threatens streamflow, concluding that groundwater pumping depleted streamflows over the long term. *Id.* at 11. The study determined that increased demand for groundwater, combined with other factors, make efforts to sustain or improve streamflows "of paramount importance for coho recovery" in the watershed. *Id.* at 25; *see also id.* at 1 ("The Mark West Creek watershed provides critical habitat for threatened

and endangered anadromous fish"). Similarly, hydrogeologist Greg Kamman emphasized that one of his "biggest concerns" regarding stewardship of natural resources in Sonoma County is "the increased demand on already stressed groundwater supplies." Exhibit 1, Letter from Greg Kamman (March 16, 2021).

The biotic resources assessments, with their narrow focus on each individual permit applicant's activities, would not address the combined effects of multiple permittees decreasing groundwater available for streamflows. An EIR for the Project that analyzes these combined potential effects of all potential permits allowed by the Project is the proper place for this analysis, as well as an analysis of feasible mitigation to address such impacts.

IV. The Project has the potential to result in significant environmental impacts.

The evaluation of a proposed project's environmental impacts is the core purpose of an EIR. *See* CEQA Guidelines § 15126.2(a) ("An EIR shall identify and focus on the significant environmental effects of the proposed project"). As explained below, the SMND fails to analyze the Project's environmental impacts, including those affecting hydrology and water quality and biological resources. In addition, as discussed above, the SMND never considers the full impacts of the Project—the foreseeable impacts of facilitating cannabis cultivation and production through ministerial permit approvals and the foreseeable impacts of events that the proposed Project would allow. In this way, the SMND fails to disclose the extent and severity of the Project's broad-ranging impacts. This approach violates CEQA's requirement that environmental review encompass all of the activity allowed by the proposed Project. The County must analyze all of the aggregated impacts of all of the foreseeable development and activities. Without this analysis, the environmental review will remain incomplete and the Project cannot lawfully be approved.

Below, we discuss several examples of impact areas with particular deficiencies. To ensure that both decision-makers and the public have adequate information to consider the effects of the proposed Project, and to comply with CEQA's requirements, the County must prepare an EIR that properly describes the Project, analyzes its impacts, and considers meaningful mitigation measures that would help ameliorate those impacts.

The SMND claims that it is a "programmatic" document and therefore detailed analysis is not within its scope. SMND at 36. Even if it were a programmatic analysis, however, the 'programmatic' nature of this SMND is no excuse for its lack of detailed analysis. CEQA requires that a program EIR provide an in-depth analysis of a large project, looking at effects "as specifically and comprehensively as possible." CEQA Guidelines § 15168(a), (c)(5). Because it looks at the big picture, a program level

analysis should provide "more exhaustive consideration" of effects and alternatives than an EIR for an individual action, and should consider "cumulative impacts that might be slighted by a case-by-case analysis." CEQA Guidelines § 15168(b)(1)-(2).

Further, it is only at this early stage that the County can design wide-ranging measures to mitigate County-wide environmental impacts. *See* CEQA Guidelines § 15168(b)(4) (programmatic EIR "[a]llows the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility. . . ."). A "program" or "first tier" EIR is expressly not a device to be used for deferring the analysis of significant environmental impacts. *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199. It is instead an opportunity to analyze impacts common to a series of smaller projects, in order to avoid repetitious analyses. Thus, it is particularly important that the environmental analysis for this Project analyze the overall impacts for the complete level of development it is authorizing now, rather than when individual specific projects are proposed at a later time.

Deferring analysis to a later stage is unlawful, as it leaves the public with no real idea as to the severity and extent of environmental impacts. Where, as here, the environmental review document fails to fully and accurately inform decisionmakers and the public of the environmental consequences of proposed actions, it does not satisfy the basic goals of CEQA and its Guidelines. *See* Pub. Resources Code § 21061 ("The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment . . . ."). The evaluation of a proposed project's environmental impacts is the core purpose of an EIR. See Guidelines § 15126.2(a) ("An EIR shall identify and focus on the significant effects of the proposed project on the environment."). It is well-established that the City cannot defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07.

The SMND fails to provide the legally required analysis of the extensive growth in cannabis cultivation and operations that the Project allows and promotes. Thus, the County must revise the environmental analysis to accurately disclose the impacts of the maximum amount of cannabis cultivation allowed by the Project. Detailed below are the specific legal inadequacies of the SMND's various impact sections related to hydrology, water quality, and biological resources.

As discussed above, the SMND's failure to consider the impacts of the whole of the project undermines the document's analysis of Project-related impacts, including those impacts related to groundwater supply, water quality, and impacts to sensitive

biotic resources. The letter prepared by Greg Kamman provides detailed comments on the shortcomings of the SMND's hydrology and water quality impacts analysis. We incorporate the Kamman Report into these comments. Some of the SMND's most troubling errors identified in the Kamman Report are described below.

A. The SMND's analysis of water supply impacts is inadequate and there is a fair argument that the project will have a significant impact on groundwater resources.

CEQA requires that an EIR present decision makers "with sufficient facts to evaluate the pros and cons of supplying the amount of water that the [project] will need." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 430-31 (2007). This includes identifying and analyzing water supplies that "bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decision making under CEQA." *Id.* at 432. The fact that an agency has identified a likely source of water for the Project does not end the inquiry.

> The ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project. If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.

Id. at 434.

This analysis is crucial in light of the drought that has gripped this State for the past several years. This SMND's analysis of impacts to groundwater supply fails to meet CEQA's standards.

The SMND discloses that "over 80 percent of the county is designated in marginal Class 3 or 4 zones where groundwater supplies are limited and uncertain." SMND at 69. It also acknowledges that cannabis facilities in rural areas would rely on surface or well water sources and would thus increase the use of water. *Id*. Despite these statements, the SMND fails to conduct the necessary analysis to evaluate the extent and severity of these

impacts. What analysis the SMND does present is cursory and unsupported. For example, the SMND presents unsubstantiated figures on estimated water use by cannabis cultivation and production facilities. The SMND estimates that water use by each cultivator would be less than 2.0 acre-feet of water per year, but it fails to disclose how this estimate is derived. SMND at 69; Kamman Report at 2 and 3. The SMND relies on the estimate of water use to conclude that "substantial groundwater overdraft is unlikely." *Id.* However, as explained above, the SMND fails to consider the impacts of the whole of the Project, or the impacts of all permits facilitated by this Project.

The SMND relies on groundwater supply standards included in the updated Ordinance to conclude that the Project "would not decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin." SMND at 71. The SMND fails to provide evidence to support this conclusion. The standards include requirements for monitoring and reporting conditions of groundwater level (i.e., groundwater level measurements, submission of annual reports, and provision of a recorded easement to provide County personnel access to the well to collect water meter readings) and for hydrogeologic reports demonstrating that cannabis facilities permitted through implementation of the Project will not cause or exacerbate overdraft conditions. Kamman Report at 3 and 4. However, the SMND fails to explain how the annual reports will be evaluated or what the triggers will be for remedial actions. Kamman Report at 4. In addition, as the Kamman Report explains, the well-yield test evaluates if the minimum yield will meet irrigation demands, but it does not evaluate if pumping would adversely impact surface water and groundwater resources. *Id*. Therefore, the SMND fails to provide evidence that required monitoring and well-yield tests for applications in Zone 3 and 4 will prevent impacts to groundwater supplies. *Id*.

The investigation by Kamman Hydrology and Engineering, Inc. also indicates that the Mark West Watershed is vulnerable to both groundwater overdraft and to reduced groundwater recharge. *See*, Kamman Report at 3-6. As explained in the Kamman Report, given the conditions in the watershed, allowing expanded cannabis operations in the Mark West Watershed would exacerbate groundwater overdraft. *Id*. at 2-5.

In sum, the SMND fails to adequately evaluate the Project's impacts of groundwater use on the County's groundwater resources. The Mark West Watershed is vulnerable to both groundwater overdraft and to reduced groundwater recharge. See, Letter from Greg Kamman at 2-4. As the Kamman Report explains, the increased demand on the County's already stressed groundwater supplies is a well-documented concern, yet the SMND fails to adequately analyze the impacts of the Project on this limited resource. Kamman Report at 2 and 3. Given the conditions in the watershed, allowing expanded cannabis operations in the Mark West Watershed would exacerbate

groundwater overdraft. *Id*. An EIR for the Project must include the necessary groundwater recharge analysis that demonstrates the Project will not add or contribute to the current state of declining groundwater storage.

B. The SMND's analysis of hydrology and water quality impacts is inadequate and there is a fair argument that the Project may have a significant impact on water quality.

FMWW is particularly concerned that implementation of the Project would result in significant adverse impacts to Mark West Creek and its watershed. The State Water Board has also listed portions of Mark West Creek and its tributaries as 303(d) impaired water bodies for sedimentation and temperature (upstream of the confluence with the Laguna de Santa Rosa). Kamman Report at 9. Because hydrological resources in the MWW and downstream are already impaired, expansion of cannabis operations has the potential to significantly impact those resources.

The SMND discloses that future cannabis operations "have the potential to impact water quality due to grading, pesticide application, fertilizers, and the use of irrigation." SMND at 68. Unfortunately, the SMND foregoes actual analysis of the Project's impacts on water quality. Specifically, the SMND fails to adequately analyze impacts from increased sedimentation resulting from ground disturbance and from vegetation clearing. Nor does the SMND adequately analyze the impacts of groundwater pumping on creeks, streams, and rivers. Kamman Report at 2-4. In addition, given that the Project will increase development and introduce industrial processes in remote rural areas, which in turn exacerbates wildfire risk, the SMND should have evaluated fire-related erosion's impacts on waterways. *See also* Letter submitted from Save Our Sonoma Neighborhoods to the County dated March 18, 2021. The SMND does none of this.

The proposed amendments would result in allowing cannabis production countywide in much of the undeveloped areas of the County, including the Mark West Watershed. Without further environmental review, the County would be making this broad approval with far-reaching effects without having answers to critical questions. These questions, which were raised in comments in 2018, remain relevant today and remain unanswered by the SMND. Specifically, the SMND: fails to accurately estimate the Project's water demand or explain how that water demand compares to other agricultural and industrial uses in the County; fails to explain what sorts of impacts related to contaminated run-off can be anticipated from these operations; and fails to identify areas of the County that may be more appropriate for cultivation than others. Without answers to these and other questions, the County cannot know the extent of potential impacts to groundwater and surface water quality.

In sum, the DEIR lacks sufficient evidentiary support for its conclusion that the Project's impacts on hydrology and water quality would be less than significant. An EIR for the Project must adequately describe the hydrologic setting, and comprehensively evaluate and mitigate the proposed Project's hydrology and water quality impacts .

C. The SMND's analysis of biological impacts Is inadequate and there is a fair argument that the Project will have a significant impact on sensitive habitat and species.

Given that the Mark West Watershed is a sensitive environment comprising critical habitat, essential fish habitat, and biological resources, the environmental analysis should have provided a thorough assessment of the Project's impacts on these resources. *See* Exhibit 1, Kamman Report, and Exhibit 3, Letter from Robert Coey, National Marine Fisheries Service (Feb. 26, 2021). The SMND's treatment of biological impacts does not meet CEQA's well established legal standard for impacts analysis. Given that analysis and mitigation of such impacts are at the heart of CEQA, the SMND will not comply with the Act until these serious deficiencies are remedied.

First, the SMND's failure to describe the existing setting (as discussed above) severely undermines its analysis of Project impacts on sensitive biological resources. Despite the SMND's acknowledgement that "the updated Ordinance could result in direct and indirect effects on sensitive biological resources including special-status species" the SMND fails to adequately analyze adverse impacts to these species. SMND at 37 and 38.

Second, the SMND fails to evaluate the extent and severity of the Project's impacts on biological resources. As explained throughout this letter and in the attached Kamman Report, erosion resulting from activities allowed by the proposed Project—both from the change in use and from associated construction of cannabis production facilities—is likely to lead to increased sedimentation of Mark West Creek and its tributaries, impairing the Mark West Watershed critical habitat area. Kamman Report at 5 and 6. The delivery of fine sediment from erosion and runoff has been documented to have negative effects on water and habitat quality, specifically degrading spawning gravel habitat, juvenile rearing pool habitats, and juvenile salmonid survival and growth. *Id*. Therefore, an increase in high-intensity uses, such as those associated with cannabis cultivation, are likely to result in sediment deposits to Mark West Creek and to increase negative impacts on aquatic habitat.

The precise extent and potential significance of such increases would only become evident with a more detailed investigation of the specific construction features and operational methods associated with the activities that would be allowed under the ordinance amendments. Given this potential for erosion in a critical habitat area, it is

crucial that the County perform a thorough analysis of this issue prior to approving the Project. Without further analysis, the County cannot know the extent of potential impacts to sensitive biological resources, such as endangered fish and other species. These are exactly the type of impacts that must be analyzed in an EIR.

V. The mitigation measures identified in the SMND are not sufficiently adequate, measurable, or enforceable.

Because, as discussed above, the SMND fails to thoroughly examine and analyze the Project's impacts, it also fails to adequately mitigate for the related impacts. Moreover, the SMND relies on insufficient mitigation and fails to consider and adopt all feasible mitigation.

The County cannot approve projects with significant environmental impacts if any feasible mitigation measure or alternative is available that will substantially lessen the severity of any impact. Pub. Res. Code § 21002; CEQA Guidelines § 15126(a). The County is legally required to mitigate or avoid the significant impacts of the projects it approves whenever it is feasible to do so. Pub. Res. Code § 21002.1(b). An EIR is inadequate if it fails to suggest feasible mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79. Of course, the County may not use the inadequacy of its impacts review to avoid mitigation: "The agency should not be allowed to hide behind its own failure to collect data." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 36. Nor may the City use vague mitigation measures to avoid disclosing impacts. *Stanislaus Natural Heritage Project*, 48 Cal.App.4th at 195. Put another way, an EIR must set forth specific mitigation measures or set forth performance standards that such measures would achieve by various, specified approaches. See CEQA Guidelines § 15126.4; see also *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1034; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93-95 (agency may not approve a vague mitigation measure that contains no performance standards and criteria to guide its later implementation). Without performance standards and an explanation of why mitigation cannot be developed now, the SMND cannot insist the impact will be insignificant and defer the development of specific mitigation measures to some future time. Guidelines § 15126.4 (a)(1)(B). The SMND failed to comply with this bedrock CEQA requirement.

"In the case of the adoption of a plan, policy, regulation, or other public project [such as the proposed Code and General Plan amendments], mitigation measures can be incorporated into the plan, policy, regulation, or project design." CEQA Guidelines § 15126.4(a)(2). Mitigation is defined by CEQA to include "[m]inimizing impacts by

limiting the degree or magnitude of the action and its implementation." CEQA Guidelines § 15370(b). In addition to proposing new "policies" as mitigation, mitigation should include changes in where development is planned, what kind is planned, and how dense or intense that development is planned to be.

Here, the SMND relies on standards in the Ordinance to reduce the Project's impacts. For example, the SMND points to requirements for permit applicants to document a net zero water plan demonstrating that the proposed facility would not result in a net increase of groundwater. However, this approach does not comply with CEQA, both because evaluating water use for each facility fails to evaluate the use and impacts of the whole of the project and because this provision defers the assessment until after Project approval. It is well-established that the County cannot defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07.

In addition, there is no indication that the SMND considered additional policies or modifications to the proposed amendments to mitigate the impacts of the Project. For example, as described above, the Project would exacerbate already stressed groundwater supplies in the county. Kamman Report at 3. These increased risks and hazards constitute a significant impact requiring the County to identify feasible mitigation measures and alternatives to minimize them. Instead, the SMND relies on unsupported statements about the limited size and number of cultivation sites and on unsubstantiated estimates of groundwater supply required for cannabis cultivation to conclude that impacts to water supply would be less than significant. Id. and SMND at 69-70.

As discussed throughout this letter, the County must first gather data on the number of existing legal and illegal cultivation sites, estimate the number of existing and eligible sites that may apply for permits, accurately estimate the amount of water supply needed for those sites, and evaluate the potential impacts on groundwater resources. A revised environmental document must identify feasible mitigation measures for such impacts (e.g., prohibiting or limiting the number of cannabis facilities within Groundwater Availability Zones 3 or 4 and excluding commercial cannabis facilities within the MWW).

VI. The permit approval process contemplated by the Ordinance requires the exercise of discretion by County officials.

The Ordinance purports to allow "ministerial" approvals of commercial cannabis operations throughout the County. Yet, proposed Chapter 38 does not describe ministerial approvals. Per the Ordinance's plain language, every approval of a commercial cannabis operation will necessarily be a discretionary action and thus subject to CEQA. By

adopting an ordinance that purports to authorize "ministerial" approvals which in actuality trigger CEQA, the County is heading toward certain litigation from those objecting to future siting decisions for commercial cannabis operations, and from applicants for these projects.

"A project is discretionary when an agency is required to exercise judgment or deliberation in deciding whether to approve an activity. It is distinguished from a ministerial project, for which the agency merely determines whether applicable statutes, ordinances, regulations, or other fixed standards have been satisfied. Ministerial projects are those for which the law requires [an] agency to act ... in a set way without allowing the agency to use its own judgment .... They involve little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision." *Protecting Our Water & Env't Res. v. Cty. of Stanislaus* (2020) 10 Cal.5th 479, 489 ("*POWER*") (internal quotations and citations omitted).

Under the proposed Ordinance, the Agriculture Commissioner *must* use their judgment to decide whether to issue permits. Thus, this is different from the situation in *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, where the court held that the permit in question did not involve the Commissioner's judgment, even though the County's ordinance might allow for discretion in other instances. *Sierra Club* therefore does not apply here. Instead, a court would hold that the County has improperly classified *all* commercial cannabis permit approvals under the ordinance as ministerial, when in fact the ordinance requires the Commissioner to exercise discretion for each permit. *POWER*, 10 Cal.5th at 499 ("County's blanket classification … enable[d] County to approve some discretionary projects while shielding them from CEQA review").

The Ordinance in many instances requires plans or surveys by qualified professionals to assess impacts, but does not provide standards governing *how* these surveys/plans will be evaluated or deemed sufficient. Thus, County officials will have to exercise discretion to determine whether they are good enough.

For example, every permit application must include a "biotic resource assessment" that "demonstrates" to the Commissioner's satisfaction that the project would not impact sensitive or special status species habitat. Proposed § 38.12.070(A)(1). Whether this plan adequately demonstrates the avoidance of impacts—including whether surveys were properly conducted to determine the presence of sensitive or special status species habitat, and what constitutes an "impact"—is necessarily left to the Commissioner's individual discretion.

Similarly, each permit application must include a wastewater management plan that, among other things, "demonstrates" to the Commissioner's satisfaction that the project would have adequate capacity to handle domestic wastewater discharge from employees. Proposed § 38.12.130(A)(5). Each application must also include a storm water management plan and an erosion and sediment control plan that "ensure," again to the Commissioner's satisfaction, that runoff containing sediment or other waste or byproducts does not drain to the storm drain system, waterways or adjacent lands. Proposed § 38.12.130(B). Obviously, whether an applicant's plans sufficiently "demonstrate" the necessary wastewater capacity, or "ensure" that runoff would not drain to waterways, would require the Commissioner's individual judgment. Proposed sections § 38.12.070(A)(1), 38.12.130(A)(5) and 38.12.130(B) would apply to *all* applications regardless of size or proposed location. Thus the Commissioner will have to exercise their discretion for every permit application they process.

Other provisions that require the exercise of discretion to approve or deny a permit include, but are not limited to, proposed sections 38.12.050(B) (historic resource survey), 38.12.050(C) (cultural resource survey), 38.12.130 (wastewater management plan), and 38.12.140 (documentation of water supply).

Furthermore, unlike in *Sierra Club*, here, the Commissioner's necessary exercise of discretion under the Ordinance would be directly tied to the mitigation of impacts from individual projects. For instance, the SMND states that "future cannabis projects facilitated by a ministerial permit . . . could result in direct and indirect impacts on sensitive biological resources including sensitive-status species. . . However, to *reduce impacts* to status species and their habitat," applicants would be required to submit the "biotic resource assessment." SMND at 39. As explained above, the Commissioner would have authority to decide whether this assessment adequately demonstrates that no impact would occur—in other words, whether the impact is effectively mitigated.

CEQA, and not the personal judgment of County staff, governs the discretionary review of projects, including mitigation of impacts. *See Sierra Club*, 11 Cal.App.5th at 22 (ministerial approval process "is one of determining conformity with applicable ordinances and regulations, and the official has no ability to exercise discretion to mitigate environmental impacts"). Here, however, the Commissioner and/or staff would have the authority to deny a proposed project which in their judgment would not avoid biological or other environmental impacts. *Id.* at 23 (if agency can deny, or modify, project proposal in ways that would mitigate environmental problems that CEQA compliance might conceivably have identified, then the process is discretionary). Thus, the proposed Ordinance contemplates a discretionary, and not ministerial, approval process.

If adopted, the Ordinance's permit approval regime would be in clear violation of CEQA, and each permit approval would risk a legal challenge and ultimately being overturned by a court. The County must revise the Ordinance and accompanying environmental document to acknowledge that all subsequent permit approvals will necessarily be discretionary decisions subject to review under CEQA.

VII. Approval of the Project, which is inconsistent with the County's General Plan, would violate the State Planning and Zoning Law.

The state Planning and Zoning Law (Gov't Code § 65000 et seq.) requires that development approvals be consistent with the jurisdiction's general plan. As reiterated by the courts, "[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, "[t]he consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." *Napa Citizens for Honest Gov't v. Napa County* (2001) 91 Cal.App.4th 342, 379. The project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." *Napa Citizens*, 91 Cal.App.4th at 379. Here, the proposed Project does more than just frustrate the General Plan's goals. As discussed in more detail below, the Project is directly inconsistent with numerous provisions in the General Plan.

In comments submitted on behalf of FMWW in 2018 regarding the County's amendments to the Medical Cannabis Land Use Ordinance, we commented that the proposed amendments were inconsistent with the County's General Plan, particularly with policies related to the protection of agricultural land and policies directed at preserving natural resources, such as groundwater, surface water, and sensitive habitat areas. The proposed Project would be inconsistent with these same policies. For the County's convenience, we reiterate the inconsistencies below.

The MWW is located within portions of Plan Area 3 (Healdsburg and Environs) and portions of Plan Area 5 (Santa Rosa and Environs) and is also within the Franz Valley Specific Plan Area. The proposed ordinance revisions would conflict with policies applicable to these plan areas. For example, the Sonoma County General Plan Land Use

Element includes objectives and policies directed at locating commercial and industrial development in areas that protect rural and agricultural lands. These policies include:

> Franz Valley Specific Plan
> Hydrology - Within groundwater recharge areas, construction activities, creation of impervious surfaces, and changes in drainage should be avoided through discretionary actions.
>
> Healdsburg and Environs (Plan Area 3)
> Objective LU-14.2: Make Windsor and Healdsburg the commercial and industrial centers for the planning area. *Avoid additional commercial and industrial uses* and tourist related businesses *in the rural areas of this region*. Maintain compact urban boundaries for Windsor and Healdsburg. (Emphasis added.)
>
> Santa Rosa and Environs (Plan Area 5)
> Policy LU-16f: Avoid amendments to include additional commercial or industrial use outside urban service areas.

The Project is inconsistent with these policies because it would allow cannabis cultivation (both indoors and outdoors) in rural areas outside urban service areas. The ordinance revisions would also allow cannabis cultivation without discretionary review, which would be inconsistent with the Franz Valley Specific Plan.

The Sonoma County General Plan Land Use Element includes multiple objectives and policies directed at locating development in areas that protect environmentally sensitive areas. These policies include:

> Goal LU-7: Prevent unnecessary exposure of people and property to environmental risks and hazards. *Limit development on lands that are especially vulnerable or sensitive to environmental damage*. (Emphasis added.)
>
> Objective LU-7.1: Restrict development in areas that are constrained by the natural limitations of the land, including but not limited to, flood, fire, geologic hazards, *groundwater availability* and septic suitability. (Emphasis added.)
>
> GOAL LU-10: The uses and intensities of any land development shall be consistent with preservation of important biotic resource areas and scenic features.

> Objective LU-10.1: Accomplish development on lands with important biotic resources and scenic features in a manner which preserves or enhances these features.

The Project is inconsistent with these policies because it would allow cannabis uses in Agricultural and Resources and Rural Development designations without adequate limitations to ensure that environmentally sensitive resources, and groundwater resources are protected.

The Land Use Element also includes multiple policies directed at the protection of water resources. Specifically:

> Goal LU-8: Protect Sonoma County's water resources on a sustainable yield basis that avoids long term declines in available surface and groundwater resources or water quality.
>
> Objective LU-8.1: Protect, restore, and enhance the quality of surface and groundwater resources to meet the needs of all beneficial uses.
>
> Objective LU-8.5: Improve understanding and sound management of water resources on a watershed basis.
>
> Policy LU-8h: Support use of a watershed management approach for water quality programs and water supply assessments and for other plans and studies where appropriate.
>
> Policy LU-11g: Encourage development and land uses that reduce the use of water. Where appropriate, use recycled water on site, and employ innovative wastewater treatment that minimizes or eliminates the use of harmful chemicals and/or toxics.

The Project is inconsistent with these policies because, as explained in the Kamman Letter, cannabis cultivation within the Mark West Watershed would exacerbate groundwater overdraft and reduced groundwater recharge, which would adversely impact biotic resources. Cannabis cultivation is a water-intensive use that requires approximately twice as much water as wine grapes. See, K. Ashworth and W. Vizuete, *High Time to Assess the Environmental Impacts of Cannabis Cultivation*, Environmental Science & Technology (2017) at 2531-2533, attached as Exhibit 4 and at

https://pubs.acs.org/doi/10.1021/acs.est.6b06343. According to the article, a study of illegal outdoor grow operations in northern California found that "rates of water extraction from streams threatened aquatic ecosystems and that water effluent contained high levels of growth nutrients, as well as pesticides, herbicides and fungicides, further damaging aquatic wildlife." *Id*. Another article indicates that "water demand for marijuana cultivation has the potential to divert substantial portions of streamflow in the study watersheds, with an estimated flow reduction of up to 23% of the annual seven-day low flow in the least impacted of the study watersheds. Estimates from the other study watersheds indicate that water demand for marijuana cultivation exceeds streamflow during the low-flow period. In the most impacted study watersheds, diminished streamflow is likely to have lethal or sub-lethal effects on state-and federally-listed salmon and steelhead trout and to cause further decline of sensitive amphibian species." *See*, Bauer et al., *Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds*, PLos ONE (2015), attached as Exhibit 5 and at http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0120016. This increased intensity in water use has the potential to result in significant impacts to biotic resources and to other users.

Cannabis cultivation also has the potential to lead to increased use of fertilizers and pesticides that could impact groundwater and source waters and pose unique challenges related to treatment and disposal of chemicals in run-off and wastewater. These impacts would be even more pronounced in sensitive watersheds, such the Mark West Creek watershed and other Russian River tributaries.

Similarly, the Project would be inconsistent with the following Land Use Element objectives and policies calling for the protection of agricultural lands[4]:

> GOAL LU-9: Protect lands currently in agricultural production and lands with soils and other characteristics that make them potentially suitable for agricultural use. Retain large parcel sizes and avoid incompatible non-agricultural uses.
>
> Objective LU-9.1: Avoid conversion of lands currently used for agricultural production to non-agricultural use.

[4] As noted in our comments submitted on behalf of Save Our Sonoma Neighborhoods, the County should maintain its characterization of cannabis cultivation as unique from traditional agricultural practices, as it did in 2016, and as it describes in the SMND. SMND at 23, 33, 34, 48 and 62. *See* also, SOSN Comments dated March 18, 2021.

> Objective LU-9.2: Retain large parcels in agricultural production areas and avoid new parcels less than 20 acres in the "Land Intensive Agriculture" category.
>
> Objective LU-9.3: Agricultural lands not currently used for farming but which have soils or other characteristics that make them suitable for farming shall not be developed in a way that would preclude future agricultural use.

In contrast to these General Plan goals and objectives, the proposed amendments would allow conversion of lands designated for agricultural uses for cannabis production, which includes construction of buildings to house indoor cultivation and would expand the allowed production of cannabis cultivation area from the current one acre to 10 percent of the parcel.

As noted above, and in the letter submitted on behalf of Save Our Sonoma Neighborhoods on March 17, 2021, the Project will have substantial environmental impacts that have not been addressed by the County. These unanalyzed impacts will also result in inconsistencies with the General Plan. Therefore, the County must fully evaluate and mitigate the impacts of the Project before it can find the Project consistent with the County General Plan.

VIII. The County must exclude the Mark West Watershed and other similarly impaired watersheds from the proposed Project.

Under CEQA, a proper analysis of alternatives is essential for the County to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Resources Code§ 21002; Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. Given the Project's potential for significant impacts as outlined above, the County must require an EIR to analyze the extent and severity of the Project's impacts related to hydrology and biological resources. The EIR must also consider feasible alternatives to avoid or minimize these impacts. Moreover, the County cannot make findings if there is an alternative that would reduce impacts to the surrounding community.

In 2018, the Planning Commission considered provisions that would have created an Exclusion Combining District, which would have excluded commercial cannabis activities from areas meeting certain criteria, including:

(d) Areas where, because of topography, access, water availability or vegetation, there is a significant fire hazard; and

(e) Areas with sensitive biotic resources or significant environmental sensitivity exists.

Here, the Mark West Watershed ("MWW") satisfies both criteria. First, the area is characterized by steeply sloped areas and encompasses areas identified as moderate, high, and very high wildland fire hazard zones. Sonoma County General Plan 2020, Public Safety Element, Figure PS-1G. Second, as discussed above and in the attached Kamman Report, the MWW is an "area with sensitive biotic resources or significant environmental sensitivity", which satisfies the criteria considered in 2018 for exclusion. Kamman Report at 5.

As enumerated in the Kamman letter and above, the MWW hosts critical aquatic and riparian habitat and endangered and sensitive aquatic species. *See* Exhibit 2, Jeremy Kobor, et al., Integrated Surface and Groundwater Modeling and Flow Availability Analysis for Restoration Prioritization Planning, Upper Mark West Creek Watershed, Sonoma County, CA (Dec. 2020) at p. 1. Because of its unique physical and biological characteristics, the watershed has been identified in numerous natural resource planning efforts for protection and enhancement. *See id;* Kamman letter at 5.

There is also a documented trend in decreased groundwater availability in the MWW over the long term. Exhibit 2, Kobor et al., at p. 11 and Kamman Report at 7. This trend, and an acknowledged strong linkage between groundwater and creek summer base flow, Exhibit 2, Kobor, et al., at p. 3, indicate that the MWW is susceptible to groundwater overdraft conditions, Kamman at 5 and 7.

In addition, the Groundwater Management Plan (GMP) for the Santa Rosa Plain Watershed indicates that groundwater levels have decreased in response to groundwater pumping in the Santa Rosa Plain groundwater basin. See http://santarosaplaingroundwater.org/wp-content/uploads/SRP_GMP_12-14.pdf (accessed on March 15, 2021) at ES-2 ("The study shows that increased groundwater pumping has caused an imbalance of groundwater inflow and outflow. This imbalance could affect wells, and eventually will likely reduce flows in creeks and streams, leading to a potential for decline in habitat and ecosystems"), ES-7, and ES-8; Kamman Report at 9. Mark West Creek flows into the Santa Rosa Plain. The GMP indicates that seepage from streams flowing onto the Santa Rosa Plain, including Mark West Creek, are a major source of recharge to the groundwater basin. The Sustainable Groundwater Management Act "requires governments and water agencies of high and medium priority basins [such as the Santa Rosa Plain Watershed] to halt overdraft and bring groundwater basins into

balanced levels of pumping and recharge." California Department of Water Resources, SGMA Groundwater Management, available at https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management.

As explained in the Kamman Letter, any incremental increase in groundwater pumping within the upper Mark West Creek watershed would not only exacerbate overdraft of local aquifers, but would reduce streamflow in Mark West Creek and associated downstream recharge, additionally exacerbating overdraft in the Santa Rosa Plain groundwater basin. Kamman Report at 10. Any future increases in groundwater pumping due to cannabis cultivation in the upper Mark West Creek watershed and other similarly impaired watersheds would also exacerbate groundwater overdraft in the Santa Rosa Plain basin. Exhibit 3, Letter from Robert Coey, National Marine Fisheries Service (Aug. 30, 2018) (explaining that restoring area groundwater basins "will likely include greater groundwater recharge, less groundwater pumping, or some combination of the two," and requesting that Sonoma County delay permitting cannabis cultivation activities relying on groundwater to avoid further harm to groundwater supplies).

Significantly, the setbacks from riparian corridors incorporated in the Project do not eliminate impacts to the Mark West Watershed and other similarly impaired watersheds or the linked groundwater basins. A streamflow analysis of the Mark West Watershed determined that, while wells at increased distance from streams depleted streamflows at slower rates, "all wells generated depletion given enough time." Exhibit 2, Kobor et al., at p. 11. "Requiring new wells to be drilled at a specified minimum distance from a stream or spring . . . may extend the length of time before streamflow depletion occurs; however, *it will not prevent streamflow depletion from occurring*." *Id.* at 21 (emphasis added). Thus, the measures currently included in the Project are insufficient to address potential significant impacts. Excluding the Mark West Watershed and other similarly impaired watersheds from the Project entirely, however, would prevent new commercial cannabis activities from drawing groundwater, thus preventing decreases in streamflow and avoiding significant environmental impacts to sensitive watersheds.

State regulations governing cannabis activities in environmentally sensitive watersheds further support exclusion of the Mark West watershed and other similarly impaired watersheds. Specifically, the Department of Food and Agriculture is prohibited from issuing new licenses for commercial cannabis activities in watersheds that the State Water Resources Control Board or the Department of Fish and Wildlife determine are significantly impacted by cannabis cultivation. 3 Cal. Code Regs. § 8216; *see also* Bus. & Prof. Code § 26069(c)(1); Water Code § 13149. If the County were to issue licenses for cannabis cultivation in these areas, it would conflict with the intent of the state regulations to protect sensitive environments from cannabis-related impairments.

Though the State Water Resources Control Board and the Department of Fish and Wildlife have not yet determined that cannabis activities have significantly impacted the Mark West Watershed, it seems foolish to wait for this eventuality—and the associated degradation of a sensitive habitat—to occur. *See also* Exhibit 3, Letter from Robert Coey, National Marine Fisheries Service (Aug. 30, 2018) ("Since continued groundwater development in [the Mark West Watershed] will likely further impair summer baseflows in the future, NMFS recommends Permit Sonoma limit future groundwater development in these basins until the effects of long-term, chronic groundwater depletion and its impact on summer baseflows are properly analyzed."). As this letter has emphasized, the Mark West watershed has already been identified as impaired in various respects. For example, the North Coast Regional Water Quality Control Board has identified Mark West Creek as impaired with respect to aluminum, dissolved oxygen, phosphorus, manganese, sedimentation/siltation, and temperature. Exhibit 6, North Coast Regional Water Quality Control Board, Laguna de Santa Rosa TMDLs. Further, the Mark West Creek is one of five streams the California Water Action Plan selected for an effort to restore important habitat for anadromous salmonids. See *Study Plan*, California Department of Fish and Wildlife, June 2018, at i.v., 9-11, attached as Exhibit 7. The study plan for this effort notes that "Water diversions, modifications to riparian vegetation, and sediment delivery to streams [like Mark West Creek] . . . have contributed to the degradation and loss of habitat" for endangered salmonid species. *Id*. Considering (1) the existing sensitivity of the watershed, and (2) the numerous impacts on water and aquatic resources resulting from cannabis cultivation that are contemplated by the State Water Resources Control Board's Cannabis Cultivation Policy,[5] it makes no sense to allow cannabis cultivation in the Mark West Watershed. Instead, excluding cannabis cultivation from the Mark West Watershed avoids incompatibility with state regulations and avoids degradation of a valuable environmental resource.

Therefore, the FMWW request that commercial cannabis activities be excluded from the Mark West Watershed and other similarly impaired watersheds. Only by excluding cannabis cultivation operations from the Mark West Watershed and similar watersheds can the County ensure that sensitive biotic resources present in these watersheds are protected.

Finally, it is important to note that property owners do not have an absolute right to grow cannabis. State and federal law simply provide that the County must allow an

[5] *Cannabis Cultivation Policy: Principals and Guidelines for Cannabis Cultivation*, California State Water Resources Control Board, Oct. 17, 2017, https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/final_cannabis_policy_with_att_a.pdf.

economically reasonable use of property. *Agins v. Tiburon* (1980) 447 U.S. 255, 260. Property owners are not entitled to any particular use of property, nor are they entitled to compensation for even a "very substantial" diminution in the value of their property. *Long Beach Equities v. County of Ventura* (1991) 231 Cal. App. 3d 1016, 1036. By contrast, the County has an obligation to protect public trust resources and to comply with state law. *National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419.

