

# CITY of CARPINTERIA, CALIFORNIA

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January 19, 2017

Santa Barbara County Planning Commission  
Attention: David Villalobos, Board Assistant Supervisor  
123 East Anapamu Street  
Santa Barbara, CA 93101-2058  
Via email to: Dvillalo@co.santa-barbara.ca.us

Re: Public Comment – Jan. 24, 2018 meeting, Item #1  
Consideration of County Cannabis Land Use Ordinance and Licensing Program and  
Final Environmental Impact Report

Dear Planning Commissioners:

The City of Carpinteria ("City") is greatly concerned about the potential for the County's proposed Cannabis Land Use Ordinance and Licensing Program ("Cannabis Regulations") to result in serious negative impacts to City residents, services, infrastructure, and the environment. In its current form, the Cannabis Regulations do not include appropriate controls and restrictions to mitigate anticipated impacts to the City. In addition, the Program Environmental Impact Report (PEIR) prepared for the Cannabis Regulations do not adequately analyze and disclose all potential significant impacts, and incorporate feasible measures to mitigate anticipated impacts.<sup>1</sup> While the City is not opposed to the cannabis industry, activities should be conducted in a way that protects the health, safety, and welfare of the residents of the City of Carpinteria, the County, and the environment.

This City's primary request is that the County Board of Supervisors delay consideration of adopting the Cannabis Regulations and certification of the PEIR to allow more time to resolve the issues raised in this letter and by other commenters. The disaster in Montecito and closure of Highway 101 has interfered with the public's ability to provide input on the County's process. It is in the community's best interests to allow more time for input and consideration of modifications to the Regulations and PEIR to mitigate negative impacts.

## Background

The City has submitted three letters to the County regarding the Cannabis Regulations and PEIR: a letter commenting on the scoping document, submitted on August 10, 2017; a letter commenting on the Draft Cannabis EIR, submitted on November 14, 2017; and a letter commenting on the Draft EIR and the options the County considered with respect to interim authorizations, submitted on December 12, 2017. The three letters are attached for your consideration as Exhibit A.

The City is currently preparing an additional letter to the County Board of Supervisors detailing the technical flaws and gaps remaining in the Final PEIR and responding to the County's responses to the City's initial comments on the Draft PEIR. Since the letter is not yet ready for distribution, the City is submitting this abbreviated letter for your Planning Commission's consideration, which focuses on the potential significant impacts and measures the City proposes to mitigate these impacts.

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<sup>1</sup> The City requests the Planning Commission consider the portions of this letter addressing the PEIR in its consideration to recommend certification of the PEIR as part of Item C-1 on the Jan. 24, 2018 agenda.

As stated in the attached comment letters, due to the City's immediate adjacency to extensive agriculturally designated lands in the unincorporated area of the County, expanded cannabis-related operations in the Carpinteria Valley will uniquely impact the City, its residents, visitors, businesses, and natural resources. The City has already been experiencing the negative impacts of the expanding cannabis industry in the form of criminal activity and noxious odors.

### **Project Overview**

The Cannabis Regulations would allow commercial cannabis cultivation, manufacturing/processing with non-volatile and volatile extraction, post-processing and packaging, testing, distribution, and retail. It would also facilitate the licensing, permitting, and regulation of commercial cannabis businesses consistent with required State of California licensing regulations (PEIR, p. ES-1).<sup>2</sup> The Cannabis Regulations consist of three components: amending the County Land Use and Development Code, the Montecito Land Use and Development Code, and the Santa Barbara County Coastal Zoning Ordinance; implementing the licensing program through amendments in the County Code to track and oversee cannabis activities in the unincorporated areas of the County; and amending other regulations and policies of the County Code to address specific aspects of cannabis activities (PEIR, p. 2-1).

The following outlines in summary form the significant negative impacts the City anticipates will result from the proposed Cannabis Regulations, the PEIR's failure to adequately analyze and mitigate these impacts and/or the failure to incorporate appropriate controls and restrictions in the Cannabis Regulations, and proposed measures to mitigate the impacts.

It is important to emphasize that in preparing its comments the City has reviewed a number of cannabis ordinances and environmental documents from other jurisdictions. Many of the measures the City is recommending below have been incorporated into ordinances and environmental documents being considered or approved by other jurisdictions. The City's review of approaches taken by other jurisdictions indicates that, in its current form, the County's Cannabis Regulations would be among the most permissive allowances for cannabis activities.

#### **I. The Cannabis Regulations will result in additional traffic on City roads serving cannabis uses in the County that must be mitigated.**

Although the PEIR recognizes traffic impacts in general as a significant impact, no attempt is made to quantify the impacts and propose feasible mitigation. Instead, the PEIR relies on subsequent individual project review to mitigate traffic impacts. The response in the Final PEIR to the City's comments on traffic states that it would be speculative to analyze and mitigate traffic impacts at this stage.

There are only five roads that provide access to County lands from Highway 101 in the Carpinteria Valley, four of which originate within the City. Of the three primary intersections on these roads located within the City, one operates at LOS C and the other two operate at LOS D. Any additional traffic on these roads will likely result in significant impacts to City roads. Since there are limited routes in the Carpinteria Valley, it is reasonable to estimate additional trips based on a worst-case build-out scenario.

The City is concerned that tourist-based traffic is likely to cause particularly acute problems. In its response to comments in the Final PEIR, the County states that tourism-based uses, such as cannabis tastings, are not proposed to be permitted. (PEIR, Response to comment L.2-28, p. 8-81.) But there is no specific prohibition included in the Cannabis Regulations. As the County is well aware, when an

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<sup>2</sup> Unless otherwise stated, references to page numbers herein refer to the December 2017 Final PEIR.

important prohibition is not made clear, operators will often exploit it as a loophole. The PEIR even acknowledges this possibility in its statement that “[s]hould this type of economy develop at a later time, it would be subject to a separate CEQA analysis.” (*Id.*)

Finally, it appears that some uses, such as conversion of existing greenhouses to cannabis cultivation, will not require discretionary permits. Therefore, reliance on subsequent project review to mitigate traffic impacts from new cannabis uses is not justifiable. The Cannabis Regulations could lead to substantial new cannabis uses generating additional traffic without any environmental analysis or project-specific mitigation.

Recommended Mitigation: The City recommends that the PEIR be revised to include an estimate for regional traffic impacts based on a reasonable worst case build-out scenario for the Carpinteria Valley. The County could then enter into an agreement with the City to contribute a portion of fees or tax revenues derived from cannabis uses based on the estimated traffic impacts toward the improvement of City road infrastructure. While it has yet to be implemented, this is similar to the mitigation included in the County’s Carpinteria Greenhouse Program EIR to mitigate the traffic related impacts of that program on City roadways and intersections. The City also recommends that the County incorporate in its Regulations an explicit prohibition on tastings and other tourism-based uses.

**II. The increase in workers employed in the cannabis industry will place additional demands on the housing supply in the Carpinteria Valley, likely resulting in overcrowding due to the limited supply of affordable housing.**

The PEIR does not analyze potential negative impacts to housing supply that will result from increased worker demand from the cannabis industry. In response to the City’s comments on this area, the Final PEIR states that the projected increase would be included in future SBCAG regional growth forecasts and regional housing needs allocation (RHNA) that would inform future Housing Element updates and that these updates would be subject to CEQA. (PEIR Response to comment L.2-25, p. 8-80.) This effectively postpones analysis of the Cannabis Regulations’ potential impacts to future CEQA review. The PEIR also answers that an EIR is not required to analyze socio-economic impacts.

The availability of housing on a Countywide basis does not adequately address the potential impacts to the Carpinteria Valley where there is already little available housing. Furthermore, as the PEIR acknowledges, cannabis operations can be more employee intensive than existing agriculture and most workers in the cannabis industry will require affordable housing options. (See PEIR, pp. 3.14-12 to 13.) Without available affordable housing, an increase in worker demand will result in overcrowding in the City, which is the main source of housing in the Carpinteria Valley. Overcrowding will have a variety of negative environmental impacts, including aesthetic/blighting effects, additional traffic, strain on municipal services, and increased fire hazards related to illegal conversions of non-habitable spaces, such as garages, to accommodate multiple families in single-family dwellings. It may also lead to new housing construction to alleviate the negative effects of overcrowding.

Recommended Mitigation: Again, the City proposes that the County enter into an agreement with the City to contribute a portion of fees or tax revenues derived from cannabis uses based on the estimated build-out scenario and worker demand figures for the cannabis industry toward a City affordable housing fund to allow the construction of new housing in the City.

**III. Odors from cannabis uses, which currently impact City residents, are likely to increase as more cannabis uses are established in close proximity to the City and without effective and enforceable odor controls.**

The proposed Cannabis Regulations require an odor abatement plan for all non-retail cannabis uses.<sup>3</sup> The standard for odor control is that odors should not be detected within residential zones to the maximum extent feasible as determined by the Planning Director. There is too much uncertainty in leaving the determination as to what level of odor control is feasible to the discretion of the Planning Director. In addition, a standard that only applies to odors in residential zones fails to protect children and other sensitive populations at schools, parks, places of worship, and in residences located in non-residential zone districts.

Further, as proposed, the primary means of ensuring compliance with odor abatement requirements is based on verified complaints. This places a substantial burden on neighbors and County staff. Neighbors must attempt to identify potential violators, sometimes in areas where a concentration of cannabis uses will make it extremely difficult to pinpoint the source, and to file complaints. County staff must then verify and document violations and follow up to ensure compliance.

Recommended Mitigation: Since odor impacts are a primary area of concern for the City, the City proposes several additional measures to mitigate impacts:

- A prohibition on all cannabis uses within 1,000 feet of municipal boundaries, with the exception of uses legally established under Article X of the County's Zoning Ordinance.<sup>4</sup>
- A prohibition on outdoor cultivation within the AG-I Zone.<sup>5</sup>
- Incorporation of a new standard that odors may not be detectable at the property line for all cannabis uses except for outdoor cultivation permitted in AG-II Zones.<sup>6</sup>
- Requirement that operators of cannabis uses measure and keep records of odor levels at the property line using olfactometers or other appropriate measurement devices on an ongoing basis. If odors are detected, the operator must implement further odor controls until the standard is achieved.

#### **IV. Allowing cannabis manufacturing in the AG-I zone and in high fire hazard areas will have significant public safety/hazard, nuisance, and other negative impacts.**

Cannabis manufacturing is not compatible with the other types of permissible uses in the AG-I Zone or with the residential zones that typically abut the AG-I Zone given the odor and safety risks. Volatile manufacturing in particular is not appropriate in any AG zone because it presents a high fire hazard risk.

Recommended Mitigation: The City proposes that cannabis manufacturing using volatile extraction be prohibited in all AG zones and that all manufacturing be prohibited in the AG-I Zone.<sup>7</sup>

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<sup>3</sup> The requirements of the proposed odor abatement plan differ between the PEIR and the ordinance amendments included in Attachments C and D of the Commission's staff report dated January 10, 2018. These comments refer to the odor abatement plan requirements in the staff report, which the City presumes is the most current staff recommendation.

<sup>4</sup> Restrictions or prohibitions on cannabis uses within specified distances of municipal boundaries have been proposed and/or adopted by Humboldt County (1,000 feet) and Santa Cruz County (600 feet).

<sup>5</sup> Outdoor cultivation is prohibited in Monterey County.

<sup>6</sup> Odor control standards that prohibit detection of odors outside of the building in which the use occurs or beyond the property line of the cannabis use have been proposed and/or adopted by San Luis Obispo County and Santa Cruz County.

**V. The Cannabis Regulations have the potential to result in an over-concentration of cannabis uses in the Carpinteria Valley resulting in odor, traffic, housing, public safety, and other blighting effects.**

As admitted in the PEIR, the Carpinteria Valley is likely to be a focal point for new and expanded cannabis uses due to the presence of greenhouses and favorable growing conditions. It is likely that the Carpinteria Valley will see a high concentration of cannabis uses. Other industries with the potential to result in blighting and nuisance effects, such as liquor stores and adult-oriented businesses, are typically subject to anti-concentration laws. Cannabis uses should be subject to similar restrictions.

It is in the County's best interests to take a conservative approach to permitting cannabis uses so that empirical evidence on the negative effects of cannabis uses can be developed and appropriate responses assessed. If the evidence shows that cannabis uses are not resulting in negative effects, the County could loosen its restrictions to allow more cannabis activities. It is much easier to loosen regulations than it is to roll back uses once they have been legally established.

Recommended Mitigation: The City recommends that some form of cap be placed on the number of permits and licenses issued for cannabis uses in the Carpinteria Valley. One approach would be to cap the number of permits issued on an annual basis and provide that the number to be issued in subsequent years will depend on an evaluation of negative effects resulting from approved uses. An alternative would be to simply establish a reasonable cap on the total number of permits allowed in the Carpinteria Valley.<sup>8</sup>

The City also recommends that the security plan required by the proposed Cannabis Regulations be required to, at minimum, comply with all requirements of State laws and regulations, and be reviewed and approved by the Sheriff's Department.<sup>9</sup>

**VI. Any program to regulate an industry in its infancy and still deemed illegal under federal law is likely to result in unforeseen impacts which must be monitored and controlled.**

As a brand new regulated industry in California, there is little precedent by which to judge the potential negative effects. It cannot be doubted that there is great uncertainty about the potential negative effects. It is a real possibility that some of the negative effects being anticipated will not materialize while other negative effects no one foresaw will present serious challenges for the community.

