



COUNTY OF HUMBOLDT  
PLANNING AND BUILDING DEPARTMENT

3015 H Street • Eureka CA 95501  
Phone: (707) 445-7541 • Fax: (707) 268-3792

## Memorandum

**To:** Humboldt County Planning Commission

**Cc:** Humboldt County Board of Supervisors

**From:** John H. Ford, Director of Planning and Building 

**Date:** September 13, 2018 (For the Meeting of September 20, 2018)

**Subject:** Discussion of cannabis application parcels accessed via federal roads

As requested by the Planning Commission, staff has confirmed that federal agencies do not view transportation of cannabis across federal lands as legal and violators may be subject to federal prosecution. Staff is recommending that the County of Humboldt place a condition on any permits which have primary or secondary access across federal lands advising the applicant of the federal regulations and potential consequences.

### Background

At the April 19, 2018 hearing for the Emerald Lion Medicinals, the Commission raised questions about the property's access across a U.S. Forest Services (USFS) road. It was understood access across federal land is not unique as there are many similarly situated parcels for which applicants are seeking commercial cannabis permits. At that time, the USFS had only commented on their two road categories and the required types of permits to use the roads. There had been no comment specifically on the matter of commercial cannabis transport over federal lands.

In the case of the Emerald Lion Medicinals project, a referral was sent in September 2017 to the USFS but no response was received. The Humboldt County Code allows the Department to assume an agency has no recommendations or comments if the Department does not receive a response within ten (10) working days. The Planning Commission expressed concern that the USFS may not have fully understood that the county was considering a commercial cannabis application that would use a federal road for access, and an action for approval would result in the transport of the commercial cannabis over federal lands.

As part of the April 19<sup>th</sup> hearing, the Commission asked staff to communicate with U.S. Forest Service, to determine if the USFS would issue a permit for the transport of commercial cannabis over federal land; and if so, what would the permit process look like; what conditions might be imposed, and permit terms and timeframes. The Commission expressed concern about considering permits prior to having these questions answered.

In response, the Department met with representatives from the U.S. Forest Service, Bureau of Land Management, and National Park Service. The significant topics covered in each meeting were the legality of using federal land to transport cannabis and compatibility of cannabis cultivation adjacent to or in the vicinity of federal lands as there are a number of projects seeking a 600 foot setback reduction from public lands managed for open space and/or wildlife habitat pursuant to HCC Section 314-55.4.11(d).

Following the meetings with USFS and BLM, the county sent letters to local leadership requesting input on the access question (Attachment 2). In response to the county's letter, the BLM and USFS responded with written statements (Attachment 3). The Park Service followed up with a formal comment letter on two applications (referred to the service earlier in 2018), which is also included in Attachment 3.

The comment letters from the BLM, USFS, and NPS all have the same conclusion. Since cannabis is a listed Schedule 1 drug under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the BLM, USFS, and NPS cannot condone transport of cannabis across federal lands. Violators could face federal criminal action.

### Discussion

The implications are significant as there is a population of approximately 225 applications which have primary access across federal land and two applications have been approved to date. Attachment 4 presents representative samples of parcels that have commercial cannabis applications and rely on access across federal land.

From the County's perspective the transport of permitted commercial cannabis from the place of cultivation to the next location in the supply chain is an assumed and expected accessory activity under a valid county permit or certificate pursuant to HCC 314-55.4 et seq.

The County of Humboldt has allowed cannabis activities subject to compliance with zoning regulations on land in the County, and this includes lands surrounded by federal property. These properties are accessed by roads across federal land, which constitute existing legal access. The conflict is created when a county permit holder and state licensee is engaged in transporting cannabis across federal land. In that scenario, they could be subject to arrest and having their cargo confiscated.

There are two basic options available to the County. One is to not approve commercial cannabis applications on land reliant on access across federal property because it exposes applicants to arrest by federal agents. Most of the affected applicants are existing cultivators. This approach would ignore that they have been conducting business from these locations for some time and would discourage them from entering into the legal market place (within California). This is contrary to the County's overall objective of encouraging existing cultivators to enter the legal permitted industry.

