

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
FROM: ANDY GUSTAVSON, SENIOR PLANNER  
PLANNING AND ECONOMIC DEVELOPMENT  
SUBJECT: APPEAL OF PLANNING COMMISSION DECISION TO APPROVE  
A CONDITIONAL USE PERMIT FOR FLEURON INC. MEDICAL  
CANNABIS COMMERCIAL CULTIVATION FACILITY – LOCATED  
AT 60 MAXWELL COURT – FILE NO. CUP16-087

AGENDA ACTION: RESOLUTION

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RECOMMENDATION

It is recommended by the Planning Commission and the Planning and Economic Development Department that the Council, by resolution, deny the appeal and uphold the Planning Commission's approval of a Conditional Use Permit to allow a medical cannabis commercial cultivation facility within an existing 10,972 square-foot building located at 60 Maxwell Court.

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EXECUTIVE SUMMARY

The item before the Council is an appeal of a Planning Commission (Commission) decision to approve a Conditional Use Permit (CUP) for Fleuron Inc. (Applicant) to establish a medical cannabis commercial cultivation facility (Facility) within an existing 10,972 square-foot light industrial building located at 60 Maxwell Court. The subject site is designated in the City's General Plan for high density housing, however the site is zoned within the TV-R-LIL-SA (Transit Village Residential – Limited Light Industrial Combining – Station Area Combining) Zoning District which allows for interim industrial uses. In addition, Zoning Code Chapter 20-46 allows for a medical cannabis commercial cultivation use in the LIL combining district with a CUP. The subject building stands on the north side of the 1.13-acre parcel (APN 010-131-033), which is a double frontage lot located between Maxwell Court and W 9<sup>th</sup> Street and is situated on the southern border of the Maxwell Court Neighborhood industrial area. On March 9, 2017, the Commission held a public hearing on the request and approved (4-1, with one absence and one abstention) the CUP. On March 20, 2017, Mr. Richard Deringer, representing Odyssey Development Company, (Appellant) filed an appeal of the action, citing various grounds including the project's compliance with the California Environmental Quality Act (CEQA), noticing, General Plan and Zoning policies, state law, and impacts to historic resources.

## BACKGROUND ON MEDICAL CANNABIS POLICY

On October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act (MMRSA or MCRSA), which went into effect on January 1, 2016. MMRSA established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, testing, storage, distribution, and sale of medical cannabis through Assembly Bills 243 and 266, and Senate Bill 643.

The 2016 City Council (“Council”) Goal Setting Workshop established five priorities to better focus staff efforts towards achieving established Council Goals. One of the Tier 1 priorities (projects that are underway or receiving the highest attention) identified is to *“pursue current opportunities for medical marijuana, cannabis cultivation, lab and employment development. Prepare for impacts of legalized recreational marijuana.”*

In accordance with Council goals, and in response to the State’s adoption of the MMRSA, the Council asserted its interest in retaining local authority over medical cannabis operations.

On January 19, 2016, the Council initiated a comprehensive policy effort to regulate medical cannabis operations, and reconvened the Medical Cannabis Policy Subcommittee. This subcommittee meets monthly and continues to work towards creation of a new, comprehensive regulatory framework to address medical cannabis land use within the City, with a targeted completion date by the end of 2016. The Subcommittee’s progress and meeting content can be tracked through the City’s website ([www.srcity.org/cannabis](http://www.srcity.org/cannabis)).

On February 23, 2016, the Council adopted an interim ordinance, which added Chapter 20-46, Medical Cannabis Cultivation, to the Zoning Code (“Code”), allowing commercial cultivation of medical cannabis with a Minor Use Permit or Conditional Use Permit, depending on the size of the proposed facility, in the Light Industrial (IL), General Industrial (IG) zoning districts, and the Limited Light Industrial (-LIL) combining zoning district (Code Section 20-46.030.A).

To date, six medical cannabis commercial cultivation facilities have been approved by the Planning Commission:

On September 22, 2016, the first facility was approved at 3310 Industrial Drive, in northwest Santa Rosa. On December 8, 2016, the second facility was approved at 2967 Coors Court, Suites A-D, in southwest Santa Rosa. On February 23, 2017, two more facilities were approved in southwest Santa Rosa, one located at 2835 Duke Court and the other at 2875 Sebastopol Road. On March 9, 2017, a facility was approved in southwest Santa Rosa at 2739 Giffen Avenue, and another in northwest at 60 Maxwell Court (the subject site).

### PROJECT BACKGROUND

On December 7, 2016, the City held a Neighborhood Meeting to inform and to receive comments from the public regarding the proposed Facility. Approximately 15 people attended the meeting. The Applicant filed a Minor Conditional Use Permit the next day.

On February 1, 2017, the Applicant submitted a revised application, dated February 27, 2017, for a Conditional Use Permit which is required for a cultivation facility exceeding 10,000 square-feet.

On March 9, 2017, the Commission held public hearing and approved (4-1, with one absence and one abstention) the requested CUP.

On March 20, 2017, the Appellant filed the subject appeal.

### PRIOR CITY COUNCIL REVIEW

Not applicable.

### APPEAL STATEMENT & COUNCIL OPTIONS

Pursuant to Zoning Code Chapter 20-62, appeals of decisions made by the Commission shall be evaluated by the Council. The Council may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for appeal.

With respect to the Conditional Use Permit, the Council may:

- Affirm, affirm in part, or reverse the action, the determination, or decision that is the subject of the appeal; or
- Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or
- If new or difference evidence is presented on appeal, the Council may refer the matter back to the Commission for further consideration.

The appellant has provided the following eight grounds for the appeal; the full appeal statement is provided as an attachment. Staff responses follow each item.