Even if ensuring compliance with these state and local laws substantially diminishes the value of the applicant's property, there is no automatic taking or County liability. For example, in *MacLeod v. Santa Clara County*, a property owner sued for a taking after he was denied a timber harvesting permit for his 7,000 acre ranch. (9th Cir. 1984) 749 F.2d 541, 542-44. On appeal, a 9th Circuit court held that the denial of the permit was not a taking because the owner could continue to use or lease the land for cattle grazing as well as hold the property as an investment. *Id*. at 547. "The fact that the denial of the permit prevented [the owner] from pursuing the highest and best use of his property does not mean that it constituted a taking." *Id.* at 548. Similarly, in *Long Beach Equities*, the court found that even where "zoning restrictions preclude recovery of the initial investment made." they do not result in a taking as long as some use of the property remains. 231 Cal. App. 3d at 1038. Further, to the extent that there are existing permitted cannabis grows in the watershed, the County may create exceptions to the exclusion for existing uses, and may require them to phase out operations over time.

Designation of the Mark West Watershed and other similarly impaired watersheds as an exclusion zone will simply prohibit the cultivation of cannabis in an area that is ecologically sensitive; it will not preclude other uses of property in the area. Because other less impactful uses of property remain, the County will have more than met its obligation to ensure some economic use of property in these watersheds.

IX. Conclusion

As set forth above, the SMND does not come close to satisfying CEQA's requirements. It fails to describe the Project and the existing setting and fails to provide a complete analysis of Project impacts and feasible mitigation measures. At the same time, ample evidence demonstrates that a fair argument exists that the Project may result in significant environmental impacts. In light of this evidence, CEQA requires that an EIR be prepared. For this reason, and because the Project conflicts with core policies of the County's General Plan, the Friends of Mark West Watershed request that the Project be denied. The Project should not be reconsidered until a legally adequate EIR is prepared and certified.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Joseph "Seph" Petta

Aaron M. Stanton

Carmen J. Borg, AICP
Urban Planner

Exhibits:

1. Letter from Greg Kamman, Senior Ecohydrologist with CBEC Ecoengineering, dated March 16, 2021

2. Jeremy Kobor, et al., Integrated Surface and Groundwater Modeling and Flow Availability Analysis for Restoration Prioritization Planning, Upper Mark West Creek Watershed, Sonoma County, CA (Dec. 2020)

3. Letter from Robert Coey, National Marine Fisheries Service (Feb. 26, 2021)

4. K. Ashworth and W. Vizuete, *High Time to Assess the Environmental Impacts of Cannabis Cultivation*, Environmental Science & Technology (2017)

5. Bauer et al., *Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds*, PLos ONE (2015)

6. North Coast Regional Water Quality Control Board, Laguna de Santa Rosa TMDLs

7. *Study Plan*, California Department of Fish and Wildlife, June 2018

cc: Scott Orr, scott.orr@sonoma-county.org
Susan Gorin, Susan.Gorin@sonoma-county.org
David Rabbitt, David.Rabbitt@sonoma-county.org
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1351089.3

From: Jake Dobrowolski
To: Cannabis; Andrew Smith
Subject: Cannabis Ordinance - Public Comment
Date: Thursday, March 18, 2021 10:07:34 AM
Attachments: Public Comment.pdf

EXTERNAL

Hello,

Please find attached my public comment and proposal/solution regarding the proposed Cannabis Ordinance update.

Thank you,

Jakob Dobrowolski
Petaluma, CA

Jakob Dobrowolski
Petaluma, CA
jd676@cornell.edu

3/17/2021

Sonoma County Planning Commission
c/o McCall Miller
Department Analyst, Cannabis Program
County Administrator's Office

Dear McCall Miller and the Sonoma County Planning Commission,

Re: Draft Ordinance and Draft Subsequent Mitigated Negative Declaration - Sonoma County Cannabis Operator Permitting Amendments

My name is Jakob Dobrowolski and I am a Petaluma resident. This letter serves as an appeal to and request for withdrawal of the current Sonoma County Cannabis Ordinance update. As currently proposed, these changes are devastating to county residents, rural land, property values, farmers/ranchers and the image/reputation of our beloved county.

My proposal and solution:

Require all the commercial cannabis operations be based in already established industrial areas.

This means that these commercial cannabis operations will:

- use municipal water, so there is no concern regarding neighbor's wells going dry and aquifer depletion. Connected to city water, they never run out of water, eliminating any water concerns, including the need to allow trucking in of water. They will also pay for all the water they use, helping municipalities and incentivizing efficient water usage.
- use municipal sewer systems, preventing any negative concerns about erosion, run off, drainage, etc.
- be connected to a reliable electrical grid already in place and built for commercial activities.
- have fewer security concerns, as they will be in permanent commercial structures, such as warehouses, which can easily be wired with CCT cameras, are already fenced in, and are built to be kept secure. Additionally, response times for emergency services will be significantly better in industrial areas than if these operations are in rural areas.
- be able to use security guards without any privacy concerns to residential neighbors and would be able to share security guards.
- be able to operate 24/7/365, receive as many deliveries as possible, have ample parking, all with limited impact on residential communities.
- be able to mitigate odor, as it will be indoors. Any odor which will be created will mostly only impact the industrial area, which is less sensitive to odors, compared to residences or other more sensitive places.
- be able to use already existing road infrastructure set up for commercial activity.
- be able to pool resources, as they are already advocating for.
- reduce threat of crop loss due to wildfire, power outages etc...

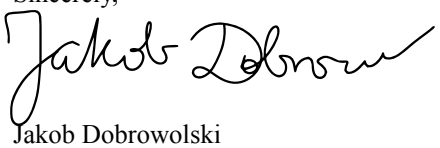
This will prevent these commercial cannabis operations from displacing local farmers.
This will keep these operations away from neighborhoods, residences and other sensitive areas.
This will protect the environment as these cannabis operations would be located in already established industrial/warehousing areas.

This will allow commercial cannabis to connect to the reliable city water and sewer network, eliminating the need to truck in water, and deal with erosion, runoff, wastewater, and other environmental concerns.
This will set these cannabis businesses up for success, as they will be able to take advantage of local roads designed to handle commercial traffic. It will also allow them to operate 24/7 without impunity and disturbance to residential communities.
The commercial cannabis operations will be surrounded by other businesses and entrepreneurs which will foster cross-functional innovation and collaboration.
This will allow these cannabis operations to cluster, something they are already advocating for, and will enable them to share resources to achieve larger scale and efficiency, as well as foster collaboration and innovation within their industry.

I urge you to reject the ordinance as currently drafted and use my proposal to locate all commercial cannabis operations in industrial or warehouse districts. This is a win-win for everyone.

Thank you.

Sincerely,



Jakob Dobrowolski
Petaluma, CA
jd676@cornell.edu

From: kgledhillconsulting@comcast.net
To: David Rabbitt; Andrea Krout; Cannabis
Subject: Phase 2 of the Sonoma County Cannabis Ordinance
Date: Thursday, March 18, 2021 10:27:30 AM
Attachments: SonomaCountyCannabisOrdinance2021.pdf

EXTERNAL

Dear Supervisor David Rabbitt,
Attached please find letter in support of 1000- foot buffer/setbacks around unincorporated towns for commercial cannabis operations.

My best,

Katherine
Katherine Gledhill

March 17, 2021

Supervisor David Rabbitt
Sonoma County Board of Supervisors
575 Administration Drive
Room 100 A
Santa Rosa, CA 95403

Re. Phase 2 of the Sonoma County Cannabis Ordinance

Dear Supervisor Rabbit,

As a long-time resident of Sonoma County, I am concerned about the compatibility of commercial cannabis cultivation operations in close proximity to the 42 unincorporated towns in the county.

I support a minimum 1000-foot buffer/setback zone of outdoor or hoop house cultivation around Sonoma County unincorporated towns adjacent to agricultural-zoned lands, in addition to buffers/setbacks stipulated around unincorporated community public use areas such as schools, cemeteries, walking paths, treatment centers, and parks. These setbacks should be determined from property lines, not residential structures.

We hope that you will consider this reasonable revision to the proposed Part 2 of the Sonoma County Cannabis Ordinance.

Sincerely,

Katherine Gledhill
11526 Sutton Street
Petaluma, CA 94952

From:	Lauren Mendelsohn
To:	PlanningAgency; Greg Carr; Larry Reed; Gina Belforte; Cameron Mauritson; Pamela Davis; Cannabis; Andrew Smith; Christina Rivera; Sita Kuteira; Jennifer Klein; BOS
Cc:	Omar Figueroa
Subject:	Comments for Planning Commission on Proposed Cannabis Policy Changes
Date:	Thursday, March 18, 2021 10:20:26 AM
Attachments:	LOOF Letter to SoCo Planning Commission Regarding Proposed Cannabis Policy Changes_3.18.21.pdf

EXTERNAL

Good morning,

Attached please find a letter from the Law Offices of Omar Figueroa regarding the proposed cannabis policy updates that the Planning Commission will be discussing today.

Thank you.

****

Lauren A. Mendelsohn, Esq.
Senior Associate Attorney
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****

LAW OFFICES OF
OMAR FIGUEROA

March 18, 2021

Sonoma County Planning Commission
2550 Ventura Ave.
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CC: cannabis@sonoma-county.org
CC: andrew.smith@sonoma-county.org
CC: christina.rivera@sonoma-county.org

Comments on Proposed Cannabis Policy Updates

Dear Honorable Planning Commissioners and Staff,

The Law Offices of Omar Figueroa is a locally-owned and operated boutique law firm based in Sebastopol. We serve a wide variety of cannabis and hemp clients throughout the state, including here in Sonoma County. Our founder and principal Omar Figueroa was a member of the Cannabis Advisory Group (CAG) when that was active, and has published several books about California's cannabis laws. We sit on the boards of the ACLU of Sonoma County, the National Cannabis Industry Association, the International Cannabis Bar Association, and the Cannabis Tourism Association. Additionally, we have been voted Sonoma County's "Best Cannabis Law Firm" by the North Bay Bohemian's readers' poll for several years running.

Below are comments regarding the proposed cannabis policy updates, as well as some comments about Sonoma County's cannabis program overall.

General Comments

- Sonoma County just received a $75,000 grant to develop a cannabis equity program to assist those who have been most harmed by the effects of prohibition in obtaining licenses and job opportunities in this industry. This is, at least in part, thanks to our advocacy work, and we look forward to working with the County to assist in development of this program.[1]

[1] https://business.ca.gov/cannabis-equity-grants-program-for-local-jurisdictions/.

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- We believe that Sonoma County would benefit from having a dedicated cannabis program manager, and a standing committee of the Board of Supervisors to discuss cannabis-related items in a way that allows for public participation.

- The County should align its requirements with State laws and regulations wherever possible. The proposed drafts include some improvements in this area, but many provisions are still inconsistent with and/or more stringent than what California requires.

- Making it possible for cannabis operators in Sonoma County to obtain licenses more easily will help to reduce the illicit market (which is where the crime that many cannabis naysayers complain about is actually related to), in addition to bringing in added tax revenue to the County.

- The cannabis industry is the fastest growing job sector in the country, with over 77,000 new jobs created just in 2020 alone, despite the pandemic (cannabis is deemed an "essential industry" in California.) Sonoma County businesses and residents ought to be given more opportunities to participate in this booming sector.

- Just as there are appellations for wine, there will soon be appellations for cannabis, and Sonoma County is ideally positioned to be home to a number of these. The proposed updates would allow for more local businesses to participate in the State's cannabis appellations program, which will be rolling out later this year.

- Applicants who've been going through the existing Chapter 26 cannabis process for years should receive priority under any new process the county adopts. A pathway to transfer one's application or permit from the PRMD track to the AWM track should be included in the ordinance. Consider adding the following language to Chapter 38:

  Section _____. Transition to Chapter 38 Pathway.

  - *An applicant who, as of the date of the adoption of this ordinance, has applied for a commercial cannabis cultivation permit under Chapter 26 and who would also qualify to submit an application pursuant to this Chapter 38 may request for their project to be reviewed under this Chapter instead (an "application track transition"). Such requests shall be granted if the requester meets the criteria for a cultivation permit under Chapter 38. The Agricultural Commissioner shall develop and promulgate specific rules to govern application track transitions, which shall include, at a minimum: (i) a description of the process and any required forms; (ii) a method for prioritizing application track transitions above new applications; and (iii) a waiver or reduction of the normal application fees to reflect the fees that have already been paid to process the original application.*

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- *A holder of a commercial cannabis cultivation permit under Chapter 26 who would also qualify for a permit under Chapter 38 shall, prior to renewal of their permit, have the option to continue with their Chapter 26 permit or to submit a request to transfer their project to be regulated according to Chapter 38 (a "compliance track transition"). Such requests shall be granted if the requester meets the criteria for a cultivation permit under Chapter 38. The Agricultural Commissioner shall develop and promulgate specific rules to govern compliance track transitions, which shall include, at a minimum: (i) a description of the process and any required forms and (ii) a method for allowing permitted operators to continue their operations while their request is considered.*

Comments on Proposed General Plan Update

- We support treating cannabis as agriculture, and welcome the proposed General Plan Amendments. That being said, we request that the County clarify exactly what protections and privileges would be afforded by this change given that the definition of agriculture in the Zoning Code would not be updated.

Comments on Proposed Chapter 38

- State cultivation licenses are issued by the Department of Food & Agriculture, not the Bureau of Cannabis Control. Soon, they will be issued by an entirely new agency, the Department of Cannabis Control. Therefore, the definition of "Licensed Premises" in Proposed Chapter 38 (§38.18.020) needs to be amended.
    - CURRENT: *"Licensed Premises" means the structure or structures and land covered by an active commercial cannabis license issued by the State of California Bureau of Cannabis Control.*
    - SUGGESTION: *"Licensed Premises" means the structure or structures and land covered by an active commercial cannabis license issued by the Department of Food and Agriculture or other State agency with authority to issue commercial cannabis licenses.*

- We support allowing a person or entity to be permitted for more than one acre of cultivation, provided that reasonable regulations are imposed and that smaller operators also have equal access to licensing.

- The definition for "new building" should be changed from January 1, 2021 to the date when the ordinance is adopted.

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- Setbacks - Measurement (§38.12.040): We support measuring setbacks from the cultivation area to the property line of the sensitive receptor. §38.12.040(C) should be updated to reflect this. Additionally, a reduction of the required setback from a sensitive receptor should be allowed if a variance is obtained.

- Setbacks - Class 1 Bikeways (§38.12.040(A)(3)): We caution against addition of Class 1 Bikeways as a sensitive receptor. There are many existing and proposed Class 1 Bikeways in the county, including on major roads.[2] To our knowledge, no other jurisdiction in the state considers bikeways to be a sensitive use. This is an unnecessary change as the county's requirements for cultivators, including its rules regarding sensitive receptors, are already more stringent than state law.

- Length of permits (§38.10.030(A)): We support a 5-year term for cultivation permits issued under Chapter 38, which would be consistent with the current requirement for cultivation permits issued under Chapter 26.

- Farmland protection (§38.12.060(B)): Has staff considered how many of the otherwise-eligible properties are impacted by this? An analysis of the important farmlands, including prime, unique, and farmlands of statewide importance in Sonoma County reveals that many Ag and Resource zoned properties fall into one of those categories.[3] The language in (a) is also too broad, and would mean that someone with a licensed greenhouse cultivation facility could not build or expand an office for their operation if the site is within one of the listed farmland categories. Additionally, this language is much more stringent than is currently required or proposed for Chapter 26 cultivation permits, which the Chapter 38 farmland protection provisions should be brought in line with.

- Odor Control (§38.12.110(B)): It is unclear whether the second and third sentences apply to all cultivation applications, or just those with permanent structures that will contain cannabis, which are mentioned in the first sentence. If it applies to all cultivation sites, that is problematic due to the impossibility of preventing all odor associated with any type of outdoor agricultural production from being detected on another parcel. The same applies to permits issued under Chapter 26. Recall that hemp is an agricultural crop that can be grown in Sonoma County and smells identical to cannabis; having two separate standards for the same odor is unfair and unnecessary.

- Generators (§38.12.110(C)(2)): Planned and unplanned power outages are common in Sonoma County, especially during fire season. However, a power outage does not typically rise to the level of a "local, state, or federally declared emergency or disaster." Permittees should be able to use generators during an emergency on the property,

[2] Bikeway map available at: https://sonomacounty.ca.gov/PRMD/Long-Range-Plans/Bicycle-and-Pedestrian-Plan/Bikeways-Map/.
[3] Farmland map available at: https://maps.conservation.ca.gov/DLRP/CIFF/.

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regardless of whether or not a local, state, or federal emergency or disaster has been declared. State law allows for this.

- Processing (§38.14.020(A) & (B)): Subsection (A), which mentions outdoor processing activities, isn't consistent with subsection (B), which says that all processing must be done indoors. Processing should not be limited to indoors.

- Self-Transport (§38.14.020(C)): We support allowing permitted cultivators to engage in self-transport activities and allowing them to have a state distribution license issued to the property. This is in line with what some other jurisdictions allow, including Mendocino and San Luis Obispo counties.

- Propagation area (§38.14.020(D)): The 25% limitation on propagation area should be removed for consistency with state law, which does not impose a cap on how much area a licensee can use for propagation.

- Multiple Tenants (§38.14.020(E)): We support the proposed language allowing more than one person to be a permittee and operate under a single cannabis permit so long as each person maintains an active state cannabis license.

- Events and Tourism (§38.14.020(F)): We support allowing cultural events, special events, tours, tastings, and similar activities to take place at a permitted cultivation site, provided that all applicable laws and regulations are complied with. Additionally, we support allowing farm stands to exist on a property with a permitted cultivation site if the appropriate state license(s) are obtained. Cannabis tourism is booming and will continue to grow in popularity over the coming years, so rather than ignoring this fact Sonoma County should embrace and benefit from it.[4]

- Enforcement: A clear distinction must be made between personal cultivation (for medical or adult use) and commercial cultivation. Personal cultivation involves growing cannabis for one's self or for someone whom one is a caregiver for, without selling it to anyone. Commercial cultivation involves growing cannabis that will be sold on the marketplace, be it the legal or illicit market. The county's enforcement practices suggest a misunderstanding of this concept, resulting in patients and adult users being penalized as though they are unlicensed commercial operators without any evidence of commercial activity. A different penalty structure should exist for commercial and non-commercial cannabis violations.

[4] See, for example, the following articles: https://www.nytimes.com/2019/07/03/travel/marijuana-vacation-travel-cannabis-usa.html, https://www.forbes.com/sites/nickkovacevich/2018/08/16/the-next-big-thing-in-cannabis-tourism/?sh=5a7453df5d9b, https://grizzle.com/tourism-cannabis-use/.

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Comments on Proposed Changes to Chapter 26

- Zoning Tables (Sec. 26-88-250): Modify Table 1A [###] so that a Minor Use Permit (MUP) is required instead of a Conditional Use Permit (CUP) for activities that are currently allowed with a Zoning Permit (ZP). A MUP still gives the County the ability to add conditions to a project, without burdening applicants with unnecessary added costs and lengthier timelines associated with CUPs. No justification has been provided for why a CUP is needed instead of a MUP for these small-scale license types.

- Sec. 26-88-250(c)(5): We support allowing tastings, promotional activities and events. Sonoma County is already a major tourist destination, and cannabis tourism has become increasingly popular, with numerous companies already taking visitors on tours of cannabis facilities throughout the North Coast just like they do with wineries and breweries. Rather than turning a blind eye, the County should embrace this.

- Propagation area (§26-88-254(f)(4)(b)): The 25% limitation on propagation area should be removed for consistency with state law, which does not impose a cap.

- Generators (26-88-254(g)(3)): Planned and unplanned power outages are common in Sonoma County, especially during fire season. However, a power outage does not typically rise to the level of a "local, state, or federally declared emergency or disaster." Permittees should be able to use generators during an emergency on the property, regardless of whether or not a local, state, or federal emergency or disaster has been declared. State law allows for this.

- Enforcement (§26-88-252): As mentioned above, there are ongoing concerns related to the County's cannabis enforcement practices. The current rules have led to Code Enforcement officers assessing penalties of $10,000 or more per day for something as minor as a medical patient growing a few more square feet of cannabis for their own personal use beyond the 100 square feet allowed by the county for personal medical gardens. This is because the Code Enforcement team considers any personal cultivation in excess of the allowed amount to be commercial cannabis, even if there is no evidence of commercial activity occurring. This is simply preposterous, and may violate the Constitutional prohibition against excessive fines. We propose the following language be added to subsection (a)(1):

    - *§26-88-252(a)(1): Enforcement of Violations. A violation of Sections 26-88-250 through 26-88-258 is subject to enforcement under Chapter 1. Notwithstanding the foregoing, a violation of Section 26-88-258 related to personal cannabis cultivation shall not be deemed a violation related to commercial cannabis unless there is evidence of commercial activity.*

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Sonoma County's motto is "Agriculture, Industry, Recreation," and cannabis relates to all three of these pillars. We ask that the Planning Commission reject the Reefer Madness of yesteryear and approve the Staff recommendation, with the modifications discussed above, in order to help local businesses and the County's economy while combating the illicit market.

Thank you for your time and consideration of this important issue.

Lauren Mendelsohn
Lauren Mendelsohn, Esq.
lauren@omarfigueroa.com

Omar Figueroa
Omar Figueroa, Esq.
omar@omarfigueroa.com

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From: Marc Farre
To: Cannabis
Subject: re proposed cannabis ordinance
Date: Thursday, March 18, 2021 10:50:56 AM

EXTERNAL

May 17, 2021

To: Sonoma County Planning Commission and Board of Supervisors
c/o McCall Miller, Department Analyst, Cannabis Program, County Administrator's Office

Dear Planning Commission and members of the Sonoma County Board of Supervisors,

I know you have a tough decision to make — balancing the needs of your resident constituents and the needs of a potentially lucrative industry. I know there are lots of coherent arguments on both sides of the equation.

But please, we must start with one bedrock principle: Do No Harm to those who are are already here. They were here first and they have the right to not have their lives, livelihoods and property values suddenly upended and degraded by a new industry that could pop up all over the County, with minimal if any oversight. The commercial interests of the few should never outweigh the interests of the many — especially when the few could demonstrably harm the many.

I am asking you to please adopt a more realistic and nuanced approach to zoning — to take into consideration not just the size of one parcel, but the actual ecosystem of human beings living around it. We need far more discretion based on genuine neighbor concerns.

I am asking you to consider the real-world impact of this proposal. A parcel (even a 10-acre DA parcel) does not sit in a vacuum, especially in parts of West County where the topography is wild and varied and the daily winds are strong (at the exact same time — summer and fall — as the flowering season).

Many more people live in DA and RR and other mixed use areas (I live west of Sebastopol near Furlong Road) than there are people planning to grow cannabis for profit. If the two coexisted with minimal interference, that would be no problem.

But here's the fundamental problem: the intense odor of pot grown in diverse areas (some DA, some RR, etc) simply can not be contained — not in windy West County, and not with our heavily populated rural areas. No matter how good it may look to you on paper, in the real world, the lines and setbacks you propose to draw are not realistic.

Here's the bottom line: People who live here (many for a long time) and pay taxes and participate in all that makes our county special should not be forced from their homes by the stench of skunk pervading the air for months at a time.

Where I live, just outside of Sebastopol, there is a wide diversity of zoning regions and parcel sizes huddled all close together in a hilly, windy ecosystem. I live on a hilltop with a couple of DA/10-acre parcels nestled among many smaller parcels and homes. Several dozens of

residents are within smelling distance from even a single cannabis grow.

I know this from experience: My family and I have had an illegal grow two DA parcels over (I too am in DA) whose stench permeated every crevice of our land, our homes (even closed up) — and frankly, our sanity — for months on end. An enforcement action by the PRMD revealed that the number of plants in those hoop houses were between 50 and 80 — well under an acre. Under the proposed ordinance, that same grower would be entitled to grow much more than this. (Not to speak of the two or three other nearby DA parcels which under this ordinance would also be entitled to begin to plant an acre of marijuana.)

I say without hyperbole that should this happen, our home would become unlivable. We would be forced to sell it and leave, and that would break my heart. Everything we have spent our lives working for is in our homes and land. Worse, we would lose an enormous amount of its current value — because for all the beauty of Sonoma County, nobody will want to live in the midst of what is essentially a smelly cannabis factory.

Please, put yourself in our shoes: How would you personally like this if it happened to you and your home and family?

Marijuana is not just another ag product, an industry that needs supporting. For all its enormous profitability, it can also be an environmental nuisance if not handled carefully and overseen.

So how is advocating for it to be allowed to operate because the County wants the revenue any different than allowing onshore drilling in the pasturelands near the coast? Would the County allow residents in a rural residential area to legally put up factories on their property that spew foul air into the homes and onto the gardens of their neighbors? Would I be allowed to start a nightly rave on my property with loud music and traffic and commotion, just because I paid sales tax to the County on the income?

From an environmental and quality of life point of view, these are much more honest comparisons to the impact this proposed ordinance would have on our residents… than the one to a vegetable or citrus farm.

I am not against cannabis, and I understand it is a fast-moving industry. But in your rush to cash in on the potential revenue of this plant at the County level, I beg you to please first STOP and consider what this would do to the residents whom you represent (and frankly who voted for you).

STOP and consider how the landscape — the beautiful landscape that we adore and that attracts billions in tourist revenue daily — will be scarred by hoop houses and the air nauseating across large swathes of the county. Forever.

STOP and consider what the industry will look like within a couple years when it becomes federally legal and the big players step in, scale up, and put all the small farmers you think need your help… out of business. Such a short-sighted, money-focused move could end up ruining the County forever…. And for what even short-term gain?

Napa County banned commercial cannabis operations, and I strongly feel we should, too. But if you decide that it must be a legal activity, then for the long-term health — economic as well

as human — this ordinance needs to be sharply cut back to put residents first, and put some real teeth into discretionary use rulings and public comment. Anything else would be a cruel and unwarranted assault not the people who put you in office (and have the power to remove you).

I feel very passionately about these basic rights, and so do all my neighbors. I ask respectfully that you put us first, and do no harm.

Thank you for reading this.

Marc Farre

From: Roxanne
To: Cannabis
Subject: Comments on Draft Amendments to Chapter 26 of Sonoma County Code
Date: Thursday, March 18, 2021 10:03:34 AM

EXTERNAL

Planning Commission
c/o McCall Miller
Department Analyst, Cannabis Program
County Administrative Office
575 Administrative Drive, Suite 104A
Santa Rosa, CA 95403

Changing the County Code to include cannabis production as an "agricultural product" is disingenuous proposal. Cannabis IS NOT an agricultural product. As defined by the current code, agriculture means the cultivation of products that are ultimately meant to feed the general population, animals, and livestock. Cannabis does none of that. Just because cannabis is planted in the ground, grown and then harvested does not qualify it as agriculture. The resulting product is ultimately for purposes of recreational use, and, to a limited extent, for medical purposes. The use of the term "medical use" is also misleading, because 70% of production of "medical use" is claimed by persons who provide a medical prescription for its use for mental conditions such as anxiety, depression. These medical permits are a dime a dozen, and will be used by producers as the main purpose of their intention to grow cannabis. As for the purchase of cannabis for recreational use, there are numerous dispensaries in the county to provide for that use.

More importantly, amending code so that cannabis production is included as an "agricultural" product, which then would be administered by the Agricultural Department out of Sacramento, by a ***ministerial method***, would be another way for the county and state governments to **chip away at the rights of residents** affected by the potential establishment of these cannabis farms a means to have equal participation in any decisions regarding their location and implementation.

"Ministerial" means residents would receive no notice of any changes to the location and production, either in physical, permanent, structures, and/or infringement on residents to the use of the area immediately within the vicinity of their residences. It would certainly make life easier for the Planning Commission and Permit Department who would refer to any complaints or issues regarding adding cannabis as an "agricultural" product and its affects on those residents, to the Agriculture Department in Sacramento. A morass of bureaucratic red tape, handled by 2 additional employees in the Agricultural Dept to handle the cannabis production and implementation of the "revised" code. We, the residents of the Liberty Valley area, an throughout the county, want to have an impactful say in ***anything*** that involves changing the nature of this area, which includes who and what this proposal will have on our rights at residents and the nature of our area. A "ministerial" method removes that choice. If residents attempt to contact the county board of supervisors, the Planning Commission, etc. they would be referred to Sacramento only to be lost in the beehive of bureaucrats and the ever present paperwork requirements, submitted

in a precise manner, for consideration. The bottom line for residents would be "if you don't like it; sue me". That prospect would be costly to the residents, while the bureaucracy continues on its merry way for years while residents' await a response which could take years!
The change to the code to include cannabis production as an agricultural product, administered by a change to a "ministerial" method of handling the changes IS UNACCEPTABLE!
You do not need to acquire 65,000 acres for production of cannabis! It is ridiculous! It will rival the acreage used production of grapes alone in the county which is absurd! The proposed locations for these production sites appear to in medium or high residential areas, like a patchwork quilt. Won't that be a lovely sight in the hills and rural areas of this county. Manufacturing like structures, tents/igloos covered in plastic tarps, which would be ripped apart by our increasing windy periods that now require emergency notifications. Because it appears that our local government is so anxious to implement these changes so that it can reap the income it could produce, they have no compunction to ramrod these changes at citizens' expense.
To Whom it May Concern
The location of this proposal to permit a commercial production of cannabis at the juncture of Pepper Road and Pepper Lane is absolutely UNACCEPTABLE.
Traffic: Pepper Road is a VERY traveled main road leading from Highway 101 into the heart of an old, historic area of the Petaluma valley. The number of trucks using the road relating to the dairy industry, the tree farms, wineries, etc, has grown tremendously in the 45 years I have lived here. The noise level has also increased, and add the number of individuals using the road as a race way with loud car engines and motor cycles on. This goes on regularly. Now add additional vehicles as will be involved in the *cultivation* of cannabis with add addition noise and wear and tear not only on Pepper Road, but also access roads such as Jewett Lane and Center Lane; two roads that this county has ***miserably*** failed to maintain in the time I have lived here. There is just one flashing traffic signal. Accessing these two lanes from Live Oak Drive will be more difficult than ever with additional traffic driving at speeds well above the designated speed limit.
Water: The residences in this area are serviced by wells. If you are not aware of it now, we are in a drought, and have been for several consecutive years with only a few "normal" rain years. And now you are proposing use of the land for a product that requires 600% more water than can already be provided to current residences, and other more environmental sensitive commercial concerns in the immediate area. Apparently, the planning department in it's infinite wisdom, has already submitted the steps to have residential wells metered. Why? There is a water shortage in this county! So now you want to divert water to growing of a product that is, in fact, NOT AN AGRICULTURAL product (...Yet, but we see the writing on your wall).
This also applies to the several potential locations immediately in the vicinity of the Pepper Road/Lane proposal.
Security: Just who is going to maintain the security of the nearby homes that would be located next to the "facilities". This location will inevitably draw criminal and/or truants to it. The residences around the "facility" have open space around them, in most cases with natural shrubbery, trees, groves of Eucalyptus. These would be helpful for the miscreants to trespass on private property in order to either evade or

access the "facility". Oh, and why not burglarize nearby residences while they're in the neighborhood. Too many times have residents of the unincorporated areas of Petaluma called Petaluma Police or Sheriff's dept regarding a problem only to be told by each entity that "that's not in our jurisdiction". If it is to be the owners responsibility, what would that involve? Razor blade wire fencing? Trained dogs? Ultra bright flood lighting at night? Guards empowered to physically stop intruders with some kind of weapon? Turn the area into a high risk environment instead of the pleasant, rural neighborhood that has thrived in this small area for over 100 years!!
Odor: Because of the huge dairy presence in the immediate area of Pepper Road/Lane, we are all accustomed to the odor of the cow dung that necessarily is spread in the fields. It is seasonal, for the most part, and a reminder that we live in a beautiful rural neighborhood. The odor of "skunk weed" is powerful and called "skunk weed" for its particular smell. No one wants to live with the smell of skunk--and we have those too--on a continuous basis.
This area of Petaluma is an old, historic area. We have one of the top elementary schools, Liberty School, with in 4 miles of the Pepper Road/Lane site. We have an old cemetery going back over 100 years. Remnants of the old chicken farms that once proliferated in this area, to remind us of the history of the area, vineyards, sweeping fields for cows to graze on. This area was designated an agricultural belt, and therefore limits the number of residences that can be built, new, in the area. Now, you want to blight the area with cannabis facilities, consisting of ugly warehouse-like buildings, and giant igloos covered in plastic tarps, ugly fencing. And when the venture fails, as some will, who will deal with the mess left behind? The Planning Department; the Permit Department?? God help us in that case! To say nothing of the property values decreasing when potential buyers see the ruins of the facility in what is/was a lovely community. (Oh, but I forget, your proposal to use the "ministerial" method of both permitting and removal of the remains. Handled by some untrained, un-engaged bureaucrat in the Agriculture Dept., located in Sacramento, who knows nothing of the area and "guided" by what is written in the code books. I address this issue in another communication).
Is this how the Planning Commission of this county plan to raise revenues for the future of this county? We will become a huge pot growing county, outstripping the wine growing acres--and which are ***real agriculture***. Supported by "contributions" from those big corporations who are the ones backing these proposals, and let the residents be damned. Finesse the county codes to remove any right of residents to determine the future of the area that they so love for its rural, natural beauty, by not advising them of any changes that may affect the right to the quiet enjoyment of their homes.
This proposal **MUST NOT BE PASSED**.
Marie-Roxanne Gudebrod
67 Live Oak Drive
Petaluma, CA 94952
(707-495-9205)
NOT ACCEPTABLE!
The growth of cannabis to the extent and administration of your "required" acreage is excessive, and what I would want my county to represent as our main agricultural product to be.

From: Pete Gonzalez
To: Cannabis; David Rabbitt
Subject: Part 2 SC Cannabis Ordinance
Date: Thursday, March 18, 2021 10:45:35 AM

EXTERNAL

Hello, this letter is in response to Part 2 of the Sonoma County Cannabis Ordinance. I request a minimum 1000 foot buffer/setback zone and
that expansion to a greater distance, depending on locally prevailing conditions, is required around residential property lines in all unincorporated towns and neighborhoods. I ask to put all cannabis processing facilities in a commercial zone district. I ask that the county not approve cannabis permits next to towns and neighborhoods. I ask that the county require an Environmental Impact Report to properly study and reduce the impacts of commercial cannabis on residential towns and neighborhoods. This will help eliminate all the time and money spent by growers and neighbors alike. Odor, water use, safety, traffice and road issues, chemical use, runoff, sound and lights are all issues that I am concerned about.

Thank you,
Pete Gonzalez and Janet Ickes
Bloomfield residents

From:	Sheri Fox
To:	Cannabis
Cc:	David Rabbitt
Subject:	Our concerns re: Sonoma County Cannabis Ordinance (Pt 2, +)
Date:	Thursday, March 18, 2021 10:49:04 AM

EXTERNAL

To whom it may concern,

Re: Cannabis as it relates to small and unincorporated towns in Sonoma County, we agree with all the voiced concerns regarding the lack of appropriate buffer zones between grows and residential homes (Pt 2 Sonoma County Cannabis Ordinance). Considering the noise, odors, water run-off, etc., we need a minimum 1000' buffer zone. It is unfortunate that all these small and unincorporated towns are being forced to use their own (our own) resources time and time again to fight what should be an obvious problem. Cannabis is not like cucumbers, it is a "mind-altering psychoactive drug" product with a high resale value, it can not be treated the same as any AG crop. A few years ago it wasn't even legal to grow, so it's a big jump to AG crop. We are not anti-cannabis, but controls have got to be put in place to protect rural communities and insure that those who grow and sell cannabis products are held to a higher standard.

Another of our biggest concerns that's rarely mentioned is: where is all the water coming from? Several of our Bloomfield neighbors have already had wells run dry. In Bloomfield we share a single aquifer, two acres of cannabis could easily overwhelm the limited water supply we have. In addition, in this extended drought period throughout the state of California, we'd like to hear what requirements are being made for new farms to use reclaimed water.

We hope the county recognizes the need for limits on approving new cannabis industry in our small towns and requires whatever studies are needed in order to protect our rural spaces. I understand this is a complicated issue but please take the time to consider and reconsider what your decisions mean for the future of our beloved Sonoma County. Thank you for hearing our concerns.

Sincerely,
West Sonoma County residents
Sheri Fox & Jon Rawlinson

Find me on Instagram @unfetteredfox
http://www.ScrapHoundStudio.com

From: VICKI AMTOWER
To: Cannabis
Subject: Cannabis buffer
Date: Thursday, March 18, 2021 10:02:21 AM
Attachments: Cannabis letter.pdf

Dear Sonoma County Planning Commissioners and staff,

I am requesting a minimum 1000 foot buffer/setback zone around residential property lines in all unincorporated towns and neighborhoods to help protect the communities a cannibus ordinace will impact. Please add this to the ordinance so that our large communinty of Bloomfield will experience as little impact as possible from the proposed cannabis operation.