The second option would be to caveat permits such that it is clear that transporting cannabis

across federal property could result in arrest and forfeiture of property and allow the applicant to determine how they will deal with that risk. This option would place the burden of addressing transportation requirements on the cultivator. In doing this, staff would recommend a condition that informs the operator of the potential consequences of transporting cannabis over federal land.

This is a challenging situation for which there is no perfect solution. In adapting to the challenges of regulating the cannabis industry it is better to default to making it easier to achieve compliance and thus participation in the legal marketplace than to encourage continued illicit activity. Choosing the first option would exclude 10-15% of the existing cultivation permit application sites from participating in the legal market. This is the most undesirable scenario imaginable. Staff recommends continuing to permit sites reliant on access across federal land with a warning of the consequences associated with being stopped by a federal agent.

Staff recommends the following condition be added to any permit or clearance being considered on land requiring access across federal land:

1. The applicant in accepting this permit (or clearance) acknowledges that cannabis is a schedule 1 drug under the Comprehensive Drug Abuse Prevention and Control Act of 1970 and that this permit shows primary access across federal property and transporting cannabis across federal property may result in the transporter being arrested and property being seized.

Attachments:

Attachment 1 November 2017 USFS Input

Attachment 2 County letters to BLM and USFS

Attachment 3 BLM, USFS, and NPS comment letters

Attachment 4 GIS report of cannabis application parcels accessed via federal roads

**Attachment 1**

**November 2017 USFS Input**

Forest Service Access Issues  
Associated with  
Humboldt County Conditional Use Permits

General

Forest Service roads identified by private property owners as being needed for access to their property in Humboldt County Conditional Use permit applications must be evaluated. Forest Service roads are basically divided into 2 categories - system roads and non-system roads. System Roads are part of the Forest Service maintained road network, non-system roads are not maintained and require an authorization to use – typically a special use permit.

System roads are not public roads in the same sense that County roads are public roads. System roads are designed and maintained for the administration of the National Forest System lands. Our main line collector roads are paved but the vast majority of our roads were built as high clearance truck roads. They were not designed for low clearance passenger cars. Maintenance of system roads is dependent upon available funds and Forest Service planned projects. In winter, Forest Service roads are not plowed and may be closed till spring. Clearance of roads from wind fall trees and rocks in the spring may be delayed until road maintenance staff can get to the problem area. Residents whose private property lies within the National Forest System boundary have the same rights to use system roads as the general public.

System roads, depending on design, location and condition can be open year road or closed seasonally with a gate due to wet weather, snow, wildlife concerns or concerns over the spread of Port Orford Cedar Root Rot Disease (the disease spreads by means of spores in mud that is tracked in vehicle tires during wet weather). System Roads are identified in the Forest Service Motor Vehicle Use Map. They are also noted by their number. The first half of the designation is the township and the second the specific road in that township. For instance road 5N20 is located in Township 5 North, road number 20.

Non-system roads that are not shown on the Forest Motor Vehicle Use Map and are not maintained. The origin of non-system roads include temporary road built by the Forest Service but no longer needed or maintained and roads developed by others including public road agencies, PG&E or private land owners. Use of non-system roads requires a special use authorization. Non-system roads have no number designation.

Commercial Use of Forest Service System Roads.

Commercial use of Forest Service Roads requires a Road Use Permit. The permit identifies the terms of use, maintenance responsibilities and fees required. Fees associated with a Road Use Permit go toward the maintenance of the road. If a landowner is hauling commercial loads (soil, rock, water, fertilizer, fuel, heavy equipment, supplies etc.) on National Forest System Roads with their own equipment no permit is necessary. If a vendor is hauling soil, rock, water, fertilizer, fuel, heavy equipment or building materials to a landowner over Forest Service system roads a Road Use Permit is needed. Fees vary according to the volume and number of trips and the type of road surface. No fee is required for incidental use of a road. Every road situation is a little different, each case must be evaluated separately.

