COUNTY OF HUMBOLDT

For the meeting of: 3/3/2026

File #: 25-1472

To: Board of Supervisors

From: Aviation

Agenda Section: Public Hearing

Vote Requirement: Majority

SUBJECT:
Appeal of the Department of Aviation's denial of an Aviation Permit to Allow a Two-Story Accessory Dwelling Unit (ADU)

RECOMMENDATION(S):
That the Board of Supervisors:

1. Open public hearing.
2. Receive staff report, Appellant testimony, and public comment; and
3. Close public comment portion of the public hearing: and
4. Adopt Resolution (Attachment 1), which does the following:
    a. Makes findings that the proposed development conflicts with Humboldt County Code, and the Airport Land Use Compatibility Plan (ALUCP) and supporting denial of the Appeal; and
    b. Denies the appeal submitted by Joseph Doty; and
    c. Denies the Aviation Permit for a two-story ADU above a new garage with a height of 24 feet for APN 511-131-031; and
5. Direct the Clerk of the Board to provide a certified Board Order and executed resolution to the Department of Aviation to be included with the notification of decision to the appropriate parties.

STRATEGIC PLAN:
This action supports the following areas of your Board's Strategic Plan.

Area of Focus: Core Services/Other
Strategic Plan Category: 9999 - Core Services/Other

DISCUSSION:

Executive Summary
The Board of Supervisors is being asked to overturn the action of the Department of Aviation which informed a property owner that an Accessory Dwelling Unit (ADU) on top of a new garage cannot be constructed on property developed with a single-family residence in the runway protection zone of the Airport Land Use Compatibility Plan (ALUCP). The runway protection zone does not allow any structures other than avigation aids. The existing development on site is nonconforming and can remain and be maintained as it but cannot be added to or increased under the limitation of the ALUCP. There is also concern that a second-story accessory dwelling unit could penetrate protected airspace at this location.

Background
The appellant attempted to submit a building permit application with the Planning and Building Department for a second story ADU

above a new garage. The applicant was informed this could not be done because the property is within the runway protection zone and was referred to the Department of Aviation. The zoning on the property includes an AP Airport Safety Review which requires compliance with the ALUCP. The Department of Aviation met with the property owner/appellant many times and ultimately informed him that it was not possible to find the project consistent with the ALUCP and the new garage and second story ADU could not be approved. The applicant never submitted an actual application, but this is being treated as a formal process in order to ensure due process.

Regulations applying to the property.

There are several interconnected regulatory documents to guide the county decision making for development around all airports in the county and particularly around the California-Redwood Coast Humboldt County Airport (ACV). These are summarized as follows:

Humboldt County Code Chapter 333.

This chapter is adopted pursuant to the authority conferred by Article 6.5 of Chapter 2, Part 1, Division 1, Title 5 of the Government Code of the State of California, otherwise known as the "Airport Approaches Zoning Law," for the purpose of promoting the public health, safety and general welfare of the inhabitants of the County. This chapter was initially adopted in 1955 and was updated in 2020 to address the process for review of penetration of protected airspace. This chapter Identifies the Department of Aviation as the department responsible for reviewing airport related permits and implements Federal Aviation Administration (FAA) protected airspace regulations. This chapter also identifies the Board of Supervisors as the appropriate appeal authority to decisions made by the Department of Aviation.

County Airport Land Use Compatibility Plan (ALUCP)

The ALUCP was prepared and adopted in 2021 under the direction of the Humboldt County Board of Supervisors in its designated role as the Airport Land Use Commission for Humboldt County. The policies contained in this document are designed to promote compatibility between the Humboldt County's public use airports and surrounding land uses "to the extent that these areas are not already devoted to incompatible uses "(Pub. Util. Code, § 21674(a)). This ALUCP replaced the Airport Land Use Compatibility Plan for Humboldt County Airports prepared in 1993 (1993 Plan).

The ALUCP includes policies and Compatibility Zones that have certain restrictions based upon the danger of the location and the consequences of an accident occurring. The compatibility zone covering the subject site is called the runway protection zone. This zone extends from the end of the runway and so statistically has the highest probability of accidents and correspondingly if the space is occupied would have the worst consequences.

The ALUCP was developed using guidelines in the California Airport Land Use Planning Handbook developed by Caltrans. Attachment 5 shows the Handbook direction for Zone 1 which does not allow any development.

AP Airport Safety Review Combining Zone

The property affected by the ALUCP has an overlay zone requiring a safety review to determine compatibility with the ALUCP. Technically a use is not allowed under the provisions of the Zoning Ordinance if it cannot successfully pass this safety review.

Department of Aviation Determination.

The decision to inform the property owner/appellant that the proposed second story ADU above a garage are based upon very clear guidance in the ALCP. Table 3-2, Safety Compatibility Criteria shows residential development as incompatible in Safety Zone 1. The table shows that there is no acceptable density, no acceptable number of people on the property, not lot coverage which is acceptable. Meaning development is not acceptable in this safety zone. This is reflected in the General Policy 23 "Development by Right" which states:

Other than in Safety Zone 1 (the runway protection zone), construction of a single-family home, including a second unit as defined by state law, on a legal lot of record as of the date of adoption of this ALUCP, if such use is permitted by local land use regulations.

