

Recommendations of the Rural Bonny Doon Association for Commercial Cannabis Cultivation in Santa Cruz County: Protecting Our Neighborhoods and Environment



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Forum

High Time for Conservation: Adding the Environment to the Debate on Marijuana Liberalization

Carah et al. (2015)

RESEARCH ARTICLE

Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds

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Summary

In the past, remote forested areas have been attractive for cannabis cultivation because it is easier to hide plants in the woods. More recently, the local laws and the growing acceptance of marijuana use and cultivation has led to more and more grows on parcels zoned RR or RA, which has negative impacts on neighborhoods.

Now that commercial medical cannabis cultivation is being decriminalized, it is time to cultivate in proper commercial agricultural settings: in the sunlight, away from residential neighborhoods, away from sensitive habitats and watersheds, out of places where cultivation and related activities cause destructive forest fires, poison wildlife, and dry up streams and aquifers.

As detailed below, the Rural Bonny Doon Association believes that commercial cannabis cultivation should be:

- restricted to properties zoned Commercial Agriculture (CA), Agriculture (A), and suitable Industrial properties;
- allowed only on those properties that also lie outside sensitive habitats and watersheds, and outside of “Priority Conservation” areas;
- allowed only where commercial agriculture won’t threaten to deplete or contaminate residential water wells; and
- allowed only where it won’t disrupt residential neighborhoods or endanger them with wildfires.

We believe that all of these protections are guaranteed under California laws AB-266 and AB-243. Section 19303 of AB-266 states:

“Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” [Italics added.]

The RBDA wants the county’s commercial cannabis cultivation regulations to protect our neighborhoods, environment, wildlife, water supplies, and protect homes from wildfires; and we want a guarantee of rigorous enforcement of the new laws and prosecution of unlicensed operations.

The philosophy behind our recommendations is to follow AB-266 and prioritize protection of neighborhoods and the environment over production of an arbitrary quantity of cannabis. In other words, the sizes and locations of cultivation sites should follow from rules developed to protect the public, rather than rules being developed to accommodate production. The Santa Cruz County Cannabis Cultivation Choices Committee (C4) was established and staffed prior to signing of AB-266 and AB-243, but C4’s recommendations should nevertheless reflect the guidance of the new state laws. RBDA believes that any recommendations of C4 that do not place protection of the public “paramount” should be ignored.

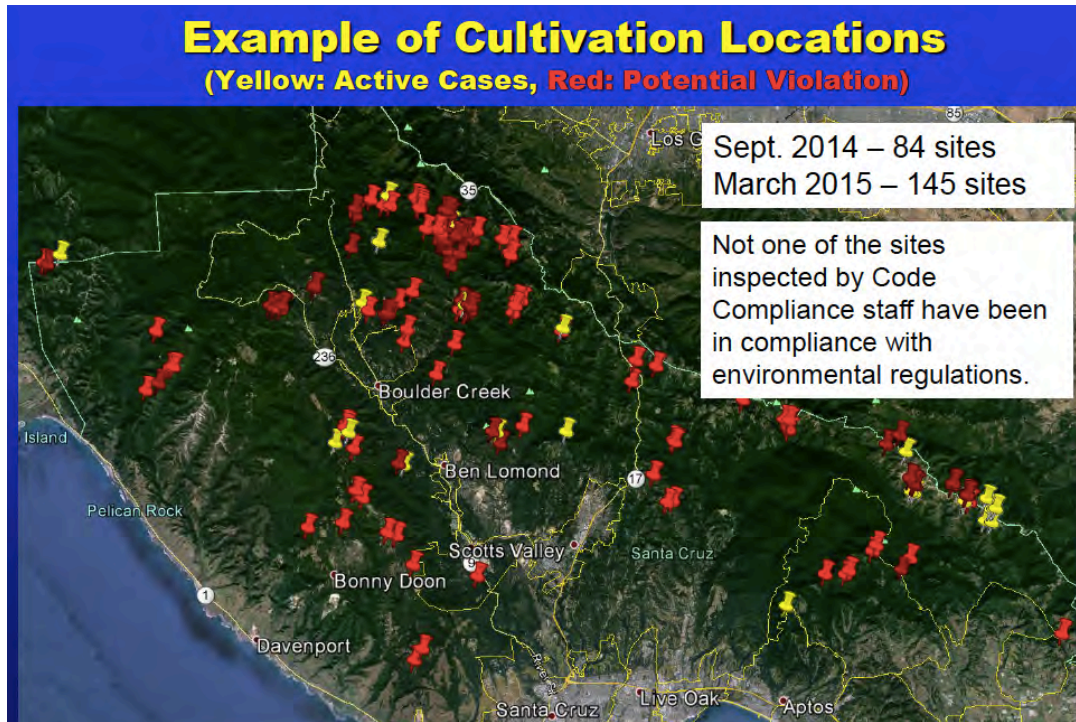


Figure 1. Map prepared by Santa Cruz County showing explosive growth of cannabis-growing sites in only 6 months.

