

VIA ELECTRONIC MAIL

November 8, 2024

John H. Ford
Director of Planning and Building
County of Humboldt
3015 H Street
Eureka, CA 95501

**Re: *Notice of Potential Conditional Use Permit Revocation*
 *CUP-00-27, APN 516-141-003, 516-141-005, 516-141-017, 516-151-016***

Dear Director Ford:

This firm represents Kernen Construction (“Kernen”). We have been asked by Kernen and its environmental/technical consultant NorthPoint Consulting Group, Inc. (“NorthPoint”) to provide a legal opinion and response to the Notice of Potential Conditional Use Permit Revocation (the “Notice”) issued to Kernen dated October 24, 2024. The Notice pertains to CUP-00-27, which authorizes aggregate processing and material handling and storage activities at Kernen’s facility located at 2350 Glendale Drive in the unincorporated Blue Lake area (the “Facility”).

1. Summary

Kernen’s use permit to operate the Facility, CUP-00-27, was granted in 2001 and Kernen now possesses a fundamental vested right to continue operating the Facility. Over the last nearly 24 years, Kernen has invested millions of dollars in the Facility and now employs nearly 100 employees. In light of these facts, California statutory, judicial, and constitutional law places significant and important constraints on the County’s ability to revoke the use permit, including a requirement to show that “in fairness and in justice there is not another way reasonably to correct the nuisance”. (*Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711 (*Leppo*).)

As shown below, in the attached supporting memorandum prepared by NorthPoint, and in the additional documents referenced here and in that memorandum, the allegations set out in the Notice are factually incorrect, legally incorrect, or both. By contrast, the facts show that Kernen has worked to be extraordinarily responsive to neighbor complaints and to direction from the County. For this reason, it appears that the consistent and largely baseless complaints lodged with the County by the Facility’s neighbors are the driving force behind the Notice. In fact, some of these neighbors have publicly stated their desire put Kernen out of business. Such complaints, however, are not by themselves adequate under the law to revoke Kernen’s vested use permit, and any action by the County to do so on the basis of these complaints and without abiding by the evidentiary, due process, mitigation, and equal protection requirements to which Kernen is entitled will result in a significant liability to the County.

2. Background Facts

The Facility is located on property that was formerly utilized as the Blue Chip Mill, an industrial hardwood log chip manufacturing facility that included log decks, processing structures, offices, and other ancillary structures. The County granted CUP-00-27 in 2001, authorizing (1) storage of raw and processed rock aggregate materials, soil and other materials like organic debris, asphalt shingles and scrap metal; (2) rock processing operations, including rock crushing, sorting and screening equipment, moveable conveyors, loading equipment and truck scales; (3) stockpiling for temporary storage of scrap metal, roof shingles and other non-toxic waste materials; (4) parking for trucks and heavy construction equipment; (5) office facilities; and (6) placement and grading of soil fill over a portion of the yard area. As acknowledged in the staff summary for CUP-00-27, the Facility site has been used for heavy industrial purposes since the 1950s, and Kernens' operations on the site are a continuation of that general use category.

As part of the CUP-00-27 approval, Kernens agreed to restore wetlands on portions of the Facility that had been impacted by the previous industrial uses. To be clear, these impacts predated Kernens' ownership and use of the Facility site. Kernens performed both wetland restoration and streamside riparian habitat restoration along portions of Hall Creek. Kernens' restoration work is documented in the Kernens Construction Wetland Mitigation Project Summary Report and Mitigation As-Built Plan (ACOE Project No. 25689N).

Even though the Facility site has been in heavy industrial use since the 1950s, and in use by Kernens since 2001, new residences have been constructed literally across the street from the Facility over the last 20 years. The below images from Google Earth are illustrative:

