



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

MMLUO Frequently Asked Questions (11/10/16)

What is MMRSA?

On October 9, 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act (“MMRSA”) (SB 643, AB 266, and AB 243). The three pieces of legislation which make up MMRSA provide long awaited guidance regarding medical cannabis some 20 years following the voter approval of Proposition 215. These laws set out a state-licensing structure for regulated medical cannabis activities, including cultivation (outdoor, mixed light, indoor, and nursery), manufacturing, distribution (wholesale), dispensary (retail), testing, and transportation. The Act established a new state government entity, the Bureau of Medical Marijuana Regulation, and provides direction and authority to the Department of Food and Agriculture and the Department of Consumer Affairs and other state agencies. Importantly, state licensing requires the operator to have secured all necessary local permits. Humboldt County is the first county in the state to have enacted land use regulations in accordance with the MMRSA law.

Does Humboldt County regulate commercial cannabis activity?

On January 26, 2015 the Humboldt County Board of Supervisors adopted Ordinance No. 2544, the Commercial Medical Marijuana Land Use Ordinance (“CMMLUO”), which provides for the location and permitting of commercial cultivation, processing, manufacturing and distribution of cannabis for medical use in Coastal and Non-Coastal zoning districts. The purpose of these regulations is to protect the public health, safety and welfare of residents of Humboldt County, and to reduce or eliminate any adverse environmental effects of existing commercial cannabis cultivation, and to prevent adverse environmental effects of any new commercial cannabis activities, consistent with the MMRSA law.

Where can I find more information about the CMMLUO and application requirement?

Click on the link below:

<http://humboldt.gov/2124/Medical-Marijuana-Land-Use-Ordinance>

How can I find out which zone districts allow commercial cultivation of cannabis for medical use?

Link to web page:

<http://ca-humboldtcounty.civicplus.com/DocumentCenter/View/53498>



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

Is there a deadline for me to apply to obtain the necessary clearance or permit from Humboldt County?

Ordinance No, 2544 became effective on February 26, 2016. The CMMLUO sets forth an initial application window which closes on December 31, 2016. Extending this application window beyond this date will require action by the Board of Supervisors.

What are the land use rules for “non-commercial” cannabis cultivation?

The allowances personal use cultivation (non-commercial) by a qualifying patient or their primary caregiver for medical purposes are contained in separate sections of the County Code and are not addressed in the CMMLUO. Indoor or outdoor cultivation for personal use must be conducted in accordance with the Phase I and Phase II MMLUO regulations and the MMRSA. See link below:

<http://humboldt.gov/2124>

Do I need to secure a County clearance or permit even though I have already secured approvals from other state regulatory agencies?

There are multiple agencies for which permits are required (e.g., CDFW, RWQCB, SWRCB, etc.). Obtaining approvals from a state agency does not remove the operator’s obligation under County Ordinance to comply with all provisions of the County’s MMLUO – Phase IV regulations. It is important to note that the converse is equally true – that is, even if an operator has secured a County certificate or permit for a commercial medical cannabis activity, this does not release the operator from any other legal or regulatory requirements of law, including securing of all necessary state permits.

There is an existing cultivation on the property I want to purchase. As the new owner do I qualify as an existing operation?

Yes. A cultivation site pertains to the operation itself and is parcel specific. However, under the County MMLUO the site must have been in cultivation prior to January 1, 2016 to be considered “existing”. The ordinance does not restrict the purchase or transfer of real property. However, the ordinance does limit to a maximum of four (4) the number of permits that any person may hold at any one time.



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

I am proposing a new cultivation operation. Must my cultivation site be located on the part of the property that has prime ag soil?

Yes. All new outdoor cultivation operations may only occur on those portions of a parcel which are properly zoned, have an average slope of less than 15% and qualify as prime agricultural soils. Prime agricultural soils are lands that qualify as Class I or Class II in the Natural Resource Conservation Service (NCRS) land use capability classifications or qualify for rating 80 through 100 in the Storie Index Rating. The County's Web GIS includes a mapping layer showing the distribution for these prime soils classifications. Additionally, native soils which have not be mapped as prime may be found to meet the characteristics of prime soils. This determination would require site-specific fieldwork by a qualified professional (i.e., soils scientist) and peer review by the appropriate resource agency. Also, the maximum cultivation size may not be greater than 20% of the area comprising prime agricultural soils on the parcel. The source of water for cultivation must be from a permitted well, from a public water provider or with a documented water right from the Department of Water Resources.

