



**Cannabis Cultivation and  
Potential Conflicts with Existing Agriculture -  
Agricultural Liaison Advisory Board Meeting  
March 2, 2020**

# CANNABIS

## PESTICIDES THAT **CANNOT** BE USED



Protecting workers, the public, and the environment from adverse effects of pesticide use in cannabis cultivation is critical to the mission of the California Department of Pesticide Regulation (DPR). DPR and the County Agricultural Commissioners (CAC) enforce the use and sale of pesticides under Divisions 6 and 7 of the California Food and Agricultural Code (FAC), and Title 3 of the California Code of Regulations (CCR). These laws and regulations apply to all pesticide use; cannabis is no exception.

All pesticide product labels include a warning statement, precautionary statements for protecting human and environmental health, storage and disposal statements, and directions for use. By law, all pesticide users must follow these statements.

When using pesticide products in cannabis cultivation, applicators must not use a rate that is higher than the rates listed on the label and follow the agricultural use requirements including method of application, restricted entry interval, personal protective equipment, and pre-harvest interval.

**Always read the label prior to using any pesticide.**

### Some pesticides cannot be used in cannabis cultivation.

While there are some pesticide products that are legal to use on cannabis under state law, (see DPR's document: [Pesticides that are Legal to Use on Cannabis](#)) other products are never allowed in cannabis cultivation. The following criteria identify pesticide products that cannot be used in California cannabis cultivation under any circumstances. The use of any pesticides meeting any one of these criteria on cannabis will be strictly enforced as a violation of the FAC and could result in civil or criminal penalties (FAC sections 12996 and 12999.5):

- Not registered for a food use in California
- California Restricted Material including Federal Restricted Use Pesticides (3CCR section 6400)  
On the groundwater protection list (3CCR section 6800)

Cannabis cultivators who are licensed by the California Department of Food and Agriculture are required to comply with pesticide laws and regulations as enforced by DPR and the CAC's.

For more information:  
[www.cdpr.ca.gov/cannabis](http://www.cdpr.ca.gov/cannabis)



## PESTICIDES THAT **CANNOT** BE USED ON CANNABIS

The following are criteria for identifying pesticides that cannot be used in cannabis cultivation and examples of active ingredients meeting these criteria. This is a representative list of active ingredients and not intended to be exhaustive. The fact that an active ingredient is not listed does not authorize its use on cannabis in California.

### ★ Pesticides Not Registered for Food Use in California

If a pesticide product does not have directions for use on a food crop, it cannot be used in cannabis cultivation. Examples of active ingredients that do not have food uses include:

- Aldicarb
- Carbofuran
- Chlordane
- Chlorfenapyr
- Coumaphos
- Daminozide
- DDVP (Dichlorvos)
- Etofenprox
- Fenoxycarb
- Imazalil
- Methyl parathion
- Mevinphos
- Paclobutrazol
- Propoxur
- Spiroxamine
- Thiacloprid

### ★ California Restricted Materials

DPR designates certain pesticides as California restricted materials (3 CCR section 6400). A pesticide can be considered a restricted material for many reasons including designation as a federal Restricted Use Pesticide. Many of these products have product labels that clearly state "Restricted Use Pesticide." Consult your local CAC to determine whether a product is a restricted material. Examples of California restricted materials include:

- Abamectin
- Bifenthrin
- Brodifacoum
- Bromdiolone
- Cyfluthrin
- Difenacoum
- Difethialone
- Fipronil
- Naled

### ★ Pesticides on the Groundwater Protection List

Active ingredients that are on the Groundwater Protection List (3CCR section 6800) have chemical characteristics that make them likely to move into groundwater. Examples of active ingredients on the groundwater protection list include:

- Acephate
- Azoxystrobin
- Boscalid
- Carbaryl
- Chlorantraniliprole
- Diazinon
- Dimethoate
- Dimethomorph
- Ethoprop(hos)
- Fludioxonil
- Imidacloprid
- Malathion
- Metalaxyl
- Methiocarb
- Methomyl
- Myclobutanil
- Propiconazole
- Tebuconazole
- Thiamethoxam

Version 9/18

# CANNABIS

## PESTICIDES THAT ARE LEGAL TO USE



Protecting workers, the public, and the environment from adverse effects of pesticide use in cannabis cultivation is critical to the mission of the California Department of Pesticide Regulation (DPR). DPR and the County Agricultural Commissioners (CAC) enforce the use and sale of pesticides under Divisions 6 and 7 of the California Food and Agricultural Code (FAC), and Title 3 of the California Code of Regulations (CCR). These laws and regulations apply to all pesticide use; cannabis is no exception.

