

CITY of CARPINTERIA, CALIFORNIA



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 §35-144S¹). 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

¹ 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. 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 Durflinger, City Manager
Steve Goggia, Community Development Director
Nick Bobroff, Senior Planner
Peter Brown, City Attorney

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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