




COUNTY OF HUMBOLDT

For the meeting of: June 5, 2018

Date: May 16, 2018  
 To: Board of Supervisors  
 From: John H. Ford, Director, Planning and Building Department   
 Subject: Appeal of the Planning Commission Denial of the Quantum Genetics Special Permit for a Proposed Wholesale Cannabis Nursery  
 Case No.: SP-16-328A  
 File No.: APN 203-231-003, Rohnerville Area

RECOMMENDATIONS:

That the Board of Supervisors:

1. Open the public hearing, and receive the staff report and public testimony.
2. Based on the findings in the staff report and the additional information and testimony received about the project, uphold the appeal, adopt the Initial Study/Mitigated Negative Declaration (IS/MND), and make the findings in Resolution 18-\_\_ (Exhibit A to Attachment A) to approve the Quantum Genetics Special Permit application (Case Number 16-328A), subject to the conditions of approval (Exhibit B to Attachment A).
3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the agent, and any other interested party.
4. Direct the Planning and Building Department - Planning Division to file a Notice of Determination with the Humboldt County Recorder's Office, pursuant to the California Environmental Quality Act.

Prepared by: Elanah Adler, Planner II

CAO Approval  TLER

REVIEW: Auditor \_\_\_\_\_ County Counsel NAD Personnel \_\_\_\_\_ Risk Manager \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. \_\_\_\_\_

Meeting of: \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
 Upon motion of Supervisor \_\_\_\_\_ Seconded by Supervisor \_\_\_\_\_

Ayes  
 Nays  
 Abstain  
 Absent

**SEE ACTION SUMMARY**

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

1 **Kathy Hayes, Clerk of the Board**

SOURCE OF FUNDING:

Applicant fees.

DISCUSSION:

*Executive Summary*

This is an appeal of the Planning Commission's February 1, 2018 denial of the Quantum Genetics Special Permit application to allow a cannabis nursery. The appellant is the project applicant. The Planning Commission was presented with public concerns about the project which were not responded to by the applicant during the hearing. In light of the evidence on the record, the Planning Commission denied the permit. The applicant has appealed the decision and provided information and offered mitigation which are responsive to the concerns expressed at the Planning Commission hearing. Since this is a *De Novo* hearing, the Board of Supervisors can consider the new information and take action on the application without consulting with the Planning Commission. Staff is recommending that the Board uphold the appeal, and approve the project with the project modifications offered by the applicant.

*Project Summary*

The project is a Special Permit to conduct a wholesale cannabis nursery operation as allowed under the provisions of the County's Commercial Medical Marijuana Land Use Ordinance (CMMLUO). The property is located in the Rohnerville area on lands planned and zoned Agriculture Exclusive. The project consists of a proposed two-story, 20,000 square-foot wholesale nursery within a 100' x 100' building. The nursery and the cultivation operation together would employ four to five part-time staff members in addition to the four to five full time staff. Thirteen standard parking spaces would be provided in support of the nursery. Anticipated water use by the nursery operations is 60,000 gallons per year. Additional water storage of two to ten 5,000 gallons tanks will be added to accommodate the water collection system.

The project site is currently developed with a mixed-light cannabis cultivation operation authorized by a Zoning Clearance Certificate issued on November 10, 2016. This cultivation operation consists of 9,792 square feet of mixed-light greenhouses, a processing building, a stand-alone ADA-compliant bathroom facility, and 45,000 gallons of water storage capacity in plastic tanks.

The proposed wholesale nursery is accessed from Triple K Place, a private road right of way served via Rohnerville Road. This roadway provides principal access to four parcels in addition to the subject property.

The water source for the nursery is provided by a combination of rainwater catchment from rooftops and greenhouses, and dehumidifier catchment. An existing permitted well (Permit #15/16-0802) along with 45,000 gallons of water storage has been developed and used on-site and will provide supplemental irrigation. The Department of Fish and Wildlife has indicated that

the permitted well may be hydrologically connected to a wetland on the property and has required that the applicant file a Notice of a Lake and Stream Alteration Agreement. If determined to be hydrologically linked to surface water use of the well for an irrigation source will be restricted to forbear pumping during the period of June 15<sup>th</sup> to October 1<sup>st</sup>. The applicant is in agreement with this restriction.

