GENERAL SERVICES ADMINISTRATION

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Via Email to listed email addresses
To City Council for the City of Sutter Creek
City Manager Tom DuBois: tdubois@cityofsuttercreek.org
City Planner Erin Ventura: eventura@haugebrueck.com

Re: Embarc THC Dispensary Project (August 17 City Council)

Dear Sutter Creek City Council:

The proliferation of marijuana dispensaries, offering products ***more than 20Xs stronger*** than the marijuana available in the 1990s, has overwhelmed and degraded our youth and culture. The New York Times reports daily marijuana use has grown exponentially from an estimated (1) million daily users in 1992 to an estimated ***18 million*** daily users in 2023, far surpassing alcohol use (at 14 million daily users). The numbers are likely much higher today, and the epidemic is accelerating beyond society's ability to control or address the impacts.

As discussed in the County's June 3, 2026 letter, a recent wave of high-quality metadata studies and large-data-set longitudinal studies (the gold standard of medical research) have ended any legitimate debate about marijuana's effects. Those studies and reports (many released just this year) have been submitted to the City and are available to the public for review. Here is a short summary of the conclusions:

(1) Adolescents who regularly use marijuana suffer potentially permanent deficiencies in working memory, processing speed, language, and other cognitive functions. (American College of Neuropsychopharmacology (2026));
(2) IQ in adolescents "decreases by 2 points each year after the start of frequent/dependent use." (European Archives of Psychiatry and Clinical Neuroscience (2024));
(3) Adolescents who regularly use marijuana are over twice as likely to develop psychotic and bipolar disorders. (Journal of American Medical Association (JAMA)(2026));
(4) Adolescents who use marijuana had a 58% increase in developing anxiety disorders and 80% increase in suicide attempts. (ScienceDirect (2026));
(5) Adolescents who *abuse* marijuana (*i.e.,* daily, significant use) show a two to four-fold increase in anxiety disorders, a five-fold increase of major depression, and a five-fold increase in psychosis. (EAPCN (2024));
(6) Adolescents who use marijuana have decreased education outcomes and a reduced "motivation to engage in everyday activities such as a diminished desire to study or work," or to "engage in social or recreational activities." (EAPCN (2024));
(7) "A new analysis reveals that more than 40% of drivers who died in motor vehicle crashes tested positive for [THC]." (ScienceDaily (2025));

(8) Commercial access to marijuana resulted in 469% increase in poison control calls for small children. (California State Auditor (2025));
(9) Commercial access to marijuana resulted in 1,808% increase in ER visits for persons over 65. (American Geriatrics Society (2023)); and
(10) Regular use of marijuana caused a six-fold increase in heart attacks for people under 50 years old and a four-fold increase in strokes. (American College of Cardiology (2025)).

Corporations like Embarc push these THC narcotics with horrifying efficiency and sophistication. The product marketing (samples provided by the County) has strong appeal for children. The medical research shows that—despite age-verification security that prevents adolescents from buying at the dispensaries—rates of marijuana abuse for adolescents rise nearly 400% when the drug is commercially accessible and convenient. (American Journal of Preventive Medicine (2026).) These adolescents use what kids call "plugs" to buy the drugs. These are older friends, relatives, and locals on social media willing to make a quick buck. The convenience of a local dispensary—the ease of accessibility—is the most important factor to adolescent drug use.

The EAPCN metadata study also confirmed that claims of benefit are generally meritless or wildly exaggerated. In almost all cases (with limited exception for ailments such as epilepsy and muscle spasticity), the harm significantly outweighs any benefit. For epilepsy, the benefit derives from CBD, not the psychoactive THC component. The study also confirmed that there are more effective and far less harmful drugs available for pain and chemo-induced nausea.

Historical Context: THC narcotics are following a predictable drug epidemic cycle, and are now entering the backlash phase.

Since California legalized marijuana for medical use in the 1990s, the public has been told wild and unsubstantiated claims about how marijuana is harmless and beneficial. And now we have the hard data that proves these claims false. To understand the moment, it is important to put this in a historical context. We have been here before.

Mark Twain famously said, "history doesn't repeat itself, but it rhymes." THC narcotics are following the same predictable cycle we've seen with previous drug epidemics. The cycle involves three phases:

The Delusion Phase: This phase is characterized by the wild and unsubstantiated claims that the drug is a beneficial wonder drug.

The Profit Phase: This phase is characterized by heavy marketing of the drug followed by reckless profiteering.

The Backlash Phase: This phase is characterized by a consensus recognition by the general public that the drug is ruining lives and degrading society.

