

TEMPLETON AREA ADVISORY GROUP
Addressing the Area's Land Use Planning Since 1994
PO Box 1135 Templeton, CA 93465

**REPORT TO THE SLO COUNTY BOARD OF SUPERVISORS AND THE
COUNTY**

TO: County Board of Supervisors, County Planning Department, Kate Shea, Eric Hughes, Vicki Janssen,
Micki Olinger, Trevor Keith
CC: TAAG Board members

FROM: Bruce Jones, TAAG Board Chair

SUBJECT: Report of TAAG's recommendation regarding the 46-page Title 22 Chapter 22.40 proposed "red-lined" proposed cannabis ordinance amendments draft and the accompanying Staff Report that will be considered for approval during the agenda item No. 29 of the scheduled October 6, 2020 Board of Supervisors' hearing.

At TAAG's Zoom (teleconferenced) publicly noticed October 1, 2020 Special Board meeting, TAAG's full Board unanimously approved the proposed SLO County cannabis ordinance amendments presented on the 46 page edited "redlined" draft of Chapter 22.40 that the Board of Supervisors will consider during the Board's scheduled October 6, 2020 hearing as agenda item No. 29 with the following ten recommendations.

The 46 page ordinance draft and the accompanying hearing Planning Staff report, published as October 6, 2020 hearing agenda documents, and can be viewed at:

Chapter 22.40 proposed cannabis ordinance - Revised 46 page "redlined" edited draft
<https://agenda.slocounty.ca.gov/iip/sanluisobispo/file/getfile/125940>

Cannabis Amendment October 6th BOS hearing County Staff report
<https://agenda.slocounty.ca.gov/iip/sanluisobispo/file/getfile/125623>

TAAG recommends acceptance of the proposed amendments presented in the 46 page Chapter 22.40 draft with the following ten modifications and comments:

- 1. Section 22.40.050 A.3.a. – Ancillary Cannabis Nursery.** The following amendment is proposed. "Any area solely allocated for use as an ancillary cannabis nursery shall be subject to the location and setback standards set forth under section 22.40.060 E.1 and 3." Section 22.40.060 E.3.a. is amended to say that "Indoor and outdoor cannabis nurseries shall be setback as set forth in Section 22.30.310". Section 22.30.310 is titled Nursery Specialties. This Section does not identify or define "cannabis nurseries" as Nursery Specialties. Section 22.30.310 A.5 refers setbacks to Section 22.30.060 – Agricultural Accessory Structures. Obviously OUTDOOR cultivation is not conducted within indoor structures. Section 22.30.060 D. indicates minimum front setbacks of 50 feet. Is this the intent of this amendment to only setback visible outdoor cannabis plants 50 feet from a project property lines? VERY CONFUSING!

TAAG Recommendation. Specific setback provisions and distances should be disclosed in Section 22.40.050 A.3.a. rather than in unrelated ordinance Sections that present considerable amounts of information related to activities not associated with cannabis operations.

2. Section 22.40.050 A.3.b. – Ancillary Cannabis Processing. The following amendment is proposed. “. . . any structures used for processing shall be subject to the location and setback standards set forth under Section 22.40.065 D.1.a. and D.3. Section 22.40.065.D.3 refers setbacks to Section 22.10.140. Section 22.40.140 D.1. requires a “basic front setback minimum of 25 feet”. Is this the intended setback distance from a project property line for this amendment? VERY CONFUSING!

TAAG Recommendation. Specific setback provisions and distances should be disclosed in Section 22.40.050 A.3.b. rather than in unrelated ordinance Sections that present considerable amounts information related to activities not associated with cannabis operations.

3. Section 22.40.050 D. 3. b. – Outdoor Cannabis Cultivation Setbacks. This issue involves designating residences as “sensitive receptors” or “sensitive sites” in the County’s cannabis ordinances. The August 18, 2020 Board of Supervisors’ hearing, the August 18, 2020 Planning Staff report (pages 8 -9) indicated that Planning was directed “to include a setback distance buffer on single-family residences under separate ownership.” The August 18th 53 page Chapter 22.40 edited “redlined” draft added the following proposed amendment wording (in red) to Section 22.40.050 D.3.b.ii. to the existing ordinance provision. “Outdoor cannabis cultivation shall be setback a minimum of 300 feet from the property lines of the site or public right-of-way, whichever is closer, **and one thousand five hundred (1,500) feet from any existing offsite residence under separate ownership.**”

The Board’s August 18, 2020 hearing record indicates that the Board voted on item (2) of the August 18, 2020 Staff report that referred to proposed amended Sections 22.40.050 D.1.b.i. and 22.40.050 D.3.b.ii. The Board conducted a single 2 -2 tie vote for these two proposed amendments rather than two separate votes for each of the two proposed amended ordinance Sections.

