



# YUROK TRIBE

## Heritage Preservation Office

PO Box 1027 Klamath, CA 95548

Phone: (707) 482-1350 • ext. 1309

June 20, 2019

Humboldt County Board of Supervisors

825 5th Street, Room 111

Eureka, CA 95501

Dear Humboldt County Board of Supervisors,

The Yurok Tribe writes to provide the Humboldt County Board of Supervisors additional information regarding the Ke'Wet Ceremonial District and the Bluff Creek Corporation's ("Bluff Creek") Cannabis Cultivation Project and Application ("the Project"). The Humboldt Planning Department ("the Department") and the Humboldt Planning Commission ("the Commission") properly followed the Commercial Medical Marijuana Land Use Ordinance ("CMMLUO") Section 55.4.11(d) in its decision to deny the Project because its proposed location is in the Ke'Wet Ceremonial District, a Yurok Tribal Cultural Resource. The Commission's decision properly relied on substantial evidence provided and discussed through multiple government-to-government consultations between the Yurok Tribe and Humboldt County, interagency meetings, community meetings, and documentation. Further, Bluff Creek knew of the Ke'Wet Ceremonial District long before the Project application was denied and was given plenty of notice of the District during the many meetings with the Yurok Tribe and the Commission.

### **1. Definition of Tribal Cultural Resources**

"Tribal Cultural Resources" are defined under CMMLUO as: (1) sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, including unique archaeological resources and historical resources as described under sections 21074, 21083.2(g), and 21084.1 of the Public Resources Code, respectively; and (2) Tribal Cultural Resource shall also include "sites or resources identified by the tribe through an action of the Tribal Council or equivalent body." (CMMLUO Section 55.4.7). Public resource code section 21074 provides tribal cultural resources are "[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are... [i]ncluded or determined to be eligible for inclusion in the California Register of Historical Resources [["CRHR"]]" or "determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1." (Pub. R. Code Section 21074

(1)(A)-(2)). The fact that a tribal cultural resource is not on the CRHR or determined eligible for the CRHR is not enough to preclude a lead agency from determining the resource may be an historical resource. (Pub. R. Code Section 21084.1).

The Commission properly designated Ke'Wet Ceremonial District as a Yurok Tribal Cultural Resource under CMMLUO. First, the Commission utilized the CMMLUO's governmental best practices of defining Tribal Cultural Resources as "sites or resources identified by the tribe through an action of the Tribal Council or equivalent body," when relying on Yurok Tribal Council Resolution 18-87 as Yurok law designating the Ke'Wet Ceremonial District as a Tribal Cultural Resource under the Yurok Tribal Register. As detailed in the charts attached to this letter, the County and the Yurok Tribe had multiple government-to-government consultations, County and Yurok agency meetings, and the Planning Commission and the Humboldt County Board of Supervisors held many public meetings regarding the development, adoption, and implementation of the County's commercial cannabis regulations. During consultations and public meetings, the Yurok Tribe shared information pertaining to the significance of the Ke'Wet Ceremonial District and the Tribe's concerns of the impact marijuana cultivation would have on Yurok cultural resources. These good faith negotiations were a collaborative effort to ensure the sacred Yurok Tribal Cultural Resources would be protected as allowed under CMMLUO.

Second, the Planning Commission properly relied on the substantial evidence provided by the Yurok Tribe through the confidential government-to-government consultations and interagency meetings in its determination that the Ke'Wet Ceremonial District is a Yurok Tribal Cultural Resource under Pub. R. Code Section 21074. The Ke'Wet Ceremonial District meets both definitions of Tribal Cultural Resource as set forth in CMMLUO and the Commission's decision is fully supported by the evidence presented at the hearing. Thus, the Commission properly denied Bluff Creek's application because its proposed Cannabis Cultivation Project would be within the identified the Ke'Wet Ceremonial District and would harm Yurok's Tribal Cultural Resources.

## **2. Information Regarding Tribal Cultural Resources is Confidential**

Good faith government-to-government negotiations regarding Tribal Cultural Resources are dependent on trust between the two parties that information regarding Tribal Cultural Resources will be kept confidential to ensure the protection of those resources from looters, vandalism, and destruction. Public Resources Code section 21082(c)(2)(A) provides the legal protection necessary to keep information shared during government-to-government consultations confidential.

The County has properly kept information regarding the Ke'Wet Ceremonial District confidential throughout this process. The Yurok Tribe is aware of attempts and threats of vandalism and destruction of the cultural resources in the Ke'Wet Ceremonial District. If the confidential information regarding Yurok cultural resources is shared publicly, these

resources will immediately be put at risk of destruction and the Yurok people will be significantly harmed. The tribal consultation process pursuant to AB 52 is specifically designed to maintain confidentiality of tribal cultural resources through the consultation process so that candid and honest consultation may occur.

In conclusion, the Commission properly determined the Ke'Wet Ceremonial District is a Yurok Tribal Cultural Resource and properly denied the Project under CMMLUO. The Yurok Tribe respectfully requests the Board of Supervisors affirm the Commission's decision to deny the Bluff Creek Project.

Wok-hlew'

A handwritten signature in black ink, appearing to read 'Rosie Clayburn', with a long horizontal flourish extending to the right.

