

ATTACHMENT 4

Planning Commission staff report of August 2, 2018



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION

3015 H Street Eureka CA 95501
Phone: (707)445-7541 Fax: (707) 268-3792

Hearing Date: August 2, 2018

To: Humboldt County Planning Commission

From: John H. Ford, Director, Planning and Building Department

Subject: **Brod Agricultural Preserve**
Application Number 14057
Case Number AGP-18-001
Assessor Parcel Numbers (APNs) 106-021-002, 106-021-003, 106-021-007, 106-021-062
363 Fulmor Road, Ferndale Area

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Please contact Cliff Johnson, Senior Planner, at (707) 445-7541, or by email at cjohnson@co.humboldt.ca.us if you have any questions about the scheduled public hearing item.

Copy: Assessor's Office

AGENDA ITEM TRANSMITTAL

Meeting Date August 2, 2018	Subject Agricultural Preserve	Contact Cliff Johnson
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Project: An application to establish a Class "D" Agricultural Preserve and Farmland Security Zone pursuant to the California Land Conservation Act and the Humboldt County Agricultural Preserve Guidelines.

Project Location: The project site is located in the Ferndale area, on both sides of Fulmor Road, at the intersection of Bertelson Lane and Aggler Lane, on the property known as 363, 428, and 439 Fulmor Road.

Present Plan Designations: Agriculture Exclusive/Prime and Non-prime Lands (AE), Eel River Area Plan (ERAP), Density: 160 to 20 acres per dwelling unit, Slope Stability: Relatively Stable (0)

Present Zoning: Agriculture Exclusive-Minimum lot size 60.0 acres, Flood Hazard Areas, Streams and Riparian Corridor Protection, Transitional Agricultural Lands (AE-60/F,R,T)

Case Number AGP-18-001

Application Number 14057

Assessor Parcel Numbers: 106-021-002, 106-021-003, 106-021-007, 106-021-062

Applicant

Merritt Brodt
PO Box 1113
Ferndale CA 95536

Owner

Brodt Revocable Trust
4028 Grizzly Bluff Road
Ferndale, CA 95536

Agent

Environmental Review: Project is categorically exempt from environmental review per Class 17, Section 15317 of the CEQA Guidelines.

Major Issues: None

State Appeal Status: Project is not appealable to the California Coastal Commission.

BRODT AGRICULTURAL PRESERVE

Case Number AGP-18-001

Assessor Parcel Number 106-021-002 et seq.

Recommended Commission Action:

1. Describe the application as part of the Consent Agenda;
2. Survey the audience for any person who would like to discuss the application;
3. If no one requests discussion, make the following motion to approve the application as a part of the Consent Agenda:

Make all the required findings, based on evidence in the staff report and public testimony, and recommend the Brodt Agricultural Preserve project to the Board of Supervisors for approval, subject to the recommended conditions of approval.

Executive Summary: An application has been made to establish a Class "D" agricultural preserve of approximately 135 acres. The property is owned by the Brodt Revocable Trust and is utilized as the main portion of the Brodt's dairy operation. The owners have also requested to establish this as a Farmland Security Zone.

The Williamson Act is intended to preserve agricultural and open space lands by discouraging the premature and unnecessary conversion to urban uses. When entering an agricultural preserve, the property owner executes a Land Conservation Contract with the County to restrict the uses of the land to agriculture, open space and/or compatible uses. The minimum term for a Land Conservation Contract ten years and is automatically renewed every year, maintaining a constant ten year contract. In exchange for restricting the uses, the land is valued as open space land pursuant to open space valuation laws (Revenue and Taxation Code Sections 421, et seq.). For a Farmland Security Zone, the term for the Land conservation Contract is 20 years.

In order to qualify for a Class "D" Unique Farmland and Dairy Preserve and contract, the preserve area must contain at least 10 acres of prime agricultural land or not less than 40 acres of tillable non-prime land of statewide or local significance. The land must be in an agricultural designation and zoned for agricultural use. The parcels must be devoted to agricultural commodities for commercial purposes in accordance with the county's Williamson Act Guidelines, and have provided a gross annual income of \$12,000 from agricultural production for three of the last five years. While under contract, the zoning and contract would prohibit any parcel divisions (which includes the sale of separate legal parcels).

