



# COUNTY OF HUMBOLDT

For the meeting of: 11/17/2022

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File #: 22-1542

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**To:** Planning Commission  
**From:** Planning and Building Department  
**Agenda Section:** Consent

**SUBJECT:**

Jess Bareilles Conditional Use Permit  
Assessor Parcel Number 201-322-006  
Record No.: PLN-2021-17253  
Fortuna area

A Conditional Use Permit located in the Fortuna Community Planning Area for one acre (43,560 square feet) of new mixed-light commercial cannabis cultivation supported by a 4,360 square foot ancillary nursery. Also proposed is a 2,400 square foot support facility for both offsite processing and distribution. The estimated 535,000 gallons annual irrigation water budget is sourced from rainwater catchment and is supported by 500,000 gallons of water storage tanks. Power is proposed to be provided by PGE.

**RECOMMENDATION(S):**

That the Planning Commission:

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 part of the Consent Agenda; and
4. Adopt the resolution (Resolution 22-\_\_). (Attachment 1) which does the following:
  - a. Finds that the Planning Commission has considered the Addendum to the Environmental Impact Report for the Commercial Cannabis Land Use Ordinance that was prepared for the Jess Bareilles project); and
  - b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
  - c. Approves the Special Permit subject to the recommended conditions of approval (Attachment 1A)

**DISCUSSION:**

**Project Location:**

The project is in Humboldt County, in the Fortuna area, on the South side of State Highway 36, approximately 0.2 mile from the intersection of Victoria Lane and State Highway 36, on the property known as 1178 State Highway 36.

**Present General Plan Land Use Designation:**

Industrial, General (IG), Airport Land Use Compatibility Zone Overlay (AP). Fortuna Area Community Plan, 2017 General Plan. Density: NA, Slope Stability: Relatively Stable (0).

**Present Zoning:**

Heavy Industrial (MH) - Qualified (Q)

**Environmental Review:**

An Addendum to a previously adopted Environmental Impact Report has been prepared for consideration per §15164 of the State CEQA Guidelines.

**State Appeal:**

Project is NOT appealable to the California Coastal Commission.

**Major concerns:**

None.

**Executive Summary:**

A Conditional Use Permit located in the Fortuna Community Planning Area for one acre of new mixed-light commercial cannabis cultivation supported by a 4,360 square foot ancillary nursery. Also proposed is a 2,400 square foot support facility for both offsite processing and distribution. The estimated 535,000 gallons annual irrigation water budget is sourced from rainwater catchment and is supported by 500,000 gallons of water storage tanks. Power is provided by PGE. The Conditional Use Permits include allowing the proposed uses in the Qualified (Q) zone. Wastewater will be provided by portable toilets and a septic system. Due to the history of ground disturbance, impact to biological resources is unlikely to be significant. Project will adapt and reuse existing industrial structures. Access is from Highway 36 and there will be a maximum of 14 employees at peak operation. Tribal consultation resulted in a condition for the inadvertent discovery protocol. Cultivation activities will be occur in enclosed structure utilizing filtration or other equivalent or superior methods minimizing odor.

**Water Resources:**

The annual irrigation water budget of 535,000 gallons is sources exclusively from rainwater catchment and supported by 500,000 gallons of storage capacity. A rainwater catchment analysis was included in the operations plan and contemplated both average (45 inch) and drought (17 inch) annual rainfall scenarios as well as collection efficiency adjustments. Even under a drought scenario, the analysis concludes that the annual water budget can be collected using the proposed catchment area which consists of the greenhouses, drying building, and processing facility. The greenhouses will use humidity-sensing drip irrigation systems.

Wastewater services are provided by portable toilets for cultivation workers prior to construction of the commercial building for processing and distribution. Occupancy and use of the commercial building cannot occur until the onsite wastewater system is permitted and constructed (**Condition of Approval A3**). There is an existing well on the property that will not be used in the cannabis operation. The project is conditioned requiring the applicant to demonstrate adequate water has been stored prior to commencing operations and there will be no connectivity between the well and any cannabis related water or wastewater infrastructure (**Condition of Approval A1**). The project is also conditioned requiring the operation to implement measures that prevent processing waste tailings from entering the septic system.

**Biological Resources:**

The project location has been used for industrial purposes for at least 70 years. The ground has been repeatedly disturbed and much of the site is covered in gravel. Per the operations plan, no ground disturbance or tree

removal is proposed to implement the project. Northern Spotted Owl Activity Center HUM0975 is 1.3 miles to the south across the Van Duzen River. No owl habitat is present on the parcel nor present north of the river between the activity center and the project site. There are no mapped surface waters or wetlands on the parcel. The nursery and mixed-light cultivation areas, which will use supplemental lighting, will be enclosed in automated greenhouses to achieve Dark Sky standards. If the automated greenhouse fails, an opaque covering will manually be pulled across all light-emitting sources. Zero light shall escape all structures between sunset and sunrise. Any security lighting will be downcast and not visible from neighboring properties.

