

From: barqueproperties@att.net
Sent: Wednesday, April 23, 2025 5:19 PM
To: BOS-Clerk of the Board
Cc: jaykipp0904@gmail.com
Subject: NOTICE OF PUBLIC HEARING; FILE NO. 25-0508; AGENDA ITEM #32; 29 APRIL 2025 @ 1:00 PM

Importance: High

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Dear Board of Supervisors,

My name is Donald W. Ullrich, Jr. I am the president and CEO of Barque Properties, Inc., a California corporation. The corporation is owner of record of Parcel C situate on Rosewood Lane adjacent to Assessor's Parcel Numbers 095-130-051 and 095-130-054, consisting of 20.24 acres, in the Somerset area, the property the subject of these proceedings.

After the hearing on 27 February 2025 before the planning commission, I walked Parcel C. Parcel C is a heavily forested undeveloped 10 acres, the forest being especially dense between Parcel C and the property the subject of these proceedings. The main house could only be partially observed and only when standing near the edge of Parcel C and Rosewood Lane. The 10 acres on which the marijuana grow is to be sited could not be seen at all.

Agreement has been reached between the corporation and the owner/occupants of the subject property to remove any and all remnants of a marijuana grow on Parcel C. Parcel C was supposed to have been sold to the owner of the subject property by Laura E. McNicol, Trustee of the Laura E. McNicol Trust, along with said two Parcels otherwise known as Parcels A and D, the trust at the time owning all three parcels. Parcel B is owned by a separate party. However, due to a cloud on title with respect to Parcel C, Parcel C was withdrawn from the sale. There may have been some confusion as to the use of Parcel C after the sale; nevertheless, the owner of Parcels A and D was advised by the trust to cease all marijuana grows on Parcel C and to restore Parcel C to the condition it was in prior to the grow. Laura E. McNicol died 27 August 2023. The corporation was her corporation owning and managing rental properties with her as the sole shareholder. On her death, the trust distributed the stock to named beneficiaries in the trust. The trust transferred title of Parcel C to the corporation.

There is a road maintenance agreement of record affecting the adjacent owners of Rosewood Lane, to wit: Parcels A, B, C, and D. The owner of the subject property has agreed that should a permit for the marijuana grow issue, the road maintenance agreement will be amended so as to provide that the owners of Parcels B and C will not bear any responsibility for road maintenance, repair or replacement necessitated by the wear and tear of vehicular traffic coming and going on Rosewood Lane to and from the property in question, or for any improvement to the road and bridge that may be required as the result of use by large vehicles such as trucks.

The corporation has no objections to the granting of the appeal.

Very truly yours,

Donald W. Ullrich, Jr.
President, Barque Properties, Inc.

Donald W. Ullrich, Jr., President & CEO
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From: Christine Schaufelberger <cschaufel@gmail.com>
Sent: Thursday, April 24, 2025 3:21 PM
To: BOS-Clerk of the Board
Subject: Comments for April 29, 2025 Board of Supervisors Public Hearing, agenda item # 25-0508
Attachments: Derby Road Neighbors Opposition to CCUP-A-25001 Appeal.pdf

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Please add the attached file, "Derby Road Neighbors Opposition to CCUP-A-25001 Appeal", to the Board of Supervisors Public Hearing item #25-0508 on April 29, 2025.
Please let me know you have received this file, and contact me with any questions or concerns.

Thank you, Christine Schaufelberger, on behalf of the Derby Road Neighbors

To: El Dorado County Board of Supervisors

From: Derby Road Neighbors

Re: Opposition to Appeal of Commercial Cannabis Use Permit CCUP-A25-0001

Approved Motion: A motion was made by Commissioner Nevis, seconded by Commissioner Williams, that the Planning Commission find that based on credible lay testimony that proposed CCUP21-0007: 1) Does not meet the requirements of the cannabis ordinance, particularly reduced setbacks from property lines and a bus stop due to land use conflicts, air quality impacts, and groundwater usage. 2) Is injurious to the public health, safety and welfare and injurious to the neighborhood due to land use conflicts, air quality impacts, traffic safety and groundwater usage. Due to these concerns, CCUP21-0007 is denied, and the Mitigated Negative Declaration is not approved.