Image Date: 2003

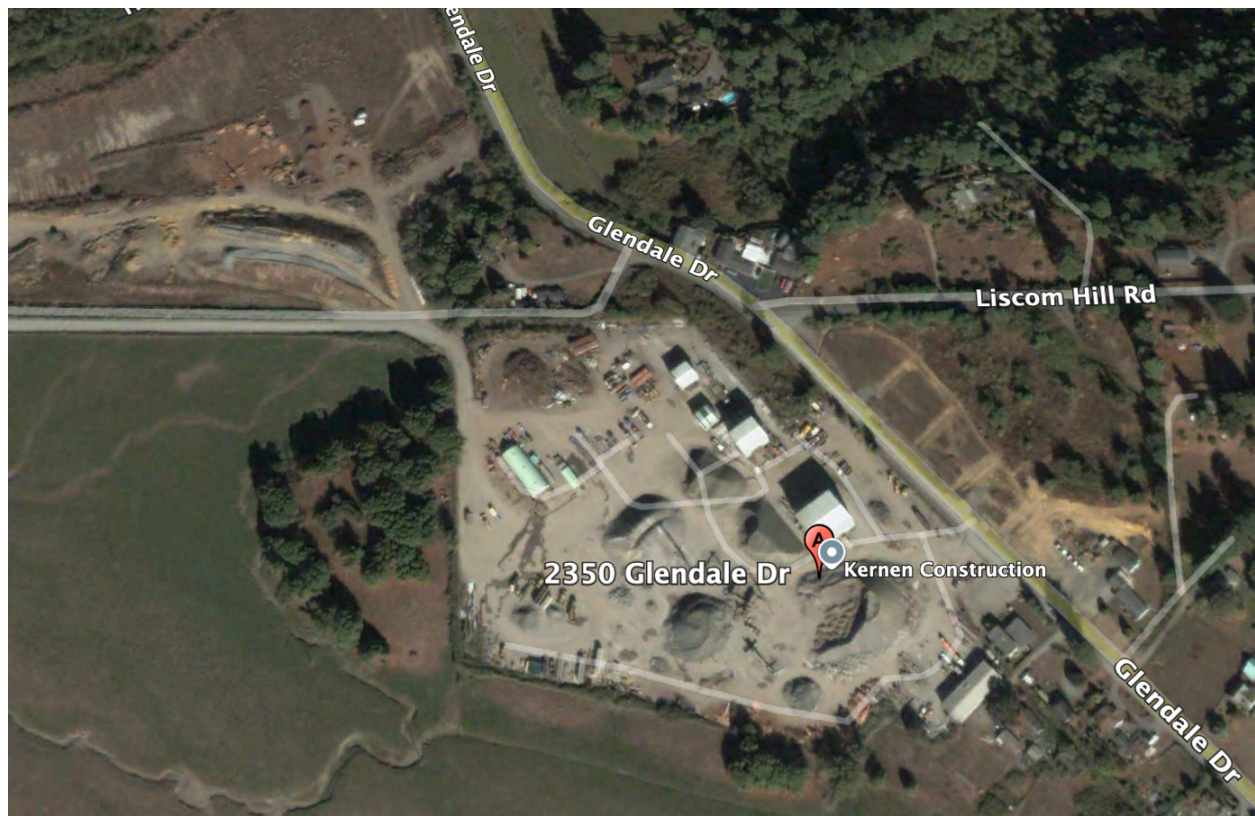
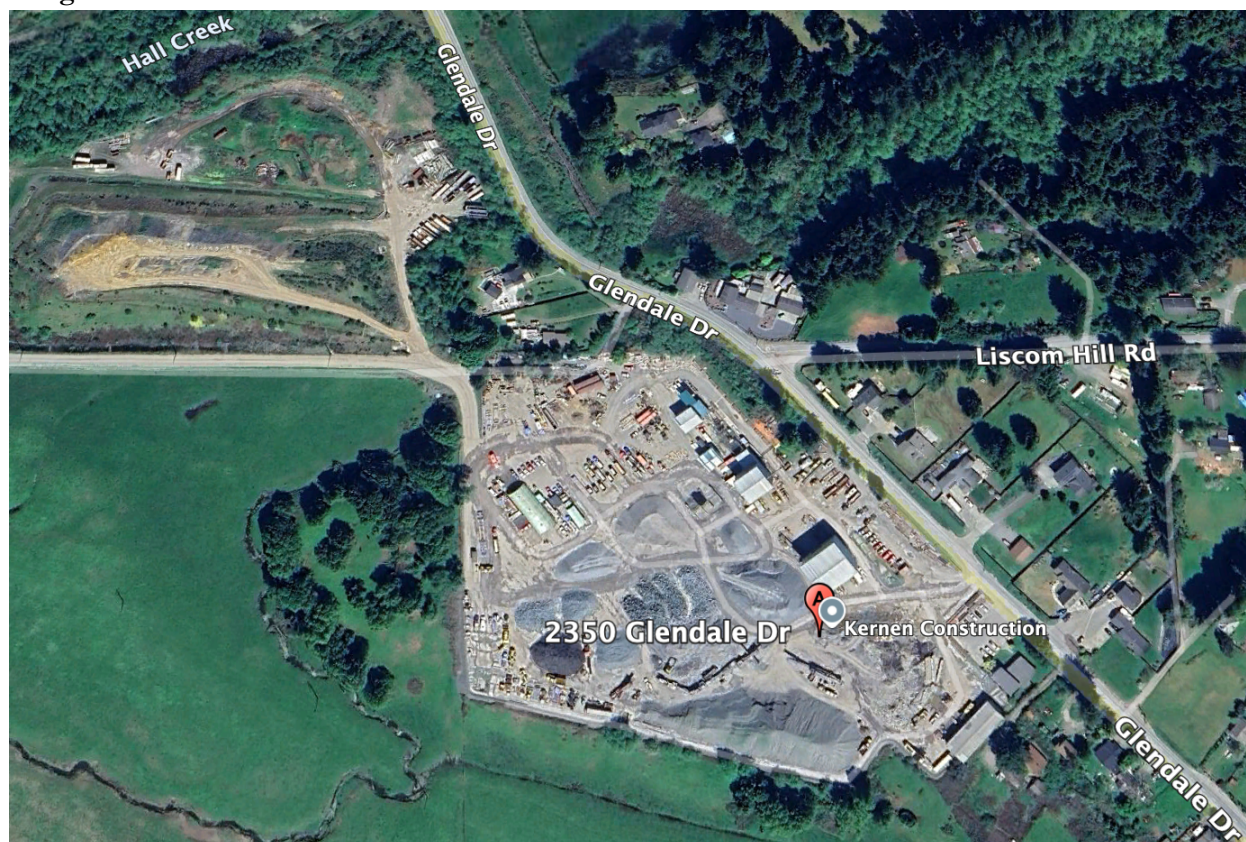


Image Date: 2023



New residences can be seen directly across Glendale Drive from the Facility to the north and east, and along Liscom Hill Road to the east.

The problems that arise from the colocation of industrial operations and residences are well-documented, and indeed while Kernen has operated the Facility for more than 20 years, some of the residents that have elected to build or purchase homes near the Facility during that time have in the last few years begun to express opposition to Kernen's continued use of the Facility. We understand that at some points during the past 18 months in particular, certain of these neighbors have inundated the County with dozens of phone calls and emails per day complaining about noise, dust, or truck traffic from Kernen's operations. As will be discussed in more detail below, very few of the neighbor complaints have been found to have any merit.

3. Legal Grounds for Permit Revocation

Kernen's use permit, CUP-00-27, has been utilized and is vested under state constitutional vesting principles. (See, e.g., *Arco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785; *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359.) Consequently, the County may not revoke Kernen's use permit without a valid evidentiary basis and without affording Kernen its full right to due process. (*Kerley Industries, Inc. v. Pima County* (9th Cir. 1986) 785 F.2d 1444, 1446 [once granted, a use permit cannot be taken away arbitrarily, for improper reasons, or without appropriate procedural safeguards].)



