

Attachment 3

Appeal Filed by the City of Fortuna

October 4, 2018

John Ford, Director
Humboldt County Planning & Building Department
3015 H Street
Eureka, CA 95501



RE: Appeal of Humboldt Boutique Gardens (Case No. CUP 16-427; SP 18-009)

Dear John:

Please accept this appeal of the Planning Commission's September 20th approval of Humboldt Boutique Gardens use permit and special permit, case numbers referenced above. This letter accompanies the appeal application, in particular it provides response to the requirement that, "...the appellant shall state specifically why the decision of the Hearing Officer is not in accord with the standards and regulations of the zoning ordinances...". (Humboldt County Code Sec. 13.2).

The project will directly impact nearby City residents and create blight for the City at large. Impacts resulting from the cannabis development will include odor, noise, traffic, crime, and water quality. This is in conflict with the County's established zoning for the site. The County's Ordinance 1689 established the zoning of MLQB-5 (2-2-1/2), with a stated purpose to:

"Protect the surrounding residential areas...from inappropriate development of the subject property,"

Further, Ordinance 1689 limits the types of uses permitted on the parcel, specifically omitting any principally permitted uses and allowing only the following uses with a use permit:

1. Stores, agencies and services such as carpentry and cabinet-making shops, clothing manufacture, contractors' yards, dry cleaning and laundry plants, handicraft manufacture, lumber yards, metal-working shops, wholesale outlet stores, painters' and decorators' yards, plumbing shops, printing and lithographing.
2. Administrative, business and professional offices.
3. Manufacture of electrical and electronic equipment, of household effects such as lamps, rugs and fabric and research and development laboratories.
4. Manufacture of furniture.

City Hall
(707) 725-7600
Fax (707) 725-7610
621 11th Street

Police Department
(707) 725-7550
Fax (707) 725-7574
621 11th Street

Parks and Recreation
(707) 725-7620
Fax (707) 725-7576
5 Park Street

Public Works
(707) 725-7650
Fax (707) 725-7651
180 Dinsmore Drive

The Planning Commission approved this under the Q zone that limits the types of allowable uses. Cannabis is not listed, nor is any agricultural activity. For uses not listed, the Commission relied on County Code Section 3.1.2.2 that allows approval of use permits 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”.

Finally, County Code Section 312-17.1 requires findings for Conditional Use and Special Permits, including 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 property or improvements in the vicinity.”

Cannabis activity is not similar to nor compatible with the site zoning, since it is an agricultural activity, and further, the proposed use will result in an increase in odor, noise, traffic, crime, and water quality impacts that will negatively affect the health, safety, and welfare of the adjoining residential neighborhood. The Q zone overlay specifically declares the need to protect neighborhoods from incompatible uses. The fact that the proposed use will result in neighborhood impacts to odor, noise, traffic, crime, and water quality demonstrates incompatibility and an inappropriate approval of the project.

The proposed activity is not suitable adjacent to residential neighborhoods. The project is within 50 feet of a residential neighborhood, visible from the Campton Heights neighborhood directly across Drake Hill Road. The County staff report for the September 20th Planning Commission meeting included signatures from 55 affected neighbors and numerous letters of protest describing the physical impacts that will be imposed on the residents. While the Initial Study prepared for the project analyzed impacts relating to odor, noise, and traffic, these cannot be fully mitigated with respect to the residents that live nearby. The mitigation and enforcement measures are unreliable; for example, project condition of approval provides that odor control be enforced by evidence of an outdoor discernable odor. These arbitrary odor enforcement measures have been found to be ineffective at other cannabis operations.

Another health and safety concern that demonstrates that this project is “inappropriate development” is the inadequate on-site septic system. The County Health Department determined that the proposed system cannot handle the volume of discharge created by the project itself, so a condition of approval was added at the public hearing to collect the irrigation runoff into a holding tank and limit septic system use to up to 15 employees. Any discharge of the holding tank effluent would need to be approved by the Regional Water Quality Control Board, but the project has not been reviewed by that agency for standards or feasibility. The City’s concerns include illicit use of the septic system to dispose of the excess irrigation water into the on-site system, causing contamination of the local groundwater and nearby wells. There are no adequate assurances that the project will not result in discharge of excess runoff from cultivation into the on-site septic system. Enforcement and monitoring measures are unreliable and ineffective, especially in this case where illicit discharge within an enclosed building is difficult to prove.

In addition, the City is concerned about how the project will negatively affect the City's planned annexation activities within the City's Sphere of Influence. The City has annexed three of the four annexation areas identified in the Fortuna General Plan 2030, and is currently conducting planning studies needed to implement the annexation of the airport area including circulation planning studies currently underway. Permitting the cannabis project within the Sphere would likely impair or prevent the annexation as it could increase the number of protests received during the protest proceedings, possibly to a level that could result in termination of the annexation. At a minimum, the project would allow uses that are inconsistent with the City's prohibition ordinance and result in prohibited uses upon City annexation.