Recommended Mitigation: The County should incorporate into its Regulations an annual monitoring and reporting program of permitted and unpermitted/illegal cannabis uses and operations. Based on results of the monitoring/reporting program, staff would make recommendations regarding modifications to regulations necessary to mitigate unforeseen impacts and also recommend funding options to increase enforcement and staffing resources, if necessary, for review and consideration by

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<sup>7</sup> Volatile manufacturing is proposed to be allowed only in the heavy industrial zones in Monterey County and is prohibited in all of San Luis Obispo and Sonoma Counties. Non-volatile manufacturing is only permitted in industrial zones in Sonoma County.

<sup>8</sup> San Luis Obispo County and Trinity County are among those that have adopted caps or phased roll-out of cannabis permits/licenses.

<sup>9</sup> Sheriff/policy department approval of security plans is required by Alameda County, San Luis Obispo County, and the City of Palm Desert.

County decision-makers.<sup>10</sup> This evaluation should include an assessment of whether law enforcement staffing in the Carpinteria Valley is adequate to handle potential increased criminal activity and does not detract from law enforcement services within the City, which are provided through contract with the Sheriff Department.

## Conclusion

The mitigation measures recommended above are necessary to protect the public health, safety, welfare and the environment within the Carpinteria Valley and throughout the County. The City is open to considering reasonable alternatives to many of these measures when they would achieve the same objectives. Without incorporating these measures as modifications to the Cannabis Regulations or required mitigation under the PEIR, the Regulations will likely lead to significant negative impacts to the City and the County. The City requests that the Planning Commission recommend that, should the Board approve the Cannabis Regulations and PEIR, it incorporate the measures recommended in this letter into its approval. The City also requests that your Commission recommend that the Board delay considering approval of the Cannabis Regulations and PEIR to allow sufficient time to resolve the issues raised in this letter.

Thank you for considering these comments.

Sincerely,



Dave Durlinger  
City Manager  
City of Carpinteria

CC: City Ad Hoc Cannabis Committee  
City Council members  
Ed Foster, Carpinteria-Summerland Fire Protection District  
Sheriff Bill Brown, Santa Barbara County Sheriff's Department  
Santa Barbara County Board of Supervisors

Attachments: Exhibit A – Prior City Comment Letters

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<sup>10</sup> A detailed annual monitoring and reporting requirement “to ensure that licensed cultivators are abiding by license and permit conditions, and to identify and take actions to address illegal cannabis activities” is proposed by Santa Cruz County. San Luis Obispo County also has an adopted monitoring program which includes ongoing inspections of cannabis operations.

Santa Barbara County Planning Commission  
Cannabis Land Use Ordinance, Licensing Program & Final EIR  
January 19, 2018

**EXHIBIT A**  
**PRIOR CITY COMMENT LETTERS**

# CITY of CARPINTERIA, CALIFORNIA

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August 10, 2017

Attention Ms. Jessica Metzger  
County of Santa Barbara Planning and Development Department  
Long Range Planning Division  
123 East Anapamu Street  
Santa Barbara, CA 93101-2058

Re: Notice of Preparation and Scoping of an Environmental Impact Report  
Cannabis Land Use Ordinance and Licensing Program EIR  
Case No. 17ORD-00000-00004

Dear Ms. Metzger:

Thank you for the opportunity to comment on the County's Notice of Preparation (NOP) for the Draft Environmental Impact Report (EIR) for the Cannabis Land Use Ordinance and Licensing Program. As described in the scoping document, the project under consideration is the adoption of a cannabis ordinance that would allow commercial cannabis cultivation, manufacturing/processing with non-volatile and volatile extraction, post-processing and packaging, testing, distribution and retail. The Draft EIR will describe the nature of these different aspects of commercial cannabis operations, identify the potential environmental impacts of uses, and identify alternatives and/or mitigation measures to address these impacts.

The City has reviewed and is generally in agreement with the issues and potential impacts identified in the County's Environmental Scoping Document. This includes the general topics of Aesthetics and Visual Resources, Agricultural Resources, Air Quality and Greenhouse Gas (GHG) Emissions, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Public Safety, Hydrology and Water Resources, Land Use and Planning, Noise, Public Services, Transportation and Circulation, and Public Utilities.

Due to the City's immediate adjacency to extensive agriculturally designated lands in the unincorporated area of the County, natural resources in the City and its residents, visitors and businesses, may be uniquely affected by any impacts resulting from expanded cannabis-related operations in the Carpinteria Valley. According to the County's recent voluntary registry effort, almost one quarter (52) of the 216 self-reported current cultivators countywide are located in the Carpinteria Valley. Of these 52 cultivators, it is not known how many are operating in a manner consistent with current law at the local and/or state levels. Furthermore, the number of self-registered cultivators located in the Valley underscores the desirability of the greenhouse and open field agricultural lands in the Carpinteria Valley for commercial cannabis operations. It is expected that many of the 506 self-registered "future cultivators" throughout Santa Barbara County are also looking at additional sites in the Carpinteria Valley.



The City has reviewed the County's Draft Cannabis Land Use Ordinance dated July 12, 2017. Comments herein identify issues, potential impacts, possible alternatives and/or mitigation measures that are germane to the City's statutory authority and are aimed at assuring that the project (i.e., Ordinance) and its potential impacts to the physical environment affecting the City are understood and properly disclosed. The City believes this is a project of area-wide significance and is responding in the belief that the project could affect residents, businesses, natural resources and public facilities within its jurisdiction.

This comment letter is provided for the limited purpose of assisting the County in scoping the project EIR. The City anticipates providing comments at the appropriate time on the various elements of the draft regulations applicable to the Carpinteria Valley including but not limited to what cannabis uses and activities are allowed, where certain uses are allowed, and development and operating standards.

### **Land Use and Agricultural Resources**

**Issue L1:** As part of the EIR for the pending Cannabis Land Use Ordinance, the County should consider the consistency of the project with the County's Carpinteria Valley Greenhouse Program (Program) and resultant Carpinteria Agricultural Overlay District, and the potential for any new cannabis regulations to encourage or promote further conversion of open field agricultural lands to greenhouse facilities in the context of the Program regulations. The adopted Program included a numerical cap on the total amount of permissible new greenhouses and greenhouse-related development (including packing and shipping facilities and hoop structures) in Area "A" of the Overlay District. The City is not aware of any available, current figures concerning the remaining acreage capacity for new greenhouse development in this Area. Furthermore, and as discussed throughout this letter, the City is generally concerned with the land use and environmental effects of any additional greenhouse development in the Carpinteria Valley. The proliferation of greenhouses and greenhouse-related development in the Valley has led to a continued industrialization of Carpinteria Valley agricultural lands. The City believes further development of such uses and facilities in the Carpinteria Valley is inappropriate and inconsistent with the intent of Agricultural land use designations in the Coastal Zone.

By way of background, in 2004, the County Board of Supervisors (BOS) finalized their adoption and incorporation of amendments to Article II of Chapter 35 of the Santa Barbara County Code to address the outcomes and findings of the Carpinteria Valley Greenhouse Program (Program), including the establishment of the Carpinteria Agricultural Overlay District. The purpose of the program was to identify, limit (through regulation) and mitigate the potential impacts to coastal resources in the Carpinteria Valley resulting from future cumulative greenhouse development. The City of Carpinteria worked closely with the County, providing feedback and comments on the Program throughout the adoption process, to address concerns over continued greenhouse development germane to the City.

The City of Carpinteria General Plan/Coastal Plan, certified in 2003, also includes a number of Objectives and Policies (i.e., Objective LU-4 and Policies LU-4a, -4b and -4c) meant to ensure that development patterns in the unincorporated Carpinteria Valley are supportive of the Coastal Act and City objectives to

preserve unique coastal resources by maintaining open field agricultural uses as the predominant use in the unincorporated Valley.

**Alternatives/Mitigation:** References in the Land Use and Development Code use tables should include a reference to compliance with the applicable provisions of the Carpinteria Agricultural Overlay District for any new cannabis operations contemplated in the Carpinteria Valley. If necessary, license or acreage caps could be considered to limit the proliferation of indoor/greenhouse cannabis operations in the Valley and/or to preserve available capacity for other non-cannabis agricultural uses.

**Issue L2:** The County's Draft Cannabis Land Use Ordinance dated July 12, 2017, contemplates allowing cannabis cultivation (Types 1-4) and non-volatile manufacturing (Type 6) in both the AG-I and AG-II zone districts, as well as volatile manufacturing (Type 7) in the AG-II zone district. The EIR should describe the nature of, intensity and processes involved in both types of cannabis-related manufacturing and compare these activities to the types and intensities of agricultural processing currently allowed in the AG-I and AG-II zones for "traditional" agricultural products. Those differences should be discussed in terms of intensity of uses (employment, traffic trips, etc.) and risks to public health, safety, and natural resources. Risks associated with allowing volatile manufacturing in areas of moderate or high fire hazards should be especially carefully considered and evaluated in coordination with fire protection agencies.

**Alternatives/Mitigation:** Alternatives considered should include further restricting or prohibiting where and/or to what extent manufacturing (Types 6/7) is permitted to occur, particularly in areas where manufacturing is determined to be inconsistent with current policies for preserving agriculture. Mitigation to be considered could include siting manufacturing facilities in areas that do not pose significant safety risks to surrounding land uses or wildlands, requiring the incorporation of additional safety measures (e.g., fire sprinkler systems, spill containment response plans, etc.) in all manufacturing facilities to minimize risk of accidents, fires, or spills, and requiring individual permitting/coordination of such facilities with applicable fire protection agencies (in the case of the Carpinteria Valley, this is primarily the Carpinteria-Summerland Fire Protection District).

**Issue L3:** The County's Draft Ordinance does not specify whether cannabis manufacturing/processing would be limited to on-premise products only, or whether off-premise product manufacturing/processing would also be allowed. We note that presently for other non-cannabis agricultural processing, only the processing of on-premise products are a permitted use in the AG-I and AG-II zones, with production of off-premise products being a conditionally permitted use only in the AG-II zone district. The EIR being prepared for the Cannabis Land Use Ordinance should identify and evaluate the potential environmental effects of allowing cannabis manufacturing/processing of off-premise products within the AG-I and AG-II zones. Specifically, the City is concerned with increased employee vehicle and/or truck traffic associated with deliveries to/from such facilities and the potential for the increased industrialization of activities occurring within Agriculturally-designated areas in the Coastal Zone.

**Alternatives/Mitigation:** Alternatives considered should include limiting cannabis production/manufacturing to on-premise products (only) in both the AG-I and AG-II zone districts (if

manufacturing/processing is to be allowed at all (see Issue L2 above). Such alternatives would help to discourage the likelihood of large scale “industrialized” cannabis operations in or among the smaller AG-I and AG-II designated parcels found in the Carpinteria Valley. Mitigation measures that limit the extent, number or location of such manufacturing/production facilities could also be considered.

**Issue L4:** The EIR Scoping Document prepared by the County did not identify possible effects to the CEQA issues of population and housing as an anticipated area of study. We believe that the potential for the project to result in socio-economic changes to the nature or intensity of agricultural employment, and/or agricultural employee housing demands must be analyzed and discussed in the EIR. The EIR must consider the employment demands generated by cannabis operations in comparison to other agricultural uses currently being practiced in the County (and specifically in the Carpinteria Valley), and the distribution of residency of employees for cannabis operations compared to other agricultural uses. Again, in light of the City’s immediate adjacency to extensive agricultural lands under the County’s jurisdiction and the City historically serving as a primary source of housing for many individuals employed in the Carpinteria Valley’s agricultural industries, the City is especially exposed to the potential impacts of any intensification of employment demands related to new or expanded commercial/medical cannabis operations.

**Alternatives/Mitigation:** Alternatives that are based upon the available potential work force, housing costs in the area, commute distances from affordable housing, etc. should be considered. If increased availability of housing affordable to the work force is anticipated, the availability of suitably designated and located land in the County should be identified. Possible mitigation measures to consider include revisiting allowances for agricultural employee housing in the AG zone districts, and/or implementing a Development Impact Fee or In-Lieu fee program to set aside funds for additional affordable housing for increased agricultural employees resulting from any intensification of agricultural operations over existing conditions as a result of the considered Ordinance.

**Issue L5:** The EIR should consider the potential for expanded cannabis operations to support or encourage the growth of ancillary, supporting or complementary uses, including but not limited to tourism-based operations (e.g., tours, “tastings,” “cannabis clubs,” “farm stays,” etc.). Potential land use, traffic circulation, public safety, and environmental effects of such uses, including where, or if, such uses would be permitted, should be discussed evaluated.

**Alternatives/Mitigation:** If allowed at all, potential mitigation could include limiting where, when and at what level of intensity such uses are permitted. Licensing/permitting of such uses should be required with coordination through appropriate municipal and/or public safety agencies.

**Issue L6:** Numerous nuisance complaints related to odor, light and noise have been brought to both the City and County resulting from the impacts of existing cannabis operations in the unincorporated Carpinteria Valley occurring in close proximity to sensitive receptors located within the City of Carpinteria, including but not limited to schools, youth centers/daycares and residences. Further expansion and intensification of cannabis operations in the Carpinteria Valley has the potential to exacerbate the inherent conflicts between these land uses.

**Alternatives/Mitigation:** As discussed elsewhere in this letter, mitigation measures to be considered should include mandatory buffers or setbacks from nearby sensitive receptors, numeric caps on licenses issued within a defined geographic area, and other physical development standards or required improvements (e.g., odor controls, etc.) for permitted premises to address and abate nuisance impacts.

**Issue L7:** The EIR should consider if and how cannabis operations would utilize the unique characteristics of agricultural land in Coastal Zone (e.g., soils, climate), and if and how the products produced are uniquely suited to the characteristics of the Coastal Zone or whether they succeed similarly in non-coastal areas when grown under similar conditions. The comparative costs of producing in the Coastal Zone versus other areas where the same products could be grown/produced should also be considered.

