



COUNTY OF HUMBOLDT

For the meeting of: 2/7/2023

File #: 23-90

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Departmental

Vote Requirement: Majority

SUBJECT:

Selection of Water Storage/Conservation and Renewable Energy System Projects for Funding through the Department of Cannabis Control's (DCC) Local Jurisdiction Grant Assistance Program (Case # PLN-2021-17446)

RECOMMENDATION(S):

That the Board of Supervisors:

1. Receive and consider the staff report;
2. Deliberate on the submitted applications shown in Attachments 3 - 6;
3. Select the applications for funding in Round 1, Round 2 and Round 3 by adopting the Resolution in Attachment 1;
4. Direct and authorize Planning and Building Department staff to execute agreements with the selected Round 1 applicants based on the template agreements in Attachment 2 and approved by County Counsel and Risk Management, and disburse funding for the selected applications;
5. Direct and authorize Planning and Building Department staff when funding becomes available for Round 2, to seek Board approval of a supplemental budget and execute agreements with the applicants based on the template agreements in Attachment 2 and approved by County Counsel and Risk Management and disburse the funding for the selected Round 2 applications; and
6. Direct and authorize Planning and Building Department staff when/if funding becomes available for Round 3, to seek Board approval of a supplemental budget and execute agreements with the applicants based on the template agreements in Attachment 2 and approved by County Counsel and Risk Management and disburse the funding for the selected Round 3 applications.

SOURCE OF FUNDING:

The salary funding for preparing this staff report and the funding for the selected projects is provided by the Department of Cannabis Control's Local Jurisdiction Grant Assistance Program (1100-282-701).

DISCUSSION:

The Board of Supervisors is being asked to approve allocating grant funds received from the Department of Cannabis Control. The Planning and Building Department received 80% of an \$18,635,147.00 grant in March 2022 and opened a competitive application process to disburse the funds which closed on Sept. 2, 2022. The department received 820 applications requesting more than \$35 million.

Based on review of the applications as described later in this report, staff is recommending approval of 174 Water Storage and Conservation applications with the funds received (Round 1), and an additional 51 applications when the department receives the remaining 20% of the grant (Round 2) as shown in Attachment 3. Some projects on the Round 3 list could be funded in Round 2 with remaining or unexecuted funds from those approved in Round 1 and 2 but either under-run their estimates or do not follow through with their projects.

For the Renewable Energy Program, staff is recommending funding 85 applications with the money on hand, and 21 applications in Round 2 as shown in Attachment 4. Some projects on the Round 3 list could be funded in Round 2 with remaining or unexecuted funds from those approved in Round 1 and 2 but either under-run their estimates or do not follow through with their projects. This leaves up to 131 eligible Water Storage/Conservation applications and 183 Renewable Energy applications that are presently unfunded but could be funded in a future Round 3 if the department receives additional funding for the program.

Program Description

The \$18.6 million in funding from the state for the Local Jurisdiction Grant Assistance Program is focused on transitioning provisional cannabis license holders to annual licenses to make the state's cannabis cultivation program more stable and sustainable into the future. This purpose is different than the county's Project Trellis program, which is broadly intended to assist individuals impacted by the war on drugs with expenses related to cannabis business. With the somewhat narrow focus of the Local Jurisdiction Grant Assistance Program the Board of Supervisors approved guidelines on June 14, 2022 for the use of funds targeting two types of projects, and this recommendation is the result of that direction:

Water Storage and Conservation Grants support projects that transition water use for commercial cannabis cultivation irrigation from surface diversions and hydrologically connected wells during the low-flow periods of the year by increasing rainwater catchment, forbearance, and water conservation. Up to \$60,000 per legal parcel is available.

Renewable Energy System Grants supports projects that replace gas/diesel/propane powered generators used for cultivation operations with renewable energy systems consistent with the 2023 state transition requirements. Up to \$30,000 per legal parcel is available.

