

Attachment B:
Appeal filed by Edward Wilkinson, Quantum Genetics



Planning Commission's Reasons for Denial and Applicant's Reasons.

1. Aspects of the proposed project not described. During the public comment period, letters were received from the public and a law firm indicating that the IS/MND and the Staff Report did not address the whole of the project that the applicant, or its successor, intends to pursue – with an attachment of a real estate listing describing possible expansion of uses to include a microbusiness license, including level 1 manufacturing, distribution, and retail uses on site. The listing stated the potential for tourist income, with development of a bud-bnb use of the proposed residence, onsite retail, and visitor's center.

Response: All aspects of the project have been clearly described and all required regulations have been met. The purpose of the approval sought stands independently of potential future operations, especially since there is no ordinance in place allowing such potential future activities.

The referenced advertisement clearly states that the property has future potential based on future governmental entitlements. This is akin to a vacant piece of property listed for sale. In that example, the seller can, and often does mention, potential sub-divisions. There are emails between the applicant and the Building and Planning Department (HCBP) letting them know the applicant is interested in doing these things. The HCBP Department told the applicant that these activities might be allowed in the 2.0 Ordinance, but are not allowed at the current time. The project that was recommended for approval by the HCBP does not include the potential Micro-business and Bud BnB. An applicant could apply to pursue those activities at a time when the law changes. If future ordinances allow for this, a whole new application would be made as well as creating a new IS/MND and staff report. The applicant has not hidden the fact that this is the end goal of the project, but the applicant would like to stress the fact that these additional activities are not the subject of the approval sought. That being said, based on the 2.0 Ordinance (if approved), there would be no onsite retail and visitor center allowed.

2. The adequacy of the existing road and proposed parking to accommodate the proposed project. Triple K Place, accessed from Rohnerville Road, is rural, gravel road that serves five parcels including the project site. The estimated number of trips per day in the IS/MND were determined to be up to 8 vehicle/truck trips (4 in/4 out) or 2,920 trips per year. However, based on the use of the Institute of Transportation Engineers (ITE) manual, a wholesale nursery of this size would be expected generate 39 trips per day, resulting in more vehicle trips than analyzed in the IS/MND. Additionally, the site may be inviting additional trips beyond the existing cultivation operation and the proposed wholesale nursery permit with visitors and tours of the site. The proposed parking indicated for the nursery was three parking spaces, accommodating an estimated three employees. Based on Humboldt County Parking (314-109.1), along with comparison of similar uses, the proposed parking is not adequate to accommodate the parking needs of the proposed nursery.

Response: Applicant will talk about the adequacy of the existing road more in part # 5.

The applicant is updating the IS/MND about the trips, as there was confusion about the number of employees during communications between the applicant and County's consultants doing the study. The IS/MND only included applicant's full time employees. There will be 4 or 5 part-time employees, making a total of 9 employees for both the cultivation and the nursery on the property. The IS/MND will be updated. However, most of the time Applicant will have approximately 5 employees for both facilities. The only time we need part-time employees is about 1 week of the month.

Commissioner Kevin McKinney used the Institute of Transportation Engineers Manual (ITE manual) to determine that a Wholesale-nursery would be expected to generate 39 trips a day. He did not indicate that the Applicants project was not a retail Wholesale Nursery, just a wholesale nursery. Our facility is not open to the public. Distributors and farmers will order online/via phone and we will deliver the clones or teens (larger sized clones), with one delivery going in and out per day. We don't do same day deliveries. Instead, we will be delivering previous day orders the next day or later, combining all orders on one truck. If our truck isn't big enough to accommodate orders, applicant will buy a truck that can.

Specifically, Commissioner McKinney was referring to code 818 in the Trip Generation Manual, 9th Edition, which states that a retail Wholesale Nursery would actually generate 41.36 trips. Since Applicant's facility will not be open to the public it should never be placed under 'Retail' as Commissioner McKinney has done. The most suitable option in the ITE manual is code "140" (Manufacturing) that states for every 1,000 SF, 0.73 trips are generated. This code fits best because we are manufacturing clones and then delivering them with no retail facility, nor will the facility be open to the public. Customers will be able to go online and check out the Applicant's inventory and if they are unhappy with clones after their purchase,

they will receive a full refund and can throw the clones away themselves. A trip generation rate of 0.73 trips/1,000SF would put our trips generated to 14.6 a day, which are actually more trips than we anticipate. Our cultivation facility is a lot more labor-intensive than the nursery and yet, only produces 8-10 trips a day on average, with most days only producing 2-4 trips. The applicant would be happy to pay for an engineer to prove his claims about current trip generation. This also could be done by paying a monitoring company to watch our cameras and noting how many trips on average there are over a month. The nursery is going to have about the same amount of trips, as the project is essentially doubling its crew.

