

PERMITTED (EVENTUALLY)

A REVIEW OF THE CANNABIS CULTIVATION PERMITTING PROCESS IN HUMBOLDT COUNTY

SUMMARY

Beginning in the early 20th century, cities and counties throughout California (and the nation) adopted a variety of laws designed to regulate and enforce land uses within their jurisdiction. These laws cover a broad range of uses, from large residential subdivisions to agricultural land to commercial developments to the height and location of front yard fences.

Following voter approval of *The Adult Use of Marijuana Act* (Proposition 64) in 2016, the County of Humboldt (County) began the permitting and regulatory process for a new type of land use, the commercial cultivation of cannabis. Although the *Compassionate Care Act* (Proposition 215) in 1996 permitted limited commercial cannabis cultivation, there were no guidelines for the County to follow, other than existing regulations for more traditional land uses. The County had to develop regulations that were specific to this industry and were consistent with existing permitting processes.

This report by the Humboldt County Civil Grand Jury describes the steps the County has taken to manage its land use responsibilities with respect to commercial cannabis cultivation in the unincorporated (non-city) areas of the County. The discussion includes use of the Accela permit management software program, the application process for meeting permit requirements, fee structures and deposits. Access to the Accela system is critiqued along with a discussion of pending permit applications, application processing time, road requirements and dependency on the State of California for approval of provisional licenses.

This report does not cover every aspect of cannabis cultivation regulation in the County. For example, it does not cover the issue of code enforcement with respect to this industry. Neither does it examine policy decisions the Humboldt County Board of Supervisors (BOS) have developed with respect to regulating the commercial cannabis industry, nor the implementation of these policies by the Humboldt County Planning Commission.

Rather, the report examines the overall permitting process. Interfaces between conventional permitting processes and those specific to the commercial cannabis industry are noted. Where appropriate, the Report addresses specific aspects of the permitting process, including:

- Changes to existing processes that might be needed; and
- What may be needed in the future to ensure that the commercial cannabis industry is regulated in a manner consistent with best practices, as understood by the BOS, professional planning staff, those seeking permits and the general public.

BACKGROUND

To facilitate orderly development of private property within the State of California, local governments authorize their Planning Departments to issue land use permits. In Humboldt County applications for land use permits are submitted to the Planning and Building Department (Planning). The permitting process is managed through the Accela activity and accounting system.

The requirement for a land use permit has multiple purposes including authorization of construction or renovation of residential or commercial structures, installation of wells and sewer systems, access to County maintained roads and development of land for commercial use, including cannabis cultivation. Since the passage of Proposition 64 and the adoption of County ordinances regulating the cannabis industry, most permit applications submitted to Planning have been related to legal cultivation of cannabis.

While there are over 900 cannabis related permit applications pending, there is an anticipated increase of land use permit applications in 2022 and beyond for commercial and residential development within the County. The Planning, Public Works Department (Public Works) and Environmental Division of the Department of Health and Human Services (DHHS) are tasked with processing the applications in a timely and efficient manner.

METHODOLOGY

The Humboldt County Civil Grand Jury's review of the permitting process for commercial cultivation of cannabis included:

- Interviews with Humboldt County officials and employees
- County and State laws and regulations
- Planning and Building Department's permit Application Form¹
- Planning and Building Department's Performance Standards for Cultivation and Processing
- Planning and Building Department's Application Requirement Cannabis 2.0 Form
- Public Works Department Land Use Division's 2-part Road Evaluation Form
- Demonstration of the online Accela permit management system
- Access the Accela permit management system as private non-permit holding citizens
- Internet research
- Accela contract between the County of Humboldt and Carahsoft Technology Corporation
- California Department of Cannabis Control rules and regulations

¹ Application and related documents available at humboldt.gov.org. Follow links to Government/Planning & Building/About Us/Cannabis Services/Commercial Medical Marijuana Permitting

DISCUSSION

The development of the legal cannabis cultivation industry within Humboldt County, coupled with governmental regulation and oversight, has generated a need within various County departments to develop a systematic process of receiving and processing permit applications. These departments are also charged with processing permit applications for a wide range of non-cannabis related land use development.