Zoning rules to protect the environment

Commercial agriculture belongs on properties zoned CA and A. These are the zones where the Santa Cruz County Fish and Wildlife Advisory (SCCFWAC) Commission recommends that cannabis be grown commercially (letter to C4 dated October 27, 2015, and included here as Appendix I). Cultivation should be excluded from TPZ, and our county regulations should “prohibit conversion of timberland to cannabis cultivation” as suggested in item 8 of their Oct 27 letter. CDFW has also argued (their letter of October 23, 2015 to Humboldt County) that TPZ lands should be excluded from cannabis cultivation to avoid fragmentation of habitat. Regardless of the zoning of the property where cannabis is grown, there should be very strict limits on the removal of trees to make room for cannabis cultivation.

We are concerned that commercial cannabis cultivation uses large quantities of water and toxic chemicals, and operations have failed to adhere to environmental regulations (Carah et al., 2015). The document “Environmental, Fire, and Health & Safety Concerns Related to Cannabis Cultivation” on the Santa Cruz County web site (Figure 1) shows that of 145 cannabis cultivation sites, “*Not one of the sites inspected by Code Compliance staff have been in compliance with environmental regulations.*” [Italics added.]

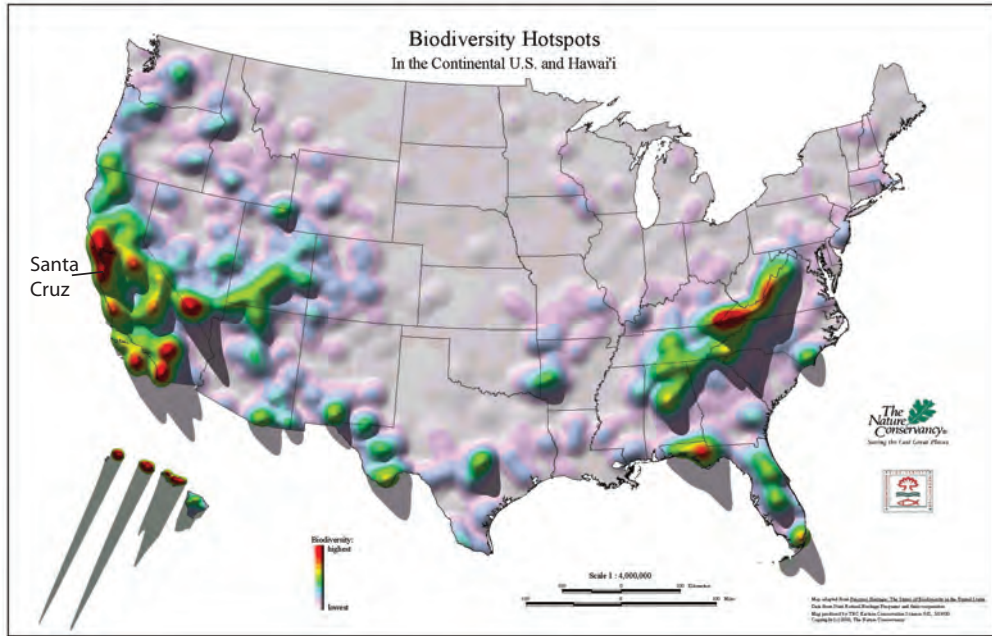


Figure 2. Map prepared by The Nature Conservancy, showing that Santa Cruz is located in the most biologically diverse region of the continental US (red peaks).

We also agree with the recommendation of SCCFWAC to “Prohibit commercial cultivation in all sensitive habitat areas”, and we think this includes all watersheds in the county that support salmon and steelhead and other threatened or endangered species. Concern about depletion of water supplies is not purely speculation. A report by CDFW researchers (Bauer et al., 2015) concluded: “Our analysis suggests that for some smaller headwater tributaries, marijuana cultivation may be completely dewatering streams.... Clearly, water demands for the existing level of marijuana cultivation in many northern California watersheds are unsustainable and are likely contributing to the decline of sensitive aquatic species in the region. Given the specter of climate change ... and diminished summer stream flows in the region, continued diversions at a rate necessary to support the current scale of marijuana cultivation in northern California could be catastrophic for aquatic species.”