### ***Planning Commission Decision***

The Humboldt County Planning Commission (Planning Commission) conducted a Public Hearing with regard to the Quantum Genetics Special Permit and the associated IS/MND on February 1, 2018. The Planning Commission considered the submitted evidence and public testimony and voted to deny the project as the required finding of Section 312-12.1.4 that “the proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity,” could not be made for the reasons set forth in the Planning Commission’s Resolution. (Attachment C). The following is a brief summary of the reasons outlined in the resolution:

- 1) All aspects of the project are not fully described or evaluated
- 2) Lack of adequate parking to accommodate project
- 3) Potential impact on neighborhood groundwater availability
- 4) Health and safety concerns due to an increase in traffic at the intersection of Rohnerville Road and Triple K Place
- 5) Lack of adequate road to accommodate project
- 6) Concern expressed by City of Fortuna relative to opposition to cannabis in general and plans for annexation at this location

### ***Basis of Appeal***

The basis of the appeal is set forth in the appeal letter submitted by the Quantum Genetics applicant Edward Wilkinson, received by the Planning and Building Department on February 9, 2018 (Attachment B). In the appeal letter, the appellant contests each of the six findings made by the Planning Commission in their denial of the project. Further, the appellant argues that his unfamiliarity with the hearing process prevented him the opportunity to present relevant testimony to the Commission. The appellant now proposes to respond and make changes to address the legitimate concerns raised by the Commission and public. Each of these are presented and discussed in the analysis below.

## *Analysis*

### **Appeal Request No. 1: All aspects of proposed project fully described**

#### **Background**

The proposed project that has been analyzed in the Staff Report and IS/MND is a Special Permit for a wholesale cannabis nursery. Also noted in these documents was a previous action which included approval of a Zoning Clearance Certificate (ZCC16-013) issued for new mixed-light cultivation on the site on November 2016.

#### **Basis of Planning Commission Action**

During the public comment period, letters were received from the public indicating that the IS/MND and the Staff Report did not address the whole of the project that the applicant or successor intends to pursue. Part of the evidence presented was a real estate listing describing possible expansion of the use of the site to include a microbusiness, including level 1 manufacturing, distribution, and retail uses. The listing stated the potential for tourist income, with development of a bud-bnb use of the proposed residence, onsite retail, and visitor's center.

#### **Appellants Response**

The appellant asserts that he has not hidden the fact that with possible changes to the County's cannabis regulations, an expansion of uses might be pursued in the future, but that these additional activities are speculative and not the subject of the approval being sought under this Special Permit. Therefore, none of these activities or uses are being sought as part of this land use entitlement.

#### **Staff Analysis**

Retail listings often present a vision of what people hope for or are planning to do and may not reflect what is permitted or is being permitted. The appellant is correct that the uses contained in the real estate listing are not a part of the application. If this were the only issue identified in the Planning Commission denial it would be easy to reject this as the rationale for denial. But in this case the Planning Commission picked up on the concerns of the neighbors who saw in the real estate listing a desire to expand the use of the site on a substandard private road. This finding can be overcome if the use of the site can be limited to that which the site and road can support. This would include adding appropriate improvements to the road and the site to mitigate impacts to neighbors.

### **Appeal Request No. 2 & 5: Adequate road & proposed parking to accommodate project, and Existing road will be widen to serve proposed project**

#### **Background**

Triple K Place, accessed from Rohnerville Road, is rural, gravel road that serves five parcels including the project site that is approximately 115 feet long. The estimated number of trips per day analyzed in the Staff Report and IS/MND were determined to be up to 8 vehicle/truck trips (4 in/4 out) or 2,920 trips per year. This was estimated primarily based on the number of employees.

