

Title:	Element 7 Cannabis Retail Facility
Project:	Conditional Use Permit (CUP-22-0005), and Coastal Development Permit (CDP-22-0006)
Location:	1628 Broadway (AKA 1626 Broadway)
APN:	003-171-014
Applicant:	Robert DiVito
Property Owner:	Four R Resources LLC
Purpose/Use:	Cannabis Retail Use
General Plan:	GSC- Highway Service Commercial
Zoning:	CS- Service Commercial
CEQA:	Exempt under Sec.15301, Class I Existing Facilities
Application Date	July 18, 2022
Appealable to CCC:	Yes
Staff Contact:	Lisa Savage, Senior Planner
Recommendation:	Hold a Public Hearing; and Adopt a Resolution finding the project is exempt from CEQA and approving with conditions.
Motion:	<i>“I move the Planning Commission adopt a Resolution finding the project is exempt from CEQA and conditionally approving a Conditional Use Permit and Coastal Development Permit for the Element 7 Cannabis Retail Facility at 1628 Broadway.”</i>

Figure 1: General Project Location– 1628 Broadway

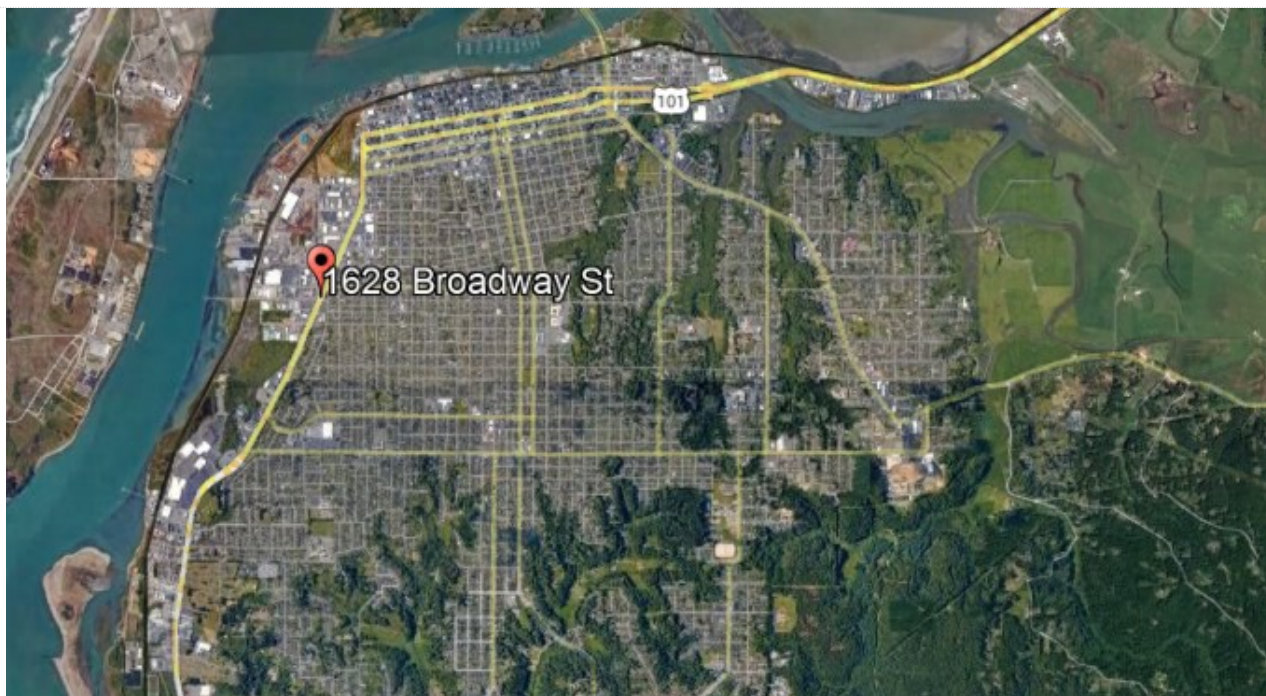
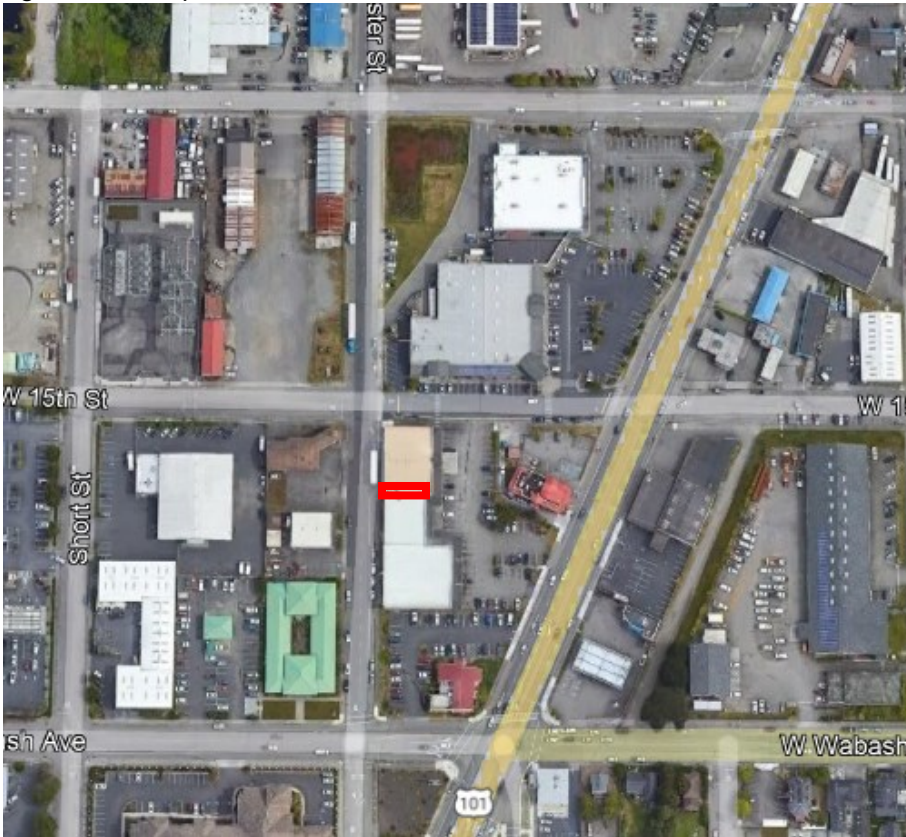


