

ATTACHMENT 7

Information Submitted by the Applicant since December 14, 2017

- Exhibit A. Applicant's requested Qualified (Q) combining zone, Section 4
- Exhibit B. Technical Memorandum, dated August 14, 2018, and prepared by Luhdorff & Scalmanini Consulting Engineers
- Exhibit C. Letter, Response to Comments of Klamath-Trinity Unified School District, dated October 5, 2018, prepared by Harrison, Temblador, Hungerford, & Johnson
- Exhibit D. Letter, Response to Comments of Hoopa Valley Tribal Council and Blue Lake Rancheria, dated October 5, 2018, prepared by Harrison, Temblador, Hungerford, & Johnson

Attachment 7
Exhibit A

SECTION 4. SPECIAL RESTRICTIONS. Principal permitted uses and conditionally permitted uses otherwise allowed under the MH (Heavy Industrial) Zone regulations of Humboldt County Code Section 314-6.5 shall not be allowed on the property described in Exhibit A except as provided for below:

(a) Principal Permitted Uses:

(1) Uses consistent with the property's existing permitted uses and/or historical industrial use, including surface mining operations, aggregate and construction materials processing and batch plants, and equipment and materials storage.

(b) Uses Permitted with a Use Permit. Uses in paragraph (1) below subject to the industrial performance standards of paragraph (2) herein:

(1) Resource-related industrial processing such as cannabis manufacturing, timber products processing, and agricultural products processing.

(2) Industrial Performance Standards

- Noise. All noise generating operations shall be buffered so that they do not exceed the General Plan Land Use/Noise Compatibility Matrix for existing adjacent uses anywhere off site.
- Lights. All lights shall be directed on-site and shielded to reduce glare to adjacent residential, recreation, and open space areas.
- Vibrations. No perceptible vibrations shall be permitted off the building site except for surface mining processing facilities.
- Electronic Interference. No visual or audible interference of radio or television reception by operations shall be permitted.
- Dust Control. All areas used for parking, traffic circulation and material storage shall be surfaced with asphalt concrete, treated with a dust suppressant or another method to maintain dust control.
- Enclosures. All manufacturing and fabricating areas shall be enclosed in buildings, except for surface mining processing facilities.
- Storage. All equipment and materials storage areas except for surface mining processing facilities shall be screened from adjacent residential zones or uses, public recreation zones or uses, and public facility zones or uses. Equipment and materials storage areas shall be screened by walls, fences, or adequate plantings to a height of not less than six feet(6'); the fencing and plantings shall conform to all yard requirements.
- Stormwater. All development shall comply with municipal separate storm sewer system (MS4) standards related to stormwater runoff, including development of a

Attachment 7
Exhibit A

stormwater management program (SWMP) or stormwater pollution prevention plan (SWPPP) to show compliance with MS4 requirements.

- Visual buffering. Maintain or enhance views from adjacent public recreation uses, residential areas, and Highway 96 of a vegetated corridor or fencing having similar effect such that new development is screened to the extent feasible.
- Does not involve industrial activity which involves the handling of toxic, highly flammable, explosive or radioactive materials in such quantities that would, if released or ignited, constitute a significant risk to adjacent human populations or development.

(c) Purpose of Qualifications. The purposes of the special restrictions and regulations herein imposed on the property are to identify and restrict principally and conditionally permitted uses to those permitted and historical uses that are consistent with a General Plan designation of Industrial, Resource Related (IR) and which have no impacts on adjacent recreational, open space, and residential uses that are greater than the impacts caused by uses historically located on the MH-Q zoned property.



Technical Memorandum

Electronic submittal

DATE: August 14, 2018 PROJECT: 18-1-016

TO: Jordan Main, Managing Partner, Compass Land Group
jmain@compassland.net

FROM: Barbara Dalgish, P.G., Senior Hydrogeologist
Till Angermann, P.G., C.H.G., Principal Hydrogeologist

SUBJECT: **EXAMINATION OF POTENTIAL IMPACTS TO GROUNDWATER QUALITY, PROPOSED MEDICAL CANNABIS PRODUCTS MANUFACTURING FACILITY, WILLOW CREEK SITE, HUMBOLDT COUNTY, CA**

1. INTRODUCTION

Mercer Fraser Company proposes to construct and operate a medical cannabis products manufacturing facility (Project) at the Willow Creek Site, near the town of Willow Creek in Humboldt County. The Project includes a new on-site wastewater treatment system (OWTS). The purpose of this Technical Memorandum is to examine the potential for (i) the Project's OWTS and (ii) an accidental spill of 55 gallons of alcohol on the project site to affect water quality in the Trinity River, Trinity Valley Elementary School or Willow Creek Community Services District (CSD) public supply wells. For this purpose, this Technical Memorandum (i) reviews pertinent existing land use, facilities, and Project specifications, (ii) examines existing hydrogeologic conditions, and (iii) uses this information to evaluate potential Project effects on water quality at nearby locations.

2. EXISTING LAND USE, FACILITIES, AND PROJECT SPECIFICATIONS

The Project is located along Trinity River Highway 96 in Willow Creek (**Figure 1**). The current land use at the Project site is sand and gravel mining and construction materials (aggregate, asphalt, concrete) production. The Conditional Use Permit and Mining Plan/Reclamation Plan for the Willow Creek Gravel Bar specifies the seasonal extraction in Humboldt County of up to 40,000 cubic yards of sand and gravel per year from river gravel bars and install as needed, two seasonal bridge crossings of the low water channel consisting of two flat cars. The extraction operations are served by processing facilities west of

the riverbank. Access to the site is gained from Highway 96, one half mile north of Willow Creek via a locked gate at the entrance to the process site directly off of Highway 96¹.

The Mercer Fraser Company has been operating at this site since at least 1969. The majority of extraction activity occurs during the summer season between June 1st and October 15th. Aggregate materials are extracted and temporarily stockpiled, then loaded on to trucks to be transported to the adjacent processing facility. The processing operation at the site involves material crushing and/or sorting; on-site storage of materials; loading activities; production of asphalt; weighing and hauling by truck, and activities such as equipment repairs. The southern portion of the processing site include a hot mix asphalt plant, rock crusher, screen, settling basin, gate, office, and scales.

The existing process site is generally flat with drainage currently flowing primarily towards the north towards the existing sediment settling basin. Willow Creek Community Services District provides approximately 40,000 gallons of water per day when the asphalt plant and crusher are in operation, and water is directed to the sediment settling basin after processing. Water is currently used for washing/processing material at the site and for air pollution control for the asphalt plant. After the water is directed to the sediment settling basin, it percolates into the ground. Watering for dust control currently occurs at the site with use of a water truck.

Runoff from the existing processing site will continue to be directed away from the river and to the existing sediment settling basin consistent with the Project site's existing Stormwater Pollution Prevention Plan (SWPPP). Off-site runoff is prevented by existing berms and stockpiles surrounding the site, and effectively promotes on-site infiltration².

The proposed Project location is situated on the southeast edge of the Willow Creek Site (**Figure 2**). The proposed manufacturing facility will have a chain link security fence with an automatic motorized gate with access control on its southwest border containing a truck unloading zone, parking area, and 50 foot by 100 foot manufacturing facility building. Outside and to the south of the proposed chain link security fence is a proposed leach field and reserve leach field. The proposed manufacturing facility is outside of the 100-year flood boundary³. The proposed manufacturing facility is located approximately 398 feet north of the Willow Creek Motel buildings; 600 feet east-northeast of the Willow Creek Community Church; 725 feet east-southeast of the Six Rivers Medical Clinic; 900 feet southeast of the U.S. Forest Services Ranger Station; and 2,090 feet southeast of the Trinity Valley Elementary School. The leach fields are proposed to be located approximately 400 feet west of the Trinity River.

¹ As described in the application information for an Extension of an Existing Humboldt County Conditional Use Permit and Surface Mining/Reclamation Plan (#CUP-19-88/SP-25-88) for the Mercer, Fraser Company Willow Creek Gravel Bar, dated May 2003; pg. 2.