Thank-you for your consideration,
Vicki Amtower

From: Clara Enriquez
To: Cannabis
Subject: cannabis plantation in Graton
Date: Thursday, March 18, 2021 11:37:11 AM

EXTERNAL

To whom it may concern:

I'd like to take this opportunity to bring up the concerns of several Hispanic Families who live in Graton for decades and can't speak up because of language and technology issues

This are some good reasons WE OPPOSE to have a cannabis plantation in Graton :

We don't want to risk our water supply - we completely depend a 100% on our wells
marijuana requires a lot of water
this will deplete our wells

Our kids have grown in a safe and quiet town so far- this kind
of business will bring noise, pollution, unbearable ODORS but the WORSE of all
it will bring CRIME to our beautiful town. This is for sure
that will change the the safety and stability of our families - we all know friends who live in Lake County or in Humboldt they share with us since marijuana is a big business in those counties - the community it's at high risk all the time - they can't get out their homes at night time - they can hear from their homes the shootings and cars racing chasing each other - those places are very dangerous to live the culprit is
the marijuana business
We Don't Want That for our Town
Graton
We don't want that in our beautiful Sonoma County
That brings tourism because its a safe county to visit.

PLEASE CONSIDER OUR CONCERNS I CAN SENT YOU
ANY TIME THE LIST OF HISPANIC FAMILIES THAT OPPOSE TO HAVE A MARIJUANA PLANTATION IN OUR TOWN GRATON

Clara T Enriquez

Sent from my iPhone

From: Eliot Enriquez
To: Cannabis
Subject: No Cannabis Farm In Graton
Date: Thursday, March 18, 2021 11:59:47 AM

EXTERNAL

Dear Sonoma County leaders,
I am writing this email in opposition to the cannabis farm that has been proposed in Graton. I have been a long-time resident of Graton and care for its wellbeing and future.

I am concerned that this new cannabis farm will be a detriment to our community to our local ecosystem. As you know, all of Graton depends on our local aquifer for water. We are and have been in a drought and I don't believe that it is wise to farm cannabis right now in the near future, this is a plant that adds no nutritional value to our community, it is simply a commodity.

There is also the negative effect and impact that will cause in our local plants an animals. I hope you vote not on this farm.

Best,
Eliot Enriquez

From: Francine Baldus
To: Cannabis
Subject: Fwd: Opposition to allowing cannabis on 10 acre parcels
Date: Thursday, March 18, 2021 11:56:10 AM

EXTERNAL

cannabis@sonoma-county.org
>>
>> Thank you for the opportunity to express an opinion regarding cannabis cultivation on smaller parcels and in rural zones.
>>
>> We live in a very beautiful county, gifted with natural phenomenon of ocean, hills, valleys, meadows and rivers and amazing agricultural land. Most of us here value our agricultural neighbors, however many of us do not wish to see the expansion of cannabis growing with large greenhouses and proximity to our residences. These greenhouse complexes create a blight on the landscape.
>>
>> First, those of us in the county rely on wells for our water, we are seriously concerned about the cultivation of cannabis that requires incredible amounts of water daily for each plant. To keep this county sustainable, we need to use our water and underground water very wisely. Cannabis is not a necessary use of our precious water resources.
>>
>> Secondly, cannabis cultivation brings noise and traffic. The wine community has already worked with the county to mitigate many of its similar issues. However, adding another layer of commercial interface to our rural neighbors will continue to cause more problems for county administration and rural roads.
>>
>> Finally, it behooves us to clearly look at all the unintended consequences of allowing this drug to invade our community, especially on this proposal of use of smaller parcels. Do we want more greenhouse construction on our landscape, a kind of construction that is not easily reversed. Do we want our water resources monopolized by cannabis cultivation?
>
>> What is it that we want Sonoma County to be famous for ... “pot farms” or can we remain noted for our natural beauty and sustainability?
>>
>> Please keep cannabis growers out of small parcels.
>>
>> Sincerely,
>> Francine Baldus
>>
>> Francine@mbaldus.com
>>
>> P.O. Box 2100
>> Sebastopol, CA 95473

From:	Heidi Mclean
To:	Cannabis
Cc:	Heidi Mclean
Subject:	Public comment: Where is the link to the map of current cannabis operations?
Date:	Thursday, March 18, 2021 11:01:11 AM

EXTERNAL

To whom it may concern,

I attended the March 12 morning Virtual Town Hall meeting. It was not possible for participants to save the information provided in the chat to a file. Therefore I do not have a link to the current map of cannabis cultivators. Why is that information not easily available on your website. When I read that there was a negative impact based on the CEQA report I question what the report was based on. If there are a large number of new operations allowed based on the ordinance amendments proposed by staff there will be increased traffic on current poorly maintained rural roads. There will be more light pollution. There will be more problems during wind events, which Sonoma County regularly has, with odor control. The current standards are not adequate.

I am appalled by the process used for putting this proposal before the citizens of Sonoma County. The difficulty in accessing correct information on the Sonoma County website leads me to the conclusion that transparency is not the objective, nor is public participation. The fact, as stated in the Town Hall I attended, that the proposed changes came from the cannabis lobbying group clarified why this was being pushed now with very little time for understanding the proposal.

This is supposed to be a process to gather information, yet there doesn't seem to be an easy way for members of the public to get the information without digging deeply into the website. That is not acceptable.

I am opposed to all these revisions, at this time, because of the lack of transparency and the convoluted process for accessing the relevant information online since in person is difficult due to the pandemic.

Best,
Heidi McLean

From: Ileana Enriquez
To: Cannabis
Subject: Cannabis Program Concerns.
Date: Thursday, March 18, 2021 11:48:15 AM
Importance: High

EXTERNAL

To whom it may concern,

I am writing ask to ask the Planning Commission to please consider the following concerns in an attempt to reject the cannabis project in Graton.

As seasons change throughout the year many of us barely acknowledge it recognizing it in small talk or solely in reference to own impact. However, these changes are clearly visible in the community path in Graton. The landscape not only clearly defines the changes in weather but, provides a safe haven for various species during migration seasons. The preservation of the location in which the city plans to build is particularly imperative as a natural pond forms during rainy seasons; providing the ecosystem necessary for animals to continue migratory paths. A critical example of the necessary protection of this environment is the Monarch Butterfly. According to a report from The World Wildlife Fund the population of Monarch butterflies dropped 26% in 2020. The top reason for the sever drop: migratory process. As we all know very well (or should know) Sonoma County is a migratory stop for these much-needed pollinators, Graton specifically being one of them. Just 10 miles away from the from the site in question lies Hallberg Butterfly Garden, a wildlife sanctuary critically located. This location needs to be preserved as delicate ecosystems continue to frail what seems like small decisions like this one will have an everlasting impact on a macro level.

Just as animals need protected lands, studies now show humans do to. Based on an article from The American Psychological Association growing evidence shows access to nature or having visible access to green spaces, “has been linked to a host of benefits, including improved attention, lower stress, better mood, reduced risk of psychiatric disorders and even upticks in empathy and cooperation.” The main take way of the mounting research being, “spending time in nature is linked to both cognitive benefits and improvements in mood, mental health and emotional well-being.” Protecting our public spaces is also a way of protecting our community by providing free access to those who may not have the means to any other form of help. Studies also show a direct correlation between healthy mental and emotional development for children. Oak Grove Elementary School is only 10 miles away from the location in question, I understand the main reason for your concern is money. I understand the county wants more money, but the county should be protecting its most vulnerable continuants otherwise why are you *really* in office?

As more and more climate reports continue to come in we see two things; the drought continue, and conditions continue to get more severe. As conditions continue to worse and wells run critically low, how can Sonoma County possibly sustain such a massive new crop? This additional depletion will doubtlessly have a larger impact on constituents, will the profit from this development actually be equitable or will the instant monetary gratification be the county main focus?
Although the allure of financial gain especially from a new sector is highly appealing. The prestige of being first or cutting edge for a new frontier is palatable, but the expense should no

longer be at an environmental or population level. During a critical time where the current environmental crisis is no longer deniable decisions regarding environmental degradation cannot be made with a financial mentality. The outcome of this development will have a long term impacts will be felt for generations to come, it will have an impact on various species of population, habitat loss, environmental degradation, hinder the positive impact is has on the community and the elementary students, bring in crime, and so much more. There is clearly a plethora of reason for which this project should be denied, I understand the county wants more money, but the county should be protecting its most vulnerable continuants otherwise why are you *really* in office?

I have many more concerns to bring up, please feel free to reach out if you have any questions regarding statistics or any additional impacts.

Thank you,

Ileana Enriquez
(707) 796-9256 | Payroll Analyst| CamelBak Products, LLC ,Vista Outdoor
2000 S. McDowell Blvd.| Suite 200 | Petaluma, CA 94954

From:	Ian Ramos
To:	Cannabis
Subject:	Concerned about Cannabis in our Community
Date:	Thursday, March 18, 2021 11:57:09 AM

EXTERNAL

Planning Commission c/o McCall Miller
Department Analyst
Cannabis Program
County Administrator's Office

I am writing in strong opposition to more cannabis in our county.

I urge you to consider the potential and realistic risks and benefits to our community.

When I look at risks and benefits, I see a lot more risks with more cannabis.

Not only will large scale cannabis growing be a blight to our environment and scenic community, cannabis is a psychoactive drug and a gateway drug. And allowing more cannabis growth in residential areas is not ideal and can create more crime.

Our community does not need more cannabis. Our community does not need more drugs.

Drugs bring more crime, addiction, death and destruction of lives and livelihoods. Drug use and abuse is a serious problem in our schools and communities.

Please do not allow more cannabis into our communities and please protect our children and communities from drugs and addiction.

Please do not make it easier to grow, sell and buy cannabis in our communities. Cannabis is not harmless and cannabis is not benign.

Thank you,
Michelle Ramos
PO Box 2100
Sebastopol, CA 95473

From: Jeff Lateer
To: Cannabis
Cc: David Rabbitt
Subject: Response to Proposed Phase 2 of the Sonoma County Cannabis Ordinance
Date: Thursday, March 18, 2021 11:45:49 AM

EXTERNAL

Dear Planning Commissioners,

I participated in the Public Comment - Cannabis Workshops / Webinar last week, and am a resident of Bloomfield. I was dismayed at the conduct and attitude of some of the (either current or future) cannabis growers during that workshop. I want to make it clear that I am not against Cannabis cultivation ***IF*** it is done in a manner that is consistent with the objective of preserving our rural way of life. Those of us who choose to live in Bloomfield do so because of its quiet unique setting that leaves the area relatively undisturbed. It is a town that in recent years has attracted young couples with small children and babies who want to raise their children in a safe, pollution free area with proximity to wildlife, clean air and caring neighbors. These young couples are joining longtime residents of Bloomfield who value our Bloomfield quality of life.

That quality of life is being jeopardized by short sighted proposed planning to allow Cannabis cultivation, with its associated bad odors, increased noise and traffic, excessive water use and increased crime potential in close proximity to our homes. We are not bullys or anti-farmers - quite the contrary, we live near both farms and farming now - with the difference that these are traditional farm, dairy and ranch operations, and not something totally different. We are asking for reasonable, well thought, well planned and scientifically backed regulations that not only protect the individual neighborhoods, but also our resources and wildlife.

It is not considered problematic to have a 1,000' buffer from a school, park, day care center, alcohol or drug treatment facility or a Class I Bikeway, all of which only operate on a part-time basis, not 24 hours a day as a residence must. Why not protect the homes of those children who attend schools, ride bikes and attend day care just as you do their daytime activities, 24 hours a day? Please add existing (as of the effective date of the ordinance) residences and neighborhoods to the areas of sensitive uses and require a 1,000' setback from Outdoor and Hoop House Cultivation. This will allow protection for both the neighborhoods *and* the growers. No neighborhoods could be built next to an existing growing operation and demand setbacks in the future.

Keep the odor and dust control requirements, fire safe roads, light restrictions, and protection of Biotic Resources, but please require that the Biotic Resource Assessment be prepared by a Sonoma County certified Biologist who has proven familiarity with Sonoma County. Please also consider additional protections for our water resources in borderline groundwater availability areas.

Please allow your decisions to be made while considering how neighboring counties have dealt with these same issues as well as the input from all of your constituants.

Best regards,

Jeff Lateer

Sent from Outlook

From:	Jane Marra
To:	Andrew Smith; Cannabis
Subject:	Public Comment Re: Draft Ordinance and Draft Subsequent Mitigated Negative Declaration - Sonoma County Cannabis Operator Permitting Amendments
Date:	Thursday, March 18, 2021 11:57:46 AM

EXTERNAL

Good morning. I wanted to provide support for the idea recently submitted by Jakob Dobrowolski. This in essence would eliminate virtually all concerns by citizens about the social, environmental and safety aspects of commercial cannabis operation.

Please seriously consider this proposal as a win-win for all.

Otherwise, I would recommend a COMPLETE Moratorium on commercial cannabis permits until a plan for the entire county that considers the needs of all has been developed.
I have read the hundreds of comments you have received and the ramifications of this ordinance are immense. I know you are looking for constructive solution ideas!

Jakob's idea is excellent. Please deny the proposed ordinance and set up an investigation into this as a solution for all.
Jane A Marra

Jakob's proposal follows:

My name is Jakob Dobrowolski and I am a Petaluma resident. This letter serves as an appeal to and request for withdrawal of the current Sonoma County Cannabis Ordinance update. As currently proposed, these changes are devastating to county residents, rural land, property values, farmers/ranchers and the image/reputation of our beloved county.

My proposal and solution:
Require all the commercial cannabis operations be based in already established industrial areas.

This means that these commercial cannabis operations will:
-use municipal water, so there is no concern regarding neighbor's wells going dry and aquifer depletion. Connected to city water, they never run out of water, eliminating any water concerns, including the need to allow trucking in of water. They will also pay for all the water they use, helping municipalities and incentivizing efficient water usage.
-use municipal sewer systems, preventing any negative concerns about erosion, run off, drainage, etc.
-be connected to a reliable electrical grid already in place and built for commercial activities.
-have fewer security concerns, as they will be in permanent commercial structures, such as warehouses, which can easily be wired with CCT cameras, are already fenced in, and are built to be kept secure. Additionally, response times for emergency services will --be significantly better in industrial areas than if these operations are in rural areas.
-be able to use security guards without any privacy concerns to residential neighbors and would be able to share security guards.
-be able to operate 24/7/365, receive as many deliveries as possible, have ample parking, all

with limited impact on residential communities.
-be able to mitigate odor, as it will be indoors. Any odor which will be created will mostly only impact the industrial area, which is less sensitive to odors, compared to residences or other more sensitive places.
-be able to use already existing road infrastructure set up for commercial activity.
-be able to pool resources, as they are already advocating for.
-reduce threat of crop loss due to wildfire, power outages etc...

This will prevent these commercial cannabis operations from displacing local farmers.
This will keep these operations away from neighborhoods, residences and other sensitive areas.
This will protect the environment as these cannabis operations would be located in already established industrial/warehousing areas.
This will allow commercial cannabis to connect to the reliable city water and sewer network, eliminating the need to truck in water, and deal with erosion, runoff, wastewater, and other environmental concerns.
This will set these cannabis businesses up for success, as they will be able to take advantage of local roads designed to handle commercial traffic. It will also allow them to operate 24/7 without impunity and disturbance to residential communities.
The commercial cannabis operations will be surrounded by other businesses and entrepreneurs which will foster cross-functional innovation and collaboration.
This will allow these cannabis operations to cluster, something they are already advocating for, and will enable them to share resources to achieve larger scale and efficiency, as well as foster collaboration and innovation within their industry.

I urge you to reject the ordinance as currently drafted and use my proposal to locate all commercial cannabis operations in industrial or warehouse districts. This is a win-win for everyone.

Thank you.

From: Jeremy Strawn
To: Cannabis
Cc: CCOBloomfield@gmial.com
Subject: Re: Sonoma County Cannabis Ordinance Part 2
Date: Thursday, March 18, 2021 11:26:42 AM

EXTERNAL

Greetings,

I am writing to add my voice to the chorus of concerned citizens urging you to consider the impact cannabis cultivation will have on our communities. Please just do the right thing. I am a resident of Bloomfield, and we are feeling quite threatened by an impending operation that will fundamentally change the small community we call Home.

While I absolutely agree that we should enable cannabis growth to happen in Sonoma County, it needs to be done in a way that respects the needs of all its residents. Allowing operations in close proximity to neighbors, sure it may generate tax revenue, but at what cost?

We've already been through enough, with fires and pandemics, and this feels just as disruptive. And just like fires that threaten our homes and ecosystems, we will do whatever it takes to protect them. In other words, a lack of adoption of the proposed changes (setbacks of 1,000 ft., processing only in commercial zoning, etc.) will only lead to further conflict and tension around the county, the last thing we need.

Please make the changes we are all asking for.

I invite you to imagine two futures, one, full of peace, content citizens, and a thriving cannabis industry. The other, full of anger, stress, mistrust, division, and lawsuits. You have the power to determine which path we take. Seems a pretty easy decision to make.

Thank You,

Jeremy Strawn
11548 Sutton St.
Bloomfield, CA

From: Kimberly Burr
To: McCall Miller; Cannabis
Subject: Cannabis Cultivation Ordinance comments
Date: Thursday, March 18, 2021 11:31:18 AM

EXTERNAL

Please make these comments a part of the administrative record in the review of the Cannabis Cultivation Ordinance Amendments and General Plan Amendment. ORD 20-0005.

The decision to approve, deny, or request modifications to the proposed changes in the draft Ordinance or the code are discretionary. I urge the Planning Commission to raise the bar on potentially high impact activities *while it has the opportunity* and to recognize the pitfalls of codifying a ministerial process that has *not* in similar potentially high impact development scenarios served the environment well. The abuse of the ministerial approach actually harms the environment in numerous ways - climate impacts, dewatering of critical habitat, erosion, wildlife movement, and many more.

These comments seek to highlight the potential impacts of this type of development on local watersheds on protected species and the climate. As to the issue of fairness, I think that the other large land use impacts occurring in our watersheds should be subject to higher standards rather than lowering the bar on another new high impact activity. The responsible way to go about this is to move ahead with measures that actually properly describe all potentially significant cumulative and individual impacts in an open process --now by way of an EIR and later on an individual application basis, in order that decision makers are fully informed before they are asked to render decisions on this or any other future developments that pose potentially significant impacts.

Proposing to Lower the Bar on Environmental Review

Unfortunately, the proposed ordinance and amendments weaken the county's promising work to properly regulate this potentially highly destructive activity. With respect to another highly destructive activity - vineyard and winery development, the county squandered an important opportunity to plan sustainably for the future and to recover listed species and protect shared resources.

Instead of raising the bar here, the county has unfortunately appears poised to do again. And worse, to sink to the lower -much less protective bar, of employing a ministerial process to permit some of the most potentially damaging activities that occur in our watersheds. Those concerned with the damage done to our watersheds due to the long embraced ministerial permitting of vineyards, hoped it would go the other direction -that the abuse of the ministerial process would be *rectified* and all potentially destructive activities would receive proper environmental review. The interests that seek to develop are - unfortunately, not far sighted and - unfortunately, are attempting to push aside concerns of the general public and even county officials.

Potentially Significant Impacts

By just renaming something or moving the review responsibilities to another department do not lessen the potential impacts of the intense development of land. That being proposed now includes more road building, increased promotional tours (or events), and farmstays (traffic), no cap on one person per acre cultivation, allowing the intense activities to move around on the parcels, removing operator qualifications requirements, and removing square foot limitations on how intense indoor cultivation maybe (more power, more inputs, more water, more waste). These proposed changes weaken environmental protections and increase potentially significant adverse impacts, and need thorough evaluation. The MND approach and ministerial process, are explicitly meant to avoid such analysis and rather predictably increase the speed in which approvals of all of these potentially more impactful activities will occur in the absence of much needed thorough environmental review.

PG&E Tree Removal

The need of the new development for power will inevitably require new PG&E service. Along with that comes significant tree removal. This is often highly destructive and occurs anywhere the lines may be considered vulnerable to wind, sparking, and fire. This issue and the potentially significant impacts to habitat, water recharge, or climate change have not been addressed.

All of these potentially increased adverse impacts -and others, trigger the need for a full environmental impact report. The cumulative impacts must be evaluated in depth in order that decision makers can make fully informed decisions. Do do less, is improper.

Ministerial Process

By definition, a ministerial process -the preferred county approach here, removes the discretion of the county. Given the potential impacts of each of these activities in isolation and taken together, this is potentially a recipe for disaster. It is as if the County seeks to rush and speed up development at a time, when we know we are moving further away from achieving sustainable development and recovery of listed species in the county especially as it pertains to water supply at certain times of the year. The proposed changes do not represent a responsible way to add significant water demands in an area. The changes are a long way from establishing net zero water use. And net zero does not equate to zero impacts on wildlife, wells, and stream flows. These impacts must be fully be described and evaluated.

Best Management Practices are Non Regulatory

Bundling so called best management practices - a suite of possible steps that could be taken, into the ministerial process, is ineffectual. If these BMP.s are important, they should be legal requirements. For whatever reason, the county is choosing to refrain from properly regulating by improperly attempting to apply loose standards and BMPs to a rapidly expanding and intense land use activity that -as we know from experience in the ministerial world of vineyard development, will not protect ground water recharge, listed species, native plants, stream flows, or generally protect communities and watershed health.

Protected Species

The county as the land use authority is inexplicably proposing to streamline approvals of a heavily water dependent activity that has the predictable potential to adversely impact water supply which will contribute to take of listed species. The streams in our area are dependent on groundwater to maintain flows and cool temperatures. This significant increase in demand on groundwater resources has not been properly evaluated and a ministerial permitting scheme rather than help this situation, facilitates this potentially harmful activity.

A full independent environmental impact report (EIR) would allow this important issue - and others, to be fully described and analyzed before decision makers are put in a position of deciding the merits of this proposal. Failing to do so will render any approvals improperly based on inadequate information.

I urge the Planning Commission to send this item Cannabis Ordinance, new Chapter 38, and proposed code changes to Ch. 26, back for review as appropriate by way of an EIR in order to understand and avoid contributing further to the take and recovery of listed species.

Thank you.

Kimberly
Green Valley Creek

“Balance - When we are urged to weigh the environmental impacts against the interests of developers, consider this...."We've lost nearly two-thirds of the world's wildlife since the first Earth Day 48 years ago."

—The Nature Conservancy

From: Mike Baldus
To: Cannabis
Subject: cannabis
Date: Thursday, March 18, 2021 11:56:42 AM

EXTERNAL

Thank you for the opportunity to express an opinion regarding cannabis cultivation on smaller parcels and in rural areas.

We live in a very beautiful county, gifted with natural phenomenon of ocean, hills, valleys, meadows and rivers. Most of us value our agricultural neighbors, however many of us do not wish to see the expansion of cannabis growing with large greenhouses and proximity to our residences.

First, those of us in the county rely on wells for our water, and the cultivation of cannabis requires incredible amounts of water daily for each plant. To keep this county sustainable, we need to use our water and underground water wisely. Cannabis is not a necessary use of our precious water resources.

Secondly, cannabis cultivation brings more traffic. The wine community has already worked with the county to mitigate many of similar issues. However, adding another layer of commercial interface to our rural neighbors will continue to cause problems for county administration and our overburdened rural roads.

Finally, it behooves us to clearly look at all the unintended consequences of allowing this drug to thrive in our community. Talk with parents of high school students to find out their worries about the availability of "pot" for their children. What is it that we want Sonoma County to be famous for ... "pot farms" or can we remain noted for our natural beauty?

Please keep cannabis growers out of small parcels.

Mike Baldus
P.O. Box 2100
Sebastopol, CA 95473
707-548-4853

From: roxannken2842@comcast.net
To: Cannabis
Subject: Cover sheet and revised comments on Draft Amendments to Chapter 26 of Sonoma County Code
Date: Thursday, March 18, 2021 11:01:35 AM

EXTERNAL

To relace earlier email 10am this date.

Roxanne Gudebrod
67 Live Oak Drive
Petaluma, Ca 94952
(707-495-9205)

From:	Roxanne
To:	Cannabis
Subject:	Comments on Draft Amendments to Chapter 26 of Sonoma County Code
Date:	Thursday, March 18, 2021 11:01:36 AM

EXTERNAL

Planning Commission
c/o McCall Miller
Department Analyst, Cannabis Program
County Administrative Office
525 Administrative Drive, Suite 104A
Santa Rosa, CA 95403

Changing the County Code to include cannabis production as an "agricultural product" is disingenuous proposal. Cannabis IS NOT an agricultural product. As defined by the current code, agriculture means the cultivation of the land for production of products that are ultimately meant to feed the general population, animals and livestock. Cannabis does none of that. Just because cannabis is planted in the ground, grown and then harvested does not qualify it as "agriculture". The resulting product is ultimately for purposed of recreational use, and, to a limited extent, for medical purposes. The use of the term "medical use" is also misleading, because 70% of production for "medical use" is claimed by persons who provide a medical prescription for its use for conditions such as anxiety, depression, etc. These medical permits are a dime a dozen, and will be used by producers of cannabis as the main purpose of their intention to grow cannabis. As for the purchase of cannabis for recreational use, there are numerous dispensaries in the county for that use.
More importantly, amending the code so that cannabis production is included as an "agricultural" product, which would then be administered by the Department of Agriculture out of Sacremenot, by a ***ministerial method,*** would be another way for the county and state governments to chip away at the rights of residents affected by the potential establishment of these cannabis farms. Denying residents a means of equal participation in any decisions regarding their location and implementation. "Ministerial" means residents would receive no notice of any changes to the location and production,either in physical, permanent structures, and/or infringement on residents to the use of the area immediately within the vicinity of their residences. It would certainly make life easier for the Planning Commission and Permit Department who would refer any complaints or questions regarding adding cannabis as an "agricultural" product and its affects on those residents, to the Agriculture Department in Sacramento. A morass of bureaucratic red tape, handled by 2 additional employees in the Agriculture Dept to handle the implementation of the "revised" code. This is tantamount to the local government saying "if you don't like it, sue me. You have to take it up with Sacramento". That prospect would be costly to residents and entail months if not years to resolve, while the bureaucracy continues on its merry way.
The change to the code to include cannabis production as an agricultural product, administered by a change to a "ministerial" method of managing the changes IS UNACCEPTABLE.

You do not need 65,000 acres for production of cannabis!!!It would rival the acreage used in the production of grapes in the county which is absurd! The proposed locations for the production sites appear to be in medium to high residential areas, leaving vast, open spaces in the county available for said production. These sites appear like a patchwork quilt. Won't that be a lovely sight in the hills and rural areas of this county. Manufacturing-like structures, tents/igloos covered in plastic tarps, which would be ripped apart by our increasing windy periods ("climate change") that now required emergency notifications to residents in the county. But, because it appears that our local government is so anxious to implement these changes so that it can reap the benefits of the income it could produce, they have no compunction be to ramrod these changes at citizens' expense. The growth of cannabis to the extent and administration of your "required" acreage is excessive, and not what I would want my county to represent as our main source of income and main agricultural product.

Changes to the current code as it exists; to include cannabis as an agricultural product, and changing the method of implementing and administering the revised changes, **IS UNACCEPTABLE**. You are infringing on our rights to the quiet enjoyment of our residences, in peace and safety, and you must continue to provide notification to all residents in any site consideration and hold proper meetings as part of any process that affects our life style.

Marie-Roxanne Gudebrod
67 Live Oak Drive
Petaluma, CA 94952
(707-495-9205)

From:	Kuszmar, David@Waterboards
To:	Cannabis
Cc:	Erickson, Gregg@Wildlife; Bianchi, Mia@Wildlife; Stokes, Wesley@Wildlife; Porzio, Kevin@Waterboards; Schultz, Daniel@Waterboards; Seidner, Dylan@Waterboards; Grady, Kason@Waterboards; Vella, Michael@CDFA; Rains, Lindsay@CDFA
Subject:	North Coast Regional Water Board Comments on Sonoma County"s Proposed Revised Cannabis Ordinance
Date:	Thursday, March 18, 2021 11:54:33 AM
Attachments:	210318_NCRWQCB_Comments_on_SoCo_Cannabis_Ordinance_FINAL.pdf

EXTERNAL

Dear McCall,

Please accept the attached comments from the North Coast Regional Water Board, and do not hesitate to reach out if you have any questions or concerns.

Respectfully,

David Kuszmar, PE
Senior Water Resource Control Engineer
Southern Cannabis Regulatory Unit
North Coast Regional Water Quality Control Board
(707) 576-2693

North Coast Regional Water Quality Control Board

March 18, 2021

Sonoma County Planning Commission (transmitted via email only)
c/o McCall Miller
County Administrator's Office
575 Administration Drive, Suite 104A
Santa Rosa, CA 95403
cannabis@sonoma-county.org

Re: NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD COMMENTS ON SONOMA COUNTY'S PROPOSED CANNABIS LAND USE ORDINANCE UPDATE, GENERAL PLAN AMENDMENT, AND ASSOCIATED SUBSEQUENT MITIGATED NEGATIVE DECLARATION, SCH NO. 2021020259

Dear McCall Miller:

The North Coast Regional Water Quality Control Board (Regional Water Board) Cannabis Waste Discharge Regulatory Program (Cannabis Program) received the subject documents and is grateful for the opportunity to provide comment. The Regional Water Board understands Sonoma County's (County's) efforts to allow expanded ministerial permitting for commercial cannabis cultivation in agricultural and resource zoned areas. However, the Regional Water Board has concerns regarding how the County's proposed permitting process and requirements may overlap and/or conflict with the State Water Resources Control Board's (State Water Board's) *Cannabis Cultivation Policy Principles and Guidelines for Cannabis Cultivation* (Cannabis Policy) and *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities* (Cannabis General Order).[1] To this end, the following comments are provided with the aim of furthering the County's efforts, providing additional information concerning the Cannabis Policy and General Order, and for the purpose of obtaining additional clarity with respect to certain water resource protection issues.

[1] The Cannabis Policy and General Order are available at: https://www.waterboards.ca.gov/water_issues/programs/cannabis/

I. Expanded Ministerial Permitting

The proposed amendments have the potential to authorize cannabis cultivation without extensive site-specific review of proposed cannabis cultivation operations. Currently, the County issues permits on project-by-project basis, that while not a streamlined process, does allow for an exhaustive environmental review process. The proposed switch from a project-specific discretionary review and approval process to a ministerial process places increased importance on the successful implementation of Best Management Practices (BMPs) by cannabis cultivators.

The Regional Water Board's review of the County's proposed revisions to its Cannabis Ordinance reveals that in some cases the BMPs required by the County are less stringent than those required by the Regional and State Water Boards (Water Boards), and vice versa. For instance, the Water Boards' riparian setback provisions for cannabis cultivation activities are much more stringent than the County's. On the other hand, the County's steep slope provisions and restrictions on the use of trucked water for irrigation are generally more stringent than the Water Boards'. In these and other such instances, it is important that the permitting outcomes from the County's ministerial process incorporate the most protective BMPs from both the County's Cannabis Ordinance and the Water Boards' Cannabis Policy and General Order. This will prevent potential threats to water quality and the beneficial uses from going unaddressed.

II. Local and State Permitting Sequencing

Similar to the County, the Water Boards require that cannabis cultivators obtain coverage under the Cannabis General Order prior to commencing any cultivation activities. The term "cannabis cultivation" is defined by the Water Boards as "[a]ny activity involving or necessary for the planting, growing, pruning, harvesting, drying, curing, or trimming of cannabis. This term includes, but is not limited to: (1) water diversions for cannabis cultivation, and (2) activities that prepare or develop a cannabis cultivation site or otherwise support cannabis cultivation and which discharge or threaten to discharge waste to waters of the state." (Cannabis Policy, Attachment A, Definition 9). The County's trigger for requiring a cultivation permit under its proposed Cannabis Ordinance is similar, but not identical. Based on past experience, the Regional Water Board understands that site-specific circumstances may at times call for alternating sequencing of the Water Boards' enrollment process and the County's permitting process.

With that in mind, the Regional Water Board seeks clarification concerning the County's requirement that cultivators must provide copies of all other agency/department permits, licenses, or certificates to the Agricultural Commissioner to serve as verification of compliance with local, state, and federal law. (Sec. 38.02.040, subd. (C).) As written, it is unclear whether the County's process requires cultivators to enroll in other agency/department permits as a condition precedent to obtaining a County permit or upon the issuance of a County permit to cultivate. For example, must a cultivator provide proof of enrollment in the Cannabis General Order via a Notice of Applicability

from the Regional Water Board as a condition precedent to applying for a County permit or merely demonstrate enrollment at the time the County issues a permit? This clarification will help highlight for applicants the importance of timely applying for and obtaining all necessary permits from the County, the Water Boards, and any other agencies with relevant authorities. Therefore, the Regional Water Board recommends that as part of the Permit Application Preparation and Filing process (Sec. 38.06.030, subds. (A-D)), the County encourage concurrent enrollment with any requisite Water Boards permit(s), and those of any other State agency as appropriate.

The Regional Water Board recommends this process for two reasons. First, if the County requires enrollment in the Cannabis General Order prior to issuance of a County permit there is potential to create administrative complications.[2] Second, there is the potential that the technical plans and reports required under the Cannabis General Order may overlap with the plans, specifications, maps, reports, assessments, and other information required under the County's permitting process, and thus opportunities for developing plans that satisfy multiple agencies' requirements should be highlighted for permit applicants. This is discussed in greater detail in the next section.

III. Required Site Plans and Reports

Enrollees in the Cannabis General Order are required to submit various technical and planning reports[3] to the Regional Water Board. Many of the necessary components of the required technical plans and reports are similar to those listed in the County's Standards for Commercial Cannabis Cultivation (Art. 12). For instance, Site Management Plans (SMPs) required under the Cannabis General Order address compliance with riparian setback restrictions, site grading and drainage requirements, erosion and sediment control, construction and maintenance of roads and stream crossings, waste and wastewater management, and water storage and use. Due to the similar nature of the technical plans and reports required under the Water Boards' and County's enrollment and permitting processes for cannabis cultivation, the Regional Water Board asks that the County acknowledge the overlap between multiple agencies' planning and reporting requirements (including those imposed by state agencies other than the Water Boards), and encourage permit applicants to proceed with plan and report preparation with the broad scope of applicable agency requirements and approval authorities in mind.

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[2] For example: If a cannabis cultivator enrolls in the Cannabis General Order prior to issuance of a County permit and the County ultimately rejects the application, the Regional Water Board's self-certification enrollment process does not allow for a refund to the cultivator for the enrollment fee, which can range between $600 and $8,000.

[3] Site Management Plan (for all sites), Site Erosion and Sediment Control Plan (Medium Risk sites), Distributed Area Stabilization Plan (High Risk sites), Nitrogen Management Plan (Tier 2 sites), and Site Closure Plan (all sites).

IV. Discharges to Septic Systems

The Cannabis General Order implements general and specific requirements for cannabis cultivation activities, as listed in Attachment A of the Cannabis Policy. General Term 27 of Attachment A prohibits the discharge of industrial wastewater (e.g. excess irrigation water, effluent, process water, or graywater) to an onsite wastewater treatment system (e.g. septic tank), to surface water, or to land (e.g. via irrigation or bio-retention treatment systems) without a separate individual or general permit from the Water Boards. Separate waste discharge requirements (i.e. an individual or general permit) or waiver thereof can be sought for the discharge of cannabis wastewater into a septic system or to land. However, it is unlikely the Regional Water Board would issue such a permit. Since the adoption of the original Cannabis Policy and General Order in 2017, the Regional Water Board has yet to approve a request for such a permit. Additionally, the Water Boards consider excess irrigation water, effluent, and process water from commercial cannabis cultivation to be industrial process waters, which are prohibited to be discharged to onsite wastewater treatment systems (OWTS) by the Water Boards OWTS Policy. As such, the Regional Water Board requests the County revise the requirements of the wastewater management plan (Sec. 38.12.130) to acknowledge that the discharge of cannabis cultivation wastewater to septic (or similar) systems is generally prohibited unless an appropriate waste discharge permit is sought from the Regional Water Board.

Lastly, the Regional Water Board supports the analysis and all concerns expressed by the California Department of Fish and Wildlife, Bay Delta Region's public comment on the subject documents, dated March 17, 2021. In particular, the Regional Water Board wishes to highlight the issues raised and recommendations made in Comment 5. All cannabis cultivation sites should be evaluated for potential wetland features and the most protective standards applied for wetland setback requirements. Notably, the Regional Water Board has regulatory authority over work conducted in or near streams and wetlands, and any such work requires separate coverage under a Water Quality Certification and/or waste discharge requirements from the Regional Board.

The Regional Water Board appreciates this opportunity to comment on the County's efforts to streamline its cannabis cultivation permitting process and hopes these comments will help align and create consistency across the Water Boards and County's permitting procedures. If you have any questions or concerns, please contact me at David.Kuszmar@waterboards.ca.gov.