*Appeal Ground #1: The public hearing notice for the Project was not sent to all impacted residents as required by the California Environmental Quality Act (CEQA). The appellant asserts the notice for the Commission's public hearing was defective because: (1) the notice was mailed to neighbors and businesses located 400-feet from the building located at 60 Maxwell Court and not the property boundary; and (2) the notice failed to include 363 9<sup>th</sup> Street as the legal property address.*

Staff Response to Appeal Ground #1:

The Commission reviewed the project in compliance with the CEQA and found the Project categorically exempt pursuant to CEQA Guidelines Section 15301, in that the Project is an existing facility involving no expansion of the facility. CEQA does not include specific noticing requirements associated with categorical exemptions.

The City does however have specific noticing requirements for public hearings associated with a conditional use permit. The Commission determined the public hearing for the CUP was duly noticed as required by Zoning Code Section 20-66.020 (Resolution 11819, attached). This notice was mailed to the Appellant and 13 other identified interested parties as well as to all land owners within 400-feet of the subject parcel, posted on the parcel's two road frontages, and published in the Press Democrat newspaper. Staff confirmed the property owner notice issued for the Commission's public hearing on this matter included all properties located completely or partially within a 400-foot radius drawn from the boundary of the subject parcel (APN 010-131-033). This notice radius exceeds the minimum radius of 300-feet required by the City Code (City Code Section 20-66.020.C.1.4).

The public hearing notice included the assessor parcel number and street address to identify the parcel and building it will occupy. This information is consistently included in any notice the City issues to clearly identify the location of any development project subject to a public hearing, as required by the City's noticing requirements and consistent with State law (California Government Code "CGC" Section 65091). It should be noted that street addresses are assigned to structures and uses and not to vacant parcels. The street address allows emergency services, the public, and the US Postal Service to identify and find the location of the structure or use. In cases where a parcel is developed with multiple structures or uses, the parcel will contain multiple addresses, none of which is designated as the "legal address".

*Appeal Ground #2: The Facility was not properly analyzed under CEQA. The Appellant listed several related concerns or issues related to CEQA review including the effect the Facility may have on financing housing projects, power demand and greenhouse gas emissions, toxic waste and water quality impacts, water use, and existing and future house, schools, and parks in the area.*

Staff Response to Appeal Ground #2:

As noted above, the Facility was determined by staff and the Commission to be categorically exempt from CEQA thus no further environmental review is required. This determination was made because the Facility will occupy an existing building. It will not expand nor intensify the use of the existing building, which was previously occupied by a large format graphic production facility, and the proposed parking lot and fencing changes are negligible (CCR Section 15301).

The financing of housing projects is a private matter and is not subject to land use or environmental regulation. The CUP conditions of approval will ensure the Appellant's

other issues will be fully addressed by applicable City and State agency land use and environmental regulations.

*Appeal Ground #3: Nearby historical resources disqualify the Facility from a CEQA categorical exemption; the Facility will eliminate potential housing development in the area. The Appellant made two additional points related to the viability of housing development envisioned by the General Plan and Specific Plan in the vicinity of the Facility (Appeal, page 4) by stating exterior security cameras, lighting, and fencing are not conducive for housing development in the area and that "lenders will evaporate on any future housing project that allows for this use."*

Staff Response to Appeal Ground #3:

CEQA provides categorical exemptions for specific projects that have been determined not to have a significant impact on the environment, however, there is an exception to this rule which states *"any project that may cause a substantial adverse change in the significance of a historical resource"* cannot qualify for a categorical exemption (CCR Section 15000.2.e).

The exception does not apply to this Project. The existing building is not identified as a historic resource. The site is not located within a locally designated preservation district as defined in the City of Santa Rosa, and as such the site is not within an Historic (-H) Combining Zoning District. The Facility's proposed security fencing and parking lot modifications are located approximately 60 feet north of "West End Preservation District" which is located within the -H Combining Zoning District. The distance and limited scale of the improvements will not substantially or adversely change the significance of the historic neighborhood. The improvements will also not directly or indirectly cause any adverse change to the significance of the DeTurk Round Barn, located within the historic neighborhood approximately 1,000 feet from the subject parcel and which is a listed historical resource. Consequently, the Commission appropriately found the Facility qualifies for a categorical exemption from CEQA.

The viability of or demand for housing development in the area is based on a variety of factors in addition to nearby land use including national and regional economic conditions, local housing demand, and housing product type and design. The Limited Light Industrial combining district was established over the Maxwell Neighborhood to ensure existing industrial uses in the area will remain vibrant and not decline for lack of maintenance as non-conforming uses until housing development becomes viable. The Facility will upgrade an existing light industrial building and provide employment opportunities and thus help to maintain the viability of this industrial area. When demand for mixed use residential and neighborhood retail uses expand northward from the Downtown SMART Station, the Council may, as intended by the current zoning, discontinue the Limited Light Industrial combining district and thus complete the land use policy transition in the Maxwell Court Neighborhood.

*Appeal Ground #4: The Facility will cause an adverse change in the significance of a historical resource.*

Staff Response to Appeal Ground #4:

See also the response to Appeal Ground #3 regarding the CEQA categorical exemption determined for the Facility and the lack of any direct or indirect adverse change to the significance of an existing historical resource. The subject building structure was constructed in 1980 and does not qualify as nor is it listed as an historical resource. Interior tenant improvements or minor exterior improvements to the parking area and fencing will not require any grading that may impact any historical or tribal cultural resource on or adjoining the site.

