



# COUNTY OF HUMBOLDT

For the meeting of: 3/1/2022

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File #: 22-185

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**To:** Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Allocation of 2021-2022 water quality improvement grant program 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 and grant applications received (Attachment 2), open the public hearing, and accept public comment; and
2. Close the public hearing; and
3. Approve the slate of grant applications from the Mitigation and Remediation Fund Awards by approving the attached Resolution \_\_\_\_ (Attachment 1); and
4. Authorize the Chair of the Board to sign the grant agreements when completed, after review and approval by County Counsel and Risk Management.

**SOURCE OF FUNDING:**

The Board authorized creation of the “CCLUO 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 (File 19-1675, December 10, 2019).

In both fiscal years 2020-21 and 2021-22, an additional \$200,000 was allocated per the agreement, totaling an additional \$400,000. On August 17, 2021, the Board authorized the Auditor Controller’s Office transfer of \$1,000,000 from General Fund Contingencies to the CCLUO Mitigation and Remediation Fund, and \$500,000 from General Fund Contingencies to Public Works for high-priority projects that reduce sediment delivery in the Redwood Creek and Sprowel Creek. (See Attachment 3 Supplemental budget).

**DISCUSSION:**

On August 17, 2021, the Board adopted Resolution 21-86 approving the Commercial Cannabis Land

Use Ordinance (CCLUO) Mitigation and Remediation Fund Grant Program, a 4-year water quality improvement program 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 for adoption of the Commercial Cannabis Land Use Ordinance (CCLUO) - Case # CV180495.

The Board set aside \$1,100,000 the first year and an additional \$200,000 in both fiscal years 2020-21 and 2021-22 totaling an additional \$400,000.

Consistent with the settlement agreement, the Board allocated \$500,000 of Program funds in the first year to Public Works to oversee high priority road improvement projects that most reduce sediment delivery. Public Works confirmed some roadway improvements have been completed, and the Board's direction is to get a report from Public Works on the fund expenditures by the end of 2022.

The remaining \$1,000,000 in the Round 1 funds are available for the Board's allocation for sediment reduction projects on roads serving cannabis cultivation sites. As detailed in the Program Guidelines, grants will be awarded for improvements to public and private roads, and at least eighty percent (80%) of funds are to be used for physical road improvements. Properties in the abatement process are not eligible for funding, and any funds not spent this year will be made available for projects in subsequent years.

The Program Guidelines approved by the Board prioritizes grants to cannabis cultivators and road maintenance associations based upon water quality benefits that would result according to 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)
- 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.

A notice of funding availability was published the first week of October 2021 and a total of ten applications for grants were received by the October 31<sup>st</sup> deadline. The applications were evaluated for completeness and all applications were referred internally to the County Departments of Building and Planning Code Enforcement, Cannabis, and Current Planning Divisions, and the Public Works Roads Division. The applications were also referred to the California Department of Fish & Wildlife (CDFW), and the North Coast Regional Water Quality Control Board (RWQCB) for comment. County staff held two meetings to review the applications with representatives of the state agencies which provided both written and verbal comments. Their comments are included with the Grant

Applications in Attachment 2.

The grant applications were evaluated for their water quality benefits using objective criteria, and on comments received from state agencies. Three projects, as shown in the table below, are being recommending for funding totaling \$175,475. The remaining balance in the fund (\$824,525) will be available for grant funding in Round 2 of the program and will be supplemented with the set-aside of 20% of the fines and penalties collected from unpermitted cannabis operations during the 2021-2022 fiscal year.

The recommended funding for Round 1 is less than the requested amounts for several reasons. First, some of the applications are supporting cultivation operations that do not have approval of required permits from CDFW and the RWQCB. These agencies do not support funding those projects because, in their view, the County would be incentivizing applicants that have not yet met minimum state requirements. They also do not support funding projects which resolve violations of state and/or local requirements, or work that has already been completed because there would be no additional improvement to the watershed in those cases.

Recommended funding is less than the requested amount in other cases because requested funding exceeded the cost of the same work reported to CDFW through their Lake and Streambed Alteration Agreement (LSAA) program, which led agency staff to believe some of the requested amounts were inflated in relation to actual costs. Recommended funding amounts for these projects reflects the project costs reported to the state agencies rather than the requested amount. Also, several applications included in their requests funding for ineligible expenses. The program guidelines restrict 80% of the award to physical improvements, so engineering costs, permit fees and other costs are limited.

Staff from CDFW and the RWQCB believe applications for better projects will be submitted with a more extensive outreach effort, and they committed to helping with that in Round 2, which will begin later this year. Staff recommends the Board roll over into the Round 2 application pool some applications not selected for full funding this round so they can be re-evaluated for compliance with CDFW and RWQCB permit requirements which would make them eligible for future funding.

