August 12, 2026

Via Email

Derek Cole, City Attorney
City of Sutter Creek
18 Main Street
Sutter Creek, California 95685

Re: Proposed Embarc ordinance, development agreement, and 11 Ridge Road entitlements request for continuance, complete record, and open participation

Dear Mr. Cole:

Our office represents Tom Calmese, a long-standing Sierra Foothill cannabis operator who operates licensed dispensaries in San Andreas, Sonora, and Arnold. Mr. Calmese is evaluating a compliant retail proposal at 125 and 130 Central Eureka Street in Sutter Creek. He has operated in the region for more than a decade and is prepared to submit a complete application, enter a development agreement, provide meaningful local benefits, and participate in a transparent public process.

We have reviewed the July 8, 2026 Planning Commission packet regarding Sutter Creek Responsible and Compliant Retail LLC d/b/a Embarc's proposal at 11 Ridge Road. We write in a constructive spirit. While the City has legitimate authority to regulate cannabis retail and may determine that carefully controlled local retail access serves the community, our concern is not that the City must reject Embarc, it is that the City should not, on the present record, permanently vest a single private applicant with the City's sole cannabis-retail opportunity while excluding other qualified operators. Moreover, material legal, environmental, and process questions remain unresolved and could subject the current Embarc project to further scrutiny and potential legal challenge. We hope to collaborate with the City in mitigating risk and avoiding further controversy in any respect.

1. Need to Revisit CEQA Analysis for the Project

As you know, CEQA applies to discretionary public-agency approvals, expressly including enactment and amendment of zoning ordinances and issuance of CUPs, unless an exemption applies [Pub. Res. Code § 21080(a)] with categorical exemptions available only for projects fitting a designated class and not subject to an exception. CCR §15301 covers operation, permitting, leasing, licensing, or minor alteration of existing facilities involving negligible or no expansion of use;

However, the proposed Notice of Exemption describes a project that includes the zoning amendment, development agreement, CUP, site plan, and sign permit. The stated basis for the Class 1 categorical exemption focuses on reuse of the former bank building and replacement sign copy. A Class 1 exemption may ultimately be appropriate for the limited tenant improvements, but the planning commission record is lacking any base of reference to relevant traffic studies, nor does it include any analysis let alone proposed mitigation measures for prospective cumulative impacts of increased customer traffic on the community for a project that proposes drawing business from across the region. Further, it appears that the estimate of 195 vehicle trips per day was an estimate provided by the applicant, itself, rather than from an objective quantitative analysis. The record should identify source studies, the precise denominator (entire 2,662-square-foot building or 1,300-square-foot sales floor), the actual former-bank baseline, peak-hour assumptions, delivery/armored-car trips, and why the cited range supports the conclusion. The Council should not rely on a staff conclusion without the underlying calculations and source reports. Accordingly, an exception under CEQA Guidelines §15300.2 may not be defensible.

The transportation record particularly warrants closer review. Staff relies on the Governor's Office of Land Use and Climate Innovation (formerly the office of Planning and Research 'OPR') premise that locally serving retail generally reduces Vehicle Miles Traveled (VMT). But Embarc's own materials characterize the Highway 49/Ridge Road location as serving a broad geographic area beyond Sutter Creek, including Amador County and surrounding foothill communities. OPR's technical advisory distinguishes local-serving retail from regional-serving retail and recommends analysis of the net change in total VMT for retail projects. This level of research is absent from the Planning Commission record which creates an additional question as to whether an affirmative decision as to finding 'C' (The proposed uses would not be detrimental to the public health, safety, or general welfare') could be reasonably supported to withstand a prospective legal challenge.

We suggest a recommendation to the Council that this matter be continued, pending further analysis, consideration and discussion, including consideration of whether concentration of all commercial cannabis retail sales at a single location within a 30-mile radius may be appropriate, versus potentially allowing a second location which would serve to diffuse traffic concentration and provide additional convenience for local and regional consumers. The City should seek to obtain independent review of the project description, the Class 1 finding and exceptions, the local-versus-regional market characterization, and the traffic/VMT/parking assumptions. The record should disclose the source data and calculations behind the stated daily-trip estimate, including the former-bank baseline and anticipated delivery/dispatch operations. Currently the CEQA exception analysis is conclusory as it lacks an independently documented analysis of the potentially regional retail draw, cross-jurisdiction trips, cumulative traffic/parking/circulation, air quality, operational security/queuing effects, or the citywide regulatory change. This is not to suggest a full EIR is necessary, it is merely an observation that a fully defensible, whole-project environmental record does not appear to be advancing to Council for the August 17, 2026 meeting which may ultimately lead to a revocable legislative decision, if challenged.

2. The CUP and Amendment Findings Lack Evidence as to Public Convenience and Consistency with Established Policy

The proposed ordinance would authorize a storefront dispensary "in any zone" by CUP while simultaneously limiting the City to one operating dispensary. A site-specific C-2 compatibility finding does not itself establish the policy consistency of a use authorized in 'any' zone by CUP while creating an exclusive marketplace for a single operator. The Council should either limit the amendment to defined suitable districts or make the policy analysis explicit.