While County Counsel's summary suggests that denial was based primarily on community opposition, the Planning Commission's findings—and the public record—show that the project fails to comply with multiple mandatory provisions of County and State law. Denial of this project is not only within the Board's discretion, it is required to ensure legal compliance with CEQA, El Dorado County Code, and State Fire Safe Regulations..

1. Neighborhood Land Use

There are two sections of the Commercial Cannabis Ordinance that clearly make this application unacceptable and are not subject to mitigation. They are the school bus stop location and the Type N Manufacturing location on a parcel that includes a residence.

The Derby Road neighborhood consists of 15 parcels that were originally developed in 1980-1982 as rural residential. The subdivisions included five 4-acre parcels, eight 10-acre parcels, one 20-acre parcel and two 40-acre parcels. The County General Plan changed the designation to PA 20, however, thirteen of these parcels were already established as single family residences and one five-acre parcel also includes a granny flat.

2. Misapplication of School Bus Stop Setback Requirements

The applicant and the staff reports continue to mischaracterize setback provisions under the County Ordinance by combining Section B which is a location standard with Section C which provides for property line setbacks.

B. Location. Outdoor or mixed-light commercial cannabis cultivation shall not be located within **1,500 feet from any school, school bus stop**, place of worship, park, playground, child care center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility. **Distance shall be measured from the nearest point of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement.**

C. **Setbacks.** Outdoor or mixed-light cultivation of commercial cannabis shall be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of the riparian vegetation of any watercourse. Setback reduction of the minimum 800 feet from the property lines may be reduced for ownership prior to ordinance adoption.

- The bus stop remains an active district asset, and its recent use and potential future use reinforces the need for compliance. **See Attachment A – School Bus Stop**

3. CEQA Review Was Incomplete and Inadequate

The Mitigated Negative Declaration (MND) failed to disclose or analyze key components:

The 800-foot setbacks from the property lines were reduced on all sides of the project: 128 feet from the processing building, 525 feet east, 500 feet north, and 350 feet west from the greenhouses. Setback reductions are allowed for previously owned parcels if they can meet all applicable requirements. These drastic reductions do not meet those requirements.

- Transportation of cannabis on private roads—not exempt under County Code—is a significant commercial activity impacting neighbors.

- Type N Manufacturing

- The site lies in a High Fire Hazard Severity Zone, yet there is no secondary evacuation route for nearby homes.

- Impacts related to lighting, odor, security, traffic, and noise were not adequately assessed or mitigated.

- Odor control deficiencies. Studies are based on outdated and inaccurate analysis conducted by EPS.

- Water Usage. **See Attachment B – Water Usage**

- Community comments based on personal observations and applicability were never responded to by or included in the CEQA analysis or staff reports.

Per CEQA Guidelines §15124, a legally adequate project description must fully disclose all activities. This MND fails that test.

4. Undisclosed Cannabis Manufacturing (Type N License)

- The project includes plans for non-volatile cannabis manufacturing (Type N), involving onsite processing of edibles, tinctures, or topicals.

- The MND is silent on this use, violating CEQA disclosure requirements.

- County Ordinance §130.41.300(C) prohibits manufacturing on parcels with residential dwellings. The project includes an occupied residence on APN 095-130-051, making the proposed use non-compliant and unlawful.

5. Unclear Distribution Activities Pose Further Risk

- The applicant failed to disclose whether they intend to operate under a Type 11 (full distribution) or Type 13 (transport-only) license.
- Without clarity, the public and County cannot evaluate traffic impacts, delivery frequency, or use of private roads.
- This omission renders the MND legally deficient under CEQA.

