

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on September 3, 2019

Resolution No. ___ - ___ Resolution of the Board of Supervisors of the County of Humboldt CERTIFYING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING FINDINGS OF FACT, DENYING THE APPEAL AND DENYING THE BLUFF CREEK COMPANY, INC. SPECIAL PERMIT APPLICATION NO. 12834; CASE NO. SP-16-667; ASSESSOR PARCEL NUMBERS 530-102-004, 530-101-009 AND 530-101-010.

WHEREAS, Humboldt County adopted the Commercial Medical Marijuana Land Use (CMMLUO) Ordinance on September 13, 2016, after adopting a Mitigated Negative Declaration finding that all impacts associated with implementation of the ordinance could be reduced to a less than significant level; and

WHEREAS, an application for a Special Permit has been submitted to the County to allow an existing cultivation operation consisting of 9,200 square feet of existing outdoor cultivation, appurtenant propagation and processing activities, and to allow cultivation activities within 600 feet of public lands (Six Rivers National Forest), (“Project”); and

WHEREAS, the application has been reviewed by appropriate county departments, state agencies and local tribes and their input has been collected and considered; and

WHEREAS, On February 7, 2019, the Planning Commission denied the Special Permit because the project could not be found consistent with Section 55.4.11(d) of the CMMLUO requiring all cultivation activities to maintain a minimum dimension of 600 feet from a Tribal Cultural Resource; and

WHEREAS, The Bluff Creek Company, Inc. (“Applicant”) on February 25, 2019, filed an appeal in accordance with the Appeal Procedures specified in Humboldt County Code Section 312-13 et seq.; and

WHEREAS, the Board of Supervisors held a duly-noticed public hearing, *de novo*, on September 3, 2019, and reviewed, considered, and discussed the application and appeal for the Special Permit for the Project; reviewed and considered all public testimony and evidence and presented at the hearing.

Now, THEREFORE BE IT RESOLVED, that the Board of Supervisors makes all the following findings:

1. CEQA. The action to deny the Special Permit is not subject to CEQA.

- a.** CEQA Guidelines Section 15270 Statutorily exempts projects which Are disapproved from compliance with the California Environmental Quality Act (“CEQA”).

2. **CONSISTENCY WITH ZONING ORDINANCE.** Approval of a Special Permit requires that the application comply with the provisions of the Zoning Ordinance. The Special Permits being requested do not comply with the Zoning Ordinance and cannot be approved.
 - a. Zoning Ordinance section 55.4.11(d) requires a 600 foot setback from a Tribal Cultural Resource (TCR) unless that setback is authorized by agreement of the affected tribe.
 - b. The Yurok Tribal council adopted a Resolution designating the Ke'Wet Ceremonial District as a Tribal Cultural Resource.
 - c. The definition of a Tribal Cultural Resource in the Zoning Ordinance allows the Tribal Council to identify sites and resources that are Tribal Cultural Resources.
 - d. The subject property is within the Ke'Wet Ceremonial District and the Yurok Tribe has expressed it is not willing to reduce the setback or grant a waiver to allow the cultivation activity.
 - e. Because the proposed application is within a Tribal Cultural Resource as defined by the Yurok Tribe and the Yurok Tribe is not willing to grant an exception to allow cultivation activities within that Tribal Cultural Resource, the Special Permit cannot be found to meet the 600 foot setback requirement contained in 55.4.11(d) of the Zoning Ordinance and the application must be denied.
3. **GROUNDS FOR APPEAL.** The petition for appeal does not include information which would demonstrate that the project should be or can be approved. The grounds for appeal are inadequate to warrant granting the appeal.
 - a. The applicant/appellant claims he was denied access to a map showing the location of the areas to Tribal Cultural Affiliation and that applicant has been unable to view the location of the Ke'wet Ceremonial District. The ability to see these maps would not change the outcome of the finding that the site is within the Ke'wet Ceremonial District.
 - i. Maps showing the areas of Tribal Cultural Affiliation are available.
 - ii. Reviewing the map of the area of Tribal Cultural Affiliation would not reveal the existence of the Ke'wet Ceremonial District. The applicant was not denied any knowledge of whether a Tribal Cultural Resource existed on the property.
 - iii. The maps defining the location of the Yurok Tribal Cultural Landscape and related correspondence with the Tribe are confidential per California Government Code Sections 6254 (r) and 6254.10.
 - iv. At the hearings before the Planning Commission on February 7, 2019 and the Board of Supervisors on September 3, 2019 representatives of the Yurok Tribe stated that the site is within the Ke'wet Ceremonial District.
 - b. The applicant/appellant claims that the County acted in violation of the Brown Act by either failing to have a meeting giving the notice required thereby or held such meeting(s) without giving required notice in deciding to accept the Yurok's TCR designation. There has been no violation of the Brown Act in accepting the Yurok

Tribe's designation of the site as a TCR.

