

H1

From: [Hayes, Kathy](#)
To: [Ford, John](#); [Bass, Virginia](#); [Bohn, Rex](#); [Fennell, Estelle](#); [Wilson, Mike](#); [Madrone, Steve](#)
Cc: [Damico, Tracy](#); [Eberhardt, Brooke](#); [Sharp, Ryan](#)
Subject: FW: ~coopetition-consulting group~ RRR process on BOS agenda
Date: Monday, October 26, 2020 4:46:21 PM
Attachments: [Staff Report.pdf](#)
[Transfer of Development-Rights.pdf](#)
[image001.png](#)

Dear Board Members: please see attached related to RRR's

Kathy Hayes, Clerk of the Board
County of Humboldt
(707) 476-2396
khayes@co.humboldt.ca.us



From: Fennell, Estelle <EFennell@co.humboldt.ca.us>
Sent: Monday, October 26, 2020 4:45 PM
To: Hayes, Kathy <KHayes@co.humboldt.ca.us>
Subject: FW: ~coopetition-consulting group~ RRR process on BOS agenda

Hi Kathy,

Can you please share this with the full board?

Thanks,

Estelle

--Estelle Fennell
Chair of the Board
2nd District Supervisor
County of Humboldt
(707) 476 2392
efennell@co.humboldt.ca.us

From: Ross Huber <rossisnow@gmail.com>
Date: Monday, October 26, 2020 at 4:41 PM
To: Fennell, Estelle <EFennell@co.humboldt.ca.us>
Subject: Fwd: ~coopetition-consulting group~ RRR process on BOS agenda

Estelle,

Hope you are doing well. If the following is inappropriate in terms of timing since the meeting is tomorrow, my apologies. Feel free to ignore.

A few things come to mind in regard to the upcoming staff report on the RRR situation. While I understand and support the desire to cap the unlimited RRR potential on certain properties, I do think that the conversation should include the following issues to be holistic.

People that have paid for RRR plans and studies and have been waiting on the county to formalize their projects, and will once again be facing new requirements that did not exist when they began the application process. Many financial decisions were made in terms of what to do with those donor and receiver sites, and many have already been restored. There needs to be acknowledgment of this fact, and people should be taken into account in this.

If you agree to restore a site and certify that it will never grow cannabis again, and then you are not allowed to transfer the square footage, is the conservation easement void?

What will people be allowed to do with the "extra" RRR square footage they are not allowed to relocate? Can you sell or bank the footage as TDR's (Transfer of Development Rights)? If you recall, the community park has a bunch of TDR credits from the rezone. They agreed to never develop the ranchettes that it was zoned for previously and keep it as a park in perpetuity. They just have no way to sell them yet. If the county got it together to create a TDR bank and market, there would be a lot of interesting options for farmers, and maybe RRR credits too. In some counties, if you have a farm on a property and then put the rest of the property into a conservation easement, you are allocated TDR credits that you can sell to other developers in other impacted areas for increased affordable housing density or whatever. Many people would gladly protect the woods around their farms if they could monetize it somehow. See the attached for more details if it is something that is interesting to you. It has been done all over the country. Maybe the TDR bank would be a good way to encourage more relocation. Just a thought because I think going backward on a RRR is going to be problematic for the county. You can't just take it back.

Regards,

Ross



COUNTY OF HUMBOLDT

For the meeting of: 10/27/2020

File #: 20-1357

To: Board of Supervisors
From: Planning and Building Department
Agenda Section: Departmental

SUBJECT:

Planning Department Request for Direction from Board on Processing of Cannabis Retirement, Remediation and Relocation (RRR) permits.

RECOMMENDATION(S):

That the Board of Supervisors:

1. Receive the staff report, and
2. Provide Board direction.

SOURCE OF FUNDING:

General Fund

DISCUSSION:

The Planning Department requests direction from your Board on processing of Cannabis Retirement, Remediation and Relocation (RRR) permits.

The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) and the Commercial Cannabis Land Use Ordinance (CCLUO) both provide an opportunity to relocate pre-existing cultivation sites out of areas where the slopes are in excess of 15% and there is not a legal water source (CMMLUO) or to relocate cultivation sites out of areas where the slopes are in excess of 15%, or there is not a legal water source, or the site is not served by a road meeting the access performance standards, or where the cultivation site does not meet the required setbacks (CCLUO). Both ordinances encourage relocation through the Retirement, Remediation and Relocation (RRR) program to move out of these areas by allowing a fourfold increase in permissible cultivation area up to 20,000 square feet. To further incentivize relocation, the RRR applications are generally permitted through a Zoning Clearance Certificate, or a ministerial action. Some have seen this as an opportunity to greatly increase the amount of cultivation which can be permitted on a site. An application for cultivation is applied for on a site and then multiple 20,000 square foot RRR's are moved to the site. The vision of the CMMLUO was to allow a cultivator to relocate to a more appropriate location and provide incentive to clean up the old site. Instead the RRR sites have become commodities and are being assembled in a manner that was not intended by the ordinances.

