

To: Humboldt County Board of Supervisors
825 5th Street
Eureka, CA 95501

Date: July 1, 2020

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Subject: Concerning the Appeal of PLN-12733-SP and PLN-12747-SP for APN 032-051-032 at 829 Redwood Drive, Garberville - Letter #3

Your Honors,

Please accept this final letter concerning the issue of the Garberville distribution and manufacturing facility at 829 Redwood Drive. This matter has been made controversial by an appeal and judicial lawsuits filed as well as the appellant party appearing to intentionally not participate in our well-established administrative review process. As such, it's been a confusing and unprecedented process, with too much focus on legal matters, and not the administration of County government.

A Board of Supervisors meeting is a quasi-judicial administrative court of public hearing on legal matters and actions they take are a legislative act. Our Constitutional governmental established rules and traditions concerning civil proceedings are quite clear, in that silence implies consent (*qui tacet consentire videtur*), and there is a collective responsibility to the social contract to reach consensus of shared values and goals while working towards a decision. As Supervisor Bhone is fond of saying, "You are either at the dinner table or on the supper plate."

The fact of the matter is the Appellant breached established governmental protocol and the social contract by trying to legislate from the bench. Specifically, Appellants are required by law and legal precedence to exhaust their administrative remedies. *Mountain View Chamber of Commerce v. City of Mountain View* Civ. No. 39724. First Dist., Div. One. Jan. 25, 1978 stated:

"It is fundamental California law that before one is entitled to judicial review or relief, he must exhaust whatever administrative remedies are provided. In the language of *Morton v. Superior Court* (1970) 9 Cal. App. 3d 977, 981 [88 Cal.Rptr. 533]: 'it is settled that the exhaustion of an administrative remedy, where one is available, is a condition precedent to obtaining judicial relief, and that 'a court violating the rule acts in excess of jurisdiction' [citations]."

Therefore, the Appellant violated this fundamental aspect of the civil administrative review process by attempting to legislate from the bench, and focusing upon further lawsuits is unnecessary. The Public Record and recent court hearing both upheld these legal requirements so future lawsuits should not go favorably for the Appellant. In essence, due to contempt of constitutional law to uphold civil administrative process, the Appellant may in fact be in Contempt of Court of the Board of Supervisors duly elected legislative responsibilities. The Board is within their rights to take formal action by censuring the Appellant, including submission of the

admonishment to the California BAR Association, and potentially dismiss the appeal without prejudice due to the Appellant's actions should they continue undermining legislative responsibilities.

Established traditional governmental process mirrors that of civil court. If the Appellant fails to show up or participate at the public hearing, whereas the Applicant does appear, the Applicant does have the right to ask the Board of Supervisors that they dismiss the appeal without prejudice approving the project as recommended by the Planning Commission and Staff without further conditions of use. Further, due to continued Contempt of Court, which is any act which embarrasses, hinders or obstructs the legislative responsibilities of the Board of Supervisors or which lessens the Board of Supervisors' duly elected authority or its dignity, the Board then can also dismiss the appeal without prejudice. The fact of the matter is the Appellant cannot legislate from the bench, in doing so has potentially given up all rights concerning appeals protections, and any further actions to obstruct the public process by purposely choosing to not participate should result in favorable actions by the Board towards the Applicant.

At this point, if the Appellant fails to show up and participate at the next publicly noticed hearing, technically the matter should be closed. Though, the Board also has a duty to ensure that the merits of the projects do in fact meet the requirements of both CEQA and consistency with County regulating documents, and if deem necessary, place further conditions of use upon the issuance of a permit. The Public Record including Staff Reports, the Planning Commission recommendation, and my previously submitted letters all state how these projects are consistent with the past use of the property and regulations as they applied at the time of project submission.

CEQA has specific elements required for public review prior to action taken by government. Staff analyzed these elements as required within the CEQA Checklist and found that the project is Categorical Exempt will not cause any adverse environmental impacts, Requiring an Environmental Impact Report would be an unnecessary, costly, and unjust action. In many cases the project creates beneficial improvements for the community and environment which in turn stimulate economic growth and tax generation for the County as stipulated with the Community and general Plans.

