



COUNTY OF HUMBOLDT

Legislation Text

File #: 24-361, Version: 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

Vote Requirement: Majority

SUBJECT:

Review of Commercial Cannabis Permitting and Acreage and Watershed Distribution

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.

SOURCE OF FUNDING:

Applicant fees

DISCUSSION:

Executive Summary

This report is an update of the county's commercial cannabis permitting efforts and code enforcement efforts in each of the county's 12 discrete planning watersheds, and within the critical (impacted and refuge) sub-watersheds. The report will show that more cannabis cultivation operations have been removed from these watersheds than the combined approved permits and pending applications. The number of potential permits is affected by the ability of permit holders and applicants to address permit processing costs and pay Measure S taxes. The report does identify that there is the potential need to address abandoned cannabis cultivation sites, and there are options being explored to address these sites.

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.:

Cap Distribution		
Watershed	Permits	Acres
Cape Mendocino	650	223
Eureka Plain	89	31
Lower Eel	336	116
Lower Klamath	161	56
Lower Trinity	169	58
Mad River	334	115
Middle Main Eel	360	125
Redwood Creek	141	49
South Fork Eel	730	251
South Fork Trinity	86	29
Trinidad	19	6
Van Duzen	425	146
TOTAL	3,500	1,205

The resolution was prepared in response to comments on the draft environmental impact report (DEIR) prepared for the CCLUO. The DEIR projected that there would be 1,000 new cannabis cultivation sites in addition to pre-existing sites. Comments raised questions about the total number of cultivation sites that could be permitted (both new and pre-existing) and their distribution. The cap set a total county-wide number, distributed the allowed number of permits within watersheds based upon eligible acreage for cannabis cultivation (zoning, non-government, slope) and included the more than 2,000 applications received under the Commercial Medical Marijuana Land Use Ordinance (CMMLUO). Further, the Board prohibited new cultivation activities in 11 designated sub-watersheds (impacted and refuge sub-watersheds) until all known pre-existing cultivation sites (established or in operation prior to Jan. 1, 2016) had been suspended, permitted, or under a compliance agreement to remediate.

The resolution indicates that the Board of Supervisors may choose to establish new caps or change their distribution within the watersheds based upon information submitted at annual reviews of the status of the cap. The cap was found consistent with the EIR prepared for the CCLUO because it restricted the total number of permits in total and within watersheds which is more conservative than the analysis of the EIR. The Board of Supervisors could choose to further reduce the cap, but any increase to the cap would need to be based upon empirical evidence that the increase can be supported by the watersheds.

Status of the Cap

Table 1 below is a “snapshot” of the current population of cannabis cultivation permits and their

associated cultivation acreage by watershed. The table is comprised of three subgroups: Approved Cultivation Permits that are still active; Permits or Applications that have been withdrawn or closed and are no longer active, and; remaining applications and their associated acreage within each watershed. The bottom of the table shows 3,009 total permits have been applied for. This number represents applications for cultivation permits and for non-cultivation operations such as manufacturing, distribution, modifications, minor deviations etc.

A total of 2,125 cultivation applications have been received. Of these:

- 1,068 cultivation permits for 388 acres are approved and being monitored.
- 657 cultivation permits for 266 acres have been denied, withdrawn, or closed.
- 400 cultivation permits for 221 acres remain to be processed to decision.

TABLE 1

Watershed	Total Cultivation Permits Submitted	Total Submitted Cultivation Acres	Cultivation Permits Approved	Permitted Cultivation Acres	Remaining Cultivation Permits Pending	Pending Cultivation Acres	With D Cult P
Cape Mendocino	393	154	234	88.26	54	23.71	
Eureka Plain	50	49	13	10.18	14	11.86	
Lower Eel River	164	88	75	34.94	21	22.76	
Lower Klamath	71	30	15	5.26	26	13.17	
Lower Trinity River	133	53	74	33.46	19	7.61	
Mad River	175	79	73	26.98	29	21.32	
Middle Main Eel River	220	95	106	42.84	54	28.06	
Redwood Creek	67	21	13	3.88	36	12.38	
South Fork Eel River	516	161	305	86.57	77	34.93	
South Fork Trinity River	45	32	24	11.04	10	14.02	
Trinidad	22	4	6	0.85	2	0.21	
Van Duzen River	269	110	130	44.05	58	30.63	
TOTALS	2125	875	1068	388.31	400	220.67	
TOTAL Cannabis Permits	3009		1336		535		

