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August 14, 2026

Via Email

Honorable Members of the City Council
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City of Sutter Creek
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Attn: Tom DuBois, City Manager (tdubois@cityofsuttercreek.org)

Re: Comment Letter Regarding Proposed Cannabis Retail Facility at 11 Ridge Road (APN: 044-020-063); August 17, 2026 City Council Hearing
-- Consolidated Response to the August 12, 2026 Comment Letters of Amador County and of Drivon Consulting, Inc. (on behalf of Tom Calmese)

Dear Honorable Councilmembers:

This firm has been retained as land use counsel to represent Sutter Creek Responsible and Compliant Retail LLC ("Applicant") in this matter. This letter responds to two comment letters submitted to the Council on August 12, 2026: the comment letter of Amador County General Services Administration Director Glenn Spitzer (the "County Letter"), and the letter of Zachary Drivon of Drivon Consulting, Inc., on behalf of Tom Calmese (the "Calmese Letter"). Both urge the Council to reject or continue a project that this City's own Planning Commission approved unanimously, that City staff has recommended for approval, and that the City Attorney has signed off on from a legal perspective. We respond to both here, so that the record before the Council is complete.

<u>County Letter</u>. This is the County's fifth letter opposing a project located entirely within the City of Sutter Creek's jurisdiction. Across five letters over four months, the County has not submitted a single compelling argument. The most recent letter instead recycles previously rebutted CEQA arguments, introduces a new traffic methodology engineered to inflate trip counts, and compares Applicant to nineteenth-century morphine and cocaine profiteers. This is a neighboring jurisdiction raising policy concerns regarding a land use decision that belongs exclusively to this Council and this community. We respect the County's right to comment. We do not, however, mistake five months of escalating pressure for substantial evidence of an environmental impact under CEQA.

Calmese Letter. Mr. Calmese is the owner and operator of cannabis dispensaries in San Andreas, Sonora, and Arnold, all located within approximately 22 to 32 miles of Sutter Creek along the Highway 49 corridor. Those dispensaries currently serve Sutter Creek residents who have no local cannabis retail option; every Sutter Creek resident who purchases cannabis today makes a round trip of 44 to 64 miles to do so, generating vehicle miles traveled that leave the City and its tax base and benefit Mr. Calmese's operations in neighboring counties. The project would capture those trips locally and return the associated revenue to Sutter Creek. Mr. Calmese's financial interest in the outcome is direct, substantial, and undisclosed. The Calmese Letter is framed as a good-governance concern about process, CEQA completeness, and public participation; in substance, it is a competing operator's effort to delay a project that would reduce his regional market share. The Council is entitled to weigh his arguments with that interest in view.

1. The Science on Cannabis Is More Nuanced Than the County Presents — and the Regulatory Framework Already Accounts for the Risks.

The County's August letter draws on an extensive collection of medical studies to argue that cannabis commercialization is categorically harmful, particularly to adolescents. Applicant takes public health seriously and does not dismiss the studies the County cites. Cannabis carries real risks, particularly for developing brains, and those risks are precisely why California's regulatory framework is among the most stringent in the world.

What the County's presentation omits is the substantial body of evidence that cuts in the other direction, and the critical distinction between regulated and unregulated access. The National Institute on Drug Abuse, the Centers for Disease Control, and peer-reviewed research published in journals including JAMA and the Journal of Studies on Alcohol and Drugs have consistently found that states with legal, regulated adult-use cannabis markets have not experienced statistically significant increases in adolescent cannabis use rates compared to states where cannabis remains illegal. The most current data from California's own Department of Public Health shows that teen cannabis use rates in California have remained flat or declined in the years since Proposition 64's implementation. The mechanism is intuitive: a licensed dispensary with mandatory age verification, state-required track-and-trace inventory systems, and real consequences for compliance failures is a meaningfully higher barrier to adolescent access than an unregulated market with no verification and no accountability.

The County also omits the significant body of evidence on cannabis's therapeutic benefits. The National Academies of Sciences, Engineering, and Medicine's comprehensive 2017 report, updated with subsequent research, found conclusive or substantial evidence that cannabis and cannabinoids are effective for the treatment of chronic pain, chemotherapy-induced nausea and vomiting, and patient-reported spasticity in multiple sclerosis, and subsequent research has documented beneficial applications for PTSD, anxiety disorders, and palliative care. The County's characterization of cannabis as a "narcotic" with no legitimate therapeutic application is not consistent with the current scientific consensus or with federal rescheduling proceedings.