Reducing the size of cultivation sites in such sensitive habitats or conservation areas is not an adequate solution. As CDFW noted in their 11/23/15 letter to Humboldt County, even small cultivation sites have caused “significant impacts on sensitive natural communities, declining species, streams, and surface water flow”.

Santa Cruz County is located in the most biologically diverse region of the entire continental US (Figure 2), and our county has been a leader in conserving these resources. Both the Sempervirens Fund and The Nature Conservancy have designated lands in our county as priorities for conservation (Figure 3).

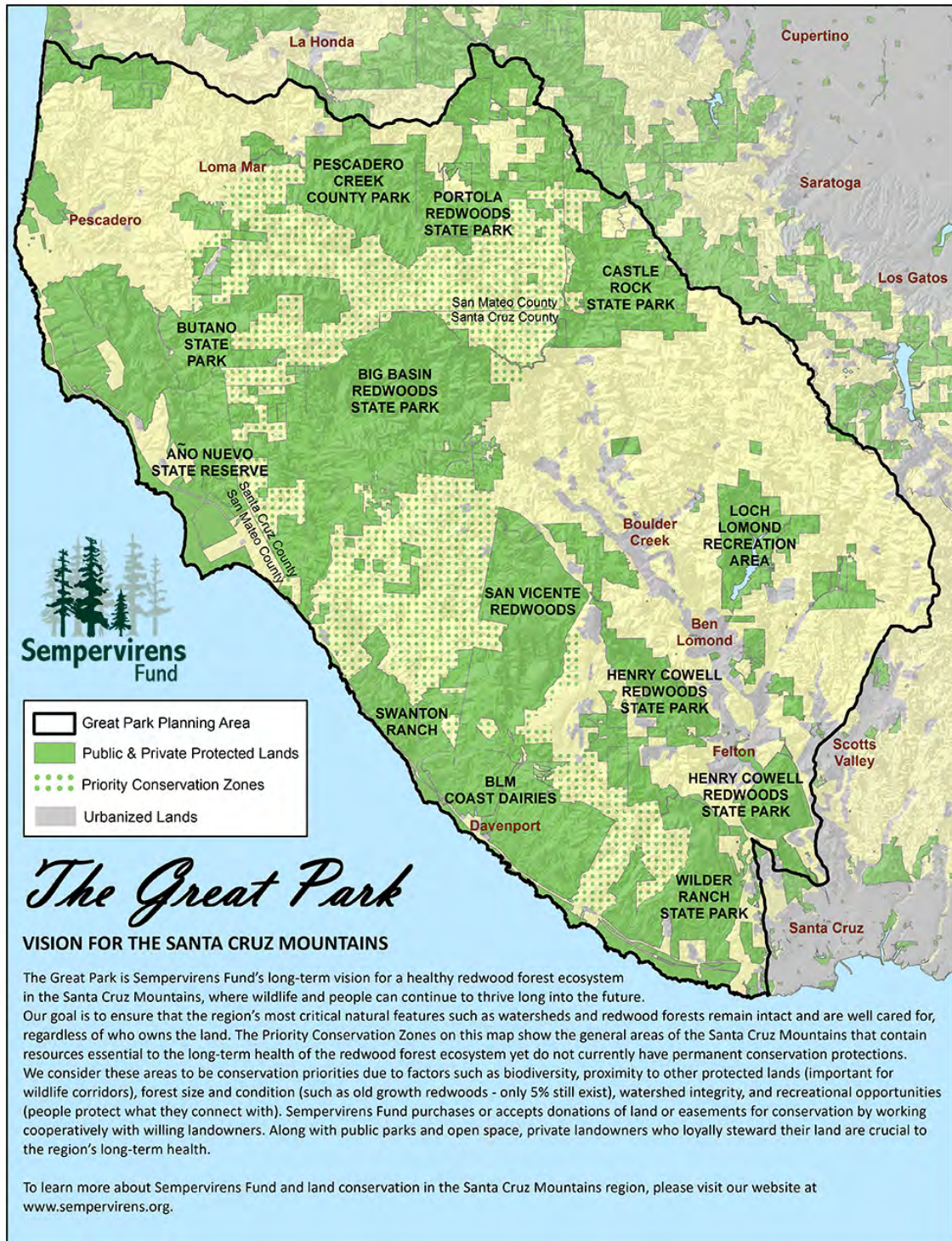


Figure 3. Map showing areas that Sempervirens Fund designated as “Priority Conservation Zones” (green dots). Text includes criteria for such designation. These areas should be excluded from commercial cannabis cultivation.