**Alternatives/Mitigation:** Mitigation considered should include means of assuring the availability of agricultural lands in the Coastal Zone for the growing of products that require the area's unique attributes.

**Issue L8:** While not specifically a CEQA issue, we do note that the County's urgency ordinance prohibiting all non-medical cannabis operations in unincorporated Santa Barbara County will expire in April, 2019, however, the County's timeline for the adoption of the Cannabis Land Use Ordinance (as presented at the July 11, 2017 Board of Supervisors hearing) suggests certification of a Local Coastal Plan Amendment (LCPA) to incorporate cannabis regulations into the County's Article II Coastal Zoning Ordinance may not be considered by the California Coastal Commission (CCC) until May 2019 (or later, depending upon scheduling, among other variables). Post-certification work efforts associated with the final implementation of the Ordinance within the Coastal Zone (e.g., returning the approved LCPA to the County BOS for acceptance, CCC acknowledgement of County acceptance of CCC action, etc.) would further delay the Ordinance from immediately taking effect.

In light of this potential timing gap between when the current urgency ordinance expires and when the Cannabis Land Use Ordinance would take effect in the Coastal Zone, what is the County's strategy for addressing and regulating existing cannabis operations and prospective new operators in areas located within the Coastal Zone during the period when no local regulations would otherwise be in effect? Of particular concern to the City are operations that are ongoing yet are subject to little, if any, regulation and generate complaints from residents and members of the public due to nuisances (e.g., odor, light, etc.). What is the status of enforcement efforts and what will be the County's enforcement strategy should the development and approval of regulations extend beyond the anticipated timeline?

### **Traffic & Circulation**

**Issue T1:** Access to greenhouse and open field agricultural lands in the Carpinteria Valley from U.S. 101 is provided by local arterial and collector streets that pass through the City of Carpinteria, including Casitas Pass Road, Linden Avenue, Santa Monica Road and Cravens Lane. Existing agricultural uses in the Valley impact City streets and intersections through increased traffic, as well as the unique impacts associated with heavy truck traffic, such as damage/wear on local roads, and the inadequacy of some intersections and driveways to accommodate heavy truck turning movements. These concerns also

apply to State Route 192, which passes through the Carpinteria Valley and the City of Carpinteria. Changes in the intensity or nature of vehicle trips associated with existing agricultural uses as a result of expanded Cannabis cultivation and production must be considered.

**Alternatives/Mitigation:** Mitigation could include operational measures such as excluding truck traffic from certain streets where conditions merit and/or limiting new vehicle trips during peak hours or similar methods. The County could also consider the establishment of a Development Impact Fee program to assess intensified uses for their incremental share of roadway and infrastructure improvements necessary to meet increased demands. We note the County previously established a similar program as part of the Carpinteria Valley Greenhouse Program to mitigate identified traffic impacts to the Santa Monica Road/Via Real/U.S. 101 intersection associated with future greenhouse development.

The potential for road/intersection repairs or improvements, addition of bike or walking paths, improving site distances at driveways and intersections, and ensuring adequate loading and parking facilities are provided onsite for cannabis operations should also be considered. If expanded cannabis operations would result in increased heavy truck traffic for concentrated areas, an assessment should be completed that determines whether or not local streets in the affected area are constructed adequately to accommodate increased truck traffic. Mitigation that would offset the proportionate share of damage done to local streets by traffic associated with increased, concentrated cannabis cultivation/manufacturing operations should be considered.

**Issue T2:** Assessing the potential impacts related to traffic and circulation will depend greatly on an understanding of the number of employees required for the expected number of cannabis operations and from where they will be coming. A study of the expected cumulative employment generation, where affordable housing for the work force is located and by what means and routes employees will commute to work must be completed in order to assess potential project impacts and provide adequate mitigation.

**Alternatives/Mitigation:** If warranted, mitigation considered could include methods for reducing vehicle trips (e.g., carpooling, bicycle lanes, etc.) and the establishment of housing affordable to the work force convenient to, or within, the project area(s).

**Issue T3:** In areas where expanded, concentrated cannabis operations are expected to occur (like in the Carpinteria Valley), a significant intensification in the number of agricultural employees associated with cannabis operations could impact the need for public transportation in the area. The EIR should include an assessment of the public transportation available, how it would be impacted and whether or not existing locations/routes would adequately support increased demand in these areas.

**Alternatives/Mitigation:** If warranted, mitigation could include cooperation with municipal transportation providers in the area to determine projected usage by agricultural employees and to determine if alterations in schedules and/or routes is necessary or possible. Similarly, the expansion or improvement of existing bicycle lanes along primary commute routes to/from affected agricultural lands could be considered.

## **Visual Resources & Blight**

**Issue V1:** Lighting impacts from indoor and outdoor cannabis operations associated with both cultivation/production operations and site security measures must be considered and evaluated. Specifically, the City is concerned with cumulative impacts to the Carpinteria Valley night sky such that visibility and aesthetics in the area would be diminished, as well as nuisance impacts to other surrounding land uses (e.g., residences) in close proximity to such uses.

**Alternatives/Mitigation:** Mitigation that could be considered includes the use of roll-down covers or similar physical means of preventing light leakage or spillover from cultivation operations. Night sky friendly, hooded lighting that does not result in spillover onto adjacent properties should be required for all security and property lighting.

**Issue V2:** As noted above under “Land Use and Agricultural Resources” Issues, the City is concerned with the potential for the contemplated cannabis regulations to encourage or foster further growth and expansion of greenhouse and manufacturing/production facilities within the Carpinteria Valley and the impacts this would have on the visual character of the Valley. The proliferation of such facilities contributes to an increasing industrialized character of agricultural lands in the Valley. Furthermore, a general lack of adequate screening, setbacks and/or buffering of such uses from adjacent residential land uses and from nearby public roads throughout the Carpinteria Valley further degrades the visual quality of the area and contributes to a blighting effect upon the area.

**Issue V3:** The aesthetic impacts of the increased securitization of agricultural lands (e.g., large imposing fencing/gates, use of razor wire or similar physical deterrents, armed security, surveillance equipment, additional lighting, etc.) resulting from cannabis cultivation and manufacturing facilities should be considered and evaluated. Again, a proliferation of such infrastructure may contribute to a blighting effect and an increasingly industrialized character of the Carpinteria Valley that is not in keeping with the largely rural nature of the Valley, which has been identified for protection in both the County’s and City’s LCPs.

**Issue V4:** Aesthetic and quality of life impacts on adjacent land uses as a result of any increased industrialization and/or securitization of rural agricultural lands, and the impacts such changes would have on property values should be considered and addressed.

**Alternatives/Mitigation:** Mitigation should be considered that would result in the creation of development standards that take into account aesthetic treatments of new cannabis operations and any needed security improvements, and may include required setbacks, screening, landscaping or similar buffering elements from adjacent uses and public spaces (including roads) with the intent of preserving the existing rural character of the area. Additionally, exterior security lighting should be required to be limited to the minimum necessary for safety purposes and designed to be “night-sky” compliant.

**Issue V5:** Improvement requirements made by the County are often not implemented through approved development or are not properly maintained so as to be effective. Unpermitted improvements are also often not observed or abated for extended periods. Enforcement of

development standards and other zoning requirements has been lax allowing necessary and required improvements to be ignored and unpermitted uses to occur, which further impacts the visual quality of the Valley.

**Alternatives/Mitigation:** Mitigation should be considered that would result in Code Enforcement officer(s) being dedicated to actively regulating and monitoring cannabis operations through the County. Public notifications, including mailed notices to nearby surrounding neighbors, concerning new or expanded licenses would help to inform concerned neighbors of pending operations and provide an opportunity for affected neighbors to share their input. Mandatory recurring inspections as part of ongoing licensing requirements (including renewals) would also help to ensure ongoing permit compliance. This would ensure a greater level of compliance at the construction stage, maintenance of required improvements over the long term, and responsiveness to citizen inquiries/concerns.

### Air Quality/Odors

**Issue AQ1:** The EIR should describe and evaluate any public health effects from exposure of persons to odors or airborne particulates associated with the contemplated types of cannabis operations (e.g., cultivation, manufacturing/processing, etc.). This analysis should include a discussion of impacts to persons that have particular sensitivity or allergies to the types of organic and chemical compounds inherent to the uses and activities contemplated by the regulations.

**Alternatives/Mitigation:** If appropriate, mitigation could include mandatory buffers from sensitive receptors, including residences, and/or limiting such activities to indoor, enclosed operations that are outfitted with appropriate air filtering/scrubbing technologies.

**Issue AQ 2:** Intensification or expansion of indoor cannabis cultivation/manufacturing uses in the Carpinteria Valley has the potential to further impact air quality in the area, both from point sources (such as emissions from new large cultivation/production/manufacturing facilities) and non-point sources (e.g., increased vehicle and large truck trips). As stated previously, it will be important to consider cumulative impacts from new construction and employment generation, including the resultant impacts to housing demand (and location), vehicle trips/circulation, etc.

**Alternatives/Mitigation:** Mitigation measures considered should include design measures to reduce GHG emissions associated with point sources and means for reducing the number and distance of vehicle trips traveled in association with cannabis operations. If warranted in specific areas, intersection and/or street improvements that are capable of reducing congestion could also be considered.

**Issue AQ3:** Complaints concerning nuisance odors from cannabis operations occurring in unincorporated areas of the County in proximity to sensitive receptors such as schools, youth centers/day cares and residences located within the City of Carpinteria have increased significantly over the last couple of years. Residents complain that the odor is objectionable, degrades their quality of life and may pose health risks. Nuisance impacts related to the unique odor characteristics of cannabis operations must be considered and addressed.

**Alternative/Mitigation:** Mitigation considered should include recognition that certain aspects of cannabis operations should not occur within certain distances of sensitive receptors, including residential uses. Incorporation of air scrubbing technologies on cannabis operations must be considered to help mitigate nuisance odor complaints.

**Issue AQ3:** The EIR should evaluate if, or how, pesticide, fertilizer or chemical usage (including for both volatile and non-volatile manufacturing) associated with the cannabis industry differs from that of existing agricultural operations, particularly in areas where such agricultural uses occur in close proximity to other land use types. Impacts related to odor from, and exposure to, such materials must be addressed.

**Alternatives/Mitigation:** Mitigation considered should include ensuring ongoing compliance with application standards and operating procedures as managed through the Agricultural Commissioner's office. If necessary, appropriate buffers from nearby surrounding sensitive receptors could also be considered.

## **Noise**

**Issue N1:** Nuisance noise from fans, ventilation systems and other operating characteristics of cannabis industry for nearby sensitive receptors, including residential land uses in City, must be addressed and evaluated. Like odor and lighting, noise complaints have seen a recent increase among residential areas in close proximity to existing cannabis operations in the Carpinteria Valley.

**Alternatives/Mitigation:** Mitigation considered should include recognition that certain aspects of cannabis operations should not occur within certain distances of sensitive receptors, including residential uses, and/or during certain hours that are likely to disturb residents or other sensitive receptors. Appropriate development standards should be established and enforced.

## **Public Facilities & Services**

**Issue PF1:** The EIR should describe and evaluate potential impacts to law enforcement service demands associated with the various aspects of commercial cannabis activities. The potential for the cash basis of the cannabis industry to lead to an increase in crime, including the potential for an increased incidence of crime in areas adjacent to commercial cannabis activities (i.e., robberies, burglaries, weapons possession, etc.) should be investigated/analyzed in the EIR.

**Alternatives/Mitigation:** Possible alternatives to be considered include physically limiting the number or geographic extent of the various types of commercial cannabis activities so as to not create an overconcentration of such uses. Any such alternative should consider the cumulative impacts of the concentration of commercial cannabis activities with other "traditional" blighting uses (e.g., bars, liquor stores, pawn shops, adult-oriented businesses, etc.). Potential mitigation measures to be considered should include additional law enforcement personnel to serve affected areas, minimum requirements, certifications, licenses and inspections for individual cannabis operations and their employees, minimum buffers/separation requirements from other blighting uses and/or exploring options for establishing and



requiring participation of commercial cannabis operations in safer alternatives to an “all-cash” operation.

**Issue PF2:** Potential increased demands for fire protection services associated with the contemplated cannabis operations relative to existing agricultural activities should be described and evaluated. In particular, any potential increased risks of fire, spills, and accidents associated with cultivation and manufacturing activities should be evaluated. We note that much of the Carpinteria Valley is located in or near moderate and/or high fire hazard areas. The appropriateness and risks associated with, for example, volatile manufacturing in such areas, should be carefully evaluated and reviewed with proper fire protection authorities. The potential for any increased incidence of traffic accidents associated with the various aspects of commercial cannabis activities should also be described and evaluated.

**Alternatives/Mitigation:** Alternatives considered could include prohibition or further limitations (e.g., license number caps, size thresholds, etc.) on where particularly high risk activities associated with commercial cannabis are permitted to occur. Mitigation measures considered could include use of development standards to buffer or separate uses from adjacent at risk land uses/resources, requiring mandatory incorporation of appropriate safety measures/technologies, and/or establishing a fee program or similar to require new/intensified uses to pay an incremental share toward additional fire safety personnel, equipment and/or facilities to serve affected areas.

**Issue PF3:** Differences in water use and demand relative to traditional agricultural crops grown in the County and in specific sub-areas like the Carpinteria Valley, should be described and evaluated. This should include demands on both municipally-provided water (like the Carpinteria Valley Water District) and from groundwater reserves through the use of private wells. Impacts to water availability and reserves, particularly in times of drought, resulting from commercial cannabis cultivation should be considered.

**Alternatives/Mitigation:** Mitigation considered could include caps on the number of licenses issued or the amount of acreage allowed to be used for cannabis operations (i.e. cultivation, etc.) for a given geographical area so as to not exceed or pose an undue burden on available water resources. Mitigation should also explore options for cultivation and manufacturing operations to use recycled and/or recirculated water systems and low water use irrigation technologies.