The City and the neighbors have demonstrated that the project is not in accord with the standards and regulations of the zoning ordinances because it is inappropriate for the neighborhood due to health and safety impacts described and that the project approval Findings as listed cannot be made; therefore, we request that the Board of Supervisors overturn the Planning Commission's approval.

Please forward this appeal to the Humboldt County Board of Supervisors as soon as possible for their consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Merritt Perry', with a long horizontal flourish extending to the right.

Merritt Perry, Interim City Manager

Copy: Fortuna City Council
Liz Shorey, Fortuna Deputy Director of Community Development



APPLICATION FORM
Humboldt County Planning and Building Department
Current Planning Division 3015 H Street Eureka, CA 95501-4484
Phone (707) 445-7541 Fax (707) 268-3792



INSTRUCTIONS:

1. Applicant/Agent complete Sections I, II and III below.
2. It is recommended that the Applicant/Agent schedule an Application Assistance meeting with the Assigned Planner. Meeting with the Assigned Planner will answer questions regarding application submittal requirements and help avoid processing delays. A small fee is required for this meeting.
3. Applicant/Agent needs to submit all items marked on the reverse side of this form.

SECTION I

APPLICANT (Project will be processed under Business name, if applicable.)

Business Name: City of Fortuna
Contact Person: Merritt Perry
Mailing Address: 621 11th Street
City, St, Zip: Fortuna, CA 95540
Telephone: (707) 725-7600 Fax: 725-7610
Email: mperry@ci.fortuna.ca.us

AGENT (Communications from Department will be directed to agent)

Business Name: City of Fortuna
Contact Person: Liz Shorey
Mailing Address: same
City, St, Zip: _____
Telephone: (707) 725-1408 Fax: _____
Email: lshorey@ci.fortuna.ca.us

OWNER(S) OF RECORD (If different from applicant)

Owner's Name: N.A.
Mailing Address: _____
City, St, Zip: _____
Telephone: _____ Fax: _____

Owner's Name: N.A.
Mailing Address: _____
City, St, Zip: _____
Telephone: _____ Fax: _____

LOCATION OF PROJECT

Site Address: _____ Assessor's Parcel No(s): _____
Community Area: _____ Parcel Size (acres or sq. ft.): _____
Is the proposed building or structure designed to be used for designing, producing, launching, maintaining, or storing nuclear weapons or the components of nuclear weapons? ☐ YES ☐ NO

SECTION II

PROJECT DESCRIPTION

Describe the proposed project (attach additional sheets as necessary): Appeal of Planning Commission's approval of Humboldt Boutique Gardens conditional use permit & special permit (Resolution 18-72; CUP 16-427; SP 18-72). See attached City letter dated Oct. 4, 2018.

SECTION III

OWNER'S AUTHORIZATION & ACKNOWLEDGEMENT

I hereby authorize the County of Humboldt to process this application for a development permit and further authorize the County of Humboldt and employees of the California Department of Fish and Wildlife to enter upon the property described above as reasonably necessary to evaluate the project. I also acknowledge that processing of applications that are **not** complete or do not contain truthful and accurate information will be delayed, and may result in denial or revocation of approvals.

[Signature]
Applicant's Signature

October 4, 2018
Date

If the applicant is not the owner of record: I authorize the applicant/agent to file this application for a development permit and to represent me in all matters concerning the application.