The County permitting process is defined by Planning as a “land-use based process” and is applied to all land use permit applications. No priority is given to a permit based on the nature of land use. The permits are processed on a “first-come-first-served” basis.

As with all permit applications, the required permit review on the local level is initiated at the Humboldt County Planning and Building Department. For a cannabis cultivation permit, additional review may be required by the Public Works Land Use Division, DHHS Environmental Health Division, Humboldt County Sheriff’s Office (HCSO), County Counsel, District Attorney (DA), and other county agencies.

The need for review by other state or local governmental bodies such as the California Department of Fish and Wildlife, Water Resources Control Board, CAL-FIRE, and Tribal Councils, is determined by Planning staff during the evaluation of the application.

Accela Permit Management Software Program

Since September 2018, Planning has utilized the Accela software program, an internationally used cloud-based government permitting and licensing program for the administration of all permits issued. All permit applications, including cannabis cultivation, are processed through the Accela system with sequential numbers which do not indicate the type of application.

Once an application is given a number in the Accela system, the applicant can log into Accela through the customer portal and upload additional information. An initial application cannot be uploaded at this time since the County’s version of the software is not able to accept credit card payments. Customers are required to make in-person visits to Planning in order to submit an application and pay the required fees. The intake of applications is done by a counter team of six full time employees assigned on a rotating basis. For applicants requiring assistance filing the application, the Planning staff meets with the applicant for an “Applicant Assistance Meeting.”

A goal of Planning is to have a system where applications can be submitted directly through the Accela system. It is anticipated that the system will be upgraded to accept payments when the DHHS fully transitions to Accela.

Between 2009 and the implementation of Accela in 2018, the County used a permitting software platform called ‘OnTrack’ to manage its permitting activity. This legacy system does not allow for a one-to-one data transfer to Accela, thus data related to calculations of

fees (including fees for annual inspections) archived before the implementation of Accela must be manually transferred to the Accela software to ensure accuracy in current accounting.

Meeting Permit Requirements

For a cannabis cultivation permit to be approved, an application for a new grow must meet all requirements before approval will be given. For an existing cultivator, a conditional approval may be granted with an agreement that the applicant will bring the location into compliance with requirements within two years.

To prepare an application for cannabis cultivation, an applicant may hire a consultant or “expediter” to assist with the application process. Typically, these are consulting engineers who prepare the land use plan application. While the use of a consultant can be beneficial to an applicant, particularly for a large grow or complex application, a consultant is not required. The same general procedure is used by the County for processing all cannabis applications.

The cannabis permit review process requires Planning to refer projects to Public Works and other entities where review is necessary. Following this review, the application is returned to Planning, indicating approval, conditional approval, or rejection. Public Works is charged with reviewing a proposed cannabis project’s impact to the county-maintained road system. If the project encroaches on a county-maintained road, an encroachment permit will be required. This review includes ensuring minimum standards for culverts, fences, and compliance with the California Streets and Highway Code. Culverts, other than where a driveway or private road intersects a county road, and sediment loads impacting watersheds are not reviewed by Public Works.

To assist applicants, Public Works prepared a *Road Evaluation Form*. This form is a checklist for applicants requesting permits for cannabis projects to identify if a road has adequate functional capacity to serve the project. Multiple forms may be needed depending on the number of roads that the cannabis project uses for access.

Public Works established a Category 4 road as an unambiguous standard to distinguish when a road has adequate functional capacity. A Category 4 road is a two-lane road that is 18 to 20 feet in width, either paved or gravel. The *Road Evaluation Form* serves to uniformly collect data regarding a road's functional capacity.

Applicants can ‘self-certify’ a road that is 18 to 20 feet wide thus allowing an applicant to avoid hiring a civil engineer. Public Works developed a list of county-maintained roads that cannot be self-certified and roads that do not need to be evaluated. Both lists are updated periodically.

When a cannabis project is served by a road that does not meet or exceed Category 4 road standards, an analysis by a civil engineer is needed to determine if 1) the road has adequate functional capacity to accommodate the cumulative increased traffic from this project and all known cannabis projects that also use the road; 2) that the road could

accommodate the project if certain improvements are made to the road; or 3) that nothing can be done to improve the road to have an adequate functional capacity to serve the project. If nothing can be done, the application will be rejected.

