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June 30, 2026

Via Email

Tom DuBois, City Manager
City of Sutter Creek
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Re: Response to Amador County General Services Administration Supplemental Comment Letter, Dated June 22, 2026 — Proposed Cannabis Retail Facility at 11 Ridge Road (APN 044-020-063); July 8, 2026 Planning Commission Hearing

Dear Mr. DuBois:

This letter is submitted on behalf of Sutter Creek Responsible and Compliant Retail LLC ("Permittee") in response to the Supplemental Comment Letter submitted by Amador County General Services Administration Director Glenn Spitzer, dated June 22, 2026 (the "County Letter"). The County Letter advances four arguments against the proposed cannabis retail facility at 11 Ridge Road (the "Project"): (1) that the staff report wrongly characterized the County's public health concerns as non-CEQA social concerns; (2) that the categorical exemption under CEQA Guidelines section 15301 is inapplicable; (3) that the "unusual circumstances" exception bars reliance on any categorical exemption; and (4) that the eight percent retail fee in the Development Agreement is an unconstitutional tax. Each argument fails on the law and the facts, and we respectfully request that this letter be entered into the administrative record for the July 8, 2026 Planning Commission hearing.

One threshold point frames the entire CEQA discussion. The County's lead authority, *Sunflower Alliance v. Department of Conservation* (2024) 105 Cal.App.5th 771, is presently under review in the California Supreme Court (S287414, review granted Dec. 18, 2024; argued Apr. 6, 2026). Under California Rules of Court, rule 8.1115(e)(1), while review is pending that decision has no binding or precedential effect and may be cited for persuasive value only. The County presents it as settled, controlling law. It is not, and, as explained below, the decision as written actually supports the City.

1. The County's Public Health Concerns Do Not Identify a Significant Environmental Effect of This Project.

The County contends that the staff report improperly treated its public health and safety concerns as "social concerns" outside CEQA. The argument conflates the existence of a cognizable CEQA category with the adequacy of the evidence offered to invoke it, and it fails for two independent reasons.

First, the County's evidence is not substantial evidence of an effect of this Project. On a challenge to a categorical exemption, the party opposing the exemption bears the burden of producing evidence that an exception applies. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.) The County submitted more than twenty studies on the effects of cannabis commercialization at the statewide and national level. Not one is specific to this Site, this building, or the conditions of this corridor. CEQA requires substantial evidence — fact, reasonable inference from fact, or expert opinion supported by fact — not speculation extrapolated from macro-level research across diverse jurisdictions. (Pub. Resources Code, § 21080, subd. (e); CEQA Guidelines, § 15384.) Research that legalization in the aggregate may increase use rates says nothing about whether this retail use, in this existing commercial building, will cause a significant effect on the physical environment at this location. The County's invocation of Public Resources Code section 21083, subdivision (b)(3) does not cure the gap: effects on human beings must be tethered to the project under review, and the County offers no project-specific evidence.

Second, the effects the County describes are not physical environmental effects at all. CEQA is concerned with physical changes in the environment, and with effects on people that travel through a physical pathway — air, water, noise, hazards. It does not require review of the behavioral or social consequences of consuming a lawful product. The California Supreme Court has confirmed that CEQA generally does not require an agency to analyze how a project may affect the people who use it, absent a statutory exception. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist*. (2015) 62 Cal.4th 369.) The County's theory — that a retailer must undergo environmental review because its lawful products may affect those who choose to buy them — would equally require an EIR for every seller of alcohol, tobacco, firearms, or pharmaceuticals. That is not the law.

2. The Section 15301 "Existing Facilities" Exemption Is Properly Invoked.

The County does not dispute that the physical work is minor: this is a tenant improvement of an existing commercial building, with no change to the building footprint, no new construction, and no expansion of the building envelope. Its argument rests entirely on the contention that the change from a bank to a cannabis dispensary is a non-negligible expansion of use. It is not.

The use category has not changed. The prior use was commercial retail — a bank branch serving walk-in customers during business hours. The proposed use is commercial retail — a licensed dispensary serving walk-in customers during business hours. Both are permitted commercial uses in a commercially zoned building. What has changed is the product sold. Under the County's theory, any change in retail product, from clothing to electronics, groceries to pharmaceuticals, would be a non-negligible change of use triggering full CEQA review. Section 15301 does not require that, and no court has so held.

The County's reliance on *Sunflower Alliance* does not help it, for two reasons. First, as noted, the decision is under Supreme Court review and is not binding. Second, the County mischaracterizes it. *Sunflower Alliance* did not involve new wells, new infrastructure, or expanded production capacity; it involved a single, previously plugged well converted to injection using the existing well pad and access road, with no significant new surface equipment. The Court of Appeal upheld the Class 1 exemption and rejected the very argument the County makes here, that any new use is an impermissible expansion. It held that an expansion of use is “negligible” when the risk of environmental harm from the new use is negligible. Under that standard, a commercial-to commercial conversion of comparable intensity, in an existing building, comfortably qualifies.

The County’s traffic argument does not change the result. Since July 1, 2020, the controlling CEQA metric for the transportation impacts of a land use project has been vehicle miles traveled (VMT), not level of service or raw trip counts. (Sen. Bill No. 743 (2013–2014 Reg. Sess.); CEQA Guidelines, § 15064.3.) Under the Governor’s Office of Planning and Research guidance, a small, locally serving retail use is presumed to have a less-than-significant VMT impact; this Project in fact reduces regional VMT by capturing cannabis-retail trips that currently travel roughly 22 to 32 miles each way to dispensaries in neighboring counties. The administrative record also includes a trip-generation analysis under the ITE Trip Generation Manual (11th ed.) showing only a negligible incremental increase over the prior banking use. The County disputes the City’s transportation conclusion but offers no competing traffic study, no expert declaration, and no site specific data. Disagreement with methodology, without contrary evidence, is not substantial evidence that the exemption is unavailable. (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 581.)