Based on the Road Evaluation Report conducted by the applicant's registered professional engineer, the Average Daily Traffic of the subject road (Triple K Place from Rohnerville Road to the project site) is 44 trips as measured on June 7, 2017. Based on the design standards outlined in the American Association of State Highway and Transportation Officials (AASHTO) Guidelines for Geometric Design of Very Low-Volume Local Roads of less than 400 ADT require identifying site specific safety problems with the road that include, but are not limited to:

1. Pattern of curve related crashes
2. Physical evidence of curve problems such as skid marks, scarred trees, or scarred utility poles
3. Substantial edge rutting or encroachment
4. History of complaints from residents or law enforcement
5. Measured or known speed substantially higher than the design speed of the road (20+ MPH higher)
6. Need for turn-outs.

Darren Tully, the engineer that completed the Road Evaluation indicated that all of the above were not safety concerns at this site, other than #6 "Need for turn-outs". Mr. Tully identified where two (2) turnouts could be accommodated along Triple K Place. Based on his analysis, he reached the conclusion that the roadway can accommodate the cumulative increased traffic from this project. Additionally, as part of the Road Evaluation submission, a letter from the Fortuna Fire Protection District (June 9, 2017) stated that the Fire Chief had reviewed the current road access through Triple K Place and confirmed the District's acceptance of the current road access, inclusive of turn-a-rounds.

#### Basis of Planning Commission Action

During the Planning Commission Hearing, there was public testimony stating concern about the adequacy of the existing roadway to support the proposed project.

The Planning Commissioners indicated that the trip estimate for this project should be determined based on the use of the Institute of Transportation Engineers (ITE) manual. This is a recognized and accepted industry standard. A commissioner cited that ITE for a wholesale nursery of this size, would be expected generate 39 trips per day, resulting in more vehicle trips than analyzed in the Staff Report and IS/MND. Additionally, the Commissioners raised concern that there is not adequate parking based on the requirements of Section 314-109.1 to accommodate the parking needs of the proposed nursery.

#### Appellants Response

The appellant asserts that the trip generation numbers used by the Planning Commission in considering the road impacts do not reflect the project in question. The ITE average daily trip (ADT) generation estimate for a wholesale nursery is 5.17 ADT/1,000 SF.<sup>1</sup> The ADT is unreasonably high when contrasted with the estimate for a retail nursery (garden center) which is 6.94 ADT/1,000 SF<sup>1</sup> and includes direct service to the public. The appellant asserts that a more reasonable comparison to the proposed nursery and its business model is manufacturing which has an estimated ADT of 0.73 ADT/1,000 SF. The applicant contends that the ADT rates are

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<sup>1</sup> Note: Per ITE this number is entitled to a "passby" trip reduction of 60% if the occupancy is less than 50,000 SF.

generated using extremely general use classification and too small of a sample size, and for this reason are not representative of the proposed business and its operations plan. As such, it greatly overstates the traffic trip generation anticipated for this use. A lower ADT is warranted based on the fact that this operation will have at a maximum of 10 employees (4 or 5 Full and 4 or 5 Part Time) in total, including the existing cultivation use. A maximum of two part time employees are only needed for 10 days of the month, three are needed for 5-7 days of the month. Further, the facility is not open to the public. Part time employees are currently carpooling to the project site to reduce traffic, and this will continue to be the practice. All sales will be ordered on-line or by phone and deliveries will be made by the business alone. There will be no same day deliveries so all orders will be combined on one truck for efficiency. For these reasons the Planning Commission's use of 39 average daily trips is excessive. Using the manufacturing ADT of 0.73 would more reasonable reflect the traffic generated under the operation plan. This would yield a trip generation rate of 14.6 trips per day.

To address any road inadequacies, the appellant/applicant has indicated that he is willing to widen the road to a minimum of 20' width and pave the surface, if required.

