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ENVIRONMENTAL LAW

April 9, 2019

Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Santa Barbara, California 93101

By email to sbcob@co.santa-barbara.ca.us

RE: Hoop Structure Ordinance Amendment; Agenda Item No. 7

Chair Lavagnino and Supervisors,

This office represents the Committees for Land, Air, Water and Species (CLAWS) and the Gaviota Coast Conservancy (GCC). We submitted a prior comment letter dated 4/5/19 that identifies several concerns we have with the changes the Board directed at the last hearing. This letter elaborates on some of the California Environmental Quality Act (CEQA) implications of those changes.

1. Meaningful Public Review and Comment are Precluded by the Last Minute Project Changes

“The requirement of public review has been called ‘the strongest assurance of the adequacy of the EIR.’” (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043, 1051 (quoting *Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal. App. 3d 813, 823).) To effectuate this public review requirement, the lead agency must prepare a draft EIR that is circulated to the public and government agencies. (CEQA Guidelines §§ 15084, 15087.) Fundamental deficiencies in the draft EIR or the omission of significant information cannot be ‘cleared up’ in a final EIR that is not circulated to the public. (*Mountain Lion Coalition*, 214 Cal. App. 3d at 1052 (court refused to consider whether the final EIR “clears up some of the deficiencies of the draft” because “[i]f we were to allow the deficient analysis in the draft [EIR] to be bolstered by a document that was never circulated for public comment . . . we would be subverting the important public purposes of CEQA.”); *see also Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal. App. 4th 74, 95.) Where fundamental deficiencies are corrected or significant new information is added to the EIR after public notice is given of the availability of the draft but before certification of the EIR, the public agency is required to recirculate the EIR for additional public comment. (CEQA Guidelines § 15088.5 (a).) Significant new information requiring recirculation includes, for example, a new significant environmental impact, a substantial increase in the severity of an environmental impact, a new significantly different and environmentally preferable feasible project alternative or mitigation measure, and information required to enable meaningful public review and comment on a fundamentally inadequate draft EIR. (CEQA Guidelines § 15088.5 (a) (1-4).)

Discussed below, for the public and decisionmakers to be adequately informed of the environmental consequences of the last minute project changes, as well as new information regarding the use of the hoops exemption for cannabis, recirculation of the EIR is required.

a. Project Changes

Here, the addition of significant new information at the very end of the process, has deprived the public of a meaningful opportunity to comment on substantial adverse project impacts and mitigation

measures that were not adopted. (See Pub. Res. Code § 21092.1; *Vineyard Area Citizens* (2007) 40 Cal.4th 412, 447.) Specifically, the downshift in permitting levels will have substantially increased physical impacts on the environment, resulting from lesser findings and levels of review and lesser public involvement (see below discussion). Additionally, these and other changes including the relaxed slope requirement both affect the effectiveness and feasibility of identified mitigation measures, and point to additional feasible mitigation that could substantially reduce Project impacts but which the Board has declined to implement.

The EIR prepared and circulated for public review and comment evaluated changes to the Land Use and Development Code (LUDC) permitting requirements for hoop structures. The Project Description identified a subset of hoop structures that would be exempt from County permits, and provided that where hoop structures fail to meet the exemption criteria, they would require either a Land Use Permit (LUP) or Development Plan (DP) – permits that include an opportunity for concerned members of the public to weigh in (through required noticing) and to object through an appeals process. In the case of the DP requirement, discretionary review including CEQA compliance is required, and findings requiring mitigation of adverse environmental impacts to the maximum extent feasible, and findings that the project is compatible with the neighborhood. (LUDC § 35.82.080.E.) The EIR relies on these County processes and the opportunity for public input to support its conclusions regarding the significance of various significant impacts, including Impact LU-2: Land Use Compatibility and Impact VIS-1: Visual Character Changes. The EIR revision document summarily states “The change of permit type is procedural and would not increase the severity of environmental impacts identified in the Final EIR.” (EIR Revision Document, 4/9/19, p. 13.) However, the ordinance amendment itself is procedural in nature, so this rationale defies logic. In particular, the downshift to Zoning Clearance which requires no public notice and is unappealable drastically alters the Project Description in a way that will result in a substantial increase in the severity of significant impacts including Impact LU-2 and VIS-1, by cutting the interested public out of the process and relying exclusively on County staff to identify issues that are only evident to the immediate neighbors and the identification of which are crucial to avoiding significant land use impacts including conflicts including loss of privacy, neighborhood compatibility, and visual impacts. The bare conclusions articulated in the EIR revision document do not include the level of detail necessary for informed decisionmaking and public participation, and do not include substantial evidence supporting a finding that the changes do not require recirculation of the EIR.