The CMMLUO and CCLUO both set no explicit limit as to the number of RRR's which can be moved to a site. The CMMLUO sets a limit of 20% of the prime soils that exist on the site and identifies the maximum amount of existing cultivation that can be approved, 43,560 square feet of outdoor and 22,000 square feet of mixed light, however the CCLUO does not limit relocation sites to only prime soils. Staff has taken the position that the ordinance and the Mitigated Negative Declaration prepared for the CMMLUO and the ordinance and Environmental Impact Report for the CCLUO did not consider the potential for people to stack RRR's onto a property, and if this is desired, they need to prepare an environmental document to examine the impacts of such a concentration of cultivation. The practice has been that any site which includes more than one permit for cultivation with two RRR's requires additional environmental review.

At the October 6, 2020 Board meeting the Board heard an appeal of an application that was approved by the Planning Commission to relocate up to 6 acres of retirement sites onto a single property in the Honeydew area. The project site was planned and zoned appropriately for the proposed activity. This is the first application to propose such a concept and reach the hearing stage and was appealed to the Board of Supervisors. This approach allows much more cultivation on a property than could otherwise be permitted without the RRR provisions. This is more typical of what is seen on industrially zoned properties. Typically, an acre is the maximum cultivation area that could be approved on agricultural land under normal permitting under both ordinances. One of the questions for the Board behind this appeal was whether this approach of assembling RRRs is appropriate. The Board expressed a significant amount of concern over this approach and ultimately decided that two RRR's and the pre-existing cultivation on the site was all that was appropriate. At least for this particular site the Board felt that stacking of RRR's was not appropriate.

The Planning and Building Department is currently processing a substantial number of applications to permit receiving sites, in many cases these involve stacking many RRR's. Currently some of these would be ministerial only and are required by code to be approved if they meet the standards of the ordinance. Therefore, the Planning and Building Department is seeking direction from the Board whether any amendments to the CCLUO are desired to address concerns regarding the existing RRR process. Staff has identified three potential alternatives for the Board to consider.

1. No changes to the CMMLUO or the CCLUO. Stacking of RRR's may be allowed up to the maximum amount allowed by the site constraints and ordinance requirements of any given parcel.
2. Amend the CCLUO to require that stacking of more than 2 RRR's on a single receiving site is required to apply for a discretionary Conditional Use Permit. The ordinance amendment would require that applications submitted under the CMMLUO would also be subject to this provision. All existing applications would be subject to this requirement. This would require a public hearing and would enable the decisions to be appealed to the Board of Supervisors.
3. Amend the CCLUO to prohibit stacking of more than 2 RRR's on a single receiving site. The ordinance amendment would require that applications submitted under the CMMLUO would

also be subject to this provision. All existing applications would be subject to this requirement.

FINANCIAL IMPACT:

General Fund

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by streamlining county permit processes

OTHER AGENCY INVOLVEMENT:

N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion.

ATTACHMENTS:

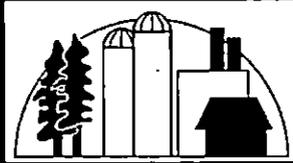
None

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A



Planning Implementation Tools

Transfer of Development Rights (TDR)



Center for Land Use Education

www.uwsp.edu/cnr/landcenter/

November 2005

TOOL DESCRIPTION

Transfer of Development Rights (TDR) is a voluntary, incentive-based program that allows landowners to sell development rights from their land to a developer or other interested party who then can use these rights to increase the density of development at another designated location.

While the seller of development rights still owns the land and can continue using it, an easement is placed on the property that prevents further development. (See Conservation Easement fact sheet) A TDR program protects land resources at the same time providing additional income to both the landowner and the holder of the development rights.

COMMON USES

Farmland protection

TDR programs are a way to permanently protect blocks of productive farmlands. Developers give farmers cash for their development rights. Farmers can use the money in any way they please (e.g. pay down debt, start a retirement account, pay operational expenses). The farmer still owns the land and retains the right to farm it.