For the establishment of a Farmland Security Zone, the land must be designated on the Important Farmland Series maps or shall meet the definition of "prime", and must be located within 3 miles of the Sphere of Influence Boundary of an incorporated city.

The subject parcel contains approximately 135 acres of prime agricultural land. All but approximately 20 acres of the property is irrigated. The soil type is exclusively mapped as Dungan soils, which has a land capability classification of 1 and is classified as a prime farmland if irrigated by the Soil Conservation Service. The proposed Class D preserve consists of five separate parcels that have been in existence since at least 1969. All of these parcels are over ten acres in size.

The property is located in the Coastal Zone and has an Agriculture Exclusive designation and is zoned for agricultural use (AE-60,F,R,T). The property has combining zones for Flood Hazard and Riparian Corridor Protection, and Transitional Agricultural Lands. The current Agriculture Exclusive zoning and proposed contract prohibit further parcel divisions.

The land is used for a dairy, with income that exceeds \$12,000 a year for each of the last three years, according to the provided income verification. The property is developed with a single family residence and multiple agricultural building to support the dairy operation. There are no outstanding building or zoning violations on the subject property. The property is located approximately 0.5 miles from the incorporated City of Ferndale.

Based on the information submitted and a review of Planning Division reference sources, planning staff believes that the proposed agricultural preserve and Farmland Security Zone meets all of the required findings for approval.

Alternatives: The Planning Commission could recommend not to approve the project. This alternative should be implemented if the Commission is unable to make all of the required findings. Planning Division staff is confident that the required findings can be made and does not recommend further consideration of this alternative.

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT
Resolution Number 18-**

Case Number AGP-18-001

Assessor Parcel Numbers 106-021-002, 106-021-003, 106-021-007, 106-021-062

Makes the required findings for certifying compliance with the California Environmental Quality Act and conditionally approves the Brodt Class D Agricultural Preserve application.

WHEREAS, Merritt Brodt has applied to establish a new Class "D" Agricultural Preserve and Farmland Security Zone in the Ferndale area pursuant to the California Land Conservation (Williamson) Act; and

WHEREAS, the proposed Agricultural Preserve may be approved if it can be found that: (1) the proposed preserve is consistent with the County's General Plan (Section 51234 Government Code); (2) the land to be included in the agricultural preserve contract is, and will continue to be, used for the purposes of producing agricultural commodities for commercial purposes, and uses compatible with agriculture; (3) the preserve area should not be less than the required minimum acres of the type of preserve unless it is proven to the satisfaction of the Planning Commission and Board of Supervisors that the proposal is a viable working preserve meeting all of the qualifications pursuant to Prime Agricultural Lands or Non-Prime Lands of Statewide significance; (4) the land must be zoned for agricultural purposes and provide for minimum parcel sizes; (5) the land shall consist of prime and/or non-prime agricultural land of statewide significance; and

WHEREAS, the Farmland Security Zone may be approved if it can be found that: (1) the lands are designated on the Important Farmland Series maps or meet the definition of "prime" agricultural land per Government Code Section 51201(c) and (2) the land is located within three (3) miles of the Sphere of Influence boundary of an incorporated city; and

WHEREAS, the County Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, the State of California has determined that the establishment of agricultural preserves is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Class 17, Section 15317; and

WHEREAS, a public hearing was held on the matter before the Humboldt County Planning Commission on August 2, 2018.

NOW, THEREFORE, be it resolved, determined, and ordered by the Humboldt County Planning Commission that the following findings be and are hereby made:

1. The proposed agricultural preserve is consistent with the General Plan; and
2. The land is and will continue to be used for the purpose of producing agricultural commodities for commercial purposes, and uses compatible with agriculture; and
3. The proposed agricultural preserve is approximately 135 acres, and that the County Williamson Act Committee has determined it to be a viable working preserve; and
4. The land is zoned Agricultural Exclusive, and consists of prime agricultural lands, as defined by Section 51201 Government Code; and
5. The land is located within three (3) miles of the Sphere of Influence boundary of an incorporated city; and

6. The proposed project is categorically exempt from environmental review pursuant to Class 17, Section 15317 of CEQA; and

BE IT FURTHER RESOLVED that the Planning Commission recommends that the Board of Supervisors of the County of Humboldt:

1. Hold a public hearing in the manner prescribed by law; and
2. Consider the application; and
3. Adopt the necessary findings prepared by Planning Staff; and
4. Adopt Resolution No. _____ establishing the Brodt Class "D" Agricultural Preserve and farmland Security Zone with Uniform Rules including Compatible Uses; and
5. Authorize the Chair of the Board to execute a Land Conservation Contract for the Class "D" Preserve and; and
6. Direct Planning Staff to prepare and file a Notice of Exemption with the County Clerk and Office of Planning and Research; and
7. Direct the Clerk of the Board to give notice of the decision to the applicant, the California Office of Land Conservation and any other interested party; and
8. Direct the Clerk of the Board to file for record the executed Land Conservation Contract with the Humboldt County Recorder.

