

Neighborhood Small Group Letter – Sebastopol

Thank you for your efforts to gather community input ahead of the EIR for a new Cannabis ordinance. Below are highlights, suggestions and questions that are pertinent to the EIR and to the existing permitting options. We represent a neighborhood of over a dozen homes that surround multiple ministerial permits in Sebastopol.

It is imperative that the County use science-based analysis to accurately measure ALL potential impacts a cannabis ordinance will generate.

It is also imperative to select a highly qualified consultant to prepare the EIR. A substandard consultant like Rincon Consulting, who wrote the subsequent mitigated negative declaration should be disqualified from participation. The consultants who prepared the EIRs for Napa and Yolo counties should receive an RFP.

Ministerial Permitting:

Ministerial permits are especially ill-suited for cannabis operations because they are issued without: notice to neighbors, a public hearing, and a right to appeal. As such, the ministerial permit process violates due process, which should be afforded to Sonoma County residents due to the unique nature of growing and processing cannabis.

No discretion can be applied in approving a ministerial cannabis permit, yet the Ag Department uses significant discretion in order to approve each ministerial cannabis permit. The Ag Dept uses discretion to determine **if**:

- Evidenced violations should be issued and fines levied.
- Biotic resources are adequately measured.
- Minimum setbacks are sufficient or should be increased to mitigate odor, noise, aesthetics.
 - The necessary setbacks to uphold the Health & Safety clause are sufficient. The Health and Safety clause [26-88-250(f)] trumps any minimum and requires further discretion by the county to determine an appropriate setback that protects neighbor's health and safety.
- The assessments submitted by applicants "demonstrating" certain findings as to water availability, wastewater management and discharge to satisfy State and County requirements – are adequate.

Ministerial applications resulting in fencing, 24-hour security, nuisance lighting, odor emissions, and increase traffic on substandard rural roads and easements, by definition, change the surrounding environment and thus trigger project-specific CEQA requirements.

The County is enabling piecemealing to occur by issuing multiple ministerial permits to separate growers on the same or adjacent parcels. These growers are not separate and distinct operators. They are hiding their collusion behind multiple LLC's. This is "piecemealing" and is violating environmental laws. This leads to unstudied parcel-specific impacts, circumvents the cumulative impact analyses, confuses the liability for violations, and does not comply with project-specific CEQA review as required by State law and CalCannabis guidelines. These are single projects in disguise, are bypassing CEQA with ministerial

permitting and are illegal. This scheme was designed by Tony Linegar, former Agriculture Commissioner, and is now rapidly accelerating under the guidance of the current Ag Comm.

Ministerial permits are up for renewal every year. Why? To give the county a chance to renew or not given the applicants performance/adherence to the code including safety, conditional changes like drought, over-use of easements, neighborhood nuisances (noise, traffic, safety...). As Andrew Smith says, "We want to give the illegal growers a chance to comply and show they can operate in the legal realm." And when they don't, revoke their permit and refuse to renew.

Moratorium:

We urge the county to enact a moratorium on new cannabis applications and renewals until the full water availability and county-wide demand is analyzed, and ideally until the new cannabis ordinance is in effect.

Any new permits that are approved now need to fall under the new ordinance once it is in effect. Any permit renewal would need to fall under the requirements of the new ordinance as well.

Many cities and counties have used moratoriums, which are expressly authorized by Government Code section 65858, to provide the needed time to draft or amend effective legislation and ordinances and to avoid making the problem worse.

At the very least, the County should pursue a moratorium on outdoor grows. What is the rush? If Sonoma County is the best place to grow cannabis, then it will still be the best place in 2-3 years.

Safety and crime:

Cannabis growers are keenly aware of the threat they live with daily because of the high dollar value of their grow and the increased chance that they will be robbed. Cannabis grows and neighborhoods are incompatible because of the numerous safety issues that come with a highly valuable product that are easily resold.

A cannabis grower in Sebastopol has firearms and discharged them at night when angry at neighbors that complain to the County and turn in violations. This is extremely intimidating and disturbing. When neighbors hear firearms discharging, they conclude that a robbery is underway and fear that crossfire may ensue or that they will be trapped in their homes because the only narrow egress road is blocked.

There is ample evidence that speaks to the increase in crime associated with cannabis grows. An example is the Nicolas Bettencourt vs. Sonoma County, BOS, PRMD and Code Enforcement lawsuit (7/6/21). Bettencourt violated 26-88-254(f)(21) weapons and firearms at the cultivation site. Bettencourt alleges that his cannabis operation was broken into six times over two years (from June 2019 through July 2021) and there was no assistance from law enforcement.

