

To: Humboldt County Board of Supervisors, Planning Department, Director John Ford,
Supervising Planner, Cliff Johnson, Recording Clerk

RECEIVED

OCT 15 2020

Clerk
Board of Supervisors

From: Maple Creek Investments, LLC, Members and Managers - Rob Dunaway, Susan
Rasmussen, Catherine Dunaway, Mike Dunaway. Agent – Brian Shields

This Response to Public Comment is submitted and requested to be entered into the Board of Supervisors records as a supplemental document to the formal written appeal regarding Maple Creek Investments, LLC (“Applicant”) and the following project:

Special Permit - PLN-2018-15197 -APN-315-011-009

Applicant’s Response to Public Comment Letters regarding the Special Permit and appeal from the Planning Commission’s project denial.

Introduction. As a general response to the limited Public Comment letters opposing the subject project, Applicant submits that the primary issues to be considered for the appeal hearing are whether the Planning Commission lawfully and properly discharged their duties under the applicable cannabis permit ordinance. As explained in Applicant’s appeal letter to the Board of Supervisors and in the extraordinary Planning Department Staff Report filed for the appeal hearing SUPPORTING the subject project, despite the Commission 4-2 denial vote, it is clear that the Commissioners voting against the project did not follow the ordinance, the law or the Board of Supervisor’s overall governance authority, or even discharge their most basic duty to be familiar with projects that come before them.

It is quite noteworthy and rare for the Planning Department to go against protocol at an appeal hearing and oppose the Commission’s denial. It is an exceptional action that demonstrates how strongly the Planning Department feels that their three year, comprehensive review and workup of this project resulted in the very best low impact project possible under the ordinance and permit process.

The Planning Department’s staff reports speak for themselves. Every possible and required study, report and review has been done on this project to the Department’s satisfaction and approval. Applicant has worked with the Department in every way, reaching agreement on every recommended project guideline and regulation.

It was clear at the Commission hearing that Commissioners voting against the project had not even read the staff report or Applicant’s responses to previous Public Comment. Such Commissioners did not even attempt to address the fact that they had previously approved a cannabis project on the adjacent parcel, a project with much higher impact utilizing greenhouses, generators and estimated water usage of 2.5 times that of Applicant’s project.

The Commission hearing was simply not conducted fairly and without bias. Nor did the Commission lawfully reach their denial conclusion; they failed the most basic legal requirement of expressly setting forth the basis for their denial. Please see Applicant’s Notice of Appeal letter

Applicant's Response to Public Comment

as, on that basis alone, the Planning Commission denial vote should be voided for significant legal defect. The Planning Department's extensive staff report was also ignored in its entirety by Commissioners voting in denial.

The bottom line for consideration on appeal is that a few Commissioners with a personal social agenda are attempting to govern and make decisions without regard to the carefully crafted and very detailed cannabis ordinance set in place by the Board of Supervisors. That is not what the Commission's purpose and legal duty requires – if some Commissioners do not like the applicable ordinance regulations, then they should resign or work through proper political channels to amend the ordinance more to their liking. They should not subvert the Board of Supervisors by making decisions based on whim, personal preference and global social concerns. And they should not penalize applicants that enter the permit process in good faith and spend six figures to complete the process, only to be denied for the personal preferences of some Commissioners.

Public Comment. Since the bulk of opposing Public Comment comes from one family and their friends, some background will be useful to the Board in determining the veracity of their Public Comment. With respect to any new Public Comment, it should be first noted that Public Comment has been sparse. One family and a few individuals have submitted comment in addition to routine opposition comment from dedicated environmentalists that oppose virtually all projects.

Applicant submits that if such Commenters would simply read the Planning Department's staff reports, any concerns regarding environmental impacts or other issues will be relieved. There are no adverse environmental impacts from this project. As stated by even Commissioners voting against the project, this is the exact type of low impact project the County would like to see. See the transcript of the Commission hearing which is a part of the appeal hearing record.

1. Foersterling family Commenters (Thomas and Elizabeth Foersterling, Victoria Foersterling Ziegler, et. al.). The Foersterlings were exposed in Applicant's Commission hearing documents for extreme bias against Applicant. In losing a parcel boundary line lawsuit that was caused by the Foersterlings' actions in the first place, they are apparently irrational in pursuit of any way to harm Applicant. Their inability to see their long memo as irrelevant and irrational should concern everyone.

The memo is essentially attempting to re-litigate a boundary line location that was fixed by court decision ordered by the Superior Court and affirmed on appeal years ago. Their entire memo should be disregarded for these reasons, as those long settled issues are not before the Board of Supervisors with respect to the appeal hearing and a Board of Supervisors hearing would not be a proper review venue anyway.

The memo is very long but factually incorrect as anyone that bothers to read the case document file at the Courthouse can quickly determine. The true facts of the boundary line lawsuit date back to the early 2000s when Applicant's family thought they might sell the subject parcel due to the long considered opinion of Applicant and the Humboldt County Sheriff's Department that

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Thomas Foersterling is a potentially dangerous person to the community at large. See below for the basis of that opinion.

However, in order to sell the parcel, the family's realtor informed them there was no boundary line survey recorded that accurately located the legal boundary between Applicant's parcel and the Foersterling parcel. Without a boundary line location, it would be impossible to sell the parcel. The lack of a previously recorded boundary line location was the result of the fact that the Foersterlings did not obtain a land survey of their parcel when they purchased it in the late 1980s. Existing records did not precisely locate the critical north-south parcel line between the two parcels.

Applicant's family hired a surveyor to do the survey which would benefit both them and the Foersterlings. However, the survey revealed that the Foersterlings had built their house and their well on Applicant's parcel. The Foersterlings' house is not visible from the county road and so Applicant's family was not aware of how close the house was to the approximate parcel line location. In addition, the Foersterlings did not file permits to build their house which architectural and engineering review might have given rise to concerns about the encroachment over the parcel line. The survey also revealed that the Foersterlings were also encroaching on a total of approximately six acres of Applicant family land in addition to the house and the well encroachment.

Applicant's family member contacted the Foersterlings about the survey and visited their house to attempt to resolve the problem. The family proposed a solution highly favorable to the Foersterlings – Applicant's family would trade the six acres of encroached river frontage land for six acres of less valuable Foersterling land off the river and located north across the county road and a parcel line adjustment would be filed. However, no good deed goes unpunished as they say, as the Foersterling response was that not only would they not agree to do that but they claimed ownership of the six acres of encroached land.

In other words, the Foersterlings bought their parcel which is identified in all county records as approximately 28 acres in size and they were now claiming that they should get an additional six acres for free, while Applicant's parcel should be reduced by six acres without any compensation at all. The Foersterlings based their demand on a claim that their seller showed them a snag tree across the river and told them that is where the parcel line was located. The judge in the lawsuit was not persuaded or amused by this claim.

Applicants then offered to sell the parcel to the Foersterlings to settle the dispute. The Foersterlings offered half the market value and discussions ended. Applicant's family was forced to file an action to have a judge determine the legal location of the boundary line and the judge and appeals court unsurprisingly ruled in favor of the land survey paid for by Applicant's family. The Foersterlings declined to hire their own surveyor to contest the land survey findings and managed to hire and fire two attorneys during the course of court proceedings.

Note that even after all of the Foersterlings' irrational behavior, Applicant's family still told the judge to bend the parcel line around the Foersterlings' house so as not to force them to tear the house down. Is Applicant's family really the bad guys in this equation?

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For further information on Thomas Foersterling, an inquiry at the Humboldt County Sheriff's Office can be made with respect to his frequent summer confrontations with visitors to the swimming hole at the Mad River county bridge. He is well known for attempting to chase people away. He used to carry a hand gun to intimidate people and was reported to the Sheriff's Department for such behavior. Further note that his confrontational behavior requires that he TRESPASS on the swimming hole parcel which is not part of his parcel, but merely adjacent.

Applicant's family owned the swimming hole parcel for decades and the primary reason Applicant's family sold that parcel was the fear that Thomas Foersterling would eventually hurt or kill a visitor to the swimming hole and legal liability would ensue. A lot of people visit the swimming hole in the summer. Last, years later, the Foersterlings still refuse to pay Applicant's family approximately \$10,000 in court awarded sanctions, fees and damages.

Due to the foregoing, Applicant submits that the Foersterling family's and their friends' veracity on any issue is highly suspect due to their extreme personal bias and irrational behavior and their Public Comment should be ignored in its entirety.

2. Public Comment from others. The other Public Commenters have not read the Planning Department's staff reports or they would know that their legitimate environmental concerns were long ago addressed in detail. Their comments are redundant to Public Comment received by the Commission. The Board can easily review the numerous environmental, traffic, safety, and other studies required by the Planning Department and state law that fully address the concerns of the other Public Comment.

There were also illegitimate concerns expressed by a few Commenters such as allegations of guard dogs and armed security personnel, which are false allegations. Nowhere in the Planning Department staff reports are such measures approved or even suggested that they will be utilized. As the Board is aware, this type of low impact, outdoor grow project requires limited personnel and security is not a serious concern except perhaps for the few weeks of harvest window time. Applicant is able to utilize security cameras due to the fact that Applicant's full-time ranch manager lives just down the county road and can monitor the security cameras. Another illegitimate allegation is that Applicant is an absentee land owner. That is also a false allegation. In addition to Applicant's full-time ranch manager on the adjacent family land, Applicant's family consists of four sibling families totaling 17 immediate family members. One or more of the family use the land virtually every week and weekend.

A final point should be made. It is easy to lose perspective on projects that are described only on paper. One such important perspective is location. Public Comment often speaks of how a project might affect the rural atmosphere of a given location. It should be noted that the subject project location is a very rural area where the smallest allowable parcel size is 40 acres (except for a handful of parcels in the watershed grandfathered into the County code such as the Foersterling parcel) and the subject parcel is surrounded by parcels ranging in size up to several hundred acres.

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This is very rural, timber and range land with huge swathes of land on which no one lives or rarely uses as far as the eye can see. The size and any alleged effect of the subject project is microscopic in perspective to these land areas. Immediate to the project location, there are only 3 residences within a half mile radius, an area covering over 500 acres. One of those residences is the previously approved cannabis project with much higher impact than Applicant's project. Applicant's project is just a speck in contrast to the vast surrounding rural countryside and according to the numerous scientific studies will not adversely impact anyone or anything.

For the above reasons, the reasons set forth in Applicant's notice of appeal letter and the reasons set forth in the Planning Department's staff reports supporting and approving the project, Applicant submits that the Board of Supervisors should approve this project.

Respectfully submitted,

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Maple Creek Investments, LLC

BOS call

Damico, Tracy

From: Damico, Tracy
Sent: Wednesday, October 14, 2020 10:54 AM
To: Bohn, Rex; Fennell, Estelle; Mike Wilson; Bass, Virginia; Steve Madrone
Cc: Ford, John; Hayes, Kathy; Sharp, Ryan; Eberhardt, Brooke
Subject: FW: Opposition to PLN 2020-166
Attachments: Opposition Documents I, II, III.pdf

FYI –

From: Viewing Stones <viewingstones@outlook.com>
Sent: Wednesday, October 14, 2020 10:25 AM
To: Viewing Stones <liz.forsterling@gmail.com>; COB <COB@co.humboldt.ca.us>; Hayes, Kathy <KH Hayes@co.humboldt.ca.us>
Cc: Bohn, Rex <RBohn@co.humboldt.ca.us>; Madrone, Steve <smadrone@co.humboldt.ca.us>; Bass, Virginia <VBass@co.humboldt.ca.us>; Fennell, Estelle <EFennell@co.humboldt.ca.us>; Wilson, Mike <Mike.Wilson@co.humboldt.ca.us>
Subject: Opposition to PLN 2020-166

To the Humboldt County Board of Supervisors, et.al.,

Please put us on the Agenda to be heard for Public Comment during the October 20th Board of Supervisors Hearing on Appeal. We are in total opposition of the proposed project. Attached is a digital copy of our submitted written Documents of Opposition for your convenience, received October 7th.

Thank you,
Sincerely,

Elizabeth and Thomas Foersterling

Sent from [Mail](#) for Windows 10

Foersterlings, Thomas and Elizabeth
8748 Butler Valley Road
Korbel, California 95550
707 668 4369
liz.forsterling@gmail.com

RECEIVED
OCT 07 2020
Clerk
Board of Supervisors

Humboldt County Board of Supervisors
825 5th Street Room 111
Eureka, CA 95501
707 476 2390
cob@co.humboldt.ca.us

Hearing Date: Tuesday, October 20, 2020
Time: 9:00 a.m.
Zoom Meeting ID and Access: available on Friday, October 16, 2020
<https://humboldt.legistar.com>

RE: Record Number PLN-2020-16608 (#20-604); Record Number PLN-15197; Planning Commission Hearing #20-1001
Subject: Appeal of Planning Commission's August 6, 2020 denial of Special Permit for Cannabis Cultivation by Maple Creek Investments LLC, a Nevada Limited Liability Company APN 315-011-009, APN 315-011-008 FR Zoning

OPPOSITION to Commercial Cannabis Cultivation

To: Humboldt County Board of Supervisors, et. al.

The Humboldt County Planning Commission did the right thing and denied MCI a Special Permit. The Foersterlings urge the Humboldt County Board of Supervisors to do the same thing, do what is right for the immediate region, and deny MCI its proposal to commercially cultivate Cannabis on parcel 315-011-009.

I. PROCEDURAL HISTORY

A. PLN-15197

1. On September 22, 2016, Maple Creek Investments, LLC, a Nevada limited liability company (MCI), submitted a commercial cannabis cultivation application (#11210) to the County of Humboldt Planning and Building

Department (CHPBD). It is unknown as to which location the Permit was sought.

2. On June 15, 2017 an application was withdrawn in accordance with Section 312-6.1.5 of the Humboldt County Code, *If the application is not completed by the Applicant within (6) months after original receipt of the application, it will be deemed withdrawn; "due to inactivity."* Notification had been given of the "pending termination due to lack of information submitted" and "inadequacies." Humboldt County Code "did not provide for a reactivation of a withdrawn application," and "the office had not been issuing interim permits for RRR." Despite receiving notification of termination, MCI continued operations. Fines were imposed.

3. Permit Application No. 2018-15197 was found to be problematic. On January 22, 2019, Deputy Director Bob Russell notified Catherine Dunaway that "a problem has been identified on this parcel that prevents further processing of this application, submitted evidence was not sufficient to verify existing outdoor cultivation on this parcel, no interim Permit has been issued, all Cannabis related infrastructure must be removed immediately, and no further cultivation is permitted on this parcel prior to permit approval." The penalty fee for the 9,530 square feet of unpermitted cultivation area was set at \$19,060.00.

Cannabis Services Division Planner Blake Batten, in an email to Six Rivers Development, LLC, summarized the findings:

- a. Submitted evidence of existing (pre-2016) cultivation on APN 315-011-009 is not sufficient to move the application forward. It appears the previous application #11210 included the same evidence.
- b. Application needs to be revised to exclusively new cultivation.
- c. While some of the submitted materials reference existing site conditions, the County needs assurance from a Registered Professional Forester.
- d. All cultivation areas must be remediated and cannabis infrastructure removed. Cultivation and additional development is not authorized on this parcel prior to approval of the permit.
- e. A penalty fee has been assessed.

f. The penalty has to be paid in full.

4. On November 1, 2019, a "settlement meeting" with Director Ford revised the amount of the penalty for the 2018 cultivation from \$19,060.00 to \$9,530.00, and negotiated the fines of the penalty to be paid after the decision of the project, approval or denial. Removal of the unauthorized cultivation had to be verified, and a warning of "no cultivation is authorized on this parcel prior to obtaining County and State approval" was given.

5. Options to resolve the issue were given as follows:

(a) Pay the penalty fee and remediate the cultivation area.

(b) Withdraw the application, remove all cannabis related fixtures and equipment from the parcel, and remediate, restore, and restock any disturbed area to their natural condition.

(c) Respond with clear and substantial evidence.

6. MCI submitted application PLN-2018-15197 for a Special Permit to commercially cultivate Cannabis for "new cultivation."

B. PUBLIC NOTICE

1. The first Public notification of the proposed project came when the first Public Notice was received. On Friday, July 3, 2020, the Foersterlings, the adjacent property owners, received a Public Notice, in their mailbox, of a summary of the proposed project, and the subsequent Zoning Hearing set for July 16th. On July 9th, the Foersterlings sent the planning clerk of CHPBD a request to be put on the Agenda for Public Comment. On July 15, 2020, CHPBD received the Foersterlings' Document of Opposition to PLN-2018-15197.¹

2. The proposed project went before the Zoning Administrator on July 16, 2020, and due to an overwhelming amount of Public Comment, and the incorrect Virtual Link addresss/phone on the Planning Department's website, the project was pushed forward to the Planning Commission.

3. The Foersterlings requested to be placed on the Agenda for the scheduled August 6th Planning Commission Hearing, to be heard for Public Comment. The Foersterlings' **SUPPLEMENTAL** to *Document of Oppositor*² was

¹ See stamped Document received July 15, 2020.

² See stamped Document received July 30, 2020.

stamped and received on July 30, 2020.

4. On August 6, 2020, the Humboldt County Planning Commission denied MCI its application for a Special Permit to cultivate a large commercial Cannabis grow on the tri-intersection of Butler Valley Road and Maple Creek Road.

5. On August 12, 2020, a Notice of Planning Commission Decision was issued, specifically stating: *The project described above was denied by the Planning Commission on August 6, 2020.*

6. On August 20, 2020, MCI appealed the Humboldt County Planning Commission's decision of denial.

7. On October 2, 2020, the Foersterlings received a Public Notice, from the Humboldt County Board of Supervisors, for a Public Hearing on the Appeal set for 9:00 a.m. on October 20, 2020.

II. OBJECTIONS TO MCI'S REASONS FOR APPEAL

A. Planning Commission Denied Special Permit 15197

The Planning Commission found overwhelming *Public Controversy* with the proposed project to be adequate enough for reason to deny³ (Ordinance No. 2599, §314-55.4.6.7). The proposed site and plan for the project is clearly not set in the right location for a large Commercial Cannabis Cultivation.

1. There are already Humboldt County permitted grows in close proximity to the proposed project. To cluster grow upon grow in the same rural region, "in the hills and off the tributary roads and sensitive habitats," is contrary to the General Plan and the Planning Commission's goals, and was cited as reason for denial (Ordinance No. 2599, §314-55.4.6.5.9).

2. The Planning Commission found, "there's a lot of antipathy towards this project," and "projects that have a huge amount of neighbor antipathy as having something wrong with them." The project clearly did not "sit right" with the majority of the Planning Commission because there was so much public outcry. To approve would have been in violation of the Purpose and Intent of Ordinance No. 2599, §314-55.4.2., some of the regulations of which are to ensure the public health, safety, and welfare of the residents and neighboring property owners.

³ There were 50 participants logged-on to the Virtual Hearing, and many more listening by phone; many letters in opposition were submitted before the hearing.

3. Using the “case-by-case” criteria, the Planning Commission found they could not approve such a visible and overly encompassing project to *that* specific area of Maple Creek, and to its greater community, citing the issue of water, drainage, cumulative effects, abatement and past violations, pre-existing vs. CEQA exemption for “New Cultivation,” thorough vetting by CDFW (or lack thereof), the location, concern for the adjacent neighboring properties, and the majority of Public Comment opposed to the project, etc.

4. The Planning Commission found the cumulative impacts, “what these all add up to,” of so many grows in one place, would adversely define the character of the region, intrude upon the residential neighborhood, and add to “water issues.”

5. The category of “pre-existing” or “new” created some debate as to the efficacy of the application itself. As there were two years of unpermitted growing by Applicant, the question as to the “abatement” arose.⁴ This controversial issue added to the Planning Commission’s decision and gave reason for denial.

6. Following Public Review, the Hearing Officer shall deny the proposed project in accordance with the particular requirements of this Code as they apply to the project (6.5.1). During COVID-19, a virtual hearing, and under all related circumstances, the Planning Commission properly exercised their judicial power.

7. Contrary to Applicant’s fourth reason for Appeal, a denial of the project is a positive move in the right direction, as was outlined by the Planning Commission. More applicant’s will be encouraged by discerning Hearing Officers who can clearly see discrepancies, inadequacies, and deception in the various Cultivation and Operation Plans submitted with Applications. Ambiguity in Staff Reports and the sidestepping of requirements will be discouraged. By only allowing those grows which are credible, and can stand the test of time, not rape the earth, and not create conflict within neighborhoods, Hearing Officers will uplift the Cannabis Industry. Code enforcement has an easier job, if the projects have solid and wholesome beginnings. Ordinances are put into place to help law enforcement, not to hinder them, to prevent litigation, not to provoke.

⁴ Letters and documents submitted by local residents, landowners, and adjacent property owners clearly outlined some of the reasons for abatement.

III. DISCUSSION

A. Non-compliance

1. Applicant spent years kowtowing with the Planning Department, "settlement meetings," emails back and forth, etc., and the Staff's direct involvement with the Applicant, and no involvement with the members of the public, adjacent neighbors, or landowners in the Butler Valley/Maple Creek area, is evidence of unfair partial pandering. The Staff Report clearly showed bias toward the Applicant, and in doing so, disregarded crucial components of necessary requirements, compliance, and conformance for approval. To camouflage inadequacies found in environmental documents and project analysis of a Cannabis Cultivation proposal is not reason for approval (CEQA). In good conscience, the Planning Commission could not approve the project.

2. Permitting requirements entail standards of which MCI was unable to meet. "The drawdown from any adjacent well(s)...Use of the well for Cannabis-related irrigation is prohibited" (§314-55.4.12.9). It must be stressed that the water extracted from "Spring #1," and collected in 6 tanks totaling 14,000 gallons, for the two years of unpermitted grows, has already drawn water away from wetlands, forested areas, and adjacent wells, not to mention all the fine water veins connected to the Mad River.⁵ Water trucked-in to supplement the proposed activities, and four 50,000 gallon rainwater catchment tanks,⁶ to be miraculously filled by a wishful amount of yearly rainfall, is not an environmentally sound project, nor is it sustainable. For a non-residential industrial commercial large grow operation to designate different tanks of water for non-cannabis irrigation use, yet the sole purpose of the use of the water is to grow cannabis, is a convoluted concept which Kindergarten children could easily find fault with. The philosophy behind *designating different containers of water for various aspects of growing pot*, well, 'clearly doesn't hold water.' All water used in the *process* of commercially cultivating Cannabis is used to cultivate Cannabis, whether to irrigate or for "back-up purposes," and cannot be categorized differently. As many of the Public pointed out, water is scarce, water is life, and water is a vital

⁵ Reason for Abatement. Code Violation.

⁶ Over 8' tall and 34' in diameter, per tank, proposed placement encroaches upon wetland and Parcel 10. Eyesore.

residential resource. MCI is unable to show there is enough water⁷ to sustain the proposed project without harming others and the environment (Water Code §13149). The Planning Commission had to deny approval.

3. Applicant declares ownership of 1,000 acres in Maple Creek. The questions are: Why would MCI choose such an inhospitable site for Cannabis Cultivation, when other, more remote, and/or discreet acreage, less blatant, less exposed, less invasive to the environment, community, and neighboring parcels, is available to it (1,000 acres), with a more abundant water supply for a sustainable business? Why have to truck water in, drawdown from other adjacent wells, and try to catch rain in humongous tanks,⁸ to grow plants on the smallest portion of sensitive land, for all to see and smell alongside and between the intersecting roads? Why try to bully and threaten its neighbors? The Planning Commission's decision of denial answered to these questions. No new permits to these sites (Ordinance No. 2599, §314-55.4.6.5.9).⁹ Applicant has **not** complied with "every possible regulatory criteria" and **cannot** be recommended for approval.

4. From all the unmet conditions in the Water Resource Protection Plan (WRPP), to the contradictions found in the Jurisdictional Wetland Delineation document, to the clear violations found in the LSAA, to the deception and "behind the back" dealings of Applicant, PLN-15197-SP fails the standards for approval (4.0). Requirements for compliance have not been met by the applicant.

5. Individually, the proposed project is devastating in itself. But the resultant cumulative impacts from "collectively significant projects" in the area would make it catastrophic (§15130(a) State CEQA Guidelines). Permitted large grow operations must not be clustered one on top of each other. If it were the *only* permitted grow in the region, it *still* would be the wrong place for Cannabis cultivation. With the majority of Public Comment against the proposal, it was

⁷ The need to truck in water, use diversionary tactics to store ground water, and surface water, and rain catchment tanks proves the lack of a sustainable water source for the project; LSAA (an incomplete application, not an agreement).

⁸ Dependent on 60" of rain per year, or more. "Captured Rainfall" impervious surfaces (Ordinance No. 2599).

⁹ RRR site, a Cannabis Cultivation operation occurring in an inappropriate, marginal, or environmentally sensitive site.

more than reasonable for the Planning Commission to deny the project, it was its duty.

B. Pre-existing vs. New Cultivation

1. Applicant and its project manager illegally grew Marijuana for two years, in 2017 and 2018, without the necessary permits. During those two years, the Public complained to the Planning Department and other County and State agencies and personnel about the illegality, environmental damage, noxious odors, noise, trespass, encroachment, harassment, and the “eyesore on the corner.” (The transient population trekking in from town with their backpacks to “check out the grow on the road” was also discussed.)

2. PLN-15197-SP is a proposal for cultivation of a much *larger* quantity of Cannabis (3X the amount), and a project slated for much *more* damage to environment, habitat, surrounding properties, and Community. With all the complaints from those two previous years, and applicant’s insufficient evidence of conformance, how can a larger more devastating and inadequate project pass?

3. Because of all the complaints, the Planning Department ordered the illegal cultivation to stop (“abatement”), and told many concerned individuals a permit to grow would never be given for that location. If it were the *only* place in Humboldt County to cultivate Cannabis, it would be the wrong location. The January 22, 2019 email¹⁰ from Blake Batten clearly shows two things: Applicant tried to deceive the Planning Department and pass off the location as pre-existing (pre-2016), and applicant was told to stop all cultivation and all related cannabis activities.

4. It was observed by all that the “wooden fence” was taken down and all the grow containers were moved, indicating a cessation of the grow. (The 6 large water tanks, and trailer, placed on the property for the grow, have not been moved, fertilizer still remains stored). Hefty fines were to be applied, and paid. Those affected were never compensated for damages incurred.

5. Whether the CHPBD treats the proposed Cannabis Cultivation as previously existing, or new cultivation, is a matter of discussion with regard to

¹⁰ Applicant’s Exhibit H (much of which is redacted).

CEQA exemption, increased area of cultivation, County Code §314-55.4.8.2.2, etc., but cannot change the facts of the instant case. Applicant did “grow,” did not have a permit to “grow,” and was *stopped*¹¹ from continuing to “grow.”

C. Humboldt County Code Title III

1. Fines, fees, and the integrity of projects brought before the Planning Department are its concern, but the overall effect of the County’s decisions are the Public’s concern. The neighbors together in Maple Creek are dependent upon one another for many things. It is a tight knit Community, and the safety and welfare of all the residents is dependent upon getting along, looking out for one another, sharing important emergency information such as fires, theft, vandalism, reckless driving, littering, etc.¹² The Maple Creek Community is a long way from the nearest Sheriff Station, Fire Department, Hospital, Garbage Company, and Grocery Store. The Maple Creek Elementary School is a central place for the Community to congregate, and has in the past been a vibrant place for education, gatherings, and community events.¹³ Blatant exposure to a Commercial Cannabis Cultivation right on the tri-section of the two main roads in and out of the area, a strip of land bisected by the two roads, is contrary to the Community Residential Plan, and clearly, would destroy the ambience of the region (§312-17.1-17.1.5.3). Its negative economic, residential, aesthetic, and environmental effect on the Community is reason to deny (H C General Plan).

2. Applicant cites another permitted Cannabis Cultivation directly adjacent to the proposed project, as reason for approval. It is absurd to suggest to a Hearing Officer that since someone else has been approved, that they should get approved also. That is clearly not a criteria for approval, and in fact, it is reason to deny, as the “property contains insurmountable physical or environmental limitations and clustering...has been maximized.”

Furthermore, the existing residence of the Giordiano family is setback from the street, and their presence in the neighborhood is welcome. There is potential for participation in the local school, and the respect shown to their neighbors has

¹¹ Abatement.

¹² Rural Neighborhood Watch Program

¹³ As a former Maple Creek School Board Member, Elizabeth Foersterling hopes to see a resurgence of the number of pupils attending the rural School.

been commendable. The Giordiano Family Farm includes an array of animals, a variety of vegetables, flowers, and trees, and the discreet Cannabis cultivation is *not* a monoculture, is *not* visible from the road, and does *not* “drawdown from adjacent wells.”

Applicant’s proposed project is wholly and completely different from that of the Giordiano Farm, and it cannot be compared, nor can it be a reason for approval. The proposed project would “impair the continued agricultural use and operations of, and on, the adjacent lands.” The proposed site is **not** “the least environmentally damaging feasible alternative location for the project.” The proposed project is **not** “compatible with the character of the neighborhood.” The proposed project does **not** “include *any* mitigation measure *sufficient* to offset increased risks to adjacent human populations.” Applicant’s proposed project is incapable of compliance.

3. The proposed project **must**:

- a. Conform to the County General Plan, Open Space Plan.
- b. Be consistent with the purposes of the existing zone.
- c. Conform to *all* regulation, standards, and requirements.
- d. **Not** be detrimental to the public health, safety, or welfare or materially injurious to properties and improvements in the vicinity.
- e. **Not** reduce residential density (included 17.1.5.3).

4. The proposed project does not comply with any of the above criteria. Many of the Goals and Policies outlined in the General Plan have been ignored by Applicant and the Staff Report. For example, the Planning Commission questioned Staff about the specific Tribe contacted, but were not told of the Indigenous Peoples of the specific area. Significant Cultural aspects of the land, once belonging to the Whilkut (Ha loh wah kut wah), were passed by with a mere, “to be called if anything is found,” pursuant to “Inadvertent Discovery Protocols.” The same *protocols* were used on parcel 07 and did not save historical Native Ceremonial Grounds from being desecrated; just a stone’s throw away from where Applicant proposes to build a roadway to the cultivation site.

D. Response to Applicant's Claims

1. Applicant claims Cannabis cultivation is a principal permitted use.

FACT: "Commercial cultivation of Cannabis is a highly regulated specialty crop and the cultivation and processing of that specialty crop **shall not be allowed as a principal permitted** use under the General Agriculture use type classification applicable within the County of Humboldt" (Code §314-55.4.3.9). Cannabis is **not** a primary agricultural permitted crop (CDFA). Applicant's claim defies the Law, and is **not** a reason for approval.

2. Applicant claims the proposed cultivation location meets setback requirements, but does not consider the proximity of the two main roads, the sensitive community of school children driving by, the church camp participants driving by, the wetland, the forested land, the Mad River Watershed and subwatersheds, the encroachment on adjacent properties and residents of Maple Creek/Butler Valley, all in plain view, vibration, sight, and smell of the proposed Cannabis operation. The location generated numerous complaints during the two years of unpermitted grow, to apply for more cultivation in the same location is a violation of Ordinance No. 2599 (RRR) regarding "inappropriate, marginal, or environmentally sensitive sites." Applicant's claim is against regulations, does not coincide with the 5 C Program,¹⁴ and is reason for denial.

3. The proposed processing facility would be central to the Maple Creek area, and would negligently define the Maple Creek Elementary School District. A Cannabis Processing Facility and Cultivation area is not Field Trip worthy for the Kindergarten through Eighth Grade student population and would be detrimental to their overall educational environment.¹⁵ Jobs related to commercial Cannabis cultivation are not the type of jobs to create for our youth to aspire to. It would be an unwelcome commercial activity in the rural residential region, and

¹⁴ The Five Counties Program.

¹⁵ Elizabeth Foersterling has worked in the educational field for over twenty-two years, beginning with volunteering as a parent at the Maple Creek School in the early 1990's, and has worked in various School Districts within Humboldt County since then, Kindergarten through Adult Education, currently at Humboldt State University. Thomas Foersterling USSF "A" License coach has worked with many teams and individuals over the years in Colleges, *i.e.* Humboldt State University and College of the Redwoods, formed the Adult Redwood Soccer League affiliated with USSF, Traveling Teams, U-18, U-16, U-14, U-12, Youth Teams, High School Teams, (St. Bernards, Hoopa, McKinleyville), clinics, F, E, and D Licensing Classes, etc., both locally in Humboldt County, and in the greater regions of the State of California, and even in Oklahoma.

FR Zoning. The Cannabis Culture is not for everyone's recreational liking, and cannot be blatantly forced upon the residents of any community, and must not be shoved onto the students of any of our schools.¹⁶ The proposal of a commercial processing facility is reason to deny PLN-2018-15197. *Bokale, et. al. v Green Earth Coffee* (2018).

4. Applicant claims to have "1,000 acres" in the vicinity of Maple Creek. That statement is not "reason for approval" of the project. Why does it not use its 446 acre parcel, or its 411 acre parcel? With so much more usable land and water, it makes one wonder why MCI would choose such an unsuitable location right in everyone's face to Cultivate Cannabis? Why would the owners of 1,000 acres of land in Maple Creek want to take water, views, land, and improvements away from neighboring property owners, infringe upon the rights of others, and cause personal injury of such magnitude? Applicant is not a full time resident of Maple Creek, and the proposed project does not meet the Zoning Standards of RA40 (Residential Agriculture).

5. Applicant claims to be landowners in Maple Creek for four generations, "since the 60's." Applicant's claim is **not** reason for approval. The Chain of Title for the Foersterlings' parcel 315-011-008 includes Robert A. Dunaway of Maple Creek Ranch (father of the four Dunaways who comprise Maple Creek Investments, LLC) who had land dealings "back in the 70's." For example, on December 20, 1972, Robert A. Dunaway, as a General Partner of Butler Valley Investment Company, a limited partnership, granted the 08 parcel, as an undivided one-half interest, to California Bankers Trust Company, a California Corporation. California Bankers Trust Company then granted the land to Wells Fargo Realty Services, Inc on November 24, 1975. Then, on July 9, 1976, both Wells Fargo Realty Services and Chaparral, LTD, a limited partnership¹⁷ granted their interest in the land to Arcata National Corporation, a California corporation which then changed its name to Arcata Corporation, and then again to ALB Ventures, Inc on June 4, 1982. On February 11, 1983 Francis and Carole Carrington, husband and wife, purchased the land from ALB Ventures, Inc, and

¹⁶ Drug Free Zones.

¹⁷ Chaparral, LTD was owned by Robert A. Dunaway.

commissioned a Survey for a Subdivision in 1986. MCI's claim prevents it from any action to Quiet Title (*Martin v. Lopes* (1946)), and adds to the reasons to deny the project.

6. Applicant claims the Foersterlings did not get a survey before they purchased their land. This is a false claim, and is not a "reason for approval" of the project. In 1987, when the 08 parcel came up for sale, the Foersterlings had the brand new 1986 B & D Survey from the new Carrington Subdivision, which clearly shows the *surveyed* river frontage footage of the parcels in the subdivision. The Foersterlings, along with Humboldt County Licensed Surveyor and Engineer Ed Schillinger, used all available recorded Surveys, existing fence, and knowledge from the locals, to locate the Original Corner Monuments and Boundaries of the property. In 1988, after escrow went through, the Foersterlings met neighboring property owners and, in agreement, in 1989 built their own well, water system, septic system, and home on their own land.¹⁸ MCI is unable to claim otherwise. *Price v. De Reyes* (1911).

The Foersterlings' land is filled with remnants of the past owners, including choker cables from the Lumber Co., and old original fence from the Wiggins' Ranch. From August 15 to 21 of 1940, William Anderson (L.S. 1936) conducted Survey No 15 for Dr. C. G. Wiggins. In 1946, A. B. Bones (L.S. 2020) conducted Survey of Maple Creek Headquarters Ranch...Hammond Lumber Co. In 1971, Otto Peters (L.S. 2561) conducted a Record of Survey Map of *Portions of Townships 4NRE & 4E and 3NR3E Humboldt Meridian*, using Book 11, Page 99, confirming the existing Original Corner Monuments. Pursuant to Code of Civil Procedure Section 2077(2) boundaries or monuments are paramount. MCI is estopped from claiming otherwise. *French v. Brinkman* (1963); *Carr v. Schomberg* (1951).

Fast forward to 2009 when Barry Kolstad, in his survey, used aerial GIS web map imaging to draw (not to scale) the Mad River, and used a computer to put a line through the Foersterlings' home, improvements, and meadow, and used Proration, Double Proportion, and GIS to move all the *existing* Original

¹⁸ Alternative Building Regulations Ordinance No. 1654

Corner Monuments. Kolstad's survey omits parcel 314-191-018, which still remains as part of the Carrington Subdivision. The parcel is found on the County's web map, but not on Kolstad's survey. The survey is not definitive, and does not establish the true boundary lines. MCI is prevented from claiming otherwise. *State of California v. Thompson* (1971); *Weaver v. Howatt* (1911); *Hannah v. Progue* (1917).

The "shift" of parcel lines on parcel maps from 1988 to 2019 is indicative of the manipulation, and creates illegal parcels. Using the same method, the State of California would lose a large swath of land to Nevada, but California does not allow such methods or outcomes. At present, State lines are not being moved.

7. Applicant claims the Foersterlings built their house and well on Applicant's property. FACT: For the past thirty-two plus years, the Foersterlings have paid the assessed property taxes for all the land and improvements the Foersterlings have made. *Gilardi v. Hallam* (1981). Applicant, against all applicable law, has tried to claim the Foersterlings' improvements which the Foersterlings have made to the Foersterlings' land. *Connolly v. Trabue* (2012).