Adopted after review and consideration of all the evidence on August 2, 2018.

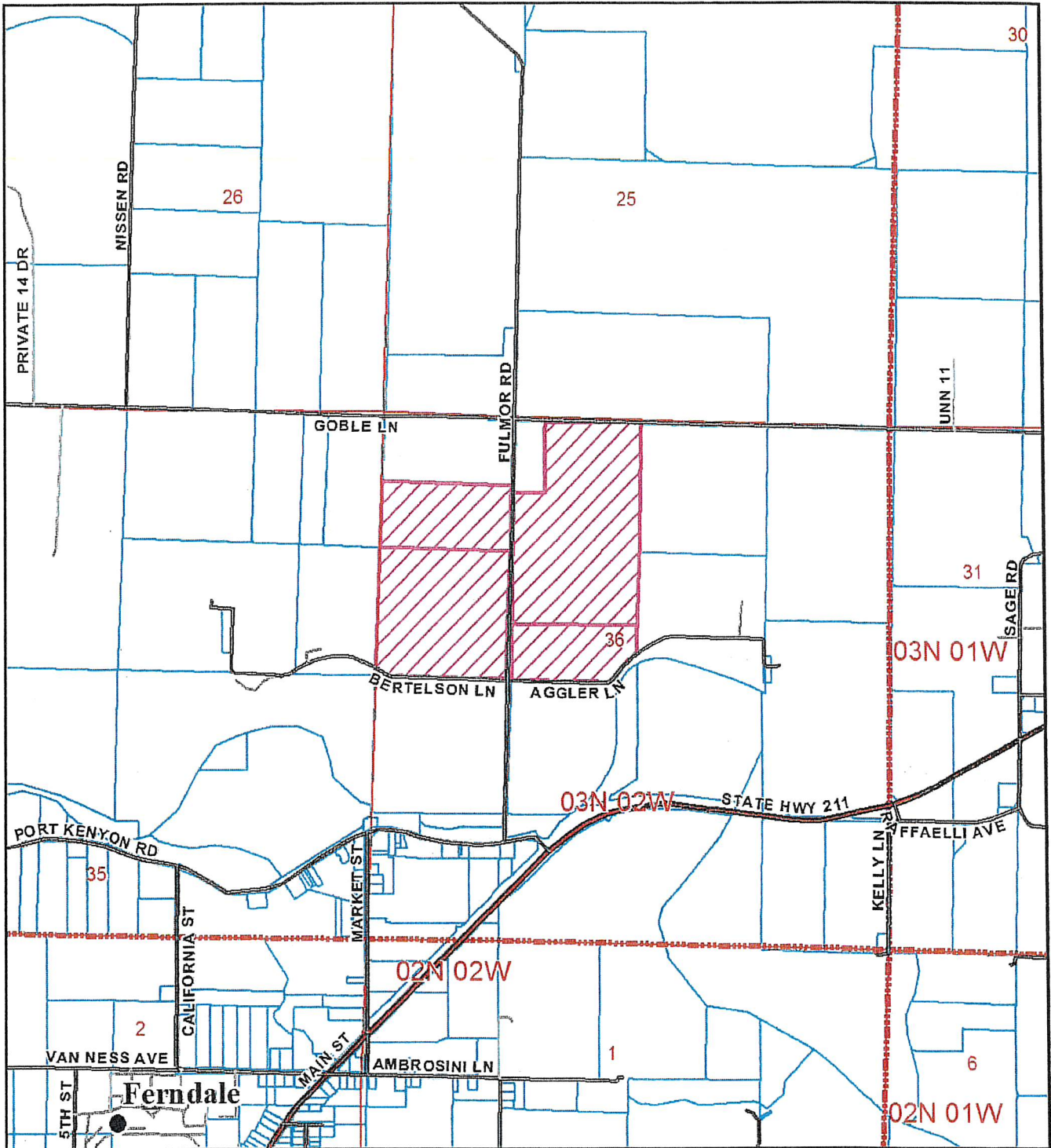
The motion was made by Commissioner _____ and seconded by Commissioner _____.