In most Compatibility Zones at least a single-family residence is allowed. This is not true in Safety Zone 1. No development is allowed in Safety Zone 1. In this situation, there is an existing house on the property which is nonconforming. It can remain and be maintained, but it cannot be expanded. Adding an additional unit would place more people in an area that is susceptible to planes

landing short of the runway, which would be catastrophic if there were people on site. Creating the potential for more people to be on site is inconsistent with the purpose of the safety zone. Attachments 6 shows the compatibility table, and Attachment 1 shows the proximity of the property to Safety Zone 1.

Appeal Arguments
In a letter dated September 4, 2025, and emailed to the Humboldt County Board of Supervisors and its Department of Aviation on September 29, 2025, Appellant argues eight (8) points discussed below.

Appeal Argument 1: Inconsistency with HCD and State Guidelines
The property owner's contention that the denial of the permit and variance for the ADU is not consistent with HCD and state guidelines is not correct. While it is true that the California Department of Housing and Community Development seeks to see more housing built in the form of Accessory Dwelling Units it is not true that this extends to allowing housing in areas that would put the residents or others in a potentially unsafe location. In this case the regulations contained in the Airport Land Use Compatibility Plan would not allow even a single-family residence to be constructed on this site due to safety concerns at the end of the runway.

By California Law, an ADU is considered part of the single-family dwelling for purposes of calculating density. ADUs are allowed where single family residences are allowed. Since a single-family residence is not allowed on this property (see findings above relative to Safety Zone 1 in the ALUP), the existing structure is legal nonconforming. It cannot be expanded to include an ADU.

Appeal Argument 2: Neighboring Properties Received Approvals
Neighboring properties have not received approvals that are in violation of either Safety Zone 1 or the height limitations established by the FAA. A review of the County Permitting system shows that no permits have been issued for new construction. There have been residential permits issued to re-roof buildings, install new water heaters, and install solar panels but no residential permits have been issued to construct a new building or to enlarge an existing nonconforming building.

The property owner referred to the Hooven Building located immediately south of the subject site as an example of the county allowing new development in Zone 1 of the Land Use Compatibility Zone. A Building Permit was issued to add an addition to the front of the building. The primary concern from Public Works in review of that Building Permit was ensuring the building does not penetrate the protected airspace surfaces. This was addressed on the approved plans. There is no record of addressing compliance with the 1993 Airport Land Use Compatibility Plan which would not have allowed expansion of this building as it was nonconforming at the time relative to the ALUP. This must be understood to have been an error.

Appeal Argument 3: Decisions Should Be Based on FAA Studies
The argument that the decision should be based on FAA studies ignores the fact that the property is located within Zone 1 which does not allow new development. The Runway Approach Zones were developed with FAA Guidance using FAA studies. No additional studies are needed. It is common for development outside of Zone 1 to be allowed after a study to determine the project would not penetrate the protected airspace surface. This property is in Zone 1.

Appeal Argument 4: Incorrect Decision-Making Authority
The appellant's argument that the administrative deciding authority rested with the Humboldt County Department of Transportation when the Zoning allowed for the existing development and was subsequently rezoned without proper notice to affected property owners of interest is incorrect, because the zoning does not allow the use requested and the property has not been rezoned. For context the appellant purchased the property in 2024. The Airport Safety Review Overlay zone has been on the property since 2002 in its current form. Landowners are presumed to know the zoning designations of their property. The AP overlay requires that a Safety Review be conducted under the authority granted in Humboldt County Code Section 333 which assigns implementation responsibility to the Department of Aviation. This code, in current form, was adopted in 2020, repealing and amending a 1955 ordinance on approach zones. This was properly noticed and adopted with intent of coming into conformance with current FAA policy and guidance.

The overlay zone requires compliance with the Airport Land Use Compatibility Plan. The ALUCP was adopted in 2021 and shows this property in Zone 1 which does not allow development. Prior to 2021 the site was subject to the 1993 compatibility plan which showed the site in Zone A which also would not have allowed new development or an expansion of an existing structure.

Appeal Argument 5: Nonconforming Designation
The property owner retains rights to maintain a nonconforming structure; however, the property owner cannot increase its intensity or level of nonconformity. The appellant is incorrect that this results in an "Incurable Obsolescent" on the property which severely reduces property values and could be construed as a "taking Eminent Domain" without compensation. GP-22 Existing Nonconforming Uses contained with the ALUP states:

> *A nonconforming use describes a lawful use existing before the effective date of a new land use restriction that has since continued without conformation. Existing uses (including a parcel or building) not in conformance with this Compatibility Plan are subject to the nonconforming use restrictions contained in state law and each local agency's respective land use regulations and zoning.*

Nonconforming uses may remain on the property if they are not expanded or changed to a more intensive use. Humboldt County Code Section 333-6 states: The regulations prescribed in Section 333-5 shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations. It is up to the property owner whether to maintain the property and buildings as configured on the site.

