

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



# F11a

**Prepared July 24, 2020 for August 14, 2020 Hearing**

**To:** Commissioners and Interested Persons

**From:** Susan Craig, Central Coast District Manager  
Brian O'Neill, Coastal Planner

**Subject: San Luis Obispo County LCP Amendment Number LCP-3-SLO-20-0043-1  
(Industrial Hemp)**

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## SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo County proposes to amend its Local Coastal Program (LCP) to allow for hemp production. The proposed amendment would add industrial hemp cultivation to the Land Use Plan (LUP) as a special subsection of “crop production and grazing uses” that would be allowed within Agricultural, Rural, and Rural Residential designated areas. The amendment would also amend the Implementation Plan (IP) to add new definitions related to hemp, provide additional requirements for hemp cultivation and processing uses, and add hemp activities into the existing cannabis enforcement and violation sections. The amendment does not propose any changes to the County’s existing cannabis regulations.

Recent updates to federal and state law removed restrictions on the cultivation, processing, and sale of hemp. The County issued an emergency order prohibiting hemp uses until a permanent ordinance could be developed. The County endeavored to develop an ordinance that allows for hemp uses, while also addressing the unique issues of this agricultural use, particularly odor control and proximity to residential uses. The proposed amendment would allow for both indoor and outdoor hemp cultivation on Agricultural and Rural designated land on sites larger than 400 acres, while prohibiting outdoor cultivation within 2,000 feet of property lines, within one mile of any Urban Reserve Line or Village Reserve Line, within 50 feet of any riparian area, or within 100 feet of any wetland. Indoor cultivation would also be allowed on these lands, in addition to Rural Residential land, but would be prohibited within 100 feet of any residence that is not owned by the cultivator. The amendment treats hemp processing in the same

manner as any other agricultural processing use, with additional requirements that processing takes place within a fully enclosed permanent structure and that an odor control plan be in place.

With these standards, the proposed amendment provides for Coastal Act priority agricultural use in a manner that respects and responds to its particular potential impact on coastal resources. Staff is recommending one small modification to clarify that the setback requirements for hemp cultivation/processing from riparian habitats is 100 feet (not the proposed 50 feet), as currently required by the LCP.

As modified, the proposed amendment appropriately supports this unique agricultural use, while providing certain requirements and restrictions that address potential impacts to coastal resources. Thus, the proposed amendment can be found consistent with and adequate to carry out the Coastal Act and the LUP, as amended, and staff therefore recommends that the Commission approve the amendment with the suggested modification. The required motions and resolutions are found on pages 4 and 5 below.

**Staff Note: LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on July 20, 2020. The proposed amendment affects the LCP's LUP and IP, and the 90-working-day action deadline is November 25, 2020. Thus, the Commission has until November 25, 2020 to take a final action on this LCP amendment unless the Commission extends the deadline to act up to one year, i.e. until November 25, 2021.

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### **EXHIBIT**

Exhibit 1: Proposed LCP Amendment

## **I. Motions and Resolutions**

Staff recommends that the Commission, after public hearing, approve the proposed LUP amendment as submitted and approve the proposed IP amendment with a suggested modification. The Commission needs to make the following motions in order to act on this recommendation.

### **Certify the LUP Amendment as Submitted**

Staff recommends a YES vote on the motion below. Passage of this motion will result in certification of the Local Coastal Program amendment as submitted and the adoption of the following resolution and findings. The motion to certify passes only by an affirmative vote of a majority of the appointed Commissioners.

**Motion:** I move that the Commission certify Land Use Plan Amendment Number LCP-3-SLO-20-0043-1 as submitted by San Luis Obispo County, and I recommend a yes vote.

**Resolution:** The Commission hereby certifies Land Use Plan Amendment Number LCP-3-SLO-20-0043-1 as submitted by San Luis Obispo County and adopts the findings set forth below on the grounds that the Land Use Plan conforms with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan 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 Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### **Deny the IP Amendment as Submitted**

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the IP amendment as submitted and the adoption of the following resolution and findings. The motion to reject the amendment as submitted passes only by an affirmative vote of a majority of the Commissioners present.

