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Prepared September 27, 2019 for October 18, 2019 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Mike Watson, Coastal Planner

Subject: Monterey County LCP Amendment Number LCP-3-MCO-19-0138-1 (Cannabis Regulations)

SUMMARY OF STAFF RECOMMENDATION

Monterey County proposes to amend its Local Coastal Program (LCP) to modify cannabis regulations within the County. In 2018, the Commission approved amendments to LCP Implementation Plan (IP) Section 20.67 to include a comprehensive regulatory program for commercial cannabis activities, including specifying the types of cannabis activities (e.g., cultivation, manufacturing, retail) allowable in specific zoning districts, and applicable coastal resource protection measures for such uses. The proposed amendment would update the cannabis ordinance with certain new definitions and standards for commercial cannabis activities throughout the coastal zone, including in terms of required setbacks from playgrounds, youth centers, and other cannabis retail facilities. These changes should all be understood as refinements to the County's existing cannabis programs based on lessons learned thus far in its implementation, and the changes do not implicate coastal resource concerns or issues. As such, the proposed changes to IP Section 20.67 can be approved as submitted.

The proposed amendment also creates a new IP Section 20.69 that establishes a five-year pilot program for limited and temporary outdoor cultivation of cannabis in Big Sur on properties with a zoning designation of Rural Density Residential (RDR) or Watershed Scenic and Conservation (WSC). The existing cannabis ordinance does not allow cannabis cultivation in these zoning districts, effectively precluding commercial cannabis cultivation in Big Sur. The intent of the amendment is to establish a program to temporarily allow for cannabis cultivation in this specific area and, over the five-year pilot program, evaluate coastal resource impacts from cannabis cultivation in Big Sur to understand whether a permanent cannabis cultivation program makes sense in this area. For cannabis operators to be included in the program, the proposed ordinance requires conformance with a series of measures, including that cultivation operations must be consistent with the Big Sur Land Use Plan (LUP)/IP and its protective provisions related to streams/riparian areas, public views, and water supply, among others. The program and any subsequently approved coastal development permits (CDPs) authorized pursuant to the program

would expire after five years unless the ordinance is extended or made permanent via a new LCP amendment.

The proposed outdoor cultivation pilot program in Big Sur will help promote a particular type of agricultural use (which is an LCP-prioritized use on coastal land in Big Sur) in an area designated for agricultural land use, and ensure that cannabis cultivation is carried out in an orderly manner while protecting coastal resources. The program includes standards reflective of the unique issues of Big Sur, and represents a precautionary approach to understand impacts and issues before making any permanent cannabis decisions for this area of the coast. The County worked with the Big Sur farming community to understand their issues and needs, as well as with Commission staff to ensure coastal resource protection, and staff recommends the Commission approve the proposed Big Sur pilot program also as submitted.

In short, the proposed amendment provides safeguards to ensure that cannabis activities will not cause any impacts to coastal resources and as such, the proposed IP changes can be found consistent with and adequate to carry out the certified LUP. See **Exhibit A** for the text of the proposed LCP Amendment. Thus, staff recommends that the Commission also approve the amendment as submitted. The motion and resolution to approve both ordinances comprising this IP amendment are found on page 4 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment (consisting of both changes to IP section 20.67 and creation of new IP section 20.69) was filed as complete on September 16, 2019. It amends the IP only and the 60-working-day action deadline is December 12, 2019. (*See* Coastal Act Sections 30513, 30514(b).) Thus, unless the Commission extends the action deadline (it may be extended by up to one year per Coastal Act Section 30517), the Commission has until November 18, 2019 to take a final action on this LCP amendment.

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EXHIBITS

Exhibit A: Proposed LCP Amendment

Exhibit B: Land Use Plan Maps

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment as submitted. The Commission needs to make one motion in order to act on this recommendation.