Sempervirens Fund calls these lands “Priority Conservation Zones”, which they define on such factors as “biodiversity, proximity to other protected lands (important for wildlife corridors), forest size and condition..., watershed integrity”. Similarly, The Nature Conservancy has designated county lands as “Priority Conservation Areas” (Figure 4). The RBDA believes that all such “Priority Conservation” lands should be excluded from commercial cannabis cultivation. It would be tragic to have preserved these lands so successfully, only to sacrifice them for agriculture that should be carried out on commercial agricultural lands in less sensitive environments.

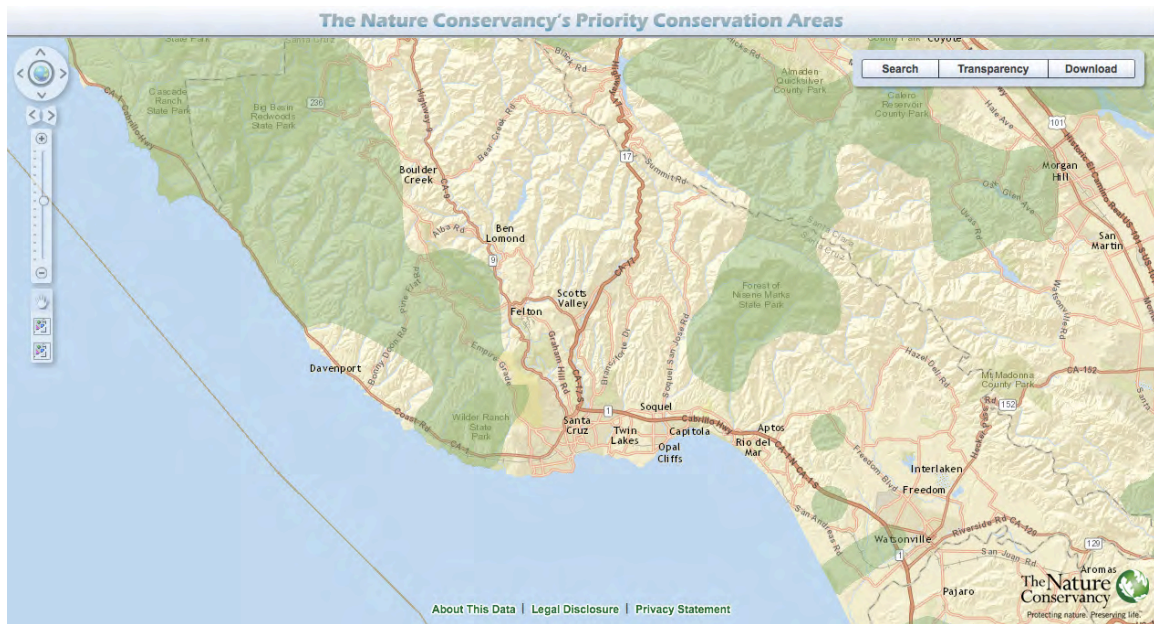


Figure 4. Map showing areas that The Nature Conservancy designated as “Priority Conservation Areas” (green). These areas should be excluded from commercial cannabis cultivation.

The RBDA therefore recommends that commercial cannabis cultivation be excluded from all sensitive watersheds and other sensitive habitats; it should be excluded from all Priority Conservation areas; and it should be excluded from all properties except those zoned CA or A.

Zoning rules to protect residential neighborhoods

All RR and RA properties should be excluded from commercial cannabis cultivation to protect residential neighborhoods from odors, pesticides, rodenticides, depletion and contamination of residential drinking-water wells, increased fire hazards, tall fences that change the character of our communities, barking and aggressive guard dogs, all-night illumination for growing and/or security, and from the attractive

nuisance created when plants worth hundreds of thousands of dollars are interspersed among family homes.

Rural residents have been vocal that they don't want commercial irrigation to deplete the wells they rely on for drinking water. And residents don't want their wells contaminated by agricultural runoff containing fertilizer or pesticide. Residents have complained bitterly about the noxious odors of flowering cannabis plants (known as "skunkweed" because of the unpleasant odor). Although indoor growing of cannabis with air filtration might reduce the noxious smell, we advocate against any commercial cultivation in residential neighborhoods.

The document "Environmental, Fire, and Health & Safety Concerns Related to Cannabis Cultivation" on the Santa Cruz County web site notes that indoor cannabis growing is a major cause of fires. **For safety reasons, commercial cannabis should not be allowed in any residential neighborhood or residential buildings, but these activities are even more dangerous in a remote forested areas where a single wildfire can wipe out an entire community.**

Enforcement

The number of known cultivation sites in Santa Cruz County almost doubled from 2014 to 2015, demonstrating that the county is unable to enforce existing cannabis regulations. Legalization of commercial cultivation will likely lead to more cultivation sites, with increasing demands on code compliance staff; increasing demands for agricultural inspectors for water use, pesticides, and runoff; and increasing demands on law enforcement to eliminate unlicensed cultivation sites and diversion of cannabis to the black market.