## Improvements to Forest Service System Road

Improvements to Forest Service system roads requires a Road Use Permit. Any improvements to Forest Service System Roads required by regulating agencies for access to private property will be at the expense of the private party and must be authorized with a Forest Service Road Use Permit. Improvements such as grading, rocking, vegetation clearance and certain culvert work can be approved with a minimum of review as these activities have already been environmentally analyzed in a road maintenance analysis. Requests for road reconstruction, realignment, bridges etc. will require a separate environmental analysis that must be paid for by the applicant. The environmental work must be done to federal environmental analysis standards, overseen and approved by Forest Service resource specialists. At present the Forest Service does not have resource specialist time available to oversee environmental analysis for major road projects to satisfy private property access needs.

### County Conditional Use Permits:

If the applicant for a County Conditional Use Permit identifies a Forest Service system road as part their access needs they should be directed to complete the Road Use Permit application identifying planned uses of the road, road upgrades required, and vendors that will use of the road. A copy of the issued Road Use Permit can be provided to vendors (fuel, water, soil providers etc.) for their use on the Forest Service system road servicing the applicants land. Road Use Permit applications can be obtained from the Forest Service by contacting Victor Dumlao, Forest Engineer, Six Rivers National Forest, 1330 Bayshore Way, Eureka, California 95501. Contact information - Phone # (707) 441-3654, e-mail [vdumlao@fs.fed.us](mailto:vdumlao@fs.fed.us)

If the applicant for a County Conditional Use Permit identifies a Forest Service non-system road as an access need or proposes a new road alignment then the applicant needs to submit a Special Use Permit application. The cost for environmentally clearing and processing the permit will be at the applicant's expense. The exact fee is dependent on a number of variables and will developed when the permit application is processed. Special use permit applications can be obtained from George Frey, Lands Department, Six Rivers National Forest, 1330 Bayshore Way, Eureka, California, 95501. Contact information - Phone # (707) 441-3631, e-mail [gfrey@fs.fed.us](mailto:gfrey@fs.fed.us).

### Send completed Road Uses applications to:

Victor Dumlao  
Engineering Department  
Six Rivers National Forest Service  
1330 Bayshore Way  
Eureka, California 95501

### Send completed Special Use Permit applications to:

George Frey,  
Lands Department  
Six Rivers National Forest  
1330 Bayshore Way  
Eureka, California 95501

**Attachment 2**

**County Letters to BLM and USFS**



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**CANNABIS SERVICES DIVISION**

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3015 H Street Eureka CA 95501  
Fax: (707) 268-3792 Phone: (707) 445-7541

August 20, 2018

sent via email

Bureau of Land Management  
Arcata Field Office  
Attn.: Molly Brown, Field Manager  
1695 Heindon Road  
Arcata, CA 95521

Dear Ms. Brown:

Thank you for taking the time to meet with our office on June 15, 2018. We also want to extend our appreciation for BLM providing input concerning natural resources on a number of projects that are adjacent to BLM managed lands. As discussed during the June meeting, the implementation of the County's land use regulations governing the commercial cultivation, processing, manufacturing and distribution of cannabis, Humboldt County Code (HCC) 314-55.4 et seq., results in the county considering and needing to take action on commercial cannabis land use applications that utilize federal roads for access. Our GIS data indicates there are roughly 250 to 300 applications for commercial cannabis that may traverse through BLM lands. From our June meeting we understand parties need to secure permits from BLM to use BLM managed roads, and that one of the standard stipulations of the permit is compliance with federal law.

Although not explicitly spelled out in HCC 314-55.4 et seq., the transport of permitted commercial cannabis from the place of cultivation to the next location in the supply chain is an assumed and expected accessory activity with a valid county land use permit or certificate pursuant to HCC 314-55.4 et seq. Transport of commercial cannabis is also a permissible activity by the State of California with licenses and permits required at all points in the supply chain [Reference B&P Section 26070, CVC Section 34620, etc.].

As part of the Application Check process outlined in HCC 312-6.1.3, the Department refers applications to federal agencies that the Department believes may have relevant authority and expertise. Given the provisions of HCC 312-6.1.3, our office will continue the above practice although we understand the transport of commercial cannabis/marijuana is an illegal activity under federal law. However, HCC 312-6.1.3 also states

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Along with the referral, the Department shall include notification that, if the Department does not receive a response within ten (10) working days, the Department will assume that no recommendations or comments are forthcoming.