If not manufacturing, the next closest option in the ITE is Code "860" (Wholesale Market) that indicates .88 trips generated per 1,000 SF, 0.88. However, this option is still wrong because it falls under retail. There will be no retail sales for the wholesale nursery as the nursery will not be open to the public and orders will be handled on-line. If this is what the Board of Supervisors finds more appropriate than code 140, which is clearly the only option in the applicant's opinion, the trips generated would still be 17.6 trips a day.

The applicant would also like to note that he spoke with Ken Freed at Public Works who said that the ITE manual are guidelines, not rules. He said he doesn't use them because they are guidelines and he doesn't actually have a copy of them onsite.

The applicant is willing to comply with all parking requirements set forth. The Applicant went into the HCBP Department to find out what the parking issues were and how to tackle them, as there is plenty of space to put 200 parking spots if the County requested it. During the public hearing, the Planning Commission was referring to section 109.1.3.3.1 under Commercial Uses in the Humboldt County Zoning Regulations. This section states "Retail Sales or Service" and requires one space for every 300 square feet, which would put the applicant at 66.67 parking spots. The applicant is happy to comply with this if needed. However, after speaking with Michael Wheeler and Heather at the HCBP Department, they informed the Applicant that there is no parking regulation for a Wholesale Nursery, but that the most appropriate use type was section 109.1.3.4.2 (Industrial Uses). This section is Manufacturing and requires 1 parking space for every 1500 square feet, which would mean the applicant needs 13.34 parking spaces. As a result, the site plan is being updated. This project should be considered Manufacturing for regulation purposes as there is no Retail and it is not open to public. To reiterate, the process consists of orders received online, manufacturing clones, and then delivering them. The Applicant doesn't anticipate more than 4 of these parking spots being used at any given time since there is already an extra parking space that is never used from the cultivation project. The only 1-2 days that the parking lot was full was when applicant had 3 different contractors and construction crews during the build-out.

Also, the Applicant would like to add that a neighbor with the horse ranch (right next to Applicant's property) used to have many more stables with about 10+ horses. These have been recently knocked down. With the additional trips created from the cultivation and potential nursery it will still be much lower than trips from the stables. Also, the neighbor that owned the stables knocked them down as he is in the application process for a Cannabis Permit and is planning to construct greenhouses right outside all these neighbors houses. Those will be much closer to those homes than the applicant's proposed indoor nursery (which is not visible from outside the property). This neighbor with the horse ranch also runs his logging business as well as maintaining many farm animals. Those activities generate trips on Triple K Place, all trips that the neighbors in opposition to Applicant's project do not oppose. The Applicant has done everything in his power to satisfy all the neighbors, even leaving a note the day he put the property into escrow informing the neighbors what he was doing, and to get in touch if there were any concerns. No concerns were raised by the neighbors to the Applicant previously, and the HCBP can confirm that there have been no formal complaints. The Applicant has maintained the road more than any of the other neighbors and will get testimony from a neighbor regarding this.

3. Well water use and the impact on neighborhood water availability. The County received public testimony that the proposed project would result in increased water usage and thus reducing the availability of ground water for other uses. Neighbors stated that wells in the area draw from a shallow aquifer and provide limited production and poor quality (high nitrates) for residential uses. While water for the nursery will be mostly sourced from dehumidifiers, well water will be used for the nursery operation and there is insufficient evidence that the shallow aquifer can supply sufficient capacity for the project use without degrading or eliminating the water supply for to neighbors' wells for residential uses.

Response: The finding of increased use of water and reduction of availability of ground water is patently untrue. The facility has implemented and invested in a number of state-of-the-art, water-saving systems that ensures there will be no, read zero, use of ground water by the end of 2018.

Both the Cultivation facility and proposed Nursery are state-of-the-art. The Cultivation facility is currently using 50% (+/- 10%) of its water from 4 dehumidifiers, which produce 107 gallons a day. If and once the Nursery is approved, 2 additional commercial dehumidifiers will be purchased that can harvest 1400 pints a day or 175 additional gallons. This, coupled with the rain catchment from the 100 x 100 foot nursery roof, means that the operation will be taking no water out of the ground. HCPB Department has commended the applicant for his creativity in finding solutions to water issues and are pushing this idea onto other projects. Proof of the specs on these dehumidifiers can be provided and will be added to the project for the Board of Supervisors to view and confirm. Additionally, the Wholesale Nursery will have a state-of-the-art Deep Water Culture Hydroponic system installed that re-uses the water. This greatly reduces the amount of total water used. All of these measures ensure that the applicant will be taking no water out of the ground by the end of 2018, making it one of the only facilities of its kind.