We want the county to complete a thorough economic analysis—in consultation with all of these relevant county agencies—to insure that the permits and taxes provided by the new regulatory scheme will provide adequate financial resources to enforce all laws.

The county's section 7.126.80 "No duty to enforce" seems like the exact opposite of what is needed to protect the public as specified in AB-266. Rather than "No duty to enforce", the new regulatory plan should include:

- (a) details of how the county will enforce the new laws,
- (b) economic analysis of how much enforcement will cost,
- (c) economic analysis demonstrating how the permits and licenses will raise the necessary funds for enforcement, and
- (d) a backup plan that ensures that the county will cease issuing Conditional Use Permits and/or licenses for commercial cultivation if the county is unable to enforce the law.

Recommendations Regarding the Cannabis Cultivation Choices Committee (C4)

The current make-up of C4 was chosen to provide input from cannabis growers and other members of the community. Rather than balancing competing interests, however, we believe that AB-266 makes protection of the public paramount over competing interests. In protecting the public, C4 should focus on:

- Protecting residential water wells from depletion and contamination
- Protecting residents from odors
- Protecting residents from fires caused by pot farming and processing
- Eliminating environmental impacts of pot farming
- Protecting coastal stream fish habitat
- Enforcement of laws regarding use of pesticides and rodenticides
- Enforcement of laws prohibiting unlicensed cultivation
- Enforcement of laws prohibiting diversion to the black market
- Economic analysis of how much enforcement will cost and how to fund it

Additional recommendations

The RBDA recommends that cultivation should be indoors (to eliminate the need for rodenticides and to provide security from theft) and within greenhouses (so as not to require excessive use of electric lighting). The RBDA also recommends that cultivation should be purely organic, with verification by a 3rd party certification service in addition to the testing of cannabis itself. SCCFWAC recommends that organic cultivation be encouraged by reduced permit fees, but we think it should be required.

If there are any Coastal Zone properties that aren't excluded by these proposed rules, permits for commercial cannabis should also require Coastal Development Permits. Moreover, these permits should be Conditional Use Permits that will not be renewed if sites are found to be causing environmental problems (as detailed in Humboldt County's regulations).

In addition to these specific regulations to protect neighborhoods and environment, the regulations in Santa Cruz County should not be so liberal that we attract commercial growers from around the country, leading to even greater damage to neighborhoods and environment. For this reason, the RBDA also believes the County should restrict the total number of cultivation sites.

Bonny Doon

The RBDA thinks the county should have uniform regulations to protect the public throughout the county. Many regions of the county have sensitive habitats and watersheds, and those environments should be protected wherever they occur (including, but not limited to, the "Priority Conservation Areas" indicated in Figures

1 and 2). We are most familiar with environmental conditions in Bonny Doon and District 3, however, and highlight some of our local issues below.

Bonny Doon is sandwiched in a narrow belt between protected areas of Coast Dairies and San Vicente Redwoods on the on the south and west, and Wilder Ranch/Gray Whale State Park, Bonny Doon Ecological Reserve, and Henry Cowell/Fall Creek State Park on the east. Bonny Doon serves as a wildlife corridor between these undeveloped lands. Consequently, many regions in Bonny Doon and the North Coast have been identified as priorities for conservation by Sempervirens Fund and The Nature Conservancy. Such lands should be excluded from commercial cannabis cultivation for reasons presented above.

Bonny Doon supplies substantial domestic water to northern Santa Cruz County communities. Davenport gets all of its water from San Vicente Creek, on the west side of Bonny Doon. The City of Santa Cruz gets water from four sources in Bonny Doon: Liddell Spring, Laguna Creek, Majors Creek, and Reggiardo Creek. Much of the water in the San Lorenzo River comes from the seven creeks and two springs on the east side of Bonny Doon that also partially serve the SLV Water District as well as flowing into the San Lorenzo River and on to Santa Cruz City diversions. All of these watersheds should be protected from depletion and contamination, and commercial cannabis cultivation should be excluded.