While BLM has provided input on projects in response to the referral process outlined above, there has not yet been a specific response or comment to the prospect of the county issuing a land use permit that would result in the transport of commercial cannabis over a federal road(s). Given the language of HCC 312-6.1.3, the county is compelled to interpret a lack of response on this matter to mean a lack of concern with respect to transport.



The lack of a BLM response leaves the county in a position where it may authorize a land use activity that will result in commercial cannabis being transported over and across federal roads. Further, the county's authorization is the first step to an applicant securing licenses for the same activity from the State.

We would appreciate knowing if this matter rises to a level that BLM wants to formally respond to and address. Please contact me with any questions about this letter at 707-268-3708.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michelle Nielsen", written in a cursive style.

Michelle Nielsen  
Senior Planner  
Humboldt County Planning and Building

Ec: Steve Mietz, Redwood National Park  
Leonel Arguello, Redwood National Park  
Merv George Jr., US Forest Service  
George Frey, US Forest Service



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**CANNABIS SERVICES DIVISION**

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3015 H Street Eureka CA 95501  
Fax: (707) 268-3792 Phone: (707) 445-7541

August 21, 2018

Sent via email

US Forest Service, Six Rivers National Forest  
Attn.: Michael Green, Acting Forest Supervisor  
1330 Bayshore Way  
Eureka, CA 95501

Dear Mr. Green:

Thank you for affording the opportunity for your staff to meet with our office on May 17, 2018. The implementation of the County's land use regulations governing the cultivation, processing, manufacturing and distribution of commercial cannabis, Humboldt County Code (HCC) 314-55.4 et seq., results in the county considering and needing to take action on commercial cannabis land use applications that utilize federal roads for access. Our GIS data indicates there are over 250 of applications for commercial cannabis that may traverse through USFS lands. From our May meeting we understand parties need to secure permits from USFS to use USFS owned/managed roads, and that one of the standard stipulations of the permit is compliance with federal law.

Although not explicitly spelled out in the referenced regulations, the transport of permitted and licensed commercial cannabis from the place of cultivation to the next location in the supply chain is an assumed and expected accessory activity with a valid land use permit or certificate pursuant to HCC 314-55.4 et seq. Transport of commercial cannabis is also a permissible activity by the State of California with licenses and permits required at all points in the supply chain [Reference B&P Section 26070, CVC Section 34620, etc.].

As part of the Application Check process outlined in HCC 312-6.1.3, the Department refers applications to federal agencies that the Department believes may have relevant authority and expertise. Our office will continue this practice although we understand the transport of commercial cannabis/marijuana is an illegal activity under federal law. However, this HCC 312-6.1.3 also states

...

Along with the referral, the Department shall include notification that, if the Department does not receive a response within ten (10) working days, the Department will assume that no recommendations or comments are forthcoming.

In accordance with HCC 312-6.1.3, the county has referred numerous commercial cannabis projects to USFS for review and comment as outlined above; however, there has not yet been a specific response or comment from USFS to the prospect of the county issuing a land use entitlement that would result in the transport of commercial cannabis over a federal road(s). Given the language of HCC 312-6.1.3, the county is compelled to interpret a lack of response on this matter to mean a lack of concern with respect to transport.

The lack of a USFS response leaves the county in a position where it may authorize a land use activity that will result in commercial cannabis being transported over and across federal roads. Further, the county's authorization is the first step to an applicant securing licenses for the same activity from the State.

We would appreciate knowing if this matter rises to a level that USFS wants to formally respond to and address. Please contact me with any questions about this letter at 707-268-3708.

Sincerely,

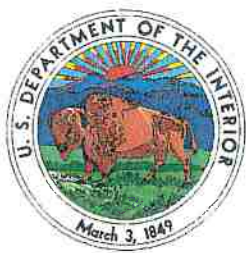
A handwritten signature in dark ink, appearing to read "Michelle Nielsen", written in a cursive style.

