



COUNTY OF HUMBOLDT

Legislation Details (With Text)

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Title: 1:30 p.m. - MCMP Humboldt, LLC Zone Reclassification of Assessor Parcel Number (APN) 522-491-017 in the Willow Creek Area

Sponsors:

Indexes:

Code sections:

Attachments: 1. Staff Report, 2. ATTACHMENT 1.pdf, 3. ATTACHMENTS 2a_2b.pdf, 4. ATTACHMENT 3_edited.pdf, 5. ATTACHMENT 4.pdf, 6. ATTACHMENT 5.pdf, 7. ATTACHMENT 6.pdf, 8. ATTACHMENT 7.pdf, 9. ATTACHMENT 8.pdf, 10. SUPPLEMENTAL INFORMATION_.pdf, 11. Public Comment MCMP.pdf, 12. Resolution 18-124.pdf, 13. Ordinance 2616.pdf, 14. Proof of Publication.pdf

Date	Ver.	Action By	Action	Result
12/4/2018	1	Board of Supervisors	approved as amended	Pass

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

1:30 p.m. - MCMP Humboldt, LLC Zone Reclassification of Assessor Parcel Number (APN) 522-491-017 in the Willow Creek Area

RECOMMENDATION(S):

That the Board of Supervisors:

1. Introduce Ordinance No. ____ by title and waive further reading;
2. Open the public hearing and receive the staff report, testimony by the applicant and the public;
3. Close the public hearing and consider the Planning Commission's recommendations;
4. Adopt the attached resolution (Resolution 18-____) (Exhibit ____ of Attachment 1) doing the following:
 - a. Consider the Addendum to and the certified Programmatic Environmental Impact Report adopted for the County General Plan, State Clearinghouse No. 2007012089 (Attachment 2a)
 - b. Consider the Addendum to and the Mitigated Negative Declaration for the Mercer Fraser Company's Conditional Use Permit, Surface Mining Permit, Special Permit, and Reclamation Plan, State Clearinghouse Number 2016082006 (Attachment 2b);
 - c. Adopt the findings and factual support required to approve the Zone Reclassification;
5. Adopt Ordinance No. ____ amending Section 311-7 of the Humboldt County Code by reclassifying property in the Willow Creek area currently known as Assessor Parcel Number (APN) 522-491-017 currently zoned Highway Service Commercial (CH) to Heavy Industrial with a Qualified combining

- zone (MH-Q) (Attachment 3);
6. Direct the Clerk of the Board to publish a summary of the zoning changes within 15 days of the date of the hearing (Attachment 4); and
 7. Direct the Clerk of the Board to give notice of the decision to the applicant, the Assessor's office, County Counsel, Planning and Building, and any other interested party.

SOURCE OF FUNDING:

The applicant is responsible for all costs related to processing of this application. There will be no effect on the General Fund.

DISCUSSION:

An application has been made by MCMP Humboldt, LLC on behalf of Mercer Fraser Company to rezone approximately 15 acres of Highway Service Commercial (CH) to Heavy Industrial with a Qualified combining zone (MH-Q). The proposed rezone implements the Industrial, Resource Related (IR) designation adopted in the 2017 General Plan, and will better reflect the historic and current use of the property for commercial surface mining and the associated processing of mined aggregate. The proposed rezone would also facilitate development of a proposed commercial cannabis manufacturing facility conditionally approved under the Commercial Medical Marijuana Land Use Ordinance (CMMLUO).

Section 312-50 of the Humboldt County Code (HCC) specifies the findings that must be made in order to approve a Zone Reclassification. These findings are as follows:

1. The proposed change is in the public interest; and
2. The proposed change is consistent with the General Plan; and
3. The amendment does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

A zone reclassification is a project subject to the California Environmental Quality Act (CEQA); therefore, one of the following findings must be made prior to approval:

- a) That the project is either categorically or statutorily exempt; or
- b) That there is no substantial evidence that the project will have a significant effect on the environment or any potential impacts have been mitigated to a level of insignificance and a negative declaration has been prepared pursuant to Section 15070 of the CEQA Guidelines; or
- c) That an environmental impact report (EIR) has been prepared and all significant environmental effects have been eliminated or mitigated to a level of significance, or the required findings in Section 15091 of the CEQA Guidelines are made.