Natural Resource Protection

A TDR program can provide a source of private money to purchase development rights on unique natural areas, critical habitat, and areas important for resource protection such as groundwater recharge areas.

Guide New Urban Development

A TDR is useful in rapidly urbanizing communities to guide housing to desirable locations. Receiving districts can be located in places where urban growth or higher densities are desired or where urban services are available.

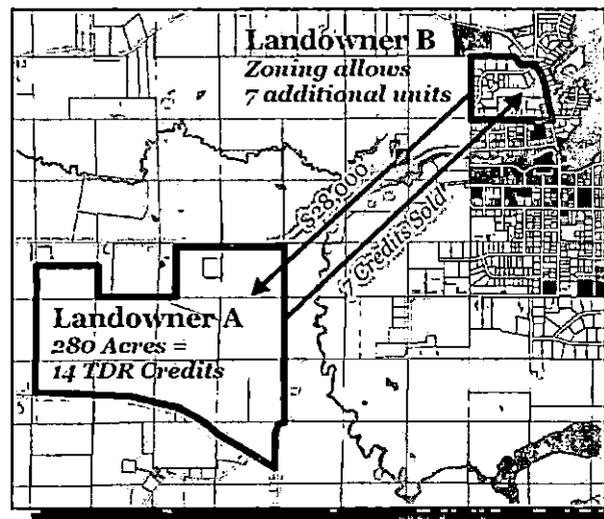
Possible Uses

Preservation of:

- ◆ Farmland
- ◆ Grazing land
- ◆ Timber land
- ◆ Open space
- ◆ Critical habitat
- ◆ Historic buildings and districts

Figure 1. Landowner A, a farmer, would like to get additional economic return from his property. In exchange for restrictions on his land, Landowner

A sells the development rights that are part of his property. This permanent prevention of development helps the community reach its farmland preservation goals. Landowner B would like to develop her property in the receiving area which already has public services. Landowner B finds that she would earn a larger profit by purchasing TDR credits from Landowner A, thereby allowing her to build more housing units.



Creating Development Credits

A formula is used to convert development rights into specific development credits based on such factors as the area put under protection, e.g. one credit for every 20 acres protected, or on the cash value of the land, or for every \$1,000 paid to the landowner. The formula also identifies how much you receive for each credit in the receiving area, e.g. one credit allows you to build an additional family unit or increase the floor area ratio of a building by a given percent.

Successful TDR programs have:

- Credits to buy,
- Increasing growth pressure in the area,
- Incentives that target growth to the receiving area.

IMPLEMENTATION

CREATION

There are four elements in successful TDR programs:

- 1. Designate a preservation zone (Sending Area).**
Identify target areas that the community desires to protect (i.e. contiguous blocks of productive farmland or sensitive natural resources).
- 2. Designate an urban growth zone (Receiving Area)**
Identify target areas in the community where development is desirable (i.e. near businesses, existing urban services, along a transportation corridor).
- 3. Determine a market for development rights**
TDRs only work when a demand exists for development rights. It is important that long-term growth expectations exist for receiving areas to assure landowners in the sending areas that their development rights have value. Adequate incentives must be provided to landowners before they will sell development rights.
- 4. Define TDR Procedures and Transfer Ratio**
TDR procedures include establishing what will be used to determine the number of development credits received (i.e. acres protected, amount of prime agricultural soil, dollar value of the land) and determining how many additional units a developer will receive per credit. Guidelines should also be set up to aid staff in their role as liaison between landowners and developers.

ADMINISTRATION

Establishing a TDR bank, run by a local government, can help the program run smoothly. Instead of developers purchasing development rights directly from landowners, the local government acts as a middleman to buy and then sell available development rights. A TDR bank makes the program more predictable and manageable for landowners and developers.

A well trained staff person is needed to manage development right transfers either by running the TDR bank, or by negotiating the transactions between landowners and developers. Staff will need to monitor the market for development rights and recommend adjustments to their value as needed. Staff also plays a large role in educating local officials, landowners, and developers about the program. Staff must ensure that the municipality's capital improvement program and ordinances continue to support the program as development transfers occur.