**Issue PF4:** The EIR should consider and describe the means of providing electrical service to cultivation and processing facilities, and the impacts on demand and availability of such services resulting from increased growing operations (particularly as a result of energy intensive indoor growing facilities), including cumulative impacts from other future anticipated land uses in the County. If generators or other “off the grid” technologies will be considered for cannabis operations, they should be evaluated for their own potential environmental and nuisance impacts to surrounding land uses.

**Alternatives/Mitigation:** Appropriate measures should be developed to ensure expanded cannabis operations in a defined area do not reduce existing or anticipated service levels. Measures to reduce energy usage, while avoiding negative environmental impacts should also be explored.

**Water Quality/Flooding and Drainage/Groundwater Recharge**

**Issue W1:** The EIR should consider the potential impacts to water quality/runoff, flood and drainage, and groundwater recharge impacts from the expansion of cannabis cultivation and manufacturing activities, particularly in areas where cannabis activities are expected to be concentrated such as the Carpinteria Valley. Cumulative impacts of new operations along with existing agricultural operations should be included, particularly as it relates to increases in impervious surfaces within a defined watershed.

**Alternatives/Mitigation:** Mitigation considered should include implementation of low impact development strategies and stormwater best management practices to address water quality and runoff concerns from cultivation and manufacturing operations. Irrigation methods that result in no or minimal offsite runoff should also be considered. In the case of new greenhouse or building construction, preservation of sufficient permeable areas to allow for onsite runoff retention and percolation should be required.

**Biological Resources**

**Issue B1:** The EIR should consider the potential impacts to biological and habitat resources from the expansion of cannabis cultivation and manufacturing activities, particularly in areas where cannabis activities are expected to be concentrated such as the Carpinteria Valley. Cumulative impacts of new operations along with existing agricultural operations should be included.

**Alternatives/Mitigation:** Specific means for the protection and preservation of sensitive habitats such as wetlands and creeks should be considered. Means of protection could include but are not limited to on-site preservation and restoration through mandatory buffers or setbacks from such resources, and development restrictions/requirements aimed at avoiding or minimizing impacts to nearby resources.

**Issue B2:** The potential for direct impacts to wildlife domestic pets as a result of pest control activities associated with cannabis cultivation operations should be discussed and evaluated. Use of poisons, rodenticides and similar pest control strategies on cultivation sites near wildlands and/or urban residential areas could result in unintended impacts to wildlife and domestic pets, including incidences where a domestic pet ingests another animal previously exposed to such materials.

**Alternatives/Mitigation:** Mitigation measures to address this concern could include limitations or restrictions on the types of pest control measures permitted to be used in sensitive areas (e.g., near creeks or wildlife corridors, or near residences), requirements for appropriate physical deterrents to discourage targeted wildlife or pets from entering cultivation sites, and written notification to neighboring residential land uses concerning the presence and potential hazards of exposure to such pest control materials.

If you have any questions concerning these comments, please contact me at (805) 755-4414 or by email at [steveg@ci.carpinteria.ca.us](mailto:steveg@ci.carpinteria.ca.us).

Sincerely,



Steve Goggia, Director  
Community Development Department  
City of Carpinteria

Cc: City Ad Hoc Cannabis Committee  
City Council members  
Dave Durlinger, City Manager  
Nick Bobroff, Senior Planner  
Ed Foster, Carpinteria-Summerland Fire Protection District  
Sheriff Bill Brown, Santa Barbara County Sheriff's Department  
Bob McDonald, Carpinteria Valley Water District

# CITY of CARPINTERIA, CALIFORNIA

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November 14, 2017

Attention Ms. Jessica Metzger  
County of Santa Barbara Planning and Development Department  
Long Range Planning Division  
123 East Anapamu Street  
Santa Barbara, CA 93101-2058

Re: Public Comment - County Cannabis Land Use Ordinance and Licensing Program Draft Environmental Impact Report

Dear Ms. Metzger:

Thank you for the opportunity to comment on Santa Barbara County's (County's) Draft Program Environmental Impact Report for the Cannabis Land Use Ordinance and Licensing Program (DPEIR). Due to the City of Carpinteria's (City's) immediate adjacency to extensive agriculturally designated lands in the unincorporated area of the County, expanded cannabis-related operations in the Carpinteria Valley will uniquely impact the City, its residents, visitors, businesses, and natural resources. Our comments focus on areas of particular importance to the City, including those identified in the City's Notice of Preparation and Scoping of an Environmental Impact Report comment letter, dated August 10, 2017.

## **Project Overview**

The project under consideration is the Santa Barbara County Cannabis Land Use Ordinance and Licensing Program (Project) which would allow commercial cannabis cultivation, manufacturing/processing with non-volatile and volatile extraction, post-processing and packaging, testing, distribution, and retail. It would also facilitate the licensing, permitting, and regulation of commercial cannabis businesses consistent with required State of California licensing regulations (DPEIR, p. ES-1). (Unless otherwise stated, references to page numbers herein refer to the October 2017 DPEIR.) The Project consists of three components: amending the County Land Use and Development Code (LUDC), the Montecito Land Use and Development Code (MLUDC), and the Santa Barbara County Coastal Zoning Ordinance (CZO) (collectively referred to herein as the Cannabis Zoning Ordinance); implementing the licensing program through amendments in the County Code to track and oversee cannabis activities in the unincorporated areas of the County; and amending other regulations and policies of the County Code to address specific aspects of cannabis activities (p. 2-1).

The City offers the following comments regarding the DPEIR:

### **Overall Structure of Analysis**

The County prepared a program-level EIR for the Project. The purpose of a program EIR is to consider the broad implications and impacts associated with the Project while not requiring a detailed evaluation of individual properties. The DPEIR divides the County into five regions: Santa Maria, Lompoc, Santa Ynez, Cuyama, and South Coast (pp. 2-3 to 2-7). The DPEIR states that the purpose of dividing the County into regions is to “facilitate Project data and impact analysis within this EIR” (p. 2-3). However, the DPEIR appears to arbitrarily analyze impacts at the regional level for only some issue areas. This regional analysis typically includes qualitative statements about anticipated higher concentrations of cannabis activities in certain regions which could result in greater impacts in these regions, but does not fully analyze or attempt to quantify regional impacts. Further, impact significance determinations are only at the County level, which results in a failure to disclose the full scope of impacts and dilutes potentially significant regional or sub-regional impacts. (See *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431 [EIR requires some degree of forecasting and an agency must use its best efforts to find out and disclose all that it reasonably can].) Proposed mitigation measures also apply at the County level rather than addressing region-specific impacts that could be more effectively mitigated with region-specific mitigation.

In addition, while the DPEIR recognizes cannabis cultivation sites tend to be concentrated in certain communities or sub-regions, including the Carpinteria Valley, it does not evaluate impacts that may be unique to these sub-regions and/or may be more concentrated in these areas. For example, with regard to land use compatibility and air quality, the proximity of a large residential population in the Carpinteria Valley that are adjacent to agricultural land where cannabis activities will be concentrated will result in greater impacts to sensitive receptors than in other parts of the County. Mitigation that takes into account this close proximity, as well as the difficulty in pinpointing the source of an odor issue when uses are concentrated, must be included in the DPEIR to address this sub-regional impact.

The same issue applies in the Coastal Zone where analysis specific to protected coastal resources is necessary to fully disclose and evaluate how the Project will impact coastal areas of the County. For example, the Coastal Act and the County’s Local Coastal Plan identify prime and non-prime agricultural land as a protected resource. (See e.g., Pub. Res. Code § 30241, 30242; County LCP Policies 8-11, 8-12.) However, the DPEIR’s agricultural resources analysis fails to disclose the potential impact of the Project on coastal agricultural land. Without this analysis, the reader cannot fully understand the potential impacts of the Project and the County cannot adequately mitigate for these potential impacts.

Even if an impact is ultimately determined to be significant and unavoidable, CEQA still requires full disclosure of the extent of the impact as well as mitigation to minimize those impacts to the maximum extent feasible. (Pub. Res. Code §§ 21002, 21002.1(b), 21100; Practice Under the California Environmental Quality Act (2d ed Cal CEB) §§ 17.8, 13.26.) For many of the issue areas evaluated in the DPEIR, a regional and sub-regional analysis of issue areas is necessary to meet this requirement, as further detailed in the comments below.

## **Proposed Zoning Ordinance Amendments**

*Applicability of and Enforcement for Existing Cannabis Activities.* The proposed Cannabis Zoning Ordinance identifies the zones in which various cannabis-related uses are allowed, the permit requirements for said uses, and applicable specific use regulations. It states that all cannabis activities shall comply with the provisions of the “Cannabis Regulations” section of the ordinance regardless of whether the activity existed or occurred prior to the effective date of the ordinance (DPEIR Appendix B, CZO §35-144S<sup>1</sup>). The project description and ordinance should clarify how these requirements will be enforced for uses that existed or occurred prior to the effective date of the ordinance. Are all existing uses required to obtain the permits specified by the Cannabis Zoning Ordinance? How do the provisions apply to uses that are legal, nonconforming uses? Would existing uses that do not conform to the specific use regulations of the Cannabis Zoning Ordinance have to be brought into compliance with the Ordinance? If so, how long would these existing uses have to comply with the new Ordinance requirements? How would CZO § 35-144S.B.a which states “[t]he required permit shall be obtained and all applicable conditions of the permit shall be satisfied prior to the commencement of the cannabis activity” apply to existing cannabis activities? We are aware the County is considering a process for determining the legal nonconforming status of existing operations which may address these questions. A discussion of this process in the DPEIR is necessary because the process, or lack of process, could have environmental effects which must be disclosed and analyzed.

*Applicability of CEQA to at the Project Level.* The Project description and the Cannabis Zoning Ordinance should clarify whether each of the cannabis-related uses that are identified as “P” (permitted use) or “S” (permit determined by specific use regulations) require ministerial or discretionary approvals. It appears, given the proposed permit process and lack of a requirement for a public hearing in most cases, that many of the cannabis-related uses identified as “P” or “S” would require only ministerial approvals, which are generally not subject to review under CEQA. This is contrary to what is implied in the impact analysis in many sections of the DPEIR, which indicates that while impacts cannot be fully evaluated at the program level, project level impacts would be considered on a case by case basis (see e.g., Section 3.4 Biological Resources, Section 3.5 Cultural Resources, Section 3.9 Land Use and Planning, Section 3.10 Noise, Section 3.12 Transportation and Traffic). The DPEIR is wholly inadequate as a project-level analysis. If any cannabis operations permitted under the Cannabis Zoning Ordinance could be approved without any subsequent CEQA review, the DPEIR must incorporate a more specific impacts analysis and proposed mitigation measures to adequately address such projects.

*Principal Permitted Use in Coastal Zone.* The Project description and the proposed amendments to the CZO should clarify whether cannabis-related uses that are identified as “P” in the CZO are considered principal permitted uses in the coastal zone.

*Residential Uses Are Sensitive Receptors.* Most County policies, regulations and CEQA thresholds identify a broader list of uses as “sensitive receptors” than those identified in the Cannabis Zoning Ordinance. While we understand SB 94 specifically requires setbacks from schools, day care centers, and youth centers, these should not be regarded as the only sensitive receptors for purposes of this Project. Typically, sensitive receptors include not only schools, youth centers, and daycares (as this term is

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<sup>1</sup> These comments include reference to CZO code sections. However, the same language is included in proposed amendments to the LUDC and MLUDC and these comments apply to those codes as well.

defined in the Cannabis Zoning Ordinance), but hospitals, convalescent homes, residential, and sometimes recreational land uses (see, e.g., p. 3.3-2). We recommend the DPEIR and Cannabis Zoning Ordinance include the more commonly recognized, broader list of sensitive receptors, which would include residential uses. If certain protections required in the Cannabis Zoning Ordinance are limited to schools, youth centers, and day care centers, we recommend using a different term to avoid confusion with other County policies and regulations.

*Inconsistent and Unclear Use of Term "Sensitive Receptor."* The Cannabis Zoning Ordinance uses terms associated with identified "sensitive receptors" inconsistently. For example, CZO § 35-144S.D.1.a requires a 600-foot setback from sensitive receptors (defined to include schools, day care centers and youth centers) and CZO § 35-144S.D.1.a.1 only requires the applicant to identify youth centers within 600 feet. The same issue applies in CZO § 35-144S.D.2.c and d. The provisions should consistently use the defined term.

CZO § 35-144S.E.3.b addresses measures "to avoid generating incompatible noise to sensitive receptors." In this context, does the term sensitive receptors refer to only schools, day care centers, and youth centers or does it include other sensitive receptors as the term is used in the County's Noise Element and Environmental Thresholds and Guidelines?

*Retail Sales in Agricultural Zones.* The Cannabis Zoning Ordinance does not allow retail sales licenses in agricultural zones. However, it is unclear whether any retail sales associated with manufacturing, processing, or distribution uses that are allowed in agricultural zones would be permitted. This requires clarification in the DPEIR because retail sales would result in unique impacts.

*Security Standards for Non-Retail Uses.* The Cannabis Zoning Ordinance includes development standards related to security for retail uses but does not include any security standards for non-retail cannabis activities. We recommend the ordinance identify appropriate security measures for non-retail cannabis activities, while taking into account the importance of protecting visual and aesthetic resources.

*Fencing Development Standards.* Development standards for fencing should include lists of both acceptable and prohibited materials to more effectively guide design. The list of prohibited materials should include barbed wire, razor wire, and concertina wire, as well as any other materials designed solely for security that provide no aesthetic value.

