




AGENDA ITEM NO.

F3

COUNTY OF HUMBOLDT

Hearing Date: April 10, 2018

To: Board of Supervisors

From: John Ford, Director of Planning and Building 

Subject: **Zoning Ordinance Amendments**
Commercial Cannabis Land Use Ordinance
Case Number OR-17-02

RECOMMENDATIONS

That the Board of Supervisors

1. Receive and consider the staff report, the Planning Commission's recommendation to certify the Final Environmental Impact Report (FEIR) and adopt the ordinances, the FEIR [Attachment 10], and written comments received since the March 19, 2018 meeting [Attachment 11], open the public hearing, and accept public comment; and
2. Close the public hearing; and
3. Deliberate on the proposed ordinances and ordinance alternatives in Attachment 6; and

Prepared by Michael Richardson
Michael Richardson, Supervising Planner

CAO Approval TLFR Eastman/leg

REVIEW:
Auditor _____ County Counsel TLFR JS Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

PREVIOUS ACTION/REFERRAL:
 Agenda Order No. _____ F-2
 Meeting of: June 13, 2017
 Agenda Order No. _____ I-1
 Meeting of: April 11, 2017
 Agenda Order No. _____ B-1
 Meeting of: March 19, 2018

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor
Seconded by Supervisor

Ayes
Nays
Abstain
Absent

SEE ACTION SUMMARY

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: _____
By: _____

Kathy Hayes, Clerk of the Board

Recommendations (continued)

4. Adopt the proposed ordinances by taking the following actions:

- a. Adopt the attached Resolution No. ____ [Attachment 1] certifying the Final Environmental Impact Report (FEIR) and adopting the Mitigation Monitoring and Reporting Program; and
- b. Adopt Resolution No. ____ [Attachment 2] A Resolution of the Board of Supervisors of the County of Humboldt making findings pursuant to Humboldt County Code Section 312-50 concerning adoption of zoning ordinance amendments and consistency with the Coastal Act, and transmitting the coastal zoning ordinance, including all necessary supporting documentation, to the California Coastal Commission as an amendment to the certified Local Coastal Program for their review and certification in accordance with Public Resources Code Section 30514; and
- c. Adopt Resolution No. ____ [Attachment 3] A Resolution of the Board of Supervisors of the County of Humboldt making findings pursuant to Humboldt County Code Section 312-50 concerning adoption of zoning ordinance amendments not in the coastal zone.
- d. Adopt Ordinance No. ____ [Attachment 4] approving the proposed Coastal Zoning Ordinance changes amending sections 313-55.4, 313-55.3.11.7, 313-55.3.7 and 313-55.3.15 of Chapter 3 of Division 1 of Title III of the County Code; and
- e. Adopt Ordinance No. ____ [Attachment 5] approving the proposed Inland Zoning Ordinance changes amending sections 314-55.4, 314-55.3.11.7, 314-55.3.7 and 314-55.3.15 of Chapter 4 of Division 1 of Title III of the County Code; and
- f. Adopt Resolution No. ____ [Attachment 7] establishing a limit on the number and acres of Cultivation Permits; and
- g. Direct the Clerk of the Board to publish Summaries of the Ordinances within 15 days after adoption by the Board, along with the names of those Supervisors voting for and against each ordinance [Attachments 8 and 9] and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the full text of each adopted ordinance along with the names of those Supervisors voting for and against the ordinance; and
- h. Direct Planning Staff to prepare and file a Notice of Determination with the County Clerk and Office of Planning and Research.

SOURCE OF FUNDING:

The contractual and salary funding for this work is included is in the General Fund contribution to the Long Range Planning unit, 1100-282.

DISCUSSION:

These proposed ordinances are a comprehensive update of the Commercial Cannabis regulations within Humboldt County applying to both the Coastal and Inland areas. The ordinances were initially presented to the Board for consideration during a Special Meeting held on March 19th 2018. During the hearing staff summarized the public process for EIR/ordinance development and key policy concerns, and presented a section by section overview of the draft regulations.

