

# LAFCO MEMORANDUM

## ***SANTA BARBARA LOCAL AGENCY FORMATION COMMISSION***

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October 5, 2023 (Agenda)

TO: Each Member of the Commission

FROM: Mike Prater  
Executive Officer

SUBJECT: REPORT ON URBAN UTILITY SERVICES FOR AG PARCELS UPDATE

*This is an Informational Report. No Action is Necessary*

### DISCUSSION

This status report is to bring the Commission and public up-to-date on the efforts to consider revisions to Commission's policies regarding Urban Utility services for Agricultural Parcels. The Commission directed, at the August 3, 2023 meeting, the matter be presented to the County Agricultural Advisory Committee (AAC) for input. The item was placed on their August 10, 2023 agenda.

#### **Agricultural Advisory Committee Outcome:**

The AAC discussed the proposed policy changes presented to the Commission on August 3, 2023. The AAC appreciated the matter be presented for input and requested continued involvement in the matter as the discussion evolves. AAC expressed that no exclusivity be included and that any policy change should not carve out a specific area. Greater information and study of the issue is warranted particularly regarding discharge and operations of cannabis cultivation countywide. AAC raised the need to better understand other uses that may benefit from urban utilities within the agricultural lands that this might be applicable to. Lastly, they questioned whether the definition of agriculture uses includes cannabis. Under the law, cannabis is defined as agricultural use regulated by the California Department of Food and Agriculture consistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act codified under Business and Professional Code 26000.

Other AAC members expressed that cannabis cultivation operations are a leading industry in recycled water on-site to maximize production and some may use a reverse osmosis (RO) water filter system that concentrates discharge and that concentrated discharge may not be suitable for wastewater treatment plant operations.

## **State Water Quality Control Board Waste Discharge Requirements Associated with Cannabis Cultivation Activities:**

The Water Board under Order WQ 2019-0001 DWQ required the State Water Board to adopt principles and guidelines for diversion and use of water for cannabis cultivation in areas where cannabis cultivation may have the potential to substantially affect instream flows.

The Cannabis Policy Order provides a statewide tiered approach for permitting discharges and threatened discharges of waste from cannabis cultivation and associated activities. The Order establishes a personal use exemption standard, and provides conditional exemption criteria for low threat to water quality activities. Tiers are defined by the amount of disturbed area. The criteria consist of:

- a. Personal use exempt Dischargers are very small non-commercial cultivators that are exempt from this General Order. (Refer to the Exemptions for Certain Cultivation Activities section of this General Order for more information.)
- b. Indoor commercial cultivation activities are conditionally exempt under this General Order. (Refer to the Exemptions for Certain Cultivation Activities section of this General Order for more information.)
- c. Outdoor commercial cultivation activities that disturb less than 2,000 square feet may be conditionally exempt under this General Order. (Refer to the Exemptions for Certain Cultivation Activities section of this General Order for more information.)
- d. Tier 1 Dischargers cultivate cannabis commercially outdoors, and have a disturbed area equal to or greater than 2,000 square feet and less than 1 acre (43,560 square feet).
- e. Tier 2 Dischargers cultivate cannabis commercially outdoors, and have a disturbed area equal to or greater than 1 acre.

The Cannabis Policy provides criteria to evaluate the threat to water quality based on site conditions. The threat is risk-based as described below:

- a. Disturbed area: The disturbed area indicates the threat to water quality because level of threat is proportional to the area of disturbed soil, the amount of irrigation water used, the potential for storm water runoff, and the potential impacts to groundwater (e.g., the use of fertilizers or soil amendments, the possible number of employees on site, etc.).
- b. Slope of disturbed area: Increased slopes may be associated with decreased soil stability, especially when associated with vegetation removal. Storm water and excess irrigation water are more likely to runoff and discharge off-site from sloped surfaces.
- c. Proximity to a surface water body: The Cannabis Policy provides setbacks from surface water bodies to reduce water quality impacts. Disturbed areas within the setbacks are more likely to discharge waste constituents to surface water and/or result in removal of riparian vegetation.

Outdoor cannabis cultivation activities that disturb an area (in aggregate) less than 2,000 square feet on any one parcel or on contiguous parcels managed as a single operation and that comply with all of the additional cultivation area criteria listed below are conditionally exempt and are required to obtain coverage under the Waiver. The 2,000 square feet conditional exemption criterion provides sufficient area for outdoor cultivation for small commercial activities. Facilities with larger disturbed

areas are inherently a higher threat to water quality and are subject to additional regulatory oversight. The conditional exemption applies per parcel or contiguous parcels; no coalitions, cooperatives, or other combination of cultivation activities can claim the conditional exemption for activities on the same parcel. To be conditionally exempt, a Discharger must comply with all of the following:

- a. The cultivation area shall be contiguous (all located in one area).
- b. The disturbed area complies with the setback requirements contained in this General Order (refer to Attachment A) and occupies less than 2,000 square feet.
- c. No part of the disturbed area is located on land with a slope greater than 20 percent.
- d. The Discharger implements all applicable BPTC measures listed in Attachment A.