Michelle Nielsen  
Senior Planner  
Humboldt County Planning and Building

Ec: Steve Mietz, Redwood National Park  
Leonel Arguello, Redwood National Park  
Molly Brown, BLM  
George Frey, US Forest Service

**Attachment 3**

**BLM, USFS and NPS comment letters**



## United States Department of the Interior

### Redwood National Park

1111 Second Street  
Crescent City, California 95531

File Code: L30

August 31, 2018

Michelle Nielsen, Senior Planner  
Humboldt County Planning and Building, Cannabis Services Division  
3015 H Street  
Eureka, California 95501

Dear Ms. Nielsen,

Thank you for the opportunity to comment on the permit applications for a cannabis operation in the town of Orick (APP # 12692 and 12693).

Our primary concern is the operation and transportation of cannabis within or adjacent to the jurisdictional boundary of the park. Specifically, after discussing with the US Attorney's Office, the activities described in the permit would be in violation of Federal law or regulation including the Controlled Substances Act of 1970. The National Park Service (NPS) cannot allow the cultivation, production, transportation, or distribution of a controlled substance as defined in Title 21 of the United States Code Chapter 13 on federal lands. There is a strong federal interest to prosecute federal crimes on federal land within the jurisdictional boundary of Redwood National and State Parks, which include portions of Highway 101 and Bald Hills Road.

We have seen a steep increase in visitation to park trails and campgrounds in or near Orick. The proposed facility is close to our main visitor center which averages over 150,000 visitors a year. The NPS has concerns with the potential for strong odors emanating from this proposed cannabis operation and potential negative impacts upon park visitor experience.

Given these concerns, we request the County deny approval of these permits for a cannabis operation in Orick. Please feel free to contact me at your convenience if you wish to discuss this further.

Respectfully,

Steve Mietz  
Superintendent  
Redwood National and State Parks

cc: Michael Green, Acting Forest Supervisor, Six Rivers National Forest  
Molly Brown, Field Manager, Bureau of Land Management Arcata



**United States Department of the Interior**  
**BUREAU OF LAND MANAGEMENT**

Arcata Field Office  
1695 Heindon Road  
Arcata, CA 95521-4573  
[www.blm.gov/california](http://www.blm.gov/california)



August 28, 2018

County of Humboldt County  
Planning and Building Department  
Attn.: Michelle Nielsen  
3015 H Street, Eureka, CA 95501

Dear Michelle,

Thank you for providing the Bureau of Land Management (BLM) with the opportunity to share our concerns regarding county permitting for cannabis cultivation on private parcels if this affects federal lands or requires any federal authorizations.

The Comprehensive Drug Abuse Prevention and Control Act of 1970 and more specifically Title II of the act (the Controlled Substances Act), lists Cannabis as a Schedule I drug. The BLM does not have discretion to permit activities on the public land that will violate the Controlled Substances Act or any other federal law. The BLM therefore cannot authorize any activities related to cannabis operations on public land such as the *cultivation, production, transportation or distribution* of supplies or product.

We recommend that permit applicants adjacent to or near BLM lands have their parcels surveyed by a professional land surveyor so that their operations do not trespass upon or cause impacts to federal lands. Individuals that cause resource damage (i.e. erosion or soil contamination) to BLM-administered lands from illicit acts, including the manufacturing of cannabis, may be subject to federal criminal and/or civil action. Permit applicants should also be aware that transporting cannabis across an existing right of way on federal lands to access a private parcel, is also illegal under federal law, and violators could face federal criminal action.

Thank you again for the opportunity to comment. Please contact me if you would like to further discuss this issue. You can reach me at 707-825-2309.

Sincerely,

Molly Brown  
Field Manager



United States  
Department of  
Agriculture

Forest  
Service

Pacific Southwest Region  
Six Rivers National Forest

1330 Bayshore Way  
Eureka, CA 95501  
707-442-1721  
TDD: 707-442-1721  
Fax: 707-442-9242

**File Code:** 1500  
**Date:** August 29, 2018

Michelle Nelson  
Planning and Building Department  
Humboldt County  
3015 H Street  
Eureka, CA 95501



Dear Ms. Nelson:

Thank you for providing the USDA Forest Service with the opportunity to provide input to Humboldt County's land use regulations governing cannabis cultivation on private property as they relate to National Forest System (NFS) lands.

