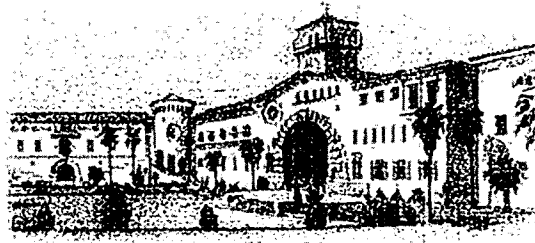


COUNTY COURTHOUSE
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GRAND JURY
SANTA BARBARA COUNTY


June 25, 2020

Ms. Jacquelyne Alexander
Chief Deputy Clerk of the Board
County of Santa Barbara
105 East Anapamu Street, #406
Santa Barbara, CA 93101

Dear Ms. Alexander,

Please acknowledge receipt of this report being delivered by DocuSign.

On behalf of the Santa Barbara County Grand Jury, the report titled:

DocuSigned by:

131E34F80B2C4D8...

CANNABIS

Is enclosed for the Board of Supervisor's review and response.

The Grand Jury, County Counsel and Presiding Judge have approved this report. *California Penal Code 933.05* requires the following:

- You are receiving this report two working days prior to its release to the public, and you shall not disclose this report prior to its public release.
- You must respond to each relevant Finding and Recommendation in this report where listed and required.
- You must submit your response to the Grand Jury and the Presiding Judge.
- If you are an elected county official or agency head, the response time is no later than 60 days of receipt of this report.
- If you are the governing body subject to the reviewing authority of the Grand Jury, the response time is no later than 90 days of receipt of this report.

Responses to Findings shall be either:

- Agree
- Disagree wholly
- Disagree partially with an explanation

Responses to Recommendations shall be one of the following:

- Has been implemented, with a brief summary of the implementation actions taken.
- Will be implemented, with an implementation schedule.
- Requires further analysis, with timeframe that shall not exceed six months from the date of publication of the report.
- Will not be implemented, with an explanation.

Your response will be posted on the Santa Barbara County Grand Jury website www.sbcgj.org.

Please provide a digital copy of your response to:

Santa Barbara County Grand Jury
sbcgrandjury.org

Also, a copy of your response must be sent to:

Judge Michael J. Carrozzo
1100 Anacapa Street
Santa Barbara, CA 93101

This report will be released to the public not less than two working days following the date of delivery. Again, this report is confidential until public release. If you have any questions, please contact me at the address below.

Respectfully yours,



Pamela Olsen
Foreperson
2019-20 Santa Barbara County Grand Jury
Santa Barbara Courthouse
1100 Anacapa Street
Santa Barbara, CA 93101

Cannabis

SUMMARY

The action taken by the Santa Barbara County Board of Supervisors to certify the development of a robust cannabis industry as the primary objective of the cannabis ordinances has altered the quality of life in Santa Barbara County, perhaps forever.

The fulfillment of that objective dictated the actions taken by the Board from the excessive allowance of licenses and acreage, creation of an unverified affidavit system, ignoring widespread odor complaints, not acknowledging the conflict between cannabis cultivation and traditional agriculture, to rejecting the environmentally superior alternatives of limited cannabis development.

Instead of a balanced approach carefully evaluating how the cannabis industry would be compatible, both as to amount of acreage and location, the Board simply opened the floodgates. These ordinances must be amended.

INTRODUCTION

The 2019-20 Santa Barbara County Grand Jury (Jury) received several requests for investigation of the actions of the Santa Barbara County Board of Supervisors (Board) surrounding the creation and passage of the Ordinance 5026, adding Chapter 50A of the Santa Barbara County Code; Ordinance 5027, amending Chapter 35-1 of the Santa Barbara County Code, the Santa Barbara County Land Use and Development Code (LUDC); Ordinance 5028, amending Article II, the Coastal Zoning Ordinance of Santa Barbara County (CZO); and creation and passage of Ordinance No. 5037, adding Chapter 50 of the Santa Barbara County Code, Licensing of Commercial Cannabis Operations (License), and related impacts. The Jury, comprised of professional people, including attorneys and CPAs, former law enforcement, business owners, government officials, and educators, spent countless hours reviewing documents, reviewing Board and Santa Barbara County Planning Commission hearings and interviewing numerous witnesses including the five members of the Board.

The rules of the Santa Barbara County Grand Jury do not permit the naming of individuals within a report. The intent of the investigation, initially undertaken pursuant to *California Penal Code Section 919(c)*, was to examine the process of the creation and passage of the ordinances and resulting issues.

The Jury does not express an opinion on the legalization of cannabis.

This investigation by the Jury was hindered by the denial of its request for subpoenas to be issued to non-government witnesses who might have been helpful to the inquiry. The investigation was further hindered by a two month delay in the final production of requested documents from the County of Santa Barbara that was purported to be responsive and complete. During the investigation, the Jury learned that all documents requested have not been provided.

The California Supreme Court has stated, "In California, unlike some other American jurisdictions, the grand jury's role as a vigilant 'watchdog' over the operations of a variety of local government activities has a long and well respected heritage."¹

¹ *People v. Superior Court* (1973 Grand Jury) (1975) 13 Cal. 3rd 430, 436

The Grand Jury is aware that the Santa Barbara County Board of Supervisors initiated a process in July, 2019 to review and possibly amend the cannabis related ordinances. The insights and recommendations provided by the Jury in this report should be of great assistance in creating a legal cannabis framework going forward that will best serve the interests of the residents, local businesses and the agricultural industry of Santa Barbara County.

METHODOLOGY

In the course of its investigation, the Grand Jury interviewed:

- the five members of the Santa Barbara County Board of Supervisors who voted on the ordinances
- a senior member of the Santa Barbara County CEO staff
- a senior member of the Santa Barbara County Planning and Development staff
- a school district superintendent
- a high school principal
- a public school teacher
- a senior Santa Barbara County Public Health Department official
- a senior member of the Santa Barbara County Agriculture Commissioner staff
- a former Santa Barbara County Planning Commission member
- a local land use attorney
- a senior member of the Santa Barbara County Tax Collector staff
- a senior member of Santa Barbara County Air Pollution Control District staff
- a Cal OSHA staff member
- a UCSB professor of environmental science
- a senior member of the Santa Barbara County District Attorney staff
- Santa Barbara County residents
- Santa Barbara County avocado growers
- Santa Barbara County vineyard owners
- a Santa Barbara County cannabis cultivator
- a Santa Barbara County cannabis activist

The Jury also reviewed:

- Santa Barbara County Board of Supervisors meetings and supporting written material
- Santa Barbara County Planning Commission meetings and supporting written material
- numerous local, state and national news articles regarding cannabis
- scientific articles on cannabis

- in excess of one thousand documents produced by the County of Santa Barbara
- emails and texts produced by the County of Santa Barbara
- County Code of Ethics published by the Research Division of the National Association of Counties, County Services Department, 2009
- Santa Barbara County Board of Supervisors official website

BACKGROUND

On November 8, 2016, the voters of California passed Proposition 64, The Adult Use of Marijuana Act, which legalized non-medical adult use of cannabis.

In 2017, at the direction of the Ad Hoc Sub Committee made up of two members of the Board and pursuant to the California Environmental Quality Act (CEQA), a Program Environmental Impact Report (EIR) was prepared by the Santa Barbara County Planning and Development Department (P&D) for the Cannabis Land Use Ordinances and Licensing Program (Project).

The Project lists ten primary objectives. (See Appendix 1.) The first objective was “Develop a robust and economically viable legal cannabis industry to ensure production and availability of high quality cannabis products to help meet local demands, and, as a public benefit, improve the County’s tax base.” The last objective was to “Limit potential for adverse impacts on children and sensitive populations by ensuring compatibility of commercial cannabis activities with surrounding existing land uses, including residential neighborhoods, agricultural operations, youth facilities, recreational amenities and educational institutions.”

On February 13, 2018, the Santa Barbara County Board of Supervisors adopted Ordinance 5026, adding Chapter 50A to the Santa Barbara County Code.

On February 27, 2018, the Santa Barbara County Board of Supervisors adopted Ordinance 5028, amending the CZO, and adopted Ordinance No. 5027, amending the LUDC.

On May 1, 2018, the Santa Barbara County Board of Supervisors adopted Ordinance No. 5037, adding Chapter 50, Licensing of Commercial Cannabis Operations, to the Santa Barbara County Code.