Eligible uses of funds

The approved guidelines for the Water Storage/Conservation Program allow funds to be used for purchase and/or installation of water storage and/or water conservation equipment including but not

limited to water tanks, plumbing, drip irrigation systems, water metering devices, soil water sensors, mulch, bioswale installation, ponds, and pond equipment. Funds may also be applied toward fees associated with implementation of approved water storage and conservation projects such as building permit fees. Other project-related fees and expenses may also be included if water storage and/or water conservation benefits are documented.

The approved guidelines for the Renewable Energy System Program allow funds to be used for purchase and/or installation of renewable energy system infrastructure, engineering for renewable energy systems or to connect cultivation sites to the Pacific Gas and Electric (PG&E) grid. Funds may be applied toward permitting fees associated with implementation of approved renewable energy projects such as building permit fees. Other expenses may also be funded if reductions in gas/diesel/propane powered generator use are documented.

Available Funding

The county received \$14,908,109.60 on March 2, 2022, which is 80% of the total grant amount awarded (\$18,635,137). According to the DCC's program guidelines, the remainder of the awarded grant will be provided after the county "has substantially met the goals and intended outcomes provided in the Annual Plan, and at a time determined by the Department (DCC) prior to March 31, 2025."

Of the \$14.9 million received by the county, \$9,702,400 is available for Round 1 of the Water Storage Grant Program and \$2,480,000 for Round 1 of the Renewable Energy System Grant Program. The remainder is targeted for a hydrographic assessment of watersheds to identify the baseline groundwater supply for each of the 12 watersheds in Humboldt County. This study will inform how deep the wells being used for cannabis cultivation "should be," describe the impacts of approved and submitted permits, and identify a baseline related to hydrology for evaluation of other projects.

Eligibility Criteria for Applications

To be eligible for either program, applicants must meet all of the following criteria:

1. Applicant is a Humboldt County cannabis cultivation permit holder or interim permit holder and State of California cannabis cultivation license holder.
2. The applicant's Humboldt County cannabis cultivation taxes are current.
3. The applicant's county cannabis cultivation permit fees are current.
4. Costs for eligible improvements must have been incurred after Jan. 21, 2022.
5. Projects require no tree removal.

Also, the water source has to be a well or surface water diversion for the Water Storage/conservation grant program and the area used for commercial cannabis cultivation may not be connected to the PG&E grid with the Renewable Energy grant program. Most of the applications (73%) are eligible for funding.

Application Submittal and Review Process

To assist applicants and to create a fair, open and transparent application process, the Department developed web pages for both the Water Storage/Conservation program

<https://humboldt.gov/3313/Water-Storage-and-Conservation-Grant-Pro> and Renewable Energy System program <https://humboldt.gov/3314/Renewable-Energy-Grant-Program>. These websites provide detailed descriptions of what types of projects could be funded, links to the Notice of Funding Availability (NOFA), a mock application, a Frequently Asked Questions document, links to the online application forms and staff contact information (telephone number and email).

A press release was published Aug. 10, 2022, announcing the grant program, upcoming application acceptance period and directing interested parties to the websites for further information and for submitting the applications. Direct notification was also sent to all the farmers holding active permits or interim permits with the county. Dedicated staff were assigned to respond to all customer phone calls and emails, and those that came into the office. Applications were accepted for a 2-week period from Aug. 22, 2022, through Sept. 2, 2022, via an online application form. A kiosk was also set up in the main lobby of the office for applicants needing staff assistance, although this resource was not utilized.

Once the list of eligible applications was created they were then compared and ranked. Since the purpose of this state-funded grant program is to transition cannabis farms from provisional state licenses to annual licenses, farms with provisional licenses are ranked highest in both the Water Storage/Conservation and Renewable Energy grant programs.

Aside from the provisional license criteria, the Water Storage/Conservation grant applications that ranked highest are those within impacted/ refuge watersheds and those that most reduce water withdrawal during the dry season. These criteria incentivize projects that most benefit the environment because in theory if less water is used for irrigation during the dry summer months, more water could be available to support plants and wildlife that depend on instream flows in creeks and rivers, particularly in impacted/ refuge watersheds.