Table 2 below represents “the present” by showing the number of Approved Cultivation Permits and their associated acreage that are active and in Post Approval Monitoring status within each watershed. These receive annual inspections. The permit cap and the acreage cap are reflected, as is the percentage of each against the stated cap. There are no watersheds that exceed or come close to exceeding the permit or the acreage caps.

TABLE 2

Watershed	Cultivation Permits Approved	Cultivation Permit Cap	Percentage of Cap	Permitted Cultivation Acres	Cultivation Acreage Cap	Percentage of Cap
Cape Mendocino	234	650	36%	88.26	223	40%
Eureka Plain	13	89	15%	10.18	31	33%
Lower Eel River	75	336	22%	34.94	116	30%
Lower Klamath	15	161	9%	5.26	56	9%
Lower Trinity River	74	169	44%	33.46	58	58%
Mad River	73	334	22%	26.98	115	23%
Middle Main Eel River	106	360	29%	42.84	125	34%
Redwood Creek	13	141	9%	3.88	49	8%
South Fork Eel River	305	730	42%	86.57	251	34%
South Fork Trinity River	24	86	28%	11.04	29	38%
Trinidad	6	19	32%	0.85	6	14%
Van Duzen River	130	425	31%	44.05	146	30%
TOTALS	1068	3500	31%	388.31	1205	32%
TOTAL Cannabis Permits	1336					

Table 3 shows the “theoretical maximum future” for the current cultivation permits and applications. Using the most conservative but unlikely scenario that ALL existing cultivation permits continue to operate and all applications are approved for their cultivation area, the combined totals by watershed are represented in the “Permits + Pending Cultivation Apps” column and are compared to the caps. Even under this most unlikely scenario, neither the permit nor the acreage caps are exceeded in any watershed.

TABLE 3

Watershed	Permits + Pending Cultivation Apps	Cultivation Permit Cap	Potential % of Cap	Permitted Cultivation Acres + Pending Cultivation Acres	Cultivation Acreage Cap	Potential % of Cultivation Acreage Cap
Cape Mendocino	288	650	44%	111.97	223	50%
Eureka Plain	27	89	30%	22.04	31	71%
Lower Eel River	96	336	29%	57.70	116	50%
Lower Klamath	41	161	25%	18.43	56	33%
Lower Trinity River	93	169	55%	41.07	58	71%
Mad River	102	334	31%	48.30	115	42%
Middle Main Eel River	160	360	44%	70.90	125	57%
Redwood Creek	49	141	35%	16.27	49	33%
South Fork Eel River	382	730	52%	121.51	251	48%
South Fork Trinity River	34	86	40%	25.07	29	86%
Trinidad	8	19	42%	1.05	6	18%
Van Duzen River	188	425	44%	74.68	146	51%
TOTALS	1468	3500	42%	608.97	1205	51%
TOTAL Cannabis Permits	1871					

Table 4 identifies the same watersheds showing over 1,200 code enforcement cases against unpermitted cannabis cultivation operations. Of the 1,211 unpermitted operations, 887 or 74% have been fully abated and another 99 are completing their abatements after entering compliance agreements. This constitutes an additional 986 cultivation sites that have been removed.

It is important to note that the vast majority of cultivation applications and approved permits were for pre-existing cultivations. The 657 withdrawn and denied applications represent a substantial reduction of roughly 30% of total cultivation applications received (2,125). Conservatively estimating that 65 percent of the 657 withdrawn and denied applications are for pre-existing, this means that approximately 427 pre-existing cultivation sites are no longer cultivating.

