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Cc: [Cea Higgins](#); [Richard Charter](#); [Rue](#); [Sarah Keiser](#); [Poison Free Malibu](#); [Padi Selwyn](#)
Subject: Local Coastal Plan - Comment Submittal
Date: Friday, October 01, 2021 5:29:19 PM
Attachments: [Chalfant Ruling red.pdf](#)
[California Attorney General Brief to Mountainlands Petition.pdf](#)

EXTERNAL

Dear Chair Tamura and members of the Planning Commission and Permit Sonoma,

Please see my comments below on the draft Local Coastal Plan. I thank you for your consideration, please do not hesitate to reach out to discuss further.

I also want to note that my comments, dated January 31 2020 were not included in the public comment records posted online (Public-Comments-2020-2021.pdf). The original email with these comments is also included in this correspondence. Please make sure they are added to the public record.

Best regards,
Megan Kaun
Sonoma Safe Ag Safe Schools
www.SonomaSASS.org

Comments on Policy Option: Pesticide Regulation

A public meeting was to be held to openly discuss further pesticide use regulations in public and private land in the coastal zone. This meeting was canceled and replaced with the publication of this policy paper. Unfortunately, this paper does not include the most up to date case law and California Attorney General Rulings and therefore makes incorrect conclusions. Santa Monica Mountains and Malibu Local Coastal Plans currently regulate pesticide use on public and private lands over and above what is required by the California Department Pesticide Regulation (CDPR). These LCPs have been held up in State Court and through rulings by the California Attorney General. Please see below for specific comments.

I am not necessarily advocating for a particular outcome for our Sonoma County LCP. I understand that locally we have a lot of factors to weigh that may be different from other areas in California. I do believe, however, that it is only right that we have an honest discussion about this option rather than declaring outright (falsely) that it is not an option for Sonoma County.

1. The "Charles A. Pratt Construction Company v. California Coastal Commission, 162 Cal. App. 4th 1068, 1075 (2008)" ruled that LCPs are state laws, not local laws. This is why a County cannot be sued for the language of an LCP. This is also why "preemption", which stops pesticide regulations by cities and counties, does not apply to LCPs.

The preemption law (FAC §11501.1) is at <https://codes.findlaw.com/ca/food-and-agricultural-code-formerly-agricultural-code/fac-sect-11501-1.html>

It includes this sentence exempting state agencies:

"(c) Neither this division nor Division 7 (commencing with [Section 12501](#)) is a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer."

This is why the Coastal Commission can regulate pesticides with LCPs.

2. Mountainlands Conservancy (an agricultural developer) sued the Coastal Commission (not Los Angeles County) over agriculture restrictions in the LA County Santa Monica Mountains LCP. One of their objections was that the LCP regulated pesticides and thus violated the preemption law.

The California State Attorney General weighed in and said pesticides can definitely be regulated in an LCP as an LCP is a state document.

See pdf page 18 section "**C. The Commission's Action Restricting the Use of Pesticides Is Consistent With Its Powers to Regulate Land Use Activities for Compliance with the Coastal Act**" in *California Attorney General Brief to Mountainlands Petition.pdf* attached.

Superior Court Judge Chalfant agreed with the Attorney General. See page 20 in *Chalfant Ruling red.pdf* attached.

Mountainlands Conservancy LOST, the Coastal Commission WON. Pesticides are currently being regulated by the Santa Monica Mountains LCP as well as the Malibu LCP on public and private land. The Ventura LCP is close to including specific pesticide regulations as well.

3. It is a common misconception that the California Dept. of Pesticide Regulation is in charge of ALL pesticide regulations. There are 14 states that do give exclusive power to regulate pesticides to one state agency. California is NOT one of the 14.

4. Pesticide use can be considered "new development". Guidance from the California Coastal Commission is that this distinction can be determined by each county so Sonoma County has a choice.

5. Sonoma County is already managing publicly owned land in the coastal zone in a very progressive way! On June 4 2019 Sonoma County Supervisors voted on a new policy on pesticide use that prohibited synthetic pesticide use on all agency maintained campuses, sidewalks, playing fields, plazas, playgrounds, and county-maintained libraries. In addition, all county departments submitted no-spray-zone maps that included where they would never use synthetic pesticides. This existing county regulation is actively in effect in our coastal zone and the details of it, including the existing for Integrated Pest Management before pesticides are ever used should be noted in this document.

6. The "right to farm" ordinance which protects farmers from adjacent resident's complaints against things like noise, manure smells, dust, lights, etc. does not provide farmers with the right to violate state pesticide use regulations per the CDPR. Pesticide drift, which often comes in the form of smells or "dust" or in water runoff remains prohibited by law.

On Fri, Jan 31, 2020 at 9:18 AM Megan Kaun <megan.kaun@gmail.com> wrote:

Dear Cecily and members of the Planning Commission,

I want to thank you for openly listening to me and other members of the public yesterday at the Local Coastal Plan hearing. I have included some additional information on the suggestion I made to incorporate a ban on synthetic pesticides (herbicides, insecticides, fungicides, and lethal rodenticides) as part of this updated document.

Last month, the [City of Malibu included a ban on pesticides](#) in their LCP with an exception for herbicide use for invasive species control (wording from Santa Monica's approved LCP attached). Los Angeles County had earlier provided precedent to do this in their LCP for Santa Monica Mountains ([SMM LCP Land Use Plan](#) and [SMM LCP Local Implementation Program](#)).

In June of last year, the County made a commitment to stop using synthetic pesticides (again, with some exceptions for invasive species management). Our LCP has the authority to incorporate this type of policy throughout the entire Coastal Zone.

I have included below some suggested policy language based on the Malibu and LA Local Coastal Plans. Please feel free to contact me directly if you would like to discuss this further.

Best regards,
Megan Kaun
Board Member, Sonoma County Conservation Action
773-677-1639 (cell)

Suggested language for pesticide ban in Sonoma County LCP

One of the main objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats, and water quality. Chapter 3 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against disruption of habitat values and that development should be designed to prevent impacts and be compatible with the continuance of those habitats. The use of synthetic pesticides, including insecticides, herbicides, fungicides, and lethal rodenticides, can have a negative effect on habitat values by directly impacting the health native species and habitats. Preserving and enhancing native species and habitats will help ensure Environmentally Sensitive Habitat Areas are protected and enhanced.

The use of synthetic pesticides, including insecticides, herbicides, fungicides, and lethal rodenticides or any toxic chemical substance that has the potential to significantly degrade biological resources in the Sonoma County Coastal Zone

shall be prohibited, except where necessary to address invasive plant species. The eradication of invasive plant species shall consider first the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls. Herbicide application shall be restricted to the least toxic product and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and used for a limited time in order to minimize adverse impacts to wildlife and the potential for introduction of herbicide into the aquatic environment or onto adjacent non-targeted vegetation. Application of herbicides shall not take place during the winter season or when rain is predicted within one (1) week of application. In no instance shall herbicide application occur if wind speeds onsite are greater than five miles per hour.

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