6. Traffic Impact Claims Are Inaccurate

- The applicant claims fewer than 10 daily trips, but documents show up to 20 trips/day during peak season, with earlier projections of 60/day.
- These are commercial vehicle trips on private, residential roads that were never designed—or maintained—for industrial-scale use.
- The applicant's vague offer to maintain the road is unenforceable and does not address long-term public safety or liability.

7. Community and Fire Safety Must Take Precedence

- This project is proposed in a community that:
 - Has only one road in and out.
 - Is surrounded by homes with children, elderly residents, and no viable evacuation alternative.
 - Faces increased fire ignition risk, particularly from human activity, lighting, generators, and vehicle trips tied to cannabis operations.

This location is not suitable for commercial cannabis under CEQA, County Fire Safe Regulations, or basic public safety principles. **See Attachment C – High Fire Exposure**

8. Documented History of Illegal Water Usage for Cannabis Activity by Applicant

The community only became aware of this at the Planning Commission Hearing on February 27, 2025. In July 2020, the State Water Resources Control Board issued a Directive Notice for illegal cannabis cultivation on adjacent parcel APN 095-130-053, citing:

- Unauthorized water diversion.

- Cultivation without state license or enrollment.
- Risk of environmental harm and regulatory noncompliance.

Jason Kipperman and Adriana Kipperman were identified as the tenants and likely operators by the landowner's legal counsel. Cease-and-desist letters were issued directly to them.

This raises serious concerns about:

- The applicant's suitability to hold a county permit.
- Credibility and trustworthiness in complying with environmental and zoning laws.
- Public risk in granting a new permit to someone with a prior enforcement history.

See Attachment D – State Water Board Directive Notice (July 23, 2020)

9. Community-Based Evidence of Environmental Harm Supports Denial

Under the CEQA "Fair Argument" standard, courts have consistently recognized that credible testimony from community members may establish a fair argument of significant environmental impacts. This legal precedent applies directly to the Rosewood Project. Longstanding residents have provided factual, experience-based testimony highlighting serious, site-specific risks: traffic safety issues on Derby Lane, wildfire vulnerability, overuse of limited water resources, and incompatible land use. CEQA does not require expert reports to substantiate these claims. The Planning Commission rightly found this evidence compelling, and it supports outright denial of the project—not further study or mitigation. Reference: May 7, 2015, Sixth District Court of Appeal Published Opinion.

Conclusion and Request

For all of the reasons above, and based on community documented observation and written public comments over the past two and a half years, we respectfully ask the Board of Supervisors to:

- Uphold the Planning Commission's denial of CCUP21-0007.
- Recognize that the MND is legally deficient, the project includes unpermitted uses, and the applicant has demonstrated a record of noncompliance.
- Protect our community's safety, roads, water, and air from the impacts of industrial cannabis in a residential rural zone.

Signed 04/23/2024 Derby Road Neighbors, Ron & Susan Buchanan, Aaron Brooks, Stephanie Cummins, Dave DePoli, Pat Freeman, Gay Jacobs, Peter Karczewski, Harry & Jean Lehmann, Craig & Sharol Lynch, David Malan, Bert Mason, Christine Schaufelberber, Stacey Merrill, Greg & Jennifer Stremcha

Attachment A – School Bus Stop

The Planning Department staff report for the Planning Commission meeting dated February 27, 2025, continues to distort the actual language of the Ordinance by using Section 130.41.200 5 B as a setback standard for school Bus stops.

Section 130.41.200 sets the Cultivation standards.

5. Cultivation Standards.

A. In addition to any State requirements by any governing State agency and any site specific requirements in a permit, outdoor or mixed-light cultivation of commercial cannabis shall comply with the following requirements. Any violation of State regulations, site specific requirements in a Commercial Cannabis Use Permit or Commercial Cannabis Operating Permit, or these requirements is subject to enforcement, abatement, and revocation of a County permit under Section 130.41.100 (Commercial Cannabis Activities Permitting and Enforcement) and Section 130.54.090 (Revocation or County Mandated Modification of a Permit).