### **Project Buildout Assumptions**

The assumptions used to estimate the existing baseline and the future cannabis canopy development potential under the Project are based solely on responses to the County's 2017 Cannabis Registry. However, the DPEIR acknowledges that registry responses were incomplete (p. 3-5). Further, the DPEIR provides no evidence to demonstrate the results of the 2017 Cannabis Registry reflect the total actual demand/potential for cannabis uses in the County. In fact, it is reasonable to assume that potential growers and others intending to open cannabis-related businesses did not know about, or chose not to respond to, the Registry. Further, the DPEIR states that the Registry data varies widely and "does not capture the whole cannabis industry in the County" (p. 2-18). By basing the projected cannabis canopy buildout under the Project solely on responses to the Registry, the DPEIR likely understates actual buildout. Further, because other uses including manufacturing, processing, and testing are based on the

estimated cannabis canopy buildout, these are also likely understated. CEQA analysis should be based on a reasonable worst case scenario. (See *Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 246.) The DPEIR assumptions should be revised to include some estimate of additional unreported demand for cannabis cultivation and related uses. We propose assuming demand would be 50 percent greater than that indicated in registry responses given the availability of land, the profitability of the cannabis industry relative to other agricultural crops, the generally permissive nature of the proposed Project, and the likelihood that many people did not know about and/or chose not to respond to the Registry. This would more accurately reflect a reasonable worst case scenario for buildout as required by CEQA.

### **Global Comment on Mitigation Measures**

Many of the proposed mitigation measures rely on County staff inspections after permits have been issued. Are any permitting or licensing fees proposed that would be used for enforcement of the Cannabis Zoning Ordinance? If so, what portion of the fees collected would be used for enforcement and how was this amount determined adequate to effectively enforce the Project and its associated mitigation measures?

### **Agricultural Resources**

*Carpinteria Agricultural Overlay District.* The DPEIR's Agricultural Resources (Section 3.2) analysis acknowledges that Carpinteria is the largest and most concentrated greenhouse district in the County and that all of these structures are located in the AG-I zone (DPEIR, p. 3.2-7). It also identifies the Carpinteria Agricultural Overlay (CAO) District as part of the regulatory setting along with its development cap and coastal development permit (CDP) requirements and states that CZO §§ 35-102F.2 through 102F.5 greatly limit the amount of impervious surfaces that may occur from the development of greenhouses in the Carpinteria Valley (pp. 3.2-14 and 3.2-20).

However, the DPEIR fails to include a sub-regional analysis of impacts that may result given these unique circumstances in the Carpinteria Valley and Coastal Zone. An assessment of impacts first requires a complete description of the environmental setting. The DPEIR must accurately establish the existing baseline conditions of permitted and unpermitted structures in Zone A of the CAO and specify how much capacity remains before the cap is met. Further, the DPEIR should address how unpermitted construction factors into the capacity determination.

The DPEIR asserts that a case-by-case review for consistency with CAO requirements would ensure policy consistency (pp. 3.9-34 and 3.9-36). However, without disclosure of existing conditions, this conclusion is not substantiated.

*Mitigation Measure (MM) AG-2 (New Structure Avoidance of Prime Soils).* MM AG-2 requires a case-by-case review of applications for new structures proposed for cannabis-related activities by the County Planning and Development Department (P&D) and states that any new structures proposed for development must be sited on areas of the property that do not contain prime soils, "to the maximum extent feasible." Even with this mitigation measure, impacts resulting from the loss of prime soils would be significant and unavoidable (Class I). Additional feasible mitigation is available that could reduce these impacts more effectively than leaving the interpretation of whether prime soils are avoided "to



the maximum extent feasible” to a staff determination on a case-by-case basis. Specifically, a more effective mitigation measure would be prohibiting or severely limiting non-cultivation cannabis uses on prime soil and/or within the coastal zone. (Practice Under the California Environmental Quality Act (2d ed Cal CEB) § 17.8 [EIR must propose mitigation measures that will minimize the project’s significant impacts and an agency should not approve a project if feasible mitigation measures exist].)

*Impacts of Limiting Volatile Manufacturing Primarily to Agricultural Land.* The proposed Project would allow volatile manufacturing in agricultural and some industrial zones, but not in commercial zones (p. 2-33). Given the DPEIR’s findings that hazard impacts associated with these activities are less than significant or can be mitigated to less than significant (pp. 3.7-19 to 3.7-23), why would volatile manufacturing not be allowed in commercial zones? Limiting volatile manufacturing to primarily agricultural zones (given that there is very limited industrially-zoned land in the County) will result in further pressure to convert agricultural land to non-agricultural uses. The impacts of limiting volatile manufacturing to primarily agricultural zones must be analyzed in the DPEIR.

*Impacts to Coastal Resources.* Cannabis appears to be highly profitable relative to other crops, which will likely drive many agricultural operations to convert to cannabis. The County should evaluate the agricultural and land use/policy consistency impacts associated with the potential conversion of significant portions of agricultural land within the Coastal Zone to cannabis cultivation, manufacturing, and other cannabis activities. The Coastal Act identifies agriculture as a priority use (Coastal Act, § 30222 and 30224). However, the DPEIR does not address whether the County considers cannabis cultivation and related activities to be an agricultural use for purposes of implementation of its coastal policies. In a June 7, 2017 letter to San Luis Obispo County regarding its proposed Cannabis Ordinance (enclosed), Coastal Commission staff stated, based on its experience with the Commission’s actions regarding other cannabis ordinances, “We do not believe that manufacturing...is an appropriate use of prime soils. Prime soils, as opposed to non-prime soils, should be reserved solely for agricultural cultivation and nurseries.” The DPEIR should discuss the County’s and Coastal Commission’s interpretation of coastal policies as they relate to cannabis activities and analyze the Project’s consistency with these policies.

### **Volatile and Non-Volatile Manufacturing**

*Clearly Define Manufacturing Processes.* The DPEIR should be updated to include manufacturing process descriptions to allow the reader to accurately understand the risks associated with various processes. The DPEIR project description states these descriptions are included in Appendix C of the document but they are missing. Further, the proposed Cannabis Zoning Ordinance must clearly define volatile and non-volatile extraction processes to ensure the standards for each use are appropriately applied through the permitting process.

*Compliance with Current Code Requirements.* The DPEIR asserts that volatile manufacturing would occur in permitted structures subject to building codes and review by the Fire Department (pp. 3.7-20 to 3.7-21). Would use of an existing industrial building for volatile cannabis manufacturing constitute a change of use requiring the building to be brought up to current building and fire code standards? If not, the DPEIR should analyze the risks associated with volatile manufacturing uses being conducted in buildings that do not comply with current building and fire code regulations.

*Comparison of Manufacturing Processes to Currently Allowed Uses in Agricultural Zones.* The DPEIR analysis states that zone districts considered eligible for cannabis operations have been assigned based on consideration of the type of cannabis activities and their compatibility with other uses allowed within such zones and specifically references similar uses in heavy industrial and commercial zones (*id.*, pp. 3.7-19 to 3.7-20). However, the DPEIR does not specifically address how cannabis-related manufacturing compares to other allowed uses in agricultural zones. The DPEIR should compare volatile and non-volatile manufacturing to other allowed uses in AG-I and AG-II zones in determining the suitability of allowing these uses in these zone districts. Off-premise processing and “extensive processing” of other (non-cannabis) agricultural products is currently not permitted in the inland AG I zone and only conditionally permitted in AG-II and coastal AG-I zones. Where it is conditionally permitted, specific standards and limitations apply (see e.g., CZO § 35-68.4.3 and LUDC § 35.42.040). No such standards or limitations are proposed for cannabis manufacturing. The DPEIR must analyze the impacts in this proposed increase in the intensity of use in the agricultural zone districts.

*Hazards Associated with Adjacent Incompatible Uses.* The DPEIR must consider the hazards associated with incompatible uses in adjacent zones, for example, residential uses immediately adjacent to AG-I zones where volatile extraction activities would be permissible.

*MM HAZ-3 (Volatile Manufacturing Employee Training Plan).* MM HAZ-3 does not include any standards addressing what must be included in an Employee Training Plan. P&D staff, who likely have minimal experience in employee hazard training procedures, will be required to determine whether a plan is adequate. Further, the monitoring requirement for MM HAZ-3 states that the County shall review site conditions and the training plan log that is required to be maintained by the employer on an ongoing basis to ensure compliance. However, no frequency for ongoing monitoring is specified such that it is impossible to determine whether this mitigation measure will be effective. The DPEIR provides no discussion of how this ongoing monitoring would be staffed and funded. Given the County’s budgetary constraints, it seems unlikely that this mitigation measure would be adequately enforced to ensure the potentially significant risks associated with volatile manufacturing operations are reduced to less than significant.

### **Impacts of Non-Cultivation Cannabis Activities**

*MM AG-1 (Cannabis Cultivation Prerequisite to Ancillary Use Licenses).* The stated intent of MM AG-1 is to ensure industrial uses are subordinate to agricultural uses. However, the mitigation measure does not limit the size of manufacturing and distribution uses relative to the cultivation use. The monitoring requirements for this mitigation states that staff will ensure uses are ancillary. However, without any quantification of what constitutes an ancillary use, this requirement is not enforceable and does not mitigate the potential loss of agricultural land. MM AG-1 should be revised to quantify what constitutes an ancillary use in terms of percentage of land area dedicated to the primary versus ancillary uses.

### **Housing & Population**

*Socio-Economic Impacts of Employment Growth.* By only evaluating this issue area on a County-wide basis, the DPEIR ignores the fact that employment and housing demand will be concentrated in specific regions and sub-regions, such as the Carpinteria Valley, rather than distributed evenly County-wide, and

fails to address the cumulative socio-economic impacts that will likely result from the Project. This issue requires a sub-regional analysis.

Many data sources, including the UCSB 2017 Santa Barbara County Community Indicators report and UCSB Economic Forecast Project (<http://www.efp.ucsb.edu/>), and the 2017 Carpinteria Valley Economic Profile (Volume 3, May 2017), evaluate housing availability and affordability at the regional and sub-regional level. The data provided in these reports demonstrates a significant lack of available, affordable housing to meet the demand that will be generated by the Project. For example, the apartment vacancy rate in the Carpinteria area as of late 2016 was 2.3 percent (2017 Carpinteria Valley Economic Profile, p. 4). The average monthly rent in the Carpinteria Market Area in 2016 was \$1,650 per month and has continued to rise (2017 Santa Barbara County Community Indicators, p. 45). Given the challenges that already exist related to the lack of affordable housing and farmworker housing, particularly on the South Coast, the DPEIR analysis should consider the socio-economic impacts of increased employment and associated housing demand at a regional level (e.g. South Coast, Santa Ynez, Lompoc, Santa Maria, and Cuyama). If this analysis finds that housing to meet the projected demand generated by the Project at a level that is affordable to employees is not available in a particular region, the most likely result will be overcrowding of existing housing stocks. The DPEIR must analyze the potential impacts of the likelihood of overcrowding at both a County-wide and sub-regional level.

*MM PEH-1 (In-Lieu Fees).* MM PEH-1 would require payment of in-lieu fees by applicants who propose a substantial number of net new employees consistent with Housing Element Policy 1.3. The stated purpose of this mitigation is to reduce population growth impacts and ensure Project generated housing demand is met, reducing the impact to less than significant. However, the County's 2015-2023 Housing Element does not include a Policy 1.3 and there does not appear to be any policy requiring payment of in-lieu fees for projects generating new employees. Further, it is unclear what constitutes "a substantial number of net new employees." As such, this mitigation measure appears unenforceable and would not effectively mitigate the potentially significant impacts related to population growth. The DPEIR should also consider whether in-lieu housing fees should be shared with neighboring jurisdictions to enable the creation of housing in the urban areas.

*Other Feasible Mitigation for Housing Impacts.* The County should consider other feasible mitigation to address the need for affordable housing generated by the Project including requiring or encouraging cultivation operations, particularly large ones, to provide on-site farm employee housing.

*Impact of Cannabis-Related Tourism.* The DPEIR should consider the potential for expanded cannabis-related supporting and complementary uses, including but not limited to tourism-based operations (e.g., tours, "tastings," "cannabis clubs," "farm stays," etc.). Would these types of uses be allowed and if so, how would they be regulated? Such uses could result in potential land use, traffic, public safety, and other environmental effects that must be evaluated in the DPEIR. If allowed at all, potential mitigation could include limiting where, when, and at what level of intensity such uses are permitted. Licensing/permitting of such uses should be required for these types of uses, or the ordinance should explicitly prohibit these types of uses outright.

## **Land Use Compatibility**

*Residential Uses Are Sensitive Receptors.* The DPEIR acknowledges that cannabis activities occurring within or adjacent to existing communities could have quality of life impacts on residents and businesses. However, the analysis concludes that the development standards incorporated into the Project would result in less than significant impacts except with regard to cannabis uses being adjacent to public lands where recreational uses may occur (pp. 3.9-43 to 44). Both the Noise and Air Quality analyses of the DPEIR identify residential land uses as sensitive receptors, while the Air Quality analysis refers to recreational land uses as “moderately sensitive to air pollution” (p. 3.3-2 and 3.10-8). It is incongruous then that the Land Use and Planning analysis proposes mitigation to address potentially significant neighborhood compatibility and quality of life impacts for nearby recreational uses but fails to identify or mitigate the same potentially significant impacts for residential uses (see discussion of MM LU-1, p. 3.9-42 to 46).

*Effectiveness of Proposed Setbacks.* Further, the DPEIR provides no evidence to support the assertion that the proposed setback distances would reduce the identified traffic, odor, noise, crime, or other quality of life issues to less than significant for those uses it defines as sensitive receptors or that no setback is necessary for other sensitive receptors, including residences.

