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November 26, 2018

VIA EMAIL TO BDONAVANIK@ELMONTECA.GOV AND FIRST CLASS MAIL

Director Betty Donavanik
Economic Development Department
City of El Monte
11333 Valley Boulevard
El Monte, CA 91731

Re: Initial Study and Mitigated Negative Declaration prepared for GSC Holding Group, LL Project for a 71,658 Square Foot Cannabis Cultivation Facility at 4400 Temple City Boulevard

Director Donavanik:

We submit this letter on behalf of the City of Temple City (City) in connection with the GSC Holding Group, LLC's applications (Development Agreement No. 02-18, Conditional Use Permit (CUP) No. 07-18, CUP No. 08-18, and CUP No. 09-18) for a project involving a 71,658 Square Foot cannabis cultivation facility at 4400 Temple City Boulevard (Project).

The mitigated negative declaration (MND) for the Project raises significant and substantial concerns to both the City and City residents as do the three proposed CUPs. These concerns, as explained in detail below, include failure to adequately study the environmental impacts of this Project that result in conclusions unsupported by the information provided in the MND, failure to consider the cumulative effects of this Project as one of 8 similar applications for marijuana cultivation facilities in the immediate vicinity of the Project, and issues concerning the CUP findings of fact and conditions of approval.

I. The Project

The Project involves retrofitting an existing 71,658 square foot industrial building to allow for the conducting of commercial cannabis cultivation, manufacturing, and distribution operations on a 4.4 acre site in the City of El Monte's M-2 General Manufacturing zone. The Project will be located at 4400 Temple City Boulevard with frontage along the east side of Ellis Lane/Temple City Boulevard.

Residential development occupies frontage along the west side of Ellis Lane, opposite the project site, and City residents, including families with small children, live, work, shop and attend school in the immediate neighborhood of the Project site.

The Project will employ up to 46 people to conduct operations that involve growing marijuana (also known as cannabis) using water and grow-related lighting, drying and processing cannabis for distribution, and extracting oil from cannabis using volatile solvents that when present in the air in sufficient quantities will ignite or explode, and that will pollute the groundwater on a site that is already subject to remediation requirements.

II. CEQA Violations

CEQA was adopted with two purposes in mind: to ensure environmental protection by requiring full disclosure of a project's significant impacts on the environment; and to encourage transparency in government. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553.) CEQA requires that a project's significant environmental impacts must be disclosed to both the public and the decision makers before a project is approved, so that the decision is well-informed and so that public can hold the decision-makers accountable. (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.)

A city has a duty to investigate the potential environmental impacts of a project. A court may consider an agency's failure to gather relevant data in determining whether there is a "fair argument" that a project's environmental impacts may be significant. (*See generally Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311 (holding that absence of evidence in record can itself support "fair argument" of significant impacts).)

If an Initial Study identifies potentially significant impacts, revisions may be made to the Project to "clearly reduce impacts to a level of insignificance" through an MND and there cannot be substantial evidence in the record that the project as revised would have a significant effect on the environment. (Public Resources Code §21080(c)(2); 14 Cal. Code Regs. §15070(b).) The changes and conditions must be agreed upon by the applicant before the MND can be released for public review. (14 Cal. Code Regs. §15070(b)(1).)

Here, approving this Project based on the existing environmental "review" would violate the California Environmental Quality Act (CEQA). The environmental "review" and "analysis" performed in the Initial Study and MND for the Project are cursory, superficial and wholly inadequate, especially with respect to gathering the relevant data

concerning the Project's environmental impacts. The current MND does not fulfill these purposes and does not satisfy CEQA's requirements.

A. The Project description is insufficient

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanis*laus (1994) 27 Cal. App. 4th 713, 730, quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193.) An "accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (*Id.* (citation omitted).) Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. Here, the Project description does not satisfy CEQA's requirements.

The Project description is insufficient because it lacks basic information about the Project operations. For example, the MND discusses how the Project involves commercial medicinal cannabis cultivation, and manufacturing using hazardous substances, and distribution operations, but does not provide any Project-specific information, or even information from comparable operations, that will provide information concerning the amount of organic waste generated by the cultivation, how cannabis by-products will be disposed and in what quantities, the types of pesticides or hazardous substances commonly used (and their proper handling), the risks of mishandling solvents and the potential impacts of such mishandling, or the types of anticipated deliveries from the site and the traffic impacts of those deliveries. Without proper description of the Project and its operations, it is difficult to provide any meaningful review of the Project's impacts.