The use, cultivation and transportation of cannabis on Forest Service lands is illegal. The Comprehensive Drug Abuse Protection and Control Act of 1970, and more specifically Title II of the act (the Controlled Substances Act), lists cannabis as a Schedule 1 drug. The Forest Service does not have discretion to permit activities on NFS lands that will violate the Controlled Substances Act or any other federal law. The Forest Service cannot authorize any activities related to cannabis operations on public land, such as the cultivation, production, transportation, or distribution of supplies or product.

We recommend that applicants for county cannabis permits who are adjacent to or near Forest Service lands have their parcels surveyed by a professional land surveyor to ensure their operations are not trespassing upon or causing impacts to federal lands. Individuals that cause resource damage, including soil erosion and contamination to Forest Service administered lands from illicit acts including the manufacture of cannabis, may be subject to federal criminal and/or civil action. Permit applicants should be aware that transporting cannabis across an existing right of way on federal lands to access a private parcel, is also illegal under federal law, and violators could face federal criminal action.

We appreciate the opportunity to comment on the county's cannabis-use regulations. If you need further information on this subject, please contact me at (707) 441-3531.

Sincerely,

MICHAEL A. GREEN  
Acting Forest Supervisor



#### **Attachment 4**

**GIS report of cannabis application parcels accessed via federal roads**



Northern Humboldt

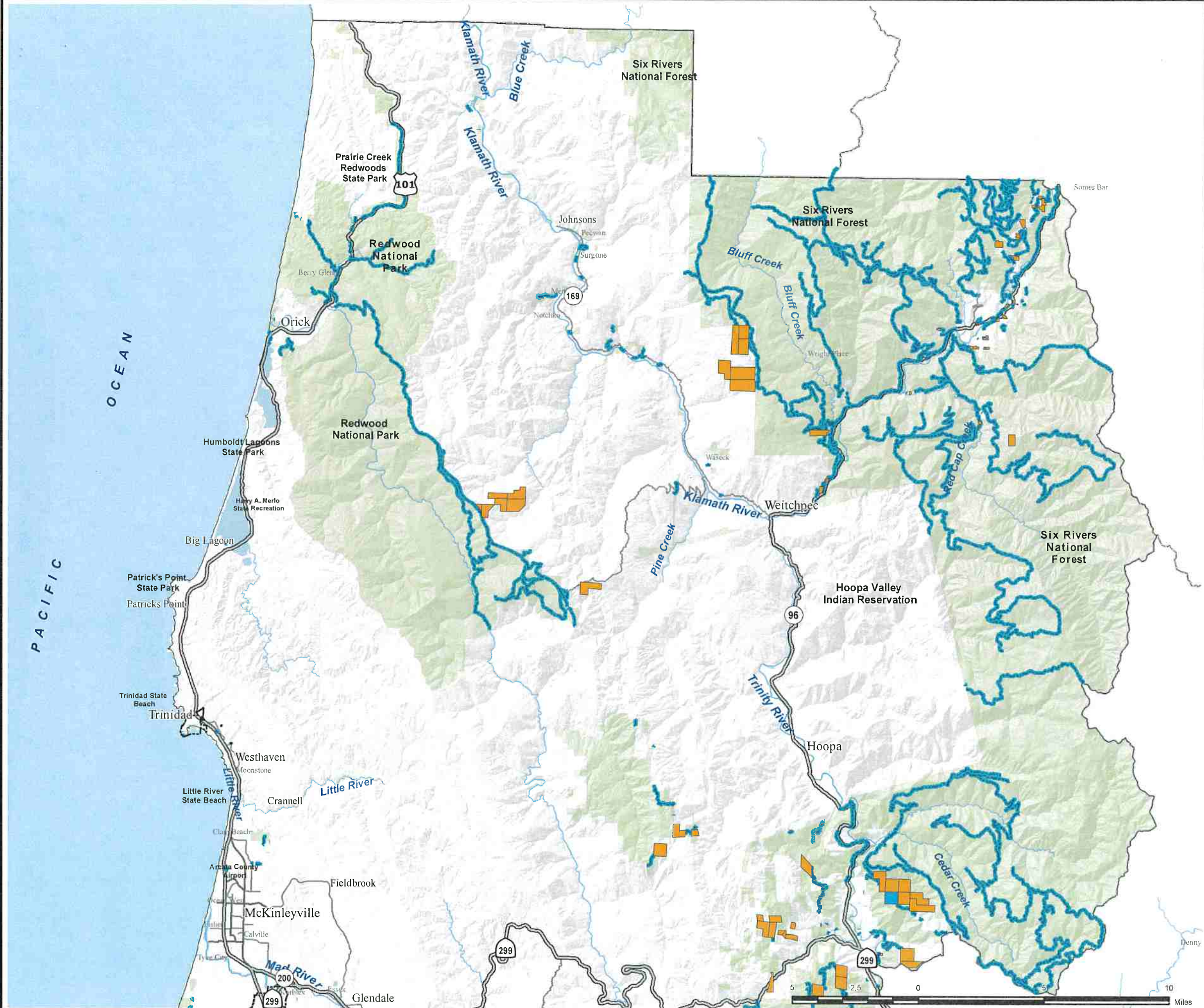
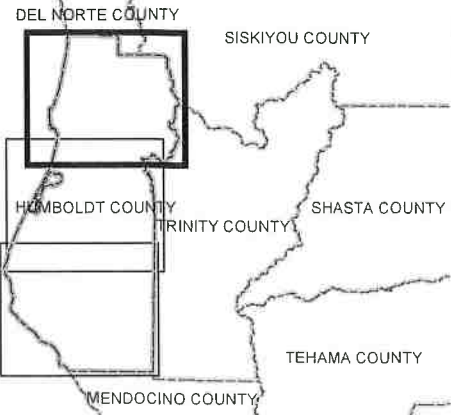
Cannabis Lands  
Utilizing Federal Roads