AYES: Commissioners:
NOES: Commissioners:
ABSTAIN: Commissioners:
ABSENT: Commissioners:
DECISION:

Robert Morris, Chair

I, John H. Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

John H. Ford
Director, Planning and Building Department



LOCATION MAP

**PROPOSED BRODT
AGRICULTURAL PRESERVE
FERNDALE AREA
AGP-18-001**

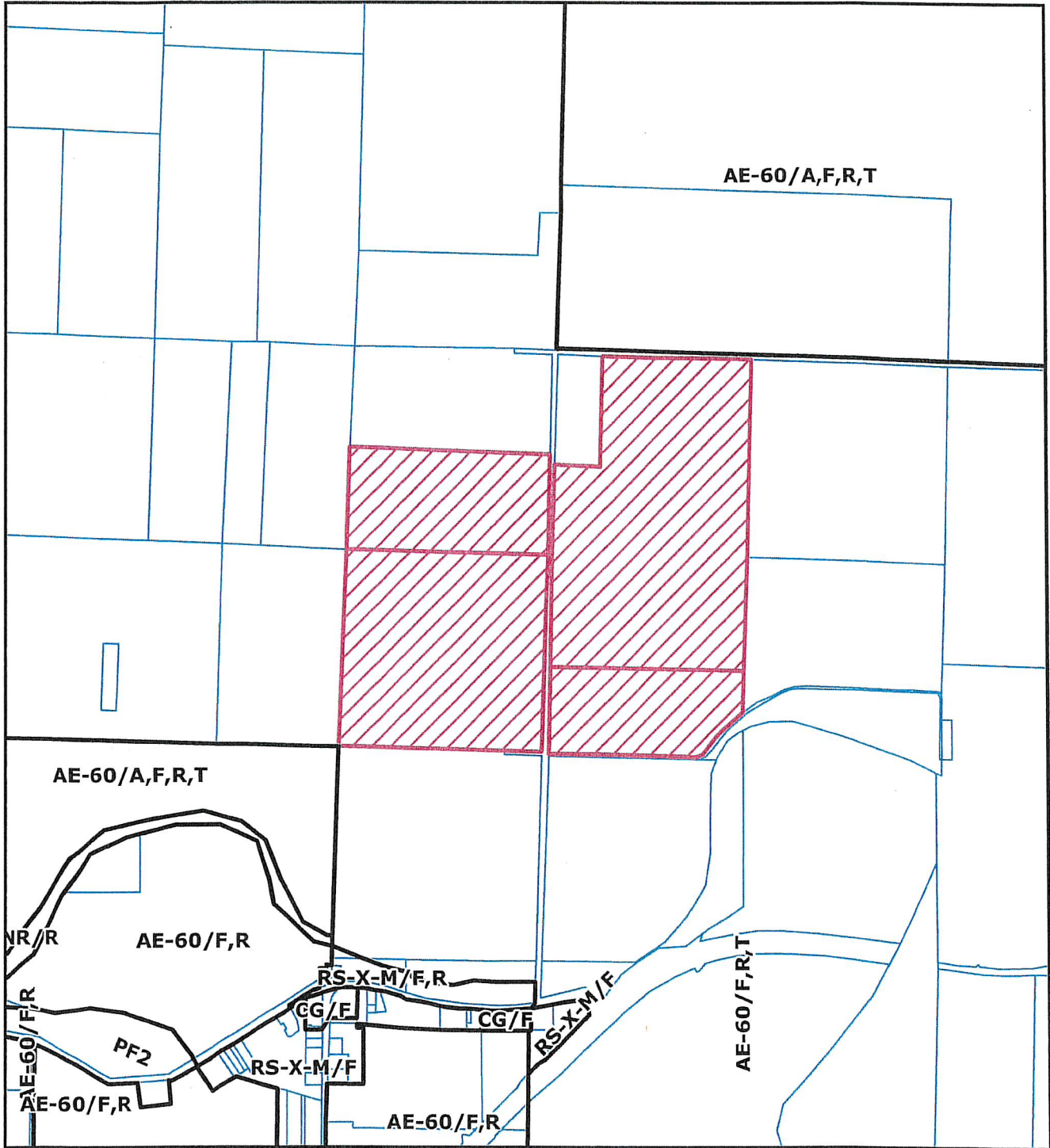
APN: 106-021-002, -003, -007, -062

T03N R02W S36 HB&M (Ferndale/Fortuna)

Project Area = 

This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.