Based on the information contained in the Planning Commission staff report and public testimony received, on December 14, 2017, the Humboldt County Planning Commission conditionally approved a Special Permit for the development and operation of a new 5,000 square foot commercial cannabis manufacturing facility, and recommended that the required findings be made and that the proposed Zone Reclassification be approved. The Planning Commission's conditional approval of cannabis manufacturing is contingent upon the rezoning of the property.

Prior to the December 2017 Planning Commission hearing, the Hoopa Valley Tribe, Willow Creek Community Services District, and Tsnungwe Council submitted letters expressing concerns about both the proposed manufacturing facility and the rezone. Also letters of opposition from community members were received.

The agency and community letters shared common areas of concern focusing on the proximity of the cannabis manufacturing to the Big Rock recreation area and Trinity Valley Elementary School, and the compatibility of cannabis manufacturing activity with these uses, especially the school. Concerns were also raised that the rezone would allow for a broad range of heavy industrial uses that would be incompatible with and impact adjacent uses. Many commenters expressed that both the cannabis manufacturing proposal and the rezone would impact the Trinity River, and the need for protections for the Trinity River as a source of drinking water, as wildlife habitat, a recreation area, and for tribal cultural uses. Also it was expressed that more review under CEQA should be completed. All agency and public letters received on or before December 14, 2017, were provided to the Planning Commission.

In its deliberations, the Planning Commission considered the issues outlined above, public testimony, including from the Willow Creek Community Services District's executive director. The District's executive director testified that there was an expectation that the project would be re-referred based on earlier communications with Planning staff. The Planning Commission also considered testimony provided by the applicant's representatives. The agent testified that the facility would not be open to the public; it would not host tours; and that the building would be secure, and constructed to not attract attention. Also, that the structure would be constructed to meet the building and fire occupancy requirements stipulated for the range, amount, etc. of solvents to be used for manufacturing, although the amount and type solvents remained as "to be determined" (Jeff Smith, December 14, 2018). Also it was communicated that the cannabis manufacturing would be a new use and would not replace or substitute the current surface mining and aggregate processing activities. The Planning Commission also considered the type and amount of hazardous materials used for the aggregate processing operation. Mr. Benzinger testified these materials consisted of 10,000 gallons diesel, 20,000 gallons propane, and 30,000 asphalt, and other miscellaneous oils and lubricants ranging in quantities from 50 to 500 gallons (Mark Benzinger, December 14, 2018). Ultimately the Planning Commission voted 6-1 to recommend approval of the proposed rezone, with the dissenting member stating he was unable to support the rezone due to the expectation for re-referral and the need for further discussion at a community level.

Table 4-E of the General Plan (Attachment 8) identifies Agricultural Products Processing and Surface Mining as allowable use types in the IR land use designation. The property has hosted surface mining operations since the late 1960s, and as part of the Planning Commission action to recommend approval of the rezone to MH-Q the applicant secured conditional approval for a Special Permit to allow a commercial cannabis manufacturing facility. The Special Permit is not yet effective, and is contingent on the zoning map amendment to rezoned to the property from CH to MH-Q being adopted. The Table 4-H in the General Plan shows the IR land use designation is compatible with the Heavy Industrial (MH) zoning district only when a Qualified (Q) combining zone that ensures zoning consistency is concurrently adopted. The proposed Q-combining zone is written to limit uses on the property to resource-related industrial processing uses such as timber, agriculture and mineral products processing, ensuring consistency between the General Plan and zoning. Surfacing mining operations, an existing use of the property, would still require a use permit under the proposed Q-combining zone, and consistent with Humboldt County Code Sections 314-59.1 and 391-4(a)(1).

