**Planning Commissioners Hearing Phase 3 Ordinance Letter**

**TO**: San Luis Obispo County Planning Commissioners Brown, Multari, Ortiz-Legg and Campbell

**CC**: Supervisors, Legislative Assistance, Selected Planning Department Staff, CAB Board and SCWG members

**Subject**: For Public Record - Comments on the June 25, 2020 San Luis Obispo Planning Commission Hearing on the Phase 3 Cannabis Ordinance Amendments

San Luis Obispo County Planning Commissioners Brown, Multari, Ortiz-Legg and Campbell:

Thank you for the opportunity to address you with this letter regarding the June 25, 2020 San Luis Obispo County Planning Commission Hearing on the Phase 3 Cannabis Ordinance Amendments (Phase 3 Ordinance). I am a SLO County farmer, property owner, taxpayer and voter. My wife and I operate our small family farm business about a mile outside the town of Creston.

**The cultivation of cannabis is not the same as traditional agriculture - cannabis cultivation is in direct conflict with traditional agriculture/small family farm businesses and our residential agriculture neighborhood’s way of life here in San Luis Obispo County (“County”). Therefore, cannabis, both hemp and marijuana, require a specific set of common sense ordinance restrictions to protect existing agriculture and small farm businesses as well as the neighboring agriculture homes and families in our County.**

The purpose of my letter to you is to provide you with facts and data that helps to inform you on this point bolded above. I will ask you to update and amend the Phase 3 Ordinance draft as outlined by the San Luis Obispo County Department of Planning and Building (Planning Department) that will acknowledge these facts and protect our County’s existing small farm businesses, tasting rooms, vineyards, event centers, and residential agriculture neighborhoods from the negative impacts of cannabis cultivation.

Below are the key facts that I will ask you to consider as you finalize your recommendations on the County’s Phase 3 Ordinance to the Board of Supervisors….

**The conflict between residential agriculture neighborhoods and the Cannabis Industry is all about compatible land use, not cannabis use.**

This conflict has been going on now in our County for almost 2 years. The Planning Department continues favoring the Cannabis Industry forcing cannabis grows next to existing residential agriculture homes and small family farm businesses. Forcing these cannabis projects Into communities and neighborhoods where cannabis grows are not land use compatible. We need the Planning Commission to help us find a solution to this conflict with a Phase 3 Ordinance that includes input from residential agriculture constituents - not just the Cannabis Industry working with the Planning Department.

Hemp and Marijuana are the same plant - cannabis. Both are the same nuisance crop and have the same compatible land use issues and problems to residential agriculture families that are forced to live nearby these cannabis grows. The same compatible land use and community health/safety issues/restrictions was identified by the Board of Supervisors in a 4:1 vote on the Industrial Hemp Ordinance in May 2020. These same Industrial Hemp Ordinance restrictions should be applied to BOTH - cannabis as hemp and cannabis as marijuana.

**Our County needs a common sense restricted compatible land use ordinance for cannabis cultivation to protect the health, safety, well being of your residential agriculture constituents.**

Historically, the Planning Department has favored the Cannabis Industry over your constituent’s interests on cannabis land uses. The Planning Department continues to ignore the common sense voice of County residential agriculture and traditional small farm agriculture constituents, and instead continues to favor the Cannabis Industry. This is a direct failure by Planning Department leadership.

It has been a 2 year issue with Planning Department leadership not listening to or incorporating the voice of residential agriculture constituents, including the local Community Advisory Committees (CACs) into cannabis ordinance changes. The following six common sense changes to the Phase 3 Ordinance are not new. These have been communicated at Planning Commission Hearings, Board of Supervisor Meetings, appeals and in law suits along with written communications and in-person meetings with the Planning Department over the last 2 years. These six changes need be included in the Phase 3 ordinance to protect residential agriculture families and traditional agriculture/small family farm businesses.

**These common sense changes have been ignored by the Planning Department in the current Phase 3 Ordinance draft. The Phase 3 Ordinance needs to:**

**1. Include residential dwellings in the “sensitive receptor” definition for cannabis grow restrictions and setbacks.** Despite the Planning Commission recommendation in June 2019 to include residential dwellings in the sensitive receptor designation, setbacks and restrictions, the Planning Department did not include residential dwellings in the Phase 3 Ordinance. Residential dwellings need at least the proposed 1,500 foot property line to property line set back from cannabis grows in the Phase 3 Ordinance.

A 2,000 foot set back from cannabis property line to resident property line is required in the recently approved Industrial Hemp Ordinance. This 2,000 foot set back for hemp cannabis should be the same with the marijuana cannabis set backs.