As a starting point, County Code outlines the grounds for revocation of a use permit and the required proceedings. Specifically, Section 312-14.2 reads as follows, in relevant part:

14.2 REVOCATION

14.2.1 Grounds for Revocation. A development permit or variance may be revoked or modified by the Board of Supervisors after a Public Hearing, upon finding that:

14.2.1.1 The permit or variance was obtained or extended by fraud, material omissions or misstatements of fact.

14.2.1.2 The permit or variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, Code section, law or regulation.

14.2.1.3 The use for which the permit or variance was granted is so conducted as to be a nuisance.

14.2.1.4 The use for which such permit or variance was granted has ceased to exist or has been suspended for one (1) year or more.

14.2.2 Cost Recovery. The County cost associated with a permit that is scheduled for a revocation hearing by the Board of Supervisors shall be borne by the permit holder.

14.2.3 Proceedings. Proceedings to revoke a development permit or variance may be initiated by the Board of Supervisors, Planning Commission, or the Planning division of the Planning and Building Department.

14.2.4 Revocation Hearing. Any proceeding to revoke a development permit or variance shall be before the Board of Supervisors. The property owner or permit applicant shall have an opportunity to show cause why the permit or variance should not be revoked.

The Notice identifies sections 14.2.1.2 and 14.2.1.3 as the potential grounds for revocation here. With respect to section 14.2.1.2, exercise of a use permit contrary to its terms or conditions or in violation of any statute, law or regulation may provide a basis for revocation of the permit. However, while any decision to revoke a use permit must necessarily rest on the facts of the case at hand, the County's pattern and practice of interpreting and enforcing this provision in other cases is relevant. Selective enforcement is unlawful and could violate Kern's right to equal protection. (See, e.g., *Squam Valley Dev. Co. v. Goldberg* (9th Cir. 2004) 375 F.3d 936; *Genesis Environmental Servs. v. San Joaquin Valley Unified Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597.)

With respect to section 14.2.1.3, relating to nuisance, state law generally allows local governments authority to declare what constitutes an actionable "nuisance", and to abate any such nuisance conditions. (See Gov. Code § 25845; County Code § 351-3 [Definition of Nuisance].) However, except in circumstances of an emergency, due process requires that a local government's decision to shut down a legitimate business on the basis of nuisance be based on competent sworn testimony that the property or business is a nuisance within the legal meaning of that term, and that there is no other reasonable way to correct the condition. (*Leppo, supra*, 20 Cal.App.3d 711; *Armistead v. City of Los Angeles* (1957) 152 Cal.App.2d 319 [disapproved on other grounds by *Mobilef v. Janovici* (1996) 51 Cal.App.4th 267].)

This requirement – to identify other reasonable ways to correct a condition short of shutting down a legitimate business or revoking its use permit – is one of the reasons that the County Code contains a process to abate



violative conditions through issuance of a notice of violation and imposition of administrative penalties. (See County Code § 352-8.) The purpose of these provisions is to provide the party in violation an opportunity to correct the problems, which is the preferred outcome because all parties, including the County, benefit from the lawful continuation of land uses and businesses, especially those like Kernén that provide a direct public benefit but where the economic barriers to entry are considerable.

Lastly, in conducting its planned hearing in connection with a potential revocation of Kernén's use permit, the County must do so before a fair and impartial hearing body or officer. (See *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017.) A hearing officer or hearing body (or any member of the body) is disqualified by the objective appearance of bias. The "fair and impartial" requirement also extends to the County's legal counsel – the County's legal counsel cannot advocate on behalf of enforcement or assist in preparation of the enforcement case and advise the hearing officer or hearing body on the case at the same time. (See *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81.)

In summary, while the law generally recognizes a local government's power to revoke a conditional use permit based on the permittee's violation of permit terms or conditions or based on the existence of nuisance, the local government's power is deeply constrained by the permittee's rights to due process, to equal protection under the law, to protection from arbitrary and capricious agency action, and by the requirement that "in fairness and in justice there is not another way reasonably to correct the nuisance". (*Leppo, supra*, 20 Cal.App.3d at p. 718.) Violation of the permittee's foregoing rights may render the local government liable to the permittee for damages.

4. Response to Specific Allegations in the Notice

Below we respond to the specific allegations set out in the Notice.

A. Grading Permit / Response to October 10, 2023 NOV

The Notice alleges that Kernén failed to submit a grading permit application as required by a prior notice of violation issued in October 2023 (the "2023 NOV"). This is false. In responding to this, we refer to the memorandum from NorthPoint to this firm dated November 8, 2024 (the "NorthPoint Memo"), which is attached to this letter as **Attachment A**. As discussed in more detail in the NorthPoint Memo, Kernén submitted the grading permit required by the 2023 NOV in November 2023, and, in fact, the County responded to that application also in November 2023. Kernén submitted a subsequent, revised application in March 2024, and again the County responded to that application also in March 2024. The grading permit application is still pending review and approval by the County.

B. Berm Grading Along Eastern and Southern Boundaries of the Upper Yard

The Notice next alleges that Kernén recently graded "a large berm along the eastern and southern boundaries of the northern yard property" without permits. This is not correct.

To be clear, Kernén did recently extend the existing berm along Glendale Road and Noisy Creek in response to the North Coast Regional Water Quality Control Board ("Regional Board") regarding stormwater discharge from the lower yard into Noisy Creek.



As stated in the NorthPoint Memo, this work was conducted within the area encompassed by CUP-00-27 and associated Grading Permit #15818. (See Exhibit 1 and Exhibit 2 to the NorthPoint Memo.) Further, the Facility is subject to the NPDES Industrial General stormwater permit, which requires Kernan to “divert run-on away from stockpiled materials”, which, after coordination with the Regional Board, is the purpose of the berm at issue. Kernan’s activities in this regard are in compliance with CUP-00-27 Conditions 6, 8, and 9.