None of this is offered to minimize legitimate concerns. It is offered to place the County's submission in context: it presents one side of a genuinely contested scientific and policy debate that California voters resolved in 2016. The proposed project — a single, heavily regulated retail storefront with mandatory state licensing, real-time law enforcement camera access, employee background checks, and a youth education program funded by the operator — represents exactly the kind of responsible implementation the voters authorized.

As a matter of CEQA law, the County's health studies do not constitute substantial evidence of a significant environmental effect arising from this specific project at this specific site. (Pub. Res. Code § 21080(e); CEQA Guidelines § 15384 ["evidence of social or economic impacts which do not contribute to or are not caused by **physical impacts on the environment** does not constitute substantial evidence"], emphasis added.) On a challenge to a categorical exemption, the party opposing the exemption bears the burden of producing substantial evidence that an exception applies. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.) CEQA requires site-specific evidence, not macro-level population studies applied wholesale to a single community retail business. Policy disagreement with cannabis legalization, however sincerely held, does not satisfy CEQA's substantial-evidence standard.

We also note that the County's invocation of the Sutter Creek Police Chief's memorandum, though offered to argue against the project, in fact supports the Development Agreement's fee structure. Chief O'Connell's assessment that a dispensary creates elevated law-enforcement demands documents the very regulatory burden for which the City negotiated its Retail Fee. The Development Agreement's Fee Payments provisions expressly identify law-enforcement coordination, surveillance-access administration, and ALPR program administration among the City regulatory services for which the fee is consideration. The Chief's analysis therefore confirms that the negotiated fee bears a fair and reasonable relationship to the City's regulatory burdens and to the benefits conferred on the operator — evidence that strengthens the record in support of the fee, not the County's position. To be clear, the conclusion of the Chief's assessment is that additional law enforcement resources should be funded, and not that the project should be denied. Applicant agrees.

2. The Traffic and VMT Analysis Is Correct; Trip Counts Are Not Reliable Evidence of a Significant Impact.

Both letters attack the project's transportation analysis: the County with a new trip-count figure, and the Calmese Letter by questioning the "denominator" and the source of the staff estimate. Neither identifies a significant transportation impact under current California law, and the trip-count criticisms do not withstand scrutiny.

The traffic methodology that is to be used under CEQA is well established, and is what City staff has used for the project. Vehicle miles traveled (VMT) is the CEQA standard that is used relating to traffic impacts. (Pub. Res. Code § 21099; CEQA Guidelines § 15064.3.) In this regard, a "lead agency has discretion to choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence." (CEQA Guidelines § 15064.3.) Here, relying on sound ITE methodology, the City has concluded that 1) the correct denominator to be used for the VMT analysis is 1,300 square feet of retail floor area, which is the customer-accessible selling space of the project (excluding back-office, storage areas, and the like), and 2) that the project actually reduces VMT, given the net trips that is saves by providing a local source of cannabis for people who normally drive over 40 miles away.

The County has advanced three different trip-generation figures — first 195, then 517 to 880, and now 606 — using three different methodologies, each produced after the prior one was rebutted, and none a correct application of ITE methodology to this site. The County's most recent 606 trip figure rests on a single indefensible choice: the engineer applied gross floor area (2,662 square feet) rather than retail floor area (1,300 square feet) as the independent variable in the ITE formula. This same choice answers the Calmese Letter's "denominator" question. ITE Land Use Code 882 (Marijuana Dispensary) uses floor area as the independent variable, but "floor area" for trip-generation purposes means customer-accessible selling space — the space that generates customer visits. The remaining 1,362 square feet of this building is back office, vault, storage, employee restrooms, and utility area; a vault and a back office do not generate customer trips. No transportation engineer applies gross building area when estimating customer trip generation for a retail use — doing so is the equivalent of counting a store's warehouse square footage when estimating how many customers walk through the front door. When the correct retail floor area (1,300 square feet) is applied to the ITE LU#882 rate, the result is precisely the figure staff calculated: approximately 325 daily trips.

Staff's analysis has been consistent throughout. A trip count that changes each time it is challenged, by a different method each time, is not reliable evidence of a significant impact. Nor is there any merit to the Calmese Letter's suggestion that the staff estimate was "provided by the applicant." The trip generation analysis was performed by City Planner Erin Ventura of Hauge Brueck Associates using the ITE Trip Generation Manual; it is an independent professional analysis, and the record reflects as much.