OBSERVATIONS AND ANALYSIS

The investigation was undertaken to examine various issues and the actions that were taken by the Board in the process of creating the ordinances. These issues include the following:

1. **Ad Hoc Committee** - The use of an Ad Hoc Sub Committee that was not open to the public and not subject to the Ralph M. Brown Act (Brown Act).²
2. **Robust Cannabis Industry** - The approval of the primary objective of the Cannabis Ordinance Project to be the development of a robust and economically viable legal cannabis industry.
3. **Access Granted To the Cannabis Industry** - The granting, by the Board, of nearly unfettered access to cannabis growers and cannabis industry representatives during the creation of the ordinances.

² The Ralph M. Brown Act, codified as California Government Code 54950 et seq.

4. **Significant and Unavoidable Environmental Impacts.**
5. **Rejection by the Board of Environmentally Superior Alternatives** - The rejection of Project Alternatives including the Environmentally Superior Alternative of Reduced Registrants.
6. **“Skunky” Smell** - The allowance of unpermitted operators to continue to operate with no effective odor control in place.
7. **Impact on Agriculture** - The failure to consider the impacts of cannabis cultivation on traditional agriculture knowing the State of California requirement of testing for pesticides on cannabis.
8. **Legal Non-Conforming Status.**
9. **Affidavit System** - The employment of an unverified affidavit system to qualify growers as legal non-conforming and the failure to determine the scope of the claimed qualifying use.
10. **Taxation** - Santa Barbara County was one of only a few counties within the State that did not tax cannabis cultivation on a square footage basis. In addition, the Santa Barbara County Treasurer-Tax Collector, an elected position, was excluded from the creation of the tax portion of the License ordinance. Also, the allowance for cannabis acreage far exceeded the demand in California.
11. **Statement of Overriding Considerations.**
12. **The Interference with the Santa Barbara County Air Pollution Control District** - The Santa Barbara County Chief Executive Office’s (CEO) staff and P&D staff interceded and revised the Cannabis Air Quality Advisory issued by the Air Pollution Control District (APCD), an independent agency.
13. **Ethics** - The acceptance of campaign contributions by Board members at or near the time the donor had a matter pending a decision before the Board.

Ad Hoc Committee

On February 14, 2017, the Board voted to establish an Ad Hoc Sub Committee (Ad Hoc) consisting of two Supervisors. The stated purpose was to review and create regulations for adult use and cannabis cultivation in the County.³ The Ad Hoc was created as a body not subject to the Brown Act and not open to the public.

The Board decision not to have open meetings on the ordinances created issues. One issue was the lack of transparency that inevitably results when the public is excluded from the process, especially on such a controversial matter as cannabis. In contrast, the 2015 Board, which included some current Board members, voted to create an Ad Hoc Sub Committee, subject to the Brown Act and open to the public, to engage in discussions with the Santa Ynez Valley Band of Chumash Indians regarding similarly controversial land use issues.

Of concern to the Jury was the fact that agendas were not prepared and minutes were not taken for the Ad Hoc meetings. The Jury learned that notes and minutes were not prepared in order to avoid any Public Records Act Requests for such documents. The lack of a paper trail does not fit with the concept of open government which seeks input from all interests. This unchecked process led to an imbalanced perspective.

³ February 14, 2017 Santa Barbara County Board of Supervisors meeting “Board Letter”
santabarbara.legistar.com/LegislationDetail.aspx?ID=2957248&GUID=605FD80A-4670-40ED-B1DD-EDBDB3C7A65D&Options=&Search=

A major issue according to witnesses interviewed by the Jury was that the process created by the use of the Ad Hoc resulted in a top down decision making process. The normal process provides for multiple public meetings held by the P&D staff with community input. The normal process allows for exploration of potential impacts to the various parts of the County prior to Board involvement. The Ad Hoc inserted the Board at the beginning of the process and not at the conclusion after community input.

A recent example of the normal process would be the proposed amendment of the LUDC to adopt new development standards, permit requirements and procedures regarding winery developments.

The Board directed P&D staff to update the then current winery regulations as part of the 2011/2012 Long Range Planning Annual Work Program.⁴

As the November 1, 2016 Board letter recounts, the staff conducted extensive stakeholder engagement and public outreach to gather information and discuss winery ordinance issues that should be addressed in the ordinance update. The public outreach included eighteen separate group meetings with wine industry and agricultural groups, neighborhood groups and non-profit organizations.

In addition, there were five public meetings, beginning in August 2012 continuing through February 2013, which discussed among other topics, neighborhood compatibility and wine ordinance structures, permitting, monitoring and enforcement. In March 2014, based on the community input received during the public outreach process, the P&D staff prepared draft ordinance language for public review. In June of 2014, the staff revised and finalized the draft ordinance.

There were hearings before the Planning Commission that occurred in August and September of 2016. The matter finally came before the Board on November 1, 2016.

In the matter of the cannabis ordinances, the Ad Hoc put the Board at the start of the process and not at the conclusion after community input. Public comment, for the cannabis ordinances, came after the forming of the ordinances had already occurred in the Ad Hoc. This is not good government, unsurprisingly leading to a seriously flawed law.

Robust Cannabis Industry

In 2017, P&D staff worked with the AD Hoc to determine the type of environmental document that would be required under CEQA to evaluate the environmental impacts associated with the new cannabis ordinance. The Ad Hoc concluded that an EIR was the appropriate document and directed staff to take the actions necessary for its preparation.

The purpose of this EIR was for use by government bodies to review and consider the environmental impacts of the Project as part of its decision-making process.

The P&D staff decided to consider the EIR a Program EIR. As was described in the Final EIR document, "As a Program EIR, the level of detail included in the project description and methodology for impact analysis is relatively more general than a project-level EIR, as individual cannabis activity site-level details are not available for prospective license applications or would be considered too speculative for evaluation. This approach allows the Board to consider broad implications and impacts associated with the project while not requiring a detailed evaluation of individual properties."⁵

⁴ November 1, 2016 Santa Barbara County Board of Supervisors meeting "Board Letter"
<https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2858292&GUID=882F40A4-1328-4B74-9465-CCE36E9E75C9&Options=&Search=>

⁵ Final Environmental Impact Report for the Cannabis Land Use Ordinance and Licensing Program Volume 1
http://cannabis.countyofsb.org/uploadedFiles/cannabis/Documents/Final_PEIR/Santa%20Barbara%20Cannabis%20FE

The Program EIR allowed for a more cursory analysis rather than project level as was performed in other counties. When considering the EIR was “cranked out in less than thirty days” by the P&D staff, the use of a Program EIR becomes telling.⁶

CEQA guidelines require that the EIR project description include a statement of the objectives of the cannabis Ordinance. The objectives were created in the Ad Hoc. A complete list of the objectives can be found in Appendix 1.

The first listed primary objective was as follows:

“Develop a robust and economically viable legal cannabis industry to ensure production and availability of high quality cannabis products to help meet local demands, and, as a public benefit, improve the County’s tax base.”

This objective became the guiding principle for the Board. The many actions that were then taken along the way in the creation and passage of the cannabis ordinances reflect this objective including the allowance of an excessive amount of acreage and the excessive grants of business licenses.

The information reviewed by the Jury describes the Board being cautioned at a Board hearing on December 14, 2017 by their retained expert, a former Board member of Humboldt County and now member of Hinderliter, de Llamas & Associates Companies⁷ (HdL), that there was a glut of cannabis statewide. He testified that the statewide cannabis production level was 13.5 million pounds with a statewide demand between 1.6 and 2.5 million pounds.

In addition, the report prepared by HdL for the Board stated as follows: “Santa Barbara is just one of 58 counties in California, but with almost 500 registrants seeking as many as 1,365 separate cultivation permits, the County’s growers could potentially produce over 3.7 million pounds of cannabis per year, which is more than double the legal amount of cannabis consumed by the entire state.”

On matters regarding Planning and Zoning, County Counsel advised the Board that they must operate under the review standard that their decisions must have a rational basis.⁸ The decision by the Board that the primary objective of the cannabis ordinances was to develop a robust and economically viable legal cannabis industry in the face of that information does not appear rational.

Access Granted To the Cannabis Industry

The testimony obtained from witnesses during the investigation, as well as documents produced pursuant to a request by the Jury, describe the granting by the Board of easy and frequent access to cannabis industry lobbyists during the creation of the ordinances. The Jury sought to interview a cannabis industry lobbyist and additional cannabis growers, but received no response.

The Jury’s review of emails and interviews with Board members showed that cannabis industry lobbyists were very aggressive in their attempt to have the ordinances be as favorable as possible to the cannabis industry. This effort was amplified by some of the cannabis industry lobbyists having recently left the employment of Santa Barbara County. It was described to the Jury that some of these cannabis industry lobbyists could be regularly seen roaming the halls of the Board’s offices.

