GENERAL SERVICES ADMINISTRATION

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Via Email to listed email addresses
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Re: Proposed Marijuana Retail Facility (July 8 Planning Commission) Supplemental Comment

Dear Sutter Creek City Council:

This letter supplements the County's comments in its June 3, 2026 letter. Having since reviewed the staff report for the dispensary item, the County would like to address some of the legal issues raised in that report.

1. <u>The staff report incorrectly dismisses the public health and safety issues as "social concerns."</u>

In the section titled, "Social Concerns Are Not CEQA Impacts," the staff report mischaracterizes all the County's issues as "social concerns" that fall outside the purview of CEQA. The reason for the mischaracterization is CEQA Guidelines, section 15064(e), which states that economic or social changes generally do not qualify as significant impacts under CEQA.

It is true the dispensary will have wide-ranging social and cultural impacts on the County, and the City should consider those detrimental impacts to the general welfare as a basis for rejecting the use permit application. That said, the focus of the County's letter was *not* on social issues (such as crime and homelessness). Instead, the letter focused on impacts to public services and to public health and safety. These impacts are unquestionably CEQA issues.

Public service impacts are routinely analyzed under CEQA. In fact, public service impacts are specifically called out in Appendix G of the CEQA Guidelines, which is part of CEQA's "Initial Study" analysis. Public health and safety are also critical to CEQA. Project effects that "will cause substantial adverse effects on human beings, either directly or indirectly" are deemed a "significant effect on the environment." (Pub. Res. Code § 21083(b)(3).) The California Supreme

Court stated "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme. (E.g., [Pub. Res. Code] §§ 21000, subds. (b),(c),(d), (g), 21001, subds. (b), (d) (emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment).)" (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386.)

Along with the County's June 3 letter detailing public services and public health and safety impacts, the County submitted substantial evidence into the administrative record, including over 20 studies, reports, and articles detailing the detrimental impacts on public health and safety. For example, one 2026 study by the American Journal of Preventive Medicine showed that local *commercialization* of marijuana (occurring well after legalization) led to a 346% increase of use by adolescents (aged 12-17) and a near 400% increase in related medical disorders for these teens.

Embarc touts age verification protocols that purport to prevent adolescent use of marijuana. All retail facilities have these protocols, yet the evidence shows a near four-fold increase in use and associated harm despite these protocols. This is because teens use what they call "plugs" to buy from the facilities. These plugs are often older friends or siblings, someone local on social media willing to assist for a quick buck, or even unwitting parents who mistakenly believe the drug is benefiting their child. The evidence suggests that proximity is the critical factor. The more convenient the purchase, the greater the likelihood of use.

The staff report also mischaracterizes the economics by incorrectly assuming a local dispensary will not lead to increased use, but will instead simply shift the purchasing from outside the County to inside the County in a zero-sum game. This unsupported economic theory does not hold water and defies common sense. The empirical evidence, as reflected in the studies, instead shows that the convenience of a local dispensary significantly expands the market and therefore expands the use of the drug in proximity to the dispensary, particularly among adolescents. Expanded use of marijuana, particularly among teens, will significantly exacerbate the detrimental health effects for County residents.

2. <u>The "existing facilities" exemption is inapplicable because the changed use is not "negligible."</u>

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 does not dispute that the project involves minor alterations of existing facilities. The issue here is that the project will significantly alter and expand the ***use*** of the facility—from a bank to a marijuana dispensary. This changed use, on its face, is not "negligible."

If this exemption is challenged, a court will not give the City any deference to an interpretation of the term "negligible" that deviates from its plain meaning. (*Sunflower Alliance v. Dept. of Conservation* (2024) 105 Cal.App. 5th 771, 782.) Instead, where the issue turns "on an interpretation of the language of the Guidelines or the scope of a particular CEQA exemption, this presents 'a question of law, subject to de novo review[.]'" (*Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 410 (internal citations omitted).) A court's task is "to determine whether, as a matter of law, the project met the definition of a categorically exempt project." (*Id.*)

The court "will stay within the reasonable scope of the exemption's language … and bear in mind its commonsense purpose." (*Sunflower Alliance,* 105 Cal.App.5th at p. 782.) Also, "a categorical exemption should be interpreted narrowly to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*L.A. Dept. of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1040.)

As the *Sunflower Alliance* court noted, 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.*)

Thus, "it makes sense that the term negligible is intended to allow changes or expansions in use that are inconsequential[.]" (*Id.*) The City is precluded from using this exemption when the proposed change has the potential to cause appreciable harm—anything more than a "negligible" harm. (*Id.*) Use of the exemption necessarily requires a preliminary analysis of the environmental and public health and safety harms at the exemption stage. (*Id.* at p. 785-786.) As the listed examples within section 15301 imply, the exemption is generally intended for restoration, alterations, or incremental expansions of the same or similar uses. (CEQA Guidelines, § 15301.) It is not intended for new uses that introduce a range of new impacts. (*Id.*)

Here, the change in use is not "negligible." The change transforms a bank to the first-in-the-County marijuana dispensary with delivery capabilities and projected sales of more than $6,000,000 of marijuana products annually—over $500,000 per month. Staff and Embarc anticipate "flooding the zone" with marijuana. The evidence presented by the County flatly refutes the prior unsubstantiated myth that marijuana is beneficial or that it is harmless, and the evidence shows that commercialization is a direct cause of substantial harm to public health and safety. This project is not a "negligible" change under any reasonable interpretation of that term.