Designating residences as “sensitive receptors” or “sensitive sites (locations)” is an important issue that the County has virtually ignored for more than two years. The public has requested at virtually every County cannabis ordinance hearing that residences be designated as “Sensitive Sites” or “Sensitive Locations” in the County’s cannabis ordinance code sections. The August 18, 2020 hearing Planning Staff report (pages 8 -9) indicated that Planning was directed “to include a setback distance buffer on single-family residences under separate ownership.” The Staff report stated that Planning “researched buffers from schools in other counties”. Five California counties were identified. Why weren’t the other 53 California counties researched and why weren’t residential buffer distances researched at all?

It is interesting to note that SLO County’s cannabis related environmental Mitigated Negative Determinations (MND’s) that are being issued on virtually a daily basis in attempts to comply with California CEQA laws for SLO County cannabis projects’ Land Use Permit approvals recognize residences and other sensitive sites not defined or recognized in the County Cannabis ordinances. For example, a large Templeton area proposed Minor Use Permit cannabis project (DRC2018-00042) scheduled for an October 16th approval hearing is supported by a 114 page MND that makes the following comments regarding sensitive receptors.

MND Page 18 - Sensitive Receptors. "Sensitive receptors are people who have an increased sensitivity to air pollution or environmental contaminants, such as the elderly, children, people with asthma or other respiratory illnesses, and others who are at a heightened risk of negative health outcomes due to exposure to air pollution. Some land uses are considered more sensitive to changes in air quality than others, due to the population that occupies the uses and the activities involved. Sensitive receptor locations include schools, parks and playgrounds, day care centers, **nursing homes, hospitals, and residences.**"

Another example was the Pozo area Beanway – DRC2019-00129 cannabis project denied by the Planning Commission on August 27th. The project MND (pages 33 and 34) makes the following comments:

(c) Expose sensitive receptors to substantial pollutant concentrations? **Sensitive receptors are people or other organisms that may have a significantly increased sensitivity or exposure to air pollution by virtue of their age and health** (e.g. schools, day care centers, hospitals, nursing homes), regulatory status (e.g. federal or state listing as a sensitive or endangered species), or proximity to the source.

(d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

The project includes indoor and outdoor cannabis cultivation, processing, and manufacturing of cannabis grown on-site. **These activities can produce potentially objectionable odors during the flowering, harvest, and processing phases and these odors could disperse through the air and be sensed by surrounding receptors.**"

"The precise adverse health effects of cannabis odors, if any, is unknown. **However, a study published in the Journal of American Medicine in 1986 (Am J Med. 1986 Jan;80(1):18-22) concluded that odors are an important cause of the worsening of certain respiratory illnesses such as asthma.** A person's expectations regarding the harmful effects of an odor may affect airway physiology in asthma sufferers (Journal of Psychosomatic Research Volume 77, Issue 4, October 2014, Pages 302- 308)."

These are just two examples of many County MND CEQA documents issued with very similar if not identical descriptions of recognized sensitive sites including residences.

TAAG Recommendation. Reinstate the proposed edited "redlined" August 18, 2020 Chapter 22.40 53 draft Section 22.40.050 D.3.b. with the County's proposed amended wording as follows. "Outdoor cannabis cultivation shall be setback a minimum of 300 feet from the property lines of the site or public right-of-way, whichever is closer, and one thousand five hundred (1,500) feet from any existing offsite residence under separate ownership."

4. Section 22.40.050 D.5. – Water. This section has three amendments that are a concern. The first amendment item deleted the existing ordinance wording **"unless a greater offset is required through land use permit approval."** Why has this phrase been deleted?

The second amendment added the wording (in red) “offset clearance shall be obtained **prior to establishment of the use or receipt of Business License Clearance pursuant to 22.62.020** through **an approved project specific** or a County approved water conservation program for the respective groundwater basin **that has been subject to environmental review, expressly provides water offsets for cannabis activities, and results in a verifiable reduction of water demand equal to, or exceeding the required water demand offset for the life of the project.** The hearing’s October 6th Staff report (page 6) under the heading Modifications to Water Requirements states that “These modifications clarify existing practices. The first is through an approved project-specific offset, such as removing an existing crop to obtain “water credit” to plant cannabis. The second option allows for cannabis projects to offset through a County-approved water conservation program. **However a County-approved program does not currently exist.”**

The Staff comment that “These modifications clarify existing practices” raises a couple of questions. The first question is why do existing County practices allow for “approved project specific (missing word ?) that are apparently NOT authorized in the existing County cannabis ordinances. The second question is why an existing cannabis ordinance provision indicates that “offset clearance shall be obtained through County approved water conservation program for the respective groundwater basin” when such programs do not exist?