Below are how the project benefits CEQA Checklist elements and are consistent with County regulations and plans:

1. Aesthetics: Net benefit as the current ground floor commercial space is not occupied nor viable in a declining economy. The property shall be rehabilitated and maintain a commercial storefront façade.
2. Agriculture Resources: Net benefit to local agricultural interests for the distribution of their goods and conversion of nonmarketable product into handcrafted secondary high-value product to efficiently be distributed within the system.
3. Air Quality: Net benefit by its placement within an Urban Area on property consistent with Zoning Code, Ordinance 1.0, General Plan, and Community Plan to reduce vehicular traffic. Product shall be picked up from farms and brought to site by a modern delivery van reducing independent traffic of trucks with trailers, employees shall have a work location close to their residence, and the property is right off Highway 101 for easy access to markets inside and outside of Humboldt. Overall, the project would centralize traffic, minimize trips conserving fuel, and reduce carbon emissions consistent with the General Plan.

4. Biological Resources: Net benefit as there are no locations outside of the Urban Areas consistent with the General Plan for these uses without developing available land over one acre (1ac) in size. Urban sprawl development and placing inconsistent uses on the fringes is a negative impact to local biological resources such as unique flora, migratory pathways, habitat, and breeding grounds. Centralizing human economic uses, such as this project, into Urban Areas is beneficial to biological resources and consistent with the General plan.
5. Cultural Resources: Net benefit as the building is refitted to its intended multi-use of commercial services and light handicraft manufacturing on the ground floor, commercial or residential rental use on the second floor, and intenerate owner residence on the third floor. Local downtown resources shall be preserved, including a storefront façade, tourist attraction, and stimulate the local economy while generating revenue for the County. Please refer back to my letter submitted June 19, 2020 for more details regarding how these projects meet consistency with the goals and policies of County development regulations and plans.
6. Geology/Soils: Net benefit as there are no locations outside of the Urban Areas consistent with the General Plan for these uses without developing available land over one acre (1ac) in size which may disturb unstable geologic areas or use beneficial soils which may be used in another way.
7. Greenhouse Gas Emissions: Net benefit as it's related to Air Quality.
8. Hazards & Hazardous Materials: Net benefit as the building shall be retrofitted by a contractor with engineered plans to meet all current applicable safety standards, including fire suppression within the main building, and the small ethanol lab holding a minimal amount of hazardous materials with plans implemented to maintain a structure that exceeds minimum safety standards. A Hazardous Materials Plan and OSHA Plan shall be developed and implemented for the property by a qualified professional.
9. Hydrology: Net benefit as it relates to Biological Resources and does not disturb areas beneficial to long-term watershed health.
10. Water Quality: Net benefit as it relates to Biological Resources and Hydrology in not disturbing new areas for development. Also centralizes vehicles into an Urban Area with paved parking, discharge collection, and stormwater drains.
11. Land Use/Planning: Net benefit as the project are consistent with Zoning Code, Ordinance 1.0, General Plan, and Community Plan. Please refer back to my letter submitted June 19, 2020 for more details regarding how these projects meet consistency with the goals and policies of County development regulations and plans.
12. Mineral Resources: Again, net benefit as no new lands shall be developed.
13. Noise: Consistent with Urban Area activities and Uses which will not be any louder than current ambient noise levels.
14. Population/Housing: Net benefit as it supports the local economy development with twelve (12) jobs to employees who live in the area thus stimulating housing and services demand consistent with the General Plan.
15. Public Services: Net benefit to the County Sherriff's Department in tax revenue to fund agency related costs including staff wages. Hopefully there would be a net benefit to the community by increased law enforcement even though it is not law enforcement's responsibility to protect the life, liberty, and property of its citizens against invasion by private actors per statutes *Castle Rock v. Gonzales*, No. 04-278 and *DeShaney v.*

Winnebago County Department of Social Services, 489 U.S. 189. Therefore, private security is a given, and shall be implemented.

16. Recreation: Net benefit to the local growing cannabis economy stimulating economic growth and revenue for the County with a tourist location consistent with the General Plan.
17. Transportation/Traffic: Net benefit as it relates to many different elements of CEQA and consistency with the General Plan. Please refer back to my letter submitted June 19, 2020 concerning the issue with Traffic Calming, stimulating economic development in an Urban Area, and the issue with the gate. Specially concerning the gate, it is inconsistent with the General and Community Plans, as well as creates a community fire hazard in violation of CalFire Codes.
18. Tribal Cultural Resources: Net benefit as there are no locations outside of the Urban Areas consistent with the General Plan for these uses without developing available land over one acre (1ac) in size which may disturb unknown Native American cultural resources.
19. Utilities: Again, a net benefit consistent with the General Plan as it places appropriate uses on a centralized community system minimizing environmental impacts outside of Urban Areas. Demand generates use fee revenues necessary for the maintenance and upgrading of community utility systems. Multiuse urban properties generate more revenue and demand while limiting external impacts to the local environment through the efficient siting of utilities. Please refer back to my letter submitted June 19, 2020 for detail consistency with County regulations and plans.
20. Mandatory Findings of Significance: The difference of opinion with the Staff Report is the lab project is applicable to a *CEQA §15302 Class 2 Exemption*. Please refer to my letter submitted March 1, 2020 as the replacement of the old ice house with a modern small lab in the same footprint for handcrafted small manufacturing of commercial goods is consistent with past use. Specifically, *CEQA Chapter 3 Article 19 §15302 Categorical Exemption* should be applied to the small lab as follows:
 - A. §15302 Class 2: Replacement or Reconstruction consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
 1. (b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity."