Parallel to the proposed rezone and as part of the county-wide rezoning now underway, it is proposed that combining zones for Mineral Resources (MR) and Streamside Management Areas and Wetlands (WR) be adopted and applied to the subject parcel to implement the goals, policies, and standards of the General Plan. As the application of the MR and WR combining was not considered by the Planning Commission as part of Mercer Fraser Company's rezone application these will be considered as part of the county-wide rezone effort. As part of the county-wide rezone effort other IR designated properties are being zoned Agricultural Exclusive.

Proposed Rezone and Surface Mining and Appurtenant Processing

The existing surface mining operation has been at this location for approximately 50 years, and is subject to an

approved Conditional Use Permit, Special Permit, and Reclamation Plan. In March 2017, the Planning Commission approved the renewal of the Conditional Use Permit, Special Permit, and Reclamation Plan to allow the continued operation of the surface mining operation and the associated processing of mined aggregate. The Planning Commission also approved the installation and operation of a concrete batch plant a new complementary activity to the existing asphalt batch plant. The permit terms are 15 years, and as the permits reach their terms, the applicant may apply for renewal. While the surface mining and associated processing of aggregate are subject to a use permit, these existing activities and uses are consistent with the proposed map amendment to change the zoning from Highway Service Commercial (CH) to Heavy Industrial zoning district with a Q-combining zone. The operation will not be affected by the proposed rezone.

The MH zoning district is intended to apply to areas devoted to normal operations of industries subject only to regulations as are needed to control congestion and protect surrounding areas. Unless modified by a Q-zone, the principally permitted uses in the MH zone include industrial manufacturing uses, including furniture, finished paper and paper products manufacturing, contractor's yards, major auto repair, animal hospitals, animal feed and sales. Uses subject to a use permit include transient habitation, manufactured home parks, and residential uses. The minimum MH parcel size is one acre; and minimum setbacks are fifty feet from front and rear yards, and at least 25 feet for side yards. The maximum allowable structure height is 75 feet.

Based on a review of the MH principally permitted uses, the existing operations are most consistent with the allowable uses in the MH zoning as they entail the use of heavy equipment, materials subject to additional regulation and reporting, often generate noise, dust, and/or odor materials; the activities are often not confined to an enclosed structure; and require staging-storage areas for raw production materials and/or for the final product.

A Q-zone functions to modify and restrict the principal permitted uses and/or conditional uses, and may apply additional development standards to implement the general plan or community plan. A Q-zone may also limit additional entitlements. [Reference HCC Sections 314-15.1 and 314-32.1.] As drafted, the Planning Commission's recommended Q-zone will modify the MH zone to do the following:

- Restrict the MH principally permitted uses to those that are resource-related. Major auto repair, for example, a principally permitted use in the MH, would not be permissible because it is not resource-related industrial processing.
- Established a suite of performance standards to which allowable development must adhere to. These performance standards do not exist in the MH zoning district;
- Restrict industrial activities that involve the handling of toxic, highly flammable, explosive or radioactive materials in such quantities that would, if released or ignited, constitute a significant risk to adjacent human populations or development.

As stated above, surface mining and appurtenant processing are established uses at this location. Surface mining and appurtenant processing are activities are consistent with the IR land use designation as they constitute resource-related industrial processing. With respect to zoning, surface mining may be permitted in all zoning districts subject to a use permit pursuant to HCC Sections 314-59.1 and 391-4, and is categorized as an Extractive Use Type pursuant to HCC Section 314-174.1. Under the proposed Q-zone, surface mining is expressly permitted subject to a use permit. This means an application for new, renewal, or expansion of surface mining operations at this location will be subject to a use permit.