B. **Location.** Outdoor or mixed-light commercial cannabis cultivation shall not be located within **1,500 feet from any school, school bus stop**, place of worship, park, playground, child care center, youth-oriented facility, pre-school, public library, licensed drug or alcohol recovery facility, or licensed sober living facility. **Distance shall be measured from the nearest point of the premises that contains the commercial cultivation to the nearest point of the property line of the enumerated use using a direct straight-line measurement.** A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this Chapter.

C. **Setbacks.** Outdoor or mixed-light cultivation of commercial cannabis shall be setback a minimum of 800 feet from the property line of the site or public right-of-way and shall be located at least 300 feet from the upland extent of the riparian vegetation of any watercourse. Setback reduction of the minimum 800 feet from the property lines may be reduced for ownership prior to ordinance adoption.

Precedent from Green Gables Growers (CCUP20-0004)

A recent case, Green Gables Growers (CCUP20-0004), provides a clear precedent demonstrating that proximity to a school bus stop is a critical issue in determining the viability of a cannabis cultivation project:

- Green Gables Growers requested a variance to reduce the required 1,500-foot distance from two school bus stops.
- The El Dorado County Planning Commission initially approved the variance, citing mitigating factors.
- Upon appeal, the El Dorado County Board of Supervisors overturned the approval, denying the project due to concerns over the school bus stop proximity.

This demonstrates that distance requirements for school bus stops must be strictly upheld and that exceptions have not been permitted in past cases. Given that the Rosewood Lane project has a 0-

foot setback to the parcels where the school stop is located it is even more egregious than Green Gables Growers, where at least some separation existed. There was discussion at the Planning Commission Hearing that the actual location of the bus stopped might be used, however, that distances is approximately 800 feet from the applicants property line.

See the included photo and map for reference. Parcel designated #43, is the bus stop, and parcels #51 and #54 are the proposed CCUP21-0007/ Rosewood Lane Project. (Note Parcel land #54 will be joined together according to the Permit Application)

Conclusion & Request

Given the County's established policy of measuring school bus distances from parcel lines, we request the Board of Supervisors uphold the Planning Commissions denial of the permit for the Rosewood Lane Cannabis Project on the grounds that it does not meet legally required location distances from a school bus stop.

Allowing this project to proceed under these conditions would set a dangerous precedent, contradicting both established County regulations and recent Board of Supervisors decisions that have upheld distance requirements in a similar case.