The Public hearing was continued to allow staff to bring back options for several topical issues raised at the hearing. The Board also allowed people to submit additional comments.

Alternative Ordinance Language

In response to public comments and Board direction received during the meeting, staff developed alternative ordinance language in four areas to provide options for Board consideration. The alternative language is presented in Attachment 6. The alternatives correspond to the following:

- 1) Proximity of Commercial Cannabis Operations to School Bus Stops;
- 2) Limitations on the total acreage which may be held by a Person;
- 3) Constructing new facilities for Indoor Cultivation within resource production zoning districts; and
- 4) Zoning Clearance Certificates for Cultivation in community areas submitted under prior the ordinance.

1) School Bus Stop Setbacks: The Planning Commission reviewed the issue of the 600-foot school bus stop setback twice. Their final recommendation is to remove the 600 foot setback for school bus stops from the ordinance except setbacks from cannabis manufacturing activities involving flammable extraction. The Board discussed the Planning Commission’s decision and requested staff to return with options for including school bus stop setbacks.

Two alternatives are presented for the Board’s consideration. One would re-establish the 600 foot setback and allow for a reduction in the setback through approval of a Special Permit. The special permit is an administrative level permit which requires public notice (including the affected School District. The second option would provide for a 200 foot setback without provisions to allow a reduction in the setback.

Additional alternatives are presented which provide relief from the school bus stops setback for commercial activities occurring within enclosed settings which include control odor, including Cannabis Support Facilities, Indoor Cultivation, and Manufacturing, respectively. Each of these alternatives can stand alone or in combination with others.

2) Limitations on the total acreage which may be held by a Person:

Though not traditionally a land use concern, the ordinance currently includes provisions for restricting the total acreage of cultivation that may be held by a person. The Planning Commission initially imposed a restriction on the number of permits in 2015 during their review of the existing Commercial Medical Marijuana Land Use Ordinance (i.e. Ordinance “1.0”), which included a limit of 4 total permits (of any kind) that could be held by a person. These restrictions were carried over verbatim in the first draft of the proposed amendments (Ordinance “2.0”).

During their review of this proposed ordinance, the Planning Commission chose to revise the restrictions to impose a limit on the number of acres of cultivation which a person could hold (4 acres) in lieu of limiting the number of permits.

Alternative 2 provides options for further refining the amount of cultivation area a person can control and a refinement of who constitutes a person. Alternative 2A would change the limit on total acreage from 4 to 8 acres to align with the upper limit on higher acreage allowances found elsewhere in the regulations available to eligible parcels 320 acres or larger in size.

Another option removes all limitations to consolidation of permits (Alternative 2B). This option comes with the understanding that it is very difficult to enforce the nuances of ownership and what constitutes a person.

At the state level, both the Medical Marijuana Regulation and Safety Act (AB243, AB266, and SB643) and Adult Use of Marijuana Act (Proposition 64) included provisions for limiting vertical integration, the consolidation of entitlements, and issuance of large cultivation entitlements. However, state licensing authorities appear reluctant to commit to meaningful restrictions on the consolidation cultivation licenses. This became apparent with the loophole created within the CalCannabis emergency regulations enabling aggregation of smaller cultivation licenses in addition to, and in excess of, the statutory acreage limits applied to medium cultivation licenses.

Commercial cannabis permits and applications in Humboldt County are held by various types of corporations –most often limited liability corporations. These companies are composed of a series of corporate officers who often also have roles as the owners (classified as “members” of the LLC). Requesting and reviewing corporate documents and monitoring changes in organizational structure and shareholders for the thousands of permit applications under review by the County is an administrative burden without necessarily having the desired effect of preventing the consolidation of permits.