In 1993, Victor and Dorothea Guynup, owners of the contiguous and conterminous 09 parcel, deeded a one-half interest to Maple Creek Ranch, a hand shake deal with Robert A. Dunaway, in which Victor Guynup maintained that portion of the 09 parcel South of the Butler Valley Road. Seven years later, in March 2000, the foreman from Maple Creek Ranch, Kerry Rasmussen at the time, came over to the Foersterlings and walked the property line with Thomas Foersterling and David Grandy from Northwestern Timber Contractors, locating the three corner monuments and agreeing on the approximate property line. Discussion ensued with Victor Guynup, and he was upset by much of MCR's actions, as they had no business on that side of the Butler Valley Road. MCR was prevented from any further action.

Victor Guynup, the Foersterlings' long time neighbor, suddenly passed away in May 2003. Shortly thereafter, in 2004, Maple Creek Ranch went after the Guynup Trust for a 100% interest in the 09 parcel. The original description of the land remained in the names of Victor and Dorothea Guynup, and was not

conveyed to the Guynup Trust. *Land not described, therefore cannot be conveyed.* MCR spent seven years trying to get the deeded land description changed, and “acquire” Title to the 09 parcel. In 2011, Humboldt County Judge Reinholtsen signed off on an Order Confirming Trust Assets, despite the fact the land still remained in Dorothea's name.

In 2008, years before MCR “aquired” APN 315-011-009, it solely, and illegally, commissioned an inaccurate GIS Survey¹⁹ which drew a line through the Foersterlings' home claiming the Foersterlings' water system, well, septic system, meadow, trees, drainage, improvements, etc., were on the 09 parcel. In 2010, MCR solely, and illegally, filed a “lawsuit” against the Foersterlings (Case No. DR100099). The Foersterlings disputed and contested the survey (still do), and questioned the legality of the “lawsuit.” *Marriage v. Keener* (1994). Applicant's claim is false, and is **not** reason for approval.

8. Applicant claims a “parcel line dispute,” between Maple Creek Ranch, Inc., a California LLC and the Foersterlings, had been “litigated.” Applicant's claim is **not** reason for approval, and contributes to reason for denial. FACT: the land had already been bought and sold by Maple Creek Ranch, over thirty years prior, using the surveyed original corner monuments, and the Foersterlings lived in agreement for over *twenty years* with those monuments, the neighboring landowners, and adjacent properties. A boundary dispute case should never have come before the Court (Codes are governed by Statute).

During the August 6, 2020 Planning Commission Hearing, Rob Dunaway neglected to tell the Planning Commission that under oath he had “misled” the Judge during the Bench Trial.²⁰ To lie under oath is not litigation, it is perjury. MCR told the Judge it had made no improvements to the 09 parcel, did not pay taxes on any improvements, there were no structural or land improvements assessed to the 09 parcel, and would not tell the Judge where the Foersterlings' well was (and is) located. The Trial Court did not allow any of the Foersterlings' evidence to be submitted which would have proved the essential facts of the

¹⁹ Kolstad Survey, 2009; Magnetic North moves West 34' per year;

²⁰ The Foersterlings were denied a Jury Trial; The Foersterlings represented themselves and were railroaded in the process.

case. Due to all the objections made by MCR's attorney,²¹ (a strategy the Foersterlings found to be unfair and preferential treatment toward the party with an attorney), and the Trial Court's error in Judgment, the outcome was not an equitable action, was not a resolution, did not secure repose, and did not prevent further litigation. The Trial Court abused its discretion, and the Appellate Court was limited to *only* the evidence allowed by the Trial Court. The Appellate Court, in its' decision, stressed MCR's claim that it had "made no improvements to the land, and did not pay taxes on any improvements" (Case No. A141015).

In 2015, after the Appellate Court's decision, Robert Dunaway confessed in a nasty, threatening letter to all the Foersterlings that the Foersterlings' well was on the disputed property. Again, during the Planning Commission Hearing, Rob Dunaway said that the "Foersterlings' well is on the Applicant's property." If the Dunaways had been candid during the Court proceedings, and told the Judge the truth about all the improvements, the outcome would have been different. The deceptive practices of both Plaintiff and its Attorney, and the prejudicial error in judgment by the Trial Court cannot stand the test of time. Applicant *now* tries to use the Planning Department, and a fraudulent site plan map for Cannabis cultivation, to claim the Foersterlings' improvements, *i.e.* "Groundwater well," "<E> Access road," "Graded flat," "Spring #2," and encroach on their land. Applicant's claim to all the improvements are unfounded, and are **not** reason for approval. The Planning Department must be wary of such false claims. Applicant's misrepresentation is reason for denial.

9. Applicant claims the Foersterlings owe it \$10,000, and as evidence submitted two Judgments as part of its "Exhibit G."

(1). The September 27, 2010 Order After Hearing RE: Monetary Sanctions was in the amount of \$1,050.00, and was sought by Plaintiff because the Foersterlings were unavailable at the scheduled day and time of the requested Deposition. Due to Robert Dunaway being a non-resident and living in Arizona at the time, he was set to travel (fly) to Humboldt from Arizona, and stay at the Best Western Bayshore Inn, a

²¹ Laurence A. Kluck has stated numerous times that "if he were the Foersterlings' Attorney he would have "won" hands down, easily."

room was already booked. Plaintiff requested Defendant pay for the flight and the room, at a total cost of \$1,050.00.

(2). The December 2013 Judgment on Reserved Issues, in the amount of \$4,950.00, was for an Order Appointing a Referee; the sum of which was owed to SHN, and was written off the Business' accounting books as a bad debt. The referee was limited in its scope, and unable to carry out its lawful duties as defined; there was no need for services rendered. The added sum of \$805.00 was calculated for payment to MCR for the *land beneath the Foersterlings' home*, and around the northeast, east, and southeast side of the Foersterlings' home, including the land area where the Foersterlings' septic system is located. MCR was **not** awarded attorney's fees.

Without the Foersterlings' permission, MCR created an illegal parcel, and generated illegitimate fees, bills, and costs associated with a wasteful and frivolous lawsuit. The Foersterlings have *nothing* to do with the actions of MCR or MCI. Applicant's claim is reason for denial. California Civil Code Section 3517; *Metsch v Heinowitz* (2020). The Foersterlings owe Applicant nothing.

10. The Foersterlings own one parcel, yet MCR took it upon itself to invent a second parcel, and *now* the Foersterlings have *two* parcels on their Title Report. MCR took it upon itself to take out a loan from Redwood Capital Bank for \$350,000.00 twice and added those amounts to liens found on the Foersterlings' Title Report. The Dunaways have illegally leached onto the Foersterlings' Title.

As it stands, the amount of the artificially fabricated liens, placed upon the Foersterlings' property by MCR's criminal action, now totals \$746,544.42, and the Foersterlings must take action to Quiet Title, seek Equitable and Declaratory Relief, and be compensated for Personal Injury and Damages. FACT: MCR has made a mess of the Foersterlings' Title Report, and it needs to be cleaned up.

MCR's excessive expenditures, unjustly and exorbitant recorded liens, and continued harassment and terrorizing of the Foersterlings, must stop. Applicant cannot lay claim to the Foersterlings' improvements, and only shows the total disregard Applicant has for its neighbors.

Furthermore, the Humboldt County Parcel Map for the 08 parcel has been changed and/or manipulated to reflect Kolstad's inaccurate GIS Web Survey. Computerized draw lines cannot change the boundaries of the lands. The Foersterlings maintain their position; contest the Kolstad Survey, object to MCR's forging a second parcel, reject the liens placed on their Title Report, discredit the 2019 Parcel Map made by Russell Dutra, and defend the equity of the improvements they made to their own land.

11. It must be mentioned that when MCR was landowner of the "Bridge Parcel," it was so negligent of good stewardship that the area became a public nuisance, and many people complained about the out of control bonfires, partying, drugs, drinking, camping, tents, trash, graffiti, parking, and trespassing issues, etc. Over the years, the repeated actions of Applicant have shown a negligence and hostility to its neighbors and the land, in clear violation of Humboldt County Code, and is reason for denial.

For over thirty years, Elizabeth Foersterling, as a long time resident of Butler Valley, has annually and/or bi-annually cleaned up the litter and trash along both sides of the Butler Valley Road, from the Maple Creek/Butler Valley intersection to Butler Valley Ranch,²² to maintain the integrity of the area. Over 1,000 gallons of trash has been picked up, and brought to the dump. During the years between 1989 and 2009, when MCR owned the Bridge Parcel, the type and amount of trash found along the road was much, much more extreme.²³

12. Applicant claims fertilizers and pesticides are not harmful, yet had obtained a certain Hazardous Substances Certificate and Indemnity Agreement; which has also appeared on the Foersterlings' Title Report and must be removed. Applicant's claim is false, and is a clear reason to deny the project in its entirety. The Fertilizers/Amendments proposed, and previously used, have many "not determined" risks and effects associated with them, as well as Manufacturers' Disclaimers in bold everywhere.²⁴ The 2018 Court Ruling, by Judge Timothy M. Frawley, ended California Department of Food and Agriculture's use of harmful

²² Except for this year during the COVID-19 Pandemic.

²³ During the summer months of the COVID-19 Pandemic double parking once again became an issue, and trash, mattresses, etc., piled up.

²⁴ DDT was once considered safe to spray over crops; ROUNDUP was marketed as safe.

pesticides without serious consideration of the cumulative negative impacts on people, animals, and water over long periods of time. *Anderson, et.al. v Pacific Gas and Electric* (1993); *Dewayne Johnson v Monsanto Company* (2016).

FACT: On packaging, of both the fertilizers and pesticides proposed to be used, and those which have already been used during the two years of unpermitted cultivation of Cannabis by the Dunaways and Mr. Shields, show CAUTION with a First Aid warning:

- If swallowed: Call *poison control center* or doctor immediately for treatment advice. Have person sip a glass of water *if able to swallow*. Do not induce vomiting unless told to do so by the poison control center or doctor. Do not give anything by mouth to an *unconscious person*.
- If on skin or clothing: Take off contaminated clothing Rinse immediately with plenty of water for 15-20 minutes. Call *poison control center* or doctor for treatment advice.
- If inhaled: Move person to fresh air. *If person is not breathing*, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to mouth if possible. Call a *poison control center* or doctor for further treatment advice.
- If in eyes: Hold eye open and rinse slowly and gently with water 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a *poison control center* or doctor for treatment advice.

The WRPP shows violations related to the fertilizers and/or pesticides found on the 09 parcel grow from previous years, and does not guarantee that conditions can be met with regard to fertilizer and pesticide use. The document concerns itself with *storage* of Fertilizers and Soil Amendments "so as not to leach into groundwater," but not so with irrigation runoff? "Spoils were located in places where they could enter surface water." Violations of "water diversion" and seepage have already occurred, and are inevitable. Soil amendments remain stored at the site. Fertilizers and Pesticides are combustible if not properly stored. In the report, "Corrective or remedial actions" were needed everywhere. Code enforcement and mitigation management cannot adequately guarantee the

health, safety, and welfare of the environment and its inhabitants; and the proposed project cannot conform to the requirements of both the General Plan and the County Ordinance. Although the WRPP lacks accuracy, is not thorough, and neglects the integrity of the land and adjacent residences, it does show conditions are not met for the proposed project, and is reason for denial.

13. In its Appeal Packet, Applicant *now* claims projected water usage at approximately "100,000 gallons annually," yet plans to "develop rain catchment in the amount of 200,000 gallons." Despite the hypocrisy by Applicant of how much water diverted, or caught, or used for this, or that, the fact is that the storage tanks already on the property, holding 14,000 gallons of water, have already significantly drawdown water, away from adjacent properties, away from wetland, away from forested areas, and away from the Mad River, and for two years were used to cultivate Cannabis. Civil Penalties §12025, for unpermitted water diversion (2019).

To hoard water in rain catchment tanks to cultivate Cannabis and divert water away from adjacent domestic water supplies is a complete violation of Ordinance No. 2599, and is against the California State Water Resource Control Board. That MCI is not concerned about the well-being of the adjacent residents and their water supply is indicative of the expected future behavior of the Applicant and its Agent. Even if much less water was proposed for use in the project, the location to commercially cultivate Cannabis alongside the road is against the Community Plan (Inland GP), and cannot be tolerated. Applicant's project is unacceptable, and its' claim is reason for denial.

14. What is in a name? Applicant refers to a "licensed Farm Management company to operate and manage the operations of the proposed development." Its reference is to the same Six Rivers Development, LLC run by Brian Shields. Brian Shields is the same individual who prepared the faulty Cultivation and Operations Plan for MCI, and tried to deceive CHPBD. He is also the same individual who has trespassed, bullied, threatened, harassed, and stalked the Foersterlings. He has told various people, who helped him compile the Operations Plan and the Permit Application, to "not talk to the Foersterlings," and

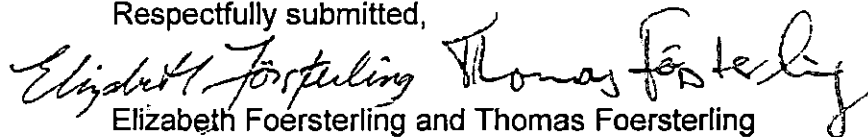
to "be assertive." Brian Shields' aggressive manner and disrespect for the Foersterlings and their property is a red flag warning. MCI proposes the same individual to be responsible for hiring, training, transporting, and managing ten²⁵ employees, along with being trusted to operate and manage the cultivation. FACT: In 2014, before Brian Shields became the foreman for Maple Creek Ranch, he was involved with an illegal grow on top of Kneeland which turned bad. He and his grow partner were involved in a fatal shooting from which he had to do jail time, and his partner was sent to prison.²⁶ The Public is concerned about this type of happening reoccurring. Violent and aggressive behavior from cultivators must not be rewarded. It alone is reason to deny.

IV. CONCLUSION

The evidence for *reason to deny* Special Permit PLN-15197, for Cannabis cultivation on parcel 315-011-009, is overwhelming. The Humboldt County Board of Supervisors must not gloss over the necessary requirements without care or concern for the residence of Butler Valley/Maple Creek. The Board of Supervisors must not neglect the importance of truly understanding the long-term negative impact of the proposed plan to environment, resources, and inhabitants. The Board of Supervisors, as a collective voice, has a crucial responsibility "to ensure the public health, safety, and welfare of the residents of the County of Humboldt."²⁷ Whoever the applicant may be, whatever the amount of Cannabis is to be cultivated, however the plan proposes to cultivate Cannabis, the location itself is clearly "not the right place." The footprint each Supervisor on the Board leaves for future generations is determined by the collective vote. The Foersterlings respectfully request the Humboldt County Board of Supervisors to do their duty, do the right thing, heed the action taken by the Humboldt County Planning Commission, and deny Special Permit PLN-15197 in its entirety.

Dated: October 7, 2020

Respectfully submitted,


Elizabeth Foersterling and Thomas Foersterling

²⁵ The number of employees was initially six, and has changed, again.

²⁶ That partner committed suicide in his cell.

²⁷ Ordinance No. 2599.

Foersterlings, Thomas and Elizabeth
8748 Butler Valley Road
Korbel, California 95550
707 668 4369
liz.forsterling@gmail.com

Humboldt Planning Department
3015 H Street
Eureka CA 95501
707 445 7541
planningclerk@co.humboldt.ca.us

Hearing Date: July 16, 2020

RE: Record Number PLN-2018-15197
Subject: Special Permit Cannabis Cultivation Maple Creek Investments, LLC
APN 315-011-009, APN 315-011-008 FR Zoning

To: Humboldt County Planning Department, Zoning Administrator, Supervising Planner,
Planner I, et. al.

Thomas and Elizabeth Foersterling, land owners in fee simple of Federal Homestead¹ Parcel Number 315-011-008, adjacent to the 40-acre parcel 315-011-009 (09 parcel), wholly and completely oppose, dispute, and contest PLN-2018-15197 in its entirety. As residents of 8748 Butler Valley Road for the past 32 years, the Foersterlings have tolerated many changes to the area, but PLN-2018-15197 is beyond the scope of sustainable. It is inconsistent with Zoning Regulations for Forestry/Recreational Zone, and not a designated use for RA40. PLN-2018-15197 is **against the General Plan for unincorporated forested and wetland areas of Humboldt County**, is against the California Environmental Protection Agency and Regional Water Quality Control Board of the North Coast Region, and is in violation of California Fish and Wildlife regulations, among many other wrongs. California Environmental Quality guidelines have not been met, and findings within the **Environmental Impact Report reveal significant adverse effects which cannot be overcome**. PLN-2018-15197 is **not feasible**. The adverse "cumulative conditions" and "significant unavoidable impacts" effecting the well-being of the people, place, and planet override and outweigh the economic benefits to Humboldt County.

There are already numerous large grow operations in the vicinity of Maple Creek, within close proximity to the proposed grow, and an additional large grow operation on the intersection of Butler Valley and Maple Creek Road would be a

¹ Recorded 1992-33188 Official Records Humboldt County, California

² i.e. "The slope toward the Mad River is considered Highly (4) unstable." **Not** considered "prime farm land."

detriment to not only surrounding neighbors, residents of the Butler Valley Maple Creek area, the Maple Creek School District, the Church Camp participants, the local Community as a whole, visitors, passersby, tourists, etc., but would also be devastating to the ecosystem, the environment, the wildlife, and the Mad River Watershed. The harmful ramifications cannot be ignored. Destruction of an historical landmark of antiquity to build a monstrous Cannabis processing facility is an affront to the greater Community of Butler Valley Maple Creek, and to erect an unsightly building on parcel 09 will obstruct the views in all directions; a road hazard, fire hazard, pollution hazard, electrical hazard, etc.

The proposed location for PLN-2018-15197 was previously a site of an unpermitted grow. For two years in a row, Brian Shields, and the Dunaways of Maple Creek Ranch, illegally grew pot in containers³ right alongside the road, for all to see and smell. They made a continuous commotion, and their movements were heard and felt by all, including "sensitive receptors." They trespassed onto neighboring parcels, harassing, bullying, and threatening as they did⁴. It is important for Humboldt County to make the right decision, help prevent further terrorizing, and stop creation of blighted areas. Enough is enough. The unpermitted grow created an unsightly neighborhood nuisance, and many complaints were heard. After damage was already done, the Humboldt County Planning Department assured the local residents a permit would never be granted for a grow in that location.

PLN 2018-15197 does not meet the requirements of a pre-existing grow, and cannot benefit in any way from that status (Ordinance No. 2599). If approved, it would fall into the category of an RRR site, "a Cannabis Cultivation operation occurring in an inappropriate, marginal, or environmentally sensitive site" (Ordinance No. 2599, §314-55 4.6.5.9). No new permits to these sites.

Maple Creek Ranch, Inc. extracted gross amounts of water from an already depleted water table. Not only were their actions illegal by the Planning Department's Regulations and the current Ordinance No. 2599, but were in violation of the California Department of Fish and Wildlife (CDFW), against the Regional Water Quality Control Board (RWQCB), an outrage to our local Water District, and extremely harmful to the neighboring property owners, the wildlife population, and the Mad River watershed.

Findings in the Water Resource Protection Plan (WRPP) for PLN-2018-15197 reveal necessary conditions are *not* met⁵. Conditions which have been given a "Yes" on the WRPP remain in question, and are arguable. For example 4.5.b with regard to water conservation measures, rainwater catchment tanks are not only inadequate, they deplete the supply of the necessary surface water, water in the water table, water for the forested areas, water for the wetland, and water for the River itself.

The Dunaways activities during those two years of unpermitted grow diminished the Foersterlings' residential water supply causing "significant cumulative effects on the availability of water for municipal or residential water uses or the aquatic environment,"⁶ and was a direct violation of performance standards. The Dunaways are *now* applying for a permit to do even greater damage and destruction to the land, water, air, fisheries, neighboring parcels and community as a whole. The Environmental Impact

³ WRPP Appendix C, photo #5.

⁴ SEE attached Letter.

⁵ WRPP Standard Conditions (4.1.d, 4.3.a-d, 4.4.a-b, 4.5.a, 4.5.e, 4.7.b-c, 4.9.d, 4.10.a, 4.11.a), to name a few.

⁶ Humboldt County Code §312-50 Required Findings Exhibit A.

Report (EIR) clearly states

"If the State Water Resources Control Board or Department of Fish and Wildlife finds, based on substantial evidence, that cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, the CDFG (California Department of Food and Agriculture) shall not issue new licenses or increase the total number of plant identifiers within that watershed or area."

Clearly, any large Commercial Cannabis Cultivation on parcel 09 cannot meet the Performance Standards for Commercial Cannabis Cultivation Activities (§55.4.12.2). Nor can it ever comply with General Standards (§55.4.12.2.1-.4) of the RWQCB, the State Water Resources Control Board (SWRCB), and the CDFW. The Lake or Streambed Alteration notification signed by Catherine Dunaway on December 14, 2018 is incomplete, incorrect, and untrue. The Lake and Streambed Alterations Agreement is sought for sediment removal and water diversion for the project, but the months between June 1st and August 31st of every year (Season of Diversion, Attachment C), are the most critical times of the year for water in the area. Cannabis cultivators are prohibited from diverting surface water during the dry season (SUIR). In reference to "Spring #1", on the Site Plan Map, the use of that well for Cannabis Cultivation already violated Section 55.4.12.9 of Humboldt County Ordinance No. 2599 stating, "If the testing demonstrates use of the well results in the drawdown of any adjacent well(s)... Use of the well for Cannabis-related Irrigation is prohibited."

Despite limited findings in the LSAA, "water does not appear to flow off the property," every property owner in rural unincorporated areas in Humboldt County knows differently. With the steep slope on the southern side of Butler Valley Road, and the trend for water to flow downhill taking the path of least resistance, contaminants from the grow cannot be contained adequately no matter what kind of precautions are taken. In WRPP 4.1.d, "Cultivation area #1 slopes to the southeast towards Butler Valley Road" in the direction of the Foersterlings' Water System.

The Dunaways stored diverted water in large storage tanks and used harmful chemicals and pesticides: run-off seeped everywhere, and was detected in water along the road, in neighboring water supplies, as well as in the natural water rivulets which continue to feed the Mad River: polluting the water, air, and earth. The Jurisdictional Wetland Delineation document is filled with disturbing contradictions, and LSAA findings for POD are ambiguous at best... "well-drained soils," but "diversion of water will require annual excavation." TerraConsulting (JWD) trespassed on April 19, 2019 and took photos,⁷ poked around the Foersterlings' Water System; the picture of Pit 3 clearly indicates exposure to contamination, and shows disturbance from above the steep slope, beneath the unpermitted grow. The "jurisdictional boundaries" found in the LSAA encroach on neighboring lands, effect the Mad River Watershed and subsequent subwatershed, and CDFW has the jurisdictional authority over wetland resources (Code §1602). It is federally illegal to grow in Wetland areas.

The EIR finds "All cultivations are required ..to be setback and located outside of Streamside Management areas...." The 09 parcel cannot be considered "outside of Streamside Management areas" as it contains wetland, and run-off feeds the Mad River. It is requested by CDFW that the County "prohibit the establishment of new cannabis cultivation operations in subwatersheds.. or within those areas, or strongholds for the restoration of fisheries for threatened or endangered salmonid species (§314-55 4 6 8

⁷ JWD Appendix A, page 2 Redox features from Pit 1 and 3.

(Resolution No. 18-?)” “Setback” numbers projected on the site map do not accurately reflect the proximity of the grow to the adjacent parcels, and do not meet the current setbacks prescribed in Ordinance No. 2599.⁸ The numbers do not take into consideration rain run-off⁹ for the element of water. Furthermore, the Planning Ordinance “limits the number of Cultivation permits within each Planning watershed”

It is obvious Humboldt County Planning Department is inundated with the permit process for the Cultivation of Cannabis, as the cap is presently set at an unsustainable total of 3,500 permits on 1,205 acres (Resolution adopted May 8, 2018); more specifically, an absurd amount of 334 permits on 115 acres in the Mad River Watershed. Needless to say, the Mad River (one of the Six Rivers protected) is Humboldt County’s *source of water*, and must be maintained in such a manner as to “ensure the public health, safety, and welfare of residents of the County of Humboldt, visitors to the County...neighboring property owners...etc.” (§55.4.2). The Mad River is the sustenance for a healthy ecosystem, without it all things will die. The desertification of Humboldt County is already happening, as is evident in all the critical watershed and subwatershed areas. The forested areas are struggling to survive, the wetlands are drying up,¹⁰ and the salmon and steelhead spawning grounds cannot and “will not support new cannabis cultivation activities” (WR-P5). The environmental impacts are irreversible and cannot be “restored.”

The responsibility is great for the Planning Department of Humboldt County to not cave into the greed factor and lose sight of the true value of our region. Too often money gets in the way of what is right and just. Here again, we are at a crossroads with the Cannabis Industry. As prior promises were made, it behooves the Planning Department to assess the comprehensive issues involved with this particular grow proposal, and take to heart the importance of their role in the beautification of the County and preservation of its resources, and to abstain from the creation of conflict within neighborhoods, degradation of the environment, loss of habitat for wildlife, as well as damage to the integrity of the Cannabis Industry in Humboldt County wrecking havoc everywhere. Choose quality over quantity.

It is paramount the Planning Department do the right thing and deny PLN-2018-15197 in its entirety. If the County approved PLN 2018-15197, with *full knowledge* of the problems, injuries, damages, grievances, liabilities, related to and in opposition of the proposed grow, it would be construed as negligent and the Release of Liability (§55.4.5.2) safeguarding the County of Humboldt would no longer be valid.

In addition, the GIS Web Map, used in the PLN-2018-15197, disclaimer states:

“The Humboldt County Planning and Building Department makes no guarantee of the quality or completeness of this data. It has not been fully reviewed for accuracy and is intended to be used for planning purposes only. The department assumes no liability or responsibility in the use of this data. While every effort has been made to assure the accuracy of this information, it should be understood that it does not have the force and effect of law, rule, or regulation. In the event of any difference or error, the law will take precedence.”

Please note the accuracy of GIS map data varies from location to location in the county. This GIS system is useful for planning purposes but should not be relied upon to determine property zoning or general

⁸ 600’ from Sensitive Receptors, and/or 1000’ in a Community Planning Area.

⁹ JWD “...upland hydrology.”

¹⁰ JWD “No Wetland Hydrology present.”

plan designation boundaries or be used in any way for project design. All GIS data should be verified before it is materially relied upon for property or project planning. In urban areas the GIS map data may be inaccurate by as much as 50 feet in any direction. In rural areas the map data may be inaccurate by as much as 400 feet in any direction.

It is plain for all to see that the boundary outlined on the site plan map prepared by Six Rivers Development LLC is not drawn to scale, is distorted, and does not accurately represent the layout of the land, the facts on the ground, or the assessment of property taxes¹¹ on the Foersterlings' meadow (labeled "Graded flat") and Water System (labeled Groundwater well (est. 1985)¹²). The boundary with parcel 315-011-012, the "existing Access road," etc., are all misrepresented by the GIS maps produced for, produced by, and presented to the Planning Department, including Kolstad's Survey¹³ which unnecessarily used Proration and Double Proportion along with GIS technology to manipulate original corner monuments and change existing boundaries. The 09 parcel does not have river frontage.¹⁴ The Foersterlings dispute, contest, and reject the Kolstad Survey¹⁵ used in PLN-2018-15197 for the proposed site for Cannabis Cultivation. Parcel 315-011-008, purchased by the Foersterlings in 1988, has continuously been assessed for the Land and Structural Improvements found on the site plan map.¹⁶

The EIR is unable to lessen the significant negative impact of "long term operational emissions of criteria pollutants and precursors (i.e. unpaved road dust, fertilizers, continuous noise, etc.), exposure of people to objectionable odors (the relentless invasive smell), and provision of the sufficient water supply (depleted for non-human use) and infrastructure needs." The "setbacks" on the site map do not take into consideration the element of air and its quality (including wind factor, vibrational disturbances, etc.). It does not address the necessity and the right to breathe fresh air. The EIR finds that "new cultivation allowed, lead to generation of localized odors in such quantities as to be a detriment, nuisance, or annoyance to a substantial number of people." That finding cannot be beneficial for Humboldt County Office of Education and the Districts it serves, nor can it be beneficial to the Tourist Industry of Humboldt County, if fully disclosed. It does not "ensure the health and safety of the residents" (Humboldt County Board of Supervisors).

The suggested measures to bring PLN-2018-15197 into compliance do not remedy any of the wrongs, and do not address the important issue of an increase of noise on the roads directly above the Foersterlings' heads. PLN-2018-15197 is defective. Beginning with a boundary dispute (based on a faulty GIS Survey, the resultant Ruling based on false testimony) combined with non-compliance with the General Plan for the rural, unincorporated Community Plan area of Humboldt County.¹⁷

¹¹ JWD pg. 2. Property assessed to....

¹² This well was Established in 1989 by the Foersterlings, and is the main source of water for residential use, assessed as *Water System Rural Property Appraisal Record*.

¹³ "Note: River and Creek courses sketched hereon from aerial topography; not surveyed.

¹⁴ Testimony from Kerry Purkett, Humboldt County Superior Court Case Number DR10009.

¹⁵ Superior Court of Humboldt County Case No. DR 10009; Court of Appeal State of California Case No. A141015;

¹⁶ Rural Property Appraisal Record on May 4, 1988 Physical inspection was made of the property, "including the meadow." Assessor's Residential Property Statement Part III: includes the Water System.

¹⁷ CCLUO is designed to protect the public health, safety, and welfare of residents, neighboring property owners, etc.

the applicant has failed to provide evidence to support its actions

Non-compliance with Forestry/Recreational and/or Residential Agriculture Zoning codes and regulations.¹⁸ non-conformance with the Conditions of Approval, and no substantial supporting evidence for conformance to the applicable Goal Policy or Standard combined with the above arguments against PLN-2018-15197 confirms it must not be approved. Commercial Cannabis Cultivation is not the intended use of the land located on the intersection of Butler Valley and Maple Creek Road. It is not only inconsistent with the "purposes of the existing Zone in which the site is located," it is materially injurious to property and/or improvements in the vicinity of PLN-2018-15197, if approved in any form, will bring blight to the region, and will cause damages and hardship of great magnitude. It must be stopped in its tracks.

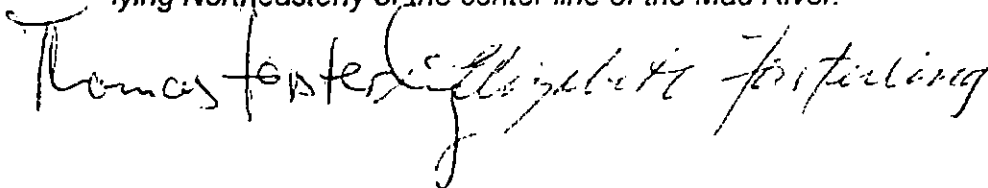
More regulation is needed in the Cannabis Industry in Humboldt County. The Foersterlings will seek to remedy all encroachments on their existing acreage, including up to the existing fence; and any subsequent negative environmental impact on their water system, septic system, meadow, air quality, and "enjoyment of their Homestead," in direct result from any Cannabis Cultivation within their surroundings, by all means available and necessary.

For every commercial grow, all residents of the entire County of Humboldt must be able to weigh in with their comments and concerns. The compliance process has been done in secret, behind the backs of the adjacent property owners; and the permitting process is flawed. The process is unacceptable, and is an infringement upon the rights of the surrounding property owners, as well as the residents of the County at large. It must be a transparent, equitable, and fair process.

The longterm impacts, for seven generations, are far reaching. The land is sacred, and the natural environment is more important than ever before. Sustainability means preservation not just a "reduction in negative impact." It is respectfully requested the Planning Department deny any and all permits for Commercial Cannabis Cultivation on parcel 09.

Respectfully submitted,
Thomas Foersterling and Elizabeth Foersterling,
Joint Tenants of the property bounded and described as follows:

*That portion of the Southeast Quarter of the Northwest Quarter
of Section 6, Township 4 North, Range 3 East, Humboldt Meridian,
lying Northeasterly of the center line of the Mad River."*



¹⁸ Land Use Designation (4.8). "Applied to remote, steep, and high hazard areas to ensure compatibility with adjacent resource production and open space uses."

¹⁹ See attached GRANT DEED.

RECORDING REQUESTED BY

1992-33188-2

RECORDED - OFFICIAL RECORDS
HUMBOLDT COUNTY, CALIFORNIA
CAROLYN CRNICH, RECORDER

AND WHEN RECORDED MAIL TO

DATE OF RECORDING

Rec Fee 8.00

THOMAS H. FOERSTER FINE
ELIZABETH FERGUSON
8748 BUTLER VALLEY RD
KORBEL, CA. 95550

Clerk, VS Total: 8.00
Nov 17, 1992 at 11:09

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Declaration of Homestead (Husband and Wife)

Know All Men by These Presents: we, THOMAS H. FOERSTER FINE

and ELIZABETH FERGUSON do hereby declare:
That we are Husband and Wife and each own an interest in the dwelling described below and selected as our declared Homestead;

That we do now, at the date of recording this Declaration, reside on the Homestead hereinafter declared:

That the premises on which we declare as Homestead are that certain land situated in the
HUMBOLDT COUNTY, CALIFORNIA, County of
HUMBOLDT, State of California, and bounded and described as follows:

That part of the 1/4 section 16, T. 12 N., R. 10 W., S. 1, of the Northern Humboldt Meridian, Township of North Humboldt, County of Humboldt, State of California, being North half of the section 16 of the said block 315 of the

together with the dwelling-house(s) and the outbuildings thereon;

That we do, by these presents, claim the premises above described, together with the dwelling-house(s), and the outbuildings thereon, as a Homestead; that all of said property is necessary to the use and enjoyment of said Homestead;

The Homestead herein declared is the principal dwelling of the declared Homestead owners;

That the facts stated in this Declaration of Homestead are known to be true as of our personal knowledge.

In Witness Whereof, we have hereunto set our hands this seventeenth day of November, one thousand nine hundred and ninety-two

Thomas H. Foerster Fine *Elizabeth Ferguson*

Page 1

This document is only a general form which may be proper for use in simple transactions and is not to be used as a substitute for the advice of an attorney. The printer does not make any warranty, either express or implied, as to the legal validity of any provision or the suitability of these forms in any specific transaction.

State of California,

County of Humboldt

ss.

On this 14th day of August, 1995, in the year one thousand nine hundred and ninety five, before me, Susan A. Thrapp, a Notary Public, State of California, duly commissioned and sworn, personally appeared



personally known to me (or proved on the basis of satisfactory evidence) to be the persons described in and whose name are subscribed to the within instrument, and acknowledged to me that they executed it.

In Witness Whereof I have hereunto set my hand and affixed my official seal in the Humboldt County of California on the day and year in this certificate first above written.

Susan A. Thrapp
Notary Public, State of California

My commission expires 11/15/95

**Declaration
of Homestead
(Husband and Wife)**

BY

(Claimant)

Dated

, 19

1992-33188-2

State of California,

County of

ss.

and says:

being duly sworn, deposes

That, _____ are the declarants named in and who make the within and annexed Declaration of Homestead, that they have read the same and know the contents thereof, and that the matters therein stated are true of their own knowledge.

Subscribed and sworn to before me this

day of _____, 19

Notary Public, State of California

My commission expires

RECORDING REQUESTED BY
FIDELITY NATIONAL TITLE INSURANCE

MAIL TAX STATEMENT TO
THOMAS HANS FOERSTERLING
ELIZABETH FOERSTERLING
6354 Fickle Hill Rd.
Arcata, CA 95521

WHEN RECORDED MAIL TO

Name
Street
Address
City
State
Zip

THOMAS HANS FOERSTERLING
ELIZABETH FOERSTERLING
6354 Fickle Hill Rd.
Arcata, CA 95521

1938
Western Title Insurance Co.
1290
JAN 20 3 32 PM '88

RECORDERS USE ONLY

ORDER NO.
ESCROW NO. 181465 MMP/gj

GRANT DEED (JOINT TENANCY)

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ 47.30

Computed on full value of property conveyed, or

Computed on full value less value of liens and encumbrances remaining at time of sale.

Unincorporated area City of _____

Tax Parcel No. 315-011-08

JEFFREY SWEITZER, a married man and Deborah Sweitzer, husband and wife,

FOR A VALUABLE CONSIDERATION, HEREBY GRANT TO THOMAS HANS FOERSTERLING and ELIZABETH FOERSTERLING, husband and wife

, as JOINT TENANTS,

the real property in the County of Humboldt State of California, described as:

That portion of the Southeast Quarter of the Northwest Quarter of Section 6, Township 4 North, Range 3 East, Humboldt Meridian, lying Northeasterly of the center line of the Mad River :

C.O.S.
FILED
NOT FILED

Dated: January 26, 1988

Jeffrey Sweitzer
JEFFREY SWEITZER

(Individual Acknowledgment)

STATE OF CALIFORNIA
County of Humboldt

On this 26th day of January, in the year 1988 before me, the undersigned, a Notary Public in and for said County and State, personally appeared JEFFREY SWEITZER personally known to me or provided me on the basis of satisfactory evidence to be the person JEFFREY SWEITZER whose name is subscribed to this instrument and acknowledged that JEFFREY SWEITZER executed it.

WITNESS my hand and official seal

000651

DUNAWAY BUSINESS LAW

4350 E. Camelback Road
Suite B200
Phoenix, AZ 85018

TEL (602) 468-5751

FAX (602) 468-1814

e-mail: dunawaylegal@email.com www.dunawaylawgroup.com

Robert W. Dunaway*

*Admitted in Arizona and California

October 13, 2015

CERTIFIED MAIL

Thomas and Elizabeth Foersterling
8748 Butler Valley Road
Korbel, CA 95550-9603

Dear Thomas and Elizabeth,

Now that your final appeal has been rejected and the legal parcel line declared by the trial court finally set in stone, we are moving forward with a fence along the parcel line. Our current schedule is to have a survey crew mark the exact parcel line and place location markers. Those location indicators will eventually be replaced by a galvanized fence, barbed wire fence or other permanent structure to clearly mark the legal boundary line.