Why can I only grow on areas of prime soil when I don't plan on using the soil on the property?

While a variety of methods have been developed for cannabis cultivation over the years, the CMMLUO seeks to minimize environmental effects from outdoor and mixed-light cultivation by restricting new cultivation to agriculturally zoned areas with slopes of less than 15% and prime agricultural soils.

Can I take advantage of the Retirement, Remediation, and Relocation (RRR) Program if I'm coming from Mendocino County?

The Retirement, Remediation, and Relocation (RRR) Program is limited to the mitigation of adverse environmental effects from existing cultivation sites located in Humboldt County. This incentive based program encourages the relocation of cultivation operations occurring in marginal and environmentally challenging sites (for example, surface water diversion without DWR water right or permit or DFW streambed alteration agreement or on a parcel with slopes in excess of 15%) to environmentally superior sites.

Is the CMMLUO effective in the Coastal Zone?

The CMMLUO represents an amendment to the County's Local Coastal Program (LCP). As such, the regulations will not take effect in the Coastal Zone until they obtain certification from the California Coastal Commission. This certification process may involve changes to the CMMLUO to conform to the Coastal Act determined necessary by the Coastal Commission. If changes are required, the Board of Supervisors then need to hold a public hearing and consider adopting modified ordinance provisions. For these reasons, the County is not able to say with any certainty when the CMMLUO regulations will become effective in the Coastal Zone.



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

Must I be a resident of Humboldt County at time of application?

There is no residency requirement to participate in commercial cannabis activities for medical use under the County's CMMLUO.

What is the Zoning Clearance process?

The Zoning Clearance Certificate (ZCC) is a ministerial (i.e., non-discretionary) pathway to securing a land use entitlement to conduct an outdoor or mixed-light commercial medical cannabis operation provided the parcel meets zoning and cultivation size limits of the CMMLUO. The application for a ZCC requires the same information as for other permit submittals but the administrative review is focused on whether the operation complies with all performance standards in the CMMLUO. Because no public hearing is required for a ZCC, the review process is typically shorter and the application fee is lower.

I grew medical marijuana on my parcel before January 1, 2016, what evidence do I need to provide to prove existing cultivation area?

Outdoor cultivation area is best demonstrated from aerial photography showing the extent of cannabis cultivation occurring on the property prior to January 1, 2016. Other documentation may also be considered. Google Earth provides free satellite imagery. There are also private firms that offer satellite imagery for certain time periods of interest. Imagery sources include:

<https://www.teraserver.com/>

<https://www.teraserver.com/>

<http://www.digitalglobe.com/>

Can manufacturing or processing be considered accessory/appurtenant uses or cottage industry? For example cultivation, trimming and making brownies out of your house. Would this all be one permit?

No. Manufacturing and processing of medical cannabis are distinct and separate permit types covered by the CMMLUO. The CMMLUO specifies the zones and permits required to engage in these commercial cannabis activities. None of these activities are permitted in residential zones. As such, the general allowances for cottage industries or uses accessory to residential uses do not apply.



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

If I'm a cultivator and my existing operation exceeds the 5,000 sq. ft. threshold for a Zoning Clearance Certificate (ZCC) what are my options?

An operator with an existing outdoor cultivation area in excess of 5,000 square feet may apply for a Special Permit or Use Permit depending on the size of the grow. These land use permits are discretionary meaning that the permit may be approved, approved with conditions or it may be denied. The hearing officer's action on the permit may be appealed to the Board of Supervisors by any aggrieved party. Even if an application for a Special Permit or Use Permit for a larger area is not granted, an operator may apply for a Zoning Clearance Certificate (ZCC) up to the 5,000 square foot limit. However, the "window" for applications under the CMMLUO (currently 12/31/2016) still applies.

Alternatively, the operator could apply only for a ZCC for 5,000 square feet of cultivation. To secure a ZCC the size of the previous cultivation area would need to be reduced to no more than 5,000 square feet.

What is the permit process for an existing "indoor" cultivation operation? Must use halt until properly permitted?

The CMMLUO does not provide an expedited permit pathway for indoor grows which were "existing" prior to January 1, 2016. Therefore, continuing indoor cultivation while seeking a permit is at the grower's own risk of criminal prosecution or civil enforcement. To qualify for state licensing under MMRSA all existing indoor cultivation operations must be properly permitted within the allowed zones and in compliance with applicable size limits of the CMMLUO.