Attachment A School Bus Stop located at Derby Road/Omo Ranch Road



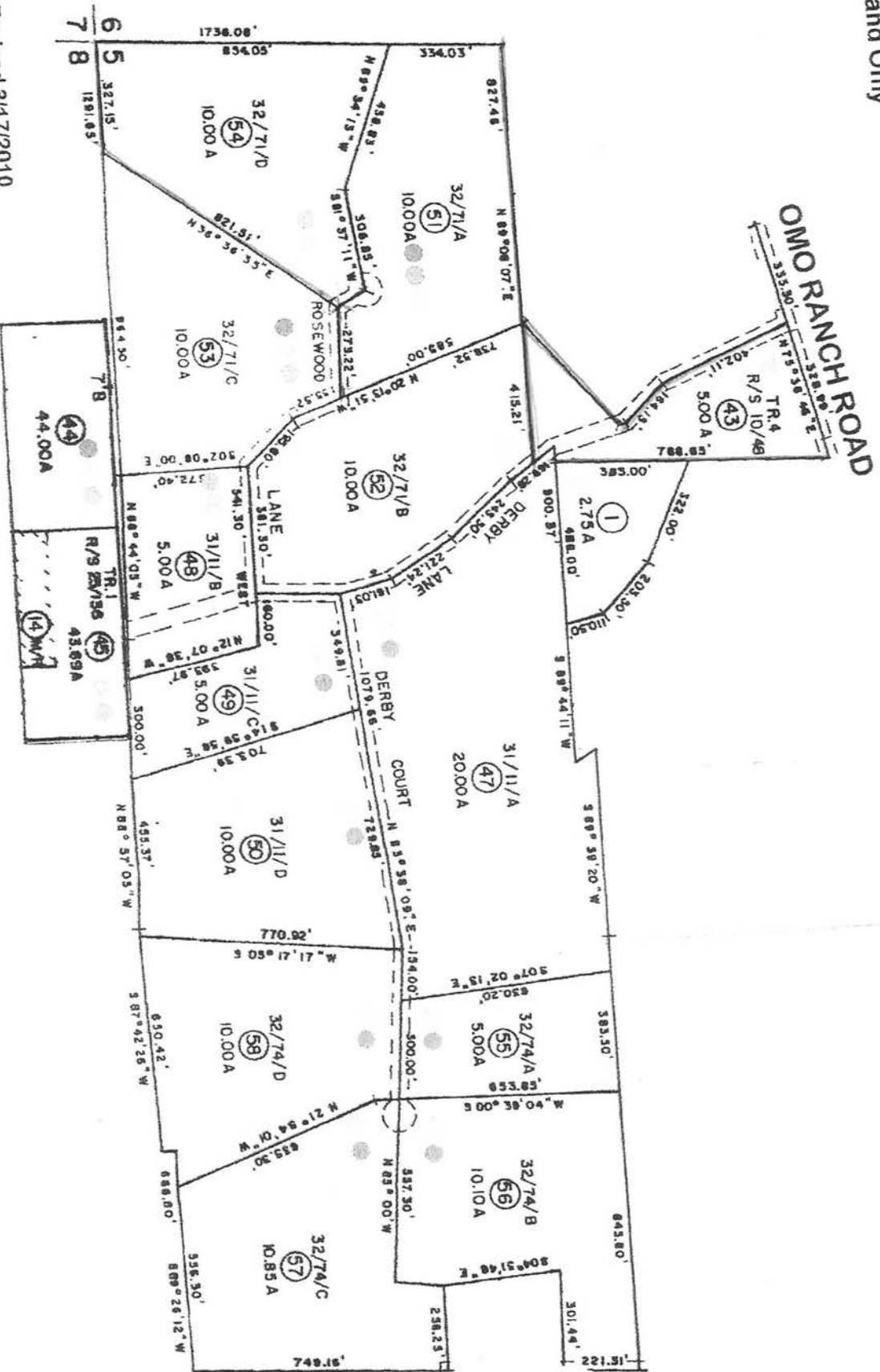
The bus travels on the same side of Omo Ranch Road for the morning pickup and afternoon drop-off and pulls off of Omo Ranch onto the lower part of Derby Lane. Parents from Derby and Shenandoah Lane walk their children or park on the right side of Derby Lane to wait for the bus. In 2017 the Derby Road Neighbors paid \$13,000 to improve drainage and pave just the lower portion of the road and aprons, where the bus stops.

Both the parcels on the right and left adjoin the applicants parcels, and the measurement from where the bus actually stops to the applicants parcels is approximately 800 feet. 700' less than the distance required by the ordinance.

Over the past 25 years, the bus stop has been used by many children and as recently as two months ago, by the applicants two related children.

Derby Lane Homeowners

- Derby Lane
- Derby Court
- Upper Derby Lane
- Land Only



Attachment B – Well Production Report Never Provided

Under El Dorado County Code § 130.41.200 (G)(3), all commercial cannabis cultivation sites must provide a **sufficient and reliable water source**. Where a site proposes to use **well water**, the County's **Cannabis Environmental Checklist**—used to screen for CEQA significance—requires disclosure of **well location, yield, and impacts on nearby wells, surface waters, and biological resources**.

Projects on parcels with existing or proposed wells typically must submit a **well production report**, and in some cases, a **pump test or hydrogeologic analysis**. This is especially true where cumulative groundwater extraction may affect other users or habitat (e.g., creeks, springs, riparian buffers). Such data is evaluated as part of the Use Permit and CEQA process.