Finally, the City's determination rests on the Class 1 exemption, and for the reasons above that reliance is well founded. Should the Commission wish to further insulate its determination, two additional independent grounds are available on this record: the Class 32 infill exemption (§ 15332) and the common-sense exemption (§ 15061, subd. (b)(3)) — the latter a general exemption not subject to the "unusual circumstances" exception — and the Commission may rest its determination on those grounds as well. In all events, cannabis dispensaries have been approved in existing commercial buildings under section 15301 throughout California since 2016, and we are aware of no successful challenge to such an exemption on the grounds the County advances.

3. The “Unusual Circumstances” Exception Does Not Apply.

The exception requires both (1) a circumstance unusual for projects in the exempt class, and (2) a reasonable possibility that the unusual circumstance will produce a significant environmental effect. (*Berkeley Hillside*, supra, 60 Cal.4th at pp. 1105–1106.) The County satisfies neither prong.

As to the first, the County identifies only that this would be the first dispensary in Amador County. Novelty in a single jurisdiction is not an unusual environmental circumstance; the relevant comparison is to other minor alterations of existing commercial buildings, and against that benchmark this Project is ordinary. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 819.) Cannabis retail 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. If first-in jurisdiction novelty were an unusual circumstance, the exception would swallow the rule. As to the second, the County identifies no site-specific condition, no sensitive receptor, biological resource, or traffic constraint, creating a reasonable possibility of a significant effect at 11 Ridge Road. Notably, in *Sunflower Alliance* itself the challenger waived any unusual-circumstances argument, so that decision offers the County no support on this point either. And, again, the common-sense exemption is not subject to this exception.

4. The Retail Fee Is a Negotiated Development Agreement Fee, Not an Unconstitutional Tax.

The retail fee is not a tax. It is a voluntary, bilaterally negotiated obligation in a Development Agreement entered under Government Code sections 65864 et seq. It is not imposed by ordinance or legislative act, is not levied on the general public, and is not collected from consumers at the point of sale. It is consideration the Permittee agreed to pay in exchange for vested rights and regulatory certainty —the right to operate at this location for a five-year term, free of intervening changes in local land use regulation.

For that reason the fee is not “imposed” within the meaning of Article XIII C. Proposition 26 reaches charges “imposed by a local government”; a charge voluntarily assented to in an arm’slength contract is not imposed. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866; see *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221 [a city may use a development agreement to negotiate contributions it could not obtain through ordinary exactions].) Independently, the fee falls within the express exception in Article XIII C, section 1, subdivision (e)(6), for “a charge imposed as a condition of property development.” Development agreement fees are a paradigmatic example, and the County’s own June 3 letter conceded that the fee “potentially meets exception No. 6.”

The County’s contention that the fee is “really” a sales tax because it is measured on gross receipts confuses the metric with the legal character of the charge. Gross receipts is an unremarkable basis for contractual payment, used in franchise, revenue-sharing, and licensing agreements statewide, none of which require voter approval. Nor does the County’s fallback — that consumers ultimately bear the fee through prices — transform it into a tax; on that logic every cost a retailer passes through (rent, utilities, wages, insurance) would be a tax. No court has adopted that view. *Zolly v. City of Oakland* (2022) 13 Cal.5th 780 is not to the contrary: it concerned franchise fees on captive ratepayers under a different constitutional exception, not a negotiated development-agreement fee in a voluntary, competitive market.

Finally, the constitutional theory is not the County’s to press. The County is not a party to the Development Agreement (Gov. Code, § 65865.4) and is not the entity that pays the fee; the economic incidence of any “tax” would fall on consumers who voluntarily purchase, and no such claim is ripe before any fee is collected. (We do not dispute that the County, as a commenting agency, may have standing to raise CEQA issues; the constitutional tax theory is a separate matter, and it is not one the County has standing to litigate.)

5. The County's Role in This Proceeding.

The County is entitled to comment, and the City should weigh its policy concerns seriously — concerns the Development Agreement already addresses through mandatory age verification, security and law-enforcement camera access, youth drug-education funding, and a community benefits program. But this is a land use decision within Sutter Creek's incorporated limits. California voters preserved local control over cannabis retail when they approved Proposition 64, and the County has no land use jurisdiction, and no independent CEQA authority, over a project inside the City. The County may disagree with the City's policy choice; it may not substitute its judgment for the City's on a matter committed to the City's discretion.

Conclusion

The County's Supplemental Comment Letter is a capable statement of policy opposition to cannabis retail, but it provides no cognizable legal or factual basis for the City to deny the Project, decline to execute the Development Agreement, or undertake further CEQA review. Its CEQA arguments rest on generalized studies rather than site-specific evidence; its lead authority is under Supreme Court review and, as written, supports the City; its traffic argument relies on a significance standard abandoned in 2020; and its constitutional argument misapprehends the nature of a negotiated development agreement fee. The policy disagreement underlying the County's letter was resolved by California voters in 2016.

Permittee respectfully urges the City to proceed with approval of the Project and execution of the Development Agreement at the July 8, 2026 hearing, and requests that this letter and the authorities cited herein be entered into the administrative record in their entirety. Please contact the undersigned with any questions.

Sincerely,

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