The survey crew will be on the parcel the morning of October 29, 2015. The Sheriff's Office has been notified and will be standing by in case there is any interference with the survey crew. Any interference with the crew will be prosecuted to the full extent of the law by both us and the Sheriff's Office. The operation and location markers will be documented with video to ensure that there is no future interference. Moving or interfering with the location markers constitutes trespassing among other violations.

The court's final ruling impacts your property in several ways. First, the legal boundary line will run from the north on a line that is approximately 12 feet into the middle of your house and then bend around the house by an approximate 30 feet setback before moving back to the line through your house and continuing on down to the river. You will need to remove any and all property or structures that you have placed on ground that is east of your house on our side of the boundary line or we will remove them for you.

Second, your water supply is on our property. If you have not done so already, you need to make immediate plans to obtain your water supply from another source on your side of the legal boundary line. We will be disconnecting your house and property from the water supply, absent compliance with the following.

We will offer you the following relief with respect to the water supply. If you agree to pay our family the court sanctions and the land cost for the encroached land that you already owe, as fixed and ordered by the court, and the fees and costs of the survey crew

as further ordered by the court, we will agree to supply your house with water from the existing water supply for a period of 1 year, which will be long enough for you to put a new water supply into operation on your side of the boundary line. You need to agree in writing to pay such fees and costs prior to the October 29, 2015 survey visit. If you cannot pay the entire amount of such fees and costs in one payment, we will accept payment over a 3-month period in 3 equal monthly payments.

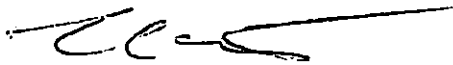
If you do not agree to this offer, we will disconnect your property as stated above and seek to collect the money owed and/or lien your property for the dollar amounts of the sanctions, encroached land costs and survey fees and costs. The sanction fees were due well over a year ago and we will pursue their collection along with the court ordered encroached land costs and survey fees and costs. Please note that the court has ordered that you are responsible for paying all of the survey fees and costs. If you interfere with the survey or the Sheriff's Office has to intervene, the Sheriff's Office costs and any costs related to finishing the survey at a later time are your legal responsibility.

Third, since the legal boundary line is close to your house, you will need to avoid trespassing on our land. We will prosecute any trespassing to the full extent of the law. Stay on your side of the boundary line.

Fourth, it is likely that we will not sell the parcel immediately but instead will lease it or utilize it for cattle or other purposes. Again, any interference with our or a lessee's use of the parcel or our property will be prosecuted to the full extent of the law. We will be using surveillance equipment to ensure your compliance with the law in the future.

The fact that I have to write this notice is depressing. I am mindful that all of this could have been avoided had you not tried to steal 6 acres of land from our family. You paid for 28 acres of land, yet claimed ownership of 34 acres. In the real world, you don't get to take 6 acres of land for free from another person. It seemed like a simple situation and we offered to trade you less valuable acreage from your parcel for the more valuable acreage you claimed around your house and down to the river. You flatly rejected that offer. Now, you will have to live with the consequences of your decision.

Sincerely,



Rob Dunaway

cc: Larry Kluck, Esq.
Suzy Rasmussen
Catherine Dunaway
Michael Dunaway
Victoria Foersterling

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Humboldt Planning Department
3015 H Street
Eureka CA 95501
7070 445 7541
planningclerk@co.humboldt.ca.us

Hearing Date: August 6, 2020
Time: 6:00pm
Virtual Link: <https://zoom.us/j/97543247525> Password: 200525
Phone: 1-346-248-7799 Meeting ID 975 4324 7525 Password: 200525

RE: Record Number PLN-15197-SP
Subject : Special Permit Cannabis Cultivation Maple Creek Investments LLC, a Nevada Limited Liability Company
APN 315-011-009, APN 315-011-008 FR Zoning

SUPPLEMENTAL to Document of Opposition

TO: Humboldt County of California Planning Department, Planning Commission, Zoning Administrator, Supervising Planner, et. al.

PLN-15197-SP is not feasible. The adverse effects of such a proposal are far greater than any need, or any want, to place an Industrial Chemical Commercial Cannabis Grow on the intersection of Butler Valley Road and Maple Creek Road. Poisonous pollution, of which the cumulative impacts have already been noted, cannot be remedied by "Mitigation Measures." To place an unnecessary eyesore, and create a neighborhood nuisance of such magnitude, in direct view of everyone who passes by, all

¹ See attached Document (Received July 15, 2020 by Humboldt County Building Division, *(revised)*).

the Community, and on top of, in front of, and in the face of the neighboring land owners is not only a violation of the Ordinance adopted to protect from such atrocities, but it does not comply with the California Environmental Quality Act, Humboldt County Department of Environmental Health, County of Humboldt's Certified Unified Program (CUPA), and the North Coast Air Quality Management District.² On July 21, 2020, a complaint was filed with the California Environmental Protection Agency (CalEPA # COMP-48402), regarding PLN-15197-SP.

The Staff Report findings for evidence supporting conformance of PLN-15197-SP to the General Plan are disturbing, lack foundation, and are speculative in nature. The findings are hearsay and ambiguous, filled with misrepresentation and misinterpretation of the project's proposal, its impact, and the necessary requirements of conformance. The wrongful application of the Goals, Policies, Standards, Measures, Regulations, and Laws which have been adopted to safeguard small rural communities from being overrun by the Commercial Cannabis Industry is a recipe for disaster. The proposed development is not in conformance. Contrary, the findings show overwhelming evidence supporting nonconformance. PLN-15197-SP must be denied. The Foersterlings object to the development of a Cannabis operation on parcel 315-011-009.

"Significant water drawdown from adjacent," neighboring residential properties is in direct violation of Ordinance No. 2599 (§55.4.12.9). The projected POD is North, and Northeast of adjacent residential wells, rivulets, waterfalls, and tributaries of the Mad River. The LSA Notification application specifies the "Season of Diversion" as between June 1st and August 31st, and has not been approved by CDFW. Cannabis Cultivators are prohibited from diverting this water during the dry season for irrigation use. The proposed plan also calls for water trucked into the site from a well one mile away; that well feeds the Maple Creek, a vital tributary of the Mad River. Clearly, there is not enough water available on the proposed site for the proposed plan. Particularly, if mediation measures require that the proposed road on the same site needs to be "watered twice a day" to keep the dust and top soil from eroding and clouds of dust from forming, then more precious water is wasted. *Wasteful* water usage is contrary to rural development.

The rustic cabin the plan proposes to demolish has been in that location since the late 1940's... early 1950's, and has become part of nature. It cannot be treated in the same way as a pre-existing building site, nor should it. There are some beautiful young fir growing near, and around the cabin, in the forested area. Disturbance of the cabin and its potential would be a loss, replacement of it with an industrial sized outbuilding would be degenerate, and is further proof the applicant does not have the necessary appreciation for the region and all it has to value.

It is the responsibility of conscientious land stewards to protect the habitat for wildlife, and to foster healthy and sustainable living practices for the land and its "land organisms."³ It is more important, than ever before, to *prevent* irresponsible, negligent, and negative environmental impacts from occurring. Commercial cannabis cultivation has become to the Cannabis Industry, as clearcutting is to the Timber Industry, or as fracking is to the Oil Industry; it is not sustainable, and is detrimental to the Earth. "The

² The proposed plan is feet away from the County Road, on both sides.

³ Leopold.

Green Rush” has scarred the land with so many large grows in the Emerald Triangle,⁴ it is no longer adequate to standby and let permitting spin out of control. Without proper regulation of Cannabis Cultivation the future for Humboldt County is grim. The pervasive pot culture of Humboldt County must be brought into balance. No rest from the pot culture. No peace. It is the responsibility of the Planning Department and County Supervisors to safeguard the interdependent ecological system so vital for survival.

The following Table 1.0 outlines the evidence supporting the findings of **nonconformance with the General Plan:**

Plan Section	Summary of Applicable Law, Goal, Policy, Standard, Regulation, Guideline, Requirement, Term, Condition	Evidence which Supports the Findings of Nonconformance with the General Plan
<p>Land Use (Chapter 4)</p> <p>Land Use Designations Section 4.8.1 Purpose</p>	<p>Residential Agriculture (RA40)</p> <p>Other uses may be restricted as detailed in the Zoning District implementing the land use designation.</p> <p>The designation applies to large lot residential uses that rely upon on-site water and waste-water systems. Varying densities are reflective of land capabilities and/or compatibility issues.</p> <p>RA40 is applied to remote, steep, and high hazard areas, or where appropriate to ensure compatibility with adjacent resources and open space uses.</p>	<p>(1). The proposed development of a Commercial Industrial Cannabis Cultivation of approximately 27,025 square feet of Marijuana Plants, and a 2,000 square foot on-site processing facility is not compatible with FR zoning and/or the applicable land use designations: Forested areas, Wetland, Mad River Watershed, subwatershed, steep and unstable slope, drawdown of adjacent well(s), location in Streamside Management area, channel of river and streams, flood and drought conditions, High Hazard Fire Zone, open spaces, scenic enjoyment, etc. “Cultivation and processing of cannabis shall not be allowed as a principal permitted use under the General Agriculture use type classification applicable within the County of Humboldt” (Humboldt County Code §314-43.2.6). The unsightly, and unconscionable storage and use of six water tanks holding 14,000 gallons of water, plus four 50,000 gallon tanks expected to hold 200,000 gallons of rainwater, plus more tanks of an undisclosed amount of water trucked in from a mile away, plus portable toilets transported 16 miles back and forth on Maple Creek Road to Blue Lake, is not appropriate for the intersection of Butler Valley Road and Maple Creek Road. It is incompatible with a rural residential designation for the land, and is incapable of sustaining the proposed activities. Therefore, PLN-15197-SP does not conform with this section.</p>
<p>Circulation (Chapter 7)</p>	<p>Goals and Policies require a balanced, safe, efficient, accessible, and convenient circulation system appropriate for each unincorporated community; coordinated planning design, development, operations, and maintenance between the County and others; access for transportation to safely move within, into and out of Humboldt</p>	<p>(2). The proposed development for Cannabis Cultivation and processing facility requires inroads with egress and ingress points along the rural Butler Valley Road, and the creation of a parking lot. This type of Commercial Industrial circulation is unsafe, inappropriate, and inefficient. Industrial Operations of such magnitude create an imbalance on the roadways. Conditions of Approval set forth by the Department of Public Works cannot be met. The disturbance to soils, forested lands, wetland areas; the creation of sediment run-off; and the need to prevent flood and mud</p>

⁴ Shane Anderson’s “A River’s Last Chance” (2018).

	<p>County.</p> <p>Pavement Management Criteria (68th percentile).</p> <p>Sight Visibility Ordinance.</p> <p>Consideration of Land Uses in Transportation Decision Making.</p> <p>Consideration of Transportation Impacts in Land Use Decision Making.</p> <p>Community Design for Public Health.</p>	<p>conditions during the rainy season, the need to water the road and lot twice daily during the dry season to prevent erosion and dust storms, and the need to provide a safe and appropriate developmental design for the "type of unincorporated community" are not provided in PLN-15197-SP. The shoulder is not paved, and is not considered Parking. The County roads servicing the area are in disrepair and have not been paved since the '50's. The road conditions are classified as poor-very poor. The steep road and blind corner on one end, and the blind intersection on the other end prohibit the necessary visibility to safely enter and exit the Butler Valley Road, and will create a road hazard with the proposed increase of traffic from employees coming and going, product being transported, etc., etc.. It does not comply with the Sight Visibility Ordinance. Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Housing (Chapter 8)</p> <p>Housing Element Densities (Ordinance 2599, §312-17.1.5)</p>	<p>Goals, Policies, and Standards contained in the Housing Element Residential Land Inventory seek to identify existing and projected housing needs and establish goals, policies, standards and measures for the preservation, improvement, and development of housing.</p> <p>Development of Parcels in the Residential Land Inventory.</p>	<p>(3). The proposed development for Commercial Industrial Cannabis Cultivation, itself, <i>reduces the residential density for the parcel</i>. Furthermore, it will reduce the development of a residential Community plan to service the Maple Creek School District. The placement of Marijuana Plants in plain sight for all to see and smell is an insult to residential growth, prevents residential development, and attracts crime, theft, and transient behavior. The proposed action to demolish the rustic cabin and build a processing facility in its place is not an "improvement," and is contrary to the policies of preservation. The goals, policies, and standards surrounding appropriate housing for the region are thwarted by the proposed project and/or any "future proposed development." A "caretakers living quarters" is referenced, but there are no approved plans presented (E.8). Furthermore, a high security apparatus is proposed, which is of such an invasive and dominant feature of the plan, it is a deterrent for residential development and degrades rather than improves, destroys rather than preserves, and in the process intrudes upon the quietude of the region. Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Conservation and Open Space (Chapter 10)</p> <p>Open Space Plan (Section 10.2)</p>	<p>The Open Space and Conservation Program is complimentary to other agencies' plans and preserves the County's unique open spaces.</p>	<p>(4). The proposed development is located within an Open Space area, and is in a severe high fire hazard zone and forested region: with its surrounding Wetland, located in the Mad River Watershed. The location is unique to Humboldt County and has been an intrical part of the scenic route for avid and professional cyclists, bird watchers, nature enthusiasts, etc., and encompasses critical habitat for local wildlife. The proposed development is against the California Department of Forestry and Fire Protection, is against the California Department of Fish and Wildlife, is against the California Environmental Protection Agency and Regional Water Quality Control Board of the North Coast Region, and against the Humboldt Bay</p>

		Municipal Water District, is not complimentary to "other agencies' plans, and destroys "unique open spaces." Therefore, PLN-15197-SP does not conform to this section.
<p>Conservation and Open Space (Chapter 10)</p> <p>Biological Resources Protection (Section 10.3)</p>	<p>Policies are applied to mapped sensitive habitat areas to protect fish and wildlife, to prevent species from becoming endangered, and to facilitate the recovery of endangered species already threatened.</p> <p>Concerns long-range preservation and conservation of Natural Resources.</p>	<p>(5). The proposed development is directly on and near sensitive critical habitat areas within the unique microclimate region of Humboldt. The Biological Assessment Report submitted by TransTerra Consulting is not comprehensive, nor is it accurate. Protocol levels and floristic surveys were not conducted. Many sensitive species in the region were not identified in the report, <i>i.e.</i> deer, bat, bear, salmon steelhead, barn owl, squirrel, mountain lion, bobcat, eagle, osprey, elk, skunk, quail, river otter, "sucker fish," duck, coyote, fox, raccoon, Tanager, barn swallow, heron, Red-tail hawk, raptors, sandpiper, lizard, snake, crickets, woodpecker, etc.</p> <p>The Jurisdictional Wetland Delineation Report submitted with the proposal fails to accurately assess the related issues to the project, <i>i.e.</i> drainage conditions, Streamside Management, and soil and water pollution. Disturbances to aquatic species, native soils, sensitive receptors, water quality, air quality related to road development and odor related to the "specialty crop," structure development, and cultivation activities are not able to be mitigated. The staff report findings incorrectly stated "generators are not part of the project's operations," when, as a matter of fact, generators will be used. The destruction of the existing rustic cabin will include destruction of the natural habitat, including beautiful young fir trees and digging into wetland. Conservation efforts and plans for long-range preservation of the area have not been addressed. The California Department of Fish and Wildlife have not approved the Staff Report's findings, and the proposed development is incompatible with the Departments' goals and objectives. Therefore, PLN -PLN-15197-SP does not conform to this section.</p>
<p>Conservation and Open Space (Chapter 10)</p> <p>Cultural Resources (Section 10.6)</p>	<p>Goals and Policies relate to the protection and enhancement of significant cultural resources, providing heritage, historic, scientific, educational, social, and economic values to benefit present and future generations.</p> <p>Substandard lot for Industrial Commercial Development.</p>	<p>(6). The proposed development is east, southeast of a previously halted project on parcel 315-011-007, on which Native Ceremonial Grounds were disturbed by the same Corporation. "Inadvertent Discovery Protocols" were too late to save the land from being excavated, disturbed, and desecrated. American Indian Tribes in the Northwest region of California have banned the cultivation of Marijuana on Tribal lands due to the detrimental cause and effect. Furthermore, the development of a Commercial Industrial Cannabis Cultivation Operation on the proposed site would destroy the historic cabin made of old growth Redwood and completely annihilate significant cultural heritage that would benefit present and future generations. Establishment of an out-of-control Cannabis Industry in Maple Creek contradicts the type of protection implied by, and explicitly expressed in, the Goals and Policies</p>

		of the General Plan. Therefore, PLN-15197-SP does not conform to this section.
Conservation and Open Space (Chapter 10)	Protection of scenic areas that contribute to the enjoyment of Humboldt County's beauty and abundant natural resources and surroundings; providing a system of scenic highways and roadways that increase the enjoyment of, and opportunities for health, safety, education, culture, nature, physical fitness, and well being. Concerns traffic and traffic safety issues.	(7). The proposed development is incompatible with the natural surroundings, and is contrary to the intended use of the land: "creating traffic and traffic safety problems for existing residents." It intrudes upon the enjoyment of Humboldt County's beauty and abundant natural resources in a plethora of ways. Any Cannabis Cultivation would be seen (and smelled), as the projected site is alongside the road. Water storage tanks, and pot plants, and a monstrous processing facility are in stark opposition to this section of the General Plan. Butler Valley Road is not a Highway, but is valued for its scenery. Despite the terrible conditions of the existing connecting roadways, many cyclists, tourists, and residents put up with the decaying road solely <i>because of the nature</i> . The proposed plan takes enjoyment away from everyone, contributes to blight, and stinks up and trashes the neighborhood, causing a nuisance. High security surveillance cameras and Signs, posted at the entrance of the Industrial Facility, with warnings, etc. in rural Humboldt, are contrary to the General Plan. Therefore, PLN-15197-SP does not conform to this section.
Scenic Resources (Section 10.6)		
Water Resources (Chapter 11) [P1-P46: S1-S13; IM1-IM32]	Goals and Policies are for Watershed Restoration, Management for Critical Watershed Areas, Water Supply, Quality, Beneficial Uses, Water Resource Habitat, Safe Storm Drainage, and Sustainable Management for rural water supplies privately provided or from on-site surface and groundwater sources. Some rural parcels have been created that cannot support residential usage based on on-site water availability, so availability must be determined on a case-by- case basis. Another concern is the cumulative effects of surface and groundwater withdrawals in rural areas where allowed land uses, if fully developed, would require more water than what is locally available during low-flow periods. Other requirements include illicit discharge detection and elimination; water quality monitoring; pollution prevention at County operations; public education and outreach; and program effectiveness evaluation.	(8). The proposed development is contrary to the General Plan. There are already numerous large permitted Cannabis operations in the area. The water supply is tapped out for such uses. Any further draw on the surface and ground water in the vicinity of the proposed site would be devastating. Two hundred thousand gallons of rainwater catchment for cultivation of Cannabis is not sustainable, and negatively impacts existing life, preventing necessary water from reaching its proper destination. Another fourteen thousand gallons of water sucked away from the surrounding Forest and Wetland contributes to the desertification of the region. Also, the drawdown from adjacent well(s) is <i>prohibited</i> by Ordinance No. 2599, under the General Plan. Trucked in water from another well one mile away from the grow site draws water away from the Maple Creek, a vital tributary for the Mad River and its aquatic life, and is also prohibited. Pollution of the earth, air and water, and the resultant harmful effects on humans, created from the use of fertilizers and pesticides cannot be "mitigated." "Reduction" is not an option, when it comes to health and well being. Therefore, PLN 2018-15197 does not conform to this section.
Noise (Chapter 13)	Noise: When sound is disagreeable or unwanted, it is	(9). The proposed development increases traffic noise, operational noise, and vibrational noise between 8am

	<p>considered noise. Excessive Noise: Noise levels are considered in the Land Use Element to avoid direct conflicts between neighboring uses and minimize the exposure of community residents to excessive noise. Purpose is to create a quiet and healthful environment with limited disagreeable noise.</p> <p>N-G2. Incompatible Land Uses. Land uses arranged to reduce annoyance and complaints and minimize the exposure of community residents to excessive noise. It also depends upon the character of the sound, number of noise events, familiarity and predictability, and the attitude of the listener.</p> <p>Policies N-P1. Minimize Noise from Stationary and Mobile Sources. Minimize stationary noise. Traffic noise.</p>	<p>and 5:30pm Monday-Saturday every week, specifically during the months between May and October. Every sound reverberates in the river valley. Every car and truck on the road can be heard, every voice echoes, and every motion has its impact. Considering that the Community residents prefer the quietude of nature: the sounds of the river, the hoot of the barn owl, the flap of the eagle's wing. The invasive quality of a Commercial Industrial Cannabis Operation in the residential neighborhood of Butler Valley Maple Creek is unwanted, and cannot be tolerated. The "character of the sound" is annoying, and unbearable. Forced exposure to pot growing, in such a blatant way, is against all sections of the Ordinance. It is offensive to "Sensitive Receptors," and complaints of an unhealthy atmosphere have already been heard. Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Air Quality (Chapter 15)</p> <p>[AQ-P4, AQ-P5, AQ-P6]</p>	<p>Goals, Policies, and Standards are to improve air quality, control fugitive dust emission, negate air quality impacts from new development, and reduce emissions of air pollutants from new commercial and industrial development up for environmental review by requiring feasible mitigation measures to achieve the standards of the NCAQMD.</p> <p>Buffering Land Uses. Consider the use of buffers between new sources of emissions and adjacent land uses to minimize exposure to air pollution.</p>	<p>(10). The proposed development does not meet air quality standards. Exposure to dust emission from grading, and the resultant dirt roads: the coming and going of personnel on a daily basis creates unhealthy patterns. Exposure to the smell of Cannabis permeating the intersection of Butler Valley Road and Maple Creek cannot be prevented, nor can it be mitigated. "Sensitive Receptors" have no way to buffer the negative impact of the odor and its side effects. The EIR recognizes the inability to rid the odor, and cannot rationalize permitting a Commercial Industrial Cannabis Cultivation directly adjacent to an already well-established, discreet permitted grow. The detrimental impacts, from the proposed development, far outweigh any economic advantage, and will, in fact, reduce the economic benefit the County seeks from the Cannabis industry. The human right to breathe fresh air exceeds any right to grow Cannabis (EPA, CEQA). Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Safety (Chapter 14)</p>	<p>The purpose of the Safety Element is to reduce the risk of death, injuries, property damage, and economic and social dislocation resulting from earthquake, fire, flood, and other hazards. The components of this element include:</p> <ul style="list-style-type: none"> • Geologic/Seismic Hazards • Flooding and Drainage 	<p>(11). The proposed development is subject to a number of hazards to life and property. PLN-15197-SP substantially increases the risks associated with Industrial Hazards; fire, flooding, drainage, pollution. Adjacent property owners and their respective dwellings, and the Community as a whole, are not safe from the hazardous conditions of this project. The erosion of soil to grade and maintain a parking lot and access road, alone, is cause for concern on Wetland and Forested areas, but to dig up soil to Cultivate thousands of square feet of Marijuana Plants, and dump pesticides</p>

<p>Community Infrastructure and Services Element (Chapter 5)</p>	<ul style="list-style-type: none"> • Fire Hazards • Airport Safety • Industrial Hazards • Emergency Management <p>This General Plan manages risk through the use of land use designations to limit exposure to hazardous areas and through policies tailored to specific hazardous conditions. The implementation measures of this Element are designed to proactively improve overall safety conditions within the County.</p> <ul style="list-style-type: none"> ○ Soils ○ Slope Stability ○ River Flooding ○ Drainage Management ○ Fire Hazard ○ Community Wildfire Protection 	<p>and fertilizers into the disturbed soil and surrounding Wetland is an environmental disaster. The slope of the land referred to in the Staff Report page 25. "attributes the presence of wetland to the orientation of Maple Creek Road above the site as well as the topography." must also include the slope of the land toward, and off of, Butler Valley Road. High slope instability and disturbance of soils, foliage, trees, extraction and retention of surface, ground, and well water, and the introduction of pesticides and fertilizers creates hazardous conditions, it does not limit them.</p> <p>To erect an Industrial Commercial processing facility, in a rural setting is negligent land use. To have P G&E bring its power to an area "with a very high fire hazard severity" (specifically, right on the intersection of the only two roads for exit or entrance by emergency and service vehicles), is a violation of the Wildfires Protection Act. P G&E is responsible for three of the most devastating fires in California's recent history, causing death and destruction of such magnitude, the areas and people affected will never recover all of the losses. To approve placing 24 7 High Voltage electrical current in the neighborhood, in close proximity to forested areas prone to extremely dry and hot times of the year is not only negligent, it is criminal. Liability falls to the applicant and/or Planning Division, as California Department of Forestry and Fire Protection and the Kneeland Volunteer Fire Department have not signed off on the project. Therefore, PLN-15197-SP does not conform to this section.</p>
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The following Table 2.0 outlines the evidence supporting the findings of nonconformance and noncompliance with necessary Zoning Regulations, Eligibility Requirements, and Performance Standards related to Ordinance No. 2599:

Section	Summary of Applicable Regulation, Requirement, and/or Performance Standard	Evidence Supporting the Findings of Nonconformance
§312-1.1.2	Development permits shall be issued for a lot that was created in compliance.	<p>(1). The 1971 Record of Survey Map of portions of Sections, including Section 6, commissioned by the Madrone Creek Development Company & Boulder Creek Development Company, referenced in the Staff Report on page 24, indicates the Tract number for the 315-011-009 parcel is 448, not 315, and that "this map is based on record information." Bearings and lengths for the parcel were derived from Book 11, Page 99, A. B. Bones' Survey of Maple Creek Headquarters Ranch, Hammond Lumber Co. In 1946, A. B. Bones established the Corner Monument connecting parcels 08, 09, 07, 01. All subsequent surveys, and land transactions: buying, selling, dividing, etc., were done using this Corner Monument established in 1946."</p> <p>The proposed development for a Commercial Cannabis</p>

		<p>Cultivation Special Permit uses a different survey, monument, boundary, and map to encroach on neighboring parcels, water systems, land, structures, and improvements in the process. The Humboldt County Assessor's Map Book 315-01, Reversion to Acreage Guynups & Arcata National Corporation, delineates 40 acre parcels, not 42, and clearly shows the 09 parcel has never had river frontage. The boundaries outlined in the proposed PLN-15197-SP do not conform to this section, and create conflict.</p> <p>Building height obstructs the viewshed and sight visibility of the intersection, infringes on the views enjoyed by adjacent land owners, and is an unsuitable use of the land. The proposed project does not conform to Zoning regulations.</p>
§314-61.1	Standards for Streamside Management Areas (SMAs)	<p>(2). To not recognize the subject parcel(s) as Streamside Management Areas is negligent. To allow for a "50' buffer," admit the "presence of jurisdictional wetland," and imply run-off from the "orientation of Maple Creek Road," but ignore the negative impact the proposed development will do to the orientation of Butler Valley Road, the orientation of the adjacent parcels, the orientation of the waterfalls and rivulets which feed the Mad River, and the orientation of the Mad River itself, is beyond reason. Culverts, etc. may channel water away from the site, but polluted run-off water still finds its way into neighboring parcels, water systems, soils, etc., and drains into the Mad River. PLN-15197-SP does not conform to the minimum performance standards in this section.</p>
§314-55.4.6.3.1 -2	<p>Eligibility Requirements:</p> <ul style="list-style-type: none"> • Energy Source 100% Renewable Energy • Water Source Non-diversionary Water Flow Data Watershed Planning Seasonal Drought Conditions Restrictions of Water Use 	<p>(3). The proposed development plans to utilize high voltage provided by P G&E in a severe high fire hazard area⁵. P G&E has been found responsible for three of the most destructive fires in California's recent history. The introduction of dangerous power lines to the site plan area is unsafe, and <i>increases</i> the fire danger risk.</p> <p>Fourteen thousand gallons of hard tank water storage for an Industrial Cannabis Operation is not considered domestic, and also, the ability to use the water for "fire suppression" is questionable. The water drawdown of adjacent well(s) is prohibited for Cannabis-related activities. The Staff Report claims "no diversionary water will be used for irrigation of cannabis," but the applicant filled out a Lake or Streambed Alteration Notification application for exactly that, and more (although incomplete, and incorrect). SUIR prevents diversion of water during the dry season. California Department of Fish and Wildlife has not signed-off on the project.</p> <p>Four 50,000 gallon tanks of "rain catchment," is not sustainable, and prevents necessary water flows during the rainy season to replenish the watershed. The fact that <i>more</i> water is needed for the proposed Cultivation clearly shows</p>

⁵ Licensed Surveyor No. 2020.

⁶ The Dunaways of Maple Creek Ranch, including their father, bought, sold, and acquired the affected parcels using the A.B. Bones' Original Corner Monument set in 1946.

		the site location is not the place for another large grow operation. In addition, the use of an off-site well for "trucking in water for cultivation and back-up water" is absurd, and a direct violation of Ordinance No. 2599. PLN-15197-SP does not conform and/or comply with the requirements in this section.
§314-55.4.11	Application Requirements	(4.) All required information has not been received. The applicant has not provided all the appropriate forms from all the agencies directly involved with the approval of the development. The Staff Report is deceptive by stating the opposite. Therefore PLN-15197-SP does not conform to this section.
§314-55.4.6.4.4	Setbacks	(5). The site map plan for the proposed project does not reflect true boundaries, does not accurately depict buffers for wetland and forested areas, does not correctly represent road conditions, potential hazards, traffic, proximity to, and impact on, the Mad River Watershed, adjacent parcels, neighbors, wildlife, resources, schools, other large grows, and fails to provide necessary "defensive space" areas. Proposed "setbacks" for the development of this Industrial-sized Commercial Cannabis Cultivation Operation on the roadside of the Butler Valley Maple Creek turn-off do not accurately address, and are not correctly applied, to the project. Therefore PLN-15197-SP does not conform to the requirements in this section.
§314-55.4.12.1, .4-.8, .10-.11, .13.	Performance Standards <ul style="list-style-type: none"> • Road System • Biological Resource Protection • Light Pollution Control • Energy Use • Noise • Cannabis Irrigation • Soils management • Existing Site Configuration 	(6). The County roads servicing the site do not meet Category 4 Standards set forth by the Department of Public Works. In many instances the roads are unpaved, less than the required footage, no centerline marked, and are in poor and/or very poor condition. To increase road traffic, punch in unpaved "access roads" with a 50' turn around, and develop a parking lot off of the County Road for an Industrialized Cannabis operation, without addressing the categorically poor/very poor conditions of the existing County roads, is negligent. The road system is negatively impacted by any disturbance from both sides of the site, Butler Valley Road and Maple Creek Road. The Roadshed is unable to support new Cannabis activity. Therefore, PLN-15197-SP does not conform to the Performance Standards. The Jurisdictional Wetland Delineation Report filed by the applicant for a Special Permit fails to accurately assess the sensitive and critical habitat areas, the Wetland, the Streamside Management areas, Mad River Watershed, etc. The Staff Report reinforces its ambiguity and reveals a reasonable doubt as to its application and recommendations. The proposed Cannabis Cultivation project is not allowed as a principal permitted use under the General Agriculture use type classification. Generators are proposed as part of the project. The proposed building site is not on what can be considered a pre-existing building site, the cabin is antique and has become part of nature. There are sensitive species on-site. Therefore, PLN-15197-SP does not conform to the Performance Standards.

* Considered Zone 10 by Insurance Companies.

		<p>Protocol levels and Floristic Surveys were not conducted, yet are included in recommendations for prior to any disturbances related to the proposed development on and to the land, native soils, aquatic life, listed species, and species of concern. To declare no SMA, but mark SMA buffers on-site, to declare "no signs of filling or altering of wetlands," but admit "drainage conditions relating to Maple Creek Road" attribute to the on-site Wetlands, and to omit the analysis of the presence of harmful algae bloom found on the adjacent parcel directly related to the accumulation of fertilizer-pesticide run-off water from the previous two years of illegal unpermitted grow by the applicant, is both contradictory and negligent. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p>
		<p>The proposed development is in violation of the International Dark Sky Standards. The Milky Way and Seasonal Constellations can be observed in the night sky. Invasive light from Industrial Commercial Cannabis activities cannot be prevented from spilling outside the boundaries of the parcel or premises. The skies are artificially lit up by any light disturbances during the after sunset hours and before the twilight hours. The proposed development is in direct view of neighboring landowners and takes away enjoyment of the Astral Views. The proposed security system and associated lighting and surveillance apparatus is an affront to the Rural Neighborhood Watch Program. The Humboldt County Sheriff's Department must be notified. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>PLN-15197-SP proposes to bring 24/7 High Voltage power to the intersection of Butler Valley Road and Maple Creek Road, putting up poles and electrical wiring, cutting trees and clearing a swath of 20' to accommodate P G&E. The proposal increases the risk of a catastrophic wildfire in the very high fire danger area. Close proximity to electrical power lines for rural residents is a severe health risk. Cap and trade is not 100% renewable. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>Sensitive Receptors located in the area of the proposed Cannabis Cultivation will be adversely affected by the commotion created by the scale of the Industrial Commercial activities. The noise of pot growers coming and going, an increase of automobile activity on the roads, and adjacent lands, are not only experienced as an increase in sound, but also an increase of vibration. The particular "character of the sound" is negative, as the applicant has shown aggressive and disrespectful behavior to members of the Community and the environment. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p>

		<p>The water usage for the proposed Commercial Cannabis Cultivation is unsustainable. Low and reduced stream flows during half of the year's cycle have now reached an all time high for the Mad River Watershed. The Mad River, as the <i>source of water</i> for Humboldt County must be preserved by all means necessary. The multiple water sources and diversionary tactics proposed undermine conservation and restoration activities now in place to protect and enhance the river flows. The use of such water for non-human use and/or Cannabis Cultivation is highly regulated, and the proposal itself is in violation of Performance Standards. No "monitoring" of the project can change the damage done to the ecosystem: water, aquatic life, land, vegetation, wildlife, and human. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>Disturbance to the native soils living in the proposed site area intrudes upon the root system of forested areas, the water flows of the Wetland, and contributes to erosion, pollution, and degradation of the soil content. The project proposes to displace soils, to dig, to grade, to excavate, and "amend the soil with fertilizers" and apply pesticides to the plants, with the intention of making the soil no longer viable and then to remove and dispose of the native soils. Removal of native soil and replacement with manufactured soil is prohibited: Native soil cannot be impaired or damaged (55.4.6.4.3). "Straw wattles" cannot control run-off during the rainy season. The proposed project is a disaster waiting to happen, and restoration efforts are untenable. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>Any configuration for Commercial Cannabis Cultivation on the intersection of Butler Valley Road and Maple Creek Road does not "result in an improvement in the environmental resources of the site." The site is not suitable for the proposed project. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>The proposed development is ineligible for permitting for all the above mentioned reasons. Because of its extreme negative impact and large public outcry, mitigation measures and monitoring plans are inadequate to prevent irreparable damages to people, place, and thing. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p>
§312-17.1.4	Special Permit Requirements	(7). The proposed development is detrimental to the public health, safety, and welfare of the entire Northcoast, and will be materially injurious to all properties and future improvements in the vicinity. No more large grow operations in Butler Valley Maple Creek. Approval, from all agencies involved with the permitting process for Cannabis

		Cultivation, has not been given to PLN-15197-SP. Therefore, PLN-15197-SP does not conform to the requirements.
Environmental Impact Report [EIR]	Establishes local land use regulations to allow for commercial cannabis operations in the unincorporated area of the County that ensure the health, and safety of the residents, employees, County visitors, neighboring property owners, etc. The EIR assures that no new significant environmental effects or a substantial increase in the severity of previously identified effects will be caused.	(8). There is substantial evidence, and enough information provided to know with reasonable assurance that the proposed PLN-15197-SP fails to comply with the Environmental Standards setforth in the EIR. "At the request of the Department of Fish and Wildlife, the County is prohibiting the expansion of existing baseline cannabis cultivation operations or the establishment of new cannabis cultivation operations in subwatersheds identified as impacted by the extent of pre-existing cannabis cultivation within those areas, or strongholds for the restoration of fisheries for threatened or endangered salmonid species (§314-55.4.6.8, Resolution No.18)." If the State Water Resources Control Board or CDFW finds cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, CDFA <i>shall not issue new licenses</i> , or increase the number of plant identifiers within that watershed or area. The proposed development is in the vicinity of the Mad River Watershed. All Cannabis activities negatively effecting soil stabilization, water run-off, rivulets, and tributaries in the Mad River Watershed are prohibited. Reparations are costly. In every instance of the EIR, the proposed project violates Environmental Law. The location of the proposed site "cannot support cannabis cultivation," in any form. There are already numerous Cannabis Cultivation operations in the vicinity, there is no more capacity. The evidence clearly shows the project adversely impacts the environment to such a degree as to create an unhealthy, unsafe, and intolerable conditions in the neighborhood. The proposed project is noncompliant with CEQA. Therefore, PLN-15197-SP does not comply with the EIR.

The Cultivation and Operations Plan prepared by Six Rivers Development LLC, for Maple Creek Investments LLC, a Nevada Limited Liability Company, itself, is rife with proposed non-compliance actions, so it is impossible for the proposed Cultivation to be "conducted in compliance with all laws and regulations as setforth in the CCLUO and MAUCRSA." The "Recommended Conditions of Approval" are not only inadequate to comply with the necessary environmental safeguards required by Ordinance No. 2599, but cannot be met by the applicant. It is the responsibility of the Planning Commission to do the right thing and deny the proposed project, deny the special permit, and deny the applicant any and all permits sought for Cannabis Cultivation and any and all related activities.