C. Construction of Berm Outside Operating Hours

The Notice alleges that Kernan constructed the berm at issue outside the authorized hours of activity and with heavy vibrations. Although the Notice references “complaints from the community”, the Notice does not substantiate this allegation with any specific evidence.

Before responding specifically, we note that the County’s interpretation of Kernan’s “authorized hours of activity” is not correct. No hours of operation are specified in the CUP-00-27 conditions of approval. Proposed hours of activity are discussed in the “Agenda Item Transmittal” and “Executive Summary” for CUP-00-27, as follows:

The project involves the siting and regular use of the following equipment and machinery: heavy construction equipment (loader, log trucks, backhoe extractor, dump trucks and trailers, flatbed trucks, water trucks), and rock crushing machinery. The activities are proposed to occur 7:00 am to 6:00 pm Monday through Friday, 7:00 am to 5:00 pm on Saturdays, with reduced hours during winter months.

(See Agenda Item Transmittal and Executive Summary, CUP-00-27, August 16, 2001.) As noted, this language is not codified in a condition of approval.

By contrast, Condition B.1. to CUP-00-27 states as follows:

The processing operator shall adhere to the approved operations plan and mitigation monitoring program, as applied to the site proper, and other support and ancillary uses and facilities (i.e., stockpiles, and the maintenance of access road drainage culverts).

(CUP-00-27, Condition B.1.) The “approved operations plan” (“Operations Plan”, see Attachment 4 to the NorthPoint Memo) states, with respect to hours of operation, as follows:

Materials handling and processing rock aggregates would normally be conducted from 7:00 a.m. to 6:00 p.m. on weekdays and from 7:00 a.m. to 5:00 p.m. on Saturdays. The hours will be reduced in the winter months when construction projects are not as active as they are during the summer months.

(Operations Plan, p. 12.) It is this language, which is incorporated by reference in adopted Condition B.1., that governs Kernan’s hours of operation at the Facility, not the summary language in the Agenda Item Transmittal or Executive Summary. (See *County of Imperial v. McDougal* (1977) 19 Cal.3d 505 [prohibiting the arbitrary addition or modification of permit conditions].) Under the plain language of the Operations Plan, only “materials handling and processing rock aggregates” are constrained to the stated hours; by implication, all



other activities, such as vehicle maintenance, office work, site maintenance and so forth, are unconstrained and can occur outside the stated hours.

Placement of the berm at issue, which is a site maintenance activity necessitated by compliance with the Facility Industrial General permit and the Regional Board, is not “materials handling and processing rock aggregates”, and consequently, even if berm work had occurred outside of the hours stated in the Operations Plan (which they did not), such work is not subject to the operating hours stated in the Operations Plan in the first instance.

The berm, however, was not placed outside of the (inapplicable) operating hours stated in the Operations Plan. Included as Attachment 7 of the NorthPoint Memo are employee timecards showing the timeframe during which the work at issue was conducted. As stated in the NorthPoint Memo, there was in fact a neighbor noise complaint from the night of October 16, 2024, but the source of the noise was a haul truck parked in the lower yard that was unintentionally left on and idling through the night. This is not related to the berm, and also is not a violation of Condition B.1.

D. Placement of the Berm in a Flood Zone

The Notice further alleges that Kernen constructed the berm “in an area subject to flooding”, which “poses a danger to the public health, safety and welfare”. This is again false.

Referring again to the NorthPoint Memo, the berm was placed within the work area approved by CUP-00-27 (see Exhibits 1 and 2 to the NorthPoint Memo), and within the area where material stockpiling is permitted. An approved FEMA Elevation Certificate (Attachment 2 to the NorthPoint Memo) was included with Grading Permit #15818 and shows that the lower yard work area is outside of the floodplain. The berm was placed above the “Base Flood Elevation” out of the floodplain.

E. Continued Operation Outside the Hours of Operation

The Notice states, without reference to any particular incident or any specific evidence, that “[t]he continued operation outside of the hours of operation is a violation of the Conditional Use Permit.” This statement, without evidence, cannot serve as a basis for revoking the use permit.

Moreover, we refer you to the discussion under response item C. above relating to the Facility’s permitted hours of operation. In short, anything other than “materials handling and processing rock aggregates” is allowed outside the hours specified in the approved Operations Plan. From a logical perspective, this makes sense given that materials handling and rock processing are the activities with the greatest likelihood of generating noise that might be audible to neighbors, particularly in off hours.

In any case, as stated in the NorthPoint Memo, Kernen has been the subject of many complaints regarding noise and operations outside of the approved operating hours; however, the majority of these complaints were unsubstantiated after investigation. To ensure its compliance and to help respond to neighbor complaints, Kernen has installed 18 cameras around the Facility to monitor the lower and upper yards. When a complaint is received, Kernen staff review the cameras to determine whether the complaint is associated with activities in the lower or upper yard, and provides the relevant information, along with images if appropriate, to the County.



The four “after hour” noise complaints received in the last few months are indicative of the types of activities that generate complaints, and the facts underlying those complaints:

- August 13, 2024. Complaint regarding early morning noise. Video log showed this was the caretaker, who lives onsite, leaving for work.
- September 29, 2024. Complaint regarding work on Sunday. Video log showed an employee drove into the yard to fill a water truck with water to use for a nearby project. This is not “materials handling and processing rock aggregates” and is not prohibited by the use permit.
- October 16, 2024. Complaint regarding evening noise. Video log showed an employee unintentionally left a haul truck idling overnight. Law enforcement was notified by neighbors, but law enforcement thought the noise was associated with the nearby truck shop and asked the shop to shut the door.
- October 29, 2024. Complaint regarding evening work in lower yard after 7:00 PM. Video log showed the employee left the yard at 6:59 PM.

