



COUNTY OF HUMBOLDT

Legislation Text

File #: 20-588, Version: 1

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Redwood Properties' Appeal of the Planning Commission Approval of The Emerald Triangle Group, LLC Co's Special Permits to Allow Cannabis Distribution and Non-Volatile Manufacturing in the C-2 (D) Zoning District

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the applicant, appellant, and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 20-___). (Attachment 1) which does the following:
 - a. Find the project exempt from the California Environmental Quality Act (CEQA) Section 15301 (Existing Facilities) and 15303 (Small New or Conversion of Existing Structures);
 - b. Make the findings to reject the appeal and approve the Special Permits as conditioned;
 - c. Deny the Appeal submitted by Redwood Properties; and
 - d. Approve the Special Permit for Cannabis Distribution and the Special Permit for Cannabis Manufacturing.

SOURCE OF FUNDING:

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

DISCUSSION:

Executive Summary

This is an appeal of the Humboldt County Planning Commission's December 5, 2019 approval of the Emerald Triangle Group, LLC Co's Special Permit applications to allow for cannabis distribution and non-volatile manufacturing at 829 Redwood Drive in Garberville. These applications would normally have been acted on by the Zoning Administrator, but due to public concern were referred to the Planning Commission. The Appeal is focused primarily on the contention that the use of CEQA exemptions for the environmental determination are not appropriate, concern with the compatibility

with the area, and the allegation that the application and related project approvals do not, but should, comply with the Commercial Cannabis Land Use Ordinance (CCLUO). The Planning Commission found that the technical requirements necessary to approve the project have been met, and staff supports that action and recommends that the Board deny the appeal and approve the Special Permits.

Planning Commission Action

The Planning Commission approved the applications on December 5, 2019, with a 4-2 vote (Ayes: Mitchell, Levy, Newman, McCavour; Nays: Morris, Bongio.) A transcript of the Planning Commission hearing is attached as Attachment 5. The majority of the Planning Commissioners found the project met zoning requirements, was consistent with the land use designation and that all of the findings for approval could be made. The reason for the dissenting votes was due to the location of the project in a predominantly retail commercial location and concerns that the manufacturing use would result in unacceptable changes to the character of the downtown commercial area. The technical analysis provided to the Planning Commission is contained in the Planning Commission Staff Report (Attachment 6).

Project Description

The project proposes a cannabis distribution and non-volatile manufacturing business. Manufacturing involves the use of mechanical processes and ethanol to extract products. The site is currently developed with a three-story commercial building, a two-story concrete building, and a two-story storage facility at the rear of the parcel off the alley. The first floor of the three-story building fronting on Redwood Drive will be divided in half. The southern half would be devoted to the distribution activity, and the northern half devoted to extraction through the use of presses and other mechanical means. The area of the whole space is 2,280 square feet. Minor alterations to the façade and the interior are proposed. The use of the 2nd floor office space and 3rd floor residence will not change as a result of this project.

The project also proposes to demolish the existing concrete building and construct in its place a 180-square foot metal building to house a closed loop ethanol extraction unit, subject to an H-1 occupancy. The new building will be the same size as the building being removed. The storage building will be retrofitted with a walk-in refrigeration unit to store cannabis products for the distribution operation. Two vans will be used in the distribution operation to deliver product. A Special Permit is requested for an exception to the loading zone size requirement.

In response to the appeal the applicant has clarified the operation needs five (5) employees per shift (two shifts per day). Up to two sprinter vans would be used to make 1-2 deliveries per day. The business hours would be Monday through Friday from 6:00 A.M. to 10:00 P.M. and Saturday and Sunday from 9:00 A.M. to 5:00 P.M. Drivers and a manager may need to pickup and drop-off after hours on an occasional basis. The business would not be open to the public. The subject parcel is served by public water and sewer service from the Garberville Sanitary District (GSD). Electrical power to the building is supplied by Pacific Gas & Electric Company (PGE).