Sincerely,

David Kuszmar, PE #C65460
Senior Water Resource Control Engineer
Southern Cannabis Regulatory Unit

210318_NCRWQCB_Comments_on_SoCo_Cannabis_Ordinance_FINAL

Cc: **California Department of Fish and Wildlife**
Gregg Erickson, Gregg.Erickson@wildlife.ca.gov
Mia Bianchi, Mia.Bianchi@wildlife.ca.gov
Wes Stokes, Wesley.Stokes@wildlife.ca.gov

State Water Resources Control Board
Kevin Porzio, Kevin.Porzio@waterboards.ca.gov
Dan Schultz, Daniel.Schultz@waterboards.ca.gov
Dylan Seidner, Dylan.Seidner@waterboards.ca.gov

North Coast Regional Water Quality Control Board
Kason Grady, Kason.grady@waterboards.ca.gov

California Department of Food and Agriculture
Michael Vella, michael.vella@cdfa.ca.gov
Lindsay Rains, lindsay.rains@cdfa.ca.gov

The attachments to the following letter are too voluminous to remediate as per Section 508 of the Rehabilitation Act of 1973 requiring government agencies to make electronic information accessible to people with disabilities.

As such, the attachments are not available online, but are available to the public upon request.

To receive a link to the attachments, email McCall Miller at Cannabis@sonoma-county.org.

Note: the attachments include the letter and exhibits to the letter, totaling 1489 pages.

From: Sara L. Breckenridge
To: Cannabis
Cc: Larry Reed; Susan Gorin; Gina Belforte; Greg Carr; Pamela Davis; Cameron Mauritson; Lynda Hopkins; Chris Coursey; district4; David Rabbitt; Carmen J. Borg; Joseph D. Petta; Aaron M. Stanton; Andrew Smith
Subject: Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment and Draft Subsequent Mitigated Negative Declaration
Date: Thursday, March 18, 2021 11:33:56 AM
Attachments: SOSN Letter Re 2021 SMND for Cannabis Land Use Ordinance Update and GPA.pdf

EXTERNAL

Dear Commissioners:

Please find attached a letter from Joseph Petta, Aaron Stanton and Carmen Borg, on behalf of Save Our Sonoma Neighborhoods (SOSN), regarding the Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment. Due to the large number and size of exhibits, the full letter with exhibits can be downloaded from the OneDrive link below. Please confirm your receipt of this letter and the exhibits. Thank you.

Link to letter with exhibits: https://shutmw-my.sharepoint.com/:b:/g/personal/breckenridge_smwlaw_com/EaEa4pyJHiJIhkke9eUPpNYBsVSmvGW3YjQss09yLyMBUw?e=A2yaqE

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March 18, 2021

Via E-Mail

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c/o McCall Miller, Department Analyst,
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Re: Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment and Draft Subsequent Mitigated Negative Declaration

Dear Commissioners:

This firm represents Save Our Sonoma Neighborhoods ("SOSN") in connection with the Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment ("Project"). This firm concurrently represents the Friends of Mark West Watershed and will submit separate comments on their behalf. SOSN is concerned that allowing ministerial approval of cannabis cultivation and production sites will have substantial negative effects on the character of rural residential areas, damage sensitive resources, and reduce the quality of life for all County residents.

The purpose of this letter is to inform Sonoma County that the Subsequent Mitigated Negative Declaration ("SMND") for the Project fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("Guidelines"). As detailed below, numerous inadequacies and omissions in the SMND render it insufficient as an environmental review document. The SMND fails to disclose, analyze, and propose adequate mitigation for significant environmental impacts related to air quality, odor, aesthetics, hydrology and water quality, groundwater supply, transportation, greenhouse gas emissions, and loss of agricultural land, and cumulative effects, among others. What analysis the SMND does present is fraught with

errors. For example, the SMND's analysis of the Project's odor impacts fails to employ accepted methods of analyzing odor impacts, fails to present a thorough evaluation of impacts, and fails to provide evidence that identified mitigation will be effective. In addition, the countless vague, voluntary, and unenforceable mitigation measures in the SMND fail to comply with CEQA, which requires enforceable, concrete commitments to mitigation. As a result, the SMND fails to describe measures that could avoid or substantially lessen the Project's numerous significant impacts. In addition, the SMND fails to provide any meaningful analysis of allowing events at cannabis cultivation sites. The pervasive flaws in the document demand that the County prepare an Environmental Impact Report ("EIR") and circulate it for review and comment by the public and public agencies.

This letter is submitted along with the report prepared by our expert consultant, Greg Kamman, Senior Ecohydrologist with CBEC Ecoengineering, whose letter dated March 16, 2021 is attached as Exhibit 1 ("Kamman Report").

I. The County may not approve the Project without preparing an environmental impact report under CEQA.

CEQA is designed to ensure that "the long-term protection of the environment shall be the guiding criterion in public decisions." *Friends of College of San Mateo Gardens v. San Mateo County Community College District* (2017) 11 Cal.App.5th 596, 604 [hereinafter "*San Mateo Gardens II*"] (quoting *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 74). Thus, the statute requires an agency evaluating a project to develop an EIR whenever "substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'" *Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1245-46 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123).

When an agency approves changes to a previously approved project studied in a prior negative declaration, additional subsequent environmental review is required when "whenever there is substantial evidence to support a fair argument that proposed changes 'might have a significant environmental impact not previously considered . . . .'" *San Mateo Gardens II*, 11 Cal.App.5th at 606 (quoting *Friends of College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 959 ["*San Mateo Gardens I*"]; *see also San Mateo Gardens I*, 1 Cal.5th at 953. In other words, an agency *must* prepare a subsequent EIR if substantial evidence supports a fair argument that the proposed changes to the project may result in a significant environmental impact. *San Mateo Gardens II*, 11 Cal.App.5th at 606-07. Proposed

changes might have a significant impact "when there is some competent evidence to suggest such an impact, even if other evidence suggests otherwise."[1] *Id.* at 607.

The fair argument standard establishes a "low threshold" for requiring a lead agency to prepare an EIR. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928. Courts "owe no deference to the lead agency's determination," and judicial review must show "*a preference for resolving doubts in favor of environmental review.*" *Id.* (italics in original). Further, where the agency fails to study an entire area of environmental impacts, deficiencies in the record "enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

Substantial evidence supporting a fair argument may consist of personal observations of local residents on nontechnical subjects, *Oro Fino Gold Mining Corp. v. Cty. of El Dorado* (1990) 225 Cal.App.3d 872, 882; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1152, as well as expert opinion supported by facts—even if that opinion is not based on a specific analysis of the project at issue, *Pocket Protectors*, 124 Cal.App.4th at 928. In marginal cases, where it is not clear whether there is substantial evidence that a project may have a significant impact and there is a disagreement among experts over the significance of the effect on the environment, the agency "must treat the effect as significant" and prepare an EIR. CEQA Guidelines § 15064(g); *City of Carmel-By-The-Sea v. Board of Supervisors*, (1986) 183 Cal.App.3d 229, 245.

As explained further below, ample evidence supports a "fair argument" that the Project may result in significant environmental impacts that were not studied in the 2016

[1] The relevant analysis under CEQA's subsequent review provisions concerns the changes since the original Medical Cannabis Land Use Ordinance was adopted in 2016, and not only the changes since the 2018 Amendments to allow adult use cannabis. This is because the 2016 Ordinance was studied in a negative declaration, while the Board of Supervisors determined that the 2018 Amendments were exempt from CEQA. *See* Resolution No. 18-0442 (Oct. 16, 2018). CEQA's subsequent review provisions apply only when there has been a prior *environmental review*. *See* Pub. Res. Code § 21166 (applies "[w]hen an environmental impact report has been prepared for a project"); Guidelines § 15162 (applies "[w]hen an EIR has been certified or a negative declaration adopted for a project"). In any event, the development potential allowed by the 2018 Amendments has not been fully realized. *See* SMND at 18. To the extent the Project would facilitate new development in areas opened to cannabis in 2018, that new development potential must be analyzed as a foreseeable effect of this Project.

Negative Declaration. These impacts would include, but not be limited to: air quality, odor, greenhouse gases, aesthetics, hydrology and water quality, groundwater supply, fire safety, transportation, and loss of agricultural land, among others. Because the Project has the potential to result in significant impacts, the County is required to prepare an EIR before it may approve the Project.

II. The descriptions of the Project and the environmental setting are inadequate.

A. The Project description is incomplete, inaccurate, and inconsistent.

In order for a CEQA document to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, (1994) 27 Cal.App.4th 713, 730. As a result, courts have found that even if an environmental document is adequate in all other respects, the use of a "truncated project concept" violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. *Id.* at 729-30. Furthermore, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *Id*. at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

As an initial matter, the SMND does not provide a meaningful description of the "development potential"—*i.e.*, the scope and extent of cannabis cultivation and other commercial cannabis activities—that may be permitted by the proposed updates to the cannabis ordinance ("Ordinance"). The CEQA Guidelines define "project" as "the whole of an action" that may result in a direct or reasonably foreseeable indirect change in the environment, and require the lead agency to fully analyze each "project" in a single environmental review document. CEQA Guidelines § 15378(a); *see also* Guidelines §§ 15165, 15168. CEQA further requires environmental review to encompass future actions enabled or permitted by an agency's decision. *Christward Ministry v. Superior County* (1986) 184 Cal.App.3d 180, 194; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 ("An evaluation of a 'first phase-general plan amendment' must necessarily include a consideration of the larger project, *i.e.*, the future development permitted by the amendment.").

Here, the SMND purports to provide an outer limit on possible development. The SMND states that "a maximum of up to 65,753 acres" could be subject to future cannabis cultivation. SMND at 16,19. This acreage is 10% of the 657,534 acres in the County that are both zoned for agricultural or resource uses and located on parcels larger than 10

acres, likely to reflect the Project's limit on outdoor cannabis cultivation area to 10% of a parcel. *Id.* As explained below, the SMND's description of the Project's development potential is misleading and inadequate to allow the public and decisionmakers to accurately assess the potential effects of the Ordinance.

Troublingly, the SMND omits any analysis of the possible extent of cannabis cultivation in existing permanent structures. The Ordinance itself contains *no limits* on indoor and greenhouse cultivation canopy in existing permanent structures. *See* proposed § 38.12.030(A)(2) ("Indoor cultivation and greenhouse cultivation canopy in an existing permanent structure is not limited."). The SMND should include a description—or at least an estimate—of the number and extent of existing permanent structures in the County that may be converted to cannabis cultivation and their square footage. The base zoning presumably limits the amount of existing permanent structures plus new permanent structures, so the County could accurately calculate the total amount of indoor cultivation allowed using its existing databases. The SMND should also analyze how much cannabis may be grown in such indoor spaces—especially since indoor cultivation can occur on shelved units, potentially *quadrupling* the canopy area possible in an existing structure. *See* Exhibit 2, Borroughs, Vertical Cultivation (website for retailer of horticultural grow shelves for cannabis operations; "Shelves are engineered for single, double, triple, and even quadruple stacks"). In addition, indoor cultivation can have as many as five harvests per year. This existing permanent structure loophole could portend significant impacts on the environment that have not been analyzed. Because the Ordinance allows an unknown, but potentially massive, amount of indoor cannabis cultivation, the corresponding impacts (in terms of increased water usage, energy usage, VMTs, greenhouse gas emissions, etc.) are similarly unknown, and potentially vast.

The Ordinance also apparently allows indoor cultivation in existing permanent structures *in addition to* both (1) indoor cultivation in up to 43,560 square feet of new or expanded permanent structures *and* (2) outdoor cultivation of 10% or less of a parcel. *See* proposed § 38.12.030(B) (limitations on indoor cultivation apply to "all *new* building coverage," not to *total* building coverage). For example, a grower on a 10-acre parcel could have 1 acre of outdoor cannabis cultivation, in addition to 43,560 square feet of cultivation in a new or expanded permanent structure, plus additional indoor cultivation in existing permanent structures currently on the parcel. As a result, the County's assumption that cannabis activities would occur on no more than 10% of the 657,534 eligible acres is incorrect. The Project could result in converting significantly greater acreage to cannabis cultivation.

The County's incomplete and inaccurate estimate of the Project's full development potential could conceal significant potential impacts. For example, the SMND's hydrology analysis concludes that groundwater supply impacts would likely be less than

significant because of "the relatively low quantities of water use (from .002 to 1.8 acre-feet per year)."[2] SMND at 69. The SMND then explains that the size limitations—10 percent of a parcel for outdoor grows and no more than one acre of *new* building coverage—would limit water use at individual sites. SMND at 69. This analysis, however, does not take into account the fact that each site can apparently include outdoor cultivation, indoor cultivation in new structures, and additional indoor cultivation in existing structures; or that indoor cultivation can be multi-tiered or stacked for greater growing area in the same building footprint. Greenhouses and hoop houses can harvest three to five crops per year, a fact the SMND neither mentions nor analyzes. Thus, because of the flawed Project description, the SMND's analysis could be significantly underestimating the amount of water demand that could be created by the Project, which could impact both hydrological and biological resources.

In addition to the flaw identified above, and as described at greater length in section IV, below, the SMND incorrectly describes a central feature of the Project as the conversion of commercial cannabis permitting in agricultural and resource zones from a discretionary to a ministerial process. SMND at 5, 8. The SMND further asserts that various proposed provisions in Article 12 of Chapter 38 set forth standards that do not require the exercise of discretion. SMND at 8-13.

The County's description of the "ministerial" nature of the permit review process established by the Ordinance is inaccurate and misleading: the Ordinance establishes a process that *requires* County officials and staff to exercise discretion. For example, the SMND implies that the County does not need to exercise discretion in evaluating biological resources because permit applications must include "a biotic resource assessment prepared by a qualified biologist that demonstrates," among other things, that the activity subject to the permit "will not impact sensitive or special status species habitat." SMND at 39. The Ordinance also requires discretionary review of a permit application if the qualified biologist recommends mitigation measures. *Id.* The Project,

[2] By the SMND's own explanation of how to convert inches per year to acre-feet, SMND at 69, fn. 1, these figures appear to be incorrect. If cannabis requires 25-35 inches per year of water for outdoor grows and 20-25 inches per year for indoor grows, SMND at 69, then, assuming a cultivation area of one acre, water use should be approximately 2-3 acre feet per year. Of course, this estimate does not account for possible cultivation on areas considerably larger than one acre or multiple crops per year in hoop houses or greenhouses. And, as explained at greater length by hydrologist Greg Kamman, these figures appear to be gross underestimates. *See* Exhibit 1, Kamman Report (March 16, 2021) (citing estimates of water use from cannabis that are 172%-746% higher than those estimates provided in the SMND).

however, does not include any objective standards to guide County officials in determining whether the biologist's assessment is adequate. Thus, County officials will have to exercise their discretion in making these determinations. *People v. Department of Housing & Community Development* (1975) 45 Cal.App.3d 185, 193-94 (holding that a permit process granting officials broad power to determine whether particular elements were sufficient or adequate required the exercise of discretion). The Project contains many similar examples of plans, studies, and reports prepared by experts, see section IV below, each of which suffers from the same defect. *See also* Exhibit 1, Kamman Report (March 16, 2021) (discussing hydrogeologic reports required for cannabis supply wells located in a priority groundwater basin: "It is my opinion that report/plan review is a discretionary process integral to the authorization of a cannabis cultivation permit that can't be done under a ministerial process.").

The SMND also contains an incomplete and inconsistent description of the special events that may be permitted as part of the Project. For example, the SMND states that the Project would no longer prohibit cannabis-related tours and events, SMND at 5, and that such events would "be *subject to existing regulations* in the Zoning Code," SMND at 13 (emphasis added). The SMND also states, however, that the County is developing a "Winery Events Ordinance" that may address cannabis-related special events. SMND at 18. This assertion that events would be governed by regulations currently under development directly contradicts the prior statement that events would be subject to *existing* regulations. Additionally, because the SMND contains no additional details about the planned winery events ordinance, it is impossible for the public or decision makers to determine what events may be permitted, let alone whether those cannabis-related events will cause or contribute to a significant environmental impact (*e.g.*, by increasing noise, traffic, greenhouse gas emissions, wildland fire evacuation issues, or vehicle miles traveled).

The SMND is similarly inconsistent and inaccurate in its description of the relationship between cannabis cultivation and other forms of agriculture. A core feature of the Project is the revision of the General Plan to include cannabis cultivation within the definition of agricultural land use. SMND at 6. To support this change, the SMND asserts that cannabis cultivation "functions similarly to other agricultural operations." SMND at 14. The SMND, however, repeatedly contradicts this conclusion. For example, the SMND states that, "*due to the unique characteristics of cannabis operations*, under the updated Ordinance *provisions applicable to traditional agriculture are expressly not applicable to cannabis cultivation*." SMND at 25 (emphasis added). The SMND also describes the unique impacts cannabis may have on the environment compared to traditional forms of agriculture. For example, the SMND states that cannabis cultivation and processing operations "generate distinctive odors" that can be "reminiscent of

skunks, rotting lemons, and sulfur." SMND at 33; *see also* SMND at 34 (acknowledging that cannabis cultivation "can generate particularly strong odors" compared to other agricultural land uses); Exhibit 3, Thomas Fuller, *'Dead Skunk' Stench from Marijuana Farms Outrages Californians*, New York Times (Dec. 19, 2018) (noting that Sonoma County received hundreds of complaints related to cannabis odor in 2018, and quoting an individual living near a cannabis grow: "It's as if a skunk, or multiple skunks in a family, were living under our house. . . . It's beyond anything you would imagine."). Cannabis cultivation also involves different aesthetic, energy, and hazardous materials practices compared to traditional agriculture. *See* SMND at 19 (explaining that cannabis "often involves the use of visible structures"); SMND at 23 (stating that cannabis may include new light sources in otherwise dark areas); SMND at 48 (describing cannabis's uniquely significant energy demands); SMND at 62 (describing hazardous components of high-powered lights used in cannabis operations). Cannabis cultivation is an intensive land use, involving foul odors and energy and other infrastructure demands, that is more similar to industrial uses than to traditional agriculture. *See, e.g.*, Exhibit 4, John W. Bartok, Jr., Cannabis Business Times, *Greenhouse Efficiency Guide: 21 Cannabis Greenhouse Design Considerations* (describing features like conveyors, heating and hot water boiler systems, fan and louver systems for ventilation, and supplemental lighting requirements). The SMND's inconsistent and inaccurate characterization of cannabis as similar to traditional agriculture is misleading to the public and decisionmakers and serves to conceal cannabis's unique features (odor, energy demand, changes in the visual character of rural areas, etc.) that could contribute to the Project's significant environmental impacts.

The Project description is also muddled by the County's adoption of an entirely new Chapter 26 of the Zoning Code on February 9, 2021. While the current Project includes revisions to Chapter 26, the revisions released with the SMND show changes to the *old* Chapter 26, rather than changes to the *new* Chapter 26 adopted on February 9. The competing versions of Chapter 26 make reviewing the Project more complicated and confusing. Furthermore, they hinder the public's ability to conduct a meaningful review of the changes the proposed Project would cause to the County Code text, implementation of the permitting regime and the physical environment. As a result, it is not possible to determine the full scope or extent of the physical impacts that would result from the Project, which violates CEQA. The County must prepare an EIR that shows the changes that would result as applied to the *new* Code, and include an analysis of the cumulative impact of the Project with the Board's recent action to update Chapter 26.

B. The SMND's description of the environmental setting is inadequate.

The SMND also fails to describe the Project setting as required by CEQA and the CEQA Guidelines. An environmental document "must include a description of the

physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if a notice of preparation is not published, at the time environmental analysis is commenced, from both a local and regional perspective." CEQA Guidelines § 15125(a). This description of the environmental setting constitutes the baseline physical conditions by which a lead agency determines the significance of an impact. *Id.* "Knowledge of the regional setting is critical to the assessment of environmental impacts." CEQA Guidelines § 15125(c). Without such an understanding, any impacts analysis or proposed mitigation becomes meaningless.

The environmental setting section of the SMND consists of four paragraphs and a single map describing (1) the location and extent of lands zoned for agriculture, (2) the number of agricultural acres located on parcels larger than 10 acres, (3) the right-to-farm ordinance, and (4) the number of cannabis permits currently issued and in process. SMND at 16-18.

This bare description of land uses falls far short of the description of physical environmental conditions in the vicinity of the project that is required. For example, the environmental setting entirely lacks a description of where the County's water resources are located. Although the SMND later acknowledges that "[o]ver 80% of the county is designated in marginal Class 3 or 4 zones where groundwater supplies are limited and uncertain," SMND at 69, there is no map or overlay showing where these zones are located and whether (and how) they overlap with areas in which cannabis cultivation may be permitted. This omission makes it difficult to assess whether the Project will have a substantial impact on groundwater supplies.

The same flaw is duplicated as to sensitive waterways and riparian habitats. The SMND does not describe how the County's sensitive waterways may overlap with areas that could be subject to cannabis cultivation.[3] This omission conceals what is likely to be a significant impact of the Project. For example, a comparison of maps of the Mark West Watershed and County zoning maps shows that most of the watershed is covered by the LIA, LEA, and RRD zoning designations, in which the Project would ministerially permit cannabis cultivation. *See* Exhibit 5, Integrated Surface and Groundwater Modeling and Flow Availability Analysis for Restoration Prioritization Planning, Upper Mark West Creek Watershed, Sonoma County, CA (Dec. 2020), Figure E1, Page 2. The SMND also fails to consider or describe the likely linkages between surface water features and groundwater. To fully and accurately analyze whether the Project will have an effect on stream flows—and species and habitats dependent on those flows—in sensitive

[3] While the Project includes required setbacks from riparian corridors, SMND at 40, to assess the effectiveness of those setbacks, the public and decisionmakers must know the extent of cannabis cultivation that may be permitted near waterways.

waterways, the County should describe the relationships between the County's groundwater basins, its surface waterways, and the areas where cannabis cultivation may be permitted. *See* Exhibit 6, Letter from Robert Coey, National Marine Fisheries Service (Feb. 26, 2021) (explaining that groundwater use by cannabis cultivators may affect surface streams and their resident threatened and endangered species).

Continuing the pattern of inadequate information provision, the SMND further fails to show the location of sensitive receptors in or near the zones in which cannabis may be permitted. For example, the SMND concludes that "most future cultivation projects that would use hazardous materials . . . would be removed from existing or proposed school sites" because cannabis cultivation would be permitted in districts "which are generally located in more rural areas of the county." SMND at 64. This level of analysis is inadequate and reflects an inadequate description of physical conditions with respect to sensitive receptors. The County surely possesses information on the location of schools in the County (as well as the locations of retirement homes, convalescent homes, hospitals, medical clinics, and drug and alcohol rehabilitation centers, which are relevant to the air quality analysis under CEQA). It should be a simple matter to include a map showing the locations of these sensitive receptors in relation to the zones in which cannabis may be permitted—or, absent a map, a description of the actual numbers of these types of facilities located within a certain distance of the applicable zones. Only with such information can the public and decisionmakers determine whether the Project would have a significant impact on these facilities and whether the County has required sufficient mitigation to reduce those significant impacts.

In addition to these flaws, the SMND's description of the baseline conditions relevant to wildfires and fire risk is inadequate. Wildfire conditions in the State are changing. California is experiencing record-high temperatures: summers are 2.5 degrees warmer than they were several decades ago, and they are likely to get even hotter. *See* Exhibit 7, Susanne Rust et al., *How climate change is fueling record-breaking California wildfires, heat and smog*, Los Angeles Times (Sep. 13, 2020). These high temperatures remove moisture from plants and soils, increasing fire danger and adding combustible fuel to the landscape. *Id.*; *see also* Exhibit 8, Anne Mulkern, *Fast-Moving California Wildfires Boosted by Climate Change*, Scientific American (Aug. 24, 2020) ("Hotter temperatures, less dependable precipitation and snowpack that melts sooner lead to drier soil and parched vegetation," according to UCLA climate scientist Daniel Swain). According to CalFire, the 2020 wildfire season burned over 4.2 million acres—over 4% of the State—in nearly 10,000 incidents; 33 people died; and over 10,000 structures were damaged and destroyed. *See* Exhibit 9, 2020 Incident Archive, CalFire. As of September 13, 2020, that year had already brought six of the 20 largest wildfires in California's history. *See* Exhibit 7, Rust et al.

Sonoma County has acutely experienced the impact of this changing risk profile. As the County is aware, since 2016, about 25 percent of the County's total acreage has burned in a series of devastating wildfires. Each year has brought a steady succession of damaging blazes. The 2017 Sonoma Complex Fires damaged 112,000 acres in the county; the 2019 Kincade Fire, 78,000 acres; and the 2020 wildfires, approximately 125,000 acres.[4] *See* accounts of recent wildfire seasons by the Sonoma County Agricultural Preservation and Open Space District in Exhibits 10 (2017 Sonoma Complex Fire), 11 (2019 Kincade Fire); and 12 (2020 Wildfires). Frequent wildfires also can allow conversion of burned habitats to non-native plants that burn more easily, further increasing wildfire risk for affected areas. *See* Exhibit 13, Tiffany Yap, et al., Center for Biological Diversity, *Built to Burn: California's Wildlands Developments Are Playing With Fire* (Feb. 2021), p. 4.

While the SMND describes recent fires in Sonoma County, (SMND at 98), it does not adequately describe the physical conditions contributing to wildfire risk. In addition to describing the climatic conditions above, the environmental setting should include descriptions of: (1) areas designated by Cal Fire to be at very high risk in which cannabis permits may be issued; (2) areas where cannabis cultivation may be permitted adjacent to "areas with low- to intermediate-housing density," wildland vegetation, and limited emergency access, *see* SMND at 98; and (3) the current state of the County's roadways in areas where cannabis may be permitted. Regarding the first two items, the location of development—particularly developments like indoor cannabis cultivation and hoop houses (which may have associated electrical equipment, § 38.18.020) involving electrical infrastructure—significantly contributes to wildfire risk. *See* Exhibit 13, Tiffany Yap, et al., at 1 ("Almost all contemporary wildfires in California, 95-97%, are caused by human sources such as power lines, car sparks and electrical equipment. Building new developments in highly fire-prone wildlands increases unintentional ignitions and places more people in danger."). Regarding roadways, the third item, the County itself has acknowledged that roadways in RRD zones provide inadequate access for emergency vehicles. *See* Exhibit 14, Discussion Paper: Key Issues and Policy Options, Cannabis Cultivation within Resources and Rural Development (RRD) Lands ("The remote RRD zoned areas are primarily accessed by one lane gravel roads that are remnants of old logging roads. Most cultivation facilities would be required to construct paved, 2-way roads with an 18-foot minimum width, sufficient for emergency vehicle

[4] This totals 315,000 acres. Sonoma County has 1.32 million acres, so 27.8 percent of the county burned from 2017 to 2020. *See*, https://en.wikipedia.org/wiki/Sonoma_County,_California.

access.").[5] For the public and decisionmakers to accurately assess whether the cannabis activities permitted by the Project will expose individuals to a significant wildfire risk, the environmental setting must fully describe the existing conditions in which those activities would occur.

The environmental setting's discussion of the current status of cannabis cultivation operations in the County is also inadequate. The SMND notes that 78 ministerial permits and 32 conditional use permits have been issued, and 78 ministerial and 55 conditional use permits are in process. SMND at 18. But particularly because, as the SMND notes, these permits may include renewals, they may involve activities other than cultivation, and may include more than one license for the same location, these figures do not convey any meaningful information about the scope of cannabis activity currently permitted in the County. At the very least, the SMND should state the total acreage permitted for cultivation, broken down by the zoning district in which it is located. This data is needed to inform the County's analysis of cumulative impacts, as well as to reveal the scope of potential new development that may be allowed by the Project.[6]

The SMND's discussion of cannabis operations in the County is also inadequate because it almost entirely ignores illegal cultivation, including its extent and its associated impacts. The SMND notes, without further elaboration or detail, that "[m]any cannabis operations have been operating illegally within the RRD land use areas." SMND at 67. It does not provide even an *estimate* of the number, extent, or actual impacts of these illegal cultivation operations. The extent of illegal operations in the County is an important part of the existing environmental baseline. As the SMND itself acknowledges, unregulated cannabis cultivation can be extremely damaging to the environment. Illegal cannabis cultivation: "has been associated with impacts to biological resources," including to sensitive species and their habitats, SMND at 38; has caused negative impacts to waterways, SMND at 55; and creates "high fire risk" related to "inadequate or improper electrical equipment" and explosions "due to the use of volatile chemicals," all located in "high fire hazard areas due to steep slopes, dense vegetation, and insufficient emergency services due to a lack of safe emergency vehicle access," SMND at 67.

Indeed, the conversion of illegal operations to permitted grows and the associated reduction in environmental impacts was a significant assumption underlying the County's

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[5] Available at http://sonomacounty.ca.gov/WorkArea/DownloadAsset.aspx?id=2147525642.

[6] The county's ArcGIS data indicates 8,289 parcels meet the criteria of being 10 or more acres and have agricultural or resource zoning: RRD (4,015); LIA (1,158); LEA (1,158); DA (1,665).

determinations that (1) the 2016 Ordinance would not have a significant impact and (2) the 2018 Amendments were exempt from CEQA. *See* 2016 Negative Declaration, p. 2 ("This Ordinance would provide a regulatory structure, with operational standards, to allow existing operators to become permitted."); Resolution 18-0442, p. 3 ("[T]he Ordinance expands regulation of the County's cannabis industry to encompass adult-use for the full supply chain, encouraging illegal cannabis cultivators to come into compliance with the environmental protection standards provided for in the Ordinance."). The 2016 Negative Declaration estimated that there were as many as *ten thousand* existing (unregulated) cultivators, the majority of which were located in the RRD zone. 2016 Negative Declaration at 2. According to the 2016 Negative Declaration, "[u]nregulated cannabis cultivation is associated with habitat destruction, pollution of waterways, illegal road construction causing erosion and increased sedimentation, unauthorized use of pesticides, illegal water diversion, large amounts of trash, human waste, non-biodegradable waste, and excessive water and energy use," as well as "offensive odor, security and safety concerns," and "use of hazardous materials." *Id.* An analysis in Bennett Valley found that "[c]ontrary to the ordinance's stated goals, no ongoing operations were legalized in Bennett Valley; all began after the supervisors invited cultivation here." Harrison, Status of Commercial Marijuana Projects in Bennett Valley, Bennett Valley Voice (January 2021), Exhibit 15.

To accurately assess the Project's impacts on the current environment, the County must provide data and analysis concerning current status of illegal operations on the County. The County and the public must be able to determine whether the current regulations have succeeded in converting illegal operations to permitted grows or if, in fact, the legal, regulated regime has grown up alongside and in addition to the prior illegal regime. Indeed, evidence suggests that the latter is more likely. *See* Exhibit 16, Thomas Fuller, The New York Times, *'Getting Worse, Not Better': Illegal Pot Market Booming in California Despite Legalization* (Apr. 27, 2019) (since legalization, "the unlicensed, illegal market is still thriving and in some areas has even expanded."); Exhibit 17, Joseph Detrano, Rutgers Center of Alcohol & Substance Abuse Studies, *Cannabis Black Market Thrives Despite Legalization* (noting that unregulated cannabis may be cheaper than legal product, and thus more attractive, because it is not subject to tax). But without this information, it is impossible for the County and the public to assess the Project's impacts, including (1) whether the Project will reduce impacts of illegal grows by bringing cultivators into compliance, or (2) whether the County's environmental baseline is significantly off because it fails to account for the impacts associated with thousands of illegal operations.

In short, the SMND's incomplete description of the Project and its environmental setting frustrates the core goals of CEQA: to provide a vehicle for intelligent public

participation and to provide an adequate environmental impact analysis. See *County of Inyo v. City of Los Angeles*, (1977) 71 Cal.App.3d 185, 197.

III. The SMND's analysis impermissibly focuses solely on the impacts of individual permits and fails to adequately analyze the impacts of the Project as a whole.

The CEQA Guidelines define a "project" as "*the whole of an action*" that may result in a direct or reasonably foreseeable indirect change in the environment. Guidelines § 15378(a). "'Project' is given a broad interpretation in order to maximize protection of the environment." *McQueen v. Bd. of Directors* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds). The analysis of a project's environmental effects must occur at the earliest discretionary approval. *See, e.g.*, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396 (EIR must analyze future action that is a "reasonably foreseeable consequence" of the initial action that would "likely change the scope or nature" of the effects of the initial action).

A lead agency considering an ordinance or a general plan amendment must analyze the impacts of all the potential activity that may be permitted by or could foreseeably result from those actions. *See Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 905 (City was required to prepare an EIR to analyze the reasonably foreseeable effects of an ordinance). This analysis is required even though enacting an ordinance or general plan amendment is, in itself, an action that occurs largely on paper. *See* Guidelines § 15378(c) ("The term 'project' refers to the activity which is being approved" and not "each separate governmental approval."). CEQA documents must analyze an ordinance's full potential level of development. As the court in *City of Redlands v. County of San Bernardino* explained, "an evaluation of a 'first phase-general plan amendment' must necessarily include a consideration of the larger project, i.e., the *future development permitted* by the amendment." (2002) 96 Cal.App.4th 398, 409 (emphasis added). Environmental review of the development allowed by a planning enactment must take place regardless of whether that development will actually materialize. *See Bozung v. Local Agency Formation Comm'n of Ventura County* (1975) 13 Cal.3d 263, 279, 282; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194–95 ("The fact future development is not certain to occur and the fact the environmental consequences of a general plan amendment changing a land use designation are more amorphous does not lead to the conclusion no EIR is required"); *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229, 235 (EIR for rezoning must be prepared even though "no expanded use of the property was proposed"). The lead agency's obligation to *fully* review an activity's potential environmental effects applies even when the activity is subject to later discretionary approvals. *Laurel Heights*, 47 Cal.3d at 396. That obligation is especially

important, however, when the later approvals would be ministerial and would not present an opportunity for further environmental review or mitigation.

Here, the SMND fails to analyze the impacts of the Project as a whole—i.e., whether the sum of all potential activities that may be allowed by the Ordinance would have a significant environmental impact. Instead, the SMND repeatedly bases its analysis of the Project's impacts on whether *each individual permit* that may be issued under the Ordinance would have a significant effect or violate a threshold of significance. This type of analysis is impermissible. *Cf. Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283-84 ("[E]nvironmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences."). The County's analysis is equivalent to determining that a massive shopping center development would not have a significant impact on the environment because the impacts of each individual store would be less than significant. This type of analysis does not inform the public or decisionmakers about the effects of the Project as a whole.

For example, the SMND's analysis of vehicle miles traveled ("VMT") is improperly focused on the impacts of individual permits rather than the Project as a whole. The VMT analysis uses screening criteria applicable to "small projects" that generate fewer than 110 vehicle trips per day. SMND at 89. The SMND then explains that "many, if not most, cannabis cultivation projects" would generate fewer than 110 average daily trips; and that larger projects exceeding 110 average daily trips would have to implement measures to reduce VMT. *Id*. As a result, the SMND concludes that VMT-related impacts would be less than significant. *Id.*

The proper frame for analysis of VMT is not the VMT that would be generated by each individual permit, but the VMT that would be generated by all potential permits allowed by the Project. According to the Office of Planning and Research ("OPR"), general plans or other land use plans "may have a significant impact on transportation if proposed new . . . land uses would *in aggregate* exceed" thresholds of significance recommended by OPR. Exhibit 18, OPR, Technical Advisory: On Evaluating Transportation Impacts in CEQA (December 2018), at p. 18 (emphasis added). OPR's recommended thresholds state, for example, that office projects may have significant impacts if their VMT exceeds the threshold of 15% below existing regional VMT per employee, or retail projects may have significant impacts if they create a net increase in total VMT.[7] *Id.* at pp.15-16. Instead of relying on the aggregate thresholds described by

[7] The same OPR document warns that "isolated rural development" of the sort contemplated in the present Project (which concerns development in RRD districts) lacks

OPR, the SMND's analysis employing the "small project" threshold effectively defines "the Project" as an individual permit, rather than as the Ordinance and General Plan Amendment.[8] This is impermissible. The County must correct this VMT analysis, using an appropriate threshold and frame of analysis that focuses on the Project as a whole. *See* Guidelines § 15378(a); *City of Redlands*, 96 Cal.App.4th 398.

The SMND's analysis of biological resources is similarly flawed. The Project requires each applicant to include a biotic resource assessment that "demonstrates that the cannabis cultivation area and related structures and development will not impact sensitive or special status species habitat." SMND at 39. Each assessment, however, will focus on the impacts from "the cannabis cultivation area" associated with an individual permit, and not the combined potential impacts of all of the cannabis permits allowed by the Project. The SMND concludes that these assessments, combined with exclusions from limited biotic habitat combining zones and setbacks from riparian corridors, would result in a less than significant impact to sensitive species and riparian habitat. SMND at 40-41.

This myopic analysis misses significant potential impacts of the Project as a whole. The SMND acknowledges that cannabis activities will rely on a combination of surface or well water sources. SMND at 69. It then concludes that it is unlikely that cultivators using groundwater would result in overdraft. *Id.* This conclusion, however, is not explained and is based on unsupported estimates of groundwater usage from cannabis cultivators. *See* Exhibit 1, Kamman Report (March 16, 2021) (criticizing the SMND's conclusion). But even assuming that each individual cultivator's water usage is not enough, on its own, to reduce water supplies in a way that threatens sensitive species and

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the VMT benefits present for projects in small towns or cities with access to transit. *Id.* at p. 21.

