

McClenagan, Laura

From: Mark C Thurmond <mcthurmond@ucdavis.edu>
Sent: Tuesday, November 30, 2021 10:41 AM
To: Planning Clerk
Cc: Mark C Thurmond; 4arthurmond@gmail.com
Subject: Request for suspension of four cannabis permits in the Freshwater watershed
Attachments: Suspension of Freshwater Creek Cannabis Permits Nov 30 2021.docx

Follow Up Flag: Follow up
Flag Status: Completed

Dear Planning Clerk,

Please find attached our letter requesting the Planning Commission suspend cannabis permits connected to three parcels in the Freshwater watershed. We are also requesting a response to this request.

Please let us know if we are pursuing an improper format for submission of this request.

Thank you.

Mark and Audrey Thurmond

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To: Humboldt County Planning Commission
cc: Humboldt County Board of Supervisors

November 30, 2021

Re: Request for Suspension of Freshwater Creek Headwaters Cannabis Permits
Grow parcel APN's: 314-131-073; 314-131-074; 314-131-075.

We are requesting suspension of all permits, and thus cultivation, for the four grows on parcels referenced above until such time as the Freshwater Creek headwaters tributary resumes normal flow year-round and regular stream testing is implemented in order to protect watershed environment and to ensure the health, safety, and welfare of residents downstream.

We believe these permitted grows have for several years resulted in cumulative negative impacts on the Freshwater watershed health and environment, including that for our own property, and on potential health, safety, and welfare of those living downstream from these grows.

Multiple Cumulative Impacts of Cannabis Activities---History:

First impact: Problems began on September 27, 2019, while one of us (MT) was inspecting a 6' culvert that allows the southern headwaters tributary of Freshwater Creek to flow under our community road, about where the creek crosses the line separating parcels APN 314-131-096 and APN 314-131-019. Historically, the creek has been a perennial stream that drains a small draw extending down from Barry Ridge. Until about 3 years ago, the area around the culvert was fisher habitat. At about 1:45 PM on the 27th, I witnessed a large wall of water gushing down the small gulch into the culvert, where I was standing. I was hit by splash and mist of a foul, acrid-smelling brown water, probably equivalent to at least 4 or 5 of my 2500 gal tanks (>10,000 gal). The 'dump/spill' of potentially toxic water could only have originated from one or more of the upstream cannabis grows. I notified Cal F&W, which did not respond until October 8 (M.Renner). The Cal Hot Line had been notified, which triggered a HAZMAT team from county Public Health to collect samples at the culvert area on October 11. On November 11, a game warden, two biologists, and a person from North Coast Regional Water Quality Board did an onsite inspection of the creek and grow areas, hiking upstream from the culvert to the grows. That and a subsequent inspection by the warden found 'suspicious' evidence, but without eyewitnesses, nothing could be proven. Due to budget constraints on testing, Public Health gave their samples to Cal F&W, who threw the samples away.

Second impact: In early September 2020, the same tributary at this same culvert dried up completely for the first time ever. The creek remained bone dry for about 2 months. The tributary joins the other headwaters tributary (eastern branch), referred to locally as 'Little Freshwater', in parcel APN 314-131-096, and has no cannabis activities in its watershed. Flow for Little Freshwater never diminished from historical normal flow throughout the fall. Thus, coupled with the normal flow of area springs, some of which had dried up in the 1990's drought, it appeared that cessation of flow in the southern tributary was not drought-related, or solely drought-related. The dry-off at this time was reported to the same game warden who investigated the spill. He expressed concern, in part based on his previous observations at the grows, that water usage by the grows might be contributing to the dry-off, and suggested that the observation be reported to our supervisor, which was done, but with no response.

Third impact: In mid July of this year (2021), the same creek dried up again at the same location; it remained dry for about 4 months. This time, multiple supervisors were contacted; only one responded: in effect, 'we are in a drought'. The flow began to increase after the rain, but then a few weeks ago it slowed down considerably. As with last year, we witnessed no obvious reduction in the flow of Little Freshwater tributary, and all springs remained flowing, suggesting again, cessation of flow in the

southern tributary that runs through the three parcels with four permitted grows was not likely attributable to drought, or solely to drought. Rather, the water deprivation causing creek dry off was likely attributable to water taken from the watershed by the cannabis grows upstream.

Complaint of Cumulative Impacts:

Last week we attempted to file a complaint with Code Enforcement, namely that this creek, populated heavily with cannabis grows upstream, dried up two years in a row, when all other water sources did not, leading to the likelihood that cumulative water usage by all or some of the grows was responsible for some/all of the repeated creek dry offs. The county system does not allow online submissions, so we made our complaint in two phone calls. We were informed they would not investigate this complaint first because

“There was nothing [they] can do --- if it is a permitted grow” (Warren B),

and, as well, in a second call

“--we are not going to investigate just because a creek dried up on its own.” (Devin S).