A. Certify the IP Amendment As Submitted

Staff recommends a **NO** vote on the motion below. Failure of the motion will result in certification of the IP amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission reject Implementation Plan Amendment LCP-MCO-3-19-0138-1 as submitted by Monterey County, and I recommend a **no** vote.*

***Resolution:** The Commission hereby certifies Implementation Plan Amendment LCP-MCO-3-19-0138-1 as submitted by Monterey County and adopts the findings set forth below on the grounds that the amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Implementation Plan Amendment may have on the environment.*

II. FINDINGS AND DECLARATIONS

A. DESCRIPTION OF PROPOSED LCP AMENDMENT

The Monterey County LCP is divided into four segments, each with its own LUP¹ and own IP. The IP also includes zoning ordinances (Title 20) that are applicable within all four segments of Monterey County's coastal zone. In 2018, the Commission approved amendments to the IP (Section 20.67 of Title 20) to include a comprehensive regulatory program for commercial cannabis activities, including specifying the types of cannabis activities (e.g., cultivation, manufacturing, and retail) allowable in specific zoning districts, and applicable coastal resource protection measures for such uses. The proposed amendment would update the cannabis ordinance with certain new definitions and standards for commercial cannabis activities throughout Monterey County's coastal zone.

Specifically, the proposed amendment would: 1) establish a new commercial cannabis operation/facility setback of 600 feet from playgrounds, child care centers, and youth centers throughout the County; 2) change most types of commercial cannabis uses from a conditional use to a principally permitted use (still subject to a type of CDP authorization, a Coastal Administrative Permit per the LCP) in authorized zone districts, and; 3) allow the existing

¹ The County's four LUP areas are: North County, Del Monte Forest, Carmel Area, and Big Sur.

retailer setback of 1,500 feet from other retailers to be modified to allow a lesser setback subject to certain findings and criteria, including a demonstration of special circumstances.

Of note, the proposed amendment also creates a new IP Section 20.69 that establishes a five-year pilot program for limited and temporary outdoor cultivation of cannabis in Big Sur on properties with a zoning designation of Rural Density Residential (RDR) or Watershed Scenic and Conservation (WSC).² The existing cannabis ordinance does not allow cannabis cultivation in these zoning districts, effectively precluding cannabis cultivation in Big Sur (although such cultivation activities have historically within the last number of years been taking place in Big Sur). The intent of the amendment is to establish a program to temporarily allow for cultivation in Big Sur and, over the five-year pilot program, evaluate coastal resource impacts from cannabis cultivation in Big Sur to understand whether a permanent cannabis program is appropriate and LCP consistent in this area. To be included in the program, the proposed ordinance requires conformance with a series of measures, including that the canopy of outdoor cultivation is limited to 2.5 percent of the total square footage of the lot, not to exceed 10,000 square feet. Qualified properties are required to provide evidence that they were engaged in medicinal cannabis cultivation on the lot prior to January 1, 2016. A coastal permit is required for any outdoor cultivation and related activities and is valid for a period of five years from the approval date or upon termination of the pilot program, whichever occurs first. The proposed ordinance further requires that cultivation operations must be consistent with the Big Sur Land Use Plan (LUP)/IP and its protective provisions related to streams/riparian areas, public views, and water supply, among others. Please see **Exhibit A** for the proposed LCP amendment text.

B. CONSISTENCY ANALYSIS

Standard of Review

The proposed amendment solely amends the IP components of the Monterey County LCP. The standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LUP. (*See* Pub. Res. Code Section 30513.)

Relevant Land Use Plan Policies

North County LUP Policy 4.3: Land Use Plan and Development Policies. The prime objective of the North County Local Coastal Program is to plan for appropriate levels of land use and development in the coastal zone while protecting coastal resources and providing or maintaining coastal access and recreation opportunities.

North County LUP Policy 4.3.4. Key Policy. All future development within the North County coastal segment must be clearly consistent with the protection of the area's significant human and cultural resources, agriculture, natural resources, and water quality.

² Per the LCP, agricultural uses are already allowed in these zoning districts and the Commission has in the past understood cannabis cultivation to comprise a particular type of agricultural use. See Santa Cruz County LCP Amendment LCP-3-SCO-18-0031-1 certified on July 12, 2018; San Luis Obispo County LCP Amendment LCP-3-SLO-18-0020-1 certified on June 6, 2018; and San Luis Obispo County LCP Amendment LCP-3-SLO-19-0009-1 certified on April 10, 2019.

Carmel Area LUP General Policy 4.4.2.7. All development and use of the land, whether public or private, must conform to the policies of this plan and must meet the same resource protection standards set forth in the plan. Where conflicts occur between one or more provisions of the plan, such conflicts shall be resolved in a manner which on the whole is the most protective of significant coastal resources.

Big Sur LUP Key Policy 3.2.1. Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the state and Nation, it is the county's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.