The Renewable Energy grant applications that ranked highest were projects that reduced fuel consumption the most which would help them meet the state's renewable energy requirements. This item was scheduled to go before the Board on Oct. 4, 2022, but was pulled because the Department was notified, and confirmed that the data in the Board report contained flawed data. The staff confirmed that a column of watershed data contained incorrect information which substantially impacted the entirety of the rankings. Additionally, staff discovered a small number of errors in state license type which also affected the rankings of some applicants. To rectify these circumstances staff re-evaluated the applications to correct those mistakes. Below is a more detailed description of the ranking process.

Detail of Ranking Procedure for Water Storage/Conservation applications

Eligible water storage/conservation applications ended up in one of three groups based on the following ranking criteria. These groups are shown on the ranking table; Applications within Impacted or Refuge watersheds **and** provisional state license. Applications within Impacted or Refuge watersheds **or** provisional state license. Applications outside Impacted or Refuge watersheds and possessing an annual state license rather than a provisional license. Within these groups, applications

were ordered so the those with the most water stored/conserved scored highest.

The result is all the Group A applications are ranked higher than all those in Group B, and within the groups, those that store/conserves the most water (measured as the number of gallons) rank higher than those that store/conserves less water. While water storage is not a reduction in water use, it allows for forbearance and a theoretical reduction in summer withdrawals that potentially benefits the environment by improving instream flows especially in the mapped impacted and refuge watersheds.

On the list in Attachment 3, Water Storage applications recommended for funding in Rounds 1 and 2 include all the applications in Groups A and B and three Group C applications. One potential criticism of using gallons of water storage / conservation as ranking criteria is it could favor larger growers over smaller ones because larger grows tend to use more water so they can more easily achieve larger reductions in water use. However, descriptions for the projects achieving the most water storage demonstrate they often contribute substantial matching funds toward their projects which deserves credit.

Detail of Ranking Procedure for Renewable Energy program applications

Ranking eligible Renewable Energy applications landed them into one of two groups which favored provisional license holders consistent with the DCC's guidelines:

- Applications with provisional state licenses, or
- Applications with annual state licenses.

Like the Water Storage/Conservation ranking, applications within these groups were ordered so the applications with the largest reductions in fuel use are ranked highest. The result is applications in Group A are ranked higher than all those in Group B, and within the groups, those that reduce fuel consumption the most (measured as the number of gallons) are ranked higher than those that save less fuel.

Because of the more limited funding for the Renewable Energy Program, Renewable Energy applications recommended for funding in Rounds 1 and 2 only include applications in Group A. For both the water storage/conservation and renewable energy programs, the date/time of submission of applications was used for tie breakers, where all other items being equal, applications submitted earlier are ranked higher.

The Planning and Building Department received comments questioning the methodology used to calculate fuel reduction for some Renewable Energy applications claiming large amounts of fuel savings. Concerns were expressed that some of the applicants were using a flawed methodology to arrive at unrealistically high amounts of fuel reduction because it would improve their ranking. Staff identified 11 Group A applications that appear to fall into this category.

In response staff conducted a review of the evaluation procedures used and applied an additional evaluation for 15 applications submitted by alternative energy contractors and other applicants using

more robust methods of calculating fuel reduction to determine whether there were objective factors that could be applied to the 11 applications with an apparent bias to make them more comparable with the others. The results did not appreciably change the application rankings but are described below.

Staff explored whether the size of the approved cultivation area was consistently correlated with fuel reduction based on the hypothesis that larger grows achieved larger fuel reduction amounts. No consistent correlation was found looking at the cultivation size. Staff also explored whether mixed light operations had consistently high fuel reduction values. Again, no consistent correlation was observed. Other variables were evaluated as well, including the wattage of the proposed solar projects. In the end, there was too much variability in the each of the factors evaluated to be useful to correct the 11 applications with an apparent bias. So instead, staff simply applied the highest fuel reduction amount calculated by the alternative energy contractors using more robust methodologies (3,350 gallons) as a cap to the 11 applications that appeared to be biased. This changed the ranking of those applications somewhat, but they all remained high enough on the list to be recommended for funding in Round 1.