*Cannabis Activities in Coastal Zone Prior to Commission Certification.* The DPEIR does not indicate when the Coastal Commission would consider and potentially certify the portions of the Project in the coastal zone. However, it is reasonable to assume this would not occur until after the County’s Nonmedical Marijuana Interim Urgency Ordinance is set to expire in March 2019. Therefore, the DPEIR should discuss what impacts could result if the urgency ordinance expires prior to Coastal Commission certification.

## **Traffic & Circulation**

*Sub-regional Traffic Analysis.* The DPEIR’s traffic analysis is at the programmatic level and does not consider specific intersections or road segments. The DPEIR acknowledges the Carpinteria Valley is an area where large amounts of future cannabis growth is expected, and existing roadways and intersections already operate at deficient levels of service, particularly along intersections with Highway 101 on- and off-ramps (pp. 3.12-26 to 28). However, it goes on to state that it would be “too speculative in this programmatic EIR to estimate potential impacts to specific road sections and intersections” (pp. 3.12-26 to 28). There are only a handful of roads and intersections that provide north-south connectivity from Highway 101 to the agricultural lands in the Carpinteria Valley. While it is not feasible to conduct a site specific traffic analysis, a sub-regional analysis of the likely impacts to the Carpinteria Valley based on the projected buildout in the sub-region appears feasible and would more accurately and thoroughly describe the Project’s impacts.

*Impacts Outside County Jurisdiction.* The DPEIR acknowledges there will be significant impacts outside its jurisdiction, on city and state roads, for example. However, it claims the County has no control over implementation of mitigation measures to reduce these impacts (p. 3.12-30). When impacts from a project occur within the jurisdictional area of another agency, the lead agency should mitigate those impacts through actions within its jurisdiction or the payment of mitigation fees to the other agency. (See *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 366-367.)

The DPEIR should consider ways the County can coordinate with local and state agencies to address intersections in other jurisdictions that are impacted by the Project including but not limited to establishing a funding mechanism for intersection and road improvements in these jurisdictions. While the County cannot require implementation of mitigation outside its jurisdiction, it can and should make reasonable efforts to address the impacts on its neighbors. Such a mitigation measure was included in the Carpinteria Valley Greenhouse Program Revised FEIR, however, to date, it does not appear to have been implemented (Case No. 99-EIR-02 RV 1). Mitigation T-1 in the FEIR requires "New greenhouse development contributing to peak hour trips to the Santa Monica/Via Real/U.S. 101 NB ramp interchange and the Linden Avenue/U.S. 101 SB ramp interchange shall pay a pro-rata contribution towards future interchange improvements. A Memorandum of Understanding (MOU) to be developed by Public Works Department, Planning & Development Department, and the City of Carpinteria, shall establish appropriate mitigation fee calculation rates and procedures." In addition to considering a similar mitigation measure for this Project, the DPEIR should evaluate how the apparent failure to implement this mitigation measure for the Carpinteria Valley Greenhouse Program and the implementation of the proposed Project could result in cumulative impacts to Carpinteria area roads.

*MM AQ-3 (Cannabis Transportation Demand Management)* This measure would require all applicants for cannabis activities to prepare a transportation demand management plan identifying strategies for reducing vehicle traffic. However, this mitigation includes no measurable standards for determining its effectiveness at reducing vehicle traffic. Adequate mitigation must both identify methods to mitigate an impact and standards the agency commits to meet. (*North Coast Rivers Alliance v Marin Mun. Water Dist.* (2013) 216 CA4th 614, 647.)

*Additional Feasible Traffic Mitigation.* Even without site specific analysis, it is reasonably foreseeable that Project and cumulative traffic impacts will be concentrated in certain areas, including the Carpinteria Valley. Therefore, the DPEIR should consider mitigation to specifically address these impacts in addition to the proposed countywide mitigation. (Practice Under the California Environmental Quality Act (2d ed Cal CEB) § 17.8 [EIR must identify feasible mitigation and project should not be approved if feasible mitigation measures exist].) The City suggests the following potential mitigations which do not appear to have been considered:

- Excluding truck traffic from certain streets or limiting new vehicle trips during peak hours.
- Improving site distances at driveways and intersections.
- Adequate loading and parking at operations sites.
- A funding mechanism for intersection and road improvements outside the County's jurisdiction (as discussed above).

*Alternative Transportation.* With regard to alternative forms of transportation, the DPEIR estimates approximately 1,992 work trips using these modes could result from the Project. It asserts that these trips would occur mostly in urban areas where infrastructure is already in place to accommodate them. Based on these assertions, the DPEIR concludes there would not be substantial new demand for alternative transportation facilities (p. 3.12-26). While bike lanes and public transit infrastructure are generally provided in urban areas within incorporated cities, most of the cannabis operations contemplated in the Project would occur outside of these urban areas where alternative transportation amenities (bike lanes, bus stops, etc.) are not generally provided or are very limited. The basis for concluding impacts related to alternative transportation would be less than significant appears to ignore

this fact. The analysis should be revised to consider impacts to rural areas where alternative transportation is not provided.

## **Visual Resources & Blight**

*Light Impacts.* The DPEIR acknowledges that cannabis cultivation, manufacturing, testing, retail, and distribution activities have the potential to create disruptive light and glare in an area. The Cannabis Zoning Ordinance requires all lighting to be shielded to prevent light trespass into the night sky and/or glare onto lots, other than lots that constitute the project site or rights of way. Additionally, structures using artificial light must be completely shielded between sunset and sunrise (pp. 3.1-18 to 24). Please clarify whether this standard would apply to temporary structures such as hoop houses. If it does not, additional analysis is required to address potential impacts of light emitted from temporary structures.

*Missing Mitigation Measure AV-1b.* Mitigation to address lighting from cultivation using light deprivation and artificial lighting is necessary to avoid an identified potentially significant impact (Impact AV-1). While MM AV-1b is referenced as mitigation for this impact, the measure itself is not included in the DPEIR. The DPEIR should be revised to include this mitigation measure.

*Applicability of Screening Requirements to Existing Cannabis Activities.* It is unclear if existing cannabis sites will be subject to the screening requirements and other development standards of the Cannabis Zoning Ordinance. The DPEIR should specify this and analyze related impacts.

*MM AV-1 (Screening Requirements).* MM AV-1 requires a landscape/screening plan be reviewed and approved at the staff level on a case-by-case basis with only general concepts for applicants or staff to consider in determining what constitutes “the appropriate type of screening.” Further, there is an inherent conflict between the concepts listed. Encouraging natural barriers to enable wildlife passage, preventing trespass, and be visually consistent are conflicting goals that cannot all be achieved “to the maximum extent feasible.” Specific standards or guidelines regarding appropriate screening are necessary to make this mitigation measure enforceable and effective. These standards should be developed in consultation with biologists, landscape architects, and others with expertise in addressing the multiple and conflicting goals of this mitigation measure.

Further, implementation of MM AV-1 (Screening Requirements) would largely be done by P&D at the permit approval stage with the exception of the one subsequent review by code enforcement staff to ensure compliance with MM AV-1. This is inadequate monitoring to ensure screening requirements are complied with and the mitigation is effective over the long-term, particularly for natural barriers that will grow and are easily altered over time. The DPEIR also includes no assessment of whether the County has the staff and/or funds to carry out even these minimal inspections. Given current County budget constraints, it seems unlikely this mitigation measure can be adequately enforced.

## **Air Quality & Odors**

*Odor Impacts.* The DPEIR includes an unsubstantiated statement that cannabis related odors are “not necessarily harmful to people” (p. 3.3-22). Information and analysis is necessary to substantiate this claim. It is reasonable to assume that strong, sustained odors, no matter what their source, are likely to have health and/or nuisance effects. Carpinteria High School students have reported experiencing

headaches from the strong odors at the school, resulting in them being sent home and detracting from the learning environment. (Tracy Lehr, "The Smell of Marijuana on a Local High School Campus Come from Growers, Not Smokers," KEYT.com (Oct. 31, 2017); Oscar Garcia, "Pot Stench in Carpinteria a Hazard," Santa Barbara Independent (Oct. 27, 2017).) The City and County have received numerous complaints over the past year from local residents stating that they are experiencing severe negative health and quality of life impacts caused by strong odors from cannabis cultivation in the Carpinteria Valley. At the very least, the odors represent a public nuisance. This is an important issue that requires a more detailed analysis in the DPEIR, supported by an expert study on the potential health and quality of life impacts caused by prolonged exposure to strong odors caused by cannabis or other similar crops.

*MM AQ-5 (Odor Abatement Plan).* MM AQ-5 is not adequate mitigation to reduce odor impacts to the maximum extent feasible. It attempts to mitigate the impact by responding to future complaints of the problem. This puts the burden on neighbors to complain after a permit has been issued rather than addressing the problem prior to authorizing the use. When odor is detected, particularly in an area where cannabis uses are concentrated, it is extremely difficult to identify the specific source of the problem. Further, the mitigation provides no means of requiring a permittee to address odor issues if the methods identified in the approved Odor Abatement Plan are not effective.

*Odor Impacts for Residential and Other Sensitive Receptors.* The DPEIR must include additional mitigation measures to reduce the impacts of odors on sensitive receptors, including residences, to the maximum extent feasible. This should include consideration of buffers between cannabis uses and adjacent residentially zoned property. The size of the buffer should be substantiated with evidence demonstrating the buffer distance will effectively reduce odor issues. Additionally, all cannabis operations with the potential to create odors, such as cultivation, manufacturing, and processing, should be required to implement the best available technology for odor control. Permits should include requirements that Odor Abatement Plans be updated as new technology to abate odors becomes available and when existing odor abatement methods are ineffective in avoiding exposing sensitive receptors, including residences, to objectionable odors. In addition, permittees should be subject to requirements for ongoing self-monitoring and reporting of the effectiveness of their odor abatement measures. This self-monitoring should be based on County-established objective, measurable standards for evaluating odor abatement effectiveness, which may include the use of available technology.

*Greenhouse Gas Emissions.* The DPEIR analysis states that it is not possible to quantify the amount of greenhouse gas (GHG) emissions the Project would contribute but "review of proposed activities on a site-by-site basis during permitting would identify potential review requirements for activities that may foreseeably result in potentially significant GHG impacts that interfere with the ECAP's GHG reduction target for 2020" (p. 3.3-22). Even though the DPEIR finds that impacts related to air quality and GHG would be significant and unavoidable, it is still required to mitigate those impacts to the maximum extent feasible. There are many examples of mitigation for GHG emissions in addition to implementation of transportation demand management as required by MM AQ-3 that can be included to further address impacts. For example, a menu of options for reducing emissions at the project level could be identified and included as mitigation for the Project to be implemented through case-by-case review. (See e.g., City of Santa Barbara Climate Action Plan, Appendix C, Initial Guidelines for Individual Projects.)

In addition, review requirements related to GHG emissions during project permitting should be identifiable now and should be described in the DPEIR (p. 3.2-22). This should include a description of policies and standards related to reducing GHG emissions that would apply at the project level and consider whether additional requirements, in the form of mitigation measures for the Project should be applied to reduce the Project's contribution to GHG emissions to the maximum extent feasible. GHG impacts are a broad cumulative issue that should be thoroughly analyzed in a programmatic EIR.

## **Noise**

*Sensitive Receptors.* The DPEIR acknowledges that AG-I and AG-II zoned parcels may border a variety of land uses, including residential and specifically states that in the Carpinteria Valley, greenhouses located on AG-I properties abut large lot residential and single family neighborhoods in "limited locations" (p. 3.10-6). The DPEIR also identifies residences, transient lodging, schools, libraries, hospitals, retirement homes, parks, recreational areas, churches and places of worship as sensitive receptors (p. 3.10-8). The proposed Cannabis Zoning Ordinance must clarify whether the "sensitive receptors" referred to in development standards for noise includes those commonly considered sensitive receptors in the application of County noise policies or the term sensitive receptors as it is defined in the Cannabis Zoning Ordinance, which includes only schools, daycare centers, and youth centers (see e.g., Appendix B, CZO § 35-144S.E.3.b). If it is the latter, the DPEIR must analyze the noise and policy consistency impacts associated with not regulating noise adjacent to residences, libraries, hospitals, retirement homes, parks, recreational areas, and other uses commonly considered, and identified in County Environmental Thresholds as sensitive receptors with regard to noise.

*Non-Traffic Noise Impacts.* In addition to noise from vehicle traffic, the DPEIR should evaluate the potential impacts of noise from fans/ventilation systems and other operations systems associated with the cannabis industry. In particular this analysis should focus on impacts to nearby sensitive receptors, including residences, which are located in close proximity to agriculturally zoned land in the Carpinteria Valley.

*Generator Prohibition.* The proposed Cannabis Zoning Ordinance should prohibit the use of generators not only for cultivation but for all cannabis-related activities. If generators are not prohibited for all cannabis-related activities, impacts (e.g., noise and air quality) associated with their potential use must be analyzed in the DPEIR.

## **Public Facilities & Services**

*Law Enforcement Services.* The DPEIR's conclusion regarding impacts on law enforcement service demands is unsubstantiated. The document provides no information on existing levels of law enforcement service or estimates of increased demand related to the Project to support its conclusion that staffing levels and police resources are adequate. Further, law enforcement is generally a regional or sub-regional issue. While one region or sub-region may have adequate capacity to meet projected increased demand, another region may not. Therefore, a regional or sub-regional analysis is necessary to adequately evaluate the impacts related to this issue area.