Subsequent to the Appeal, the applicant sought to address concerns by including art and branded merchandise (not for sale) in the front windows facing the street. Partitions behind the displays would

block views of the operation by the general public. In addition, the project proposes a 50-square-foot vestibule at the front entry of the building as a tourist viewing area. Once inside the viewing area, tourists would be able to see the worktables and observe the mechanical manufacturing processes in action. The viewing area is behind a locked entry door and will be accessible for groups of no more than ten people during limited hours. The applicant has also clarified that they do not intend to operate 24 hours per day even during peak periods.

Background

On December 28, 2016, applications were submitted for Special Permits for non-volatile manufacturing (PLN-12747-SP) and distribution (PLN-12733-SP). Distribution and Manufacturing are uses allowed subject to a Special Permit pursuant to the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) sections 314-55.4.8.5 and 55.4.8.6. (A copy of the CMMLUO is attached as Attachment 7.) CMMLUO Performance Standards related to setbacks from property lines and sensitive receptors such as churches apply specifically to cultivation and processing but do not apply to manufacturing and distribution (see CMMLUO section 55.4.11 (d)). No cultivation or processing will take place as part of this project.

On May 8, 2018, the Board adopted the Commercial Cannabis Land Use Ordinance (CCLUO) (codified at Humboldt County Code Title III, Chapter 4, section 314-55.4 et. seq.). CCLUO section 314-55.4.3.1 states:

Applications for Commercial Cannabis Activity land use permits filed on or before December 31, 2016 shall be governed by the regulations in effect at the time of their submittal, except as follows and is otherwise prescribed herein. Zoning Clearance Certificate applications for Open Air Cultivation filed on or before December 31, 2016 shall be controlled by the provisions of section 55.4.6.7 of this Section.

At the time the CCLUO was being considered for adoption, it was the determination of the Planning Commission, which was affirmed by the Board of Supervisors, that it would not be fair to change the rules that applied to the 2375 applications submitted under the CMMLUO mid-stream when a majority of projects were still under review by the Planning Department. A huge issue that needed to be addressed in the CCLUO was the growing conflicts associated with cannabis cultivation in areas that were more residential in character. This issue was largely related to odor. The CCLUO implemented provisions for these special areas which included the requirement that even cultivation sites authorized with a ministerial permit under the CMMLUO would be required to address the odor issue through one of four options provided by the CCLUO. CCLUO section 55.4.6.7 contains the provisions for neighborhood compatibility that retroactively apply to Zoning Clearance Certificates for open air cultivation submitted under the CMMLUO. These are the only provisions in the CCLUO that apply to applications submitted prior to December 31, 2016, and do not affect this application because it is an application for a manufacturing and distribution facility, and not for cultivation. This application is evaluated solely under the regulations established by the CMMLUO.

Setting

The project is located on the East side of Redwood Drive, approximately 80 feet North from the

intersection of Sprowel Creek Road and Redwood Drive, on the property known as 829 Redwood Drive. The 3-story building fronts onto Redwood Drive. A public sidewalk and thirteen parking spaces are located on the street fronting the building. Directly to the north are businesses including the Humboldt Brand clothing store, a vacant store front formerly a spa, and The Hemp Connection retail store. On the south side of the site are businesses including the appellant Redwood Properties, Karen Miclette Insurance, Getti-up Coffee stand, and a grocery store. West of the project is the Chevron gas station and the Shell gas station (across the street). To the east of the project location is a residential neighborhood. A Community Presbyterian Church is located approximately 180 feet from the proposed project. The church was damaged in a fire in 2017 and is not currently operational. This was also the location of a pre-school, also no longer active. The New Hope Assembly of God Church is located 450 feet from the project site.