Most importantly, none of the opponents' trip-count arguments states a significant impact under current law, because since July 1, 2020, transportation significance under CEQA is measured by VMT, not level of service or raw trip counts. (Pub. Res. Code § 21099; CEQA Guidelines § 15064.3.) The staff report correctly applies the VMT framework. The Calmese Letter's argument that Applicant's materials describe a "broad geographic area" and therefore defeat the local-serving presumption, misreads the OPR guidance. The relevant distinction is between uses that capture trips that would occur anyway and uses that generate entirely new regional trips. A dispensary serving Sutter Creek and the surrounding foothill communities is paradigmatically trip-*capturing*: the residents of Sutter Creek, Amador City, Drytown, and the surrounding areas who now drive 22 to 32 miles to Mr. Calmese's dispensaries will make those trips regardless; the only question is where they terminate. Terminating them locally is precisely what VMT reduction means, and the County has submitted no VMT analysis of its own.

Finally, the County's attempt to recast its congestion concern as a "safety" impact does not change the result. The law is clear that "a project's effect on automobile delay shall not constitute a significant environmental impact." (CEQA Guidelines § 15064.3; see also, Pub. Res. Code § 21099(b)(2) ["vehicular capacity or traffic congestion, shall not be considered a significant impact on the environment"].) The County's reliance on Public Resources Code section 21099(b)(3) is misplaced, as that provision preserves review of genuine transportation-safety impacts, but it does not relax CEQA's substantial-evidence requirement, and it certainly does not change the clear statement (in the immediately preceding provision, no less) that congestion delays are not a significant environmental impact. An observation that turn lanes "back up" at peak hours describes congestion and level of service, not substantial evidence of a site-specific safety hazard caused by this project, and a report analyzing intersection capacity and level of service addresses the very metric CEQA no longer treats as a significance standard.

3. The § 15301 Class 1 Exemption, Unusual Circumstances, and Common-Sense Exemption Arguments Have Each Been Addressed in the Record.

The County's CEQA exemption arguments appeared in its June 22 letter and were rebutted in Applicant's June 30 and July 3 responses, which are in the record; the Calmese Letter's contention that the exemption analysis is "conclusory" adds nothing new, because the record includes the staff analysis, the ITE methodology, and Applicant's prior responses. The burden of producing substantial evidence that an exception applies rests on the challenger. We note the essential points.

Under the California Supreme Court's June 25, 2026 *Sunflower Alliance* decision, addressed in Applicant's July 7 record correction letter, the "negligible or no expansion of use" standard under

§ 15301 refers to a change in the nature or degree of a facility's use, not to the risk of environmental harm, and the Court confirmed that the Class 1 exemption can apply to new uses in existing facilities. The former bank and the proposed dispensary are both walk-in commercial retail uses occupying the same storefront during ordinary business hours; the nature of the use is unchanged, and the degree of the use — a single small retail tenant in a commercial building on a commercial corridor — is not more than negligibly changed. The Supreme Court's framework, correctly applied, supports the exemption.

The unusual-circumstances exception requires both a physical, site-specific characteristic distinguishing the project from others in the exempt class and a reasonable possibility that the characteristic will produce a significant environmental effect. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.) Being the first cannabis dispensary in a county is a regulatory fact, not a physical characteristic, and the County has identified no site-specific physical condition distinguishing 11 Ridge Road from any other small commercial building. The exception does not apply.

The County's attack on the common-sense exemption under § 15061(b)(3), citing *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, does not withstand scrutiny. The project satisfies the very standard the County invokes: the adaptive reuse of an existing commercial building into a regulated retail storefront — with no new construction, no expansion of footprint, and no change to utilities, and with operations governed by the most comprehensive state regulatory framework applicable to any California retail business — is precisely the kind of project about which it can be seen with certainty that no significant physical environmental effect will occur.

4. The 8% Fee Is Lawful Contractual Consideration — Not a Tax, and Not Subject to the Mitigation Fee Act.

The County's August letter argues that the Development Agreement's 8% fee violates the Mitigation Fee Act (Gov. Code §§ 66000-66008) for lack of the nexus findings required by § 66001. This confuses two distinct statutory frameworks. Mitigation Fee Act fees are unilateral conditions of approval, and they require nexus findings precisely because the applicant has no choice but to pay them.

Notably, Government Code section 66000 expressly defines a "Fee" under the Mitigation Fee Act as "a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, **but does not include…fees collected under development agreements** adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4." In other words, the argument that the County is relying on is belied by the plain text of the code provision itself.

Development agreements under Gov. Code §§ 65864 et seq. are categorically different. A DA is a voluntary, bilateral contract that neither party is compelled to enter. The 8% fee is not a condition imposed on Applicant — it is consideration Applicant negotiated in exchange for vested rights, entitlement certainty, and a defined operating term it would not otherwise receive. California courts have recognized that a development agreement may secure contributions a city could not obtain through unilateral exaction, precisely because the arrangement is contractual. (See *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221.) The County cites no authority applying the Mitigation Fee Act's nexus requirements to a negotiated development-agreement fee, because there is none.