Owner of Record Signature

Date

Owner of Record Signature

Date

This side completed by Planning and Building Staff

Checklist Completed by: _____ Date: _____

THE FOLLOWING ITEMS MUST BE SUBMITTED WITH THIS APPLICATION

Item	Received	Item	Received
<input type="checkbox"/> Filing Fee of \$ _____	<input type="checkbox"/>	<input type="checkbox"/> Agricultural Feasibility Study	<input type="checkbox"/>
<input type="checkbox"/> Fee Schedule (see attached, please return completed fee schedule with application)	<input type="checkbox"/>	<input type="checkbox"/> Architectural Elevations	<input type="checkbox"/>
<input type="checkbox"/> Plot Plan 12 copies (folded if > 8½" x 14")	<input type="checkbox"/>	<input type="checkbox"/> Design Review Committee Approval	<input type="checkbox"/>
<input type="checkbox"/> Tentative Map 12 folded copies (Minor Subd)	<input type="checkbox"/>	<input type="checkbox"/> Environmental Assessment	<input type="checkbox"/>
<input type="checkbox"/> Tentative Map 18 folded copies (Major Subd)	<input type="checkbox"/>	<input type="checkbox"/> Exception Request Justification	<input type="checkbox"/>
[Note: Additional plot plans/maps may be required]		<input type="checkbox"/> Joint Timber Management Plan	<input type="checkbox"/>
<input type="checkbox"/> Tentative Map/Plot Plan Checklist (complete and return with application)	<input type="checkbox"/>	<input type="checkbox"/> Lot Size Modification Request Justification	<input type="checkbox"/>
<input type="checkbox"/> Division of Environmental Health Questionnaire	<input type="checkbox"/>	<input type="checkbox"/> Military Training Route (see County GIS)	<input type="checkbox"/>
<input type="checkbox"/> On-site sewage testing (if applicable)	<input type="checkbox"/>	<input type="checkbox"/> Parking Plan	<input type="checkbox"/>
<input type="checkbox"/> On-site water information (if applicable)	<input type="checkbox"/>	<input type="checkbox"/> Plan of Operation	<input type="checkbox"/>
<input type="checkbox"/> Solar design information	<input type="checkbox"/>	<input type="checkbox"/> Preliminary Hydraulic and Drainage Plan	<input type="checkbox"/>
<input type="checkbox"/> Chain of Title	<input type="checkbox"/>	<input type="checkbox"/> R1 / R2 Report (Geologic/Soils Report, 3 copies with original signatures)	<input type="checkbox"/>
<input type="checkbox"/> Grant Deed		<input type="checkbox"/> Reclamation Plan, including engineered cost estimate for completing reclamation	<input type="checkbox"/>
<input type="checkbox"/> <input type="checkbox"/> Current <input type="checkbox"/> Creation	<input type="checkbox"/>	<input type="checkbox"/> Second Dwelling Unit Fact Sheet	<input type="checkbox"/>
<input type="checkbox"/> Lot Book Guarantee (prepared within the last six months prior to application)	<input type="checkbox"/>	<input type="checkbox"/> Variance Request Justification	<input type="checkbox"/>
<input type="checkbox"/> Preliminary Title Report (<u>two copies</u> , prepared within the last six months prior to application)	<input type="checkbox"/>	<input type="checkbox"/> Vested Right Documentation/Evidence	<input type="checkbox"/>
		<input type="checkbox"/> Other _____	<input type="checkbox"/>
		<input type="checkbox"/> Other _____	<input type="checkbox"/>
		<input type="checkbox"/> Other _____	<input type="checkbox"/>

FOR INTERNAL USE

<input type="checkbox"/> Ag. Preserve Contract <input type="checkbox"/> Certificate of Compliance <input type="checkbox"/> Coastal Development Permit <input type="checkbox"/> Administrative <input type="checkbox"/> Planning Commission <input type="checkbox"/> Design Review <input type="checkbox"/> Inland <input type="checkbox"/> Coastal <input type="checkbox"/> Determination of Legal Status <input type="checkbox"/> Determination of Substantial Conformance <input type="checkbox"/> Extension of _____ <input type="checkbox"/> Fire Safe Exception Request	<input type="checkbox"/> General Plan Amendment <input type="checkbox"/> General Plan Petition <input type="checkbox"/> Information Request <input type="checkbox"/> Modification to _____ <input type="checkbox"/> Lot Line Adjustment <input type="checkbox"/> Preliminary Project Review <input type="checkbox"/> Special Permit <input type="checkbox"/> Administrative <input type="checkbox"/> Planning Commission H.C.C. \$ _____ <input type="checkbox"/> Subdivision <input type="checkbox"/> Parcel Map <input type="checkbox"/> Final Map <input type="checkbox"/> Exception to the Subdivision Requirements	<input type="checkbox"/> Reclamation Plan <input type="checkbox"/> Surface Mining Permit <input type="checkbox"/> Surface Mining Vested Right Determination <input type="checkbox"/> Timber Harvest Plan Information Request <input type="checkbox"/> Use Permit H.C.C. \$ _____ <input type="checkbox"/> Variance H.C.C. \$ _____ <input type="checkbox"/> Zone Reclassification <input type="checkbox"/> Other _____ <input type="checkbox"/> Other _____
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Application Received By: _____ Date: _____ Receipt Number: _____

General Plan Designation: _____

Plan Document: _____

Land Use Density: _____

Zone Designation: _____

Coastal Jurisdiction Appeal Status: ☐ Appealable ☐ Not Appealable

Preliminary CEQA Status:

☐ Environmental Review Required

☐ Categorically Exempt From Environmental Review: Class _____ Section _____

☐ Statutory Exemption: Class _____ Section _____

☐ Not a Project

☐ Other _____