² As described in the application information for an Extension of an Existing Humboldt County Conditional Use Permit and Surface Mining/Reclamation Plan (#CUP-19-88/SP-25-88) for the Mercer, Fraser Company Willow Creek Gravel Bar, dated May 2003; pg. 23.

³ According to the Willow Creek Site Plan map and schematic (prepared by Pacific Affiliates Consulting Engineers on 5-19-2017), which used the 100-year flood zone boundary based on Humboldt GIS Portal 2015 FEMA Flood Zones.

The Project will produce medical cannabis products and consists of a main proposed manufacturing facility building, approximately 5,000 square feet in size, with associated raw materials storage, extraction room, packaging room, commercial kitchen facilities to produce edible products, and space for administrative functions. The facility will provide on-site parking for its employees within the chain link security fence (**Figure 3**).

The Project includes a new state-of-the-art on-site wastewater treatment system (OWTS) that may involve a mound system, shallow pressure distribution system, or pre-treatment with shallow pressure system. The new OWTS will be designed to handle the septic needs for the employees associated with the Project, and would be operational after approval from the Humboldt County Department of Health (HCDH).

Humboldt County OWTS Regulations are stringent and require (2017, pg. 28), "OWTS shall not cause the groundwater nitrate concentration to exceed 10.0 mg/L as N at any source of drinking water on the property nor on any potential off-site drinking water source." In general, OWTS in Humboldt County must be reviewed and approved by HCDH and Human Services Public Health Branch. Requirements for onsite wastewater systems are specified by the County Public Health Branch and include setbacks for septic tanks and disposal fields from property lines, buildings, wells and water bodies, as well as cut and fill areas and unstable land forms. Setback distances vary depending upon whether the property has an individual water system or not (Humboldt County General Plan, April 2017). Water supply is provided to the Project by Willow Creek CSD.

Furthermore, the leaching area associated with OWTS is subject to design factors of the soil characteristics. To determine septic suitability, soils must have a certain percolation rate, and consider other factors such as: depth of groundwater, perched groundwater, and historical groundwater level; depth of bedrock; steepness of topography; presence of soils that could become seasonally saturated during times of intense rainfall; presence of soil types that may act as a barrier to effluent flow; and the presence of landslides or other potentially unstable soil conditions. Sites with inadequate soils and other unfavorable site characteristics would be required to utilize alternative septic systems, such as mound and pressurized systems, or may not be allowed to have on-site disposal systems. The Land Use Program of HCDH and Human Services Public Health Branch is responsible for the review and approval of applications to construct septic systems (Humboldt County General Plan, 2017).

Regarding OWTS setback requirements, State OWTS Policy Section 9.4.10.1, .4, .5 state that new OWTS must be setback 150 feet from a public water well, 100 feet from a perennial stream, wetland, and other waters, and 100 feet from a private water well. This same policy indicates that new OWTS must be either 400 feet or 200 feet from the High Water mark of the water body, depending on if the dispersal system is within 1,200 feet of the intake or between 1,200 and 2,500 feet of the intake and, "located within the catchment of the drainage such that it may impact the intake point" (HCDH and Human Services Department of Environmental Health, 2017, Appendix E). **Figure 3** illustrates that the proposed new OWTS leach field exceeds these standards. It is over 2,000 feet from the Trinity Valley Elementary School, over 300 feet from the Trinity River, and over 550 feet from Willow Creek. The proposed new OWTS leach field is over 7.5 miles upstream of the gaging station of the Trinity River at Hoopa, which is located at the southern end of the Hoopa Reservation.

3. EXISTING HYDROGEOLOGIC CONDITIONS

This section describes hydrogeologic conditions in the vicinity of the Project relating to groundwater and the Trinity River. The Trinity River runs along the eastern side of the Project site, flowing to the northwest.

The Project site is located outside of any defined groundwater basin (DWR Bulletin 118⁴), with the nearest groundwater basin (the Hoopa Valley Groundwater Basin) located approximately 5.5 miles to the north. The geologic formation at the Willow Creek site consists of a mixture of Quaternary non-marine terrace deposits and recent alluvium consisting of unconsolidated gravel sand and silt. Reported site stratigraphy indicates interbedded layers of sand to sandy gravel, which are moderately consolidated and result in high percolation rates as well as a low summer groundwater table⁵.

To help understand the hydrogeology of the Willow Creek project site vicinity, well completion reports for wells within a radius of 1 mile (which covers the entire Willow Creek vicinity) were collected. There are forty-four (44) well completion reports (WCRs) available from DWR⁶ contained in township/range-sections: H07N/05E-28, -29, -32, and -33. Thirteen (13) of those WCRs are located within the same one-square mile township/range-section as the Project site (H07N/05E-29) and are summarized below (Table 1).

Table 1: Summary of Well Completion Reports in H07N/05E-29

Well Type	Number of Wells	Well/Hole Depth Range (ft)	Range of Year Drilled	Comments
Domestic Well	2	305-405	2007	Well was dry but still completed with an open hole from 25-305 feet; Well completed in fractured rock
Dry Hole Abandoned	1	100	1961	No water encountered, so hole abandoned
Grounding Well	1	106	2009	For grounding cables at PG&E substation
Industrial Well	2	94-135	1961	One is a well deepening record – deepening an existing well from 75 feet to 135 feet
Monitoring Well	5	20-40	1989-1997	Two are from the Cal Trans yard

⁴ <https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118>, accessed 7/27/2018

⁵ As described in the application information for an Extension of an Existing Humboldt County Conditional Use Permit and Surface Mining/Reclamation Plan (#CUP-19-88/SP-25-88) for the Mercer, Fraser Company Willow Creek Gravel Bar, dated May 2003; pg. 20.

⁶ <https://dwr.maps.arcgis.com/apps/webappviewer/index.html?id=181078580a214c0986e2da28f8623b37> accessed 7/27/2018

Municipal Well	2	68-75	1961	Owner info redacted and unavailable
----------------	---	-------	------	-------------------------------------

Groundwater Levels

Twenty-five (25) out of the forty-four (44) WCRs contained water level data related to the drilling and installation of those wells. Generally, the depth to first encountered water and static water levels for wells completed in the alluvium ranged from 13 to 29 feet below ground surface. The WCRs also indicate that the alluvium in the area of Willow Creek contains sand, gravel, cobbles, boulders, and some thin beds of clay overlying fractured bedrock of mostly shale, which agrees with the geologic description of the site mentioned above.

Public databases were searched to find local groundwater levels, with results available from the State Water Resources Control Board (SWRCB) Regulated Facilities Geotracker Database. The database search returned a total of ten (10) wells with water level data, all from a nearby closed Leaky Underground Storage Tank (LUST) cleanup site (Union, Fork's (T0602300076), at 38988 Highway 299, Willow Creek, CA 95573⁷). This site is located approximately 2,400 feet south of the proposed Project facility, and started its cleanup in January 1989, and completed (case closed) in August 2007. Potential contaminants of concern included: benzene, diesel, gasoline, MTBE/TBA/other fuel oxygenates, tert-amyl methyl ether (TAME), toluene, waste oil/motor/hydraulic/lubricating, and xylene. The ten monitoring wells varied in depth from 14 to 20 feet in depth, with depth to water values ranging between 5 to 13 feet below ground surface, taken between October 2001 and September 2006.

Groundwater Quality

Public databases were also searched to find local groundwater quality data. Groundwater quality data near the Project site included data from the ten wells at the Union Fork's regulated facility (approximately 2,400 feet from the proposed Project site), as well as one other well from the U.S. Geological Survey's (USGS) National Water Information System (NWIS) (approximately 650 feet from the proposed Project site) (Figure 5). The USGS site (007N005E29R001H) is completed at a depth of 44 feet below ground surface and has been sampled twice (once in November 2010 and again in October 2015).

Groundwater samples for the regulated facility monitoring wells and the USGS-monitored well include many chemical constituents related to volatile organic carbons (VOCs). The regulated facility is associated with contaminants including benzene, which was also found in the USGS-monitored well (in the most recent 2015 sample). The regulated facility monitoring wells also contained detectable levels of diesel, ethanol, gasoline, MTBE, and xylenes, among others, which is to be expected. In the context of the Project, VOC constituents and nitrate are of primary interest. The only nitrate samples are available from the USGS-monitored well, with very low concentrations in both the 2010 and 2015 sample (0.196 and 0.073 mg/L as N), much lower than the Maximum Contaminant Level (MCL) of 10 mg/L as N.

