October 6, 2017

Bureau of Cannabis Control
Attention: Sara Gardner
1625 North Market Boulevard, Suite S-202
Sacramento, CA 95834

Transmit Via E-Mail: BCC.CEQAcomments@dca.ca.gov

RE: Commercial Cannabis Business Licensing Program Regulations
Initial Study/Negative Declaration Comments

Dear Ms. Gardner:

On behalf of the Rural County Representatives of California (RCRC), the Urban Counties of California (UCC), and the California State Association of Counties (CSAC), we offer our comments on the Initial Study/Negative Declaration (IS/ND) for the Commercial Cannabis Business Licensing Program Regulations.

Counties will be responsible for local regulation and permitting of many commercial cannabis operations licensed under the proposed program, and will often serve as the lead agencies for site-specific environmental review of these operations. The goal of our comments is to assist the Bureau of Cannabis Control (BCC) in developing a more robust and thorough CEQA document that will both fully comply with CEQA and provide a solid foundation for future, more specific environmental reviews at the appropriate local or state level.

We have limited our comments to matters relating to environmental analysis, impacts, and mitigations within the scope of CEQA. The county organizations continue to have policy concerns with respect to certain other aspects of the proposed program, and respectfully request BCC's attention to our comment letter dated June 13, 2017 on those issues, which is attached for your reference.

Comment No. 1: **The IS/ND should acknowledge BCC's obligation to comply with CEQA when licensing individual commercial cannabis facilities, including serving as lead agency in circumstances where the local jurisdiction does not issue a discretionary permit for the facility.**

The IS/ND pervasively assumes that local jurisdictions will conduct site-specific CEQA review for each individual commercial cannabis facility, and relies upon this assumption to conclude that licensing such facilities will have no significant environmental effects.[1] While this will indeed often be the case, there are several foreseeable circumstances under which such local CEQA review will not occur, leaving a potential gap in environmental review and protection.

Unlike the former Medical Cannabis Regulation and Safety Act (MCRSA), the current cannabis regulatory statutes do not explicitly require "dual-licensing" of cannabis facilities at the local level.[2] In a local jurisdiction that does not prohibit commercial cannabis activities (either expressly or through permissive zoning), but simply allows these activities without any local permit, the state license issued by BCC may be the only regulatory approval for such facilities - and the only opportunity for site-specific environmental review and mitigation. Similarly, local jurisdictions may choose to permit some or all commercial cannabis activities through a ministerial permit, leaving BCC as the only avenue for CEQA review of the project.

The IS/ND does not address any of these foreseeable circumstances, and indeed compounds the difficulty by asserting that "[t]he Bureau considers the issuance of a license *to be a ministerial action as it pertains to further review under CEQA*, unless the *circumstances of an individual license* require that the Bureau treat it as a discretionary action warranting additional review under CEQA."[3] To begin with, this is a potentially serious legal error. A license is discretionary, for purposes of CEQA, if the issuing agency "has [the] authority to condition the permit in environmentally significant ways."[4] BCC clearly has such authority over commercial cannabis licenses, as reflected in the foregoing caveat regarding "the circumstances of an

[1] (See, e.g., IS/ND pp. 4.0-4 through 4.0-5, 4.0-8, 4.0-10, 4.1-10, 4.3-20, 4.5-17, 4.7-9, 4.8-8 through 4.8-9, 5-9, 5-23, 5-25.)

[2] (Compare Business and Professions Code section 26055, subdivisions (c)-(g) with former Business and Professions Code section 19320, subdivision (a).)

[3] (IS/ND p. 2-1.)

[4] (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 208. See also *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 272-273; *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 20-23.)

individual license," the repeated references in the IS/ND to BCC's "discretion,"[5] and most critically, in the plain language of the underlying statutes.[6]

Perhaps more importantly for present purposes, this creates the foreseeable prospect that commercial cannabis facilities may be permitted in some communities without any project-level CEQA review at either the state or local level. This undermines the IS/ND's reliance on future site specific CEQA review to address environmental impacts, and thus its conclusions that such impacts need not be evaluated and mitigated at this programmatic stage. To avoid this concern, we recommend that the IS/ND be revised to acknowledge BCC's responsibility to comply with CEQA when issuing licenses for commercial cannabis activities, and commit to performing appropriate CEQA review in circumstances where a local jurisdiction does not act as lead agency for such projects.