Discharges from cannabis cultivation activities eligible for coverage under this General Order are exempt from the requirements of Consolidated Regulations for Treatment, Storage, Processing, or Disposal of Solid Waste in California Code of Regulations, title 27, division 2, subdivision 1, section 20005, et seq. The activities are exempt from the requirements of title 27 so long as the activity meets and continues to meet all preconditions listed below. (Cal. Code Regs., tit. 27, §20090).

- a. Wastewater – Discharges of wastewater to land, including but not limited to evaporation ponds, percolation ponds, or subsurface leach fields if all of the following conditions are met:
  - i. The applicable Regional Water Board has issued WDRs, reclamation requirements, or waived such issuance.
  - ii. The discharge complies with the applicable water quality control plan.
  - iii. The wastewater does not need to be managed according to California code of Regulations, title 22, division 4.5, chapter 11, as a hazardous waste. (Cal. Code Regs., tit. 27, §20090(b).)
- b. Soil Amendments – Use of nonhazardous decomposable waste as a soil amendment pursuant to applicable BPTC measures, provided that Regional Water Boards may issue waste discharge or reclamation requirements for such use. (Cal. Code Regs., tit. 27, §20090(f).)

The guidelines can make it exceedingly more difficult to achieve and may lead many not to warrant a waiver. This in turn, may lead to an alternative to seek other means for discharge of waste from cannabis cultivation activities.

**Background:**

As background, on how and why the Commission pursued changes to Section 7 of the Commissioner’s Handbook, to address Urban Utility services for Agricultural Parcels Commissioner Willams requested staff evaluate a Sphere of Influence (SOI) revisions to Carpinteria Sanitary District (CSD) boundary, with Commission support. On May 4, 2023, the Commission considered and adopted the Municipal Service Review (MSR) for 33 agencies that provider water and sewer services countywide. As part of that report, the Carpinteria Sanitary District requested that a large study area be considered for a sphere amendment. The area generally covered 423-acres located south of SR 192 (Foothill Road) and north of Via Real between Nidever Road and Cravens Lane that included various agricultural properties, some of which includes greenhouses. The reason for the request was documented in the MSR under Chapter 3(A) “Carpinteria Sanitary District” Profile. In part it states, *“The District has been approached by surrounding agricultural property owners, particularly with greenhouse*

*structures and related improvements, regarding the potential for sewer service for retail operations, higher density employees, and on-site housing options. The transition from flower production to cannabis cultivation and processing has intensified the use of these properties and increased the need for effective wastewater management.”* A request, by the CSD, to consider this policy raises concerns related to these greenhouse parcels that may likely be in need of public sewer service in the future and, if so, is the CSD the utility provider who would logically deliver it? These policy discussions include water quality protection, public health and safety, and water supply enhancement. The idea of expanding the District’s SOI to strategically include properties likely in need of public sewer service in the future may offer a higher public benefit than excluding them. Study Area #2 was identified as some of these areas meeting the service needs for public sewers.

Additional testimony was presented to the Commission by the CSD General Manager at the May 4<sup>th</sup> meeting that the district was working with the Carpinteria Valley Water District to embark on a recycled water treatment project. The added service area could result in increased flows that would need to be considered in the designing of the treatment facility while providing sewer services for needed properties to help off-set future costs.

Additional testimony was raised that existing LAFCO policies would need to be revised to achieve a sphere of influence revision. LAFCO has policies that encourage the conservation of prime agricultural lands and open spaces as defined by *Gov. Code § 56064* that promote the preservation of agricultural uses and consistency with City and County General Plans. Conflict with the goals of maintaining the physical and economic integrity of such lands would be discouraged. Development shall be guided towards areas containing nonprime agricultural lands. The extension of potable water or wastewater services to a parcel zoned for agricultural use will only be approved, if at all, if the approval is limited to that portion of the parcel that includes an approved use that needs potable water or wastewater services, provided the use does not compromise agricultural viability. All of these policies would need to be reconsidered to allow for a broader sphere expansion of the west and east greenhouse developed parcels within the CSD request. No other agency had requested expansion to their SOI to address urban utility service needs.