As for the processing of mined aggregate, the 2017 approved permits for Mercer Fraser Company (File No. 522-491-017/Apps No. 10345) described this activity as involving material crushing and/or sorting, onsite storage of materials, production of asphalt and concrete, and weighing and hauling by truck". Although aggregate processing is specifically excluded from the Extractive use type and is not a specifically enumerated use, the

activity involves “the on-site production of goods by methods not agricultural or extractive in nature”, and is most consistent with the Industrial use type descriptor when compared to the other available use type classifications-Agricultural, Civic, Commercial, Commercial Timber, Natural Resources, and Residential [Reference HCC Section 314-175]. As stated above, under the proposed Q-zone new, renewal, or expansion of aggregate processing requires a use permit.

Questions have been raised about whether there are other appropriate zones that are compatible with the IR land use designation. In addition to the Heavy Industrial (MH) zoning district with the concurrent adoption of a Qualified (Q) combining zone, Table 4-H of the General Plan identifies the following zoning districts as being consistent with the IR land use designation:

- Limited Industrial (ML) with the concurrent adoption of a Qualified combining zone
- Flood Plain (FP)
- Agricultural Exclusive (AE)
- Timber Production Zone (TPZ)

The four other zoning districts identified as consistent with the IR land use designation (a copy of each zoning district is in Attachment 8) are summarized below to aid the evaluation of the appropriateness of each eligible zoning district.

Limited Industrial (ML): The ML zoning district is intended to apply to areas where light manufacturing and heavy commercial uses of the non-nuisance type and large administrative facilities are the desirable predominate uses [Reference HCC Section 314-3.2]. This zoning district provides for a mix of light manufacturing, professional offices, and emergency shelters (when mapped) as land uses permitted by right, unless modified by a Q-zone. Enumerated uses that may be permitted with a use permit include transient habitation, emergency shelters, manufactured home parks, animal hospitals, animal feed and sales yards, and heavier types of manufacturing as characterized by furniture, finished paper and paper products manufacturing. ML’s minimum parcel size, minimum property line setbacks, and maximum allowable structure height are identical to those of MH. As stated above, for IR designated lands, the General Plan stipulates the concurrent adoption of a Q-zone to ensure consistency when rezoned to the Limited Industrial.

Flood Plain (FP): Flood Plain is a natural resource zoning district intended to be applied to areas which have been inundated by flood waters in the past and which may reasonably be expected to be inundated by flood waters in the future [Reference HCC Section 314-5.2]. The FP zone is intended to limit the use of areas subject to such inundation and flooding to protect lives and property from loss, destruction and damage due to flood waters and to the transportation by water of wreckage and debris. FP principal uses include general agriculture, nurseries and greenhouses, and animal sales and feed yards, temporary recreational vehicle parks, and recreational uses. Uses enumerated as allowable with a use permit include residential uses, including special occupancy parks, and “...commercial and industrial uses which, in the opinion of the Planning Commission, are compatible with contiguous zones”. Development standards specify a five acre minimum parcel size, yard setbacks of at least 20 feet, and no specified structure height. Portions of the property are subject to flooding during 100-year and 500-year events according to the 2017 FEMA mapping as shown in the map in Attachment 8.

Agricultural Exclusive (AE): The Agricultural Exclusive zoning district is “intended to be applied in fertile areas in which agriculture is and should be the desirable predominate use...” [Reference HCC Section 314-7.1]. Principally permitted AE uses include general agriculture and farm dwellings. Conditionally permitted uses include intensive agriculture, animal hospitals, animal sales and feed yards, irrigation supplies sales, and agricultural and timber products processing. The northern portion of the property contains Russ sandy loam

(Ru3) soils which have a Storie Index Rating of 67 according to the *Soils of Western Humboldt County*. This same area is rated as a Class II soil under the federal land capability classification, meeting the General Plan's definition of prime agriculture. The southerly portion is identified as "Man altered" and is not further evaluated in *Soils of Western Humboldt County*. While a portion of the site contains prime agricultural soils the property does not host general or intensive agricultural uses or development currently or on a historical basis. [Reference HCC Sections 314-7.1 and 314-170]. Another consideration is AE's minimum parcel size is 20 acres, which is greater than the subject parcel's 15 acre size. Setbacks range from 20 to 30 feet, and there is no maximum structure height.