Comment No. 2: The IS/ND should not exclude evaluation of reasonably foreseeable site development activities from the scope of the proposed program.

The IS/ND asserts that "activities regulated under the Proposed Program do not include . . . [s]ite development activities for the purposes of conducting a cannabis business license by the Bureau, including new construction or modifications to existing structures" and consequently wholly declines to evaluate the potential environmental effects of such activities, except with regard to "cumulative considerations."[7]

Counties certainly appreciate that the full extent of such activities and their impacts cannot be ascertained at the programmatic level – and further, that local jurisdictions will typically exercise primary regulatory authority to address any such effects. However, this does not justify complete refusal to evaluate these activities as *direct effects* of BCC's proposed program. This is both a potentially serious CEQA concern,[8] and also inappropriately shifts the

[5] (See, e.g., IS/ND pp. ES-4, 1-4, 3-23, 3.25.)

[6] (See Bus. & Prof. Code, § 26012, subdivision (a)(1). See also Bus. & Prof. Code, §§ 26011.5, 26055, subd. (c).) Note that CDFA's Draft Program Environmental Impact Report (PEIR) for the CalCannabis Cultivation Licensing program (https://www.cdfa.ca.gov/calcannabis/documents/CDFA_CalCannabis_DEIR_Vol1.pdf) correctly acknowledges that the state licensing authority may be required to perform site-specific CEQA review as lead agency in circumstances where the local jurisdiction does not issue a discretionary local permit. (*Id.* at pp. 1-6, 4.0-8, 4.1-17, 4.3-31, 4.4-21, 4.4-29, 4.9-4, etc.)

[7] (See, e.g., IS/ND pp. 2-14, 3-1, 4.0-3, 5-5, etc.)

[8] (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 937-939; *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 442, fn. 8 ["The city justified the omission by claiming the corps would act to protect wetlands during the permit process. The court was not persuaded. *Each* public agency is required to comply with CEQA and meet its responsibilities,

entire burden of assessing such impacts and developing appropriate mitigation measures to permitting agencies (typically local jurisdictions) on a case-by-case basis.

Contrary to certain suggestions in the IS/ND, BCC has broad discretionary authority over virtually every aspect of licensed commercial cannabis operations, including ancillary activities.[9] Moreover, while some site development activities may occur prior to an application for licensure under the program, or may have dual use for non-cannabis functions outside of the program, the potential for the proposed program to *induce* cannabis facility site development in areas where such facilities were not previously located cannot be wholly ignored, and should be considered in the IS/ND.

BCC consequently has both the ability and the obligation to consider and mitigate the potential impacts of those activities *to the extent reasonably foreseeable at the programmatic level*. Further, in those other areas where the IS/ND has engaged in such program-level evaluation, it has resulted in meaningful regulatory measures to reduce impacts that might otherwise have difficult to address on a piecemeal project-by-project basis – such as the implementation of security requirements that reduce law enforcement impacts,[10] and adoption of measures developed by CDFA to programmatically address foreseeable impacts from the cultivation component of microbusinesses. While the potential impacts of site development activities will indeed often require further consideration at the project level, some program-level evaluation would be feasible and beneficial, and should be included in a revised and recirculated IS/ND .[11]

Comment No. 3: The IS/ND relies upon the Draft CalCannabis PEIR prepared by CDFA, which will require revisions in order to fully comply with CEQA.

The IS/ND relies heavily upon CDFA's Draft Program Environmental Impact Report (PEIR) for the CalCannabis Cultivation Licensing program to evaluate the potential environmental impacts of cultivation activities undertaken by microbusiness licensees.[12] As set forth in the

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including evaluating mitigation measures and project alternatives. Lead agencies in particular must take a *comprehensive* view in an EIR"].)

[9] (See, e.g., Bus. & Prof. Code, §§ 26013, 26055, subd. (c).)

[10] (See IS/ND p. 4.7-7.)