*Appeal Ground #5: The Project is inconsistent with General Plan Transit Village Residential land use designation, which is intended to create housing, and it did not properly address the required findings for a zoning map and text amendment.*

Staff Response to Appeal Ground #5:

The Commission found the Facility consistent with the Santa Rosa General Plan 2035 (General Plan) and the Downtown Station Area Specific Plan (Specific Plan) and that it conforms to applicable zoning regulations. The Commission determined the Facility will continue an existing light industrial use of the building, which was formerly occupied by Clear Focus Imaging, a large format graphic production company. As described in the Commission's staff report (March 9, 2017, page 7) the Specific Plan supports continued industrial and light manufacturing uses, including the Project, in the Maxwell Court neighborhood pursuant to Policy SP-LU-5.4, which states:

*Allow continuance of existing non-conforming uses within the Plan Area until properties are ready to convert to uses that are consistent with adopted plans and regulations. Allow for maintenance and re-occupancy of buildings with non-conforming uses and exempt minor alterations and/or expansions of existing buildings from the development guidelines established in the Development Guidelines and Streetscape Standards chapter of this plan.*

The Facility, as an interim use, will provide a viable commercial service to the community, create permanent full-time and part-time jobs, and help to maintain the economic viability of this area. Furthermore, the existing TV-R-SA-LIL zoning allows light industrial uses in this area until such time the Council decides to discontinue the Limited Light Industrial Combining zoning designation over the Maxwell Court Neighborhood (SRCC Section 20-28.070.F).

The only entitlement requested by the applicant by the Commission was a CUP. The applicant did not request a Zoning text or map amendment. Such an amendment was not required of the project nor was an amendment recommended by the Commission. Therefore, the Commission did not consider nor make any findings required for a zoning text or map amendment.



In 2010, the Council made General Plan consistency findings when Ordinance 3950 was adopted to add Chapter 20-28 Limited Light Industrial (-LIL) Combining District to the zoning ordinance, and Ordinance 3951 was adopted to place the combining district over the Maxwell Court Neighborhood. Then, in 2015, the Council made General Plan consistency findings again when Ordinance 4060 was adopted to add Chapter 20-46, Medical Cannabis Cultivation, which permits Medical Cannabis Cultivation in the Limited Light Industrial combining district as well as the Light Industrial (IL) and the General Industrial (GL) zoning districts.

The Council properly exercised its authority in each instance to adopt and amend the zoning ordinance to regulate the use of buildings, structures and land within the City (State Government Code Section 65850). In doing so, the Council determined these amendments were consistent with the General Plan and the Specific Plan, and found they will not have a significant impact on the environment and, therefore, are not subject to CEQA.

*Appeal Ground #6: The Project violates the zoning outlined by the Downtown Station Area Specific Plan and the setback requirements for cannabis related uses including cultivation.*

Staff Response to Ground #6:

The Commission determined the Facility is consistent with the Downtown Station Area Specific Plan (see response to Appeal Ground #5).

The City does not require any setbacks between a medical cannabis cultivation use and other land uses. In addition, MCRSA (state law) does not require any setbacks associated with medical cannabis commercial cultivation. The only state law setbacks established for a medical cannabis land use is regarding commercial dispensaries with a storefront; in those cases, the setback is 600 feet from a K-12 school. The State is still targeting completion of its licensing regulations by 2018 to fully implement MCRSA. City staff is tracking changes to state law and medical cannabis regulations as they emerge and is not aware of any state laws in effect at this time that require setbacks for medical cannabis commercial cultivation.

City staff is currently preparing a local comprehensive medical cannabis ordinance pursuant to Council direction. The Council Policy Subcommittee has met over 15 times to discuss medical cannabis policy issues in preparation of the interim measures and in preparation of the draft comprehensive ordinance. To date, the Subcommittee has not requested that setbacks be established to a medical cannabis commercial cultivation use.

To date, six medical cannabis commercial cultivation facilities have been approved by the Planning Commission:

On September 22, 2016, the first facility was approved at 3310 Industrial Drive, in northwest Santa Rosa. On December 8, 2016, the second facility was approved at

2967 Coors Court, Suites A-D, in southwest Santa Rosa. On February 23, 2017, two more facilities were approved in southwest Santa Rosa, one located at 2835 Duke Court and the other at 2875 Sebastopol Road. On March 9, 2017, a facility was approved in southwest Santa Rosa at 2739 Giffen Avenue, and another in northwest at 60 Maxwell Court (the subject site). Several of these permits, including the subject site are in proximity or adjacent to residential uses or districts. In each of these cases, the Commission considered the unique merits of the proposals and found the projects, as conditioned, in compliance with all required CUP findings and in compliance with the City's Interim Medical Cannabis Cultivation ordinance.

To address the impacts of the subject project on adjacent or nearby uses, the CUP contains two specific conditions that protect existing and future residential uses from odor and noise. These conditions implement existing General Plan policy and Zoning Code regulations. (Resolution 11819, Conditions 17 and 18; see discussion below at page 18 – 19.)

*Appeal Ground #7: General Plan policies and State setback standards support the denial of the CUP. The Appellant states the 24-hour facility will be a nuisance to residents in the area, cannabis uses will prevent housing development and displace existing industrial uses; cannabis uses do not create a positive feeling in the community; and the cannabis use, which is illegal under the federal law, will degrade the business community. The appellant contests the Commission's determination that the Facility is supported by the following General Plan policies:*

*LUL-I-1 Provide a range of commercial services that are easily accessible and attractive, that satisfies the needs of people who live and work in Santa Rosa and that also attracts a regional clientele.*

*LUL-K Protect industrial land supply and ensure compatibility between industrial development and surrounding neighborhoods.*

*EV-A Maintain a positive business climate in the community.*

*EV-A-1 Continue to promote Santa Rosa as the North Bay's premier location for technology, clean/green technologies, and entrepreneurial businesses, which create new products and business models that will attract national and international markets.*

**Staff Response to Ground #7:**

At this time, there is no state law setback standard for Medical Cannabis Commercial Cultivation facilities (see response to Appeal Ground #6). The Commission found, based on the evidence in the record, the Facility to be consistent with the above noted (and other) General Plan policies and that it substantially furthered the objectives, goals,



and policies of the General Plan. The Appellant has not provided any new evidence to form the basis of a different conclusion.