⁷ https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0602300076, accessed 8/7/2018.

Trinity River and Willow Creek Stream Discharge and Quality

Stream discharge, stage, and water quality data are available from the Trinity River Station at Hoopa (DWR Station HPA; USGS Site Number 11530000), approximately 7.5 miles north northwest (downstream) of the Project (**Figure 5**). Surface water quality and stream discharge data are also available from a site along Willow Creek, approximately 1.4 miles west of the Project site (upstream of the tributary connection with the Trinity River).

Stream discharge and stage data for the Trinity River Station at Hoopa are available from the DWR's California Data Exchange Center⁸ (CDEC) from 1984 to present. Average daily discharge at this location ranges from 199 to 105,267 cfs with an average of approximately 4,540 cfs. The average daily river stage ranges from 0.01 to 40.7 feet with an average of 14.7 feet (or an elevation of 344.7 feet mean sea level). The average daily discharge translates to approximately 2.9 billion gallons per day traveling down the Trinity River in the vicinity of the Hoopa Reservation.

Stream discharge and surface water quality data from the Willow Creek site are available from two measuring events (October 1977 and August 2015). Willow Creek discharge ranged from 7.7 cfs (5 million gallons per day) in October 1977 to 5.9 cfs (3.8 million gallons per day) in August 2015. Surface water quality data are available for general mineral chemistry, which indicate generally good water quality. The water at the Willow Creek site were not tested for VOCs. The nitrate concentration, measured solely in 1977, was 0.01 mg/L as N, which is well below the MCL of 10 mg/L as N.

Surface water quality data at the Trinity River Hoopa site are available from 1950 to September 2017, with almost monthly measurements taken between 1951 and 1980. Surface water quality data are available for general mineral chemistry, indicating that water is generally of good quality at this location. No VOC measurements were taken at this site, but nitrate was tested between 1961 and 1980, ranging in concentration from non-detectible levels (<0.01 mg/L as N) to 0.75 mg/L as N, well below the MCL of 10 mg/L as N.

4. EVALUATION OF POTENTIAL PROJECT EFFECTS ON WATER QUALITY AT TRINITY VALLEY ELEMENTARY SCHOOL AND THE HOOPA RESERVATION'S TRINITY RIVER WATER SUPPLY

On-Site Wastewater Treatment System

The Project will include a new OWTS that will be designed for a facility with maximally four employees. The OWTS will not receive solvent waste from the extraction processes. The design of the OTWS will be reviewed and approved by the HCDH prior to use, and already exceeds minimum setback requirements. It is proposed to be located over 2,000 feet from the Trinity Valley Elementary School, over 300 feet from the Trinity River, over 550 feet from Willow Creek, and over 7.5 miles from the Trinity River gaging station at the southern end of the Hoopa Reservation. The Trinity River maintains good quality water for the data records available with the present-day activities that exist along it. Given the foregoing, the

⁸ <https://cdec.water.ca.gov/> accessed 8/7/2018

notion that the Project OWTS could measurably affect water quality at the Trinity Valley Elementary School or the Trinity River intake at the Hoopa Reservation is unrealistic.

Accidental Spill at the Project Site

Alcohol is a solvent used in extraction processes at the Project and may be delivered by truck to the facility in 55-gallon drums. The highest risk for a spill is not associated with the transit but with loading and unloading. All loading and unloading activities will occur in the fenced Project area on paved surfaces that may also be roofed. For these activities, emergency protocols are already in place (Mercer-Fraser Willow Creek Spill Prevention, Control and Countermeasure Plan, 2015).

Part of standard spill responses is the containment of fluids. According to the Willow Creek Industrial Activities Stormwater Pollution Prevention Plan (SWPP), the current facility site is relatively level and entirely contained by aggregate berms, all stormwater is conveyed to the sediment settling basin, and no stormwater is allowed to runoff the site. Therefore, if a spill were to occur outside of the paved loading docks on earthen surfaces, the potential occurrence of which is remote, the material would stay on site. In that case, spill response includes prompt excavation of contaminated soil. Given the low quantities of proposed use, the low likelihood of a spill, and site-specific characteristics that would contain any spill onsite, the notion that an accidental spill of alcohol could measurably affect water quality at the Trinity Valley Elementary School or in the Trinity River is unrealistic.

LIST OF FIGURES

Figure 1 – Location Map

Figure 2 – Project Parcel Map

Figure 3 – Proposed Project Site Map

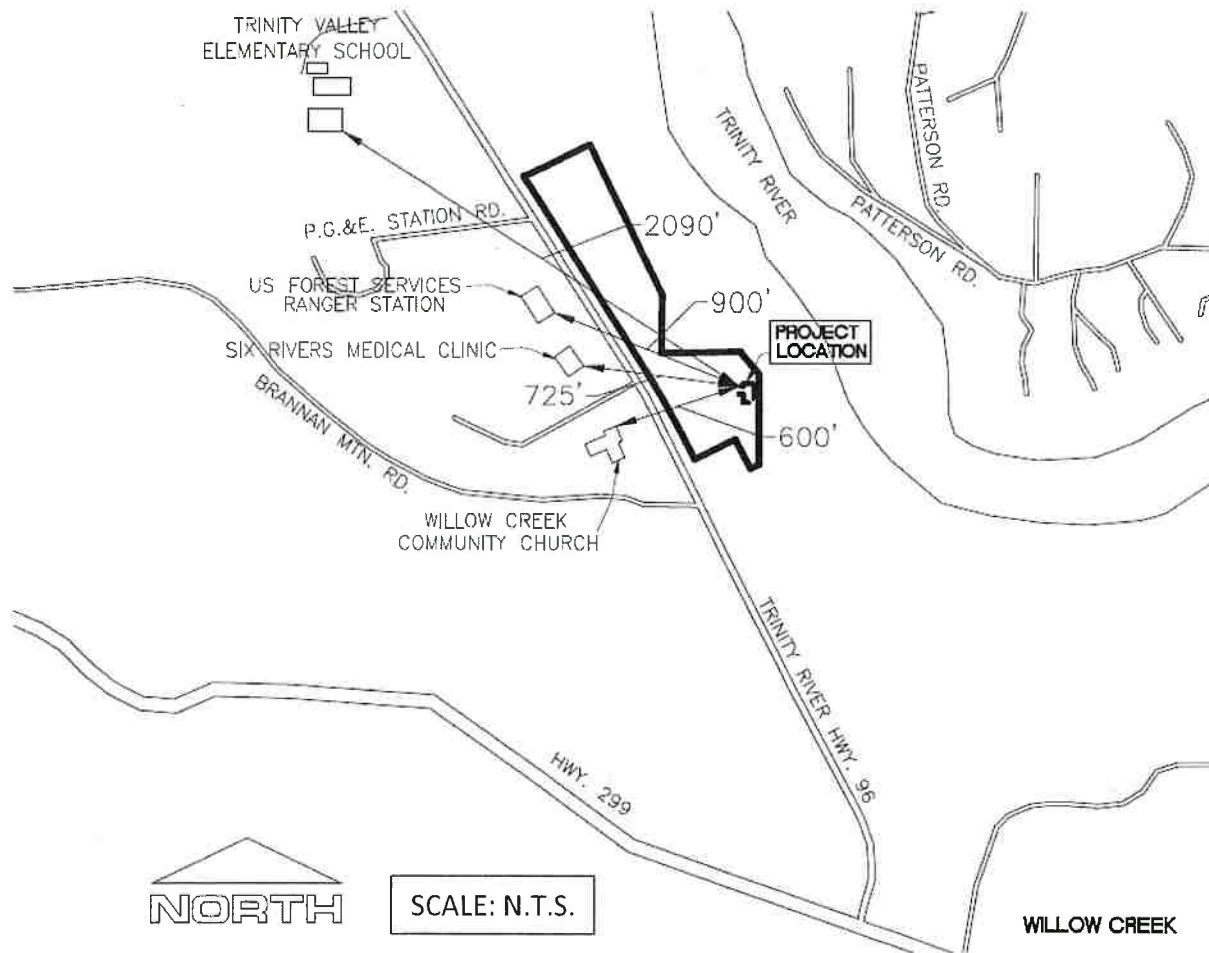
Figure 4 – Willow Creek Project Location, Proposed On-Site Wastewater Treatment System