Further issues of concern:

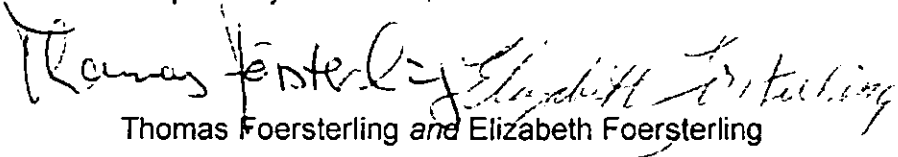
- Criminal trespass.
- Invasion of privacy.
- Elder abuse with intent to do harm.
- Vandalism.

- Terrorism.
- Stalking.
- Harassment.
- Assault.

It is declared, under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: August 3, 2020

Respectfully submitted,


Thomas Foersterling and Elizabeth Foersterling

Damico, Tracy

From: Alec Ziegler <ziegler.alec@gmail.com>
Sent: Friday, October 9, 2020 2:41 PM
To: COB
Subject: Submission of Public Comment for 10/20/20 BoS Meeting, Maple Creek LLC Appeal

Good afternoon,

I would like to add my name to the list of people providing public comment during the Board of Supervisor's meeting scheduled for 10/20/2020. I wish to speak on the agenda item concerning an appeal of a special permit for cannabis cultivation denial by Maple Creek Investments, LLC.

Sincerely,

Alec Ziegler
(707) 499-0240

October 8, 2020

Reference: Parcel Number 315-011-009

Applicant: Maple Creek Investments, LLC

Record Number: PLN-2018-15197

Appeal Record Number: PLN-2020-16608

To Whom it May Concern:

I had the opportunity to hear the discussion amongst the Planning Commissioners when this project was denied. Some key elements of this permit proposal are that *it benefits non-owner occupied operators; includes security, guard dogs and armed surveillance; has a highly suspect plan for rainwater catchment to meet the enormous project needs proximal to a known wetland; and is immediately adjacent to the class 1 Mad River which is the prime source of water for thousands of residents; the majority of the adjacent neighbors are opposed.* The **egregiousness of this proposal within this traditionally pastoral community** serves a purpose to make many of us much more aware of what has been quietly happening behind-the-scenes in Humboldt County with the current processes that are in place. Without many of us realizing it, we are giving up much of what we hold precious within the Humboldt County community. *For what? Who is being served here?* One thing is clear and that is that ***the cannabis permitting process is flawed and is in immediate need of revision.***

1. The local values and concerns of the community must have high consideration in this process. The permitting process should begin with the input of neighbors and impacted communities, to ensure that the issues that are important to the community are addressed at the outset. **Input from the local community should be pre-requisite early on in the permitting process.**
2. **Every cannabis grow near a tributary to, or mainstem of Mad River has potential impact upon the entire downstream community.** This means the thousands of people for whom the Mad River is their water source must be made aware up front that these proposals are being made. Maps should be publicly available depicting the cannabis activity along with reports of cumulative impacts and monitoring. This publicly available information should be made highly accessible to anyone interested. **The entire potentially affected community should be included in notification** that these proposals are occurring with opportunity for comment.
3. With these concentrated grow and proposed processing facilities, comes **increased public safety concerns.** Careful consideration must be given to any proposals within a radius of a school. The county needs to document the increase in public safety issues that are a direct result of the permitted cannabis community.
4. Any **non-owner-occupied permits must receive a much higher level of public review and requirement** than even owner-occupied. There are increased security concerns and much less vested interest in the local community when non-owner occupied growers come in to make a quick buck with the resources that Humboldt has long held dear.
5. It is clear that proposed permitting consultants have figured out the buzzwords and elements to include or not mention in the permits. There is a certain level of naivete for planners to think that these growers will be able to collect hundreds of thousands of gallons of rainwater to support their enormous water needs, and yet they are choosing to place their operations right next to a river. **Water budgets need to be carefully reviewed and monitoring of operations needs to be in place.**

6. Before any additional permits are issued, there needs to be a **comprehensive review of what has been learned thus far**: a) What has been the economic impact and has the economic benefit been more for a few incoming residents capitalizing on how easy it is to get permitted and take over the best resources that Humboldt County has to offer? b) Economic considerations need to include the cost of the monitoring that should be done on these operations and the risks to fundamental resources such as water supply c) What have been the legal and public safety impacts; d) results of cumulative impacts studies to the Humboldt County water supply e) A well-designed monitoring and testing plan for surveillance and identical effects and potential contaminants that may impact the health of the community; e) How has the quality of life of the long-term Humboldt County community been impacted.

I understand the County is interested in generating revenue from this permitting process, but the process needs to be established so that maintaining the values and interests of the long-term residents who have built that community is given due respect and a high level of consideration. Revenue is not the only consideration. **Are we jeopardizing the health of a significant portion of the community for the sake of permit revenue? Who really is economically benefitting from this process?**

The Board needs to ask themselves, **What kind of a community are we creating? Are the values we as a community hold dear being preserved?** Considering each permit individually means that only a few of the surrounding neighbors are aware of what is going on and means we as a community don't realize collectively how we are being impacted by what is occurring and trickling down to us from farther upstream. Let's step back, carefully review where we are from the broad perspective, and have a community-wide discussion of our collective vision for a safe, harmonious future.

Sincerely,

x JudyWartella

Judy Wartella
Concerned Neighbor

Judy Wartella



HUMBOLDT BAY MUNICIPAL WATER DISTRICT

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GENERAL MANAGER

JOHN FRIEDENBACH

October 9, 2020

Humboldt County Board of Supervisors
815 5th Street
Eureka, CA 95501

RE: Parcel Number 315-011-009

Applicant: Maple Creek Investments, LLC

Record Number: PLN-2018-15197

Appeal Record Number: PLN-2020-16608

Dear Supervisors,

Humboldt Bay Municipal Water District (District) submits this letter in response to Special Permit Application PLN 2018-15197 and Appeal PLN-2020-16608 by Maple Creek Investments, LLC (Applicant). It would be inappropriate to find the project exempt from CEQA where 27,025sf is not an existing facility.

On May 8, 2018 the Humboldt County Board of Supervisors approved OR-17-02, Commercial Cannabis Land Use Ordinances establishing, amongst other ordinances, Humboldt County Ordinance 55.44.6 for "Accommodations for Pre-Existing Cultivation Sites" (ordinance). This allowed cannabis cultivation sites that meet all other eligibility and siting criteria and performance standards to be considered for a special use permit.

The Applicant seeks a special use permit for a new commercial cannabis operation (project) that includes 27,025 square feet of new, full-sun outdoor cultivation and a 2,000 square foot on site ancillary processing facility. The project would use up to 200,000 gallons of water per year from rainwater catchment tanks, on-site surface water diversion and as back up, a well on an adjacent parcel under common ownership.

Approval of this project would be inappropriate where it may harm wildlife and fish, and may threaten the stressed Mad River watershed.

I. The Project has Potential to Harm Mad River and Maple Creek Water Flows and Fish

Mad River and Maple Creek are waterways subject to the protections of the public trust doctrine which establishes a local government responsibility to maintain the flows of the waterway for public use. (*Cal. ex rel. State Lands Com v. Superior Court* (1995) 11 Cal.4th 50, 63 [the beds of navigable rivers are owned by the state in trust for the public.]), It is reasonable to assume that this well is drawing from surface water or at the least is primarily influenced by surface water. This diversion of surface water could consequentially influence the flow and volume of the Mad River, potentially interfering with water impounded by the District at Ruth Lake for delivery to the District's municipal customers. In addition, storm water runoff from the project could carry chemicals and debris into the Mad River, contaminating not only the drinking water source, but also fish and other species in the water bodies. It is the District's understanding and belief that the State Water Board has determined that the Mad River is fully appropriated and there are no more water rights available for appropriation. (See State Water Board Order 98-08; Water Code, § 1206.) Therefore, we respectfully request that the County verify with the Water Board the water rights claimed to be owned and permitted (including the proposed expanded use of water) by the applicant prior to issuing a CUP.

II. The Project is not exempt from CEQA

There are a number of cannabis operations occurring in the area, drawing on limited water and posing a potential threat to the drinking water source and sensitive habitats. This is only one of many similar operations in the area. While the County may find reason to conclude each project individually is exempt, a point not conceded by the District, permitting each of these operations based on an exemption avoids adequate analysis of impacts of the cumulative impact on the river. "All exemptions ... are inapplicable when the cumulative impact of successive projects of the same place, over time is significant." (CEQA Guidelines, § 15300.2, subd. (b).) Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts... The individual effects may be changes resulting from a single project or a number of separate projects. (CEQA Guidelines, § 15355, subd. (a).) Essentially, an agency cannot forego environmental review if, "taking into consideration the effects of past, current, and probable future projects, the environmental effect is significant." (Aptos Council v. County of Santa Cruz (2017) 10 Cal.App.5th 226, 285.) Due to the cumulative impacts of the multiple operations in the area, a categorical exemption would not be appropriate. Thus, the District claims that this project is not fit for the CEQA exemption for existing facilities.

Further, an exception to the CEQA exemption is for unusual circumstances. This project proposes to establish a new commercial cultivation and production operation in a rural wooded area that had not previously undergone any CEQA environmental review. The District claims it would only be appropriate for the project to undergo such environmental review.

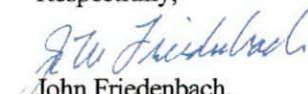
III. Designation of Mad River as a Critical Watershed Under Humboldt County General Plan

On October 3, 2019 our District submitted to the Humboldt County Planning Commission the attached letter with a carbon copy to the Board of Supervisors our request to have the Mad River designated as a Critical Watershed as defined in the Humboldt County General Plan. (see attached copy) We have not received any correspondence regarding this request for over one year from either the Planning Commission, Planning Department nor the Board of Supervisors. It appears that our request is being ignored. This is extremely disheartening given that the Mad River is the source drinking water supply for two thirds (2/3rds) of Humboldt County's population. This request and adequate consideration by the Planning Commission and Board of Supervisors is relevant to all cannabis CUP's being considered in the Mad River watershed and their cumulative effect on the watershed. As noted above, CEQA requires analysis of the cumulative impacts of all discretionary projects and significant cumulative impacts must be mitigated. This requirement reflects the fact that numerous projects with no individual significant impact often result in environmental degradation when added together. Development of numerous small cannabis projects in proximity to the Mad River is likely to result in such cumulative impacts here, resulting in degradation and potential contamination of the District's drinking water supply. Designating the Mad River as a Critical Watershed Under Humboldt County General Plan would reinforce CEQA's statutory requirements and protections and better protect the Mad River.

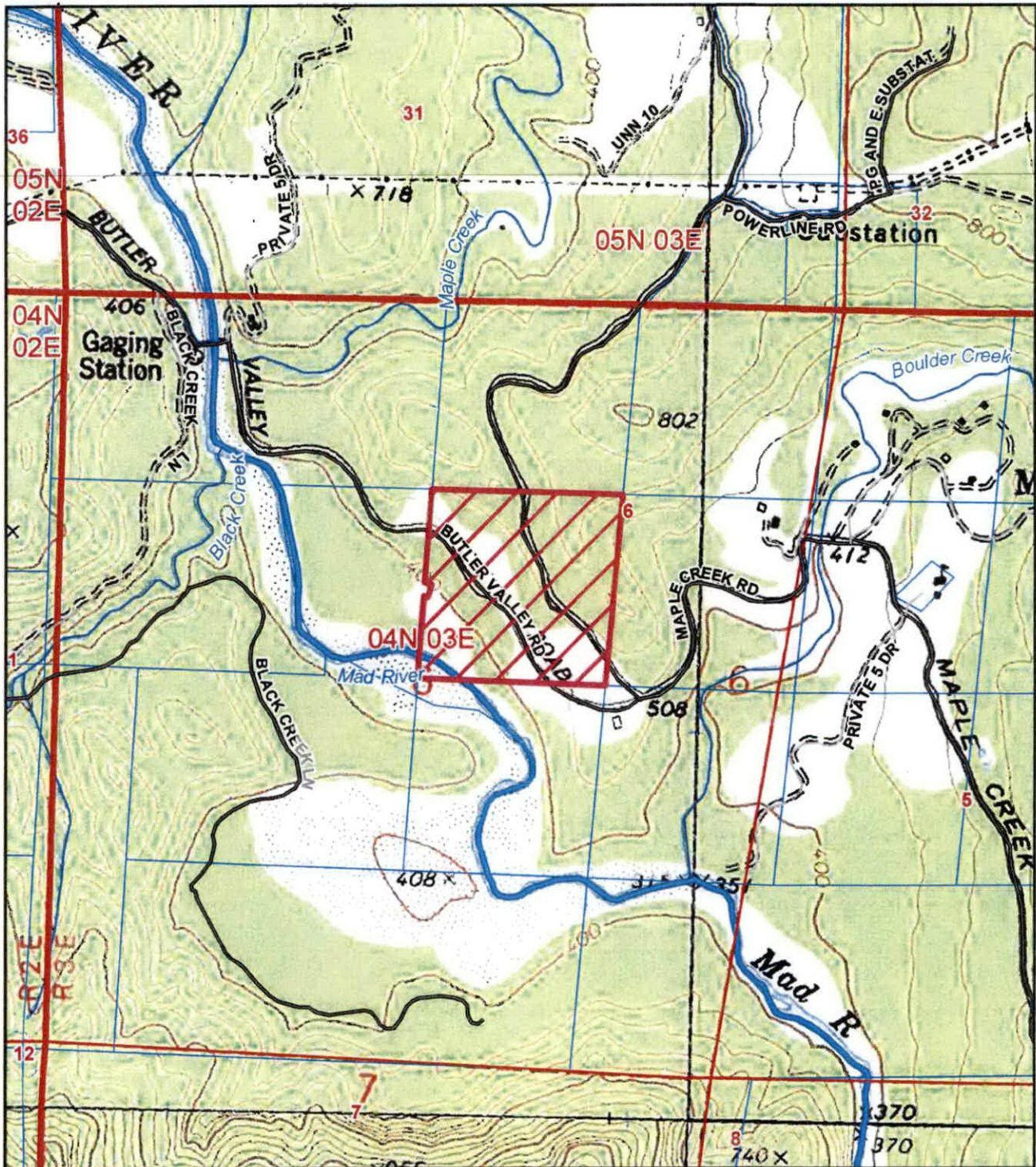
* * *

For the above reasons, it would be appropriate for the Board of Supervisors to deny the appeal or condition with CEQA Environmental Review the Special Permit application PLN-2018-15197 where the project has potential to harm wildlife and fish, and could jeopardize water quality/security.

Respectfully,


John Friedenbach,
General Manager

Cc: Gordon Leppig, CDFW



TOPO MAP
PROPOSED MAPLE CREEK INVESTMENTS
 Maple Creek AREA
 PLN--2018-15197
 APN: 315-011-009-000
 T04N R03E S6 HB&M (KORBEL)

Project Area = 


N



0 1,000 2,000
 Feet



This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.



**AERIAL MAP
PROPOSED MAPLE CREEK INVESTMENTS
Maple Creek AREA
PLN--2018-15197
APN: 315-011-009-000
T04N R03E S6 HB&M (KORBEL)**

Project Area = 

N


0 875 1,750
 Feet

This map is intended for display purposes and should not be used for precise measurement or navigation. Data has not been completely checked for accuracy.



HUMBOLDT BAY MUNICIPAL WATER DISTRICT

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GENERAL MANAGER

JOHN FRIEDENBACH

October 3, 2019



Humboldt County Planning Commission
3015 H Street
Eureka, CA 95501

RE: Designation of the Mad River Watershed as a Critical Municipal Water Supply Area

Dear Commissioners,

The Humboldt Bay Municipal Water District provides water to approximately 88,000 residents or 2/3rds of the County's population. We provide the source water to our seven Municipal Customers and a small number of direct bill residents. Our source of supply is the Mad River Basin beginning at our reservoir Ruth Lake where water is impounded during the rainy season and then released during the dry season to provide a continuous water supply. Our releases travel 75 miles down the Mad River watershed until reaching our Ranney Wells where ground water is pumped at our Essex facility. Given the large amount of Humboldt County population dependent upon our source water, it is essential that the integrity of the high water quality that residents have enjoyed for the past 60 years be protected and preserved for future generations. Consequently, we request that you designate the Mad River Watershed as a Critical Municipal Water Supply Area as provided in the Humboldt County General Plan Section 11.4 Goals and Policies, subsection WR-P4.

Because zoning changes are in process for the implementation of the County's General Plan, we respectfully request that you re-prioritize the General Plan implementation measures that relate to Section 11.4 and/or processing this request and place this issue at the top of that list.

Land uses within the Mad River Watershed have the potential to significantly impact the quality and quantity of the District's water supplies.

Land uses within the Mad River Watershed have potential to degrade and contaminate the Mad River, which serves as the District's water supply. These are significant cumulative impacts. It is known that the area around the Ranney intake wells is already in a degraded condition due to gravel mining operations in the area. (See, e.g., Public Notice for Letter of Permission 2004-1, Appx. G.) Runoff from agricultural operations, roads, and other uses can result in cumulatively significant impacts to water quality by drawing pollutants and sediments into the Mad River. Mining and oil and gas operations and other land uses involve hazardous chemicals which, if spilled, can leach into groundwater which flows

into the Mad River, contaminating the District's water supply. Operations within the 100- year floodplain in particular carry a high risk of directly releasing hazardous chemicals into the Mad River during a flooding event, thereby contaminating the District's water supply.

Additionally, land uses in the watershed indirectly impact the District's water quality. In an unaltered system, rainfall is filtered before reaching a river, which reduces the amount of contamination carried into the river. Where there are permeable surfaces, rainwater is absorbed into the soil and filtered by the substrate before it enters the Mad River as groundwater. Vegetation likewise serves to filter runoff and also prevents erosion, thereby protecting water quality from excessive sediment loads. Development reduces the amount of permeable surfaces and quantity of vegetation. As a result, more stormwater flows directly into the Mad River and contains higher contaminant concentrations and sediment loads. These cumulative impacts degrade the District's water quality.

The quantity of water available to the District is also impacted by land uses within the watershed. Land uses that draw from onsite wells reduce the quantity of groundwater that flows into the Mad River. Similarly, land uses that rely in part on rain-water catchment, such as cannabis growing operations, reduce the volume of water that either directly runs into the Mad River or indirectly reaches the Mad River as groundwater.

Ongoing and increasing land uses within the Mad River Watershed will result in cumulative impacts to the quality and quantity of the District's water supplies. Accordingly, the Mad River Watershed is eligible for mandatory designation as a Critical Municipal Water Supply Area. As stated by the Humboldt Community Services District in its February 16, 2018 letter to the Humboldt County Board of Supervisors: "We have only one major water source and the public has invested millions of dollars into making it safe and reliable." Thus, the Planning Commission is requested to recommend to the Board of Supervisors that the Mad River Watershed be designated as a Critical Municipal Water Supply Area under the General Plan to ensure the ongoing safety and reliability of the District's water source.

Given the size of the Mad River, we believe the Board may need to go beyond the standard protocols and develop standards more specific to the concerns of the District. The District concerns are more related to industrial pollution from uses on adjacent lands. We strongly advocate the Board of Supervisors develop standards to offer these protections.

We believe the Planning Commission will be the first step in the review process. It is our understanding that the portions to be mapped as critical watershed can be tailored and it does not need to be the entire watershed.

We are not sure of the schedule for Critical Watershed Designation however, the District kindly requests the Mad River Critical Designation be moved up in priority while processing the implementation of the County's General Plan.

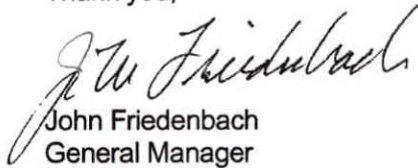
Time is of the essence. The Board of Supervisors just approved various zoning text amendments, including the MR zone, that the District submitted concerns on. There are a lot of recommend zoning changes coming up. The Board of Supervisors is moving into the Community Planning phase and wrapping up the text amendment, then moving on to zoning. Time is of the essence for the District to clarify concerns regarding designating the Mad River Watershed as a Critical Watershed.

We are available to work with Planning Department staff to construct development standards consistent with designation of the Mad River Watershed as a Critical Municipal Water Supply Area. For

example, our District is more concerned with new industrial uses proposed within the watershed versus runoff from small parcels located higher within the watershed.

We look forward to hearing back from you and learning the schedule and process to have the Mad River Watershed designated as a Critical Municipal Water Supply Area under the General Plan Section 11.4 Goals and Policies, subsection WR-P4.

Thank you,


John Friedenbach
General Manager



COPY

Cc: Humboldt County Board of Supervisors
Tina Bartlett, CDFW Northern Region
Justin Ly, National Marine Fisheries Service

October 8, 2020

Reference: Parcel Number 315-011-009
Applicant: Maple Creek Investments, LLC
Record Number: ~~PLN-2018-15197~~
Appeal Record Number: PLN-2020-16608

Att: Humboldt County Board of Supervisors

As property owners and residents of the Maple Creek area, we object to the proposal to operate a year-round cannabis processing facility in an area predominantly zoned for Timber Production (TPZ) and we object to any requested exemption from the Environmental Impact Report and CEQA. This project lies outside the realm of appropriate land-use in this small, rural community.

The project is located in an environmentally sensitive area adjacent to the Mad River with rain flow going directly to the Mad River. The Mad River provides water for domestic and business uses to Humboldt County's largest population base and is an important salmonid stream, supporting coho and chinook salmon and a rare run of summer steelhead. Critical concerns related to this project include threats to anadromous fisheries habitat, human health and wildlife from chemical runoff and pollution from herbicides, pesticides, fungicides and rodenticides used in cannabis cultivation which have the potential to pollute the water and harm humans, fish and wildlife alike. These pollutants are not the only concern, as the fertilizers used to provide nutrients during the growing season have by-products including cyanotoxins which are neither regulated nor tested and the ultimate toxicity of these by-products is still unknown.

The proposal to construct a 2,000 square foot processing facility for drying, curing, trimming, and packaging cannabis raises numerous further concerns related to waste disposal, water use, increased traffic and road safety as well as noise pollution. It seems highly unlikely that four (4) full-time and six (6) part-time seasonal employees can manage cultivation activities for 27,025 square feet of outdoor cannabis cultivation. This large size of this processing facility/cultivation activity will likely be harvested three or four times per year requiring probably a continuous crew of employees. How many employees will actually work there? Will employees be allowed to live there or will they be driving back and forth daily? What will be the human waste disposal for an entire trimming/processing crew? How and where will that much cannabis waste be disposed of?

This project is on a Category 4 County-maintained road, which was designed for small homesteaders, not large-scale marijuana cultivation and processing facilities. The road

has completely collapsed in places so that only one car can pass at a time, with numerous blind corners and a high rate of accidents relative to the road use. A further increase in traffic will lead to further road damage, accidents, and result in safety issues similar to what we have seen happen in other areas of Humboldt County such as Highway 36, Briceland Road, and Salmon Creek Road.

I am also concerned about my personal safety and the safety of my neighbors and those who recreate on the river. As we all know, with large-scale cannabis cultivation come attack dogs, weapons, robberies, and an increase in crime. Volatile and dangerous situations have already occurred in this area due to cannabis cultivation. If someone is in danger in Maple Creek and calls the sheriff, there is no way for the sheriff to respond to this remote area in time to prevent harm.

The property owner states that 214,000 gallons of water will be needed for cannabis cultivation with additional water obviously needed for living. What will ensure that water will not be pumped directly from Maple Creek to support the cultivation and how will this be monitored? With global warming there has been a significant drying of the creeks and a decrease in rainfall, and it is unlikely that the proposed source of water for irrigation from four 50,000-gallon rainwater catchment tanks will be sufficient or even possible to collect.

Further, this project's proposed activities will have significant cumulative impacts in this location. The impacts of this project on the watershed, fish and wildlife, citizen safety, traffic, road maintenance, etc., are all compounded by the impacts of neighboring cannabis projects in this community. The approval of large-scale cannabis cultivation in this area will potentially turn this environmentally sensitive scenic recreational area into a polluted and dangerous location.

This steep, wooded, environmentally sensitive watershed is not an appropriate location for a large-scale cultivation and processing facility, and there should be absolutely NO consideration of exemptions or modifications to the Environmental Impact Report or CEQA, given the potential regional impact to human health and the Humboldt County water source and fisheries habitat in addition to the deleterious local impacts to the community who shares access to their homes via these roads and recreates in these waters. I hereby request that this appeal be denied.

Sincerely,

Kim and Breda Savage

October 8, 2020

Reference: Parcel Number 315-011-009

Applicant: Maple Creek Investments, LLC

Record Number: PLN-2018-15197

Appeal Record Number: PLN-2020-16608

Att: Humboldt County Board of Supervisors

This proposed project has enormous negative ramifications for our small rural community and is clearly bordering on industrial use, which is outside the scope of the Land Use element of the existing General Plan for this area. There are numerous questions that come to mind when reading the proposal, which was clearly contracted out to paid consultants with the goal of presenting a benign appearance in order to secure a special use permit from the County. Once such a permit is issued, the community has less opportunity to effectively raise concerns about unanticipated issues. It is what is not stated or what is guilefully glossed over in the reports that is of concern.

The notice indicates “The Humboldt County Zoning Administrator will consider an Addendum to a previously adopted Environmental Impact Report.” What is specifically in this EIR Addendum? What decisions are being made? Interested and impacted individuals must be provided the EIR and need time to review and understand the addendum.

There are numerous other questions that deserve answers.

Why is such a huge facility needed for processing of the cannabis that is grown on-site? Is the underlying intent here to become a regional processing facility and handle pot from other growers within Humboldt County? Under NO circumstances should any permits be issued that allow for off-site transport via a County road from or to other growers and this site. If any permit were to be issued it must clearly stipulate processing marijuana grown on-site only. But again, why is such a huge facility needed for this size of an operation? What is to prevent it from functioning as a regional processing facility once permits are issued?

The catchment tanks are very near the wetland. The catchment area is not identified. This is a large omission on the site plan and necessary in order to

evaluate the impact to the adjacent sensitive wetland. We understand wetlands are defined as those areas that are saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Surface catchment of this magnitude means reduced surface runoff, which translates to possible adverse impact to adjacent wetlands. This must be carefully evaluated according to Army Corps of Engineer guidelines and on the site plan.

Does the graded area need a survey and is a permit required for the grading?

The proposal indicates requirements to remove existing infrastructure. Are these items requiring removal due to the fact that previously they were unpermitted? Any structures identified as having been previously illegally unpermitted should be corrected and brought into compliance prior to consideration of issuance of any new permits.

Is the water budget reasonable? We would like to see an engineering and hydrologist assessment on the catchment area design, water calculations, and expected need and frequency to transport water and the nature of the off-site water to be used. The proposal indicates that additional water needs would be supplied by a neighbor's well. Where is that neighbor and what is that specific water source (depth, location, proximity to stream) and what are the associated environmental impacts of drawing from that water source? The proposal of trucking this water via trailer with water tanks impacts already stressed County roads and adds additional traffic.

MCI already intends to continue utilizing surface water diversion during the wet season for storage of water to follow water forbearance requirements and is seeking a Special Permit to continue this use. What are the details of this special permit?

These unique river flat areas of Humboldt have a long indigenous historical record. What artifacts were noted in any cultural survey reports? We would like an opportunity to review and engage an independent archaeologist's opinion of any surveys. No attachments were provided in the copy of the CMMLUO 2.0 Cultivation and Operations Plan v.4 prepared for Maple Creek Investments that we received.

How can you keep curious travelers out of the potentially high value cultivation area of easily transportable goods? Often seasonal trim workers come from areas outside of the County and have no vested interest in the community. How is this going to be guarded? Will guard dogs or firearms be maintained on-site? What does this mean for the security of the neighbors, our family, or our friends. What does this mean for our community? The proposal indicates that "Only management will be authorized in these locked areas to mitigate potential theft. All product at the end of the shift will be returned to these locked areas and remote monitoring via closed circuit video surveillance." Knowing that this intense high level of security is a requirement of this business raises significant concern for all of the peaceful neighbors who have chosen to live in this remote and rural area for the beauty and pristine qualities that make Humboldt County special. We have not had to question our safety in the past and we rely on and trust our neighbors. This completely changes the small rural community culture. We do not want to see this pristine area become industrialized and unsafe.

Traffic resulting from seasonal and full-time workers is a significant issue for these rural roads, with unpaved, one-way segments. Road safety is already a significant concern which will only be exacerbated by more cars travelling to and from the site. Compliance with the Category 4 road standard needs to be independently verified.

As a long-time resident of Humboldt County I feel that the notification system regarding such high impact projects could be improved, as I find myself in a position where I have three days to digest and review an large and incomplete package. This is a pristine rural area and the population base of the adjacent neighbors who would receive notification of this hearing is small and therefore any concerns raised should be taken very seriously. There is a large interested population base that would never even receive County Notification of this proposal, and that is the people within the broader community who value the recreation opportunities and the beauty and pristine nature of this area. The Maple Creek loop which passes immediately past this site is a popular route for bikers and many county residents recreate immediately downstream. Many people choose to live in Humboldt County because they have opportunities take short drives and bike rides through and to unspoiled and beautiful areas. Production facilities and grows and huge rain catchment infrastructure and video surveillance and on-site security can be located anywhere and do not

need to be located all along the Class I Mad River that serves as the primary drinking water for the County. Do we really want the unique and pristine areas of Humboldt County to become industrialized and unsafe? The proposers clearly had months to prepare these documents and the short time window for review is insufficient for thorough understanding of what the potential ramifications this project could have on our Humboldt community.

Sincerely,

Erik Weibel

October 8, 2020

Reference: Parcel Number 315-011-009
Applicant: Maple Creek Investments, LLC
Record Number: PLN-2018-15197
Appeal Record Number: PLN-2020-16608

Att: Humboldt County Board of Supervisors

There are several issues in this application that stand out.

The applicant, Maple Creek Investments, LLC is the name that is being used by the Dunaway and Rasmussen families who collectively own over 1,000 acres of land, which includes this parcel. Much of that land is river frontage and flat. The first question that I would ask is why do they choose to place this proposed operation in this highly visible area, adjacent to the Mad River, along the main road travelled by nearly every bicyclist and automobile passing to and through this community? This area is a popular tourist spot where there are in the summer up to 30 vehicles parked on the side of the road next to the bridge. There are families with children walking in the road peacefully. What is the rationale to install a high security grow and processing plant which up-front calls for dogs and guns to maintain security? My understanding is there are thousands of permits in process of being issued by the the Humboldt County Planning Department already, which have not required those security stipulations. If this is being put up front as a necessary part of the operations of this proposed high security facility, is there something else that will be going on there that requires such high security?

There are several unresolved issues raised at the last Planning Commission meeting around the project including access through one adjacent neighbor's property and boundary delineations being contested with another adjacent neighbor. These issues have not been resolved. There have been multiple changes to parts of the application throughout the process. Humboldt County Planning was planning to fine the applicant for two years of previous illegal activity, and that apparently has been reduced to one year. What would warrant such an exemption?

There is no place for a processing facility there in a pastoral area that is not specifically zoned for such activity. I recently spoke with one individual who was subletting part of their land to grow without permits. This is not uncommon. How many more unknown grows are out there? This applicant had an illegal grow operation on this site for two years. It seems highly likely that the processing plant will end up being used for these other unpermitted operators. The landowners are

wealthy people who own lots of property elsewhere. Why would somebody with this background be involved in illegal grows to start with? They have a history of hostile relations with the neighbor adjacent to this parcel. Contrary to what the applicant mentioned at the last meeting, the majority of objectors are not from one family, but from neighbors surrounding the property and only two represented one family. There are many other members from other families who were not present at the meeting or who didn't separately respond. Our family alone represents 10 objectors, all neighbors to this site.

The road conditions of the segment to Korbel have been minimally maintained for at least 20 years, with much of it converted back from asphalt to gravel. It is full of potholes that get filled in maybe once a year. With global warming and decreasing rainfall, it is very unlikely that they will be able to collect enough water for their project via rain fall. The option of trucking in water will further damage the road. In the summer at the bridge area, the parked cars leave very little room to pass by. The weight of these vehicles will further impact the frailty of the existing asphalt road. Who will be checking that they are not using Mad River water to irrigate their plants inside their armed compound?

This has been for years a quiet peaceful area for the locals and tourists visiting the river. There is an elementary school within a mile of the site. Having a legalized armed compound in the middle of a pastoral area will change forever the nature of the Maple Creek community and its usage if approved. It is up to you, as a Board Member to carefully consider the values and concerns of long-term residents in the Humboldt County Community. Thank you for your consideration.

Sincerely,

Concerned Anonymous neighbor

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BOARD OF SUPERVISORS

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PARTIAL TRANSCRIPT OF HUMBOLDT COUNTY

PLANNING COMMISSION HEARING

(Re: Maple Creek Investments, LLC)

(August 6, 2020)

ORIGINAL

Coleman Reporters
540 H Street
Crescent City, CA 95531
(707) 464-6465
office@colemanreporters.com

1 (12:32)

2

3 CHAIR BONGIO: All right. So, could we have the
4 staff report on the Maple Creek Investments, LLC, please.
5 Do we have a staff report?

6 CLIFF JOHNSON: Miscal, I believe your mic is
7 muted.

8 COMMISSIONER NEWMAN: Chair --

9 CHAIR BONGIO: Yes, Mike.

10 COMMISSIONER NEWMAN: -- Bongio?

11 CHAIR BONGIO: Yes.

12 COMMISSIONER NEWMAN: I need to recuse myself on
13 this one, on this item. There's been a -- I'm trying to
14 find out from the FPPC on some conflict of interest
15 questions. I happen to carry some insurance for not the
16 applicants, but for the consultant, and I need to have
17 further review with the FPPC. I've talked to counsel and
18 been advised that I should recuse myself on this item.

19 CHAIR BONGIO: All right. Thank you. Appreciate
20 that.

21 COMMISSIONER NEWMAN: So, is somebody going to call
22 me when this is over? I'll leave the meeting.

23 CHAIR BONGIO: I don't think there's any reason
24 that --

25 DIRECTOR FORD: Yes. Yeah, we will -- can

1 (inaudible) --

2 COMMISSIONER NEWMAN: I will --

3 DIRECTOR FORD: I will email you, unless you want
4 to give me your number right now.

5 COMMISSIONER NEWMAN: I'll send it to you straight
6 on the chat, just to you.

7 DIRECTOR FORD: Perfect. Thank you.

8 CHAIR BONGIO: All right. Let's get that staff
9 report then.

10 MISEAL RAMOS: Okay. Good evening, Commissioners,
11 my name is Miseal Ramos, and I will be presenting the
12 facts regarding Maple Creek Investments, LLC.

13 This project was not heard by the zoning
14 administrator on July 16th due to public concern.

15 So, the proposed project is one 27,025 square foot
16 full sun outdoor cannabis cultivation in a consolidated
17 location seen on the site where the southern pin is on the
18 aerial -- or actually that's the next slide, excuse me,
19 which will you see on the next slide. The applicant
20 proposes to install four rainwater catchment tanks in an
21 existing flat area and to redevelop an existing wooden
22 shed into a 2,000 square foot ancillary drying and
23 processing facility.

24 COMMISSIONER LEVY: Mr. Ramos --

25 DIRECTOR FORD: Miseal?

1 MISEAL RAMOS: Yes.

2 DIRECTOR FORD: Are you intending to be screen
3 sharing right now?

4 MISEAL RAMOS: I am.

5 DIRECTOR FORD: You -- you --

6 MISEAL RAMOS: Am I not?

7 DIRECTOR FORD: You're not.

8 MISEAL RAMOS: Okay. Sorry about that.

9 DIRECTOR FORD: And could you check your
10 microphone, too, and turn it up a little bit so we can
11 hear you better?

12 MISEAL RAMOS: Perhaps. Yes. Am I -- am I being
13 heard?

14 CHAIR BONGIO: We're hearing you, just not real
15 loud.

16 MISEAL RAMOS: Okay. Well, I'll try and speak up.
17 Is my screen being shared correctly now?

18 CHAIR BONGIO: Yes.

19 COMMISSIONER PELLEGRINI: That's better.

20 MISEAL RAMOS: Good. Okay. So, I'll start over.
21 All right.

22 So, yeah, my name is Miseal Ramos, and I will be
23 presenting the facts regarding Maple Creek Investments,
24 LLC, a project not heard by the zoning administrator on
25 July 16th due to public concern.

1 The proposed project is for -- is a special permit
2 for one 27,025 square foot full sun outdoor cannabis
3 cultivation in a consolidated location. The applicant
4 proposes to install four rainwater catchment tanks in an
5 existing flat area and to redevelop an existing wooden
6 shed into a 2,000 square foot ancillary drying and
7 processing facility.

8 Annual irrigation will be approximately 200,000
9 gallons, the same capacity as the proposed rainwater
10 catchment tanks, and equals approximately 7.4 gallons per
11 square foot per year, under provisions of the CCLUO that
12 applies to parcels, tankers, or larger whereby one acre of
13 cultivation may be permitted with a special permit, and
14 the subject property is approximately 42 acres.

15 Power for the ancillary processing facility is to
16 be -- is proposed to be PG&E, a 200 amp single phase drop
17 with a backup generator in case of public service power
18 shutoff events.

19 Here is the project site seen in the pin to the
20 south. It is at the intersection of Maple Creek and
21 Butler Valley Road.

