

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 EIGHTH STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FAX (707) 826-8960



March 29, 2021

Elanah Adler, Planner
Humboldt County Planning & Building Dept.
3015 H Street
Eureka, CA 95501

RE: Local Coastal Program Amendment (LCPA) Application No. LCP-1-HUM-21-0034-2 proposing amendments to the County's Local Coastal Program (LCP) Implementation Plan (IP) to ban industrial hemp cultivation in the coastal zone.

Dear Ms. Adler:

Thank you for the County staff's transmittal for Commission certification of the above-referenced LCPA. We received a physical copy of the application materials in our office on March 17, 2021. As we understand it, the scope of the proposed amendment includes the addition of a new section (sec. 313-55.5) to the Coastal Zoning Regulations (Chapter 3 of Division 1 of Title III of the County Code) related to industrial hemp land use regulations. As stated in the proposed regulations, the regulations apply to "all facilities and activities involved in the cultivation of Industrial Hemp and registration of Industrial Hemp cultivation sites..." The proposed regulations would ban the cultivation of industrial hemp and registration of industrial hemp cultivation sites throughout the unincorporated areas of the County coastal zone.

In considering an LCPA application, the standard of review that the Commission applies to proposed changes to an IP is conformity with and adequacy to implement the County's coastal land use plans (LUPs).

We are determining whether we can process the proposed LCPA as a minor or de minimis amendment rather than a major amendment. However, the information requested below is needed to make the determination as well as to file the application in conformance with Coastal Act sec. 30510(b) and associated implementing regulations (14 CCR sec. 13551 et seq.). We understand that this amendment is a priority for the County due to the upcoming end date of the County's temporary moratorium on industrial hemp cultivation. Therefore, please provide the information listed below as soon as possible to expedite the application process. Unfortunately, given the timing of submittal of a complete application relative to the Commission's staff report production and noticing deadlines, there may be insufficient time to process the application and schedule it for Commission action prior to the moratorium expiration date.

1. **Clarification on Ordinance.** The application submittal includes a copy of Ordinance No. 2666 that's titled "Certified copy of portion of proceedings, Meeting of February 9, 2021" and signed by the Board Chair and Deputy County Clerk. However, this version appears not to include the change to section 313-55.5.3 of the ordinance that we understood may have been made at the February 9th Board hearing. Assuming the revision to the definition of Industrial Hemp in the ordinance was actually adopted by the Board (as indicated in attachment 4b of the application submittal), please provide an updated "certified copy" of the ordinance that reflects the correct, adopted version of the ordinance. If the revision to the definition was not adopted by the Board, please clarify whether the County requests the revision to be added as a suggested modification under this LCPA application.
2. **Clarification on Regulations for Other Industrial Hemp Uses.** Based on our reading of sections 313-55.5.2 and 55.5.4 of the proposed ordinance and our conversations with County staff, we understand that the proposed ban under this LCPA is intended to pertain only to the cultivation of industrial hemp and not to the distribution, manufacturing, processing, or retail sale of industrial hemp. It also is our understanding that the County has stated that the distribution, manufacturing, processing, and retail sale of harvested industrial hemp crop is to be regulated under the County's existing CCLUO for these cannabis-related activities and uses. However, reading the definition of "industrial hemp" under the proposed regulations (emphasis added)...

A crop agricultural product, whether growing or not, that is limited to types of the plant Cannabis sativa Linnaeus 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 (THC) concentration of no more than 0.3 percent on a dry weight basis...

...we note that the proposed definition pertains to product not only that is growing (cultivation) but also to product that is not growing (which we assume pertains in part to harvested product undergoing distribution, manufacturing, processing, and retail sale). We also note that the definition of "cannabis" under the existing CCLUO (CZR sec. 313-55.4), which regulates all types of commercial cannabis uses (cultivation, distribution, manufacturing, processing, etc.) expressly **excludes** "industrial hemp" altogether (emphasis added)...

"Cannabis" or "marijuana" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code

Reading the two definitions above together, regulations pertaining to all types of industrial hemp uses **do not** appear to be covered by section 313-55.4 (the

CCLUO), as the definition of cannabis under the CCLUO expressly excludes industrial hemp. Based on this conclusion and our understanding that the proposed ordinance only bans the cultivation of industrial hemp and does not otherwise regulate other industrial hemp uses (distribution, manufacturing, processing, etc.), please clarify whether: (1) the County therefore lacks regulations for industrial hemp uses involving distribution, manufacturing, processing, and retail sale (and if so, whether this raises any significant coastal resource issues); or (2) the County believes that the existing CCLUO regulations do in fact serve as regulations for the distribution, manufacturing, processing, and retail sale of industrial hemp product. If the County believes the latter, please explain how that is the case given the definitions highlighted above.