The staff report (included) references a different well (Permit #2130) with a yield of only 1.5 GPM, which was capped due to inadequate output. The applicant claims a 7.5 GPM well exists on-site, but:

- There is no record of a recent well test verifying this yield.
- Using standard well degradation formulas, a 25-year-old well originally producing 7.5 GPM would now yield between 4.6 and 5.8 GPM.
- The water demand calculations fail to account for an existing residence (4-6 occupants) and a swimming pool, significantly underestimating actual consumption.
- The combined annual water demand is estimated at 350,000 gallons/year:
 - 125,000 GPY for the residence.
 - 225,000 GPY for the cannabis operation.

Applicant refers to a pond on site, however it is seasonal and not available during dry months when there is high fire danger and low water production.

Conclusion: current well test and a hydrogeological study to confirm that the project will not overdraft groundwater supplies was never provided. Failure to provide accurate water data justifies denial of the permit.

* Held for final - owner not happy & may
No further action requested as of 1-24-01 - CKM
WELL DRILLING INSPECTION REQUEST want to destroy
Permit # 2130

NAME: McNicol

LOCATION: 3331 Rosewood Lane

Somerset

DATE: 5/16 TIME: AM PM

REQUESTED BY: Dave

DRILLER: Grid Waters

☐ PRELIMINARY SITE

☒ WELL SEAL

☐ DESTRUCTION

☐ APPROVED

☐ DISAPPROVED

CASING DEPTH: 26' SEAL DEPTH: 24' +

10 AM

OF BAGS: MATERIAL: Bentonite

REMARKS:

Water in seal hole ~2' down/advised to obtain
bentonite & return later today to seal well

R.E.H.S. CKM DATE: 5-16-00

rev.08/98well.insp

~1 1/2 GPM per Dave

Attachment C - Wildfire Exposure of Cannabis Cultivation

Dillis, C., Butsic, V., Moanga, D., Parker-Shames, P., Wartenberg, A., & Grantham, T. E. (2022). The threat of wildfire is unique to cannabis among agricultural sectors in California. *Ecosphere*, 13(9), e4205. <https://doi.org/10.1002/ecs2.4205>

Why the study matters

It is the first statewide, peer-reviewed analysis that overlays:

1. Exact locations of every licensed outdoor cannabis farm ($n \approx 2,800$, 2018–2020 licensing data) and their acreage, with
2. CAL FIRE Fire-Hazard Severity Zones (FHSZs), historical wildfire perimeters (1970-2020), and
3. Modeled “future burn hotspots” (2020-2100).

It then compares cannabis to three other major crop groups—grapes, pasture, and “general crops”—using descriptive statistics and generalized-additive models (GAMs).

Key Findings (Statewide):

1. 36% of licensed cannabis acreage is in 'High' Fire-Hazard Severity Zones; less than 9% of vineyard acreage is.
2. 24% is in 'Very-High' zones, eight times higher than pasture.
3. Cannabis farms are significantly closer to historical wildfire perimeters ($p < 0.001$).
Probability of burning by 2100 is more than double that of other crops.

Metric	Cannabis	Grapes	Pasture	General crops
Farms located in high FHSZ	36 % of cannabis acreage (≈ 986 farms)	8.8 %	4.3 %	< 4 %
Farms in very-high FHSZ	24 % (≈ 788 farms)	2.9 %	1.7 %	< 2 %
Median distance to a wildfire that burned 1970-2020	Closer for cannabis than any other crop (GAM significant at $p < 0.001$)	—	—	—
Likelihood of being in a future (2020-2100) burn hotspot	Highest for cannabis; $> 2\times$ pasture, $> 1.5\times$ grapes (GAM)	—	—	—

Implications for El Dorado County:

Derby Lane / Rosewood parcels lie inside CAL FIRE draft 'High' to 'Very-High' zones (2023). Outdoor grows follow the statewide trend of locating in fire-prone WUI areas.

County updates (Feb 2024) list eight cultivation permits in process, up from three in 2021. Each new site adds ignition sources and traffic on many single-access roads, increasing evacuation and suppression challenges.

