

From: [Mark C Thurmond](#)
To: [Planning Clerk](#)
Subject: FW: Letter to Commisioners: Watershed Adaptive Management for Cannabis
Date: Monday, April 29, 2024 2:10:51 PM
Attachments: [Watershed Adaptive Management- Resolution 18-43 PC 5-2-2024.docx](#)

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My phone number is 530- 574-2530.

Thank you .

Mark Thurmond

From: Mark C Thurmond <mcthurmond@ucdavis.edu>
Sent: Monday, April 29, 2024 1:46 PM
To: planningclerk@co.humboldt.ca.us
Cc: Ken Miller <tamer1@suddenlink.net>; Mark C Thurmond <mcthurmond@ucdavis.edu>
Subject: FW: Letter to Commisioners: Watershed Adaptive Management for Cannabis

From: Mark C Thurmond
Sent: Monday, April 29, 2024 1:45 PM
To: planningclerk@co.humboldt.ca.us
Cc: Ken Miller <tamer1@suddenlink.net>; Mark C Thurmond <mcthurmond@ucdavis.edu>
Subject: Letter to Commisioners: Watershed Adaptive Management for Cannabis

Dear Planning Clerk,

Please forward our letter 'Watershed Adaptive Management Process and Data for Cannabis Ordinance 2.0: Resolution 18-43' to the Commissioners for the Planning Commission Meeting for May 2, 2024.

Thank you.

Ken Miller

Mark Thurmond

Watershed Adaptive Management Process and Data for Cannabis Ordinance 2.0: Resolution 18-43

Submitted to the Humboldt County Planning Commission for May 2, 2024 Meeting

Following legalization of commercial cannabis cultivation, the County developed a commercial cannabis land use ordinance, pursuant to environmental impact reports (DEIR and FEIR), as required by CEQA. The FEIR acknowledges there are many impacts of cannabis cultivation on watersheds and residents that would not be adequately mitigated, which resulted in FEIR passage of the FEIR with “Overriding Concerns”. In the six years since FEIR approval, however, routine monitoring of streams and rivers stipulated in the FEIR has never taken place. Joint watershed evaluation studies the County stated it was willing to undertake with state agencies have never taken place. None of the annual public hearings to assess cannabis impacts on watersheds and residents that were mandated by County Resolution 18-43 of 2018 also has never taken place.

Consequently, no rational justification exists for current cultivation levels, and certainly none exists for increasing cultivation further, until studies and data become available that provide reasonable assurance that environmental or social harm will **not** occur.

We therefore recommend the following sensible and practical measures:

1. Freeze new permits to the current number until studies and data show no potential social or environmental harm. If industry is indeed contracting locally, this should not be a burden, but it will guard against any unmitigated green rush associated with federal legalization or state legalization of direct sales.
2. Freeze expansion of current permit cultivation areas pending studies and data showing no potential social or environmental harm from expansion.
3. Consider incentives to promote social and environmental stewardship, including terroir and road repair/maintenance and mitigation of impacts on neighbors.
4. Develop appropriate and credibly interactive public processes that include collaboration with State water and wildlife agencies for data collection needed to assess watershed viability and health, and each watershed’s “carrying capacity” to sustain cannabis cultivation.

This cannabis 2.0 Programmatic EIR, and the regulations and protections that flow from it, depend on project-level evaluations, which require, for each watershed and sub-watershed, at a minimum, the following:

- Detailed, updated maps and images of permitted and pending permit sites, -- showing pending, active and lapsed permit locations, original and expanded cultivation areas and types, grading, hoop houses, energy sources/generators, water sources/locations, streams and rivers, and roads.
- Updated data from watershed and sub-watershed studies and analyses, including temporal monitoring data on stream flow and water quality (eg. nutrients, temperature, bacteria, sediment, etc), and on road and traffic data. The FEIR acknowledges that these areas are inadequately mitigated, resulting in passage of the FEIR with “Overriding Concerns”.
- A plastics inventory that catalogues types and amounts in order to begin addressing this menace, and to inform and get ahead of future legislative efforts sure to come.

Background:

In addition to mandating annual public hearings to assess cannabis activities and impacts, Resolution 18-43 placed an arbitrary cap of 3500 on total number of commercial cannabis cultivation permits, as well as caps for each of 12 planning watersheds, including critical (impacted and salmonid thermal refugia) subwatersheds.

Resolution 18-43 promised a potential adaptive management tool that was to later acquire data to justify rational permit numbers and distributions. The Resolution called for an “*---analysis of the condition of these planning watersheds, including review of water flow data and applicable studies or information prepared by the following state and local agencies: California Department of Fish & Wildlife, North Coast Regional Water Quality Control Board, State Water Resources Control Board, and the Department of Forestry and Fire Protection..*”, and further stated:

“Following the establishment of a countywide cap on the total number of permits and acreage of cultivation that may be approved, beginning in May of 2019, the Board of Supervisors agrees to conduct an annual review of the limits and prescribed distribution of permitting and acreage allowances found in the above table. Review shall occur at a noticed public hearing held during a meeting of the Board of Supervisors, during which the Board shall receive and consider a report providing an update on local permitting efforts.”