The area along Redwood Drive is zoned C-2. The CMMLUO allows both distribution and manufacturing uses in the C-2 zone. There are a number of other distribution and manufacturing uses which have been approved in the C-2 zone including:

Table 1

Address	Location	Uses
77 Hwy 254 ¹	Phillipsville	Distribution Manufacturing
615 Bear Creek Road	Garberville	Distribution Processing
3354 Redwood Drive	Redway	Distribution
3525 Redwood Drive	Redway	Distribution Manufacturing (Mechanical) Dispensary
705 Hwy 101 ²	Garberville (Richardson Grove)	Distribution Manufacturing and Processing Dispensary Cultivation Nursery
1580 Nursery Way	Mckinleyville	Distribution Manufacturing (Infusion) Dispensary
1551 Nursery Way	Mckinleyville	Distribution Dispensary
1711 Mckinleyville Ave.	Mckinleyville	Manufacturing (Non-volatile) Dispensary
39136 Hwy 299	Willow Creek	Manufacturing (Water extract)
39057 Hwy 299	Willow Creek	Distribution Manufacturing (Non-volatile)

1. Site was rezoned to allow manufacturing and distribution. Previous zoning was CH (Highway Commercial)
2. Site was rezoned to allow manufacturing and distribution. Previous zoning was U (Unclassified)

As shown above, both manufacturing and distribution facilities have been approved in the C-2 zoning district. This is a discretionary permit and as such the decision maker must determine that the approval of this use will not have an adverse impact upon the public health, safety, and welfare. Much of the public concern seems to be related to the use of ethanol in the manufacturing process in an older

building. In actuality, the ethanol extraction will be conducted in a new building constructed just for that purpose, which will include built-in fire suppression as required by the building and fire codes.

Basis of Appeal

The appellant is Redwood Properties, a business located at 831 Redwood Drive directly next door to the project site. Redwood Properties (“Appellant”) challenges the CEQA findings for the project and requests the project be denied. The basis of the appeal is set forth in the appeal letter submitted by Allison Jackson on behalf of Redwood Properties, received by the Planning and Building Department on December 18, 2019 (see Attachment 3). This is a *de novo* hearing and the Board of Supervisors is not limited to the evidence in the existing record. The following discussion addresses the discrete points raised in the appeal.

Appeal Issue 1: *The CEQA exemption (Section 15301 Existing Facilities) does not apply because the project represents an expansion of the existing commercial use from light retail to industrial.*

Appellant’s Assertions: The appellant asserts the California Environmental Quality Act (CEQA) Guidelines Class 1 exemption (Existing Facilities) cannot be used for the project. The appellant argues that the proposed manufacturing and distribution operation constitutes a different scale of commercial use than the retail/office and other commercial uses previously occupying this location, and that the proposed use is therefore an expansion that could have direct effects on the environment requiring preparation of an EIR or Negative Declaration.

Response: Manufacturing and distribution are use types that often evoke images of large scale industry and warehouses with a large volume of truck traffic. With respect to cannabis, however, the permit and license types for manufacturing and distribution do not exhibit these characteristics within Humboldt County. As shown above in Table 1, there have been a number of manufacturing and distribution uses approved in C-2 zoning districts without having adverse impacts on the surrounding area.

If a use can operate within an existing facility without degrading the outward appearance of the building, generating significantly more traffic, or resulting in other impacts to the surrounding area, it can be found to be consistent with the prior use types that occupied the space or that could occupy the space as principally permitted uses. The exemption for existing facilities is appropriate because this proposed use will not change the nature of the area beyond what could be expected with other permitted uses, and may actually result in a decrease in traffic.

The alterations to the existing 3-story building involve interior partitions, plumbing and electrical upgrades. These are all changes commonly referred to as Tenant Improvements that routinely occur when a new business moves into an existing commercial space. Specific equipment utilized in the manufacturing operation includes an evaporator unit, vacuum ovens, chillers, food-grade water hash extraction, rosin presses, ice machine, and freeze dryer. The distribution business will utilize pre-roll machines, weighing machines, and packing materials to package cannabis flower and products for sale in accordance with California Bureau of Cannabis Control regulations. An office space will be used for management and record-keeping. Sprinter vans will be used to unload raw product and to load

manufactured products. There will be up to two deliveries per day to the loading zone in the rear of the lot accessed by the deeded easement through the alley.