All pesticide product labels include a warning statement, precautionary statements for protecting human and environmental health, storage and disposal statements, and directions for use. By law, all pesticide users must follow these statements.

When using pesticide products in cannabis cultivation, applicators must not use a rate that is higher than the rates listed on the label and follow the agricultural use requirements including method of application, restricted entry interval, personal protective equipment, and pre-harvest interval.

Some pesticide products are never allowed in cannabis cultivation under any circumstances (see DPR's document: Pesticides that Cannot be Used on Cannabis).



### Always read the label prior to using any pesticide.

#### PRODUCTS THAT CAN BE LEGALLY APPLIED TO CANNABIS IN CALIFORNIA

A pesticide product can legally be applied to cannabis under state law if the active ingredients found in the product are exempt from residue tolerance requirements and the product is either exempt from registration requirements or registered for a use that is broad enough to include use on cannabis.

Residue tolerance requirements are set by U.S. EPA for each pesticide on each food crop and are the amount of pesticide residue allowed to remain in or on each treated crop with "reasonable certainty of no harm." Some pesticides are exempt from the tolerance requirement when they are found to be minimal risk.

Active ingredients exempt from registration requirements are mostly food-grade essential oils such as peppermint oil or rosemary oil.

Cannabis cultivators who are licensed by the California Department of Food and Agriculture are required to comply with pesticide laws and regulations as enforced by DPR and the CAC's.

For more information:  
[www.cdpr.ca.gov/cannabis](http://www.cdpr.ca.gov/cannabis)

## PESTICIDES THAT ARE LEGAL TO USE ON CANNABIS

The following are examples of pesticide active ingredients that are exempt from tolerance requirements and either exempt from registration requirements or have labels broad enough to include use on cannabis. This is not an exhaustive list of active ingredients that may fit the legal use criteria. The active ingredients are organized by the intended target.

### Insecticides and Miticides

- Azadirachtin
- *Bacillus thuringiensis* sub. *kurstaki*
- *Bacillus thuringiensis* sub. *israelensis*
- *Beauveria bassiana*
- *Burkholderia* spp. strain A396
- Capsaicin
- Cinnamon and cinnamon oil
- Citric acid
- Garlic and garlic oil
- Geraniol
- Horticultural oils (petroleum oil)
- Insecticidal soaps (potassium salts of fatty acids)
- Iron phosphate
- *Isaria fumosorosea*
- Neem oil
- Potassium bicarbonate
- Potassium sorbate
- Rosemary oil
- Sesame and sesame oil
- Sodium bicarbonate
- Soybean oil
- Sulfur
- Thyme oil

### Fungicides and Antimicrobials

- *Bacillus amyloliquefaciens* strain D747
- Cloves and clove oil
- Corn oil
- Cottonseed oil
- *Gliocladium virens*
- Neem oil
- Peppermint and peppermint oil
- Potassium bicarbonate
- Potassium silicate
- Rosemary and rosemary oil
- Sodium bicarbonate
- *Reynoutria sachalinensis* extract
- *Trichoderma harzianum*

### Vertebrate Repellants

- Castor oil
- Geraniol

Version 12/17

# Pesticides Exempt from EPA Tolerance Levels

## Electronic Code of Federal Regulations

e-CFR data is current as of **January 23, 2019**

[Title 40](#) → [Chapter I](#) → [Subchapter E](#) → [Part 180](#)

[Browse Previous](#) | [Browse Next](#)

Title 40: Protection of Environment

### **PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD**

#### **Contents**

##### **Subpart A—Definitions and Interpretative Regulations**

- §180.1 Definitions and interpretations.
- §180.3 Tolerances for related pesticide chemicals.
- §180.4 Exceptions.
- §180.5 Zero tolerances.
- §180.6 Pesticide tolerances regarding milk, eggs, meat, and/or poultry; statement of policy.

##### **Subpart B—Procedural Regulations**

- §180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities or processed foods.
- §180.8 Withdrawal of petitions without prejudice.
- §180.9 Substantive amendments to petitions.
- §180.29 Establishment, modification, and revocation of tolerance on initiative of Administrator.
- §180.30 Judicial review.
- §180.31 Temporary tolerances.
- §180.32 Procedure for modifying and revoking tolerances or exemptions from tolerances.
- §180.33 Fees.
- §180.34 Tests on the amount of residue remaining.
- §180.35 Tests for potentiation.
- §180.40 Tolerances for crop groups.
- §180.41 Crop group tables.