The California Air Resources Board’s Air Quality Guidance from 2005 was adopted by the San Luis Obispo Air Pollution Control District. SLO County defines “sensitive receptor” locations to include “…schools, parks, playgrounds, day care centers, nursing homes, hospitals and RESIDENTIAL DWELLING UNITS (my emphasis).

The recently approved Industrial Hemp Ordinance also includes residential dwellings as “sensitive receptors”.

The current County pig farm/cattle feed lot ordinance has a 1,000 foot residential dwelling property setback consistent with the “sensitive receptor” definition and 1 mile setback from residential neighborhood area homes.

“County Hog Ranch Ordinance 22.30.100 - Animal Facilities - Specialized E. Hog ranches. The raising or keeping of more than three sows, a boar and their unweaned litter is subject to the same standards that are required of beef and dairy feedlots by Subsection C. A hog ranch shall be located no closer than one mile from any residential category; and no closer than 1000 feet from any school, or dwelling.”

Pot farms like pig farms produce obnoxious outdoor odors. Residential dwellings and families are negatively impacted by these nuisance odors. Cannabis grows also present negative safety, health and well being impacts as well as crime risks to residential agriculture homes and families nearby.

Why did the Planning Department NOT include residential dwellings in the sensitive receptor definition for the Phase 3 Ordinance?

*Common sense requires that residential families need to be included in the sensitive receptor category and your constituents protected at home just like they are when in schools, libraries, playgrounds and rehabilitation centers.*

**2. Address “pesticide drift” and cannabis terpenes that are in direct conflict with traditional agriculture and small farm businesses - this requires a release of liability** for any traditional agriculture pesticide drift within a 3 mile radius of any cannabis grow.

Protections need to be put in the Phase 3 Ordinance that safeguard the County’s existing $2.5 billion traditional agriculture businesses. Currently owned and operated family farm businesses are at risk from up to 3 miles in proximity to a cannabis operation. The cultivation of cannabis IS NOT THE SAME as growing wine grapes, strawberries, fruit trees, vegetables or forage crops.

Traditional agriculture and small family farm businesses are at legal risk to use pesticide sprays (herbicide, fungicide, insecticides etc) on their farm crops up to 3 miles from a cannabis grow because these sprays could “pesticide drift” to the cannabis plants. This "pesticide drift" could contaminate the cannabis end product which is required to undergo extensive testing for pesticide content. In the Creston area, arial pesticide spraying of the alfalfa and forage fields are common along with boom, blast and venturi spraying of pesticides for the fruit, olive orchards, vegetable crops and vineyards.

This is the same conflict to traditional agriculture businesses that has been a disaster in Santa Barbara County. Legal battles are on going in Santa Barbara and Napa counties due to this “pesticide drift” conflict brought on by cannabis grows versus traditional agriculture. See referenced articles below:

* May 1, 2020: Santa Barbara Independent. "Lawsuit Seeks to Shut Down Busy Bee’s Organics in Wine Country. County Must Rein In Booming Cannabis Industry, Coalition Says." https://www.independent.com/2020/04/30/lawsuit-seeks-to-shut-down-busy-bees-organics-in-wine-country/
* March 30, 2020: Santa Maria Times. "Santa Barbara County Planning Commission to recommend more rigorous permit for all cannabis cultivation" https://santamariatimes.com/news/local/govt-and-politics/santa-barbara-county-planning-commission-to-recommend-more-rigorous-permit/article\_93a77c65-d3fd-5e4a-8122-c92a5f2892fd.html
* February 18, 2020: Politico. "Wine vs. weed in Napa Valley" https://www.politico.com/news/2020/02/18/wine-vs-weed-in-napa-valley-115322
* October 17, 2019: Wine Business.com. "Napa County Takes First Step To Ban Commercial Cannabis Cultivation." https://www.winebusiness.com/news/?go=getArticle&dataId=221115
* September 18, 2019: Wine Business Daily News "Napa supervisors prepare to ban cultivation, manufacturing, and sale of commercial cannabis in unincorporated Napa County" https://www.winebusiness.com/news/?go=getArticle&dataId=219744
* August 9, 2019: Cal Coast News. "Proposed Buellton pot grows pit a vintner against weed farms" https://calcoastnews.com/2019/08/proposed-buellton-pot-grows-pit-a-vintner-against-weed-farms/
* July 19, 2019: Edhat Santa Barbara. “Supervisors agree to added restriction for local cannabis growers" https://www.edhat.com/news/supervisors-agree-to-added-restriction-for-local-cannabis-growers
* June 21, 2019: Time Magazine. “The Environmental Downside of Cannabis Cultivation” https://time.com/tag/cannabis/
* June 18, 2019: Santa Barbara Independent. “Santa Barbara County in an Uproar Over Cannabis Odors” From Carpinteria to Santa Ynez Valley Lawsuits, Public Hearings and Civil Protests Complain About Smells Emitting from Green Houses and Fields. https://www.independent.com/2019/06/05/santa-barbara-countyin-an-uproar-over-cannabis-odors
* June 15, 2019: LA Times. “The World’s Largest Pot Farms, and How Santa Barbara Opened the Door” https://www.latimes.com/local/california/la-me-santa-barbara-pot-grows-20190612-htmlstory.html
* May 22, 2019: Los Angeles Magazine. "In Santa Barbara, the War Between Weed Growers and Their Neighbors Is Getting Nasty" https://www.lamag.com/citythinkblog/santa-barbara-weed-war/

