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VIA HAND DELIVERY

Joseph Lawlor, Project Planner
Contra Costa County
30 Muir Road
Martinez, CA 94553

Re: **Notice of Appeal: Planning Commission Action on January 27, 2010 regarding LP20-2020 (Diablo Valley Farms, 4425 Sellers Avenue)**

Dear Mr. Lawlor:

This letter is notice of appeal pursuant to Contra Costa County (“County”) Code (“Code”) Section 26-2.406, of the County Planning Commission (“CPC”) action on January 27, 2021 for Agenda Item 2b, upholding an appeal by the City of Brentwood of the County’s issuance of a cannabis cultivation permit to Diablo Valley Farms (“DVF”). After adopting Zoning Ordinance Chapter 88-28 – Cannabis Regulation (“Cannabis Regulation”), the County issued a request for proposals seeking qualified applicants for commercial cannabis cultivation. On December 10, 2019, Appellant’s proposal for commercial cannabis cultivation at DVF was selected by the County Board of Supervisors (“CBOS”) as one of eight RFP respondents invited to apply for a land use permit as required by the Cannabis Regulation. Appellant submitted an application for a land use permit, LP20-2020, (“Permit”) to establish a commercial cannabis cultivation facility to be located at DVF, which is an existing plant nursery (“Project”). The Permit, including conditions of approval, was approved by the Zoning Administrator on November 2, 2020. The City of Brentwood appealed the Zoning Administrator’s decision approving the Permit to the CPC, and although the Project complies with all requirements of the Cannabis Regulation and County Staff has consistently recommended approval of the Permit, the CPC upheld the appeal and denied the Permit.

The owner of DVF, Robert Nunn, and the applicant, Lisa Borba, (collectively “Appellant”) appeals the CPC decision on the following grounds:

1. The CPC decision to deny the Permit was based on an erroneous finding that Sunset Park is a “youth center.” This finding is not supported by the evidence and provides grounds for appeal under Code Section 26-2.2404(c)(3). Sunset Park is a park and is not a youth center within the

meaning of the Cannabis Regulation and Section 11353.1 of the California Health and Safety Code (“HSC”). The Cannabis Regulation states that, unless provided otherwise, the definitions set forth in Division 10 of the Business and Professions Code and the HSC shall apply. Under the Cannabis Regulation, a commercial cannabis cultivation facility cannot be located within 1000’ of a school, day care center, youth center or drug treatment center (collectively “Protected Uses”). The legislative history of the adoption of the Cannabis Regulation demonstrates that the CBOS considered and ultimately rejected inclusion of parks within the category of Protected Uses. By its express terms, HSC Section 11352.1(e)(2) does not include parks within the definition of a youth center. The CPC’s finding that Sunset Park is a “youth center” and thereby a Protected Use is not satisfied by evidence and is a gross misinterpretation of the Cannabis Regulation.

2. Code Section 26-2.2402(c)(1) provides that a property owner may appeal a decision if the owner’s property rights have been adversely affected by the denial of the permit and the decision does not comply with the General Plan. Laws are to be applied fairly and uniformly. As stated in the January 27, 2021 Staff Report, the Permit complies with all aspects of the Cannabis Regulation, applicable zoning and the General Plan. Denial of the Permit based on an inaccurate and inconsistently applied reading of the requirements of the Cannabis Regulation is a denial of equal protection. The CBOS cannot turn its back on the laws that it adopted after years of careful consideration. Appellant has invested significant time and tens of thousands of dollars in reliance on the County’s application of its standards on a fair and equitable basis.

Appellant requests the Board of Supervisors uphold this appeal of the CPC, reinstate the Permit as approved by the Zoning Administrator, and decline to add any additional conditions requested by the City of Brentwood to the Permit.

Very truly yours,



Shawn J. Zovod

ec: Contra Costa County Board of Supervisors
Robert Nunn
Lisa Borba
Deborah Castles