Rosie Clayburn, M.A.  
Tribal Heritage Preservation Officer  
Yurok Tribe  
PO Box 1027  
Klamath, CA 95548  
rclayburn@yuroktribe.nsn.us

**Attachment 1**

<b>Meetings</b>		
<b>Date</b>	<b>Attendance</b>	<b>Topic</b>
3/22/18	Tribal Council, THPO	K'Wet Ceremonial District Action Item ExecDir 18-009 Major Action passed
4/17/18	Supervisor Ryan Sundberg (District 5 Rep), Maia (legal fellow) THPO,	Draft CMMLUO 1.0
4/28/18	THPO, Culture, TERO, Watershed, Planning, OTA-Councilmembers Aubrey, Natt, Supervisors Sundberg & Fennell, Dir. Ford, Humboldt Planning Dept. Counsel Natalie Duke	Potential MOU between Yurok Tribe and County, CMMLUO 1.0; moratorium on new applications in Yurok Ancestral Territory
5/4/18	THPO, Culture, TERO, Watershed, Planning, OTA-Councilmembers Aubrey, Natt, Supervisors Sundberg & Fennell, Dir. Ford, Humboldt Planning Dept. Counsel Natalie Duke	Potential MOU between Yurok Tribe and County, CMMLUO 1.0; moratorium on new applications in Yurok Ancestral Territory
6/1/18	THPO, Culture, TERO, Watershed, Planning, OTA-Councilmembers Aubrey, Natt, Supervisors Sundberg & Fennell, Dir. Ford, Humboldt Planning Dept. Counsel Natalie Duke	Potential MOU between Yurok Tribe and County, CMMLUO 1.0; moratorium on new applications in Yurok Ancestral Territory
7/9/18	THPO, Culture, TERO, Watershed, Planning, OTA, Councilmembers Gensaw, McCovey, Supervisors Sundberg & Fennell, Dir. Ford, Humboldt Planning Dept. Counsel Natalie Duke	MOU in progress, extension of moratorium on new applications in Yurok Ancestral Territory
10/22/18	THPO, Culture, TERO, Watershed, Planning, OTA, Councilmembers Gensaw, McCovey, Dir. Ford, Humboldt Planning Dept.	MOU in progress, extension of moratorium on new applications in Yurok Ancestral Territory
11/9/18	Tribal Council, THPO	K'Wet Ceremonial District Resolution 18-87 Major Action passed

<b>Humboldt Planning Department and Yurok Cannabis Task Force meetings</b>		
<b>Date</b>	<b>Attendance</b>	<b>Topic</b>
10/23/17	John Ford, Humboldt County Planning Department and Yurok Cannabis Task Force Members	Draft CMMLUO 1.0
7/19/18	John Ford, Humboldt County Planning Department and Yurok Cannabis Task Force Members	Public Hearing
8/10/18	John Ford, Humboldt County Planning Department and Yurok Cannabis Task Force Members	Ke'wet District
7/18/18	John Ford, Humboldt County Planning Department and Yurok Cannabis Task Force Members	Discussing cultivation on Yurok ancestral lands and consultation process and policies
2/7/19	Vice Chair Frankie Myers and Rosie Clayburn, THPO	Presenting before the Humboldt County Planning Commission meeting discussing Ke'Wet Ceremonial District and the Bluff Creek application. The Commission voted 3-2 to deny the permit.

<b>Yurok Cannabis Task Force Meetings with Bluff Creek</b>		
<b>Date</b>	<b>Attendance</b>	<b>Topic</b>
3/21/18		Bluff Creek inspection by the County
10/25/18	Lucien Smith, Philip Wayne Smith, Cannabis Task Force	Meeting with Bluff Creek and the Yurok Tribe
11/8/18	Lucien Smith, Cannabis Task Force	Meeting with Bluff Creek and the Yurok Tribe. Agenda Provided.
<b>Yurok Culture Committee Meeting and</b>		
<b>Date</b>	<b>Attendance</b>	<b>Topic</b>
3/28/2018	THPO and Yurok Culture Committee	Special Consultation Meeting regarding the Ke'Wet Ceremonial District
Prior 3/28/18	THPO and 5 Yurok Dance Leaders	Consultation regarding the Ke'Wet Ceremonial District

**Attachment 2**

<b>Correspondence</b>			
<b>Date</b>	<b>Author</b>	<b>Recipient(s)</b>	<b>Topic</b>
1/19/18	Yurok Tribe Cannabis Task Force	Bluff Creek	Requesting a meeting and application review processing fee
1/25/18	Bluff Creek	Yurok Tribe Cannabis Task Force	Refusal to pay fee and acknowledge Yurok Tribe's authority
2/7/18	Yurok Tribe Cannabis Task Force	Bluff Creek	Denying cannabis cultivation
2/22/18 – 4/16/18	Kathleen Fisher, Yurok	Humboldt County	Emails scheduling the Yurok Tribe's visit to the Bluff Creek property
6/14/2018 – 8/9/19	Kathleen Fisher, Yurok	John Ford, Humboldt County	Emails scheduling a government to government consultations between Yurok and Humboldt County
7/26/18	Yurok Tribe Tribal Heritage Preservation Officer	Bluff Creek	Denying permit based on substantial adverse impact to cultural resources
7/26/18	Yurok Tribe	Humboldt County Planning Commission	Comment and review of Bluff Creek permit

<b>Documentation</b>			
<b>Date</b>	<b>Author</b>	<b>Recipients</b>	<b>Topic</b>
11/27/18	Yurok Tribal Council	Humboldt County Planning Department and County Counsel	Major Action and Resolution designating the Ke'Wet Ceremonial District as a Tribal Cultural Resource to be include on the Yurok Tribal Register