Report Card: Transfer of Development Rights

Cost	Money or staff resources required to implement tool.
C	A TDR program will likely require dedicated staff to set up and manage the program. Start-up money will be needed if a TDR Bank is created. Money to purchase development rights comes from developers rather than tax dollars.
Public Acceptance	The public's positive or negative perception of the tool.
B	The public likes the fact that money to purchase development rights comes from the private sector, not taxpayers. Property owners in the receiving area however, may have a problem with the increased density if existing utilities can not support it and building design isn't accepted.
Political Acceptance	Politician's willingness to implement tool.
C	Local officials approve of the market financing the program. Intergovernmental agreements that transfer development from one municipality to another must contend with tax-base transfer issues. Determining appropriate standards and prices for development credits may be difficult.
Equity	Fairness to stakeholders regarding who incurs costs and consequences.
A	Rural landowners voluntarily sell their development rights and are compensated for them. Developers get density bonuses for purchasing development rights, so costs are not handed down to homebuyers.
Administration	Level of complexity to manage, maintain, enforce, and monitor the tool.
D	TDR is one of the most difficult land management techniques to establish. Administration of TDR programs is complex and costly and maintaining a market may be difficult.
Scale	The geographic scale at which tool is best implemented.
Local to Regional	The program can be run on any scale but works best over an area that includes both rural and urban areas. The scale will also be dependent on the ability of the managing agency or organization to create a successful program with enough credits to buy and corresponding need for development.

GRADING EXPLANATION

- A - Excellent
- B - Above Average
- C - Average
- D - Below Average
- F - Failing

WISCONSIN EXAMPLES

Mequon

The city of Mequon has created a TDR program to protect the city's nature preserve from bordering development. A developer bought the development rights on 112 acres owned by a local nursery. A conservation easement was placed on the land that guarantees that no housing can be built on the property. The development rights will be transferred by allowing increased density on property north of the preserve that is owned by the developer.

Waukesha County

Waukesha County has a TDR program to protect prime agricultural land. The county allows increased density developments in areas with municipal services in exchange for the purchase of development rights on community identified prime agricultural tillable lands. For the areas of increased density, the ordinance lists permitted uses, defines building location, height and size, requires grouping of lots and a minimum lot size. Each district has a total maximum density that must be maintained. The development proposal must be approved by the Town Planning Commission and the County Zoning Agency before it can be implemented.

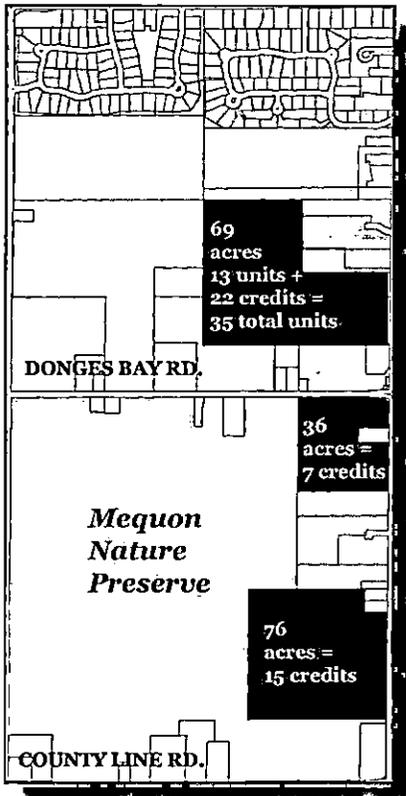


Figure 2

Transfer Formula for Mequon

The underlying village zoning yields 1 single family unit per 5 acres. One development credit is equal to one additional unit. Seven development credits from the 36 acre parcel and 15 credits from the 76 acre parcel (the sending areas) were added to the existing 13 units allowed in the 69 acre receiving area for a total of 35 possible units. In addition, the developer received a "1.8 times the allowed units" bonus for constructing duplexes creating a total of 63 duplex units or 31.5 possible two-unit buildings. The final site plan yielded 30 two-unit buildings.

FOR MORE INFORMATION

Arendt, Randall (1994). *Rural by Design: Maintaining Small Town Character*. Planners Press, American Planning Association Chicago, IL

Daniels, Tom and Deborah Bowers (1997). *Holding Our Ground: Protecting America's Farms and Farmland*. Island Press, Washington, D.C.

Dane County, Transfer and Development Rights Introduction. Available at <http://www.co.dane.wi.us/plandev/planning/tdr/section1.htm>

Pruetz, Rick (Summer 1998). *Putting Growth in Its Place with the Transfer of Development Rights*. Planning Commissioners Journal, Issue 31

ACKNOWLEDGEMENTS

Document prepared by Douglas Miskowiak and Linda Stoll, 2006. CLUE gratefully acknowledges all external reviewers. Design and layout by Robert Newby. Figure 1 and 2 developed by Douglas Miskowiak. Data for the Mequon example provided by the City of Mequon Department of Community Development.