##### **Subpart C—Specific Tolerances**

- §180.101 Specific tolerances; general provisions.
- §180.103 Captan; tolerances for residues.
- §180.106 Diuron; tolerances for residues.



# Pesticides Allowed for Use on Cannabis – Both Exempt from Tolerance and Broad Label Directions



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BOTANICAL INSECTICIDE

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**AZADIRACHTIN-BASED BOTANICAL ANTIFEEDANT, REPELLANT AND INSECT GROWTH REGULATOR  
FOR USE ON GREENHOUSE AND OUTDOOR FOOD CROPS, ORNAMENTAL FLOWERS, TREES, SHRUBS AND PLANTS**

ACTIVE INGREDIENT:	% By Wt.
Azadirachtin .....	1.2%
OTHER INGREDIENTS .....	98.8%
<b>TOTAL</b>	<b>100.0%</b>

Contains 0.0987 lb. (44.8 g) azadirachtin per gallon.

**KEEP OUT OF REACH OF CHILDREN  
CAUTION**

#### DIRECTIONS FOR USE

It is a violation of Federal Law to use this product in a manner inconsistent with its labeling. READ ENTIRE LABEL. USE STRICTLY IN ACCORDANCE WITH PRECAUTIONARY STATEMENTS AND DIRECTIONS, AND WITH APPLICABLE STATE AND FEDERAL REGULATIONS. Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your state or tribe, consult the state or tribal agency responsible for pesticide regulation.

NET CONTENTS \_\_\_ GALLONS

EPA Reg. No. 71908-1-10163  
EPA Est. No.

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# Pesticides Allowed for Use on Cannabis – Both Exempt from Tolerance and Broad Label Directions

## USE SITES

**AGRICULTURAL USE SITES** – Use AZA-DIRECT on agricultural use sites including, but not limited to, the following:

**BERRIES GROUP, such as:** Blackberry, Blueberry, Currant, Elderberry, Gooseberry, Huckleberry, Loganberry, Raspberry (black and red), Note: For Strawberries – see miscellaneous.

**BULB VEGETABLES, such as:** Garlic, Leek, Onion (dry bulb, green and Welch), Shallot

**CEREAL GRAINS and GRAINS GROUP, such as:** Barley, Buckwheat, Corn, Millet (pearl and Proso), Oats, Popcorn, Rice, Rye, Sorghum (milo), Teosinte, Triticale, Wheat, Wild rice

**CITRUS FRUITS, such as:** Calamondin, Citrus citron, Citrus hybrids, Grapefruit, Kumquat, Lemon, Lime, Mandarin (tangerine), Orange (sour and sweet), Pummelo, Satsuma mandarin, White Sapote, Uni Fruit

## COTTON AND TOBACCO

**CUCURBIT VEGETABLES, such as:** Chayote, Chinese waxgourd, Citron melon, Cucumber, Gherkin, Gourd (edible), Muskmelon, Pumpkin, Squash (summer and winter), Watermelon

**FORAGE CROPS, including but not limited to:** Alfalfa, Alfalfa Seed, Clover, Trefoil or Vetch.

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**FRUITING VEGETABLES, such as:** Eggplant, Groundcherry, Pepino, Pepper (including bell pepper, chili pepper, cooking pepper, pimento, sweet pepper), Tomatillo, Tomato

**HERBS AND SPICES GROUP, such as:** Allspice, Angelica, Anise (anise seed and star), Annatto (seed), Balm (lemon balm), Basil, Borage, Burnet, Camomile, Caper buds, Caraway, Caraway (black), Cardamom, Cassia bark, Cassia buds, Catnip, Celery seed, Chervil (dried), Chive, Chinese Chive, Cinnamon, Clary, Clove buds, Coriander (cilantro or Chinese parsley – leaf), Coriander (cilantro-seed), Costmary, Culantro (leaf and seed), Cumin, Curry (leaf), Dill (dillweed and seed), Fennel (common, Florence), Fenugreek, Grains of paradise, Horehound, Hyssop, Juniper berry, Lavender, Lemongrass, Lovage (leaf and seed), Mace, Marigold, Marjoram, Mustard (seed), Nasturtium, Nutmeg, Parsley (dried), Pennyroyal, Pepper (black and white), Poppy (seed), Rosemary, Rue, Saffron, Sage, Savory (summer and winter), Sweet bay (bay leaf), Tansy, Tarragon, Thyme, Vanilla, Wintergreen, Woodruff, Wormwood