[8] The SMND briefly gestures toward the threshold addressing 15% reductions below existing VMT levels. SMND at 89. However, the analysis that follows suggests that the Project would *exceed* this threshold, stating that new projects would be "located in rural areas of the County, where existing average trip lengths are higher." *Id.* The SMND also notes that the conversion of existing agriculture to cannabis cultivation would not necessarily result in additional trips, SMND at 89, but this statement is contradicted by the SMND itself and unsupported by any evidence. On the previous page, the SMND states that large greenhouse cultivation operations could result in additional vehicle trips compared to existing uses. SMND at 88 ("[L]arge greenhouse cultivation operations could have 100 to 200 employees commuting to cultivation sites, resulting in additional vehicle trips compared to existing agricultural uses."). Further, the SMND does not appear to assess, let alone to support with evidence, whether cannabis is likely to replace existing agricultural acreage as opposed to adding additional acreage.

riparian habitat, a group of cultivators all drawing water from the same surface water source, from hydrologically-linked surface water sources, or from hydrologically-linked groundwater basins could significantly decrease the water available for in-stream flows despite required setbacks, potentially harming the plant and animal species that rely on those flows. *See also* Letter from Friends of Mark West Watershed to the Planning Commission dated March 18, 2021.

The combined impact of multiple cultivators drawing upon limited groundwater supplies could have significant impacts on biological resources. For example, a recent analysis of streamflow in the Mark West Watershed prepared for the Sonoma Resource Conservation District and California Wildlife Conservation Board emphasized the importance of groundwater to providing habitat for sensitive species. According to the streamflow analysis, groundwater discharge "represents the primary process responsible for generating summer streamflow" in the watershed. Exhibit 5, Jeremy Kobor, et al., Integrated Surface and Groundwater Modeling and Flow Availability Analysis for Restoration Prioritization Planning, Upper Mark West Creek Watershed, Sonoma County, CA (Dec. 2020) at p. 3. The report also showed that human consumption of groundwater threatens streamflow, concluding that groundwater pumping depleted streamflows over the long term. *Id.* at p. 11. The study determined that increased demand for groundwater, combined with other factors, make efforts to sustain or improve streamflows "of paramount importance for coho recovery" in the watershed. *Id.* at p. 25; *see also id.* at 1 ("The Mark West Creek watershed provides critical habitat for threatened and endangered anadromous fish"). Similarly, hydrogeologist Greg Kamman emphasized that one of his "biggest concerns" regarding stewardship of natural resources in Sonoma County is "the increased demand on already stressed groundwater supplies." Exhibit 1, Kamman Report (March 16, 2021).

The biotic resources assessments, with their narrow focus on each individual permit applicant's activities, would not address the combined effects of multiple permittees decreasing groundwater available for streamflows. An EIR for the Project that analyzes these combined potential effects of all potential permits allowed by the Project is the proper place for this analysis, as well as an analysis of feasible mitigation to address such impacts.

IV. The permit approval process contemplated by the Ordinance requires the exercise of discretion by County officials.

The Ordinance purports to allow "ministerial" approvals of commercial cannabis operations throughout the County. Yet, proposed Chapter 38 does not describe ministerial approvals. Per the Ordinance's plain language, every approval of a commercial cannabis operation will necessarily be a discretionary action and thus subject to CEQA. By

adopting an ordinance that purports to authorize "ministerial" approvals which in actuality trigger CEQA, the County is heading toward certain litigation from those objecting to future siting decisions for commercial cannabis operations, and from applicants for these projects.

"A project is discretionary when an agency is required to exercise judgment or deliberation in deciding whether to approve an activity. It is distinguished from a ministerial project, for which the agency merely determines whether applicable statutes, ordinances, regulations, or other fixed standards have been satisfied. Ministerial projects are those for which the law requires [an] agency to act ... in a set way without allowing the agency to use its own judgment .... They involve little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision." *Protecting Our Water & Env't Res. v. Cty. of Stanislaus* (2020) 10 Cal.5th 479, 489 ("*POWER*") (internal quotations and citations omitted).

Under the proposed Ordinance, the Agriculture Commissioner *must* use his judgment to decide whether to issue permits. Thus, this is different from the situation in *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, where the court held that the permit in question did not involve the Commissioner's judgment, even though the County's ordinance might allow for discretion in other instances. *Sierra Club* therefore does not apply here. Instead, a court would hold that the County has improperly classified *all* commercial cannabis permit approvals under the ordinance as ministerial, when in fact the ordinance requires the Commissioner to exercise discretion for each permit. *POWER*, 10 Cal.5th at 499 ("County's blanket classification … enable[d] County to approve some discretionary projects while shielding them from CEQA review").

The Ordinance in many instances requires plans or surveys by qualified professionals to assess impacts, but does not provide standards governing *how* these surveys/plans will be evaluated or deemed sufficient. Thus, County officials will have to exercise discretion to determine whether they are good enough.

For example, every permit application must include a "biotic resource assessment" that "demonstrates" to the Commissioner's satisfaction that the project would not impact sensitive or special status species habitat. Proposed § 38.12.070(A)(1). Whether this plan adequately demonstrates the avoidance of impacts—including whether surveys were properly conducted to determine the presence of sensitive or special status species habitat, and what constitutes an "impact"—is necessarily left to the Commissioner's individual discretion, a task for which he typically lacks expertise.

Similarly, each permit application must include a wastewater management plan that, among other things, "demonstrates" to the Commissioner's satisfaction that the project would have adequate capacity to handle domestic wastewater discharge from employees. Proposed § 38.12.130(A)(5). Each application must also include a storm water management plan and an erosion and sediment control plan that "ensure," again to the Commissioner's satisfaction, that runoff containing sediment or other waste or byproducts does not drain to the storm drain system, waterways or adjacent lands. Proposed § 38.12.130(B). Obviously, whether an applicant's plans sufficiently "demonstrate" the necessary wastewater capacity, or "ensure" that runoff would not drain to waterways, would require the Commissioner's individual judgment. Proposed sections 38.12.070(A)(1), 38.12.130(A)(5) and 38.12.130(B) apply to *all* applications regardless of size or proposed location. Each applicant must submit an energy conservation plan to reduce energy use below the threshold of significance. § 38.12.110. The Commissioner must exercise his personal judgment as to whether the plan is adequate. Thus the Commissioner will have to exercise his discretion for every permit application they process.

Other provisions that require the exercise of discretion to approve or deny a permit include, but are not limited to, proposed sections 38.12.050(B) (historic resource survey), 38.12.050(C) (cultural resource survey), 38.12.130 (wastewater management plan), and 38.12.140 (documentation of water supply).

Furthermore, unlike in *Sierra Club*, here the Commissioner's necessary exercise of discretion under the Ordinance would be directly tied to the mitigation of impacts from individual projects. For instance, the SMND states that "future cannabis projects facilitated by a ministerial permit . . . could result in direct and indirect impacts on sensitive biological resources including sensitive-status species. . . However, to *reduce impacts* to status species and their habitat," applicants would be required to submit the "biotic resource assessment." SMND at 39. As explained above, the Commissioner would have authority to decide whether this assessment adequately demonstrates that no impact would occur—in other words, whether the impact is effectively mitigated.

The Commissioner or County staff would also have discretion to determine the adequacy of the applicant's VMT analysis demonstrating whether a proposed project would add fewer than 110 average daily vehicle trips. SMND at 89, 90. Staff shall "verify[]" that a project complies with applicable County or recommended State thresholds related to VMT and that, "if necessary, [the project] incorporates appropriate VMT-reducing measures consistent with the requirements in Mitigation Measure TRANS-1." *Id.* at 90. With implementation of Mitigation Measure TRANS-1, "[t]his impact would be less than significant with mitigation incorporated." *Id.* at 89. Yet, clearly, staff would need to exercise discretion to "verify" whether the applicant's VMT

analysis is adequate and whether a project "incorporates VMT-reducing measures." *Id.* at 90.

CEQA, and not the personal judgment of County staff, governs the discretionary review of projects, including mitigation of impacts. *See Sierra Club*, 11 Cal.App.5th at 22 (ministerial approval process "is one of determining conformity with applicable ordinances and regulations, and the official has no ability to exercise discretion to mitigate environmental impacts"). Here, however, the Commissioner and/or staff would have the authority to deny a proposed project which in their judgment would not avoid biological, vehicle miles traveled, or other environmental impacts. *Id.* at 23 (if agency can deny, or modify, project proposal in ways that would mitigate environmental problems that CEQA compliance might conceivably have identified, then the process is discretionary). Thus, the proposed Ordinance contemplates a discretionary, and not ministerial, approval process.

If adopted, the Ordinance's permit approval regime would be in clear violation of CEQA, and each permit approval would risk a legal challenge and ultimately being overturned by a court. The County must revise the Ordinance and accompanying environmental document to acknowledge that all subsequent permit approvals will necessarily be discretionary decisions subject to review under CEQA.

V. The SMND's analyses of and mitigation for the Project's environmental impacts are legally inadequate.

The evaluation of a proposed project's environmental impacts is the core purpose of an EIR. *See* CEQA Guidelines § 15126.2(a) ("An EIR shall identify and focus on the significant environmental effects of the proposed project"). As explained below, the SMND fails to analyze the Project's numerous environmental impacts, including those affecting land use, transportation and circulation, air quality, biological resources, odor, climate change, public health and safety, and noise. In addition, as discussed above, the SMND never considers the full impacts of the Project—the impacts of the foreseeable impacts of facilitating ministerial approval of cannabis cultivation and production and of events that the proposed Project would allow. In this way, the SMND fails to disclose the extent and severity of the Project's broad-ranging impacts. This approach violates CEQA's requirement that environmental review encompass all of the activity allowed by the proposed Project. The County must analyze all of the aggregated impacts of all of the foreseeable development and activities. Without this analysis, the environmental review will remain incomplete and the Project cannot lawfully be approved.

Below, we discuss several examples of impact areas with particular deficiencies. To ensure that both decision makers and the public have adequate information to consider

the effects of the proposed Project, and to comply with CEQA's requirements, the County must prepare an EIR that properly describes the Project, analyzes its impacts, and considers meaningful mitigation measures that would help ameliorate those impacts.

The SMND claims that it is a "programmatic" document and therefore detailed analysis is not within its scope. SMND at 36. Even if it were a programmatic analysis, however, the 'programmatic' nature of this SMND is no excuse for its lack of detailed analysis. CEQA requires that a program EIR provide an in-depth analysis of a large project, looking at effects "as specifically and comprehensively as possible." CEQA Guidelines § 15168(a), (c)(5). Because it looks at the big picture, a program level analysis must provide "more exhaustive consideration" of effects and alternatives than an EIR for an individual action, and must consider "cumulative impacts that might be slighted by a case-by-case analysis." CEQA Guidelines § 15168(b)(1)-(2).

Further, it is only at this early stage that the County can design wide-ranging measures to mitigate County-wide environmental impacts. *See* CEQA Guidelines § 15168(b)(4) (programmatic EIR "[a]llows the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility. . . ."). A "program" or "first tier" EIR is expressly not a device to be used for deferring the analysis of significant environmental impacts. *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199. It is instead an opportunity to analyze impacts common to a series of smaller projects, in order to avoid repetitious analyses. Thus, it is particularly important that the environmental analysis for this Project analyze the overall impacts for the complete level of development it is authorizing now, rather than when individual specific projects are proposed at a later time.

Deferring analysis to a later stage is unlawful as it leaves the public with no real idea as to the severity and extent of environmental impacts. Where, as here, the environmental review document fails to fully and accurately inform decisionmakers and the public of the environmental consequences of proposed actions, it does not satisfy the basic goals of CEQA and its Guidelines. *See* Pub. Resources Code § 21061 ("The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment . . . ."). The evaluation of a proposed project's environmental impacts is the core purpose of an EIR. *See* Guidelines § 15126.2(a) ("An EIR shall identify and focus on the significant effects of the proposed project on the environment."). It is well-established that the County cannot defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07.

The SMND fails to provide the legally required analysis of the extensive growth in cannabis cultivation (from about 50 acres currently to as many as 65,753 acres, a 1,300 fold increase) and operations that the Project allows and promotes. Thus, the County must revise the environmental analysis to accurately disclose the impacts of the maximum amount of cannabis cultivation allowed by the Project. Detailed below are the specific legal inadequacies of the SMND's various impact sections.

A. The SMND fails to adequately analyze and mitigate the Project's air quality and odor emissions

The SMND's analysis of Project-related air quality and odor impacts contains numerous deficiencies that must be remedied in order for the public and decision-makers to fully understand the Project's impacts. Specifically, the evaluation of the Project's air quality impacts must be revised to address: (1) failure to adequately analyze Project operation pollutants; (2) failure to adequately analyze odor emissions; (3) deficient analysis of project-related public health impacts; (4) and failure to identify all feasible mitigation measures for significant impacts. These issues, and other deficiencies, are discussed in greater detail below.

1. The SMND fails to adequately analyze and mitigate the Project's potential to create objectionable odors.

New and expanded cannabis cultivation and production sites facilitated by the proposed Project have the potential to generate significant odors impacting nearby sensitive receptors. As the California Air Resources Board Air Quality makes clear "the types of facilities that can cause odor complaints are varied and can range from small commercial facilities to large industrial facilities…". California Environmental Protection Agency and California Air Resources Board Air Quality and Land Use Handbook: A Community Health Perspective, 2005 at 32 and 33; excerpts attached as Exhibit 19. Odors can cause health symptoms ranging from psychological (e.g., irritation, anger, or anxiety) to physiological (e.g., circulatory and respiratory effects, nausea, vomiting, and headache). *Id*. and BAAQMD CEQA Guidelines at 7-1; excerpts attached as Exhibit 20. As discussed in detail below, the SMND for the Project fails to take seriously the significant odor impacts resulting from cannabis cultivation and processing sites.

a. The SMND fails to follow applicable guidance on methods to evaluate the significance of odor impacts.

The BAAQMD CEQA Guidelines provide guidance for lead agencies evaluating odor impacts. The BAAQMD CEQA Guidelines also provide odor screening distances recommended by agency for a variety of land uses. The guidance specifies that "Projects

that would site a new odor source or a new receptor farther than the applicable screening distance shown in Table 3-3 from an existing receptor or odor source, respectively, would not likely result in a significant odor impact."

The BAAQMD CEQA Guidelines also recommend a multi-step process to comprehensively analyze the potential for an odor impact. These include:

- Disclosure of Odor Parameters: this includes information on the type and frequency of the odors, the distance and landscape between the odor sources and sensitive receptors, predominant wind direction and speed, and whether the sensitive receptors would be upwind or downwind from the odor sources. BAAQMD CEQA Guidelines at 7-2.

- Odor Screening Distances: The BAAQMD CEQA Guidelines provide odor screening distances for a variety of land uses. The guidance specifies that Projects that would locate sensitive receptor(s) to odor source(s) closer than the screening distances would be considered to result in a potential significant impact. *Id*. The Guidelines list a variety of land uses known to cause odors. Although cannabis cultivation sites are not specifically included, the list includes such uses as composting facilities, food processing facilities, and green waste and recycling operations. We note that all of the screening distances cited by the BAAQMD range from one to two miles. BAAQMD CEQA Guidelines at 3-4.

- Odor Complaint History: the impact of an existing odor source on surrounding sensitive receptors should also be evaluated by identifying the number of confirmed complaints received for that specific odor source. The Air District recommends that lead agencies take all odor complaints (including ones made to BAAQMD) and evaluate the distance from source to receptor. It also recommends using odor complaints from surrogate odor sources to evaluate if the new source would result in significant odor impacts. BAAQMD CEQA Guidelines at 7-3.

- Significance Determination: lastly, the lead agency should use the information obtained from the steps above to reach a conclusion regarding the significance of the odor impact. *Id*. If an agency concludes there is the potential for significant odor impacts, "BAAQMD considers appropriate land use planning the primary method to mitigate odors." *Id*. The agency recommends that "providing sufficient buffer zones between sensitive

receptors and odor sources should also be considered prior to analyzing implementation of odor mitigation technology." *Id*.

Here, as discussed below, the SMND pays short shrift to this important issue and entirely fails to apply these established methods of evaluating odor impacts.

b. The SMND presents incomplete and inaccurate analysis of the Project's anticipated odor impacts.

The SMND acknowledges that "[O]dors from cannabis cultivation sites have been described as reminiscent of skunks, rotting lemons, and sulfur..." SMND at 33. The SMND also discloses that "[P]revailing winds carry cannabis odors to downwind residences" and "potentially generate odors that adversely affect a substantial number of people." SMND at 34. However, the SMND's cursory discussion omits any actual analysis of how sources of odorous emissions caused by implementation of the Project would impact sensitive receptors.

Odors from cannabis cultivation sites result from both indoor and outdoor cultivation areas and include odors from manure fertilizer. The molecules that cause most of the foul odors from cannabis cultivation are aromatic volatile organic compounds called terpenes. While the SMND claims that odors are worst during harvesting in the months of September and October, residents living near existing cannabis cultivation sites report experiencing pungent odors from June through November if there is a single harvest, but many cultivators have two or three harvests. (Personal Communication, C. Borg, Urban Planner and members of Save Our Sonoma Neighborhoods, March 8, 2021.) Contradicting the claims by the County that odor is only a 2-month a year problem, a group of neighbors on Abode Road, Petaluma, filed suit in August 2018 after a "strong skunky smell of cannabis cloaked the neighborhood" since spring, causing "significant breathing problems" for a young paraplegic who relies on a breathing tube and was at risk of suffocation. *See* Johnson, Neighbors file federal lawsuit to shut down Sonoma County cannabis grower, Press Democrat August 31, 2018), Exhibit 21; Letter from Stefan and Carol Bokaie, Exhibit 22.

Aside from misrepresenting the extent and duration of odor impacts on nearby sensitive receptors, the SMND fails to provide *any* information on current odor impacts and current odor control systems that may be in place at existing facilities. Such information would inform the public and decisionmakers about anticipated impacts and the efficacy of odor control systems. Notwithstanding the failure of the SMND to provide this rudimentary information about odor sources and odor control systems at existing sites, the SMND is silent with regard to the County's historical record of odor complaints. Had the County undertaken this analysis, it would likely have concluded that

the current setbacks have proven to be grossly ineffective, with many area residents suffering from offensive odors as a result of cannabis cultivation operations. County residents indicate that the smell from the such sites can be overwhelming. Individuals also state that they have called the County and the BAAQMD on multiple occasions. It is important to point out that the BAAQMD typically responds to these callers with a perfunctory explanation, stating that nothing can be done since the facility has a permit to operate. Similarly, calls to the County have generally not yielded any change in ameliorating odors despite the fact that the County Code currently considers odor from cannabis a nuisance. *See*, County Code § 26-88-250 (f) (Health and Safety. Medical cannabis uses shall not create a public nuisance or adversely affect the health or safety of the nearby residents or businesses by creating dust, light, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, runoff or wastes.) Testimonies from residents filing complaints constitute substantial evidence to support a fair argument that the proposed Project may have result in a significant odor impact. In *Oro Fino Gold Mining Co. v. County of EI Dorado* (1990) 225 Cal.App.3d 872,882, (the Court held that personal observations about a previous project constitutes substantial evidence of a potentially significant impact of a new project). See also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735–736 & fn. 13, 187 Cal.Rptr.3d 96 ("Residents' personal observations of traffic conditions where they live and commute may constitute substantial evidence even if they contradict the conclusions of a professional traffic study."); *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1152; example letters from Sonoma County residents regarding odor impacts from commercial cannabis cultivation sites, attached as Exhibit 22, (including a letter from Katie Moore regarding odor from a 1-acre outdoor grow in Fulton that presents constant, noxious smells during the growing season at a home 2,000 downwind. When Ms. Moore complained to the county, one official said "this is here to stay. If you don't like it, then move." *Id*.)

Concerning indoor cultivation operations, the SMND foregoes any analysis of these facilities and defers analysis for outdoor cultivation operations to the future requiring a case-by-case review of these facilities if warranted based on the number of complaints. SMND at 35. CEQA requires that impacts be evaluated now, prior to Project approval, not deferred until some later date if complaints are sufficient to trigger an investigation.

By contrast, Yolo County prepared an EIR for its Cannabis Land Use Ordinance. See, https://www.yolocounty.org/government/general-government-departments/community-services/cannabis/cannabis-land-use-ordinance accessed March 1, 2021; excerpted Air Quality and Odor chapter attached as Exhibit 23. The Yolo

County EIR evaluated odor impacts from existing and eligible cannabis cultivation sites and included air dispersion models that simulated atmospheric conditions, such as meteorology and topographical influences to quantify the impact of odors. See also memo from Trinity Consultants to Yolo County, dated August 17, 2020, attached as Exhibit 24. Given that the Project fails to limit the number of cannabis cultivation permits approved by the County, an EIR must evaluate the effects of the whole of the Project, that is, the approval of potentially thousands of outdoor and indoor cultivation sites for up to 65,753 acres of cannabis cultivation. In addition, the County has an obligation to identify effective mitigation as part of this review to ensure that sensitive receptors in the vicinity of cannabis cultivation operations are not significantly impacted by odors.

c. The SMND relies on inadequate mitigation measures that do not reduce odor impacts to less than significant levels.

Instead of providing a thorough analysis of the Project's anticipated odor impacts, the SMND once again relies on unproven mitigation measures to conclude that odor impacts will be reduced to less than significant levels. For example, for indoor cultivation facilities, the Code amendments include a standard that permanent structures that may cultivate or contain cannabis must be equipped with odor control filtration and ventilations systems to control odors. SMND at 33. The standard also states that "odor shall be controlled in a way that prevents cannabis odor from being detected off of the parcel containing the cannabis site." SMND at 33; proposed § 38.12.110. B. The SMND identifies Mitigation Measure AIR-2, which requires daily inspections to verify that air filtration equipment continues to function properly at indoor cultivation sites. However, the SMND fails to provide evidence that the proposed measures will effectively reduce odor impacts to less than significant levels in part because the Project includes no effective means of ensuring that cannabis odor is not detected on adjacent parcels.

With regard to outdoor cannabis cultivation operations, the SMND points to several factors it claims would reduce the exposure of sensitive receptors to odors from outdoor grows. First, the SMND states that "outdoor cannabis cultivation generates the strongest odors in September and October, during the last four to eight weeks of the growing season prior to harvest. This would restrict the timing of the most adverse cannabis odors to no more than two months per year." SMND at 34. While outdoor cultivation may be a single crop per year, hoop houses, which are not controlled for odor, can have three harvests. Thus, the period that odor is problematic can be much longer than the SMND asserts. Real life experience demonstrates the period is much longer that the SMND's estimate. Pungent odors clearly can be a problem throughout the growing season. Even if the cannabis odors were most pungent for only 8 weeks during the year, neighboring property owners would be unable to open their windows or enjoy their homes and backyards during the months of September and October. *See* Fuller, 'Dead

Skunk' Stench from Marijuana Farms Outrages Californians, New York Times, December 22, 2018 attached as Exhibit 3. But in fact, odors adversely impact neighbors for the entire cannabis growing period, including in summer when children are not at school and people tend to spend more time outdoors.

Second, the SMND states that residents in agricultural and resource zones would have limited exposure due to large parcel sizes. SMND at 34. However, many DA, RR, AR and RRD parcels are in non-conforming areas. For example, the cannabis business at 885 Montgomery Road in Sebastopol, is on a 10-acre DA zoned parcel but is surrounded by seven, small, DA and AR/RR zoned parcels with a 3.3-acre average size. See map in Guthrie Letter, Cannabis cultivation should occur in appropriate places, at 13, Exhibit 22. There are many examples of similar non-conforming parcels in the County. An EIR should include a review of existing and eligible cannabis cultivation parcels and analyze how they may impact neighboring residents.

Third, the SMND claims that vegetative screening would buffer sensitive receptors from cannabis odors. *Id*. The SMND appears to base its statement on the United States Department of Agriculture Natural Resource Conservation Service ("NRCS") Publication October 2007- Windbreak Plant Species for Odor Management around Poultry Production Facilities, attached as Exhibit 25. However, while vegetative buffers may be partially effective[9] for reducing poultry and livestock odors (ammonia and hydrogen sulfide), plants are not known to absorb the terpene odor molecules emitted by cannabis. [Personal Communication: C. Borg, Urban Planner, SMW with Dr Deborah Eppstein, Retired Ph.D. in biochemisty, March 10, 2021. In addition, ammonia (NH_3) and hydrogen sulfide (H_2S) are much more volatile than terpenes [ammonia evaporates at -28 degrees Fahrenheit, hydrogen sulfide evaporates at -140 degrees Fahrenheit.] *Id*. The most volatile cannabis terpenes evaporate at +70 degrees Fahrenheit. *Id*. The density of ammonia (0.00089 g/ml) is 1,000 times less than for cannabis terpenes (0.858 g/ml for B-pinene).] *Id*. Thus, the more highly volatile ammonia molecules can disperse much more readily than the heavier terpene molecules. *Id*.

Furthermore, even if planting vegetation were an effective windbreak on flat ground, 20 years growth may be needed, with limited results starting after 5 years. *See*, NRCS Publication October 2007- Windbreak Plant Species for Odor Management around Poultry Production Facilities attached as Exhibit 25. Many cultivation sites in Sonoma

[9] The observed reduction in odor was only 46 percent. NRCS March 2007, p. 2. The reduction probably occurred because "[p]lants have the ability to absorb aerial ammonia." *Id*.

County are located on hillsides facing sensitive receptors where prevailing winds can widely distribute terpene odors.

The SMND fails to evaluate the efficacy of vegetative buffers on cannabis odors and fails to take hillside locations into account. Vegetative buffers do not disperse cannabis terpene odors and prevent them from adversely affecting adjacent parcels. This has been demonstrated by Ortech, a cannabis consulting company with 40 years of odor management experience. It found that "uncontrolled cannabis odors can disperse as far as 1,000 m (3,280 feet or more than 0.6 mile) from outdoor (cannabis) farms and more than 300 m (984 feet) from indoor grow facilities." Ortech brochure at 2, attached as Exhibit 26. This finding is confirmed through residents' experiences in recent years, where vegetative screening and thick tree cover does not prevent strong odors from cultivation areas of between 10,000 square feet and one acre from travelling over 600 feet without wind. Prevailing winds extend the odor even further. In another example, the odors from a one-acre cultivation site in Fulton adversely affects people 2,000 feet downwind all summer and fall. *See*, Exhibit 22 at Moore letter; *see also*, "What's it Like to Live 100 feet from 15, 000 Cannabis Plants" North Bay Biz, December 4, 2020, attached as Exhibit 27. These problems would be exacerbated by outdoor cultivations of up to 10 acres.

The SMND acknowledges that the aforementioned factors do not mitigate odor impacts from outdoor cannabis cultivation operations and identifies Mitigation Measure AIR-3, which provides:

"In the case that odors are not adequately diffused and verified odor complaints are received, Mitigation Measure AIR-3 would be required to address odor problems on a case-by-case basis. Where the County finds that a cannabis operation is having a substantial adverse effect on sensitive receptors, the County would review additional measures to reduce outdoor odor generation, including use of engineered solutions such as Vapor-Phase Systems (Fog Systems). Fog systems mix water with an odor-neutralizing chemical, which remains in the air after the water evaporates. With implementation of Mitigation Measure AIR-3, the impact of cannabis odors would be reduced to a less than significant level."

The SMND fails to explain that vapor phase systems (Fog) are exclusively used for indoor grows. There is no experience for large outdoor grows. The effects of long-term human inhalation of the chemicals in the fog mist and related technologies has not been studied, including potential health problems for pregnant women, babies, children, the elderly, and the acute or chronically ill. It is unlikely that federal or state health authorities would allow its use without much more information.

The SMND then concludes that impacts relating to odorous emissions from outdoor operations would be less than significant with implementation of Mitigation Measure AIR-3. *Id*. However, the SMND itself provides evidence that impacts would be potentially significant when it provides for Permit Sonoma staff to "refer the matter to the Board of Zoning Adjustments for review of additional measures to reduce outdoor odor generation, including use of engineered solutions such as Vapor-Phase Systems (Fog Systems)." *Id*.

In sum, as discussed above, allowing ministerial permits for cannabis cultivation and production is likely to encourage a substantial increase in these facilities. As the SMND admits, cannabis facilities produce strong odors that impact nearby residents and other sensitive receptors, especially where prevailing winds carry cannabis odors downwind. SMND at 34. Sensitive land uses must be protected from these incompatible uses.

The Project, as currently proposed, lacks effective measures to minimize odor-related land use conflicts. A revised environmental analysis in the form of an EIR must assume that the County will have cannabis applications to the greatest degree allowable; that is that all (or at least most) of existing and eligible cannabis cultivation sites will apply for permits. The document must then be revised to include a comprehensive assessment of odors caused by the proposed Project. The analysis should comply with BAAQMD guidance for conducting such analysis as discussed above. Should the analysis determine that the Project's odor impacts are significant, the EIR must identify feasible mitigation measures to avoid and minimize impacts on sensitive receptors. These measures should include overall limits on permit approvals, exclusion zones in the County's sensitive resource areas, and robust setbacks as the primary mitigation to avoid significant odor as well as other impacts. In addition, the EIR should identify additional measures, such as testing with appropriate equipment (*e.g.*, use of field olfactometers; *see* The Nasal Ranger: A Hobbyist Weed Farm's Worst Enemy, attached as Exhibit 28) and engineered solutions as a last resort should odor impacts persist. The only effective mitigation for odor from outdoor grows is distance. At a minimum, because sensitive receptors are known to reside in residences (SMND at 32), the same minimum 1,000-foot setback from sensitive receptors in schools should be applied to residential property lines. Depending upon size of grow and other conditions, in many situations it should be further. See Guthrie, Cannabis cultivation should occur in appropriate places, Exhibit 22.

2. The SMND fails to adequately analyze and mitigate the Project's air quality impacts.

The Project is within the jurisdiction of the Bay Area Air Quality Management District (BAAQMD) and the area is currently designated as a nonattainment area for state

and federal ozone standards, the state standard for large particulate matter (PM10), and the state and federal standard for fine particulate matter (PM2.5). SMND at 29. Emissions from cannabis cultivation and production operations include ozone precursors, such as nitrogen oxides (NOx), a substance known to be harmful to people and the environment, and volatile organic compounds ("VOCs"). Ozone is a criteria pollutant under the Clean Air Act, and the BAAQMD is the delegated enforcement agency for the area. Emissions from cannabis cultivation and production operations will contribute to worsening the county's air pollution, which already violates state and federal standards. SMND at 29.

The SMND's discussion of the Project's potential to emit criteria pollutants, such as NOx, is cursory and lacks evidentiary support. While the SMND acknowledges that the Project would generate emissions of particulates and ozone precursors (*i.e.*, NOx), it concludes that "because cannabis cultivation is not an intensive urban land use, it is anticipated that the long-term operation of cannabis cultivation sites would not generate emissions exceeding BAAQMD thresholds." *Id*. at 29 and 30. Based on this rationale, the SMND that the proposed Project would not result in significant Project and cumulative air quality impacts. *Id*. However, the document reaches this conclusion without completing the analysis of the Project's air quality impacts. The SMND fails to calculate NOx emissions and dismisses this potential impact without analysis of any sort and in contradiction to other statements in the document that conclude such exceedance of significance thresholds is possible. SMND at 29 and at Section IV. Summary of Environmental Issues at 15 respectively; staff report to the Planning Commission meeting on March 18, 2021["…it is possible that cannabis operations would generate NOx emissions exceeding the BAAQMD's significance threshold of an average of 52 pounds per day during construction or operation, contributing to regional ozone pollution."]

In fact, cannabis cultivation and production operations emit NOx through use of equipment for cultivation and extraction. Cannabis cultivation and processing also emits VOCs, such as terpenes and butane. Personal communication: C. Borg, Urban Planner and D. Eppstein; also *see e.g.*, https://airqualitynews.com/2019/09/19/cannabis-farms-in-the-us-could-be-causing-chronic-air-pollution/ accessed on 3-12-21 and attached as Exhibit 29 ; https://www.sciencedaily.com/releases/2019/09/190918100230.htm accessed on 3-12-21 and attached as Exhibit 30; and https://science.sciencemag.org/content/363/6425/329.summary accessed on 3-12-21 and attached as Exhibit 31. Studies indicate that cannabis grows contribute substantially to air pollution. *Id*. The SMND fails to quantify the anticipated emissions from ministerial approval of cannabis permits and fails properly evaluate the resulting air impacts. It is well-established that the County cannot defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07.

Having failed to conduct an adequate analysis of the Project's impacts, the SMND presents Mitigation Measure AIR-1. However, Mitigation Measure AIR-1 exclusively addresses particulate matter or dust. (Mitigation Measure AIR-2 and AIR-3 address odor impacts; *see* comments in section D.2 below.) Thus, the SMND fails to analyze and mitigate the Project's NOx and VOC emissions and the impacts that would result from both. The SMND also fails to adequately analyze the air quality and health and safety impacts associated with significant odor impacts and with the increased fire risk caused by the Project. *See* section D.2 below for additional information on potential health impacts related to odor emissions.

In addition, the SMND fails to evaluate the potential health risks from Project-related increases in fire risk. Fires produce high-risk contaminants, including trace metals, polycyclic aromatic hydrocarbons (PAHs), benzene, carbon monoxide (CO), nitrogen and sulfur oxides, cyanide, volatile organic compounds (VOCs), airborne acids, and particulates. *See* Exhibit 32 (Rahn, M., N. Bryner, R. Swan, C. Brown, T. Edwards, and G. Broyles, Smoke Exposure and Firefighter Risk in the Wildland Urban Interface (2016) FEMA-FP&S Grant, 2013), attached hereto. The increase in fires will deteriorate air quality. Smoke is made up of a complex mixture of gases and fine particles produced when wood and other organic materials burn. The greatest health threat from smoke is from fine particles ($PM_{2.5}$), which are microscopic particles that can penetrate the lungs and cause a range of health problems, from burning eyes and a runny nose to aggravated chronic heart and lung diseases, and even premature death. Exhibit 33 (Airnow, How Smoke from Fires Can Affect Your Health (2018), https://www.airnow.gov/air-quality-and-health/how-smoke-from-fires-can-affect-your-health/ , accessed on March 8, 2021), attached hereto. People with heart or lung diseases, the elderly, children, and pregnant women are especially vulnerable to the effects of PM2.5. *Id*.

B. The SMND fails to adequately analyze and mitigate the Project's impacts on groundwater supply.

CEQA requires that an EIR present decision makers "with sufficient facts to evaluate the pros and cons of supplying the amount of water that the [project] will need." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 430-31 (2007). This includes identifying and analyzing water supplies that "bear a likelihood of actually proving available; speculative sources and unrealistic allocations ('paper water') are insufficient bases for decision making under CEQA." *Id.* at 432. The fact that an agency has identified a likely source of water for the Project does not end the inquiry.

The ultimate question under CEQA . . . is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts

of supplying water to the project. If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact. *Id*. at 434. This analysis is crucial in light of the drought that has gripped this State for the past several years. This SMND's analysis of impacts to water supply fails to meet CEQA's standards.

As described in section III above, the SMND's failure to consider the impacts of the whole of the project undermines the document's analysis of Project-related impacts, including those impacts related to water supply. The letter prepared by Greg Kamman provides detailed comments on the shortcomings of the SMND's water supply impacts analysis. We incorporate the Kamman Report into these comments. Some of the SMND's most troubling errors identified in the Kamman Report are described below.

The SMND presents unsubstantiated figures on estimated water use by cannabis cultivation and production facilities. The SMND estimates that water use by each cultivator would be less than 2.0 acre-feet of water per year. SMND at 69. However, the SMND fails to disclose how this estimate is derived and seems not to have considered the greatly increased water demand by hoop houses that harvest two to three crops per year. As the Kamman Report explains, the increased demand on the County's already stressed groundwater supplies is a well-documented concern, yet the SMND fails to adequately analyze the impacts of the Project on this limited resource. Kamman Report at 2-4.

Nor does the SMND adequately analyze the impacts of groundwater pumping on creeks, streams, and rivers. Kamman Report at 3-4. Moreover, the methods the County has devised to address potential impacts to surface waters from groundwater pumping do not mitigate potentially significant impacts. *Id*. The 500-foot setback for wells from waterways in Zones 1 and 2 appears to be arbitrary. Similarly, the SMND fails to provide evidence that required well-yield tests for applications in Zone 3 and 4 will prevent impacts to groundwater supplies. *Id*. As the Kamman Report explains, the well-yield test evaluates if the minimum yield will meet irrigation demands, but it does not evaluate if pumping would adversely impact surface water and groundwater resources.

In sum, the SMND fails to adequately evaluate the Project's impacts of groundwater use on the County's groundwater and surface water resources. An EIR for the Project must correct the aforementioned gaps in analysis. In addition, the EIR must evaluate related Project-related impacts associated with water quality and aquatic habitat

and biotic resources reliant on that habitat. *See*, Kamman Report at 5-10 and Letter from Friends of Mark West Watershed to Planning Commissioners dated March 18, 2021.

