



COUNTY OF HUMBOLDT

For the meeting of: 11/6/2018

File #: 15046

To: Board of Supervisors

From: Planning and Building Department

SUBJECT:

City of Fortuna Appeal of Planning Commission Approval of Humboldt Boutique Gardens Conditional Use Permits and Special Permits to Allow Indoor Cannabis Cultivation in the ML-B-5(2.5)-Q Zoning District within the Sphere of Influence of the City of Fortuna

RECOMMENDATION(S):

That the Board of Supervisors open the public hearing and receive the staff report, testimony by the appellant and applicant, and public; close the public hearing; adopt the attached resolution (Resolution 18-__ (Exhibit A to Attachment 2)) doing the following: adopt the Initial Study and Mitigated Negative Declaration, State Clearinghouse No. 2018012017; make the findings required to deny the appeal and approve the Conditional Use Permits and Special Permits; deny the Appeal; adopt the mitigation monitoring and reporting plan; and approve the Conditional Use Permits and Special Permits subject to the conditions of approval (Exhibit B to Attachment 2); direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the property owner, and any other interested party; and direct the Planning and Building Department to file a Notice of Determination with the Humboldt County Recorder's Office, pursuant to the California Environmental Quality Act.

SOURCE OF FUNDING:

The Appellant has paid in full the appeal fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission's September 20, 2018 approval of the Humboldt Boutique Gardens Conditional Use Permits and Special Permits to allow the development and operation of a new commercial indoor cannabis cultivation facility. The appellant is the City of Fortuna.

The project consists of 8,560 square feet (sf) of new indoor cannabis cultivation and processing and nursery facilities within a proposed 13,000 sf building that would be 28 feet in height. The Planning Commission considered testimony both in support of and in opposition to the project. The primary opposition came from local residents and the City of Fortuna. The Commission found that the potential for adverse effects to the neighborhood and to the City of Fortuna had been adequately addressed by the project as proposed and conditioned. The Planning Commission approved the project with a vote of 4-1. No reason for the dissenting vote was given.

The City of Fortuna ("Appellant") has appealed the decision and submitted a letter stating why the Planning Commission's approval is not in accord with the standards and regulations of the Zoning Code. The appeal does not raise issues not considered by the Planning Commission. The primary concerns can be summarized as:

- Project is not an eligible and compatible use pursuant to the Qualified combining zone;
- Approval does not adequately protect the neighboring residential uses;
- The on-site septic system and the measures for handling spent irrigation water are not protective of public health, safety, and welfare;
- Project will be detrimental to public health and safety; and
- Cannabis use will negatively affect the City's planned annexation activities within its adopted Sphere of Influence.

Each of the appeal issues are presented and discussed in the analysis below.

This is the first application to be considered under the Commercial Cannabis Land Use Ordinance adopted by the Board of Supervisors on May 8, 2018. This ordinance established areas within the Sphere of Influence of a City as a Special Area requiring approval of a Conditional Use Permit. The requirement of a Conditional Use Permit was to increase the level of discretion exercised in the review of applications in these areas to insure that there are no negative impacts to the surrounding area. The Planning Commission found that potential impacts associated with odor, noise, water quality, safety and security and traffic had all been adequately addressed to protect the public health, safety and welfare. No new information is presented as part of this appeal.

This is a *de novo* hearing and the Board of Supervisors is not limited to the evidence in the existing record and may receive new evidence at the appeal hearing. Staff is recommending that the Board deny the appeal, and approve the project with conditions.

Project Summary and Setting

Humboldt Boutique Gardens, (“Applicant”), applied for a Conditional Use Permits (CUP) and Special Permits for 8,560 square foot (sf) of new indoor cannabis cultivation, processing and nursery facility within a proposed 13,000 sf building that would be 28 feet in height. The facility would be served by a new on-site septic system and well. Eight employees are proposed to operate this facility which, would consist of six 960 sf flowering rooms (5,760 sf total), a 240 sf propagation room for developing clones, a 240 sf mother room, and a 2,080 sf vegetative room for the tending of plants before they are placed in the flowering rooms. The remaining space in the warehouse would consist of a processing room, a drying room, and a packaging room in addition to general storage, a truck bay, office, and bathroom facilities.