**LEGUME VEGETABLES (Succulent or Dried), such as:** Bean, Broad Bean, Chickpea, Guar, Jackbean, Lablab bean, Lentil, Pea, Pigeon Pea, Soybean, Sword bean

**LEAFY AND BRASSICA (COLE) VEGETABLES, such as:** Amaranth, Arugula, Broccoli, Broccoli raab (rapini), Brussels Sprouts, Cabbage, Cauliflower, Cardoon, Cavalo broccolo, Celery, Chinese Broccoli (gai lan), Chinese Cabbage (bok choy, Napa), Chinese mustard Cabbage (gai choy), Chinese Celery, Celtuce, Chervil, Chrysanthemum (edible-leaved, Garland), Collards, Corn salad, Cress (garden, upland), Dandelion, Dock (sorrel), Endive (escarole), Fennel (florence), Kale, Kohlrabi, Lettuce (head and leaf), Mizuna, Mustard Greens, Mustard Spinach, Orach, Parsley, Purslane (garden, winter), Radicchio (red chicory), Rape Greens, Rhubarb, Spinach, Spinach (New Zealand, vine), Swiss Chard, Turnip Greens

**MISCELLANEOUS, such as:** Asparagus, Avocado, Banana, Coffee, Cocoa, Cranberry, Fig, Globe artichoke, Grape, Hops, Kiwifruit, Mango, Mushroom, Okra, Olives, Papaya, Pawpaw, Peanut, Persimmon, Pineapple, Pomegranate, Strawberry, Tea, Water chestnut, Watercress, and all other food crops





**BUREAU** OF  
**CANNABIS**  
**CONTROL**  
CALIFORNIA

ALL CANNABIS HARVESTED ON OR AFTER 1/1/2018 AND ALL CANNABIS PRODUCTS MANUFACTURED ON OR AFTER 1/1/2018, SHALL BE TESTED ACCORDING TO TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS, SECTION 5715, AND THE REGULATIONS THAT FOLLOW.

PHASE-IN OF REQUIRED LABORATORY TESTING	INHALABLE CANNABIS	INHALABLE CANNABIS PRODUCTS	OTHER CANNABIS & CANNABIS PRODUCTS
<b>JANUARY 1, 2018</b>			
Cannabinoids Testing	✓	✓	✓
Moisture Content Testing	✓		
Category II Residual Solvents and Processing Chemicals Testing		✓	✓
Category I Residual Pesticides Testing	✓	✓	✓
Microbial Impurities Testing (A. fumigatus, A. flavus, A. niger, A. terreus)	✓	✓	
Microbial Impurities Testing (Escherichia coli and Salmonella spp.)	✓	✓	✓
Homogeneity Testing of Edible Cannabis Products			✓
<b>JULY 1, 2018</b>			
Category I Residual Solvents and Processing Chemicals Testing		✓	✓
Category II Residual Pesticides Testing	✓	✓	✓
Foreign Material Testing	✓	✓	✓
<b>DECEMBER 31, 2018</b>			
Terpenoids Testing	✓	✓	✓
Mycotoxins Testing	✓	✓	✓
Heavy Metals Testing	✓	✓	✓
Water Activity Testing of Solid or Semi-Solid Edibles	✓		✓



**Bureau of Cannabis Control**  
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Sacramento, CA 95834  
(800) 952-5210

For the latest updates, follow the Bureau on social media



# Allowed Levels of Pesticide Residue in California

16 CCR § 5719

## § 5719. Residual Pesticides Testing.

- (a) The laboratory shall analyze at minimum 0.5 grams of the representative sample of cannabis goods to determine whether residual pesticides are present.
- (b) The laboratory shall report whether any Category I Residual Pesticides are detected above the limit of detection (LOD) and shall report the result of the Category II Residual Pesticides testing in unit micrograms per gram (µg/g) on the COA. The laboratory shall indicate "pass" or "fail" on the COA.
- (c) The laboratory shall establish a limit of quantitation (LOQ) of 0.10 µg/g or lower for all Category I Residual Pesticides.
- (d) The sample shall be deemed to have passed the residual pesticides testing if both of the following conditions are met:
  - (1) The presence of any residual pesticide listed in the following tables in Category I are not detected, and
  - (2) The presence of any residual pesticide listed in the following tables in Category II does not exceed the indicated action levels.