The remaining options tackle ways to more closely refine the definition of “Person” for purposes of permit counting, specifically exempting investors and financiers but not certain significant shareholders. All options incorporate concepts and language designed to differentiate between different forms of ownership and financial interest, consistent with the current CalCannabis licensing regulations. Alternative 2C applies the permit limit more broadly by using a definition of “Person” that includes majority shareholders, CEO’s, and Board members, and excludes Investors and Financiers.

3) Constructing new facilities for Indoor Cultivation within resource production zoning districts:

Alternative 3 would allow up to 10,000 square feet of Indoor Cultivation within new structures on properties zoned AE - Agriculture Excusive, AG - Agriculture General, FR - Forestry Recreation, and U - Unclassified. The Alternative includes required findings designed to prevent fragmentation of agricultural properties through clustering and careful siting standards for the proposed new cultivation facilities, and prohibits the development of new buildings for indoor cultivation on properties not served by a road meeting the Category 4 standard. Alternative 3 does not include provisions for the similarly zoned properties within the Coastal Zone, in recognition of feedback received from staff from the Coastal Commission.

4) Zoning Clearance Certificates for Cultivation submitted under current ordinance:

Applications for ministerial cultivation permits filed under the current ordinance (“1.0”) continue to be a source of considerable public concern and debate where located near cities, Tribal Lands, or certain Community Planning Areas (CPA’s). Under the current regulations, cultivation permit applications within many of these areas may be ‘principally permitted’ with a Zoning Clearance Certificate due to their agricultural zoning, level terrain, prime agricultural soils, and parcel sizes. Processing of these types of applications is not subject to discretionary review, and does not provide for notification of the public or surrounding property owners, or any public hearing.

This section as approved by the Planning Commission would have required all Zoning Clearance Certificates to retroactively comply with criteria to mitigate odor. There are 9 applications currently approved which fall into this category, and 144 which have not yet been approved. This section should be amended to require that all applications which have not yet been approved comply with these criteria.

Other Ordinance Changes

In addition to the ordinance alternatives in Attachment 6, staff recommends the Board consider two changes made by staff since the prior meeting shown in ~~strikeout~~ and underline text in the proposed ordinances in Attachments 4 and 5. The first clarifies the permit cap for watersheds applies to all permits for commercial cultivation and propagation activities (outdoor, mixed light, indoor, and nurseries). The second substitutes new “Purpose and Intent” language provided during public comment at the prior meeting. The new wording is more positive and aspirational than the previous version, and seemed to be well received by the Board.

Cultivation Permit Cap in Watersheds

At the previous meeting, staff provided a brief synopsis of the Cultivation Permit Cap presented to the Planning Commission. It included the recommendation to set a cap at 5,000 on the number of cultivation applications approved under the existing and proposed new ordinance, and a table showing a suggested distribution of the applications among watersheds in the County. It is to be reviewed on an annual basis to adapt the permitting program to changing conditions on the ground as needed. The Planning Commission discussed the permit limit and distribution, and eventually recommended a permit cap be included in the ordinance, and the details of the permit limits within each watershed be established by the Board through a separate resolution.

Attachment 7 presents three alternative cap resolutions for the Board’s consideration. They all include a provision to be reviewed on an annual basis to adapt the permitting program to changing conditions on the ground as needed. The initial number of 5,000 cultivation permits presented to the Planning Commission in Attachment 7A was based upon a rough doubling of the original 2,400 applications received prior to December 31, 2016. This is far less than the estimated 15,000 grows that exist in Humboldt County.

The concept presented by the California Department of Fish and Wildlife (CDFW) of protecting certain priority watersheds by allowing no new cultivation in certain designated watersheds has merit. Staff would recommend that Attachment 7B, subtracting the cultivation permits from the priority watersheds, is an appropriate refinement.