*Appeal Ground #8: The Facility violates State housing guidelines. The appeal asserts the Facility will eliminate up to 2,000 dwelling units and 225 very low income units within a 35-acre "opportunity site". Specifically, it states the City's approval of the CUP violates Section 65915.7.a.3 of the California Government Code by eliminating 35 acres within ½ mile of the Downtown Station from future housing development.*

**Staff Response to Appeal Ground #8:**

The City's approval of the CUP to allow the establishment and operation of the Facility will not violate the referenced government code section. Section 65915.7.a enumerates three location criteria that must be met for the City to grant a density bonus to a commercial property developer who enters into a development agreement with an affordable housing developer to build affordable housing.

The Facility does not conflict with any State housing guideline nor City housing policy. The Facility is located within the Downtown Station Area, which is designated as a Priority Development Area, where increased residential densities are allowed. The current zoning for the site, as discussed in Staff Response to Appeal Ground #5, permits industrial uses and permits medical cannabis commercial cultivation uses. Further, the Facility is not "new development" as defined by the Zoning Code since it will continue the existing light industrial use of the existing building.

Finally, as previously stated, the CUP includes conditions to prevent the Facility from creating an odor or noise nuisance for existing and future uses. Also, the Zoning Code outdoor lighting regulation (City Code Chapter 20-30) requires the Facility to shield and recess outdoor lighting to reduce light bleed to adjoining properties, restricts light fixtures below 16-feet, and prohibits illumination of areas off the site. These conditions will ensure the continued light industrial use of the existing building will continue to be compatible with existing and future uses within the Maxwell Court Neighborhood as it transforms to mixed use residential and neighborhood retail development.

## ANALYSIS

### 1. Project Description

Fleuron Inc. is proposing to operate a medical cannabis commercial cultivation facility within an existing 10,972 square-foot building located at 60 Maxwell Court, near the West End Neighborhood, in northwest Santa Rosa. The facility will operate seven days a week with 10 employees, working 8 a.m. to 5 p.m., with 24-hours per day private security. No public access is allowed. Other than new fencing to secure the parking lot and building entrance, no changes are proposed to the site or to the exterior of the building, which was previously occupied by Clear Focus Imaging, a large format graphic production company.

The subject building stands on the north side of the 1.13-acre parcel (APN 010-131-033), which is a double frontage lot located between Maxwell Court and W 9<sup>th</sup> Street and is situated on the southern border of the Maxwell Court Neighborhood industrial area.

Fleuron Inc. will locate its administrative functions in the existing 2,450 square foot office space located at the north end of the building. The 970 square foot enclosed space, or “sally port”, located at the south end building will provide a secure space to store and ship green waste from the facility for disposal or further processing off-site. The remainder of the building, approximately 7,550 square feet, will be devoted to cultivation. This area will be partitioned into rooms for the mother plant and plant cloning, growth of plant stem and leaves in the vegetation room, and the growth of plant buds in four flowering rooms. These rooms will be equipped with odor control and air purification systems.

New exterior lighting and surveillance cameras will be placed on the building’s exterior. The employee entrance on the west side of the building will be secured by new cross fencing (and gates) located at the north and south end of the parking area on the west side of the building. This area will be restriped to designate nine parking spaces (including one accessible space), which are in addition to the three spaces located at the front of the building. The employee entrance will open into a secured room by the office. The shipping entrance is also located within the secured area, next to the sally port. While new cross fencing and gates will allow emergency vehicle through the site, all traffic related to the facility will use the existing driveway at 60 Maxwell Court. Access to the second building on the property will rely on the driveway entrance at 363 W 9<sup>th</sup> Street.

## 2. Surrounding Land Uses

North: Warehouse Retail (Grapevine Trading Company)  
South: Residential (Single Family Dwellings)  
East: Vehicle Services (various repair and autobody shops)  
West: Warehouse Retail (Platt Electric Supply)

The project site is a double frontage lot, lying between Maxwell Court and W 9<sup>th</sup> Street, located at the south end of the Maxwell Court industrial area. This area is bounded by College Avenue, North Dutton Avenue, W 9<sup>th</sup> Street, and the SMART Railroad and includes the Bodean Asphalt Plant, automobile repair shops, building supply stores, an art supply store, a restaurant, and other light industrial and commercial type uses. The West End Neighborhood residential area is located immediately to the south, on the south side of W 9<sup>th</sup> Street, opposite the subject property. The nearest schools located in the vicinity include Abraham Lincoln Elementary School 1,750 feet to the west on W 9<sup>th</sup> Street and the Kid Street Learning Center 2,000 feet to the east at W 8<sup>th</sup> Street and Davis Street.

The nearest park (or public facility) is the City owned DeTurk Round Barn facility about 1,000 feet to the east on Donahue Street.

### 3. Existing Land Use – Project Site

The subject property is a flat, rectangular-shaped parcel located at the south end of the Maxwell Court industrial area. It is a double frontage lot situated between Maxwell Court and W 9<sup>th</sup> Street, immediately west of the SMART right-of-way. There are two, one-story industrial buildings on the site. The building on the north side, which faces Maxwell Court, will be occupied by the Project. This building is currently vacant. It was previously occupied by Clear Focus Imaging, a large format graphic production company that employed 20 people and operated 24-hours a day, seven days a week. The second building at 363 W 9<sup>th</sup> Street on the south side of the property, which is also vacant, was previously occupied by automobile repair businesses.

Two fences enclose the center of the property and divide the property into a northern and southern half. The northern half is occupied by the subject building at 60 Maxwell Court. It has 12 adjoining parking spaces (four nonconforming). The southern building at 363 W 9<sup>th</sup> Street, which is not part of this Project, has eight adjoining parking spaces. The side property lines are fenced. Trees and landscaping occupy a portion of each street frontage.