The site was previously used for a variety of commercial uses. Business records show the most recent businesses were The Healthy Choice, an ice cream and frozen dessert business, and Miranda's Rescue Thrift Store. Other past commercial uses of the site include a window treatment store, a tattoo parlor, three other clothing stores, and a furniture store. The retail clothing businesses would have involved customer traffic, including business parking and delivery drop-offs in the alley. The ice cream shop utilized freezers, blenders and other food-grade commercial equipment not dissimilar to some of the equipment that the applicant would install.

The following table lists the historical uses of the building according to the available business licenses (estimated start and end dates inferred from business license records):

Business	Type	Date
Beauty Shop	Salon	1950
Back in a Flash	Clothing	1996 - 2011
Creekside Interiors	Furniture	2000-2002
The Love Shack	Clothing	2007 - 2010
Piercing and Tattoo	Body Art	2008
The Healthy Choice	Ice cream and Frozen dessert	2012 - 2020
Garberville Boutique	Clothing	2014-2015
The Blind Lady	Window treatment store	2015- 2017
Miranda's Rescue Thrift Store	Clothing	2018- 2020

General commercial activities would create similar amounts of noise and light associated with the use that occurred with previous uses. The proposed project will result in minor modifications to the exterior and interior of the existing buildings, but nothing that will change the character of the site or the neighborhood.

The change of use from one commercial use to another use with similar characteristics resulting in minor modifications to the existing buildings (which are not historic) is consistent with the categorical exemption for existing structures pursuant to Section 15301 of the CEQA Guidelines. This categorical exemption is specifically intended for changes of use where no ground disturbance, or physical changes to the environment will occur. The change of use from one business to another does not trigger the need for environmental review under CEQA. The cannabis distribution and manufacturing business

is a commercial operation that does not substantially differ from previous existing commercial uses and is therefore not an expansion of use. The appeal does not provide fact-based evidence of substantial environmental impacts that appellant alleges may be associated with the project.

For the reconstruction of the new building, CEQA Guidelines section 15303 allows construction of new small buildings. A 180-square-foot building replacing an existing building of the same size meets this criterion.

Appeal Issue 2: *A fair argument based on substantial evidence exists that the project will result in significant adverse environmental impacts. The conditions of approval incorrectly apply mitigation measures to address project impacts.*

Appellant's Assertions: The appellant also claims that the CEQA exemption is inappropriate because there is a fair argument based on substantial evidence that the project will have an adverse effect on the environment and the categorical exemption is inappropriate.

Response: Because the project is exempt from CEQA, the “fair argument” legal standard does not apply. The County’s record contains substantial evidence demonstrating the project will not cause any adverse environmental impacts, and the appellant presents no substantial evidence to show otherwise. Concerns noted about noise, light, traffic, proximity to church and school, and fire hazard are not supported by any substantial evidence as to why the change of use from one commercial business to another would have a significant adverse impact on the environment or why it is actually an expansion in the use or associated impacts. Each alleged potential impact is discussed below.

1. Odor

The first argument the appellant makes to support this position is that the requirement of odor control is a mitigation measure and the presence of a mitigation measure presupposes an environmental impact. Mitigation is required when there is a potentially significant environmental effect resulting from a proposed project and there is not an existing standard that is uniformly applied to projects of the type that is proposed to address the potential impact. In the case of cannabis odor, requiring odor control filtration systems has been a standard requirement for cannabis manufacturing, distribution and dispensaries within community areas. Humboldt County has approved 40 permits with manufacturing and distribution, 39 of those have requirements for odor control. The one that does not was for distribution only. This is not a mitigation measure, but, instead, a standard requirement.

2. Public Concern

The appellant also argues that public opposition to the project demonstrates that the project will negatively impact the environment. It is important to note that the existence of public opposition is not a basis for determining an environmental impact. The appellant argues the following are impacts based on concerns of the public:

A. Ethanol Extraction:

The Fire Department expressed concern and recommended denial of the project. The Fire Department’s concern was related to ethanol extraction in the wood frame building, which is

not proposed. The ethanol extraction would be conducted in the new metal building which will be constructed to house this type of activity in conformance with the Fire and Building Codes. In addition, the storage of ethanol requires reporting under chapter 6.95 of the California Public Health and Safety Code and will require preparation of a business plan for emergency response administered by Environmental Health. Based upon the facts that the ethanol use will not be in the existing wood building and would occur only in a metal building that will replace an existing building, constructed in compliance with building and fire codes, and the use of the ethanol will be monitored by existing laws, staff finds no substantial evidence that the use of the ethanol will have an adverse impact on the environment or pose a hazard under these circumstances.