With respect to off-street parking, the Planning Commission applied the standard for retail services (1 space per 300 SF) to this proposed use. By formula using this retail commercial descriptor would require the provision of 67 parking spaces. The appellant is willing to include additional parking spaces at the amount determined to be appropriate for the project, however 67 spaces would be inconsistent with the parking demand of the nursery for the reasons stated above. The business will have at a maximum of 10 employees (FT and PT) total between the nursery and the existing mixed light cultivation operation. Also, the business is not open to the public. The Zoning Regulations are silent as to the required off-street parking for a wholesale nursery. However, if the manufacturing standard were applied as with the proposed ADT rate above, 13 parking spaces would be required (the higher of 1 space per 1,500 SF or number of employees at peak shift). The appellant/applicant agrees to develop additional off-street parking spaces to meet this standard.

#### Staff Analysis

Section 314-109-1.2.6, Multiple Uses and Joint Use, states that whenever more than one use is proposed for a development site, the total off-street parking spaces required shall be the sum of the spaces required for each use. Existing on-site parking consists of ten standard and two ADA-compliant accessible spaces. At the time of drafting the Staff Report and IS/MND, the applicant proposed two (2) additional standard spaces and one (1) additional accessible (a total of three ADA parking spaces), providing a total of twelve (12) standard and three (3) accessible spaces for both the mixed-light cultivation and wholesale nursery operation. The land use on the site is agricultural, and the Off-Street Parking Code is silent as to the requirement for agricultural employees. The Staff Report and IS/MND thus used the most comparable standard for employees in this situation as one space for each employee at peak shift (per Section 314-109.1.3.4.2 – Manufacturing).

In the Planning Commission Staff Report Supplement No. 3 (Attachment D), the findings of the IS/MND were based on a trip generation assumption of 8 trips, a Category 4 Road, and parking calculated on the expected number of employees. Based on the review of the Road Evaluation, it

was inaccurate to describe Triple K Place as a Category 4 Road, as it currently does not meet a 20' width. Based on the existing road traffic volume of 44 ADT, and Whitchurch Engineering's assessment, the roadway could be adequate for the expected use if turnouts were developed. However, the applicant in response to public testimony has agreed to widening the access road to the Category 4 standard. This would involve the improvement of 3 to 5 additional feet of roadway width. The surface would be gravel to match the existing condition but the applicant has indicated he would pave the surface, if required. Additionally, parking sufficient to accommodate the combined uses for both the proposed nursery and existing mixed light cultivation operation must be developed on site. This would include the development and provision of minimum of fifteen (15) parking spaces. These requirements have been added to the revised conditions of approval (Attachment A, Exhibit B).

It should be noted that this project description is a revision to what was analyzed in the Staff Report and IS/MND reviewed by the Planning Commission. These project changes differ slightly from the analysis conducted in the IS/MND. The difference between 8 ADT and 14 ADT on this road with the proposed widening will not constitute a significant impact or change in the analysis completed in the IS/MND. As noted above, the study by Whitchurch Engineering indicates that this road as a category 4 can accommodate significantly more traffic. The IS/MND adequately addresses construction impacts as discussed in Air Quality, Geology and Soils, Hydrology and Water Quality, and Transportation/Traffic, all of which were indicated to be less than significant with no mitigation required.

Additionally, the Staff Report and IS/MND include an analysis of Biological Resources and mitigation measure **BIO-4 Avoid Impacts to Streambed management Areas** requiring no construction equipment, materials, or activities shall be permitted to occur within the protected SMA. No portions of the roadway or potential parking areas are located within the identified SMA. The Cultural Resources section includes mitigation measure **CUL-1 Inadvertent Discoveries of Cultural and Paleontological Resources, and Human Remains** requires construction activities to cease if any resources or remains are identified. The Noise section includes an analysis of construction related noise impacts and includes the following mitigation measure, **NOI-1 Construction Related Noise** to ensure that construction noise impacts will be reduced through limiting hours/times of construction, and that equipment will be maintained in good working order.

The additional road widening improvements differ from the road regrading following development to the pre-development condition that was analyzed in the IS/MND. However, these short-term construction impacts are limited in scope and there is no evidence to indicate that the changes constitute a substantial revision within the context of CEQA. As noted, the impacts of noise, dust, biological and cultural resources are not significantly different than already addressed and mitigated in the IS/MND.