Figure 5 – Groundwater and Surface Water Monitoring Sites

REFERENCES

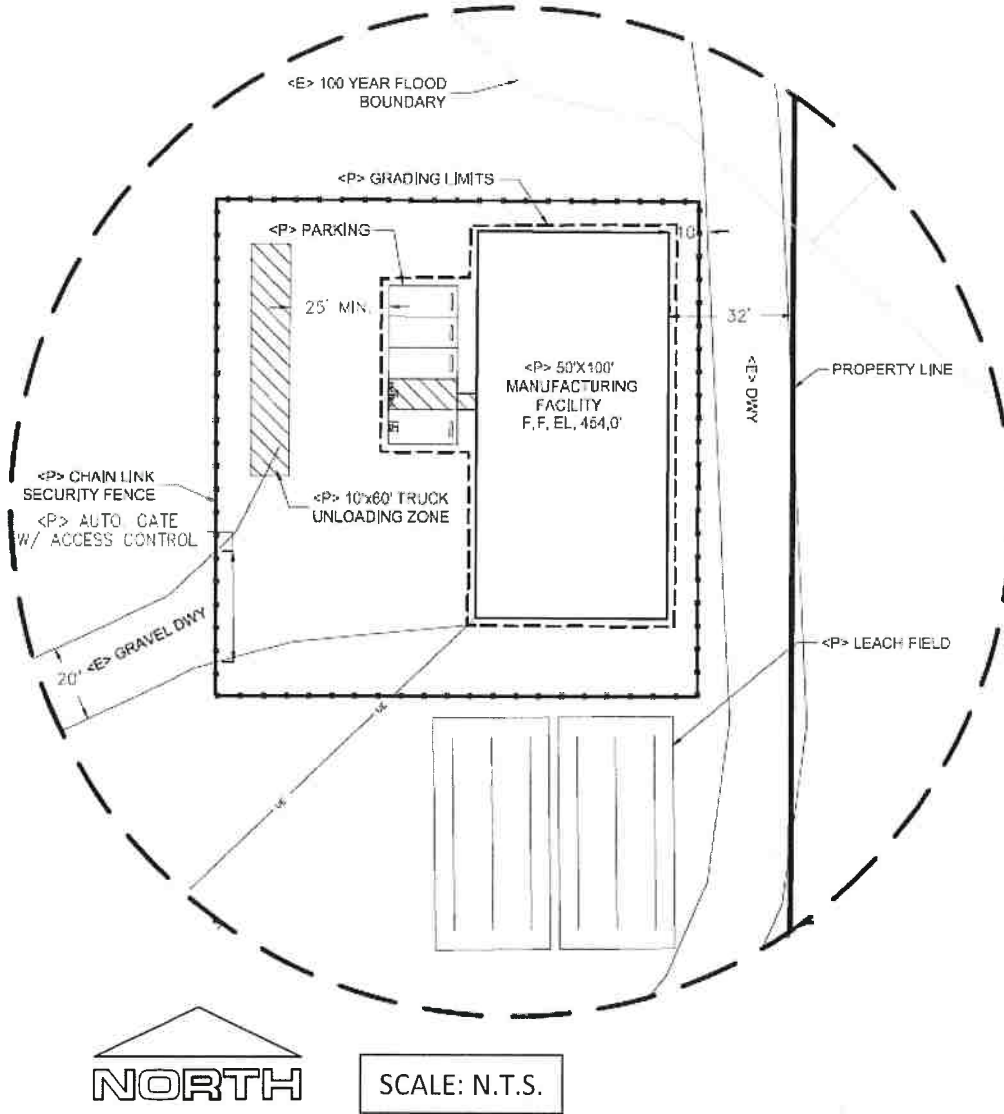
- Domenico, P.A. and F.W. Schwartz, 1998, Physical and chemical hydrogeology. John Wiley & Sons, Inc. p. 39.
- Ford, 2017 Mercer Fraser Conditional Use Permit, Surface Mining Permit, Special Permit, and Reclamation Plan Approval, Application 10345.
- Humboldt County Department of Health and Human Services, Department of Environmental Health, 2017, Humboldt County Onsite Wastewater Treatment System (OWTS) Regulations and Technical Manual, Issued and Effective November 7, 2017.
<https://humboldt.gov/DocumentCenter/Home/View/62933>
- Humboldt County Planning and Building Department, Current Planning Division, 2017. Notice of Planning Commission Decision, Assessor Parcel Number 522-491-017, December 20, 2017.
- Humboldt County, 2017, Humboldt County General Plan Update, Revised Draft Environmental Impact Report SCH# 2007012089, April 19, 2017,
<https://humboldt.gov/DocumentCenter/Home/View/58851>
- Mercer-Fraser Company, 2015a, Industrial Activities Stormwater Pollution Prevention Plan for Mercer-Fraser Company Willow Creek, June 1, 2015.
- Mercer-Fraser Company, 2015b, Spill Prevention, Control, and Countermeasure Plan, 351 Highway 96, Willow Cree, CA, Mercer-Fraser Company.
- Pacific Affiliates Consulting Engineers, 2017, Site Plan, Mercer Fraser, 533 State Why 96, Willow Creek, Rev. 5/19/2017.