In further conversations with other interested organizations desire was expressed to see a far lower number of cultivation sites, which is presented in Attachment 7C. This alternative would allow no new cultivation permits in the priority watersheds identified by CDFW. And while 3,000 cultivation sites may seem low, if one considers there are currently approximately 1,800 applications active for cultivation and non-cultivation cannabis activities, and if 1,500 of these cultivation sites are approved, then the 3,000 number would represent a doubling of the number of cultivation permits that have been applied for and are likely to be approved. Staff recommends this alternative as appropriate to balance concerns expressed about watershed protection and to allow a sufficient number of permits to begin accepting applications under the updated ordinance.

Since this is a watershed protection effort, areas with sufficient water, based upon infrastructure and water supplies established to support prior water-intensive industrial uses, should be exempted from the cap. This primarily applies to the Humboldt Bay Municipal Water District infrastructure on the Samoa Peninsula, and this exemption has been included in the ordinance language.

The Board received more recent comments from the Friends of the Eel River that the cap should be set based on scientific data demonstrating the cultivation allowed can be supported by the instream flows of each watershed after taking into account the needs of the other beneficial uses, particularly threatened fish species and other wildlife. While staff agrees this would be another appropriate cap for the Board's consideration, the data to support this alternative is not available at this time.

Response to March 28, 2018 Comments from the Coastal Commission

The version of the CCLUO that would apply in the coastal zone is presented in Attachment 4. At the prior meeting, staff informed the Board the coastal CCLUO was revised to address the concerns expressed by Coastal Commission staff in their letter dated February 2, 2018. More recent comments from that agency highlighted the need for a consistency analysis between the proposed ordinance and the County's six Local Coastal Plans. That consistency analysis is now included in Attachment 2, the resolution making the findings the proposed ordinance is consistent with the General Plan and the Coastal Act.

Response to Friends of the Eel River Comments

Comments from the Friends of the Eel River (FOER) organization received on March 19th and March 28th advocate for prohibiting all cannabis activities within subwatersheds identified by CDFW as impacted or "stronghold" subwatersheds – those with high capacity for fish habitat. FOER also advocates requiring Use Permits for all cultivation proposals within the listed watersheds, with approval dependent upon completion of an analysis of cumulative watershed-specific effects, and application of mitigation program for net reduction of sediment inputs and water diversions. Where an analysis cannot be provided or reductions achieved, the project would not be approved.

FOER's correspondence includes a critique of:

- the EIR's treatment of environmental baseline and watershed scale in the Cumulative Impact Analysis

- Compliance with California’s Nondegradation policy applicable to North Coast streams and rivers
- Proposed Watershed Cap Alternatives
- Treatment of Rodenticide Use and potential effects on wildlife.
- The Ordinance and EIR’s consistency with Goals, Policies, and Standards of General Plan concerning water resources and land use

Attachment 11 provides detailed responses to the FOER’s comments. In summary, the Friends of the Eel River letters and the support materials from William Trush and the Klein report do not bring new environmental issues that the Draft and Final EIR did not already address. Attachment 3 of this staff report explains how the CCLUO is consistent with the 2017 Humboldt County General Plan. While the FOER’s suggestions for alternative language should be considered by the Board, no changes to the ordinances or environmental documents are necessary to comply with the requirements of CEQA or other state laws.

Response to Comments from the Yurok Tribal Council

In an April 2, 2018 email from Elly Hoopes, she informed County Counsel that after some discussion, the Yurok Tribal Council requested changes to the CCLUO shown below in **bold**:

“55.4.5.1.5 Areas of Traditional Tribal Cultural Affiliation

The County shall engage with local Tribes before consenting to the issuance of any clearance or permit, if Commercial Cannabis Activities occur or are proposed within an Area of Traditional Tribal Cultural Affiliation. This process will include referral of the project to and engagement with the Tribe(s) through coordination with their Tribal Historic Preservation Officer (THPO) or other tribal representatives. This procedure shall be conducted similar to the protocols outlined under SB 18 (Burton) and AB 52 (Gatto), which describe “government to government” consultation, through tribal and local government officials and their designees. During this process, the tribe may ~~request~~ **require** that operations associated with the clearance or permit be designed to avoid, minimize or mitigate impacts to Tribal Cultural Resources, as defined herein. Examples include, but are not limited to: conducting a site visit with the THPO or their designee to the existing or proposed cultivation site, requiring that a professional cultural resources survey be performed, or requiring that a tribal cultural monitor be retained during project-related ground disturbance within areas of sensitivity or concern. **No permit shall be issued without the express written consent of the Tribe.** The county shall request that a records search be performed through the California Historical Resources Information System (CHRIS).”