*Fire Protection Services.* As with law enforcement, the adequacy of fire protection services must be evaluated at the service-area level. This is particularly true for fire protection/emergency services that



require immediate response. Risks and increased service demand for fire protection in specific areas may exceed thresholds even if a consideration of County-wide impacts does not. Further, given that cannabis activities are anticipated to be concentrated in specific areas that are also high and very high fire hazard severity zones, including the Carpinteria Valley, impacts and service demands will be different than in other areas with lower fire risks and/or a lower concentration of cannabis activities. The analysis should include existing levels of service by fire district/service area and estimate the increased demand related to the Project and cumulatively. If there are potential impacts to areas expected to have high concentrations of activities, the DPEIR should consider caps in these high fire risk areas.

For the Carpinteria Valley sub-region, this analysis should evaluate consistency with the Carpinteria-Summerland Fire Protection District Standards of Response Coverage and Headquarters Staffing Adequacy Study (Study), dated July 27, 2016. This Study includes several findings related to existing service issues in the Carpinteria Valley and the need for a third fire station in the area. The Fire District currently has only two fire stations with a minimum of nine firefighters on duty and mutual aid engines are not located nearby. The Study finds that existing facilities are inadequate to provide timely, effective multiple-unit coverage to serious fires in the Carpinteria Valley portion of the district's service area (Study, p. 9). Further, the study found that "the District's fire station areas are too large, on a very constrained road network, to deliver travel times less than 6 minutes. Some of this is made worse when both Station 1 units are committed to an incident and Station 2 must cover from farther away. The only way to improve response times is to increase unit availability by properly locating a third unit to support the eastern District and limit the amount of occurrences Station 2 must respond to all the way into Carpinteria" (Study, p. 10). Given the existing setting, it appears likely any increase in fire protection and emergency service demand in the Carpinteria-Summerland Fire Protection District service area would result in potentially significant impacts.

### **Water Supply, Water Quality, Groundwater Recharge**

*Evaluate Water Supply at Groundwater Basin Level.* The County's Groundwater Thresholds Manual for Environmental Review of Water Resources in Santa Barbara County requires an analysis of groundwater at the basin level. Additionally, given that the DPEIR predicts cannabis activities will be concentrated in specific areas, some of which have limited groundwater supplies, impacts can only be appropriately evaluated at the basin level. The County-wide analysis of water supply does not accurately disclose the potential impacts of the project on individual groundwater basins in the County. The analysis should also consider the potential cumulative impacts associated with over-drafted basins and sea water intrusion if the Project will contribute to these existing conditions.

*Water Supply Impacts in Coastal Zone.* Groundwater resources are identified as a protected resource in the Coastal Zone (see e.g., County LCP Policies 2-2, 3-19, 8-5). Therefore, an analysis of impacts within the Coastal Zone is necessary to adequately evaluate and mitigate potentially significant impacts in this area.

*Ongoing Drought Conditions.* The DPEIR fails to evaluate or even acknowledge the ongoing drought conditions in Santa Barbara County. Consideration of current and potential future drought conditions is essential to an adequate analysis of water supply and service availability.

*Water Quality and Groundwater Recharge.* The DPEIR fails to consider the cumulative impacts related to water quality and groundwater recharge that are likely to result from increased impervious surfaces, particularly in the Carpinteria Valley.

*Chemicals Specific to Cannabis Activities.* The DPEIR should address how chemicals used in the various types of cannabis manufacturing may compare to chemicals currently used in agricultural zones. If there is a substantial difference in the type and/or quantity of chemicals used in cannabis manufacturing, the DPEIR must evaluate the impacts of this new use, including impacts related to fire risk and other hazards, air quality, water quality, and land use compatibility.

*Evaluate Water Quality at Groundwater Basin Level.* As with water supply, water quality must be considered on a sub-regional or basin level. By evaluating this issue only at the County-wide level, the DPEIR does not consider impacts related to water quality or groundwater recharge that could result due to the concentration of activities in the Carpinteria Valley and in the Coastal Zone. This analysis is necessary for full disclosure of the Project's impacts. Existing conditions, such as the fact that the Carpinteria Salt Marsh is an impaired water body with known nutrient load issues, should be considered in this analysis.

Further, we question whether the County has adequate staffing and funds to conduct the inspections required by the mitigation measures. If adequate staffing and funding does not exist, these mitigations will not be implemented to effectively reduce the identified potentially significant impacts.

## **Biological Resources**

*Coastal Biological Resources.* Given the many unique biological resources located in the Coastal Zone which are protected by Coastal Act and County LCP policies, a coastal zone specific analysis of biological impacts is necessary to adequately assess the potential impacts of the Project on these resources. If potentially significant impacts are identified, Coastal Zone specific mitigation should be proposed.

*MM BIO -3 (Wildlife Movement Plan).* The requirements of *MM BIO -3*, which is intended to require non-disruptive, wildlife-friendly fencing, such as post and rail fencing, wire fencing, and/or high-tensile electric fencing, to allow passage by smaller animals would likely conflict with the security needs of cannabis operations. The DPEIR should consider whether implementation of this mitigation measure is feasible given these conflicting issues.

## **Project Alternative**

The Project's environmental impacts will not be evenly distributed throughout the County but rather concentrated in specific areas, in particular the Carpinteria Valley sub-region. Therefore, it is appropriate that the County consider a project alternative that reduces and avoids impacts at the regional and sub-regional level. Alternative 3 reduces impacts by placing a County-wide cap on the number of licenses issued. However, it would more effectively mitigate impacts to apply caps on a regional and sub-regional level. Given the concentration of existing and anticipated cannabis activity demand in the Carpinteria Valley and the associated impacts that will result, a cap should be applied specifically to this sub-region.

We request that the DPEIR be revised to include an alternative that establishes a cap on the number of cannabis operations of each type that will be allowed in each sub-region, including the Carpinteria Valley. The cap should account for existing operations such that sub-regions with a high proportion of existing cannabis operations in comparison to the County as a whole, such as the Carpinteria Valley, do not experience a disproportionate concentration of cannabis operations. The cap for each sub-region should be set at a number sufficient to reduce all impacts to a less than significant level.

## **Conclusion**

The DPEIR analyzes impacts on a county-wide basis, despite acknowledging that the Carpinteria Valley will see much more concentrated impacts as a result of the Project. The Carpinteria Valley and the Coastal Zone in general have significant unique attributes such as prime soils, high concentration of agricultural operations, and proximity to residential areas, that require more detailed analysis.

Although a program EIR is typically more general than a project EIR, it should still analyze known impacts in a comprehensive fashion. (See *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 233.) The DPEIR acknowledges that there is currently a higher concentration of cannabis operations in the Carpinteria Valley and that this is likely to continue after adoption of the County regulations. As detailed in this letter, there are many areas where the potential impacts of expanded cannabis operations on the Carpinteria Valley can be estimated and analyzed, including traffic impacts to roads within the City of Carpinteria and unincorporated area, odor impacts from increased cultivation, and loss of prime and/or coastal agricultural land. The DPEIR should more completely analyze these impacts and propose specific mitigation measures relevant to the Carpinteria Valley and the Coastal Zone.

Furthermore, it appears that cannabis operations in certain areas will be able to obtain required permits to begin operations without discretionary review. For example, an applicant proposing to cultivate and manufacture cannabis using non-volatile methods on property in the AG-I zone and outside of the geographic appeals portion of the Coastal Zone can obtain required permits based on a staff level determination. In many cases, it appears that CEQA review would not be required for such projects. The DPEIR is wholly inadequate for a project-level analysis. The DPEIR should clarify whether it is anticipated that any cannabis operations permitted under the County's proposed cannabis regulations could be approved without any subsequent CEQA review. If this is the case, the DPEIR must incorporate a more specific impacts analysis and proposal for mitigation measures to adequately address such projects.

The City requests that the DPEIR be revised to include a more detailed and specific analysis of impacts related to issues areas including agricultural resources, biological resources, water quality and supply, and land use compatibility and policy consistency in the Carpinteria Valley and Coastal Zone, and propose specific mitigation measures for significant impacts identified.

Our staff would be happy to meet and discuss our concerns and comments on the DPEIR with you. If you would like to set up such a meeting, please contact Senior Planner Nick Bobroff at 805-755-4407 or by email at: [nickb@ci.carpinteria.ca.us](mailto:nickb@ci.carpinteria.ca.us). We thank you for taking the time to consider and address our comments.

Sincerely,



Fred Shaw, Mayor  
City of Carpinteria

Enclosure: Letter from Coastal Commission to San Luis Obispo County, June 7, 2017

Cc: City Council  
Dave Durlinger, City Manager  
Steve Goggia, Community Development Director  
Nick Bobroff, Senior Planner  
Peter Brown, City Attorney

**CALIFORNIA COASTAL COMMISSION**

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June 7, 2017

County of San Luis Obispo Planning and Building Department  
ATTN: Brandi Cummings  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408

**Subject: Cannabis Ordinance/Local Coastal Program Amendment**

Dear Brandi:

Thank you for the opportunity to review the County's proposed ordinance for cannabis regulations in the Coastal Zone. Our understanding is that this ordinance will be submitted to the Coastal Commission for certification into the County's Local Coastal Program (LCP) after final County approval.

In general, the six new uses (Cannabis Cultivation, Nurseries, Manufacturing, Testing Facilities, Dispensaries, and Transport and Distribution) have been closely aligned with existing LCP policies and standards for similar uses. For example, the new use "Cannabis Nurseries" has similar standards as those for "Nursery Specialties", including that it is allowed in the same land use categories, and requires the same setbacks, minimum site area, etc. None of the six uses have a lower permit requirement than existing similar uses. With that said, Commission staff would like to provide the following preliminary comments based on experience with the Commission's actions regarding other cannabis ordinances.

- 1. Cannabis Manufacturing on Prime Agricultural Lands.** The County's proposal would allow cannabis manufacturing to occur on prime and non-prime soils within the County's Agriculture land use category. We do not believe that manufacturing, including the *"production, preparation, propagation or compounding of cannabis or cannabis products either directly or indirectly... at a fixed location, that packages or repackages cannabis or cannabis products, or labels its containers,"* is an appropriate use of prime soils. Prime soils, as opposed to non-prime soils, should be reserved solely for agricultural cultivation and nurseries. Therefore, we recommend that you delete cannabis manufacturing as an allowed use in the Agriculture land use category.
- 2. CZLUO Section 23.08.421 Exemptions from Permit Requirements.** Section 23.08.421 identifies activities that would otherwise be exempt from permitting requirements. So there is no confusion about when a CDP is required, including if the activity constitutes "development" under the Coastal Act and LCP, we would suggest the inclusion of language into 23.08.421 that states that "any development, pursuant to 23.11.030 and Coastal Act Section 30106, located within the Coastal Zone of San Luis

Obispo County, and not exempted per the Coastal Act or applicable California Code of Regulations, requires a coastal development permit.”

3. **Figures 8-1 and 8-2 - Nipomo Mesa Cannabis Control Area.** Figures 8-1 and 8-2 should include a Coastal Zone Boundary Line, and should ideally focus in on the areas of the Nipomo Mesa Cannabis Control Area that is *within* the Coastal Zone (perhaps through an additional inset map. A majority of what is shown in Figures 8-1 and 8-2 is outside the Coastal Zone, and thus has no applicability in terms of Title 23 and the LCP.
4. **23.08.423(e)(2) Screening.** Section 23.08.423(e)(2) requires all cannabis cultivation activities to occur “*within a secure fence at least (6) feet in height that fully encloses the cultivation area. The fence must include a lockable gate(s) that is locked at all times, except for during times of active ingress/egress. Said fence shall not violate any other ordinance, code section, or provision of law regarding height location materials or other fencing restrictions and shall not be constructed or covered with plastic or cloth.*” We would not recommend the inclusion of language that outright requires fencing, which could have coastal resource impacts, particularly when said fencing would be placed in visually sensitive coastal, rural, agricultural areas. Currently, the LCP requires permits for any fence that will ***obstruct views of, or legal access to the tidelands*** (CZLUO Section 23.03.040), specifically to ensure discretionary review of fencing and potential impacts. We believe that there are other softer, less potentially visually intrusive methods (e.g., hedgerows, tree rows, growing cannabis in the middle of other agricultural crops, etc.) that could be used to screen cannabis cultivation, particularly within visually sensitive rural, agricultural areas, and thus would recommend again that fencing is not outright required for this activity.

Thank you again for the opportunity to review and comment on the County’s proposed cannabis ordinance prior to the Board’s consideration on June 20th. We look forward to continuing to work together on this ordinance so that it can be approved by the Coastal Commission. Please let us know if you have any questions or would like to discuss further.

Sincerely,

Daniel Robinson  
Coastal Planner  
Central Coast District Office

# CITY of CARPINTERIA, CALIFORNIA

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December 12, 2017

County of Santa Barbara Board of Supervisors  
c/o Mike Allen, Chief Deputy Clerk of the Board  
105 E. Anapamu Street, Room 407  
Santa Barbara, CA 93101

Re: Consideration of State Cannabis Licensing Options

Dear Chair and Supervisors:

As Mayor of the City of Carpinteria, I write to you on behalf of the Carpinteria City Council (City) to request that the Board of Supervisors not take any actions to support or enable cannabis businesses to acquire temporary or annual State licenses prior to the adoption and effectuation of the County's own Cannabis Land Use Ordinance and Licensing Program (CLUO&LP). The City feels strongly that to do otherwise would effectively circumvent the intended purpose of the County's local ordinance adoption process, which is to create comprehensive regulations for commercial and medical cannabis activities. Further, the City believes that to allow or facilitate the issuance of temporary or annual State licenses for cannabis activities occurring within the Coastal Zone prior to the adoption and certification of the County's Local Coastal Program (LCP) Amendment to Article II, Santa Barbara County Coastal Zoning Ordinance (CZO) as part of the CLOU&LP effort would be legally inconsistent with planning and zoning laws, the County's LCP, and the California Coastal Act (Coastal Act). Such action may also violate the California Environmental Quality Act (CEQA), as the County does not appear to have conducted any environmental analysis of the interim procedures under consideration.