San Vicente Creek is included on the federal Clean Water Act list of impaired water bodies due to sediment (Appendix II). Coho salmon in the basin are state and federally listed as endangered; steelhead are federally listed as threatened. The Resource Conservation District of Santa Cruz County reported in June 2014 (<http://www.rcdsantacruz.org/san-vicente-creek-watershed-plan>) that they completed a Salmonid Recovery Plan for the San Vicente Creek Watershed. This program was conducted by CDFW, Big Creek Lumber, National Oceanic & Atmospheric Administration, Swanton Pacific Ranch, Sempervirens Fund, Bureau of Land Management, US Fish and Wildlife Service Coastal Program, and Peninsula Open Space Trust.

The month after completion of the salmon recovery plan for San Vicente Creek, CDFW News (July 2014) reported raiding a pot farm that was diverting water from the creek and contaminating it with toxic chemicals.

Summary

In many states, commercial interests are allowed to move into an area and drill for oil or mine for coal, with little regard to the impact of their commercial operations on communities or the environment. But California is not Appalachia. We have the greatest biodiversity in the continental US, and we have new laws that were designed to protect communities and the environment from commercial cannabis cultivation. California AB-266 places protection of the public “paramount”.

In the past, remote forested areas have been attractive for cannabis cultivation because it is easier to hide plants in the forest. More recently, the local laws and the growing acceptance of marijuana use and cultivation has led to more and more grows on parcels zoned RR or RA, which has negative impacts on neighborhoods. Now that commercial medical cannabis cultivation is decriminalized, it is time to cultivate in proper commercial agricultural settings: in the sunlight, away from residential neighborhoods, away from sensitive habitats and watersheds, out of places where cultivation and related activities cause destructive forest fires, poison wildlife, and dry up streams.

We want the county to implement regulations that exclude commercial cannabis cultivation in sensitive watersheds and other sensitive habitats, exclude cultivation from Priority Conservation Zones, prohibit conversion of our forest lands to cultivation, and prohibit commercial cultivation in all residential areas (including all RR and RA properties).

As part of its responsibility to protect the public, the county should conduct a rigorous economic analysis prior to passage of new laws. The analysis should involve consultation with the appropriate law enforcement agencies, code enforcement personnel, and agricultural inspectors to determine real costs of enforcement—including inspection of the 150 and growing known or suspected cultivation sites—and guarantee that the county will have financial resources to ensure rigorous enforcement.

In summary, RBDA recommends that the Santa Cruz County commercial cannabis cultivation regulations should include the following:

- (1) exclude all residential neighborhoods (including RR and RA)
- (2) exclude all lands except those zoned as CA and A
- (3) exclude all lands in sensitive habitats or watersheds
- (4) exclude all lands mapped as Priority Conservation lands
- (5) exclude cultivation near residential drinking-water wells
- (6) require adequate setbacks to reduce the odor and other impacts on neighboring properties
- (7) prohibit conversion of forest lands to commercial cultivation
- (8) prohibit cultivation where slopes are steep or forest fires are a hazard
- (9) severely limit the removal of trees to create open space for cultivation

- (10) cultivation should be organic (certified by independent agencies)
- (11) cultivation should be in greenhouses
- (12) enforcement should be rigorous, including shutting down unlicensed operations and enforcing against diversion to the black market

REFERENCES

Bauer S, Olson J, Cockrill A, van Hattem M, Miller L, Tauzer M, et al. (2015) Impacts of Surface Water Diversions for Marijuana Cultivation on Aquatic Habitat in Four Northwestern California Watersheds. PLoS ONE 10(3): e0120016.
doi:10.1371/journal.pone.0120016

Carah, J. K., Howard, J. K., Thompson, S. E., Gianotti, A. G. S., Bauer, S. D., Carlson, S. M., ... & Power, M. E. (2015). High Time for Conservation: Adding the Environment to the Debate on Marijuana Liberalization. *BioScience*, 65(8), 822-829.

Illustrations on cover and Figure 1 are from Santa Cruz County Web site document: "EnvirFireHealthSafetyIssuesCannabisCultivation.pdf"

APPENDICIES

- I. Letter from Santa Cruz County Fish and Game Advisory Commission letter to C4
- II. The Nature Conservancy Salmon Snapshot for San Vicente Creek



COUNTY OF SANTA CRUZ

FISH AND GAME ADVISORY COMMISSION

701 OCEAN STREET, ROOM 312, SANTA CRUZ, CA 95060
(831) 454-3154 FAX: (831) 454-3128 TDD: (831) 454-2123

October 27, 2015

Dear Cannabis Cultivation Choices Committee (C4):

The County of Santa Cruz Fish and Game Advisory Commission advises the Board of Supervisors on any matters pertaining to fish and game in the county, including the natural habitat, wildlife, and environment in general. The Commission also makes recommendations, consistent with the policies and regulations of the California Department of Fish and Wildlife, to the Board of Supervisors concerning expenditures from the County Fish and Game Propagation Fund.