<i>Category I</i>	
<i>Residual Pesticide</i>	<i>CAS No.</i>
Aldicarb	116-06-3
Carbofuran	1563-66-2
Chlordane	57-74-9
Chlorfenapyr	122453-73-0
Chlorpyrifos	2921-88-2
Coumaphos	56-72-4
Daminozide	1596-84-5
DDVP (Dichlorvos)	62-73-7
Dimethoate	60-51-5
Ethoprop(hos)	13194-48-4
Etofenprox	80844-07-1
Fenoxycarb	72490-01-8
Fipronil	120068-37-3
Imazalil	35554-44-0
Methiocarb	2032-65-7
Methyl parathion	298-00-0
Mevinphos	7786-34-7
Paclobutrazol	76738-62-0
Propoxur	114-26-1
Spiroxamine	118134-30-8
Thiacloprid	111988-49-9



<i>Category II</i>	<i>CAS No.</i>	<i>Action Level (µg/g)</i>	
		<i>Inhalable Cannabis Goods</i>	<i>Other Cannabis Goods</i>
<i>Residual Pesticide</i>	<i>CAS No.</i>		
Abamectin	71751-41-2	0.1	0.3
Acephate	30560-19-1	0.1	5
Acequinocyl	57960-19-7	0.1	4
Acetamiprid	135410-20-7	0.1	5
Azoxystrobin	131860-33-8	0.1	40
Bifenazate	149877-41-8	0.1	5
Bifenthrin	82657-04-3	3	0.5
Boscalid	188425-85-6	0.1	10
Captan	133-06-2	0.7	5
Carbaryl	63-25-2	0.5	0.5
Chlorantraniliprole	500008-45-7	10	40
Clofentezine	74115-24-5	0.1	0.5
Cyfluthrin	68359-37-5	2	1
Cypermethrin	52315-07-8	1	1
Diazinon	333-41-5	0.1	0.2
Dimethomorph	110488-70-5	2	20
Etoxazole	153233-91-1	0.1	1.5
Fenhexamid	126833-17-8	0.1	10
Fenpyroximate	111812-58-9	0.1	2
Flonicamid	158062-67-0	0.1	2
Fludioxonil	131341-86-1	0.1	30
Hexythiazox	78587-05-0	0.1	2
Imidacloprid	138261-41-3	5	3
Kresoxim-methyl	143390-89-0	0.1	1
Malathion	121-75-5	0.5	5
Metalaxyl	57837-19-1	2	15
Methomyl	16752-77-5	1	0.1
Myclobutanil	88671-89-0	0.1	9
Naled	300-76-5	0.1	0.5
Oxamyl	23135-22-0	0.5	0.2
Pentachloronitrobenzene	82-68-8	0.1	0.2
Permethrin	52645-53-1	0.5	20
Phosmet	732-11-6	0.1	0.2
Piperonylbutoxide	51-03-6	3	8
Prallethrin	23031-36-9	0.1	0.4
Propiconazole	60207-90-1	0.1	20
Pyrethrins	8003-34-7	0.5	1
Pyridaben	96489-71-3	0.1	3
Spinetoram	187166-15-0, 187166-40-1	0.1	3
Spinosad	131929-60-7, 131929-63-0	0.1	3
Spiromesifen	283594-90-1	0.1	12
Spirotetramat	203313-25-1	0.1	13
Tebuconazole	107534-96-3	0.1	2
Thiamethoxam	153719-23-4	5	4.5
Trifloxystrobin	141517-21-7	0.1	30