B. Parking

The appellant argues there is not sufficient parking for the proposed use. However, it must be taken into account that this is an existing commercial space that has previously supported commercial uses with the same parking limitations. The change of use from retail to cannabis distribution and manufacturing will result in a reduction in the parking demand associated with the building. The existing commercial space consists of two separate locations known as 825 and 827 Redwood Drive. The operations plan for the proposed manufacturing and distribution activities envisions employing two people in each tenant space. By comparison, the standard total parking required under the County parking code for the 2,280 square feet of retail space would be twelve (12) spaces. If the use were to revert to past uses such as the restaurant and ice cream and frozen desserts the parking requirement would be closer to 30 spaces.

The parking requirement for the cannabis business does not involve customers at the site so a retail parking requirement is not appropriate. The zoning ordinance allows a variable demand parking requirement based on the peak parking space demand. This would consist of the maximum number of employees on site at any one time and the number of delivery vehicles. The maximum number of employees for the project is five (5) and two sprinter vans used for delivery would result in a parking requirement of 7 spaces. The seven parking spaces required for this use are less than the 12 parking spaces required for a typical retail use. While parking is a concern in Garberville, the Zoning Ordinance (Humboldt County Code section 314-109.1.2.5) states that no additional parking is required for sites not in compliance with the ordinance parking requirements when the amount of parking required is equal to or less than the parking requirements of the prior use. With these facts, there is no additional environmental impact related to parking beyond what would exist for any other permitted use of the property.

C. Traffic

The project would primarily be accessed from Redwood Drive and Maple Lane via a private alley. Construction of the project would result in a temporary increase in construction traffic that would be minimal and for short duration. Construction activities would be contained on-site and would not result in substantial adverse effects or conflicts with the local roadway system.

Vehicle trips generated during operation of the project would include daily round trips for each of the 10 staff (2 shifts of 5), plus round trips by the distribution vehicles (each vehicle making two trips per day). This amounts to approximately 28 vehicle trips per day. This is amount of traffic is less than would be generated by a retail use at the site.

The tourist viewing area does not create additional traffic but would add to the interest of the streetscape of Garberville. This would be a possible point of interest for people already on the street and would allow the façade of the building to appear more like a retail establishment but is not expected to in and of itself generate traffic.

In addition, the existing use of the 2-story storage facility in the back of the lot is a 20-unit mini storage. Intermittent trips down the alley are required to access the storage units. The proposed project will discontinue use of the storage units resulting in a further reduction in the amount of traffic attributable to the site.

D. Noise

This is a commercial zone and delivery and pick up is a normal part of businesses within these zones. The uses will all be conducted indoors, and so it is not expected that the noise level will exceed that of any other normal commercial business allowed in this zone. During operation, the project would not involve the use of heavy machinery, large trucks, or any other high noise producing activity and thus will not generate noise greater than that of the vehicle traffic on the streets in the project vicinity. Potential noise sources associated with the project would include temporary noise during demolition of the concrete building and construction of the new metal building.

The proposed project will not result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.

E. 24/7 Use

The applicant has stated that they will not operate on a 24-hour-a-day basis. This is thus not an impact.

3. Other Possible Environmental Considerations

Although a project that is determined to be exempt need not be analyzed against Appendix G of the CEQA Guidelines, in order to be thorough, the following discussion addresses topics that are potentially relevant to the issues raised by Appellant. The issues are discussed here to document for the administrative record that all potential impacts under the relevant CEQA Guidelines have been considered. As the following discussion indicates, substantial evidence demonstrates that the proposed project will not result in potential significant impacts.