### 4. General Plan

The project site is designated Transit Village Medium on the Santa Rosa General Plan 2035 land use diagram and is situated at the north end of the Railroad Corridor Sub-Area of the Downtown Station Area Specific Plan (“Specific Plan”). As stated by the General Plan (General Plan, page 2-11),

*This classification is intended to accommodate mixed use development within approximately one-half mile of a transit facility. Development should transition from less intense uses at the outlying edges to higher intensity uses near the transit facility. Residential uses are required, and ground floor neighborhood serving retail and live-work uses are encouraged. Housing densities range from 25.0 to 40.0 units per gross acre.*

This site is located about ½ mile from the SMART Station, on the southern edge of the Maxwell Court neighborhood. Given its distance from the station, the General Plan anticipates the Maxwell Court neighborhood (including the project site) will eventually be converted from industrial and light manufacturing uses to less intense residential and neighborhood retail uses. The following Specific Plan goal anticipates this future mixed use development within the Railroad Corridor Sub-Area will occur within the context of remaining industrial uses (Specific Plan, page 4-5).

*To facilitate the planned transition to a more compact development pattern within the subarea, increased setback distances should not be used as a measure to mitigate potential noise and air quality impacts when new development is proposed next to non-conforming industrial or light industrial uses.*

The following General Plan goals and policies are applicable to the proposed medical cannabis cultivation use:

- |         |  |
|---------|--|
| LUL-I-1 | Provide a range of commercial services that are easily accessible and attractive, that satisfies the needs of people who live and work in Santa Rosa and that also attracts a regional clientele.  |
| LUL-K   | Protect industrial land supply and ensure compatibility between industrial development and surrounding neighborhoods.  |
| LUL-K-2 | Require that outdoor storage areas be screened from any public right-of-way.   |
| EV-A    | Maintain a positive business climate in the community.   |
| EV-A-1  | Continue to promote Santa Rosa as the North Bay's premier location for technology, clean/green technologies, and entrepreneurial businesses, which create new products and business models that will attract national and international markets. |
| EV-A-5  | Maintain diversity in the types of jobs available in Santa Rosa to lessen the impact of economic cycles.   |
| EV-D    | Maintain the economic vitality of the downtown, business parks, offices and industrial areas.  |
| NS-B-5  | Pursue measures to reduce noise impacts primarily through site planning. Engineering solutions for noise mitigation, such as sound walls, are the least desirable alternative.   |
| NS-F-2  | Require that hazardous materials used in business and industry are transported, handled, and stored in accordance with applicable federal, state, and local regulations.   |

A medical cannabis commercial cultivation use, while not specifically addressed in the Santa Rosa General Plan, is allowed within the Limited Light Industrial combining zoning district (City Code Chapter 20-46). This combining district designation only applies to the Maxwell Court neighborhood (City Code Section 20-28.070). It provides an interim land use framework that allows existing industrial and light industrial uses to continue in the Maxwell Court neighborhood until the properties are ready to convert to Transit Village Residential uses. In the interim, the proposed use would continue to provide a viable commercial service to the community, create permanent full-time and part-time jobs, and help to maintain the economic viability of this area. In addition, the use would be conducted entirely indoors with odor control and noise reduction measures, as

well as operate with a security plan. The Issues section of this report provides further discussion regarding odor, noise and security aspects of the Project.

The Specific Plan allows existing industrial and light manufacturing uses, including the Project, to continue in the Maxwell Court neighborhood pursuant to Policy SP-LU-5.4, which states:

*Allow continuance of existing non-conforming uses within the Plan Area until properties are ready to convert to uses that are consistent with adopted plans and regulations. Allow for maintenance and re-occupancy of buildings with non-conforming uses and exempt minor alterations and/or expansions of existing buildings from the development guidelines established in the Development Guidelines and Streetscape Standards chapter of this plan.*

The Project is consistent with the applicable underlying General Plan goals and policies as well as the associated Transit Village Medium General Plan land use designation in that it is a light manufacturing type use which is permitted in the Limited Light Industrial (-LIL) combining zoning district, it will re-occupy an existing light manufacturing building, and it will not significantly alter nor expand the existing structure or site.

## 5. Zoning

North: Transit Village Residential-Station Area-Limited Light Industrial (TV-R-SA-LIL)

South: Low Density Residential-Historic (R-1-6-H)

East: Transit Village Residential-Station Area-Limited Light Industrial (TV-R-SA-LIL)

West: Transit Village Residential-Station Area-Limited Light Industrial (TV-R-SA-LIL)

The project site is bounded on three sides by properties that are within the same Transit Village Residential-Station Area-Limited Light Industrial (TV-R-SA-LIL) zoning district. This zoning is consistent with the Transit Village Medium General Plan land use designation (Code Section 20-20.020.A, Table 2-1) and the property is located within and is subject to the Specific Plan.

### **Land Use:**

Transit Village Residential (TV-R) zoning is “...*intended to support a diverse mix of multi-family housing, live-work housing and mixed-use residential with neighborhood serving retail,*” (Code Section 20-20-050.D). This zoning is applied

to the project site and most of the lots within Maxwell Court neighborhood; areas within approximately ½ mile from the Downtown transit station (Code Section 20-22-020.D).