This document is part of CLUE's collaboration with the USDA, NRCS, GEM, and UWEX, entitled, "Partnership for Community Planning – Models for Land Use Education, Planning, and Management."



Hayes, Kathy

From: ScumSlayer <ScumSlayer@protonmail.com>
Sent: Monday, October 26, 2020 9:15 PM
To: COB
Subject: H Dept Reports, #1 Cannabis RRR 20-1357

Megan Metcalf
H Dept Reports, #1 Cannabis RRR 20-1357

I am against the changing of this law. I currently work for a location with RRR sq ft and I am glad for the job. Isn't shutting down the illegal sites the goal of the RRR program? How does limiting 2 RRR permits per site encourage that? If someone happened to operate multiple site shouldn't they all be shut down, not just 2?-Megan M.

Sent with [ProtonMail](#) Secure Email.

Hayes, Kathy

From: Joshua Clark <jcog323@yahoo.com>
Sent: Monday, October 26, 2020 9:12 PM
To: COB
Subject: H Dept Reports, #1 Cannabis RRR 20-1357

Joshua Clark,

H Dept Reports, #1 Cannabis RRR 20-1357

My name is Joshua Clark and I am against any change in the law at this time. I currently own and operate a cannabis farm here in Humboldt County, and happen to be in the application process for a site with the intent to have multiple RRR's attached to the location.

I read the Humboldt County's letter of the law and purchased land based on what the law said.

I have spent thousands of dollars, (all on the county's request) getting Land Surveys, Archeologist, Biologist and Road reports. On getting a CEQA report. Getting maps drawn up, And so on. Now to change the letter of the law mid game after people have worked with the county for extended periods of time in good faith and invested large monetary amounts is completely wrong and doesn't even sound legal.

The spirit or intent of the RRR program first and foremost is to Retire, Remediate and Relocate ALL illegal cannabis locations in Humboldt County that do not fit the criteria of the CMMLUO. This was a large scale attempt to protect the environment and promote the transition of the largest illegal cultivation market in America into the legal market. Whether an operator has only one location or 10 it shouldn't matter because the intent was to get as many of these illegal locations Retired, Remediated and Relocated. The intent was never to limit the amount of these sites to some small mom and pop scale.

As well we are in the 12th hour of the RRR program. New applications for RRR's are no longer allowed. So this sudden change in law would only affect people currently in the permit process.

And that brings up a good point. How can you justify changing the rules on the people still in the application process, when there are people currently permitted with multiple RRR's. Are you going to take away their RRR's as well?

And further more, I find it distasteful that I was only made aware of this last night. I am a stakeholder in this situation and there should have been more notice other than an email sent out at 6:43pm the night before. Is this the legal manner on how things are supposed to be done?

I would like to end with this. Other counties up and down California are permitting much larger individual farm sites than Humboldt County currently does. Humboldt County has always been the heart of California's Cannabis industry illegal and legal. How do we expect to continue this if we fall behind other locations and further limit the allowable lawful cultivation amounts allowed? I will be calling into the meeting reading this statement as well.-Joshua Clark

Hayes, Kathy

From: J ? <jcog323@gmail.com>
Sent: Monday, October 26, 2020 8:58 PM
To: COB
Subject: Section H. Department Reports #1,,,,, RRR 20-1357

Name: Jonah Greenfield
Section H. Department Reports #1,,,,, RRR 20-1357

Statement: I am against changing the laws on this matter. How can you contemplate changing the law on people this late in the game? This will only affect people that are currently in the application process? Or are you guys going to go back and take away RRR's from sites that currently exist? This doesn't sound fair, or legal??? I would expect the Board to rally behind Humboldt County's cannabis industry and vote to keep the laws the same. As they know a majority of people in Humboldt County support the legal cannabis industry. So should they, unless they think they are above the people they serve.-Jonah G

Hayes, Kathy

From: Steven Luu <steven@slconsultinginc.com>
Sent: Monday, October 26, 2020 8:00 PM
To: COB
Subject: Public Comment for Board of Supervisors Hearing - RRR

To whom it may concern,

This email is my public comment towards the following agenda item: Planning Department Request for Direction from Board on Processing of Cannabis Retirement, Remediation and Relocation (RRR) permits

My name is Steven Luu and I am a consultant that has worked with several clients to develop receiving areas in the Shively, Holmes Flat and Redcrest areas - areas that have historically been used as agricultural land successfully practicing dry farming techniques.