In terms of small handicraft industrial manufacturing the ethanol lab meets that description and is consistent with the original purpose of use of the small structure which was to manufacture on-site ice product for a variety of internal and community uses. Lab equipment components are small, certified by an engineer, operated by factory trained staff, are extremely safe and reliable, and require manual labor plus oversight during use. If the lab was operated efficiently for the proposed double shift during the harvest season, it would only be able to process a single vanload of material, producing a little over a couple gallons of distillate or crude. The distillate or crude is only a base product, which must be combined and packaged by hand with other cannabis products onsite to create a higher-value secondary good, or sold raw to another licensee such as an edible producer. Finished product then would be transferred to the distribution facility efficiently next-door, without the use of additional vehicles, and then marketed within and outside of the County.

Fiscally speaking, the projects should be a benefit to the community and County General Fund as revenue is generated for high value economic activities. It is anticipated that twelve (12) local people who live in the immediate area will be directly employed at the facilities with a gross annual taxable payroll over a half million dollars (>\$500,000). Further, it is estimated that the combined gross revenue of both facilities operations will in the range of ten million dollars (\$10,000,000) before taxes and operational expenses are deducted. This does not account for the other taxes generated from the second-floor commercial office rental spaces or general property taxes and overall combined with the projects results in a higher than normal revenue producer for the County. Small shops selling goods to consumers is not viable in a declining economy nor can compete in tax generation as the proposed projects. Payroll and operations both produce taxable income for the County, while creating compensated demand for community services, and allows for economic growth as specified within the Community and General Plans.

Technically speaking the CEQA review process is not completed until both the California Bureau of Cannabis Control (BCC) and Department of Public Health (DPH) issue license. Each respective agency has its own CEQA review process, which require that the County as Lead Agency provide Local Authorization for licensure, and a final CEQA review is undertaken by BCC and DPH. Both agencies CEQA concerns are that the project is not located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued or as authorized by the local jurisdiction. Please refer to my letter submitted March 1, 2020. As noted in the Staff Report and within my letters there are not any BCC or DPH CEQA issues with these projects for licensing which are consistent with County regulations and plans for permitting.

Therefore, the questions related to these projects which the Board of Supervisors are voting on should be based upon the facts and consistency with County regulations and plans as such:

1. Did the Planning Commission and Staff make the correct recommendation concerning the CEQA determination?
2. Do the projects meet Zoning and General Plan regulations as passed by the Board of Supervisors?
3. Do the projects meet the policies and goals of both the Community and General plans for Urban Areas as passed by the Board of Supervisors?
4. Do the projects meet the intent and policies of Ordinance 1.0 as passed by the Board of Supervisors?
5. Are the projects a net economic benefit for the long-term growth and health of the community as required by the Zoning and General Plan regulations as passed by the Board of Supervisors?

A review of projects with those questions in mind should affirm consistency with Zoning Code, Ordinance 1.0, the General Plan, and Garberville Community Plan. Controversy and NIMBYism is not a CEQA or County regulatory related issue which should result in denial of the projects. Especially in consideration of how the Board's duly elected power has been usurped by the Appellant's attempted use of legislating from the bench in violation of Administrative Law.

Respectfully it is requested the Board of Supervisors vote consistent with their past actions and approve of these projects. The only additional changes are requested:

1. Requested alteration to CEQA documentation to include a *Chapter 3 Article 19 §15302 Class 2Categorical Exemption* for the small lab which will replace the old ice manufacturing structure.
2. Requested that the County enforce development code concerning the gate. The gate blocking alley gate traffic should be removed for Traffic Calming purposes as required within the General Plan and to meet Fire Code. It is a hazard to the community, could be considered blight, and stands in the way of economic development.

Thank you for taking the time to read this and past letters submitted. Please take into consideration the information provided and argument justifying the consistency of the projects with CEQA and County regulating documents. Respectfully it is requested you vote in favor of these projects to continue on the goals of economic growth for desperately needed revenue generation and employment opportunities.

Sincerely,



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