ZONING MAP

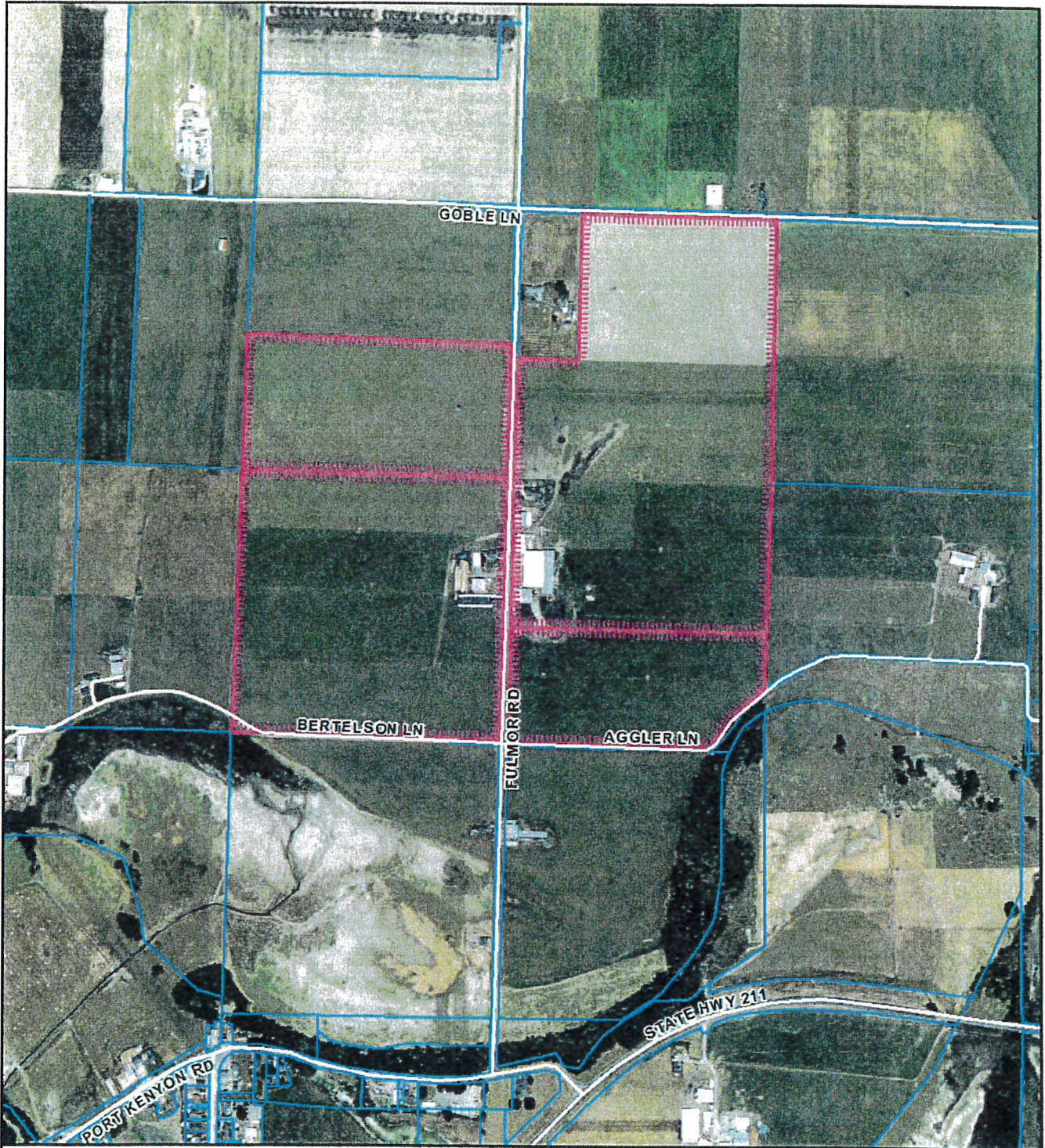
**PROPOSED BRODT
AGRICULTURAL PRESERVE
FERNDALE AREA
AGP-18-001**

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T03N R02W S36 HB&M (Ferndale/Fortuna)**