B. The MND does not adequately analyze the Project and its impacts on the environment

The CEQA violations do not end with the inadequate Project description. The MND itself is flawed because it does not analyze the Project and its impacts on the environment. A lead agency prepares an initial study to determine whether a negative declaration, a mitigated negative declaration or full environmental impact report is the appropriate environmental review document. (14 CCR §15365 (CEQA Guidelines).) The initial study must consider "all phases of project planning, implementation and operation. ..." (CEQA Guidelines §15063(b)(1).) The initial study must analyze whether any aspect of a project, either individually or cumulatively, may cause a significant adverse impact to the environment. (CEQA Guidelines §15063(b)(1).)

The initial study must include enough information to allow the lead agency to determine the environmental review document appropriate. (*Center for Sierra Nevada Conservatives v. County of El Dorado* (2012) 202 Cal. App. 4th 1156 (citations omitted).) The record must provide evidence to support conclusions reached in an initial study. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal. App. 4th 1591.) When, as here, a lead agency "fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate." (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4th 1591, 1597.) Failure to adequately analyze all of a project's potentially significant impacts or provide evidence to support conclusions reached in the initial study is a failure to comply with CEQA.

When a project may have a significant impact on the environment, an EIR, not an MND, must be prepared. CEQA requires that an EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Substantial evidence "means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines section 15384(a).) The fair argument standard is a low threshold test for requiring preparation of an EIR. (*Id.* at 84.) The preference is to resolve any doubts "in favor of environmental review." (*Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal. App. 4th 1095, 1110.)

Here, there are multiple instances where the MND fails to disclose, analyze and mitigate significant impacts concerning public services, traffic/transportation, hazardous materials, and solid waste. Moreover, the MND includes no mention whatsoever of the Project's significant cumulative impacts, particularly with respect the multiple marijuana uses currently being processed by the City of El Monte for location in the vicinity of the Project. Because this Project may have a significant impact on the environment, an EIR must be prepared.

1. Public Services

The MND's deficiencies continue with respect to the consideration of impacts on public services. CEQA Guidelines, Appendix G, XIV Public Services, require the lead agency to consider whether the project will "result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable

service ratios, response times or other performance objectives for any of the public services."

To comply with the Guidelines' mandate, the MND should at a minimum analyze whether the Project will result in any changes in calls for service for the Project site that would necessitate new or altered government facilities. But the MND does not provide any information regarding calls for service at existing projects of similar size and operational characteristics. While the MND acknowledges there may be an increase in calls for service, the MND includes no information regarding the Project's day-to-day operations, it is not possible to even attempt to analyze any changes to calls for service levels and its impact.

For example, the MND concludes that the Project will have less than significant impacts on public services such as fire protection. The MND states how the "two largest threats to fire safety include the concentration of flammable plants in individual grow rooms [and] the use of VOCs [volatile organic compounds] as part of the extraction/oil production process." The MND further admits that there will be an "increase in the demand for … fire service calls" but then without explanation states that the increase is "less than significant" because fire response costs will be paid by the applicant. This conclusion fails to meaningfully review the threat to fire safety, the data indicating that there will be an increase in demand for fire services, and how such impacts that increase demand for fire service ratios, response times, or performance can be solved by payment of money alone.

Similarly, the MND concludes that the Project will have less than significant impacts on public services such as police protection because there will be security plan in place. However, while the MND acknowledges that security plans are necessary to maintain security for a facility that cultivates a federally controlled substance, it does not provide any data on calls for service at existing projects of similar size and operational characteristics. Without such information, it is unclear how any agency can provide an adequate review of the impact to police services, let alone conclude that a security plan to be developed in the future will decrease impacts to police services to a less than significant level.

Further, all discussion of public services impacts focuses on the El Monte Police Department and other El Monte city services. However, given the Project's location on the border of Temple City, it is reasonable to assume that Temple City services may also be impacted by the project, specifically the Los Angeles County Sheriff's Department as Temple City's contract law enforcement. As such, the MND must

acknowledge potential impacts on all public services based on the Project's location and operations, not based only on jurisdictional boundaries.