Morphine followed the same cycle in the second half of the 19th century. The medical establishment heavily marketed morphine as a cure for pain, depression, coughing, diarrhea, anxiety, alcoholism, etc. The commercialization resulted in the country's first major addiction epidemic. It ruined countless lives. Ultimately, medical journals alerted the public to the harms, physicians stopped recommending it, and the public demanded action to address the damage to society. The final nails in the coffin were the 1906 Pure Food and Drug Act and the 1914 Harrison Narcotics Act. Now its use is limited to severe, end-of-life pain.

Cocaine also followed the cycle. In 1887, the U.S. Surgeon General claimed there was no such thing as a cocaine addiction, and he recommended cocaine as a treatment for depression. Sigmund Freud published *Über Coca,* in which he touted cocaine as a miracle drug and a substitute for alcohol "without any of the unpleasant after-effects." Pharmaceutical companies Merck and Parke Davis marketed cocaine for multiple ailments and made fortunes. American pharmacist John Stith Pemberton founded Coca-Cola, introducing cocaine to the masses. Countless cocaine products came to market around the turn of the century.

Then came the consequences—mass addiction, crime, and ruined lives. Freud's 12-year addiction finally came to an end after he admitted to himself that his recommendations led to severe addiction and psychosis. In fact, many of the addicts whose lives were destroyed were the same doctors who recommended cocaine as a wonder drug. By the early 20th century, studies and reports of addiction, toxicity, and abuse led to a reversal of attitudes, and the people demanded legislation, which severely restricted the commercial use of cocaine.

THC-related narcotics are still in the profit phase, but are now clearly entering the backlash phase. It is increasingly common to see public outrage, and that trend will grow as the medical research becomes more widely known. This transition from the profit phase to the backlash phase is characterized by a battle between those who seek to maintain the "drug is harmless/beneficial" lie and those who demand the truth and seek change. Over time, those who seek to prop up the lie will appear more and more ridiculous, until there is no one left to believe the lie. The same battle of ideas occurred with morphine and cocaine, and today, no sane person would claim that cocaine and morphine are harmless or beneficial.

Some may see this letter as hyperbolic because they still view marijuana from a perspective of the 1990s or before. Those days are gone. The accessibility, use, and potency of this drug has exploded on our watch. The THC narcotic epidemic is now ground zero in the battle for our children and our culture. Parents are awakening to the reality that these narcotics are dumbing down the youth, stifling their ambition, permanently damaging them psychologically, and making them lazy, docile, and dependent.

A free society depends on our children growing up with purpose, clear-headed, strong-minded, intelligent, and independent. A culture in which tens of millions of people now medicate themselves daily, while corporations like Embarc expand their market with ruthless efficiency and a public-facing smile, is a direct threat to our nation's continued freedom and prosperity. The time is now to address this epidemic plainly and firmly.

Public health and safety impacts are impacts that must be analyzed under the California Environmental Quality Act (CEQA)

Embarc claims CEQA is unconcerned with the health and safety effects of marijuana on Amador County citizens, but the California Supreme Court holds a different view: "The Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369.)

In its staff report, the planners initially dismissed marijuana's health and safety impacts by mischaracterizing them as "social impacts," which are generally not cognizable under CEQA. But the County correctly pointed out in its June 22, 2026 letter that a public agency cannot avoid an analysis of public health and safety impacts by simply mischaracterizing those impacts as social impacts.

In response to the County's letter, in its June 30 letter, Embarc counsel made two arguments: (1) that "CEQA generally does not require an agency to analyze how a project may affect the people who use it ...." and (2) that the County did not present substantial evidence of the effects of the project. Embarc is wrong on both counts.

1. <u>CEQA is concerned with impacts *arising from* the project, including the health and safety impacts from THC narcotics.</u>

For support of its first point, Embarc curiously cites *California Building Industry Assn.,* which does not support Embarc's position in the least. The key holding in *California Building Industry Assn.* is that an agency need not analyze impacts on human health and safety when those humans are invited to an ***existing*** hazard. In that case, the Association challenged CEQA Guideline section 15162.2(a), which called for an environmental impact report to "identify and focus on the significant environmental effects of the proposed project," including "any significant environmental effects the project might cause *by bringing development and people into the area affected.*" (*Id.* at p. 385 (emphasis in original).)

In other words, if a developer sought to build a subdivision in an existing flood zone or on an existing fault line, then this Guideline would have required the agency to analyze the impacts on future users of the project, even though the project itself did not *create* the flood or earthquake hazard.