22 The pin to the north is the location of the
23 proposed drinking and sanitation water source for the
24 project, which is an off-site well on a parcel under
25 common ownership. The proposed use of the well as a

1 domestic water source for on-site personnel does not
2 represent a change in use for the well, as it is currently
3 serving a domicile.

4 The parcel is designated residential/agriculture in
5 which general agriculture is a permitted use. Cannabis is
6 considered an agricultural crop and a water storage
7 infrastructure such as is proposed on this parcel is
8 common on agricultural lands.

9 The applicant will improve the intersection of the
10 access driveways to Butler Valley Road to the same
11 pavement type as the county road, which is considered by
12 Public Works to be a category four road.

13 The proposed project neither includes nor precludes
14 residential development.

15 Here is an aerial image of the project site. The
16 proposed project does not represent incompatible land uses
17 given that it is permissible under this land use
18 designation, and the Commission has previously approved a
19 conditional use permit for an adjacent property for an
20 outdoor commercial cannabis cultivation.

21 In the environmental review, the following
22 documents were reviewed to establish compliance with the
23 CCLUO standards for cultivation activities as well as to
24 establish consistency with the county's EIR.

25 Public comments received regarding the project

1 included concerns regarding access, pollution, water
2 quality, fire risks, traffic, impact to biological
3 resources, noise and smell impacts to surrounding
4 neighbors, and noncompliance with required findings for
5 approval.

6 Here is a broader aerial of the location of the
7 project site, again, at the intersection of Butler Valley
8 and Maple Creek Road.

9 Staff recommends that the Planning Commission find
10 the project consistent with the addendum to the FEIR
11 adopted for the CCLUO per section 15164 of CEQA guidelines
12 to make required plannings for approval of the special
13 permit and to adopt a resolution approving Maple Creek
14 Investments, LLC -- special permit, sorry, subject to the
15 conditions of approval.

16 And that is all.

17 CHAIR BONGIO: Do any of the Commission have
18 questions for staff?

19 COMMISSIONER LEVY: Uh --

20 CHAIR BONGIO: Go ahead, Noah.

21 COMMISSIONER LEVY: -- I do. Well, I'm asking a
22 question that I already asked Director Ford and got a
23 short answer, but I just wanted to put it on the record.
24 I noticed that in our staff report, there was no reference
25 to any comments received from the Department of Fish and

1 Wildlife in the referral request for this one. I asked
2 Mr. Ramos and Director Ford this afternoon if there was
3 anything that we weren't hearing about. I'll let Director
4 Ford speak to that.

5 DIRECTOR FORD: *(inaudible)*, Chair?

6 CHAIR BONGIO: Please.

7 DIRECTOR FORD: Thank you, Commissioner Levy.

8 So, I -- after our conversation today, I was able
9 to talk to a representative of CDFW, and they did briefly
10 look at this project, identified that it is outdoor
11 cultivation, understood that it would not have lights or
12 generators associated with cultivation, and felt that
13 there were not the impacts to be concerned about
14 associated with this. So, they did not *(inaudible)*.

15 CHAIR BONGIO: All right.

16 COMMISSIONER LEVY: Thank you for following up on
17 that. Yeah, thanks.

18 CHAIR BONGIO: Any other questions, Noah, or I'll
19 open it up to anybody else. Thank you.

20 Melanie, I see your hand up. Go ahead, Melanie.

21 COMMISSIONER MCCALOUR: Oh, thank you. I was just
22 wondering, it's kind of along the same lines, whether
23 there was any mention by them of it being close to the so
24 called salmon super highway I think it's called. Yeah,
25 salmon super highway, four miles of habitat for threatened

1 coho salmon. It's a tributary close by, from what I
2 understand.

3 CHAIR BONGIO: I guess that's a question for you,
4 John.

5 DIRECTOR FORD: Yeah. So, through the Chair, thank
6 you. They did not provide comments on that and did not
7 express a concern with the proximity of the site to the
8 Mad River.

9 COMMISSIONER MCCALOUR: Okay. Thank you. I
10 haven't verified it myself, it was something that someone
11 mentioned to me also, and I just wanted to see if you had
12 heard of it. I haven't been able to find anything on it
13 myself. Thanks.

14 CHAIR BONGIO: Any other questions for staff?

15 Seeing none, I will open this up for public
16 comment, because I believe we will have a few people
17 tonight. So, I see that we at least have one attendee,
18 but I'm not seeing a hand up. Maybe I'm not -- Julie --
19 go ahead, Julie. Julie, are you there? Now we're
20 getting attendees. So, I guess, Julie, they will come
21 back to you.

22 Next -- I'm not showing hands by people, I'm just
23 showing that there's five hands up. I don't know -- so go
24 ahead, Alex. I don't know what order they're in. It's
25 not showing.

1 (Pause)

2 DIRECTOR FORD: So, if -- Mr. Zigler, can you
3 unmute yourself?

4 CHAIR BONGIO: Alex, can you unmute yourself? Go
5 ahead, Alex, if you're there.

6 Alex, can you unmute yourself? Go ahead, Alex, if
7 you're there.

8 Let's go on to the next person and then come back
9 around.

10 So, Ryan Shields is the next speaker. Are you
11 there?

12 BRIAN SHIELDS: Hello. Are you receiving me?

13 CHAIR BONGIO: Yes. We're receiving you now.

14 BRIAN SHIELDS: Okay. My name is Brian Shields,
15 and I'm the project manager for this particular project,
16 and I just wanted to chime in and say I'm here to answer
17 any questions after the public comment period. And I
18 wanted to thank the Planning Commission for holding this
19 forum, as well as county staff for the excellent job
20 they've done in preparing this project thus far.

21 So, I'll turn it back over for the public comment.
22 I just wanted to let everybody know I am here.

23 CHAIR BONGIO: All right. Thank you, Brian.

24 Jill is the next speaker.

25 SKYLAR GIORDANO: All right. Hello? Can you hear

1 me?

2 CHAIR BONGIO: Yes.

3 SKYLAR GIORDANO: My name is actually Skylar
4 Giordano, I am using my wife's computer, so --

5 CHAIR BONGIO: You're Jill to us.

6 SKYLAR GIORDANO: I -- I am the neighbor directly
7 to the south bordering the parcel in question. And I'm
8 not fundamentally opposed to cannabis, but I am opposed to
9 a non-lived-on site right there on the road. I feel like
10 it's going to have impacts negative to our lifestyle and
11 the community. So those are kind of just broad concerns.

12 The wetland, my well is also directly downhill from
13 this natural wetland (*inaudible*), so I am curious as to
14 what those impacts of drawing that kind of water will be
15 on my already one gallon -- one gallon a minute well.

16 But mainly, I see that the road, the driveway, the
17 proposed access to this grow site originates on my parcel.
18 And I have my title report in front of me and show no
19 easements with the Dunaways or Maple Creek, LLC. So,
20 that's -- those are my concerns.

21 CHAIR BONGIO: Okay. Thank you.

22 Next speaker is Victoria, please.

23 VICTORIA FOERSTERLING: Can you hear me?

24 CHAIR BONGIO: Yes.

25 VICTORIA FOERSTERLING: Okay. Good. That's a good

1 thing.

2 As a professional realtor in Humboldt, I am often
3 asked what the purpose of property ownership is, and by
4 definition it means to have quiet enjoyment of one's
5 property, which with the Maple Creek proposed cultivation
6 will be impossible to attain with added traffic, noxious
7 smells, fertilizer leaching into residential water
8 sources, and the matter of our watershed.

9 Surveillance cameras and the hostile environment
10 brought on by large grow operations, not limited to theft,
11 vandalism, illegal drug sales, use and illegal firearms,
12 not to mention the decline in property values of
13 neighboring properties. This was also demonstrated on the
14 show, Murder Mountain, which our county is now known for.
15 It's not what we want our county to be known for.

16 This proposal is not principally permitted, and
17 inevitably will damage and inhibit neighboring properties
18 to use their properties within their principally permitted
19 use. For example, if a neighboring property were to have
20 a day camp or a Boy Scout camp being next to a large
21 federally illegal grow operation, not principally
22 permitted, detracts from and impinges upon the rights and
23 established uses of neighboring property owners.

24 Thirdly, there is simply not enough water to go
25 around. The rivers are lower than they've ever been. The

1 proposed catchment system takes ground water away from
2 neighboring wells and the matter of our watershed and its
3 sensitive ecosystem. It is not an adequate source of
4 water for the proposed cultivation. And as you --
5 somebody had said, that it was a residential -- what's
6 this -- residential/agricultural, this does not seem like
7 a residential/agricultural type of grow, this is more
8 bordering on a commercial grow, which should not be
9 permitted in this area.

10 It's close to a school. It is in the middle of
11 everything driving. The roads simply cannot handle that.
12 As part of the plan that shows that they're going to be
13 trucking in water, and I dare any one of you to drive past
14 the bridges to get to this property on a day that people
15 are going to the river, and you can barely fit a bicycle
16 through the traffic.

17 Previous illegal grow operations owned by the same
18 members of Maple Creek, LLC has resulted in disruption to
19 Native American burial grounds. I'm wondering if there
20 has been any substantial true archaeological investment.
21 The part that I read did not seem thorough.

22 And, of course, the mapped wetlands are absolutely
23 too close to proposed cultivation. There is an issue with
24 the wetlands data in the report done by Tara and Pacific
25 Watershed. It was noted in an extremely dry time of year

1 and is completely inaccurate.

2 There are also currently property lines in dispute
3 on the subject property proposed for cultivation.

4 The culmination of these faults in Maple Creek, LLC
5 proposal is why I strongly oppose this project.

6 CHAIR BONGIO: Thank you, Victoria.

7 Next is Elizabeth Foersterling.

8 ELIZABETH FOERSTERLING: Okay, good evening to all
9 of you. I would like to ask if the board -- I mean, if
10 the Planning Commission here has had a chance to read our
11 submitted documents? And for the *(inaudible)*, I would
12 like to submit them for the minutes this evening.

13 CHAIR BONGIO: We did receive them.

14 ELIZABETH FOERSTERLING: There was the option --
15 have you seen them?

16 CHAIR BONGIO: Yes, we did receive them.

17 ELIZABETH FOERSTERLING: Okay. Super. So, I don't
18 have to read them tonight for you to understand where I'm
19 coming from and what I have to say.

20 What I would like to do is point out the
21 discrepancies in tonight's presentation by the planning --
22 the staff report by the Planning Department. So, in the
23 other staff report, it wasn't 200,000 gallons, it was 214,
24 because 14,000 gallons are already on, with six plastic
25 tanks sitting there in the intersection of Buttler Valley

1 and Maple Creek Road.

2 Another question I would like to know is how many
3 of the Planning Commission this evening have driven out
4 and seen the -- viewed the scene before this meeting.

5 So, anyway, there's a discrepancy of 14,000 gallons
6 plus the water that they said for drinking water. That's
7 not what they said in the other staff report.

8 So tonight we're getting a completely different
9 view. Fourteen thousand gallons of water is enough to
10 live on for the year, and they want to blow it away into
11 the soil with pesticides and fertilizers. So if you read
12 the staff report, or the proposal of the fertilizers and
13 the pesticides that are planned to be stored and used into
14 native soils, you will find that it reads like a horror
15 film, something out of Erin Brockovich. Some of you are
16 old enough to know what -- who that is and what Erin
17 Brockovich had to do to rid the chemicals in the water.

18 So for two years there was an unpermitted grow on
19 that parcel, the 09 parcel, and that water that they used
20 for those 14,000 gallons drew down from our well that we
21 built in 1989. It impacted us so greatly for those two
22 years that we did not have the same amount of water in
23 June. Then there was July, August, September, October,
24 and until November.

25 So your ordinances, your general plans, everything

1 that I have read supports us, the landowner. And if it is
2 not applied correctly, I only can say that it's going to
3 have to go further, because I have read the law and I've
4 read the ordinance, and I've read everything that you have
5 put before us, and it supports us, the adjacent
6 landowners.

7 Again, it says there would be six employees in the
8 staff report, now they say ten. In the report they call
9 the cabin a shed, which not only shows that they have no
10 regard for the history in this area, they have no regard
11 for what is already here.

12 They said no generator. They said yes generator.
13 They said that they could get renewable resources, now
14 they're saying PG&E. Well, clearly in my document, I
15 outlined how dangerous PG&E has been to the state of
16 California for the last how many years? Three? Why is
17 that? Because we have been in drought. There is not
18 enough water. There are enough grows right here. We're
19 surrounded by them. One, two, three, no more. It's
20 enough!

21 Sixteen miles they want to truck water. The staff
22 report that we saw tonight, they didn't talk about the
23 portable toilets they want to put on the intersection of
24 Butler Valley and Maple Creek Road. These roads that I
25 have walked and run on for 32 years. And for those two

1 years that they grew, not the amount that they are
2 proposing to grow now, but it smelled all the time. Not
3 just when I ran by that parcel and those people who have
4 been abusive, they've trespassed, they've stalked us, and
5 they have threatened to kill my dog, and they have
6 threatened me and my life because my life is with this
7 land.

8 In January of 2021, on the 26th of January, it will
9 be 33 years that we have lived here. The site plan that
10 they have used goes right through our house. It's not the
11 parcel map that we bought the land with, it's not the line
12 of the boundary that we bought the land with.

13 *(inaudible)*.

14 Yeah, I can go on, I've lived here for 33 years.
15 You're gonna cut me off? I'm sorry, I'm supposed to have
16 three minutes.

17 CHAIR BONGIO: Yeah.

18 ELIZABETH FOERSTERLING: Okay, public works. They
19 only -- they only say the road. Nothing -- nothing has
20 been checked off. Nothing. Nothing has been checked off.
21 So, I can write a book now if you guys aren't gonna listen
22 to me, that's fine, but I will tell you attachment five
23 has nothing checked off except for the Division of
24 Environmental Health for the portable toilets. Okay? The
25 Department of Fish and Wildlife has not had any comment,

1 not to me and not to you. Division of Water Rights, it
2 has not been checked off. The district attorney, not
3 checked off. Agricultural Commission, not checked off.
4 Maple Creek School, not checked off. Niland Volunteer
5 Fire Department, not checked off. For a plethora, a
6 multitude.

7 I haven't even begun to write. I only had a month,
8 and you have my two documents to go by. But I haven't
9 stopped yet. This is beyond feasible, it's beyond
10 sustainable --

11 CHAIR BONGIO: Okay, you're going to have to wrap
12 it up.

13 ELIZABETH FOERSTERLING: Okay. And I -- I ask you
14 to deny this permit to the Maple Creek Investments, LLC.
15 Their apparatus of surveillance and their mentality and
16 what they do and the pollution, it's too much.

17 CHAIR BONGIO: Okay. Thank you very much. You're
18 going to have to wrap it up.

19 Next speaker, please.

20 Alex, you're next.

21 ALEX ZIGLER: All right. And thank you for the
22 opportunity to speak tonight. My apologies (*inaudible*).

23 CHAIR BONGIO: Thank you. Go ahead. We lost you.

24 ALEX ZIGLER: Hello?

25 CHAIR BONGIO: We hear you now.

1 ALEX ZIGLER: Okay. My apologies for technical
2 difficulties here, and thank you for the opportunity to
3 speak.

4 I'm going to jump right in and say that my biggest
5 concerns, and echoed by most of the folks that have spoken
6 tonight, would be water use, particularly pertaining to
7 calculations on the amount of water that will be required
8 by this project in order for cultivations to proceed
9 throughout the year. I would say that they are nebulous,
10 there are multiple mentions both in the WRPP in the actual
11 plan submitted by applicants and in staff's synopsis for
12 the Commission that seems like guesswork at best. You
13 know, it's not well defined. I would say that the number
14 that they have put down for the required water for their
15 cultivation operation is not well defined. I didn't see
16 any logs, at least in my review, that really prove that
17 that was what they would require for it.

18 And additionally to that, I don't see any
19 provisions in the plan mentioned anywhere for whether
20 there is insufficient water provided through the water
21 catchment system during a particular grow cycle. You
22 know, if there's not enough rain, they're not going to
23 have enough water cached. What's going to be their source
24 of water then? I don't see any provisions toward trucking
25 in water, which would be my guess is the next logical step

1 for them. There's no accounting for additional traffic or
2 load on the road that was going to be required by trucking
3 water, things of that nature. Would they allow plants to
4 die off should no water be available? Things that are not
5 accounted for addressed in the plan that I think are
6 critical for something of this scale that's already
7 getting this much blowback from the community already.

8 I would say additionally (*inaudible*) concerns,
9 impacts to a massive reduction in available water recharge
10 for ground water, water runoff to streams, rivers.
11 Although they may be a little bit further away, we all
12 know that those hydrology systems are extremely connected
13 on many levels, and you're talking you're only less than a
14 mile away from the river, the fact that that's not of more
15 concern raises a red flag for me.

16 Where the water will be cached, according to the
17 site map, is significantly up slope of the mapped wetlands
18 on the parcel. That's water that's being taken away from
19 those wetlands. Those are very important pieces of
20 environmental resource for (*inaudible*) area. I don't see
21 any discussion for what would happen if that water's taken
22 away, nor do I see any discussion about what would happen
23 if the catchment system fails, certainly not if there's a
24 catastrophic failure of any water storage. Anything that
25 would protect either the crop or the road or anything

1 downslope of those catchment tanks is not addressed, I
2 think that's an important security concern, not only for
3 the people around, but for the site itself.

4 The wetland delineation mapping, I would -- I think
5 is a little deficient. I think that the WRPP and the
6 wetland delineation map conflict in a lot of their ideas
7 about how much water (*inaudible*) performed at very draw
8 points of the year. It's explicitly stated, particularly
9 in wetland delineation mapping, that it was -- that their
10 initial investigation was performed at an exceptionally
11 dry time of year, I believe it was the beginning of
12 October in a historical drought year. Also something of
13 concern with what the assumptions about this project are
14 being based upon.

15 I also have concerns about the number of changes
16 over the last few, I guess, two months when this project
17 actually came into public view, about the source of water,
18 how much water would be required, and how the water would
19 be treated and applied to the crop. It doesn't seem --
20 and I understand the applicant was probably trying to
21 respond to questions from staff from public input, the
22 fact that it was not a hard number from the beginning,
23 that it has changed so much back and forth, and so many
24 unreliable numbers and conflicting numbers have been
25 provided, also raise a red flag about whether the water

1 that they're proposing for this project is going to be
2 sufficient.

3 I do think there are a lot of other very serious
4 issues. I think that a lack of input from other
5 regulatory agencies also is concerning, I would echo
6 Commissioners' comments on that. Just because they
7 declined to make a comment over the phone to John Ford,
8 with all respect, on the day of this meeting does not mean
9 that they have adequately vetted this project nor been
10 able to respond to the particulars of a report or of a
11 project that admittedly has been changing on a daily basis
12 based on the materials that we're receiving as the public.

13
14 I do think that there are threats to environmental
15 resources, protected wildlife. Much of elk -- or Maple
16 Creek in that area is an elk migration quarter, they mob
17 all over the place below the river, up above the river, on
18 both sides of the road.

19 CHAIR BONGIO: You need to wrap up, Alex.

20 ALEX ZIGLER: Oh, excuse me. Sure.

21 I would say that the cumulative effects of this
22 project taken as a whole, the cumulative effect, the
23 community concern about this project and the uncertainty
24 with the way that it's moving forward, even if taken by
25 themselves are not enough to disprove this project or at

1 the very least to push it, cumulatively would be grounds
2 for the Commission to deny, if not push the project.

3 Thank you for your time. I appreciate the
4 opportunity to speak.

5 CHAIR BONGIO: Thank you.

6 Shirley Williams -- Julie Williams. Sorry. Julie,
7 go ahead. Julie, are you there?

8 We'll go on to the next speaker and then come back.

9 Judy, are you there?

10 JUDY: Hi, can you hear us?

11 CHAIR BONGIO: Yes.

12 JUDY: Hi. We are neighbors across the river, and
13 we have been there for 30 years. Can you hear me all
14 right?

15 CHAIR BONGIO: Yes.

16 JUDY: And we have -- we have significant concerns
17 from multiple perspectives. You know, just the water is
18 the life for everybody that lives out there, and -- and,
19 but not only that, the water of the Mad River is critical
20 to the whole Humboldt County community.

21 And I feel like it's really, really important that
22 the Humboldt County Planning really look as a whole at the
23 cumulative effects of all of these different grows that
24 are happening up and down the Mad River, and really what
25 the impact of it is to our main source of water. And so I

1 think that's really important because every time you have
2 one of these come presented before you, it's just one of a
3 whole series of. And what has happened is over the 30
4 years we have been there, we have -- we purchased this
5 property in 1989, and what -- for years Humboldt County
6 has been a bastion of organic farming and very against
7 monocultural crops, you know, that was one of the big
8 mainstays of it. And now what is ultimately happening is
9 there's -- it's becoming a monocultural crop up and down
10 the river and throughout Humboldt County, and I think -- I
11 think the cumulative impacts are important, that we really
12 look at that carefully.

13 But, also, in addition to that, there are safety
14 issues. When you start having people from out of the area
15 and it become non-owner occupied and they're non-
16 residential, it's a whole different -- it's a whole
17 different impact onto the community. And then you're
18 going to have transient workers occurring up in -- that
19 are just coming at certain times of the year and
20 increasing the load on the road, which is not a safe road
21 to begin with. And it's definitely a concern.

22 And safety is a definite concern. We're out
23 there, you know, there's people that we don't know, and
24 it's just -- there's definitely safety concerns, and
25 particularly if you're going into a project to begin with

1 that's requiring video surveillance for -- and it already
2 has safety concerns about what is there.

3 Also, you know, really I think we need to look at
4 the zoning of this, and I think also the fact that there
5 is a wetlands needs to be really looked at carefully,
6 because just what you can't see from the overview of that
7 map is that -- is that it's a very steep down to the
8 river, across the road, down the river, right directly
9 into the Mad River. And it's -- it's very shallow, the
10 water -- the ground water table is very shallow there, and
11 there's quite a bit of -- it's very -- it drains right
12 into -- into the river.

13 So, there's multiple concerns that we're concerned
14 about and we -- I'm not so great at articulating here, but
15 if we could -- you know, we have presented some -- some
16 documents of concerns, but I really think we need to look
17 at what we're (inaudible) --

18 CHAIR BONGIO: You're going to have to wrap it up,
19 Judy, please.

20 JUDY: Okay, that's fine.

21 CHAIR BONGIO: All right. Thank you.

22 I'm trying to be lenient on the time, but I can't
23 let you go too long over.

24 JUDY: Fine. That's fine.

25 CHAIR BONGIO: Okay. Next caller, please. Oh, I

1 guess that's it. I apologize, but I can't see who's
2 calling in tonight, for some reason it's not showing up,
3 so they're telling me.

4 So, with no more public, I will close the public
5 comment and I will bring it back to the Commission for
6 deliberation.

7 CHAIR BONGIO: Ronnie, go ahead.

8 COMMISSIONER PELLEGRINI: Yeah. I appreciate a lot
9 of the passionate comments that we heard tonight, and I
10 super appreciate Noah's question in the beginning, and I
11 really admire Director Ford for reaching out to Fish and
12 Game to try to get an answer to the question regarding
13 their concerns.

14 Now having said all that, my bigger concern is, I
15 can't -- I can't feel good about just recommending
16 approval for this without a more thorough vetting by Fish
17 and Wildlife because of the anadromous and the water
18 issues. I do -- I'm not trying to disparage anything that
19 Director Ford has done or even their reply back, but you
20 know, a couple minute conversation really doesn't satisfy
21 that requirement in my mind. And the water use and the
22 Maple Creek drainage into the Mad River.

23 And then also, another issue was the abatement.
24 This property, it sounds like, according to Planner Ramos,
25 this property was abated a couple years ago. So these

1 neighbors have been dealing with some of these problems,
2 and you can hear it in their voices in their public
3 comment, you know, now this property owner's trying to get
4 legal, and that's the way it should go, but I would like
5 an answer, or a comment from Fish and Wildlife of a more
6 thorough degree.

7 And that's the end of my comments. Thank you.

8 CHAIR BONGIO: Thank you, Ronnie.

9 Anybody else?

10 COMMISSIONER O'NEILL: I have a question of staff.
11 There was an allegation by one of the speakers that there
12 was a disturbance of burial sites that were either on or
13 near that site, and I'm curious as to what tribe was
14 notified in the culture report for this project.

15 CHAIR BONGIO: Okay. We'll have them comment at
16 the end on -- unless you want to comment about it now.

17 DIRECTOR FORD: Miseal, do you have that record in
18 front of you?

19 MISEAL RAMOS: Yeah. Let me --

20 CHAIR BONGIO: No -- no sound.

21 MISEAL RAMOS: The jurisdictional tribes are the
22 Blue Lake Rancheria and the Bear (*inaudible*).

23 DIRECTOR FORD: You just (*inaudible*) mute again.

24 MISEAL RAMOS: I said the jurisdictional tribes are
25 the Blue Lake Rancheria and the Bear River.

1 COMMISSIONER O'NEILL: So, did you find in the
2 record any -- that there were burial sites there or is
3 that just something that's being alleged? Is there any
4 knowledge of that?

5 DIRECTOR FORD: So, let me just try to explain the
6 process that we go through a little bit here, Commissioner
7 O'Neill. Is that when we receive the application, we have
8 agreements with all the tribes, and we circulate the plan
9 to the tribes for their review. And one of the things, as
10 you're aware, is that the ordinance requires that there be
11 no cultivation within 600 feet of a tribal cultural
12 resource. So that allows the tribes to indicate whether
13 or not they're concerned with something that's on the
14 site, and if there is something on the site, there is the
15 ability to say that can't happen here. We really don't
16 provide a public report when there has been an
17 archaeological study done, because we want to respect the
18 privacy and the integrity of *(inaudible)*.

19 And so an archaeological report was done on this
20 site. I assume that it was asked for by the tribe, that's
21 very common for the Bear River *(inaudible)* Rancheria
22 tribal historic preservation officer to ask for a cultural
23 analysis. And so I did notice in the file when I was
24 looking at it that there is such a report in the file. I
25 did not read it to see whether or not there had been a

1 disturbance or not, but based upon the conditions of what
2 were presented, I would -- Mr. Ramos, is there anything to
3 indicate that there was a violation of a *(inaudible)*?

4 MISEAL RAMOS: I believe my takeaway from the
5 report is that the results of the survey for cultural
6 artifacts on-site was negative, that there were not
7 artifacts that were going to be adversely affected by the
8 proposed development.

9 CLIFF JOHNSON: And through the Chair, I'd like to
10 just add, I'm actually looking at the archaeological study
11 right now that was prepared by Jamie Roscoe, and it did
12 not identify any archaeological sites or resources on the
13 property. They -- both the Bear River band *(inaudible)*
14 and the Blue Lake Rancheria *(inaudible)* did respond that
15 they did not have any concerns and that they had read the
16 report.

17 CHAIR BONGIO: Thank you.

18 Okay. Does that answer your question, Peggy?

19 COMMISSIONER O'NEILL: *(No audible response)*

20 CHAIR BONGIO: All right. We'll move on.

21 Noah, your hand's up, go ahead.

22 COMMISSIONER LEVY: Thank you, Mr. Chairman.

23 So, yeah, I do have a couple of followup questions
24 for the staff, perhaps for the applicant. But first of
25 all, I just want to acknowledge that, you know, we heard

1 some very heartfelt testimony from some of the neighbors
2 and residents of the Maple Creek area.

3 I personally am very, very fond of the area around
4 this property. I'm not unfamiliar with it. My kids have
5 played out in the Maple Creek Elementary School playground
6 many times. I've been to the Maple Creek swimming hole at
7 the Mad River more times than I can count.

8 And to be totally honest, I would like to find some
9 objective reasons why this shouldn't go through, and I'm
10 not saying that there aren't any, but on the other hand,
11 what I see here is a few things that I would consider to
12 be a pretty good marker of a clean and low impact project
13 in that they are using on-grid PG&E power. And, I mean,
14 you can't fault them from using PG&E power. I mean, the
15 PG&E lines are already there. So, yeah, maybe there's a
16 fire risk associated with power lines, but it's a hell of
17 a lot better than generators in my book.

18 From what I understand, and I do want to confirm
19 this, they're entirely planning to use rainwater catchment
20 for their irrigation. There's a well involved. But as I
21 understand it, the well is only to be drawn upon for
22 drinking water to supply the employees.

23 You know, it's full sun, outdoor in the ground. I
24 mean, these are three or four different things that we
25 kind of want to see when we're talking about low impact

1 grows.

2 Now, the big thing that I'm concerned about here -
3 - and I don't feel like this was fully addressed in the
4 staff report, so I'd kinda like to ask specifically about
5 this. Well, first of all, am I correct that the
6 irrigation water is entirely to be used for rainwater
7 catchment? Because if that's true, you know, rainwater
8 catchment doesn't deprive Maple Creek of water. It
9 doesn't. You know, it doesn't deprive any of the
10 neighbors of water. So much more water falls in rain than
11 can be captured. The catchment is the least impactful way
12 that you can gather your water. That I know, if that's
13 true that that's what they're doing.

14 What I'm -- what I'm not so sure about is the whole
15 question of the abatement order. If -- what I don't like
16 about this project is the sense that we might be rewarding
17 past bad behavior. You know, if -- you know, there's a
18 lot of antipathy towards this project, and I -- I honestly
19 tend to see projects that have a huge amount of neighbor
20 antipathy as having something wrong with them if only in
21 that the applicants didn't bother to explain to the
22 neighbors what they were doing and why it wouldn't cause
23 these problems.

24 So, all of what I've said is sort of what I see as
25 having checked the right boxes, but I'm still not

1 convinced that this is a good project, because I'm
2 concerned about the whole history of abatements for past
3 violations. And I'm not so sure that past violators
4 should get such an easy pass to just re-apply and do it
5 better the second time.

6 So, I guess, there's a couple of questions there,
7 about the water, where it's coming from, and what is the
8 history of violations that led to the abatement order.

9 Thanks.

10 CHAIR BONGIO: Melanie, I see you have your hand
11 up.

12 Oh, yeah, why don't we go ahead and we'll answer
13 them as we go, that way it's fresh on their minds. Go
14 ahead.

15 DIRECTOR FORD: Miseal, are you going to answer the
16 water question?

17 MISEAL RAMOS: Yes. So, yeah, the proposed
18 irrigation water source is to be solely from four 50,000
19 gallon engineered rainwater catchment tanks without any
20 surface water diversions.

21 CLIFF JOHNSON: I did want to add, before Director
22 Ford speaks of abatement, I did just want to add that we
23 are proposing a condition of approval that the irrigation
24 tanks be metered so that we can ensure that they have
25 enough water for their irrigation -- sorry, for their

1 cultivation.

2 And the question did come up, what would happen if
3 they do not have enough water that they've collected. The
4 county would work with them to reduce the cultivation area
5 so that they do not have to rely on anything other than
6 that rainwater catchment.

7 COMMISSIONER LEVY: So there's no provision for
8 trucking water, just to be clear, that's not allowed.

9 MISEAL RAMOS: Not for irrigation.

10 COMMISSIONER LEVY: Right.

11 CLIFF JOHNSON: Correct. And the ordinance would
12 not allow or authorize that.

13 DIRECTOR FORD: So, relative to the abatement, I
14 actually don't remember this one, Miseal, do you recall
15 what --

16 MISEAL RAMOS: Basically, I think the only record I
17 can find regarding it is that per a settlement meeting
18 with yourself and the applicants, a fine was to be
19 assessed upon the decision being made for the project by
20 the relevant hearing body.

21 DIRECTOR FORD: That's -- that's what I wanted to
22 make sure of. Thank you. Is that this is not -- was not
23 an abatement in terms of a code enforcement action, this
24 was a situation where they were cultivating before they
25 had their permit, and it was a circumstance where there

1 was existing cultivation on the site, there was some
2 reason for some misunderstanding, and so we -- I allowed
3 them to pay their fine upon approval of the project rather
4 than normally what we do when a applicant is in violation
5 and we assess -- or I assess a penalty that needs to be
6 paid before we continue processing the permit.

7 So, let me say that, unfortunately, it is not
8 uncommon enough for there to be violations associated with
9 permits, and so I wouldn't want to single this particular
10 applicant out, because if we began to take detrimental
11 action because of a violation, that would significantly
12 change how we deal with many, many, many permits.

13 COMMISSIONER MITCHELL: I have a question -- or a
14 followup question, Director Ford.

15 CHAIR BONGIO: Go ahead.

16 COMMISSIONER MITCHELL: So, what you said just
17 there confused me, because I thought this was coming in
18 under new cultivation not existing. And the CEQA
19 exemption that we're using is not existing facilities.
20 So, can you describe a little bit more about how much of
21 this project is existing and how much of it is new, and
22 then why are there considered violations if it would be a
23 pre-existing cultivation?

24 DIRECTOR FORD: So -- sure. Thank you for the
25 clarification. There was pre-existing cultivation on

1 this. They qualified for the amount of cultivation as
2 new, and so they're just simply applying for new to make
3 it more simple. There was historic cultivation on the
4 property. The fine was related to the fact that they were
5 cultivating without having permits.

6 COMMISSIONER MITCHELL: So they didn't start
7 cultivating after the first ordinance was put in effect,
8 this is something that would have allowed them to apply
9 for existing cultivation.

10 DIRECTOR FORD: This is for new. That is correct.

11 COMMISSIONER MITCHELL: Okay. Thank you.

12 CHAIR BONGIO: Does that answer your questions?

13 We'll move on to the next (*inaudible - away from*
14 *microphone*) Are you there, Melanie?

15 COMMISSIONER MCCALOUR: Yes. Hi. Thank you.

16 I just wanted to say that I also agree that the
17 water usage seems reasonable or even beyond reasonable. I
18 would still love to see what -- I'm very happy the
19 Planning Department did move to start putting the water
20 usage in, you know, in terms of the actual values. I
21 would still love to see a reference point even in there
22 for the public just so it's really clear this is above or
23 below the average water use for this type of site. But in
24 any case, I've read through it and I'm satisfied.

25 So, I don't really see -- likewise, I don't really

1 see anything that stands out that would, you know, have us
2 not approve the project. You know, there's not going to
3 be a light pollution. And so the only possible effect
4 that I see is traffic, and so -- and I don't really think
5 it is significant, but I did have a question, because it
6 was brought up several times, that maybe would satisfy
7 some of the public, was the traffic analysis done on the
8 basis of a year or on the basis of a month? And was it an
9 average or was it a mode? What type of metric was used
10 for that? Because as we know, there is a fair bit of
11 traffic already in that area in the summer.

12 So that's the only question I had and a couple
13 comments. Thank you.

14 DIRECTOR FORD: Do you want us to respond to that?

15 CHAIR BONGIO: Go ahead.

16 DIRECTOR FORD: So in response to the traffic
17 analysis, the way traffic is evaluated, up until, as
18 you're aware, January 1st -- or July 1st of this year, is
19 through level of service standards. And when the
20 ordinances 1.0 and 2.0 were adopted, there were no
21 roadways that were identified as being within a
22 deteriorated or failing condition. So adding traffic to
23 these roadways, while it may be something that the public
24 doesn't like, it doesn't so add traffic to a road that
25 additional improvements would be needed that would require

1 additional work to widen or improve the facilities. And
2 that is what we found here is that this project is
3 consistent with previous environmental work, and doesn't
4 change any of those assumptions.

5 COMMISSIONER MCCALOUR: Thank you for that
6 clarification.

7 CHAIR BONGIO: Any other -- sorry about that, I
8 haven't spoke for so long I forgot I was muted.

9 We already dealt with the road issue, so I'm not
10 going to bring that up, but I'm going to bring up a couple
11 other issues that one of them got brought up by a couple
12 of the speakers and I think it's been discussed a little
13 bit amongst the Commission as well, and that's the
14 cumulative effects.

15 I think, you know, just tonight we have two
16 projects that are in this area. I know we've approved one
17 other at least, and I hear about others that are coming,
18 so I think we really need to think about what all these
19 add up to be, because you know, I've lived here all my
20 life and there used to be a salmon run in the Mad, in fact
21 there was a good salmon run in the Mad, and there's no
22 salmon run in the Mad anymore. You know, steelhead is
23 still pretty good, but salmon is almost gone. It's bad.

24 And the whole push for doing these -- this is the
25 second point -- the whole push for doing these cannabis

1 ordinances was to get the grows out of the hills. Well,
2 we're not doing a very good job of that, we just keep
3 allowing them out in the hills. And I think this is a
4 good place to start on looking at getting them where we
5 said we were going to get them, and that was out of out in
6 the hills and off the tributary roads and in the more
7 sensitive habitats and get them in closer where you don't
8 have the traffic issues and the water issues. And so
9 that -- that would be where I see myself heading in.

10 You know, it seems like a good -- a lot of things
11 seem good about this project. The way they're doing the
12 water catchment and all, but you know, not too long ago we
13 had a really good project before us that had a lot of good
14 things, the wind project, and we said that that was a
15 really good project, too, but it just wasn't the right
16 place to do it. And, you know, the right place to be
17 doing this is not up in the hills. So, you're going to
18 see me voting against this project because we need to get
19 them out of the hills.

20 And that's all I have to say.

21 Any other Commissioners that want to speak before I
22 bring it back for a vote?

23 Seeing none, I will close the discussion and bring
24 it back to the Commission to vote on this issue.

25 Anyone?

1 COMMISSIONER LEVY: Sorry, I -- hey, can you hear
2 me? This is Noah.

3 I'm just wanting to chime in to say that I'm -- I'm
4 persuaded by what Chair Bongio just said. You know, this
5 is being classified as a new project. I understand that
6 it was an existing project and that there's a history of
7 abatement and so forth. And as I understand it, that --
8 they were led to re-apply as a new project because of, you
9 know, certain advantages that would come from doing it
10 that way rather than doing it as existing, because I guess
11 you could expand what you had before because of the zoning
12 and what it allowed.