FIGURE 1 LOCATION MAP

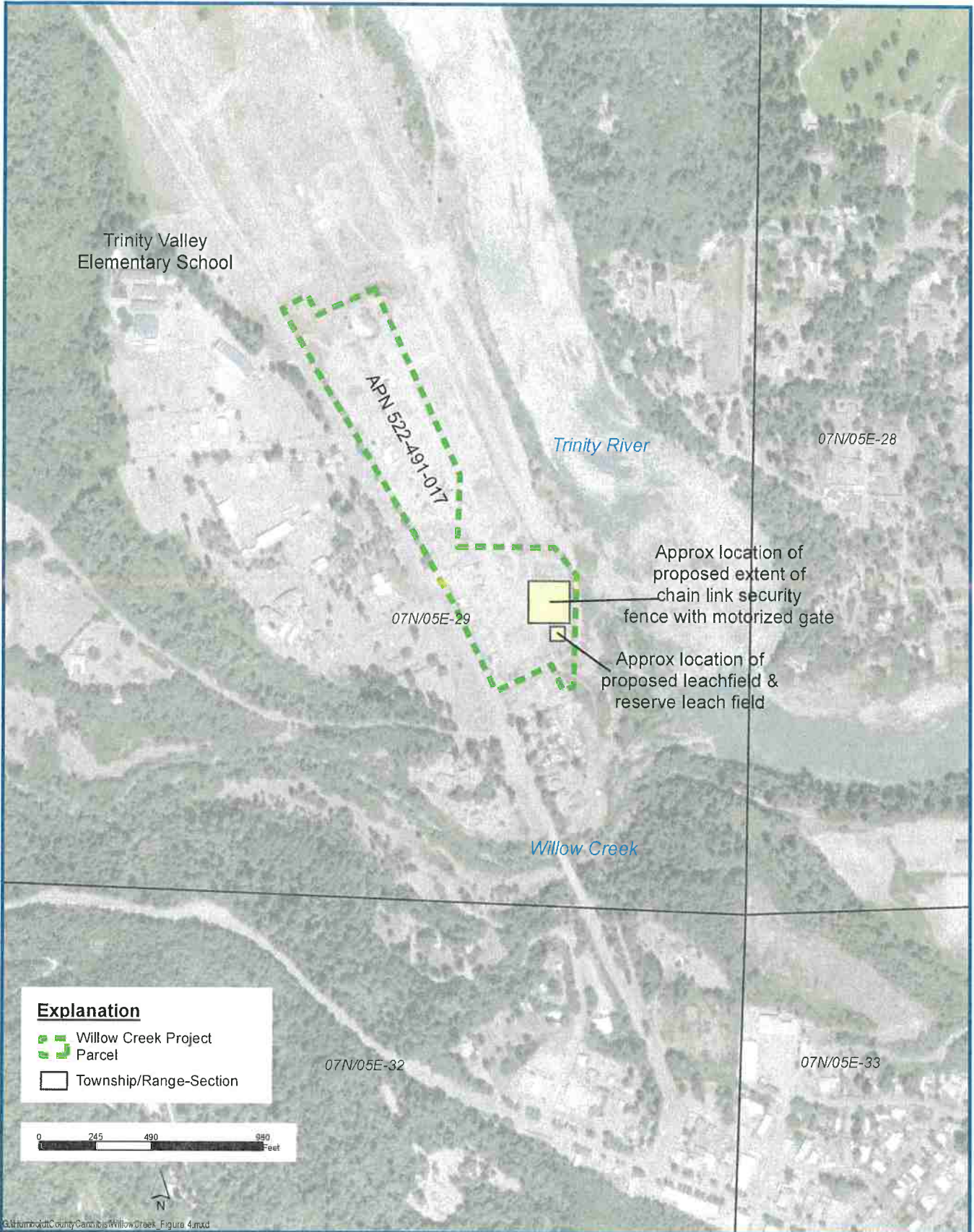


Source: Pacific Affiliates Consulting Engineers, 2017

FIGURE 3 PROPOSED PROJECT SITE MAP



Source: Pacific Affiliates Consulting Engineers, 2017



**Willow Creek Project Location
Proposed On-Site Wastewater Treatment System**

*Willow Creek Proposed Project
Mercer Fraser, Humboldt County*

Figure 4



\\HumboldtCounty\Cannist\WillowCreek_Figure 5.mxd



Groundwater and Surface Water Monitoring Sites

*Willow Creek Proposed Project
Mercer Fraser, Humboldt County*

Figure 5

HARRISON
TEMBLADOR
HUNGERFORD
& JOHNSON

MINING
LAND USE
NATURAL RESOURCES

2801 T STREET
SACRAMENTO, CA 95816
TEL 916.382.4377
FAX 916.382.4380
WWW.HTHLAW.COM

October 5, 2018

VIA ELECTRONIC MAIL ONLY

John Ford
Director of Planning and Building Department
County of Humboldt
3015 H Street
Eureka, CA 95501
jford@co.monterey.ca.us

***Re: Zone Reclassification 16-002, SP-16-014;
Response to Comments of Klamath-Trinity Unified School District***

Dear Mr. Ford:

On behalf of Mercer-Fraser Company and MCMP, LLC (together “Applicants”), we write in response to comments from the Klamath-Trinity Joint Unified School District (“District”) regarding the above-referenced zone reclassification.

On January 11, 2018, the Humboldt County Planning Commission voted to recommend a zone reclassification of APN 522-142-017 from Highway Service Commercial (CH) to Heavy Industrial with a Qualified combining zone (MH-Q). The zone reclassification is necessary to implement the property’s new General Plan land use designation of Industrial, Resource Related (IR). The zone reclassification also better reflects the existing and historical industrial use of the property. The Planning Commission also approved SP-16-014 for a cannabis manufacturing facility on the property.

On February 13 and March 5, 2018, the District wrote letters to the Board of Supervisors (“Board”) in opposition to the Planning Commission’s approval of the cannabis manufacturing facility. Copies of those letters are attached as **Exhibit A**. Neither the District nor any other party challenged the Planning Commission’s approval of SP-16-014. The District’s opposition to the recommended rezoning is solely due to the fact that rezoning will allow SP-16-014 to come into effect. The District’s opposition is not related to the zone reclassification more generally. Notwithstanding the District’s failure to challenge the Planning Commission’s approval of the cannabis manufacturing facility, we respond to each of the District’s comments regarding the SP-16-014 in turn below.

February 13, 2018 Letter

In its first letter, the District raised concern that the recommended zone reclassification “would permit cannabis cultivation and processing” and that “[t]he cultivation of marijuana, or presence of marijuana processing facilities, near District bus stops and other school facilities” is harmful to children.

John Ford
Zone Reclassification 16-002, SP-16-014;
Response to Comments of Klamath-Trinity Unified School District
October 5, 2018

Specifically, the District raised concern that the cannabis manufacturing facility's proximity to the Trinity Valley Elementary School "increases the probability that those children will be exposed to marijuana, and therefore places those children at risk of increased drug use."

The District's concerns are unfounded. While cannabis cultivation is permitted in MH zones accompanied by a Commercial or Industrial General Plan land use designation, or where previously developed for a lawful industrial or commercial use, the County's use of a Qualified (Q) combining zone would not allow such use as of right. The proposed Q combining zone limits the types of uses in the MH zone to resource-related industrial processing such as timber, agriculture, and mineral products processing. Cannabis cultivation is not included as a principally permitted use. Moreover, the Qualified combining expressly prohibits "industrial activity which involves the handling of toxic, highly flammable, explosive or radioactive materials in such quantities that would if released or ignited, constitute a significant risk to adjacent populations or development."

Applicants have no intent to commence cannabis cultivation and processing operations at the site. However, if a future owner or operator did wish to do so, the future owner must obtain a conditional use permit following a noticed public hearing. The County would then be entitled to approve or deny such application on its individual merits, with input from the local community.

Here, the zone reclassification best reflects the existing and historic industrial use of the property. Given the Applicants' intent and protections from the Q Combining Zone, there will be no foreseeable cannabis cultivation and processing activities occurring on site.

March 5, 2018 Letter

In its second letter, the District contends that the approved cannabis manufacturing facility is in violation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act's (Business and Professions Code § 26000 *et seq.* ["MAUCRSA"]) setback requirements. Specifically, the District asserts that MAUCRSA requires that cannabis manufacturing facilities are required to be at least 600 feet away from a school, and that the distance should be measured property line to property line, rather than premises to premises. The District has misapplied MAUCRSA as it fails to account for the County's own cannabis ordinance.

MAUCRSA provides, in pertinent part, that a cannabis manufacturing facility:

[S]hall not be located within a 600-foot radius of a school. Providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, *unless a licensing authority or a local jurisdiction specifies a different radius.* The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code, unless otherwise provided by law.

(Bus. and Prof. Code, § 26054(b) [emphasis added].)

John Ford
Zone Reclassification 16-002, SP-16-014;
Response to Comments of Klamath-Trinity Unified School District
October 5, 2018

If a licensing authority or a local jurisdiction has not specified its own radius, as allowed under MAUCRSA section 26054(b), MAUCRSA's default 600-foot radius is measured as follows: "the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the ... [cannabis manufacturing facility] is to be located without regard to intervening structures."

Here, the County has enacted the Commercial Medical Marijuana Land Use Ordinance ("CMMLUO").¹ While the CMMLUO, as allowed by MAUCRSA, specified a 600-foot setback requirement on *cannabis cultivation*, the CMMLUO does not require any setbacks for *cannabis manufacturing*. In summary, the County has determined that cannabis manufacturing facilities, unlike cultivation facilities, are not required to be setback at least 600 feet from schools, school bus stops, and churches. Accordingly, given that the County has chosen not to require setbacks for manufacturing activities, MAUCRSA section 26054(b)'s setback requirements are inapplicable to SP-16-014.

The District also notes that the Health and Safety Code provides that "no marijuana cooperative, collective, dispensary, operator, establishment, or provider who possess, cultivates, or distributes medical marijuana ... shall be located within a 600-foot radius of a school. (Health and Safety Code, § 11362.768(b).) The District contends that if the Applicants intend to have a storefront, such use would be prohibited.

SP16-014 allows for the construction and operation of a cannabis manufacturing facility, a use which is not included within Health and Safety Code's prohibitions. Applicants do not intend to construct or operate a marijuana cooperative, collective, dispensary, or other similar use at the site. As discussed above, the Qualified combining zone expressly prohibits such a use, absent additional County approval following noticed public hearings.