Timber Production Zone (TPZ): Pursuant to HCC Section 314-7.4, the TPZ zoning district is intended to provide standards and restrictions for the preservation of timberlands for growing and harvesting timber. For lands to be rezoned into TPZ it must be demonstrated the parcel currently meets the timber stocking standards as set forth in Section 4561 of the Public Resources Code and be at least 80 acres in size, in addition to the findings HCC Section 312-50. Given the parcel size requirement and the fact the parcel does not contain stands of timber currently or in recent history, the facts do not support finding the parcel meets the intent or basic eligibility requirements to be rezoned into the TPZ.

The property owner has expressed a desire to retain and continue the current surface mining and appurtenant processing operations. Both of these activities are consistent with the IR land use designation, and the General Plan Goal MR-G1 to protect mining sites from incompatible land uses, and to provide for a regulated long-term supply of mineral resources. The proposed rezone to MH-Q is consistent with these provisions and in the public interest as it expressly allows for both surface mining and aggregate processing subject to use permit, avoids creating a non-conforming condition with respect to these existing uses; places the historic and existing activities into a zoning district that most closely fits while providing for technical input and public review through the use permit application and review process for applications for new, renewal, or expansion of surface mining and appurtenant processing.

Propose Rezone and Commercial Cannabis Activities

On December 14, 2017, the Planning Commission conditionally approved a Special Permit to allow the operation of the commercial cannabis manufacturing facility subject to adoption of the rezone to MH-Q. The Zone Reclassification to change the principal zoning of the property from Highway Service Commercial (CH) to Heavy Industrial with a Qualified combining zone (MH-Q) must be approved by the Board of Supervisors before the Special Permit for cannabis manufacturing can become effective because the manufacturing of commercial cannabis is not allowed on properties zoned CH but is allowed in MH. The Q-combining zone narrows the uses allowed on the property, and in order to allow cannabis manufacturing must include that as an allowed use. The ordinance before the Board of Supervisors includes provisions to allow the proposed cannabis manufacturing.

While no appeal of the Planning Commission's conditional approval of the Special Permit was filed, following the December 14, 2017 action by the Planning Commission, the Hoopa Valley Tribal Council (HVT), Klamath-Trinity Joint Unified School District (KTJUSD), and Willow Creek Community Services District (WCCSD) submitted letters expressing opposition and concern about the proposed rezone. Letters of opposition from other community members were also submitted following the December 14th hearing. All letters received to date are included in Attachment 6.

To follow up the HVT, KTJUSD, and WCCSD letters, on March 23, 2018 County staff held separate meetings with the each organization in the Willow Creek area. To summarize the concerns expressed in the letters and during the meetings:

- The HVT's concerns are for potential impacts to surface and ground water quality resulting primarily

from the presence of the cannabis manufacturing facility and the potential for increased heavy industrial activities. These activities have the potential to damage the HVT's drinking water supply, salmon fisheries, and cultural resources and would permit heavy industrial activities to be located in the 100-year flood plain. Also the HVT expressed concerns regarding potential chronic and catastrophic exposure to hazardous materials associated with the cannabis manufacturing facility, especially for students attending the nearby school.

- The KTJUSD's concerns focus on enabling cannabis activities in close proximity to the school, as this normalizes an activity that perpetuates a culture of substance abuse. Although the manufacturing building will be located in the southeast corner of the property, access to and from the site will be approximately 760 feet from school property. The District's strong opposition is related to the messaging that drug use is harmful which is resulting in statistical improvements in drug use among children. Having a legal drug manufacturing facility across the street from the school sends a mixed message.
- Some of the concerns expressed by the WCCSD's echo those of the HVT and the school district regarding water quality, allowing industrial development in the flood zone, the potential for a catastrophic event, and proximity to the school. It was also expressed by WCCSD representatives that this area is seen as an extension of downtown Willow Creek because of the school, health clinic, and the Big Rock recreation area. The District indicated that without further design guidelines that the fencing required by the proposed Q zone for purposes of screening would be prison style as this often the most cost effective. WCCSD staff shared that the Big Rock area is to be managed by the Community Services District before being taken over by Six Rivers National Forest.