C. The SMND fails to adequately analyze and mitigate the Project's aesthetic impacts.

Sonoma County draws tourists largely based on its rural character, bucolic countryside vistas, and small-town charm. The County proposes allowing up to 65,733 acres of new outdoor cannabis cultivation, together with at least 8,289 acres of greenhouses.[10] Currently about 50 acres of cannabis are being cultivated, so the Project would allow a 1,300-fold increase in the number of cannabis facilities.

The SMND concedes the Project would affect "parcels within scenic vistas." SMND at 19. However, the SMND fails to provide any analysis of the actual impacts. The SMND includes no simulations of views from public viewpoints (such as trails and roadways) of existing and eligible cannabis cultivation sites that may apply for a cannabis cultivation permit. By contrast, the EIR for the Yolo County Cannabis Land Use Ordinance considered views of existing and eligible cannabis cultivation sites from various scenic roadways and public viewpoints and evaluated the impacts of three different alternatives allowing various levels of development. *See*, Yolo County Land Use Ordinance, Draft EIR at 3-1.1 to 3-1.48; excerpts attached as Exhibit 23. Here, the SMND provides no such analysis, and assumes that setbacks and screening alone will be adequate to reduce impacts. However, as discussed further below, the SMND provides no evidence that the mitigation measures will be effective.

Ministerial permits would allow industrial-scale developments without public involvement or consideration of how each project affects the overall landscape. County staff's 2015 Discussion Paper opined on the need to limit indoor cannabis cultivation "because indoor facilities are more industrial in nature…and may not be in keeping visually with the rural character of these lands." See Exhibit 14, Discussion Paper at 4. For this reason, among others, staff recommended that "[A]ll larger sized operations would be required to obtain a conditional use permit, allowing close review of the site on a case by case basis." *Id*. at 5. But here, the proposed Project would conflict with County staff's own recommendations and the SMND fails to adequately study and analyze the impacts of the proposal on aesthetics.

[10] One acre of new structures for indoor cultivation on parcels 10-20 acres is allowed, and more on larger parcels. Proposed § 38.12.030 (B). The county's ArcGIS data indicates 8,289 parcels meet these criteria: RRD (4,015); LIA (1,158); LEA (1,158); DA (1,665).

The SMND proposes setbacks, screening, and design review to lessen adverse visual effects from cannabis structures. But screening applies only to fences and outdoor canopy, not for hoop houses, greenhouses, or indoor grow facilities. Although they are required to be fenced, the fences will not screen them from view. Setbacks for hoop houses are only 100 feet from a property line of a neighboring residence, and setbacks for greenhouses are as little as 10 feet. SMND at 19; proposed § 38.12.010. The SMND concludes that setbacks reduce impacts to a less than significant level, however the SMND provides no evidence to support this conclusion. SMND at 20-24.

Implementing the Project to allow cannabis cultivation and production on lands designated for traditional agriculture and resource protection will result in significant impacts to scenic views and vistas and changes to the visual character. As described throughout this letter, cannabis cultivation and production differs from traditional agriculture and is more similar to an industrial process. Outdoor cultivation is frequently placed within hoop houses that appear like plastic greenhouses and can add light and glare impacts. *See* photo of hoop houses, attached as Exhibit 34. Indoor facilities look much like multi-story warehouses or self-storage units. See photos of indoor facilities, attached as Exhibit 35. Such facilities would appear out of scale with surrounding community features or unsightly if located in rural environments. These facilities would indisputably have significant visual impacts and degrade the existing visual character of rural communities.

An EIR must include a detailed and thorough analysis of the project's likely aesthetic impacts, as outlined above. It must provide an adequate analysis that would permit informed decisions about the project, effective mitigation measures, and alternatives that could have less intensive impacts. The EIR must also analyze all project components that could impact views. The accepted approach to analyzing visual and aesthetic impacts is to: characterize the existing setting of the area affected by the Project; describe the changes that would result given the proposed changes to the Code; provide photomontages or visual simulations to illustrate examples of the change in character of the affected area before and after project implementation; and identify feasible mitigation measures and alternatives to reduce or eliminate significant impacts. To comply with CEQA, the County must include such an analysis in an EIR for the Project.

D. The SMND fails to analyze all potential direct and indirect impacts, including wildfire safety and emergency access/evacuation.

The SMND includes a description of recent wildfire history in Sonoma County. It describes fires in 2017 and 2019 that burned more than 188,000 acres and destroyed more than 5,600 homes in Sonoma and Napa counties. In 2020, the LNU Lighting Complex fire brought more destruction and devastation to the area. The SMND goes on to state

that "extreme wildfire events are anticipated to occur 20 percent more often by 2050 and 50 percent more often by the end of the century." SMND at 98. Given these disclosures, one would expect the County to thoroughly evaluate wildfire impacts from this Project, which would result in development countywide. Instead, the SMND relies on a baseline of conditions of 2016 to evaluate the impacts of the Project. For wildfire risk and other impact areas, this outdated baseline is insufficient. As noted above, since 2017, approximately 25 percent of county land has experienced fire. Personal communication: C. Borg, Urban Planner with SM&W and Dr. D. Eppstein, March 1, 2021. In addition, the mountainous, highly combustible areas in eastern Sonoma County have a Fire Hazard Severity Zone (FHSZ) ranking of "very high" and "high" according to California Department of Forestry and Fire Protection (CAL FIRE 2020) maps, and therefore are the most susceptible to wildland fires. *See* Exhibit 36.

As the climate changes and fire risk grows, Californians and Sonoma County residents and their neighbors are rightfully concerned about the risk of wildfire. With the state still recovering from the disastrous fires of 2020, decisionmakers must consider the role that increased development plays in the proliferation of wildfires, especially when that development encroaches into heavily forested areas with steep hills. CEQA requires environmental documents to analyze the risk of wildfire and the contribution of new projects to the risk of wildfire. In light of the County's history of severe fires, one would expect a thorough evaluation of fire risks associated with changes to allowed land uses.

The SMND here fails at every juncture to provide the legally required analysis of the Project's direct, indirect, and cumulative impacts of a disastrous wildfire. First, the SMND ignores how changes to the climate will impact wildfires in the future. It then provides a legally inadequate analysis of the direct, indirect, and cumulative wildfire hazard impacts associated with easing permit requirements for allowing cannabis cultivation and production in rural undeveloped areas. The SMND exacerbates the failure to identify and analyze the Project's significant impacts by relying on token mitigation measures that do little to reduce the Project's admittedly significant fire hazard impacts, especially in RRD-zoned parcels. SMND, p. 67..

1. The SMND fails to adequately address future changes in precipitation, temperature and wind and their effects on fire hazards.

It is common knowledge that climate change will increase the risk and frequency of wildfire as well as the severity of wildfire events. For example, the intensity of and number of days with Diablo winds is expected to increase. Expected changes in precipitation will result in decreased fuel moisture and increased fire risk. Exhibit 37, A.L. Westerling, H.G. Hidalgo, D.R. Cayan, and T.W. Swetnam, Warming and Earlier

Spring Increase Western U.S. Forest Wildfire Activity, 313 Science 940 (2006); Exhibit 38, D. Cayan, A. L. Luers, M. Hanemann, G. Franco, and B. Croes, Scenario of Climate Change in California: Overview, CEC-500-2005-186-SF (2006).

As discussed in section II.B. above, wildfire season in the western region of the United States, including California, recently has lengthened from a previous average of between five and seven months to a year-round occurrence. The number of large wildfires that burn more than 1,000 acres has increased throughout the western United States. This is occurring as average annual temperature in the Western regions of the United States has risen by nearly two degrees Fahrenheit since the 1970s and the winter snow pack has declined. Union of Concerned Scientists, Infographic: Wildfires and Climate Change, September 8, 2020, https://www.ucsusa.org/resources/infographic-wildfires-and-climate-change, attached as Exhibit 39. The intensity of and number of days with Diablo winds is expected to increase. Expected changes in precipitation will result in decreased fuel moisture and increased fire risk. Exhibit 37 (Westerling, et al.); Exhibit 38 (D. Cayan, et al.) Exhibit 40 (LA Times "How Climate Change is Fueling Record-breaking California Wildfires, Heat and Smog" September 13, 2020) attached hereto.

Despite these known factors, the SMND fails to take them into consideration in its analysis of wildfire impacts, instead assuming that if future grow sites and facilities are built to code and follow minimal guidelines, the risk of fire and the resulting harm they cause will be less than significant. This myopic view of fire risk leaves the public and decision makers unable to fully understand the risk of potentially adding tens of thousands of acres of cannabis cultivation and production facilities in rural areas, in many cases adjacent to open space. The SMND failed to discuss these existing environmental conditions, and as a result, failed to adequately analyze wildfire hazard impacts within this context.

2. The SMND fails to adequately analyze and mitigate the fire hazard impacts of replacing open space land with cannabis cultivation and production facilities.

CEQA requires an analysis of both a project's direct and reasonably foreseeable indirect impacts. Other than acknowledging that the Project could lead to a substantial expansion of cannabis cultivation and associated structures on parcels within high or very high fire severity zones, the SMND provides no analysis of the scope or extent of this impact and fails to identify the foreseeable indirect impacts that will occur as a result of the Project. The SMND cannot just provide bare conclusions, it "must contain facts and analysis" to support and explain such conclusions. *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.

The SMND fails to evaluate the potential for the Project to expose people or structures to a significant risk of loss, injury or death involving wildland fires. This is a potentially significant impact inasmuch as the proposed Project would result in more intensive use of rural lands in remote, wildland areas. Studies illustrate the heightened safety risks from development and intensification of land use in areas where fire is a natural part of the ecology and flammable vegetation exists. As development and more intensive land uses encroach on the wildland urban interface, it causes an increase in the number of fires and more loss of life. *See* Land Use and Wildfire: A Review of Local Interactions and Teleconnections, attached as Exhibit 41

A 2017 study that evaluated 1.5 million wildfires in the United States between 1992 and 2012 found that humans were responsible for igniting 84 percent of wildfires, accounting for 44 percent of the acreage burned in wildfires. *See* Exhibit 42 (Balch, Jennifer; Bradley, Bethany; Abatzoglou, John, et. al., Human-Started Wildfires Expand the Fire Niche Across the United States, Proceedings of the National Academy of Sciences: Volume 114 No. 11 (March 14, 2017) https://www.pnas.org/content/pnas/114/11/2946.full.pdf, accessed on August 20, 2020), attached hereto.

The California Office of the Attorney General has noted that locating development in wildfire risk areas "will itself increase the risk of fire" and increase the risk of exposing existing residents to an increased risk of fire, citing a plethora of reports. Letter from Nicole Rinke to Planning Commission on Monterey dated March 20, 2019 at 3-4, attached as Exhibit 43.

Unlike the existing ordinance (*see* Chapter 26 § 26-88-258(a)(3)), the proposed Project would allow the use of volatile compounds on site. Cannabis grown on-site may be processed (dried, trimmed, etc.) on-site by the permittee as well as manufactured using industrial processes to extract the THC oil, and such cannabis products may be transported. See Proposed § 38.14.020 (A)-(C). "Cannabis products" are defined in proposed section 38.18.020, and include edibles, topical products, and concentrated cannabis. Thus, besides volatile compounds, ethanol and high-pressure CO_2 extraction and distillation are allowed. Allowing these chemicals and processes onsite constitutes a serious fire risk that the fire prevention plan (SMND at 85) does not address or mitigate. Personal communication: C. Borg, Urban Planner with SM&W and Dr. D. Eppstein, March 1, 2021. The current cannabis ordinance limits such processes to industrial sites. See SCC Chapter 26, Table 1D.

Other elements of the Project will also increase fire risk and the inevitable resulting fires. Fires are frequently caused by infrastructure, such as roads, power lines, and gas lines. As Sonoma County knows too well from recent experience, power lines

ignite wildfires through downed lines, contact with vegetation, colliding conductors, and equipment failures. *See* Exhibit 44 (Texas Wildfire Mitigation Project, How Do Power Lines Cause Wildfires? (2018) https://wildfiremitigation.tees.tamus.edu/faqs/how-power-lines-cause-wildfires, accessed on March 8, 2021), attached hereto. CalFIRE determined that 16 wildfires in northern California in October 2017 were caused by electric power and distribution lines, conductors, and the failure of power poles. *See* Exhibit 45 (California Department of Forestry and Fire Prevention CAL FIRE Investigators Determine Causes of 12 Wildfires in Mendocino, Humboldt, Butte, Sonoma, Lake, and Napa Counties (2018), attached hereto.

Other wildfires are caused by sparks or ignitions from vehicles on roadways. *See* Exhibit 46 (Pacific Biodiversity Institute, Roads and Wildfires (2007) http://www.pacificbio.org/publications/wildfire_studies/Roads_And_Wildfires_2007.pdf , accessed on March 8, 2021), attached hereto. The Project's new roads and additional vehicles on roadways from the Project will exacerbate the fire risk and increase the number of fires—significant environmental impacts unaddressed by the SMND.

The SMND itself acknowledges that commercial cannabis operations "are associated with high fire risk and have been responsible for structure fires in both urban and rural areas." SMND at 67. The SMND also acknowledges that RRD-zoned areas "are known to be high fire hazard areas due to steep slopes, dense vegetation, and insufficient emergency services due to a lack of safe emergency vehicle access." SMND at 67. Easing permit requirements and allowing cannabis grows with only ministerial approval is likely to encourage an influx of permit applications. Intensified land uses like these in remote areas, such as lands designated RRD in the eastern part of the County, increase ignition risk and vastly increase the cost of fighting wildland fires with task forces of urban fire engines needed to protect homes in the urban-wildland interface. At the same time, climate change is making summers hotter and drier, leading to an increase in the frequency and severity of catastrophic wildfire. Moreover, given that many rural parts of the County are accessed by narrow, substandard roads, increasing the intensity of land uses in areas with limited ingress/egress has the potential to degrade safe evacuation of residents as well as impede access for fire fighters and first responders during a fire.

Fire risk is not only a factor on remote parcels zoned RRD. It also affects parcels zoned LEA, LIA, and DA, many of which burned during the four wildland fires in Sonoma County that consumed 25 percent of its acreage since 2017. Much of the burned land is not designated as high or very high fire hazard severity zones. Fires that begin at cannabis cultivation sites can readily spread elsewhere in windy conditions as evidenced by the recent conflagrations in Sonoma County that began in Napa County and progressed into Sonoma during high wind events. For all these reasons, cannabis projects

in the wildland-urban interface expose people or structures, directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.

The SMND admits the updated Ordinance could lead to a substantial expansion of cannabis cultivation and associated structures on parcels within very high fire severity zones. SMND at 99 and 100. The SMND even admits that "future cannabis cultivation facilitated by the updated Ordinance would have potentially significant wildfire impacts, as existing codes and regulations cannot fully prevent wildfires from damaging structures or harming occupants. Cannabis cultivation operations in high fire risk areas would increase the exposure of new structures and occupants to risk of loss or damage from wildfire." SMND at 100. However, the SMND foregoes meaningful analysis of potential impacts to public safety and property loss during a wildfire event. It fails to include an analysis of potential cannabis facilities locating in remote areas with limited access, or locating in close proximity to rural residential development, and how potential fire in different scenarios might spread under different weather, fuel, wind and ignition point scenarios.

3. The SMND fails to analyze impacts related to emergency response and evacuation.

Concerning emergency response and evacuation, the SMND merely asserts that the Project would not affect emergency response routes or response times and concludes that impacts related to emergency evacuation would be less than significant. SMND at 98. The SMND provides no support for its conclusion. Despite the document's admission that the Project would allow for expansion of cannabis cultivation within designated high fire risk areas in remote mountainous areas, and that the Project would result in potentially significant wildfire impacts, the SMND defers analysis and mitigation of this important issue.

Instead, the SMND relies on a project element requiring a site security plan that includes emergency access in compliance with fire safe standards. SMND at 99. The SMND also imposes two mitigation measures. The first addresses construction activities; it prohibits construction activities, such as welding and grinding outdoors during National Weather Service red-flag warnings and requires fire extinguishers and spark arresters on construction vehicles. The second addresses new structure locations; it requires compliance with existing regulations prohibiting cultivation on slopes greater than 15%, includes grading limits and ridgetop protections, and adds criteria for siting new structures including avoidance of landslide-susceptible areas and sloped hillsides. SMND at 101.

The SMND's approach to mitigation is inadequate under CEQA for multiple reasons. First, many of the potential sites that could be used for cannabis cultivation are located on substandard, narrow, dead-end, rural roads. *See e.g.*, photos of typical roads leading to existing cannabis cultivation sites in Sonoma County, attached as Exhibit 48. These roads fail to meet State Fire Safe Regulations as discussed further below. Secondly, even if emergency vehicles could traverse such roads, there is no space to allow for vehicles of evacuating residents that share those roads. Whether or not the County has adopted an emergency response plan to address these deficiencies, under CEQA the County has an obligation to evaluate the extent and severity of these public safety risks. The SMND bypasses the required step of analyzing the potential impacts of implementing the Project. For example, it fails to evaluate the potential for Project-related increased truck and automobile traffic to hinder evacuations on narrow rural roads and steep private roads. Consequently, the EIR lacks evidentiary support for its conclusion that the Project's impacts relating to evacuation and emergency response would not be significant.

The SMND's approach is particularly egregious given that a 2015 staff-prepared discussion paper on "Cannabis Cultivation Within Resources and Rural Development (RRD) Lands ("Discussion Paper"), addressed the inadequacy of rural roads in RRD areas and includes the following paragraph related to 'Emergency Services':

"The remote RRD zoned areas are primarily accessed by one lane gravel roads that are remnants of old logging roads. Most cultivation facilities would be required to construct paved, 2-way roads with an 18 foot minimum width, sufficient for emergency vehicle access. Water for fire suppression may also be required. Emergency response in these areas are handled by volunteer fire departments and response times vary."

Discussion Paper at 1, available at http://sonomacounty.ca.gov/WorkArea/DownloadAsset.aspx?id=2147525642 accessed on March 8, 2021, attached as Exhibit 14. The Discussion Paper indicates that the County has data about rural roadways that should have been incorporated into this environmental documentation, yet the SMND is silent regarding safety issues resulting from substandard roadways in remote areas.

Moreover, State Fire Safety Regulations require a "minimum of two ten (10) foot traffic lanes" for emergency access and egress. See, California Code of Regulations, Title 14 Natural Resources, §1273.01. The California Board of Forestry and Fire Protection ("Board") has expressed its concerns regarding the County's standards for fire safe roads both because they omit standards included in the State's Fire Safe Regulations and because the County's standards on their face appear to be less stringent than the Fire Safe Standards. See, October 23, 2020 letter from Jeff Slaton, Senior Board Counsel for the

Board of Forestry and Fire Protection, to the Board of Supervisors, Exhibit 47. The Board expressed "particular concern" about standards for existing roads and for ingress/egress that allows concurrent civilian evacuation. Notwithstanding the County's recent failed request for certification of its fire safe ordinance, the County has an obligation to evaluate the impacts of implementing the proposed Project and to identify mitigation measures to minimize significant impacts related to public safety.

The SMND should have prepared an evacuation analyses to identify areas that would have evacuation impacts. These analyses would have: (1) identified the locations of existing facilities that would experience increased events; (2) identified the locations of reasonably foreseeable new facilities; (3) identified the expected number of workers and total estimated amount of operational traffic at each of these facilities[11]; (4) evaluated the capacity of roadways near the existing and new facilities and determined whether these roadways would be able to accommodate added traffic during evacuations; (5) modeled the various scenarios of wildland fire that could occur near each facility's vicinity; and (6) determined whether (a) area residents and facility visitors would have adequate time to escape and (b) emergency service providers would be able to access the sites' in a timely manner, consistent with emergency service response time goals. It is imperative that such analyses be conducted for the proposed Project given the wildfire crisis that is plaguing the West and given the potential for cannabis cultivation and production facilities to locate in a "Very High Fire Hazard Severity" and "High Fire Hazard Severity" zones. *See* Exhibit 36 CalFire Fire Sonoma County Hazard Severity Zones December 2020 and Exhibit 49 Wildland Fire Hazard Areas Map, Public Safety Element, Sonoma County General Plan 2020.

In addition, it has come to our attention that the County Board of Supervisors' tentative calendar for 2021 includes a two-hour item scheduled for August 17, 2021 to review and adopt the County's plan for preparing and conducting large-scale community emergency evacuations. This planning process for community evacuations during emergencies should precede and inform the County's consideration of this proposed Project. Once the County has a better understanding of the areas of vulnerability and requirements for safely evacuating residents during emergencies, that valuable information can be incorporated into an EIR for this Project to comprehensively evaluate potential public safety issues for the community.

[11] For example, if the Project were implemented on Matanzas Creek Lane, a 1-mile dead-end road that is only 11 feet wide, 720 people could be employed that would have to be evacuated. Comments by Bill Burns and Sherilyn Burns, Exhibit 22. This is an enormous increase from evacuating residents of 17 parcels.

Nor does the EIR consider in any meaningful way post-fire condition hazards associated with unstable slopes, such as landslides, erosion, and gullying. *See* Exhibit 50 (US Geological Survey, New Post-Wildfire Resource Guide now Available to Help Communities Cope with Flood and Debris Flow Danger (2018), https://www.usgs.gov/center-news/post-wildfire-playbook?qt-news_science_products=1#qt-news_science_products, accessed on March 8, 2021), attached hereto. After a fire, landslide hazards, including fast-moving, highly destructive debris flows, can occur because fires destroy vegetation that slows and absorbs rainfall and harm roots that stabilize soil. *Id*. The burning of vegetation and soil on slopes more than doubles the rate that water will run off into watercourses. *See* Exhibit 51 (California Department of Conservation, Post-Fire Debris Flow Facts, 2019, https://www.conservation.ca.gov/index/Pages/Fact-sheets/Post-Fire-Debris-Flow-Facts.aspx#:~:text=The%20January%202018%20Montecito%20debris,Geological%20Survey%20scientists%20estimated%20the, accessed on March 8, 2021). Post-fire debris flows are particularly hazardous because they can occur with little warning, damage objects in their paths, strip vegetation, block drainage ways, damage structures, and endanger human life. *Id*. An EIR must include this analysis.

4. The proposed mitigation will not reduce wildfire hazard impacts to a less than significant level.

Despite the obvious severity of potential impacts resulting from proliferating cannabis facilities countywide, the SMND relies on impotent mitigation measures that do not actually mitigate anything. The minimal mitigation the SMND proposes fails to reduce fire hazard impacts to a less-than-significant level.

The SMND largely relies on consistency with Fire Code requirements and required preparation of a "fire prevention plan" as part of the application process. SMND at 99. The fire prevention plan is to demonstrate compliance with the Fire Code and applicable local and state standards. *Id*. As discussed in more detail below, CEQA directly forbids an assumption, without underlying analysis, that simply complying with a regulatory standard is adequate to mitigate a potentially significant impact. *See*, *e.g.*, *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16-17 (compliance with regulation alone not a basis for finding impact less than significant); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09 (environmental effect may be significant despite compliance with such requirements).

Moreover, any proposed facilities are already required to comply with fire regulations. Merely requiring compliance with existing agency regulations does not conclusively indicate that a proposed project would not have a significant and adverse

impact. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d at 716. Furthermore, the SMND indicates that the Project's wildfire impacts would be significant notwithstanding the Project's compliance with the Fire Code and local and state standards. SMND at 99. Thus, there is no substantial evidence to support the SMND's conclusion that the Project's fire hazard impacts will be less-than-significant.

This blatant failure to mitigate wildfire risks is especially problematic in light of California's recent spate of deadly wildfires; it is unfathomable that the County could even consider approving potentially tens of thousands of acres of cannabis facilities on rugged terrain without first paying adequate consideration to fire and emergency response. As such, the County cannot approve the Project unless it recirculates a EIR that adequately mitigates the aforementioned wildfire impacts.

In sum, the Project would encourage development of new cannabis cultivation and production facilities by making the permits easier to obtain and making the facilities more profitable by allowing events. As the SMND acknowledges, most lands zoned RRD and DA are located in more remote areas of the County. The SMND is legally inadequate due to its failure to address the threat posed by an increase in land use intensity and traffic in rugged, remote areas of the County. Until this issue is examined thoroughly in an EIR, the County may not approve the proposed Zoning Code and General Plan amendments.

E. The SMND fails to adequately analyze and mitigate the Project's traffic impacts related to an increase in Vehicle Miles Travelled.

The SMND presents a deficient traffic analysis which fails to address the true impacts of the Project. First, as discussed in Section III of this letter above, because the SMND focuses solely on the impacts of individual permits, it fails to adequately analyze the impacts of the Project as a whole. With regarding to traffic related impacts, the SMND fails to analyze impacts associated with a significant increase in VMT from the aggregate increase generated from all potential permits allowed by the Project. Instead, it limits its comments to the potential effects of traffic trips from each separate facility. As discussed above, this approach is inappropriate under CEQA. The proposed Project is not an end in itself. It is the prelude to development of additional cannabis cultivation and production sites and additional events at these facilities.

Breaking the Project into parts by leaving out the future activity of having multiple applications annually is illegal segmentation and leads to inadequate environmental review. *See*, e.g., *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 283-84 (CEQA mandates that "environmental considerations do not become submerged by chopping a large project into many little ones"). A lead agency, moreover, may not

segment a project by reviewing entitlements one at a time, waiting for each new approval to consider the specific development proposed. Instead, an agency must provide environmental review of an entire project at the time of the first approval. See, *e.g.*, *City of Carmel-By-the-Sea* (1986) 183 Cal.App.3d 229, 233-35, 244 (city must analyze full environmental consequences of rezone because it "was a necessary first step to approval of a specific development project"); *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 31, 34, 39-40 (County EIR must analyze General Plan amendment that was the "first step" toward developing new towns).

Second, what analysis the SMND does include is incomplete, inconsistent, and unsupported. For instance, the SMND states that "cultivation operations could have 100 to 200 employees commuting to the sites. SMND at 88. It then states that cannabis cultivation projects would generate a net increase of fewer than 110 average daily trips. The SMND fails to present any data to support either figure. Nevertheless, the number of trips and vehicle miles travelled that should have been considered are those from the expected *total* number of applications annually, not from each facility separately.

The County's own documents provide evidence that trips and VMT are likely to be higher than this SMND presents. For example, the 2016 Negative Declaration for the Medical Cannabis Ordinance indicates that a one-acre cultivation site or a 0.25-acre indoor operation can each require 12-15 employees during peak periods and fifteen employees average 30-60 trips a day. Sonoma County 2016 Negative Declaration for the Medical Cannabis Ordinance at 44. A 2020 permit application for a 1-acre cannabis operation in Glen Ellen employs 12 full-time and five part-time staff during peak fire season. See Draft Mitigated Negative Declaration for UPC19-0002, Gordenker Ranch Cannabis at 6, attached as Exhibit 52. Using the County's method of estimating daily trips from the number of employees in its 2016 Negative Declaration, 100 to 200 employees would result in 400 to 800 daily trips for a single large greenhouse project. This amount of increased traffic would result in adverse impacts related to public safety on narrow, rural roads, particularly during emergency evacuations.

The County can easily calculate an estimate of trips from all facilities together by estimating the number of applications based on the applications received in the past few years since cannabis cultivation has been allowed in the County and extrapolating from that number. *See e.g.*, Yolo County Cannabis Land Use Ordinance Environmental Impact Report dated September 1, 2020 available at https://www.yolocounty.org/government/general-government-departments/community-services/cannabis/cannabis-land-use-ordinance , accessed on March 1, 2021; excerpts attached as Exhibit 23. Such estimates must differentiate between indoor and outdoor cultivation and size of projects to estimate the number of employees per acre, which would allow an estimate of the number of daily trips.

Moreover, the SMND's identified Mitigation Measures providing that individual cannabis cultivation project applicants provide analysis of the amount of average daily trips and vehicle miles travelled does not excuse the County from analyzing the impacts of implementing the Project now. Inasmuch as the proposed Code and General Plan amendments are the first discretionary approval that will ultimately result in development activity countywide, this environmental document must analyze the environmental impacts from these activities in as detailed a manner as possible. *Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 31, 34, 39-40.

Finally, the SMND's failure to properly evaluate Project's trips and VMT, implicates the SMND's analysis of greenhouse gases. An EIR for the Project must address this flaw.

F. The SMND fails to adequately analyze and mitigate the Project's greenhouse gas emissions.

The SMND acknowledges that cannabis cultivation is a land use that generates substantial greenhouse gas ("GHG") emissions from energy use. SMND at 61. It also discloses that new cannabis operations permitted under the proposed Project could contribute to an exceedance of California's statewide targets. *Id*. But again, the SMND foregoes the necessary analysis of estimating the amount of GHG emissions that would be emitted from implementation of the Project. Instead, the SMND assumes that Project elements would reduce GHG emissions to a less-than-significant level.

This approach fails under CEQA for multiple reasons. First, the SMND's perfunctory "analysis" of the Project's GHG impacts does not comply with CEQA. Rather than study the environmental implications of the Project's GHG emissions, the SMND takes the legally impermissible easy route: it simply labels impacts as significant, without offering any information on the nature or scope of the problem. It is not sufficient to simply assert that an impact is significant and then move on. This approach does not allow decision makers and the public to understand the severity and extent of the Project's environmental impacts. *See, e.g., Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs*. (2001) 91 Cal.App.4th 1344, 1370-71; *Galante Vineyards v. Monterey Peninsula Water management Dist*. (1997) 60 Cal.App.4th 1109, 1123; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 (a lead agency may not simply jump to the conclusion that impacts would be significant without disclosing to the public and decision makers information about how adverse the impacts would be).

The SMND should have calculated the amount of GHG emissions from the project based on the Ordinance requirements and limitations. *See*, Estimating Adequate Licensed Square Footage for Production, BOTEC Analysis Corporation, 2014, attached as Exhibit

53 and available at https://www.cannabisbusinessexecutive.com/wp-content/uploads/2014/11/5a_Cannabis_Yields-Final.pdf accessed March 16, 2021. For example, based on the assumption that indoor grows can yield .04 kg per square foot of cannabis per harvest, and that indoor grows can yield 4-6 harvests per year. An indoor grow of 20,000 square feet, with four harvests per year, would thus produce 3,200 kg of cannabis annually. Converting that to ounces, you get 112,876.7 ounces, which would generate 16,141,368 pounds, or about 7,300 metric tons per year of carbon emissions, which would be the equivalent of adding 1,460 cars to the road. This estimate would be for a single indoor grow of approximately 20,000 square feet. The Ordinance does not contain a limit on existing permanent indoor structures, and limits new structures (on parcels of 10-20 acres) to 43,560 square feet.

Second, the SMND relies on the proposed Ordinance's requirement that greenhouse and indoor cultivation sites reduce GHG emissions either by using 100 percent renewable energy sources or by offsetting emissions from non-renewable sources by purchasing carbon credits. SMND at 61. However, the SMND cannot simply assume that the purchase of GHG offsets will eliminate the Project's GHG emission impacts. Until the SMND's provides a comprehensive analysis of the Project's impacts, it is not possible to formulate effective mitigation. Moreover, even if offsets were potentially feasible mitigation, the SMND must demonstrate their effectiveness in reducing the Project's climate change impacts. When a lead agency relies on mitigation measures to find that project impacts will be reduced to a level of insignificance, there must be substantial evidence in the record demonstrating that the measures are feasible and will be effective. *Sacramento Old City Assn. v. City Council of Sacramento*, 229 Cal.App 3d 1011, 1027 (1991); *Kings County*, 221 Cal.App. 3d at 726-29. As discussed further below, we can find no such evidence here.

The proposed Ordinance provision related to the offset requirement states that "any offsets shall be generated in California pursuant to protocol accepted by the County…", but neither the Ordinance nor the SMND specify what this protocol will entail. SMND at 61 and draft Ordinance at § 38.12.110.C. Moreover, the SMND confers complete discretion in County staff to determine whether the purchased carbon offsets meet the unspecified protocol and whether the offsets are adequate to reduce impacts. *Id*. Courts have found mitigation fees inadequate where the amount to be paid for mitigation was unspecified and not "part of a reasonable, enforceable program." *Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th* 1189; see also *Cal. Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 198.

In practice, even the most sophisticated offset programs have failed. A 2016 report prepared for the EU Directorate General for Climate Action concluded that nearly 75% of the potential certified offset projects had a low likelihood of actually contributing

additive GHG reductions, and less than 10% of such projects had a high likelihood of additive reductions. Exhibit 54 (Institute of Applied Ecology, *How additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternative*s, March, 2016) at 11; *see* also Exhibit 55 (*Carbon Credits Likely Worthless in Reducing Emissions, Study Says*, Inside Climate News, April 19, 2017.) Partly in recognition of these flaws, offsets are typically permitted to constitute only a very small part of an overall emission reduction program—for example, California's cap and trade program allows no more than 8 percent reductions come from offsets. There is simply no evidence that the undefined, unenforceable offsets proposed by the SMND will cause any meaningful reduction to mitigate the permanent increase in GHG caused by the proposed development. Protocols adopted by voluntary market registries may not meet standards necessary to ensure that Project emissions actually will be reduced to a less than significant level. *See Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467 at 511-12.

An EIR on the Project must address the aforementioned flaws by providing a detailed analysis of GHG emission impacts and mitigation to minimize those impacts.

G. The SMND fails to adequately address the Project's related impacts on energy use, wildfire safety, and utility services.

1. Energy use under the Ordinance would vastly exceed the County's threshold, such that the proposed mitigation measure is woefully inadequate.

CEQA requires that a lead agency analyze the energy impacts of a proposed project, specifically, whether the project would "result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation." CEQA Guidelines, Appendix G, § VI(a); *see* also Pub. Resources Code § 21100(b)(3); CEQA Guidelines § 15126.2(b). This analysis must include the project's energy use "for all phases and components." CEQA Guidelines § 15126.2(b). If this analysis indicates that a project would result in wasteful or inefficient energy use, the agency "shall mitigate" this significant impact. *Id.* Related to this requirement, the lead agency must also analyze whether the proposed project would "require or result in the relocation or construction of new or expanded. . . electric power [or] natural gas . . . facilities, the construction or relocation of which could cause significant environmental effects." CEQA Guidelines, Appendix G, § XIX(a).

According to the California Public Utilities Commission, cannabis is an energy-intensive crop when grown indoors. *See Energy Impacts of Cannabis Cultivation*, Cal.

Pub. Utils. Com., April 2017, attached as Exhibit 56.[12] "According to a recent study … Seattle Light and Power estimates a 3% increase in overall electric demand as a result of legal cannabis production, and a utility interviewee from Colorado estimated that the total load growth for the state attributable to cannabis production since 2013 was between 0.5% and 1%. In 2015, Bloomberg researchers estimated that cannabis grow facilities made up almost 50% of the new power demand in Colorado." J. Remillard & N. Collins, *Trends and Observations of Energy Use in the Cannabis Industry*, Alliance for an Energy Efficient Economy (2017) (internal citations omitted), attached as Exhibit 57.[13] *See also* "Nearly 4 Percent of Denver's Electricity Is Now Devoted to Marijuana," CPR News, published Feb. 19, 2018[14]; "3 Big Questions About Energy Use in Legal Cannabis Cultivation," Midwest Energy Efficiency Alliance, published August 27, 2019 ("Oregon has experienced localized blackouts due to the added strain on the electric grid from indoor cannabis facilities.")[15]; "Electricity Use in Marijuana Production," Nat'l. Conference of State Legislatures, published August 2016 ("The electricity consumption of growhouses is staggering when compared to business and residential use.")[16]; "Most states legalizing marijuana have yet to grapple with energy demand", Energy News Network, published July 27, 2019 ("[S]tates legalizing cannabis so far have done little to limit or even track the huge amounts of energy needed to grow it indoors.")[17].

The SMND's analysis of these issues is cursory and violates CEQA. First, rather than cite to the copious literature on the energy intensity of commercial cannabis operations, the SMND merely states that "indoor and mixed-light operations can require a relatively large amount of electricity" due to the various energy-intensive activities

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[12] Available at: https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Policy_and_Planning/PPD_Work/PPD_Work_Products_(2014_forward)/PPD%20-%20Prop%2064%20Workshop%20Report%20FINAL.pdf (last visited March 11, 2021).

[13] Available at: https://www.aceee.org/files/proceedings/2017/data/polopoly_fs/1.3687880.1501159058!/fileserver/file/790266/filename/0036_0053_000046.pdf (last visited March 11, 2021).

[14] Available at: https://www.cpr.org/2018/02/19/nearly-4-percent-of-denvers-electricity-is-now-devoted-to-marijuana/ (last visited March 11, 2021).

[15] Available at: https://www.mwalliance.org/blog/3-big-questions-about-energy-use-legal-cannabis-cultivation (last visited March 11, 2021).

[16] Available at: https://www.ncsl.org/research/energy/electricity-use-in-marijuana-production.aspx (last visited March 11, 2021).

[17] Available at: https://energynews.us/2019/06/27/most-states-legalizing-marijuana-have-yet-to-grapple-with-energy-demand/ (last visited March 11, 2021)

involved in cultivation, including but not limited to building lighting and heating and cooling systems, and other energy usage for cultivation, processing and distribution. SMND at 49. Nor does the SMND attempt to identify existing energy supplies and energy use patterns in the region and locality. CEQA Guidelines § 15126.2(b). Instead, the SMND includes a table showing the total electricity and natural gas demand in PG&E's entire service area of Northern California. SMND at 48. This information serves no purpose for determining the impact of the project on existing energy supplies in Sonoma County. Consequently, the SMND does not include a baseline against which the project's energy intensity can be measured. CEQA Guidelines § 15125(a) (physical environmental conditions "in the vicinity of the project" will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant).