Fee Structures and Deposits

The current basic fee structure is based on the type of permit and is designed for cost recovery by the County. Fees are collected upon submission of the application as a deposit to be applied toward the permit processing. Costs for a Zoning Clearance Certificate, a Special Permit, and a Conditional Use Permit are fixed amounts. If additional time is required by staff, cost reimbursements for County services can be significantly increased if an incomplete application requires revisions, follow up contacts with the applicant are necessary or there is missing information.

In charging fees against the deposit, the Planner enters time that is billed at the employee's hourly rate. Each Planner is required to input into Accela the specific tasks relating to the application that they perform. The current balance of the deposit is shown in Accela. If the deposit is exhausted, an additional deposit is required. Upon issuance of the permit, any balance remaining is refunded to the applicant. Annual cannabis inspections are separately billed to the permit holder.

County Staff and Citizen Access to Accela

For County departments other than Planning and Building, access to Accela is limited to responding to Planning referrals. This includes Public Works, HCSO, DA, County Counsel, and DHHS. These departments receive an electronic (Accela) notice of an application sent by Planning.

When Accela was adopted by Planning, Public Works was not allocated funds to fully build out the program. Although Public Works does not have full access to Accela, necessary inter-departmental communications with Planning are conducted by email and regular weekly meetings.

In addition to applicants and County staff, Accela is also accessible to the public through the Citizen Access portal on the County's website. Citizens may view the status of all permit applications, including cannabis. It is difficult to locate a permitted site in Accela with only a parcel number or address. While there is an undocumented method for locating permit information, the public can call Planning who will provide the application number to be used in Accela.

Pending Permits

There are over 900 pending cannabis applications as of January 2022 which include a limited number of new applications. Many of the applications are for modification to existing permits and permits still in the review process. To date, since September 2016, 1,117 cannabis applications have been completed, 21 have been denied and 693 have been withdrawn, closed, or canceled.

To complete the licensing process, the applicant must receive approval from the California Department of Cannabis Control. As of January 2022, there are about 300 permits that have been approved by the County but are classified as “interim permits” pending final approval by the State. The State may issue a provisional license when: 1) the applicant has submitted a complete annual license application; 2) evidence that California Environmental Quality Act (CEQA) compliance is underway, if not completed; 3) evidence that compliance with local ordinances is underway, if not completed; 4) will enter into a labor peace agreement if more than 20 employees; 5) employs, or will employ within one year, a supervisor and an employee who have completed a Cal/OSHA 30-hour general industry training course; and 6) meet any necessary Department of Fish and Wildlife Streambed Alteration requirements.²

The State will not issue new provisional licenses after June 30, 2022, however, a valid provisional license may be renewed and will be valid until its expiration date. Provisional licenses will sunset in stages with annual modification to requirements through 2026. Beginning July 1, 2022, applications must meet California Department of Cannabis Control requirements for the issuance of a license. It is the intent of the County to have all interim permits acted on before June 30, 2022.

Time Requirement for Permit Review

The time required for Planning to process an application is impacted by the completeness and complexity of the application. If the application is sufficient to comply with the requirements for a large grow, staff will assign it to a hired consultant to review for compliance and prepare the staff report. Small grow permits are processed by Planning staff. An application for cannabis cultivation is classified as “small” if the cultivation is 2,000 square feet or less.

The time frame for approval required under County Ordinance 2.0 can be as short as months while a large grow or incomplete application may take three to four years. Typically, approval can be made in 30 days if the grow is less than 2,000 square feet. Delays in application processing and approval are the result of an incomplete application, deficiencies in the application, or failure of the applicant to complete the process. If an incomplete application is not withdrawn, it must still be taken to a final decision even if the grower is inactive.

Review by Public Works is generally completed within 30 days. The most common delay issues are certification of Category 4 roads and the necessity for an applicant to acquire a right-of-way for turnouts on narrow (non-Category 4) roads. The quality of application can also impact the review time.