[IR-Volume%201.pdf](#)

⁶ Video of October 17, 2017 Santa Barbara County Board of Supervisors meeting
http://sbcounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=3123&meta_id=345212

⁷ <https://www.hdlcompanies.com/>

⁸ Video of February 6, 2018 Santa Barbara County Board of Supervisors meeting
http://sbcounty.granicus.com/MediaPlayer.php?view_id=3&clip_id=3228&meta_id=354710

To be clear, this report should not be seen as commenting on the actions of the lobbyists. They are working to promote their clients' interests. Rather, this report demonstrates that the Board did not set reasonable limits as to the number of contacts, both written and in private meetings. Most importantly, there was an apparent lack of limits as to when these contacts occurred, including just prior to or even during Board meetings with cannabis decisions on the agenda

Evidence obtained in the Jury's investigation showed cannabis industry representatives had two meetings, one on January 30, 2017 and one on February 9, 2017, with a Board member prior to the matter of cannabis first being added to the Board agenda on February 14, 2017.

Further documents reviewed by the Jury show a Board member meeting with cannabis industry representatives throughout 2017 including on October 16, 2017 on the topic of non-conforming uses that was to be discussed by the Board on October 17, 2017. Another member of the Board met with different cannabis lobbyists on October 11, 2017 to discuss the same topic.

Other examples of meetings just prior to a Board meeting include a Board member having two meetings with different cannabis lobbyists on November 13, 2017, the day before a Board meeting on November 14, 2017 that was to hear discussion on Letters of Authorization for Temporary State Cannabis Licenses. Those two meetings repeated with the same Board member on December 13, 2017 for the Board hearing on December 14, 2017 where the Board approved the Santa Barbara County letter to the State of California regarding Temporary State Licenses and discussed the taxation of cannabis. Those meetings create the appearance of an imbalance of access and undue influence.

Perhaps most concerning to the Jury was a meeting by a Board member just before the Board meeting of February 6, 2018. The Board member accepted an invitation to tour a cannabis operation on February 1, 2018 to discuss with the owner the issue of how to measure the distance from a cannabis operation to a sensitive receptor, such as a school. On February 5, 2018, the owner sent an email to the Board member advocating for the measurement of the buffer distance to be the property line of the sensitive receptor to the premises of the cannabis operation instead of the Planning Commission recommended buffer distance of property line to property line. This would allow his cannabis operation to remain open. The Board rejected the recommended measurement procedure and instead voted to measure the buffer from the property line of the sensitive receptor to the premises of the cannabis operation.

Documents obtained by the Jury, that had not been previously disclosed to the public, show voluminous emails from cannabis lobbyists and cannabis growers to Board members. While the Jury understands that sending emails to advocate positions favorable to the interests of their client is part of the job of a lobbyist, it was unnerving to the Jury to see both the tone and timing of these emails.

The tone of these emails appeared at times as if to direct specific actions to the Board members and gave the perception of an attempt to command instead of recommend. Understanding that no such authority exists with the lobbyists, the Jury felt that limits on such direct conversations should have been established by the Board members receiving these emails.

The timing of these emails was also concerning to the Jury. The documents reviewed show many being sent the day before a Board meeting, with some confirming the discussions had that day at a meeting with a Board member. The Jury also found two emails sent from a cannabis lobbyist to a Board member the morning of a Board of Supervisors meeting. On March 20, 2018, the most extreme example was an email sent by a Board member to a lobbyist, during a Board meeting, asking the lobbyist if they agreed with a P&D staff recommendation.

This kind of direct access far outweighs the access of others which was typically through emails complaining of odor and other issues, or the three-minute public comment at a Board meeting, limiting the opportunity for exchange with the Board members.

Significant and Unavoidable Environmental Impacts

The EIR assessed potential environmental impacts that could occur with the implementation of the Project. These included potential direct, indirect, secondary and cumulative impacts. Four categories described as classes were used.⁹ This report will examine Class I.

“Class I - Significant Unavoidable Adverse Impacts: Significant impacts that cannot be feasibly mitigated or avoided. No measures could be taken to avoid or reduce these adverse impacts to achieve insignificant or negligible levels. Even after application of feasible mitigation measures, the residual impact would be significant. If the project is approved with significant and unavoidable impacts, then the decision-makers are required to adopt a Statement of Overriding Considerations pursuant to CEQA Section 15093. This CEQA section requires the explanation why benefits of the Project outweigh the potential damage caused by these significant unavoidable impacts.”

The analysis completed in the EIR found that implementing the proposed Project would create significant and unavoidable direct or indirect impacts. Two of the impacts were:

“Agricultural resources - the loss of prime soils due to the unavoidable installation of greenhouses and similar agricultural structures for agricultural uses.”

“Air quality and greenhouse emissions - cannabis activities involve emissions from additional vehicle travel as well as ongoing stationary operations. In addition, the scent of cannabis plants can produce a variety of odors, especially during the flowering phase, which is often considered and perceived by some individuals as objectionable or offensive. Despite mitigation implementation, this nuisance may not be entirely removed and this impact would remain significant and unavoidable.”

Documents reviewed by the Jury demonstrate that P&D and the Board were made aware in a presentation at the February 14, 2017 Board hearing by a member of the CEO’s office that the State of California would require nonmedical marijuana to be comprehensively tested by independent testing services for the presence of contaminants, including mold and pesticides, before it could be sold by licensed businesses.

With that information in hand, the Jury questions why the issue of the conflict between traditional agriculture and cannabis grows was omitted in the EIR. It was hardly a secret that traditional agriculture in Santa Barbara County necessarily utilizes insecticides in dealing with destructive pests and fungicides for mold and mildew. That glaring omission is very hard to understand and is very troubling. It will be discussed separately in this report.

The EIR acknowledges that the odor of cannabis plants is a significant and unavoidable impact on the environment. The odor issue is of such consequence that it also merits separate discussion in this report.

⁹ Final Environmental Impact Report for the Cannabis Land Use Ordinance and Licensing Program Volume 1
http://cannabis.countyofsb.org/uploadedFiles/cannabis/Documents/Final_PEIR/Santa%20Barbara%20_Cannabis%20FEIR-Volume%201.pdf

Rejection by the Board of Environmentally Superior Alternatives

Section 15126.6(d) of the State CEQA Guidelines requires the EIR to assess a reasonable range of alternatives to the proposed Project. These included alternatives that could feasibly attain most of the basic objectives while avoiding or substantially lessening one or more of the significant effects of the proposed Project.

Alternatives typically involve changes to the location, scope, design, extent, intensity, or method of construction or operation of the proposed project. A fundamental mandate of CEQA is that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which would substantially lessen the significant environmental effects of the projects.”¹⁰

The EIR analyzed four alternatives to the Project. These are described as follows:

The No Project Alternative

Alternative 1: Exclusion of Cannabis Activities from the AG-1 Zone District

Alternative 2: Preclusion of Cannabis Activities from Williamson Act Land

Alternative 3: Reduced Registrant Alternative

Each of the alternatives was evaluated based on significance, location, extent and magnitude of impacts, potential benefits, and relative impacts in comparison to other alternatives. The alternative with the fewest adverse impacts was then considered the Environmentally Superior Alternative.

The No Project Alternative was rejected in the EIR. The finding was that under the No Project Alternative, the banning of cannabis, the direct impacts associated with licensing of an expanding cannabis industry would not occur. This alternative, however, would not address unregulated and illegal cannabis activities. Further, it would not offer an avenue for licensing and permitting, thus it was likely that illegal cannabis activities would continue to exist.

Under the No Project Alternative, the EIR found that aesthetic and agricultural resources impacts would likely be reduced but other environmental impacts would not be due to the illegal cannabis operations.

The EIR stated that the Project, Alternative 1 and Alternative 2 would all result in significant and unavoidable impacts to agricultural resources, air quality, noise, and transportation. Only Alternative 3 would reduce impacts to agricultural resources to a less than significant level.

Alternative 1: Exclusion of Cannabis Activities from the AG-1 Zone District. Under this alternative cannabis related activities would not be allowed within the AG-1 zone districts throughout Santa Barbara County. This alternative would reduce the areas of eligibility in the County, in particular the Carpinteria Valley and the Santa Ynez Valley.

The EIR found that Alternative 1 would reduce the total amount of eligible area and sites as compared to the proposed Project and would require substantial relocation or abandonment of existing cannabis operations. Existing cultivators would need to find locations within the reduced area of eligibility.