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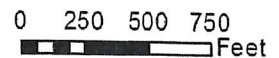
AERIAL MAP

**PROPOSED BRODT
AGRICULTURAL PRESERVE
FERNDALE AREA
AGP-18-001**

**APN: 106-021-002, -003, -007, -062
T03N R02W S36 HB&M (Ferndale/Fortuna)**

Project Area = 

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ATTACHMENT 1

CONDITIONS OF APPROVAL

Approval of the Agricultural Preserve is conditioned on the following terms and requirements which must be satisfied before the Agricultural Preserve can be scheduled for action by the Board of Supervisors.

Conditions of Approval

1. **Within five (5) days of the effective date of the action**, the applicant shall submit a check to the Planning Division, made out the Humboldt County Recorder, in the amount of \$50 to execute the filing of a Notice of Exemption with the County Clerk and Office of Planning and Research.
2. The applicant shall submit an executed and notarized Land Conservation Contract.
3. The applicant shall pay to the Humboldt County Planning Division any unpaid balance associated with the processing of this application.

ATTACHMENT 2

STAFF ANALYSIS OF THE EVIDENCE SUPPORTING THE REQUIRED FINDINGS

Required Findings

Agricultural Preserve-Williamson Act Findings: The California Land Conservation Act of 1965, also known as the Williamson Act, provides the legislative authority and specifies the findings that must be made to establish Agricultural Preserves. The Williamson Act may be found commencing with Section 51200 of the Government Code. Generally, the following findings must be made to establish Agricultural Preserves.

1. That the proposed preserve is consistent with the County's General Plan (Section 51234 Government Code); and
2. That the land to be included in the agricultural preserve contract is, and will continue to be, used for the purpose of producing agricultural commodities for commercial purposes, and uses compatible with agriculture.

Additionally, to be eligible for the establishment of an Agricultural Preserve, the agricultural property must meet the criteria for one of the four "classes" (A, B, C or D) of Agricultural Preserve Contracts. A summary of the criteria for a Class D "Unique Farmland" Preserve is listed below.

Class D

- a. The preserve area shall contain not less than 10 acres of prime agricultural land or not less than 40 acres of tillable non-prime land of statewide or local significance. Individual parcels must have been in existence for a minimum of ten (10) years prior to application for a land conservation contract.
- b. That the land is shown in an "agricultural" designation on the Humboldt County General Plan and zoned for agricultural use.
- c. The parcels in question are used for, and devoted to agricultural pursuits and have provided a gross annual income of \$12,000 from agricultural production for three of the past five years.
- d. The proposed zoning and contract would prohibit any parcel divisions.
- e. Residential development rights beyond one single family residence for each ownership unit in the preserve would be conveyed to the County for the life of the Contract.
- f. Not more than twenty five percent (25%) of the land area within the preserve is zoned Timberland Production Zone.

The required findings can be made based on the following analysis.

Staff Analysis

Agricultural Preserve-Williamson Act Criteria

1. **That the proposed preserves are consistent with the County's general plan (Section 15234 Government Code).**

The land proposed for the Class D agricultural preserve is designated Agriculture Exclusive by the Eel River Area Plan (ERAP). The Eel River Area Plan and the County general Plan contain policies which preserve agricultural and open space lands. The Department believes that the proposal is consistent with, and furthers, the goals of these agriculture policies. In addition, the proposal to establish agricultural preserves furthers the goals of assuring the protection of the County's agricultural economy and to minimize the conflicts between agricultural and urban land uses by restricting the subdivision of these lands.

2. **That the land to be included in the agricultural preserve contract is, and will continue to be, used for the purpose of producing agricultural commodities for commercial purposes and uses compatible with agriculture.**

The proposed preserve is currently being used as a dairy. County Assessor staff, the County Agricultural Commissioner, and the Williamson Act Committee have reviewed the proposed Class D preserve and recommend approval. Planning staff believes that the proposed agricultural preserve meets the required findings. Based on information submitted, staff believes the establishment of the preserve will not conflict with any adjoining or surrounding land uses.