Staff recommends formalizing the commitment to upgrade Triple K Place to a Category 4 Road Standard of 18'-20' width roadway and the development of at least fifteen (15) total parking spaces for the wholesale nursery and cultivation operation.

The recommended Conditional of Approval would be accomplished through an edit to #14, as follows:

14. The applicant shall maintain and improve Triple K Place from the intersection with Rohnerville Road to the driveway on the subject property to a minimum width of 18' width with a gravel surface.

The appellant/applicant has indicated that he will pave the road surface is required by the Board. If determined appropriate, this condition would substitute AC paving for gravel, above.

**Appeal Request No. 3: No well water will be used for irrigation by the end of 2018, ensuring no impact on neighborhood groundwater availability**

**Background**

The County received public testimony that the proposed project would result in increased water usage thus reducing the availability of ground water for neighboring property owners. Neighbors stated that wells in the area draw from a shallow aquifer which provides limited production and poor quality (high nitrates) for residential uses. Additionally, there is insufficient evidence that the shallow aquifer can supply sufficient capacity for the project use without degrading or eliminating the water supply for neighbors' wells. Water for the existing cultivation is currently provided by a combination of water capture from dehumidifiers inside the greenhouses along with the existing well. The applicant has proposed to add a rainwater catchment system, through the use of gutters on the greenhouses and on the roof of the wholesale nursery. Additionally, additional dehumidifiers will be purchased to increase interior water capture in the nursery building.

**Basis of Planning Commission Action**

The Planning Commission was unable to find that the effect of water withdrawals from the permitted well for cultivation would not adversely affect the wells on neighboring properties. Going into the Planning Commission meeting Staff's intent was to ensure compliance with other water regulating agencies, establish prohibitions on dry season withdrawals from the groundwater well (if determined to be jurisdictional by CDFW), require installation of two separate water meters for domestic and irrigation water uses during all times of the year and require that the groundwater well be a secondary irrigation source (and subject to forbearance from June 15<sup>th</sup> to October 1<sup>st</sup>), with the primary source to be dehumidifier water capture and a rainwater catchment system.

Calculations for water collection from the dehumidifiers, provided by the applicant's engineer, were used at the hearing in order to demonstrate the efficiency and utility of dehumidifier water capture. The applicant has already been implementing these water saving-measures and it has been shown to provide adequate water for cultivation irrigation. The proposal for the wholesale nursery project had been designed to build on these water saving techniques and ensuring efficient water use.

**Appellant's Response**

The appellants express concern over the Commission's finding that the increased use of water for the nursery operation would result in the reduction of availability of ground water. The existing



mixed-light cultivation operation currently recovers 50 percent of its water use from 4 dehumidifiers producing 107 gallons per day. The wholesale nursery will employ two additional commercial dehumidifiers that can harvest 175 additional gallons per day. The applicant proposes to further augment this water capture by employing rainwater catchment from the nursery building roof. One of the goals of the proposed project is to ensure new and efficient water saving systems, including using a Deep Water Culture Hydroponic system that re-uses water for nursery plant production. The combination of these measures will result in an adequate water supply for cultivation and nursery operations permitting suspension of well use in beginning in 2018.

Additionally, the permitted well is 240 feet in depth. While the well casing does have a screen at 40 to 120 feet below ground level, leading to the precautionary forbearance requirement by CDFW, the well also captures groundwater at 160 to 220 feet near its deepest reach. According to the Driller's Log, the deeper aquifer is separated from the upper water bearing formation by a blue clay layer at 120 to 150 feet below ground level.

Based on the testimony at the Planning Commission the appellant has agreed to implement all proposed water-saving measures and in addition, has agreed to not use any groundwater for irrigation purposes by the end of 2018 (once all improvements have been installed on-site).