While adoption of Alternative 1 would achieve most of the Project objectives, the EIR found that it failed as it would not achieve Project Objective 1, the development of a robust and economically viable legal cannabis industry or Objective 4, encouraging businesses to operate legally and secure a license to operate in full compliance with County and State regulation. The EIR states that Alternative 1 also

¹⁰ California Public Resources Code section 21002.

does not achieve Objective 6, the minimization of adverse effects of cultivation, manufacturing and distribution activities on the natural environment.

Next, consideration was given to Alternative 2: Preclusion of Cannabis Activities from Williamson Act Land. Under this alternative, cannabis activities would not count towards the minimum cultivation requirements to qualify for an agricultural preserve contract pursuant to the Williamson Act.¹¹

While under this alternative cannabis activities would be considered compatible uses on lands that are subject to agricultural preserve contracts, they would be limited to a maximum of 22,000 square feet of cannabis canopy cover for each Williamson Act contract premises.

The EIR notes that this alternative would result in limiting the potential for cannabis activities on over 50 percent of eligible County area and would eliminate hundreds of potential operations from occurring on Williamson Act lands.

Although adoption of Alternative 2 would have met some of the Project objectives, such as a permitting process, the regulation of sites and premises to avoid degradation of the visual setting and neighborhood character, odors, hazardous materials, and fire hazards, it was rejected.

The failing of Alternative 2 was that it did not achieve some of the basic Project objectives namely those related to development of a robust and economically viable legal cannabis industry, Objective 1. That is understandable considering this alternative limits how robust the cannabis can then become. What is unclear is how this alternative prevents the accomplishment of Objective 4, encouraging businesses to operate legally and secure a license to operate in full compliance with County and State regulations, or Objective 6, minimization of adverse effects of cultivation and manufacturing and distribution activities on the natural environment.

The last alternative considered was the Reduced Registrant Alternative. As described in the EIR, this would limit the total number of licenses issued by the County to one half of the number of each category of licenses that were listed as part of the 2017 Cannabis Registry. This would limit the representative buildout of the Project analyzed in the EIR by a commensurate 50 percent. The EIR goes on to state that existing cannabis operators that were identified in the registry would be prioritized for licensing, which would substantially reduce the net new buildout, while allowing for limited growth.

Selection of Alternative 3 would result in substantial reductions in the severity of most impacts compared to the proposed ordinances. This alternative would reduce significant and unavoidable impacts to agricultural resources to a less than significant level. However, the EIR found that it would not achieve the most basic Project objectives of the development of a robust and economically viable and legal cannabis industry, Objective 1, and encouraging businesses to operate legally and secure a license to operate in full compliance with County and State regulations, Objective 4.

Alternative 3 was found to be the Environmentally Superior Alternative to the Project, as it would result in less severe impacts to the environment due to the limited extent of cannabis development and limited granting of licenses by the County. As stated in the EIR, "With implementation of mitigation measures, the Reduced Registrants Alternative provides a balance between meeting Project objectives, including quality of life concerns and addressing environmental impacts and allowing for limited amounts of growth in the cannabis industry."

Despite this statement, Alternative 3 was rejected in the EIR, as this alternative was found to not adequately meet Objective 1 of the Project, the development of a robust cannabis industry, and

¹¹ The California Land Conservation Act of 1965

Objective 4, encouraging businesses to operate legally. Therefore, the EIR found the Environmentally Superior Alternative was infeasible.

Skunky Smell

The most complaints the Jury received about cannabis involved the skunky smell that is produced by cannabis operations. Perhaps the most surprising discovery was the willingness of the Board to justify subjecting Carpinteria, and the rest of the County, to a condition that affects the health and enjoyment of residents. This was not an unexpected result of the Board's actions in creating the cannabis ordinances. They knew about the quality of life concerns and chose the revenue potential of cannabis instead.

Board members received many emails, reflected in submissions for Board meetings from Carpinteria residents, explaining how this skunky smell was impacting their lives. The residents described that their health was being impacted. They told the Board that the way of life that they so cherished in Carpinteria was being ruined. They feared their property values were declining. There was no shortage of complaints, including from the City of Carpinteria itself, through its six letters to the Board.

Most startling was that the Board received two letters from the Carpinteria School District prior to the passage of the cannabis ordinances. The letters detailed that the air quality in Carpinteria High School was being compromised by strong cannabis odors to the point that by afternoon the students and staff were reporting ill effects, such as headaches from the nauseating odor. The Jury found no evidence of a Board member contacting the Carpinteria School District to discuss the buffer zone distances and measurements prior to the passage of the ordinances. The School District sought buffers of 1,000 feet to 1,500 feet from the high school to the cannabis operation. The Board approved 600 feet from nursery operations and 750 feet from cultivation operations, ignoring Planning Commission and staff recommendations.

Carpinteria was not the only victim. The Santa Ynez Valley including Buellton, the Santa Rita Hills AVA wine tasting rooms, Cebada Canyon and Los Alamos residents also voiced their complaints at Board meetings and through emails. There can be no doubt that the Board knew the extent of the odor problem.

So why would the Board ignore this obvious concern? The answer is found in the Program EIR cannabis project objectives that were created by the Ad Hoc, made up of two Supervisors, and a staff support group. The decision to make the development of a robust cannabis industry the first primary objective of the cannabis ordinances project meant that known serious problems such as odor were not sufficiently important to derail their goal.

This is not speculation on the part of the Jury. The EIR, certified by the Board, describes cannabis odor as a significant and unavoidable impact. Instead of choosing environmentally superior alternatives that would lead to smaller and better located operations, the Board chose to proceed with these cannabis ordinances. The most telling document though was the Board's finding of overriding considerations.

In the CEQA required Statement of Overriding Considerations, as in the rejection of Environmentally Superior Alternatives, the first stated reason to choose these ordinances was the goal of developing a robust cannabis industry, despite the odor issue. That goal overrode the complaints of the residents.

Impact on Agriculture

The action of the Board in allowing cannabis operations to be located in close proximity to traditional agriculture has led to disastrous results. That action is very distressing to the Jury as the members of the Board knew of the incompatibility of cannabis. They knew about the odor issues. They knew about the

State rules regarding pesticides and cannabis. Their response was to change the County Uniform Rules, against staff recommendations, that would have allowed for such a compatibility analysis prior to approval. If that was not enough, they certified an EIR that did not even address this known incompatibility.

The February 6, 2018 Board hearing was a pivotal moment for Santa Barbara County. At this hearing, which unfortunately was held shortly after the mudslides in Montecito, the Board certified the cannabis EIR and began the process of amending the LUDC. The amendment of the LUDC provided for cannabis permit applications to be governed by the land use permit requirements rather than by the more exacting conditional use permit process, except if said cannabis operations are located near an existing developed rural neighborhood.

The EIR that was approved and certified by the Board did not address the incompatibility issue between traditional agriculture and cannabis. On February 14, 2017, the Board was advised by CEO senior staff that the State would be testing cannabis for pesticides. The Board knew, or certainly should have known, that many crops in Santa Barbara County from lemons, to avocados, and grapes require effective insecticides and fungicides to survive.

These crops are valuable. According to the Santa Barbara County Agricultural Production Report, avocados were valued at more than \$38 million in 2017 and \$52 million in 2018. Lemons were valued at over \$15 million in 2017 and \$17 million in 2018. Wine grapes were valued at more than \$146 million in 2017 and \$121 million in 2018.

The P&D response to the issue of pesticides in the EIR, as recently as the Board letter of March 10, 2020, was “CEQA requires the assessment of a project’s impact on the environment. The issue of pesticide drift is an important issue but it would not be considered an environmental impact resulting from the project”.

The EIR fails to consider the impossible situation in which traditional agriculture finds itself when using approved pesticides, applied by licensed pesticide applicators. Post application winds or even insects or birds can transfer pesticides on to the cannabis. As the State has set extremely low pesticide tolerances for cannabis, it seems clear that this known incompatibility left cannabis the chosen winner and traditional agriculture the chosen loser in the Board certified EIR.

For vineyard and winery owners in the Santa Rita Hills AVA,¹² the area between Buellton and Lompoc, the issues of odor and terpenes, an aromatic hydrocarbon obtained from plant oils, are severe. Vintners have been growing in the Santa Rita Hills since 1971 and the area finally became recognized as a coveted AVA in 2001. There are now 2,700 planted acres by 59 total wineries.

The sense of smell, or olfaction, is evoked by scents, which are airborne molecules that are volatile enough to reach the olfactory receptors located at the top of the nostril. Volatile stimuli can be perceived directly via the orthonasal pathway, directly through the nostrils, or indirectly, via the retro-nasal pathway when the wine is already in the mouth.