The third amendment in this Section adds the wording “**For clarification and not limitation, Planning Area Standards under Article 9 of the land use ordinance which apply water offset requirements on development for non-agricultural purposes, including but not limited to Section 22.94.025, do not apply to or supersede the offset requirements under this subsection for cannabis cultivation, nursery and processing uses.**” What is the intent of this proposed amended provision?

TAAG Recommendation – Restore the existing Chapter 22.40.050 D.5 ordinance provision as it currently exists with the following amendments.

Cannabis cultivation sites that require a land use permit and are in a groundwater basin at Level of Severity III pursuant to the last Biennial resource Management System report shall provide an estimate of water demand prepared by a licensed professional engineer **Professional Geologist, Certified Engineering Geologist, or Certified Hydrogeologist or other expert on water demand, as approved by the Director of Planning and Building, and a detailed description of how the new water demand will be offset. All water demand within a groundwater basin at Level of Severity III shall be offset at a minimum 1:1 ratio. All water demand within an identified Area of Severe Decline shall offset at a minimum 2:1 ratio unless a greater offset is required through land use permit approval. Offset clearance shall be obtained through a County approved water conservation program for the respective groundwater basin prior to the establishment of the use or receipt of Business License Clearance pursuant to 22.62.02**

5. **Section 22.40.050 D.6.b. – Screening and Fencing.** This Section indicates the following proposed amended wording (in red) “Fencing material shall be solid, **such as wood, masonry or chain link with security slates.** All fencing and/or walls shall be made from material that blends into the **surrounding terrain and shall minimize any visual impacts.**” It is difficult to imagine fencing or walls that blend into surrounding terrain or minimizes visual impacts. D.6.a of this Section states that “Fencing shall be constructed of durable materials for security purposes”. Compliance with D.6.b will, in many

cases, defeat the primary purpose of fencing which is Security. All fencing designs should be incorporated into the Sheriff's Department approval of cannabis project security plans required by proposed amended Section 22.40.040 A.5.a.

TAAG Recommendation. Revise the proposed amended wording to say "Fencing material shall be solid, such as wood, masonry or chain-link with security slates. Tarpaulins, scarp material, dust guard fencing, privacy netting, or woven or non-woven polyethylene plastic, hedges, or buses are not considered fencing.

6. Section 22.40.050 E.7 – Setback Modifications. This Section is amended (in red) to state "(For setback modifications only.) Specific conditions of the site and/or vicinity make the required setback unnecessary **to achieve compatibility with the surrounding land uses.**" The term "compatibility with surrounding land uses" is not defined. "Specific conditions" that allow for the reduction of standard minimum setback and buffer distances are not defined in this Section or in any other Section of cannabis ordinance Chapter 22.40.

TAAG Recommendation. - Amend this Section and all Chapter 22.40 Sections (more than 30) that allow for the reduction of standard minimum setback and buffer distance modifications to require clearly described "specific conditions" that may be considered in justifying and approving proposed reductions of standard minimum setback and buffer distances.

7. Section 22.40.060 E.3 – Indoor and outdoor nursery setbacks. This Section is amended to state "**Indoor and outdoor** cannabis nurseries shall be setback as set forth in Section 22.30.310. See comments and TAAG recommendation regarding the reference to Section 22.30.310 in comment 1. above.

8. Section 22.40.060 E5 – Cannabis Nursery Water Standards – This Section's proposed amendments are identical to Section 22.40.050 D.5. See comments and TAAG Recommendation in 4. above.

9. Section 22.40.060 6.b.– Cannabis Nursery Screening and Fencing - This Section's proposed amendments are identical to Section 22.40.050 D.6.b. See comments and TAAG Recommendation in 5. above.

10. Section 22.40.065 D.3 – Cannabis Processing Facilities Setbacks. This provision refers to Section 22.10.140 for required setback distances. See comments and TAAG Recommendation in 2. above.

Respectfully submitted,
Bruce Jones, TAAG Chair
October 2, 2020