Here we learned Code Enforcement presumes that, if a small creek populated by several grows dries up, the cause shall not be considered related to water diversions or wells of the grows; rather, it is because ‘it dries up on its own’. This statement seems at odds with an underlying historical premise of the FEIR:

“Cannabis cultivation operations within public and private lands have led to illegal water diversions; this has contributed to dewatering of some streams during a period of drought which likely has adversely effected aquatic habitat.” (FEIR)

We learned as well that Code Enforcement was also dismissing the possibility of diversions because a Google map suggested the grows were too far away from the creek, even though water could be pumped through buried, hidden PVC pipe. We were told that, even though on-site County inspections may not have taken place, annual permits of these grows were renewed through what was termed ‘desk reviews’, where growers self-report in-stream flow monitoring, testing, and other self-assessments. The growers’ self reporting apparently did not include any admission to water usage violations. We were informed that the burden was on us to show there were ‘straws in the creek’, which would require that we break the law and trespass.

They concluded by stating

“--we have no means to determine if diversions or wells have impacted the creek---”. (Devin S)

The ‘means’, which the County says it does not have, is referred to as a cumulative impact analysis, which is described briefly elsewhere.^a

Cumulative Impacts: Environmental impacts, health, and safety.

Environment: Cumulative impacts on the environment include contamination of Freshwater Creek resulting from a dump of contaminated, potentially toxic water into Freshwater Creek and repeated deprivation of water from the Freshwater watershed, such that one tributary dried up two years in a row.

Loss of water in a watershed, due to cannabis cultivation, is a function of the cumulative amount of water taken from the watershed by capture of rainwater, creek and spring diversions, and wells, which in this case accumulates for each of the four grows. In other words, it is not the water taken from the watershed by just one grow, rather, it is the water taken by all grows combined. Total cumulative impact on watershed environment must factor, as well, in what CEQA refers to as “*reasonably foreseeable probable future projects [events]*---, which would include the ominous cumulative impacts of our pernicious drought and increasing climate temperatures, none of which has been done.

Amount of water deprivation: At the last Planning Commission meeting, we heard that it was not known how much water can be consumed by cannabis grows, which varies by type of cultivation and many other factors. To estimate water consumption by these four grows, and thus an amount of water taken from this small Freshwater Creek watershed, we applied an estimate of average water consumption per square foot of cultivation from a 2018 survey of California grows (including some in Humboldt) by the University of California Agriculture and Natural Resources.^b Applying their average use per square foot of 0.18 gal/ft²/day per year for greenhouses (which underestimates usage of the outdoor grows), an accumulated cultivation area of 60,405 sq ft permitted for the three parcels in the Freshwater Creek headwaters would require 3,968,608 gallons of water per year (0.18 x 365 x 60,405) from rain water, creek and spring diversions, and wells, or about **4 million gallons**. This is equivalent to more than **12.2 acre-feet of water**.

The question we must all ask is ‘how could removal of 12.2 acre feet of water from a small headwaters tributary not adversely affect stream flow, such that the stream could even cease to exist?’, as occurred here. In the situation with these grows, we have another element of cumulative impact, namely the effect of repeated annual deprivations. The cumulative effects over time, year after year, for all grows combined are not considered; instead, the County considers only a one-time incremental effect of one grow. Damage to the environment does not completely recover in a year after cumulative deprivation; the damage accumulates and worsens, especially as we face a future of drought and increasing global warming, which constitute additional impacts not being considered. What will become of this tributary’s watershed ecosystem with continued deprivation of 12.2 acre feet of water per year, year after year?

Road and traffic safety impacts: The County’s process for evaluating and permitting cannabis activities also has ignored cumulative impacts multiple grows and other activities can have on roads and traffic safety. Instead, the county has considered a potential impact of a grow’s activities separately and independently from those of other grows. With respect to Kneeland, for example, the County did not consider cumulative impacts of cannabis-related traffic for the scores of grows utilizing Kneeland Road, or consider the heavy log-truck traffic, or heavy equipment traffic from power line maintenance and replacement. Instead of considering the impact of cannabis activities in total, the County has assessed only incremental effects. To be in compliance with CEQA, all activities must be considered in a cumulative impact analysis that assesses the cumulative impact of all the cannabis activities, as well as others that can cause an impact.