#### Staff Recommendation

The concern relative to groundwater use for irrigation is resolved with the applicant agreeing to not use groundwater for cultivation. The concern relative to this is how to insure that the well is not used for irrigation. Staff proposes the following condition be added:

- 12. Irrigation water for the nursery shall come from water collected from dehumidifiers and rainwater catchment. Water from the onsite well shall not be used for nursery irrigation.*

#### **Appeal Request No. 4: Health and safety concerns due to an increase in traffic at the intersection of Rohnerville Road and Triple K Place are unlikely to be further impacted as a result of the proposed project**

#### Background

The subject site is zoned AE (Agricultural Exclusive), which permits a variety of uses, including agricultural production and residential development. As production and development occurs, an incremental increase in vehicular traffic in the vicinity would be expected to occur as well.

#### Basis of Planning Commission Action

Comment letters and public testimony stated concern with the safety of the intersection of Triple K Place and Rohnerville Road. The traffic and speeds are reportedly high on Rohnerville Road and there is limited area to accelerate from Triple K Place onto Rohnerville Road. No construction of acceleration, deceleration or turning lanes are proposed. The project would increase the traffic volume entering and exiting the project site, increasing road hazards.

### Appellant's Response

The appellant has requested his engineer to investigate accident records at this intersection to determine if these hazards exist, and if they do, have they increased over time. This investigation provided a single record of an accident at this intersection in which a single car lost control during daylight when it was wet traveling along Rohnerville Road. The appellant's agent will be conducting a full report on the accident history to be presented to the Board of Supervisors. As noted in response to Appeal Request 2 and 5 above, the proposed wholesale nursery will not generate a significant increase in traffic. All orders are made by phone or internet and deliveries will be consolidated so as to limit the number of trips. Employee traffic is minimal as the 4 to 5 part-time staff will only be required one week out of each month. The appellant has agreed to widen Triple K Place to Category 4 standards. The encroachment onto Rohnerville Road will be subject to the visibility and improvement standards of the Department of Public Works.

### Staff Analysis

Public Works indicates that the intersection of Triple K Place and Rohnerville Road meets County standards. Additionally, the Fortuna Fire Protection District (June 9, 2017) stated that the Fire Chief had reviewed the current road access through Triple K Place and confirmed the District's acceptance of the current road access, inclusive of turn-a-rounds. Based on the forgoing and the accident history information submitted by the appellants, Staff recommends that the Board of Supervisors approve the appeal in this matter subject to a modified condition to formalize the commitment to approve the full length of Triple K Place serving the project to a Category 4 standard.

The recommended Conditional of Approval would be accomplished through an edit to #14, as described in the response to Appeal #2 and #5 above.

### **Appeal Request No. 6: Pending City of Fortuna Annexation**

#### Background

The project site is adjacent to the Rohnerville Airport within the unincorporated area of Humboldt County. As part of the Humboldt County General Plan Update, an Urban Study Area process was conducted and led to the designation of Urban Development Areas, Urban Expansion Areas, and Water Service Areas within Community Planning Areas. The project area is outside of the Urban Expansion Area as identified in the Humboldt County General Plan.

The project site is located within the Sphere of Influence of the City of Fortuna and the City General Plan has identified four annexation areas. To date, the City has completed annexation of three of these four areas. The fourth annexation area is identified as the Rohnerville Airport, including the lands in which this project is located. The City is taking steps necessary to complete this annexation area which includes a circulation planning grant to be carried out in 2018.

#### Basis of Planning Commission Action

The City of Fortuna provided both written and verbal comments in opposition of this project. The City has adopted a ban on cannabis activities within the City and is opposed to cannabis activities within the City's sphere of influence. If, and when, this property is annexed into the

City of Fortuna, approved cannabis projects that are previously permitted in this area will be inconsistent with City policies. These conflicting policies create challenges to future annexation, and result in nonconforming uses upon city annexation. The City representative pointed out that the IS/MND did not include a discussion of these future annexation efforts as part of its analysis as part of this project.

#### Appellant's Response

The appellant/applicant states that City annexation was a concern when purchasing the property and he had contacted Fortuna at the time of purchase. They reported that, because they had to annex the airport, any annexation wouldn't occur before 2020 at the earliest. The appellant asserts that Fortuna may not still have a ban on cannabis activities within the City once annexation of this area does occur. Additionally, the appellant states that the property sits on the boundary of the proposed annexation area and Sphere of Influence, which means that it would not be considered an "island" and LAFCo would not force the property to be annexed.