13 But I just want to say, and I feel extremely torn
14 on this, but I kinda feel like I want to treat this one a
15 little differently. If it was an existing project that
16 was being cleaned up and remediated and made more
17 environmentally friendly, and if that's what the purpose
18 of it was, I would be inclined to view it a little bit
19 more kindly.

20 I will totally say, and I have said, that there's a
21 lot of things about this project that are doing it the
22 right way. They're doing it the right way with water, as
23 far as I'm concerned, they're doing it the right way with
24 growing it outside. But there's something that doesn't
25 sit right with me about this, and that has something to do

1 with the fact that I see no evidence in the record that
2 they even tried to communicate with the neighbors about
3 what they were doing, about how what they are proposing to
4 do is not going to bring criminals and dogs and, you know,
5 all kinds of bad stuff. I mean, I will say, I've been out
6 there at the swimming hole, like there's no way this grow
7 is going to bring more traffic in the summer than that
8 swimming hole. It's a fucking amazing swimming hole.
9 Sorry. It's a great swimming hole. A lot of traffic. A
10 lot of people come out there. There's no way that this
11 grow is going to cause that kind of impact. But there's
12 something that doesn't sit right about it.

13 And, again, I would view it a little differently if
14 they were just taking an existing grow, cleaning it up,
15 and classifying it as existing. But it's not, it's a new
16 -- it's a new project.

17 So, despite all the things that they're doing
18 right, I don't know that I can support it. I just wanted
19 to go on the record about that.

20 CHAIR BONGIO: Melanie has her hand up.

21 COMMISSIONER MCCALOUR: Thank you, Chair.

22 I just, since we're discussing this, I'd like to
23 say that I -- I do take cumulative effects very seriously,
24 and cumulative impacts is one of the exceptions to the
25 CEQA exemption. On the other hand, the Planning

1 Department knows this and, you know, takes this into
2 consideration in their work, and so I don't see that at
3 least yet.

4 One of the callers said, oh, do we want this to be
5 what our county is known for? And, you know, for better
6 or for worse, it is what it is known for, and the pursuit
7 of, you know, the (*inaudible*) for cannabis is going to be
8 what maybe saves the economy here in this county.

9 So, I mean, there are multiple considerations. But
10 what it comes down to for me is not really what I
11 personally think, it's whether everything has been
12 satisfied, you know, if there's any gray areas even, you
13 know, that's what we look for in terms of the CEQA, in
14 terms of the ordinances. And there really isn't. I mean,
15 you know, we're not allowed to take into consideration
16 their rude behavior, if indeed it existed, or
17 communication with the neighbors or dogs or any of those
18 things really.

19 And in this particular case, I don't even see that
20 this project is at all close to not satisfying any of the
21 requirements legally. And indeed if it were to be -- if
22 we, you know, didn't approve it, I'm sure it would just be
23 a long litigation, which ultimately doesn't really improve
24 what we have going on at the county level anyway.

25 So, I'm still in favor of approving this project.

1 Thanks.

2 CHAIR BONGIO: Thank you, Melanie.

3 I see Ronnie has her hand up.

4 COMMISSIONER PELLEGRINI: Yeah, just really
5 quickly. Alan and Noah articulated I guess what I was
6 kinda trying to say earlier and not as well. But Maple
7 Creek is a very special place. I won't throw out the F
8 bomb like somebody did, but it's -- and we gotta do it
9 right. And I -- it's not sitting right with me, so I
10 can't -- I'm not supporting it.

11 CHAIR BONGIO: Thank you, Ronnie.

12 I'm not seeing -- wait, I think those are the same
13 hands. So I'm not seeing any more hands from the
14 Commission.

15 And the Director made a point to me just a second
16 ago that the applicant didn't get to speak. The
17 representative for the applicant did, but if the applicant
18 would like to speak, I will open it back up just for the
19 applicant. I just assumed that the representative was
20 speaking for the applicant, but I will give that option.

21 So, go ahead if you would like --

22 ROB DUNAWAY: Hello, can you hear me?

23 CHAIR BONGIO: Yes.

24 ROB DUNAWAY: Thank you. My name is Rob Dunaway.
25 I would like to respond to some of the comments. Thank

1 you for the opportunity and also thank you for a detailed
2 overview of this project.

3 What hasn't been talked about by the commenters is
4 the fact that our family has owned property at Maple Creek
5 since the sixties, and we've been visiting the area since
6 the fifties. So we're now in our fourth generation of
7 owning property up there, and we own roughly 1,000 acres.
8 We're not a 40 acre parcel holder, we're a good sized
9 landowner up there. We have a sustaining cut timber farm
10 plan. We're managing our land with best practices and
11 have been doing so for well over 50 years.

12 I would also note that one of the Commissioners was
13 wondering about the relationship between the families.
14 And without going into a lot of detail, I would note that
15 four or five of the commenters are all from one family,
16 they happen to be adjacent to our property, and there was
17 a parcel line dispute because they did not obtain a land
18 survey when they purchased their property. In order to
19 establish a fixed and recorded parcel line, we had to
20 enter into litigation with them, and as you probably can
21 tell from some of the passion involved, our family won
22 that parcel line dispute and I think there's a little bit
23 of emotion tied up in that, rather than focusing on the
24 merits of the project and the criteria thresholds that by
25 all accounts have been met and exceeded.

1 This has been a three-year process. You know,
2 everything that the county has asked we have done.
3 Everything that we thought was best practices for the
4 project has been implemented. We've done everything asked
5 under the ordinances and pursuant to the county. And as I
6 say, this was not a short review process, an undetailed
7 process. Director Ford's department is on this stuff.
8 They know this forwards and backwards, and that's why it
9 takes three years to put a good project together.

10 So, I just wanted to point out some of the
11 background there.

12 The last thing is that one of the first
13 commenters/speakers, I believe is the grow operation that
14 is already approved just to the south of our parcel. So,
15 you know, there are approved grows in this exact area, and
16 they went through the same difficult review process that
17 we've gone through and they were approved.

18 So, with that said, I'd -- if any of the
19 Commissioners have any questions, I would be happy to
20 answer them. Or our project manager would be happy to
21 answer them, whichever is more efficient.

22 CHAIR BONGIO: Any questions from the
23 Commissioners?

24 Seeing none, we will leave it at that. Thank you
25 for your comments.

1 I will now bring this back to the Commission for
2 deliberation. Anybody want to start it off?

3 COMMISSIONER MCCALOUR: Well, I -- I -- perhaps we
4 weren't already there, I think we were though.

5 CHAIR BONGIO: I think we were, but we need
6 somebody to make a motion.

7 COMMISSIONER MCCALOUR: Yeah.

8 CHAIR BONGIO: Don't everybody jump at once.

9 COMMISSIONER MCCALOUR: I guess I'll give it a shot
10 then. I'll motion to approve the Maple Creek Investments,
11 LLC special permit, record number PLN-2018-15197, APN 315-
12 011-009, Butler Valley Road. And, yeah, that's it.

13 CHAIR BONGIO: We have a motion. Do we have a
14 second?

15 COMMISSIONER MITCHELL: I would second the motion.

16 CHAIR BONGIO: We have a motion and a second. Any
17 discussion about the motion? If not, I will call for the
18 vote.

19 Laura, please roll call.

20 LAURA: Alan Bongio?

21 CHAIR BONGIO: No.

22 LAURA: Ronnie Pellegrini?

23 COMMISSIONER PELLEGRINI: No.

24 LAURA: Noah Levy.

25 COMMISSIONER LEVY: No.

1 LAURA: Mike L. Newman. He abstained.
2 Peggy O'Neill.
3 COMMISSIONER O'NEILL: No.
4 LAURA: Brian Mitchell.
5 COMMISSIONER MITCHELL: Yes.
6 LAURA: Melanie McCavour.
7 COMMISSIONER MCCAVOUR: Yes.
8 CHAIR BONGIO: So, the motion did not pass, so now
9 we need to have somebody make a motion that will pass. I
10 know that sounds strange, but we've did this before. So
11 would anybody like to make a motion denying the project?
12 DIRECTOR FORD: If -- if I --
13 CHAIR BONGIO: Go ahead, Director.
14 DIRECTOR FORD: One of the options could be, is to
15 continue it with the direction to staff to bring a
16 resolution finalizing the Planning Commission's reasons
17 for taking that action. I would prefer to do that rather
18 -- if that is the motion, prefer to do that rather than
19 trying to put something together here tonight.
20 CHAIR BONGIO: We can do that. It seems like it's
21 pretty straightforward, though, we just need a motion
22 denying the project. So, it's pretty straightforward if
23 somebody wants to do that, or we could do what the
24 Director said and have him bring it back. It's up to you
25 guys.

1 COMMISSIONER O'NEILL: I'll make a motion to deny
2 the project.

3 CHAIR BONGIO: We have a motion. Do we have a
4 second?

5 COMMISSIONER PELLEGRINI: I'll second.

6 CHAIR BONGIO: We have a motion and a second to
7 deny the project. Any discussion about this?

8 Seeing none, I will call for the vote. Laura.

9 LAURA: Alan Bongio.

10 CHAIR BONGIO: Yes.

11 LAURA: Ronnie Pellegrini.

12 COMMISSIONER PELLEGRINI: Yes.

13 LAURA: Noah Levy.

14 COMMISSIONER LEVY: Yes.

15 LAURA: Peggy O'Neill.

16 COMMISSIONER O'NEILL: Yes.

17 LAURA: Brian Mitchell.

18 COMMISSIONER MITCHELL: No.

19 LAURA: Melanie McCavour.

20 COMMISSIONER MCCAVOUR: No.

21 And is it just me, or is there some kind of speaker
22 on where everyone sounds like they're shouting into a
23 (inaudible) theater?

24 CHAIR BONGIO: Well... You're right about that
25 noise, Melanie.

1 COMMISSIONER MCCAIVOUR: Oh, good, it's not in my
2 head.

3 CHAIR BONGIO: Yeah. No. And with that, the
4 motion carried with a vote of four to two.

5 So, usually about 7:00 we take a break, so I'm
6 going to suggest we take a small break, about ten minutes
7 right now, and we'll come back and get the last issues
8 taken care of. Thank you.

9 (End of Requested Portion of Meeting @ 1:31)

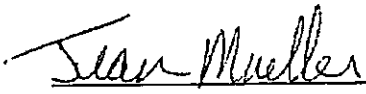
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CERTIFICATE

I, Jean Mueller, do hereby certify that I transcribed the audio of the above meeting; that I thereafter had reduced by typewriting the foregoing transcript; and that the foregoing transcript constitutes a full, true, and accurate record of the meeting.

Dated: September 21, 2020.



Jean Mueller

Foersterlings, Thomas and Elizabeth
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707 668 4369
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RECEIVED

OCT 07 2020

Clerk
Board of Supervisors

Humboldt County Board of Supervisors
825 5th Street Room 111
Eureka, CA 95501
707 476 2390
cob@co.humboldt.ca.us

Hearing Date: Tuesday, October 20, 2020

Time: 9:00 a.m.

Zoom Meeting ID and Access: available on Friday, October 16, 2020

<https://humboldt.legistar.com>

RE: Record Number PLN-2020-16608 (#20-604); Record Number PLN-15197; Planning Commission Hearing #20-1001

Subject: Appeal of Planning Commission's August 6, 2020 denial of Special Permit for Cannabis Cultivation by Maple Creek Investments LLC, a Nevada Limited Liability Company APN 315-011-009, APN 315-011-008 FR Zoning

OPPOSITION to Commercial Cannabis Cultivation

To: Humboldt County Board of Supervisors, et. al.

The Humboldt County Planning Commission did the right thing and denied MCI a Special Permit. The Foersterlings urge the Humboldt County Board of Supervisors to do the same thing, do what is right for the immediate region, and deny MCI its proposal to commercially cultivate Cannabis on parcel 315-011-009.

I. PROCEDURAL HISTORY

A. PLN-15197

1. On September 22, 2016, Maple Creek Investments, LLC, a Nevada limited liability company (MCI), submitted a commercial cannabis cultivation application (#11210) to the County of Humboldt Planning and Building

Department (CHPBD). It is unknown as to which location the Permit was sought.

2. On June 15, 2017 an application was withdrawn in accordance with Section 312-6.1.5 of the Humboldt County Code, *If the application is not completed by the Applicant within (6) months after original receipt of the application, it will be deemed withdrawn; "due to inactivity."* Notification had been given of the "pending termination due to lack of information submitted" and "inadequacies." Humboldt County Code "did not provide for a reactivation of a withdrawn application," and "the office had not been issuing interim permits for RRR." Despite receiving notification of termination, MCI continued operations. Fines were imposed.

3. Permit Application No. 2018-15197 was found to be problematic. On January 22, 2019, Deputy Director Bob Russell notified Catherine Dunaway that "a problem has been identified on this parcel that prevents further processing of this application, submitted evidence was not sufficient to verify existing outdoor cultivation on this parcel, no interim Permit has been issued, all Cannabis related infrastructure must be removed immediately, and no further cultivation is permitted on this parcel prior to permit approval." The penalty fee for the 9,530 square feet of unpermitted cultivation area was set at \$19,060.00.

Cannabis Services Division Planner Blake Batten, in an email to Six Rivers Development, LLC, summarized the findings:

- a. Submitted evidence of existing (pre-2016) cultivation on APN 315-011-009 is not sufficient to move the application forward. It appears the previous application #11210 included the same evidence.
- b. Application needs to be revised to exclusively new cultivation.
- c. While some of the submitted materials reference existing site conditions, the County needs assurance from a Registered Professional Forester.
- d. All cultivation areas must be remediated and cannabis infrastructure removed. Cultivation and additional development is not authorized on this parcel prior to approval of the permit.
- e. A penalty fee has been assessed.

f. The penalty has to be paid in full.

4. On November 1, 2019, a "settlement meeting" with Director Ford revised the amount of the penalty for the 2018 cultivation from \$19,060.00 to \$9,530.00, and negotiated the fines of the penalty to be paid after the decision of the project, approval or denial. Removal of the unauthorized cultivation had to be verified, and a warning of "no cultivation is authorized on this parcel prior to obtaining County and State approval" was given.

5. Options to resolve the issue were given as follows:

(a) Pay the penalty fee and remediate the cultivation area.

(b) Withdraw the application, remove all cannabis related fixtures and equipment from the parcel, and remediate, restore, and restock any disturbed area to their natural condition.

(c) Respond with clear and substantial evidence.

6. MCI submitted application PLN-2018-15197 for a Special Permit to commercially cultivate Cannabis for "new cultivation."

B. PUBLIC NOTICE

1. The first Public notification of the proposed project came when the first Public Notice was received. On Friday, July 3, 2020, the Foersterlings, the adjacent property owners, received a Public Notice, in their mailbox, of a summary of the proposed project, and the subsequent Zoning Hearing set for July 16th. On July 9th, the Foersterlings sent the planning clerk of CHPBD a request to be put on the Agenda for Public Comment. On July 15, 2020, CHPBD received the Foersterlings' Document of Opposition to PLN-2018-15197.¹

2. The proposed project went before the Zoning Administrator on July 16, 2020, and due to an overwhelming amount of Public Comment, and the incorrect Virtual Link addresss/phone on the Planning Department's website, the project was pushed forward to the Planning Commission.

3. The Foersterlings requested to be placed on the Agenda for the scheduled August 6th Planning Commission Hearing, to be heard for Public Comment. The Foersterlings' **SUPPLEMENTAL** to *Document of Oppositor*² was

¹ See stamped Document received July 15, 2020.

² See stamped Document received July 30, 2020.

stamped and received on July 30, 2020.

4. On August 6, 2020, the Humboldt County Planning Commission denied MCI its application for a Special Permit to cultivate a large commercial Cannabis grow on the tri-intersection of Butler Valley Road and Maple Creek Road.

5. On August 12, 2020, a Notice of Planning Commission Decision was issued, specifically stating: *The project described above was denied by the Planning Commission on August 6, 2020.*

6. On August 20, 2020, MCI appealed the Humboldt County Planning Commission's decision of denial.

7. On October 2, 2020, the Foersterlings received a Public Notice, from the Humboldt County Board of Supervisors, for a Public Hearing on the Appeal set for 9:00 a.m. on October 20, 2020.

II. OBJECTIONS TO MCI'S REASONS FOR APPEAL

A. Planning Commission Denied Special Permit 15197

The Planning Commission found overwhelming *Public Controversy* with the proposed project to be adequate enough for reason to deny³ (Ordinance No. 2599, §314-55.4.6.7). The proposed site and plan for the project is clearly not set in the right location for a large Commercial Cannabis Cultivation.

1. There are already Humboldt County permitted grows in close proximity to the proposed project. To cluster grow upon grow in the same rural region, "in the hills and off the tributary roads and sensitive habitats," is contrary to the General Plan and the Planning Commission's goals, and was cited as reason for denial (Ordinance No. 2599, §314-55.4.6.5.9).

2. The Planning Commission found, "there's a lot of antipathy towards this project," and "projects that have a huge amount of neighbor antipathy as having something wrong with them." The project clearly did not "sit right" with the majority of the Planning Commission because there was so much public outcry. To approve would have been in violation of the Purpose and Intent of Ordinance No. 2599, §314-55.4.2., some of the regulations of which are to ensure the public health, safety, and welfare of the residents and neighboring property owners.

³ There were 50 participants logged-on to the Virtual Hearing, and many more listening by phone; many letters in opposition were submitted before the hearing.

3. Using the “case-by-case” criteria, the Planning Commission found they could not approve such a visible and overly encompassing project to *that* specific area of Maple Creek, and to its greater community, citing the issue of water, drainage, cumulative effects, abatement and past violations, pre-existing vs. CEQA exemption for “New Cultivation,” thorough vetting by CDFW (or lack thereof), the location, concern for the adjacent neighboring properties, and the majority of Public Comment opposed to the project, etc.

4. The Planning Commission found the cumulative impacts, “what these all add up to,” of so many grows in one place, would adversely define the character of the region, intrude upon the residential neighborhood, and add to “water issues.”

5. The category of “pre-existing” or “new” created some debate as to the efficacy of the application itself. As there were two years of unpermitted growing by Applicant, the question as to the “abatement” arose.⁴ This controversial issue added to the Planning Commission’s decision and gave reason for denial.

6. Following Public Review, the Hearing Officer shall deny the proposed project in accordance with the particular requirements of this Code as they apply to the project (6.5.1). During COVID-19, a virtual hearing, and under all related circumstances, the Planning Commission properly exercised their judicial power.

7. Contrary to Applicant’s fourth reason for Appeal, a denial of the project is a positive move in the right direction, as was outlined by the Planning Commission. More applicant’s will be encouraged by discerning Hearing Officers who can clearly see discrepancies, inadequacies, and deception in the various Cultivation and Operation Plans submitted with Applications. Ambiguity in Staff Reports and the sidestepping of requirements will be discouraged. By only allowing those grows which are credible, and can stand the test of time, not rape the earth, and not create conflict within neighborhoods, Hearing Officers will uplift the Cannabis Industry. Code enforcement has an easier job, if the projects have solid and wholesome beginnings. Ordinances are put into place to help law enforcement, not to hinder them, to prevent litigation, not to provoke.

⁴ Letters and documents submitted by local residents, landowners, and adjacent property owners clearly outlined some of the reasons for abatement.

III. DISCUSSION

A. Non-compliance

1. Applicant spent years kowtowing with the Planning Department, "settlement meetings," emails back and forth, etc., and the Staff's direct involvement with the Applicant, and no involvement with the members of the public, adjacent neighbors, or landowners in the Butler Valley/Maple Creek area, is evidence of unfair partial pandering. The Staff Report clearly showed bias toward the Applicant, and in doing so, disregarded crucial components of necessary requirements, compliance, and conformance for approval. To camouflage inadequacies found in environmental documents and project analysis of a Cannabis Cultivation proposal is not reason for approval (CEQA). In good conscience, the Planning Commission could not approve the project.

2. Permitting requirements entail standards of which MCI was unable to meet. "The drawdown from any adjacent well(s)...Use of the well for Cannabis-related irrigation is prohibited" (§314-55.4.12.9). It must be stressed that the water extracted from "Spring #1," and collected in 6 tanks totaling 14,000 gallons, for the two years of unpermitted grows, has already drawn water away from wetlands, forested areas, and adjacent wells, not to mention all the fine water veins connected to the Mad River.⁵ Water trucked-in to supplement the proposed activities, and four 50,000 gallon rainwater catchment tanks,⁶ to be miraculously filled by a wishful amount of yearly rainfall, is not an environmentally sound project, nor is it sustainable. For a non-residential industrial commercial large grow operation to designate different tanks of water for non-cannabis irrigation use, yet the sole purpose of the use of the water is to grow cannabis, is a convoluted concept which Kindergarten children could easily find fault with. The philosophy behind *designating different containers of water for various aspects of growing pot*, well, 'clearly doesn't hold water.' All water used in the process of commercially cultivating Cannabis is used to cultivate Cannabis, whether to irrigate or for "back-up purposes," and cannot be categorized differently. As many of the Public pointed out, water is scarce, water is life, and water is a vital

⁵ Reason for Abatement. Code Violation.

⁶ Over 8' tall and 34' in diameter, per tank, proposed placement encroaches upon wetland and Parcel 10. Eyesore.

residential resource. MCI is unable to show there is enough water⁷ to sustain the proposed project without harming others and the environment (Water Code §13149). The Planning Commission had to deny approval.

3. Applicant declares ownership of 1,000 acres in Maple Creek. The questions are: Why would MCI choose such an inhospitable site for Cannabis Cultivation, when other, more remote, and/or discreet acreage, less blatant, less exposed, less invasive to the environment, community, and neighboring parcels, is available to it (1,000 acres), with a more abundant water supply for a sustainable business? Why have to truck water in, drawdown from other adjacent wells, and try to catch rain in humongous tanks,⁸ to grow plants on the smallest portion of sensitive land, for all to see and smell alongside and between the intersecting roads? Why try to bully and threaten its neighbors? The Planning Commission's decision of denial answered to these questions. No new permits to these sites (Ordinance No. 2599, §314-55.4.6.5.9).⁹ Applicant has **not** complied with "every possible regulatory criteria" and **cannot** be recommended for approval.

4. From all the unmet conditions in the Water Resource Protection Plan (WRPP), to the contradictions found in the Jurisdictional Wetland Delineation document, to the clear violations found in the LSAA, to the deception and "behind the back" dealings of Applicant, PLN-15197-SP fails the standards for approval (4.0). Requirements for compliance have not been met by the applicant.

5. Individually, the proposed project is devastating in itself. But the resultant cumulative impacts from "collectively significant projects" in the area would make it catastrophic (§15130(a) State CEQA Guidelines). Permitted large grow operations must not be clustered one on top of each other. If it were the *only* permitted grow in the region, it *still* would be the wrong place for Cannabis cultivation. With the majority of Public Comment against the proposal, it was

⁷ The need to truck in water, use diversionary tactics to store ground water, and surface water, and rain catchment tanks proves the lack of a sustainable water source for the project; LSAA (an incomplete application, not an agreement).

⁸ Dependent on 60" of rain per year, or more. "Captured Rainfall" impervious surfaces (Ordinance No. 2599).

⁹ RRR site, a Cannabis Cultivation operation occurring in an inappropriate, marginal, or environmentally sensitive site.

more than reasonable for the Planning Commission to deny the project, it was its duty.

B. Pre-existing vs. New Cultivation

1. Applicant and its project manager illegally grew Marijuana for two years, in 2017 and 2018, without the necessary permits. During those two years, the Public complained to the Planning Department and other County and State agencies and personnel about the illegality, environmental damage, noxious odors, noise, trespass, encroachment, harassment, and the “eyesore on the corner.” (The transient population trekking in from town with their backpacks to “check out the grow on the road” was also discussed.)

2. PLN-15197-SP is a proposal for cultivation of a much *larger* quantity of Cannabis (3X the amount), and a project slated for much *more* damage to environment, habitat, surrounding properties, and Community. With all the complaints from those two previous years, and applicant’s insufficient evidence of conformance, how can a larger more devastating and inadequate project pass?

3. Because of all the complaints, the Planning Department ordered the illegal cultivation to stop (“abatement”), and told many concerned individuals a permit to grow would never be given for that location. If it were the *only* place in Humboldt County to cultivate Cannabis, it would be the wrong location. The January 22, 2019 email¹⁰ from Blake Batten clearly shows two things: Applicant tried to deceive the Planning Department and pass off the location as pre-existing (pre-2016), and applicant was told to stop all cultivation and all related cannabis activities.

4. It was observed by all that the “wooden fence” was taken down and all the grow containers were moved, indicating a cessation of the grow. (The 6 large water tanks, and trailer, placed on the property for the grow, have not been moved, fertilizer still remains stored). Hefty fines were to be applied, and paid. Those affected were never compensated for damages incurred.

5. Whether the CHPBD treats the proposed Cannabis Cultivation as previously existing, or new cultivation, is a matter of discussion with regard to

¹⁰ Applicant’s Exhibit H (much of which is redacted).

CEQA exemption, increased area of cultivation, County Code §314-55.4.8.2.2, etc., but cannot change the facts of the instant case. Applicant did “grow,” did not have a permit to “grow,” and was *stopped*¹¹ from continuing to “grow.”

C. Humboldt County Code Title III

1. Fines, fees, and the integrity of projects brought before the Planning Department are its concern, but the overall effect of the County’s decisions are the Public’s concern. The neighbors together in Maple Creek are dependent upon one another for many things. It is a tight knit Community, and the safety and welfare of all the residents is dependent upon getting along, looking out for one another, sharing important emergency information such as fires, theft, vandalism, reckless driving, littering, etc.¹² The Maple Creek Community is a long way from the nearest Sheriff Station, Fire Department, Hospital, Garbage Company, and Grocery Store. The Maple Creek Elementary School is a central place for the Community to congregate, and has in the past been a vibrant place for education, gatherings, and community events.¹³ Blatant exposure to a Commercial Cannabis Cultivation right on the tri-section of the two main roads in and out of the area, a strip of land bisected by the two roads, is contrary to the Community Residential Plan, and clearly, would destroy the ambience of the region (§312-17.1-17.1.5.3). Its negative economic, residential, aesthetic, and environmental effect on the Community is reason to deny (H C General Plan).

2. Applicant cites another permitted Cannabis Cultivation directly adjacent to the proposed project, as reason for approval. It is absurd to suggest to a Hearing Officer that since someone else has been approved, that they should get approved also. That is clearly not a criteria for approval, and in fact, it is reason to deny, as the “property contains insurmountable physical or environmental limitations and clustering...has been maximized.”

Furthermore, the existing residence of the Giordiano family is setback from the street, and their presence in the neighborhood is welcome. There is potential for participation in the local school, and the respect shown to their neighbors has

¹¹ Abatement.

¹² Rural Neighborhood Watch Program

¹³ As a former Maple Creek School Board Member, Elizabeth Foersterling hopes to see a resurgence of the number of pupils attending the rural School.

been commendable. The Giordiano Family Farm includes an array of animals, a variety of vegetables, flowers, and trees, and the discreet Cannabis cultivation is *not* a monoculture, is *not* visible from the road, and does *not* “drawdown from adjacent wells.”

Applicant’s proposed project is wholly and completely different from that of the Giordiano Farm, and it cannot be compared, nor can it be a reason for approval. The proposed project would “impair the continued agricultural use and operations of, and on, the adjacent lands.” The proposed site is **not** “the least environmentally damaging feasible alternative location for the project.” The proposed project is **not** “compatible with the character of the neighborhood.” The proposed project does **not** “include *any* mitigation measure *sufficient* to offset increased risks to adjacent human populations.” Applicant’s proposed project is incapable of compliance.

3. The proposed project **must** :
 - a. Conform to the County General Plan, Open Space Plan.
 - b. Be consistent with the purposes of the existing zone.
 - c. Conform to *all* regulation, standards, and requirements.
 - d. **Not** be detrimental to the public health, safety, or welfare or materially injurious to properties and improvements in the vicinity.
 - e. **Not** reduce residential density (included 17.1.5.3).

4. The proposed project does not comply with any of the above criteria. Many of the Goals and Policies outlined in the General Plan have been ignored by Applicant and the Staff Report. For example, the Planning Commission questioned Staff about the specific Tribe contacted, but were not told of the Indigenous Peoples of the specific area. Significant Cultural aspects of the land, once belonging to the Whilkut (Ha loh wah kut wah), were passed by with a mere, “to be called if anything is found,” pursuant to “Inadvertent Discovery Protocols.” The same *protocols* were used on parcel 07 and did not save historical Native Ceremonial Grounds from being desecrated; just a stone’s throw away from where Applicant proposes to build a roadway to the cultivation site.

D. Response to Applicant's Claims

1. Applicant claims Cannabis cultivation is a principal permitted use.

FACT: "Commercial cultivation of Cannabis is a highly regulated specialty crop and the cultivation and processing of that specialty crop **shall not be allowed as a principal permitted** use under the General Agriculture use type classification applicable within the County of Humboldt" (Code §314-55.4.3.9). Cannabis is **not** a primary agricultural permitted crop (CDFA). Applicant's claim defies the Law, and is **not** a reason for approval.

2. Applicant claims the proposed cultivation location meets setback requirements, but does not consider the proximity of the two main roads, the sensitive community of school children driving by, the church camp participants driving by, the wetland, the forested land, the Mad River Watershed and subwatersheds, the encroachment on adjacent properties and residents of Maple Creek/Butler Valley, all in plain view, vibration, sight, and smell of the proposed Cannabis operation. The location generated numerous complaints during the two years of unpermitted grow, to apply for more cultivation in the same location is a violation of Ordinance No. 2599 (RRR) regarding "inappropriate, marginal, or environmentally sensitive sites." Applicant's claim is against regulations, does not coincide with the 5 C Program,¹⁴ and is reason for denial.

3. The proposed processing facility would be central to the Maple Creek area, and would negligently define the Maple Creek Elementary School District. A Cannabis Processing Facility and Cultivation area is not Field Trip worthy for the Kindergarten through Eighth Grade student population and would be detrimental to their overall educational environment.¹⁵ Jobs related to commercial Cannabis cultivation are not the type of jobs to create for our youth to aspire to. It would be an unwelcome commercial activity in the rural residential region, and

¹⁴ The Five Counties Program.

¹⁵ Elizabeth Foersterling has worked in the educational field for over twenty-two years, beginning with volunteering as a parent at the Maple Creek School in the early 1990's, and has worked in various School Districts within Humboldt County since then, Kindergarten through Adult Education, currently at Humboldt State University. Thomas Foersterling USSF "A" License coach has worked with many teams and individuals over the years in Colleges, *i.e.* Humboldt State University and College of the Redwoods, formed the Adult Redwood Soccer League affiliated with USSF, Traveling Teams, U-18, U-16, U-14, U-12, Youth Teams, High School Teams, (St. Bernards, Hoopa, McKinleyville), clinics, F, E, and D Licensing Classes, etc., both locally in Humboldt County, and in the greater regions of the State of California, and even in Oklahoma.

FR Zoning. The Cannabis Culture is not for everyone's recreational liking, and cannot be blatantly forced upon the residents of any community, and must not be shoved onto the students of any of our schools.¹⁶ The proposal of a commercial processing facility is reason to deny PLN-2018-15197. *Bokale, et. al. v Green Earth Coffee* (2018).

4. Applicant claims to have "1,000 acres" in the vicinity of Maple Creek. That statement is not "reason for approval" of the project. Why does it not use its 446 acre parcel, or its 411 acre parcel? With so much more usable land and water, it makes one wonder why MCI would choose such an unsuitable location right in everyone's face to Cultivate Cannabis? Why would the owners of 1,000 acres of land in Maple Creek want to take water, views, land, and improvements away from neighboring property owners, infringe upon the rights of others, and cause personal injury of such magnitude? Applicant is not a full time resident of Maple Creek, and the proposed project does not meet the Zoning Standards of RA40 (Residential Agriculture).

5. Applicant claims to be landowners in Maple Creek for four generations, "since the 60's." Applicant's claim is **not** reason for approval. The Chain of Title for the Foersterlings' parcel 315-011-008 includes Robert A. Dunaway of Maple Creek Ranch (father of the four Dunaways who comprise Maple Creek Investments, LLC) who had land dealings "back in the 70's." For example, on December 20, 1972, Robert A. Dunaway, as a General Partner of Butler Valley Investment Company, a limited partnership, granted the 08 parcel, as an undivided one-half interest, to California Bankers Trust Company, a California Corporation. California Bankers Trust Company then granted the land to Wells Fargo Realty Services, Inc on November 24, 1975. Then, on July 9, 1976, both Wells Fargo Realty Services and Chaparral, LTD, a limited partnership¹⁷ granted their interest in the land to Arcata National Corporation, a California corporation which then changed its name to Arcata Corporation, and then again to ALB Ventures, Inc on June 4, 1982. On February 11, 1983 Francis and Carole Carrington, husband and wife, purchased the land from ALB Ventures, Inc, and

¹⁶ Drug Free Zones.

¹⁷ Chaparral, LTD was owned by Robert A. Dunaway.

commissioned a Survey for a Subdivision in 1986. MCI's claim prevents it from any action to Quiet Title (*Martin v. Lopes* (1946)), and adds to the reasons to deny the project.

6. Applicant claims the Foersterlings did not get a survey before they purchased their land. This is a false claim, and is not a "reason for approval" of the project. In 1987, when the 08 parcel came up for sale, the Foersterlings had the brand new 1986 B & D Survey from the new Carrington Subdivision, which clearly shows the *surveyed* river frontage footage of the parcels in the subdivision. The Foersterlings, along with Humboldt County Licensed Surveyor and Engineer Ed Schillinger, used all available recorded Surveys, existing fence, and knowledge from the locals, to locate the Original Corner Monuments and Boundaries of the property. In 1988, after escrow went through, the Foersterlings met neighboring property owners and, in agreement, in 1989 built their own well, water system, septic system, and home on their own land.¹⁸ MCI is unable to claim otherwise. *Price v. De Reyes* (1911).

The Foersterlings' land is filled with remnants of the past owners, including choker cables from the Lumber Co., and old original fence from the Wiggins' Ranch. From August 15 to 21 of 1940, William Anderson (L.S. 1936) conducted Survey No 15 for Dr. C. G. Wiggins. In 1946, A. B. Bones (L.S. 2020) conducted Survey of Maple Creek Headquarters Ranch...Hammond Lumber Co. In 1971, Otto Peters (L.S. 2561) conducted a Record of Survey Map of *Portions of Townships 4NRE & 4E and 3NR3E Humboldt Meridian*, using Book 11, Page 99, confirming the existing Original Corner Monuments. Pursuant to Code of Civil Procedure Section 2077(2) boundaries or monuments are paramount. MCI is estopped from claiming otherwise. *French v. Brinkman* (1963); *Carr v. Schomberg* (1951).

Fast forward to 2009 when Barry Kolstad, in his survey, used aerial GIS web map imaging to draw (not to scale) the Mad River, and used a computer to put a line through the Foersterlings' home, improvements, and meadow, and used Proration, Double Proportion, and GIS to move all the *existing* Original

¹⁸ Alternative Building Regulations Ordinance No. 1654

Corner Monuments. Kolstad's survey omits parcel 314-191-018, which still remains as part of the Carrington Subdivision. The parcel is found on the County's web map, but not on Kolstad's survey. The survey is not definitive, and does not establish the true boundary lines. MCI is prevented from claiming otherwise. *State of California v. Thompson* (1971); *Weaver v. Howatt* (1911); *Hannah v. Progue* (1917).

The "shift" of parcel lines on parcel maps from 1988 to 2019 is indicative of the manipulation, and creates illegal parcels. Using the same method, the State of California would lose a large swath of land to Nevada, but California does not allow such methods or outcomes. At present, State lines are not being moved.

7. Applicant claims the Foersterlings built their house and well on Applicant's property. FACT: For the past thirty-two plus years, the Foersterlings have paid the assessed property taxes for all the land and improvements the Foersterlings have made. *Gilardi v. Hallam* (1981). Applicant, against all applicable law, has tried to claim the Foersterlings' improvements which the Foersterlings have made to the Foersterlings' land. *Connolly v. Trabue* (2012).

In 1993, Victor and Dorothea Guynup, owners of the contiguous and conterminous 09 parcel, deeded a one-half interest to Maple Creek Ranch, a hand shake deal with Robert A. Dunaway, in which Victor Guynup maintained that portion of the 09 parcel South of the Butler Valley Road. Seven years later, in March 2000, the foreman from Maple Creek Ranch, Kerry Rasmussen at the time, came over to the Foersterlings and walked the property line with Thomas Foersterling and David Grandy from Northwestern Timber Contractors, locating the three corner monuments and agreeing on the approximate property line. Discussion ensued with Victor Guynup, and he was upset by much of MCR's actions, as they had no business on that side of the Butler Valley Road. MCR was prevented from any further action.

Victor Guynup, the Foersterlings' long time neighbor, suddenly passed away in May 2003. Shortly thereafter, in 2004, Maple Creek Ranch went after the Guynup Trust for a 100% interest in the 09 parcel. The original description of the land remained in the names of Victor and Dorothea Guynup, and was not

conveyed to the Guynup Trust. *Land not described, therefore cannot be conveyed.* MCR spent seven years trying to get the deeded land description changed, and “acquire” Title to the 09 parcel. In 2011, Humboldt County Judge Reinholtsen signed off on an Order Confirming Trust Assets, despite the fact the land still remained in Dorothea’s name.