Under existing policy, on a case-by-case basis, the Commission can evaluate and consider the appropriateness of extending sewer service under an out-of-agency service agreement (OASA) consistent with the policy to limit the portion of the parcel that includes the needed service. The CSD’s desire was to allow for future annexation and not seek individual OASA’s. Annexation can only occur if first the properties are included within the district SOI. Hence, the direction given at the Mat 4, 2023 meeting was to adopt the CSD Sphere of Influence as proposed by staff and direct LAFCO staff to bring back revisions to the necessary policies. Staff would later bring back a supplement report to the MSR for future revisions to the CSD SOI that included appropriate CEQA analysis. Conversations with the CSD General Manager has indicated the district does not have further interest in perusing technical studies and CEQA analysis at this time.

**California Environmental Quality Act (CEQA):**

Staff was directed, at the August 3, 2023 meeting, to re-evaluate the appropriate CEQA analysis to revise the Commission’s policies concerning Section 7 II – Sphere of Influence Policies, Section 7 V –

Policies Encouraging Conservation of Prime Agricultural Lands and Open Space Areas, and Section 7 XII – Extending Urban Utility Services to Agricultural Parcels. The three sections were policies that needed revisions to allow for SOI change and future annexation versus an OASA. Direction from AAC and Commissioners felt any policy revisions should address countywide consideration and not a specific localized area, such as, Carpinteria Valley.

In the CEQA case *City of Livermore V LAFCO*, the court held the amendment to the SOI guidelines was a policy change that may have a significant impact on the environment and therefore an EIR was required. In addition, the appropriate CEQA review for expanding the CSD Sphere of Influence to include the ~423-acres would also require greater CEQA analysis. It may make sense to combine these efforts, if the Commission desires to do so. Generally, a consultant would be requested to conduct an EIR. Again, the CSD has indicated they do not have further interest in perusing technical studies and CEQA analysis at this time.

The County of Santa Barbara is currently working through the Agricultural Enterprise Ordinance which would allow incidental agricultural uses that allow for more intense development such as Farmstays, small scale campgrounds, and other enterprise uses that could benefit from urban utility services. This effort has taken approximately three years and approximately \$170,000 with the use of consultants to draft an ordinance and EIR for Board of Supervisor action later this year. Similar efforts would likely be necessary or tiering from the CEQA document might be possible to make Commission policy changes that would allow a sphere of influence amendment and future annexation of agricultural parcels to receive urban utility services. Otherwise, the exiting policy would allow for, on a case-by-case basis, extending sewer service under an out-of-agency service agreement consistent with the current policy to limit the portion of the parcel that includes the needed service. The status report regarding history of OASA's is on the October agenda that outlines and documents the use of such agreements. The current work plan and adopted budget did not include consultant work for the fiscal year. The cost could be covered by contingency reserves and would be covered by membership in next year's budget plan.

### Attachments

Attachment A – Public Comments

Please contact the LAFCO office if you have any questions.

**From:** Streamline <noreply@specialdistrict.org>  
**Sent:** Monday, August 14, 2023 5:15 PM  
**To:** lafco@sblafco.org  
**Subject:** New form submission received: Contact Us



## Contact Us

<b>Your name:</b>	Curtis Cloud Thornton
<b>Your email:</b>	swqmisturtlebird17@gmail.com
<b>Subject:</b>	Commission handbook section 7
<b>Message:</b>	<p>Members of the commission: I'm a concerned citizen of Carpinteria. I read the comments regarding the proposed changes to your handbook that Carpinteria sanitation department wants to add more greenhouses to their service .None of the comments noted that the greenhouses in Carpinteria are actually pharmaceutical production companies with an agriculture designation. Are the members aware the Carpinteria sanitation department plans on putting the discharge of this into the communities well? Discharge from a pharmaceutical manufacturing company in the community well? Are the members aware that other sanitation districts in Ventura county and Santa Barbara county have already been denied doing this by reasonable water districts. Why should Carpinteria have this exception to enable these pharmaceutical companies to discharge pollution from poor use of their water for drug production and increase the pollution of the water of very wells they plan on using in the future. The Carpinteria water district is the only district that is also going to be directing its sewer into the public's water well. Is this also the policy of the regional water quality control board? I have decades of experience in horticulture and know very well the practices of these companies. I ask you to be very thoughtful of the consequences of your decisions and your faith in these companies and the sanitation districts ability to as they say provide "pure" water to its community! Thank you for your attention, Curtis Cloud Thornton</p>
<b>Attachment:</b>	

[Reply / Manage](#)