The point is that growers arm themselves because their commercial operations are valued in the millions of dollars and it's still a cash business. The county tried to mitigate this threat by requiring significant security. And then tried to mitigate the threat to neighbors by banning firearms. This obviously hasn't worked for the growers who fear being robbed and neighborhoods who fear being shot in the crossfire.

Firearms are not allowed on a cannabis site. The threat to personal and public safety is significant and the Sheriff department's capacity to respond in a timely manner is inadequate at best.

Federal Law Concerning Marijuana and Firearms Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.

<https://www.canorml.org/the-law-of-marijuana-use-and-firearm-possession-in-california/>

Health and safety of residents are a CEQA issue. How can the County set up a system of land use decisions that often result in neighbor's safety being jeopardized?

Setbacks:

Setting the ministerial check-list criterion for 100/300 ft setbacks violates the cannabis ordinance as the 100/300 ft are minimum setbacks, and the county needs to use discretion to determine the necessary setback to uphold the Health & Safety clause. The Health and Safety clause [26-88-250(f)] trumps any minimum and requires discretion by the county to determine an appropriate setback that protects neighbor's health or safety.

In the case of our Sebastopol neighborhood, multiple ministerial cannabis permits in close proximity to 12 homes must have much greater than the minimum setback of 100 ft to the property line and 300 ft to homes to protect the health and safety of neighbors. A minimum of 1,000 ft setbacks from the property line are required.

Easements & Roads:

The additional burden caused by cannabis operations on general road easements is significant and is nothing like vineyards. Our roads were never designed with the intent of supporting commercial traffic. They serve a limited number of residents, who use them to access their residences and are subject to only occasional use by trucks. These are private roads, maintained by residents at own expense, and with no provisions for supporting the additional wear and tear from a commercial cannabis operation.

Adding any amounts of ongoing commercial traffic to these roads without ANY provisions for their maintenance, improvement, or addressing of fire safety deficiencies as part of their use permit creates an immediate and major financial and physical burden on the rest of the neighborhood. This also dramatically increases the risk of fatalities during a crime or fire emergency if trucks associated with the commercial cannabis operation either block road access to fire department personnel or block evacuation routes for residents.

Planned Trip Assessments is bad policy and is not enforceable. Self reported per project is being done with no county benchmarks to assess the plans against. There are no reporting or revision requirements subsequent to permit vesting. No penalties for exceeding provided estimates. The County is again relying on neighbors to monitor and report violations / egregious behavior. And the County has no recourse to county enforcement on private roads.

Vineyards may have workers accessing a vineyard up to seven times per year. Cannabis grows are industrial and require worker access seven days per week all year. Given this, the following are ways this issue could be mitigated:

- Adhere to California fire safe roads
- Require applicants to obtain written permission from road easement holders to use the easement for a commercial cannabis operation
- Traffic impact studies conforming to County guidelines should be required of all applications based on trip generation rates

Scofflaw and Enforcement:

The widespread lack of enforcement has emboldened illegal and legal cannabis growers to violate the code at will knowing the worst that could happen is an insignificant fine compared to the millions of dollars per year generated from a single 10,000 sq ft grow. As example, a grower in Sebastopol was caught with 22,000 illegal plants and was fined \$100,000. The County gave the violator payment terms on the fine. At \$500 per pound, the product was worth \$3m - \$5m. The grower did not have to destroy the plants and paid no taxes when sold. The County is being played by the industry.

Before issuing any more cannabis permits, the BOS and PRMD need to show their constituents that they are serious about enforcing cannabis code. Start covering the cost of enforcement by collecting the maximum fines from all violations that neighbors and law enforcement are reporting with evidence. And when a grower is subject to three violations, revoke the permit and ban the grower for two years as stated in the existing ordinance. In a Sebastopol grower case, the neighbors have submitted over a dozen evidenced violations with only one grading violation being issued...and the fine was waved.

The enforcement arm of the county has broken the trust of the residents because they have failed to live up to their own promise to be mindful of health and safety of us all. The PRP is an excessive example of how entities that are clearly not complying, or maybe cannot ever comply, are allowed to grow with impunity for now five years and counting. How can we trust the County to enact anything when it is clear that there is no stomach to make sure the laws are followed? Unless there is enforcement of the current ordinance, anything that is done moving forward will be looked upon with suspicion.

The stated goal of the BOS was to entice the illegal growers into the legal realm where they could be regulated. When are the regulations going to be enforced?