b. New Information

The use of exempt hoops for Cannabis has been the focus of much of the public comment at Planning Commission and Board hearings, and the public and other affected industries have identified a number of significant impacts including odor, glare, public safety, and other impacts that are either unique or especially pronounced with the use of hoop structures for cannabis as opposed to traditional crops like berries. In response to public comment on the issue, the EIR’s Response to Comment (RTC) states:

Cannabis cultivation is subject to licensing and permitting requirements that are outside the scope of this EIR. The Cannabis Land Use Ordinance and Licensing Program adopted by the Board of Supervisors will require all cannabis cultivation to obtain zoning permits and a license, including any future cannabis cultivation within hoop structures or shade structures.

(RTC, 2-2.) County staff provided a similar answer in response to Supervisor questions at the 3/12/19 hearing. However, a careful look at the proposed Hoops Ordinance and the Cannabis Ordinance, and as confirmed by County staff both orally and in emails, reveals that hoops that meet the exemption criteria could be added to already-permitted outdoor cannabis operations *without* any additional permit process. (Deputy Director of Long Range Planning Dan Klemann, personal communications, 4/3 and 4/8). This significant new information requires additional environmental analysis and the opportunity for the public to meaningfully comment on this highly controversial issue that has the potential to severely impact the environment. Additionally, public comments have raised serious questions regarding the acreage of cannabis cultivation in hoops evaluated in the EIR, and the need to revise the analysis to accurately account for the impacts of the Hoop Ordinance with respect to cannabis cultivation. Additionally, the evidence referred to in the Findings regarding the infeasibility of mitigation measures, the adequacy of the EIR's analysis, and the Statement of Overriding Considerations include comments from traditional farmers and organizations representing traditional farmers regarding the benefits of hoops for traditional crops and the traditional agricultural economy. There is no substantial evidence that the use of hoops for cannabis has these benefits, and as discussed by numerous public commenters, the use of hoops for cannabis has significant detriments both to the environment and the community more broadly that must be taken into consideration.

2. Inadequate Response to Comment

Public commenters identified a host of significant environmental issues that required a response pursuant to CEQA's authority governing the response to comments on EIRs. (*See* CEQA Guidelines § 15088.) Unfortunately the County's responses to a number of important comments were inadequate, including comments raised by the City of Goleta regarding visual impacts and land use incompatibilities associated with the use of hoops for cannabis adjacent to urban areas. (*See* Responses to Comment 2, RTC pp. 9-7-9-8.) Notably, the City of Goleta identified significant environmental issues with respect to the need for minimum notice and process safeguard associated both with the proposed exemption and potential Zoning Clearance, that were not responded to in the RTC which stated incorrectly that "The comment pertains to the merits of the project, rather than the adequacy of the EIR, and will be forwarded to County decision-makers for their consideration." (RTC 2-4, p. 9-7.) The failure to respond to this and other important comments raising significant environmental issues undermines the adequacy of the EIR, as "failure to comply with required response-to-comment procedures can constitute grounds for finding the EIR inadequate and reversing the Lead Agency's project approval." (Matthew Bender, *1-22 California Environmental Law & Land Use Practice* § 22.04, citing *Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal. App. 3d 664, 686-687.

3. Conclusion

For reasons discussed herein, we request that the Board recirculate the EIR for public review and comment to ensure that serious environmental issues are not swept under the rug, and that the Board and public fully understand the environmental ramifications of this Project including the recent changes and new information.

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read 'Ana Citrin', written over a horizontal line.

Ana Citrin
Marc Chytilo
For CLAWS and GCC