These two factors contribute to why experts state that wine perception is 80 percent olfactory. Flavors inherent in wine, much like food, rely heavily on sense of smell to produce a favorable experience while consuming. When other strong odors are introduced, it obviously changes the perception of the taster.

¹² American Viticultural Area

Winery operations, including tasting facilities and vineyards, have been prevalent in the Santa Rita Hills long before the AVA designation. Winery and vineyard operators have spent millions of dollars developing and building their operations and brands. The proposed introduction of over 625 acres of open air cannabis grows, with the ever-present north and west winds averaging between 9.1 to 10.5 MPH daily,¹³ makes it virtually impossible for these two types of operations to co-exist, weighing heavily against the viability of the wine industry. The heavy skunky odor, of even just a few cannabis plants, can elicit a strong response from people nearby. Olfactory molecules do not stop at the property line. Several hundred acres of cannabis will be devastating to the region's wine reputation, tourism and sales.

The issue of terpene drift from cannabis to grapes was another issue not adequately considered by the hastily crafted EIR. Currently, there are studies underway being conducted by the wine grape¹⁴ and cannabis industries to determine the impact of terpenes on the characteristics of grapes, and the cannabis skunky smell on the taste of wine. It is of note to consider that two other famous wine growing regions of California, Napa County and Sonoma County, have taken steps to protect their wine industries by either banning cannabis (Napa) or severely limiting it (Sonoma). In comparison, the Board has set a cap of 1,575 acres of cannabis in the County plus 186 acres in the Carpinteria greenhouses.

On March 20, 2018, the Board approved amendments to the Uniform Rules for Agricultural Preserves and Farmland Security Zones (Uniform Rules) that regulate allowed uses on lands that are subject to agricultural preserve contracts. Consequently, by making these amendments, the Board chose to ignore the recommendations of P&D staff and the County's Agricultural Preserve Advisory Committee (APAC) whose duties include reviewing proposed projects for compatibility to neighboring agricultural properties.

The Board amended the Uniform Rules by declaring cannabis to be an agricultural use instead of the recommended compatible use. That decision was significant as it allowed cannabis growers to obtain the benefits of the property tax breaks under the Williamson Act. Perhaps of even more calculated significance was the designation of cannabis as an agricultural use thereby removing the APAC review for compatibility with adjacent agricultural properties which would have been required if cannabis had been designated as a compatible use.

Thus, the framework of these decisions had been established by the Board. The results are the approvals by the Board of large cannabis operations in the Santa Rita Hills region with many more already in the pipeline. The Board has created a situation where the court system is likely the only hope for relief for traditional agriculture, at a huge legal cost and possible damages to taxpayers.

Legal Non-Conforming Status

In January 2016, the Board approved the creation of a legal non-conforming use exemption for then existing medical marijuana cultivation operations that were in compliance with State laws. To be legal, the cultivation was limited to 100 square feet on a lot with a residential structure. The Board failed to insist on a process that would have identified those that claimed this status. Thus, the County had no idea how much cannabis was being grown by claimed medical marijuana growers.

¹³ www.weatherspark.com/y/1262/Average-Weather-in-Lompoc-California-United-States-Year-Round#Sections-Wind

¹⁴ May 5, 2020 Santa Barbara County Board of Supervisors meeting "Public Comment - University of California, Davis"
<https://santabarbara.legistar.com/LegislationDetail.aspx?ID=4430356&GUID=4C9684C9-80B0-4D18-AEBC-4772570E1BB7&Options=&Search=>

This status allowed the cannabis operations to continue without a County permit and thus not subject to the requirements that follow with a permit. This status created a myriad of problems that continue to the present.

A major problem that developed with the legal non-conforming use status was the illegal expansion of the use. The expansion of acreage, while enjoying this status, was improper and unpermitted. The reaction of P&D staff to complaints in this regard was to forgive as long as an application was in preparation instead of moving to eradicate the illegal expansion. It is not surprising that this position by P&D staff was, and remains, problematic, as the allowance of continued operation removed the incentive to complete the permit application.

Even more of a problem resulting from the legal non-conforming status being authorized was the fact that only those growers who followed through and obtained a permit are subject to regulations to control the odor from cannabis operations that remains such a problem countywide.

A memorandum of January 15, 2020 to the Planning Commission from a senior member of P&D describes the issue clearly. Most cannabis cultivation that currently exists within the County consists of medical cannabis activities which operators assert are legal non-conforming pursuant to Article X of the Land Use Code¹⁵ (Article X) and, consequently, are allowed to operate pursuant to Article X and the non-conforming regulations of the zoning ordinances. Specifically, out of the 270 acres of cannabis that currently exist within the County, approximately 199 acres, 74 percent, consist of legal non-conforming cannabis cultivation subject to Article X, and the remaining approximately 71 acres, 26 percent, consist of cannabis cultivation that is subject to the current County zoning and licensing requirements.

The memorandum continues on to remind the Planning Commission that these legal non-conforming commercial cannabis cultivation activities are not currently subject to the cannabis zoning regulations which are designed to control the adverse impacts of commercial cannabis activities. Thus, when the Planning Commission is considering the efficacy of commercial cannabis regulations, the focus should be on examples of commercial cannabis activities that are operating in compliance with cannabis regulations that apply to the 26 percent of acreage and not the unregulated 74 percent.

Under this poorly constructed scenario, the unpermitted cannabis operations continue to operate without mandatory odor control.

Affidavit System

Without question, one of the most perplexing decisions made by the Board was the utilization of an unverified affidavit system to qualify applicants who claimed to be existing medical cannabis growers and thus eligible to apply for licenses to continue to grow cannabis.

This affidavit system was the creation of a senior member of the CEO's staff, not the result of a group process. The affidavit executed by the cannabis grower, under penalty of perjury, was in lieu of a formal permit or license as required by the State. The affidavit was then submitted to the State of California by the applicant as part of the process to obtain a temporary State license.

The major and obvious flaw of this affidavit system was the lack of any required verification as to the veracity of whether the applicant had indeed been growing cannabis as of January 19, 2016. This concern was noted by the Planning Commission that recommended a process that included a public hearing wherein the applicant could prove their affidavit was truthful.

¹⁵ library.municode.com/ca/santa_barbara_county/codes/code_of_ordinances?nodeId=CH35ZO_ARTXMEMARE

Despite a comment by a Board member, at a Board hearing, that a verification process was needed, “I trust some cannabis operators but not all”, the Board member still voted with the majority and declined to follow the Planning Commission recommendation of a verification process. The Board’s disregard for potential abuse is incomprehensible.

This serious error was compounded by the Board’s failing to require those who claimed to have been medical cannabis growers as of January 19, 2016 to prove the extent of their acreage as of that date. The absence of a verified benchmark encouraged the expansion of the grower’s acreage beyond what was in the ground on January 19, 2016, if any. Once again, the Board’s decision in this regard is truly baffling.

As there were no enforcement procedures established, complaining neighbors were left to report suspected violators to P&D, both as to eligibility and expansion of operations. Even when shown that the suspicions were indeed correct, P&D staff simply allowed the operation with the expanded acreage to continue if the operator had begun the application process for a County permit. It is not surprising that claimed legal non-conforming operators have been less than diligent in getting their applications ready for approval.

By requiring only a signature, many of the same people previously involved in illegal activities were given an unverifiable opportunity to legitimize their cannabis operations. The purpose of a law, any law, is to regulate human behavior. Laws should punish bad behavior and reward good behavior. The affidavit system and the cannabis ordinances do exactly the opposite.

Taxation

Work on the taxation components of the ordinances began in early 2017. One of the first steps was to hire the consulting firm of Hinderliter, de Llamas & Associates (HdL) to assist the County with, among other things, the development of application fee structures, taxation structure options and fiscal analysis based on a variety of assumptions for medical and recreational cannabis in Santa Barbara County.¹⁶ HdL has provided revenue management services, including sales, property, lodging, business license, cannabis regulation and tax strategies to nearly every county in California.

HdL’s report, dated October 14, 2017 was presented to the Board on December 14, 2017.¹⁷ The report noted that a Standardized Regulatory Impact Assessment prepared for the California Department of Food and Agriculture estimated statewide cannabis production at 13.5 million pounds, though the estimate of cannabis consumption by California residents at just 2.5 million pounds.¹⁸ The report also mentions that a separate study performed for the California Cannabis Industry Association put statewide consumption even lower, at 1.6 million pounds. HdL estimated that “the County’s growers could potentially produce over 3.7 million pounds of cannabis per year.”