Several multi-acre cannabis RRR receiving sites have already been entitled in this region which practice exemplary cultivation methods to produce high quality cannabis using the most minimal of inputs using dry farm techniques in native soil.

Several of these cultivation sites displaced farming activities such as intensive alfalfa production that required constant irrigation outside of the wet weather season and as such, represent a reduced impact to the watershed.

I suggest that a special cannabis zone be established for this region to allow the previously approved stacked RRRs to remain without further re-evaluation and to allow future applicants to stack RRRs to the full potential of the receiving property as long as the operations utilize dry farming techniques and do not develop infrastructure (i.e. structures) that would exceed what is typically allowed on the property without stacking RRRs (i.e. to support 1 acre of cultivation). I believe this would limit the net impact of these operations to something that is in-line with the intent and scope of the ordinance and nurture cultivation techniques that are very unique to this region - techniques that I feel will form one of the defining appellations for cannabis cultivated in Humboldt County.

To consider revoking the licenses of the current permittees who have invested substantial amounts of capital and time to secure the local county permits, clean up dozens of RRR sites, and obtained state licensure would be incredibly damaging - to the local economy by shutting down permitted businesses, to the County's tax collections by revoking issued permits, and to the trust that has been built with the cultivating community. To me it seems cruel to even consider taking such an action to punish those that are doing the right thing - growing in the right place with environmentally sustainable methods and cleaning up problem sites.

Furthermore -the amount of time that would be involved in re-permitting these sites would be substantial - County staff time, hearing time, state licensing staff time - all resources that are already stressed and pressured with the volume of applications being processed.

I am also requesting clarification for suggestion #2 in the staff report about requiring a CUP for more than two stacked RRRs. Under the 1.0 and 2.0 ordinances, RRRs can be less than 20,000 square feet as they are a 4x multiplier up to a cap of 20,000 SF. However under 2.0, RRRs can also be a 1 to 1 ratio of the mitigated area with no cap. From my review of the language, I believe a cap of 40,000 SF of RRR receiving area is the intent and the planning department and board of supervisors may wish to consider amending the suggestion #2 to a square footage canopy cap instead of limiting the number of RRRs a site receives.

Sincerely,

Hayes, Kathy

From: Jeff Schirmann <jeffschirmann@gmail.com>
Sent: Tuesday, October 27, 2020 9:35 AM
To: COB
Subject: Planning Department Request for Direction from Board on Processing of Cannabis RRR

This comment is in regards to:

H. DEPARTMENT REPORTS - Planning and Building Department - Planning Department Request for Direction from Board on Processing of Cannabis Retirement, Remediation and Relocation (RRR) permits

Greetings Humboldt County Planning Commission and Board of Supervisors,

My name is Jeff Schirmann, I'm a local cannabis business owner and participant in the RRR program. I'm commenting today on the proposed changes to the CMMLUO and/or CCLUO regarding RRR projects.

I was born and raised in Humboldt County, and for my entire life have been exposed to news articles and community comments regarding the negative environmental impacts of illegal cannabis cultivation. As Humboldt County residents, we see dozens of busts in local news publications, with multiple photos showing trash, water-ways sucked dry, clear cuts, and pesticides strewn about the forest floor. There's one question that isn't answered in *any* news article covering these busts: what happens to these properties after they're busted? Nothing. All of the garbage stays right where it was photographed, the forest isn't replanted, the roads aren't improved, the waterline isn't removed from the river. I learned this first hand through the RRR program over the last several years. I purchased a remote piece of land in Maple Creek for dirt cheap because it had previously been busted for several environmental violations related to illegal cannabis cultivation. When I arrived on the property for the first time, I noticed everything sat exactly where it was photographed during the bust years before. There were literally hypodermic needles in a stream that feeds Maple Creek. I can say with relative certainty that all of that garbage and those environmental violations would still be on that property if not for incentives created by Humboldt County's RRR program, and mine and my partner's personal efforts going out to a remote property to haul the trash out of it.

This particular RRR has been in the making for several years. Each step of the way the project was created and edited to the specs of the Humboldt County Planning Department. We feel that changing the parameters of these massive projects at this stage will result in years of lost time for Humboldt County planning staff and local business owners, along with the hundreds of thousands of dollars spent by these operators. Worst of all the devastation caused by years of illegal cannabis cultivation will remain unaddressed. Unless the county has a plan to clean up all of these properties, then I firmly believe the best method for remediation continues to be the RRR program as is.

Thank you for your time and consideration of my comments,

- Jeff Schirmann