In response to comments concerning surface and ground water quality, the applicant retained Luhdorff & Scalmanini Consulting Engineers (LSCE), to prepare a hydrogeologic assessment and a review of the cannabis manufacturing's potential impacts to water quality. The submitted report dated August 14, 2018, is in Attachment 7. The Division of Environmental Health (DEH) regulates domestic wastewater generated by operations, i.e., wastewater from restrooms and hand washing stations. Wastewater associated with cannabis activities is regulated by the Regional Water Quality Control Board (RWQCB); although this project was referred to RWQCB, that agency did not provide comments. Based on a review of the file, the OWTS will receive wastewater from both domestic and cannabis activities; therefore, the applicant will need to receive approval from both agencies prior to issuance of the building permit.

Per the LSCE report, the OWTS will be located outside the 100-year flood plain of the Trinity River and over 300 feet west of the Trinity River, greater than 550 feet from Willow Creek, and is over 7.5 miles upstream of the gaging station at Hoopa. With respect to potential solvents that could be used in the manufacturing process, the report only assesses the risk associated with alcohol, although the Planning Commission's conditional approval does provide for the use of volatiles when using a closed loop system meeting engineering, certification, and reporting requirements. The risk assessment of using alcohol, which would be delivered in 50-gallon drums, per the referenced report (page 7), is as follows:

The highest risk for a spill is not associated with the transit but with loading and unloading. All loading and unloading will occur in the fenced project area on paved surfaces that may also be roofed. For these activities, emergency protocols are already place (Mercer-Fraser Willow Creek Spill Prevention, Control and Countermeasure Plan, 2015).

The report goes on to say that the containment of fluids is part of the standard spill response under the Willow Creek Industrial Activities Stormwater Pollution Prevention Plan (SWPP). Per the SWPP, as the site is relatively level, entirely contained by aggregate berms, and stormwater is already conveyed to the sediment settlement basin, should a spill occur outside of the paved loading dock area and on earthen area, the material would stay on site (page 7). As part of the spill response, the contaminated soil would be promptly excavated.

The report concludes the accidental spill of alcohol having a measurable impact on water quality is unrealistic due to the quantities used, the low likelihood of there being a spill, and the site specific characteristics.

The proposed rezone limits the types of permissible industrial development as discuss above. The concurrent adoption of the Q-zone imposes performance standards that must be met. Additionally, water quality would be protected during flood events by the standing subdivision requirement concerning development in the 500-year flood plain. The subject parcel was created by the Clover Flat subdivision Tract No. 144 Clover Flat Subdivision, recorded in Book 17 of Maps, Pages 38-42 on December 27, 1979; the parcel shape was modified by a later lot line adjustment. The approval of the Clover Flat subdivision includes an ongoing condition requiring “any construction within 50 feet of the 1964 flood plain limits or within 2 feet of the 1964 flood elevations shall conform with Section 332-2 of the HCC [now HCC Section 335-2] relating to construction in flood prone areas”. Conformance with this requirement means development within the 500 year flood plain will need to be designed and constructed to be floodproof and/or to be elevated at least one foot above the 100-year flood elevation. In short, the Clover Flat subdivision requirement extends the County’s flood plain development regulations to development in the 500-year flood plain. Without this subdivision requirement, only development within the 100-year flood plain would be subject to the County’s Flood Damage Prevention regulations. Although there was little discussion of this standing requirement as part of the Planning Commission’s deliberations, development of the property is not relieved from implementing and conforming to this duly-noticed requirement or the 75-foot building setback as measured from the edge of the Highway 96 right of way. As this condition was imposed by the subdivision that created the parcel, it remains in place unless a modification to the subdivision is approved. The record reflects that protection of surface water quality of the Trinity River was a concern. To better provide for vertical consistency between governing land use regulations, staff recommends the proposed Qualified combining zone Performance Standards be amended to mirror the subdivision requirement. Also that the Q-zone section governing uses permitted with a use permit be amended to indicate that this requirement cannot be waived through the use permit process.