² AB 141 and SB 160 (2021)

FINDINGS

F1. The intake of applications for cannabis cultivation is done at the Planning and Building Department by a counter team of six full time employees assigned on a rotating basis to enter the application information into the Accela system. **(R1)**

F2. The Accela software cannot accept credit card payments, thus an applicant cannot utilize the online application process. **(R1)**

F3. The Board of Supervisors funded the purchase of the Accela software for the Planning and Building Department to replace the former OnTrack permit management system. Accela lacks completeness in that the Public Works Department is limited to responding to Planning & Building Department referrals. **(R2, R3)**

F4. Through the Accela Citizen Access portal, there is a cumbersome process for the public to access and view the status of all permit applications, including cannabis. **(R4)**

F5. The State will not issue new provisional cannabis licenses after June 30, 2022. Thereafter, applicants must meet all requirements of State regulations for the issuance of a license. Holders of a provisional license will be allowed to continue in operations until final resolution after which the County will be notified. **(R5)**

F6. As of January 2022, there were over 900 pending cannabis permits, many of which are amendments to existing permits. **(R6)**

F7. Within the Public Works Department, as part of the cannabis permitting process, applicants are allowed to “self-certify” Category 4 roadways, however, self-certification is not always verified. **(R7)**

RECOMMENDATIONS

R1. The Humboldt County Civil Grand Jury recommends that for Fiscal Year 2022-2023, the Board of Supervisors approve sufficient funding for the Planning and Building Department to upgrade the Accela system so that applicants can complete the application, including payment, on-line. This will reduce the need for applicants to come into the Planning and Building office. **(F1, F2)**

R2. The Humboldt County Civil Grand Jury recommends that for Fiscal Year 2022-2023, the Public Works Department determine the funding needed and submit a budget request to build out Accela modules for Planning and Building Department referrals for; 1) encroachment permitting; 2) legal document review; 3) map review; 4) drainage fee calculator; 5) encroachment violation and tracking; 6) reporting tools for each module; and/or other modules determined to be necessary. **(F3)**

R3. The Humboldt County Civil Grand Jury recommends that for Fiscal Year 2022-2023, the Board of Supervisors approve sufficient funding for the Public Works Department to

fully implement Accela to a level which enables Public Works to meet its specific needs. **(F3)**

R4. The Humboldt County Civil Grand Jury recommends that in Fiscal Year 2022-2023, the Planning and Building Department provide in the Citizen Access Portal specific instructions for the general public to search a location without creating an account in Accela or the need to contact the Planning and Building staff. **(F4)**

R5. The Humboldt County Civil Grand Jury recommends that the Planning and Building Department act on all County interim cannabis permits upon receiving notice of approval or denial of the State provisional license. **(F5)**

R6. The Humboldt County Civil Grand Jury recommends that for applications pending more than 30 days, the Planning and Building Department notify applicants of the corrective actions required for approval. **(F6)**

R7. The Humboldt County Civil Grand Jury recommends that by December 31, 2022, as an essential part of the cannabis permitting process, actual verification that a roadway meets Category 4 requirements should be performed by Public Works employees. **(F7)**

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Humboldt County Grand Jury requests responses as follows:

Within 60 days from the following individuals:

Humboldt County Planning and Building Department Director John Ford at jford@co.humboldt.ca.us: **(F1, F2, F4, F5, F6, R1, R4, R5, R6)**

Humboldt County Public Works Department Director Thomas Matson at tmatson@co.humboldt.ca.us: **(F3, F7, R2, R7)**

Within 90 days from the following governing body:

Humboldt County Board of Supervisors at vbass@co.humboldt.ca.us, mike.wilson@co.humboldt.ca.us, rbohn@co.humboldt.ca.us, mbushnell@co.humboldt.ca.us, smadrone@co.humboldt.ca.us: **(F3, R1, R3)**

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Land Use and Development, *Humboldt County Codes*, §§ 311-1 et seq.

Medical Marijuana Land Uses, Performance Standards for all CMMLUO Cultivation and Processing Operations, *Humboldt County Codes* § 314-55.4.12

Medicinal and Adult-Use Cannabis Regulation and Safety Act, *California Business and Professions Code* §§ 26000, et seq., as modified by Assembly Bill 141 and Senate Bill 160 (2021)

Streets and Highways Plan, *Humboldt County Codes*, §§ 411-1 et seq.