The project descriptions for the highest ranked Renewable Energy applications demonstrate that like their water Storage/Conservation counterparts, they often contribute substantial matching funds toward their projects which results in higher fuel reduction amounts.

Analysis of Submitted Applications

The ranked Water Storage applications are presented in Attachment 3 with the highest ranked applications at the top of the list. There are 174 Water Storage/Conservation applications recommended for funding in Round 1 for a combined total of \$9,701,241.00, which will result in additional storage/conservation of approximately 22 million gallons. When the remaining 20% of the total grant award is received, an additional 51 applications will be funded in Round 2. Another 131 applications are not now funded but could receive funding in Round 3 if an additional award is made from DCC. On Jan. 6, the Planning and Building Department circulated the ranking sheets in Attachment 3 and the list of ineligible applications to each of the applicants for review and comment on any factors used for ranking. At the time this staff report was written, no comments have been received that identified any errors in the ranking in Attachment 3.

With the money already received, 85 Renewable Energy applications are recommended for funding for a total of \$2,502,226.00 shown in Attachment 4. These will achieve a reduction of approximately 166,000 gallons of fuel consumed annually.

On Jan. 6, the Planning and Building Department circulated the ranking sheets in Attachment 4 and ineligible applications to each of the applicants for review and comment on any factors used for ranking. Based on review by the applicants and submitted evidence, one application that was thought to be ineligible was determined to be eligible and is recommended for funding in Round 1: Palo Verde Medicinals, App ID 22454, Apps # 12508, APN 218-051-003. This application has a provisional license and will achieve a fuel reduction of approximately 724 gallons with a proposed 3.47kW solar panel array and battery storage project which places it between applications #73 and #74 on the list in Attachment 4. The recommended funding for this project is \$29,712, and rather than funding this

project by taking it away from one of the other Round 1 applications, staff recommends supplementing Round 1 with \$29,712 of the \$2.4 million allocated to the Hydrologic Assessment of Watersheds.

When the remaining 20% of the total grant award is received, an additional 21 applications will be funded (Round 2), and another 183 applications could receive funding in Round 3 if an additional award is given to the county from DCC.

Round 2 Funding

The remaining 20% of the total awarded to the county is expected after DCC determines the county's program is operating in conformance with the grant agreement and program guidelines. Staff recommends the Board direct and authorize Planning and Building Department staff upon receipt of the remaining funds from DCC, to seek approval of a supplemental budget and enter into agreements with the Round 2 applicants. Staff recommends this same process be used to grant money to the remaining eligible Round 3 applicants if an additional award is provided by DCC.

FINANCIAL IMPACT:

Round 1: As described above, this item will result in \$9,701,241.00 the County received from the state being disbursed to 174 Water Storage/Conservation applicants and \$2,502,226.00 disbursed to 85 Renewable Energy applicants from budget unit 1100282-701.

Round 2: In combination with approval of a future supplemental budget request, this item will result in \$2,446,342 the County expects to receive from the state being disbursed to 51 Water Storage/Conservation applicants and \$612,468 for 21 Renewable Energy applicants from budget unit 1100282-701.

Round 3: In the event DCC provides additional funding beyond what has already been awarded for Round 1 and Round 2, and in combination with approval of a future supplemental budget request, this item could result in up to \$6,753,635 disbursed to 131 more Water Storage/Conservation applicants and up to \$5,204,632 disbursed to 183 more Renewable Energy applicants based on the rankings in the lists in Attachments 3 and 4. The program will be administered by the Advanced Planning unit of the Planning and Building Department in budget unit 1100282-701.

These funds will support cannabis farmers in a transition from provisional to annual state licenses which will help stabilize their operations into the future so they can continue to provide economic benefits for the County, business owners and residents.