A. Historic Resources

The Northwest Information Center and County Assessor's Office identified the property as possibly having structures built over 45 years ago that may be of historical value. An investigation was conducted by Archaeological Research and Supply Company in February 2019 finding for the purposes of CEQA none of the buildings on the site would be considered a historic landmark. The Historical Analysis found that the origin of the buildings is unknown and the buildings are not associated with events that have made a significant contribution to broad patterns of California's history and cultural landscape, are not associated with people important to our past, do not embody distinctive characteristics of a type, period, region, or method of construction or yield information important to prehistory or history, therefore there is no impact to historic resources.

B. Light and Glare

Any new lighting associated with the development of the proposed project would be subject to the CMMLUO standard requiring the project components comply with dark sky standards and that no lighting shine onto adjoining parcels

C. Air Quality and Greenhouse Gas

There are no significant impacts associated with Air Quality or Greenhouse Gas Emissions because normally such impacts are due to traffic generated by the project. Here, this project would generate fewer trips than other uses which have occupied this tenant space. Additionally, there are no point sources which could emit air pollutants of concern. The Closed Loop Ethanol Extraction system captures and reuses the ethanol as part of the process so there are no emissions.

D. Cultural

The project area is within the ethnographic territory of the Bear River Tribes. As part of the commercial cannabis application review process, the Bear River Band of the Rohnerville Rancheria was sent a referral requesting comments on the proposed project. A referral was also sent to representatives of the Intertribal Sinkyone Wilderness Council. A referral requesting comments on the proposed project was sent to the Northwest Information Center (NWIC). No concerns were identified.

E. Hazardous Materials

Hazardous materials associated with the proposed operation include ethanol for use in extraction. The potential health hazards for ethanol are irritation in case of contact with skin and eyes, or inhalation. Ethanol is a flammable liquid. Improper handling, storage, or transport could pose a risk to the environment and to human health. However, non-volatile extraction would be performed in a commercially manufactured closed-loop system approved for use by the local fire code official in accordance with Section 40225 of California Code of Regulations Title 17, Division 1, Chapter 13, and approved for use in accordance with Chapter 38 of the California Fire Code. Use of extraction solvents would be required to comply with all applicable local, state, and federal standards associated with the handling and storage of hazardous material. The applicant would be required to file a Hazardous Materials Business Plan with the County Division of Environmental Health for

the storage of ethanol.

With implementation of appropriate, required storage, handling, and application practices required as a matter of law and as standard health and safety conditions, it is not anticipated that the use of these materials would pose a significant hazard. In the event of foreseeable upset and accident conditions, it is unlikely that these hazardous materials would be released in a manner that would create a significant hazard to the public or the environment.

F. Water Quality

The project proposes minor interior alterations and the reconstruction of a small existing building. Erosion control practices will be included in the requirements of the Building Permit for the demolition and reconstruction of the Building. The proposed project would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality.

G. Public Services -- Security

Cannabis-related operations are commonly associated with greater security-related demands, which may result in an increase in law enforcement services provided by the County Sheriff's Department. The proposed project would include gated access allowing entry only with identification badges, 24-hour video surveillance, a security alarm system with automatic law enforcement notification, and an inventory tracking system. While this project would not, on its own or cumulatively, trigger enough demand for law enforcement services to result in the need for new or physically altered law enforcement facilities, the inclusion of the proposed security design features further bolsters that determination.

H. Utilities

The commercial building is connected to water and sewer serviced by the Garberville Sanitary District (GSD). The applicant entered into a Conditional Will-Serve Agreement with the GSD Board. The requirements of the GSD include: sewer line shall be installed independent of other business or buildings, an approved GSD valve will be added to the waste discharge tank prior to entering the collection system; one additional water meter and one sewer connection, including applicable fees, will be completed prior to initiation of operations.

Pacific Gas and Electric provides electrical power for the site. Energy use would be off-set in part by solar panel installation on available roof top space for each building and purchase of carbon offsets from a carbon offset company.

The proposed project would comply with all federal, state, and local statutes related to solid waste, including AB 939. This would include compliance with the Humboldt Waste Management Authority's recycling, hazardous waste, and composting programs in the county to comply with AB 939.

