



COUNTY OF HUMBOLDT

For the meeting of: 8/17/2021

File #: 21-1136

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Implementation of a Water Quality Improvement Grant Program with Funds from the Commercial Cannabis Land Use Ordinance (CCLUO) Mitigation and Remediation Fund (Case # PLN-2021-17061)

RECOMMENDATION(S):

That the Board of Supervisors:

1. Receive and consider the staff report, open the public hearing, and accept public comment;
2. Close the public hearing;
3. Deliberate on the proposed Mitigation and Remediation Grant Program Guidelines;
4. Approve the Mitigation and Remediation Grant Program Guidelines by adopting Resolution No. _____ [Attachment 1] making findings the Guidelines are exempt from environmental review pursuant to CEQA;
5. Authorize the Auditor-Controller to set up a new fund titled "CCLUO Mitigation and Remediation Fund" with fund number _____;
6. Authorize the Auditor-Controller to transfer One Million Dollars (\$1,000,000) from General Fund Contingencies into the CCLUO Mitigation and Remediation Fund;
7. Direct Planning staff to administer the Mitigation and Remediation Grant Program following the approved Guidelines;
8. Authorize the Auditor-Controller to transfer Five Hundred Thousand Dollars (\$500,000) from General Fund Contingencies into the Department of Public Works Roads Fund (budget unit 1200888).
9. Direct the Department of Public Works to oversee expenditure of the funding for high-priority projects that reduce sediment delivery in the Redwood Creek and Sprowel Creek watersheds in Southern Humboldt as identified in Attachment 3 in 2022, or as soon thereafter as practicable;
10. Direct Planning staff in consultation with the Department of Public Works to provide reports to the Board of Supervisors by the end of the calendar year in 2022 and continuing through 2026 assessing the effectiveness of the program in improving water quality in the targeted watersheds

and (if needed) recommending modifications to the Guidelines to enhance the program's effectiveness in improving water quality in the targeted watersheds; and

11. Consider the request from staff in the California Department of Fish and Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB) for the use of \$16,000 in Grant funds for an assessment of Sprowel Creek Road by Pacific Watersheds (Attachment 4).

SOURCE OF FUNDING:

The salary funding for preparing this staff report is included in the General Fund contribution to the Long-Range Planning unit, 1100-282. The first year of the four-year Mitigation and Remediation Grant Program is to be funded through a transfer of \$1,100,000 from General Fund Contingencies. The remaining three years of the Program will be funded through twenty percent (20%) of the collected fines and penalties from cannabis civil enforcement actions, up to \$1,100,000 each year, determined through the annual budget process based on the number of sites needing remediation and availability of funding. In both fiscal years 2020-21 and 2021-22, an additional \$200,000 was allocated per the agreement, totaling an additional \$400,000.

The Planning and Building Department will return at a later date with a supplemental budget request to support this item.

DISCUSSION:

This item involves approving guidelines and implementation of a new grant program administered by the county that seeks to improve water quality in targeted watersheds impacted by cannabis cultivation. It implements an October 2019 settlement agreement between Friends of the Eel River and Humboldt County regarding the Commercial Cannabis Land Use Ordinance (CCLUO) - Case # CV180495.

In this agreement, the Board authorized creation of a "Mitigation and Remediation Fund" with \$1,100,000 from the General Fund the first year, and up to that same amount for the next three years with funding from fines and penalties of cannabis civil enforcement actions, potentially augmented by other grants and/or funding from other sources as directed by the Board in the annual budget review process. In both fiscal years 2020-21 and 2021-22, an additional \$200,000 was allocated per the agreement, totaling an additional \$400,000 to be transferred from Contingencies for this Program.

The Mitigation and Remediation Grant Program is directed at sediment reduction projects on roads serving cannabis cultivation sites. As detailed in the Program Guidelines in Attachment 1, grants will be awarded for improvements to public and private roads for the specific purpose of protecting water quality in streams, creeks, and rivers. At least eighty percent (80%) of funds will be used for physical road improvements. Properties in the abatement process are not eligible for funding under this Program.

