



COUNTY OF HUMBOLDT

For the meeting of: 12/13/2022

File #: 22-1639

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Time Certain Matter

SUBJECT:

9:15 AM - Request for direction related to Coastal Zone Commercial Cannabis Land Use Ordinance Cultivation Section 313-55.4.6.4.4.1.3 which requires a 600-foot setback from Tribal Cultural Resources and Section 313-55.4.6.4.4.1.6 which allows for the required setback to be waived or reduced with the express written consent of qualified officials or representatives representing these protected uses.

RECOMMENDATION(S):

That the Board of Supervisors:

1. Open the public hearing and receive the staff report and presentation by County staff and Tribal representatives, and open public comment; and
2. Close the public comment portion of the hearing; and
3. Deliberate and find that a single tribe can determine if there is a tribal cultural resource in this context.
4. Direct staff to take other action as appropriation, including, but not limited to: directing staff to initiate an amendment to the CCLUO to allow for a CEQA focused process to resolve disagreements between tribes.

SOURCE OF FUNDING:

Applicant fees.

DISCUSSION:

The Planning Department is requesting the Board of Supervisors provide guidance on the Coastal Zone Commercial Cannabis Land Use Ordinance Cultivation Section 313-55.4.6.4.4.1.3 which requires a 600-foot setback from Tribal Cultural Resources and Section 313-55.4.6.4.4.1.6 which allows for the required setback to be waived or reduced with the express written consent of qualified officials or representatives representing these protected uses. Two local tribes have taken opposing positions on whether the project site is a Tribal Cultural Resource and whether the cultural resource setback should be waived. This situation has not been confronted previously, and the ordinance does not provide a process for resolution when there is a disagreement between tribes.

The Humboldt Bay Company, LLC submitted a Coastal Development Permit, Special Permit and Conditional Use Permit application to redevelop the former Sierra Pacific Industries (SPI) mill site in Manila with a commercial cannabis facility that would include approximately 7.3 acres of indoor and mixed-light cannabis cultivation and commercial cannabis support facilities including processing, distribution, manufacturing, and testing facilities. The project would require up to 163 full time employees at peak operation. As part of the redevelopment of the site the applicant has been working with the Humboldt County Sheriff to develop a permanent law enforcement training facility.

The project area was once a Wiyot village site that is thought to have been destroyed during construction of the mill. At least three Cultural Resource Surveys have been completed, including most recently in September 2021 for the proposed project. None of the surveys found any archaeological or cultural resources and the site does not appear to qualify as a significant archaeological or historic resource for the purposes of the California Environmental Quality Act.

There are three tribes with ancestral territory covering the site: the Wiyot Tribe, the Bear River Band of the Rohnerville Rancheria, and the Blue Lake Rancheria. The project was initially referred to all three tribes in September 2021. All three tribes responded to the referral request stating that a tribal monitor should be required during construction and that the project should be conditioned for inadvertent discovery. No specific objections to the project were raised at that time and the County began work on the environmental review for the project. As part of the CEQA process the County officially sent offers for tribal consultation as required by the California Public Resources Code (commonly referred to as AB52 consultation). The County received requests for consultation from both the Wiyot Tribe and the Blue Lake Rancheria and through these discussions the Wiyot Tribe specifically stated their objection to this project.

Subsequent to the discussions under tribal consultation, the Wiyot Tribal Council, on August 8, 2022, declared this site a Tribal Cultural Resource and specifically denied a reduced setback. Complicating matters, on October 25, 2022, the Bear River Band of the Rohnerville Rancheria Tribal Council submitted correspondence stating their full support for the project. The Bear River Band Tribal Council has also requested that the County not consider this a Tribal Cultural Resource under the Commercial Cannabis Land Use Ordinance as this would prohibit approval of this project and they strongly support this project moving forward. An additional letter was expected from the Bear River Tribe but was not received. On December 5, 2022, the Blue Lake Rancheria submitted comments stating that they have no position on this project.

The department has attempted to explain why a tribe opposed to a proposal has standing and cannot be overruled by a tribe supporting the proposal, but this leaves an unresolved disagreement. As a result, the Planning Department is requesting direction from your Board. The request from the Planning Department is for guidance on how to interpret the applicable code sections when there are competing positions regarding a Tribal Cultural Resource. A strict reading of the language of the ordinance would appear to result in no options for commercial cannabis activities to occur on this site. The applicable provisions of the ordinance are identified and summarized below:

Section 55.4.6.4.1.3 states that a setback of six hundred (600) is required from all sensitive receptors,

including a Tribal Cultural Resource.

Section 55.4.6.4.4.1.6 defines “Tribal cultural resources” as *sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, including unique archaeological resources and historical resources as described under Sections 21074* *<<https://humboldt.county.codes/CA/PRC/21074>>, 21083.2(g)* *<[https://humboldt.county.codes/CA/PRC/21083.2\(g\)](https://humboldt.county.codes/CA/PRC/21083.2(g))>, and 21084.1* *<<https://humboldt.county.codes/CA/PRC/21084.1>> of the Public Resources Code, respectively. “Tribal cultural resource” shall also include sites or resources identified by the tribe through an action of the Tribal Council or equivalent body.*

Section 55.4.6.4.4.1.6 states that *the setback required from these areas may also be waived or reduced with the express written consent of qualified officials or representatives representing these protected uses.*

The CCLUO is clear that when a site is declared a Tribal Cultural Resource or is within 600 feet of a Tribal Cultural Resource, development with cannabis activities is not permitted unless authorized by the tribe(s). The ordinance does not include provisions to resolve disagreements between tribes when their ancestral areas overlap.

The most straight forward reading of the ordinance is that in situations where there are tribes who disagree but where one tribe finds a site to be a Tribal Cultural Resource, the site must be considered a Tribal Cultural Resource. When a Tribal Council takes action to identify the site as a Tribal Cultural Resource, it follows that that Tribal Council would then be the “qualified officials or representatives representing” the protected uses, and that the Tribal Council that defined the site as a Tribal Cultural Resource would determine whether or not the setback may be granted. While this is challenging in situations where the tribes are in disagreement regarding the existence of a Tribal Cultural Resource and the viability of a cannabis project, there is not a suitable way of arbitrating between the tribes because only the tribe can define what is a Tribal Cultural Resource to that tribe.

A strict reading of the ordinance language indicates that the site must be considered a Tribal Cultural Resource due to the actions of the Wiyot Tribal Council and that only the Wiyot Tribe may choose to waive the setback to a site they have identified as a Tribal Cultural Resource.

If the Board of Supervisors finds that this is an unacceptable result, the Board may direct that the Planning Department initiate an ordinance amendment to provide a process for resolution of situations where tribes disagree regarding the existence of a Tribal Cultural Resource in a specific location. This would likely involve the preparation of at least a focused EIR to address potentially significant impacts to a Tribal Cultural Resource.

FINANCIAL IMPACT:

This agenda item is being paid for with applicant fees and as a result, this item will not impact the Humboldt County General Fund.

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STRATEGIC FRAMEWORK:

This request for direction relates to the Strategic Framework goal to stabilize and support a successful cannabis economy.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion.

ATTACHMENTS:

1. Wiyot Tribe Correspondence and Tribal Council Minute Order
2. Bear River Band of Rohnerville Rancheria correspondence

PREVIOUS ACTION/REFERRAL:

Board Order No.: [Click or tap here to enter text.](#)

Meeting of:

File No.