**Motion:** I move that the Commission reject Implementation Plan Amendment Number LCP-3-SLO-20-0043-1 as submitted by San Luis Obispo County, and I recommend a yes vote.

**Resolution:** The Commission hereby denies certification of Implementation Plan Amendment Number LCP-3-SLO-20-0043-1 as submitted by San Luis Obispo County and adopts the findings set forth below on grounds that the implementation plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan amendment would not meet the requirements of the California Environmental Quality Act, as there are

feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan amendment as submitted.

**Certify the IP Amendment with a Suggested Modification**

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the IP amendment with a suggested modification 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 certify Implementation Plan Amendment Number LCP-3-SLO-20-0043-1 as submitted by San Luis Obispo County if it is modified as suggested in this staff report, and I recommend a yes vote.

**Resolution:** The Commission hereby certifies Implementation Plan Amendment Number LCP-3-SLO-20-0043-1 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan amendment, with the suggested modification, conforms with and is adequate to carry out the provisions of the certified Land Use Plan as amended. Certification of the Implementation Plan amendment if modified as suggested 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 Implementation Plan amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Plan amendment if modified.

**II. Suggested Modification**

The Commission hereby suggests the following modification to the proposed IP amendment, which is necessary to find the IP consistent with the LUP. If San Luis Obispo County accepts the suggested modification within six months of Commission action (i.e., by February 14, 2021), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Text in underline format denotes proposed text to be added by San Luis Obispo County in its proposed LCP amendment. Text in ~~cross-out~~ format and text in double underline format denotes proposed text to be deleted and added, respectively, by the Commission's suggested modification:

CZLUO Section 23.30.244.C.1.c. All industrial hemp cultivation shall be set back at least 50 100 feet from the upland extent of riparian vegetation of any watercourse, and 100 feet from any wetland.

### III. Findings and Declarations

#### A. Description of Proposed LCP amendment

The County is proposing changes to both the LCP's Land Use Plan (LUP) and Implementation Plan (IP) in order to regulate hemp-related activities. The existing LUP's "Framework for Planning" document includes Coastal Table O, which lists fourteen land use categories, the allowable uses within those categories, and the permitting status for each. The Framework for Planning also includes definitions for each defined land use.

The proposed LUP amendment creates a new subcategory for hemp cultivation<sup>1</sup> within the "crop production and grazing" use category in Coastal Table O, thereby identifying the land use categories where hemp cultivation is allowed. The amendment also adds language to the definition of crop production and grazing to specifically prohibit in-field sales of hemp. Hemp cultivation uses are classified in the table as special uses, meaning that they are allowable if specific criteria are met and if required findings are made. County approvals of CDPs for special uses are also appealable to the Coastal Commission.

The proposed amendment also contains various changes throughout the IP to include hemp-related definitions, to add standards with which hemp processing and cultivation must comply, and to add hemp to the LCP's existing nuisance abatement sections.

The proposed amendment treats hemp similarly to other agricultural uses, with unique standards meant to address the specific issues related to hemp cultivation and processing, such as odor and security. The amendment would regulate such activities as follows:

- Outdoor hemp cultivation operations would be allowed in the Agriculture – Prime Soils (AGps), Agriculture – Non-Prime Soils (AGnps), and Rural Lands (RL) land use categories. Outdoor hemp cultivation would only be allowed on sites larger than 400 acres. Outdoor cultivation would be prohibited within 2,000 feet of property lines, within one mile of any Urban Reserve Line or Village Reserve Line (URL/VRL), within 50 feet of any riparian area, or within 100 feet of any wetland.