Per Resolution 18-43, annual public hearings were to include reports “*---detailing the number and status of all applications received, permits approved, compliance agreements that have been executed, and code enforcement actions undertaken by the Department. Law enforcement and other relevant officials from local and state agencies shall be contacted and invited to provide and present input and information to be considered by the Board during annual review. After holding a public hearing and considering all information and testimony received, the Board may choose to establish new caps on acreage and permits as well as change their distribution within watersheds.*”

However, there has never been any watershed carrying capacity analysis or any other study that has justified the current 1400 or so permits, let alone the 3500 permit cap proposed in Resolution 18-43, and there has never been any 18-43 public hearing to assess permit numbers and acreage.

The County concedes its lack of technical capacity to conduct this critically necessary evaluation, and that it needs to effectively engage with State agencies for watershed studies and monitoring. In that regard, the County had agreed to participate in watershed analysis: “*...a watershed analysis to establish cannabis cultivation caps for each watershed would be difficult for the County to conduct as it would require details on existing water users in each watershed and the extent that riparian water rights may be exercised. The County lacks the technical experience to collect this extent of data and determine what is the appropriate aquatic carrying capacity. Regional and state agencies that would have the appropriate technical information and experience to conduct a watershed analysis include State Water Board, North Coast Regional Water Quality Control Board, and CDFW. **The County would be willing to participate in joint watershed evaluation studies** with the North Coast Regional Water Quality Control Board and other interested agencies.” (FEIR 2-96)*

No such watershed analysis has taken place and, likewise, even though stipulated in the FEIR, no routine monitoring of streams has taken place. (FEIR 2-23)

Similarly, there have not been any cumulative impact analyses to evaluate social and environmental impacts associated with these permits. Section 15130(a) of the State CEQA Guidelines requires a discussion of the cumulative impacts of a project when the project’s incremental effect is cumulatively considerable (FEIR 2-51) and the County acknowledges unevaluated cumulative impacts on water and infrastructure: “*The project’s contribution to cumulative impacts associated with the provision of sufficient water supplies and infrastructure needs would be cumulatively considerable and significant and unavoidable.*” (FEIR 1-4)

Planning Department's approach ignores the need to evaluate impacts, and, instead, relies on relative cultivation permit numbers contrasted with historical ones, including illegals. The approach provides zero information regarding baseline current conditions, and offers no data upon which to adapt future regulations. Permits continue to be approved for new or expanded cultivation on already heavily permitted sensitive environmental areas, spawning streams, or neighborhoods, where significant impacts have continued to build after years of approvals that ignored accumulating environmental and social impacts. These impacts are further compounded when regulations intended to fully mitigate harmful effects are not followed. In a large sample of licensed operations, DF&W found 65% were not in compliance (S Bauer, DFW, April 23, 2024), for one reason or another, revealing profound regulatory and enforcement failures.

Further, Planning Department claims that cumulative impacts are covered in the DEIR and FEIR, which only provide conclusions, not an analysis or impact data. The actual cumulative impact analysis and its results are not available. Without full transparency and presentation of appropriate methods and their results, there exists no foundation for claims that cumulative impacts have been addressed in the County's program.

Planning Department's convenient presumption of an industry in decline ignores potential market upsides that could reinvigorate a green rush, namely federal reassignment of cannabis from Schedule 1 to Schedule 3 drug status and state-approved direct-to-consumer sales. Watersheds remain highly vulnerable, and Planning Department's status quo approach does nothing to establish rational data collection needed to understand why watersheds are not thriving and what to do to fix that.

For starters, we recommend that every cultivation permit be plotted on a publicly available map to show, for purposes of public inspection and Planning Commission decision making, sub-watershed concentrations of permits, proximity to sensitive receptors (spawning areas, neighborhoods, domestic water, traffic problems, etc), where monitoring would likely yield important mitigation information.

We also recognize the increasing menace of plastic, and suggest that types and amounts of plastic associated with any permit be reported. This would help with clean-up operations, cataloging use, and developing alternatives.

Implementation of the 18-43 adaptive management goals constitutes a practical application of the "Precautionary Principle," to minimize unanticipated and preventable environmental or social harm resulting from current practices under 2.0., and to help those practices evolve sustainably.

In summary, until adequate evaluations of watershed carrying capacities, cumulative impacts, and FEIR-stipulated routine water monitoring are conducted, there is no rational justification to continue issuing either new cultivation permits, or expanding allowable cultivation on existing ones.

Respectfully,

Ad Hoc Watershed Adaptive Management Group, April 18, 2024

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