Big Sur LUP Key Policy 3.3.1. All practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas.

Big Sur LUP General Policy 3.3.2.1. Development, including vegetation removal, excavation, grading, filing, and the construction of roads and structures, shall not be permitted in the environmentally sensitive habitat areas if it results in any potential disruption of habitat value. To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.

Big Sur LUP Specific Policy 3.3.3.A4. Setbacks of 150 feet on each side of the streambank shall be required for all streams to protect riparian plant communities unless a narrower corridor can be demonstrated to be sufficient to protect existing vegetation and provide for restoration of previously disturbed vegetation.

Big Sur LUP General Policy 3.4.2.1. The County will take an active role in the conservation of Big Sur's water resources and will support and encourage the wise use and management of water resources by residents and public agencies.

Big Sur LUP Specific Policy 3.4.3.A4. Inter-basin transfer of water: No new water system and no expansion of existing water systems which transport water out of the watershed of any perennial stream shall be allowed. Undeveloped parcels outside of the watershed of origin shall not be allowed to utilize transported water. Permit applications shall demonstrate a suitable source of water not requiring establishment or expansion of, or intensification of use, of an inter-basin water transfer system. ...

Big Sur LUP Key Policy 3.6.1. Agriculture, especially grazing, is a preferred use of coastal lands. In locations where grazing has been a traditional use, it should be retained and

encouraged both under private and public ownership. Williamson Act contracts, scenic easements, tax incentives, large lot zoning, and other techniques will be encouraged by the County to promote and assist agriculture.

Big Sur LUP General Policy 3.6.2.II. *Landowners shall be encouraged to establish or expand agricultural operations, such as animal husbandry, livestock breeding, aviaries, vineyards, tree farms, native plant farms, and seed farms.*

Big Sur LUP Policy 5.3.1. *Eight broad categories of land use are proposed for the Big Sur coast that reflect existing and traditional land uses and the priorities of the California Coastal Act. In all categories agricultural land use is a principal permitted use as provided for in Section 3.6 of this plan.*

Big Sur LUP Policy 5.3.1.2. Watershed and Scenic Conservation. *Protection of watersheds, streams, plant communities, and scenic values is the primary objective. Principal uses in this category include agriculture/grazing and supporting ranch houses and related ranch buildings. ...*

Consistency Analysis

In general, the above-cited LUP policies allow for development, including prioritizing agricultural uses and related activities, provided that those uses/activities and related development are consistent with the LUP's coastal resource protection policies, including that development does not encroach within the critical viewshed (i.e., Highway 1 and major public view areas in Big Sur), avoids and protects environmentally sensitive habitats and stream/riparian corridors, and can demonstrate adequate facilities (e.g., water supply) to serve the proposed development.

The County's current cannabis regulations in IP Section 20.67 require that commercial cannabis retailers be located at least 1,500 feet from another cannabis retailer and be set back at least 600 feet from a school, public park, or drug recovery facility. The setbacks were established to distribute the density of cannabis retailers and to avoid exposure to youth and youth-oriented facilities. However, the setbacks have created challenges to processing applications for commercial cannabis activities and they are not aligned with current state law. Although State law expressly requires a setback of at least 600 feet between commercial cannabis operations and schools, day care centers, and youth centers, there are no required setbacks between cannabis retailers or between retailers and drug recovery centers in state law, though there is still a density component in state regulations that requires state licensing agencies to determine if there is an "excessive concentration" of retailers in a census tract.

In addressing the setback issues, the County considered and analyzed several options for promoting commercial cannabis activities while being sensitive to health, safety, and social issues that may arise from cannabis sales and use. Under the proposed amendment, commercial cannabis uses would be changed from a conditional use to a principally permitted use in authorized zone districts (and subject to an Coastal Administrative Permit a type of coastal

development permit),³ and the existing 1,500-foot setback between commercial cannabis facilities would be modified to allow a lesser setback (with a CDP) and a required finding of public convenience or necessity for all cannabis retail use permits. In addition, the amendment would delete the 600-foot setback for “public parks” and replace it with a 600-foot setback from “playgrounds” (newly defined as part of this IP amendment), which is more appropriate as it targets recreational areas more specifically designed to be used by children.⁴ The amendment would further update setbacks for all commercial cannabis activities in a manner consistent with state law, including removal of the setback from drug recovery centers and adding setbacks from day care centers and youth centers. These changes should all be understood as refinements to the County’s existing cannabis programs based on lessons learned thus far in its implementation, and the changes do not implicate coastal resource concerns or issues. As such, the proposed changes to IP Section 20.67 can be approved as submitted.