Appeal Argument 6: "Constitutional Taking
Denial of Appellant's permit does not constitute a compensable taking under either federal or California law. Under both the Fifth Amendment to the U.S. Constitution and Article I, Section 19 of the California Constitution, a regulatory taking generally requires denial of all economically beneficial or productive use of property. The subject property retains substantial economic use under its existing RS-Q-AP-N zoning designation, including the ability to maintain the current residence.

The denial only prohibits an expansion of the residence including an Accessory Dwelling Unit and associated structural expansion within an airport Safety Zone 1, which is a reasonable exercise of the County's police power to protect public safety.

Federal law recognizes a categorical taking only when a regulation deprives a property of all economically beneficial use (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003). Where some economic use remains, courts apply the Penn Central balancing test, which considers economic impact, interference with investment-backed expectations, and the character of the government action. Here, the property retains its primary residential use and other RS-Q-AP-N permitted uses, and the denial is based on legitimate public safety concerns related to air navigation hazards. Similarly, California law applies the same principles and allows inverse condemnation only where government action substantially impairs property use. California courts have consistently held that denial of an intensification or expansion of a nonconforming use does not constitute a taking (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533). The County's action is consistent with Humboldt County Code §§333-1 et seq. and §314-16.1, which have long been in effect and provide constructive notice of airport safety restrictions (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110). Because the property retains economically viable use and the regulation serves a critical public safety purpose, denial of the proposed second-story addition does not result in a compensable taking under either federal or state law

Appeal Argument 7: Mitigation Could Allow ADU Over Garage
The Appellant incorrectly contends that there is mitigation that could be provided to allow installation of the garage and second floor ADU. Safety Zone 1 of the ALUCP prohibits any increase in development regardless of proposed mitigation. Safety Zone 1 of the Airport Land Use Compatibility Plan (ALUCP) prohibits any increase in development regardless of proposed mitigation measures. Further consultation or consideration of mitigation is not feasible because no amount of mitigation can overcome the presumption that increased inhabitation in Safety Zone 1 poses an inherent risk to life and property.

Appellant's proposal to disassemble an existing radio tower to reduce its height does not mitigate the hazard; substituting a

non-life-supporting structure with a structure intended for human habitation increases the intensity of nonconformity rather than reducing it. Mitigation is only allowed where reasonable measures would lessen an adverse impact, and no reasonable measure exists that could lessen the impact of this development, which creates an aviation hazard through obstruction and poses a risk to aircraft navigability and on-ground human life.

Appeal Argument 8: FAA Policy Supports Compensation
The applicant questions why the FAA has not reviewed the Director's discretion and questions why an effort has not been made to purchase the property or compensate the property owner for lack of use. County Code assigns the Department of Aviation responsibility to determine whether a project is consistent with the regulations in effect (HCC 333-7). The Department's actions are following the regulations put in place to protect areas around the airport to not endanger public safety.

The issue is not whether the site should be purchased, but whether a new garage and second floor accessory dwelling unit can be added. As both the airport property owner and the land use authority, the County of Humboldt is properly exercising this control through zoning regulations and is not required to acquire ownership of Appellant's property to enforce airport safety standards. While FAA policy encourages ownership when airport authority differs from land use authority, that policy does not apply here because the County serves as both. Although ultimate acquisition may be considered in the future, the Department of Aviation operates as an enterprise fund intended to be self-supporting through user fees and currently lacks sufficient resources to acquire Appellant's property. The current financial landscape does not provide sufficient resources to acquire the same. Therefore, denial of the proposed development is consistent with FAA policy and does not trigger any obligation for compensation or immediate acquisition.

Staff Conclusion and Recommendation
Appellant's proposed development on Assessor Parcel Number 511-131-031 conflicts with Humboldt County Code and the ALUCP. This is not an application that can be marginally considered. This proposal conflicts with the public health and safety provisions of the ALUCP.

SOURCE OF FUNDING:
Costs not recovered from Appellant will be absorbed by the Department of Aviation via Aviation Enterprise Fund (3530).

FINANCIAL IMPACT:
Since there is no formal application, there is no fee to be received.

STAFFING IMPACT:
Processing of this appeal has been accomplished with existing staff in the Department of Aviation and County Counsel.

OTHER AGENCY INVOLVEMENT:
Planning & Building Department

ALTERNATIVES TO STAFF RECOMMENDATIONS:
It is not recommended that the Board of Supervisors pursue any alternatives.

ATTACHMENTS:
1. Resolution No. _____
2. 2021 ALUCP Maps
    a. Airport Influence Area
    b. Noise Compatibility Policy Map
    c. Safety Compatibility Policy Map
    d. 14 CFR Part 77 Airspace Protection Surfaces
3. Department of Aviation Determination
4. Notice of Appeal
5. Zone 1 diagram from Caltrans handbook.

6. Table 3-2 of the ALUCP
7. GIS map showing the parcel in Zone 1 of the ALUCP.

PREVIOUS ACTION/REFERRAL:
Meeting of: n/a
File No.: n/a