The proposed project is in the Limited Industrial (ML) zoning district where cannabis activities are allowable. The site has a Qualifying combining zone (Q) overlay applied prior to any consideration of cannabis being legalized and does not specifically allow cannabis, but it is appropriate to find that cannabis activities are consistent with the intent of the Q zone. The recently adopted CCLUO allows indoor cannabis cultivation to be within 300 feet of a bus stop. The indoor nature of the cannabis activities will not have an adverse impact on children at bus stops. The project will be located completely in a building designed appropriately for the industrial location, and there will not be adverse impacts to the neighborhood related to visual impacts, odor impacts or security concerns.

Setting and Neighboring Land Uses

The project site is located on the south side of Drake Hill Road approximately 1,800 feet west of the intersection of Drake Hill Road and Rohnerville Road. The Rohnerville Airport which is owned and operated by the County is located approximately a half mile south. The lands to the north are developed with single family residences. The lands on the south side of Drake Hill Road and adjacent to the project site are a mix uses. To the west are vacant agricultural properties used for livestock grazing. The properties directly to the east are developed with mini-storage facilities and warehousing used for contractor’s yard storage. These three properties feature typical commercial-industrial structures that are of relatively recent construction.

Previous Land Use Decisions

The subject parcel is within the boundaries of the Fortuna Area Community Plan (“FACP”). The Fortuna Area Community Plan was adopted by the Board of Supervisors in May 1985. As part of the May 1985 adoption of the FACP, the subject parcel was designated Industrial General (IG), and zoned Limited Industrial with combining zones for Special Building Area specifying a 2.5 acre minimum parcel size and Qualified (ML-B-5(2.5)-Q). The provisions of the Qualified combining zone are pursuant to Humboldt County Zoning Ordinance No. 1689, adopted May 28, 1985, and amended by Ordinance No. 1784 on December 16, 1986. The subject parcel is within the geographic area referenced therein as Area 1. A full copy of Ordinances Nos. 1689 and 1784 is in Attachment 5.

An application for subdivision and conditional use permit (PMS-03-13/CUP-03-06) was filed in August 2003 for the development of the parent parcel. The review and development of this industrial subdivision was coordinated with the City of Fortuna with the project being referred to the City on two occasions. The City expressed the need for a stormwater detention basin and that city water and sewer services would only be available to one of the parcels. In response, the county imposed the requirement for a stormwater basin designed and sized for the ultimate development of the parcel. Both applications were approved with conditions and mitigation measures by the Planning Commission June 2004. Ultimately, a City of Fortuna representative signed off on the improvement plans prior to the recordation of the parcel map.

The Planning Commission staff report explains the background of this project and is attached for consideration.

Basis of Appeal

The basis of the appeal is set forth in the appeal letter submitted by the City of Fortuna ("City"), received by the Planning and Building Department on October 4, 2018 (Attachment 3). The following discussion addresses the discrete points raised in the appeal.

Analysis

Appeal Issue 1: The project is in conflict with the County's established zoning for the site.

The Commercial Cannabis Land Use Ordinance allows cannabis activities in the ML district. The fact that the site is in the Sphere of Influence of the City of Fortuna requires that a Conditional Use Permit be approved. There is no conflict with the base zoning.

The appellant writes that the project is in conflict with the County's established zoning for the site as the proposed use is not an enumerated use within the Q Zone. The Appellant's letter states that "*Ordinance 1689 limits the types of uses permitted on the parcel; cannabis is not listed, nor is any agricultural activity...Cannabis activity is not similar to nor compatible with the site zoning, since it is an agricultural activity.*"

The allowable uses of the principal zone of the subject parcel, Limited Industrial (ML), are modified by the special restrictions and regulations of the Q zone that apply to this parcel. The applicable Q zone was adopted by Ordinance 1689, on May 28, 1985, and amended by Ordinance No 1784 on December 16, 1986. The subject parcel is located in the geographic area referred therein as Area 1. The special restrictions and regulations of the Area 1 Q zone are such that there is a limited list of uses that require a Conditional Use Permit.