As you likely know, environmental impacts associated with commercial cannabis cultivation have been well documented both locally and state-wide. Effects on fish and wildlife may range widely from food chain effects of pesticide use to excessive water diversion to hydromodification issues associated with improper rural road construction. Our watersheds already face a litany of impacts associated with historic and present land uses and the recent emergence of wide-scale commercial agricultural activity in rural areas of the County compounds this already troublesome situation. Santa Cruz County is a biodiversity hot spot, home to many threatened and endangered plant, animal, and fish species as well as rare and threatened habitat types. These resources deserve special protection, not just for their inherent value, but as community assets.

Therefore, we are very interested in your work on the County's medical cannabis cultivation regulations. We have been asked to weigh in on environmental protection issues which the C4 should consider in their development of new County regulations regarding cannabis cultivation. Our commission encourages you to consider that properties zoned A (agriculture) and CA (commercial agriculture) are the most suitable for commercial cannabis crops. But in all cases, we would like to see the following environmental protections:

1. Require proof of valid water rights for surface water diversions serving commercial operations.
2. Require irrigation efficiency water audits and implementation of water conservation best practices for commercial operations.
3. Require all roads associated with commercial operations to meet County and CalFire standards.
4. Enhance riparian protection regulations for commercial operations; 100' for perennial streams, 50' for intermittent streams and 25' for ephemeral drainages.

5. Require preparation of a Farm Plan or Conservation Plan which will guide development and implementation of commercial operations.
6. Require 3rd party certification of Conservation Plans and their implementation.
7. Prohibit commercial cultivation in all sensitive habitat areas – including sandhills, riparian corridors and northern maritime chaparral.
8. Request special rule for Santa Cruz County to prohibit conversion of timberland to cannabis cultivation.
9. Dedication of tax revenue on medical cannabis sales to cannabis regulatory program development, regulatory enforcement and mitigation of problem grow sites.
10. Require Santa Cruz County residency for all commercial cultivation operations.
11. Require a notarized cultivation authorization letter from landowners for all tenant-farmer commercial cultivation operations.
12. Prohibit light and noise pollution for all commercial cultivation operations.
13. Encourage organic only cultivation of commercial cannabis cultivation through reduced permit requirements.
14. Require herbicide and pesticide testing for all commercially-derived cannabis.
15. Require chain of custody documentation for all commercially-derived cannabis products sold in Santa Cruz County dispensaries.
16. Require compliance with all other applicable local and state regulations and ordinances.
17. Facilitate use of existing greenhouse facilities that greatly reduce environmental impacts associated with outdoor grows and new cultivation sites while also providing security for growers.

We very much look forward to reviewing the recommendations of C4 and hope that you will provide us with the opportunity to do so prior to their going to the Board of Supervisors. Thank you for your consideration.

Sincerely,



Sandra Baron
Fish and Game Advisory Commission - Chair

cc: Susan Pearlman - County Administrative Officer; Board of Supervisors; Kristen Kittleson - County Environmental Health Services

San Vicente Creek

SALMON SNAPSHOT FOR 2012/13

Estimate of adult fish

COHO



STEELHEAD



WHAT WE HAVE†

0 [21]

61

WHAT WE NEED

105§

+

† Population estimate (derived from redd counts) provided by California Department of Fish and Wildlife. Coho estimate comprised of two hatchery-marked ocean return fish and 26 Scott Creek captive broodstock released into San Vicente Creek to create a larger natural spawning set of adults. The California Coastal Salmonid Monitoring Program for San Vicente Creek initiated in 2011/12. Data are preliminary and subject to change.

§ Spawning adult fish recovery targets represents the biological conditions National Marine Fisheries Service would use to delist the species and remove them from the Federal List of Endangered and Threatened Wildlife and Plants (50 CFR 223.102)(NMFS 2012a).

+NMFS target not defined.

WHERE WE FIND SALMON TODAY



Map shows current distribution and historical range for all species combined. Data compiled from multiple sources. Go to www.CASalmon.org for more information and maps by species.