The record explains why the City may choose to permit cannabis retail, but it does not explain why public convenience, consumer choice, pricing, access, local investment, and fiscal benefit are best served by awarding the only opportunity to a single applicant without an open opportunity for other qualified operators, let alone fostering a competitive local marketplace such as that which exists in nearby San Andreas, which shares a similar population demographic to the City of Sutter Creek. This also seems to defy an affirmative finding 'A' ('The proposed uses of the property are desirable to the public convenience or welfare') as stated in the Planning Commission Staff Report as required under Sutter Creek Municipal Code 18.60.040.

The City can preserve (and enhance) safety, local benefits, and meaningful control while accepting applications from more than one qualified operator, applying objective criteria, and allowing the Council to compare public benefits rather than irreversibly vesting a single applicant before an open opportunity exists.

3. The Current Legislative Record Lacks Foundation

The Planning Commission packet describes the zoning amendment, development agreement, CUP, site plan, and sign permit as a "complete, interconnected package." Yet the proposed development agreement contains uncompleted fields for hearing dates, resolution numbers, and planning-area information, and includes Council-approval recitals in the past tense before Council action. The proposed Planning Commission resolutions also include uncompleted resolution/vote fields.

Because a development agreement is a legislative act that must be approved by ordinance and supported by a legislative-body finding of consistency with the General Plan and any applicable specific plan, see Gov. Code §65867.5, the Council should receive a complete final agreement, a redline from the Planning Commission version, and specific consistency findings tied to actual General Plan policies. The City should also circulate the final Council agenda packet and all supporting materials with sufficient time for meaningful public review.

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4. Transparency Surrounding Financial Projections and Conflict(s) of Interest

The proposed DA requires an 8% payment on gross receipts and describes that payment as consideration for vested rights, regulatory administration, compliance monitoring, law-enforcement coordination, and other City services. Staff's forecast treats the payment as a major anticipated revenue source. Before final action, the City should make available the legal analysis, cost/consideration support, drafts, redlines, and communications concerning that payment, as well as the material describing how the separate community fund will be administered. The City should further consider the 'Community Fund' to which Embarc is purportedly committing 1% of its gross revenue, while also appearing to to be independently organized and administered by Embarc itself. Absent input from established community organizations with a proven record of raising and distributing resources to benefit the local community, the self-directed Embarc fund may present various issues around conflict of interest and potential financial collussion.

We also request that the City preserve all project records and ensure that all officials have completed any required conflict review and recusal analysis. We make no accusation against any official. We do ask that any actual or potential financial interests, including interests in nearby property, be addressed through the appropriate documented process before the Council acts. The same is true of communications that may bear on the timing, selection process, or development of the project. Notably, the Staff report explictly states that Embarc, as applicant ***requested*** the zoning amendment creating an exclusive opportunity for itself to do business as a cannabis retailer in the City. This lends itself to an assumption that the City has deferred to the will of a private entity without exercising proper due diligence and discretion prior to advancing an exlusive, lucrative opportunity for a single privat party.

On July 29 and August 11 my office advanced Public Records Act requests which seek much of this material. It is concerning that the City's response to our July 29 request cites 'unusual circumstances' under California Government Code section 7922.535(b), and requests a 14-day extension to August 21, which has the City at best continuing to search, or at worst, intentionally withholding these records until the City Council's decision on August 17 is made. Given the scheduled Council action, please provide the responsive final Council packet, CEQA and traffic materials, agency comment letters, DA drafts/redlines, and communications concerning the selection and financial terms as promptly as possible.

5. Allow Open and Equal Participation by Qualified Operator(s)

Mr. Calmese asks the City to allow his proposal to be considered on equal terms.

The City can preserve careful local control while either:

1. Revising the ordinance to allow more than one qualified operator in suitable commercial zones; or

2. Establishing a public, neutral application process with published criteria, a defined application period, consistent environmental review, and a transparent comparison of qualifications, community benefits, fiscal terms, site suitability, and public-safety measures.

An open process, if warranted under these circumstances, again, pending further discussion, would reduce risk, strengthen the administrative record, and give residents the benefit of informed choice. It would not require the City to lower its standards or to approve any applicant, per se.

Requested Action

For these reasons, Mr. Calmese respectfully asks the City Council to:

- Continue the proposed ordinance, DA, and associated entitlements;
- Direct preparation of a complete public record and independent CEQA review appropriate to the integrated project;
- Circulate a corrected final DA and explicit General Plan consistency findings;
- Defer any exclusivity or vesting decision until the City establishes an open, objective path for qualified applicants, including Mr. Calmese; and
- Preserve and produce the requested records, and complete any applicable conflict review.

We would welcome the opportunity to meet with you and City staff promptly to discuss a process that allows the City to retain local control, protect public safety, secure legitimate community benefits, and avoid excluding a qualified local operator without a transparent basis.

Sincerely,

Zachary Drivon, Attorney & CEO
Drivon Consulting, Inc.

cc: City Council; Tom DuBois, City Manager; Alejandra Zambrano, Interim City Clerk; Tom Calmese; Kevin Marchese