The City's appeal focuses on this list of uses that can be authorized. Section 3 of the Q zone ordinance identifies the following uses as being allowed with a use permit for Area 1:

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.
- [5. Quasi-Public Uses, added by Ordinance 1784]

The City's appeal does not acknowledge that at the end of Section 3, after all the uses are itemized for each of the areas, the following language appears:

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 use permits. (Ordinance 1689, pg. 9.)

This provision is interpreted to provide the ability to consider permitting other uses within the Q zone, provided that the use is consistent with the purpose of the Q zone and is processed in accordance with the requirements for a Use Permit. This is important because it shows that the Board, in enacting the Q zone, thought about and allowed for non-enumerated uses.

The City in its appeal cites Humboldt County Code section 312-3.1.2 (the general rules and procedures of the Code) which allows for the issuance of a Use Permit 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" as the reason the Planning Commission cited to inappropriately approve the project. This is not the provision which is being relied upon to find that the use can be approved, it is the language from section 3 of the Q zone which allows other uses to be considered.

Appeal Issues 2 & 3: The Project is in conflict with the special restrictions and regulations of the Qualified combining zone. The project will directly impact City residences and create blight for the City at large. Impacts resulting from the cannabis development will include odor, noise, traffic, crime, and water quality.

In the appeal letter, the City of Fortuna quotes the purpose of the Q zone is to "*Protect the surrounding residential areas ... from inappropriate development of the subject property*". This is a stated purpose of the Q zone and there are three others (all four are

delineated here):

1. Protect and reserve the property for limited industrial development such as light manufacturing and heavy commercial uses; and
2. Protect the surrounding residential areas and the public airport from inappropriate development of the subject property; and
3. Implement the policies of the Fortuna Area Community Plan applicable to industrial development of the subject property; and
4. Provide for public and technical review of projects planned for the property as a means of reducing or eliminating the potential impacts of industrial development on the existing road and drainage systems.

The City is arguing that the project will cause odor, noise, traffic, crime, and water quality impacts adversely affecting nearby residential uses, and, as such, the Project is not consistent with the purpose of the Q zone to protect nearby residences. In their analysis, the Planning Commission found there are not adverse impacts to the adjacent residential areas.

Odor. The project design includes measures to mitigate potential cannabis odor. All cannabis operations are proposed to occur in an enclosed structure. The Project includes the use of an air filtration system using activated charcoal filtration that will be installed in every room where cannabis activities are undertaken. The system will remove odor by creating a negative pressure environment where air will be drawn through a carbon filter with a centrifugal fan. Air from the grow rooms, drying rooms, and processing areas will be “scrubbed”, and then vented to the exterior. An individual filtration system will also be installed in the truck bay to capture any odor that may escape the rooms and into the interior of the building because of the opening of doors. The Project operation plan includes replacement of the charcoal filters annually where the manufacturer recommends filtration replacement only every two years. The doors to the facility face south away from the residential area to the north.

In order to provide an additional level of confidence that the odor is fully mitigated, staff recommended to the Planning Commission inclusion of an odor performance condition calling for adaptive management to address odor should it be present outside the building. The recommended standard would stipulate that the operation will not result in the discernible odor of cannabis at the property lines adjoining existing residential uses and if the odor is discernable that the applicant is obligated to work with the county to refine the odor controls until the odor impact is removed. The threshold for discernible odor would be discernible by a reasonable person.

The Appellant’s letter expresses concern about the reliability of the performance standard and worry that it may be enforced in an arbitrary manner. However, the odor control proposed by the applicant will be sufficient to mitigate the odor impact. In the event that the equipment is malfunctioning or not maintained, the additional performance standard will allow the County to address any odor.