Figure 2: Site Map



PROJECT SUMMARY

Element 7 is applying for a Conditional Use Permit (CUP) (CUP-22-0005), and Coastal Development Permit (CDP) (CDP-22-0006), for a Cannabis retail facility in an existing approximately 1,500-square-foot (-sf) retail space (formerly Subway) in a strip mall located at 1628 Broadway Street. In addition to the retail facility, the applicant is applying for a license for General Cannabis Use (Distribution), which is a Principally Permitted Use in the

CS-Service Commercial zone district, and will not be addressed in this Staff Report. Only the interior of the structure will be modified; the exterior will not be modified other than signage. There is no ground disturbing activity associated with the project. If approved, the retail use will apply only to the 1,500-sf space (former Subway location) (Figures 2 and 3).

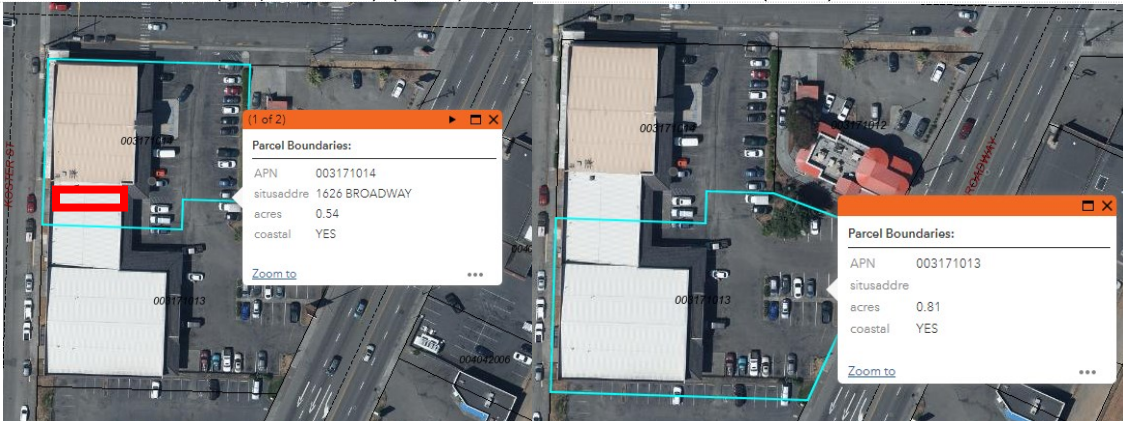
Background

The Project is located at 1628 Broadway, on the southwest corner of Broadway (Hwy 101) and W. 15th Street, on an approximately .54-acre parcel. The entire strip mall is approximately 20,500 sf (measured using GIS), with a total of five storefronts. The mall is split roughly down the middle into two separate legal parcels; APN 003-171-014 (north) is the parcel containing the proposed retail facility and BevMo, and APN 003-171-013 (south (.81 acres)) is the parcel with a nail salon, UPS store and O'Reilly Auto Parts (Figure 4, below). The project is located in the Coastal Zone, in the City's coastal development permitting jurisdiction. The surrounding area is a mix of hotels, restaurants (including drive-through), and other commercial uses. A half block to the west, the zoning changes to General Industrial. The subject property and surrounding properties on 4th Street are zoned Service Commercial (CS). Cannabis retail is allowed with a CUP in the CS zone district. Pursuant to Eureka Municipal Code (EMC) Sec.10-5.2401(c), projects located in the Coastal Zone and requiring a CUP also require a CDP.

Figure 3: Storefront – 1628 Broadway



Figure 4:
APN: 003-171-014 (Subject Parcel) (north) APN: 003-171-013 (south)



Element 7 plans to remodel the interior, and is proposing no changes to the exterior, and no ground disturbing activity. The retail store will be open for delivery and dispensary operations daily from 9 a.m. to 9 p.m. They estimate having between five (5) and seven (7) employees, with two for delivery, one for packaging /dispatch, one security guard, one inventory/compliance manager, and one general manager. Deliveries from wholesale distributors will range from two-three per week and deliveries to customers will be approximately 25-40 per day. Element 7 will provide a wide range of branded cannabis and cannabis-related products, including flower, vapes, cartridges, and accessories.

USE PERMIT ANALYSIS

To approve a Use Permit, the Planning Commission must make all of the following findings:

- a) The proposed location of the conditional use is in accord with the objectives of Chapter 5 and the purposes and intent of the district in which the site is located;
- b) The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity;
- c) The proposed conditional use will comply with each of the applicable provisions of Chapter 5; and
- d) The proposed conditional use is consistent with the certified Local Coastal Program.

I. Code Consistency

Chapter 5 Objectives and Purpose

Pursuant to EMC Sec.10-5.102, the zoning regulations are adopted by the City Council in accordance with the City Charter to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare. More specifically, the chapter is adopted in order to achieve the following objectives:

- (a) To provide a precise guide for the physical development of the City in such a manner as to achieve progressively the arrangement of land uses depicted in the General Plan adopted by the Council.**

The site is located in the General Service Commercial (GSC) land use designation which provides appropriately located areas for retail and wholesale commercial establishments that offer commodities and services required by residents of the city and its surrounding market area. The proposed cannabis retail use will be located in an existing, 1500-sf vacant building (storefront) and will provide cannabis products to residents of the city and surrounding area. There are similar cannabis retail locations along Broadway (Hwy 101), including one that is proposed to open across the street in a former sporting goods store.

