

To: Planning Commission, Humboldt County's

November 17, 2021

Re: Cannabis Discussion, Meeting of Nov 18, 20221

email attachment: Cannabis Discussion Planning Commission Thurmond Nov 18 2021

Dear Commissioners,

Thank you for taking the time and agenda for this discussion; it seems long overdue.

Clearly, there are many factors involved in the general public's disappointment and anger regarding cannabis permitting and enforcement, which cannot be addressed properly, at least by me, in one brief discussion. Nevertheless, I would like to offer some thoughts for your consideration in recommending a pause in permitting activities, such that a thorough assessment can be made and an ordinance revision undertaken.

A. Disenfranchisement and failure to protect residents.

1. The staff report is helpful in understanding the process undertaken by the Planning Department, and, on the surface, would appear rigorous, as the report claims. For those of us who have had some first hand experience with cannabis issues, however, whatever rigor might appear on the surface does not seem to manifest in real life. We know about the county not 'taking the lead' to engage Fish and Wildlife, or the Sheriff, or Water Resources Board; and we know about Fish and Wildlife, the Sheriff, and Water Resources not standing up. We know the 'complaint-driven' enforcement does not work. We know about the illegal water hauling, water dumping into streams, and noisy generators that go unchecked. We know about the special outside interests behind the high bidding for land and financing of industrial indoor mega-grows, where so many of the profits leave the county. And, sadly, we know about elected and appointed officials clearly conflicted by financial interests in the cannabis industry who are in pivotal decision making positions. So, one has to wonder why the county believes it is doing such a good job, when there are so many complaints, law suits, and now special discussions by the Commission for purposes of making recommendations.

I believe the answer, at least in part, lies in the glaring omission in the long list of various bureaus, firefighters, departments, tribes, cities, agencies, etc. that are consulted or that give their stamp of approval to permit applications. The omission is the keystone to building a successful cannabis program. The omitted group is not currently part of the approval process; it is not consulted and typically has no knowledge of, or say in, permit applications. That group is the people. Specifically, it is county residents whose neighborhoods have been infiltrated by cannabis grows and who are the ones who have to deal with the environmental problems, water problems, criminal activity, obstruction, and various issues of health, welfare, and safety, from which they were not protected by the ordinance, code enforcement, or the Sheriff.

2. Section 55.4.5.1.4. of Ordinance 2.0 describes areas considered by the county for resident notification and a public hearing, which by default informs us of all other areas where residents are not to be notified or allowed a public hearing. These excluded areas encompass neighborhoods, like Kneeland, where, for residents, notification of permitting and any public hearing option is disallowed.

3. Exclusion of areas like Kneeland creates two problems for the ordinance and regulations:

a. The ordinance invalidates itself. By excluding areas like Kneeland, and, because people in these areas are residents of the county, the ordinance thus falsifies itself (makes a false statement) in that the ‘regulations’ cannot ‘intend’ to ‘ensure public health, etc of [all] residents of the county’, as stated under 55.4.2 PURPOSE AND INTENT, because it has excluded residents in areas like Kneeland:

“These regulations are intended to ensure the public health, safety and welfare of residents of the County of Humboldt, ---” (‘all’ residents is clearly implied)

The problem can be seen in one of two ways: either the statement of purpose and intent is false, in that the intent is not, in truth, that all residents would be ensured of protection, or the restriction to residents *only* in specified areas is incongruent with the statement of intent, which applies to *all* residents, not just those specified. Either way, the contradictory statements would invalidate legitimacy of the ordinance as a legal document.

b. Even if one ignores the ordinance’s self-invalidation, the exclusion of county residents (in the areas not specified in 55.4.5.1.4) from opportunity to be notified and to have a public hearing unfairly removes them from consideration for protection of their health, safety, and welfare. That is, it not only does not ‘ensure’ (which means to guarantee), health, safety, and welfare of residents, it also removes a significant rural segment of the citizenry both from even being notified of a potential problem as well as from any opportunity for receiving protection via a public hearing. The 14th amendment guarantees ‘equal protection of the laws’, and says that we cannot be denied protections without ‘due process’, and our own state constitution gives us the right to be notified. The ordinance does not provide any process, logic, or reasoning for denying these residents the same protection it provides to SOI areas, tribes, special communities, etc. Clearly, the ordinance disenfranchises a highly significant group of county residents by disallowing notification and a hearing, and, consequently, does not and cannot ‘--- ensure [their] public health, safety and welfare ---’.

B. A sustainable and reasonable number of grows and acres under cultivation.

The staff report suggests we are forced to use cannabis activity in 2016 as a CEQUA baseline. This so-called requirement has let the county proceed on ‘a fool’s errand’. Let’s set aside CEQUA for a moment and think of an analogy of cattle ranching, and considering stocking density and long-term viability of a cattle ranch. An important objective would be to manage the range and herd in a way that maximizes both the productivity of the ranch (selling cattle) and the long-term sustainability of the land, such that future generations will benefit. If too many cattle feed on too few acres, the land will suffer, the soil will become depleted, weeds will take over, and subsequent years will see a diminished

carrying capacity of the land and less thrifty cattle. Of course drought and climate change also will affect stocking density. We would not overstock this range just because someone or some agency told us to do so; the land would deteriorate, and our welfare would suffer.

So why have we arbitrarily established some number of grows and acreage as appropriate for Humboldt? Instead of attempting to live with an unreasonable and unjustified 'baseline' activity level, I suggest we should be asking what is the optimum number of grows or acreage, given the potential carrying capacity for cannabis cultivation in our county, which also places a high importance on improving and protecting the environment, scarce water, other agriculture, as well as mitigating global warming and ensuring health, safety, and welfare of its citizenry. There are many mouths at the feed trough that need to be considered.