The County needs to understand that this “mythical cannabis tax revenue” comes with very real additional public costs. Please consider increasing the Sheriff’s staff and training to address public safety and nuisance complaints.

Ultimately, the goal will be to determine if cannabis will have significant impacts, and mitigations and the conditions must be publicly measurable, verifiable, and enforceable.

We cannot continue to draft mitigations and conditions that rely on measures that: are self-reported, imprecisely defined, non-publicly verifiable, do not use county-established benchmarks, and don’t automatically flag non-compliance.

We cannot center our enforcement plans on: neighbors reporting neighbors, complaints as only mechanism for tracking non-compliance, and manual, ad hoc, subjective monitoring by individual county employees.

The County is risking irreparable damage to our tourism industry - unsightly, odorous operations and the fear of crime - tourists may decide to go elsewhere.

The County should undertake a concerted campaign to widely publicize the penalties for cannabis permit violations.

Water:

Water issues are a top priority now, and with wells going dry in many areas, we cannot continue to issue permits without making sure that all new development requiring water will not create further negative impacts to existing homeowners and farmers.

Water availability analysis should be conducted and areas to be considered for cultivation should be based on dry years, not average historical year conditions. In the past, the county and consultants have based their analysis on historical average but, due to climate change, historical average is now inappropriate. New benchmarking analysis, based on a worst-case scenario, is critical to assure accurate projections of current and future water needs for all users county-wide can be satisfied sustainably.

The ultimate goal for the EIR and a successful cannabis ordinance should assure future sustainability in compliance with the Sustainable Groundwater Management Act.

The California Department of Food and Agriculture (CDFA) must approve of all water sources being used for cannabis cultivation activities prior to use as well as any additions or changes to sources. Cultivators who use an unapproved water source may face CDFA fines and disciplinary action, such as license revocation. In the case of a grower in Sebastopol, a new water source was developed and not disclosed in two ministerial applications even though evidence was provided to the County.

Last January, Supervisor Rabbitt stated on a Zoom meeting regarding cannabis, that water issues can be dealt with by capturing rain water. If too many properties use catchment, the creeks and wetlands in the county will be de-watered, salmon restoration efforts will be futile and groundwater levels will decrease. Catchment ponds will impact replenishment and future health of the underlying aquifer and downstream flows. Net Zero Plans are not effective for applying conditions on water use - not enforceable, not verifiable, and are not measurable.

Last November, UC Berkeley was awarded a \$314,417 grant to study the “Cannabis Water-Use Impacts to Streamflow and Temperature in Salmon-Bearing Streams” by the Bureau of Cannabis Control. The County needs to leverage the findings from studies like this to drive County water policy development for all water demands.

Odor:

Cannabis cultivation and processing generates significant nuisance odors impacting nearby residents and other sensitive receptors. As acknowledged in the SMND, unlike other types of agriculture, cannabis cultivation and processing operations “generate distinctive odors that adversely affect people” that can

be “reminiscent of skunks, rotting lemons, and sulfur” and have the potential to adversely affect a substantial number of people.

Emissions from cannabis cultivation and production operations contribute to worsening air pollution, which violates state and federal standards for ozone and fine particulate matter and state standards for particulate matter.

Cannabis odors can disperse as far as 3,280 ft from outdoor grows and more than 984 ft from indoor grow facilities.

Odor Recommendations to mitigate cannabis odor nuisance and protect the health and safety of Sonoma County residents:

- Increase setbacks (buffers) to sensitive receptors including neighboring homes from 100 feet to property line to 1000 feet minimum to property line. This will reduce the strength or concentration of an odor and the frequency at which it may be detected since buffers provide atmospheric dispersion of odor. The larger the setback, the more distance is available for dispersion of the odor to occur before it may reach a sensitive receptor.
- Odor must not be detectable off-site or past the property line.
- Outdoor cannabis cultivation must be limited in size appropriate to its surrounding environment and natural resources and removed from neighboring homes.
- Indoor and greenhouse grows should be in industrial zones and must require carbon filters to prevent odor from leaving all structures

Aesthetics:

Cannabis cultivation substantially degrades the existing visual character and quality of our designated Scenic Corridor in West County. The large, unattractive structures and hoop houses with solid fences create an industrial look more akin to a self-storage commercial operation. These commercial structures should not be allowed in Scenic Corridors. They degrade the existing visual character of our surroundings for both public and private views. Hoop houses, large greenhouses, indoor cultivation kour Scenic Corridor.

Commercial operation:

A cannabis operation is akin to a commercial development with security fencing, surveillance equipment, bathrooms, structures and workers on site seven days a week that generate significant traffic, noise and dust. These operations belong in commercial and industrial zoned areas – not in neighborhoods.

