



COUNTY OF SAN LUIS OBISPO

DEPARTMENT OF AGRICULTURE / WEIGHTS & MEASURES

Martin Settevendemie, Agricultural Commissioner / Sealer of Weights & Measures

DATE: June 24, 2020
TO: Young Choi, Project Manager
FROM: Lynda L. Auchinachie, Agriculture Department
SUBJECT: Caldwell/Smyth_Eden Dreams Cannabis Minor Use Permit DRC2018-00183 (3032)

The Agriculture Department has become aware of potential incompatibility issues between cannabis activities and traditional crop production. The proposed indoor and outdoor cannabis activities are located on a Williamson Act property that is proximate to parcels that support wine grape vineyards. These vineyards are known to use pesticides that cannabis is required to be tested for by California law to ensure there are no pesticide residues above the established tolerance levels. The establishment of the proposed project has the potential to cause traditional agricultural operations to cease or curtail their crop production activities near the proposed site because of the state regulations which have imposed pesticide residue thresholds for cannabis which are significantly lower than the residue thresholds allowed for traditional crops.

The Agriculture Element has policies to protect and encourage agricultural operations and conserve agricultural resources. As stated in Section 22.40.020 of the San Luis Obispo County Code, cannabis is not an agricultural commodity with respect to local "right to farm" ordinances nor is it considered "crop production and grazing" as a land use type. In this regard, the County has significant interest in ensuring the continued viability of agricultural operations adjacent and near cannabis cultivation operations. For this reason, the following conditions of approval and finding for project approval are recommended to address the incompatibility issue:

Waiver and Release of Liability – Pesticide Use By Neighboring Agricultural Operations Condition of Approval

The applicant, and their representatives, agents, officers, employees, successors, landlords, tenants, insurers, assigns and any other party claiming a direct or indirect financial, ownership or commercial interest in the project or the cannabis or cannabis products produced or located on the site (Releasing Parties"), shall, as a condition of approval of this land use permit, release, waive, discharge, hold harmless and covenant not to sue any property owner, property operator/tenant or pest control business, pest control advisor or qualified applicator, including their owners, agents, officers, employees and authorized representatives ("Released Parties"), for any claim, loss or damage to cannabis or cannabis products located on the project site arising out of the

recommendation or application of a registered pesticide on an agricultural commodity located outside the project site by a person or business who holds the required state license or certificate and local Operator Identification Number and, if applicable, Restricted Materials Permit, and who follows required state and local pesticide use reporting and does not grossly depart from industry norms, standards and practices regarding the application of said pesticide. This condition does not extend to any loss or damage caused by the gross negligence or willful misconduct of a Released Party, or a violation of Food and Agricultural Code Section 12972 verified by the County Agricultural Commissioner. This condition expressly extends to any statutory violations, except as set forth herein, including but not limited to actual or alleged violations of Food and Agricultural Code Section 12973, so long as the violations are not caused by the gross negligence or willful misconduct of a Released Party. Approval of this land use permit, as a land use decision, is a quasi-judicial action regulatory in nature involving the application of preexisting laws or standards to a specific project and does not involve negotiated consideration by both the County and the application, unlike a development agreement (see 78 Ops. Cal. Atty. Gen. 230), and therefore is not subject to the limitations of Civil Code section 1668 because this land use decision is not contractual in nature. This condition of approval shall have no impact on the enforcement or application of State pesticide laws and regulations by state or local agencies, including but not limited to licensing and certification requirements, pesticide use reporting and operator identification numbers, pesticide use enforcement inspections and investigations, issuance of cease and desist orders, initiation of administrative or criminal enforcement actions, and imposition of administrative, civil and criminal penalties.

Finding for Project Approval

It is the declared policy of this County under Chapter 5.16 of the San Luis Obispo County Code and the County Agriculture Element to protect and encourage agricultural operations and conserve agricultural resources. Pursuant to Section 22.40.020 of the San Luis Obispo County Code, cannabis is not an agricultural commodity with respect to local "right to farm" ordinances nor is it considered "crop production and grazing" as a land use type. In this regard, the County has significant interest in ensuring the continued viability of agricultural operations adjacent and near cannabis cultivation operations. The County acknowledges that the establishment of the proposed project has the potential to cause traditional agricultural operations to cease or curtail their crop production activities near the proposed site because of state regulations which have imposed pesticide residue thresholds for cannabis which are significantly lower than the residue thresholds allowed for traditional agricultural crops. More specifically, the County has received substantial evidence indicating pesticide applicators would refuse to serve an agricultural operation if a cannabis site is permitted in close proximity to the agricultural operation because fear of potential crippling liability should a nearby cannabis operation be able to allege their cannabis has been

made unmarketable by an offsite pesticide application, even if the levels of pesticide residue on the cannabis would otherwise be well within the amounts allowed for traditional agricultural food crops, like citrus, avocado, vineyards, vegetables and strawberries. The County has received reports in other jurisdictions, such as the County of Santa Barbara, of agricultural operations curtailing activities because of nearby cannabis operations, as well as lawsuits being filed by cannabis operations against nearby traditional agricultural operations and pesticide applicators related to cannabis allegedly made unmarketable by pesticide applications in nearby traditional agricultural fields. In accordance with the rights afforded to the County by Article XI, section 7 of the California Constitution, and in order to adequately protect agricultural operations and conserve agricultural resources within the County, the imposition and enforceability of the condition of approval requiring the applicant to release, waive, discharge, hold harmless and covenant not to sue for any claim, loss or damage to cannabis or cannabis products related to an offsite pesticide application, as set forth within the condition of approval, is a condition to the issuance of the land use permit and making the findings required to approve this land use permit under County Code, specifically, the findings required by Sections 22.62.050.C.1 and 22.62.060.C.4c and d. If any clause or provision of this condition of approval is asserted by Releasing Party to be illegal, invalid or unenforceable, or is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws and the applicant does not provide or agree to adequate alternatives, this land use permit may be deemed void ab initio and there would be no vested rights to commence or continue cannabis activities on the site. If you have any questions, please call me at 805.781.5914.