Legend

- Cannabis Applications Utilizing Federal Roads
- Cannabis Projects Utilizing Federal Roads
- Federal Lands
- Federal Roads
- Roads

This map is intended for planning purposes only and should not be used for precise measurement or legal boundary delineation. Original map size is 17"x11".  
Map produced by Humboldt County Planning & Building Department, Sept. 2018  
ArcMap 10.5.1 Document: H:\aprs\Cannabis\Projects\Cannabis\_Fed\_Lands\_Northern2.mxd

Map Location





# Central Humboldt

## Cannabis Lands Utilizing Federal Roads

### Legend

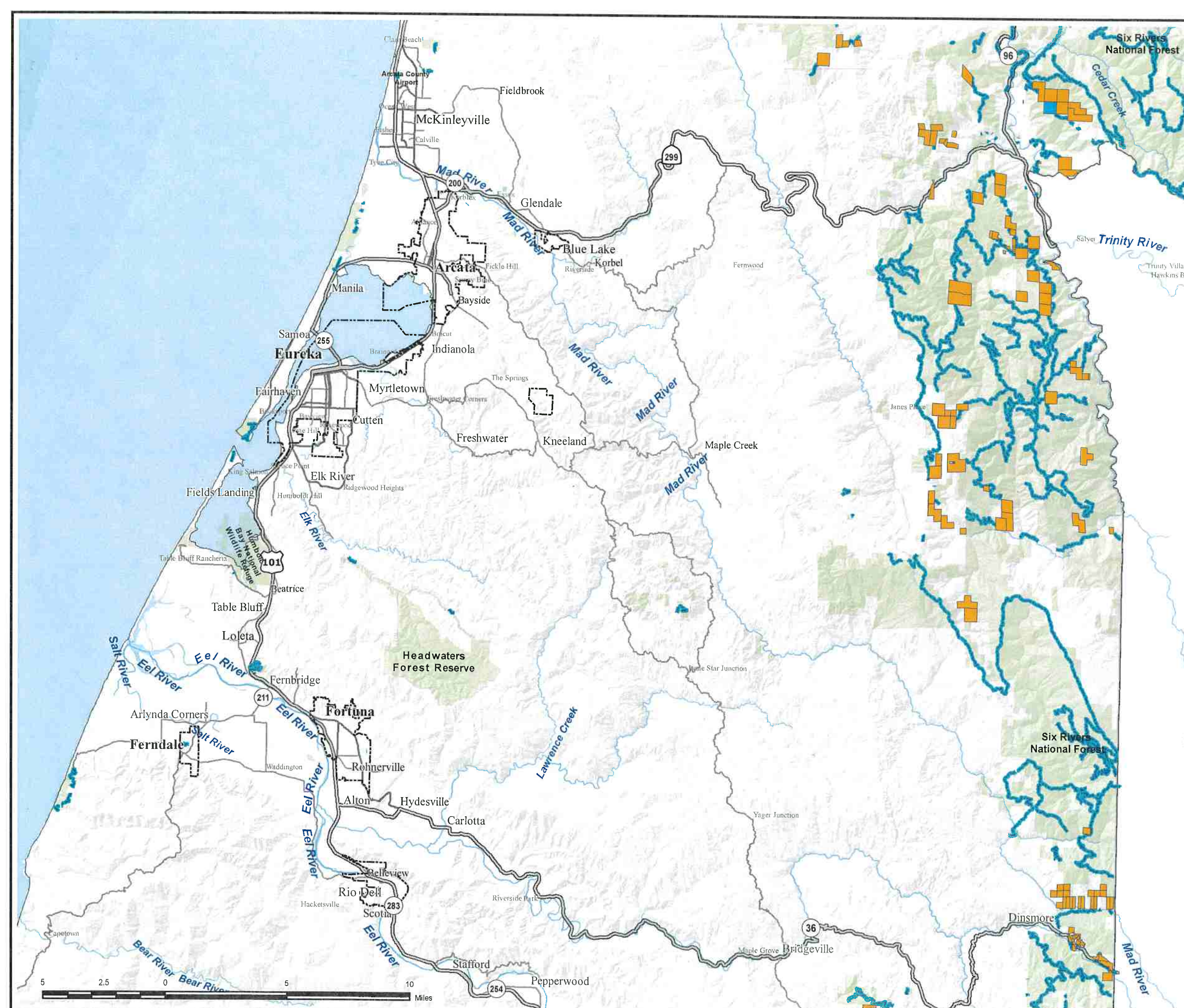
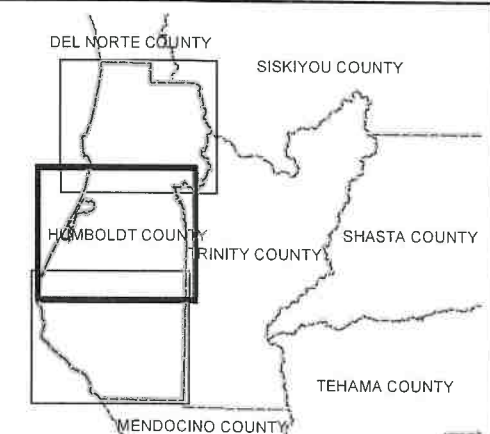
-  Cannabis Projects Utilizing Federal Roads
-  Cannabis Applications Utilizing Federal Roads
-  Federal Lands
-  Roads
-  Federal Roads

This map is intended for planning purposes only and should not be used for precise measurement or legal boundary delineation. Original map size is 17"X11".

Map produced by Humboldt County Planning & Building Department, Sept. 2018

ArcMap 10.5.1 Document: H:\aprs\Cannabis\Projects\Cannabis\_Fed\_Lands\_Central2.mxd

### Map Location








# Southern Humboldt

## Cannabis Lands Utilizing Federal Roads

### Legend

-  Cannabis Applications Utilizing Federal Roads
-  Federal Lands
-  Roads
-  Federal Roads

This map is intended for planning purposes only and should not be used for precise measurement or legal boundary delineation. Original map size is 17"x11".

Map produced by Humboldt County Planning & Building Department, Sept. 2018

ArcMap 10.5.1 Document: H:\aprs\Cannabis\Projects\Cannabis\_Fed\_Lands\_Southern2.mxd

### Map Location