RESTORATION HIGHLIGHTS

- 1 fish passage barrier removed
- 1 mile of instream habitat restored
- 1 stream crossing removed
- 8 large woody debris structures added for instream habitat

Compiled from multiple data sources; see CASalmon.org for details



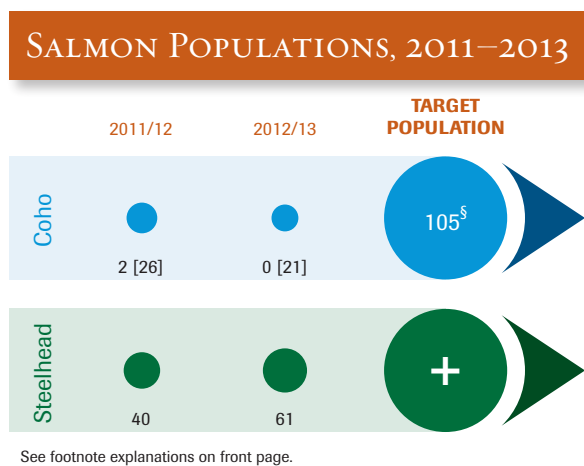
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The Resource Conservation District of Santa Cruz County and its partners created a series of step pools leading to a larger backwater pond, addressing the lack of winter refuge and summer rearing habitat in San Vicente Creek.

San Vicente Creek is a small coastal watershed which drains 11 square miles of the Santa Cruz Mountains. Since 1906, with elimination of the tidal marsh at the mouth of the creek, the creek flows through a tunnel to the Pacific Ocean at Davenport, CA, 10 miles north of Santa Cruz, CA. The San Vicente Creek basin is marked by Karst geology, which supplies relatively cool water during the summer low-flow period. Most of watershed (99%) is still privately owned, with a large proportion (61%) in conservation ownership. Beyond minimal rural residential use, the dominant land use is timber: 60% of the watershed is coniferous forest. Over the last decade, 22% of the watershed was under sustainable timber harvest plans.

The San Vicente Creek is included on the federal Clean Water Act list of impaired water bodies due to sediment. Coho salmon in the basin are state and federally listed as endangered; steelhead are federally listed as threatened. Per the National Marine Fisheries Service Final Recovery Plan for Central California Coast coho salmon, the highest priorities for restoration are to: maintain current large wood; ensure lower pond inlet in is maintained; remove invasive plants from riparian zones; protect floodplains and off-channel habitats; and reduce erosion from private roads and mining.

In 2001, federal and state agencies, and a local nonprofit group, initiated an egg collection program from the few remaining coho salmon in the Scott Creek watershed for supplementation rearing in both Scott and San Vicente Creeks. Eggs were raised to adulthood at two facilities: the Monterey Bay Salmon & Trout Project hatchery in the Scott Creek watershed (starting in the late 1970s) and the NMFS Southwest Fisheries Science Center (starting in 2001). Progeny of captive brood fish have been released annually in San Vicente Creek as smolts since the program was initiated. Since the 2011/12 spawning seasons, sexually mature adult coho salmon from the captive brood program have also been released into San Vicente and Scott Creeks, which have severely depressed populations. Observations indicate released adult brood-fish spawned successfully in the wild. This program is ongoing and details can be found on their website at <http://swfsc.noaa.gov/SalmonEcology>.



© RCD of Santa Cruz County

This large wood project was completed with support from the Resource Conservation District of Santa Cruz County, Natural Resource Conservation Service, National Marine Fisheries Service, State Coastal Conservancy, California Department of Fish and Wildlife, State Water Resources Control Board, US Fish and Wildlife Service, US Bureau of Land Management and the Trust for Public Land.

The Nature Conservancy of California

Throughout California and much of the Pacific Northwest, wild salmon are disappearing – as are the jobs and way of life that depend on them. The remaining populations face grave threats: there is not enough water in streams at the right times; water temperatures are too high; passages to spawning grounds are blocked; estuaries have been altered; and habitat for young fish is missing. The Nature Conservancy’s Salmon Initiative aims to rebuild coho salmon, Chinook and steelhead trout populations to sustainable and fishable abundance. The initiative demonstrates habitat restoration and supports collective solutions that have application beyond salmon and California. **Contact snapshots@tnc.org.**

About the California Salmon Snapshots

The *California Salmon Snapshots* provide an annual update of salmon population status and trends along the Coast of California. This information can be used to galvanize and increase public and private funding for long-term investments in priority salmon restoration projects, regular data collection, and amplify the current coastal monitoring program. 2013 marks the first year of the *California Salmon Snapshots*.



How to Help

Actively support monitoring and priority restoration actions listed in the National Marine Fisheries Service Recovery Plans for coho and steelhead and the California Department of Fish and Wildlife Coho Recovery Strategy and Steelhead Restoration and Management Plan. Work with The Nature Conservancy and conservation partners in your local watershed to bring more wild salmon back to California. **Visit www.CASalmon.org** for more detail on how to **get involved** with recovery efforts and local watershed groups.