C. Permit locations and their wells impact watersheds differently.

1. One question not addressed is which watersheds are impacted by wells that hit water-bearing strata common to two or more watersheds. Much of Humboldt county's geology, known as the Franciscan Complex Formation, characteristically has varying sedimentary layers of clay, sand, gravel, and rock. A formation common to one side of a watershed divide generally will be similar to that for a different watershed on the other side of the divide. This means that water-bearing strata in a gravel or sand layer can be expected to carry through from one side of a watershed to the side of the adjacent watershed, such that water drawn from one watershed well could draw down water on the other side of the divide in a different watershed. This phenomenon would be more likely for wells at higher elevations. For example, wells along the Kneeland ridge in the Eureka Plain watershed will likely impact water dynamics in the adjacent VanDuzen watershed, and perhaps even in the Mad River watershed, and visa versa. Thus, it is not logical to assume that a well in one watershed will not negatively impact water in the adjacent watershed, and any water, including rainwater, used by cannabis grows in these watershed border areas should be considered to impact multiple watersheds, not just one.

2. Wells and other water diversions at higher altitudes of a watershed will impact watershed viability differently than wells and diversions at lower elevations, such as in alluvial plains. Removal of water from a watershed through wells and diversions at high elevations will negatively impact water availability throughout the natural drainage that the water would have taken, had it not been diverted. In contrast, water taken from an area lower in the watershed will obviously not impact water availability above that point (water flows downhill). Thus, with respect to watershed habitat and viability, wells and other diversions high up in the watershed will be expected to have a wider and more extensive negative impact on the watershed than would wells/diversions in the lower plains.

3. Permitting locations at higher elevations will allow more extensive distribution of pollutants throughout the watershed, compared to locations at lower elevations. Using the same logic as in (C2.) above, potential pollutants discharged or escaping from a cannabis grow located at a high elevation will flow down through soil and/or water to potentially contaminate the entire drainage area downhill from the polluting grow; whereas pollutants released from a grow farther downstream will contaminate

areas downstream from that grow, but not above it. Thus, the risk of widespread contamination of a watershed is higher for grows located higher up in a watershed, compared with those at lower elevations.

4. In summary, risk assessments, and thus decisions about whether permits should be allowed, should consider shared watershed exposure and watershed elevation in order to mitigate water deprivation and pollutant contamination.

D. Self Governing

The issues and controversies surrounding cannabis permitting and enforcement, along with our collective inability to resolve differences, beg questions about the County's ability to self govern and uphold the rule of law. Certainly the Covid crisis precluded important face-to-face discussions that did not help; we have been necessarily isolated from each other.

Taken together, over many years now, however, these complaints, letters, and law suites represent an indictment not just on the ordinances and law enforcement programs, but also on our ability and willingness to undertake self government. It *appears* (emphasis here) the people are no longer in a position of self government; rather the process is being 'coordinated' by very influential interests groups and by public officials who would appear more closely tied to those groups than to the people or to the county's best interests. Is this just an 'appearance', or is it real?

Still, there is a need for more listening, on all sides, and more attention to the concerns and anger expressed through letters, lawsuits, and speakers. As noted above, county residents who are the most likely to be hurt by cannabis activities in their neighborhood should not be excluded from the permit approval process. It seems that the 'self' in self government is being removed or side-stepped.

E. Model Validation

Six years ago, the county faced a monumental problem of what to do with tens of thousands of illegal cannabis grows that were destroying environments, introducing more and more crime, sapping our water, and promoting climate change. In all fairness, and with appreciation for the task then at hand, the county came up with a model for permitting and code enforcement, that tried not to 'throw out the baby with the bathwater'. It may have seemed to be a good working model, for a while. Now, as with any model, there comes a time when we must ask 'Is our model valid?'. Does it accomplish what we want it to accomplish, especially considering new, or newly recognized, facts, like pernicious drought and the emergencies of climate change, or unanticipated problems and concerns. What have the plethora of experiences and complaints taught us about how the process could work better?

I believe, it is timely now to declare a pause in permitting that allows for analysis and critical assessment of what needs to be done. Just as we would want to stop flying a plane with a flawed altimeter until it can be fixed, we should not persist in causing more harm by continuing to issue

permits. Rather than allow this morass to continue playing out law suite by law suite, which will cost tax payers dearly in legal awards, I urge a timeout in order to step back and re-think what we have done and what we should do.

Concluding Thoughts

It would greatly benefit the county to have a well thought out strategic plan, for long-term management and use of our precious, culturally sacred, and scarce water, before we continue further with permitting for a water thirsty industry in such an environmentally sensitive county. To proceed without a plan would be embarking on another 'fool's errand'.

I would implore that for all planning there be immediate and emergency consideration to mitigate causes and impacts of the climate change crisis, which is before us now, at this moment. With regard to cannabis activities, such consideration should include all use of fossil fuels, ranging from generators and 4-wheelers to transportation of labor.

Prerequisite to proceeding further is a sound, justifiable foundation in facts and reasoning, coupled with a clear perspective of what we want Humboldt County to be. What shall be the essence or the gist of the county? What is the dream for Humboldt? I believe that to proceed otherwise would again be a 'fool's errand'.

One can appreciate the strong desire by some supervisors for the cannabis industry to generate lots of money and for local businesses and shops to reap the benefits. But, please consider the big picture; there are many industries to support, and without Humboldt county's precious natural environment, where would we all be.

Finally, I would ask that residents who have become, or will become, victims of cannabis incursions into their neighborhood be treated respectfully, and be given the right to be informed sufficiently in advance and to be at the approval table when permit applications are being considered or re-evaluated.

Thank you.

Respectfully,

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Kneeland CA