For context, it is important to understand a fundamental rule of CEQA, which is that impacts are measured from the baseline, which is defined as the "existing physical conditions." (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319.) The proposed Guideline language violated this fundamental rule in that it redefined the baseline and required agencies to analyze that baseline as if it were an impact. The Court ultimately struck the Guideline language as incompatible with CEQA, concluding "that CEQA generally does not require an analysis of how ***existing*** environmental conditions will impact a project's future users or residents." (*Id.* at p. 386 (emphasis added).)

The proposed dispensary project presents an entirely different factual scenario. Embarc is not inviting the public to an *existing* public health and safety issue (such as a flood zone); instead, Embarc is *creating* a public health and safety issue by flooding the County with THC narcotics. Based on Embarc's pro-forma forecast, it intends to flood the region with $6,228,954 worth of narcotics in year one, $6,914,139 in year two, $8,918,086 in year three, $9,720,714 in year four, and $10,595,579 in year five. It's not as if there were piles of marijuana existing on this site before Embarc applied for this project. This is not an *existing* public health and safety issue, but one that Embarc seeks to *create.* No one would dispute that CEQA requires an analysis of the impacts *arising from* (*i.e.,* created by) Embarc's dispensary project—and that includes the health and safety impacts.

The entire reason the County cited the Supreme Court case was for the simple point that public health and safety impacts are cognizable CEQA impacts. Embarc does not dispute this point. Naturally CEQA is concerned with the public health and safety impacts on humans—just as CEQA is concerned with the health and safety impacts on any species.

Moreover, Embarc does not dispute the fact that CEQA is also concerned with impacts on governmental services, a point discussed at length in the County's June 22 letter. Sutter Creek's Police Chief recently acknowledged impacts on the Sutter Creek Police Department and the County's Sheriff's Office, concluding: "The introduction of a cannabis dispensary at 11 Ridge Road introduces a distinct, elevated profile of criminal risk that fundamentally exceeds the capacity of current patrol resources." (Jim O'Connell memo.) This criminal strain on resources is separate and apart from the strain on capacity to patrol the roads to address impaired drivers.

2. Embarc's arguments regarding substantial evidence flow from the same erroneous reading of *California Building Industry Assn.*

Embarc's arguments regarding substantial evidence are likewise premised on its mistaken assumption that CEQA is unconcerned with health and safety impacts arising from the proposed dispensary. CEQA is indeed concerned with any and all public health and safety impacts arising from the project. (Pub. Res. Code §§ 21080(d), 21100(a)-(d),(g), 21001(b) and (d).) This defective assumption led Embarc to conclude that any evidence related to marijuana in general is irrelevant and that only site-specific traffic-related evidence is relevant.

Substantial evidence is defined broadly to include "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384(a).) Substantial evidence excludes argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts. (*Id.*) It includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (CEQA Guidelines, § 15384(b).)

The research studies presented by the County are a compilation of factual observations of the harmful effects of marijuana on humans. This is empirical evidence—not "argument," not "speculation," not "unsubstantiated opinion or narrative," and not "clearly erroneous or inaccurate evidence." The studies were published by the most prominent medical institutions on the planet and easily verifiable. The studies were performed on humans. Humans also live in Amador County. It is reasonable to conclude that Embarc's THC narcotics will have similar impacts on the humans that live in Amador County. Accordingly, the studies are relevant and qualify as substantial evidence related to Embarc's project.

<u>The California Supreme Court recently reinforced the County's argument that the "existing facilities" exemption is improper because the expansion of use is not "negligible."</u>

In its June 30 letter, Embarc argued that the County's "existing facilities" argument was baseless in part because the California Supreme Court was reviewing *Sunflower Alliance v. Dept. of Conservation* (2024) 105 Cal.App.5th 771, a case on which the County relies. The California Supreme Court cite is 20 Cal.5th 22.

The County's reliance on this case was not negatively impacted by the recent Supreme Court decision; the decision only reinforces the County's argument. The County cited the appellate case to assist explaining the threshold for "negligible." The Guideline states that the "existing facilities" exemption only applies to minor alterations of existing facilities "*involving negligible or no expansion of existing or former use.*" (CEQA Guidelines, § 15301 (emphasis added).) The exemption itself states: "The key consideration is whether the project involves negligible or no expansion of use." (*Id.*)

The County quoted the lower *Sunflower Alliance* case merely to explain that the term "negligible" sets the outer limits of a permissible expansion. (*Sunflower Alliance,* 105 Cal.App.5th at p. 784.) The court noted that "[t]he plain meaning of 'negligible' is small, unimportant, or inconsequential." (*Id.*) This point is supported by the plain language of the Guideline itself, and the Supreme Court did nothing to disturb this common sense explanation.