Conclusion: Statewide data show cannabis cultivation is uniquely exposed to wildfire danger. Approving the Rosewood project would intensify that exposure on Derby Lane, a corridor already rated High risk.



State Water Resources Control Board

July 23, 2020

Certified Mail Number: 7000 1000 0000 1000 0000

Investigation ID Number: 12060

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**DIRECTIVE NOTICE TO OBTAIN REGULATORY COVERAGE FOR CANNABIS
CULTIVATION ACTIVITIES**

Action Required**Failure to Respond May Result in Fines**

You are receiving this Directive Notice because, based on information currently available to the State Water Resources Control Board (State Water Board) and the Central Valley Regional Water Quality Control Board (Regional Water Board)(collectively referred to as Water Boards), you own the following parcel(s) that appear(s) to be used for cannabis cultivation or associated activities:

County: El Dorado			
APN 095-130-053-000	APN	APN	APN

For translation assistance with this notice, please contact the following below:

Spanish: Para obtener más información en español por favor contáctenos al teléfono (916) 341-5265 o vía email a: OPP-LanugageServices@waterboards.ca.gov.

Hmong: Rau kev npaub ntiv ua lus Hmoob, thov txuas lus nrog peb ntawm xov tooj (916)-341-5265 los sis email: OPP-LanugageServices@waterboards.ca.gov.

There is no record of enrollment in the Water Boards' Cannabis Cultivation Program by any person associated with this property. There is no record of a water right allowing seasonal storage of surface water for cannabis cultivation on the property and/or no record of any person obtaining coverage under the *General Waste Discharge Requirements and Waiver of Waste Discharge Requirements for Discharges of Waste Associated with Cannabis Cultivation Activities*¹ (Statewide General Order).

¹ The Statewide General Order is available at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2019/wgo2019_0001_dwg.pdf

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

If you have been contacted in error or are no longer cultivating cannabis on the parcel(s) identified above, please log in to the Portal and select the *Division of Water Rights - Cannabis Compliance Response Portal*. There, you may input your response and upload any documents or photos necessary to resolve this Directive Notice. Please use your Assessor's Parcel Number(s) and the Investigation ID listed above. The State Water Board will confirm the receipt of the information you provide by email or by phone number (please provide both forms of contact).


Notification Regarding Potential Enforcement

All cannabis cultivators must comply with the regulatory requirements described in this Directive Notice and Attachment. Failure to obtain any necessary regulatory coverage may subject you to enforcement action, including fines, by the State Water Board, the Regional Water Board, or both.

Water Code section 1847 provides that a person who violates any cannabis cultivation related requirement or who diverts or uses water for cannabis cultivation without a necessary CDFA CalCannabis license, may be subject to a fine of \$500 plus \$250 for each ongoing day of violation if the person fails to correct the violation within 30 days after the Board has called the violation to the attention of that person. **This Directive Notice constitutes notice that you appear to be in violation of one or more cannabis cultivation requirements and/or that you appear to be diverting water for cannabis cultivation without a CDFA CalCannabis license, and thus may be subject to liability under Water Code section 1847.**

Water Code section 1052 provides that the diversion or use of water subject to the Division's permitting authority other than as authorized, is a trespass and the State Water Board may impose a fine of \$500 for each day in which the unauthorized diversion or use of water occurs. **This Directive Notice constitutes notice that you appear to be diverting water subject to the State Water Board's permitting authority without a valid water right on file and thus, may be subject to liability under Water Code section 1052.**

Water Code section 13261 provides that a person who fails to submit a report of waste discharge when requested to do so is guilty of a misdemeanor and may be subject to administrative civil liability of up to \$1,000 for each day the report is late. **This Directive Notice constitutes a request on behalf of the Regional Water Board that you enroll under the Statewide General Order or submit a report of waste discharge for an individual WDR for your cannabis cultivation activities.**


Taro Murano, Program Manager
Cannabis Enforcement Section
Division of Water Rights
State Water Resources Control Board