Thank you for this opportunity to respond to these comments. Should you have any questions concerning the matters discussed herein, please do not hesitate to contact me by telephone at (916) 228-4221, or by e-mail at aguernsey@hthjlaw.com.

Very truly yours,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON

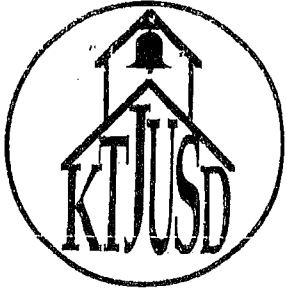


By
Adam K. Guernsey, Esq.

cc: Chairperson Ryan Sundberg and the Members of the County of Humboldt Board of Supervisors

¹ The manufacturing facility, approved on January 11, 2018, is subject to the CMMLUO, rather than the more recently adopted Commercial Cannabis Land Use Ordinance ("CCLUO"), adopted by the Board on May 8, 2018 and often referred to as Ordinance 2.0.

EXHIBIT A



Klamath-Trinity Joint Unified School District

P. O. BOX 1308 + HOOPA, HUMBOLDT COUNTY, CALIFORNIA 95546

JON RAY
Superintendent

Telephone (530) 625-5600

Web address: <http://www.ktjUSD.k12.ca.us>

REC'D OF SUPERINTENDENT
FEB 13 2018
FAX (530) 625-5611

February 13, 2018

Dear Humboldt County Board of Supervisors:

We write in opposition to the Planning Commission's approval of ZR-16-002, MCMP, LLC Zone Reclassification. As concerned citizens of Willow Creek and guardians entrusted with schoolchildren of all ages, the Klamath-Trinity Joint Unified School District ("KTJUSD") is deeply opposed to the proposed rezoning of Key Parcel Number, 522-491-017, which would permit cannabis cultivation and processing. As described in detail below, the proposed rezoning is contrary to the community's, the District's, and the state's compelling interest in deterring drug abuse by schoolchildren.

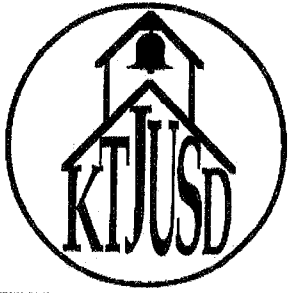
Current law contains relatively few limitations concerning the cultivation and processing of marijuana. As you know, on November 8, 2016, California voters passed Proposition 64, the "Control, Regulate, and Tax Adult Use of Marijuana Act" ("Act"), which legalized the growth and personal use of marijuana. The Act also included provisions related to the sale, transportation, and taxation of marijuana. For example, the Act prohibits marijuana businesses from being located within 600 feet of schools, day cares, or youth centers. (*See Cal. Bus. & Prof. Code § 26054.*) Likewise, the California Health & Safety Code states in pertinent part:

No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana... shall be located within a 600-foot radius of a school. (*Cal. Health & Safety Code § 11362.768(b).*)

Although authority specific to marijuana is limited, the regulation of other substances and activities through statutes and case law provides useful guidance. For example, regarding alcoholic beverages, the California Department of Alcoholic Beverage Control ("Department") may, in its discretion, license and regulate the sale of alcohol, and may specifically refuse to issue licenses for premises located within 600 feet of schools. (*See Cal. Bus. & Prof. Code § 23789; see generally Cal. Const., Art. XX § 22; Cal. Bus. & Prof. Code § 23051; Cal. Bus. & Prof. Code § 23789.*)

Case law illustrates the importance of such restrictions. For instance, in *Weiss v. State Board of Equalization*, the California Supreme Court upheld the denial of an off-sale license at premises within 80 feet of a school, stating that, "a reasonable person could conclude that the sale of liquor on such premises would adversely affect the public welfare and morals." (*Weiss v. State Bd. of Equalization* (Cal. 1953) 40 Cal.2d 772, 775-776; *see also* Cal. Const., Art. XX § 22.) Similarly, the California Court of Appeal in *Donia v. Alcoholic Beverage Control Appeals Board* upheld the Department's denial of a license to a convenience store located near an elementary school in a low-income area, recognizing that, "there is considerable expert evidence of the recognized effects of off-sale outlets on public drinking, the associated police problems and the psychological effect of public drinking on children." (*Donia v. Alcoholic Bev. Control Appeals Bd.* (Cal. App. 1985) 167 Cal.App.3d 588, 596.)

Courts have also discussed the important state interest in deterring drug use by schoolchildren. For example, the United States Supreme Court recognized that deterring drug use by schoolchildren is an,



Klamath-Trinity Joint Unified School District

P. O. BOX 1308 + HOOPA, HUMBOLDT COUNTY, CALIFORNIA 95546

JON RAY
Superintendent

Telephone (530) 625-5600

FAX (530) 625-5611

Web address: <http://www.ktjUSD.k12.ca.us>

March 5, 2018

Dear Humboldt County Board of Supervisors:

In follow-up to our previous letter, dated February 13, 2018, we write to once again express the Klamath-Trinity Joint Unified School District's strong opposition to the proposed rezoning of Key Parcel Number 522-491-017, including to allow for cannabis manufacture and processing. It is our understanding that on January 11, 2018 the County Planning Commission voted to approve ZR-16-002, MCMP, LLC Zone Reclassification. On February 13, 2018, we sent a letter to the County Board of Supervisors expressing our opposition to the proposed rezoning, given the unlawful proximity to the elementary school, and the interest in deterring drug abuse by schoolchildren. A copy of the letter is enclosed here for reference.

It is our understanding that the County Board of Supervisors will now consider whether to give final approval to the proposed rezoning. With this letter, we strenuously reiterate our opposition to the proposing rezoning, drawing specific attention to the legal prohibitions on locating marijuana facilities in close proximity to public school sites, and urge you not to approve this project.

Page 3, Executive Summary of the December 14, 2017 report presented to the County of Humboldt, Planning and Building Department, Current Planning Division, regarding "MCMP, LLC, Zone Reclassification and Special Permit" ("Report"), provides:

The ultimate objective of this application is to develop and operate a commercial medical cannabis manufacturing facility on a portion of a parcel that hosts an active surface mining and processing operation including a concrete batch plant. . . Trinity Valley Elementary School's property is approximately 1,270 feet from the proposed location. The 600 foot setback requirement from schools, school bus stops, churches, etc. that applies to commercial cannabis cultivation does not apply to this project because 1) it does not include cultivation; and 2) the setback requirement does not extend to commercial cannabis manufacturing.

The District respectfully disagrees with the above conclusion and believes the setback requirement applies to this medical cannabis manufacturing facility, thereby prohibiting its current proposed location which is only 56 feet from the District's Trinity Valley Elementary School ("TVES"), when measured consistent with applicable legal standards.

For example, as stated previously, the Control, Regulate, and Tax Adult Use of Marijuana Act (“Act”) prohibits marijuana businesses from being located within 600 feet of schools, day cares, or youth centers. (See Cal. Bus. & Prof. Code § 26054(b); 16 C.C.R. § 5026.) Specifically, this prohibition applies to any “premises licensed under” Division 10 (Cannabis) of the Business and Professions Code, and/or under the California Bureau of Cannabis Control. (Cal. Bus. & Prof. Code §§ 26000 *et seq.*; 16 C.C.R. §§ 5000 *et seq.*) As part of the Medicinal and Adult-Use Cannabis Regulation and Safety Act, these laws and regulations pertain to all state licenses related to cannabis or cannabis products intended for adults without a physician’s recommendation as well as commercial cannabis activity involving medicinal cannabis, and including licenses related to the sale, distribution, and manufacture of cannabis. (Cal. Bus. & Prof. Code §§ 26001(a), (ae), 26070(a), 26130(a).) For these purposes, “commercial cannabis activity” is the “cultivation, possession, *manufacture*, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.” (*Id.* § 26001(k), *emphasis added.*) Thus, the conclusion quoted above that “the setback requirement does not extend to commercial cannabis manufacturing” is incorrect. (See Report, p. 3.)