The Limited Light Industrial (-LIL) combining district is an interim zoning designation, which modifies the primary Transit Village-Residential zoning by allowing industrial and light manufacturing uses to continue in the Maxwell Court neighborhood. Section 20-28-070.A of the Code, says this district is “... *intended to allow the properties within the Maxwell Court neighborhood (Figure 2-8) to maintain a vibrant and thriving industrial area, while also allowing the uses permitted in the primary zoning district, Transit Village-Residential, to be developed, with ultimate conversion to Transit Village-Residential within the life of the Santa Rosa General Plan 2035.*”

In this regard existing industrial and light manufacturing businesses can continue as permitted uses in the Maxwell Court neighborhood until this neighborhood is ready for conversion to mixed use residential and neighborhood retail land uses. As referenced below, Code Section 20-28.070.F states the Council may decide to discontinue this interim zoning on or after January 1, 2020:

*Duration of -LIL Combining District. Five years after the activation of the SMART passenger rail service at the Downtown Santa Rosa station, or January 1, 2020, whichever is sooner, the Community Development Department shall schedule a review by the City Council for consideration of initiation of rezoning the Maxwell Court neighborhood from Transit Village-Residential-Limited Light Industrial to Transit Village-Residential, discontinuing the -LIL Combining District.*

If the Limited Light Industrial zoning is discontinued, the Project and other industrial and light manufacturing uses in the Maxwell Court neighborhood may continue as nonconforming uses subject to the City’s nonconforming regulations (Code Chapter 20-61). A nonconforming use is allowed to continue, to be sold or transferred to new owner, and converted to a similar or more restrictive type use (Code Section 20-61.020); however, it is not allowed to expand its size nor intensify its activities. Finally, if the nonconforming use is discontinued for more than six months, the use is not allowed to resume operation. If the Limited Light Industrial zoning is discontinued, any new use on the project site will be required to comply with the Transit Village-Residential zoning.

### **Medical Cannabis Commercial Cultivation:**

Commercial cultivation of medical cannabis is addressed in Code Chapter 20-46, which was added in March of 2016. The intent of enacting these regulations was to retain local (City) control over the commercial cultivation of cannabis, pending further legislative action by the State and pending a comprehensive effort by the City to prepare local regulations.



The Code defines Commercial Cultivation of Medical Cannabis as “any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical use, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered, or sold in accordance with the Medical Marijuana Regulation and Safety Act (MMRSA) for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.”

Code Section 20-46.030.A allows medical cannabis commercial cultivation uses in the Light Industrial, (IL) and General Industrial (IG) zoning districts, and the Limited Light Industrial (-LIL) combining district, subject to either a Minor Use Permit or Conditional Use Permit, as stated below:

- a) *Commercial cultivation operations up to 10,000 square-feet in size shall be allowed with a Minor Use Permit. For the duration of this interim ordinance, all applications for a Minor Use Permit under this section shall be referred to the Planning Commission for hearing and decision pursuant to Section 20-50.020(A)(1).*
- b) *Commercial cultivation operations over 10,000 square-feet in size shall be allowed only with a Conditional Use Permit.*

The Project would utilize an existing 10,972 square-foot building, and, as such, a Conditional Use Permit is required.

#### **Conditional Use Permit Findings:**

In order to grant the Conditional Use Permit, the following findings set forth in Code Section 20-52.050 (Conditional Use Permits) must be made. Each finding is accompanied by a response.

- a. *The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and the City Code.*

Response: The proposed Fleuron Inc. medical cannabis cultivation facility, which is a light manufacturing type use, will occupy an existing 10,972 square-foot industrial building that is located within the Transit Village Residential-Station Area-Limited Light Industrial (TV-R-SA-LIL) zoning district where commercial cultivation of medical cannabis is allowed to occur with a Conditional Use Permit (Code Section 20-46.030.A.2).

- b. *The proposed use is consistent with the General Plan and any applicable specific plan.*

Response: The proposed Fleuron Inc. medical cannabis cultivation facility is consistent with the applicable underlying General Plan and Specific Plan goals and policies and the associated Transit Village Medium General Plan land use designation. Specifically, Specific Plan Policy SP-LU-5.4 allows for the continuance of existing non-conforming uses and for the re-occupancy of buildings with new non-conforming uses, including the proposed continuation of the light manufacturing use of the existing building in the Maxwell Court neighborhood, until “... *properties are ready to convert to uses that are consistent with adopted plans and regulations.*”

c. *The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.*

Response: The proposed use will be located in an existing 10,972 square-foot building, within a light industrial neighborhood that includes a mix of light manufacturing, warehousing, distribution and automotive repair related uses. As such, the area is well-suited for the proposed operation as a continued light industrial type use of the property. While the subject site is adjacent to residential uses (West End Neighborhood), the facility is located 325 feet from the nearest residential use and approximately 1,750 feet to the nearest school.

In addition, the Commission considered the following specific issues and their resolution as follows:

**Land Use Compatibility:**

The subject property is located at the south end of the Maxwell Court industrial area, which is developed with a mix of industrial, light manufacturing, warehousing, distribution and automotive repair uses. The project site is bounded on the north, west and east by the same TV-R-SA-LIL zoning district; the West End neighborhood to the south is located within a R-1-6-H zoning district.

While the long term land use goal is to transition the Maxwell Court area to mixed use residential and neighborhood retail, the proposed use will reoccupy the building which formerly housed a large format graphic production company. The proposed use, like the former use, will be conducted entirely indoors, operate seven days a week, and generate limited vehicle trips and parking demand. Work activities associated with the Project will be limited to normal business hours (8am-5pm) unlike the former use which operated 24-hours a day. Also, unlike the former use and the other light manufacturing uses located in the same zoning district, the Project requires a Conditional Use Permit in accordance with the Medical Cannabis Cultivation zoning regulation (Code Chapter 20-46). The purpose of this regulation is to “... *retain local control over the commercial cultivation of cannabis, pending further legislative action by the state and a pending a comprehensive effort by the City to prepare local regulations.*” The

Conditional Use Permit will ensure the activities associated with the Project are compatible with existing and future land uses in the surrounding area.

The following are approximate distances from the project site to nearby residential neighborhoods, schools, and city public facilities:

- West End Neighborhood –325 feet to the south, opposite W 9<sup>th</sup> Street
- Abraham Lincoln Elementary School – 1,750 feet to the west on W 9<sup>th</sup> Street.
- Kid Street Learning Center – 2,000 feet to the east at W 8<sup>th</sup> Street and Davis Street.
- DeTurk Round Barn - 1,000 feet to the east on Donahue Street.