Less than a mile away, there is a 1-acre cultivation project that proposed to use 3000 gallons of water a day that is drawn from a well within proximity to the parties in opposition to this wholesale nursery and yet no complaints were made by them. The Planning Commission had no problem with approving it. The applicant's project is estimated to use a fraction of that amount of water. This will be laid out in the exhibits that will be forwarded to the County as soon as possible. Another example was when the Humboldt Bay Water Municipal Water District said that a Manufacturing (Extraction) project could possibly contaminate half of Humboldt County's water supply and the Planning Commission still approved it.

Environmental preservation, water use, and respect for shared resources has been and will continue to be this project's objective.

4. Health and safety concerns due to an increase in traffic at the intersection of Rohnerville Road and Triple K Place. Comment letters and public testimony stated concern with the safety of the intersection of Triple K Road and Rohnerville Road. The traffic and speeds are reportedly high on Rohnerville Road and there is limited area to accelerate from Triple K Road on to Rohnerville Road. No construction of acceleration, deceleration or turning lanes are proposed. The project would increase the traffic volume entering and exiting the project site, increasing road hazards.

Response: Project causes minimal traffic – barely a difference to the status quo.

The applicant has had SHN request accident records on the intersection of Rohnerville Road and Triple K place from County. As far as records go back only 1 accident has occurred on this intersection, which was not related to Triple K Place and involved a single car that lost control during daylight when it was wet – no injuries and nothing to do with Triple K Place. SHN is preparing a full report on the accident history to present to the Board of Supervisors. On top of that the neighbor bordering the Applicant's property runs a horse stable and logging business on his property. Those uses involve driving in and out with 30 - 40 foot trailers and heavy machinery on this intersection daily, and they have never caused an accident. Public works have checked off on the intersection and have stated that this intersection is up to code. Professional opinions on what is up to code should be followed, not lay opinion.

Again, the applicant would like to stress the fact that since the neighbor with the horse stable business has decreased his operation capacity substantially that the traffic that would be increased from the nursery will be much lower than what was previously there. Furthermore, it will be much less dangerous as there won't be any 30-40 foot trailers nor heavy logging trucks as there is from the neighbor that everyone has accepted without protest or complaint.

5. Existing road is not wide enough to serve proposed project. A Road Evaluation package was received on June 30th, 2017 in response to Public Works request for a road evaluation to ensure that road serving the project has the capacity to accommodate the proposed use. The Road Evaluation Report included "Part A" signed by the applicant, attesting that the access road is developed to Road Category 4 standards (20 feet wide) or better. "Part B", completed by Darren Tully, Registered Professional Engineer, includes a diagram of the road that indicated the width varies between 12 to 15 feet, provided photographs, and recorded 44 daily trips on June 7, 2017, using a counter serving six other road users. The testimony of several neighbors that live along Triple K Place state that the road does not currently meet the Road Category 4 standard of 20 feet width, consistent with the measurements submitted by applicant's engineer in the Road Evaluation Report, "Part B", and that current traffic conditions from the permitted cultivation site without the additional wholesale cannabis nursery are negatively impacting the road. The project would increase road

use and further impact road conditions without commitment by the applicant of upgrading and maintaining the road.

Response: The applicant has been and will continue to be willing and able to commit to upholding proper road maintenance. The issue previously manifested was not because the applicant was negligent, but because the Chief of the Fortuna Fire Department and the civil engineer permitted it and said it was up to code. Had the applicant known otherwise, it would have been addressed accordingly.

Within Humboldt County's Road Evaluation Report Instructions, it says,

"INSTRUCTIONS: The road Evaluation Report consist of two parts. The first part (Part A) may be completed by the applicant. If the second part (Part B) is needed, it must be completed by a Civil Engineer licensed by the State of California."

The Applicant admits to putting that the road met Category 4 requirements since both the engineer and the Fire Chief of the Fortuna Fire Department who had come inspect the road said that it was up to code. The applicant is not a professional road evaluator, was told the road was up to code and made the mistake of checking Box 1 and not Box 3. Even though the applicant checked Box 1, the applicant still got both the Fortuna Fire Department and Whitchurch Engineering to evaluate the road. Both stated that the road in its current form is up to standard for its use.

