

# CITY of CARPINTERIA, CALIFORNIA



October 2, 2019

Honorable John Parke, Chair  
Santa Barbara County Planning Commission  
c/o Planning and Development, Hearing Support  
123 E. Anapamu Street  
Santa Barbara, CA 93101

Re: October 2, 2019 Planning Commission Agenda  
Standard Agenda Item No. 1, Cannabis Land Use Ordinance and  
Licensing Program PEIR Presentation

Honorable Chair Parke:

The City of Carpinteria ("City") has questions and concerns regarding the County's reliance on the certified Programmatic Environmental Impact Report ("PEIR") for the Cannabis Land Use Ordinance for individual cannabis land use permit applications within the Coastal Zone portions of the County.

We note that when the PEIR was certified by the Board of Supervisors ("Board") on February 6, 2018, it was explicitly certified only for the proposed amendments to the County's Land Use and Development Code ("LUDC") (Case No. 17ORD-00000-00004), amendments to the Montecito Land Use and Development Code ("MLUDC") (Case No. 17ORD-00000-00009), amendments to Article X, Medical Marijuana Regulations (Case No. 17ORD-00000-00001), and amendments to the Uniform Rules for Agricultural Preserves and Farmland Security Zones (Case No. 17ORD-00000-00019). The proposed amendments to the Coastal Zoning Ordinance ("CZO") (Case No. 17ORD-00000-00010) were instead found to be statutorily exempt from the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code section 21080.9 and CEQA Guideline section 15265.<sup>1, 2</sup>

In light of the PEIR not having been certified for the cannabis land use ordinance amendments to the CZO, we question the County's reliance on the PEIR as the basis for an addendum tiered off of that environmental clearance for pending individual cannabis land use permit applications located within the Coastal Zone and subject to the requirements of the CZO. Pursuant to CEQA Guideline 15152, Tiering is applicable:

<sup>1</sup> County of Santa Barbara Board of Supervisors Action Summary, February 6, 2018. Departmental Agenda, Planning Items and Public Hearings, Item No. 3. (18-00066)

<sup>2</sup> CEQA Guideline 15265 shifts the burden of CEQA compliance from the local agency to the California Coastal Commission. The Coastal Commission's program for certifying local coastal programs is a certified regulatory program that is treated as equivalent to CEQA for the purpose of adopting the local coastal program pursuant to Public Resources Code section 21080.5. However, as noted below, it does not necessarily qualify as a Program EIR for the purposes of tiering.

*“where an EIR has been prepared and certified for a program, plan, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:*

- (1) Were not examined as significant effects on the environment in the prior EIR; or*
- (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.”*

In other words, we believe that the tiering process cannot be used when the later project is inconsistent with, or in this case, not addressed by, the program, plan, policy, or ordinance for which the PEIR was prepared and certified.<sup>3</sup> Simply put, if there is not a certified PEIR for the ordinance in question (i.e., CZO amendments), then there is nothing to tier off of for subsequent projects subject to the ordinance.

When we raised this question with County staff, we were informed that the County has been relying on the California Coastal Commission’s (“Coastal Commission”) CEQA equivalent environmental review process conducted as part of the Coastal Commission’s review of the land use plan/implementation plan (“LUP/IP”) amendments for the cannabis land use ordinance as the basis for being able to tier off of the County’s PEIR since the Coastal Commission relied, in part, on the County’s PEIR for their environmental review. However, LUPs/IPs certified by the Coastal Commission do not fall within the types of EIRs from which agencies can tier off of under CEQA Guideline 15152(h).<sup>4</sup>

We further note that the County’s decision not to certify the PEIR for Coastal Zone portions of the County breaks with the County’s past practices for considering and adopting new programs, plans, or ordinances affecting the Coastal Zone. For example, in the case of the County’s recently adopted Gaviota Coast Plan, which like the cannabis land use ordinance, affects both inland and coastal portions of the County, the County prepared and certified an Environmental Impact Report (“EIR”) for the entirety of the Plan. Likewise, when the County adopted the Carpinteria Valley Greenhouse Program (“Greenhouse Program”) in 2002, which applies entirely within the Coastal Zone, the County similarly prepared and certified an EIR. After certification of the Greenhouse Program EIR, the County effectively used the certified EIR for tiering purposes to evaluate individual land use permit applications for new greenhouse construction within the Carpinteria Agricultural Overlay District.

In light of the above, we respectfully request that the County clarify its legal authority to tier off of the certified PEIR for the inland portions of the County for environmental review of projects located in the Coastal Zone. At minimum, we believe this would require the County to prepare more thorough and explicit CEQA findings for individual cannabis land use permit applications located in the Coastal Zone to clarify the rationale and legal basis for tiering off the Coastal Commission’s CEQA equivalent environmental review process. Otherwise, we believe the County would be obligated to conduct project-specific environmental review under CEQA for

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<sup>3</sup> Although the County reviewed environmental impacts in the Coastal Zone in its preparation of the PEIR, as noted above, the County never expressly certified the PEIR in the Coastal Zone.

<sup>4</sup> Pursuant to CEQA Guideline 15152(h), types of eligible EIRs for tiering include: General Plan EIR, Staged EIR, Program EIR, and Master EIR.

each individual cannabis permit application located in the Coastal Zone, until the County both prepares and certifies a PEIR applicable specifically to the Coastal Zone.

Finally, we have been closely following the Board's recent deliberations concerning possible amendments to the County's cannabis land use and business licensing regulations and understand that the Board is contemplating various amendments to the LUDC, CZO and Article X, among other ordinances. In the event the Board proceeds with further amendments to the CZO related to cannabis land use regulations, this question about the non-certified status of the PEIR for the Coastal Zone will once again become germane in the context of preparing any subsequent or supplemental environmental review pursuant to CEQA for any additional CZO amendments.

We appreciate your careful attention to this matter and your commitment to ensuring environmental review for all cannabis land use permit applications are conducted in compliance with the requirements of CEQA. The City looks forward to continuing this discussion.

Yours,



Steve Goggia, Director  
Community Development Department  
City of Carpinteria

Cc. Santa Barbara County Planning Commission  
City Council Members  
Dave Durlinger, City Manager  
California Coastal Commission