Part of the City’s concern may stem from a City complaint about cannabis cultivation directly east of the subject site on the south side of Drake Hill Road. Staff notified the property owners of the concerns associated with unpermitted cultivation on this adjacent property, and recently was able to inspect the interior of the buildings finding that there is evidence of prior cannabis cultivation, but it has discontinued. The County takes enforcement action against project which have approved permits when determined to be in violation of the permit or in violation of the County Code.

Between the project design and the added condition, odor will not be an impact to adjacent residential properties.

Noise. The Project would result in new noise related to construction activities on a temporary basis and related to the operation of the facility. The Project will not expose persons to or generate noise levels in excess of standards established in the local general plan. Temporary increases in noise levels would occur during the construction period. The temporary noise level increases would be similar to those associated with any other construction project. To minimize noise levels during construction, the Initial Study and Mitigated Negative Declaration (“IS-MND”) includes a mitigation measure to limit hours of construction to Monday through Friday from 8:00 am to 5:00 pm, Saturday from 9:00 am to 5:00 pm with no construction activity on Sunday or holidays.

On-going project-related sounds will primarily be limited to daytime operations, generally Monday through Sunday from 7:00 a.m. to 6:00 p.m. Although the operation is proposed to occur 24 hours per day, there will be very limited activity outside of the peak operating hours of 7:00 a.m. to 6:00 p.m. The project will involve the use of light-duty equipment for cultivation activities that would not result in excessive noise levels. HVAC units and some filter equipment will be installed to minimize odors and may result in some minor noise on the exterior of the buildings. The fans that assist with odor filtration, however, will be located inside the building. The Project will use on-grid power provided by PGE for all energy needs, and no generators will be used as part of this project. Project activities will occur inside the proposed building. Access to the building will be on the south side facing away from the residential areas to the north. The building orientation will serve to buffer Project activities from the residential neighborhood to

the north. The fact that Project activities will almost exclusively occur inside the building coupled with the building's orientation will significantly reduce potential noise levels.

The General Plan establishes a Noise Performance Standard (Lmax), General Plan Standard N-S7, which sets the maximum day (6:00 a.m. to 10:00 p.m.) standard for the Limited Industrial zoning district at 75 dBA, with a night maximum of 65 dBA. Backup alarms on delivery vehicles and traffic from employees and delivery vehicles are the only noise sources anticipated for the site. The traffic noise will be minimal, and the back-up alarms will be very infrequent and limited to daytime hours. The noise impact of this project is very minimal. To further maintain compatibility with the adjacent residential neighborhood, as a condition of approval, deliveries will be limited to Monday through Friday from 8:00 am to 6:00 pm, Saturday from 9:00 am to 5:00 pm with no deliveries on Sunday.

The potential sources of noise of the Project have been identified, and the Project design and conditions include measures to minimize increases in noise levels and limitations on the hours of construction and operation. The evidence supports the finding that the Project, as proposed and conditioned, is adequately protective of the adjacent residential uses.

Traffic. Access to the site is directly off a paved city-maintained public road (Drake Hill Road). Drake Hill Road is paved with a center line stripe. There is a sidewalk on the south side. Humboldt County Department of Public Works stated that the roadway serving the subject property is adequate to accommodate the proposed use. The Department of Public Works provided comments regarding the removal and replacement of a sidewalk section with an approved driveway design and the requirement to obtain an encroachment permit for constructing improvements within a County maintained road right of way. These have been made a condition of approval.

The Applicant anticipates they will have one weekly delivery of growing related supplies brought to the site from a local vendor. Any other needed cultivation or office related supplies will be picked up by the Applicant or other employees. This delivery would be in a small U-HAUL style truck and not a semi-truck. The Applicant anticipates one pickup from a licensed distributor every other week who will to pick up the finished product. This would be made in a smaller transport vans.

The project may generate up to 32 employee trips per day (8 employees x 4 trips per day to arrive and depart work, with off-site lunch). Altogether, the project is estimated to generate less than 35 trips per day.