4. Exceptions in CEQA Guidelines Section 15300.2:

There are potential exceptions to the use of categorical exemptions under CEQA. In this case the County has considered but concluded based on substantial evidence that none of the exceptions to the use of categorical exemptions contained in CEQA Guidelines Section 15300.2 apply to this project. The exceptions and reasons they do not apply are as follows:

- (a) *The project is not located in a particularly sensitive environment, and thus does not pose a risk of significant effects for this reason.* There are no mapped or identified resources in the vicinity of this site.
- (b) *There is not a risk of cumulative impacts from this project; there are not significant impacts from successive projects of the same type in the same place over time.* The proposed project would not have any additional impacts beyond what a typical use permitted in the C-2 zoning district would have; therefore, there is not potential for a cumulative impact. There is not an undue concentration of manufacturing and distribution uses in Garberville. As shown in Table 1 there is one approved distribution and processing business approved in Garberville. Table 1 shows a manufacturing and distribution facility with a Garberville address, but this is located 10 miles to the south near Richardson Grove.
- (c) *There is no reasonable probability that the project will have a significant effect on the environment due to unusual circumstances.* This project has no features that distinguish it from the typical structures and operations that occur within the Class 1 and Class 3 exemptions. As explained elsewhere herein, the project would contain similar types of equipment and would have less traffic than other types of retail uses which have inhabited the project site previously. The proposed project would not have any additional impacts beyond a typical use permitted in the C-2 zoning district. In addition, substantial evidence in the County's record demonstrates that the project will not have any significant environmental impacts. As noted in Table 1 there are other manufacturing and distribution uses approved and operating in similar circumstances (business district with surrounding residential areas) in Redway, McKinleyville and Willow Creek without causing adverse impacts on the environment. This is the reoccupation of an existing commercial tenant space and the reconstruction of a 180 square foot building within developed lot. The use of ethanol as part of the business will require the new building to be constructed to meet Building and Fire Code standards associated with the use of this material. There will be no emissions. Therefore, there are no unusual circumstances associated with this project or this location and this potential exception does not apply.
- (d) *The project will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources.*
- (e) *The project is not located on a hazardous waste site included on any list compiled pursuant to Section 35962.5 of the Government Code.*
- (f) *The project will not cause a substantial adverse change in the significance of a historical resource.* The buildings on the project do not qualify as a historical resource. See discussion under 3.A above.

The appellant has attempted to invalidate the use of the CEQA exemption arguing the proposed use is

an expansion of use and alleging that the use will have a significant adverse impact but there is not substantial evidence to demonstrate that this use would have an impact beyond other uses which can be permitted within the C-2 district.

Appeal Issue 3: *The Project does not comply with the provisions of the Commercial Cannabis Land Use Ordinance (CCLUO).*

The appellant asserts that the requirements of the CCLUO apply to the subject site. As noted above the CCLUO was adopted with the provision that applications received prior to January 1, 2017 shall be processed under the previously adopted CMMLUO. The language from Section 55.4.3 is as follows:

Applications for commercial cannabis activity land use permits filed on or before December 31, 2016, shall be governed by the regulations in effect at the time of their submittal, except as follows and is otherwise prescribed herein. Zoning clearance certificate applications for open air cultivation filed on or before December 31, 2016, shall be controlled by the provisions of Section 314-55.4.6.7.

It is clear that applications received prior to the deadline date for the CMMLUO would be considered under the CMMLUO. In the report to the Board of Supervisors containing the Planning Commission recommendation for the CCLUO (3/19/2018, page 2) it was explained that: *“The majority of the Commission voted to not apply the new ordinance requirements to existing applicants (Section 314-55.4.3.1, page 112 of this staff report). The Commission received testimony from applicants and others that conforming to the new ordinance requirements may trigger different performance standards, application requirements and may even trigger different permit requirements which would make navigating the permit process more difficult in some cases.”* The Board of Supervisors did not change the language of the ordinance. The provision carves out an exception by stating *“except as follows and is otherwise prescribed herein.”* The section referred to section 55.4.6.7 which requires that Zoning Clearance Certificates issued for open air cultivation in defined sensitive areas under the CMMLUO are subject to further consideration in order to address odor issues. Section 55.4.6.7 also states that it only applies to applications received before January 1, 2017. This is the only such reference in the CCLUO where application that have been previously submitted were subject to the requirements of the CCLUO. In Section 55.4.6.7 there are specific requirements for these permits. The permits currently under consideration are for manufacturing and distribution activities, not cultivation, and were received by the Planning Department prior to January 1, 2017. Therefore, the applicant and Board of Supervisors are not bound by the requirements of the CCLUO.