The SMND establishes a threshold of significance for the project's impact on inefficient or wasteful energy use. A significant impact due to the wasteful or inefficient use of energy would occur if a cannabis operation uses more than 25.5 kWh/square foot annually. SMND at 49. Yet, the SMND makes no effort to identify the "[t]otal energy requirements of the project by fuel type and end use," or the "[t]otal estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode." CEQA Guidelines, Appendix F. Instead, the SMND states that indoor cultivation *generally* uses 200 kWh/square foot annually and that mixed-light cultivation uses 110 kWh/square foot annually. SMND at 48. However, the SMND also states that energy use "can vary widely as a result of factors such as plant spacing, layout and the surrounding climate." *Id.* Rather than use a generic range for the energy intensity of indoor operations, the County should have used a modeling tool, such as CalEEMod, to estimate the maximum potential energy intensity of the proposed project, assuming all properties currently or foreseeably eligible for cultivation under the Ordinance were to construct growing facilities to the maximum extent permitted. *See Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194 (evaluation of action must include analysis of all activities permitted by the action). This tool also should take into account the unique climatic conditions of Sonoma County.[18]

[18] The SMND furthermore errs in estimating the project's energy use from transportation modes associated with workers, by assuming that "the number of employees working …[is] likely similar to existing and planned" agricultural facilities in the County. SMND at 50. Whether the average number of workers per existing or planned agricultural operation would be "similar" under the proposed Ordinance is not the point; rather, for purposes of estimating energy impacts, the SMND must look at the *absolute* number of

Even omitting a discussion of factors which may result in higher energy uses by cannabis operations in Sonoma County, the SMND thus indicates that indoor operations could use *eight times* more energy than the County's threshold of significance for determining whether energy use is wasteful or inefficient. The SMND therefore finds that the Project would result in a significant impact. SMND at 50. However, the SMND asserts that, with implementation of Mitigation Measure ENERGY-1, the Ordinance "would not result in wasteful or unnecessary energy consumption in Sonoma County, and impacts would be less than significant with mitigation incorporated." *Id.*

The County's proposed mitigation measure for this significant impact is woefully insufficient to reduce this impact to below the threshold of significance. The measure would merely require that, before receiving a building permit, an applicant must submit an "energy conservation plan" to reduce energy use below the threshold of significance (25.5 kWh/square foot per year). This plan must contain (1) a detailed inventory of the proposed project's energy demand, and (2) a program for reducing or "offsetting" the project's energy use such that it does not exceed the threshold, including but not limited to "[e]vidence that the project will permanently source project energy demands from renewable energy sources (*i.e.*, solar, wind, hydro)," or reduce energy use through energy efficiency measures. SMND at 51.

There are numerous legal problems with MM ENERGY-1. First, the mitigation measure is duplicative of the Ordinance itself, and thus would not actually "mitigate" anything. Per section 38.12.110 of the proposed Ordinance, indoor and greenhouse projects would *already* be required to be fully powered by renewable energy, or else offset by carbon credits determined by the County to be verifiable and enforceable. SMND at 49. The SMND finds that notwithstanding this requirement of the Ordinance, impacts would still be significant; hence the proposal of MM-ENERGY-1. Yet, the mitigation measure would merely require what the Ordinance already requires—that projects be powered by renewable energy.

Second, the SMND provides no evidence that any combination of either grid-tied, or on-site renewable generation, or energy efficiency, would be sufficient to power the types of cannabis operations the Ordinance would allow throughout the County, whether individually or cumulatively. Under CEQA, mitigation measures' efficacy must be apparent and there must be evidence in the record showing they will be effective in remedying the identified environmental problem. *See Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168. MM ENERGY-1 does not come close to meeting

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new workers/truck trips that would result. Thus, the SMND lacks any evidence to conclude that worker-associated transportation would not result in significant energy impacts.

this standard. Similarly, allowing applicants to "offset" their energy use by buying carbon credits does not actually address the issue of whether there is sufficient energy *supply* to support the projects the Ordinance would allow. *See also* Section V.C, *supra*, discussing requirement that mitigation relying on carbon "offsets" be verifiable, enforceable and non-duplicative.

Third, by its own terms, MM-ENERGY-1 would only apply to cannabis operations in new buildings; it would not apply to cannabis operations newly allowed by the Ordinance in existing buildings. As explained in proposed section 38.12.030 – Limitation on Canopy and Structures, the Ordinance does not limit the square footage of indoor cannabis operations in existing structures. Thus, despite the fact that the wasteful use of energy from indoor cannabis operations allowed under the Ordinance could exceed the County's threshold by eight times, MM-ENERGY-1 would only attempt to address wasteful energy use in new structures.

2. The SMND fails to analyze whether the Project would require new or expanded electric distribution facilities, the construction of which could cause significant impacts.

Given that the SMND indicates that the types of projects the Ordinance would allow could massively exceed the County's threshold of significance, the County should have analyzed whether the current distribution system—as distinct from current energy *supply*—has sufficient capacity to serve these projects, both individually and cumulatively. Under CEQA, the lead agency must analyze whether the proposed project would "result in the relocation or construction of new or expanded. . . electric power [or] natural gas . . . facilities, the construction or relocation of which could cause significant environmental effects." CEQA Guidelines, Appendix G, § XIX(a). Among other things, new electric wires create an increased risk of wildfire, which is a significant environmental impact under CEQA. *See, e.g.,* Pub. Resources Code § 8386(b) (each utility shall submit annual wildfire mitigation plan, including a "description of the preventive strategies and programs to be adopted by the [utility] to minimize the risk of its electrical lines and equipment causing catastrophic wildfires."); *see also* SMND at 99-100 (concluding that "the updated Ordinance would not require the installation of new power line infrastructure, and therefore would not exacerbate fire risk.").

The SMND completely fails to do this. The SMND's discussion of this potential impact cross-references the aforementioned finding that "because the updated Ordinance would allow for larger cannabis operations . . . large-scale new cannabis uses could potentially exceed energy supply during operation." SMND at 96. Yet, instead of analyzing whether the project would require the "relocation or construction of new or expanded. . . electric power [or] natural gas . . . facilities," the SMND concludes *without*

evidence that aforementioned MM-ENERGY-1 would avoid having to construct new distribution facilities. The SMND fails to recognize that even if sufficient generation were available to serve the projects that will be allowed by the Ordinance, substantial upgrades to the distribution system would likely be necessary in order to supply this energy to individual projects, often in remote rural areas where distribution systems are already marginal.

In fact, there is substantial evidence that PG&E's current distribution system in Sonoma County would not support the type and scale of projects the Ordinance would allow, even if sufficient renewable generation were available to supply these projects. As just one example of an existing and proposed project that together would likely exceed the current distribution line capacity, there is an existing grow and adjacent proposed cultivation both on Palmer Creek Road, Healdsburg (permit nos. UPC17-0067 and UPC18-0046, respectively). PG&E's Integration Capacity Analysis ("ICA") map shows the feeder nearest these two sites, which indicates zero capacity for additional load and also zero capacity for additional distributed generation. This map suggests, first, that an upgrade to the distribution system would be needed to support the considerable additional electricity demand (or load) associated with cannabis production at these locations; and second, that it would not be possible for an applicant simply to install their own on-site renewable generation to meet their new demand. *See* Exhibit 58 (ICA map screenshot showing feeder nearest Palmer Creek Road).[19] The County must use all available tools to evaluate whether buildout of cannabis operations under the proposed Ordinance would exceed the available capacity of the distribution system, particularly in areas where the Ordinance would actually or foreseeably allow cultivation operations.

[19] "Load ICA" is defined as the "[a]mount of load that can be installed at that location without any thermal or voltage violations at the time the integration capacity analysis was performed." *See* Exhibit 59, PG&E's instruction manual for ICA maps, at 10. Although PG&E's data does not prove conclusively that upgrades to electric infrastructure would be necessary (*see, e.g.*, recent order from an Administrative Law Judge in the California Public Utilities Commission's ICA proceeding, requiring the Investor Owned Utilities ("IOUs"), including PG&E, to clean up their messy data; the order is available at https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M361/K810/361810169.PDF), it is the best data publicly available at this time, and it demonstrates that the County must do a more in-depth investigation before proceeding. Alternatively, the County must require a permit-by-permit discretionary review to determine, at the time of permitting, whether significant impacts would occur.

H. The SMND fails to adequately analyze and mitigate the Project's noise impacts.

The proposed Project would result in a significant increase in cannabis cultivation operations in the County. The SMND acknowledges that these facilities, particularly mixed light and indoor cultivation structures use HVAC units, and other noise producing equipment that operates 24 hours per day. SMND at 80. Hoop houses can have electrical and mechanical equipment (§ 38.18.020) and could produce noise from fans and HVAC. Unshielded HVAC equipment located within 1,000 feet of an offsite receptor could generate noise exceeding the "nighttime standard of 45 dBA L50." SMND at 80. The SMND discloses that even with shielding, HVAC "equipment could still exceed the nighttime standard within a distance of 300 feet from sensitive receptors." *Id*. The SMND concedes it "is necessary to require a sufficient setback between HVAC equipment and sensitive receptors." *Id*.

The noise resulting from implementation of the Project will detrimentally affect rural communities and residents living near cannabis cultivation sites. Despite the SMND's disclosure of the Project's anticipated exceedance of the County's noise standards, the SMND fails to provide a complete evaluation of the Project's noise impacts. As an initial matter, given that the SMND's traffic analysis underestimates Project-related traffic, operational noise impacts at adjacent residential areas are likely to be even higher than the SMND discloses. Once the County calculates a more accurate estimate of truck and vehicle traffic associated with cannabis cultivation and associated special events, the revised analysis can be used to estimate noise impacts.

In addition, a revised analysis must calculate anticipated noise from various types of facilities using typical equipment. The analysis should take into account the potential for multiple facilities to locate near each other and/or along one roadway. Concerning noise from special events, the County must calculate the number of events that can take place at facilities based on any limits imposed by the relevant Code section on such events rather than assuming that such events "would occur infrequently." SMND at 81. Without such an analysis, the SMND provides no evidence that the amount of noise reduction provided through identified best management practices will be sufficient to reduce noise to less-than-significant levels. SMND at 82.

I. The SMND fails to analyze significant impacts associated with loss of farmland.

The SMND fails to adequately analyze or mitigate the effects of the Project on agricultural land conversions in the foothills and mountainous areas of the County. Implementation of the Project would allow the avoidable conversion of thousands of

acres of lands currently designated for grapes and other food crops to cultivation and production of cannabis. Despite this potential loss of farmland, the SMND includes virtually no analysis of the Project's impacts on the loss of agricultural land for cultivation of food crops. As explained in section VIII below, cannabis cultivation is qualitatively different from other forms of agriculture, particularly in terms of its environmental impacts, and thus should not be redefined as "agriculture" in the County's General Plan.

The lucrative business of growing cannabis provides financial incentives to convert traditional agricultural land to cannabis uses. An increase in cannabis facilities in remote, rural areas will in turn add more pressure for even more conversion of rural agricultural lands used for food production. The SMND acknowledges this potential conversion of land when it states: "Expanded cannabis operations under the updated Ordinance also would displace other types of agricultural cultivation (*e.g.*, vegetables, grapes, and plant nurseries)…." SMND at 61. Nonetheless, the SMND fails to evaluate the impacts of displacing traditional agricultural activities.

The Sonoma County General Plan Agricultural Element (Agricultural Element) indicates that supporting cultivation of the food system is considered a priority. For instance, the Agricultural Element states that the purpose of the general plans is "to establish policies to insure the stability and productivity of the County's agricultural lands and industries." Agricultural Element at AR-1. The Agricultural Element at section 2.10, where it indicates that aquaculture and fishing should be considered along with land based agricultural practices, does so because those businesses produce a food source. The Agricultural Element specifies :

"Aquaculture and the fishing industry produce a food source and have needs similar to land based agricultural operations. Policy is needed to treat the support facilities of the fishing industry that relate to food production or harvesting in the same manner as those of other agricultural production."

Agricultural Element at AR-2. Similarly, Agricultural Element Policy AR-1e states:

"Encourage and support farms and ranches, both large and small, that are seeking to implement programs that increase the sustainability of resources, conserve energy, and protect water and soil *in order to bolster the local food economy*, increase the viability of diverse family farms and improve the opportunities for farm workers."

Agricultural Element at AR-3; emphasis added.

In light of the fact that agriculture is an important land use in Sonoma County, that the County is known for its vineyards and sustainable agriculture, and that it has long been a high priority of the County to provide for the conservation of its agriculture, the avoidable loss of thousands of acres of productive farmland to the cannabis industry resulting from the Project is significant. Thus, the County must include analysis of this significant impact in an Environmental Impact Report for the Project.

Finally, it is important to note that the permanent protection of agricultural and open space areas has become an urgent need throughout the state. California statutory and case law have long recognized open space as a valuable environmental resource. Accordingly, the California Legislature has declared that "open-space land is a limited and valuable resource which must be conserved wherever possible." Gov't Code § 65562(a). Nearly fifty years ago the California Supreme Court recognized that "[t]he elimination of open space in California is a melancholy aspect of the unprecedented population increase which has characterized our state . . . ." *Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek*, 4 Cal.3d 633,638 (1971), cert. denied, 404 U.S. 87S (1971). Of course, the problem has become ever more serious since the Court's prescient statement.

J. The SMND fails to adequately analyze and mitigate the Project's impacts on specific and area plans.

The SMND fails to analyze conflicts with any of the County's eight specific and area plans. Policy LU-1a of the General Plan emphasizes that:

> A Specific or Area Plan may establish more detailed policies affecting proposed development, but may not include policies that are in conflict with the General Plan. In any case where there appears to be a conflict between the General Plan and any Specific or Area Plan, the more restrictive policy or standard shall apply.

In particular, the Project conflicts with policies in the Bennett Valley Area Plan and possibly other specific and area plans. Land Use Policy 2 in the Bennett Valley Area Plan provides "Commercial development is not considered appropriate to the rural character of Bennett Valley." Both Chapter 26 and Chapter 38 permit *commercial* cannabis activity, and Sonoma County Counsel has concluded that discretionary approvals under Chapter 26, building permits issued under chapter 7, and grading permits issued under chapter 7 are "development."[20]

[20] *See*, Comments submitted by Bennett Valley Citizens for Safe Development, Exhibit 22.

Land Use Policy 3 provides "[d]evelopment shall be coordinated with the public's ability to provide schools, fire, police and other needed services." Emphasis added. Crime is a major concern with cannabis cultivation, and it can take 30 to 45 minutes for a sheriff to respond to a call in Bennett Valley. The Proposal would allow 600 acres of commercial marijuana cultivation in Bennett Valley and fails to discuss or mitigate this issue. Possible mitigations include establishing a sheriff's substation in Bennett Valley; banning permits on properties located on shared access roads to minimize home invasions of innocent non-growers; and banning marijuana grows adjacent to parcels that are zoned residential to limit home invasions of neighbors not involved with marijuana cultivation.[21]

VI. The SMND fails to provide any analysis of the Project's potentially significant cumulative impacts.

CEQA requires lead agencies to disclose and analyze a project's "cumulative impacts," defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Guidelines § 15355. Cumulative impacts may result from a number of separate projects, and occur when "results from the incremental impact of the project [are] added to other closely related past, present, and reasonably foreseeable probable future projects," even if each project contributes only "individually minor" environmental effects. Guidelines §§ 15355(a)-(b). A lead agency must prepare an EIR if a project's possible impacts, though "individually limited," prove "cumulatively considerable." Pub. Res. Code § 21083(b); Guidelines § 15064(i).

Extensive case authority highlights the importance of a thorough cumulative impacts analysis. In *San Bernardino Valley Audubon Society v. Metropolitan Water Dist. of Southern Cal.* (1999) 71 Cal.App.4th 382, 386, 399, for example, the court invalidated a negative declaration and required an EIR be prepared for the adoption of a habitat conservation plan and natural community conservation plan. The court specifically held that the negative declaration's "summary discussion of cumulative impacts is inadequate," and that "it is at least potentially possible that there will be incremental impacts. . . that will have a cumulative effect." *See* also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d at 728-729 [EIR's treatment of cumulative impacts on water resources was inadequate where the document contained "no list of the projects considered, no information regarding their expected impacts on groundwater resources and no analysis of the cumulative impacts"].

In contravention of the above authorities, the SMND provides no discussion or analysis whatsoever of the Project's cumulative impacts. SMND at section 21 at 103.

[21] *Id*.

Instead the SMND makes conclusory statements regarding the Project's cumulative impacts. For example, the SMND claims that the Project "would not adversely affect biological, cultural, or other physical resources outside of the project sites." *Id*. As discussed throughout this letter, this statement is incorrect. First, the SMND's purported analyses on these topics focuses only on potential impacts from each individual facility (as opposed to impacts from all possible facilities under the Project), thus failing to evaluate the impacts from the whole of the project. Second, the SMND fail to consider other potential Projects or the cumulative effects of the whole project along with other projects. Impacts related to hydrology, water quality, and groundwater will result in cumulative impacts to area rivers and streams that support sensitive fish species. *See also*, Letter from Robert Coey, National Marine Fisheries Service dated February 26, 2021 attached as Exhibit 6. The SMND fails to evaluate these impacts.

The SMND's cumulative impact analysis refers the reader to the individual resource section for a discussion of the Project's cumulative air quality and greenhouse gas impacts. *Id*. Again, the SMND purported analyses on these topics focuses only on potential impacts from each individual facility. SMND at 30. While the SMND asserts that "[A]ir pollutant emissions from individual projects can contribute to cumulative air pollution in a regional air basin," no actual analysis is included. *Id*. Moreover, as discussed above the SMND fails to provide evidence that the identified mitigation measures will be enforceable and effective. The SMND then states that other issues, including aesthetics "are site-specific by nature, and impacts at one location do not add to impacts at other locations or create additive impacts." SMND at 103. The document provides no evidence to support this statement. The SMND fails to consider the effects of this Project along with other projects in the County (*e.g.*, the County's Winery Events Ordinance currently under consideration). The SMND thus completely ignores the cumulative effects of all the potential development that may take place pursuant to the new zoning provisions and general plan amendments combined with other development. These impacts must be analyzed in an EIR on the Project.

VII. The mitigation proposed by the SMND is inadequate.

Because, as discussed above, the SMND fails to thoroughly examine and analyze the Project's impacts, it also fails to adequately mitigate for the related impacts. Moreover, the SMND relies on insufficient mitigation and fails to consider and adopt all feasible mitigation.

The County cannot approve projects with significant environmental impacts if any feasible mitigation measure or alternative is available that will substantially lessen the severity of any impact. Pub. Res. Code § 21002; CEQA Guidelines § 15126(a). The County is legally required to mitigate or avoid the significant impacts of the projects it

approves whenever it is feasible to do so. Pub. Res. Code § 21002.1(b). An EIR is inadequate if it fails to suggest feasible mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79. Of course, the County may not use the inadequacy of its impacts review to avoid mitigation: "The agency should not be allowed to hide behind its own failure to collect data." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 36. Nor may the City use vague mitigation measures to avoid disclosing impacts. *Stanislaus Natural Heritage Project*, 48 Cal.App.4th at 195. Put another way, an EIR must set forth specific mitigation measures or set forth performance standards that such measures would achieve by various, specified approaches. *See* CEQA Guidelines § 15126.4; *see* also *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1034; *see* also *Communities for a Better Environment' v. City of Richmond* (2010) 184 Cal.App.4th 70, 93-95 (agency may not approve a vague mitigation measure that contains no performance standards and criteria to guide its later implementation). Without performance standards and an explanation of why mitigation cannot be developed now, the SMND cannot insist the impact will be insignificant and defer the development of specific mitigation measures to some future time. Guidelines § 15126.4 (a)(1)(B). The SMND failed to comply with this bedrock CEQA requirement.

"In the case of the adoption of a plan, policy, regulation, or other public project [such as the proposed Code and General Plan amendments], mitigation measures can be incorporated into the plan, policy, regulation, or project design." CEQA Guidelines § 15126.4(a)(2). Mitigation is defined by CEQA to include "[m]inimizing impacts by limiting the degree or magnitude of the action and its implementation." CEQA Guidelines § 15370(b). In addition to proposing new "policies" as mitigation, mitigation should include changes in where development is planned, what kind is planned, and how dense or intense that development is planned to be.

Here, there is no indication that the SMND considered additional policies or modifications to the proposed amendments to mitigate the impacts of the Project. For example, as described above, the Project would exacerbate risks from wildfire hazards to existing residents and introduce new hazards in terms of providing inadequate emergency evacuation routes. These increased risks and hazards constitute a significant impact requiring the County to identify feasible mitigation measures and alternatives to minimize them. Instead of fully evaluating the Project's wildfire-related impacts, the SMND effectively assumes that no such impacts are possible because future applicants will be required to comply with applicable (unspecified) regulations. SMND at 99.

The County incorrectly conflates code compliance with the CEQA process. CEQA directly forbids an assumption, without underlying analysis, that simply complying with a

regulatory standard is adequate to mitigate a potentially significant impact. Under well-established case law, compliance with existing policies and regulations does not excuse the agency from describing project activities or from analyzing resulting impacts. See, *e.g.*, *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16-17 (compliance with regulation alone not a basis for finding impact less than significant); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09 (environmental effect may be significant despite compliance with such requirements). A revised environmental document must identify feasible mitigation measures for such impacts (*e.g.*, limiting the number of cannabis facilities within high fire risk zones, limiting the total number of permits approved, and/or limiting cannabis facilities to areas with access via roads that meet State standards for fire safety).

Concerning Project impacts related to odors, the SMND fares no better. Despite acknowledging that odor impacts from cannabis cultivation sites are potentially significant (SMND at 33 and 34), the SMND provides virtually no analysis of odor impacts from indoor cultivation sites. Instead, as described in detail in section V.D.2 above, the SMND relies on measures requiring odor control filtration and ventilation systems to control odors for indoor cultivation. But because the SMND fails to impose quantifiable performance standards, it fails to provide evidence that the measure will reduce impacts to less-than-significant levels.

For outdoor cultivation sites, the SMND relies on established setbacks to minimize odor impacts and a single mitigation measure that impermissibly defers analysis of odors until after the cultivation permit is approved and implemented. SMND at 35. Buffers and setbacks can be effective ways to minimize odors since distance reduces the strength and concentration of odors through atmospheric dispersion. However, the minimal buffers proposed by the SMND are inadequate to reduce odor impacts to adjacent residents. As shown by cannabis consulting firm Ortech, setbacks of at 3,000 feet or more are necessary to minimize odors from outdoor cannabis cultivation sites. Ortech brochure at 2, attached as Exhibit 26. In fact, many counties (i.e., Napa and Marin) forbid outdoor cultivation recognizing the significant negative impacts on health and safety of residents, citing both odor and crime. Other counties, such as Yolo County, require larger minimum setbacks of 1,000 feet for outdoor cultivation of up to one acre of cultivation.

A revised environmental document must identify feasible mitigation measures for odor impacts, particularly for outdoor cultivation areas (*e.g.*, limit or exclude cannabis cultivation sites adjacent to RR-, AR- and RRD-designated areas of the County; increase setbacks from residential property lines to a minimum of 1,000 feet to 3,000 feet from residences depending on site specific location, topography, and prevailing winds; require cultivation of less odorous plant strains; and/or limiting cultivation to smaller grow

areas). In cases where mitigation efforts of cannabis operators repeatedly fall short of effectiveness (as measured by three or more complaints from neighbors), modification of the operator's cannabis cultivation permit should be required to address the impact. This can include either increasing the setback, relocation of outdoor activities indoors or in a greenhouse or, if odor impacts persist, revoking the permit.

In another example, the SMND acknowledges significant aesthetic impacts related to degradation of existing visual character. SMND at 21 and 22. Here similar to its approach for mitigating odor impacts, the SMND relies on setbacks and screening to minimize impacts to views and visual character. However, the SMND provides no evidence that these measures will be effective to reduce impacts to less than significant levels. Especially for larger indoor facilities that include industrial-sized warehouse buildings, planting vegetation and minimal setbacks are not likely to effectively screen these facilities from public viewpoints.

Compliance with CEQA would involve acknowledging and describing the anticipated effects of the Project. To this end, an EIR must quantify the Project's effects on area residents (including loss of agricultural land, odor and air pollution, transportation impacts, increased wildfire risk, increased noise, and impacts to views) and natural resources (including impacts on water supply, watershed water quality, and on biological resources dependent on water quality) and the efficacy of the proposed mitigation, so that the public and decision makers may reach their own conclusions. *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130. The current proposal to allow cannabis cultivation sites with ministerial review and minimal setbacks of 100 feet from the property line and 300 feet from the residences of sensitive receptors would result in significant impacts that have neither been adequately analyzed nor adequately mitigated.

VIII. Cannabis is associated with uniquely problematic nuisance conditions and should not be included under the County's Right-to-Farm Ordinance.

The proposed project would amend the General Plan (2020) to redefine agricultural land use as inclusive of cannabis cultivation, thus potentially making commercial cannabis operations subject to the County's Right to Farm Ordinance (Sonoma County Code, ch. 30). In addition, the proposed Chapter 38 lacks the Health and Safety clause that is in the current chapter 26 cannabis ordinance (§ 26.88.250(f)) that forbids commercial cannabis activity from creating a public nuisance or adversely affect the health or safety of the nearby residents. As explained throughout this letter, cannabis is associated with uniquely problematic nuisance conditions and thus should not be defined as, and receive the same protections as, traditional agriculture.

In 2016, the Board of Supervisors found that cannabis should be treated differently from other agriculture because its classification under the Federal Controlled Substances Act. The Board of Supervisors distinguished cannabis from other agriculture because of its "federal classification as a Schedule I drug, the security concerns associated with a high value crop, and the unique characteristics of the cannabis cultivation operations." December 20, 2016 Board of Supervisors Resolution Approving an Amendment to Uniform Rules 2.0, 4.0, 7.0 and 8.0 of the Sonoma County Uniform Rules for Agricultural Preserves and Farmland Security Zones. See Exhibit 60 Board of Supervisors 2016 Proposed Ordinance. The Resolution cited the FCSA for its classification of cannabis as a Schedule I drug. The Resolution further stated "that excluding cannabis cultivation from the Uniform Rules' definition of 'agricultural use,' is desirable and will appropriately tailor Sonoma County's agricultural preserve program to meet local, regional, state, and national needs for assuring adequate, healthful and nutritious food for future residences." *Id.*

Although the SMND states that "the County has since found that despite this federal classification, cannabis cultivation functions similarly to other agricultural operations and that it fits within the plain language and intent of the term 'agriculture,'" none of the considerations that went into the Board's 2016 reasoning have changed. Cannabis cultivation is an intensive land use involving odors and energy and other infrastructure demands more similar to industrial uses than to traditional agriculture. *See*, *e.g.*, Exhibit 4, John W. Bartok, Jr., Cannabis Business Times, Greenhouse Efficiency Guide: 21 Cannabis Greenhouse Design Considerations (describing features like conveyors, heating and hot water boiler systems, fan and louver systems for ventilation, and supplemental lighting requirements). Furthermore, the SMND itself contradicts any finding that cannabis cultivation is "similar" to other agricultural operations.

The SMND concludes that the proposed project would require extensive mitigation in order to reduce cannabis operations' impact on surrounding agricultural uses. In describing this mitigation, the SMND explicitly differentiates cannabis cultivation from other forms of agriculture. For instance, although agricultural land uses often generate odors, "cannabis cultivation can generate particularly strong odors that adversely affect people." SMND at 34; *see also id.* at 33 (cannabis cultivation and processing operations "generate distinctive odors" that can be "reminiscent of skunks, rotting lemons, and sulfur.").

Similarly, although it is common for agricultural operations to include visible structures such as barns and silos, "the updated Ordinance could allow for additional cannabis structures (especially light-reflective greenhouses and hoop houses) that could contrast with the general form, scale, and bulk of other agricultural structures or vegetation in rural areas." SMND at 22; *see also id.* at 24 ("cannabis cultivation can

cause distinct glare impacts in comparison to typical agricultural practices. Greenhouses and hoop houses used for cannabis cultivation can have highly visible light-reflective materials."). Cannabis cultivation also involves different energy and hazardous materials practices compared to traditional agriculture. *See* SMND at 48 (describing cannabis's uniquely significant energy demands); SMND at 62 (describing hazardous components of high-powered lights used in cannabis operations).

Other counties, including Alameda, Humboldt, and Mendocino, have declined to expand the definition of agriculture in their general plans to include cannabis for these very reasons. They also cite the fact that cultivation of cannabis raises health, safety and welfare concerns not raised by other traditional agricultural products. Given the status of cannabis as a controlled substance, which is illegal under federal law, cannabis cultivation involves potential adverse effects that differ from the cultivation of other types of crops (*e.g.*, criminal activity and impacts on children and sensitive populations). State cannabis regulations include a number of development standards and permitting requirements to avoid or mitigate these adverse effects, which are not required for the cultivation of other types of crops on agricultural lands. Cannabis cultivation and cannabis operations are therefore excluded from the State and these counties' definitions of agriculture.

IX. Conclusion

As set forth above, the Project does not come close to satisfying CEQA's requirements. The SMND fails to describe the Project and its setting, and fails to provide a complete analysis of Project impacts, cumulative impacts, and feasible mitigation measures. At the same time, ample evidence demonstrates that a fair argument exists that the Project may have significant environmental impacts. In light of this evidence, CEQA requires that an EIR be prepared. For this reason, SOSN respectfully requests that the Project be denied.

Very truly yours,

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Exhibits

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6. Letter from Robert Coey, National Marine Fisheries Service (Feb. 26, 2021)

7. Susanne Rust et al., *How climate change is fueling record-breaking California wildfires, heat and smog*, Los Angeles Times (Sep. 13, 2020)

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12. Sonoma County Agricultural Preservation and Open Space District – 2020 Wildfires

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From:	Chelsea Holup on behalf of PlanningAgency
To:	Cannabis
Subject:	FW: Comment for March 18th Planning Commission meeting from Veva Edelson of Bloomfield
Date:	Thursday, March 18, 2021 11:00:45 AM
Attachments:	Untitled 2.pdf

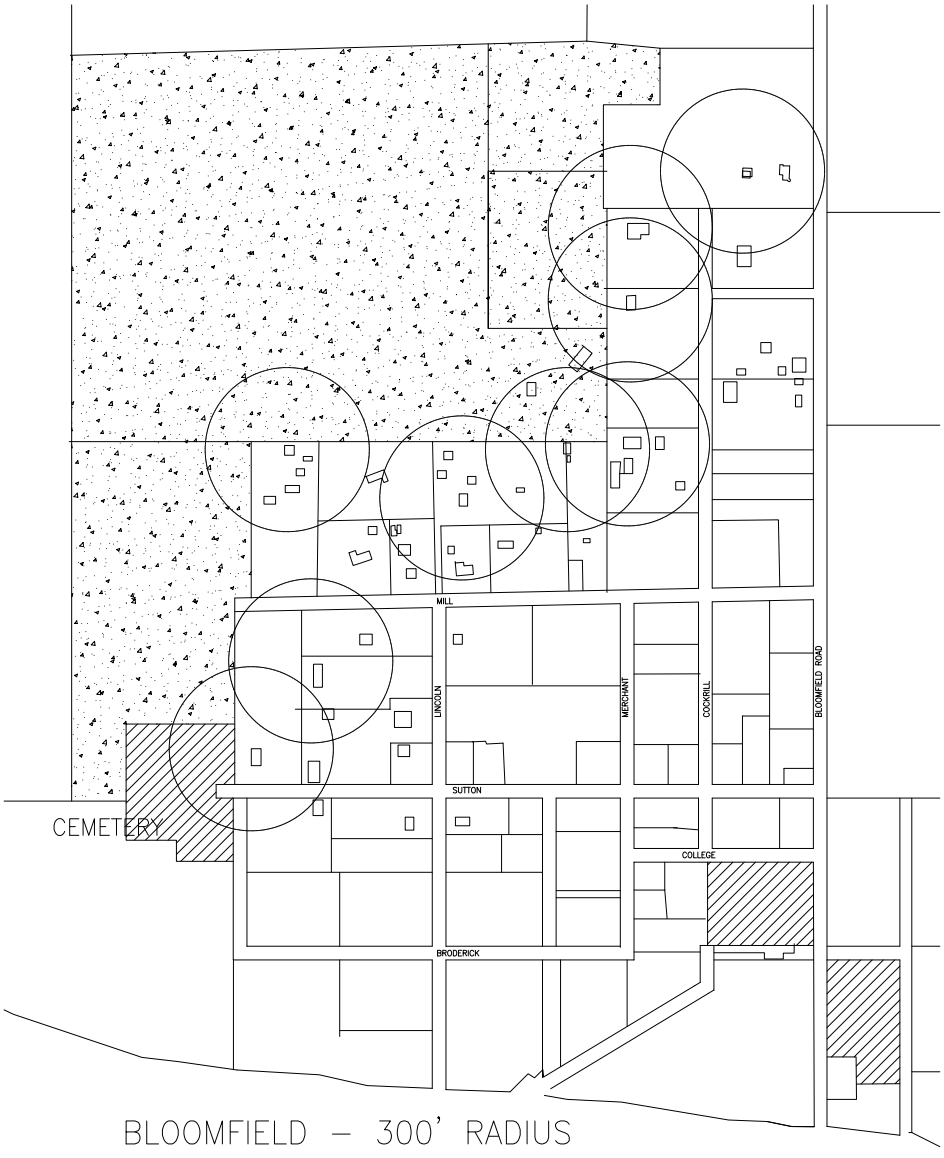
From: Veva Edelson <veva.edelson@gmail.com>
Sent: March 18, 2021 10:51 AM
To: PlanningAgency <PlanningAgency@sonoma-county.org>
Cc: David Rabbitt <David.Rabbitt@sonoma-county.org>; Andrea Krout <Andrea.Krout@sonoma-county.org>; Andrew Smith <Andrew.Smith@sonoma-county.org>
Subject: Comment for March 18th Planning Commission meeting from Veva Edelson of Bloomfield

EXTERNAL

Carbon Farmer/ Artist
Piano Farm
Bloomfield CA
415 640-8837

March 18th 2021

Dear Planning Commissioners,
The new ordinance must address neighborhood compatibility by providing a 1000 ft setback/ buffers zone. We live rurally and are deeply invested in the land and being outside on the land. The proposed 300 ft setback from our residences subjects us to substantial and unknown impacts without proper environmental study provided by an EIR. How can a commercial cannabis project on an adjoining property have a setback starting from my house on my property as part of their setback requirement? Is this a taking of my property rights? How does this affect what I can do with my property? Is this legal? This is shocking and scary. We in Bloomfield are unsettled by this development and saddened to feel the lack of concern for our health and well being in the writing of this proposed ordinance. This must be resolved by adopting 1000 ft setback/buffer zones and expansion to a greater distance may be required depending on locally prevailing conditions around residential property lines in all unincorporated towns and neighborhoods under part 2 of the ordinance.



BLOOMFIELD – 300' RADIUS

This map shows the proposed 300 ft setback/ buffer from homes in Bloomfield. Why are our back yards becoming the setback/ buffer? Is this legal? Is it safe? What about my property rights?

Thank you,
Veva Edelson
CCOBloomfield Member

From: Wendy Smit
To: Cannabis
Subject: Comment and question on Proposed Cannabis Ordance and General Plan Amendments
Date: Thursday, March 18, 2021 11:49:21 AM

EXTERNAL

I have two questions and comments.
1. Re existing and future Agricultural Easements in Sonoma County
Will Commercial Cannabis be allowed as an agricultural crop. Cannabis is still a controlled substance under Schedule 1 and so therefore violates Federal Law.

2. Under the Proposed 'Ordinance to Establish and Administer Development Impact fees for Fire Protective Services' will Commercial cannabis development be required to pay the Impact fees? This should be required.

Thank you
Wendy Smit

From: district5
To: Cannabis
Subject: FW: Support cannabis amendments, suggested addition
Date: Thursday, March 18, 2021 12:38:53 PM
Attachments: Sonoma BOS re amendments 2021 03 17.pdf

From: Don Duncan <don@patientscarecollective.com>
Sent: Wednesday, March 17, 2021 11:58 AM
To: Susan Gorin <Susan.Gorin@sonoma-county.org>; David Rabbitt <David.Rabbitt@sonoma-county.org>; district3 <district3@sonoma-county.org>; district4 <district4@sonoma-county.org>; district5 <district5@sonoma-county.org>
Subject: Support cannabis amendments, suggested addition

EXTERNAL

Dear Supervisors,

I have attached a letter supporting the proposed changes to the county's cannabis ordinance and suggesting a change related to existing applicants.

Thank you.