Adding the pre-existing cultivation sites that are no longer cultivating with those that have code enforcement cases pending, this is a total of 1,413 fewer cultivation operations than existed at the 2016 baseline. More cultivation sites have been removed from the County than have been approved.

TABLE 4

Watershed	Parcels with Enforcement Initiated	Compliance Agreements	Fully Abated	Withdrawn/Denied Cultivation Permits	Canabis Operations Removed from Watersheds
Cape Mendocino	240	17	180	105	302
Eureka Plain	21	0	15	23	38
Lower Eel River	34	2	27	68	97
Lower Klamath	34	2	28	30	60
Lower Trinity River	86	5	65	40	110
Mad River	65	4	43	73	120
Middle Main Eel River	198	24	142	60	226
Redwood Creek	45	3	29	18	50
South Fork Eel River	334	22	262	134	418
South Fork Trinity River	31	8	12	11	31
Trinidad	3	0	1	14	15
Van Duzen River	120	12	83	81	176
TOTALS	1211	99	887	657	1,643

Table 5 and 6 below show results of permitting and code enforcement actions within the 11 sub-watersheds identified in Resolution 18-43. Table 5 shows there are 141 applications to be processed for a total of 53.92 acres, 341 permits have been approved and 162 have been withdrawn or denied within the impacted and refuge sub-watersheds.

Table 6 shows that a total of 327 properties have either been completely abated or are in a compliance agreement. There are 162 applications/permits either withdrawn or denied. Using the same assumption as above that 65 percent of those were for pre-existing, means that at least 105 of those permits are for pre-existing meaning that there has been an overall reduction of 432 properties from being cultivated. More cultivation sites have been removed from these watersheds than have been approved.

TABLE 5

Sub-Watershed	Remaining Permits Pending	Pending Acres	Withdrawn /Denied	Withdrawn Acres	Permits Approved	Permitted Acres	Total Permits Submitted	Total Submitted Acres
*Headwaters Mattole River	10	2.33	18	3.89	52	12.54	80	19
Middle Mattole River	8	3.85	24	10.24	41	16.41	73	31
Upper Mattole River	16	5.77	11	1.89	43	10.28	70	18
Noisy Creek - Redwood Creek	22	6.20	5	0.97	3	1.04	30	8
Minor Creek - Redwood Creek	13	6.07	5	1.76	6	1.53	24	9
Redwood Creek	14	4.46	24	5.98	42	8.72	80	19
Salmon Creek	17	7.28	29	6.00	65	15.71	111	29
*Sprowel Creek	1	0.42	4	1.45	12	3.16	17	5
Hoagland Creek - Van Duzen River	13	4.96	22	18.32	30	9.83	65	33
Butte Creek	16	8.82	7	1.96	18	6.00	41	17
Little Van Duzen River	11	3.76	13	4.05	29	10.89	53	19
TOTALS	141	53.92	162	56.51	341	96.11	644	207
TOTAL Cannabis Permits	168		279		395		842	

TABLE 6

Sub-Watershed	Parcels with Enforcement Initiated	Compliance Agreements	Fully Abated	Withdrawn/Denied Cultivation Permits	Canabis Operations Removed from Watersheds
*Headwaters Mattole River	60	5	42	18	65
Middle Mattole River	56	5	38	24	67
Upper Mattole River	54	3	42	11	56
Noisy Creek - Redwood Creek	18	1	18	5	24
Minor Creek - Redwood Creek	24	3	18	5	26
Redwood Creek	37	2	29	24	55
Salmon Creek	53	5	43	29	77
*Sprowel Creek	3	0	3	4	7
Hoagland Creek - Van Duzen River	33	3	23	22	48
Butte Creek	12	1	10	7	18
Little Van Duzen River	33	6	17	13	36
TOTALS	383	34	283	162	479

Impact of Delinquent Payments.

