



COUNTY OF HUMBOLDT

For the meeting of: 9/10/2019

File #: 19-1084

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

SUBJECT:

Annual Review of Limits and Prescribed Distribution of Commercial Cannabis Permitting and Acreage Allowances

RECOMMENDATION(S):

That the Board of Supervisors:

1. Open the public hearing and receive the staff report and testimony by the public;
2. Close the public hearing; and
3. Direct staff to continue to monitor applications within the critical watersheds and pursue abatement of the most egregious violations and keep the permit caps and cultivation prohibitions established by Resolution 18-43 in place.

SOURCE OF FUNDING:

Applicant fees.

DISCUSSION:

This report is an update of the county's commercial cannabis permitting efforts and cannabis code enforcement efforts in each of the county's 12 discrete planning watersheds, and within the critical (impacted and refuge) subwatersheds. The report will show that while substantial progress in permitting and abating cannabis sites has occurred, additional progress is needed to fully permit and remediate all known commercial cannabis sites. Additionally, ongoing watershed monitoring efforts which will help to identify the impact of cannabis cultivation and the regulatory framework on critical subwatersheds have yet to be completed. As a result, staff's recommendation to the board is to continue to monitor the application process and to continue to work on abatement of egregious cannabis violations.

Background: As part of the adoption of the Commercial Cannabis Land Use Ordinance (CCLUO) the

Board chose to distribute the allowable permits and acreages among the 12 discrete Humboldt County planning watersheds as follows:

Watershed	Permits	Acres
1 Cape Mendocino	650	223
2 Eureka Plains	89	31
3 Lower Eel River	336	116
4 Lower Klamath	161	56
5 Lower Trinity	169	58
6 Mad River	334	115
7 Middle Matine	360	125
8 Redwood Creek	141	49
9 South Fork	730	251
10 South Fork	86	29
11 Trinidad	19	6
12 Van Duzen	425	146
TOTAL	3,500	1,205

Further, the Board prohibited new cultivation activities in the impacted and refuge subwatersheds until all known pre-existing cultivation sites (established or in operation prior to January 1, 2016) had been suspended, permitted, or under a compliance agreement to remediate pursuant to the Retirement, Remediation, and Relocation provisions of the CCLUO.

The resolution establishing this cap, adopted by the Board of Supervisors on May 8, 2018, (Resolution No. 18-43) provided for annual review by the Board of the limits and distribution of permitting. After a review of current information and testimony the Board may choose to establish new caps and change their distribution within watersheds.

Permit review:

As of August 1, 2019, 2,497 commercial cannabis applications totaling up to 778.59 acres of cultivation have been submitted. Of these, 471 permits totaling 123 acres of commercial cannabis had been approved and an additional 572 permits have been withdrawn, cancelled or denied. Please note that while listed at 102 acres, the cultivation area of applications that have been withdrawn, cancelled, or denied is not accurately known as many of these applications did not include accurate or specific information regarding their cultivation areas.

Watershed	Permits Submitted	Acres	Withdrawn/Denied	Acres	Permits Approved	Acres
Cape Mendocino	417	186.12	81	11	108	35.2
Eureka Plain	71	50.89	15	1.18	13	2.18
Lower Eel River	205	91.89	41	7.26	45	8.5
Lower Klamath	111	34.24	31	6.9	16	5.1
Lower Trinity River	147	73.26	28	4.1	32	14.6
Mad River	271	99.20	86	14.9	34	4.52
Middle Main Eel River	219	101.28	51	13.2	22	5.34
Redwood Creek	77	22.85	16	2.38	2	0.6
South Fork Eel River	611	188.78	143	20.11	133	25.5
South Fork Trinity River	51	44.39	5	1.32	7	3.21
Trinidad	12	1.2	3	0.27	2	0.18
Van Duzen River	308	154.83	72	19.43	57	18.37
Total	2,497	778.59	572	102.05	471	123.3

While none of the permit caps have been exceeded, the county received applications that exceed the acreage cap per the adopted resolution in the Eureka Plain, South Fork Trinity River and Van Duzen River watersheds.

In the Eureka Plain watershed, applications totaling just over 1 acre of cultivation have been withdrawn, cancelled or denied, resulting in current applications that exceed the cap by approximately 19 acres. In the South Fork Trinity River watershed, current applications exceed the acreage cap by approximately 13.5 acres. In the Van Duzen River watershed, enough applications have been withdrawn or cancelled to where current applications are below the cap. The relationship to these caps will be monitored, and if we approach the cap limits, we will notify applicants that permits will be approved based upon when all necessary information is received to support approval of the application. Once the cap threshold is reached no additional permits will be issued until further Board of Supervisors action is taken to increase or remove the Cap.

All other watersheds are within the allowable limits of the resolution even if all submitted permits were to be approved.

Enforcement

As of August, a total of 857 cannabis enforcement and abatement actions had been initiated in

Humboldt County. Over 300 unpermitted cultivation sites had been fully abated, and another 166 had entered into compliance agreements. The enforcement efforts have been heavily targeted in critical subwatersheds and towards the most egregious violations. As of August of 2019, the largest and most egregious unpermitted cannabis sites have been or are currently being resolved through the code enforcement process. Unpermitted/illegal cultivation activities are increasingly smaller in size. As the code enforcement efforts continue, smaller illegal cultivation sites will become targets for code enforcement actions.

The breakdown within the discrete planning watersheds is shown in the table below.