The intent of the Board of Supervisors at the time of adoption of the CCLUO was to not change the rules on people who had submitted applications for cannabis activities in reliance on the rules in effect. The appellant correctly points out that under the CCLUO manufacturing uses must comply with setbacks from sensitive receptors (schools, churches, parks or Tribal Cultural Resources). In this case there is an operating church within 450 feet of the proposed use and a church and day facility which are currently not in use approximately 150 feet from the proposed facility. This use would not be allowed at this location if the application were filed after January 1, 2017, but since the application was filed prior to January 1, 2017, the setback requirements do not apply.

Timing of Appeal Hearing

The appeal has been processed substantially in conformance with the appeal procedures of HCC Section 312-13.1. While the appeal was not heard within the timeframe established by Humboldt County Code section 312-13.5 which requires that an appeal be heard within 30 working days of the appeal being filed, the appeal was scheduled to be heard on March 17, 2020, within 57 working days of the appeal being filed, which did not result in prejudice to the Applicant or the Appellant. The County complied with Humboldt County Code section 312-13.5 in scheduling the appeal hearing as soon as reasonably practicable.

The delay in hearing was due to efforts made to coordinate with the Applicant and Appellant to resolve the issues on appeal. The Applicant was willing to work with the Department and Appellant to revolve such issues. Shortly after the appeal was filed the Applicant contacted the department and asked if removing the proposed ethanol extraction would address the Appellant's concerns and asked the Department to reach out to the Appellant. Department contacted the Appellant at the phone number listed in the appeal and left message seeking to discuss the issues raised in the appeal and whether changes such as removing ethanol extraction could be made to address the concerns. No response was ever received. The Department was also contacted by the Applicant expressing their desire to make other revisions to address issues raised in the appeal. The most recent submittals and revisions were made on March 4, 2020.

The appeal was then continued from the March 17, 2020 to May 19, 2020, due to the COVID-19 (coronavirus) pandemic and the resulting state of emergency and public health orders issued statewide and locally in Humboldt County. The continuance was necessary to ensure the health and safety of the public, the applicant, the appellant, and County staff.

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.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors has a range of alternatives to the staff recommendation to deny the appeal and uphold the approval of the project, as summarized below:

1. Grant the appeal and deny the project. In the event that the Board of Supervisors finds evidence in the appeal, public testimony or from another source compelling to deny the application, the Board should state the basis for that conclusion and continue the item to May 26, 2020, so that a resolution can be prepared expressing those findings, approving the appeal and denying the application.
2. Determine the use of categorical exemptions from CEQA are not appropriate and direct

that an Initial Study be prepared. This option should only be used if the Board of Supervisors finds that there is no substantial evidence demonstrating that the criteria of the cited categorical exemptions are met by this project, or that the County's conclusions that none of the potential exceptions to categorical exemptions apply are not supported by substantial evidence. This alternative would require additional study or information related to potential environmental impacts which have not been answered. This alternative would require a continuance to a date uncertain.

3. Approve the project in a modified form. The Board of Supervisors may find that there are components of the project which are acceptable, but others that are not. In that case, a condition should be written to modify the project description to omit the offensive components of the project.

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 Resolutions and Findings
2. Site and Building Plans
3. Appeal filed by Allison Jackson on behalf of Redwood Properties
4. Resolution of the Planning Commission, Resolution No. 19-73
5. Transcript of Planning Commission hearing
6. Planning Commission Staff Report
7. Commercial Medical Marijuana Land Use Ordinance (CMMLUO)

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A