These distances provide adequate separation from the proposed use to schools and residential areas.

Conditions of approval related to odor control and security will further ensure land use compatibility. Due to the industrial nature of the site and the surrounding properties, the distance of the site to residential, parks and schools, along with the proposed conditions of approval, staff finds the Project is not expected to present any significant land use compatibility issues.

### **Security:**

Development and implementation of a security plan is essential to ensure the safe operation of the Project. The applicant has provided a preliminary security plan that addresses on-site security for the Project. A more detailed, final security plan will be provided to the City for review and approval prior to issuance of a building permit.

Key provisions of the proposed security plan include the following:

- The building has a loading area that allows for deliveries and loading to occur within a secure fenced enclosure.
- The main employee entrance door can only be accessed from the parking area, which will be secured by a fenced enclosure and monitored by surveillance cameras.
- The facility will be monitored 24-hours a day, seven days a week by a third party professional security company via an electronic security system.
- The interior and exterior of the building will be monitored by strategically placed security cameras and lights.
- All applicants must pass background checks as a condition of employment, and hiring preference will be given to local residents. Employees will be thoroughly trained on all cultivation and security protocols to ensure product and staff safety.

Based on the above provisions, along with the condition of approval to require the implementation of the approved final security plan, the Project will provide sufficient security to ensure safe operations.

**Odor Control:**

Condition of approval Condition 17(A) requires that “odor control be regulated and maintained such that the odors of medical cannabis are not detected outside of the building.” The air quality and odor control systems outlined in the Project Statement (attached) will help to meet that standard. The applicant’s proposed multi-tiered odor reduction system is based on current accepted industry methods and products. This system, which is described in the Project Statement, includes the following:

- Separate, sealed cultivation rooms to contain odors.
- An air filtration system that pairs Dynamic V8 electric grid air filtration with a carbon filter to reduce odor within the building.
- An air purification system called “Skrudd” that treats exhaust air leaving the building.

Conditions of approval require the installation and operation of the proposed air quality filtration system, as a means to reduce odor related to the Project. The Project, as proposed and as conditioned, is expected to adequately control odors outside of the building.

**Noise:**

The General Plan establishes normally acceptable noise for various land uses within the City (Figure 12-1, Land Use Compatibility Standards page 12-4). The normally acceptable noise limit for Multifamily Residential uses is 65 decibels (dB). The limit is 70 dB for Business Commercial uses and 75 dB for Industrial uses. The General Plan also estimates the ambient noise level at the project site will reach 65 dba by 2035, which takes into account full build-out of the land uses and projected traffic in the area (Figure 2.2, General Plan Noise and Safety Element, page 12-5).

General Plan Noise and Safety Element Policy NS-B-6 requires existing uses to reduce noise normally acceptable levels. The recommended conditions of approval (Draft Resolution Condition 18) require review of air conditioning equipment (anticipated to be a primary source of noise) for noise attenuation equipment. This condition will ensure noise generated by the Project will be kept at or below 65 dB and be compatible with future mixed use development anticipated on the adjoining properties under the Transit Village Residential zoning.

With this condition of approval, the Project will be consistent with General Plan noise standards.

- d. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.*

Response: The proposed cannabis cultivation facility would be located entirely within an existing 10,972 square-foot industrial building, including all growing, harvesting, packaging and shipping functions. Access to the site is provided via Maxwell Court, and the building will be fully accessible pursuant to American's with Disabilities Act (ADA) standards, though no public access will be permitted due to the nature of the proposed use and for security purposes. All necessary utilities are available at the project site, including water, wastewater, storm drainage and Pacific Gas and Electric (PG&E) services.

- e. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.*

Response: The Project will be consistent with surrounding land uses, which are all within the same Transit Village – Residential – Station Area - Limited Light Industrial zoning district and comprise a variety of light manufacturing, warehousing, distribution and automotive repair related businesses, with residential uses lying south across W. 9<sup>th</sup> Street. In addition to the proposed fenced parking lot and building entrance enclosure, conditions of approval would further regulate the use to ensure it will not create in a public nuisance or health and safety hazard. Condition 4, sections (d) through (g) require the implementation of a security plan, use of surveillance cameras, security video retention, and alarm systems.

- f. The Project has been reviewed in compliance with the California Environmental Quality Act (CEQA).*

Response: The Project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301, which applies to existing facilities involving no expansion of facility. The Project involves use of an existing 10,972 square-foot industrial building, for a commercial cannabis cultivation facility, with new interior partitions, plumbing, air circulation and electrical improvements and reconfigured parking; and with no building expansion or exterior building renovations.

Code Section 20-46.030.D also stipulates that medical cannabis commercial cultivation operators "... shall be required to comply with such additional operational conditions or performance measures adopted by subsequent ordinance(s) of the City to comprehensively regulate medical cannabis". The

City staff is currently working with the Council Medical Cannabis Policy Subcommittee to prepare the draft comprehensive medical cannabis ordinance.

Additionally, medical cannabis commercial cultivation operators must obtain a State license as they become available, and shall comply with any applicable State licensing requirements, such as operational standards and locational criteria. These issues are addressed in the conditions of approval.

**Parking:**

The project site currently includes 23 delineated on-site parking spaces; 14 spaces adjoin and serve 60 Maxwell Court. The other nine spaces run along the east side of the second building at 363 W 9<sup>th</sup> Street. The Code does not include specific parking requirements for cannabis cultivation facilities. However, staff has determined parking demand for this type use, which does not include retail customers or public services, is comparable to a warehousing and wholesale distribution operation, which requires one space per 1,000 square feet of gross floor area. This parking rate was applied to the four previously approved medical cannabis commercial cultivation projects. Pursuant to Section 20-36.050(C)(allowing flexibility for parking standards under a conditional use permit) a lower parking rate was deemed appropriate for at least one of the applications.