Here, the December 14, 2017 Report specifically represents that MCMP will “operate a commercial medical cannabis manufacturing facility.” (Report, p. 3.) The Report makes clear that MCMP will “produce cannabis concentrate,” will accept “raw product” from state licensed providers, and will sell “finished product” to “State license facilities on a wholesale basis.” (Report, p. 3.) Based on these activities, MCMP is subject to the licensing requirements described above, including, but not limited to, the requirement for its premises to be located at least 600 feet away from a school, such as TVES. (Cal. Bus. & Prof. Code § 26054(b).)

Moreover, the relevant laws specify that the distance between the premises and a school is to be measured as: “the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medicinal cannabis cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.” (Cal. Health & Safety Code § 11362.768(c).) The District’s information shows that MCMP’s proposed facility will be located *only 56 feet*, measured from property line to property line, from TVES. This is in stark contrast to the “approximately 1,270 feet” noted above. This discrepancy is concerning, especially given that a distance of 1,270 feet creates the illusion that the MCMP premises location would be legally-compliant, as well beyond 600 feet from TVES.

In sum, and based on the above, the District believes that MCMP’s premises would, in fact, be subject to the 600-foot setback requirement, and considering the premises would be located only 56 feet from TVES, it would be unlawful to allow MCMP to operate at the current proposed location.

Moreover, in addition to the above, the California Health & Safety Code also provides a 600-foot setback requirement, specifically that “no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana... shall be located within a 600-foot radius of a school.” (Cal. Health & Safety Code

§ 11362.768(b.) This prohibition specifically applies to a medicinal cannabis cooperative, collective, dispensary, establishment, or provider that is authorized to possess, cultivate or distribute medicinal cannabis and has a storefront or mobile retail outlet. (*Id.* § 11362.768(e).)

To the extent that MCMP intends to have a storefront, this further prohibits its proposed location of only 56 feet from TVES. Furthermore, the County is permitted to adopt ordinances or policies to even further restrict the location or establishment of a medicinal cannabis cooperative, collective, dispensary, establishment, or provider. (*Id.* § 11362.768(f).)

In summary, contrary to the conclusions of the December 14, 2017 Report, MCMP's proposed commercial cannabis manufacturing facility is subject to the legal requirement that such facilities be located at least 600 feet away from a school. Given the proposed location of only 56 feet away from TVES, the current proposed location is unlawful. Further, given the adverse impact drug use has had and continues to have on our students and the school environment, MCMP does not belong directly across the street from Trinity Valley Elementary School. As such, the District once again strongly urges the County Board of Supervisors not to approve the ZR-16-002, MCMP, LLC Zone Reclassification. Although the District desires to work cooperatively with its local community, please be advised that the District will pursue any and all necessary legal action to prohibit MCMP from operating across from TVES, or otherwise challenge any action by the County Board of Supervisors to approve such project.

Thank you for your attention to this correspondence, please do not hesitate to contact me if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Ray". The signature is fluid and cursive, with a large initial "J" and "R".

Jon Ray

Klamath-Trinity Joint Unified School District

October 5, 2018

VIA ELECTRONIC MAIL ONLY

John Ford
Director of Planning and Building Department
County of Humboldt
3015 H Street
Eureka, CA 95501
jford@co.monterey.ca.us

***Re: Zone Reclassification 16-002, SP-16-014;
Response to Comments of the Hoopa Valley Tribal Council and Blue Lake Rancheria***

Dear Mr. Ford:

On behalf of Mercer-Fraser Company and MCMP, LLC (together "Applicants"), we write in response to comments from the Hoopa Valley Tribal Council ("HVT") and the Blue Lake Rancheria ("Rancheria") regarding the above-referenced zone reclassification and special permit.

On January 11, 2018, the Humboldt County Planning Commission voted to recommend a zone reclassification of APN 522-142-017 from Highway Service Commercial (CH) to Heavy Industrial with a Qualified combining zone (MH-Q). The zone reclassification is necessary to implement the property's new General Plan land use designation of Industrial, Resource Related (IR) and better reflects the existing and historical industrial use of the property. The Planning Commission also approved SP-16-014 for a cannabis manufacturing facility on the property. The Planning Commission's approval of SP-16-014 was not appealed or otherwise challenged.

On February 8, 2018, and February 26, 2018, the HVT and the Rancheria wrote separately to the Board of Supervisors in opposition to the Planning Commission's recommendation of zone reclassification to MH-Q due to potential water quality impacts and concerns regarding industrial uses within the 100-year floodplain. The HVT and Rancheria also raised additional concerns specifically regarding the Planning Commission's approval of SP-16-014 and the cannabis manufacturing facility's potential for water quality impacts. Copies of these letters are attached as **Exhibit A**.

Given the overlap in the HVT and Rancheria's comments, we address the comments together below.

//
//
//

1. The zoning reclassification to MH-Q will not result in any increased risk to local water quality.

The HVT and Rancheria each expressed concern with the recommended zoning reclassification due to the potential for heavy industrial and potentially hazardous activities occurring within the 100-year flood plain. These concerns are unfounded due to protections put in place as part of the Applicants' current operations, conditions imposed on the approval of SP-16-014, and limitations imposed through the County's use of a Qualified combining zone, as discussed below.

The site is the location of an active and fully permitted sand and gravel mine and processing facility. Mining and processing operations have been ongoing at the Project site since at least 1969. Current processing operations include material crushing and sorting, storage of materials, production of asphalt, and weighing and hauling by truck. Aggregate materials mined at the site are temporarily stockpiled, loaded onto trucks, and transported to the on-site processing facility (e.g., for crushing and use in the hot mix asphalt plant) or to off-site locations for further processing. Power loaders, excavators, bulldozers, rock crushers, screens, trucks and trailers, scrapers, truck scale, pumps, settling basin, gate office, a concrete batch plant, and a hot mix asphalt plant are all currently authorized to operate on the project site. These uses, aside from the recently permitted concrete batch plant, have been ongoing for approximately 60 years without incident.

While portions of the site are located within the 100-year flood plain, all of the Applicant's existing or proposed activities, except for in-stream gravel extraction, are located outside of the 100-year floodplain. Applicants seek the zone reclassification to provide consistency with the historical and current industrial use of the property, as well as allow for future uses on the property consistent with an industrial zoning classification.

The existing mining and processing operations are subject to existing regulation that protects and will continue to protect water quality following the zone reclassification. For example, the site is subject to an existing Stormwater Pollution Prevention Plan ("SWPPP"), which requires stormwater runoff to be directed away from the river and to the existing sediment basin. Off-site runoff is prevented by the site's existing berms and stockpiles surrounding the site, and effectively promotes on-site water infiltration. The existing operation is also subject to a Hazardous Materials Business Plan and a Spill, Prevention, Control, and Countermeasure Plan to prevent the discharge of oil and hazardous materials.

The County also imposed conditions of approval on SP-16-014 which further protects water quality. For example, SP-16-014 is expressly conditioned to prohibit construction of the manufacturing facility within the 100-year flood plain. The conditions also require, among other things:

- Diverting and trapping of sediment laden runoff into basins to settle prior to releasing flows to receiving waters;
- Inspection prior to significant rain events to ensure control measures are working properly and correction of problems as needed;
- The use of only non-volatile solvents in cannabis manufacturing activities; and
- Approval and permits from the Division of Environmental Health and Regional Water Quality Control Board for the on-site wastewater treatment system ("OWTS").

In addition, the proposed Qualified (Q) combining zone limits the types of uses in the MH zone to similar resource-related industrial processing such as timber, agriculture, and mineral products processing. The Qualified combining expressly prohibits “industrial activity which involves the handling of toxic, highly flammable, explosive or radioactive materials in such quantities that would if released or ignited, constitute a significant risk to adjacent populations or development.” Given these special restrictions, no more intense use of the site than currently exists will be permitted without the need for a new conditional use permit.

In summary, the zone reclassification best reflects the existing and historical industrial use of the property. Given the protections required by Applicants’ existing operations, the Qualified (Q) Combining Zone, and conditions of approval imposed on the manufacturing facility, neither the Planning Commission’s Approval of SP-16-014 nor the Board’s approval of the zoning reclassification will have an adverse impact on water quality in the area.