**Pesticide Residue Tolerance Comparison Chart - SLO County Working Document**

<i>Residual Pesticide</i>	<i>CAS No.</i>	<b>Pesticide Residue Established Tolerances (ppm)</b>					
		<i>Inhalable Cannabis Goods</i>	<i>Other Cannabis Goods</i>	<i>Avocados</i>	<i>Lemons</i>	<i>Grapes (wine)</i>	<i>Strawberry</i>
Abamectin	71751-41-2	0.1	0.3	0.02	NE	NE	NE
Acetamiprid	135410-20-7	0.1	5	NE	1.00	0.35	0.35
Bifenthrin	82657-04-3	3	0.5	NE	0.05	0.20	3.00
Captan	133-06-2	0.7	5	NE	NE	25.00	20.00
Carbaryl	63-25-2	0.5	0.5	NE	10.00	10.00	4.00
Chlorantraniliprole (9771)	500008-45-7	10	40	4.00	1.40	2.50	1.00
Chlorpyrifos (99)	2921-88-2	Zero	Zero	NE	1.00	NE	0.20
Cyfluthrin (11,323)	68359-37-5	2	1	NE	0.20	1.00	NE
Cypermethrin	52315-07-8	1	1	(1) NE (2) NE (3) 0.50	(1) NE (2) 0.35 (3) 0.35	(1) NE (2) NE (3) 2.00	(1) NE (2) NE (3) 0.80
Diazinon	333-41-5	0.1	0.2	NE	NE	NE	0.50
Dimethoate (339)	60-51-5	Zero	Zero	NE	2.00	NE	NE
Imidacloprid (23,586)	138261-41-3	5	3	1.00	0.70	1.00	0.50
Malathion	121-75-5	0.5	5	8.00	8.00	8.00	8.00
Metalaxyl	57837-19-1	2	15	NE	2.00	NE	NE
Methomyl	16752-77-5	1	0.1	2.00	2.00	NE (*5.00)	NE
Myclobutanil	88671-89-0	0.1	9	NE	NE	1.00	0.50
Naled	300-76-5	0.1	0.5	NE	3.00	0.50	1.00
Permethrin (11,844)	52645-53-1	0.5	20	1.00	NE	NE	NE
Propiconazole	60207-90-1	0.1	20	0.20	8.00	NE	1.30
Pyrethrins	8003-34-7	0.5	1	NE	NE	*1.00	NE
Pyridaben	96489-71-3	0.1	3	NE	0.90	2.00	2.50
Spinetoram	187166-15-0, 187166-40-1	0.1	3	0.30	0.30	0.50	0.90
Spinosad	131929-60-7, 131929-63-0	0.1	3	0.30	0.30	0.50	0.90
Spirotetramat (20469)	203313-25-1	0.1	13	0.60	0.60	1.30	*0.40
Tebuconazole	107534-96-3	0.1	2	NE	NE	5.00	NE

**NE = Not Established**

Tolerances for pesticides used on locally grown commodities that are much higher than the same active ingredient tolerance on cannabis.

Tolerances for pesticides used on locally grown commodities that are lower than the same active ingredient on cannabis.

# Pest-Control Companies Pull Out of Carpinteria Cannabis Deal

Avocado Growers Say They Are Left with No Good Options This Spring



Credit: Paul Wellman

By **Melinda Burns**

Thu May 23, 2019 | 12:00am



The Oxnard pest-control companies that spray avocados in the Carpinteria Valley have pulled out of a proposed agreement with cannabis greenhouse operators, saying they can't risk contaminating the marijuana crop.

Under the deal, cannabis growers in the valley would have agreed not to sue the commercial sprayers during the weeks they normally spray in the spring. The companies would have been able to use pesticides that work well on avocados but are on the state's "red list" as contaminants for cannabis.

"We're all disappointed, but we're just not going to do it," said Rob Scherzinger, the founder and manager of Aspen Helicopters, Inc., one of four Oxnard pest-control companies that work in the Carpinteria Valley. "It's just a snake in the grass that will bite us one of these days. It's a potential loss we can't afford."



Photo: **Paul Wellman**

Graham Farrar, president of the Cannabis Association for Responsible Producers, or CARP Growers, said all 27 cannabis growers in the valley had been willing to sign an agreement and cooperate with the commercial sprayers. No commercial cannabis in Carpinteria has tested positive for pesticide "drift" from avocado orchards since testing began three years ago, he said.

The whole dispute started when the cannabis growers gave the commercial sprayers their phone numbers earlier this spring and asked to be notified when spraying began so that they could close their greenhouse vents, Farrar said. Members of CARP Growers use beneficial insects, not pesticides, on cannabis.

"There's no grower that's ever threatened to sue an applicator or an avocado guy," Farrar said. "No cannabis growers got mad or tried to push anybody out. We were just trying to be good neighbors."