To further ensure that it was not generating noise in excess of that allowed by the use permit (60 Ldn at nearby residential properties – see CUP-00-27 Condition B.6.), NorthPoint conducted noise monitoring at the upper and lower yards of the Facility and determined that all operations were in compliance with the foregoing condition. NorthPoint submitted a Noise Monitoring Study to the County on August 23, 2024 (Attachment 5 to NorthPoint Memo). Kern’s operations are in compliance with this condition.

F. Soil Test Results

The Notice alleges that Kern has “not turned in testing results showing the soils that [Kern has] received and stored on site are clean, this too is a violation of the conditions of approval”. This allegation is false in two respects. First, there is no condition of approval that requires Kern to submit soil testing results to the County, and notably the Notice does not cite to any such condition.

Second, as stated in the NorthPoint Memo, soil testing results, from samples taken from the soil stockpiled in the lower yard, were submitted to the County on August 23, 2024 (see Attachment 6 to the NorthPoint Memo). The test results showed that the stockpiled material was clean and consistent with soils in the region.

5. Public Records Act Requests

We previously submitted a request for public records related to the Notice on October 31, 2024, and are awaiting the production of responsive documents.

Further, attached to this letter as **Attachment B** is a second request for public records related to the Notice.

Both requests seek documents that will enable Kern to fully respond to the Notice, consistent with Kern’s right to due process.



6. Request for Continuance of Hearing

Given that County has not yet produced the public records requested by Kernan, which records are necessary for Kernan to fully respond to the Notice, we request that the County continue the scheduled December 3, 2024 revocation hearing to a later date.

7. Conclusion

The facts relating to Kernan's operation of the Facility do not support revocation of its use permit, and even if they did, the County has failed to show that there are no means short of revocation that could resolve the problems at hand.

What appears to be driving this effort are the consistent and largely baseless complaints lodged with the County by the Facility's neighbors, some of whom, as noted, have been vocal about their desire to put Kernan out of business. But such complaints are not adequate under the law to revoke Kernan's vested use permit, and any action by the County to do so on the basis of these complaints and without abiding by the evidentiary, due process, mitigation, and equal protection requirements to which Kernan is entitled will result in a significant liability to the County. And as a further reminder, Kernan employs nearly 100 individuals who all live, shop, and vote in the County.

Separate and apart from our request to continue the December 3 hearing, we strongly urge the County to rescind the Notice, and, if the County continues to believe that Kernan is operating in violation of the use permit, to engage in a corrective process through the County's standard notice of violation provisions. These provisions are more than adequate to address any violations that may actually exist.

We and NorthPoint are happy to further discuss any of the information provided in this letter and the attached memorandum. I can be contacted via email at bjohnson@everviewlaw.com.

Sincerely,



Bradley B. Johnson, Esq.
Everview Ltd.

cc: Annje Dodd, Ph.D., NorthPoint
Scott Farley, Kernan Construction
Yolynn St. John, Kernan Construction



Attachment A



November 8, 2024

To: Everview Law
Attn: Bradley B. Johnson, Esq.
9655 Granite Ridge Drive, Ste. 200
San Diego, CA 95123

RE: Response to Notice of Potential Conditional Use Permit Revocation, CUP-00-27, APN 516-141-003,
516-141-005, 516-141-017, 516-151-016

To Bradley B. Johnson, Esq.,

The purpose of this letter is to summarize the information you requested regarding the County of Humboldt Planning and Building Department (County) Notice of Potential CUP Revocation to Kernan Construction (Kernen) dated October 24, 2024.

- 1) **County Comment:** On October 10, 2023, the Planning and Building Department issued a Notice of Violation to Kernan Construction for operating outside of the approved hours of operation, unshielded lighting, and for constructing a large pond or water impoundment feature on the property without permits. The required action in this NOV was to submit for a grading permit application within 30 days, which was November 10, 2023. After a follow up inspection, it was determined that there was additional unpermitted grading that occurred in the north yard for the construction of a drainage channel and check dams, and [Kernen was] advised to include these features in a grading permit application. It is now October 24, 2024, over a year from the issuance of the NOV, and a complete grading permit application has still not been submitted.

Response: A Grading Permit and Building Permit Application were submitted to the County on Monday, November 13, 2023, and a response was received from the County on November 14, 15 and 17, 2023. A lapse in time occurred between responding to the County's response and a new online application submittal was completed on March 21, 2024, with County response on March 26, 2024. The permit application fee was paid on April 8, 2024. Correspondence regarding this is provided in Attachment 1a – 1d.

A follow-up inspection occurred on December 29, 2023 in which County staff conducted an inspection of the grading associated with CUP-00-27/SP-00-65, and stated that "CUP-00027/SP-00-65 authorized the operations in the yard area to occur outside of the mitigation area and therefore the stormwater detention feature is allowed in this area without a Special Permit for encroachment in the SMA", but noted that a Grading Permit is still needed for "permanent" changes to the lower yard, which include the pond and new stormwater drainage ditch in the center of the yard (Attachment 1e).

Since the application submittal on March 21, 2024, Kernen Consulting engaged NorthPoint Consulting Group, Inc. (NorthPoint) to assist with addressing County comments regarding the Grading Permit Application. NorthPoint has conducted a drone survey of the lower yard, including the pond, new drainage ditch, and berm and is preparing an As-Built Grading Plan was submitted to the County on November 8, 2024. The estimated excavation that occurred is approximately 2,600 cubic yards (CY) and the fill is approximately 11,500 CY. It should be noted that the activities authorized by CUP-00-27/SP-00-65 and Grading Permit #15818 within the lower yard on APN 516-151-016 included the storage and movement of up to 345,000 CY of soil in the lower yard.

