



COUNTY OF HUMBOLDT

For the meeting of: 4/4/2023

File #: 23-364

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

SUBJECT:
Summarily Approve Administrative Civil Penalty Assessment on Various Properties

RECOMMENDATION(S):
That the Board of Supervisors:

1. Approve the proposed Administrative Civil Penalty Assessments on property owners who are in violation of various Humboldt County Codes including violation of Commercial Cannabis Land Use Ordinance (CCLUO) (formerly Commercial Medical Marijuana Ordinance) in the amount of \$900,000 plus administrative costs incurred in accordance with Title III, Division 5, Chapter 2, section 352-20 Summary Approval of Proposed Administrative Civil Penalty Assessments.
2. Provide direction to the Planning and Building Department regarding additional enforcement of Administrative Civil Penalty Liens.

SOURCE OF FUNDING:
Property Owner

DISCUSSION:

I. Executive Summary

The Board is being asked to approve the proposed Administrative Civil Penalty Assessments against nine properties which have been unresponsive/non-compliant to notices from the county requiring abatement of nuisances and correction of code violations related to cannabis cultivation. Your Board is also being asked to give direction on how to treat these civil penalty assessments. Historically they remain on the property until the property is sold, but questions have been raised whether it is good to leave a \$900,000 assessment sitting on a property for an indefinite period of time. Your Board is being asked to give direction on how to address these assessments.

II. Administrative Civil Penalty Assessments

Attachments A-I include a record of key noticing documents for each violation, including the name of the property owner, the name of the violator, the Assessor Parcel Number (APN), and notification

documents.

Humboldt County Code Section 352-20 states “If an objection to the proposed assessment is not filed by a Responsible Party within ten (10) calendar days after service of the Notice of Administrative Civil Penalty Assessment, the Humboldt County Board of Supervisors shall summarily approve the proposed assessment without holding an Administrative Civil Penalty Assessment Hearing.

These assessments are the result of active code enforcement on unpermitted cannabis operations as directed by your Board. Utilizing a combination of satellite imagery, on-site inspections, and in some cases collaboration with law enforcement, the department issued Notices to Abate Nuisance and Notices of Violation and Proposed Administrative Civil Penalty (“Notices of Violation”) on each of the properties listed below for unpermitted cannabis operations, and in some cases unpermitted structures, unpermitted grading and other violations of Humboldt County Code.

A. Bryce Gess CE20-0471 APN 315-082-004 TOTAL: \$901,572.13

- Violation of Commercial Cannabis Land Use Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes
- Grading without permits
- Development within a Streamside Management Area
- Unapproved sewage disposal system
- Improper storage & removal of solid waste

Bryce Gess was issued a Notice of Violation with a proposed daily administrative civil penalty of \$43,000 per day on March 10, 2020. The proposed administrative civil penalty accrued for 90 days, totaling \$3,780,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment A.

Action	Date
Bryce Gess is Deeded Property	10/18/2018
HCSO warrant served	2/20/2020
NTA and NOV Served	3/10/2020
Mr. Gess makes contact with CEU	3/18/2020
10 Days Expired	3/21/2020
90 Days Expired	6/19/2020
“Notice of Administrative Civil Penalty Assessment” Served	8/24/2021

B. Wheeler Lumber Co Inc CE19-0225 APN 211-375-011 TOTAL: \$901,444.67

- Violation of Commercial Cannabis Land Use Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes

- Grading without permits

Action	Date
Satellite Review - Active Enforcement for Unpermitted Cannabis Cultivation	9/16 - 9/17/2019
NTA and NOV Served	9/18/2019
Property Owner Makes Contact with P&B Dept.	9/26/2019
10 Days Expired - No Appeal Requested	9/29/2019
90 Days Expired - Penalties Accrue to \$2,700,000	12/28/2019
"Over 90 Days Unresolved Warning" letter sent	3/10/2020
Assisted HCSO Search Warrant	5/11/2020
"Notice of Administrative Civil Penalty Assessment" Served	4/30/2021

Wheeler Lumber Co Inc was issued a Notice of Violation with a proposed daily administrative civil penalty of \$24,000 per day on September 18, 2019. The proposed administrative civil penalty accrued for 90 days, totaling \$2,160,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment B.