Vertical management of the supply chain:

Allowing the same person to grow, process, manufacture and sell cannabis provides ample opportunity to by-pass the track and trace program. Sonoma County can be more restrictive compared to the State and should not allow growers to also process and own a dispensary. Growers have circumvented the laws for decades. The County needs boundaries that can be enforced as have been in the alcohol business with their three-tiered distribution model.

Further Recommendations: Please include provisions in the future cannabis ordinance for the following:

- Disallow cannabis cultivation in water scarce areas. Limit the square footage of plants in other areas. Don't promote water catchment as a solution.
- Existing baseline conditions should be examined to include all illegal cannabis grown, cannabis permits already issued, all people growing without a permit in the Penalty Relief Program, and all pending and reasonably foreseeable future permits. Other residential, commercial, fire protection and agricultural users in the unincorporated areas need to be identified and their present and future needs assessed.
- Include evaluation of all constraints on our water supply by all users in the County, including everyone to whom Sonoma County Water Agency (SCWA) sells water. Note that the SCWA also sells water to Marin.
- Users with any water rights should be listed so they can be evaluated as a draw on our overall water "system". In this process the EIR can more accurately reach a conclusion about how much total water is available and how much can be used for new demand in the unincorporated areas.
- New permits must rely on the best accounting of assumed water supply. Climate change and drought may have altered these assumptions and an analysis of the existing usages and cumulative impacts needs to be a part of the EIR.
- Every permit to require applicant to post a "Facility Removal and Site Reclamation Bond" so that, in the event of noncompliance or project abandonment, the funds are available to restore the site without requiring the county to lien the property and engage in a lengthy collection proceeding.
- Change in ownership must be noticed to the County not less than 90 days in advance of change.
- CEQA requires that "mitigation measures" be measurable and verifiable.
- The EIR needs to:
 - Stipulate the metric used, method of verification, the frequency of monitoring,
 - Specify the records produced, reported and retained for each identified potential adverse impact.
 - Detail the response to be taken when any exceptions or exceedances are detected including notification of the County and the steps necessary to remedy and to assure no similar future violations.
 - Include all of the requirements for such "Mitigation Monitoring Plans" that are necessary to objectively demonstrate, record and report project compliance.
- Permit applicants should be required to prepare and submit a "Mitigation Monitoring and Reporting Plan" tailored to their particular project and subject to County approval prior to beginning any construction or operations. The plan needs to address the monitoring necessary to demonstrate and document compliance with each required mitigation measure and permit condition. All monitoring data demonstrating compliance must be science based and independently verifiable and available to the public.
- Each permit holder to be required to produce for the County a "Compliance Report" that includes any complaints filed and the resolution, compiles all of the required monitoring data for each condition and mitigation measure, identifies all exceptions and exceedances that have occurred, describes and documents the steps taken to prevent future exceptions and violations, and presents subsequent monitoring data to demonstrate that the operation has resolved the issue and is now in full compliance.

- Permits to expire annually subject to automatic renewal upon County review and approval of the Annual Compliance Report. This avoids the prolonged process necessary to abate a non-compliant operation with the drawn out administrative and potential Court appeals. The failed PRP is an example.
- Approval of compliance reports should be an action of the BZA or Planning Commission after a public hearing. If the report is not approved, the operation must cease immediately. Operators can appeal a determination of non-compliance but cannot operate again unless and until the decision of the public body is reversed in which case the permit will be reinstated and operations can resume. Based on the Annual Compliance Report, the public body should be able to add or modify permit conditions in order to assure future compliance.
- Illegal plants must be destroyed by the County. Not doing so supports the continuance of the black market and makes the county an enabler. This also allows the grower to evade taxes.
- Impose maximum fines on all violations and make fines due upon issuance. Since 2018, the County has allowed cannabis permit applicants and permit holders to be behind in the payment of various cannabis taxes, often for months or even years. This violates the cannabis ordinance and Penalty Relief Program requirements. The County has essentially extended interest-free loans to cultivators. No such relief is provided to ordinary citizens if they get behind on property taxes.

Questions for Possible Surveys:

1. Do you favor a temporary moratorium or pause in approval of cannabis permits until we see what is going to happen next year with the water crisis? Yes or No?
2. In what proximity to your own home would you feel comfortable having a cannabis grow:
 - a. Adjacent
 - b. At least ¼ mile
 - c. At least ½ mile
 - d. At least 1 mile
 - e. At least 5 miles
 - f. No distance is OK