An important consideration of any cannabis tax is the ability to help create a legal market that attracts customers and discourages them from buying on the illicit market. Cannabis users are willing to pay more for the convenience, selection, and quality-control benefits offered by legal businesses, however there is a limit to how much more they are willing to pay.¹⁹ If an important goal is to significantly

¹⁶ “*Contract For Marijuana Consulting Services*”, approved and signed April 10, 2017

¹⁷ santabarbara.legistar.com/LegislationDetail.aspx?ID=3289847&GUID=70A26A7A-4031-43B3-A0B8-24A6BAC7A074&Options=&Search=

¹⁸ Duncan McEwan, et al (January 2017) “*Economic Impact Analysis of Medical Cannabis Cultivation Program Regulations*” California Department of Food and Agriculture

¹⁹ Michael Amlung, Derek D. Reed, Vanessa Morris, Elizabeth R. Aston, Jane Metrik, James MacKillop. “Price elasticity of illegal versus legal cannabis: a behavioral economic substitutability analysis,” Society for the Study of

diminish the illicit market the cumulative cannabis tax levied must not be so high as to be greater than the benefits provided by a legal cannabis industry.

The report lists four main approaches to taxing the various cannabis commercial activities:

- Taxation on cultivation area by square foot
- Tax on gross receipts of a cannabis business
- Per-Unit tax on the product by weight or volume
- Retail sales tax at point of sale

The first two of these relate to cultivation, and will be the focus of the rest of this section.

Square Footage Tax – A square footage cultivation tax is based on the activity of growing cannabis. It is the most commonly used method for the taxation of cultivation in California. Santa Barbara County is one of only a few counties within California to not use that method. An advantage of this method is that it allows the grower and the county to know upfront exactly how much the annual tax will be at the time the permit is issued. This also allows the grower to make the required payments at any time up until the end of the fiscal year. A downside for the grower to this method is that it does not account for variations in yield, so if the grower has crop loss or reduced yield they still pay the full tax. An upside for a grower is that if there is higher yield, or several crops, the tax remains constant. HdL stated in their report that this method is the easiest and most reliable to administer.

Gross Receipts on Cultivation – A cultivation tax based on gross receipts is a tax on production or earnings, rather than activity. This form of taxation, while less common, has the advantage that if production is high and gross receipts follow then higher revenue would be collected by the County. Growers may prefer this method as it ties the taxes due to actual production. This method, however, presents problems with verification of the volume of the actual cannabis grown and sold, and could be subverted by growers who try to hide their actual yield and sales. In their report, HdL stated that this method can be difficult to administer, as the County must verify the business's reported earnings or production.

The Jury learned that Santa Barbara County is one of a few counties within California that exclusively uses the Gross Receipts method for cannabis cultivation. The Jury asked those interviewed as to why the County did not follow the path that was more reliable and easier to administer and that many other counties in California were using. The answer the Jury received was that the Gross Receipts method had the potential to be much more lucrative than the Square Footage method. To date, the belief that using the Gross Receipts method would result in more taxes has not proven to be true. While the County initially predicted cannabis tax revenues as high as \$25 million, in 2018-19 the actual revenue was only \$6.8 million.²⁰ Monterey County, which until this year only allowed indoor grows and uses the Square Footage method, had 2018-19 cannabis tax revenues of \$15.4 million.²¹

This difference in revenue collected is more alarming when compared to the number of acres of permitted cultivation in each county. Santa Barbara County has 217 permitted acres compared to Monterey's 62.

Addiction,114(1):112-118 (2019).

²⁰ Santa Barbara County Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2019
https://www.countyofsb.org/uploadedFiles/auditor/content/FY2018_19CAFR.pdf

²¹ Monterey County Budget End of Year Report, Fiscal Year 2018-2019
<https://www.co.monterey.ca.us/home/showdocument?id=84679>

The Jury also learned that some of the assumptions supporting the use of the Gross Receipts method over the Square Footage method were flawed. The Jury was told that verification would be easy, accurate and complete, using the State of California's METRC 'Track & Trace' system. METRC is intended to be used to track commercial cannabis activity and movement across the distribution chain from "seed-to-sale".²² The concept of METRC is that every plant is 'tagged' with a tracking number and can be followed from seed germination, through cultivation, manufacturing and retail sale. It appears that Ad Hoc had not adequately investigated the METRC 'Track and Trace' system and accepted at face value promises made and sales materials provided. There are two significant problems with the decision to rely on this system. First, the system is still being tested and has not been proven to work to the levels promised. Santa Barbara County has been accepted as a Beta tester but that process has only begun. Secondly, except for surprise visits to cultivation sites to audit the METRC system tagging, there is no way to assure that all plants are properly tagged and tracked, or that all product harvested is accurately reported to the taxing agencies. Just this past January, Deputies from the Santa Barbara County Sheriff's Office served a warrant and raided a cannabis farm in Carpinteria and found 'off-book' sales.²³ How can the County be certain that other growers are not doing the same?

The Ad Hoc appeared to not be interested in the Square Footage method, which is a more reliable and safer method of taxing cultivation and is used nearly ubiquitously in California. It was also the preferred method by most within County government whom the Jury interviewed. The Jury was told that a member of the Ad Hoc working group led the charge for using the Gross Receipts method and even had asked HdL to revise an early draft of its report to focus more on that tax method.

The Jury was also told that a senior member of the CEO's office did not include the Santa Barbara County Treasurer - Tax Collector (Tax Collector) when the Ad Hoc was working on the taxation portions of the cannabis ordinances. Additionally, the Jury learned that the two members of the Board assigned to Ad Hoc took no steps to override the decision by the staff member and took no action to include the Tax Collector in the drafting of the taxation portion of the cannabis ordinances. The Jury found that the Tax Collector, an elected official, failed to insert himself in the process to draft the taxation portion of the cannabis ordinances. The Jury was told that it was known to the Ad Hoc that the Tax Collector did not favor the use of the Gross Receipts method as it made it harder, or nearly impossible, to audit.

Even with the apparent bias of Ad Hoc toward using the Gross Receipts method, the Board had adequate warning that using that method may not have been in the best interests of the County. In its report to the Board, HdL stated it "has commonly recommended cultivation taxes based on square footage, as they are simple, predictable and easy to administer." While HdL also stated, "A single, all-encompassing tax on gross receipts may allow greater flexibility for cultivators to structure their business more competitively", this statement is more favorable to the growers, and not necessarily in the best interest of the County.

Further, using a Gross Receipts method subjects the County to the challenges of market prices. As cannabis revenues fall, so will the related taxes. In Colorado, wholesale cannabis prices have dropped 61 percent from their peak in 2015.²⁴ With the excess of cannabis supply to cannabis demand in California, it is highly likely the same fate will befall California and the County.

Furthermore, during the first year of the program, most of the revenue generated by cannabis taxes was

²² <https://www.metrc.com/california>

²³ <https://www.latimes.com/california/story/2020-02-14/carpinteria-pot-farm-accused-of-selling-on-black-market>

²⁴ https://itep.org/taxing-cannabis/#_edn49

spent on enforcement of the cannabis ordinances. Since then, this revenue is being considered to help solve many of the current budget difficulties. A robust cannabis industry requires a robust enforcement process. No apparent consideration has yet been given to the costs of actual enforcement costs. These costs must be factored in prior to diverting one penny to existing budget problems.

Statement of Overriding Considerations

The Board, faced with the knowledge that the proposed cannabis Project would cause significant and unavoidable impacts on the environment including air quality and odor, found reasons to justify their decision to proceed forward. The methodology for this was the Statement of Overriding Considerations.

The first listed justification is that the Project provides for a robust and economically viable legal cannabis industry to ensure production and availability of high quality cannabis products to help meet local demands and as a public benefit, improves the County's tax base. The next listed justification is that the Project enhances the local economy and provides opportunities for future jobs, business development, and increased living wages. Moreover, the Project promotes continued agricultural production as an integral part of the region's economy by giving existing farmers access to the potentially profitable cannabis industry, which in turn will provide relief for those impacted by competition from foreign markets and rising costs of water supply.

The Jury investigation confirmed that the farmers being referenced were the flower growers in Carpinteria. Their ability to grow cannabis was deemed an overriding consideration by the Board paramount to the skunky smell endured by the residents of Carpinteria. The Board found that the benefits of giving flower growers access to growing cannabis "outweigh the unavoidable adverse environmental effects and therefore the adverse environmental effects may be considered acceptable." Amazingly, the Board went on to find that this reason alone would be enough to justify the approval of the cannabis ordinances, even if all other reasons were struck by a court.

For a full list of all Overriding Considerations see Appendix 2.