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<sup>1</sup> Hemp is defined to mean an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

- Indoor hemp cultivation would be allowed in the AGps, AGnps, RL, and Rural Residential (RR) land use categories. Indoor industrial hemp cultivation is limited to sites of five acres or larger, and must be contained within a fully enclosed new or existing permitted building or greenhouse. The building or greenhouse must be set back at least 100 feet from any existing offsite residences of separate ownership and be equipped and/or maintained with sufficient ventilation controls to eliminate nuisance odors.
- Hemp processing<sup>2</sup> would be allowed in the AGps, AGnps, RL, RR, Commercial Service (CS), and Industrial (IND) land use categories. All hemp processing facilities are required to submit an odor management plan that ensures the facility is sited and/or operated in a manner that prevents hemp nuisance odors from being detected offsite.
- In all cases, applicants must satisfy the hemp registration requirements specified in the California Food & Agricultural Code.
- All hemp related violations would be subject to the existing LCP procedures applicable to cannabis related violations.

Please see **Exhibit 1** for the proposed LCP amendment text.

## **B. Consistency Analysis**

### **Standard of Review**

The proposed amendment affects both the LUP and IP components of the San Luis Obispo County LCP. The standard of review for LUP amendments is that they must meet the requirements of and be in conformity with the Chapter 3 policies of the Coastal Act. The standard of review for IP amendments is that they must conform with and be adequate to carry out the policies of the certified LUP.

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<sup>2</sup> Note that in the proposed amendment, “hemp processing” is limited to drying, curing, trimming, packaging, and preparing for further processing within a permanent building (not a hoop house or similar non-permanent structure). The harvesting of industrial hemp grown onsite that is performed in the field with mobile equipment not involving permanent buildings, hoop houses, or trailers would be included under “Crop Production and Grazing.” Manufacturing of finished hemp products would be classified under existing LCP “Industry, Manufacturing, and Processing” uses according to the end-product and scale of operations (e.g. manufacturing of CBD-infused chemical products would be considered Chemical Manufacturing in the LCP and hemp cloth manufacturing would be classified as textile products).

## LUP Amendment Consistency Analysis

### *Relevant Coastal Act Policies*

Coastal Act Section 30250(a) encourages new development within existing developed areas:

**Section 30250(a).** New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Coastal Act Sections 30241 and 30242 require agricultural land to be maintained in agricultural use to the greatest extent feasible, and for conflicts between agriculture and urban land uses to be minimized:

**Section 30241.** The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent

to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

**Section 30242.** All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

### *Consistency Analysis*

In general, the proposed amendment adds hemp cultivation as an allowable use within appropriate areas designated for agricultural use and treats this use in a similar manner to other crop production activities. This is appropriate given that these land use designations seek to protect and foster agricultural production. The amendment considers hemp processing as any other agricultural processing use and does not propose any changes to the LUP in this regard. The proposed amendment is therefore broadly consistent with Coastal Act Sections 30241 and 30242, which protect and prioritize coastal agriculture, and with Section 30250(a), which encourages new development within or near existing developed areas. Additional restrictions in the proposed IP amendment further tailor the circumstances under which specific hemp activities will be allowed and these are discussed further in the IP Consistency Analysis below.

### **IP Consistency Analysis**

#### *Relevant LUP Policies*

The existing LUP includes a variety of policies affecting issues raised by cannabis activities, including protection of environmentally sensitive habitat and visual and scenic resources. Key policies include:

**Environmentally Sensitive Habitats Policy 1:** New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.

**Environmentally Sensitive Habitats Policy 17:** In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands. This shall be a minimum of 100 feet in width measured from the upland extent of the wetland unless a more detailed requirement for a greater or lesser amount is included in the LUE or the LUO would allow for adjustment to recognize the constraints which the minimum buffer would impose upon existing subdivided lots.

**Environmentally Sensitive Habitats Policy 28:** In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, educational or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from a design standpoint) can be accommodated.

