

BOARD OF SUPERVISORS MEETING
December 4, 2018
1:30 p.m.

**For Item F2: MCMP Humboldt, LLC Zone Reclassification of
Assessor Parcel Number (APN) 522-491-017 in the Willow
Creek Area**

(Each Speaker Limited to 3 Minutes)

Voluntary Sign-In Sheet

- ✓ 1. Jon Ray - KTJUSD
- ✓ 2. Vivienne Drutt - Hoopa Valley Tribe
- ✓ 3. Mike Drutt - HVT Fisheries
- ✓ 4. Joe James - Yurok Tribe
- ✓ 5. Meg Stofsky, White Ally, Eureka Resident
- ✓ 6. BARBARA AKA KARPANI BURNS - ARCATA RESIDENT
- ✓ 7. SCOTT FRAZER, BLUE LAKE, CA
- ✓ 8. Larry Glass - NEC
- ✓ 9. Mr + Mrs Wayne & Sarah Jr.
- ✓ 10. Gary Falxa, Eureka resident
- ✓ 11. Kedarsha Cotegrove
- ✓ 12. ~~Sum A. Cleary~~ Hoopa Tribal Council
- ✓ 13. SW Mooney - Hoopa Tribe
- ✓ 14. Walt Kava
- ✓ 15. Thomas Joseph

Please Sign up to Speak

- ✓ 16. ~~MANA Srinivasna Jones~~
- ✓ 17. Tia Oms Peter
- ✓ 18. Jessica Chaudano
- ✓ 19. Glen Colwell
- ✓ 20. SUSAN O'GORMAN, WCCSD
- ✓ 21. Lucien Smith, Bluff Creek Company, Inc
- ✓ 22. Patricia Spaul
- ✓ 23. Barbara Shultz
- ✓ 24. PATRICIA LAI

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SUPPLEMENTAL INFORMATION #2

For Board of Supervisors Agenda of: December 4, 2018

<input type="checkbox"/>	Consent Agenda Item	}
<input type="checkbox"/>	Continued Hearing Item	}
<input checked="" type="checkbox"/>	Public Hearing Item	}
<input type="checkbox"/>	Department Report	}
<input type="checkbox"/>	Old Business	}

Re: **File Id # 18-1592: MCMP Humboldt, LLC, Zone Reclassification**
 Application Number 10243 Case Number ZR-16-002
 Assessor's Parcel Number (APN) 522-491-017
 533 State Highway 96, Willow Creek area

Attached for the Board of Supervisors' record and review are the following supplementary information item(s):

1. An errata sheet displaying clarifications and corrections for the staff report:
 - (a) Page 7 of the staff report, in citing the applicant's risk assessment, Exhibit B of Attachment 7, stated that alcohol would be delivered in 50-gallons drums, when the Luhdorff & Scalmanini Consulting Engineers report in fact states the amount is 55-gallon drums per the report.
 - (b) Table 4-H Zoning Consistency Matrix—Inland: this table was referenced on page 3 of staff report but omitted from Attachment 8.
2. Revised Attachment 3, proposed Qualified (Q) combining zone. Sections (b)(1) and (c)(1) and (2). Staff is recommending revisions to the recommended Q-combining zone contained in Attachment 3 of the Board of Supervisors staff report for the meeting of December 4, 2018. are shown in underlined, italicized and bold text. Deletions are shown in strikeout.
3. Correspondence in opposition to the project received by the Planning and Building Department.
4. Letters from the applicant:
 - (a) To the Planning Commission, dated January 11, 2012, regarding the designation of the entire Willow Creek as Industrial Resource Related (IR).
 - (b) To the Board of Supervisors, dated June 22, 2015, regarding the designation of the entire Willow Creek as Industrial Resource Related (IR).
 - (c) Response to Patrick O'Brien comments contained in Attachment 6, received by the Planning and Building Department on November 30, 2018.
 - (d) Response to North Coast Environmental Center comments contained in Supplemental #1, received by the Planning and Building Department on November 30, 2018.