Thus, the proposed use will help facilitate and achieve the arrangement of land uses depicted in the 1997 Coastal General Plan consistent with this objective.

- (b) To foster a harmonious, convenient, workable relationship among land uses.**

The retail use will be located within an existing 1,500 square foot storefront on the southwest corner of Broadway Street (Hwy 101) and W. 15th Street, on an approximately .54-acre parcel.

The storefront was previously a Subway store, is now vacant, and is located within a strip mall and directly adjacent to BevMo to the north and a nail salon to the south. The surrounding area is a mix of hotels, restaurants (including drive-through), and other

commercial uses. Granting the use permit will foster a harmonious, convenient, workable relationship among land uses by providing another similar and compatible use, within an existing vacant storefront.

- (c) To promote the stability of existing land uses that conform with the General Plan and to protect them from inharmonious influences and harmful intrusions.**

The area where the project is located (HWY 101 corridor) includes a diverse mix of retail, service commercial, and light industrial uses. The area includes more intensive commercial uses including automobile service stations, hotels, drive-through fast food, and big box retail. The project will add a relatively small (approximately 1,500 square feet) cannabis retail use within a vacant storefront in a strip mall. The cannabis retail use is compatible with surrounding uses. No referral comments were received which would indicate the proposed retail facility would be problematic in the area. Therefore, the addition of a cannabis retail facility will not be an inharmonious influence or a harmful intrusion in the area.

- (d) To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the city as a whole.**

The proposed cannabis retail store will be located in a vacant storefront in a strip mall. The retail use will be operated in an area where a diverse mix of uses flourish, which will in turn benefit the City as a whole.

- (e) To prevent excessive population densities and overcrowding of the land with structures.**

The proposed cannabis retail store will occupy a vacant storefront in a strip mall on Broadway, in an area with a diverse mix of hotels, restaurants and commercial, uses, including additional cannabis businesses. The addition of the proposed cannabis retail use will not contribute to an increase in population densities, and will not cause overcrowding of land with structures, as the use will be conducted within an existing storefront; thus, the proposed use is consistent with this objective.

- (f) To promote a safe, effective traffic circulation system.**

The proposed cannabis retail use will be located in a vacant storefront that was previously a Subway store. The store can be accessed from 15th Street, via either Broadway or Koster Street, and also directly from Broadway into the parking lot servicing the south side of the mall, in front of O'Reilly Auto Parts. The retail store will be serviced by five to seven employees, and will require two to three deliveries per week from distributors. The applicant expects to deliver product to local costumers between 24 and 40 times per day. Since the location was previously a Subway that received product deliveries and also utilized delivery services to deliver to the local area, the new use is not expected to have an impact on the existing traffic circulation system. Thus, the proposed use is consistent with this objective.

- (g) To foster the provision of adequate off-street parking and off-street truck loading facilities.**

The cannabis retail store will be located in an existing vacant storefront in an existing strip mall. Pursuant to EMC Sec. 10-5.1503.2(a), five (5) off-street parking spaces are required for the cannabis retail use. All the parking spaces for the strip mall are divided across the two separate APNs (003-171-013, -014), and between the two parcels there is adequate off-street parking to serve all five retail uses. Since the spaces over the two lots are available for all stores, a non-exclusive easement over both parcels for parking is required. There is no truck loading facility, and none is proposed or required, as the store is under the minimum 4,000 square feet of gross floor area that would require a loading berth. Thus, the proposed use will foster the provision of adequate off-street parking.

- (h) To facilitate the appropriate location of community facilities and institutions.**

No community facilities or institutions exist at the site or nearby.