- i. The adoption of the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) within the Zoning Ordinance was undertaken at publicly noticed hearings. The language of the CMMLUO provides that a TCR includes sites or resources identified by the tribe through an action of the Tribal Council or equivalent body.
 - ii. The CMMLUO does not provide the County with the ability or responsibility to conduct a public hearing to determine whether a tribe has acted appropriately in determining whether a site is a TCR. Further, information regarding archeological site information and reports obtained in consultation with the Yurok Tribe on a project level basis is confidential per California Government Code Sections 6254 (r) and 6254.10.
 - iii. There was no requirement for a public hearing to accept the Yurok Tribe's determination that the Ke'wet Ceremonial District is a TCR, so there could be no violation of the Brown Act.
- c. The appellant claims that the County definition of a TCR does not specifically match the definitions used in the California Public Resources Code sections 5024.1 and 21084.1. The County can define what a TCR is separately from these Public Resource Code (PRC) sections and has done that in order to mitigate impacts to archaeological and cultural resources.
- i. PRC section 5024 establishes the California Register of Historical Resources and PRC section 21084.1 is from the California Environmental Quality Act defining significant impact to a Historical Resource.
 - ii. PRC Section 21084.1 states:

The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.
 - iii. To mitigate impacts to historical resources (tribal, cultural, and archaeological) Tribe(s) whose traditional territory is associated with a site have the authority to identify TCRs at that site pursuant to the CMMLUO. The ability of a tribe to determine what is important and to convey that to the County is consistent with the methodology of AB 52 which provides for government to government consultation regarding potential impacts to tribal cultural resources. AB 52 and related laws require that certain information exchanged be kept confidential to protect resources (*see, e.g.*, California Government Code sections 6254 (r) and 6254.10; Public Resources Code section 21082.3(c)).
- d. The appellant claims that the CMMLUO is unconstitutional, prohibits the free exercise of Appellant's religious beliefs, and will result in a taking of the property and denial of

other protected rights. The denial of this Special Permit is not unconstitutional, does not prohibit the free exercise of Appellant's religious beliefs, and will not result in a taking of the property or denial of other protected rights.

- i. There has been no evidence submitted which indicate that the CMMLUO is inconsistent with the US Constitution. The CMMLUO allows cultivation of cannabis where it can be demonstrated there will not be an adverse impact on Tribal Cultural Resources and the other requirements of the Ordinance are met. In this case, it cannot be found there will be no impact on TCRs.
- ii. The CMMLUO allows a tribe to identify Tribal Cultural Resources and to grant setback reductions where appropriate. There is inherent logic in allowing a tribe to define what is culturally significant to the tribe, without having non-tribal members affect that decision. Per Public Resources Code section 21084.1, the county may identify significant historic resources in manners other than what is eligible for listing and has done that with respect to TCRs.
- iii. See finding 3(c)(iii) above.
- iv. The provisions of the CMMLUO do not restrict exercise of religion in any way. The CMMLUO does not require that a property owner accept or practice the religious beliefs of native American people.
- v. Cultivating cannabis is not a protected right, it is a privilege which may be exercised when it can be demonstrated there will be no adverse impacts to protected resources and the other requirements of the CMMLUO are met. The ability to cultivate cannabis on this site is tied to the ability to not adversely impact Tribal Cultural Resources. This cannot be done and thus cultivation of cannabis cannot be permitted at this site. This does not deprive the applicant of continued use of the property for an existing residence and all the enjoyment that accompanies that.

NOW, THEREFORE, be it resolved that the Board of Supervisors hereby:

- 1 Denies the Appeal submitted by The Bluff Creek Company, Inc.;
- 2 Denies the Special Permit.

The foregoing Resolution is hereby passed and adopted by the Board of Supervisors on September 3, 2019, by the following vote:

Adopted on motion by Supervisor _____, seconded by Supervisor _____ and the following vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

_____, Chair
Humboldt County Board of Supervisors

STATE OF CALIFORNIA)) SS. County of Humboldt)

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

KATHY HAYES Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: KATHY HAYES

Date: _____, 2019

By _____ Deputy