C. Wheeler Lumber Co CE19-0226 APN 211-376-027 TOTAL: \$901,444.67

- Violation of Commercial Cannabis Land Use Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes
- Grading without permits

Action	Date
Satellite Review - Active Enforcement for Unpermitted Cannabis Cultivation	9/16 - 9/17/2019
NTA and NOV Served	9/18/2019
Property Owner Makes Contact with P&B Dept.	9/26/2019
10 Days Expired - No Appeal Requested	9/29/2019
90 Days Expired - Penalties Accrue to \$2,700,000	12/28/2019
"Over 90 Days Unresolved Warning" letter sent	3/10/2020
Assisted HCSO Search Warrant	5/11/2020
"Notice of Administrative Civil Penalty Assessment" Served	4/30/2021

Wheeler Lumber Co Inc was issued a Notice of Violation with a proposed daily administrative civil penalty of \$30,000 per day on Sept. 18, 2019. The proposed administrative civil penalty accrued for 90 days, totaling \$2,700,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment C.

D. Wild Berry Investments 18CEU-710 APN 212-022-013 TOTAL: \$900,285.47

- Violation of Commercial Cannabis Land Use Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes
- Grading without permits
- Development within a Streamside Management Area
- Improper storage & removal of solid waste
- Hazardous materials violations
- Junk and/or inoperable vehicles
- Non-approved water supply system

Current Owner Case Actions	Date
Wild Berry Investments LLC is Deeded Property	8/8/2022
Review Property's Current Ownership	8/11/2022
NTA and NOV Served	1/19/2023
10-Days Expired (NTA NOV)	1/31/2023
Notice of Admin Penalty Assessment Served	3/10/2023
10-Day Period to Appeal Assessment Expires	3/20/2023
90 Days Expired (NOV)	5/1/2023

<i>Prior Owner Case Actions</i>	<i>Date</i>
Intrex Enterprises LLC is formed as LLC in AZ; Blagovest Kalinov is sole member listed	10/18/2006
Intrex Enterprises LLC is Deeded Property	10/7/2014
App #11997 for 1.0 pre-existing cultivation submitted	12/19/2016
App #11997 Closed Due to Inactivity	9/27/2017
Satellite Review - Active Enforcement for Illegal Cannabis Cultivation	12/4 - 12/6/2018
NTA and NOV Served	12/7/2018
10 Days Expired	12/18/2018
CDFW inspects property with Water Board and County Hazmat; multiple violations found including active indoor cultivation	12/20/2018
90 Days Expired	3/19/2019
"Notice of Administrative Civil Penalty Assessment" Served	3/19/2020
Hearing Request submitted re: Admin Civil Penalty Assessment	3/24/2020
Property transfers to Shawn Waddell (unknown to CEU at time)	12/29/2020
NTA and NOV Served to New Owner Shawn Waddell	7/6/2021
Law Enforcement Warrant Assisted	1/10/2022
Notice of Admin Penalty Assessment Served	1/20/2022

Additional NTA and NOV Served with additional violations added from search warrant inspection	1/20/2022
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Wild Berry Investments (new property owner) was issued a Notice of Violation with a proposed daily administrative civil penalty of \$51,000 per day on Jan. 19, 2023. The proposed administrative civil penalty accrued for 50 days, totaling \$2,550,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment D.

**E. Moises Roman CE20-0759 APN 530-151-001 TOTAL:
\$900,252.88**

- Violation of Commercial Cannabis Land Use Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes
- Grading without permits

Action	Date
CCLUO 1.0 Application Submitted (#12000 CUP16-493) for Pre-Existing Cultivation	12/19/2016
Immediate Action Letter for Expansion of Pre-Existing Cultivation Area Sent	10/18/2018
CCLUO 1.0 Application (PLN-12000-CUP) Denied by Planning Commission	6/6/2019
Prior Owner Actions (CE19-0054);	
NTA and NOV Served	6/14/2019
10 Days Expired - No Appeal Requested	6/25/2019
Property Owner makes contact with P&B Dept.	7/12/2019
Assisted HCSO Search Warrant	9/5/2019
90 Days Expired	9/22/2019
“Notice of Administrative Civil Penalty Assessment” Served	10/18/2019
Property transferred to Moises Roman; Mr. Roman’s mail address identical to prior owner	10/30/2019
Current Owner Actions (CE20-0759)	
NTA and NOV Served	9/30/2020
10 Days Expired - No Appeal Requested	10/11/2020
90 Days Expired - Penalties Accrue to \$2,700,000	1/9/2021
“No Contact” Warning Letter Sent	4/6/2021
“Notice of Administrative Civil Penalty Assessment” Served	7/2/2021

Moises Roman was issued a Notice of Violation with a proposed daily administrative civil penalty of \$30,000 per day on Sept. 30, 2020. The proposed administrative civil penalty accrued for 90 days, totaling \$2,700,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment E.