Despite information that identifies potential impacts, the MND states that "no mitigation is required" and that any impact is offset by adding a payment upon the applicant through a development agreement, which can be amended over time to reduce or even eliminate the payment. Furthermore, these plans must be enforceable through permit conditions, agreements or other legally binding documents, which are not identified in detail in the mitigation measures. (14 Cal. Code Regs. §15126.4.)

2. **Transportation/Traffic**

The MND's consideration of impacts to transportation and traffic also does nothing but graze the surface. Temple City Boulevard and Ellis Lane are located within the City of Temple City, and all traffic from the Project will directly impact Temple City's streets and intersections. However, Temple City was not consulted prior to or during the preparation of the traffic impact analysis. Temple City was not given the opportunity to provide any input on the intersections studied or methodologies used. The MND does not contain any data concerning uses related to cannabis cultivation and distribution using commercial vans. The traffic impact analysis relies upon an over-simplified assumption about employee trip generation that does not accurately characterize employee travel behavior, and completely ignores the additional daily trips that will be created by commercial delivery trucks and vans.

As such, the MND's failure to provide any information regarding the day-to-day operations of the Project also renders the conclusion of no significant impacts to traffic and transportation suspect. Instead, the MND cites to the "former use" of a furniture store, which presumably uses large scale trucks (with much less trip and delivery frequency compared to smaller commercial vans) and claims that there will be no impact to the circulation system. This data may be useful to evaluate other manufacturing uses similar to that of a furniture store, but without operational data concerning marijuana cultivation and delivery services, this discussion lacks any meaningful data to conclude that there are no significant impacts and that no mitigation measure is required.

3. **Hazardous Materials**

The MND further identifies how the Project use is commonly associated with hazardous materials, including the use of pesticides, nutrients, and corrosive chemicals, some of which are flammable and others which will create dangerous vapors. While the MND claims that the applicant will identify the hazardous materials will be used and

comply with legal requirements for handling them as mitigation measures, these plans must be enforceable through permit conditions, agreements or other legally binding documents, which are not identified in detail in the mitigation measures. (14 Cal. Code Regs. §15126.4.) The MND cannot possibly claim to have fully disclosed and addressed the Project's impacts on the environment when it so blatantly defers even naming the hazardous materials to be used in Project operations.

Furthermore, the MND identifies how vapor extraction wells are currently required to remove volatile organic contaminants from the groundwater. To address this issue, the MND only states that the applicant must prepare an "interior improvement plan and site plan that maintains the integrity of the existing wells while indicating the location and extent of new wells." However, this "review" fails to discuss the operations that necessitate this need to remove volatile organic contaminants, how interior improvement plans or site plans will mitigate this issue, or why such mitigation was omitted from the mitigation measures. It does not address the need or extent of new wells, deferring this to a site plan to be prepared later, and does not discuss if or how the installation of additional wells is related to the Project or what environmental impacts may result from the additional wells. It also does not address whether the use and storage of solvents on site would affect the current vapor extraction or how the misuse or spills of the solvents could negatively affect the ongoing remediation efforts. Nor does the MND discuss the potential for organic material to be stored on the site and to decompose in a manner affecting the remediation efforts. In short, the MND fails to square the proposed Project operations with the ongoing environmental remediation efforts at all.

4. Waste

The MND's consideration of solid waste impacts is superficial and lacks meaningful environmental review. The MND does not contain any data concerning solid waste generated by cannabis cultivation and distribution. As such, the MND's failure to provide any information regarding the day-to-day operations of the Project also renders the conclusion of no significant impacts to solid waste in excess of state or local standards, or local capacity, suspect.

The MND uses data of general manufacturing uses to determine the projected amount of cannabis waste and solvents, but without operational data concerning marijuana cultivation and delivery services, this discussion lacks any meaningful data to conclude that there are no significant impacts and that no mitigation measure is required, especially when the solid waste generated are large amounts of federally controlled substances.