[11] The IS/ND's effort to consider these activities under the rubric of "cumulative considerations" does not fully satisfy BCC's obligations under these circumstances. A cumulative or regional impact analysis cannot be used to trivialize or mask project-specific impacts. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.)

[12] (See IS/ND p. 4.0-5.)

attached comment letter submitted to CDFA on July 31, 2017, the PEIR will require certain revisions to fully comply with CEQA and to accurately reflect certain provisions of the governing statutes. (For example, the assertion that California law generally considers cannabis to be an agricultural product – repeated in the IS/ND – is erroneous, and may undermine the agricultural resources impact analysis.) These comments apply to the corresponding portions of the IS/ND that rely upon the CDFA PEIR, and we would request that corresponding corrections be made to the IS/ND.

Comment No. 4: The IS/ND's assumptions regarding the size and operating characteristics of commercial cannabis licensees should be validated through regulatory provisions limiting the scope and intensity of activities conducted upon any single licensed premises.

Many of the IS/ND's impact analyses depend upon assumptions regarding the size and operating characteristics of each of the types of commercial cannabis licensees under BCC's jurisdiction.[13] These assumptions appear consistent with the governing statutes at the time the IS/ND was released, but should be re-examined due to intervening changes in the law.

At the time the IS/ND was released, the governing statutes required that licensed commercial cannabis premises be "separate and distinct."[14] This effectively permitted only one licensed commercial cannabis operation upon any single premises, thereby ensuring that the intensity of activities conducted on any single licensed premises was actually limited in a manner consistent with the IS/ND's assumptions. However, Assembly Bill 133, effective September 16, 2017, repealed the foregoing provision.[15] While the primary intention of this change appears to have been to allow the co-location of a medicinal retailer licensee and an adult use retailer licensee on a single premises, that limitation is not reflected in the statutory language. Absent regulatory clarification, there is the foreseeable prospect that the state licensing authorities may authorize large, vertically integrated facilities that concentrate retail, distribution, manufacturing, and even cultivation operations on a single premises. The potential impacts of such large conglomerate facilities on the surrounding environment and community plainly exceed the assumptions stated in the IS/ND in numerous areas, including traffic, noise, odors, and impacts related to law enforcement and other public services.[16]

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[13] (See, e.g., IS/ND p. 4.6-12, 4.7-7 through 4.7-8, 4.8-7 through 4.8-8.)

[14] (Former Bus. & Prof. Code, § 26053, as amended by Statutes 2017, Chapter 37 (Senate Bill 94).)

[15] (Statutes 2017, chapter 253, section 3, amending Bus. & Prof. Code, § 26053.)

[16] The IS/ND mistaken treats the prospect of "procurement of multiple licenses" resulting "in combined impacts that exceed those associated with an individual license" as "cumulative considerations." (IS/ND pp. 5-12 through 5-13.) However, no actual analysis of such combined impacts appears anywhere in

In order to avoid potentially serious weakness in the IS/ND's environmental analysis and conclusions, the proposed program should include provisions to ensure that "co-location" of commercial cannabis licensees is actually limited in a manner consistent with the assumptions utilized in the IS/ND – or the IS/ND itself should be revised to evaluate the impacts of permitting more extensive co-location of licensed operations and implement appropriate mitigation measures. [17]

We appreciate the opportunity to provide these comments on the proposed regulations. If you have any questions, please contact Paul A. Smith at psmith@rcrcnet.org, Jolena Voorhis at jolena@urbancounties.com or Cara Martinson at cmartinson@counties.org.

Sincerely,

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Attachments: Comments on Proposed Bureau of Marijuana Control Regulations
CalCannabis Cultivation Licensing Program EIR Comments

Chapter 5, pertaining to cumulative impacts. Perhaps more importantly, for the reasons discussed in fn. 11 above, these are *not* cumulative but are instead *direct* impacts of the proposed program that must be evaluated accordingly.

[17] Similarly, the proposed program should include provisions limiting unregulated activities on licensed premises (e.g., non-cannabis business activities, or unlicensed cannabis activities by personal caregivers, etc.) Such commingled activities will foreseeably occur absent regulatory control, and will equally foreseeably result in potential impacts beyond those evaluated in the IS/ND.