--
Don Duncan, Director of Government Affairs
Patients Care Collective
California Cannabis Distribution Company
Foxworthy Farms
(323) -326-6347

March 17, 2021

Sonoma County Board of Supervisors
575 Administration Drive
Room 100 A
Santa Rosa, CA 95403

VIA Email

RE: Support for cannabis amendments and suggested change for applicants

Dear Supervisors:

I am writing today to support the changes to the cannabis ordinance proposed by staff (ORD20-0005) and to suggest an essential addition to the proposal that is consistent with its intent. Streamlining the permit process for cannabis cultivation will remove barriers for smaller-scale cultivators and save time and money for the county. The proposed changes will also bring the cannabis permitting process in line with other agricultural uses and state regulations. I suggest that, in addition to the common-sense provisions of the staff proposal, you create a path for Conditional Use Permit (CUP) applicants that have not had the final disposition of their application to reapply under the new provisions.

Foxworthy Red, LLC, known as Foxworthy Farms, is an outdoor cannabis cultivation business authorized under the penalty relief program. The owners bought the 82-acre parcel in the Rural Resource Development (RRD) zone in 2016 to cultivate medical cannabis for the nation's oldest continuously operating medical cannabis dispensary. The farm now grows cannabis for adult and medical retailers in the Sonoma County and other Bay Area communities. Two of the three owners lived on the property at 7955 St. Helena Road until the Glass Fire destroyed one residence. The displaced owner will rebuild and live on the farm again as soon as it is possible.

The Board of Zoning Adjustments (BZA) denied our CUP application on December 12, 2019. We filed an appeal based, in part, on the lack of timely notice and incomplete information provided to the BZA by staff at Permit Sonoma. In response to staff feedback before the hearing, we prepared new water management plans, access improvements, and more. Although we submitted those documents to staff days in advance of the hearing, staff did not give them to members of the BZA until after our hearing was underway.

The Board of Supervisors (BOS) has not yet scheduled our appeal hearing. I propose that Foxworthy Farms and other applicants in the designated zones without a final disposition on their CUP applications be allowed to apply for a permit from the Agricultural Commissioner if the proposed changes are adopted. To accomplish this, we would like the BOS to pause all pending applications and appeals for cannabis cultivators. If the BOS approves the changes, applicants

qualified to do so may then apply for an Agricultural Commissioner permit instead of a CUP using the improved process.

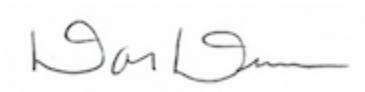
It is reasonable and fair to allow current applicants to use the streamlined process. A new applicant in the RRD zone would be allowed to apply for a ministerial permit. It would be inconsistent to have two similar projects following widely divergent paths. Moving the permitting process for Foxworthy Farms and other pending applicants to the Agricultural Commissioner is fair and less expensive for the applicants and the county.

The streamlined process is significant for Foxworthy Farms. We applied for our CUP in 2017 and have diligently pursued approval. We spent a substantial amount of time, effort, and money since 2017 to obtain licenses and comply with local and state regulations. We agreed to refrain from processing on-site and using two greenhouses as part of a stipulated agreement with the County Council in June of 2019. That agreement significantly reduced our earning potential and dramatically increased processing costs. Our pending appeal and any subsequent legal fees will drive up the price further. These costs were already a burden for a small, locally owned business like ours. However, we are also struggling with devasting damage from the Glass Fire resulting in estimated losses of up to $3 million.

Despite the hardships, we remain committed to our mission of providing quality medical and adult-use cannabis. We are determined to be a part of Sonoma County's burgeoning cannabis marketplace, where we will provide good local jobs, generate tax revenue, and practice sincere stewardship of our land and watershed. Adding a path to an Agricultural Commissioner permit for Foxworthy Farms is critical in making this happen. I urge you to temporarily pause our appeal process and clarify that we will have an opportunity to take advantage of the proposed improvements to the ordinance.

I am eager to discuss this proposal with you at your convenience. You may reach me at don@PatientsCareCollective.com or (323) 326-6347.

Thank you,



Don Duncan
Director of Government Affairs

cc. Sonoma County Planning Commission

From: Gina Cloud
To: Cannabis
Subject: cannabis ordinance comments March 18 2021
Date: Thursday, March 18, 2021 12:51:18 PM
Attachments: Doc7.docx

Thank you for the opportunity to speak.

I want to address the issue of setbacks from residences. Currently the new part of the ordinance calls for a 300 foot setback between cannabis related activities and residences.

This is unacceptable for a number of reasons, especially in a residential community that shares fence lines with ag land.

The recommended 300' setback allows growers to utilize private property as part of their setback. How can neighbors ignore the presence of cannabis activity when it is so close to their back yards? 300 feet from residences means that if one's house is set 150 feet back from one's property line, cannabis related activities could be just 150 feet beyond their property line. Rural residents inhabit their properties as much as their homes, using them for family recreation, gardens, pets & animal husbandry, orchards, projects and many other things. Most ppl in rural communities spend part of each day outside. Three hundred foot setbacks for these neighborhoods from cannabis activities is ***not*** the way to support community compatibility.

The Petaluma Gap area is host to many grow sites. Most of them are on ranchlands and tucked well away from neighbors, and as long as the growers are environmentally responsible, they are not considered a problem.

However, when cannabis seeks to enter residential neighborhoods it becomes problematic. 300' setbacks from residences will set in motion a persistent, adversarial dynamic. However, 1000 feet from residences or 800' from property lines, could lessen many of the effects of having cannabis within sight, smell, and hearing of families and individuals who are heavily invested both financially and emotionally in their homes, properties, and communities.

Ample setbacks will go a long ways toward allowing all stakeholders to be compatible neighbors. Now is the time to set policy that will help rural communities and cannabis growers to be good neighbors. Please require 1000' setbacks from residences for cannabis related activities. Thank you.

`

From: Komal Gill on behalf of CannabisTax
To: Cannabis
Subject: FW: Public comment on Sonoma County Cannabis ordinance
Date: Thursday, March 18, 2021 12:17:26 PM
Attachments: image001.png

From: Jay Scherf [mailto:jay.scherf@gmail.com]
Sent: Thursday, March 18, 2021 12:01 PM
To: CannabisTax <CannabisTax@sonoma-county.org>
Subject: Public comment on Sonoma County Cannabis ordinance

EXTERNAL

Hello,

My name is Jay Scherf, and I am submitting a brief written public comment ahead of today's planning commission meeting. I had meant to draft a longer letter, but the deadline is upon me. I spent the first 20 years of my life in the Mark West Creek watershed and care about it very much. I am opposed to the current ordinance as drafted on the following principles:

- The county does not have time to meaningfully engage with public comment (my lette being a case in point).

- The county should consider a full EIR for such an impactful plan, so that all residents concerns can be addressed

- Sonoma County's watersheds are at a critical juncture - they contain large amounts of intact quality riparian habitat for numerous species, and they have also been heavily impacted by development in the last 200 years (but especially the last 50). An improperly considered cannabis ordinance could push our rivers past the point of no return. This issue needs to be more thoroughly considered.

Thank you,

Jay

707-365-0012

745 Jean Marie Dr.
Santa Rosa, CA 95403

From:	Sonia Taylor
To:	Larry Reed; Todd Tamura; Gina Belforte; Greg Carr; Caitlin Cornwall; Pamela Davis; John Lowry; Cameron Mauritson; Jacquelynne Ocana; Cannabis; PlanningAgency
Cc:	Tennis Wick; Scott Orr; Lynda Hopkins; Chris Coursey; district4; Susan Gorin; David Rabbitt; Robert Pittman; Andrew Graham; Johnson, Julie; Jim Sweeney; Suzanne Doyle; Steve Birdlebough; Michael Allen; Janis Watkins; Teri Shore; Padi Selwyn; Judith Olney; SCTLC list; Will Carruthers
Subject:	Re: Draft Cannabis Package, PC Hearing March 18, 2021
Date:	Thursday, March 18, 2021 12:04:40 PM
Attachments:	3_18_21_cannabis_ltr_cultural_resources_final_1.pdf

EXTERNAL

Gentlepersons:

Attached to this email is my letter covering one final point.

As always, I am happy to discuss this request with any of you -- please do not hesitate to contact me.

Thank you for your consideration.

Sonia

Sonia Taylor
707-579-8875
great6@sonic.net

Sonia E. Taylor
306 Lomitas Lane
Santa Rosa, CA 95404
707-579-8875
Great6@sonic.net

18 March 2021

Larry Reed, Chair, District 2
Todd Tamura, Chair, District 2
Gina Belforte, District 3
Greg Carr, District 1
Caitlin Cornwall, District 1
Pam Davis, District 5
John Lowry, District 5
Cameron Mauritson, District 4
Jacquelynne Ocaña, District 3
Sonoma County Planning Commission

McCall Miller -- cannabis@sonoma-county.org

PlanningAgency@sonoma-county.org

Via email

Re: Draft Cannabis Ordinance and Draft Subsequent Mitigated Negative Declaration
Planning Commission Hearing Scheduled for March 18, 2021

Gentlepersons:

My apologies. I thought I was done writing letters on this subject, but I have one final concern that I want to bring to your attention.

Proposed Chapter 38, in Section 38.12.050, contains a requirement for a Cultural Resources Survey at paragraph C. Both the Sonoma County Farm Bureau and Erin Gore of the Garden Society (and perhaps others) have requested that you eliminate all requirements for a Cultural Resources Survey in proposed Chapter 38, because:

> "[W]e are concerned this regulation will eventually be imposed on all of agriculture." [Farm Bureau]

And

> "No other agriculture crop is required to do a Cultural Resource Survey." [Ms. Gore, the Garden Society]

In the limited time I have to write and submit this letter, I believe that they are correct that no other agricultural activities are required to do such a Cultural Resources Survey.

However, I believe that all agricultural activities are required to comply with subparagraph D of Section 38.12.050, which covers what I believe are State requirements regarding human remains and cultural resources (see, for example, Section 26.18.040 of the current Zoning Code).

Frankly, given the fact that Native Americans lived throughout Sonoma County historically, and that all human remains and cultural resources are not only protected under State law, but are important to preserve not only for the Tribes, but for all of us, I believe that instead of eliminating the requirement for a Cultural Resources Survey from proposed Chapter 38, it should instead be required of all agricultural and other activities that disturb the ground.

Other letters from cannabis cultivators have a different talking point about this section, requesting that a list of cultural surveyors be pre-approved by local Tribes and be available for cannabis businesses (and other agricultural activities, in my opinion) to utilize. I think that this is a reasonable request that should be fulfilled.

Again, of course, I do not believe that the proposed Chapter 38 can be adopted as is, or with changes, because the Supplemental Mitigated Negative Declaration herein is defective under the California Environmental Quality Act.

Thank you for your attention to this matter.

As always, I am happy to talk with any one of you regarding this matter. Please do not hesitate to contact me if you have any questions or require additional information.

Very truly yours,

Sonia E. Taylor

Cc: Tennis Wick, Permit Sonoma Director
Scott Orr , Permit Sonoma Deputy Director
Sonoma County Board of Supervisors
Robert Pittman, Sonoma County Counsel
Federated Indians of Graton Rancheria
Andrew Graham, Press Democrat
Julie Johnson, Press Democrat
Jim Sweeney, Press Democrat
Will Carruthers, the Bohemian
Sierra Club
Sonoma County Conservation Action
Greenbelt Alliance
Preserve Rural Sonoma County
Sonoma County Transportation and Land Use Coalition

From: Adam Davidoff
To: Cannabis
Subject: Comments for ordinance updates
Date: Thursday, March 18, 2021 5:18:46 PM

EXTERNAL

Dear Board of Supervisors + Staff,

I am a longtime organic vegetable farmer of 10+ acres annually, cannabis farmer and 25 year plus resident of Sonoma County. As someone who cultivates millions of plants annually with cannabis being a small percentage of the total, people are making way too big of a deal about cannabis cultivation. It's just another plant. I advocate removing as much of the onerous regulation as possible and let the farmers get back to work.
For the proposed ordinance updates please:

- For adjacent parcels owned or leased by the same entity, allow property-line setbacks to be waived.
- Allow property-line setbacks to be waived with written authorization from a neighboring landowner.
- I would like to see RR and AR added back, as a right to farm in Sonoma County. (Small farming is essential in our agricultural county.)
- The state already has strict enough restrictions for water use. Please remove the new water restrictions you have added and treat us like other agriculture commodities. Please make water use requirements in line with other agricultural operations in the county and get rid of the onerous reporting requirements and studies for permitting.
- Please don't put caps on propagation. If it is used on-site, it should not be limited by square footage. Plants grow very quickly and must be held until they are used. We have strain banks and Mother Stock that must be kept alive. This requires extra space.
- Please remove the requirements for plant screening of Cannabis farms. (Other crops are not subjected to this) They draw attention to the fact that there is a cannabis farm behind a fence as opposed to a horse or dog, they cost extra money, and they use extra water. They are also just plain unsightly and a poor use of natural resources. Farmers aren't required to screen vegetables, dairy, grapes, livestock, nurseries, or

really anything. Why should they need to screen cannabis.

- Please remove the requirement for an emergency to be government declared (Example: There may be a power outage on a single parcel that will still create an emergency for that farmer. They must be able to pump water or turn on lights to save their crop.)

    - Farmers may need to use generators for short periods of time, or in a specific location where power isn't available. It would allow farmers to dry in the field, as opposed to shipping to another location. Allowing farmers the opportunity to see their crop through all the way to the end, without forcing them to rely on the infrastructure of someone else, is critical to small scale growers viability.

Thank you for your consideration.

Sincerely,

Adam Davidoff

From:	Levinson, Andrea@CDFA
To:	McCall Miller
Cc:	Ponce, Kevin@CDFA; Rains, Lindsay@CDFA; Vella, Michael@CDFA; Kuszmar, David@Waterboards; Erickson, Gregg@Wildlife; Bianchi, Mia@Wildlife; Stokes, Wesley@Wildlife; Porzio, Kevin@Waterboards; Schultz, Daniel@Waterboards; Seidner, Dylan@Waterboards; Grady, Kason@Waterboards; Hengeveld, Caitlin@CDFA
Subject:	Comment Letter_ISMND_(SCH No. 2021020259)
Date:	Thursday, March 18, 2021 1:39:46 PM
Attachments:	image001.png oledata.mso (SCH No. 2021020259)_ISMND_Sonoma County.pdf

EXTERNAL

Hello Ms. Miller,

Attached are the CDFA comments on the Initial Study/Mitigated Negative Declaration for:

- (SCH No. 2021020259) – Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment.

Please let me know if you have any questions or need more information.

Thank you,

Andrea Levinson
Scientific Aid

CalCannabis Cultivation Licensing Division
California Department of Food and Agriculture
Andrea.Levinson@cdfa.ca.gov
(916) 576-3840 | (833) CAL-GROW

Stay Connected

CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE

March 18, 2021

McCall Miller
County of Sonoma
575 Administration Dr. Ste 104A
Santa Rosa, CA 95403
(707) 565-2431

Re: Review of Initial Study/Mitigated Negative Declaration (SCH No. 2021020259) – Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment

Dear Ms. Miller:

Thank you for providing the California Department of Food and Agriculture (CDFA) CalCannabis Cultivation Licensing Division (CalCannabis) the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND; SCH No. 2021020259) prepared by Sonoma County for the Sonoma County Cannabis Land Use Ordinance Update and General Plan Amendment (Proposed Ordinance Update).

CDFA has jurisdiction over the issuance of licenses to cultivate, propagate and process commercial cannabis in California. CDFA issues licenses to outdoor, indoor, and mixed-light cannabis cultivators, cannabis nurseries and cannabis processor facilities, where the local jurisdiction authorizes these activities. (Bus. & Prof. Code § 26012(a)(2).) All commercial cannabis cultivation within California requires a cultivation license from CDFA. Therefore, with respect to the Proposed Ordinance Update, CDFA is a responsible agency under the California Environmental Quality Act (CEQA). For a complete list of all license requirements, including CalCannabis Licensing Program regulations, please visit: https://static.cdfa.ca.gov/MCCP/document/CDFA%20Final%20Regulation%20Text_01162019_Clean.pdf.

CDFA expects that the amendment to the cannabis ordinance analyzed in the IS/MND will not impact the pathway CDFA discussed with Sonoma County and memorialized in the letter CDFA sent to Sonoma County on June 19, 2019. As discussed January 8, 2021 the County intends to continue to prepare a draft Notice of Exemption, accompanied by a project description, a checklist to document the

applicability of the categorical exemption(s), and, if relevant, photos to document that cultivation existed prior to the application date for projects authorized under a zoning permit, when the project might fit within a CEQA categorical exemption. CDFA understands the County will not be relying on such categorical exemption(s), but the County will provide these documents to applicants to include with their applications to CDFA. CDFA will make an independent determination regarding the applicability of any categorical exemption.

CDFA offers the following comments concerning the IS/MND.

General Comments (GC)

GC 1: CalCannabis PEIR potential impacts

The CalCannabis PEIR determined that some environmental topics generally fell outside of CalCannabis' regulatory authority because these topics are regulated by local land use. Additionally, there are other topics for which detailed analysis in the CalCannabis PEIR was not possible because of the statewide nature of the CalCannabis licensure program. Many of these topics involve the evaluation of site-specific conditions, the details of which were infeasible to identify and evaluate in a statewide PEIR, and the characteristics of which were unknown at the time the PEIR was published (e.g., the locations of new cultivation sites that would be planned and licensed were unknown at the time the PEIR was published).

For those topics, listed below, the CalCannabis PEIR determined that potential impacts would most appropriately be evaluated in local regulatory program-level documents or site-specific documents.

CalCannabis requests that CEQA documents prepared by or on behalf of cannabis cultivation applicants evaluate the impacts of commercial cannabis cultivation projects for these resource topics, at an appropriate regionally-focused and site-specific level, and include mitigation measures that will ensure projects will not result in significant adverse impacts on the environment.

Specific Comments and Recommendations

In addition to the general comments provided above, CDFA provides the following comments regarding the analysis in the IS/MND.

Comment No.	Section Nos.	Page No(s).	Resource Topic(s)	CDFA Comments and Recommendations
1	2 a)	24	Agriculture and Forest Resources	A 1:1 ratio for replacement of important farmland is not enough because there is no guarantee that the replaced farmland will successfully replace the land being destroyed. Suggest increasing the ratio replaced from 1:1 to 2:1.
2	2 c)	27	Agriculture and Forest Resources	The analysis is missing for this section.
3	4 a)	37-39	Biological	Sensitive species such as the California red-legged frog, California tiger salamander, and foothill yellow-legged frog are known to exist in the county. The three protected species are also known to breed in artificial pools such as irrigation reservoirs and can also travel long distances “without apparent regard to topography, vegetation type, or riparian corridors” (Bulger et al. 2003; USFW). Therefore, CDFA suggests a more in-depth analysis be done on the potential for cannabis cultivation to impact these protected species. CDFA also suggests listing the updated ordinance standards found in section A (pg 39) as mitigation.

Conclusion

CDFA appreciates the opportunity to provide comments on the IS/MND for the Proposed Ordinance Update. If you have any questions about our comments or wish to discuss them, please contact Kevin Ponce, Senior Environmental Scientist, at (916) 247-1659 or via e-mail at Kevin.Ponce@cdfa.ca.gov.

Sincerely,

Lindsay Rains,
Licensing Program Manager

From: Greg E.
To: Cannabis
Subject: Today"s Cannibis Presentation
Date: Thursday, March 18, 2021 3:21:11 PM

EXTERNAL

Hello,

I am writing this to express my concern over the possibility of rezoning more than 65,000 acres to support the interests of the marijuana industry. This is equivalent to 101.6 square miles or a square slightly over 10 miles on a side. That many square miles, if placed on Courtyard Square as its center, would extend north approximately to Rebeli Rd and the junction of Mark West, south to Wilfred Rd off US 101, west to Willowside Rd and east to Summerville Rd and CA 12!

Additionally, those 65,000 acres would represent approximately 7% of the entire acreage of 960,000 acres within Sonoma County and be on top of the acreage now being grown within the County already dedicated to marijuana cultivation. Is the goal to be a net exporter out of the County for this product?

Also, it' sunderstood that this crop requires more water than a vineyard does and it produces noxious fumes that a vineyard doesn't.

So, my questions are:

1. Where will the additional water to support this additional expansion come from in future dry years? And please be specific.
2. How much will anticipated tax revenues increase if this plan is approved?
3. Will permit hearings be held if approved?
4. If approved, will this acreage be "right to farm" land? Why is that designation necessary?
5. If approved, will the requirements for a CQEA be upheld?

Thanks in advance for your answers.

Sincerely,

Greg Ervice

Santa Rosa

From:	Gretchen Giles
To:	PlanningAgency; Greg Carr; Larry Reed; Gina Belforte; Cameron Mauritson; Pamela Davis
Cc:	Cannabis; Andrew Smith; Michael Coats
Subject:	Comments from the Sonoma Valley Cannabis Enthusiasts on Proposed Cannabis Policy Updates
Date:	Thursday, March 18, 2021 1:26:49 PM
Attachments:	SVCE.SonomaCounty.Planning.pdf

EXTERNAL

Dear Sirs and Madams,
Attached please find a letter sent on behalf of SVCE.
Regards,
Gretchen Giles
707.570.7887
@gretchengiles
hellogretchen.com

March 18, 2021

Sonoma County Planning Commission
2550 Ventura Ave
Santa Rosa, CA 95403

PlanningAgency@sonoma-county.org
greg.carr@sonoma-county.org
larry.reed@sonoma-county.org
gina.belforte@sonoma-county.org
cameron.mauritson@sonoma-county.org
pamela.davis@sonoma-county.org

CC: cannabis@sonoma-county.org
CC: Andrew Smith, andrew.smith@sonoma-county.org
CC: Christina Rivera, christina.rivera@sonoma-county.org

Dear Honorable Planning Commission and County Staff,

The Sonoma Valley Cannabis Enthusiasts organization, representing cannabis advocates in the Sonoma Valley and beyond, supports Sonoma County's efforts at implementing progressing hemp and cannabis policies that bring our county into better alignment with the practices implemented by the State of California.

We feel strongly that Sonoma County should be world renowned for the quality of our sun-grown cannabis and that we should make every effort to place our county in the best position possible to benefit from the cannabis appellation system newly instituted by the state.

Tourism for cannabis as well as that for wine and food should be a major focus of our county's efforts. We have seen how well it has worked to support our local wine industry.

Direct to consumer sales of cannabis products by licensed ag producers should be allowed as they are for food and wine.

We are at the gateway to the Emerald Triangle and make a perfect jumping off point for the curious and ambitious NorCal traveler. We have better, more plentiful and more luxurious food and accommodations than do Mendocino, Humboldt, or Trinity counties — the triumvirate which compose the Emerald Triangle — let's ensure that our cannabis is given the same support we offer to our profitable wine industry.

Specifically, we request that the Planning Commission please:
Treat cannabis as other ag products.
Align Sonoma County goals with those of the state.
Offer a more generous path forward for cannabis ag retail.
Embrace cannabis tourism and pave the path for its full impact.

Recognizing the immense economic engine that cannabis is — California reaped $1 billion in tax revenue last year from this one commodity and gained thousands of jobs that can only exist within the state — and harnessing its good is vital to the continued success our county has so far enjoyed.

Thank you for your kind attention,

Michael Coats

Michael Coats
President, SVCE

From:	Heidi Mclean
To:	Cannabis
Cc:	Heidi Mclean
Subject:	Support for the Friends of the Mark West Watershed letter
Date:	Thursday, March 18, 2021 3:56:23 PM

EXTERNAL

Dear Planning Commission Members,

The property which my family owns is in District 1. I fully support the position of the Friends of the Mark West Watershed as outlined in the letter they submitted today.

I appreciate the time staff has put into their proposal, however it does not flesh out the water issues and the mitigation required. I am certain there will be lawsuits if this proposal is approved because of the lack of an adequate EIS.

I also would like to point out that the smell of horse, dairy, or any other manure does not impact me the same way the odor from cannabis does. This is a personal issue and I realize not everyone is the same.

Thank you very much,
Heidi McLean

From: James Dugdale
To: Cannabis
Subject: Changes to the Cannabis Operator Permitting Should be Denied
Date: Thursday, March 18, 2021 2:18:32 PM

EXTERNAL

Members of the Planning Commission and to All Members of the Board of Supervisors of Sonoma County:

The recommended changes to the cannabis operator permitting should not be approved: they are heavily weighted toward favoring commercial cannabis operators and heavily burden the residents and local environment - please do not approve these changes.

Cannabis should not be recategorized as an agricultural crop. The growing and production of cannabis produces a controlled substance, with little to no processing. That's not agriculture, that's the equivalent of pharmaceutical production. Cannabis growth and production (much like pharmaceuticals) should be governed by state agencies that oversee pharmaceutical production operations.

The proposed terms for ministerial permits have the high propensity to lead to independent judgements with unintended outcomes by county personnel, with the potential for corruption; this is a mistake and it should not be allowed.

The lot sizes and setbacks for growing cannabis should be increased, not decreased; and a "10% of lot size" option should not be allowed. An acre of cannabis is already too large for any area that has residences nearby. Growing cannabis creates a putrid smell and increases the probability of crime on the growing site which can easily spill over to neighboring properties. The current setbacks are not nearly big enough as it is. They should be increased, not decreased. And there should be no difference in the setbacks between sensitive areas and any other areas with families or businesses: they are all sensitive. The minimum setback should be at least 1000. The Board of Supervisors was moving this direction previously, and it should continue to do so.

There should be a CEQA and a MND report required for every commercial operation. These reviews should be made available for public review and comment. They should be conducted every three to five years for each commercial grower.

There should be no on-site processing allowed, nor should there be any on-site distribution or trucking. Both of these activities open the opportunity for abuse, and will inherently lead to criminal activity, or an invitation to violation by the commercial operator or its staff.

It should be mandated that security lighting not extend beyond the commercial property.

Growing operations should not be visible by any properties, private or public, nor should they be visible from any public roadway: they are a visual blight.

Hoop houses should not be allowed to have electricity or plumbing, and they should not be allowed to be up or operational throughout the year.

Ground water testing should be done annually for GPM as well as chemicals (to prevent excess leaching into the soil, neighbors properties, and the local waterways).

The changes should include terms for compensating or "making whole" the neighbors and local community for damage done by the commercial growers and/or their crop production.

I do not support the proposed changes. Simply said, they are bad for Sonoma County.

I request that my comments be added to the public comments section, and that my name and contact information remain anonymous. I am happy to speak with members of the Planning Commission and Board of Supervisors.

Regards, Jim Dugdale
415-640-2005

From:	Judith Olney
To:	great6@sonic.net
Cc:	Larry Reed; Todd Tamura; Gina Belforte; Greg Carr; Caitlin Cornwall; Pamela Davis; John Lowry; Cameron Mauritson; Jacquelynne Ocana; Cannabis; PlanningAgency; Tennis Wick; Scott Orr; Lynda Hopkins; Chris Coursey; district4; Susan Gorin; David Rabbitt; Robert Pittman; Andrew Graham; Johnson, Julie; Jim Sweeney; Suzanne Doyle; Steve Birdlebough; Michael Allen; Janis Watkins; Teri Shore; Padi Selwyn; SCTLC list; Will Carruthers
Subject:	Re: Draft Cannabis Package, PC Hearing March 18, 2021
Date:	Thursday, March 18, 2021 1:01:30 PM

EXTERNAL

Touché!!!

In Continued Health - Judith
Sent with frozen fingers from iPhone - please excuse the typos!

On Mar 18, 2021, at 12:04 PM, Sonia Taylor <great6@sonic.net> wrote:

Gentlepersons:

Attached to this email is my letter covering one final point.

As always, I am happy to discuss this request with any of you -- please do not hesitate to contact me.

Thank you for your consideration.

Sonia

Sonia Taylor
707-579-8875
great6@sonic.net

<3_18_21_cannabis_ltr_cultural_resources_final_1.pdf>

From: Natasha Khallouf
To: Cannabis
Subject: Fwd: Letter
Date: Friday, March 19, 2021 1:09:29 AM

EXTERNAL

Please accept letter. It was bounced back

Sent from my iPhone

Begin forwarded message:

> **From:** natasha khallouf
> **Date:** March 18, 2021 at 3:00:13 PM PDT
> **To:** cannabis@sonomacounty.org
> **Subject: Letter**

From: Natasha Khallouf
To: Cannabis
Subject: Fwd: Letter
Date: Friday, March 19, 2021 1:11:42 AM
Attachments: letter to county .pdf

EXTERNAL

Please accept letter. It was sent before deadline but original email was bounced back due to typo

Sent from my iPhone

Begin forwarded message:

> **From:** natasha khallouf <nkhallouf@yahoo.com>
> **Date:** March 18, 2021 at 11:59:52 AM PDT
> **To:** David.Rabbit@sonoma-county.org, Chris.coursey@sonoma-county.org
> **Subject: Letter**

Dr. Natasha Khallouf

Agricola Flower & Nursery, Penngrove
On Point Integrative Clinic, Sebastopol
PO Box 672
Penngrove Ca, 94951

March 18, 2021

Sonoma County Board of Supervisors
575 Administration Drive
Room 100 A
Santa Rosa, CA 95403
cannabis@sonoma-county.org

Re: Cannabis Draft Ordinace

Dear County Officials,

After much deliberation I would like to share my thoughts on the proposed Cannabis Draft Amendments . To refresh your memory I was one of the first applicants to submit my application in 2017 and was the second permit issued in the county. Currently I am the longest permit holder since the first is no longer active. To give a bit of my history and background; I am a licensed Primary Care Provider (PCP) with a doctorate in Oriental medicine which includes acupuncture and herbal medicine. It was in the Chinese Materia Medica that cannabis was first mentioned over 2,000 years ago for medicinal use. However in 1996 when California passed proposition 215 MDs were the ones authorized to recommend it. This created much confusion. To tell a patient body to use a plant without having had any medical training on appropriate dosages, indications, contraindications or methods of delivery created a fall out of patients left with very bad experiences and little therapeutic action. While I attended school I began to meet patients that were not only navigating these challenges but were also having difficulty finding clean and efficacious cannabis. In 2003 I began cultivating to close this gap and from 2004-2017 I provided medical cannabis all over

the state direct to patients with an active medical cannabis recommendation. I also helped to advise them on proper use. In addition, I had created a positive impact helping to educate the medical community on the proper uses of medical cannabis being asked to teach seminars and classes and personally consult with MDs and Nurse Practitioners. I moved to Sonoma County in 2005 and have been cultivating here for 16 years alongside having a thriving medical practice in both Sebastopol and San Francisco. When the initial ordinance was finalized I was living and cultivating on an AR parcel. Though I Imagined being on farmland would deem me eligible, my parcel as all other ARs did not make the cut. Many of my comrades were unjustly excluded from the eligibility of the permitting process due to this one single factor. In a frantic attempt to maintain my standing as a cultivator in what now was a rapidly changing market, I found an inflated piece of property in the outskirts of Penngrove. I reluctantly, because of the inflated price and visibility to the neighbors, entered into a lease with option but only *after* Amy Lyle of PRMD assured me that a neighbor could never weigh in on a ministerial permit and I would be protected. Fast forward and the ordnance has been changed due to the pressures the S.O.S members have placed on the county. After having a permit in hand and local approval I will now be subjected to a public hearing where my very vocal and opposing neighbors will be heard yet again. Mind you, my neighbors were adamantly opposed to cannabis cultivation ***before*** I even broke ground. However, cannabis's medicinal value is no longer speculative it has been substantiated by countless researchers and peer reviewed articles based on astounding laboratory studies and clinical experiences. **That is why I support the notion of including cannabis as an agricultural crop. I support the expansion of ministerial permitting and believe it appropriate to be placed under the authority of the Agricultural Commissioner.**

The vocal minority is being heard and heeded. However, cannabis is a huge economic drive in our local economy and even more so during this time of extreme economic struggle for all businesses. In addition because agricultural sectors are suffering as a whole I urge the county to proceed in a way that for once actually invigorates the pathway for those in queue and supports the original pioneers that are in need of being grandfathered in due to changes in the ordinance after they were permitted or applied (such as myself, and Jamie Ballacino "Hands in the Earth Farms") as well as create an attractive opportunity for those still deliberating on whether or not they should come into the fold. Instead of the retaliation of county code violations, operators need to be encouraged to do the right thing and become active participants in an industry long been held by a community of resilient and capable individuals. Many of these individuals seek the protection of the regulated market but fear the

onerous and cumbersome process that has until now shown little hope of success in weathering.

Based on my review of **"Draft Proposed Amendments to Agricultural Resources Element to Sonoma County General Plan"**

I am in STRONG agreement that cannabis be included in the definition of agriculture. Since Hemp is legal across all 50 states and it is the same bio-identical plant with the same nuisance of smell, it make the most sense to include cannabis as an agricultural crop.

Based on my review of the "**Draft Amendments to Chapter 26-Sonoma County Zoning Regulations**" I strongly urge the following:

Cannabis be included as an Agricultural crop and the last sentence be removed from the following: "**Agricultural crop:** Any cultivated crop grown and harvested for commercial purposes, except for cannabis and other controlled substances, which are defined and classified separately.

Based on my review of the "**Draft Chapter 38"** I strongly urge the following:

Sec. 38.12.020. – Parcel Requirements.

Limiting Parcel size to 10 acres prevents small family farmers from being able to subsidize. It's a restriction based on privilege while those with less privilege often need more opportunity. Considering that hemp, a bio-identical plant does not have these restrictions, it would benefit the community at large to make it an option for every farmer on agriculturally zoned parcels. Farmers that have smaller parcels often need the biggest support. Being unable to grow a valuable crop is denying them of an opportunity to ensure their survival in an already very difficult field.

Sec. 38.10.030. – Time limit, Renewal, and Expiration.

All ministerial permits should be made for 5 years, it is too costly, difficult and arduous of a process to limit to one year.

Sec. 38.12.030. – Limitation on Canopy and Structures.

I am in agreement that Outdoor cultivation and Hoop House cultivation canopy cover should be limited to ten percent (10%) of parcel size

Sec. 38.12.060. - Tree, Timberland, and Farmland Protection.

Does not allow for diseased or fire damage trees to be removed. A licensed arborist can be required to determine if the tree(s) is diseased or fire-damaged and allow for removal by a license professional.

38.14.020. Activities Allowed with a Ministerial Permit

Its absolutely imperative that farmers be able to self-transport. With he cost of regulations, the cultivator is expected to pay for each of the services to get product to market not limited to cultivation taxes and distribution. Allowing self transport would support a bit more autonomy

Events and retail sales to the public are such a critical lifeline for the Sonoma County farmer. As we know we have a robust industry where consumers very much enjoy visiting where these products are grown and/or produced produced. In years past programs such as “Go Local” and “Sonoma County Farm Trails” have been a great success. Cannabis cultivators would like to close the gap between producer and consumer and share their farms with the consumer. I believe this to be an incredible untapped opportunity that will create new a vital economies in the area.

In closing, I would like to thank the county administration for creating an atmosphere of dialogue and consideration. As a community , I believe it is all that we have ever asked for.

Sincerely yours,

Dr. Natasha Khallouf

From: Tess
To: Cannabis
Subject: cannabis
Date: Thursday, March 18, 2021 4:31:19 PM

EXTERNAL

Hi,

I already sent my concerns to you, but after hearing some of the comments during the Planning Commission meeting, need to add that I don't care whether it is cannabis or hemp, it all smells and needs a proper set back from neighbors. And it smells way worse than horse poop!

Stephanie Danaher

From: Tess
To: Cannabis
Subject: cannabis
Date: Thursday, March 18, 2021 4:42:17 PM

EXTERNAL

Also, after hearing many growers complain about trying to get a permit for years, I wonder how my neighbor, a very bad
player, at 1700 Barlow Lane, was able to get his permit after a few months. He grew illegally for almost ten years. What's
going on here??

Stephanie Danaher

From: Wendy Smit
To: Cannabis
Subject: Planning Commission Comments
Date: Thursday, March 18, 2021 3:27:30 PM

EXTERNAL

Dear Commissioners and Board of Supervisors and Staff,
I have been attending the Public Hearing today. In the interest of time, please consider my questions.

1. I would like to ask how the changes will streamline the process. Will a combination of ministerial permits for the crop combined with a use permit at PRMD really save tax payers funds and expedite the process? Is this really 'necessary' as stated in the staff report?

2. How will the Ag. Commissioner staff deal with increased demands on his department. Right now demands from other crops specifically vineyards are more than his staff can handle. PRMD is understandably over taxed due to post fire demands and new housing projects. They need more staffing too.

3. What is the rationale for permitting rural resource zones? How will new agricultural cultivation impact those areas that have only been grazed up to this point? We have new vineyards that cover hillsides and where oak woodland has been torn out, this will only allow more land conversion, without environmental protections. How will the cumulative impact of small cannabis development be controlled?

4. Is it true that Williamson Act covered properties will now be allowed to grow this crop under the inclusion of cannabis as a crop not a product.

5. How will the county minimize and mitigate for new weed populations being brought in on agricultural equipment?

Wendy Smit
4th District
8000 Highway 128
Healdsburg, CA 95448
707 481-3765