In their comment letter the city of Fortuna expressed concern regarding project impacts to intersections that are operating below an acceptable level of service (LOS). Additionally, the city expressed concern about potential conflicts between commercial traffic and bicycle and pedestrian traffic at the intersection of Drake Hill Road and Thelma Street. To minimize contributing traffic to intersections functioning below an acceptable LOS, and to avoid potential conflicts with bicycle and pedestrian traffic at the Drake Hill Road and Thelma Street intersection, the Applicant is proposing to route traffic to Highway 36 via Rohnerville Road and not through the city of Fortuna. This proposed routing would result in traffic traversing through three intersections identified as critical intersections in the city of Fortuna's 2010 Final Programmatic EIR (pg. 4.1-5): Rohnerville Road/Drake Hill Road (#24), proposed Highway 36 Connector/Rohnerville Road (#25); and Highway 36 Connector/Rohnerville Road. Proposed State Highway 36/Highway 36 connector (#26) is operating at level of service (LOS) B, and Highway 36 Connector/Rohnerville Road, both northbound and southbound are at LOS A. The existing LOS at these route intersections is at or above an acceptable LOS. Upon implementation of the city General Plan the LOS at these intersections will remain at or above an acceptable LOS. Given the scale of the project and the restricted routing of traffic, the project is not expected to significantly contribute to traffic and or degrade the LOS along the path traveled to and from the site. To ensure ongoing compliance the recommended conditions of approval include two ongoing requirements: one condition stipulating adherence to the prescribed route, and second establishing a protocol to bring the project back in compliance should the county receive complaints. The evidence supports finding that the Project, as proposed and conditioned, adequately protects the adjacent residential uses.

Crime and security. At the September 20, 2018 Planning Commission hearing many speakers expressed concern that approval of the project would result in an increase in crime. An element of the stated intention for the adoption of Ordinance No. 2599, Commercial Cannabis Land Use Ordinance ("CCLUO"), is to establish land use regulations concerning the commercial cultivation in order to encourage safe, reasonable and responsible growth that reduces negative impacts on our community and environment, including protection of residential neighborhoods from harm resulting from cannabis activities [Reference: Humboldt County Code Section 314-55.4.2]. Accordingly, CCLUO application submittal requirements include the requirement for a security plan. In accordance with HCC Section 314-55.4.11, the Applicant submitted a detailed security plan. Proposed security measures include the installation of an interior and exterior security camera system with recording and remote monitoring, installation of perimeter fencing that includes barbed wire, and a security coded electronic gate entrance to the property. The lower 5 feet of the building will be constructed of masonry and all doors and door locks will be reinforced for added security. The signage will not advertise the type of business at the location.

The Project includes security measures for construction, fencing, cameras, etc., evidencing adequate security and protection for the surrounding land uses, including the residential neighborhood. The suite of security measures to be provided can serve as both a deterrent to prevent the facility from becoming a target for crime and to improve security in the area. The evidence supports finding the Project, as proposed and conditioned, adequately protective of the adjacent residential uses.

Water quality. The Appellant's letter expresses concern regarding the adequacy of the on-site septic system and regulatory review. The Division of Environmental Health ("DEH"), regulates on-site wastewater system ("OWTS") for the domestic waste stream. Discharge associated with production, cultivation or manufacturing (the latter activity is not a part of the Project) is under the jurisdiction of the Regional Water Quality Control Board ("RWQCB").