Under the warehouse calculation, the 10,972 square foot building at 60 Maxwell Court requires 11 parking spaces. The Project will reconfigure the parking area to eliminate four non-conforming parallel spaces along the west property line and restripe the existing diagonal spaces to provide eight standard diagonal spaces, including one accessible space. The three spaces at the front of the building will remain. As a result, 11 spaces would be provided when 11 are recommended under the standard warehouse calculation. The nine existing spaces serving the building located at 363 W 9<sup>th</sup> Street will also remain.

The Parking Chapter of the Code also states parking requirements may be reduced (or increased) in conjunction with the requested use permit (Code Section 20-36.050.C). Given the applicants proposed maximum of 10 employees, staff finds the proposed 11 parking spaces would be appropriate for the facility.

6. Neighborhood Meeting Comments

The Neighborhood Meeting held on December 7, 2016, was attended by approximately 15 people. As of March 1, 2017, 17 written statements (attached) have been submitted to date from interested parties. The questions raised at the meeting sought clarification about the operation of the facility, the applicant's intent to expand into the second building on the project site, and the Project's compatibility with existing and future residential uses including site security,



trespass, neighborhood crime, noise, and parking demand. The meeting attendees also posed broader questions concerning the legality of cannabis cultivation, continuation of the Project if the Limited Light Industrial (-LIL) zoning district is discontinued, and the applicability of the California Environmental Quality Act (CEQA). The written statements raised additional concerns regarding the Project's proximity to schools and parks, the visual impact of proposed lighting and security fencing, Cultural Heritage Board review, and a nearby diesel fuel pipeline. Finally, staff received a number of statements from neighbors and persons familiar with the applicant's dispensary in the City of Cotati which expressed their support for the Project.

At the meeting, the applicant was able to confirm the Project is limited to one building, describe the security measures associated with the operation, and outline the noise and odor control measures associated with indoor cannabis cultivation. Staff responded to the questions regarding the legality of medical cannabis, the intent of the Limited Light Industrial zoning designation, and the application of CEQA.

Below is staff's response to issues raised by the public but not addressed at the meeting or elsewhere in this report.

- Visual impact. New exterior lighting will be shielded and downward cast, which is a standard requirement of all commercial development. The proposed fencing will be located in the interior of the lot, which will be seen from Maxwell Court and not from W 9<sup>th</sup> Street.
- Cultural Heritage Board Review. The Cultural Heritage Board does not review development located outside the City's Historic Districts, including development adjoining the West End Neighborhood. However, the Project will be subject to Design Review by staff at the time a building permit and/or zoning clearance is sought for proposed site improvements and building modifications.
- Maxwell Court Pocket Park. The Specific Plan identifies a future pocket park at a site north and east of the project site (Specific Plan Policy SP-UPS-6.4; Figure 7-2: Existing and Proposed Parks). This park will be built with fees associated with future projects in the Maxwell Court neighborhood. The Project will not conflict with nor restrict the development of this pocket park as there are no park setback requirements for cannabis cultivation with no retail sale.
- Nearby Diesel Fuel Pipeline. Any work within the public right-of-way requires an encroachment permit (See Engineering Development Services Attachment A, Condition 1). Information about this or any other pipe located within or adjoining the area of work will be required prior to the issuance of a building permit related to this Project.

7. Public Improvements/On-Site Improvements

The Project was reviewed by the City's Engineering Development Services Division. While no substantial specific public or on-site improvements are required at this time, a number of conditions of approval related to the proposed use have been developed, and are memorialized in the Exhibit "A" dated January 12, 2017, which is attached in its entirety to the resolution.

FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not development which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15301.

PLANNING COMMISSION REVIEW AND RECOMMENDATION

On March 9, 2017, the Commission held public hearing and approved (4-1-1-1) the Conditional Use Permit for the project, with Chair Cisco, Vice Chair Crocker, Commissioners Edmondson and Groninga voting Yes; Commissioner Duggan voting No; Commissioner Stanley abstaining; Commissioner Rumble Absent. Prior to taking action, the Commission considered the staff report and all associated attachments, the staff presentation, the applicant's presentation, and public testimony. There were eleven speakers during the hearing, with five speaking in opposition. Following the hearing, the Commission discussed the details of the project, including plans for addressing security, noise, circulation and odor mitigation. The Commission also discussed the balancing of General Plan, zoning, and cannabis policies, as well as the findings necessary to support approval of a Conditional Use Permit. The Commission made required use permit findings, based on evidence in the record, necessary to approve the CUP, and adopted Planning Commission Resolution No. 11819.

NOTIFICATION

The public hearing for the subject appeal was noticed in the Santa Rosa Press Democrat, and a notice was mailed to all property owners of record within 400 feet of the subject site and to the attendees of the Neighborhood Meeting held on December 7, 2016. In addition, copies of the notice were posted at City Hall, and public hearing signs were posted on the site's frontages on Maxwell Court and on W 9<sup>th</sup> Street.

### ATTACHMENTS

- Attachment 1 – Disclosure Form
- Attachment 2 – Appeal Form and Attachments
- Attachment 3 – Location Map
- Attachment 4 – General Plan Land Use
- Attachment 5 – Zoning Map
- Attachment 6 – Vicinity Aerial
- Attachment 7 – Project Statement (1/31/17)
- Attachment 8 – Project Statement and Information (12/8/16)
- Attachment 9 – Site Aerial
- Attachment 10 – Proposed Site Plan (1/31/17)
- Attachment 11 – Proposed Floor Plan (1/31/17)
- Attachment 12 – Site Analysis
- Attachment 13 – PC Staff Report Packet 3-9-17
- Attachment 14 – PC Minutes 3-9-17
- Attachment 15 – PC Resolution 11819
- Attachment 16 –Correspondence

Resolution 1/Exhibit A

### CONTACT

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