Additionally, the appellant states that there is nothing in the current CMMLUO, in which his project is subject to regulations that preclude the ability for cannabis projects to move forward that are within a city's sphere of influence. Further, the measures identified in Alternative 9 of the CMMLUO update (version 2.0) with regard to proximity to lands with a Sphere of Influence in the pending revision of the CMMLUO can be satisfied by the proposed project.

#### Staff Analysis

Cannabis development in close proximity to residences and within a city's Sphere of Influence has become controversial. The County's approach to updating the cannabis regulations was to not create an outright prohibition, but to rely on a discretionary permit process to consider each application based upon the circumstances associated with the particular case.

In this particular case the site is in a rural area, with the Rohnerville Airport to the west, grazing land to the north, west and south, and smaller rural lots to the east. Access to the site comes from the east. The IS/MND addressed that the project would not conflict with any applicable land use plan, policy or regulation of an "agency with jurisdiction with jurisdiction over the project" adopted for the purpose of avoiding or mitigating an environmental effect. The issue of the development within the Sphere of Influence must consider the sensitive receptors in the area. In this case the road users have expressed concern, and the applicant has agreed to widen the road. Water use is a concern and the applicant has agreed to not use the well for cannabis irrigation. The other normal concerns in a Sphere of Influence are odor and appearance. In this case the nursery will not produce odor for two reasons; first nurseries produce small plants that are not at the flowering stage, and second the nursery is within a building. The building is a two story structure that may appear large, but not larger than a typical barn which would be a normal building in this context.

The potential for a future annexation would have more significant concern if there were some type of plan that has been developed indicating that this area is intended to be used in a manner inconsistent with the application. In this particular case such information has not been presented. The City's General Plan designates this land for agricultural purposes, so it would seem that the proposed use is not inconsistent with the land use.

### **Staff Recommendation**

The applicant and his agent did not present testimony at the Planning Commission hearing, and as such, the Commissioners did not have the opportunity to receive the additional information contained herein. The information provided by the applicant, including agreement to improve the road and not use water from the well for irrigation addresses the most significant technical concerns raised. What the applicant or future owner may choose to do in the future is speculative and should not be the basis of an action. The concern expressed by the City of Fortuna is based upon a possible future annexation and the City's general objection to cannabis activities of any kind. The proposal does not conflict with the City's General Plan. General objections are difficult to overcome because it is not based on the project, but an opposition to a particular activity. This is not a particularly sensitive location, such as a location close to existing city development, so in this case the project complies with all land use regulations of the County and can be approved in such a way to mitigate the concerns which have been expressed. Based upon this, staff recommends that the Board of Supervisors uphold the appeal and approve the project.

### **FINANCIAL IMPACT:**

There will be no additional effect on the General Fund. The appellant has paid in full the appeal fee associated with this appeal.

### **OTHER AGENCY INVOLVEMENT:**

The Department has referred the project application to numerous agencies for comments and recommendations. Agencies indicated that they have no comment. These referrals are included as Attachment D.

### **ALTERNATIVES TO STAFF RECOMMENDATIONS:**

The Board of Supervisors can choose to deny the project per the action by the Planning Commission, or the Board of Supervisors uphold the appeal and make changes to the conditions of approval in addition to those recommended by staff. If either of these alternatives is pursued, the staff would request that the matter brought back before the Board at a later date to consider a revised resolution and/or revised Conditions of Approval.

### **ATTACHMENTS:**

**NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.**

- Attachment A: Draft Board Resolution
- Attachment B: Appeal filed by Edward Wilkinson, applicant for Quantum Genetics
- Attachment C: Resolution of the Planning Commission, Resolution No. 18-10
- Attachment D: Planning Commission Staff Report and Supplemental Information
- Attachment E: Applicants/Appellants Additional Submitted Information