With regard to proposed IP Section 20.69’s allowance for temporary outdoor cultivation in Big Sur, the amendment is intended to provide a temporary program to evaluate the impacts and long-term appropriateness of cannabis cultivation in Big Sur as a type of agricultural land use. As discussed earlier, the ordinance specifies a series of criteria that cultivation operations must meet so as to ensure coastal resource protection, including conformance with the Big Sur LUP/IP and its protective provisions related to streams/riparian areas, public views, and water supply. The proposed ordinance also requires that: 1) cultivation activities have a minimum 150-foot setback from any stream, river, or watercourse; 2) cultivation may not take place on any federal or state lands or on lots where the only access is through federal lands; 3) no outdoor cultivation or cultivation-related facilities/uses may be visible from offsite, including cannabis plants, fences, water systems, or other structures; 4) no lighting may be visible in the critical viewshed, and water supply sources must be provided from onsite sources; and 5) water transported by vehicles from offsite shall not be considered evidence of an adequate water supply source. Finally, the duration of the proposed ordinance is five years from the effective date of Commission certification, after which time the County will review its effectiveness and determine next steps, including whether to approve a new ordinance and to submit an LCP amendment request to either extend the ordinance or make it permanent.

Although not currently an allowable use under the LCP, cannabis cultivation has historically been taking place in Big Sur and is an economically viable form of agriculture in this area. Per the LCP, agriculture is both a principally permitted and preferred use of coastal lands (LUP Policies 3.6.1, 3.6.2.11, 5.3.1, and 5.3.1.2). The proposed amendment promotes the continuation and retention of agricultural production in Big Sur and allows local farmers who have been

³ A Coastal Administrative Permit (CAP) is a type of coastal development permit for minor projects that requires a staff level discretionary approval. The CAP process requires review by all relevant County agencies and provides for public notice of pending decisions, during which time any interested parties can request a public hearing. Any requested CAP that is controversial or precedent setting may be referred to the Planning Commission by the Director of Planning.

⁴ “Playground” is defined in the IP amendment as “any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.”

cultivating cannabis under the state’s Medicinal and Adult-Use of Cannabis Regulatory and Safety Act to continue their operations.

Overall, the amendment represents a comprehensive regulatory program intended to be consistent with the recent statewide legalization of recreational marijuana while ensuring that cannabis activities are allowed in appropriate areas of Big Sur and subject to strict standards so as to protect coastal resources. The program includes standards that address the unique issues of Big Sur, and represents a precautionary approach to understand impacts and issues before making any permanent cannabis decisions for this area. Finally, the proposed amendment language is consistent with the language contemplated by other cities and counties, including the ways in which they have addressed Coastal Act concerns when addressing cannabis activities, and further is consistent with other past language certified by the Commission for this purpose.⁵ Thus, the proposed amendment will not adversely affect coastal resources, is consistent with the above-cited policies of the certified LUP, and can be approved as submitted.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Coastal Commission’s review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. (*See* 14 CCR Section 15251(f).) Local governments are not required to undertake environmental analysis of proposed LCP amendments (*see* Pub. Res. Code Section 21080.9; *see also* 14 CCR Section 15265(a)(1)), although the Commission can and does use any environmental information that the local government has developed in certifying LCP amendments consistent with Coastal Act and CEQA requirements. CEQA requires that alternatives to the proposed action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

Monterey County adopted a Negative Declaration for the proposed LCP amendments (i.e., November 6, 2018 Commercial Cannabis Activities and June 18, 2019 Outdoor Cannabis Cultivation) and in doing so found that the amendment would not have significant adverse environmental impacts. This report has discussed the relevant coastal resource issues with the proposal including those related to land use and agricultural resources. All above findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment would have on the environment within the meaning of CEQA. Thus, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

⁵ See Santa Cruz County LCP Amendment LCP-3-SCO-18-0031-1 certified on July 12, 2018; San Luis Obispo County LCP Amendment LCP-3-SLO-18-0020-1 certified on June 6, 2018; and San Luis Obispo County LCP Amendment LCP-3-SLO-19-0009-1 certified on April 10, 2019.