3. **Clarification on Impacts to Agriculture.** In comments we provided to County staff after the Board's February action and prior to submittal of this LCPA application, we asked for an explanation of how the various allowances for non-industrial hemp cultivation in the coastal zone under the proposed ordinance will not result in degradation or impairment of the agricultural viability of the commercial (non-hemp) cannabis industry from issues raised during the local process that led to the decision to ban industrial hemp cultivation in the County. In other words, why did the County choose only to ban the cultivation of industrial hemp rather than the cultivation of any amount of hemp given the expressed concerns from the agricultural community related to the risk of pollen drift/cross contamination, pests, and potentially other issues that could adversely impact existing agricultural activities in the County? The response provided with the application submittal does not address these issues but instead references the coastal resource protections required for cannabis cultivation under the existing CCLUO regulations, recognizing that those same requirements will apply to permissible (non-industrial) hemp cultivation in the coastal zone. We understand that the existing regulations and their coastal resource protection measures will apply to the commercial cultivation of up to 4,355 square feet of hemp per parcel. However, please explain how cultivating up to 4,355 square feet of hemp in the coastal zone will not result in degradation or impairment of the agricultural viability of the commercial (non-hemp) cannabis industry from issues raised during the local process that led to the decision to ban industrial hemp cultivation in the County (e.g., from pollen drift/cross contamination pests, etc.)
4. **Tribal Consultation.** Thank you for including a copy of the Tribal consultation letter sent by the County to Tribal representatives in September of 2019. Please provide copies of correspondence and communications with Tribal representatives on the proposed industrial hemp ban, if any.

It is the Commission's policy and responsibility to consult with Tribes who have requested consultation for proposed Commission actions within the Tribes' area(s) of interest. We will be consulting with Tribes pursuant to our policy, and if applicable, we will inform you of any additional information related to the proposed LCP amendment requested by Tribes.

5. **Clarification on Noticing.** Under Coastal Act sec. 30514(d), the executive director of the Commission may determine that a proposed amendment is de minimis if it would have no impact, either individually or cumulatively, on coastal resources, is consistent with the policies of Chapter 3 of the Coastal Act (commencing with sec. 30200), meets various noticing requirements, and does not propose any change in use. We are considering processing the amendment as a de minimis LCPA, but to do so, we need confirmation that the requisite noticing requirements of sec. 30514(d)(1)(A) have been met:

(A) The local government, at least 21 days prior to the date of submitting the proposed amendment to the executive director, has provided public notice, and provided a copy to the commission, that specifies the dates and places where comments will be accepted on the proposed amendment, contains a brief description of the proposed amendment, and states the address where copies of the proposed amendment are available for public review, by one of the following procedures:

(i) Publication, not fewer times than required by [Section 6061 of the Government Code](#), in a newspaper of general circulation in the area affected by the proposed amendment. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(ii) Posting of the notice by the local government both onsite and offsite in the area affected by the proposed amendment.

(iii) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

The application materials include some of the information needed to verify noticing in conformance with the above requirements. However, please provide evidence, if applicable, that the notice was published “in the newspaper of largest circulation from among the newspapers of general circulation in those areas” and date of publication as well as the contents of the notice so we can verify compliance with the above-cited noticing requirements for de minimis LCPA application processing.

6. **Noticing list.** To allow the Commission to notice all interested parties of upcoming actions on the proposed amendment, please provide a mailing list associated with the local public hearings that were held for the LCP amendment, including a list of all names and addresses of those who were sent public hearing notices. Please also provide the contact information (home and/or email addresses), if available, of any persons who participated during the local review process. Finally, please provide a mailing list for all other interested persons and public agencies listed under CCR sec. 13515(a) of the Coastal Commission’s administrative regulations¹ whether notified directly by the County or not.

¹ CCR §13515(a) states “At a minimum, all notices for public review sessions, availability of review drafts, studies, or other relevant documents or actions pertaining to the preparation of the LCP or LRDP shall be mailed to: (1) any member of the public who has so requested; (2) each local government contiguous with the area that is the subject of the LCP or LRDP; (3) local governments, special districts,

Elanah Adler

Re: Initial review of LCPA Application No. LCP-1-HUM-21-0034-2 (Industrial Hemp Ban)

Please don't hesitate to contact me with any questions or to arrange a meeting to discuss this letter and the information required to move the application forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa B. Kraemer". The signature is fluid and cursive, with the first name "Melissa" being the most prominent part.

Melissa B. Kraemer
Supervising Analyst

or port or harbor districts that could be directly affected by or whose development plans should be considered in the LRDP; (4) all of the state and federal agencies listed in Appendix A of the Local Coastal Program Manual; (5) local libraries and media; and (6) other regional or federal agencies that may have an interest in or be affected by the LCP. Any reference in this subchapter to "interested parties" or "public agency" shall include the aforementioned persons or groups."