How is a school bus stop location determined?

The bus stop location is considered a location designated on a bus route schedule maintained by the school district which designates bus stop locations by county road intersections or addresses. Questions concerning a more precise demarcation of a particular bus stop location shall be made in consultation with the affected school district. Also, see 13 CCR 1238.



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

Is germination of starts from seed or clones on-site for outdoor or mixed light cultivation allowed in an indoor setting?

It is not an uncommon practice for an outdoor or mixed-light cultivation operation to include an indoor space for propagation of seeds and clones for use on the property. While not outdoor or mixed-light, it remains a component of this activity because the starts are there only for a short period (a few weeks at most), they remain immature and never reach flowering stage, and they are used exclusively on the same property as grown. For this reason, this activity may be considered ancillary to the outdoor and/or mixed light cultivation use, and distinguishable from the Indoor Cultivation (i.e., cultivation to flowering stage using full artificial light) and the Nursery (wholesale or retail) activity types as defined in the MMLUO regulations. Operators using this accommodation for on-site propagation must show the propagation room on the cultivation site plan and apply this area toward the total cultivation area limits under the CMMLUO.

Is mixed-light and outdoor cultivation at one site subject to two clearances/permits or one?

Each permit type (mixed-light or outdoor) requires its own clearance or permit. Permitting for a combination of permit types may be processed under a single permit application or separately. If jointly applied, each operator will receive a certificate or permit. With regard to the limitation allowed any one person, each zoning clearance certificate, special permit or use permit for an activity type (e.g., outdoor, mixed-light, nursery, etc.) would be considered separate permits for purposes of the four permit limit.

What is the upper limit of cultivation area allowed on a parcel with a mixed-light and an outdoor cultivation operation?

The maximum cultivation area for each permit type is set forth per the table in Section 314-55.4.9. The maximum allowable cultivation area for existing cultivation is 22,000 sq. ft. for mixed-light and 43,560 sq. ft. for outdoor on a single parcel. Existing outdoor and/or mixed light cultivation is limited as to the size of the cultivation area prior to January 1, 2016. For new cultivation, the maximum aggregate cultivation area for qualifying parcels under 320 acres in size is 10,000 square feet*. This could be outdoor, mixed-light or a combination of each. However, the maximum cultivation area of all combined operations is 10,000 square feet.

* Different limits apply for parcels over 320 acres or for RRR relocated permit areas. See CMMLUO for other applicable provisions that may affect maximum cultivation area.



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

Where can I find information about renewable energy and carbon offset programs?

The MMLUO requires that electrical power used in indoor cultivation operations (e.g., for illumination, heating, cooling, and ventilation) be provided by one or more of the following: on-grid power with 100% renewable source; on-site zero net energy renewable source; or with purchase of carbon off sets of any portion of power not from renewable sources.

Information on PG&E's solar choice program:

http://www.pge.com/en/about/environment/pge/solarchoice/index.page?WT.mc_id=Vanity_solarchoice

Starting in May 2017, the Redwood Coast Energy Authority will offer 100% renewable electricity through its locally operated REpower+ service. For more information, see the Community Choice Energy section at: RedwoodEnergy.org, or call (800) 931-RCEA.

Entities related to verified/credible third-party carbon offset or renewable energy credit programs include: <http://www.green-e.org/> and <http://www.climatetrust.org/>

The Redwood Coast Energy Authority provided the above information. RCEA is a great resource for these types of questions.

The California Air Resources Board recognizes qualified registries: <http://www.arb.ca.gov/>

The CMMLUO specifies a minimum 600 foot setback from the area devoted to cannabis cultivation, processing, manufacturing, or distribution from a school, school bus stop, church or other place of worship, public park, or tribal cultural resource. How are these terms defined?

The CMMLUO defines "Tribal Cultural Resources" to mean sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, including unique archaeological resources and historical resources as described under sections 21074, 21083.2(g), and 21084.1 of the Public Resources Code, respectively. Tribal Cultural Resource shall also include sites or resources identified by the tribe through an action of the Tribal Council or equivalent body.

Additionally, the County Zoning Regulations provide definitions of the following terms:

Public Park: means land that is publicly owned or controlled for the purpose of providing recreation and/or open space for public use.

Place of Religious Worship: a specially designed structure or consecrated space where individuals or a group of people such as a congregation come to perform acts of devotion, veneration, or religious study.