**Visual and Scenic Resources Policy 1:** Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible.

**Visual and Scenic Resources Policy 2:** Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion.

**Visual and Scenic Resources Policy 4:** New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited.

#### *Consistency Analysis*

The proposed IP amendments further regulate hemp in two ways: 1) by imposing additional restrictions on where certain hemp activities are allowed; and 2) by ensuring that such activities meet specific resource protection standards. Thus, the proposed IP

amendment limits hemp uses to appropriate locations and imposes standards on hemp uses to guard against coastal resource impacts. For example, while the proposed LUP amendment would allow outdoor hemp cultivation within the AGps, AGnps, and RL land use categories, proposed IP Section 23.08.426 (see **Exhibit 1**) specifies that outdoor cultivation can only be located on sites that are 400 acres or larger in size, is prohibited within one mile of URL/VRL boundaries, and is prohibited within 2,000 feet of property lines. In this fashion, the proposed IP amendment goes further than the proposed LUP amendment in directing this unique agricultural product away from more developed areas where it may conflict with residential uses.

Similar restrictions are proposed for indoor hemp cultivation which, in addition to the AGps, AGnps, and RL land use categories, is also allowed in the RR land use designation. The proposed IP amendment limits indoor cultivation to within new or existing, fully enclosed, permanent, and permitted structures on sites five acres or larger. In addition, the structures must be located a minimum of 100 feet away from existing offsite residences of separate ownership. Hemp processing would be allowed subject to Minor Use Permit approval in the same manner as other agricultural processing uses, so long as it occurs within a fully enclosed building.

In addition to providing more explicit requirements related to the types and extent of hemp activities that can occur in particular areas, the proposed IP amendment establishes a variety of standards that more generally address the specific issues associated with hemp, such as nuisance odors, as well as the types of coastal resource impacts that can occur in conjunction with agriculture and development more generally. For example, the amendment requires minimum setbacks from riparian vegetation and wetland vegetation in order to protect sensitive habitats. In order to prevent the possibility of increased development in rural and agricultural areas along the coast and adverse effects on visual and scenic resources, the amendment prohibits the use of hoop structures for cultivation and requires all new or existing permanent structures to be permitted prior to use.

However, the County-approved amendment requires hemp cultivation to be set back only a minimum of 50 feet from the upland extent of riparian vegetation; however, Environmentally Sensitive Habitats Policy 28 requires a 100-foot riparian vegetation setback for any new development located outside the USL (50 feet is the standard riparian setback within urban areas only). Because the locational standards described above effectively prohibit hemp cultivation within any USL (which are often co-terminus with URL/VRL boundaries, where hemp cultivation is prohibited), the appropriate riparian setback for hemp production is 100 feet. Accordingly, a modification is required to clarify that the riparian vegetation setback shall be 100 feet from riparian vegetation, consistent with the current LCP standard.

Generally, the proposed amendment provides the needed protections for coastal resources and strikes an appropriate balance between addressing the particular issues posed by hemp, on the one hand, and regulating hemp in a manner similar to other agricultural or processing/manufacturing uses, on the other. Unlike cannabis-related activities, which require discretionary review in each case, hemp cultivation is treated in the same manner and is subject to the same permitting requirements as all other crop production and agricultural processing uses, so long as the applicable standards are met.

In conclusion, as modified, the IP amendment provides additional specificity and clarity to ensure that hemp activities are allowed in appropriate areas and in a manner that protects coastal resources. As such, the proposed IP amendment, with the identified suggested modification, is adequate to carry out the LUP.

### **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. (14 CCR Section 15251(f)). Local governments are not required to undertake environmental analysis of proposed LCP amendments (Pub. Res. Code Section 21080.9), although the Commission can and does consider any environmental information that the local government has developed in evaluating LCPs and LCP amendments. CEQA generally requires that alternatives to a 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.

San Luis Obispo County found under Section 15061(b)(3) of the State CEQA Guidelines that the proposed LCP amendment was exempt from the requirements of CEQA because it would not have the potential for causing a significant effect on the environment. The proposed amendment places new restrictions on hemp cultivation and processing, which are similar to other agricultural production and processing uses already allowed within the County. This report has discussed the relevant coastal resource issues with the proposal. All above findings are incorporated herein in their entirety by reference.

As modified as described in this report, 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 amendment as modified 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).