The Program will prioritize awards of grant money to cannabis cultivators and road maintenance associations based upon the expected water quality benefits that would result from the road improvement projects given the following criteria:

- 1) Highest priority will be given to projects with one or more stream crossings and corrective grading within and close to a stream channel.
- 2) Improvements to roads in priority sub watersheds identified in Resolution 18-43 (Resolution Establishing a Cap on the Number of Commercial Cannabis Cultivation Permits and Acres - Attachment 2)
- 3) Roads which will not be maintained by a Road Maintenance Association and serving cultivation sites approved under the 2016 Commercial Medical Marijuana Land Use Ordinance when the improvements will bring the road into compliance with the standards of the 2018 Commercial Cannabis Land Use Ordinance.
- 4) Locations in highly erodible soils, steep slopes, proximity to watercourses, and the presence of impacted fisheries.

The Program Guidelines in Attachment 1 describe the procedure for submittal, review and approval of the sediment reduction projects. A notice of funding availability will be published in the first week of September, and applications for grants will accepted by the Planning Department until October 31 of each year of the four-year program beginning in 2021. The applications will be evaluated for completeness using a checklist, and complete applications will be referred to the Department of Public Works, the California Department of Fish and Wildlife, and the Regional Water Quality Control Board for comment.

There will be opportunity in this stage of review for the proposals to be modified based on comments from the reviewing agencies to make them more competitive by improving their effectiveness in providing water quality benefits.

As explained in the Program Guidelines, proposals will be evaluated for their water quality benefits using objective criteria, and Planning staff will bring recommendations for funding to the Board by the end of February of the succeeding year. Funds not spent in any given year will be made available for projects in the subsequent year. Monitoring implementation and completion of the projects will be performed by county staff knowledgeable in implementation of grading and erosion control projects or by a licensed civil engineer contracted by the county. Release of the final twenty percent of the funds for each project will be withheld pending verification of the completion of the project to the satisfaction of the Planning Director in consultation with the Department of Public Works based on the report from county staff or contract engineer and other factual evidence.

The county has a list of potential road projects to reduce sediment delivery to the Redwood Creek and Sprowel Creek watersheds in Southern Humboldt, which is included in Attachment 3. Consistent with the Settlement Agreement, staff recommends the Board direct the Department of Public Works to oversee funding for the use of \$500,000 of the Program funds in 2022, or as soon thereafter as practicable, for high priority projects on the list in Attachment 3 that most reduce sediment delivery.

The Department received an unsolicited email request from staff in the California Department of Fish and Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB) for the use of \$16,000 in Grant funds for an assessment of Sprowel Creek Road (Attachment 4). Staff recommends the Board

consider this request. The Department of Public Works opposes this expenditure of funds on a consultant because they have staff available for that work and because contracting and other paperwork involved in managing a consultant would reduce the amount of money available for implementation of sediment reduction projects.

Environmental Review

This project is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15308. Actions by Regulatory Agencies for Protection of the Environment, which applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

FINANCIAL IMPACT:

This action will reduce the General Fund contingencies by One Million Five Hundred Thousand Dollars (\$1,500,000) and includes the allocations for fiscal years 2019-20, 2020-21 and 2021-22. The remaining year of the program will be funded through twenty percent (20%) of the collected fines and penalties from cannabis civil enforcement actions, up to \$1,100,000. No additional contributions from the General Fund are anticipated.

Staff costs and other expenses related to preparation and review of this agenda item total approximately \$3,000. Administration of the Mitigation and Remediation Fund is estimated to involve 0.5 FTE Planner II at an annual cost of \$48,639.31. These costs will be supported by the General Fund contribution to the Planning and Building Department's proposed budgets for the next four years. There is no impact to the road fund as any projects will be fully funded through mitigation fund.

The Planning and Building Department will prepare a separate Board report with the supplemental budget to support this item.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by facilitating public/private partnerships to solve problems.

OTHER AGENCY INVOLVEMENT:

Auditor-Controller, County Counsel, Public Works, California Department of Fish and Wildlife and the Regional Water Quality Control Board

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may amend the Program Guidelines at its discretion to better fit the terms of the Settlement Agreement. The Program Guidelines were written to closely conform to the Settlement Agreement, so staff does not recommend further consideration of this alternative.

ATTACHMENTS:

1. Resolution No. _____ making findings the Mitigation and Remediation Program is exempt from environmental review pursuant to CEQA and approving the Program Guidelines. 2. Resolution 18-43 (Resolution Establishing a Cap on the Number of Commercial Cannabis Cultivation Permits and Acres) 3. List of Project Identified by the Department of Public Works 4. Email Proposing Funding for Sprowel Creek Road Assessment

PREVIOUS ACTION/REFERRAL:

Board Order No.: L-1
Meeting of: 10/1/2019