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Prepared November 20, 2020 (for December 11, 2020 Hearing)

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Rainey Graeven, Coastal Planner

**Subject: Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0062-2
(Cannabis Regulations Update)**

Proposed Amendment

Santa Cruz County proposes to modify the Implementation Plan (IP) component of its LCP related to non-retail commercial cannabis activities. Specifically, the proposed amendment would: 1) update the definition of “cannabis cultivation” to clarify that it is an agricultural activity (as opposed to a commercial activity), consistent with the California Department of Food and Agriculture’s updated definition; 2) make corresponding changes to the permitting levels for various cannabis activities including designating cannabis cultivation, distribution, and transport as principally permitted uses in the Commercial Agriculture (CA) zoning district; 3) add “Transport Only” (i.e., a license for someone who solely transports, but does not store or hold title to cannabis or cannabis products) as a new license/use (i.e., distinguishing “transport only” from the “cannabis distribution” license), and allowing it in all zoning districts except the Special Use (SU) zoning district; 4) update the enforcement section, including adding appeal and administrative hearing processes; 5) add a new prohibition on advertising to minors; and 6) require that licenses only be issued following approval of a Best Management and Operation Practices (BMOP) plan to ensure that all cannabis activities conserve natural resources and have as minimal an impact as possible on the surrounding environment.

Overall, the proposed amendments are relatively minor in scope and mostly serve to clarify terms and procedures related to cannabis permitting and operations. See **Exhibit 1** for the proposed amendment text.

Minor LCP Amendment Determination

Pursuant to Title 14 of California Code of Regulations (CCR) Section 13555, the Executive Director may determine that a proposed LCP amendment is “minor.” 14 CCR Section 13554 defines minor LCP amendments. Among other things, minor LCP amendments include:

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14 CCR Section 13554(a). *Changes in wording which make the use as designated in the zoning ordinances, zoning district maps or other implementing actions more specific and which do not change the kind, location, intensity, or density of use and which are found by the Executive Director of the Commission or the Commission to be consistent with the land use plan as certified by the Commission.*

If the Executive Director determines that an amendment is minor, that determination must be reported to the Commission. If one-third or more of the appointed members of the Commission request that it be processed as a major LCP amendment, then the amendment shall be set for a future public hearing; if less than one-third of the appointed members of the Commission object to the minor LCP amendment determination, then the amendment is deemed approved and it becomes a certified part of the LCP.

The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is minor.

The proposed LCP amendment retains the entirety of the existing LCP cannabis ordinance's regulatory structure with regard to where and what type of cannabis activities and uses are allowed in the coastal zone, as well as the applicable standards such uses must meet in order to ensure protection of coastal resources. The proposed amendment merely changes the level of permit review necessary for cannabis cultivation in existing structures or the use of existing structures for non-retail cannabis distribution, thereby streamlining the review process. In addition, any cannabis activities that qualify as development would continue to be processed via a CDP subject to substantive LCP standards that are not changed through this LCP amendment.¹ As such, the proposed amendment does not change the kind, location, intensity, or density of use of land, and qualifies under the regulatory definition of a minor LCP amendment.

¹ Because cannabis cultivation/distribution is limited to outdoor cultivation/existing structures (i.e., no new structures can be constructed for cannabis activities) and because cannabis is an agricultural crop (and harvesting for agricultural purposes does not meet the definition of development under IP Section 13.20.040), many types of cannabis activities may not qualify as development requiring a CDP. Additionally, structures typically associated with agricultural activities can qualify for an agricultural exclusion in Santa Cruz County, including the construction, improvement, and expansion of agricultural support facilities (including barns and storage buildings), the improvement/expansion of greenhouses (if ground coverage is not increased by more than 25% or 10,000 square feet, whichever is less), and limited fencing (see IP Sections 13.20.073 and Coastal Commission Exclusion Orders E-82-4 and E-82-4-A5 for the complete list of agricultural exclusions), provided all such activities are consistent with the terms and conditions of the Commission-adopted exclusion orders. Thus, some limited cannabis-related development may be categorically excluded from CDP requirements; however, cannabis-related development that is a unique/atypical (and not "normal") agricultural activity, or that has the potential for coastal resource impacts (e.g., a six-foot-tall solid fence or a new illuminated greenhouse that adversely impacts public views) would not be eligible for an exemption or exclusion, and thus would require a CDP that protects coastal resources as directed by the LCP (including in terms of protecting public views, environmentally sensitive habitat, etc.). In sum, the LCP includes a suite of tools to provide and streamline cannabis and other agricultural activities more broadly, but also to ensure coastal resources are protected.

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California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are not required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, the County exempted the proposed amendment from environmental review (citing CEQA Section 26055(h)).

The Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA. Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed amendment would necessitate. Thus, the proposed amendment will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

Coastal Commission Concurrence

The Executive Director will report this minor LCP amendment determination, and any comments received on it, to the Coastal Commission at its virtual meeting on December 11, 2020. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Rainey Graeven at the Coastal Commission's Central Coast District Office via email at Rainey.Graeven@coastal.ca.gov. If you wish to comment on the proposed amendment and/or object to the proposed minor LCP amendment determination, please do so via regular mail (directed to the Central Coast District Office) or email (by emailing centralcoast@coastal.ca.gov) by 5:00 p.m. on December 4, 2020.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on November 13, 2020. The proposed amendment affects the LCP's IP only, and the 60-working-day deadline for the Commission to take action on it is February 16, 2021. Thus, unless the Commission extends the action deadline (it may be extended by up to one year by the Commission per the Coastal Act), the Commission has until February 16, 2021 to take a final action on this LCP amendment.

Exhibit 1: Proposed Amendment Text