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Overlay Cannabis District Was Consistent with General Plan and EIR and Exempt from CEQA



The Court of Appeal held that the addition of cannabis retailers to existing commercial neighborhoods through an overlay zoning district was exempt from CEQA as consistent with the existing General Plan and related EIR. *Lucas v. City of Pomona*, 92 Cal.App.5th 508 (2023).



The City decided to allow commercial cannabis activities in specific locales within its boundaries through adoption of a new overlay zone. The City determined its action was exempt from CEQA and approved a notice of exemption under Guidelines section 15183(a), which exempts projects that "are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified."

The appellate court upheld the City's action against a challenge by a property owner, Lucas, whose business was excluded from the authorized zones. The court initially determined that the City's decision to approve a notice of exemption was subject to the substantial evidence standard — and not the fair argument standard as Lucas argued — because Guidelines section 15183(a) requires an agency to examine whether a project's environmental effects were analyzed as significant impacts in a prior EIR on a general plan or zoning action with which the project is consistent.

Reviewed under this standard, the City's action complied with CEQA. City staff conducted field trips to evaluate legally operating cannabis businesses in other cities and met with planning staff from various agencies to understand how cannabis uses are similar or distinct from other types of commercial uses. Based on this research, the City determined the proposed cannabis uses were consistent with existing land uses and would not generate additional or different environmental impacts. The City also adopted Findings of Consistency, which evaluated the project's consistency with the findings of the 2014 EIR pertaining to impacts on air quality, GHG emissions, land use and planning, noise, public services, and traffic. The City's conclusion, based on this review, that the project would not result in any new or increased severity of significant environmental effects beyond those identified in the 2014 EIR was supported by substantial evidence. Accordingly, no additional environmental review or documentation was required.

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