A Technical Memorandum evaluating the presence prime agriculture soils concluded that any potential prime soils that may have been present has been converted over time through decades of ground disturbance. Therefore, there will be no loss or conversion of prime soils from the proposed cannabis project. A noise assessment and mitigation plan measured ambient noise at three locations finding an average dBA of 40.1 at the northern location, 53.3 at the eastern location and 57.1 at the western location. For purposes of the noise performance standards, an average of the three measurement locations, or 50.1, will be used for the southern property line. These measurements are incorporated into the noise performance standards in the conditions of approval (**Condition of Approval C2**). Invasive species will be monitored around the project area twice a year and if identified will be removed by hand or mechanical means. Herbicides or other chemicals will not be used to manage invasive species.

#### **Adaptive Reuse of Developed Industrial Sites:**

The proposed project meets all performance standards described in HCC 314-55.4.12.12. The proposed project will occur in an existing commercial building. Any interior changes to the building will not prevent future re-occupancy by new uses compatible with the MH zone and there are no new facilities proposed for construction.

The applicant provided copies of a Phase I and limited Phase II dated May 19, 2020, and June 10, 2022, respectively. The investigations detected some presence of chemicals of concern, particularly dioxins at the location of a former conical burner. The concentration of dioxins was measured at 38.4 pg/g (picograms per gram or parts per trillion). This concentration is less than all minimum screening levels which range from 220 pg/g for commercial/industrial uses to 40 pg/g for agricultural uses. It is also noted that the area of the parcel proposed for cultivation is away from the area that once contained the conical burner. The reports did not recommend further study or testing.

The parcel contains five existing structures in various condition. The 30x60 Quonset style building will not be used in the cannabis operations. The 70x26 wood frame building is dilapidated and in need of demolishing prior to the cannabis permit application. Staff concurs that the wood frame building is not reusable for either cannabis or future industrial use. The 90x46 wood frame, metal sided building will be used in the cannabis operations. Any interior improvements to this building will be conducted so not to preclude future industrial uses if the cannabis operation discontinues (**Condition of Approval A5**). The 8x8 well house will not be used in the cannabis operation. The 10x18 restroom building and associated unpermitted septic tank is scheduled for demolition per the outcome and resolution of Code Enforcement Case 18CEU213. The 90x46 wood frame building was constructed through building permit 89-1055-A4 and is legal non-conforming regarding the setback requirements for the MH zone. However, the proposed use of this building for drying cannabis is subject to the 30-foot setback in the CCLUO. Therefore, the project is conditioned so that no cultivation related activities occur within the 30-foot setback within the building (**Condition of Approval A5**).

#### **Consistency with the Qualified Combining Zone (Q):**

##### Subject Parcel Zoning History

On May 28, 1985, the Board of Supervisors adopted Ordinance 1689 that reclassified the subject property from

U to MH-Q (Qualified Heavy Industrial). The project parcel is in Area 6 as described in the ordinance. The Zone Amendment Ordinance (ZAO) states that the purpose of the special restrictions imposed on the parcel for Area 6 is:

1. Protect and reserve the property primarily, but not exclusively, for timber products processing plants; and
2. Protect the surrounding lands from other types of industrial developments on the subject property which may be inappropriate for the area; and
3. Provide an opportunity for public review and comment on industrial development planned for the property.

The ZAO further defines the uses that may be allowed on the parcel:

"Principal and conditionally permitted uses otherwise allowed under the R-4, C-2, CH, ML and MH zone regulations of Humboldt County Code Sections 314-31, 314-37, 314-40, 314-43 and 314-46 shall not be allowed on the property designated as Areas 1 through 8 on Exhibits A through H with the following exceptions:

Area 6 Principal Permitted Uses:

1. Timber products processing plants (buildings) for commercial processing of wood and wood products, including but not limited to sawmills, lumber and plywood mills, but not including pulp mills.
2. General agriculture, nurseries and greenhouses and roadside stands.

Area 6 Uses permitted with a Use Permit

1. Manufacture of furniture.
2. Manufacture of electrical and electronic equipment, of household effects such as lamps, rugs and fabric and research and development laboratories.
3. Industrial and manufacturing uses.
4. Dwellings and mobilehomes [sic]"

#### Applicability of a Conditional Use Permit to Expand Uses of Property

Although the ZAO listed uses that may be permissible with a use permit, the ZAO also contemplated the need to expand the enumerated uses allowed on the property. The ZAO further states, "A conditional use permit required for expansion of such existing general uses may be granted in accordance with the general rules and procedures of the Humboldt County Code applicable to use permits." The lack of indentation immediately after a series of indented paragraphs representing the subsections to Section 3 of the Ordinance indicates the provision is intended to apply to all the areas listed in Section 3, including the subject property in Area 6.