As discussed above, the Special Permit to allow cannabis manufacturing in a new 5,000 square foot structure was conditionally approved by the Planning Commission in December 2017. This permit was approved under Ordinance 2559, and since December 2017 Ordinance 2559 has been repealed and replaced by Ordinance 2599, the CCLUO, and commonly referred to as Ordinance 2.0. As drafted, the PC recommended Q-zone would allow additional cannabis activities when in accordance with HCC 314-55.4 because the Q-zone does not impose additional regulations specific to this section of the Zoning Regulations. However, upon closer review the parcel is ineligible for most types of cannabis activity due to the 600 foot setback required from sensitive receptors and the prohibition of cannabis activity within 600 feet of a school. Churches or other places of religious worship; public parks; tribal cultural resources; and school bus stops in use at the time of project application submittal all constitute sensitive receptors pursuant to HCC Section 55.4.6.44(c). The limiting sensitive receptors are the Willow Creek Community Church located on the west side of Highway 96 and the Big Rock recreation area adjacent to the east. The Big Rock recreation area constitutes a public park as it is owned and managed by Six Rivers National Forest and is developed with vault toilets, picnic areas some having structures to provide shade, a paved public parking area, and a paved river access ramp. The school and sensitive receptor buffer requirements apply to cannabis activities involving cultivation, support facilities, and manufacturing. Under the CCLUO as written, the only permissible commercial cannabis activity would be as a destination tour site. An application to initiate such an activity would be subject to the Special Area Provisions because the subject property is in the Willow Creek community planning area. Additional Special Area Provisions include early notification to property owners and occupants within 1,000 feet of the property, and that all cannabis activity is subject to securing a use permit.

The proposed Q-zone is silent on other uses and activities that reside in Section B of the Zoning Regulations, e.g., non-appurtenant signs (aka billboards), in addition to commercial cannabis activities. Because the

proposed Q-zone does not expressly regulate other Section B uses and activities, it functions to only modify the principal and conditional uses of the principal zone and add performance standards, with surface mining being the exception.

Planning staff recommends that the proposed Q-zone Special Restrictions language concerning principal and conditionally permitted uses be amended to clarify that the conditionally approved Special Permit is subject to the enumerated performance standards and to distinguish that this activity was approved under the CMMLUO, Ordinance No. 2559, which has since been repealed and replaced by the CCLUO <<https://humboldt.gov.org/DocumentCenter/View/53372>>. Staff's recommended amendment is included as in Section 4(a) of Attachment 3.

Environmental Impact. An Addendum to the Environmental Impact Report (EIR) for the Humboldt County General Plan, State Clearinghouse No. 2007012089, adopted by the Board of Supervisors on October 23, 2017 was prepared. The 2017 General Plan changed the land use designation to Industrial, Resource Related. The EIR considered this change in land use designation. An Addendum is appropriate where a previously certified EIR adequately addresses the impacts of a project even where the project description for the EIR does not include the subsequent project. A rezone implementing a change to the general plan land use designation is an example of an appropriate use of an addendum where no additional environmental impacts have been identified. In this case there are two factors, first is the EIR prepared for the general plan land use change, and second is the land use and zoning change are for a site which has accommodated an industrial aggregate extraction and processing use for 50 years. The Addendum is included as Attachment 1 of this staff report. Based on the information in the application and a review of relevant references there is no evidence that the proposed project will have a potential adverse effect either individually or cumulatively, on aesthetics, biological resources, hazards and hazardous materials, noise, hydrology/water quality, air quality, land use/planning, and transportation/traffic beyond what currently exists on the site and has existed for over 50 years. The environmental documents on file include detailed discussions of all the relevant environmental issues.