In 2008, years before MCR “aquired” APN 315-011-009, it solely, and illegally, commissioned an inaccurate GIS Survey¹⁹ which drew a line through the Foersterlings’ home claiming the Foersterlings’ water system, well, septic system, meadow, trees, drainage, improvements, etc., were on the 09 parcel. In 2010, MCR solely, and illegally, filed a “lawsuit” against the Foersterlings (Case No. DR100099). The Foersterlings disputed and contested the survey (still do), and questioned the legality of the “lawsuit.” *Marriage v. Keener* (1994). Applicant’s claim is false, and is **not** reason for approval.

8. Applicant claims a “parcel line dispute,” between Maple Creek Ranch, Inc., a California LLC and the Foersterlings, had been “litigated.” Applicant’s claim is **not** reason for approval, and contributes to reason for denial. FACT: the land had already been bought and sold by Maple Creek Ranch, over thirty years prior, using the surveyed original corner monuments, and the Foersterlings lived in agreement for over *twenty years* with those monuments, the neighboring landowners, and adjacent properties. A boundary dispute case should never have come before the Court (Codes are governed by Statute).

During the August 6, 2020 Planning Commission Hearing, Rob Dunaway neglected to tell the Planning Commission that under oath he had “mised” the Judge during the Bench Trial.²⁰ To lie under oath is not litigation, it is perjury. MCR told the Judge it had made no improvements to the 09 parcel, did not pay taxes on any improvements, there were no structural or land improvements assessed to the 09 parcel, and would not tell the Judge where the Foersterlings’ well was (and is) located. The Trial Court did not allow any of the Foersterlings evidence to be submitted which would have proved the essential facts of the

¹⁹ Kolstad Survey, 2009; Magnetic North moves West 34’ per year;

²⁰ The Foersterlings were denied a Jury Trial; The Foersterlings represented themselves and were railroaded in the process.

case. Due to all the objections made by MCR's attorney,²¹ (a strategy the Foersterlings found to be unfair and preferential treatment toward the party with an attorney), and the Trial Court's error in Judgment, the outcome was not an equitable action, was not a resolution, did not secure repose, and did not prevent further litigation. The Trial Court abused its discretion, and the Appellate Court was limited to *only* the evidence allowed by the Trial Court. The Appellate Court, in its' decision, stressed MCR's claim that it had "made no improvements to the land, and did not pay taxes on any improvements" (Case No. A141015).

In 2015, after the Appellate Court's decision, Robert Dunaway confessed in a nasty, threatening letter to all the Foersterlings that the Foersterlings' well was on the disputed property. Again, during the Planning Commission Hearing, Rob Dunaway said that the "Foersterlings' well is on the Applicant's property." If the Dunaways had been candid during the Court proceedings, and told the Judge the truth about all the improvements, the outcome would have been different. The deceptive practices of both Plaintiff and its Attorney, and the prejudicial error in judgment by the Trial Court cannot stand the test of time. Applicant *now* tries to use the Planning Department, and a fraudulent site plan map for Cannabis cultivation, to claim the Foersterlings' improvements, *i.e.* "Groundwater well," "Access road," "Graded flat," "Spring #2," and encroach on their land. Applicant's claim to all the improvements are unfounded, and are **not** reason for approval. The Planning Department must be wary of such false claims. Applicant's misrepresentation is reason for denial.

9. Applicant claims the Foersterlings owe it \$10,000, and as evidence submitted two Judgments as part of its "Exhibit G."

(1): The September 27, 2010 Order After Hearing RE: Monetary Sanctions was in the amount of \$1,050.00, and was sought by Plaintiff because the Foersterlings were unavailable at the scheduled day and time of the requested Deposition. Due to Robert Dunaway being a non-resident and living in Arizona at the time, he was set to travel (fly) to Humboldt from Arizona, and stay at the Best Western Bayshore Inn, a

²¹ Laurence A. Kluck has stated numerous times that "if he were the Foersterlings' Attorney he would have "won" hands down, easily."

room was already booked. Plaintiff requested Defendant pay for the flight and the room, at a total cost of \$1,050.00.

(2). The December 2013 Judgment on Reserved Issues, in the amount of \$4,950.00, was for an Order Appointing a Referee; the sum of which was owed to SHN, and was written off the Business' accounting books as a bad debt. The referee was limited in its scope, and unable to carry out its lawful duties as defined; there was no need for services rendered. The added sum of \$805.00 was calculated for payment to MCR for the *land beneath the Foersterlings' home*, and around the northeast, east, and southeast side of the Foersterlings' home, including the land area where the Foersterlings' septic system is located. MCR was **not** awarded attorney's fees.

Without the Foersterlings' permission, MCR created an illegal parcel, and generated illegitimate fees, bills, and costs associated with a wasteful and frivolous lawsuit. The Foersterlings have *nothing* to do with the actions of MCR or MCI. Applicant's claim is reason for denial. California Civil Code Section 3517; *Metsch v Heinowitz* (2020). The Foersterlings owe Applicant nothing.

10. The Foersterlings own one parcel, yet MCR took it upon itself to invent a second parcel, and *now* the Foersterlings have *two* parcels on their Title Report. MCR took it upon itself to take out a loan from Redwood Capital Bank for \$350,000.00 twice and added those amounts to liens found on the Foersterlings' Title Report. The Dunaways have illegally leached onto the Foersterlings' Title.

As it stands, the amount of the artificially fabricated liens, placed upon the Foersterlings' property by MCR's criminal action, now totals \$746,544.42, and the Foersterlings must take action to Quiet Title, seek Equitable and Declaratory Relief, and be compensated for Personal Injury and Damages. FACT: MCR has made a mess of the Foersterlings' Title Report, and it needs to be cleaned up.

MCR's excessive expenditures, unjustly and exorbitant recorded liens, and continued harassment and terrorizing of the Foersterlings, must stop. Applicant cannot lay claim to the Foersterlings' improvements, and only shows the total disregard Applicant has for its neighbors.

Furthermore, the Humboldt County Parcel Map for the 08 parcel has been changed and/or manipulated to reflect Kolstad's inaccurate GIS Web Survey. Computerized draw lines cannot change the boundaries of the lands. The Foersterlings maintain their position; contest the Kolstad Survey, object to MCR's forging a second parcel, reject the liens placed on their Title Report, discredit the 2019 Parcel Map made by Russell Dutra, and defend the equity of the improvements they made to their own land.

11. It must be mentioned that when MCR was landowner of the "Bridge Parcel," it was so negligent of good stewardship that the area became a public nuisance, and many people complained about the out of control bonfires, partying, drugs, drinking, camping, tents, trash, graffiti, parking, and trespassing issues, etc. Over the years, the repeated actions of Applicant have shown a negligence and hostility to its neighbors and the land, in clear violation of Humboldt County Code, and is reason for denial.

For over thirty years, Elizabeth Foersterling, as a long time resident of Butler Valley, has annually and/or bi-annually cleaned up the litter and trash along both sides of the Butler Valley Road, from the Maple Creek/Butler Valley intersection to Butler Valley Ranch,²² to maintain the integrity of the area. Over 1,000 gallons of trash has been picked up, and brought to the dump. During the years between 1989 and 2009, when MCR owned the Bridge Parcel, the type and amount of trash found along the road was much, much more extreme.²³

12. Applicant claims fertilizers and pesticides are not harmful, yet had obtained a certain Hazardous Substances Certificate and Indemnity Agreement; which has also appeared on the Foersterlings' Title Report and must be removed. Applicant's claim is false, and is a clear reason to deny the project in its entirety. The Fertilizers/Amendments proposed, and previously used, have many "not determined" risks and effects associated with them, as well as Manufacturers' Disclaimers in bold everywhere.²⁴ The 2018 Court Ruling, by Judge Timothy M. Frawley, ended California Department of Food and Agriculture's use of harmful

²² Except for this year during the COVID-19 Pandemic.

²³ During the summer months of the COVID-19 Pandemic double parking once again became an issue, and trash, mattresses, etc., piled up.

²⁴ DDT was once considered safe to spray over crops; ROUNDUP was marketed as safe.

pesticides without serious consideration of the cumulative negative impacts on people, animals, and water over long periods of time. *Anderson, et.al. v Pacific Gas and Electric* (1993); *Dewayne Johnson v Monsanto Company* (2016).

FACT: On packaging, of both the fertilizers and pesticides proposed to be used, and those which have already been used during the two years of unpermitted cultivation of Cannabis by the Dunaways and Mr. Shields, show CAUTION with a First Aid warning:

- If swallowed: Call *poison control center* or doctor immediately for treatment advice. Have person sip a glass of water *if able to swallow*. Do not induce vomiting unless told to do so by the poison control center or doctor. Do not give anything by mouth to an *unconscious person*.
- If on skin or clothing: Take off contaminated clothing Rinse immediately with plenty of water for 15-20 minutes. Call *poison control center* or doctor for treatment advice.
- If inhaled: Move person to fresh air. *If person is not breathing*, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to mouth if possible. Call a *poison control center* or doctor for further treatment advice.
- If in eyes: Hold eye open and rinse slowly and gently with water 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a *poison control center* or doctor for treatment advice.

The WRPP shows violations related to the fertilizers and/or pesticides found on the 09 parcel grow from previous years, and does not guarantee that conditions can be met with regard to fertilizer and pesticide use. The document concerns itself with *storage* of Fertilizers and Soil Amendments "so as not to leach into groundwater," but not so with irrigation runoff? "Spoils were located in places where they could enter surface water." Violations of "water diversion" and seepage have already occurred, and are inevitable. Soil amendments remain stored at the site. Fertilizers and Pesticides are combustible if not properly stored. In the report, "Corrective or remedial actions" were needed everywhere. Code enforcement and mitigation management cannot adequately guarantee the

health, safety, and welfare of the environment and its inhabitants; and the proposed project cannot conform to the requirements of both the General Plan and the County Ordinance. Although the WRPP lacks accuracy, is not thorough, and neglects the integrity of the land and adjacent residences, it does show conditions are not met for the proposed project, and is reason for denial.

13. In its Appeal Packet, Applicant *now* claims projected water usage at approximately "100,000 gallons annually," yet plans to "develop rain catchment in the amount of 200,000 gallons." Despite the hypocrisy by Applicant of how much water diverted, or caught, or used for this, or that, the fact is that the storage tanks already on the property, holding 14,000 gallons of water, have already significantly drawdown water, away from adjacent properties, away from wetland, away from forested areas, and away from the Mad River, and for two years were used to cultivate Cannabis. Civil Penalties §12025, for unpermitted water diversion (2019).

To hoard water in rain catchment tanks to cultivate Cannabis and divert water away from adjacent domestic water supplies is a complete violation of Ordinance No. 2599, and is against the California State Water Resource Control Board. That MCI is not concerned about the well-being of the adjacent residents and their water supply is indicative of the expected future behavior of the Applicant and its Agent. Even if much less water was proposed for use in the project, the location to commercially cultivate Cannabis alongside the road is against the Community Plan (Inland GP), and cannot be tolerated. Applicant's project is unacceptable, and its' claim is reason for denial.

14. What is in a name? Applicant refers to a "licensed Farm Management company to operate and manage the operations of the proposed development." Its reference is to the same Six Rivers Development, LLC run by Brian Shields. Brian Shields is the same individual who prepared the faulty Cultivation and Operations Plan for MCI, and tried to deceive CHPBD. He is also the same individual who has trespassed, bullied, threatened, harassed, and stalked the Foersterlings. He has told various people, who helped him compile the Operations Plan and the Permit Application, to "not talk to the Foersterlings," and

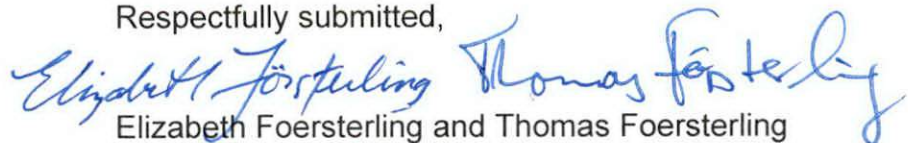
to “be assertive.” Brian Shields’ aggressive manner and disrespect for the Foersterlings and their property is a red flag warning. MCI proposes the same individual to be responsible for hiring, training, transporting, and managing ten²⁵ employees, along with being trusted to operate and manage the cultivation. FACT: In 2014, before Brian Shields became the foreman for Maple Creek Ranch, he was involved with an illegal grow on top of Kneeland which turned bad. He and his grow partner were involved in a fatal shooting from which he had to do jail time, and his partner was sent to prison.²⁶ The Public is concerned about this type of happening reoccurring. Violent and aggressive behavior from cultivators must not be rewarded. It alone is reason to deny.

IV. CONCLUSION

The evidence for *reason to deny* Special Permit PLN-15197, for Cannabis cultivation on parcel 315-011-009, is overwhelming. The Humboldt County Board of Supervisors must not gloss over the necessary requirements without care or concern for the residence of Butler Valley/Maple Creek. The Board of Supervisors must not neglect the importance of truly understanding the long-term negative impact of the proposed plan to environment, resources, and inhabitants. The Board of Supervisors, as a collective voice, has a crucial responsibility “to ensure the public health, safety, and welfare of the residents of the County of Humboldt.”²⁷ Whoever the applicant may be, whatever the amount of Cannabis is to be cultivated, however the plan proposes to cultivate Cannabis, the location itself is clearly “not the right place.” The footprint each Supervisor on the Board leaves for future generations is determined by the collective vote. The Foersterlings respectfully request the Humboldt County Board of Supervisors to do their duty, do the right thing, heed the action taken by the Humboldt County Planning Commission, and deny Special Permit PLN-15197 in its entirety.

Dated: October 7, 2020

Respectfully submitted,


Elizabeth Foersterling and Thomas Foersterling

²⁵ The number of employees was initially six, and has changed, again.

²⁶ That partner committed suicide in his cell.

²⁷ Ordinance No. 2599.

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Hearing Date: July 16, 2020

RE: Record Number PLN-2018-15197
Subject: Special Permit Cannabis Cultivation Maple Creek Investments, LLC
APN 315-011-009, APN 315-011-008 FR Zoning

To: Humboldt County Planning Department, Zoning Administrator, Supervising Planner, Planner I, et. al.

Thomas and Elizabeth Foersterling, land owners in fee simple of Federal Homestead¹ Parcel Number 315-011-008, adjacent to the 40-acre parcel 315-011-009 (09 parcel), wholly and completely oppose, dispute, and contest PLN-2018-15197 in its entirety. As residents of 8748 Butler Valley Road for the past 32 years, the Foersterlings have tolerated many changes to the area, but PLN-2018-15197 is beyond the scope of sustainable. It is inconsistent with Zoning Regulations for Forestry/Recreational Zone, and not a designated use for RA40². PLN-2018-15197 is **against the General Plan for unincorporated forested and wetland areas of Humboldt County**, is against the California Environmental Protection Agency and Regional Water Quality Control Board of the North Coast Region, and is in violation of California Fish and Wildlife regulations, among many other wrongs. California Environmental Quality guidelines have not been met, and findings within the **Environmental Impact Report reveal significant adverse effects which cannot be overcome. PLN-2018-15197 is not feasible.** The adverse "cumulative conditions" and "significant unavoidable impacts" effecting the well-being of the people, place, and planet override and outweigh the economic benefits to Humboldt County.

There are already numerous large grow operations in the vicinity of Maple Creek, within close proximity to the proposed grow, and an additional large grow operation on the intersection of Butler Valley and Maple Creek Road would be a

¹ Recorded 1992-33188 Official Records Humboldt County, California

² i.e. "The slope toward the Mad River is considered Highly (4) unstable." Not considered "prime farm land."

detriment to not only surrounding neighbors, residents of the Butler Valley Maple Creek area, the Maple Creek School District, the Church Camp participants, the local Community as a whole, visitors, passersby, tourists, etc., but would also be devastating to the ecosystem, the environment, the wildlife, and the Mad River Watershed. The harmful ramifications cannot be ignored. Destruction of an historical landmark of antiquity to build a monstrous Cannabis processing facility is an affront to the greater Community of Butler Valley Maple Creek, and to erect an unsightly building on parcel 09 will obstruct the views in all directions; a road hazard, fire hazard, pollution hazard, electrical hazard, etc.

The proposed location for PLN-2018-15197 was previously a site of an unpermitted grow. For two years in a row, Brian Shields, and the Dunaways of Maple Creek Ranch; illegally grew pot in containers,³ right alongside the road, for all to see and smell. They made a continuous commotion, and their movements were heard and felt by all, including "sensitive receptors." They trespassed onto neighboring parcels, harassing, bullying, and threatening as they did.⁴ It is important for Humboldt County to make the right decision, help prevent further terrorizing, and stop creation of blighted areas. Enough is enough. The unpermitted grow created an unsightly neighborhood nuisance, and many complaints were heard. After damage was already done, the Humboldt County Planning Department assured the local residents a permit would never be granted for a grow in that location.

PLN 2018-15197 does not meet the requirements of a pre-existing grow, and cannot benefit in any way from that status (Ordinance No. 2599). If approved, it would fall into the category of an RRR site, "a Cannabis Cultivation operation occurring in an inappropriate, marginal, or environmentally sensitive site" (Ordinance No. 2599, §314-55.4.6.5.9). No new permits to these sites.

Maple Creek Ranch, Inc. extracted gross amounts of water from an already depleted water table. Not only were their actions illegal by the Planning Department's Regulations and the current Ordinance No. 2599, but were in violation of the California Department of Fish and Wildlife (CDFW), against the Regional Water Quality Control Board (RWQCB), an outrage to our local Water District, and extremely harmful to the neighboring property owners, the wildlife population, and the Mad River watershed.

Findings in the Water Resource Protection Plan (WRPP) for PLN-2018-15197 reveal necessary conditions are *not* met.⁵ Conditions which have been given a 'Yes' on the WRPP remain in question, and are arguable. For example, 4.5.b with regard to water conservation measures, rainwater catchment tanks are not only inadequate, they deplete the supply of the necessary surface water, water in the water table, water for the forested areas, water for the wetland, and water for the River itself.

The Dunaways activities during those two years of unpermitted grow diminished the Foersterlings' residential water supply causing "significant cumulative effects on the availability of water for municipal or residential water uses or the aquatic environment,"⁶ and was a direct violation of performance standards. The Dunaways are *now* applying for a permit to do even greater damage and destruction to the land, water, air, fisheries, neighboring parcels and community as a whole. The Environmental Impact

³ WRPP Appendix C, photo #5.

⁴ SEE attached Letter.

⁵ WRPP Standard Conditions (4.1.d, 4.3.a-d, 4.4.a-b, 4.5.a, 4.5.e, 4.7.b-c, 4.9.d, 4.10.a, 4.11.a), to name a few.

⁶ Humboldt County Code §312-50 Required Findings Exhibit A.

Report (EIR) clearly states:

"If the State Water Resources Control Board or Department of Fish and Wildlife finds, based on substantial evidence, that cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, the CDFA (California Department of Food and Agriculture) shall not issue new licenses or increase the total number of plant identifiers within that watershed or area."

Clearly, any large Commercial Cannabis Cultivation on parcel 09 cannot meet the Performance Standards for Commercial Cannabis Cultivation Activities (§55.4.12.2). Nor can it ever comply with General Standards (§55.4.12.2.1-4) of the RWQCB, the State Water Resources Control Board (SWRCB), and the CDFW. The Lake or Streambed Alteration notification signed by Catherine Dunaway on December 14, 2018 is incomplete, incorrect, and untrue. The Lake and Streambed Alterations Agreement is sought for sediment removal and water diversion for the project, but the months between June 1st and August 31st of every year (Season of Diversion, Attachment C), are the most critical times of the year for water in the area. Cannabis cultivators are prohibited from diverting surface water during the dry season (SUIR). In reference to "Spring #1", on the Site Plan Map, the use of that well for Cannabis Cultivation already violated Section 55.4.12.9 of Humboldt County Ordinance No. 2599 stating, "If the testing demonstrates use of the well results in the drawdown of any adjacent well(s)...Use of the well for Cannabis-related Irrigation is prohibited."

Despite limited findings in the LSAA, "water does not appear to flow off the property," every property owner in rural unincorporated areas in Humboldt County knows differently. With the steep slope on the southern side of Butler Valley Road, and the trend for water to flow downhill taking the path of least resistance, contaminants from the grow cannot be contained adequately no matter what kind of precautions are taken. In WRPP 4.1.d, "Cultivation area #1 slopes to the southeast towards Butler Valley Road" in the direction of the Foersterlings' Water System.

The Dunaways stored diverted water in large storage tanks, and used harmful chemicals and pesticides; run-off seeped everywhere, and was detected in water along the road, in neighboring water supplies, as well as in the natural water rivulets which continue to feed the Mad River; polluting the water, air, and earth. The Jurisdictional Wetland Delineation document is filled with disturbing contradictions, and LSAA findings for POD are ambiguous at best... "well-drained soils," but "diversion of water will require annual excavation." TerraConsulting (JWD) trespassed on April 19, 2019 and took photos,⁷ poked around the Foersterlings' Water System; the picture of Pit 3 clearly indicates exposure to contamination, and shows disturbance from above the steep slope, beneath the unpermitted grow. The "jurisdictional boundaries" found in the LSAA encroach on neighboring lands, effect the Mad River Watershed and subsequent subwatershed, and CDFW has the jurisdictional authority over wetland resources (Code §1602). It is federally illegal to grow in Wetland areas.

The EIR finds "All cultivations are required...to be setback and located outside of Streamside Management areas...." The 09 parcel cannot be considered "outside of Streamside Management areas" as it contains wetland, and run-off feeds the Mad River. It is requested by CDFW that the County "prohibit the establishment of new cannabis cultivation operations in subwatersheds....or within those areas, or strongholds for the restoration of fisheries for threatened or endangered salmonid species (§314-55.4.6.8

⁷ JWD Appendix A, page 2 Redox features from Pit 1 and 3.

(Resolution No. 18-?).” “Setback” numbers projected on the site map do not accurately reflect the proximity of the grow to the adjacent parcels, and do not meet the current setbacks prescribed in Ordinance No. 2599.⁸ The numbers do not take into consideration rain run-off⁹ for the element of water. Furthermore, the Planning Ordinance “limits the number of Cultivation permits within each Planning watershed.”

It is obvious Humboldt County Planning Department is inundated with the permit process for the Cultivation of Cannabis, as the cap is presently set at an unsustainable total of 3,500 permits on 1,205 acres (Resolution adopted May 8, 2018); more specifically, an absurd amount of 334 permits on 115 acres in the Mad River Watershed. Needless to say, the Mad River (one of the Six Rivers protected) is Humboldt County’s *source of water*, and must be maintained in such a manner as to “ensure the public health, safety, and welfare of residents of the County of Humboldt, visitors to the County...neighboring property owners...etc.” (§55.4.2). The Mad River is the sustenance for a healthy ecosystem, without it all things will die. The desertification of Humboldt County is already happening, as is evident in all the critical watershed and subwatershed areas. The forested areas are struggling to survive, the wetlands are drying up,¹⁰ and the salmon and steelhead spawning grounds cannot and “will not support new cannabis cultivation activities” (WR-P5). The environmental impacts are irreversible and cannot be “restored.”

The responsibility is great for the Planning Department of Humboldt County to not cave into the greed factor and lose sight of the true value of our region. Too often money gets in the way of what is right and just. Here again, we are at a crossroads with the Cannabis Industry. As prior promises were made, it behooves the Planning Department to assess the comprehensive issues involved with this particular grow proposal, and take to heart the importance of their role in the beautification of the County and preservation of its resources, and to abstain from the creation of conflict within neighborhoods, degradation of the environment, loss of habitat for wildlife, as well as damage to the integrity of the Cannabis Industry in Humboldt County; wreaking havoc everywhere. **Choose quality over quantity.**

It is paramount the Planning Department do the right thing and deny PLN-2018-15197 in its entirety. If the County approved PLN 2018-15197, with *full knowledge* of the problems, injuries, damages, grievances, liabilities, related to and in opposition of the proposed grow, it would be construed as negligent and the Release of Liability (§55.4.5.2) safeguarding the County of Humboldt would no longer be valid.

In addition, the GIS Web Map, used in the PLN-2018-15197, disclaimer states:

“The Humboldt County Planning and Building Department makes no guarantee of the quality or completeness of this data. It has not been fully reviewed for accuracy and is intended to be used for planning purposes only. The department assumes no liability or responsibility in the use of this data. While every effort has been made to assure the accuracy of this information it should be understood that it does not have the force and effect of law, rule, or regulation. In the event of any difference or error, the law will take precedence.

Please note the accuracy of GIS map data varies from location to location in the county. This GIS system is useful for planning purposes but should not be relied upon to determine property, zoning or general

⁸ 600’ from Sensitive Receptors, and/or 1000’ in a Community Planning Area.

⁹ JWD “...upland hydrology.”

¹⁰ JWD “No Wetland Hydrology present.”

plan designation boundaries or be used in any way for project design. All GIS data should be verified before it is materially relied upon for property or project planning. In urban areas the GIS map data maybe inaccurate by as much as 50 feet in any direction. In rural areas the map data may be inaccurate by as much as 400 feet in any direction."

It is plain for all to see that the boundary outlined on the site plan map, prepared by Six Rivers Development LLC, is not drawn to scale, is distorted, and does not accurately represent the layout of the land, the facts on the ground, or the assessment of property taxes¹¹ on the Foersterlings' meadow (labeled "Graded flat") and Water System (labeled Groundwater well (est. 1985)¹²). The boundary with parcel 315-011-012, the "existing Access road," etc., are all misrepresented by the GIS maps produced for, produced by, and presented to the Planning Department, including Kolstad's Survey¹³ which unnecessarily used Proration and Double Proportion along with GIS technology to manipulate original corner monuments and change existing boundaries. The 09 parcel does not have river frontage.¹⁴ The Foersterlings dispute, contest, and reject the Kolstad Survey¹⁵ used in PLN-2018-15197, for the proposed site for Cannabis Cultivation. Parcel 315-011-008, purchased by the Foersterlings in 1988, has continuously been assessed for the Land and Structural Improvements found on the site plan map.¹⁶

The EIR is unable to lessen the significant negative impact of "long term operational emissions of criteria pollutants and precursors (*i.e.* unpaved road dust, fertilizers, continuous noise, etc.), exposure of people to objectionable odors (the relentless invasive smell), and provision of the sufficient water supply (depleted for non-human use) and infrastructure needs." The "setbacks" on the site map do not take into consideration the element of air and its quality (including wind factor, vibrational disturbances, etc.). It does not address the necessity and the right to breathe fresh air. The EIR finds that "new cultivation allowed...lead to generation of localized odors in such quantities as to be a detriment, nuisance, or annoyance to a substantial number of people." That finding cannot be beneficial for Humboldt County Office of Education and the Districts it serves, nor can it be beneficial to the Tourist Industry of Humboldt County, if fully disclosed. It does not "ensure the health and safety of the residents" (Humboldt County Board of Supervisors).

The suggested measures to bring PLN-2018-15197 into compliance do not remedy any of the wrongs, and do not address the important issue of an increase of noise on the roads directly above the Foersterlings' heads. PLN-2018-15197 is defective. Beginning with a boundary dispute (based on a faulty GIS Survey; the resultant Ruling based on false testimony) combined with non-compliance with the General Plan for the rural, unincorporated, Community Plan area of Humboldt County,¹⁷

¹¹ JWD pg. 2, Property assessed to....

¹² This well was Established in 1989 by the Foersterlings, and is the main source of water for residential use, assessed as *Water System* Rural Property Appraisal Record.

¹³ "Note: River and Creek courses sketched hereon from aerial topography; not surveyed.

¹⁴ Testimony from Kerry Purkett, Humboldt County Superior Court Case Number DR10009.

¹⁵ Superior Court of Humboldt County Case No. DR10009; Court of Appeal State of California Case No. A141015;

¹⁶ Rural Property Appraisal Record on May 4, 1988 Physical inspection was made of the property, "including the meadow." Assessor's Residential Property Statement Part III: includes the Water System.

¹⁷ CCLUO is designed to protect the public health, safety, and welfare of residents, neighboring property owners, etc.

the applicant has failed to provide evidence to support its actions.

Non-compliance with Forestry/Recreational and/or Residential Agriculture Zoning codes and regulations,¹⁸ non-conformance with the Conditions of Approval, and no substantial supporting evidence for conformance to the applicable Goal, Policy, or Standard, combined with the above arguments against PLN-2018-15197 confirms it must not be approved. Commercial Cannabis Cultivation is not the intended use of the land located on the intersection of Butler Valley and Maple Creek Road. It is not only inconsistent with the "purposes of the existing Zone in which the site is located," "it is materially injurious to property and/or improvements in the vicinity." PLN-2018-15197, if approved in any form, will bring blight to the region, and will cause damages and hardship of great magnitude. It must be stopped in its tracks.

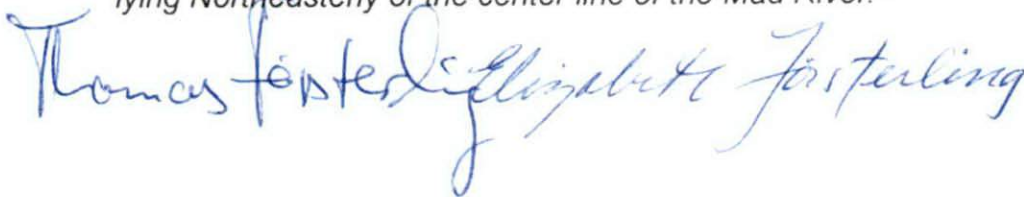
More regulation is needed in the Cannabis Industry in Humboldt County. The Foersterlings will seek to remedy all encroachments on their existing acreage, including up to the existing fence; and any subsequent negative environmental impact on their water system, septic system, meadow, air quality, and "enjoyment of their Homestead," in direct result from any Cannabis Cultivation within their surroundings, by all means available and necessary.

For every commercial grow, all residents of the entire County of Humboldt must be able to weigh in with their comments and concerns. The compliance process has been done in secret, behind the backs of the adjacent property owners; and the permitting process is flawed. The process is unacceptable, and is an infringement upon the rights of the surrounding property owners, as well as the residents of the County at large. It must be a transparent, equitable, and fair process.

The longterm impacts, for seven generations, are far reaching. The land is sacred, and the natural environment is more important than ever before. Sustainability means preservation not just a "reduction in negative impact." It is respectfully requested the Planning Department deny any and all permits for Commercial Cannabis Cultivation on parcel 09.

Respectfully submitted,
Thomas Foersterling and Elizabeth Foersterling,
Joint Tenants of the property bounded and described as follows:

*That portion of the Southeast Quarter of the Northwest Quarter
of Section 6, Township 4 North, Range 3 East, Humboldt Meridian,
lying Northeasterly of the center line of the Mad River.¹⁹*

A handwritten signature in blue ink that reads "Thomas Foersterling and Elizabeth Foersterling". The signature is written in a cursive, flowing style.

¹⁸ Land Use Designation (4.8). "Applied to remote, steep, and high hazard areas to ensure compatibility with adjacent resource production and open space uses."

¹⁹ See attached GRANT DEED.

RECORDING REQUESTED BY
FIDELITY NATIONAL TITLE INSURANCE

MAIL TAX STATEMENT TO
THOMAS HANS FOERSTERLING
ELIZABETH FOERSTERLING
6354 Fickle Hill Rd.
Arcata, CA 95521

WHEN RECORDED MAIL TO

Name
Street
Address
City
State
Zip

THOMAS HANS FOERSTERLING
ELIZABETH FOERSTERLING
6354 Fickle Hill Rd.
Arcata, CA 95521

1938
RECORDED AT THE OFFICE OF
Western Title Insurance Co.
1563 1290
JAN 20 3 32 PM '88

RECORDERS USE ONLY

GRANT DEED (JOINT TENANCY)

ORDER NO.
ESCROW NO. 181465 MMP/gj

The undersigned grantor(s) declare(s) :
Documentary transfer tax is \$ 47.30
(x) Computed on full value of property conveyed, or
() Computed on full value less value of liens and encumbrances remaining at time of sale.
(x) Unincorporated area () City of _____
Tax Parcel No. 315-011-08

JEFFREY SWEITZER, a married man and Deborah Sweitzer, husband and wife,

FOR A VALUABLE CONSIDERATION, HEREBY GRANT TO THOMAS HANS FOERSTERLING and ELIZABETH FOERSTERLING, husband and wife

as JOINT TENANTS,
the real property in the County of Humboldt State of California, described as:

That portion of the Southeast Quarter of the Northwest Quarter of Section 6, Township 4 North, Range 3 East, Humboldt Meridian, lying Northeasterly of the center line of the Mad River.

C.O.G.
FILED
NOT FILED

Dated: January 26, 1988

Jeffrey Sweitzer
JEFFREY SWEITZER

(Individual Acknowledgment)

STATE OF CALIFORNIA
County of Humboldt

Thomas Hans Foersterling

On this 26th day of January, in the year 1988, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JEFFREY SWEITZER

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person S whose name is subscribed to this instrument and acknowledged that he executed it.

WITNESS my hand and official seal.

000651

RECORDING REQUESTED BY

1992-33188-2

RECORDED - OFFICIAL RECORDS
HUMBOLDT COUNTY, CALIFORNIA
CAROLYN CRNICH, RECORDER

AND WHEN RECORDED MAIL TO

Recorded by THOMAS FOERSTERLING

Rec Fee 8.00

Name
Street Address
City & State

THOMAS H. FOERSTERLING
ELIZABETH FOERSTERLING
8748 BUTLER VALLEY RD.
KORBEL, CA. 95550

Clerk: VS Total: 8.00
Nov 17, 1992 at 11:09

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Declaration of Homestead (Husband and Wife)

Know All Men by These Presents: We, THOMAS HANS FOERSTERLING

AND ELIZABETH W. FOERSTERLING, do hereby declare:

That we are Husband and Wife and each own an interest in the dwelling described below and selected as our declared Homestead;

That we do now, at the date of recording this Declaration, reside on the Homestead hereinafter declared;

That the premises on which we declare as Homestead are that certain land situated in the

UNINCORPORATED AREA, County of

HUMBOLDT, State of California, and bounded and described as follows:

That portion of the Southeast Quarter
of the Northwest Quarter of Section 6,
Township 4 North Range 3 East Humboldt
Meridian, lying Northeastly of the center
line of the Mad River. 315-011 08

together with the dwelling-house(s) and the outbuildings thereon;

That we do, by these presents, claim the premises above described, together with the dwelling-house(s), and the outbuildings thereon, as a Homestead; that all of said property is necessary to the use and enjoyment of said Homestead;

The Homestead herein declared is the principal dwelling of the declared Homestead owners;

That the facts stated in this Declaration of Homestead are known to be true as of our personal knowledge.

In Witness Whereof, we have hereunto set our hands this Seventeenth day
of November one thousand nine hundred and ninety-two

Thomas Hans Foersterling

Elizabeth W. Foersterling

State of California,
County of Humboldt ss,

On this 10th day of November
in the year one thousand nine hundred and 92
before me, Susan A. Thrapp
a Notary Public, State of California, duly commissioned and
sworn, personally appeared



Thomas & Elizabeth Versterling
personally known to me (or proved on the basis of satisfactory
evidence) to be the persons described in and whose name are
subscribed to the within instrument, and acknowledged to me that
they executed it.

In Witness Whereof I have hereunto set my hand and affixed my
official seal in the State of California County
of Humboldt on the day and year in this certificate
first above written.

Susan A. Thrapp
Notary Public, State of California

My commission expires May 5, 1995

1992-33188-2

Dated, 19.....

.....
Claimant

.....
Claimant

BY

Declaration of Homestead (Husband and Wife)

State of California,
County of

..... being duly sworn, deposes
and says:

That.....
are the declarants named in and who make the within and
annexed Declaration of Homestead, that they have read the same
and know the contents thereof, and that the matters therein stated
are true of their own knowledge.

Subscribed and sworn to before me this, 19.....
day of

Notary Public, State of California

My commission expires

DUNAWAY BUSINESS LAW

4350 E. Camelback Road
Suite B200
Phoenix, AZ 85018

TEL (602) 468-5751

FAX (602) 468-1814

e-mail: dunawaylegal@gmail.com www.dunawaylawgroup.com

Robert W. Dunaway*

*Admitted in Arizona and California

October 13, 2015

CERTIFIED MAIL

Thomas and Elizabeth Foersterling
8748 Butler Valley Road
Korbel, CA 95550-9603

Dear Thomas and Elizabeth,

Now that your final appeal has been rejected and the legal parcel line declared by the trial court finally set in stone, we are moving forward with a fence along the parcel line. Our current schedule is to have a survey crew mark the exact parcel line and place location markers. Those location indicators will eventually be replaced by a galvanized fence, barbed wire fence or other permanent structure to clearly mark the legal boundary line.

The survey crew will be on the parcel the morning of October 29, 2015. The Sheriff's Office has been notified and will be standing by in case there is any interference with the survey crew. Any interference with the crew will be prosecuted to the full extent of the law by both us and the Sheriff's Office. The operation and location markers will be documented with video to ensure that there is no future interference. Moving or interfering with the location markers constitutes trespassing among other violations.

The court's final ruling impacts your property in several ways. First, the legal boundary line will run from the north on a line that is approximately 12 feet into the middle of your house and then bend around the house by an approximate 30 feet setback before moving back to the line through your house and continuing on down to the river. You will need to remove any and all property or structures that you have placed on ground that is east of your house on our side of the boundary line or we will remove them for you.

Second, your water supply is on our property. If you have not done so already, you need to make immediate plans to obtain your water supply from another source on your side of the legal boundary line. We will be disconnecting your house and property from the water supply, absent compliance with the following.