- 2) **County Comment:** Further, it has recently come to our attention that Kernen Construction graded a large berm along the eastern and southern boundaries of the northern yard property. This grading was also done without permits and appears to have involved grading and vegetation removal within a Streamside Management Area. This unpermitted grading activity corresponds to complaints from the community about work outside of the authorized hours of activity and with heavy vibrations.



Response: Kernen Construction utilized clean, stockpiled materials to extend the existing berm along Glendale Road and Noisy Creek for the purpose of addressing a comment from the North Coast Regional Water Quality Control Board (NCRWQCB) regarding water discharging from the lower yard into Noisy Creek. This was actually water that flowed from Glendale Drive onto the lower yard during an extremely large rain event when water flowed onto the lower yard from flooding of Glendale Drive.

The berm construction work was conducted within the area approved by CUP-00-27/SP-00-65 (Exhibit 1) and associated Grading Permit #15818 (Exhibit 2). Kernen Construction is also enrolled in the Industrial General Order (Order). Per the Order, the site “shall divert run-on away from stockpiled materials”, which is the purpose of the berm.

The construction of the berm was conducted by Kernen Construction staff during authorized work hours. Kernen Construction has provided employee timecards to corroborate this (Attachment 7).

There was a noise complaint on the night of October 16, 2024. This was due to a haul truck parked in the Lower Yard that was unintentionally left on and was not associated with the berm construction.

- 3) **County Comment:** The placement of the berm was discussed at a public meeting where you were instructed to not do any work until you had applied for and received a permit for that grading. The location of the berm is not in a location where stockpiling of material was contemplated or allowed. The placement of a berm in an area subject to flooding affects the flow of floodwaters and can cause upstream flooding. This poses a danger to the public health, safety and welfare. Placement would have been addressed in the permit process.

Response: The berm was placed within the work area approved by CUP-00-27/SP-00-65 (Exhibits 1 and 2), which is within the location where stockpiling of material was approved and has occurred for years. The berm was actually extended into an existing stockpile where vegetation had grown over the years into the stockpile (Figure 1).

Based on an approved FEMA Elevation Certificate (Attachment 2) that was included with Grading Permit #15818 authorized by CUP-00-27/SP-00-65, the lower yard is completely outside of the floodplain.



Figure 1. Google Earth Imagery with Terrain

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A Floodplain Evaluation was conducted by NorthPoint (Attachment 2), which includes hydrologic and hydraulic analysis. The Floodplain Evaluation demonstrates that a) the lower yard work area is outside of the floodplain, b) the FEMA Flood Insurance Rate Map (FIRM) in the vicinity of the lower yard is outdated, based on old topography and approximate methods, and does not accurately reflect the 100-year floodplain in the vicinity of the lower yard, and c) the placement of the berm does not impact the 100-year flood depth and would not cause additional upstream flooding.

- 4) **County Comment:** The continued operation outside of the hours of operation is a violation of the Conditional Use Permit. Further, you have not turned in testing results showing the soils that you have received and stored on site are clean, this too is a violation of the conditions of approval. The fact that you have now installed improvements in an area subject to flooding without the benefit of a grading permit and without allowing the Floodplain Administrator to evaluate the impacts of placement of the pond and the berm in areas subject to flooding poses a potential impact to the public health, safety and welfare. This is considered a nuisance under the Humboldt County Code.

Response: Operational Hours – Since the issuance of the NOV, Kernen has received multiple complaints regarding noise and operating outside of the hours of operation, however, the majority have either been unsubstantiated, were unintentional, or were not associated with Kernen.

Kernen has installed 18 cameras to monitor the lower and upper yards. When a complaint is received, Kernen staff review the cameras to identify if the complaint is associated with activities in the lower or upper yard, summarizes what happened, and provides the information, along with images if appropriate, to the County. There have been only four “after hour” noise complaints in the last few months:

- 1) August 13, 2024. Early morning noise. Video log showed this was the caretaker, who lives onsite, leaving for work.
- 2) September 29, 2024. Work on Sunday. Video log showed an employee drove into the yard to fill a water truck with water to use for a nearby project. This was unintentional and the employee was notified.
- 3) October 16, 2024. Evening noise. Video log showed an employee unintentionally left a haul truck idling overnight. Law enforcement was notified by neighbors, but law enforcement thought it was associated with the truck shop and asked the shop to shut the door.
- 4) October 29, 2024. Evening work in lower yard after 7:00 PM. Video log showed the employee left the yard at 6:59 PM.

The approved Conditions of Approval (COA) for CUP-00-27/SP-00-65 (Attachment 3) include Operational Restrictions without restrictions on operational hours. While the Agenda Item Transmittal and Executive Summary (Attachment 3) from the hearing for CUP-00-27/SP-00-65 attempt to define hours of operation of the facility, they fail to accurately summarize the Plan of Operations that was submitted with the application for CUP-00-27/SP-00-65 (Attachment 4). Specifically, the Plan of Operations stated the following for Hours of Operation, “Materials handling and processing rock aggregates would normally be conducted from 7:00 a.m. to 6:00 p.m. on weekdays and from 7:00 a.m. to 5:00 p.m. on Saturdays. The hours will be reduced in the winter months when construction projects are not as active as they are during the summer months”. The intent was not to limit all operations to this time window, or event to limit materials handling and processing of rock aggregates, but to provide a “normal” work window.

Noise – Operating Restriction #B-6 of the COA states that, “Applicant shall ensure that noise generated by the operations shall not exceed 60 Ldn at nearby residential properties” NorthPoint conducted noise monitoring at the lower and upper yards and determined that the operation is in compliance with #B-6. Preliminary results were provided to the County on July 24, 2024, and the final results were submitted to the County on August 23, 2024. (Attachment 5)

Soil Testing – Soil testing results, from samples taken of the stockpiled soil in the lower yard, were submitted to the County on August 23, 2024 (Attachment 6) demonstrating that the sample results are consistent with background levels in the region.