The Resolution of Approval and Findings in Attachment 1 identifies the evidence in support of making all the required findings. Given that the historic use of the property is a resource extraction heavy industrial use, the most appropriate zoning designation is for Heavy Industrial (MH) with the concurrent adoption of a Qualified (Q) combining zone.

FINANCIAL IMPACT:

The change in zoning to MH-Q, if adopted, will not change the subject property's tax classification. Additionally, the applicant has paid for all costs incurred in processing the application. Approval of the zoning reclassification is consistent with the Board's Strategic Framework through its core role of supporting business, workforce development and creation of private sector jobs (in this case by creating opportunities for existing and new commercial and industrial uses where sited appropriately) and enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

The project was referred to various State and local agencies for comments and recommendations. The Planning Commission has recommended approval. The adopted resolution from the Planning Commission is included in Attachment 5 to this report.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may choose not to accept the Planning Commission recommendation of approval and may amend the proposed Q-zone in order to address the concerns raised by agencies and the community.

The Board could consider Q-zone amendments to modify the performance standards for the protection water quality, and ensure odor associated with resource-related processing activities is not detectable at the property lines. The performance standard regarding screening could be refined to avoid a prison appearance. Other Q-zone amendments the Board could consider is to restrict new entitlements for additional commercial cannabis activities and/or non-appurtenant signs.

With respect to commercial cannabis activities, the Board could amend the proposed Qualified (Q) zone to do any of the following:

- Limit the use of solvents for the conditionally approved CMMLUO cannabis manufacturing to only use non-volatiles including alcohol.
- Prohibit commercial cannabis activities beyond the conditionally approved Special Permit that is not yet effective. As discussed above, as the CCLUO is written at this time the subject parcel is not eligible to host commercial cannabis activities involving cultivation, support facilities, or manufacturing. Such an amendment would future-proof the parcel's eligibility for commercial cannabis.
- Prohibit all commercial cannabis activities including the Special Permit for manufacturing conditionally approved December 14, 2017 but not yet effective due to the CH zoning.

On November 27, 2018, a representative of the applicant contacted Planning staff requesting that Section 4 of the Qualified (Q) be amended to allow existing surface mining and appurtenant aggregate processing as principally permitted uses, where the Planning Commission's recommended Q-zone expressly allows these activities subject to a use permit (Attachment 7). The requested amendment would modify the regulation of land use as considered by the Planning Commission. Government Code Sections 65853 and 65857 specify the zoning amendment procedure,

The legislative body may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation (Gov't code section 65857; emphasis added.)

While reducing the regulatory burden to permit surfacing mining and aggregate processing operations in the future was in part the impetus for the zoning map amendment, at this time the request does not meet the statutory legal requirements because it has not been considered by the Planning Commission. Should the Board elect to modify the Planning Commission's recommended Q-zone, staff recommends the matter be continued date uncertain in order to adequately address the legal obligations.

As documented in the Planning Commission Resolution (Attachment 5), the Planning Commission believes that satisfactory evidence has been provided in the project record to support making the required findings. Planning staff does recommend the clarifying language concerning the approved CMMLUO permit as drafted be adopted.

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. Draft Board Resolution and Findings
2. CEQA Addendum
3. Ordinance No. _____, and Certification of Rezoning Exhibit A (legal description), Exhibit B (map)

4. Summary of Ordinance, Map to be published (Exhibit A)
5. Planning Commission Resolution and Staff Report
6. Public Comments Received by the Humboldt County Planning and Building Department After December 14, 2017
7. Information Submitted by the Applicant After December 14, 2017
8. Full text of consistent zoning districts and 2017 FEMA 100- and 500-year flood zone mapping

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A.

Meeting of: N/A.