**Also…**

**The following language needs to be included in the Phase 3 Ordinance to protect and prevent undo pesticide drift litigation by the Cannabis Industry for existing traditional agriculture and local small farm family farm businesses in the County…**

*“Throughout the life of the project, 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, 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 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. This condition expressly extends to any statutory violations, including but not limited to actual or alleged violations of Food and Agricultural Code Section 12972 or 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, 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.”*

Conversely, the cannabis grows drift terpenes that could negatively impact the quality of the County’s local vineyards, strawberry fields and fruit orchards. Terpenes are a large and diverse class of organic compounds, produced by a variety of plants, including cannabis. Terpenes often have a strong odor. These cannabis terpenes could negatively impact fruit quality - UC Davis is currently studying this impact. In November 2019, UC Davis provided Santa Barbara County a letter that outlined the potential negative impacts of terpenes on vineyard and grape quality. In Napa Valley vineyard/winery grape contracts have been cancelled due to cannabis terpene contamination and the traditional agriculture vineyards have had to go to court versus the cannabis grows in the area.

Cannabis grows are not land use compatible with existing traditional agriculture and small farm businesses - nor are they compatible with nearby wineries, tasting rooms, restaurants and our tourism industry.

*Common sense DOES NOT allow the Santa Barbara County and Napa Valley experience with cannabis grows to be the same disaster to traditional agriculture and tourism here in San Luis Obispo County.*

**3. Keep the cultivation of cannabis indoors and limited to sealed greenhouses that do not vent to the atmosphere.** All cannabis cultivation should be in a closed, sealed, non-venting greenhouse. Outdoor grows can not provide odor controls across property lines to local neighborhoods or family homes. Nuisance odors should not be detectable outside of indoor green house structures - and need to have the most current available odor control technologies.

Outdoor grows can not prevent the cannabis odors/air pollution from crossing property lines and impacting the health/safety of neighboring homes and farms. Rigorous indoor grow only odor control standards are needed to protect adjacent property owners and neighborhood residents from the strong odors of cannabis cultivation. Only indoor grows can help mitigate these negative odor impacts on adjacent properties and protect the public safety and welfare of residents

*Common sense should limit cannabis grows to indoors only and require no odors to be detected outside of any indoor grow buildings/greenhouses.*

**4. Eliminate industrial chemical manufacturing/extraction processes (including ethanol and liquid carbon dioxide) on Agriculture Zoned lands.**  No use of chemical extraction processing of the cannabis biomass including use of ethanol or liquid carbon dioxide extraction industrial manufacturing processes should be allowed on agriculture lands. There are significant risks of ﬁre/explosion hazards as well as untested environmental impacts to land, air and neighboring shared water/aquifers with these chemical extraction processes.

The chemical extraction of THC for marijuana and CBD for hemp is NOT like a winery making wines. It uses ethanol (alcohol) or liquid carbon dioxide under high pressures as a solvent to chemically take the THC/CBD out of the cannabis plant biomass. This is an industrial chemical process, it is flammable and can cause an explosion if not operated under Good Manufacturing Practice (GMP) standards. This is NOT a natural fermentation process using yeast to produce the alcohol from sugars into wine.

*Common sense is to eliminate chemical manufacturing/extraction processes using ethanol and liquid carbon dioxide. Put this type of manufacturing where it belongs on Industrial or Commercial Zoned lands - NOT next door to residential agriculture neighborhoods or traditional agriculture farms.*

**5. Require compliance with the California Environmental Quality Act (CEQA).** Do not allow cannabis project exemptions to CEQA. No other industry in SLO County is given CEQA exemptions - cannabis cultivation/processing and resulting impacts to the environment are unknown and unstudied.