- (i) To promote commercial and industrial activities in order to strengthen the city's tax base.**

The proposed project will provide a cannabis retail business in a vacant storefront, which can strengthen the City's tax base through sales tax of retail product. The applicant will also be required to maintain their City Business license and a Cannabis license which require annual fees paid to the City. As a result, the proposed use is consistent with this objective.

- (j) To protect and enhance real property values.**

The proposed project will be located in a vacant storefront of a strip mall, which will serve to enhance the vibrancy of the area and protect and enhance property values.

- (k) To safeguard and enhance the appearance of the city.**

No exterior modifications to the existing building are proposed. Therefore, the proposed use will not impact the appearance of the City consistent with this objective.

Purposes of the Zone District

In addition to the objectives prescribed in EMC §§10-5.102 (Objectives) and 10-5.2902 (Objectives and purposes), the CS Service Commercial Districts are included in the zoning regulations to achieve the following purposes:

- (a) To provide appropriately located areas for retail stores, offices, service establishments, amusement establishments, and wholesale businesses offering commodities and services required by residents of the city and its surrounding market area;
- (b) To provide opportunities for retail stores, offices, service establishments, amusement establishments, and wholesale businesses to concentrate for the convenience of the public and in mutually beneficial relationship to each other;

- (c) To provide space for community facilities and institutions that appropriately may be located in commercial areas;
- (d) To provide adequate space to meet the needs of modern commercial development, including off- street parking and truck loading areas;
- (e) To minimize traffic congestion and to avoid the overloading of utilities by preventing the construction of buildings of excessive size in relation to the amount of land around them;
- (f) To protect commercial properties from fire, explosion, noxious fumes, and other hazards;
- (g) To provide appropriately located areas for commercial uses having features that are incompatible with the purposes of the other commercial districts;
- (h) To permit additional development in mixed commercial areas containing both retail stores and commercial services; and,
- (j) To allow a wider choice of location for certain industrial uses that do not have an adverse impact on commercial services.

The proposed project will add cannabis retail and cannabis distribution uses within an existing building in a zone which allows for this use. Many other cannabis-related businesses are located throughout the CS zone district in other areas of Eureka, including some along the north and south Hwy 101 corridor. A concentration of occupied properties helps reduce blight and deter vandalism and other crime. The proposed location is in a vacant storefront of a strip mall in a commercial area on Hwy 101 that has never been occupied by a community facility or community institution. As discussed above, there is adequate parking to serve the proposed use and the other uses occupying the strip mall, and there is a non-exclusive easement over both strip mall parcels (APNs: 003-171-013, -014) for parking. There is no Environmentally sensitive habitat (ESHA) within 200' of the strip mall. The proposed use will not generate an unusual risk of fire, explosion, noxious fumes, or other hazards. Pursuant to the City's cannabis regulations (Sec. 10-5.3001 et seq., and Chapter 158), any odors created by the retail store must be contained to the store and not detectable from public rights-of-way or nearby properties. The applicant is required to have an odor control and ventilation system installed, which includes a carbon filtration system. The odor control system will eliminate any associated odors.

The proposed retail use is not appropriate for some commercial districts (such as Henderson Center or Old Town), but is appropriate for the CS zone district, which allows for more intensive commercial uses and for light industrial uses, which are not likely to have an adverse impact on surrounding commercial services or uses. Directly adjacent to the north in the strip mall is a BevMo, and to the south in the strip mall are two additional similar sized retail spaces, a nail salon and UPS store, and an O'Reilly Auto Parts store. The surrounding area is a mix of hotels, restaurants (including drive-through), and other commercial uses. A half block to the west, the zoning changes to General Industrial. The proposed use is compatible with the existing commercial uses within the immediate area. The proposed use will not constrain additional development of retail stores or commercial services, either on the site or in the vicinity. Based on the above analysis, the findings can be made that the proposed project is appropriate for the CS zone district.