The Renewable Energy program has the added benefit of reducing fuel costs for cannabis farmers into the future. Information submitted with the applications recommended for approval indicates Round 1 will result in a reduction of approximately 166,000 gallons of fuel consumed for cannabis cultivation purposes. Assuming fuel costs of \$5/gallon, Round 1 funding alone has the potential to reduce the cost of cannabis farming operations by close to \$830,000 annually. Additional funding rounds of the program will provide additional cost savings to cannabis farmers.

The DCC grant provides a total of \$288,759.20 for staffing Round 1 and Round 2 over a 3 ½ year

term. Staff costs and other expenses related to implementing the DCC program as of 9/1/22 are \$124,276.00 or 43% of the total. Indirectly the cost of processing of payments to the approved applicants by the Auditor will be supported by the General Fund. The Planning and Building Department and the office of the Auditor-Controller have been engaged in discussions that will allow the distribution of funds to be completed expeditiously.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework priority of seeking outside funding sources to benefit Humboldt County needs .

OTHER AGENCY INVOLVEMENT:

Department of Cannabis Control, County Counsel, Auditor Controller, Risk Management, Tax Collector's Office.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

If the Board determines the procedure used in application review and scoring does not substantially conform to the program guidelines approved by the Board, the Board could decide to not approve any applications at this time and direct Planning and Building Department staff to return with a revised ranking of applications, providing specific direction on the modified parameters needed to better align with the approved guidelines.

Staff does not recommend further consideration of this alternative because the ranking process used by Planning and Building Department staff aligns well with both the DCC and the Board-approved program guidelines, and it was fair, open and transparent in the following important ways:

- when feasible, applicants were notified in real time of errors or deficiencies in their applications so they could be fixed before the application period closed;
- applicants determined to be ineligible for the program were provided an opportunity to demonstrate their applications were in fact eligible which led to several applications being placed back on the list of ranked applications, and
- all eligible applicants were notified where their application was ranked on the list and in which round of funding they are being recommended.

Also, staff recommends against this alternative because it will increase the cost of developing the ranked list for selecting which projects are selected for funding in which rounds. As mentioned previously, the cost to develop the ranked list in Attachment 1 so far is 43% of the total awarded for staffing, and if substantial costs are incurred to create another ranked list, that may decrease the amount of funding available to applicants.

The Board could also elect to require a new application period to be opened for any additional funding that will be received from DCC in the future. While this may provide an opportunity for new applicants to be considered, this option is not recommended. The applications received to date far exceed the amount of the existing grant. The staff hours that would be required to open a new application period and undertake the ranking process will consume a significant amount of hours and administrative cost that would reduce the amount of funding available to cultivators.

The Board could also elect to restrict the grant awards to one per parcel **and** one per applicant. This modification would allow funds to be disbursed across a broader range of applicants as shown in Attachments 5 and 6 and may be considered a more fair and equitable method of disbursing the funds. Staff recommends against this alternative because it is inconsistent with the Notice of Funding Availability which restricted applications to one per parcel but not one per applicant. Also, the name entered into the application form is not the best way to determine if an application is from a particular person or entity. In the cannabis industry there are known to be some companies that have different names but are owned by the same individuals. Nonetheless, if the Board selects this alternative, the wording of the Resolution of approval will need to be modified to refer to Attachments 5 and 6 rather than Attachments 3 and 4.

ATTACHMENTS:

- Attachment 1: Resolution Approving Selected Water Storage/Conservation and Renewable Energy System Applications
- Attachment 2a: Water Conservation Grant Agreement
- Attachment 2b: Renewable Energy Grant Agreement
- Attachment 3: Ranked Water Storage/Conservation Applications (one per parcel)
- Attachment 4: Ranked Renewable Energy Applications (one per parcel)
- Attachment 5: Ranked Water Storage/Conservation Applications (one per parcel & one per applicant)
- Attachment 6: Ranked Renewable Energy Applications (one per parcel & one per applicant)

PREVIOUS ACTION/REFERRAL:

Board Order No.: J-1
Meeting of: 11-02-2021
File No.: 21-1540