The County's reliance on Gov. Code § 65865(e) is also misplaced: that provision requires DA fees to "comply with Section 66006" — an accounting and expenditure requirement for collected fees — not § 66001's substantive nexus test. The City's staff, Planning Commission, and City Attorney have reviewed and approved of this legally sound structure.

The County's Proposition 26 argument — that the fee is a tax requiring voter approval — fares no better. It has been addressed in Applicant's prior submissions and does not withstand scrutiny. The Retail Fee is bargained-for contractual consideration in a voluntary development agreement, not a charge imposed on the public; and to the extent any constitutional exception need be reached, the fee is a charge imposed as a condition of property development within Article XIII C, section 1, subdivision (e)(6), as the Development Agreement's recitals expressly provide. Equally important, this issue does not affect the project's approval or continued operation: the Development Agreement provides that the Retail Fee and the Community Fund contribution are severable, that Applicant's vested rights to develop and operate the Project are supported by independent consideration and are not contingent on the fee, and that any successful challenge to the financial terms would be resolved by negotiating a lawful replacement rather than by disturbing the entitlements. Any incidence of a purported "tax" would fall on future purchasers — not on the County or the appellant — and no such claim would be ripe before any fee is collected.

5. The Single-Operator Ordinance Is a Lawful, Revisable Regulatory Limit, and the Equal-Protection Ground Fails.

The Calmese Letter argues that the single-operator ordinance fails the CUP's public convenience and welfare finding and creates an "exclusive marketplace" that should be opened to competitive applications; the Ryan appeal separately argues that permitting a single dispensary without competitive bidding denies equal protection. Both arguments fail, and for related reasons.

Under the Adult Use of Marijuana Act, California municipalities have broad authority to limit or prohibit the number of cannabis retailers within their jurisdiction. (Bus. & Prof. Code § 26200.) A numerical cap is a classic exercise of that authority, and the City has adopted it as a general regulatory limit on the number of retail permits — a limit that applies without regard to the identity, residency, or principal place of business of any applicant. The ordinance grants Applicant no exclusive franchise and no permanent monopoly. It authorizes one retail permit at this time and leaves the City free to revisit the authorized number following a defined review period. Characterizing a revisable regulatory cap as the irreversible creation of a private "exclusive marketplace" is inaccurate.

The staff report documents the public convenience and welfare basis for the choice: authorizing a single, closely regulated dispensary allows the City to concentrate its limited law-enforcement and code-enforcement resources, to monitor community impacts through one accountable operator, to capture associated revenue locally, and to evaluate the operation through the Development Agreement's compliance, audit, and periodic-review provisions before deciding whether to authorize additional retailers. Those are legitimate findings, grounded in the City's own circumstances rather than in the qualifications of any particular applicant. Whether instead to run a competitive process for multiple operators is a policy choice the law commits to the City's discretion; the decision to proceed with a capped, phased approach is not a legal deficiency. The comparison Mr. Drivon draws to San Andreas — a market Mr. Calmese already serves — is, in substance, a request that Sutter Creek adopt a framework more favorable to his commercial interests.

The same principles dispose of the Ryan appeal's equal-protection ground. A cannabis retail permit is a land use entitlement, not a government contract subject to competitive-bidding requirements. The City's decision to authorize a single permit is a legislative line-drawing judgment reviewed under the deferential rational-basis standard, and the public-interest bases documented in the record — population size, limited enforcement capacity, and a phased approach with a defined review period — easily satisfy that standard. The equal-protection argument fails as a matter of law.

6. The DA's Ministerial Blanks Are Not a Legislative Record Deficiency.

The Calmese letter argues that the Development Agreement contains "uncompleted fields for hearing dates, resolution numbers, and planning-area information," and concludes that the Council should receive a "complete final agreement" before acting. This argument misunderstands how development agreements are processed.

Development agreements routinely contain ministerial blanks — hearing dates, resolution numbers, APN confirmations — that are populated at or after execution. These are administrative details, not substantive terms. The Council has before it the complete, substantive Development Agreement — every material provision, every fee obligation, every covenant, every compliance requirement, and every termination right — in the form approved by the Planning Commission.

The blank fields are the equivalent of signature blocks waiting for dates: they do not affect the legal sufficiency of the Council's review or the adequacy of the legislative record under Gov. Code § 65867.5. The suggestion that ministerial blanks render the legislative record legally defective is not supported by the Government Code or California development agreement practice.