The ordinance changes requested would transfer permit jurisdiction to the Yurok Tribe, which is similar to the request by the City of Fortuna to transfer permit jurisdiction to them in their Sphere of Influence.

FINANCIAL IMPACT:

The cost of preparing the FEIR was \$231,927.00. Staff costs for preparation and review of the ordinance total \$210,838.10 at the time this report was drafted. These costs are supported by the General Fund contribution to the Planning and Building Department, Long Range Planning Unit's FY 2017-18 budget.

The proposed ordinance is consistent with the Board's 2017 Strategic Framework as it will help enforce laws and regulations to protect residents, create opportunities for improved safety and health, encourage new local enterprise, and support business, workforce development and creation of private-sector jobs.

OTHER AGENCY INVOLVEMENT:

The following agencies have been involved in the review of the ordinance:

- Humboldt County Agricultural Commissioner
- Humboldt County Department of Health and Human Services
- Humboldt County Office of Education
- Humboldt County Public Works Department
- U.S. Army Corps of Engineers,
- California Coastal Commission,
- California Department of Consumer Affairs, Bureau of Cannabis Regulation,
- California Department of Fish and Wildlife, Region 1,
- California Department of Food and Agriculture,
- California Department of Forestry and Fire Protection,
- California Department of Parks and Recreation,
- California Department of Pesticide Regulation,
- California Department of Public Health,
- California Department of Transportation, District 1,
- California Department of Water Resources,
- North Coast Regional Water Quality Control Board (Region 1),
- North Coast Unified Air Quality Management District, and
- State Water Resource Control Board.

ALTERNATIVES:

In addition to the alternative ordinance language and the permit cap alternatives described above there are alternatives presented in the EIR for the Board to consider.

ATTACHMENTS:

- Attachment 1: Resolution No. _____, certifying the Final Environmental Impact Report (FEIR)
- Attachment 2: Resolution No. _____, making findings pursuant to Humboldt County Code Section 312-50 – concerning adoption of zoning ordinance amendments for the coastal zone and Title 14 §13551 of the Administrative Code and Public Resources Code, §30200 (Coastal Act)
- Attachment 3: Resolution No. _____ A Resolution of the Board of Supervisors of the County of Humboldt making findings pursuant to Humboldt County Code Section 312-50 concerning adoption of zoning ordinance amendments not in the coastal zone.
- Attachment 4: Ordinance No. _____, amending sections 313-55.4, 313-55.3.11.7, 313-55.3.7 and 313-55.3.15 of Chapter 3 of Division 1 of Title III of the County Code
- Attachment 5: Ordinance No. _____, amending sections 314-55.4, 314-55.3.11.7, 314-55.3.7 and 314-55.3.15 of Chapter 4 of Division 1 of Title III of the County Code
- Attachment 6: Ordinance Alternatives
- Attachment 7: Resolution Establishing a Cap on the Number Permits and Acres Which May Be Approved For Open Air Cannabis Cultivation
- Attachment 8: Post-Adoption Summary of Ordinance, amending Chapter 3 of Division 1 of Title III of the County Code For Areas Within the Coastal Zone
- Attachment 9: Post-Adoption Summary of Ordinance, amending Chapter 4 of Division 1 of Title III of the County Code For Areas Outside the Coastal Zone
- Attachment 10: Final Environmental Impact Report
- Attachment 11: Written Public Comments Received after the March 19, 2018 Public Hearing