We will offer you the following relief with respect to the water supply. If you agree to pay our family the court sanctions and the land cost for the encroached land that you already owe, as fixed and ordered by the court, and the fees and costs of the survey crew

as further ordered by the court, we will agree to supply your house with water from the existing water supply for a period of 1 year, which will be long enough for you to put a new water supply into operation on your side of the boundary line. You need to agree in writing to pay such fees and costs prior to the October 29, 2015 survey visit. If you cannot pay the entire amount of such fees and costs in one payment, we will accept payment over a 3 month period in 3 equal monthly payments.

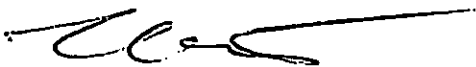
If you do not agree to this offer, we will disconnect your property as stated above and seek to collect the money owed and/or lien your property for the dollar amounts of the sanctions, encroached land costs and survey fees and costs. The sanction fees were due well over a year ago and we will pursue their collection along with the court ordered encroached land costs and survey fees and costs. Please note that the court has ordered that you are responsible for paying all of the survey fees and costs. If you interfere with the survey or the Sheriff's Office has to intervene, the Sheriff's Office costs and any costs related to finishing the survey at a later time are your legal responsibility.

Third, since the legal boundary line is close to your house, you will need to avoid trespassing on our land. We will prosecute any trespassing to the full extent of the law. Stay on your side of the boundary line.

Fourth, it is likely that we will not sell the parcel immediately but instead will lease it or utilize it for cattle or other purposes. Again, any interference with our or a lessee's use of the parcel or our property will be prosecuted to the full extent of the law. We will be using surveillance equipment to ensure your compliance with the law in the future.

The fact that I have to write this notice is depressing. I am mindful that all of this could have been avoided had you not tried to steal 6 acres of land from our family. You paid for 28 acres of land, yet claimed ownership of 34 acres. In the real world, you don't get to take 6 acres of land for free from another person. It seemed like a simple situation and we offered to trade you less valuable acreage from your parcel for the more valuable acreage you claimed around your house and down to the river. You flatly rejected that offer. Now, you will have to live with the consequences of your decision.

Sincerely,



Rob Dunaway

cc: Larry Kluck, Esq.
Suzy Rasmussen
Catherine Dunaway
Michael Dunaway
Victoria Foersterling

Foersterlings, Thomas and Elizabeth
8748 Butler Valley Road
Korbel, California 95550
707 668-4369
liz.forsterling@gmail.com



Humboldt Planning Department
3015 H Street
Eureka CA 95501
7070 445 7541
planningclerk@co.humboldt.ca.us

Hearing Date: August 6, 2020
Time: 6:00pm
Virtual Link: <https://zoom.us/j/97543247525> Password: 200525
Phone: 1-346-248-7799 Meeting ID 975 4324 7525 Password: 200525

RE: Record Number PLN-15197-SP
Subject : Special Permit Cannabis Cultivation Maple Creek Investments LLC, a Nevada Limited Liability Company
APN 315-011-009, APN 315-011-008 FR Zoning

SUPPLEMENTAL to Document of Opposition¹

TO: Humboldt County of California Planning Department, Planning Commission, Zoning Administrator, Supervising Planner, et. al.

PLN-15197-SP is not feasible. The adverse effects of such a proposal are far greater than any need, or any want, to place an Industrial Chemical Commercial Cannabis Grow on the intersection of Butler Valley Road and Maple Creek Road. Poisonous pollution, of which the cumulative impacts have already been noted, cannot be remedied by "Mitigation Measures." To place an unnecessary eyesore, and create a neighborhood nuisance of such magnitude, in direct view of everyone who passes by, all

¹ See attached Document (Received July 15, 2020 by Humboldt County Building Division, (revised)).

the Community, and on top of, in front of, and in the face of the neighboring land owners is not only a violation of the Ordinance adopted to protect from such atrocities, but it does not comply with the California Environmental Quality Act, Humboldt County Department of Environmental Health, County of Humboldt's Certified Unified Program (CUPA), and the North Coast Air Quality Management District.² On July 21, 2020, a complaint was filed with the California Environmental Protection Agency (CalEPA # COMP-48402), regarding PLN-15197-SP.

The Staff Report findings for evidence supporting conformance of PLN-15197-SP to the General Plan are disturbing, lack foundation, and are speculative in nature. The findings are hearsay and ambiguous, filled with misrepresentation and misinterpretation of the project's proposal, its impact, and the necessary requirements of conformance. The wrongful application of the Goals, Policies, Standards, Measures, Regulations, and Laws which have been adopted to safeguard small rural communities from being overrun by the Commercial Cannabis Industry is a recipe for disaster. The proposed development is **not** in conformance. Contrary, the findings show overwhelming evidence supporting nonconformance. PLN-15197-SP must be denied. The Foersterlings object to the development of a Cannabis operation on parcel 315-011-009.

"Significant water drawdown from adjacent," neighboring residential properties is in direct violation of Ordinance No. 2599 (§55.4.12.9). The projected POD is North, and Northeast of adjacent residential wells, rivulets, waterfalls, and tributaries of the Mad River. The LSA Notification application specifies the "Season of Diversion" as between June 1st and August 31st, and has not been approved by CDFW. Cannabis Cultivators are prohibited from diverting this water during the dry season for irrigation use. The proposed plan also calls for water trucked into the site from a well one mile away; that well feeds the Maple Creek, a vital tributary of the Mad River. Clearly, there is not enough water available on the proposed site for the proposed plan. Particularly, if mediation measures require that the proposed road on the same site needs to be "watered twice a day" to keep the dust and top soil from eroding and clouds of dust from forming, then more precious water is wasted. *Wasteful* water usage is contrary to rural development.

The rustic cabin the plan proposes to demolish has been in that location since the late 1940's... early 1950's, and has become part of nature. It cannot be treated in the same way as a pre-existing building site, nor should it. There are some beautiful young fir growing near, and around the cabin, in the forested area. Disturbance of the cabin and its potential would be a loss, replacement of it with an industrial sized outbuilding would be degenerate, and is further proof the applicant does not have the necessary appreciation for the region and all it has to value.

It is the responsibility of conscientious land stewards to protect the habitat for wildlife, and to foster healthy and sustainable living practices for the land and its "land organisms."³ It is more important, than ever before, to *prevent* irresponsible, negligent, and negative environmental impacts from occurring. Commercial cannabis cultivation has become to the Cannabis Industry, as clearcutting is to the Timber Industry, or as fracking is to the Oil Industry; it is not sustainable, and is detrimental to the Earth. "The

² The proposed plan is feet away from the County Road, on both sides.

³ Leopold.

Green Rush” has scarred the land with so many large grows in the Emerald Triangle,⁴ it is no longer adequate to standby and let permitting spin out of control. Without proper regulation of Cannabis Cultivation the future for Humboldt County is grim. The pervasive pot culture of Humboldt County must be brought into balance. No rest from the pot culture. No peace. It is the responsibility of the Planning Department and County Supervisors to safeguard the interdependent ecological system so vital for survival.

The following Table 1.0 outlines the evidence supporting the findings of **nonconformance with the General Plan:**

Plan Section	Summary of Applicable Law, Goal, Policy, Standard, Regulation, Guideline, Requirement, Term, Condition	Evidence which Supports the Findings of Nonconformance with the General Plan
<p>Land Use (Chapter 4)</p> <p>Land Use Designations Section 4.8.1 Purpose</p>	<p>Residential Agriculture (RA40)</p> <p>Other uses may be restricted as detailed in the Zoning District implementing the land use designation.</p> <p>The designation applies to large lot residential uses that rely upon on-site water and waste-water systems. Varying densities are reflective of land capabilities and/or compatibility issues.</p> <p>RA40 is applied to remote, steep, and high hazard areas, or where appropriate to ensure compatibility with adjacent resources and open space uses.</p>	<p>(1). The proposed development of a Commercial Industrial Cannabis Cultivation of approximately 27,025 square feet of Marijuana Plants, and a 2,000 square foot on-site processing facility is not compatible with FR zoning and/or the applicable land use designations; Forested areas, Wetland, Mad River Watershed, subwatershed, steep and unstable slope, drawdown of adjacent well(s), location in Streamside Management area, channel of river and streams, flood and drought conditions, High Hazard Fire Zone, open spaces, scenic enjoyment, etc. “Cultivation and processing of cannabis shall not be allowed as a principal permitted use under the General Agriculture use type classification applicable within the County of Humboldt” (Humboldt County Code §314-43.2.6), The unsightly, and unconscionable storage and use of six water tanks holding 14,000 gallons of water, plus four 50,000 gallon tanks expected to hold 200,000 gallons of rainwater, plus more tanks of an undisclosed amount of water trucked in from a mile away, plus portable toilets transported 16 miles back and forth on Maple Creek Road to Blue Lake, is not appropriate for the intersection of Butler Valley Road and Maple Creek Road. It is incompatible with a rural residential designation for the land, and is incapable of sustaining the proposed activities. Therefore, PLN-15197-SP does not conform with this section.</p>
<p>Circulation (Chapter 7)</p>	<p>Goals and Policies require a balanced, safe, efficient, accessible, and convenient circulation system appropriate for each unincorporated community; coordinated planning design, development, operations, and maintenance between the County and others; access for transportation to safely move within, into and out of Humboldt</p>	<p>(2). The proposed development for Cannabis Cultivation and processing facility requires inroads with egress and ingress points along the rural Butler Valley Road, and the creation of a parking lot. This type of Commercial Industrial circulation is unsafe, inappropriate, and inefficient. Industrial Operations of such magnitude create an imbalance on the roadways. Conditions of Approval set forth by the Department of Public Works cannot be met. The disturbance to soils, forested lands, wetland areas; the creation of sediment run-off; and the need to prevent flood and mud</p>

⁴ Shane Anderson’s “A River’s Last Chance” (2018).

	<p>County.</p> <p>Pavement Management Criteria (68th percentile).</p> <p>Sight Visibility Ordinance.</p> <p>Consideration of Land Uses in Transportation Decision Making.</p> <p>Consideration of Transportation Impacts in Land Use Decision Making.</p> <p>Community Design for Public Health.</p>	<p>conditions during the rainy season, the need to water the road and lot twice daily during the dry season to prevent erosion and dust storms, and the need to provide a safe and appropriate developmental design for the "type of unincorporated community" are not provided in PLN-15197-SP. The shoulder is not paved, and is not considered Parking. The County roads servicing the area are in disrepair and have not been paved since the '50's. The road conditions are classified as poor-very poor. The steep road and blind corner on one end, and the blind intersection on the other end prohibit the necessary visibility to safely enter and exit the Butler Valley Road, and will create a road hazard with the proposed increase of traffic from employees coming and going, product being transported, etc., etc., It does not comply with the Sight Visibility Ordinance. Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Housing (Chapter 8)</p> <p>Housing Element Densities (Ordinance 2599, §312-17.1.5)</p>	<p>Goals, Policies, and Standards contained in the Housing Element Residential Land Inventory seek to identify existing and projected housing needs and establish goals, policies, standards and measures for the preservation, improvement, and development of housing.</p> <p>Development of Parcels in the Residential Land Inventory.</p>	<p>(3). The proposed development for Commercial Industrial Cannabis Cultivation, itself, <i>reduces the residential density for the parcel</i>. Furthermore, it will reduce the development of a residential Community plan to service the Maple Creek School District. The placement of Marijuana Plants in plain sight for all to see and smell is an insult to residential growth, prevents residential development, and attracts crime, theft, and transient behavior. The proposed action to demolish the rustic cabin and build a processing facility in its place is not an "improvement," and is contrary to the policies of preservation. The goals, policies, and standards surrounding appropriate housing for the region are thwarted by the proposed project and/or any "future proposed development." A "caretakers living quarters" is referenced, but there are no approved plans presented (E.8). Furthermore, a high security apparatus is proposed, which is of such an invasive and dominant feature of the plan, it is a deterrent for residential development and degrades rather than improves, destroys rather than preserves, and in the process intrudes upon the quietude of the region. Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Conservation and Open Space (Chapter 10)</p> <p>Open Space Plan (Section 10.2)</p>	<p>The Open Space and Conservation Program is complimentary to other agencies' plans and preserves the County's unique open spaces.</p>	<p>(4). The proposed development is located within an Open Space area, and is in a severe high fire hazard zone and forested region; with its surrounding Wetland, located in the Mad River Watershed. The location is unique to Humboldt County and has been an intricate part of the scenic route for avid and professional cyclists, bird watchers, nature enthusiasts, etc., and encompasses critical habitat for local wildlife. The proposed development is against the California Department of Forestry and Fire Protection, is against the California Department of Fish and Wildlife, is against the California Environmental Protection Agency and Regional Water Quality Control Board of the North Coast Region, and against the Humboldt Bay</p>

		Municipal Water District, is not complimentary to "other agencies' plans, and destroys "unique open spaces." Therefore, PLN-15197-SP does not conform to this section.
<p>Conservation and Open Space (Chapter 10)</p> <p>Biological Resources Protection (Section 10.3)</p>	<p>Policies are applied to mapped sensitive habitat areas to protect fish and wildlife, to prevent species from becoming endangered, and to facilitate the recovery of endangered species already threatened.</p> <p>Concerns long-range preservation and conservation of Natural Resources.</p>	<p>(5). The proposed development is directly on and near sensitive critical habitat areas within the unique microclimate region of Humboldt. The Biological Assessment Report submitted by TransTerra Consulting is not comprehensive, nor is it accurate. Protocol levels and floristic surveys were not conducted. Many sensitive species in the region were not identified in the report, <i>i.e.</i> deer, bat, bear, salmon/steelhead, barn owl, squirrel, mountain lion, bobcat, eagle, osprey, elk, skunk, quail, river otter, "sucker fish," duck, coyote, fox, raccoon, Tanager, barn swallow, heron, Red-tail hawk, raptors, sandpiper, lizard, snake, crickets, woodpecker, etc.</p> <p>The Jurisdictional Wetland Delineation Report submitted with the proposal fails to accurately assess the related issues to the project, <i>i.e.</i> drainage conditions, Streamside Management, and soil and water pollution. Disturbances to aquatic species, native soils, sensitive receptors, water quality, air quality related to road development and odor related to the "specialty crop," structure development, and cultivation activities are not able to be mitigated. The staff report findings incorrectly stated "generators are not part of the project's operations," when, as a matter of fact, generators will be used. The destruction of the existing rustic cabin will include destruction of the natural habitat, including beautiful young fir trees and digging into wetland. Conservation efforts and plans for long-range preservation of the area have not been addressed. The California Department of Fish and Wildlife have not approved the Staff Report's findings, and the proposed development is incompatible with the Departments' goals and objectives. Therefore, PLN -PLN-15197-SP does not conform to this section.</p>
<p>Conservation and Open Space (Chapter 10)</p> <p>Cultural Resources (Section 10.6)</p>	<p>Goals and Policies relate to the protection and enhancement of significant cultural resources, providing heritage, historic, scientific, educational, social, and economic values to benefit present and future generations.</p> <p>Substandard lot for Industrial Commercial Development.</p>	<p>(6). The proposed development is east, southeast of a previously halted project on parcel 315-011-007, on which Native Ceremonial Grounds were disturbed by the same Corporation. "Inadvertent Discovery Protocols" were too late to save the land from being excavated, disturbed, and desecrated. American Indian Tribes in the Northwest region of California have banned the cultivation of Marijuana on Tribal lands due to the detrimental cause and effect. Furthermore, the development of a Commercial Industrial Cannabis Cultivation Operation on the proposed site would destroy the historic cabin made of old growth Redwood and completely annihilate significant cultural heritage that would benefit present and future generations. Establishment of an out-of-control Cannabis Industry in Maple Creek contradicts the type of protection implied by, and explicitly expressed in, the Goals and Policies</p>

		of the General Plan. Therefore, PLN-15197-SP does not conform to this section.
<p>Conservation and Open Space (Chapter 10)</p> <p>Scenic Resources (Section 10.6)</p>	<p>Protection of scenic areas that contribute to the enjoyment of Humboldt County's beauty and abundant natural resources and surroundings; providing a system of scenic highways and roadways that increase the enjoyment of, and opportunities for health, safety, education, culture, nature, physical fitness, and well being. Concerns traffic and traffic safety issues.</p>	<p>(7). The proposed development is incompatible with the natural surroundings, and is contrary to the intended use of the land; "creating traffic and traffic safety problems for existing residents." It intrudes upon the enjoyment of Humboldt County's beauty and abundant natural resources in a plethora of ways. Any Cannabis Cultivation would be seen (and smelled), as the projected site is alongside the road. Water storage tanks, and pot plants, and a monstrous processing facility are in stark opposition to this section of the General Plan. Butler Valley Road is not a Highway, but is valued for its scenery. Despite the terrible conditions of the existing connecting roadways, many cyclists, tourists, and residents put up with the decaying road solely <i>because of the nature</i>. The proposed plan takes enjoyment away from everyone, contributes to blight, and stinks up and trashes the neighborhood, causing a nuisance. High security surveillance cameras and Signs, posted at the entrance of the Industrial Facility, with warnings, etc. in rural Humboldt, are contrary to the General Plan. Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Water Resources (Chapter 11)</p> <p>[P1-P46; S1-S13; IM1-IM32]</p>	<p>Goals and Policies are for Watershed Restoration, Management for Critical Watershed Areas, Water Supply, Quality, Beneficial Uses, Water Resource Habitat, Safe Storm Drainage, and Sustainable Management for rural water supplies privately provided or from on-site surface and groundwater sources. Some rural parcels have been created that cannot support residential usage based on on-site water availability, so availability must be determined on a case-by-case basis. Another concern is the cumulative effects of surface and groundwater withdrawals in rural areas where allowed land uses, if fully developed, would require more water than what is locally available during low-flow periods. Other requirements include illicit discharge detection and elimination; water quality monitoring; pollution prevention at County operations; public education and outreach; and program effectiveness evaluation.</p>	<p>(8). The proposed development is contrary to the General Plan. There are already numerous large permitted Cannabis operations in the area. The water supply is tapped out for such uses. Any further draw on the surface and ground water in the vicinity of the proposed site would be devastating. Two hundred thousand gallons of rainwater catchment for cultivation of Cannabis is not sustainable, and negatively impacts existing life, preventing necessary water from reaching its proper destination. Another fourteen thousand gallons of water sucked away from the surrounding Forest and Wetland contributes to the desertification of the region. Also, the drawdown from adjacent well(s) is <i>prohibited</i> by Ordinance No. 2599, under the General Plan. Trucked in water from another well one mile away from the grow site draws water away from the Maple Creek, a vital tributary for the Mad River and its aquatic life, and is also prohibited. Pollution of the earth, air and water, and the resultant harmful effects on humans, created from the use of fertilizers and pesticides cannot be "mitigated." "Reduction" is not an option, when it comes to health and well being. Therefore, PLN 2018-15197 does not conform to this section.</p>
<p>Noise (Chapter 13)</p>	<p>Noise: When sound is disagreeable or unwanted, it is</p>	<p>(9). The proposed development increases traffic noise, operational noise, and vibrational noise between 8am</p>

	<p>considered noise. Excessive Noise: Noise levels are considered in the Land Use Element to avoid direct conflicts between neighboring uses and minimize the exposure of community residents to excessive noise. Purpose is to create a quiet and healthful environment with limited disagreeable noise.</p> <p>N-G2. Incompatible Land Uses. Land uses arranged to reduce annoyance and complaints and minimize the exposure of community residents to excessive noise. It also depends upon the character of the sound, number of noise events, familiarity and predictability, and the attitude of the listener.</p> <p>Policies N-P1. Minimize Noise from Stationary and Mobile Sources. Minimize stationary noise. Traffic noise.</p>	<p>and 5:30pm Monday-Saturday every week, specifically during the months between May and October. Every sound reverberates in the river valley. Every car and truck on the road can be heard, every voice echoes, and every motion has its impact. Considering that the Community residents prefer the quietude of nature; the sounds of the river, the hoot of the barn owl, the flap of the eagle's wing. The invasive quality of a Commercial Industrial Cannabis Operation in the residential neighborhood of Butler Valley Maple Creek is unwanted, and cannot be tolerated. The "character of the sound" is annoying, and unbearable. Forced exposure to pot growing, in such a blatant way, is against all sections of the Ordinance. It is offensive to "Sensitive Receptors," and complaints of an unhealthy atmosphere have already been heard. Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Air Quality (Chapter 15)</p> <p>[AQ-P4, AQ-P5, AQ-P6]</p>	<p>Goals, Policies, and Standards are to improve air quality, control fugitive dust emission, negate air quality impacts from new development, and reduce emissions of air pollutants from new commercial and industrial development up for environmental review by requiring feasible mitigation measures to achieve the standards of the NCAQMD.</p> <p>Buffering Land Uses. Consider the use of buffers between new sources of emissions and adjacent land uses to minimize exposure to air pollution.</p>	<p>(10). The proposed development does not meet air quality standards. Exposure to dust emission from grading, and the resultant dirt roads; the coming and going of personnel on a daily basis creates unhealthy patterns. Exposure to the smell of Cannabis permeating the intersection of Butler Valley Road and Maple Creek cannot be prevented, nor can it be mitigated. "Sensitive Receptors" have no way to buffer the negative impact of the odor and its side effects. The EIR recognizes the inability to rid the odor, and cannot rationalize permitting a Commercial Industrial Cannabis Cultivation directly adjacent to an already well-established, discreet permitted grow. The detrimental impacts, from the proposed development, far outweigh any economic advantage, and will, in fact, reduce the economic benefit the County seeks from the Cannabis Industry. The human right to breathe fresh air exceeds any right to grow Cannabis (EPA, CEQA). Therefore, PLN-15197-SP does not conform to this section.</p>
<p>Safety (Chapter 14)</p>	<p>The purpose of the Safety Element is to reduce the risk of death, injuries, property damage, and economic and social dislocation resulting from earthquake, fire, flood, and other hazards. The components of this element include:</p> <ul style="list-style-type: none"> • Geologic/Seismic Hazards • Flooding and Drainage 	<p>(11). The proposed development is subject to a number of hazards to life and property. PLN-15197-SP substantially increases the risks associated with Industrial Hazards; fire, flooding, drainage, pollution. Adjacent property owners and their respective dwellings, and the Community as a whole, are not safe from the hazardous conditions of this project. The erosion of soil to grade and maintain a parking lot and access road, alone, is cause for concern on Wetland and Forested areas, but to dig up soil to Cultivate thousands of square feet of Marijuana Plants, and dump pesticides</p>

<p>Community Infrastructure and Services Element (Chapter 5)</p>	<ul style="list-style-type: none"> • Fire Hazards • Airport Safety • Industrial Hazards • Emergency Management <p>This General Plan manages risk through the use of land use designations to limit exposure to hazardous areas and through policies tailored to specific hazardous conditions. The implementation measures of this Element are designed to proactively improve overall safety conditions within the County.</p> <ul style="list-style-type: none"> ○ Soils ○ Slope Stability ○ River Flooding ○ Drainage Management ○ Fire Hazard ○ Community Wildfire Protection 	<p>and fertilizers into the disturbed soil and surrounding Wetland is an environmental disaster. The slope of the land referred to in the Staff Report page 25, "attributes the presence of wetland to the orientation of Maple Creek Road above the site as well as the topography," must also include the slope of the land toward, and off of, Butler Valley Road. High slope instability and disturbance of soils, foliage, trees, extraction and retention of surface, ground, and well water, and the introduction of pesticides and fertilizers <i>creates</i> hazardous conditions, it does not limit them.</p> <p>To erect an Industrial Commercial processing facility, in a rural setting is negligent land use. To have P G&E bring its power to an area "with a very high fire hazard severity" (specifically, right on the intersection of the only two roads for exit or entrance by emergency and service vehicles), is a violation of the Wildfires Protection Act. P G&E is responsible for three of the most devastating fires in California's recent history, causing death and destruction of such magnitude, the areas and people affected will never recover all of the losses. To approve placing 24/7 High Voltage electrical current in the neighborhood, in close proximity to forested areas prone to extremely dry and hot times of the year is not only negligent, it is criminal. Liability falls to the applicant and/or Planning Division, as California Department of Forestry and Fire Protection and the Kneeland Volunteer Fire Department have not signed off on the project. Therefore, PLN-15197-SP does not conform to this section.</p>
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The following Table 2.0 outlines the evidence supporting the findings of nonconformance and noncompliance with necessary Zoning Regulations, Eligibility Requirements, and Performance Standards related to Ordinance No. 2599:

Section	Summary of Applicable Regulation, Requirement, and/or Performance Standard	Evidence Supporting the Findings of Nonconformance
§312-1.1.2	Development permits shall be issued for a lot that was created in compliance.	<p>(1). The 1971 Record of Survey Map of portions of Sections, including Section 6, commissioned by the Madrone Creek Development Company & Boulder Creek Development Company, referenced in the Staff Report on page 24, indicates the Tract number for the 315-011-009 parcel is 448, not 315, and that "this map is based on record information." Bearings and lengths for the parcel were derived from Book 11, Page 99, A. B. Bones' Survey of Maple Creek Headquarters Ranch/Hammond Lumber Co. In 1946, A. B. Bones established the Corner Monument connecting parcels 08, 09, 07, 01. All subsequent surveys, and land transactions: buying, selling, dividing, etc., were done using this Corner Monument established in 1946.⁶</p> <p>The proposed development for a Commercial Cannabis</p>

		<p>Cultivation Special Permit uses a different survey, monument, boundary, and map to encroach on neighboring parcels, water systems, land, structures, and improvements in the process. The Humboldt County Assessor's Map Book 315-01, Reversion to Acreage Guynups & Arcata National Corporation, delineates 40 acre parcels, not 42, and clearly shows the 09 parcel has never had river frontage. The boundaries outlined in the proposed PLN-15197-SP do not conform to this section, and create conflict.</p> <p>Building height obstructs the viewshed and sight visibility of the intersection, infringes on the views enjoyed by adjacent land owners, and is an unsuitable use of the land. The proposed project does not conform to Zoning regulations.</p>
§314-61.1	Standards for Streamside Management Areas (SMAs)	<p>(2). To not recognize the subject parcel(s) as Streamside Management Areas is negligent. To allow for a "50' buffer," admit the "presence of jurisdictional wetland," and imply run-off from the "orientation of Maple Creek Road," but ignore the negative impact the proposed development will do to the orientation of Butler Valley Road, the orientation of the adjacent parcels, the orientation of the waterfalls and rivulets which feed the Mad River, and the orientation of the Mad River itself, is beyond reason. Culverts, etc. may channel water away from the site, but polluted run-off water still finds its way into neighboring parcels, water systems, soils, etc., and drains into the Mad River. PLN-15197-SP does not conform to the minimum performance standards in this section.</p>
§314-55.4.6.3.1 -2	<p>Eligibility Requirements:</p> <ul style="list-style-type: none"> • Energy Source 100% Renewable Energy • Water Source Non-diversionary Water Flow Data Watershed Planning Seasonal Drought Conditions Restrictions of Water Use 	<p>(3). The proposed development plans to utilize high voltage provided by P G&E in a severe high fire hazard area⁷. P G&E has been found responsible for three of the most destructive fires in California's recent history. The introduction of dangerous power lines to the site plan area is unsafe, and <i>increases</i> the fire danger risk.</p> <p>Fourteen thousand gallons of hard tank waterstorage for an Industrial Cannabis Operation is not considered domestic, and also, the ability to use the water for "fire suppression" is questionable. The water drawdown of adjacent well(s) is prohibited for Cannabis-related activities. The Staff Report claims "no diversionary water will be used for irrigation of cannabis," but the applicant filled out a Lake or Streambed Alteration Notification application for exactly that, and more (although incomplete, and incorrect). SUIR prevents diversion of water during the dry season. California Department of Fish and Wildlife has not signed-off on the project.</p> <p>Four 50,000 gallon tanks of "rain catchment," is not sustainable, and prevents necessary water flows during the rainy season to replenish the watershed. The fact that <i>more</i> water is needed for the proposed Cultivation clearly shows</p>

⁵ Licensed Surveyor No. 2020.

⁶ The Dunaways of Maple Creek Ranch, including their father, bought, sold, and acquired the affected parcels using the A.B. Bones' Original Corner Monument set in 1946.

		the site location is not the place for another large grow operation. In addition, the use of an off-site well for "trucking in water for cultivation and back-up water" is absurd, and a direct violation of Ordinance No. 2599. PLN-15197-SP does not conform and/or comply with the requirements in this section.
§314-55.4.11	Application Requirements	(4.) All required information has not been received. The applicant has not provided all the appropriate forms from all the agencies directly involved with the approval of the development. The Staff Report is deceptive by stating the opposite. Therefore PLN-15197-SP does not conform to this section.
§314-55.4.6.4.4	Setbacks	(5). The site map plan for the proposed project does not reflect true boundaries, does not accurately depict buffers for wetland and forested areas, does not correctly represent road conditions, potential hazards, traffic, proximity to, and impact on, the Mad River Watershed, adjacent parcels, neighbors, wildlife, resources, schools, other large grows, and fails to provide necessary "defensive space" areas. Proposed "setbacks" for the development of this Industrial-sized Commercial Cannabis Cultivation Operation on the roadside of the Butler Valley Maple Creek turn-off do not accurately address, and are not correctly applied, to the project. Therefore PLN-15197-SP does not conform to the requirements in this section.
§314-55.4.12.1, .4-.8, .10- .11, .13,	Performance Standards <ul style="list-style-type: none"> • Road System • Biological Resource Protection • Light Pollution Control • Energy Use • Noise • Cannabis Irrigation • Soils management • Existing Site Configuration 	(6). The County roads servicing the site do not meet Category 4 Standards set forth by the Department of Public Works. In many instances the roads are unpaved, less than the required footage, no centerline marked, and are in poor and/or very poor condition. To increase road traffic, punch in unpaved "access roads" with a 50' turn around, and develop a parking lot off of the County Road for an Industrialized Cannabis operation, without addressing the categorically poor/very poor conditions of the existing County roads, is negligent. The road system is negatively impacted by any disturbance from both sides of the site. Butler Valley Road and Maple Creek Road. The Roadshed is unable to support new Cannabis activity. Therefore, PLN-15197-SP does not conform to the Performance Standards. The Jurisdictional Wetland Delineation Report filed by the applicant for a Special Permit fails to accurately assess the sensitive and critical habitat areas, the Wetland, the Streamside Management areas, Mad River Watershed, etc. The Staff Report reinforces its ambiguity and reveals a reasonable doubt as to its application and recommendations. The proposed Cannabis Cultivation project is not allowed as a principal permitted use under the General Agriculture use type classification. Generators are proposed as part of the project. The proposed building site is not on what can be considered a pre-existing building site, the cabin is antique and has become part of nature. There are sensitive species on-site. Therefore, PLN-15197-SP does not conform to the Performance Standards.

⁷ Considered Zone 10 by Insurance Companies.

		<p>Protocol levels and Floristic Surveys were not conducted, yet are included in recommendations for prior to any disturbances related to the proposed development on and to the land, native soils, aquatic life, listed species, and species of concern. To declare no SMA, but mark SMA buffers on-site, to declare "no signs of filling or altering of wetlands," but admit "drainage conditions relating to Maple Creek Road" attribute to the on-site Wetlands, and to omit the analysis of the presence of harmful algae bloom found on the adjacent parcel directly related to the accumulation of fertilizer/pesticide run-off water from the previous two years of illegal unpermitted grow by the applicant, is both contradictory and negligent. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>The proposed development is in violation of the International Dark Sky Standards. The Milky Way and Seasonal Constellations can be observed in the night sky. Invasive light from Industrial Commercial Cannabis activities cannot be prevented from spilling outside the boundaries of the parcel or premises. The skies are artificially lit up by any light disturbances during the after sunset hours and before the twilight hours. The proposed development is in direct view of neighboring landowners and takes away enjoyment of the Astral Views. The proposed security system and associated lighting and surveillance apparatus is an affront to the Rural Neighborhood Watch Program. The Humboldt County Sheriff's Department must be notified. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>PLN-15197-SP proposes to bring 24/7 High Voltage power to the intersection of Butler Valley Road and Maple Creek Road, putting up poles and electrical wiring, cutting trees and clearing a swath of 20' to accommodate P G&E. The proposal increases the risk of a catastrophic wildfire in the very high fire danger area. Close proximity to electrical power lines for rural residents is a severe health risk. Cap and trade is not 100% renewable. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>Sensitive Receptors located in the area of the proposed Cannabis Cultivation will be adversely affected by the commotion created by the scale of the Industrial Commercial activities. The noise of pot growers coming and going, an increase of automobile activity on the roads, and adjacent lands, are not only experienced as an increase in sound, but also an increase of vibration. The particular "character of the sound" is negative, as the applicant has shown aggressive and disrespectful behavior to members of the Community and the environment. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p>
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		<p>The water usage for the proposed Commercial Cannabis Cultivation is unsustainable. Low and reduced stream flows during half of the year's cycle have now reached an all time high for the Mad River Watershed. The Mad River, as the <i>source of water</i> for Humboldt County must be preserved by all means necessary. The multiple water sources and diversionary tactics proposed undermine conservation and restoration activities now in place to protect and enhance the river flows. The use of such water for non-human use and/or Cannabis Cultivation is highly regulated, and the proposal itself is in violation of Performance Standards. No "monitoring" of the project can change the damage done to the ecosystem; water, aquatic life, land, vegetation, wildlife, and human. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>Disturbance to the native soils living in the proposed site area intrudes upon the root system of forested areas, the water flows of the Wetland, and contributes to erosion, pollution, and degradation of the soil content. The project proposes to displace soils, to dig, to grade, to excavate, and "amend the soil with fertilizers" and apply pesticides to the plants, with the intention of making the soil no longer viable and then to remove and dispose of the native soils. Removal of native soil and replacement with manufactured soil is prohibited; Native soil cannot be impaired or damaged (55.4.6.4.3). "Straw wattles" cannot control run-off during the rainy season. The proposed project is a disaster waiting to happen, and restoration efforts are untenable. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>Any configuration for Commercial Cannabis Cultivation on the intersection of Butler Valley Road and Maple Creek Road does not "result in an improvement in the environmental resources of the site." The site is not suitable for the proposed project. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p> <p>The proposed development is ineligible for permitting for all the above mentioned reasons. Because of its extreme negative impact and large public outcry, mitigation measures and monitoring plans are inadequate to prevent irreparable damages to people, place, and thing. Therefore, PLN-15197-SP does not conform to the Performance Standards.</p>
§312-17.1.4	Special Permit Requirements	<p>(7). The proposed development is detrimental to the public health, safety, and welfare of the entire Northcoast, and will be materially injurious to all properties and future improvements in the vicinity. No more large grow operations in Butler Valley Maple Creek. Approval, from all agencies involved with the permitting process for Cannabis</p>

		Cultivation, has not been given to PLN-15197-SP. Therefore, PLN-15197-SP does not conform to the requirements.
Environmental Impact Report [EIR]	<p>Establishes local land use regulations to allow for commercial cannabis operations in the unincorporated area of the County that ensure the health, and safety of the residents, employees, County visitors, neighboring property owners, etc.</p> <p>The EIR assures that no new significant environmental effects or a substantial increase in the severity of previously identified effects will be caused.</p>	<p>(8). There is substantial evidence, and enough information provided to know with reasonable assurance that the proposed PLN-15197-SP fails to comply with the Environmental Standards set forth in the EIR. "At the request of the Department of Fish and Wildlife, the County is prohibiting the expansion of existing baseline cannabis cultivation operations or the establishment of new cannabis cultivation operations in subwatersheds identified as impacted by the extent of pre-existing cannabis cultivation within those areas, or strongholds for the restoration of fisheries for threatened or endangered salmonid species (§314-55.4.6.8, Resolution No.18)." If the State Water Resources Control Board or CDFW finds cannabis cultivation is causing significant adverse impacts on the environment in a watershed or other geographic area, CDFA shall not issue new licenses, or increase the number of plant identifiers within that watershed or area. The proposed development is in the vicinity of the Mad River Watershed. All Cannabis activities negatively effecting soil stabilization, water run-off, rivulets, and tributaries in the Mad River Watershed are prohibited. Reparations are costly.</p> <p>In every instance of the EIR, the proposed project violates Environmental Law. The location of the proposed site "cannot support cannabis cultivation," in any form. There are already numerous Cannabis Cultivation operations in the vicinity, there is no more capacity. The evidence clearly shows the project adversely impacts the environment to such a degree as to create an unhealthy, unsafe, and intolerable conditions in the neighborhood. The proposed project is noncompliant with CEQA. Therefore, PLN-15197-SP does not comply with the EIR.</p>

The Cultivation and Operations Plan prepared by Six Rivers Development LLC, for Maple Creek Investments LLC, a Nevada Limited Liability Company, itself, is rife with proposed non-compliance actions, so it is impossible for the proposed Cultivation to be "conducted in compliance with all laws and regulations as set forth in the CCLUO and MAUCRSA." The "Recommended Conditions of Approval" are not only inadequate to comply with the necessary environmental safeguards required by Ordinance No. 2599, but cannot be met by the applicant. It is the responsibility of the Planning Commission to do the right thing and deny the proposed project, deny the special permit, and deny the applicant any and all permits sought for Cannabis Cultivation and any and all related activities.

Further issues of concern:

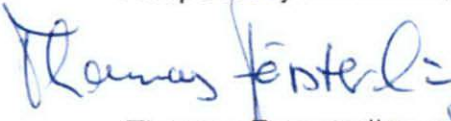

- Criminal trespass.
- Invasion of privacy.
- Elder abuse with intent to do harm.
- Vandalism.

- Terrorism.
- Stalking.
- Harassment.
- Assault.

It is declared, under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: August 3, 2020

Respectfully submitted,



Thomas Foersterling and Elizabeth Foersterling