2. The cannabis manufacturing facility will not have harmful impacts on water quality.

The HVT and Rancheria also raised concern that the proposed manufacturing facility will have impacts to water quality. The Rancheria specifically raised concern potential impacts from the use of volatile solvents that are different from the existing and ongoing industrial operations. The Rancheria also specifically requested that a risk assessment be prepared to examine the potential impact to drinking water in the area.

The approved Project contains numerous conditions of approval that protect water quality, given the site’s location in the lower Trinity watershed. These conditions include, but are not limited to, the following:

- A requirement that all leachfield areas that support the manufacturing facility’s OWTS be located outside of the 100-year flood plain;
- A requirement that manufacturing is limited to non-volatile solvents; and
- A requirement that the Applicants’ secure a grading permit prior to ground disturbance that includes the General Plan’s sedimentation and erosion control measures.

Notwithstanding these conditions, the Applicants, in a good faith effort to respond to these comments, engaged the groundwater engineering firm Luhdorff & Scalmanini, at considerable expense, to examine the cannabis manufacturing facilities potential impacts to groundwater quality. A copy of Luhdorff & Scalmanini’s Technical Memorandum is attached as **Exhibit B**. In summary, the Technical Memorandum makes the following conclusions:

- Given that the manufacturing facility’s OWTS: (1) will not receive waste solvents; (2) will be reviewed and approved by the Humboldt County Department of Health; and (3) exceeds minimum setback requirements, it is unrealistic that the manufacturing facility’s on-site wastewater treatment system would measurably affect water quality in the area.

Mr. John Ford
Zone Reclassification 16-002, SP-16-014;
Response to Comments of the Hoopa Valley Tribal Council and Blue Lake Rancheria
October 5, 2018

- Given the low quantities of solvents, the low likelihood of a spill, and the site's specific characteristics that would contain any spill onsite, it is unrealistic that an accidental spill could measurably affect water quality in the area.

Given the extensive analysis of this issue, we believe that the Applicants' construction and operation of the cannabis manufacturing facility in compliance with the terms and conditions of SP-16-014 will not have a negative impact on water quality.

Thank you for this opportunity to respond to these comments. Should you have any questions concerning the matters discussed herein, please do not hesitate to contact me by telephone at (916) 228-4221, or by e-mail at aguernsey@hthjlaw.com.

Very truly yours,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By
Adam K. Guernsey, Esq.

cc: Chairperson Ryan Sundberg and the Members of the County of Humboldt Board of Supervisors

EXHIBIT A



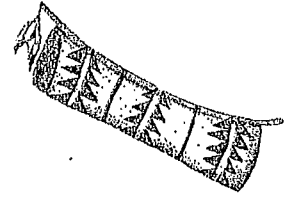
HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe

Post Office Box 1348 Hoopa, California 95546

PH (530) 625-4211 · FX (530) 625-4594

www.hoopa-nsn.gov



Chairman Ryan Jackson

February 8, 2018

BOARD OF SUPERVISORS
FEB 13 2018
HUMBOLDT COUNTY

Humboldt County Board of Supervisors
825 5th Street, Room 111
Eureka, CA 95501

RE: Application Number 10243; Case Numbers ZR-16-002 and SP-16-014

Board of Supervisors:

The Hoopa Valley Tribe (HVT) is adamantly opposed to the change in the zoning of Assessor's Parcel Number 522-142-017 from Highway Service Commercial to Heavy Industrial. This proposed zoning is likely to have detrimental impacts to the source drinking water, salmon fisheries, and cultural resources of the Hupa people.

Zoning changes that allow heavy industrial operations have the potential to adversely affect the domestic drinking water supply for approximately 5000 residents of the Hoopa Valley Indian Reservation and therefore should be denied. Our concerns are the protection of drinking water for the health and safety of our communities while preserving the high-quality waters of the Trinity River and its underlying aquifers.

The HVT is greatly concerned that this proposed change in zoning of Assessor's Parcel Number 522-142-017 from Highway Service Commercial to Heavy Industrial will allow for activities that have the potential to adversely affect the water quality in the surrounding vicinity of the parcel, as well as downstream of the parcel. HVT also asserts that the activities proposed by Mercer Fraser Company on the parcel do not provide adequate control or mitigation measures for this project, and therefore have the potential to cause irreparable damage to the HVT's source drinking water, salmon fisheries, and cultural resources.

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



February 26, 2018

Humboldt County Board of Supervisors
825 Fifth Street
Eureka, CA 95501

Re: Blue Lake Rancheria Comments on Zoning Change and Special Permit for Parcel APN 504-161-010

Dear Supervisors:

The Blue Lake Rancheria requests that you deny the recommended zoning change and special permit application for the Mercer Fraser property APN 504-161-010. The zoning change to Modified Heavy Industrial (MH-Q) is inappropriate for development within the 100-year floodplain, and we recommend an alternative zoning that is more protective of the Mad River.

The County's General Plan Update includes several goals and policies that speak to the inappropriateness of this project and zoning change: these are found in the safety element, land use element, and water resources element. These policies are aimed at preventing unnecessary exposure in floodplains and regulating industrial uses to minimize risk and exposure, protecting floodplains from development, conserving agriculturally zoned lands, and protecting water quality for municipal water supply and threatened and endangered fish species. Additionally, the Flood Damage Prevention Ordinance (2016) prohibits "storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life."

Heavy industrial and potentially hazardous activities have no place within the 100-year flood plain. Looking at the future with greater uncertainty in regards to climate and hydrologic events, the 100-year floodplain should be anticipated to conduct floodwaters. There is no shortage of more appropriate sites for this project and the risk of the proposed location is too great.

The Mad River is a listed "impaired waterway" under the Clean Water Act section 303(d), for sediment, turbidity, and temperature, and contains several listed species under the Endangered Species Act. NOAA's published multispecies recovery plan places the Mad River species and habitat among the top priorities for protection. For more information, please visit:

http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/north_central_california_coast/coastal_multispecies_recovery_plan.html. The Mad River watershed and riparian corridors are also considered critical habitat for several threatened and endangered species.

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



We have witnessed salmon in the river at the parcel in question, and have included pictures of this (attached). Watershed management should prioritize the recovery of these species. These species need clean water, high quality habitat, lower temperatures, and access to floodplain and off channel habitat during times of high winter flows.

We are disappointed this project was not required to have an appropriate level of environmental impact analysis. It is completely reasonable that a cannabis extraction facility using volatile solvents is different enough from gravel extraction and processing that the potential impacts would need to be assessed before siting it in a sensitive environmental location. Additionally, we believe a risk assessment should be required due to the proximity to the drinking water wells for Humboldt Bay Municipal Water District.

In the interest of protecting public health and the environmental health and resilience of this important watershed, a more appropriate zone should be applied to the parcel and the cannabis extraction facility should find a different site. We are not comforted by the Q-zone overlay, permit conditions, or safety assurances of MCMP. We have unfortunately experienced the hazardous impacts of bad actors coupled with weak permitting and inadequate enforcement of environmental violations by existing industrial users in the Mad River watershed. As a result, damage to Mad River water quality is already occurring and it is ongoing. Cumulative impacts must be considered, an important part of an Environmental Impact Report.

It is unfortunate that this project has been approved by the Planning Commission, and we ask you to take the time to conduct a closer look and ultimately act to protect the Mad River. Many projects are slipping through the consultation and review processes, as reviewers (for environmental and cultural purposes) are overwhelmed with the sheer volume of cannabis permit projects. We support the Humboldt Bay Municipal Water District's appeal and urge you to deny the project and Modified Heavy Industrial zoning for the parcel.

Sincerely,

A handwritten signature in cursive script that reads "Claudia Brundin".

Claudia Brundin
Tribal Chairperson

BLUE LAKE RANCHERIA

P.O. Box 428
Blue Lake, CA 95525

Office: (707) 668-5101
Fax: (707) 668-4272

www.bluelakerancheria-nsn.gov



Aerial photo (above) showing the Mercer Fraser parcel on the left, and the site where many salmon have been seen holding near the rock in the center (below).



EXHIBIT B