F. Aldrew Crowe CE21-1101
\$901,253.32

APN 216-381-028

TOTAL:

- Violation of Commercial Cannabis Land Use Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes
- Grading without permits
- Development within a Streamside Management Area
- Improper storage & removal of solid waste
- Unapproved sewage disposal system

Action	Date
Property purchased by Andrew D Crowe	7/29/2019
Large tree removal/grading site development occurs on property	2019-2020
CEU assists HCSO search warrant; active outdoor cultivation operation	5/25/2021
NTA and NOV served	5/28/2021
CEU assists 2 nd HCSO search warrant; active outdoor cultivation operation	8/10/2021
Notice of Admin Civil Penalty Assessment served	9/21/2021

Aldrew Crowe was issued a Notice of Violation with a proposed daily administrative civil penalty of \$42,000 per day on June 1, 2021. The proposed administrative civil penalty accrued for 90 days, totaling \$3,360,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment F.

G. Kim Shafer 18CEU-349

APN 210-162-010

TOTAL: \$900,824.56

- Violation of Commercial Medical Marijuana Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes

Action	Date
Kim Shafer, et. al is Deeded Property	10/30/2007
Satellite Review for Active Enforcement	8/3/2018
NTA and NOV Served	8/10/2018
No Contact Warning Letter	11/26/2018
Abandoned cultivation 2018 - 2019; cultivation restarts 2020	2018-2020
Satellite Review for Active Enforcement	7/12/2021
NTA and NOV Served	8/19/2021
Notice of Administrative Civil Penalty Assessment Served	11/1/2021

Kim Shafer was issued a Notice of Violation with a proposed daily administrative civil penalty of \$10,000 per day on Aug. 13, 2018. The proposed administrative civil penalty accrued for 90 days, totaling \$900,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment G.

H. Kim Shafer 18CEU-350 APN 210-163-018 TOTAL: \$900,824.56

- Violation of Commercial Medical Marijuana Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes

ActionDate	
Kim Shafer, et. al is Deeded Property	10/30/2007
Satellite Review for Active Enforcement	8/3/2018
NTA and NOV Served	8/10/2018
No Contact Warning Letter	11/26/2018
Abandoned cultivation 2018 - 2019; cultivation restarts 2020	2018-2020
Satellite Review for Active Enforcement	7/12/2021
NTA and NOV Served	8/19/2021
Notice of Administrative Civil Penalty Assessment Served	11/1/2021

Kim Shafer was issued a Notice of Violation with a proposed daily administrative civil penalty of \$10,000 per day on Aug. 13, 2018. The proposed administrative civil penalty accrued for 90 days, totaling \$900,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment H.

I. Jose MC Amezcua CE20-0684 APN: 531-074-005 TOTAL: \$901,096.98

- Violation of Commercial Cannabis Land Use Ordinance
- Construction of building/structure in violation of building, plumbing and/or electrical codes
- Grading without permits
- Development withing a Streamside Management Area
- Improper storage and removal of solid waste

ActionDate	
Jose MC Amezcua is Deeded Property	4/12/2019
Law Enforcement Warrant Assisted	8/19/2020
NTA and NOV Served	9/30/2020
10-Days Expired (NTA NOV)	10/11/2020
Initial Contact Made	11/10/2020

90 Days Expired (NOV)	1/9/2021
90 Days Unresolved Letter Sent	10/8/2021
Notice of Admin Penalty Assessment Served	4/26/2022

Jose MC Amezcua was issued a Notice of Violation with a proposed daily administrative civil penalty of \$41,000 per day on Sept. 30, 2020. The proposed administrative civil penalty accrued for 90 days, totaling \$2,790,000. The department is requesting \$900,000 plus administrative costs, which is consistent with previous administrative civil penalty assessments. See Attachment I.

Each entity has received proper notices in accordance with Title III, Division 5 which included notification by first class certified mail, posting to the property, and/or legal notices published in the local newspaper. The first contact was a Notice to Abate Nuisance in accordance with County Code section 351-7 and Notice of Violation and Proposed Administrative Civil Penalty County Code in accordance with section 352-7 that were served upon the listed property owner(s) via first class certified mail and posting on the properties. Those who responded to the notification were offered compliance agreements. None of the listed property owners responded to or signed the compliance agreement and letters were sent withdrawing the compliance agreement offer. As a final attempt in the communication process to the property owner(s) the issuance of the Administrative Civil Penalty Assessment, County Code Section 352-15 was served via first class certified mail and posted to the properties. None of the listed property owners have responded to this notification in a timely manner.