2. Public Health, Safety, and Welfare

Referrals were sent to agencies and City departments with interest or jurisdiction over the property or the intended use of the property. No comments were received which would indicate the proposed cannabis retail store would be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity. Therefore, because no potential impacts were identified by any agency, by City Staff, or through analysis; and, through the application of the conditions of approval and enforcement of other existing City regulations; and based on the discussion herein, the finding can be made the project will not impact the public health, safety or welfare.

3. Provisions of Chapter 5

The applicable provisions of Chapter 5 include the development standards for yards, building height, size, and bulk, off-street parking and loading, landscaping, etc. The proposed use will be located in an existing storefront which meets applicable development standards with no additions or exterior modifications proposed. Additionally, no new off-street parking or loading facilities are required by the Municipal Code or proposed by the applicant. Therefore, the proposed use and location comply with the applicable provisions of Chapter 5.

EMC Chapter 5 Article 30 (Cannabis) establishes regulations for commercial cannabis uses in the Coastal Zone, including the requirement that commercial cannabis uses in the Coastal Zone of the City must also comply with EMC Chapter 158 (Cannabis), and these provisions include development standards for noise, lighting, parking, odor control, security and avoiding adverse impacts to public health and safety. Based on the analysis in the staff report, the proposed use meets all applicable commercial cannabis development standards of Article 30 and Chapter 158.

4. Local Coastal Program

The Local Coastal Program includes the 1997 Coastal General Plan land use designations and map, and the EMC zoning district regulations and map, among other provisions. The proposed conditional use is consistent with the GSC land use designation and CS zone district, as described in detail above. The proposed use meets the intent of the zoning designation as it will allow for a use, cannabis retail, located in an area where it will not have an adverse impact on commercial services or uses. The proposed retail use will utilize an existing vacant storefront in a strip mall, which is surrounded by other commercial uses.

The proposed use is also consistent with the Land Use policies of the 1997 Coastal General Plan and the Coastal Development Permit chapter of the EMC, as discussed below in the Coastal Development Permit analysis section of this report. For all these reasons, the conditional use described above is consistent with the certified Local Coastal Program.

COASTAL DEVELOPMENT PERMIT ANALYSIS

The proposed cannabis retail use requires a Coastal Development Permit from the City. To approve a Coastal Development Permit, the Planning Commission must find that the proposed development conforms to the policies of the Certified Local Coastal Program. The Local Coastal Program is divided into two components: the first component is the *Land Use Plan*, which is the General Plan specific to land in the Coastal Zone. It outlines the existing conditions, permitted uses, and policies needed to achieve the goals of the Coastal Act and includes the general plan map. The second component of the Local Coastal Program is the *Implementation Plan*, which

includes zoning regulations and the zoning map for land in the Coastal Zone, as well as specific Coastal Zone ordinances necessary to implement the policies of the Land Use Plan.

Land Use Plan Analysis

The purpose of the GSC – General Service Commercial land use designation is to provide appropriately located areas for retail and wholesale commercial establishments that offer commodities and services required by residents of the city and its surrounding market area. The project is consistent with the GSC land use designation as it will provide for another commercial business that offers a product for residents of the city and its surrounding market area.

Staff reviewed the goals and policies in the adopted and certified Land Use Plan (LUP) to determine whether the project conforms to the LUP. The review found the project does not conflict with any adopted LUP goals or policies, and is consistent with and supported by the following:

Goal 1.L To ensure an adequate supply of commercial land for and promote the development of commercial uses to meet the present and future needs of Eureka residents and visitors and to maintain economic vitality.

The proposed project will result in a new cannabis retail store in an existing vacant storefront in a strip mall, in a zone which allows for this use. By allowing for the use in an existing building, at an appropriate location, the proposed project will have a positive effect on the City's economic vitality and will not adversely impact available commercial land. For all the reasons described above, the proposed project is consistent with Goal 1.L and associated policies.

Goal 1.A To establish and maintain a land use pattern and mix of development in the Eureka area that protects residential neighborhoods, promotes economic choices and expansion, facilitates logical and cost-effective service extensions, and protects valuable natural and ecological resources.