The Supreme Court's focus was on the term "use." The Supreme Court clarified that "the phrase 'negligible or no expansion of existing or former use' refers to the change in the *nature* or *degree* of a structure or facility's use, not the risk of environmental harm caused by such a change in use." (*Sunflower Alliance v. Dept. of Conservation* (2026) 20 Cal.5th 22, 48-49 (emphasis added).)

This holding bolsters the County's argument. The County was not myopically focusing on the risk of increased environmental harm arising from the expanded use of the site. Instead, the County was (and is) focusing on the fact that the dispensary project presents a *significant* change in the *nature* and *degree* of the previous bank use.

The daily trip evidence reinforces that point—not merely from an environmental impact perspective, but from a use perspective. According to the County's traffic engineer, with reference to the ITE Trip Generation Manual 12th Edition, the proposed dispensary use is expected to generate approximately 606 daily trips when evaluated correctly (*i.e.,* using the *gross* floor area instead of the *retail* floor area). In terms of *degree* of use, the dispensary is substantially more intense, particularly when one considers that the bank has not been operational for approximately seven years. To put 606 daily trips in perspective, when a potential use generates 200 daily trips, the County's Transportation Impact Study Guidelines generally require a traffic study.

Moreover, the project proposes a significant change in the *nature* of the use of the facility—from a low-intensity bank use to high-intensity marijuana dispensary use that has a likely potential to transform the region. As the Sutter Creek Chief of Police, Jim O'Connell, stated in his memorandum to the Council: "Given the types of high-priority crimes associated with dispensaries-specifically armed robberies and organized burglaries involving multiple suspects, the City of Sutter Creek's ability to respond with 'only one officer on duty' creates an unacceptable risk to both the officer and the community."

The proposed dispensary presents a potentially significant safety issue on Ridge Road at and between the intersections of Sutter Hill Road and State Highway 49.

In its June 30 and July 3 letters, Embarc mischaracterizes the County's concerns regarding traffic. Citing CEQA Guidelines, Section 15064.3, Embarc correctly points out that CEQA now generally requires a traffic analysis that focuses on vehicle miles traveled and not on congestion and level of service. But this misses the point entirely. The County is not focusing on *congestion*, the County is focusing on *safety.*

Public Resource Code section 21099, which is the law that directed the Office of Planning and Research to develop the Guideline 15064.3, reads in relevant part as follows:

> This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation. The methodology established by these guidelines shall not create a presumption that a project will not result in significant impacts related to air quality, noise, safety, or any other impact associated with transportation.

(Pub. Res. Code § 21099(b)(3).)

The County is focused on a potentially significant traffic safety issue on Ridge Road from the intersections of Sutter Hill Road and leading to the intersection of Highway 49. The area is already heavily congested during peak hours. Making matters worse, many residents access Highway 49 (myself included) from Sutter Hill Road, which ends at Ridge Road directly across from the proposed dispensary.

The safety issue arises from the fact that the dispensary alone will generate an estimated additional 606 daily trips within a quiet shopping center that probably generates a total of 50 daily trips presently. This severe increase will pose potentially significant safety issues on this congested intersection.

I have personally witnessed that the turn lanes on Ridge Road for Highway 49 often do not fully accommodate all turning vehicles during peak hours. The left-side turn lane ends in front of the proposed dispensary, and traffic is often backed-up into the single through-lane (thereby blocking through traffic). To safely accommodate the new traffic from the dispensary, the road may have to be reengineered with new striping. Also, the ingress/egress for the dispensary will likely need to be reengineered.

A traffic engineer report will be presented to the City prior to the August 17 meeting. This report will provide greater detail of the potential safety impacts.

The "Common Sense" exemption has no application to the dispensary project.

Staff relies on two exemptions: the "existing facilities" categorical exemption (discussed above) and the "common sense" exemption. The common sense exemption has no application to this project because it requires the City "to be *certain* that there is *no possibility* the project may cause significant environmental impacts." (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117; CEQA Guidelines, § 15061(b)(3).)

As the *Davidon Homes* court noted, the common sense exemption lacks the implied finding that the project will have no significant impact (as other exemptions have). (*Id.* at p. 116.) This means the initial burden is on the City to show "with certainty" that the activity will have no impact, and this initial showing is particularly important where the project opponents raise arguments regarding the possibility of significant impacts. (*Id.* at p. 117; *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 385-386.)

It is likely that, because the common sense exemption is plainly inapplicable to this project, Embarc does not even attempt to defend it in its June 30 letter.