The delinquency of payments on Measure S Taxes and processing costs to the Planning and Building Department is likely to further reduce the number of applications and permits. There are currently 228 permit holders owing both permit processing costs to Planning and Building and Measure S taxes. Of these, 149 are approved permits and will be subject to suspension for a period of 90 days, during which the permit holders can enter into an agreement to pay their taxes and catch up on their Measure S payments. If this does not occur these permits will be scheduled for revocation in front of the Board of Supervisors. There are 79 applications that owe processing costs and Measure S taxes from possession of an Interim Permit. These will be scheduled for a hearing at the Zoning Administrator with a recommendation of denial.

In addition, there are 76 applicants that owe either Measure S taxes or costs associated with processing the application. These applications will be scheduled for the Zoning Administrator with a recommendation of denial. There are 234 permit holders that owe either Measure S taxes or costs associated with processing the application. These applicants will be suspended with a possible result being revocation unless the permit holder brings their accounts current. There are a total of 538 applications and permits having the potential to be removed from the permit numbers cited when the 228 permits that owe both Measure S and processing costs, 234 permit holders that owe either Measure S or processing costs and applicants that owe either Measure S or processing costs are added together. While staff hopes that the applicants and permit holders included in these lists will take the necessary actions to not be revoked or denied, it is difficult to tell how this will affect the overall number of permits. The net result will be that the overall number of potential and actual permits will be reduced. The 538 applications and permits owing money exceeds the number of remaining permits (400) to be processed.

Impacts on water use:

1. Relative Water Use. The numbers presented above demonstrate that the overall number of cultivation sites has been reduced. It is difficult to quantify this in relation to actual cultivation area and water use but given the numerical reduction in cultivation sites it is likely that water use within the watersheds have been reduced.

The public has frequently expressed concern over the potential impact on the county's water resources from cannabis irrigation. From a water usage perspective, it might be worthwhile to note the following:

- Both the CMMLUO and the CCLUO regulate the amount and source of water being used for Cannabis Cultivation. This is much different than the unregulated industry.
 - The CMMLUO only allows diversionary water sources for pre-existing cultivation and the CCLUO does not allow it except to start plants when practicing dry farming. When a diversionary source is used, forbearance during the dry season is required. This is accompanied by regulations on the amount of water used and the amount put into storage.
 - The majority of cannabis operations have moved away from diversionary sources and are relying on groundwater wells and/or rain-water catchment.
 - A research study published by the USGS (Flint, 2013) indicates that approximately 34% of precipitation in Northern California percolates into groundwater recharge. <https://ecologicalprocesses.springeropen.com/articles/10.1186/2192-1709-2-25> That translates to roughly 378,500 gallons of groundwater recharge a year per acre of land as an average in Humboldt County, with many microclimates exceeding this amount. The recharge rate can be higher in above-average rainfall years. Even on an individual parcel basis, more water from precipitation is going into groundwater than is coming out for cannabis irrigation.
2. Watershed Monitoring: When Resolution 18-43 was adopted, the county understood that the California State Water Resources Control Board, the North Coast Regional Water Quality Control Board, and the California Department of Fish and Wildlife were engaging in water quality and flow monitoring on many of the watersheds and other subwatersheds in Humboldt County. Planning and Building Department staff has reached out to these agencies to see if any useable data has been collected that could be used to compare stream flows and stream health from pre- and post-cannabis permitting and enforcement. However, these agencies have not provided any water quality and water quantity data that can be utilized for these purposes.

Conclusions.