Only wastewater from domestic uses enter the OWTS; they consist of the restroom and the handwashing stations. Spent irrigation water will not enter the OWTS. The Applicant does not anticipate cultivation operations will generate significant amounts of unabsorbed irrigation water because Project plans are for the use of a precise dispensing irrigation water system that applies water at the plant in combination with the use of an absorbent soil-less growing medium consisting of peat and perlite. Project plans also include the use of dehumidifiers in each cultivation room to capture water that will then be recycled as irrigation water. No runoff from vegetative, mother, or propagation rooms within the building is anticipated. Should there be runoff from irrigation operations, water will be directed to an in-room floor drain. Each cultivation room will have an individual floor drain, and the floor drains will be tied together. These floor drains will then be connected to an exterior 2,600 gallon reservoir exterior to the building. From a regulatory stand point this is classified as industrial waste. The Applicant proposes to pursue one of two options for handling of this industrial waste water:

- Option 1 is for the industrial waste water to be filtered and then recirculated and reused as cultivation irrigation water. The Applicant has stated this is the preferred option.
- Option 2 is for the industrial waste water to be recycled and reused for irrigating the on-site landscaping plants, trees, and bushes. This option requires that the Applicant secure an individual waste discharge requirement ("IWDR") approval from the RWQCB prior to initiating use/application of industrial waste water. Implementation of Option 2 also triggers the performance standard adopted by the Planning Commission requiring that landscaping irrigation not result in measurable runoff.

Regardless of the subsequent use of the waste water, staff recommends that Project approval be conditioned on secondary containment being installed for the reservoir.

Review of the subdivision creating the subject parcel, including the on-site waste water system, was coordinated with DEH. The subject Project was referred to DEH for review and input in accordance with the Humboldt County Code. On September 18, 2018, DEH commented they have received adequate testing to support the installation of an Onsite Waste Treatment System and recommended approval of the Project.

The Project was referred to the RWQCB for input. In both cases, RWQCB did not comment, and HCC Section 312-6.1.3 compels the County to interpret a lack of response on this matter to mean a lack of concern. Additionally, the State Clearinghouse circulated the Initial Study-Mitigated Negative Declaration, State Clearinghouse No. 2018012017, to the RWQCB, as a responsible and trustee agency. RWQCB did not provide comments in response to the circulation of the IS-MND. Since the filing of the appeal, staff has again attempted to illicit project specific input from RWQCB, but no comments have been provided to date.

The language of HCC Section 312-6.1.3, however, does not relieve the Applicant from the obligation to obtain all necessary approvals or permits from other jurisdictional agencies, and this requirement is reflected in the conditions of approval found in Exhibit B of Attachment 2 requiring the applicant to comply with RWQCB standards.

The regulatory components are in place to protect water quality associated with the project and evidence supports finding the Project, as proposed and conditioned, is adequately protective the adjacent residential uses.

Appeal Issue 4: The project is in conflict with Humboldt County Code Section 312-17.1 findings for Conditional Use and Special Permits

The referenced finding is:

“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.” [Reference HCC Section 312-17.1.4]

The Planning Commission considered the analysis and evidence found herein and in the record, and made this finding in the affirmative. As discussed above, the primary impacts of concern are related to odor, noise, traffic, security and water quality. Each of these have been addressed, and there has not been any evidence submitted to indicate that this finding cannot be made in the affirmative.

Appeal Issue 5: The Project will negatively affect the City’s planned annexation activities within the City’s Sphere of Influence.

The subject parcel is located in the Rohnerville Airport Annexation area (“RAA”) as designated in the City’s General Plan. The RAA occupies a large portion of the City of Fortuna’s southern Sphere of Influence. Attachment 1 includes a table listing all of the pending and approved applications in the RAA, there are seven altogether, and a map indicating the geographic location of the projects within the RAA. Two of the applications are located on the subject site, reflecting the two phase nature of the application. Two more are on the adjacent site to the east. The other three are located at the far east end of the annexation area. One application eastern area application for cultivation has been approved, and a subsequent application for a nursery on that same parcel has been appealed to the Board of Supervisors. The four applications in the immediate proximity to this site are all for indoor cultivation in an industrial zone, and do not have the potential to significantly change the nature of the area if approved in a manner which protects the public health, safety and welfare.

As stated in the Appellant’s letter, three of the four areas designated for annexation in the City of Fortuna’s adopted General Plan have been annexed. However, as part of the Local Agency Formation Commission (“LAFCo”) proceedings the annexation areas for the two most recent annexations (Carson Woods and Strongs Creek) were scaled back due potential impacts related to the conversion of agricultural lands. An application to initiate annexation proceedings for the RAA, however, has not been filed with LAFCo.