## **Cannabis Discretionary Use Permit “Condition of Approval” Waiver**

### Finding for Project Approval

It is the declared policy of this County under Chapter 5.16 of the San Luis Obispo County Code and the County Agriculture Element to protect and encourage agricultural operations and conserve agricultural resources. Pursuant to Section 22.40.020 of the San Luis Obispo County Code, cannabis is not an agricultural commodity with respect to local “right to farm” ordinances nor is it considered “crop production and grazing” as a land use type. In this regard, the County has significant interest in ensuring the continued viability of agricultural operations adjacent and near cannabis cultivation operations. The County acknowledges that the establishment of the proposed project has the potential to cause traditional agricultural operations to cease or curtail their crop production activities near the proposed site because of state regulations which have imposed pesticide residue thresholds for cannabis which are significantly lower than the residue thresholds allowed for traditional agricultural crops. More specifically, the County has received substantial evidence indicating pesticide applicators would refuse to serve an agricultural operation if a cannabis site is permitted in close proximity to the agricultural operation because fear of potential crippling liability should a nearby cannabis operation be able to allege their cannabis has been made unmarketable by an offsite pesticide application, even if the levels of pesticide residue on the cannabis would otherwise be well within the amounts allowed for traditional agricultural food crops, like citrus, avocado, vineyards, vegetables and strawberries. The County has received reports in other jurisdictions, such as the County of Santa Barbara, of agricultural operations curtailing activities because of nearby cannabis operations, as well as lawsuits being filed by cannabis operations against nearby traditional agricultural operations and pesticide applicators related to cannabis allegedly made unmarketable by pesticide applications in nearby traditional agricultural fields. In accordance with the rights afforded to the County by Article XI, section 7 of the California Constitution, and in order to adequately protect agricultural operations and conserve agricultural resources within the County, the imposition and enforceability of the condition of approval requiring the applicant to release, waive, discharge, hold harmless and covenant not to sue for any claim, loss or damage to cannabis or cannabis products related to an offsite pesticide application, as set forth within the condition of approval, is a condition to the issuance of this land use permit and making the findings required to approve this land use permit under County Code, specifically, the findings required by Sections 22.62.050.C.1 and 22.62.060.C.4.c and d. If any clause or provision of this condition of approval is asserted or determined to be illegal, invalid, or unenforceable under present or future laws, this land use permit shall be deemed void ab initio and there shall be no vested rights to commence or continue cannabis activities on the site.

### Waiver and Release of Liability - Pesticide Use By Neighboring Agricultural Operations

The applicant, and their representatives, agents, officers, employees, successors, landlords, tenants, insurers, assigns and any other party claiming a direct or indirect financial, ownership or commercial interest in the project or the cannabis or cannabis products produced or located on the site, shall, as a condition of approval of this land use permit, release, waive, discharge, hold harmless and covenant not to sue any property owner, property operator/tenant or pest control business, pest control advisor or qualified applicator, including their agents, officers, employees and authorized representatives (“Released Parties”), for any claim, loss or damage to cannabis or cannabis products located on the project site arising out of the recommendation or application of a registered pesticide on an agricultural commodity located outside the project site by a person or business who holds the required state license or certificate and local Operator Identification Number and, if applicable, Restricted Materials Permit, and who follows required state and local pesticide use reporting and does not grossly depart from industry norms, standards and practices regarding the application of said pesticide. This condition does not extend to any loss or damage caused by the gross negligence or willful misconduct of a Released Party. This condition expressly extends to any statutory violations, including but not limited to actual or alleged violations of Food and Agricultural Code Section 12972 or 12973, so long as the violations are not caused by the gross negligence or willful misconduct of a Released Party. Approval of this land use permit, as a land use decision, is a quasi-judicial action regulatory in nature involving the application of preexisting laws or standards to a specific project and does not involve negotiated consideration by both the County and the application, unlike a development agreement (see 78 Ops.Cal.Atty.Gen. 230), and therefore is not subject to the limitations of Civil Code section 1668 because this land use decision is not contractual in nature. This condition of approval shall have no impact on the enforcement or application of State pesticide laws and regulations by state or local agencies, including but not limited to licensing and certification requirements, pesticide use reporting and operator identification numbers, pesticide use enforcement inspections and investigations, issuance of cease and desist orders, initiation of administrative or criminal enforcement actions, and imposition of administrative, civil and criminal penalties.

# Cannabis Discretionary Use Permit Referral Evaluation Process

- Department of Agriculture is referred all discretionary projects that may effect existing agriculture uses or long-term agricultural resources, including proposed cannabis projects
- Cannabis cultivation projects will be evaluated on a case by case basis for the potential need of a “Condition of Approval” waiver
- County Counsel has determined that these can only be applied on a case by case basis not universally to all cannabis cultivation projects (could that change during Phase 3 of the cannabis ordinance?)