As shown below, with the exception of the Moriah Miranda application Planning and Building Department staff's recommendations align with those of the state agencies to maximize the protection of water quality in streams creeks and rivers and to ensure program funds are not available, either directly or indirectly, to any properties in the abatement process consistent with the program guidelines. However, the County is the ultimate decision maker so the Board is not obligated to follow the recommendations of the state agencies.

The table below provides a summary of the all the projects and the recommended funding:

<i>Grant Application</i>	<i>Project Description and staff notes</i>	<i>Requested Funding</i>	<i>Recommended Funding</i>
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Cobb Road Improvements	Reinforces & replaces eleven (11) culvert replacements, fifteen (15) rolling dips, surface drainage upgrades & inside ditch cross-drains. <i>Recommendation removes funding associated with a parcel with a violation (APN 208-341-004). Include in Round 2 funding if violation is resolved.</i>	\$108,395	\$83,381
Serendipity Road Improvements	Reinforces & replaces five (5) culverts. <i>Recommendation reduces funding to align with project cost reported to CDFW (LSAA 1600-2018-0721-R1).</i>	\$99,426	\$43,426
Samuels Ranch Road	Spread road base in areas of Samuels Ranch Loop Road where road is bare & needs to be re-rocked. <i>Recommend full funding.</i>	\$30,000	\$30,000
Moriah Miranda	Remediation activities to address grading, reforestation, road improvements, replace and upgrade failing culverts. <i>Recommendation reduces funding to remove ineligible costs (non-physical work &gt; 20% of project total) and lost wages.</i>	\$692,640	\$12,852
Nooning Creek	Reinforces & replaces two (2) culverts. <i>Recommendation reduces funding to align with project cost reported to CDFW (LSAA No. 1600-2019-0156)</i>	\$51,816	\$3,816
Diamond Sky Farm	Implements conditions of approval of WRPP. <i>Recommendation reduces funding to align with project cost reported to CDFW (LSAA No. 1600-2020-0053-R1)</i>	\$15,000	\$2,000
Armstrong Road Improvement	Reinforces & replaces thirteen (13) culverts, as required by Code Enforcement action. <i>Recommend no funding because they are out of compliance with work completion dates and all other reporting requirements of Final LSAA 1600-2019-0096-R1. Also grant requested amount is \$186K more than LSAA notification. Include in Round 2 funding for LSAA project cost if in good standing with permitting agencies.</i>	\$230,000	\$0

Van Dyke	Four (4) culverts to be replaced inlets/outlets, implements WRPP and PW condition pave public road entrance, work completed. <i>Recommend no funding because the work is already completed.</i>	\$12,594	\$0
Bamboo Farms Remediation	Three (3) culverts were replaced, inlets/outlets were reinforced with rip-rap, and new gravel placed on the road over the culverts, work completed as required by Code Enforcement action. <i>Recommend no funding because the work is already completed.</i>	\$21,362	\$0
Walker Ridge	Reinforces & replaces eight (8) culverts on Class III streams. <i>Recommend no funding because they are out of compliance with reporting requirements of LSAA 1600-2019-0576-R1. Also grant application project cost is inconsistent with LSAA project cost. Project cost difference is approximately \$27K more than LSA notification.</i>	\$67,486	\$0
Totals:		\$1,328,719	\$175,475

Monitoring implementation and completion of the projects will be performed by County staff knowledgeable in implementation of grading and erosion control projects. 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 and other factual evidence.

**Environmental Review**

The proposed allocation of 2021-2022 water quality improvement grant program funds from the Commercial Cannabis Land Use Ordinance (CCLUO) Mitigation and Remediation Fund is exempt from environmental review pursuant to CEQA, under CEQA Guidelines §15308, actions by regulatory agencies for protection of the environment. The purpose of the program is to protect water quality in streams creeks and rivers.

**FINANCIAL IMPACT:**

This action will reduce the CCLUO Mitigation and Remediation Fund by \$175,475. The remaining three (3) 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, as well as unused funds from this first year - \$824,525. Administration of the Mitigation and Remediation Fund is estimated to involve 0.5 FTE Planner II at an annual cost of \$48,639.31 which is supported by the CCLUO Mitigation and Remediation Fund.

**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 choose alternative funding amounts at its discretion to better fit the administration of the Mitigation and Remediation Fund. The recommended funding amounts are based on the Program Guidelines with input from the County Departments of Building and Planning Code Enforcement, Cannabis, and Current Planning Divisions, and Public Works Roads Division, and the California Department of Fish & Wildlife and the North Coast Regional Water Quality Control Board, so staff does not recommend further consideration of this alternative.

**ATTACHMENTS:**

1. Resolution for Approval for Round 1 Funding
2. Comments from state agencies on the Grant Applications and the Grant Applications themselves

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: J-2

Meeting of: August 17, 2021

File No.: 21-1136