SUPPLEMENTAL #2: ITEM 1

MCMP Humboldt, LLC, Zone Reclassification Errata Sheet December 4, 2018

(a) Page 7 of the staff report:

Per the LSCE [Luhdorff & Scalmanini Consulting Engineers] report, the OWTS will be located outside the 100-year flood plain of the Trinity River and over 300 feet west of the Trinity River, greater than 550 feet from Willow Creek, and is over 7.5 miles upstream of the gaging station at Hoopa. With respect to potential solvents that could be used in the manufacturing process, the report only assesses the risk associated with alcohol, although the Planning Commission's conditional approval does provide for the use of volatiles when using a closed loop system meeting engineering, certification, and reporting requirements. The risk assessment of using alcohol, which would be delivered in 50 -gallon drums, per the referenced report (page 7), is as follows:

Per the LSCE report, the OWTS will be located outside the 100-year flood plain of the Trinity River and over 300 feet west of the Trinity River, greater than 550 feet from Willow Creek, and is over 7.5 miles upstream of the gaging station at Hoopa. With respect to potential solvents that could be used in the manufacturing process, the report only assesses the risk associated with alcohol, although the Planning Commission's conditional approval does provide for the use of volatiles when using a closed loop system meeting engineering, certification, and reporting requirements. The risk assessment of using alcohol, which would be delivered in 55 -gallon drums, per the referenced report (page 7), is as follows:

Table 4-H. Zoning Consistency Matrix – Inland

LAND USE DESIGNATIONS	C-1	C-2	C-3	C-H	MB	ML	MH	AV	PF1	PF2	DF	FP	RS	R-1	R-2	R-3	R-4	RA	AE ¹	AG	TF1	FR	U ¹
Residential Land Use Designations																							
Residential-Medium Density (RM)															X	X	X		X ²	X	X ²		
Residential-Low Density (RL)														X	X ²	X ²			X ²	X	X ²		
Residential Estates (RE)												X	X ²	X ²				X ²	X ²	X	X ²	X ²	
Residential Agriculture (RA)												X	X ²	X ²				X ²	X ²	X ²	X ²	X ²	
Commercial Land Use Designations																							
Commercial General (CG)	X	X																				X ²	
Commercial Services (CS)	X	X	X	X	X ²																	X ²	X ²
Commercial Recreation (CR)	X	X		X																		X ²	X ²
Mixed Use (MU)	X	X											X ²	X ²	X ²	X	X				X ²	X ²	
Village Center (VC)	X	X		X		X	X					X	X	X							X ²	X ²	X
Rural Community Center (RCC)	X	X		X		X	X					X	X	X						X ²	X	X ²	X
Industrial Use Land Use Designations																							
Industrial, General (IG)			X		X ²	X	X													X ²		X ²	X ²
Industrial, Professional (IP)						X ²	X ²													X		X	
Business Park (MB)		X ²	X ²		X	X ²																	
Open Space and Public Land Use Designations																							
Conservation Roadway (CR)									X	X	X	X								X			X
Natural Resources (NR)											X									X			
Open Space (OS)											X									X			
Public Facilities (PF)	X	X		X		X	X	X	X	X	X		X	X	X	X	X		X	X	X		X
Public Recreation (PR)								X	X	X										X	X ²	X	
Public Lands (P)							X			X										X	X ²	X	X
Tribal Lands (TL)							X			X										X	X	X	X
Tribal Trust Lands (TTL)							X			X										X	X	X	X
Railroad			X			X	X	X	X	X		X								X	X	X	X
Resource Production Land Use Designations																							
Timberlands (T)										X	X									X	X ²	X	
Ag. Grazing (AG)											X	X								X	X ²	X	
Ag. Exclusive (AE)											X	X								X		X	

¹ Zones are consistent with identified land use designations only when combining zone density/minimum lot size designators are consistent with General Plan policies and standards.

² Requires Q – Qualified combining zone, to ensure consistency.

³ Resource zones may be used as holding zones until rezoning to planned uses.

Supplemental No. 2: Item 1(b): Table 4-H Zoning Consistency Matrix—Inland
 Table referenced on page 3 of staff report but omitted from Attachment 8

SUPPLEMENTAL #2: ITEM 3

REVISED ATTACHMENT 3

Ordinance No. _____

Exhibit A (legal description), Exhibit B (map)

Staff recommended revisions to the Qualified (Q) combining zone as contained in Attachment 3 of the Board of Supervisor's report are shown in underlined, italicized and bold text. Deletions are shown in strikeout.