Floodplain – As discussed above, the improvements have been installed outside of the floodplain and would not cause additional upstream flooding.



November 8, 2024

If you have any questions regarding this matter, please contact our office at (707) 798-6438 or email annje@northpointeureka.com.

Sincerely,



Annjanette (Annje) Dodd, PhD, PE
Principal Engineer

Exhibits (Attached)

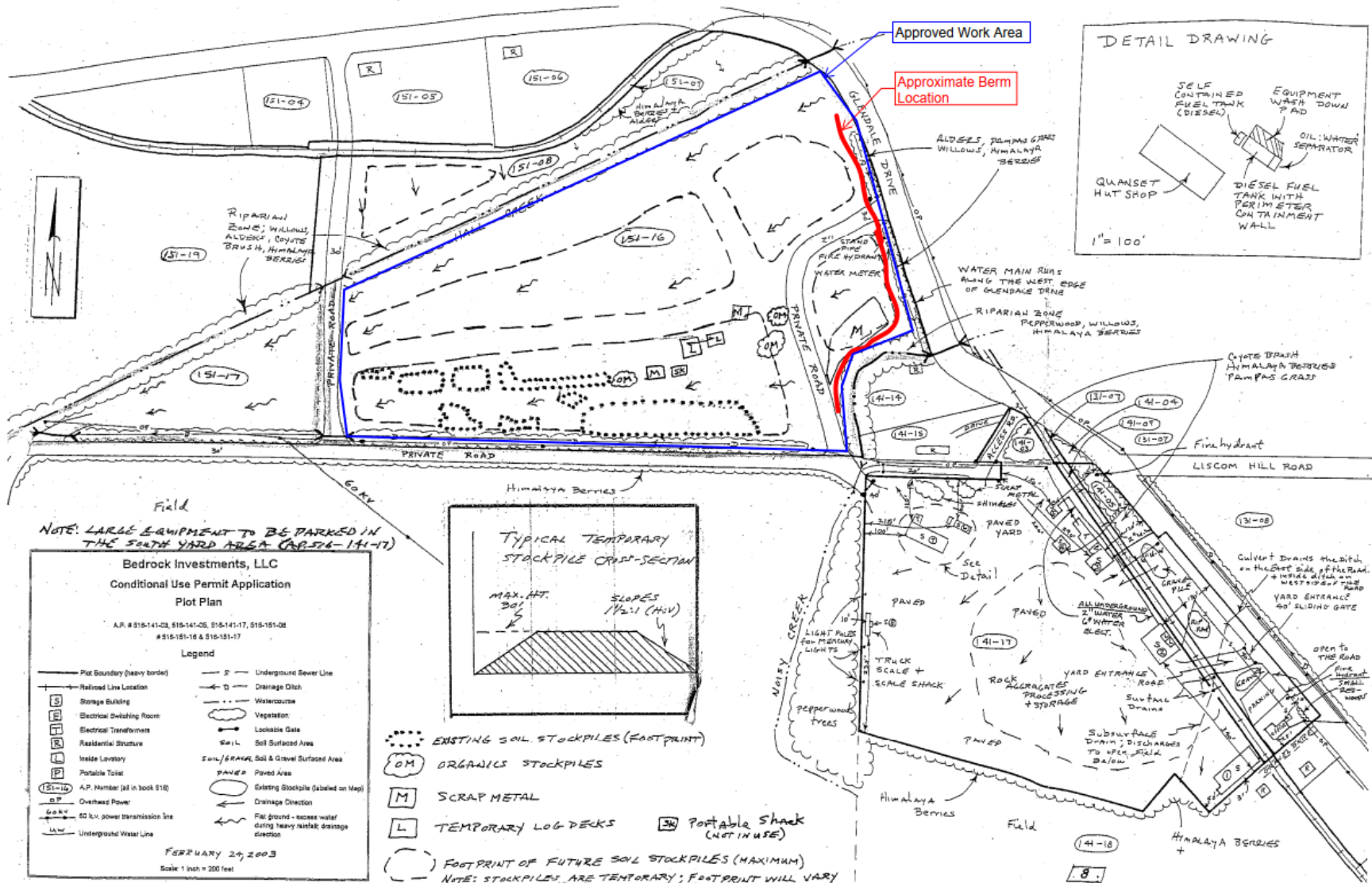
- 1) Site Plan Authorized by CUP-00-27/SP-00-65
- 2) Grading and Drainage Plan authorized by Grading Permit #15818 April 2003

Attachments (Hyperlinks Provided)

- 1) [Grading Permit Application Correspondence](#)
- 2) [Floodplain Evaluation](#)
- 3) [Conditions of Approval for CUP-00-27/SP-00-65](#)
- 4) [CUP-00-27/SP-00-65 Plan of Operations](#)
- 5) [Noise Monitoring Study](#)
- 6) [Email to County and Soil Test Results](#)
- 7) [Kernen Timecards](#)