The general rules referenced in Section 3 of the ZAO is Humboldt County Code section 312-3.1.2 which states, "A Use Permit must be secured, pursuant to all requirements of this Code, prior to the initiation, modification or expansion of a use or development that is:

- 3.1.2.1 permitted only as a conditionally permitted use, or
- 3.1.2.2 *for any use not specifically enumerated in these regulations, if it is similar to and compatible with the same uses permitted in the zone in which the subject property is situated.*" (Emphasis added)

The uses listed in the ZAO do not include cannabis cultivation and associated cannabis uses. Those uses would not have been contemplated in 1985 as they were not legal at that time. In enacting the CCLUO, the County considered indoor cannabis cultivation, manufacturing, dispensary, processing, and distribution to be compatible uses in industrial zones, thereby authorizing the activity in the MH zone. The additional factor here is the existence of the qualifying zone and the uses specifically enumerated in Ordinance 1689. By including the catchall provision in Section 3 of the ZAO, the Board provided flexibility for this type of situation, a new

legal use that is compatible with existing permissible uses.

A cannabis distribution and offsite processing facility is compatible with other activities allowed on the parcel both as principally permitted and conditionally permitted uses per the ZAO. Timber products processing and industrial manufacturing uses are similar but more intensive uses of the land than the proposed project. The CCLUO's adaptive reuse performance standards ensure that future eligible industrial uses will be possible if the cannabis operation is discontinued.

Staff analysis concludes that the cannabis activities requested in this application can be allowed subject to a Use Permit, provided that the activities are consistent with the intent of the Q Zone. In this case the Q zone is to protect and preserve the parcel for resource and industrial development which will not have an adverse effect on the area. The cannabis activities are being proposed within an existing commercial building that can be used for other industrial purposes if the cannabis activities are no longer conducted on this site. The cannabis activities will be contained in an enclosed structure so there will not be an adverse impact upon the surrounding area. Based upon these factors it is appropriate to find that the proposed cannabis activities are consistent with the Q Zone and approve the Conditional Use Permit.

**Energy:**

Electricity will be sourced from PGE through an eligible renewable energy program. A generator is present for emergencies only. The current has two existing commercial PGE services. One service is 480 amps, 3 phase and the second is 220 amps, 3 phase. No service upgrades are proposed as the existing power is sufficient for project needs.

**Access:**

Access to the parcel is taken directly from Highway 36. The Project was referred to Caltrans which did not respond. A condition of approval requires the applicant to provide documentation demonstrating an encroachment from Caltrans exists for the proposed use (**Condition of Approval A6**). State Highway 36 meets the criteria for a category 4 standard. The project was referred to the Fortuna Fire Protection District which did not respond. The project is conditioned to obtain a will serve letter from the fire protection district and implement any requests from the fire district for onsite fire suppression water storage, hose fittings, addressing standards, and security gate access (**Condition of Approval A7**).

There will be 14 employees maximum during peak operations. The site plan depicts 14 parking spaces including one ADA compliance space. Per the operations plan, traffic from the proposed operations would be similar or less than existing traffic from the current occupants. Therefore, no significant increase in traffic is expected.

The project was referred to PGE which responded with preliminary general comments regarding the potential proximity to a PGE easement. Follow up investigation has concluded that the project as proposed will not encroach an any PGE facility or easement.

**Geologic Suitability:**

The project parcel is mapped in the County GIS as relatively stable. The entire parcel is mapped as 15% slope or less.

**Timber Conversion:**

There is no timber conversion associated with this industrial site associated with the proposed project.

**Security and Safety:**

The security plan for the operation includes locked gates.

**Tribal Consultation:**

The project is within the historic aboriginal territory of the Bear River Band of the Rohnerville Rancheria and the Wiyot tribe. The project was referred to the Northwest Information Center at Sonoma State and Bear River. A Cultural Resources Investigation dated December 2021 was performed by James Roscoe et al. The investigation final report was reviewed by the Bear River Tribal Historic Preservation Office which recommended the standard inadvertent discovery protocol which has been incorporated into the project as a condition of approval (**Condition of Approval C1**).

**Consistency with Humboldt County Board of Supervisors Resolution No. 18-43:**

Approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43 which established a limit on the number of permits and acres which may be approved in each of the County's Planning Watersheds. The project site is in the Lower Eel Planning Watershed, which under Resolution 18-43 is limited to 336 permits and 116 acres of cultivation. With the approval of this project the total approved permits for cultivation in this Planning Watershed would be 78 permits and the total approved acres would be 37.04 acres of cultivation.

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comment or recommended approval or conditional approval. (Attachment 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect to add or delete conditions of approval. The Planning Commission could deny approval if unable to make all the required findings. Staff has concluded the required findings in support of the proposal can be made. Consequently, staff does not recommend further consideration of these alternatives.

ATTACHMENTS:

1. Resolution
  - A. Conditions of Approval
  - B. Cultivation Operations Plan
  - C. Site Plan
2. Location Map
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
  - A. Phase I and Phase II Studies
  - B. Noise Assessment
  - C. Prime Soils Technical Memorandum
  - D. Plan for Adaptive Reuse of Developed Industrial Site
5. Referral Agency Comments and Recommendations
  - A. DEH Response

Applicant

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**File #:** 22-1542

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