5. **Cumulative impacts**

The MND fails to address how the City of El Monte is currently processing 8 applications that would allow for cannabis facilities within the immediate area of the proposed Project and how such approvals, including approval of this Project, would interact to create cumulative impacts on the area and the residents living nearby.

"[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the . . . [MND] together with other projects causing related impacts." (Guidelines, § 15130(a)(1).) "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and *reasonably foreseeable probable future projects*. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines, § 15355(b) (emphasis added).)

Here, it is likely that the Project will have significant cumulative impacts on the environment, particularly because there are a total of 8 projects currently being considered by the City of El Monte for the immediate area of the Project, all of which will have the same type of use, and therefore will generate the same or substantially similar environmental effects. That is, they will have the same or similar traffic impacts, the same or similar public service impacts, the same or similar waste impacts, and the same or similar hazardous materials impacts. But not only are these impacts not properly analyzed for the Project, they are not even mentioned as cumulative impacts of the 8 reasonably foreseeable projects in the immediate area. With no mention of, much less any attempt to analyze and address cumulative impacts, CEQA will be violated if the Project moves forward. (*Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359.)

III. Planning and Land Use Law Violations

The Project includes three separate CUP applications for cannabis cultivation, manufacturing, and distribution. While all these activities are proposed to occur on the same site within one building, they are three distinct uses, each requiring individual analysis. However, the findings of fact as listed in proposed Resolution No. 3527 address the Project as a whole and do not enumerate findings for each of the uses to be authorized by the three CUPs. The different uses each have different operational aspects and impacts that must be acknowledged in the findings of fact. More significantly, the findings of fact fail to demonstrate how the Project will not be detrimental to adjacent and nearby residential properties in the City of Temple City. While acknowledging the residential uses to the west, the findings rely upon blanket statements about compliance with conditions of approval, mitigation measures, and

regulatory requirements to argue that the project will not be detrimental to neighboring residences. The only specific item mentioned is that the Project will provide buffering to the adjacent residential properties through large setbacks and landscaping. However, this visual buffering fails to address the primary areas of concern that could lead to detrimental impacts, including air quality, traffic, and hazardous materials. Further, as noted throughout this letter, the identified mitigation measures are incomplete or inadequate to mitigate the potential environmental impacts, so relying on such mitigation measures in the findings of fact makes the findings themselves suspect.

The findings of fact also rely upon compliance with the proposed conditions of approval. However, this too is problematic given the flexibility of some conditions. For example, one of the primary ways in which the Project may be detrimental to adjacent residences is by emanating offensive odors. While the MND and staff report talk extensively about odor control, and one of the mitigation measures relates to odor control, condition of approval 53 only requires installation of a ventilation and filtration system that prevents odors from exiting the structure "to the greatest extent feasible." The language of the condition would allow excessive equipment costs to deem effective odor control infeasible, which eliminates any guarantee that the Project will not create offensive odors that would adversely impact neighboring residential properties, and negates any finding of fact that affirmatively claims the project will not be detrimental to neighboring residential properties.

In addition, and as noted throughout this letter, the location of up to 8 of this type of facility within the immediate area allows the "greatest extent feasible" language to render the condition completely illusory. If and when all 8 facilities claim excessive cost as a reason to avoid mitigation, offensive odors will fill the area.

IV. Conclusion

The MND is replete with conclusions but completely lacking in facts to support them. In the absence of facts, the lead agency may not summarily conclude that the Project will have no significant environmental impacts. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215.)

For this reason, we reiterate that the City of El Monte must address the concerns as stated concerning the MND and CUPs. At the very least, the Project must be halted at this time to undergo substantial revisions to the MDN and the CUPs; in reality the Project should be subjected to full environmental review via an EIR and to additional public outreach about its impacts and the cumulative impacts of at least 8 projects to be located in the immediate area.

Similarly, the findings for the CUPs lack specificity and instead are comprised of blanket statements attempting to justify three separate activities but failing to justify any of them. The conditions of approval for the CUPs are similarly faulty, as they fail to include either the specificity or the strict controls necessary to allow the Project to peacefully coexist with the residential neighbors in Temple City or with Temple City in general.

Sincerely,

Burke, Williams & Sorensen, LLP

Gregory M. Murphy

cc: Eric S. Vail, City Attorney
Bryan Cook, City Manager