The proposed cannabis retail use will occupy a vacant storefront in an established strip mall in a mixed-use area on the Hwy 101 corridor, away from exclusively residential neighborhoods. The closest residences are located to the northeast, across Hwy 101 on 14th Street. The site is already connected to water, sewer, electrical, and gas utilities. As the proposed use will be located within an existing building and there are no proposed ground disturbing activities, there are no anticipated impacts to nearby wetlands and bay waters. For all these reasons, the proposed project, as conditioned, is consistent with Goal 1.A and associated policies.

Goal 5.B To provide public open space and shoreline accessways throughout the Coastal Zone, consistent with protecting environmentally sensitive habitats and other coastal priority land uses.

The proposed project will occupy a portion of a vacant storefront in an established strip mall on the west side of Broadway (Hwy 101), over 2,000 feet from Humboldt Bay, separated from the Humboldt Bay waterfront by three roadways and a number of developed properties, including Costco. The properties along the waterfront in this location are zoned and designated for coastal-dependent industrial (CDI) use and prevent public access to the water, with the Eureka Waterfront Trail located inland of the CDI parcels along Railroad Avenue. There is an access

point approximately a mile to the southwest where the public can access a public pier at the terminus of Del Norte Street. The project will not impact the Eureka Waterfront Trail or any other existing access facilities either through direct conflict or anticipated increases in demand. Therefore, the project will have no significant adverse effect on public access, and the project, as proposed without new public access, can be found consistent with this goal and associated policies.

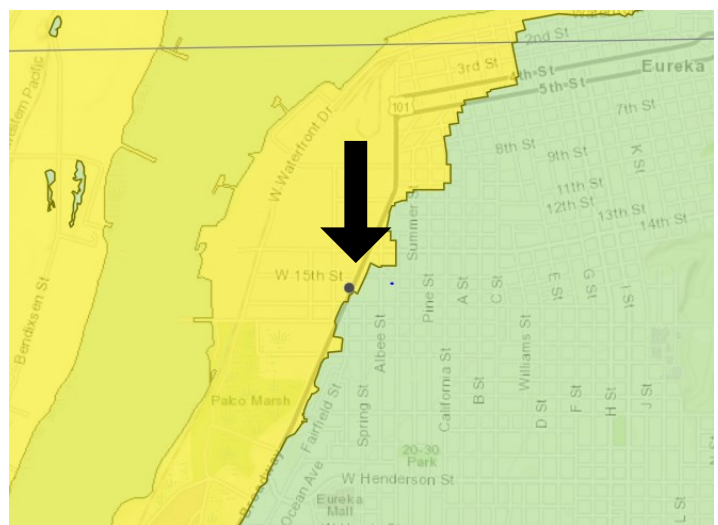
Goal 6.A To protect and enhance the natural qualities of the Eureka area’s aquatic resources and to preserve the area’s valuable marine, wetland, and riparian habitat.

The proposed use will occupy a portion of a vacant storefront of an established strip mall. There are no wetland or riparian habitats adjacent to the site, and by accommodating growth through the use of an existing storefront, with no associated new exterior construction, expansion of the building, or ground disturbing activity proposed, the project will avoid any adverse impacts in the Coastal Zone. Thus, the proposed project will protect and preserve the area’s valuable marine, wetland, and riparian habitat consistent with Goal 6.A and associated policies.

Goal 7.A To minimize loss of life, injury, and property damage due to seismic hazards; and Goal 7.B To minimize loss of life, injury, and property damage due to geological hazards.