Attempts to compel the property owners to respond to the notices, abate the nuisances and correct the code violations, and comply with Humboldt County Code section 314-55.4 and other applicable code sections have been unsuccessful. As a result, the proposed Administrative Civil Penalty Assessments are now before your Board to be approved. The next steps prescribed in Humboldt County Code section 352-21, *et seq.* include:

- a) Issuance of Notice of Administrative Civil Penalty Lien to each Responsible Party.
- b) Imposition of Administrative Civil Penalty Lien. The lien will be recorded 45 days after the service of the Notice of Administrative Civil Penalty Lien is served on the Responsible Party. Once the lien is recorded, interest begins to accrue on the lien.

III. Disposition of Properties

Humboldt County Code section 352-23(d) states the “Administrative Civil Penalty Lien may be foreclosed and the real property subject to such lien sold, by the filing a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgement to foreclose.”

There are 21 previously recorded Administrative Penalty Liens. The Planning and Building Department has not taken further enforcement action beyond recording the liens. It has been the

department's position that it does not want to acquire property and thus have not pursued foreclosure. This may be a cause for concern as there are advantages and disadvantages to the current practice. The Planning and Building Department is seeking direction whether to fully implement the code as written or to pursue other alternatives.

Allowing the lien to remain on title until the property transfers ownership is a way to ensure payment or partial payment of the lien, even if not for many years. It is a low investment of staff time compared to filing for a foreclosure and the county does not become the property owner assuming the responsibilities that come with taking title of the property. The primary responsibility is many of these properties have simply been abandoned and have not been cleaned up. The disadvantages are that the property does not get cleaned-up and the lien serves as a deterrent to the property selling.

Initiating a foreclosure process would involve a higher investment of staff time and likely result in the county owning the properties. It would expedite the payment or partial payment of the liens, and which could provide funding for the remediation and abatement of the violations on the involved parcels.

Many of the properties with recorded Administrative Penalty Liens have been essentially abandoned and have defaulted on their property taxes. It is important to note that these are not properties that are occupied, they have been abandoned. If these properties are auctioned by the county to collect defaulted taxes, the Administrative Penalty Lien is not necessarily included or collected as part of that sale because the lien is not a high priority lien. However, any amount bid over the minimum bid could result in a partial lien payoff. The lien would remain on title after the property is transferred to a new owner, and Code Enforcement would work with the new owner to come into compliance and abate the remaining violations.

If there were a land trust or other entity interested in purchasing these properties and cleaning them up, that would be a desirable outcome. There is no way of predicting which properties may be desirable to such an entity. It is likely that the properties in the greatest need of clean up would be those least desirable from a cost standpoint. The county could engage with organizations to find out if any are interested in purchasing and cleaning up properties. The only systematic way of ensuring these properties are cleaned up is through the foreclosure process. It has never been the county's desire to become a property owner of delinquent properties, but it is the county's objective to see that properties are cleaned up and without encumbrance for future owners.

The range of opportunities available to the Board of Supervisors include:

1. Continue to lien properties without follow up action until properties sell
2. Solicit proposals from organizations interested in purchasing and cleaning up properties
3. Begin foreclosing on properties that have no action for a period of 3 years.

FINANCIAL IMPACT:

The cost of preparing the case and serving the notices has been billed to the property owner in accordance with established policies and code sections. This is initially a General Fund cost, expenses

for which are reflected in the Planning & Building Department - Code Enforcement budget unit (1100-269).

The General Fund will be reimbursed when the property owner pays the administrative cost, or after the property is held in lien and costs recovered through that process.

STRATEGIC FRAMEWORK:

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

OTHER AGENCY INVOLVEMENT:

The Sheriff's Department, California Department of Fish and Wildlife, Department of Health and Human Services Environmental Health, may also be involved when necessary.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could approve issuance of Administrative Civil Penalty Assessment for all, some or none of the properties listed.

ATTACHMENTS:

- Attachment A: Bryce Gess - APN 315-082-004
- Attachment B: Wheeler Lumber Co Inc - APN 211-375-011
- Attachment C: Wheeler Lumber Co - APN 211-376-027
- Attachment D: Wild Berry Investments - APN 212-022-013
- Attachment E: Moises Roman - APN 530-151-001
- Attachment F: Aldrew Crowe - APN 216-381-028
- Attachment G: Kim Shafer - APN 210-162-010
- Attachment H: Kim Shafer - APN 210-163-018
- Attachment I: Jose MC Amezcua - APN 531-074-005

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A
Meeting of: N/A
File No.: N/A