The City intends this letter to serve as comments on the CLOU&LP, the Draft Programmatic EIR on the CLOU&LP, and any actions the Board contemplates taking with respect to an interim authorization program.

## Background

This letter concerns two actions taken by the Board of Supervisors (Board) at its November 14, 2017 hearing.

First, the Board directed staff to return to the December 14, 2017 Board hearing with further details for the development of a procedure to allow existing, legal nonconforming medicinal cultivators to request a letter of authorization from the County Executive Office in support of individual efforts to obtain a temporary State license under the State's new licensing program anticipated to be operative in January 2018.<sup>1</sup>

Second, the Board directed staff to return with additional details for an interim procedure by which the County could determine that owners and operators seeking annual cannabis licenses are consistent with the County's proposed CLUO&LP before it is effective and operative within the Coastal Zone to enable owners and operators to obtain annual licenses from the State. As directed by the Board, this

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<sup>1</sup> The State licensing authority may issue temporary licenses that are valid for 120 days with possible 90-day extensions if an application for an annual State license has been submitted to the State licensing authority.

procedure would apply to existing, legal nonconforming, and new or expanded operations, and medicinal or recreational operations.

The City of Carpinteria has grave concerns with these contemplated procedures. As has been well documented elsewhere, including the County's Draft EIR for the CLUO&LP, there is a high concentration of existing cannabis activities within the Carpinteria Valley. Many of these cannabis operations are located in close proximity to sensitive receptors including, but not limited to, schools and residences. Numerous complaints have been filed with the City and County concerning the nuisance, quality of life, and possible health effects of excessive exposure to cannabis operations. By the County's own admission, there is no definitive figure on just how many cannabis operations are in existence within the County or the Carpinteria Valley in particular, nor of their respective compliance with, or legal status under, existing County or State regulations. Additionally, the County has previously acknowledged its inability to effectively monitor, ensure compliance with, or enforce existing regulations. The City is concerned that a process allowing the legitimization of existing illegal cannabis operations and the creation of new cannabis operations before the proper regulatory controls are in effect could exacerbate current impacts on City residents and lead to future complications the County may not be anticipating.

### **Temporary Licenses During Gap/Transition Period**

The County's letter of authorization procedure for existing, legal nonconforming medicinal growers, as discussed on November 14<sup>th</sup>, would make no effort to verify or fact check the statements made by cultivators seeking licenses. Instead, the County would simply accept a sworn affidavit from the cultivators that they were in operation prior to January 19, 2016 and would ask these cultivators to voluntarily supply information about property owner consent, odor control, and security measures. There would be no mechanism for validating the claims or statements provided by the growers, and, as several Board members acknowledged, penalties for providing false information in affidavits are unlikely to be imposed due to lack of County investigation and verification. Nor is there any clear basis under this contemplated procedure for the County to refuse to issue a letter of authorization on behalf of a grower, since there is no means to enforce voluntary submittal of requested information. It appears that anyone who submits an affidavit, without any verification as to its accuracy, will receive a letter of authorization.

The City believes the only appropriate options are for the County to either develop a procedure for verifying claims of legal nonconforming status, or short of that, not act on applications for temporary State licenses until the County's CLUO&LP is adopted and in effect. By not issuing a letter of authorization or similar statement, the State would not be able to issue temporary State licenses to alleged existing, legal nonconforming growers. To do otherwise provides an incentive and opportunity for unregulated growers to gain legitimacy under the State's licensing program, potentially leading to claims of vested rights and making it more difficult to shut down illegal operations, if or when growers are ever found to be in violation of their sworn affidavit statements. The County's submittal of letters in support of issuance of temporary State licenses is clearly a benefit to growers, but there is significant risk and cost for the County in taking such action and no benefit provided to the County or its residents, particularly since there is currently no fee or taxation structure in place for these operations.

### **Annual Licenses During Gap/Transition Period**

The City also strongly believes that the only appropriate response to applications submitted for annual State licenses during the interim period between January 2018, when the State will begin accepting and issuing licenses, and when the County's CLUO&LP becomes operational (Interim Period) is to inform the State licensing authority that the applicant is not in compliance with local regulations since



the CLUO&LP is not yet in effect. There is no viable manner by which the County could conclusively demonstrate compliance with yet to be determined or approved regulations, nor does there appear to be any way to enforce the regulations if they have not yet become operative. This is of particular importance within the Coastal Zone, where it is expected that the County's CLUO&LP would not become effective until approximately June 2019.

Adding further potential complications, it is not uncommon for regulations adopted by the County for the Coastal Zone to change through the Coastal Commission certification process. If a cannabis operator has established operations in compliance with the current draft regulations, how will the County force the operator to make modifications to comply with the Coastal Commission's revisions to the CLUO&LP? The operator will almost certainly claim some form of vested rights or legal nonconforming status. This could lead to a patchwork of applicable regulatory controls throughout the County, making enforcement even more challenging.

As with temporary licenses, the lack of a fee or tax structure for these uses would mean there is no benefit and significant risk and cost to the County and its residents associated with facilitating operation of these unregulated uses.

### **Interim Authorizations Violate Zoning**

Granting interim authorizations to conduct uses not allowed by the CZO and prior to the effectiveness of regulations that the Board has determined are necessary to control proposed cannabis uses runs directly counter to the purpose of planning and zoning laws. A zoning scheme is akin to a contract whereby landowners forego certain rights to use land in the assurance that the use of neighboring property will be similarly restricted, in order to enhance the overall community welfare (*Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles* (1974) 11 Cal. 3d 506, 517.). If the County issues interim authorizations to cannabis operations, it is breaking the contract that exists between landowners in the agricultural zones that only the activities allowed under the current CZO shall be permitted. In *Neighbors in Support of Appropriate Land Use v. Cty. of Tuolumne* (2007) 157 Cal.App.4th 997, 1009, the court found that a County violated this principle when it approved a use by Development Agreement that was not allowed in the zone, rather than rezoning the property. By issuing interim authorizations to conduct cannabis activities before the Coastal Commission has certified the County's proposed Ordinance allowing the activities, the County would be creating the same ad hoc exceptions to zoning that the court struck down in the *Tuolumne* case.

### **Inconsistency with Coastal Act and County's LCP**

The County cannot legally take actions that would be inconsistent with its own LCP, such as determining compliance with non-existent regulations or acting in a way to facilitate the issuance of annual State licenses for an activity not currently allowed within the Coastal Zone. There are no provisions in the County's existing CZO for commercial cannabis uses. Nearly all cannabis uses would meet the definition of "development" pursuant to the Coastal Act and the County's CZO, and therefore would require issuance of a Coastal Development Permit (See CZO §§ 35-58 and 35-169.2(1)). Until the proposed regulations allowing cannabis operations have been approved by the Coastal Commission, the County cannot make the findings required for issuance of a Coastal Development Permit to any cannabis operation that would involve development (See CZO § 35-169.5 [findings required for approval of Coastal Development Permit include that the project conforms to the Local Coastal Land Use Plan and laws, rules, and regulations pertaining to zoning].) "Any proposed amendment to the Local Coastal Program shall not take effect until it has been certified by the Coastal Commission." (CZO § 35-180.7.). Approving uses not yet allowed by the County's LCP directly undermines this requirement and violates the Coastal Act (See *Charles A. Pratt Constr. Co. v.*

*California Coastal Comm'n* (2008) 162 Cal.App.4th 1068, 1075 [LCP's are not merely a matter of local law; they embody state policy].). The County should not be approving any new cannabis uses until the CLUO&LP is certified through the LCP Amendment process and becomes effective.

### **Inconsistency with California Environmental Quality Act**

The November 14<sup>th</sup> Board letter requested the Board determine that establishing a process to provide letters of authorization to applicants seeking temporary State licenses is exempt from CEQA because the letters are "administrative activities that will not result in direct or indirect physical changes in the environment." While the proposed letter of authorization procedure may be an administrative activity, it may result in indirect physical changes in the environment. Specifically, providing letters of authorization will have the effect of allowing existing cannabis growers who claim to have legal, nonconforming operations to obtain temporary State licenses to operate and potentially expand without any verification of the legality of the existing operations. As such, the County's issuance of letters of authorization may indirectly result in physical changes in the environment by facilitating legitimizing cannabis cultivation without any evaluation of compliance with existing local regulations or any requirement to comply with existing or proposed County regulations intended to address traffic, odor, public health and safety hazards, and land use incompatibility impacts of such operations. Therefore, establishing a procedure by which the County would assist in allowing existing cannabis growers to obtain State licenses to operate prior to the establishment of local regulations requires analysis under CEQA.

While the amendments to Article X adopted by the Board on November 14<sup>th</sup> require legal non-conforming uses to terminate or apply for a permit within 6 months of the operative date or 18 months of the effective date of the CLUO&LP, it is unclear how or when uses that the County is considering to allow to become established or expand during the Interim Period would be brought into compliance with the CLUO&LP when it becomes operative. Even if a similar amortization period is established for uses authorized in the Interim Period, uses could be in a prolonged permitting process and/or delay condition compliance such that they are operating for years outside of local regulations and during this time causing significant adverse impacts on the environment. This is particularly likely in the Coastal Zone, where local regulations are not anticipated to be certified by the Coastal Commission until approximately June 2019.

Any process by which the County takes action to allow cannabis uses to become established or expand will result in physical changes to the environment and is therefore subject to environmental review pursuant to CEQA (CEQA Guidelines, § 15378.). The County cannot delay environmental review until its regulations are effective. It must conduct environmental review prior to taking any action that allows cannabis uses to establish or expand, even on a provisional basis.

The Draft EIR for the CLUO&LP identifies many significant impacts that would result from adoption of the proposed CLUO&LP. These environmental impacts would likely be even greater if cannabis uses were allowed to become established prior to the operative date of the CLUO&LP and the implementation of mitigation measures required by CEQA. As Supervisor Wolf stated at the Board's November 14<sup>th</sup> hearing, the Draft EIR does not analyze any interim procedures. Therefore, it cannot be relied upon as environmental review for any proposed interim actions. The only action the County can take without conducting CEQA review is to enforce its existing ordinances, which do not allow commercial cannabis operations.

The Draft EIR for the CLUO&LP is a program-level document which concludes that many of the potential environmental impacts are too speculative to be evaluated at the program level and instead explicitly states that cannabis-related development will be evaluated in future environmental review on

a case-by-case basis. Would the Interim Period compliance review procedures be considered a discretionary decision, meaning each proposal would be subject to CEQA review? Or, would cannabis uses proposed during the Interim Period be considered ministerial or administrative decisions exempt from CEQA? If it is the latter, any process by which the County authorizes cannabis uses to establish or expand during the Interim Period would violate CEQA, as the Draft EIR relies on environmental clearance being conducted on a project-level basis to fully mitigate certain impacts such as traffic and affordable/farmworker housing demand. Further, it does not appear that even the Program-level mitigation proposed in the Draft EIR for known impacts, including traffic mitigation fees and in-lieu housing fees, could be imposed in the Interim Period if only a "compliance review" and no land use permit is required. The County would also have no way to directly enforce the Program-level mitigation measures or the requirements of the CLUO&LP, meaning that an operator could demonstrate or commit to compliance during the County's compliance review site visit or consultation and then operate in a way that does not comply, causing potentially significant environmental effects. The County's only apparent recourse would be to attempt to get the state to revoke the operator's State license. Given the lack of clear procedures in this regard, significant environmental damage could result even if the County was successful in getting the State to revoke an operator's license.

Presumably cannabis operations proposed in the Coastal Zone would be able to apply for building and other County permits to facilitate new or expanded operations once they complete the compliance review process. Again, this interim approval process will allow operators to establish claims for vested rights and legal nonconforming status that will enable them to circumvent the regulations of the CLUO&LP once it becomes effective. Further, this interim process could allow operators to later claim that the proper environmental baseline for any future environmental review that may be required is the existing operations. This would completely undermine the CEQA review process for the CLUO&LP, potentially resulting in numerous operations that would be able to sidestep mitigation by establishing their operations as existing conditions.

Finally, the project description in the Draft EIR does not include the issuance of interim authorizations to legitimize legal nonconforming uses and allow the establishment of new cannabis uses prior to the CLUO&LP becoming effective in the Coastal Zone. The project description in an EIR must be accurate. If it is inaccurate because it fails to discuss the entire project, the analysis of impacts in the EIR will likely reflect the same mistake, leading to an insufficient EIR (See *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393.). Since the Draft EIR does not analyze the potential impacts of the interim authorizations the County is contemplating, such an authorization program would require its own environmental clearance. This would likely require an EIR due to the potential significant impacts of allowing cannabis operations to be established without any regulations in place to provide controls to protect the public health, safety, and welfare.

## **Conclusion**

The City requests that the County do the following as to existing and proposed cannabis activities in the Coastal Zone: (1) make a determination as to which existing cannabis operations qualify as legal nonconforming under Article X and issue only to those operations temporary authorizations that enable them to obtain temporary State licenses; (2) refuse to issue any authorizations for existing cannabis operations that the County determines do not qualify as legal nonconforming under Article X; (3) not issue any form of authorization or approval for a proposed new cannabis operation until the CLUO&LP has been certified by the Coastal Commission and is in effect. The City believes that these actions are necessary to protect the health, safety, and welfare of the residents of the City of Carpinteria, as well as residents of the County.

Interim Cannabis Licensing Options  
December 12, 2017

Sincerely,



Fred Shaw

Mayor of the City of Carpinteria

CC: Dave Durlinger, City Manager  
City Council Members  
Dylan Johnson, on behalf of Brownstein Hyatt Farber Schreck, LLP, acting as City Attorney  
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