Humboldt County Agricultural Preserve Guidelines Class D Criteria

- a. **The preserve area shall contain not less than 10 acres of prime agricultural land or not less than 40 acres of fillable non-prime land of statewide or local significance. Individual parcels must have been in existence for a minimum of ten (10) years prior to application for a land conservation contract.**

The Department has determined that the proposed preserve consists of a five legally created parcels that total approximately 135 acres. Each of the parcels are at least 20 acres in size. The most recently created parcel was created through an approved minor subdivision application in 1969. All of the land in the proposed preserve is designated as prime agricultural land according to the National Resource Conservation Service.

- b. **That the land is shown in an "agricultural" designation on the Humboldt County General Plan and zoned for agricultural use.**

The land has an Agriculture Exclusive designation and is zoned for agricultural use.

- c. **The parcels in question are used for, and devoted to agricultural pursuits and have provided a gross annual income of \$12,000 from agricultural production for three of the past five years.**

The proposed preserve will consist of five individual parcels of land which are currently being used for agricultural pursuits (cattle and sheep grazing) and the applicant has submitted evidence documenting that the five parcels are utilized together and have provided a gross annual income of at least \$12,000 from agricultural production for three of the past five years.

- d. **The proposed zoning and contract would prohibit any parcel divisions.**

The zoning of the proposed preserve is Agriculture Exclusive specifying a minimum parcel size of 60 acres. The 135 acre preserve will be prohibited from being further divided under the Humboldt County Zoning Ordinance in addition to the prohibition within the land conservation contract.

- e. Residential development rights beyond one single family residence for each ownership unit in the preserve would be conveyed to the County for the life of the Contract.**

Residential development rights beyond one single family residence will be conveyed to the County through the execution of the land conservation contract.

- f. Not more than twenty five percent (25%) of the land area within the preserve is zoned Timberland Production Zone.**

None of the land within the proposed preserve is zoned Timberland Production Zone.

Environmental Impact: The designation of lands as Agricultural Preserves is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Class 17, Section 15317.

ATTACHMENT 3

APPLICANT'S EVIDENCE IN SUPPORT OF THE REQUIRED FINDINGS

Attachment 3 includes a listing of all written evidence that was submitted by the applicant in support of making the required findings for the Brodt Agricultural Preserve.

The following materials are on file with the Planning Division unless otherwise indicated:

- Application Form
- Present Owners' Deeds
- Preliminary Title Report
- Verification of agricultural income

ATTACHMENT 4

REFERRAL AGENCY COMMENTS AND RECOMMENDATIONS

The project was referred to the following referral agencies for review and comment for the amendment to the agricultural preserve.

Those agencies that provided written comments originally are checked off.

Referral Agency	Response	Recommendation	Attached	On File
Agricultural Commissioner		No response		
Wiyot Tribe		No response		
Bear River Band		No response		
Farm Bureau		No response		
Assessor's Office	✓	Approval		✓
Williamson Act Committee	✓	Approval	✓	
City of Ferndale		No response		
Cattlemen's Association	✓	Approval		✓
California Coastal Commission		No response		



PLANNING AND BUILDING DEPARTMENT

3015 H Street Eureka CA 95501
Phone: (707) 445-7541

WILLIAMSON ACT COMMITTEE

Agricultural Center
5630 South Broadway, Eureka

March 28, 2018 Meeting Minutes

I. Call to Order

The meeting was called to order at 3:00 p.m. by Chair John LaBoyteaux.

II. Roll Call

WAC Members Present: John Vevoda, John LaBoyteaux, Dean Hunt, John Rice, Mark Moore
Staff Members Present: Cliff Johnson, Michelle Nielsen, Mari Wilson, Audrey Hanks, Joel Ellinwood

III. Approval of Minutes

Motion to approve the December 12, 2017 minutes made by John Vevoda and seconded by Mark Moore. Motion carries 4/0 (Rice not present for vote)

IV. Scheduled Matters:

Item 1. Brodt New Agricultural Preserve

The Planning and Building Department is seeking a Committee Recommendation regarding the proposed establishment of a new Class "D" preserve and Farmland Security Zone pursuant to the California Land Conservation Act (otherwise known as the Williamson Act) and the Humboldt County Agricultural Preserve Guidelines. The project site is located in the Ferndale area.

Staff report was presented by Cliff Johnson. The committee asked why this was being proposed as a Class D instead of a Class A preserve. Staff stated that they felt it that the Class D was more flexible regarding lot sizes and that they meet the requirements of both. The hearing was opened for public comment. The applicant, Merritt Brodt, stated that they have no real preference on the preserve class. Public comment was closed.