Require that CEQA determinations include, as a minimum, the preparation of CEQA Initial Studies to provide the basis and justification for proposed Cannabis project Categorical Exemptions. Each agriculture property in our County has its own unique environmental issues and requirements. The Cannabis Industry needs to comply with CEQA - just like any other business operating in this County.

*Common sense has the County protect our environment through CEQA enforcements as well as protect the health and wellbeing of your constituents from unknown and unstudied cannabis grow environmental impacts.*

**6. Establish strict and specific density limitations for the number of cannabis project cultivations sites that may be near each other in a local residential agriculture neighborhood.**

Multiple cannabis projects should not be “clustered” in any residential agriculture area. A minimum set back of 2,000 feet from cannabis cultivation property lines needs to be established - from cannabis property line to cannabis property line. Multiple cannabis projects amplify the cannabis negative impacts with concentrated odors, compromising the surrounding view sheds with fences and structures that negatively impacts the surrounding country side for miles and attract crime elements. Just look at the pictures in the articles listed above in Carpinteria and Santa Ynez Valley with landscape polluted by long rows of hoop houses and greenhouses. We do not want this to happen to our San Luis Obispo County country landscapes or within our residential agriculture communities.

*Common sense dictates that the County should NOT replicate the disasters in Santa Barbara County with the concentration of cannabis grows in Carpinteria and Santa Ynez Valley and include at least a 2,000 foot set back - property line to property line - for cannabis grows.*

**Finally, please listen to CAC inputs on the Phase 3 Ordinance amendments. The Creston Advisory Body (CAB) and the Creston Community DO NOT want cannabis grows next door to our farms, residential agriculture neighborhoods, homes and families.**

A CAB letter on the Industrial Hemp Ordinance was sent to the County earlier this year where CAB states our community concerns and position on cannabis grows - it’s same for both hemp and marijuana. Please listen to your County CACs and constituents on this conflict of issues regarding cannabis grows specific to compatible land use and our rural country way of life. Cannabis grows are not compatible land use within our Creston Community or our community’s safety, health and wellbeing.

As the Planning Commission you have seen all of this before from the public - nothing new in my email to you that has not been written or presented many, many times to this Planning Commission. Over the last two years your residential agriculture constituents have been asking for your help. Yet, the Planning Department continues to ignore your constituent’s recommendations and these six common sense changes outlined above in the proposed Phase 3 Ordinance draft.

**Not including these six common sense changes in the Phase 3 Ordinance is a failure of Planning Department leadership.**

Please stop this ongoing conflict to residential agriculture neighborhoods and traditional agriculture in our County. These cannabis projects negatively impact our communities, homes and families. Please represent us - your constituents - and OVER RULE the Planning Department and their historic and demonstrated bias for the Cannabis Industry by adding these changes to the proposed Phase 3 Ordinance…

1. **Include residential dwellings in the “sensitive receptor” definition** for cannabis grow restrictions and setbacks. This Planning Commission made this recommendation in June 2019.
2. **Address “pesticide drift” and cannabis terpenes that are in direct conflict with traditional agriculture and small farm businesses - this requires a release of liability** for any traditional agriculture pesticide drift within a 3 mile radius of any cannabis grow.
3. **Keep the cultivation of cannabis indoors** and limited to sealed greenhouses that do not vent to the atmosphere. Outdoor grows can not prevent the cannabis odors/air pollution (or pesticide drift) from crossing property lines and impacting the health/safety of neighboring homes and farms.
4. **Eliminate industrial chemical manufacturing/extraction processes (including ethanol and liquid carbon dioxide) on Agriculture Zoned lands.** Put manufacturing where it belongs on Industrial or Commercial Zoned lands.
5. **Require compliance with the California Environmental Quality Act (CEQA).** All SLO county businesses must comply with CEQA. Do not allow cannabis project exemptions to CEQA.
6. **Establish strict and specific density limitations for the number of cannabis project cultivations sites that may be near each other** in a local residential agriculture neighborhood. Do not replicate the disaster in Santa Barbara County.

The cultivation of cannabis is NOT traditional agriculture in SLO County. Cannabis, both hemp and marijuana, require a specific set of common sense ordinance restrictions to protect existing agriculture and small farm businesses as well as the neighboring agriculture homes and families in San Luis Obispo County.

I urge you to include these six common sense changes in your Planning Commission Phase 3 Ordinance recommendations to the Board of Supervisors.

Thank you,