- A. Watershed Caps. Watershed monitoring data by state agencies has not been produced in any usable information, but the county's permit and enforcement efforts have led to a substantial reduction in cannabis cultivation. The following conclusions can be drawn:
- i. Very few applications for new cultivation are being submitted, and based upon the facts the county is at 42% of the number of allowed applications and 51% of allowed acreage, it is not expected the cap will be reached.
 - ii. There are watersheds that show a higher concentration of potential permits and cultivation. This is dependent upon projects that have not been approved moving forward for approval and will be affected by the reduction in overall permits, likely to result from farmers not being current in the permitting costs and payment of Measure S taxes.
- B. Water Use. Between the denial and withdrawal of pre-existing cultivation sites and code enforcement actions to abate illegal cultivation sites, there are fewer cultivation sites in the county than when the county's permitting process began. Unfortunately, this has not been monitored, but it is likely the impact of these efforts on the health of the county's watersheds has been positive.
- C. Abandoned/Discontinued Cultivation Sites. Concern has been raised about cannabis cultivation sites being abandoned and not cleaned up. The CCLUO requires that when a cannabis operation ceases to exist on a property that the cannabis related improvements are removed or converted to another permitted use on the property. Some farmers are selling their properties and purchased by people who do not want to cultivate. These properties are being cleaned up. For permitted cultivation sites, and sites that had cultivation with an Interim Permit but never received the formal permit, the department will contact the property owner to determine if they will take necessary actions to clean it up. There has been some success in this approach. If the property owner is not responsive, then this will become a Code Enforcement action. Code Enforcement has two established tools available, and is exploring additional mechanisms that could provide resources to clean these sites up, as follows:
- i. Abatement. This involves the county removing all the material from the site using the abatement fund. This can get expensive and the county is not compensated for the expenses until the property is either sold, or sold because there are delinquent taxes. It does provide an immediate mechanism to address dangers to the environment and public, health and safety and in circumstances where there are no other alternatives available.
 - ii. Receivership. In cases where there is equity in the property to pay off the cost of a cleanup, and resale of the property, a court-appointed receiver can be used to clean the property. In these cases, the county does not bear the costs other than the staff time to establish the existence of the violation, issue appropriate notices and work with the receiver. County costs are reimbursable through this process. Receiverships have now been used effectively by the county to abate several sites and many more are being explored both related to cannabis and for traditional code enforcement cases.
 - iii. NGO/Grant Collaboration. The department has been in discussions about grants and collaboration with Non-Government Organizations (NGOs) to facilitate clean up of cannabis

properties. This is still in the exploratory stage but has potential to see properties cleaned up.

Staff expects that the number of properties that need to be addressed will continue to increase. If they all need to be addressed through the county funded abatement process, this will not be feasible. To the extent the department can develop other mechanisms to assist with this will make the work possible.

D. Ordinance Modification. During the discussions on possible Measure A responses the idea of modifying the CCLUO was discussed, and the idea of a “3.0” continues to be discussed. The primary question that needs to be answered is why a new ordinance? Most of the issues raised in the Measure A initiative are addressed in the existing ordinance (annual review for compliance, coordination with other agencies, public notice, instream flows and wells, diversionary sources of water and forbearance, use of generators, and roads.) The CCLUO is more comprehensive in how it addresses these issues than the CMMLUO. The Planning Commission has established standard conditions for CMMLUO applications that require conversion from generators to renewable energy, requirements for review of wells, and water monitoring.

The three areas that seemed to carry some consensus with the Board of Supervisors during those discussions was related to whether the cap could or lowered, whether additional new large cultivation sites should be allowed, and whether the threshold for public notice should be lowered. Each of these can be accomplished without a complete re-write of the existing ordinance. Based upon the low number of applications (fewer than five) received over the last couple of years and under the CCLUO in general, there is not a high demand to permit new cultivation sites. There is already a cap on the number of large cultivation sites that can be permitted. Currently the CCLUO allows not more than 10 cultivation sites over an acre in area.

If your Board desires to see modifications to the CCLUO, or to the cap, it is recommended that direction be given to staff with a priority level. Work on this will require that other policy and ordinance work be put to the side for this to be completed.

FINANCIAL IMPACT:

The work associated with monitoring permits relative to the watersheds is funded by permit fees.

STRATEGIC FRAMEWORK:

This action supports your Board’s Strategic Framework priority by its support of the Goals and Policies of fostering healthy watersheds through responsible management of forest lands and watersheds.

OTHER AGENCY INVOLVEMENT:

None

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Resolution 18-43

PREVIOUS ACTION/REFERRAL:

Board Order No.: 19-1084, 18-400

Meeting of: 9/10/18, 5/8/18

File No.: N/A