Under the City’s 1993 General Plan, the City’s designation of the subject parcel and surrounding land generally mirrored that of the County with the subject parcel being designated for industrial development. Per Table 3.1-3 of the PEIR, under the 1993 General Plan the county’s 90.8 acres of industrial area represented approximately 1.1 percent of the city’s Existing Industrial (IND) land use designation. As part of the City’s most recent General Plan update effort, however, these lands were redesignated to agriculture as were the adjoining lands. Other lands in the RAA area were also re-designated from Public Facility, Agriculture and a small amount of Industrial (County) to Public Facility, Agriculture, and a larger amount of Industrial (City).

For this parcel and the adjoining warehousing parcel (consisting of APNs 203-211-014 and 203-211-017) it appears this redesignation from industrial to agricultural may have been in part based on the City’s assessment of the existing land use at the time of preparation. According to the PEIR’s existing land use mapping, prepared July 2007, the subject parcel was identified as agricultural, and the warehousing parcel was identified as being vacant. This land use assessment appears to have been made without the consideration of the City’s previous coordination and engagement on the subdivision that created the subject parcel as discussed above. It should be noted that all heavy commercial/light industrial uses, even those specifically enumerated under the County’s zoning and currently eligible to be permitted, would be nonconforming uses under the City’s pre-planning land use designation of agriculture should this land be annexed. This transition to nonconforming status would also extend to the existing warehouse facility for contractor’s storage on the neighboring property to the east. Furthermore, there is no agreement pursuant to Gov’t Code Section 56425(b) between the County and City of Fortuna to not process land use applications that may conflict with the City’s General Plan, or to otherwise modify planning and zoning requirements. Absent such an agreement, the County is the local land use authority and has not abdicated its land use jurisdiction relating to this parcel or any other parcel in the Sphere of Influence in advance of annexation.

While the City’s planning area includes lands within the Sphere of Influence, by way of the PEIR, the City’s General Plan recognizes that these lands remain under the jurisdiction of the County until it is annexed to the City (PEIR, pgs. 2-10, 2-21):

While the proposed plan would expand the City’s Planning Area to cover the area between SR 36 and the Van Duzen River: (1) the proposed plan would not apply new City General Plan land use designations to this area; (2) Humboldt County would continue to exercise land use authority in this area; and (3) the proposed plan would not result in physical changes within this area. For these reasons, this PEIR does not address this area other than to note that it is an area judged by the City to bear relation to its planning. (PEIR, pg. 2-10).

While the City’s General Plan is the City’s guiding land use policy and planning document, it does not supersede the County’s land use authority. Proposals for development in the Sphere of Influence need to demonstrate conformance with the County’s General Plan and zoning regulations. In short, the project under consideration is subject to the County’s land use regulations. It

may become necessary at some point to reconcile the City's land use agricultural designation and the County's Industrial General designation as part of Fortuna Community Plan's Governance Policies FCP-P1 and FCP-P2. However, this long range planning action is beyond the scope of this project. The project must be evaluated on its merits under the County's adopted general plan and zoning regulations.

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:

Department of Health and Human Services, Division of Environmental Health; Department of Public Works, Land Use Division.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors can uphold the appeal and deny the project. This alternative should be implemented if the Board is unable to make all of the required findings. The Planning Commission found that the required findings can be made and no new information has been submitted to change these findings. Consequently, staff does not recommend further consideration of this alternative.

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.

1. Table and Maps
2. Draft Board Resolution, Findings and Exhibits A-E
3. Appeal filed by the City of Fortuna, appellant
4. Resolution of the Planning Commission, Resolution No. 18-72
5. Humboldt County Zoning Ordinance No. 1689, and as amended by Ordinance No. 1784.
6. Planning Commission Staff Report and Supplemental Information
7. Public Comments Received
8. Applicant submitted comments

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A.

Meeting of: N/A.