School: means an institution of learning for minors, whether public or private, offering a regular course of instruction as required by the California Education Code. This definition includes a kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.



COUNTY OF HUMBOLDT PLANNING AND BUILDING DEPARTMENT

School Bus Stop: means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.

How is distance measured?

The 600 foot buffer setback is measured as the horizontal distance from the edge of the cultivation, processing, manufacturing, or distribution area or building to the nearest property line of the school site or listed feature.

When do Fire Safe requirements apply?

The Humboldt County Fire Safe Regulations (FSR) applies to portions of the county located with State Responsibility Areas (SRA) for wildfire protection when new development occurs on the parcel. Examples of new development activity subject to the FSR would include construction of a building requiring a permit, obtaining a use permit for an activity with the potential to increase fire risk, or constructing a new road or extending or widening an existing roadway. Development of a processing Facility is an example under the CMMLUO of an activity that fall under the Fire Safe regulations. Maintenance of structures or roads is not subject to the FSR. The County's Fire Safe Regulations are intended to provide basic emergency access and wildfire protection measures by applying minimum development standards for emergency access, signing and building numbering, private water supply reserves for emergency fire use, and vegetation (fuels) modification.

Link to County's Fire Safe Regulations:

<http://www.humboldt.gov/DocumentCenter/Home/View/278>

My parcel has a Notice of Subdivision Map Act Violation recorded against it. May I apply for a clearance or permit to conduct a commercial cannabis activity and what steps are involved?

An application for and approval of a Subdivision Map Act Certificate of Compliance will be required before the County may issue any clearance or permit to cultivate, process, distribute or manufacture medical cannabis under the CMMLUO.

My parcel has a Notice of Nuisance recorded against it. Is it necessary to remove this Notice before obtaining a zoning clearance certificate or special permit or use permit?

Yes, if the noncompliance with building or zoning regulations (e.g., non-permitted grading or building) to which the Notice of Nuisance (NON) applies involves development used for or shared by commercial medical cannabis activities. If, however, the noncompliant development has no connection to the commercial medical cannabis activity, the applicant is not required to secure the release of the NON.



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT

I have an existing 7,800 square foot outdoor cultivation area. Can I convert all or a portion of this existing cultivation area to mixed-light?

No, the CMMLUO provides that operations existing prior to January 1, 2016 may be permitted as to the existing activity but not changed.

A mixed-light operation seeks to cultivate year round. How many hours of natural light are required for this operation not to be classified as “indoor”?

Under the MMRSA (B&P Code 19332 (g)(9)) the state will set maximum thresholds for mixed light cultivation. At this time it is unknown what those limits will be.

For existing outdoor cultivation areas, can more than one use permit be issued for one parcel or can we get a use permit issued per group of parcels as one operation/project?

Permits are parcel specific and are issued for each cultivation permit and NOT grouped together. There is no limit to the amount of permits per parcel. Permit limits are per applicant (i.e. individual, corporation, LLC, collective, etc. entities) which is limited to 4 permits per applicant. (55.4.8.10)

What project elements of a new outdoor or mixed light cultivation project must be located on prime agricultural soil?

Only the actual cultivation area (that is, the garden beds or plots, exterior dimensions of greenhouses, maximum anticipated extent of all vegetative growth, etc. – see “cultivation area” definition in CMMLUO) must be located on prime agricultural soil. Other project elements such as drying, trimming, solar power, generator shed, storage sheds, etc. aren’t required to be located on prime agricultural soil. And yes, this does apply to both new outdoor and new mixed light cultivation projects.

Regarding the requirement that “the maximum cultivation size may not be greater than 20% of the area comprising prime agricultural soils on the parcel,” what is included in “cultivation size?”

Only the actual cultivation area (that is, the garden beds or plots, exterior dimensions of greenhouses, maximum anticipated extent of all vegetative growth, etc – see “cultivation area” definition in CMMLUO) contribute towards this threshold.



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT

Where the CMMLUO limits the number of permits to 4 per person, is that 4 permits per applicant (aka permit-holder) or is it 4 permits per land owner? Or both?

It means 4 permits per applicant/permit-holder. There is not a limit on the number of permits per land owner unless they are also the applicant/permit-holder.

Would a project to cultivate on one parcel and dry/trim on an adjacent parcel (where both parcels are under the same ownership) be processed by the County as a single project with a single permit?

Yes.