The Interference with the Air Pollution Control District

One of the most disturbing matters that came to the attention of the Jury was the interference by the CEO senior staff and P&D senior staff in the operations of the Santa Barbara County Air Pollution Control District (APCD).

An independent agency since 1994, the mission of the APCD is: "To protect the people and environment of Santa Barbara County from the effects of air pollution". In furtherance of that mission the APCD issues air quality advisories to the public.²⁵

On Friday, April 26, 2019, the APCD issued online an APCD Advisory (Advisory) titled Air Quality and Cannabis Operations. Among a number of matters discussed in the Advisory, the issue of buffers from outdoor cannabis operations was raised. The APCD advised that with outdoor grows, a reasonable buffer should be established between the grow site and any residential, commercial or public access point with the APCD "strongly encouraging large buffer zones (e.g., 1 mile) to allow for maximum odor dispersion, as well as other odor abatement strategies, to avoid nuisance odors".²⁶

Within a few days, a senior member of the CEO's office contacted the APCD about the Advisory. This

²⁵ <https://www.ourair.org/>

²⁶ APCD Advisory, April 26, 2019 advisory (updated May 7, 2019) <https://www.ourair.org/wp-content/uploads/APCD-Cannabis-Advisory-v2.pdf>

was followed by phone calls from this individual to the APCD the next day requesting the APCD take down the Advisory. The Jury learned that the APCD refused to remove the Advisory.

What followed were communications from a senior member of P&D that convinced the APCD to remove the Advisory. The senior member of P&D then sent the APCD a rewording of the Advisory that included the removal of the language cited above, including “strongly encouraged large buffer zones (e.g. 1 mile)”. The Advisory now only states that the district encouraged the use of buffer zones. No recommended distance of a buffer remained in the replacement Advisory. The various changes were made and a revised Advisory was issued on May 7, 2019. The Jury was told that no such request had ever previously been made to the APCD.

Ethics

Santa Barbara County has been in turmoil since the legalization of recreational cannabis in 2016. There has been public protest over cannabis odor, controversy between the cannabis industry and traditional agriculture, the appearance of financial irregularities and accusations of undue influence. Rarely a day goes by without media coverage of some aspect of the Santa Barbara cannabis industry.

The Santa Barbara County Board of Supervisors does not have a formal code of ethics to inspire and guide the conduct of its members and staff. It relies instead on a simple statement of mission, as reflected below:

“Provide quality public services to the people of Santa Barbara County in response to their need for a healthy, safe and prosperous environment; and to establish and maintain a workforce which reflects the diversity of the community.”²⁷

While these statements lay a sound foundation, they are insufficient to provide detailed guidance to a powerful and influential Board that governs the everyday life of approximately 450,000 local citizens. The challenges of governing a constantly evolving Santa Barbara County demand a more powerful statement and oversight of ethics for the future.

Counties throughout the nation have chosen to establish Codes of Ethics to promote ethical decision making and conduct, and increase public trust in their elected leaders. Such Codes frequently address issues such as:

- Conflict of interest: Potential conflicts are defined
- Acceptance of gifts: Dollar and timing limits are put into effect
- Exploitation of official position: Personal influence and hiring friends and relatives is restricted
- Financial disclosure reports: Disclosure requirements and reporting frequency are defined
- Limitations on campaign contributions: Dollar caps and timing relative to issues under consideration are defined
- Declaration of contact outside of public hearings with subjects of prospective legislation is required
- Outside employment: Disclosure and authorization for outside employment is required
- A “two-year rule”: Establish time limits before which government officials can seek employment with entities they’ve worked with after they leave government service

²⁷ <https://www.countyofsb.org/bos>

Many counties also establish independent Ethics Commissions to provide oversight of government functions and transparency to the general public. These commissions develop and publish a Code of Ethics, review and assess the performance of government functions against those ethical standards, and report their findings to the public. Such commissions are an excellent tool for assuring accountability of government officials.

CONCLUSION

The 2019-20 Santa Barbara County Grand Jury began an investigation initiated by concerns of residents over the influence of the cannabis industry on the creation of the cannabis ordinances. The Jury discovered unequal access was granted to the cannabis industry representatives by the Santa Barbara County Board of Supervisors to the point of allowing email communications during a Board of Supervisors meeting.

A more sobering realization for the Jury was that the governance in this matter took the form of some Supervisors aggressively pushing through their own agendas while other Supervisors meekly followed or resigned themselves to the inevitable.

Some senior staff in the office of the Santa Barbara County Chief Executive Office and the Santa Barbara County Planning and Development Department became cannabis advocates, losing their objectivity to the point of interfering in the responsibilities of independent agencies and elected officials.

The Board of Supervisors rushed through the cannabis ordinances, ignoring the Santa Barbara County Planning Commission and staff recommendations on verification of applicants claiming eligibility to grow cannabis, to buffer distances for odor, and to not establishing cannabis as a compatible use that would allow for an analysis of compatibility with traditional agriculture. The actions of the Board resulted in the picking of winners and losers.

The Board of Supervisors used the mechanism of an Ad Hoc Sub Committee to craft the cannabis ordinances out of public view. These ordinances are now the cautionary tale for other counties in the State of California on what *not* to do.

The Ralph M. Brown Act, codified as California Government Code 54950 et seq., declares as follows:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards, and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The Jury believes the Board of Supervisors, in their hubris, failed the people of Santa Barbara County. Now they must amend the cannabis ordinances to regain the people’s trust.

FINDINGS AND RECOMMENDATIONS

Finding 1

The impact of cannabis production on the health and welfare of Santa Barbara County residents was inadequately weighed and considered by the Santa Barbara County Board of Supervisors.

Recommendation 1a

That the Santa Barbara County Board of Supervisors direct the Santa Barbara County Planning and Development Department Director to prepare Environmental Impact Reports addressing each region of Santa Barbara County after holding public hearings to evaluate public concerns.

Recommendation 1b

That the Santa Barbara County Board of Supervisors direct the Santa Barbara County Planning and Development Department Director to develop Project Objectives for the Environmental Impact Reports that reflect a balance between cannabis, traditional agriculture, and the residents of Santa Barbara County.

Finding 2

The creation of a non-Brown Act Ad Hoc Sub Committee that was not open to the public led to a lack of transparency and distrust by Santa Barbara County residents.

Recommendation 2

That the Santa Barbara County Board of Supervisors require all future Ad Hoc Sub Committees be open to the public and subject to the Brown Act.

Finding 3

The Board of Supervisors granted nearly unfettered access to cannabis growers and industry lobbyists that was undisclosed to the public during the creation of the cannabis ordinances.

Recommendation 3

That the Santa Barbara County Board of Supervisors develop standards that require Santa Barbara County Board of Supervisors members to publicly disclose all access granted to lobbying individuals or groups, especially while a matter involving these individuals or groups is before the Board of Supervisors.

Finding 4

The conflict between cannabis production and traditional agriculture is a major concern for the continued existence of certain segments of traditional agriculture in Santa Barbara County.

Recommendation 4a

That the Santa Barbara County Board of Supervisors amend the Land Use and Development Code and Article II, the Coastal Zoning Ordinance to require all pending cannabis land use permit applications be subject to a Conditional Use Permit review.

Recommendation 4b

That the Santa Barbara County Board of Supervisors amend the County's Uniform Rules for Agricultural Preserves and Farmland Security Zones to declare that cannabis cultivation and related facilities are compatible uses on contracted land instead of as an agricultural use.

Finding 5

The amount of cannabis production allowed under the current cannabis ordinances is excessive and has led to overconcentration in some portions of Santa Barbara County.

Recommendation 5a

That the Santa Barbara County Board of Supervisors require all applicants with cannabis use and development permit applications and licenses pending, who claim legal non-conforming status, to prove their claimed status before the Santa Barbara County Planning Commission.

Recommendation 5b

That the Santa Barbara County Board of Supervisors direct the Santa Barbara County Planning and Development Department Director, in conjunction with the Santa Barbara County Sheriff's Office, to eradicate all cannabis grown on acreage claimed under Legal Non-Conforming status when the cannabis operator fails to demonstrate to the Santa Barbara County Planning Commission that the planting of cannabis occurred prior to January 19, 2016.

Recommendation 5c

That the Santa Barbara County Board of Supervisors direct the Santa Barbara County Planning and Development Department Director to deny permits for the growth of cannabis on acreage claimed under Legal Non-Conforming status when the cannabis operator fails to demonstrate to the Santa Barbara County Planning Commission that the planting of cannabis occurred prior to January 19, 2016.

Finding 6

The approval by the Santa Barbara County Board of Supervisors of an unverified affidavit system does not require proof of prior cannabis operations to establish eligibility to continue to grow cannabis as a legal non-conforming use.