Moreover, staff's own traffic analysis shows the expanded traffic use is not "negligible." Staff assumed the dispensary would generate 150 daily trips per 1,000 sf, for a total of 195 daily trips (assuming 1,300 sf retail space). Even using this assumption, the dispensary would generate 30% more traffic than the bank (assuming the bank generated 150 total daily trips). A 30% increase in traffic is not a "negligible" increase.

But this 30% conclusion is unreasonably optimistic. Per the ITE Trip Generation Manual, the range for dispensaries is 70-250 daily trips. Based on the extraordinary estimated sales of over $6,000,000 per year, Embarc's proposed monopoly on the region's marijuana market, Embarc's delivery capabilities, and Embarc's ever-increasing market of "Buy Online, Pick Up In Store," the 150 trips per 1,000 sf is unreasonably low—in the bottom half of the range. Also, the assumption that the low-trafficked localized Umpqua Bank generates 150 trips per day is also unreasonably high as a baseline. That assumption makes sense for a Bank of America, Wells Fargo, or other major national bank, not an obscure, local bank like Umpqua Bank. If staff had used a more reasonable daily trip assumption for the dispensary, and a more realistic baseline for the bank, the traffic increase would be far greater than 30%.

3. The "unusual circumstances" exception bars the use of any categorical exemption.

"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).) Reliance on the exception requires a showing of unusual circumstances and a showing of potential significant impacts as a result of the unusual circumstances. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104.) Alternatively, a challenger "may establish an unusual circumstance with evidence that the project *will have* a significant environmental effect." (*Id.* at p. 1105-1106 ("When it is shown 'that a project otherwise covered by a categorical exemption will have a significant environmental effect, it necessarily follows that the project presents unusual circumstances.").)

Unusual circumstances relate to some feature of the project that distinguishes the project from other features in the exempt class. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 819.) For example, in *Walters,* the court held that a city can negate the "unusual circumstances" exception by showing "the presence of comparable facilities in the immediate area[.]" (*Walters,* 1 Cal.App.5th at p. 821 (*citing Bloom v. McGurk* (1994) 26 Cal.App.4th 1307). The *Walters* court ultimately concluded a proposed car wash and coffee shop did not present an unusual circumstance because there were multiple similar uses "in the surrounding area." (*Walters*, 1 Cal.App.5th at p. 821.)

The unusual circumstances here are that the project involves the sale of marijuana—over $6,000,000 worth per year. There are no similar uses in the surrounding area. In fact, this project is highly unusual because it would be *the first* marijuana dispensary in the entire County. This feature of the project clearly distinguishes this project from other features in the exempt class, and it distinguishes it from all other uses in the County.

The staff report concludes that the exception does not apply because "[p]olitical or cultural novelty does not legally constitute an unusual circumstance." However, as discussed above, this feature (the retail sale of marijuana) is not merely a social issue. Instead, the circumstances of a marijuana retail facility present a host of impacts that require CEQA analysis—impacts that do not arise from any other business in the County.

Because the dispensary intends to sell over $6,000,000 worth of marijuana in the County annually, there is more than a "reasonable possibility" that the project will have a significant impact on public services and public health and safety in the County. For this reason, even if it is assumed the "existing facilities" exemption were appropriate (and it's not), the "unusual circumstances" exception prevents the City from using the exemption.

4. The development agreement poses an unconstitutional tax.

Staff acknowledges in its report that the 8% "fee" is "assessed on the business's gross receipts," and therefore acts like a sales tax. It is plainly not a development fee—*i.e.,* one that has a nexus to, and is roughly proportionate to, the development impacts.

Staff believes that the constitutional exception to the "tax" definition is met merely because the "fee" results from a voluntary, bilateral contract. Staff is wrong. This does not create an exception to the "tax" definition under Article XIII C, Section 1, subdivision (e), of the California Constitution.

Staff also contends the "fee" is legal because it is paid by the developer, not the public. Again, staff is wrong. The "fee" comes from the sales. The people who actually pay are the members of the public who purchase the marijuana, not the developer. There is no getting around the fact that this is an illegal sales tax (illegal because the public did not vote on it).

Again, the County thanks the City for providing the opportunity to comment.

Sincerely,

Glenn Spitzer

cc: County Board of Supervisors,
Chuck Iley (County Administration Officer),
Greg Gillott (County Counsel)