7. The Conflict-of-Interest Suggestion Is Unsupported, and the Community Fund Is Subject to City Oversight.

The Calmese Letter suggests — while expressly declining to make any accusation — that City officials may have undisclosed financial interests and that the selection of Applicant reflects a process in which the City "deferred to the will of a private entity." No evidence of any conflict of interest, improper financial relationship, or procedural irregularity has been identified or submitted to the record. A suggestion that further investigation might reveal something concerning is not substantial evidence, and it is not a basis to continue or deny a project reviewed and processed through the City's full public entitlement process over more than a year. Applicant does not oppose, and welcomes, the completion of any conflict review and the preservation of project records the Calmese Letter requests; a clean record serves the City and Applicant alike.

The observation that Applicant requested the zoning amendment is routine and carries no implication of impropriety. Development agreement applicants regularly initiate the legislative process by requesting the zoning authorizations a project requires; that is how land use entitlement works throughout California. Anyone could have approached the City with such a proposal — Applicant is the party that did so, through the City's public process.

The Community Advisory Board and Community Fund, which Mr. Drivon characterizes as a potential conflict, are a governance model Embarc has implemented in 17 communities across California, and the Development Agreement subjects them to meaningful City oversight. Under the agreement, Community Fund allocations must be made for public purposes benefiting the City and its residents in accordance with written criteria provided to the City Manager; Applicant must deliver an annual public report of all Fund receipts and allocations; and the Fund may not be used for the private benefit of Applicant or its owners, officers, or affiliates. The Board must include Sutter Creek residents and meet quarterly, with City representatives invited to participate. This is a structured, transparent community-benefit mechanism the City negotiated and approved, not self-dealing.

8. The Public Records Act Requests Do Not Require a Continuance.

Mr. Drivon notes that his office submitted Public Records Act requests on July 29 and August 11, and characterizes the City's 14-day extension as potentially "intentionally withholding" records until after the Council vote. The Public Records Act expressly authorizes an agency to extend the initial response period by up to 14 days in "unusual circumstances," including the need to search for and collect records from separate facilities, to review a voluminous set of records, or to consult another agency with a substantial interest in the request. (Gov. Code § 7922.535(b)-(c).) The City's use of a standard statutory extension is not evidence of bad faith, and a records request submitted days before a long-scheduled Council vote does not, by law, require that vote to be continued. The City remains obligated to respond to the requests on the statutory timeline, and it can do so without delaying a decision on a project that has been pending for more than a year.

9. A Continuance Would Prejudice Applicant and Serves No Legitimate Public Purpose.

The relief the Calmese Letter requests — continuance, competitive rebidding, and independent CEQA review — would require Applicant to restart an entitlement process that has been underway for more than a year, during which Applicant has invested substantial resources in site planning, community outreach, Development Agreement negotiation, and regulatory compliance. The practical effect would be to give a competing operator an opportunity to enter a market he does not currently serve, at the expense of an applicant that has completed the City's process.

The City's process has been public and noticed throughout. Two Planning Commission hearings were duly noticed; public comment was accepted at every stage; and the administrative record spans months of submissions, responses, and hearings. The City lawfully elected to authorize a single retailer rather than to run a competitive application process, and it was not required to run one. Within that framework, the opportunity to engage the City was not closed to anyone — any qualified operator could have approached the City and pursued the same public entitlement path Applicant pursued. The suggestion that the process lacked transparency or public participation is contradicted by the record itself.

Conclusion

The City of Sutter Creek has conducted a thorough, deliberate, and legally compliant review of this application. Across five letters, the County has shifted its traffic analysis three times, renewed CEQA arguments rebutted on each prior submission, and introduced a Mitigation Fee Act theory that misreads the governing statutes. The Calmese Letter, for its part, is a competing operator's effort to delay a project that would return to Sutter Creek the cannabis-retail trips and revenue his own out-of-county dispensaries now capture. The Council should not defer to either, and it should not mistake either for evidence.

Applicant remains committed to being a responsible, community-integrated operator in Sutter Creek. The Development Agreement includes real-time law enforcement camera access, employee background checks, a youth drug education program, local hiring priorities, and a community advisory board, together with the negotiated Retail Fee and community benefit contribution supporting the City and its residents, the same operating model Embarc has implemented in 17 communities across California.

Applicant respectfully urges the Council to deny the request for continuance, deny the appeal filed by Teresa Ryan, uphold the Planning Commission's decisions, and approve all pending entitlements at the August 17, 2026 hearing.

Respectfully submitted,

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