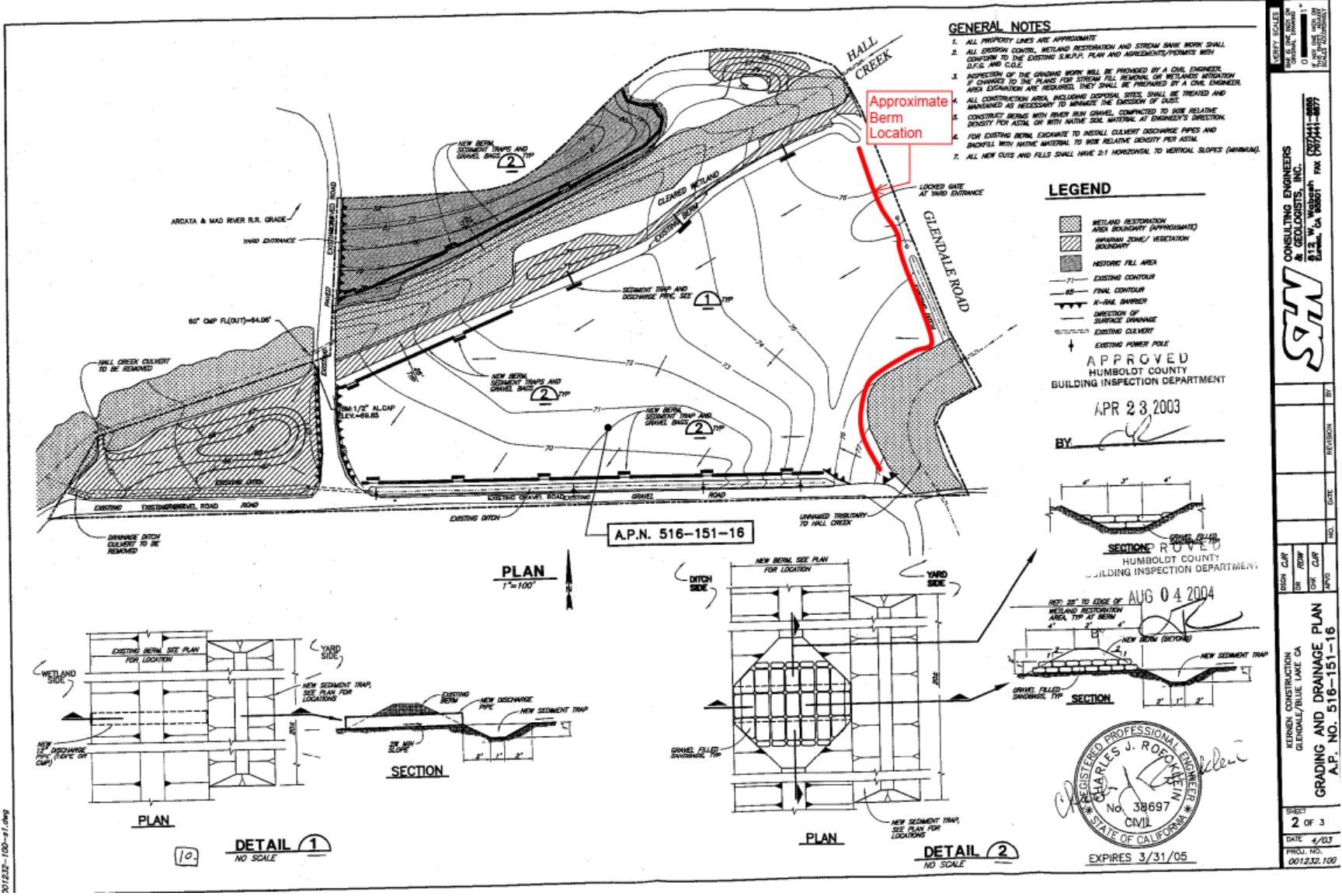


Exhibit 1 - Site Plan Authorized by CUP-00-27/SP-00-65



November 8, 2024

Exhibit 2 - Grading and Drainage Plan authorized by Grading Permit #15818 April 2003



Attachment B

VIA ELECTRONIC MAIL

November 8, 2024John H. Ford
Director of Planning and Building
3015 H Street
Eureka, CA 95501***Re: REQUEST FOR PUBLIC RECORDS***

Dear Mr. Ford:

This letter also constitutes a request pursuant to California Government Code section 6250 *et seq.* for access to certain public records in the possession of the County, as specified below.

Definitions

1. "COUNTY" means Humboldt County, its elected officials, executives, appointees, staff, employees, and agents.
2. "WRITINGS" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored, which is now or was at any time in the actual or constructive possession, custody or control of the County, and includes but is not limited to original writings and any non-identical copies as defined in California Evidence Code section 250. For clarity, "writings" as used herein expressly includes communications transmitted via City and private email systems and text messages. (See *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.)
3. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting, containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing, evidencing, or in any other way being relevant to that given subject matter.
4. "NOTICE" means a notice of potential conditional use permit revocation or similar WRITING issued by the COUNTY pursuant to Section 312-14.2 of the County Code.
5. "PUBLIC HEARING NOTICE" means a notice of public hearing for a conditional use permit revocation pursuant to Section 312-14.2 of the County Code.

REQUEST FOR PUBLIC RECORDS

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6. "DECISION DOCUMENT" means any document denoting the COUNTY's decision after a public hearing regarding whether or not to revoke a conditional use permit pursuant to Section 312-14.2 of the County Code.
7. "STAFF REPORT" means any staff document, summary, executive summary, or agenda item transmittal prepared in connection with any public hearing to revoke a conditional use permit pursuant to Section 312-14.2 of the County Code.

Subject to the definitions above, we request the following materials:

1. All NOTICES issued or published by the COUNTY for the time period January 1, 2019 to the date of this letter.
2. All PUBLIC HEARING NOTICES issued or published by the COUNTY for the time period January 1, 2019 to the date of this letter.
3. All DECISION DOCUMENTS issued or published by the COUNTY for the time period January 1, 2019 to the date of this letter.
4. All STAFF REPORTS issued or published by the COUNTY for the time period January 1, 2019 to the date of this letter.

Sincerely,



Bradley B. Johnson, Esq.
Everview Ltd.

cc: Scott Farley, Kernen Construction
Yolynn St. John, Kernen Construction
Praj White, P.E., NorthPoint Consulting Group, Inc.
Annje Dodd, Ph.D., NorthPoint Consulting Group, Inc.