Health and safety: Our health and safety on parcel APN 314-131-082, as well that of others who live downstream in Freshwater, have been jeopardized by the dumping of contaminated water into Freshwater Creek. It was purely coincidental that one of us witnessed the dumping, and, thus, we have no reason to believe the event of September 27, 2019, was an isolated incident. We have every reason to believe it will be repeated. Despite claims made by Code Enforcement, we have no reason to believe

the growers are testing Freshwater Creek for pollutants, or that any county or state officials are testing, or for that matter care about pollution in Freshwater Creek.

CEQA

A fundamental principle underpinning CEQA is to prevent *cumulative impacts*. Section 15355 of the State CEQA Guidelines defines a cumulative impact as the condition under which

“two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts... The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time” (California Code of Regulations [C.C.R.]

Section 15355)^a

In other words, evaluation of one grow, located in an area of other grows, can contribute to a larger impact when all the other grows are considered in the aggregate. Neither County Planning nor the Planning Commission does this; permits are evaluated individually and separately without context to, or knowledge of, other grows in the area and, consequently, are approved without consideration for the *cumulative impact*. Planning Commission’s hands may be tied in this regard, in part because it has not received a report of a proper *cumulative impact analysis* that considers all grows in an area. Or, as stated by the AEP CEQA Portal:

“--- a project that you’re evaluating within a certain area may contribute to a larger impact/effect if you look at other projects in that area.”^a

In addition, the Commission is somewhat hamstrung in being restricted from access to maps of cannabis locations, which would permit visualization of congregations of grows and could prompt recognition of potential cumulative effects. It is unclear why the County has refused for years to give the Commission access to these maps. Had maps been available when these four grows were reviewed, the Commission might have realized the three contiguous parcels forming a cluster of grows along a small Freshwater Creek headwaters tributary could easily result in serious cumulative impacts and damage to the environment. Maps certainly would assist the Commission in meeting a key ordinance objective:

“Key environmental objectives of the proposed ordinance are to: establish requirements that identify the locations and circumstances where cannabis activities are appropriate without causing adverse environmental impacts, consistent with state agency regulations; ___”(FEIR)

Thus, the Planning Commission appears to be in violation of CEQA by not considering cumulative impacts in its decisions to approve cannabis permits, as CEQA says it should.

The water deprivation we now face with the Freshwater watershed, and ‘death’ of a headwaters perennial stream, exemplifies what can happen when CEQA is not followed.

In summary, we believe the permits on the referenced parcels should be suspended for the following reasons:

1. The County has not been truthful to the CEQA guidelines by failing to consider cumulative impacts, as is required. Instead, the County considers incremental effects only. These impacts include, but are

not limited to, cumulative impacts of the multiple cannabis operations on water deprivation of the Freshwater watershed, such that one headwaters tributary dried up two years in a row, for months at a time.

2. The County has not undertaken joint county-state regular monitoring or testing of streams, as required by FEIR, but instead allowed growers to make their own assessments and reports about water use and water pollution.
3. The County has not pursued a reasonable practice of annual, unannounced on-site inspections of cannabis activities, including violations of water usage.
4. For the many grows in the Kneeland area, the County has failed to consider cumulative impacts of cannabis-related traffic and traffic safety, as well as other potentially damaging and dangerous types of traffic, such as that for log-trucks and heavy equipment haulers.
5. There is a documented history of a potentially toxic dump/spill emanating from an upstream grow that may have already contaminated Freshwater watersheds, as well as our own property. There is no reason to believe dumping of contaminated water will not continue, given the failure to inspect and to allow 'desk reviews'. Such history constitutes an impact related to the cannabis grows, which, according to CEQA, must be taken into account in assessing cumulative impacts of the cannabis activities.
6. The County failed to conduct a proper cumulative impact analysis and report, as would be necessary and appropriate to inform the Planning Commission about prospects for cumulative impacts.
7. Because no impact analysis was conducted on the aggregate of the four grows, the Planning Commission failed to take into account potential cumulative impacts of cannabis activities on the Freshwater Creek environment and watersheds.
8. We have never been notified of any permit applications, even though we are downstream from the grows where we would be exposed to toxic spills and where we experience the water deprivation. We believe our right to be informed of these grows has been violated.
9. Taken together, considering all activities of all four permitted grows, the cumulative impacts reveal clear and present dangers to the environment and water viability of the Freshwater watershed, and to the health, safety, and welfare of those living downstream.

Respectfully,

Audrey R. Thurmond
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References.

- a. AEP CEQA Portal: https://ceqaportal.org/tp/AEP%20CEQA%20Portal_Cumulative%20Impacts.pdf)
- b. Wilson S, Bodwitch H, Carah J, Daane K, Getz C, Grantham T, Butsic V; First known survey of cannabis production practices in California, University of California Agriculture and Natural Resources, vol 73, no. 3, 2021.) <https://calag.ucanr.edu/Archive/?article=ca.2019a0015>