

Recommended Planning 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:

Find that the Planning Commission has considered the Addendum to the adopted Environmental Impact Report for the Commercial Cannabis Land Use Ordinance (CCLUO) as described by Section 15164 of the State CEQA Guidelines, make all required findings for approval of the Conditional Use Permits, and adopt the Resolution approving the Humboldt IQ, LLC Conditional Use Permits as recommended by staff subject to the recommended conditions.

Executive Summary

Conditional Use Permits for commercial cannabis distribution and off-site processing in the Fortuna Community Planning Area. The annual water budget of 72,000 gallons is provided exclusively by rainwater catchment supported by 35,000 gallons of storage. Power is sourced from PGE through an eligible renewable energy program. There will be 10 employees at peak operations. The Conditional Use Permits include allowing the proposed uses in the Qualified (Q) zone.

The project will occur within an existing commercial structure. No new structures or ground disturbance is proposed. As analyzed in detail below, the requirements of the Q zone are met in accordance with Humboldt County Code through the issuance of a Conditional Use Permit because the proposed cannabis uses are compatible with principally permitted uses and the surrounding area. Access for the project location comes off Highway 36 and driveway improvements will be required as recommended by Caltrans. Tribal consultation resulted in the recommendation for inadvertent discovery protocol.

Water Source

Water usage is projected to be 72,000 gallons annually for the processing and distribution operation. Water is sourced exclusively from rainwater catchment and support by 35,000 gallons of storage. Estimated water usage would not exceed 300 gallons per day. Monthly water usage is projected to be 6,000 gallons.

The Operations Plan provides a rainwater catchment analysis using a credible online resource. The applicant will utilize 6,740 square feet of surface area for collection from the roofs of the commercial building and the agricultural building as depicted on the plot plan. The Operation Plan notes that rainwater data from Eureka was used because that is what was available for the online calculator but also notes that this represents a more conservative estimate as Fortuna historically receives slightly more rainfall on average than Eureka. The analysis concludes that if only 80% of projected rainfall occurs, the collection system should still be able to collect approximately 141,000 gallons annually, which is more than the project annual water budget of 72,000 gallons for the distribution and processing operation. The applicant will be required to demonstrate that adequate water has been stored prior to commencing operations as well as demonstrate that there is no interconnectivity of water infrastructure serving the distribution and processing operation and the onsite well. **(Condition of Approval A1)**.

The site has a Non-Standard Sewage Disposal System. Referral to the Division of Environmental Health has verified that the implemented septic design can accommodate up to 10 full time employees. The project is also conditioned to implement measures that prevent processing waste tailings from entering the septic system **(Condition of Approval A2)**.

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 due diligence investigations of soil and groundwater testing dated May 15 and July 21, 2009, respectively. The investigations detected some presence of chemicals of concern, particularly petroleum hydrocarbons. The reports noted that the installation of the septic system likely abated some of the source contamination and further estimated that natural attenuation through the introduction of the leech field would have ongoing remedial effect over time. Because the current cannabis operation proposal does not include any ground disturbance in the areas identified in the reports, no conditions or follow up is recommended by staff at this time. However, because this investigation was done in 2009 and an RV repair business has operated continuously since the report was published, additional testing would be recommended if the operation were to ever be modified or expanded to include new ground disturbance. Additionally, the investigation notes that the leach field system precludes the beneficial use of the shallow groundwater as a drinking water supply in this area.

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]¹"

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

¹ County of Humboldt, Ordinance 1689, May 28, 1985, Page 7

use permits.²" 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 of 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.

Natural Resources

The proposed distribution and offsite processing operation will occur within an existing commercial building. No new ground disturbance is proposed therefore any potential impact to biological resources from the operation will be less than significant. Per the Operations Plan, the applicant will conduct seasonal monitoring for invasive plants and will remove them manually or with hand tools (**Condition of Approval C3**).

Energy

Electricity is provided by PGE and shall be sourced from an eligible renewable energy program, such as the RCEA PowerPlus plan (**Condition of Approval B1**). No generator use is associated with the project.

Noise

The applicant provided a noise assessment dated February 2022 as part of the operations plan. The noise assessment establishes the following average baselines: 66.2 dB for the northern legal parcel property line (Site A), 61.4dB for the western (Site B), and 55.2 dB for the southern (Site C) legal parcel property line. These baselines have been incorporated into the noise standards described in the conditions of approval (**Condition of Approval C1**).

² Ibid, Page 9

Access

Access to the site is taken directly from Highway 36. The project was referred to Caltrans which recommended that only the west driveway be used for daily access and reserve the use of the east driveway for emergency access only. The eastern driveway should be gated and locked except in an emergency. The project is conditioned as such (**Condition of Approval A4**). Additionally, Caltrans stated that both driveways require improvements to meet standards for commercial road approaches including a minimum 20 foot width and minimum paved approach of 20 feet from the shoulder stripe or Caltrans right of way line, whichever is less (**Condition of Approval A4**). The driveway encroachments will require permits from Caltrans.

The project was referred to the Fortuna Fire Protection District which recommended that a minimum of 10,000 gallons of dedicated fire suppression water consisting of 3" piping to 2.5" national hose fitting and accessible to fire apparatus (**Condition of Approval A3**). The applicant must also post addressing at a location and size acceptable to the fire protection district as well as provide for gate access during an emergency response (**Condition of Approval A3**).

There will be 10 employees maximum during peak operations. The plot plan depicts 9 regular parking spaces and 1 ADA parking space. Once the cannabis operation commences, the existing RV repair business will vacate the property. The RV repair business is associated with customer traffic, suppliers and employees. It is therefore estimated that net vehicle traffic will decrease once the cannabis operation replaces the RV business (**Condition of Approval A5**).

Tribal Consultation

The project is in the Bear River Band of Rohnerville Rancheria and the Wiyot Tribe aboriginal territory. The project was referred to the tribes and the Northwest Information Center. A December 2020 Cultural Resources Investigation Report prepared by Decho and Nick Angeloff was provided by the applicant. The Report was reviewed by the Bear River Tribal Historic Preservation Officer who recommended an inadvertent discovery protocol which is included as a condition of approval. (**Condition of Approval C2**).

Resolution 18-43 Consistency

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 Van Duzen Planning Watershed, which under Resolution 18-43 is limited to 425 permits and 146 acres of cultivation. Since this project does not include cultivation, the number of permits and acres in cultivation will not change.

Environmental Review and Staff Recommendation

Environmental review for this project was conducted and based on the results of that analysis, staff concludes that all aspects of the project have been considered in a previously adopted Environmental Impact Report adopted for the Commercial Cannabis Land Use Ordinance. An addendum to the Environmental Impact Report has been prepared for consideration by the Planning Commission (Attachment 2).

Staff recommends that the Planning Commission make all the required findings based on the evidence in the record and approve the application subject to the recommend conditions.

Alternatives: The Planning Commission could elect not to approve the project, or to require the applicant to submit further evidence or modify the project. Modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all the required findings. Planning staff has concluded that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.

The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the EIR for the CCLUO as stated above. However, the Commission may reach a different conclusion. In that case, the Commission should continue the item to a future date at least two months later to give staff the time to complete further environmental review.