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# F16a

**Prepared October 28, 2022 (for November 18, 2022 Hearing)**

**To:** Commissioners and Interested Persons

**From:** Kevin Kahn, Central Coast District Manager  
Breylen Ammen, Coastal Planner

**Subject: Monterey County LCP Amendment Number LCP-3-MCO-22-0035-1  
(Cannabis Regulations Update)**

## **Proposed Amendment**

Monterey County proposes to modify the Implementation Plan (IP) component of its Local Coastal Program (LCP) related to cannabis cultivation. In 2018, the Commission approved amendments to IP Section 20.67 to include a comprehensive regulatory program for indoor commercial cannabis activities.<sup>1</sup> In 2019, the Commission approved an additional cannabis-related amendment that added a new IP Section, 20.69, that established 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).<sup>2</sup>

The proposed amendment would amend IP Sections 20.67 and 20.69 to: 1) update the countywide renewable energy requirements for indoor cannabis cultivation using artificial lighting; 2) extend the Big Sur outdoor cannabis cultivation pilot program from 5 to 8 years (to end June 18, 2026); 3) reduce the pilot program's minimum setback of a cannabis site from the nearest offsite structure from 500 feet to 250 feet; 4) clarify the criteria which may be used to grant exceptions to the minimum setback requirement for the pilot program; and 5) increase the maximum square footage of outdoor canopy allowed by the pilot program from 10,000 to 20,000 square feet. See **Exhibit 1** for the proposed amendment text and **Exhibit 2** for the changes in strikethrough and underline format.

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<sup>1</sup> LCP Amendment No. LCP-3-MCO-18-0004-1, approved February 2018

<sup>2</sup> LCP Amendment No. LCP-3-MCO-19-0138-1, approved October 2019

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### 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:

*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 amendment can best be described as some relatively minor refinements to the existing certified IP’s regulation of cannabis, including in relation to lessons learned since initial approval in 2018 and 2019. For example, the County proposes to update the renewable energy requirements for cannabis cultivation that uses artificial lighting to no longer require 50% onsite renewable energy production. Instead, it would require all energy used to either be purchased from a utility company through a rate program that provides 100% renewable energy, or onsite renewable energy production to the maximum extent feasible combined with the purchase of carbon offsets for any portion not produced onsite. The County believes this change will help facilitate more renewable/carbon-neutral energy use for indoor cannabis cultivation. As such, this component of the proposed amendment clarifies the existing regulations and would have no impacts to coastal resources.

The proposed Big Sur-related changes seek to facilitate participation in the previously established pilot program for existing outdoor cultivation of cannabis by extending the pilot program, updating the setback requirements, and increasing the maximum canopy cover. The current program, which includes Big Sur as well several areas outside of the coastal zone, is intended to both address existing cannabis operations in Big Sur and evaluate coastal resource impacts from such operations to gain a better understanding of whether a permanent cannabis program is appropriate and LCP consistent in this area. However, the pilot program has only received two viable applications to date and the lack of participation has hindered the County’s ability to study potential impacts from cannabis cultivation in Big Sur. By slightly modifying certain site parameters for

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inclusion in the program, including for setbacks and canopy square footage, the County hopes to broaden the applicability of cannabis operations for program evaluation. Key coastal resource protection requirements, however, remain unchanged, including consistency 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. Any cannabis cultivation permits would continue to be processed via a CDP subject to existing LCP standards that are not changed through this LCP amendment. 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.

### **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 hybrid meeting on November 18, 2022. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Breylen Ammen at the Coastal Commission's Central Coast District Office via email at [Breylen.Ammen@coastal.ca.gov](mailto:Breylen.Ammen@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](mailto:centralcoast@coastal.ca.gov)) by 5:00 p.m. on November 10, 2022.

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### **Procedural Note - LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on September 13, 2022. The proposed amendment affects the LCP's IP only, and the 60-working-day deadline for the Commission to take action on it is December 9, 2022. 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 December 9, 2022 to take a final action on this LCP amendment.

Therefore, if four or more Commissioners object to the Executive Director's determination that this amendment is minor, then staff recommends that the Commission vote to extend the deadline for final Commission action on the proposed amendment by one year. To do so, staff recommends a YES vote on the motion below. Passage of the motion will result in a new deadline for final Commission action on the proposed LCP amendment. The motion passes only by an affirmative vote of a majority of the Commissioners present.

*Motion: I move that the Commission extend the time limit to act on Monterey County Local Coastal Program Amendment Number LCP-3-MCO-22-0035-1 to December 9, 2023, and I recommend a yes vote.*

**Exhibit 1: County-approved ordinance and proposed amendment text**

**Exhibit 2: Proposed amendment text in strikethrough and underline format**