The "Unusual Circumstances" exception prevents the use of any categorical exemption (including the "existing facilities" exemption).

As the County noted in its June 22 letter, "a categorical exemption shall not be used for an activity where there is a *reasonable possibility* that the activity will have a significant effect on the environment *due to unusual circumstances.*" (CEQA Guidelines, § 15300.2(c)(emphasis added); *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104.)

Citing basic common sense as well as *Walters v. City of Redondo Beach,* (2016) 1 Cal.App.5th 809, the County argued that the first-ever THC dispensary in the County plainly qualifies as an unusual circumstance under the Guidelines. In its June 30 letter, Embarc countered by arguing that marijuana is "a lawful, state-regulated use expressly authorized by Proposition 64; its novelty in Amador County is a political and regulatory fact, not an environmental one."

Embarc's misguided rebuttal flows from the same error discussed above. Namely, Embarc incorrectly assumed that marijuana's effect on the health and safety of Amador County residents is irrelevant under CEQA. As discussed above, Embarc is wrong. Moreover, it is irrelevant if the impact arises from a "lawful, state-regulated" activity. Indeed, virtually all activities for which people seek a permit are lawful and state-regulated. This does not mean those activities are devoid of environmental impacts and exempt from CEQA review.

The additional 8% sales tax is unlawful because it was not approved by the electorate.

Proposition 218 added Articles XIII C and D to the California Constitution. Article XIII C, Section 2(b), states in relevant part that no taxes may be imposed "until that tax is submitted to the electorate and approved by a majority vote." The term "tax" is defined broadly in Article XIII C, section 1, subdivision (e).

Prop 218 severely limits a city's ability to impose taxes, and it has seven narrow exceptions to the broad "tax" definition. One of the exceptions is "A charge imposed as a condition of property development." (Cal. Const., Art. XIII C, Sec. 1, Subd. (b)(6).) This is the exception Embarc attempts to utilize to bypass the Prop 218 requirements of voter approval.

The obvious problem with the use of this exception is that Embarc's purported "development agreement" does not qualify as a development agreement under California law. Instead, it is merely a revenue sharing agreement related to the operation of the facility dressed up as a development agreement for the sole purpose of getting around Prop 218.

Development agreements are governed under, and defined by, Government Code sections 65864, *et seq.* In its June 30 letter, Embarc acknowledged this point. However, Embarc failed to address the fact that the purported development agreement plainly fails to meet the requirements imposed by the Government Code. The most obvious defects are that the agreement does not pay for public facilities related to the project, and that the City is not making the basic findings required by the Government Code related to the accounting of the public facility financing.

Government Code section 65865(a) authorizes any city to enter into a development agreement, but states that the agreement "shall comply with Section 66006 with respect to any fee it receives or cost it recovers pursuant to this article." (Gov't Code § 65865(e).)

The Mitigation Fee Act (Act) is codified in Government Code sections 66000-66008. Qualifying "fees" under the Act are defined as "a monetary exaction other than a tax or special assessment … 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* …." (Gov't Code § 66000(b) (emphasis added).)

"Development project" is defined as any project undertaken for the purpose of development and construction, and it specifically excludes the *operation* of the development. (Gov't Code § 66000(a).)

Government Code section 66001 requires the City to specifically describe (1) the purpose of the fee, (2) the use of the fee (*e.g.,* which public facility it is used to finance), (3) the relationship between the fee and the type of development project, and (4) the relationship between the need for the public facility the fee is funding and the type of development project on which the fee is imposed. (Gov't Code § 66001(a).)

The Government Code also requires the City to determine the reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed. (Gov't Code § 66001(b).) Government Code section 66006 imposes specific accounting requirements on the City for the financing of those public facilities the development agreement is intended to finance.

The purported "development agreement" between Embarc and the City meets none of these requirements for statutory development agreements for the simple reason that this agreement has nothing to do with the financing of public facilities intended to serve the proposed dispensary.

Instead, the agreement is merely a revenue sharing agreement dressed up as a development agreement in a shallow attempt to avoid the requirements of Prop 218. The effect of the agreement, in fact and in law, is to impose a tax on the consumer without his or her consent.

Conclusion

In conclusion, for all the reasons stated above, the County respectfully requests that the City deny this project application. The project is in direct conflict with the general welfare of the community, and it is unlawful in several respects.

Thank you for allowing the County to comment.

Sincerely,

Glenn Spitzer

cc: County Board of Supervisors,
Sheriff Gary Redman
District Attorney Todd Riebe
Chuck Iley (County Administration Officer),
Greg Gillott (County Counsel)