Motion to recommend approval of the establishment of the new Class D preserve and Farmland Security Zone. (Vevoda/Hunt, Approved 4-0, Rice not present)

Item 2. Portion of Chalk Mountain Ranch Agricultural Preserve

The Planning and Building Department is seeking a Committee Recommendation regarding possible enforcement action or non-renewal of the Land Conservation Contract for a portion of the original Chalk Mountain Ranch agricultural preserve.

Staff report was presented by Cliff Johnson. Committee member Dean Hunt stated that he knows that some grazing does occur on the property. The committee discussed the fact that the land appears heavily timbered and that the owners have not been responsive to annual production surveys. County Assessor Mari Wilson noted that the current owner was the owner of another agricultural preserve that was recommended for non-renewal by the committee. No members of the public chose to comment and public comment was closed.

Motion to recommend non-renewal of the land conservation contract. (Vevoda/Moore, Approved 4-0, Rice not present)

Item 3. Mad River Buttes/Eco Green Grow

The Planning and Building Department is seeking a Committee Recommendation regarding the Special Permit and Conditional Use Permits for commercial cannabis cultivation within the existing Mather Class "B" agricultural preserve.

Staff report was presented by Cliff Johnson and Michelle Nielsen. The committee discussed the ability of commercial cultivation to occur as a compatible use in Class B preserves. Public comment was opened. The applicant discussed the proposed cultivation operation and that they have entered into a lease for grazing. Pat Fulton discussed the lease and his intention to use the property for grazing, with up to 75 head of cattle able to be supported in the winter on this property. Public comment was closed. The committee asked about monitoring and enforcement of cannabis permits and the need to ensure that grazing continues without impediment during the cannabis cultivation operations.

Motion to recommend approval of the application as consistent with the Williamson Act Guidelines and the Land Conservation Contract. (Moore/Hunt, Approved 4-1, Rice opposed)

Item 4. Mad River Estates

The Planning and Building Department is seeking a Committee Recommendation regarding the Special Permit, Conditional Use Permits, and Zoning Clearance Certificates for commercial cannabis cultivation within the existing Anthony Garner Class "B" agricultural preserve.

Staff report was presented by Cliff Johnson and Michelle Nielsen. Committee member John Laboyteaux described the concerns that the committee had regarding the project at the last committee meeting, which were primarily that the distribution of cannabis improvements would result in a much larger reduction in grazing potential than just that occupied by the cultivation area. The hearing was opened for public comment. Praj White, representing the applicants, described the proposed operation and existing grazing use. Mr. White presented the committee with a plan showing the fenced grazing pens that exist on the property and how the commercial cannabis activities would be able to be developed with minimal disruption to the existing fenced pens. The operator of the grazing lease described how the property is used for grazing. The public hearing was closed. Committee members debated whether the proposed future RRR cultivation sites were appropriate for the property given the impacts that could occur to the grazing.

Motion to recommend that the proposed permits are consistent with the existing agricultural operation of the preserve. (Vevoda/Moore, Approved 3-2, Rice, LaBoyteaux opposed)

Item 5. Cannabis permitting in Williamson Act lands

The Planning and Building Department is seeking direction to assist with reviewing commercial cannabis applications within agricultural preserves.

Staff report was presented by Cliff Johnson. The committee discussed delegating to staff the authority to make recommendations on Williamson act consistency for cannabis cultivation permits below a certain size, and whether to include the authority to make such recommendations on commercial nurseries and extractive processing. The hearing was opened for public comment and closed after no members of the public wished to comment. The committee discussed the need for enforcement of permits to ensure that grazing is not impacted, and requested that annual reports be submitted to the committee to document this. The committee discussed that the impacts of cannabis on grazing lands includes all associated cannabis improvements, not just the cultivation area.

Motion to delegate to staff the Williamson Act recommendation authority of discretionary commercial cannabis cultivation license types of 2 acres or less. (Hunt/Vevoda, Approved 4-1, Rice opposed)

V. **Old Business** None

- VI. **Correspondence** None
- VII. **Public Comments** None
- VIII. **Adjournment** Motion to adjourn (Vevoda/Rice, Approved 5-0). Meeting was adjourned by Chair LaBoyteaux at 5:24 p.m.