Watershed	Parcels with Enforcement Initiated	Compliance Agreements	Fully Abated
Cape Mendocino	187	51	66
Eureka Plain	11	0	7
Lower Eel River	17	4	11
Lower Klamath	22	3	10
Lower Trinity River	60	8	29
Mad River	42	6	14
Middle Main Eel River	143	20	46
Redwood Creek	21	9	2
South Fork Eel River	240	45	100
South Fork Trinity River	29	7	2
Trinidad	0	0	0
Van Duzen River	85	15	29
Total	857	166	316

Subwatersheds

Resolution No. 18-43 also declared that certain subwatersheds were either impacted by low stream flows due to cannabis or were declared to be refuges critical to the recovery of certain aquatic species. The resolution prohibited all new cannabis cultivation in these subwatersheds until all known pre-existing cultivation sites were suspended, permitted or remediated. The following tables show the status of permitting and enforcement efforts within these impacted and refuge subwatersheds.

Subwatershed	Permits Submitted	Acres	Withdrawn/Denied	Acres	Approved	Acres
<i>*Headwaters Mattole River</i>	105	20.13	23	1.62	28	4.23
Middle Mattole River	63	22.87	14	4.83	35	17.38

Upper Mattole River	81	18.96	14	1.36	12	3.53
Noisy Creek - Redwood Creek	31	8.16	3	0.51	0	0
Minor Creek - Redwood Creek	36	12.25	8	1.34	3	0.61
Redwood Creek	91	18.99	25	4.16	20	2.62
Salmon Creek	113	22.54	27	1.72	23	5.82
<i>*Sprowel Creek</i>	11	28.01	4	0.99	5	1.0
Hoagland Creek - Van Duzen River	65	31.66	22	13.63	11	4.5
Butte Creek	46	15.95	6	0.96	5	2.08
Little Van Duzen River	53	13.5	7	0.07	13	4.72
Total	695	187.84	153	31.19	155	46.49
<i>*Refuge watersheds</i>						

Subwatershed	Parcels with Enforcement Initiated	Compliance Agreements	Fully Abated
<i>*Headwaters Mattole River</i>	55	8	23
Middle Mattole River	45	22	10
Upper Mattole River	36	5	18
Noisy Creek - Redwood Creek	9	1	2
Minor Creek - Redwood Creek	12	7	1
Redwood Creek	29	6	13
Salmon Creek	39	9	17
<i>*Sprowel Creek</i>	1	0	0
<i>Hoagland Creek - Van Duzen River</i>	23	3	7
Butte Creek	7	0	3
Little Van Duzen River	24	5	6
Total	280	67	99
<i>*Refuge watersheds</i>			

As demonstrated above, the county has made significant progress on permitting and abating cultivation sites in these subwatersheds, however is not close to having permitted or remediated all known cultivation sites. Though not an immediate concern, the County will continue to need to monitor applications within the Eureka Plain and South Fork Trinity planning watersheds to ensure that the

acreage caps set by Resolution 18-43 are not exceeded.

In the critical subwatersheds, county code enforcement has identified potentially 147 additional parcels that may be commercial cultivating cannabis without being within the county permit process. These parcels will likely have enforcement initiated soon, bringing the total of parcels within these critical watersheds that are being addressed through the code enforcement process to over 400. Code enforcement efforts are having incredible success in abating violations, but these efforts continue to be necessary to reduce and eliminate the impacts of illegal and unpermitted cannabis grows within these watersheds.

Watershed Monitoring

The California State Water Resources Control Board, North Coast Regional Water Quality Control Board, and Department of Fish and Wildlife are all actively engaged in water quality and flow monitoring on many of the critical subwatersheds, as well as other subwatersheds in Humboldt County. The majority of the efforts are currently occurring in subwatersheds in the South Fork Eel River Planning Watershed as part of the California Water Action Plan, an initiative of Governor Brown that was started in 2014 and updated in 2016. Similar monitoring is just beginning in the tributaries to the Van Duzen. Data being acquired include seasonal flow measurements, turbidity, and temperature. Along with this data, the State is developing hydrological models to determine what the pre-impacted flow levels and temperature would have been. Those models will be used to compare to the recorded data to determine how much of an impact the cannabis production is having in these watersheds, and how much of an impact the permitting of these cultivation sites are having on improving the water quantity and water quality within these subwatersheds.

These ongoing efforts have only just begun and are expected to take at least another 3 years or more. However, once these studies are completed, we expect to be able to draw conclusions about the impact of cannabis production and permitting on the health of these critical watersheds. Through the permit requirements for water forbearance and BMP's, county staff is optimistic that the watershed monitoring data will show substantial beneficial impacts in the health of these critical watersheds. However, no conclusions can be drawn until the watershed monitoring modeling and data has been completed.

Conclusion

Substantial permitting and enforcement work remain necessary in these critical watersheds, and solid technical data about the health of the watersheds will not be known for a minimum of a few more years. Accordingly, staff recommends that the prohibition on new cannabis production in the critical watersheds remain in place.

FINANCIAL IMPACT:

The cost of processing cannabis applications is subject to full cost recovery by applicants.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

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OTHER AGENCY INVOLVEMENT:

State Water Resources Control Board, California Department of Fish and Wildlife, North Coast Regional Water Quality Control Board.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may choose to instruct staff to perform environmental analysis necessary to amend the distribution of allowable cultivation within the discrete planning watersheds and/or to remove the prohibition of new cultivation within the designated impacted and refuge watersheds.

ATTACHMENTS:

Attachment 1: Resolution 18-43 - Establishing a Cap

PREVIOUS ACTION/REFERRAL:

Board Order No.: J-1

Meeting of: May 8, 2018

File No.: 18-400