# Cannabis Discretionary Use Permit Referral Evaluation Process

- Department of Agriculture has developed criteria for issuance of this “Condition of Approval” (COA) based on drift data and relative risk of cannabis contamination from off-site movement of neighboring crops.
- Pesticide drift is never legal or allowable, but it’s recognized that it can occur and that certain products or application types are more prone to drift, off-site movement, or volatilization.
- We can only *recommend* the inclusion of a COA. The COA could be removed during a separate step in the discretionary review process.

# Cannabis Discretionary Use Permit Referral Evaluation Process

Recommendation for Condition of Approval based on local conditions:

- Proximate to Williamson Act properties
- Recommend exclusion of any cannabis cultivation within 500 feet from existing citrus and avocado orchards
- COA *may* be recommended for cannabis projects within 500 to 1,250 feet of existing citrus and avocado orchards
- COA *may* be recommended for cannabis projects 300 to 600 feet of row crops, vineyards, vegetables, berries, nurseries, etc.



## Exhibit B – Conditions of Approval

The applicant, and their representatives, agents, officers, employees, successors, landlords, tenants, insurers, assigns and any other party claiming a direct or indirect financial, ownership or commercial interest in the project or the cannabis or cannabis products produced or located on the site (“Releasing Parties”), shall, as a condition of approval of this land use permit, release, waive, discharge, hold harmless and covenant not to sue any property owner, property operator/tenant or pest control business, pest control advisor or qualified applicator, including their owners, agents, officers, employees and authorized representatives (“Released Parties”), for any claim, loss or damage to cannabis or cannabis products located on the project site arising out of the recommendation or application of a registered pesticide on an agricultural commodity located outside the project site by a person or business who holds the required state license or certificate and local Operator Identification Number and, if applicable, Restricted Materials Permit, and who follows required state and local pesticide use reporting and does not grossly depart from industry norms, standards and practices regarding the application of said pesticide. This condition does not extend to any loss or damage caused by the gross negligence or willful misconduct of a Released Party, or a violation of Food and Agricultural Code section 12972 verified by the County Agricultural Commissioner. This condition expressly extends to any statutory violations, except as set forth herein, including but not limited to actual or alleged violations of Food and Agricultural Code Section ~~12972 or~~ 12973, so long as the violations are not caused by the gross negligence or willful misconduct of a Released Party. Approval of this land use permit, as a land use decision, is a quasi-judicial action regulatory in nature involving the application of preexisting laws or standards to a specific project and does not involve negotiated consideration by both the County and the application, unlike a development agreement (see 78 Ops.Cal.Atty.Gen. 230), and therefore is not subject to the limitations of Civil Code section 1668 because this land use decision is not contractual in nature. This condition of approval shall have no impact on the enforcement or application of State pesticide laws and regulations by state or local agencies, including but not limited to licensing and certification requirements, pesticide use reporting and operator identification numbers, pesticide use enforcement inspections and investigations, issuance of cease and desist orders, initiation of administrative or criminal enforcement actions, and imposition of administrative, civil and criminal penalties.

# California Food & Agriculture Code – Codes Related to Pesticide Drift

## FOOD AND AGRICULTURAL CODE - FAC

DIVISION 7. AGRICULTURAL CHEMICALS, LIVESTOCK REMEDIES, AND COMMERCIAL FEEDS [12500 - 15340] *(Division 7 enacted by Stats. 1967, Ch. 15.)*

CHAPTER 2. Pesticides [12751 - 13192] *(Heading of Chapter 2 amended by Stats. 1996, Ch. 361, Sec. 26.)*

ARTICLE 10. Recommendations and Usage [12971 - 12979] *(Article 10 enacted by Stats. 1967, Ch. 15.)*

**12971.** No recommendation shall be in conflict with the registered labeling for the product being recommended.

*(Added by renumbering Section 12972 by Stats. 1978, Ch. 1049.)*

**12972.** The use of any pesticide by any person shall be in such a manner as to prevent substantial drift to nontarget areas.

*(Added by Stats. 1978, Ch. 1049.)*

**12973.** The use of any pesticide shall not conflict with labeling registered pursuant to this chapter which is delivered with the pesticide or with any additional limitations applicable to the conditions of any permit issued by the director or commissioner.

*(Repealed and added by Stats. 1978, Ch. 1049.)*



# Questions?