Recommendation 6

That the Santa Barbara County Board of Supervisors require all applicants with cannabis use and development permit applications and licenses pending, who claim legal non-conforming status, to prove their claimed status before the Santa Barbara County Planning Commission.

Finding 7

The affidavit system does not require proof of prior scope of the cannabis acreage.

Recommendation 7a

That the Santa Barbara County Board of Supervisors direct the Santa Barbara County Planning and Development Department Director, in conjunction with the Santa Barbara County Sheriff's Office, to eradicate all cannabis grown on acreage claimed under Legal Non-Conforming status when the cannabis operator fails to demonstrate to the Santa Barbara County Planning Commission that the planting of cannabis occurred prior to January 19, 2016.

Recommendation 7b

That the Santa Barbara County Board of Supervisors direct the Santa Barbara County Planning and Development Department Director to deny permits for the growth of cannabis on acreage claimed under Legal Non-Conforming status when the cannabis operator fails to demonstrate to the Santa Barbara County Planning Commission that the planting of cannabis occurred prior to January 19, 2016.

Finding 8

The option taken by the Santa Barbara County Board of Supervisors to tax cannabis cultivation using a Gross Receipts method was less reliable than the Square Footage method used by the vast majority of California counties.

Recommendation 8

That the Santa Barbara County Board of Supervisors amend Ordinance 5026 to tax cannabis cultivation using the Square Footage method.

Finding 9

The Santa Barbara County Treasurer-Tax Collector was not included in the creation of the tax portions of the cannabis ordinance.

Recommendation 9

That the Santa Barbara County Board of Supervisors require that all future ordinances that involve taxation require the Santa Barbara County Treasurer-Tax Collector be involved in the creation of the ordinance.

Finding 10

Members of the Santa Barbara County Chief Executive Officer's office and Santa Barbara County Planning and Development staffs unduly and without apparent Board knowledge successfully sought changes to the April 26, 2019 Cannabis Advisory from the Santa Barbara County Air Pollution Control District, an independent agency, eliminating a one mile buffer recommendation.

Finding 11

There has not been effective odor control at the boundary of cannabis cultivation and related activities, resulting in significant public outcry about odor, quality of life and health concerns.

Recommendation 11

That the Santa Barbara County Board of Supervisors suspend all County unpermitted cannabis operations until proof of odor control at the boundary of their operation is accepted by the Santa Barbara County Planning Commission.

Finding 12

The Santa Barbara County Board of Supervisors does not have a written Code of Ethics to formalize its ethical standards and guide its decision making processes.

Recommendation 12a

That the Santa Barbara County Board of Supervisors establish, staff and empower an independent Ethics Commission with oversight over the Board and its staff members.

Recommendation 12b

That the independent Ethics Commission develop a Code of Ethics, review Board activities on a periodic and as needed basis for compliance, and share its findings with the public.

Recommendation 12c

That the Santa Barbara County Board of Supervisors require all its members to publicly disclose receipt of campaign contributions from donors who have matters pending a decision by the Board.

Recommendation 12d

That the Santa Barbara County Board of Supervisors require those members receiving campaign contributions from donors with matters pending a decision, to recuse themselves from those matters or return the campaign contributions.

This report was issued by the Grand Jury with the exception of a grand juror who wanted to avoid the perception of a conflict of interest. That grand juror was excluded from all parts of the investigation, including interviews, deliberations, and the writing and approval of this report.

REQUEST FOR RESPONSE

Pursuant to *California Penal Code Section 933 and 933.05*, the Santa Barbara County Grand Jury requests each entity or individual named below to respond to the enumerated findings and recommendations within the specified statutory time limit:

Responses to Findings shall be either:

- Agree
- Disagree wholly
- Disagree partially with an explanation

Responses to Recommendations shall be one of the following:

- Has been implemented, with brief summary of implementation actions taken
- Will be implemented, with an implementation schedule
- Requires further analysis, with analysis completion date of no more than six months after the issuance of the report
- Will not be implemented, with an explanation of why

Santa Barbara County Board of Supervisors – 90 days

Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12

Recommendations 1a, 1b 2, 3, 4a, 4b, 5a, 5b, 5c, 6, 7a, 7b, 8, 9, 11, 12a, 12b, 12c and 12d

Appendix 1

Project Objectives of the Cannabis Land Use and Licensing Program

1. Develop a robust and economically viable legal cannabis industry to ensure production and availability of high quality cannabis products to help meet local demands and, as a public benefit, improve the County's tax base;
2. Provide opportunities for legal commercial cannabis cultivation, testing, packaging, transportation, distribution, manufacturing, and retail sale in appropriate unincorporated areas of the County, consistent with state law and County regulations;
3. Develop a new regulatory program allowing for the orderly development and oversight of commercial cannabis activities and businesses, consistent with state law and existing agricultural industry practices, standards, and regulations;
4. Encourage commercial cannabis businesses to operate legally and secure a license to operate in full compliance with County and state regulations, maximizing the proportion of licensed activities and minimizing unlicensed activities;
5. Provide an efficient, clear, and streamlined commercial cannabis licensing and permit process and attainable regulations and standards to facilitate participation by commercial cannabis business in the unincorporated areas of the County;
6. Minimize adverse effects of commercial cannabis activities on the natural environmental, natural resources, and wildlife, including riparian corridors, wetlands, sensitive habitats, and water resources;
7. Promote energy and resource efficiency in all cannabis activities, consistent with existing agricultural and any other industry practices, standards, and regulations;
8. Establish land use requirements for commercial cannabis activities to minimize the risks associated with criminal activity, degradation of visual resources and neighborhood character, groundwater basin overdraft, noise nuisances, hazardous materials, and fire hazards;
9. Develop a regulatory program that protects the public health, safety, and welfare through effective enforcement controls(i.e., ensuring adequate law enforcement and fire protection services) for cannabis activities in compliance with state law, to protect neighborhood character and minimize potential negative effects on people, communities, and other components of the environment; and
10. Limit potential for adverse impacts on children and sensitive populations by ensuring compatibility of commercial cannabis activities with surrounding existing land uses, including residential neighborhoods, agricultural operations, youth facilities, recreational amenities, and educational institutions.

Appendix 2

Statement of Overriding Considerations

Pursuant to Public Resources Code Section 21081(b) and CEQA Guidelines sections 15043, 15092, and 15093, any unavoidable adverse environmental effects of the project (as modified by incorporation of EIR mitigation measures, and development standards shown in RV 01) are acceptable due to the following environment benefits and overriding considerations:

A. The project provides for a robust and economically viable legal cannabis industry to ensure production and availability of high quality cannabis products to help meet local demands, and, as a public benefit, improves the County's tax base.

B. The project enhances the local economy and provides opportunities for future jobs, business development, and increased living wages. Moreover, the project promotes continued agricultural production as an integral part of the region's economy by giving existing farmers access to the potentially profitable cannabis industry, which in turn would provide relief for those impacted by competition from foreign markets and rising costs of water supply.

C. The project expands the production and availability of medical cannabis, which is known to help patients address symptoms related to glaucoma, epilepsy, arthritis, and anxiety disorders, among other illnesses.

D. The project allows for the orderly development and oversight of commercial cannabis activities by applying development standards that require appropriate siting, setbacks, security, and nuisance avoidance measures, thereby protecting public health, safety, and welfare.

E. The project provides a method for commercial cannabis businesses to operate legally and secure a permit and license to operate in full compliance with County and state regulations, maximizing the proportion of licensed activities and minimizing unlicensed activities. Minimization of unlicensed activities will occur for two reasons. First, the County will be providing a legal pathway for members of the industry to comply with the law. Secondly, the County will use revenue from the project to strengthen and increase code enforcement actions in an effort to remove illegal and noncompliant operations occurring in the County unincorporated areas.

F. The project establishes land use requirements for commercial cannabis activities to minimize the risks associated with criminal activity, degradation of neighborhood character, groundwater basin overdraft, obnoxious odors, noise nuisances, hazardous materials, and fire hazards.

G. The project minimizes the potential for adverse impacts on children and sensitive populations by imposing appropriate setbacks and ensuring compatibility of commercial cannabis activities with surrounding existing land uses, including residential neighborhoods, agricultural operations, youth facilities, recreational amenities, and educational institutions.

H. The project provides opportunities for local testing labs that protect the public by ensuring that local cannabis supplies meet product safety standards established by the State of California.

I. The project protects agricultural resources, natural resources, cultural resources, and scenic resources by limiting where cannabis activities can be permitted and by enacting development standards that would further avoid or minimize potential impacts to the environment.