*The project site is within a seismically active area in which large earthquakes are expected to occur during the lifespan of the proposed use. The proposed retail use will occupy a vacant storefront, and will not result in a significant addition of employees or customers. The existing structure to be occupied by the new cannabis use was legally constructed in the mid-1990s pursuant to a City building permit, consistent with California Building and Fire Codes which ensure seismic safety. **Condition A** has been included to ensure the applicant obtains all required Building and Fire permits for any future improvements to the satisfaction of Development Services - Building and Humboldt Bay Fire.*

Figure 5: Tsunami Hazard Area Map - 1628 Broadway Street



The project site is located outside of the FEMA mapped 100- and 500-year flood zones, but is located in the mapped tsunami inundation area on the Tsunami Inundation Map for Emergency Planning (Figure 5; California Geological Survey, August 13, 2020) and is at risk of tsunami inundation from waves generated from a variety of local and distant sources. If the region were to suffer a major earthquake along the Cascadia Subduction Zone, a local tsunami could hit the Humboldt Bay shoreline within minutes and tsunami run-up could affect the project site.

*The tsunamis risk can best be minimized through timely evacuation from the tsunami inundation zone. Therefore, **Condition B** has been added requiring the applicant to submit a “Tsunami Safety Plan” for review and approval by Development Services – Planning. The plan is required to demonstrate that 1) the tsunami threat and evacuation route will be adequately communicated to customers and employees, 2) procedures will be in place for the safe evacuation of all occupants in the event of a tsunami, and 3) staff will be adequately trained to carry out the plan. The plan is required to include 1) a map of the evacuation route; 2) hazard risk notification procedures, including information on where tsunami evacuation information will be conspicuously posted; and 3) training procedures for staff to ensure the plan is effectively implemented for the life of the development.*

For all the reasons discussed above, the project as conditioned will minimize risk to life and property from geologic hazards consistent with Goals 7.A and 7.B and associated policies.

Based on the above analysis, the project does not conflict with any, and is supported by several of the adopted goals and policies of the certified LUP; therefore, the finding the project conforms with the LUP can be made.

Implementation Plan Analysis

The project must be found to conform with the entire Local Coastal Program, including the Implementation Plan. The Implementation Plan includes zoning regulations and the zoning map for land in the Coastal Zone, as well as specific coastal zoning ordinances necessary to implement the policies of the Land Use Plan. The project site is zoned CS – Service Commercial which allows cannabis retail as a conditional use. The proposed use will be located in an existing building with no additions or exterior modifications proposed. The proposed cannabis retail use will conform with the zoning code and CS zone district as described under the Use Permit analyses above.

In addition to specifying the regulations pertaining to specific zoning districts, IP Sec. 10-5.2940 et. seq., specifies development standards that apply to all development in the Coastal Zone, including standards for public access, environmental resources, natural hazards, visual resources, public works, and new development. These standards largely reiterate certified LUP goals and policies discussed in the LUP policy analysis above, and the applicable findings are incorporated as if set forth in full herein. As a result, the proposed project as conditioned conforms with the certified IP.

ENVIRONMENTAL ASSESSMENT

The City of Eureka, as Lead Agency, has determined the proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), in accordance with Sec.15301, Existing Facilities, Class I of the CEQA Guidelines, which covers the operating of private structures involving negligible or no expansion of use. Since the proposed project will be located entirely within an existing building with no proposed expansion or enlargement of the building, the project qualifies for the Class I exemption.

PUBLIC HEARING NOTICE

Public notification consisted of notification by mail of property owners and residents within a 300-foot radius of the site on or before June 30, 2023, and posting on the City’s website and

bulletin boards. A public hearing notice sign was also posted on the project site on or before June 30, 2023.

CONCLUSION

Based on the analysis above, the proposed retail cannabis use is consistent with the General Plan, Zoning Code, and Local Coastal Program. The project is suitable for the site and for the existing building in which it will be located, and is compatible with existing and planned land uses in the vicinity. The project is not detrimental to the public health, safety, and welfare, and is properly located within the City and adequately served by existing utilities and infrastructure.

STAFF CONTACT

Lisa Savage, Senior Planner, 531 K Street, Eureka, CA 95501; planning@eurekaca.gov; (707) 441-4160

DOCUMENTS ATTACHED

Attachment I: Planning Commission Resolutionpages 13-15