Saying that the applicant is not willing to commit to upgrading or maintaining the road is simply not true. The applicant is totally willing to do that. The HCPB Department has thanked the applicant a number of times for being so easy to work with and always doing what needs to be done with no questions asked. This is no different with the road. The applicant has already included in the conditions of approval that he is willing to upgrade the road to 20 feet. This can easily be done as there is a 40 foot wide easement on Triple K Place that goes all the way to the Applicant's project/property. The Applicant is not only willing to upgrade the road to Category 4, but also is willing to spend \$50,000-100,000 paving the road if necessary. However, this money would be much better for donations to needy community organizations. In any event, the Applicant will have both a quote for upgrading it to 20-foot wide gravel and paving the road by the time of the hearing on this appeal.

6. Prejudice future pending City of Fortuna annexation. The City of Fortuna provided both written and verbal comments in opposition of this project. The City has adopted a ban on cannabis activities within the City and is opposed to cannabis activities within the City's sphere of influence. The City General Plan identified four annexation areas and, to date, has completed annexation of three of these four areas. The fourth annexation area is identified as the Rohnerville Airport, including the lands in which this project is located. The City is taking steps necessary to complete this annexation area which includes a circulation planning grant to be carried out in 2018. Cannabis cultivation in this area will allow uses that are inconsistent with City policies, creating challenges to future annexation, and result in nonconforming uses upon city annexation. The City representative pointed out that the IS/MND did not include a discussion of these future annexation efforts as part of its analysis as part of this project.

Response: This was a concern of the Applicant during his Due Diligence period before closing on the purchase of the property. He had contacted Fortuna at the time of purchase and they said that because they had to annex the airport, any annexation wouldn't occur before 2020, at the earliest. Even then, the proposed plan is a 2030 Plan and there is no certainty that Fortuna will still have the ban on Cannabis at that time nor even annex the area. Also, grandfather provisions would allow this project to continue to operate and Fortuna would have to issue a variance or create an exception.

Also, on Humboldt County's Plan Figure 1 Urban Development and Expansion Areas (South from the Land Use Map from Humboldt County), even though there is an Urban Expansion Area, it does not include the Applicant's property. Everything east of it is in a UEA but the Applicant's property is not.

On top of this it is important to note that this property sits on the boundary of the proposed annexation area and Sphere of Influence (SOI). This means it would not be considered an 'Island' and LAFCo would not force the property to be annexed. LAFCo has explicitly told the applicant the following;

"When reviewing proposals, LAFCo generally discourages the creation of islands or corridors of unincorporated territory that are entirely or substantially surrounded by a city on three or more sides. Currently your property is not substantially surrounded by the city and is therefore not considered an island."

Fortuna could annex everything around it without causing any future challenges. There is nothing in the Cannabis Ordinance that states that operations are not allowed to be within the Sphere of influence (SOI) and thus the applicant is complying with these rules. The Board of Supervisors passed an ordinance that wanted to bring the grows out of the hills and into AG land. The applicant has done everything asked of him.

If the 2.0 Ordinance is passed there is a provision – Alternative 9 that requires setbacks from residences within the SOI as well as other protections. As far as the Applicant is aware this project meets all these requirements as well. However, the project is not being scrutinized under these regulations.

The Applicant has also spoken to LAFCO and they have said that Fortuna doesn't even have a plan to annex this area with LAFCO. This means that Fortuna is and won't be able to annex the area by 2018 if at all. The City is using whatever they can to halt such projects when in fact they are twisting the facts to influence the decision of the County. Email evidence between the applicant and LAFCO will be provided regarding this issue.

Conclusion: The Applicant has gone above and beyond the requirements for this project and has been told directly by the HCBP Department that he has complied with everything that has been requested. Applicant is willing to resolve any issues that arise even if they are costly. The Applicant has summarized the reasons for denial and will be putting a formal response together with all the exhibits showing everything stated here is true and correct.

The Applicant is extremely respectful of his neighbors and wants do to everything in his power to satisfy them. The cultivation project has spent over \$700,000 in Fortuna and surrounding local businesses as well as hiring locally. This is a huge benefit to the local community. The Applicant and investors have \$500,000 in capital ready to be released upon approval of the permit. The approval of the Wholesale Nursery would also benefit surrounding businesses as well as create much-needed jobs.

The Applicant moved to Humboldt County with the intention to lead by example and to become a beneficial member of the community. He has done everything that been asked of him and more. He moved here with the thought that Humboldt County was leading the way in the Cannabis space. Applicant believed the County wanted people like him and his operation to lead the way.