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
STATE OF CALIFORNIA**

Certified copy of portion of proceedings, Meeting on December 4, 2018

Ordinance No. ____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT AMENDING SECTION 311-7 OF THE HUMBOLDT COUNTY CODE BY REZONING PROPERTY IN THE WILLOW CREEK AREA (ZR-16-002, MCMP HUMBOLDT, LLC)

The Board of Supervisors of the County of Humboldt do ordain as follows:

SECTION 1. ZONE AMENDMENT. Section 311-7 of the Humboldt County Code is hereby amended by reclassifying lands in the Willow Creek area from Highway Service Commercial ("CH") to Heavy Industrial with a Qualified combining zone ("MH-Q"). The area described is also shown on the Humboldt County zoning maps for the Willow Creek Community Plan and on the map attached as Exhibit B.

SECTION 2. ZONE QUALIFICATION. The special restrictions and regulations set forth in Section 4 herein are hereby made applicable to the property reclassified from "CH" to "MH-Q" and described in Exhibit A, in accordance with Humboldt County Code Section 314-32, which authorizes restriction of the MH zone regulations by application of the "Q" (Qualified Combining Zone).

SECTION 3. PURPOSE OF QUALIFICATIONS. The purposes of the special restrictions and regulations herein imposed on the property described in Exhibit A are to identify and restrict principally and conditionally permitted uses to those that are consistent with a General Plan designation of Industrial, Resource Related (IR) and which have no impacts on adjacent recreational, open space, and public school uses that are greater than the impacts caused by uses historically located on the MH-Q zoned property.

SECTION 4. SPECIAL RESTRICTIONS. Principal permitted uses and conditionally permitted uses otherwise allowed under the MH (Heavy Industrial) Zone regulations of Humboldt County Code Section 314-3.3 shall not be allowed on the property described in Exhibit A except as provided below:

(a) Commercial cannabis activities as approved on or before December 14, 2017, and subject to the industrial performance standards of paragraph (b)(2) herein;

(b) Principal Uses. Uses in paragraph (1) below subject to the industrial performance standards of paragraph (2) herein.

(1) Resource-related industrial processing such as timber products processing, agricultural products processing, and processing of mined aggregate.

(2) Industrial Performance Standards

(i) Noise. All noise generating operations shall be buffered so that they do not exceed the General Plan Land Use/Noise Compatibility Standards, Table 13-C, for existing adjacent uses anywhere off site.

(ii) Lights. All lights shall be directed on-site and shielded to reduce glare to adjacent residential, recreation, and open space areas.

(iii) Vibrations. No perceptible vibrations shall be permitted off the building site except for surface mining processing facilities.

(iv) Electronic Interference. No visual or audible interference of radio or

television reception by operations shall be permitted.

- (v) Dust Control. All areas used for parking, traffic circulation and material storage shall be surfaced with asphalt concrete, treated with a dust suppressant or another method to maintain dust control.
 - (vi) Enclosures. All manufacturing and fabricating areas shall be enclosed in buildings except for surface mining processing facilities.
 - (vii) Storage. All equipment and materials storage areas shall be screened from adjacent residential zones or uses, public recreation zones or uses, and public schools. Equipment and materials storage areas shall be screened by walls, fences, or adequate plantings to a height of not less than six feet (6'); the fencing and plantings shall conform to all yard requirements.
 - (viii) Visual buffering. Screen views from adjacent public recreation uses, public schools, and Highway 96 using a vegetated corridor such that new development is screened to the extent feasible.
 - (ix) Does not involve industrial activity which involves the handling of toxic, highly flammable, explosive or radioactive materials in such quantities that would, if released or ignited, constitute a significant risk to adjacent human populations or development.
 - (x) Any construction within 50 feet of the 500-year flood plain limits or within 2 feet of the 500-year flood elevations shall conform to Humboldt County Code Section 335-5, and as may be amended from time to time, related to construction in flood prone areas.
- (c) Uses permitted with a Use Permit:
- (1) Uses in paragraph (b)(1) above but are not able to meet the performance standards of (b)(2) above. Conformance with Performance Standard (b)(2)(x) cannot be waived.
 - (2) Surface removal and processing of minerals and natural materials to be used for commercial purposes.
 - (3) A caretaker's residence when subordinate to the principal use.
 - (4) Uses in paragraph (b)(1) above and where there are no potential ground or surface water impacts to the lower Trinity watershed.

SECTION 5. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after the date of its passage.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 20___, on the following vote, to wit:

AYES: Supervisors:

NOES: Supervisors:

File #18-1592, Supplemental #2: Item 2
REVISED Attachment 3

ABSENT: Supervisors:

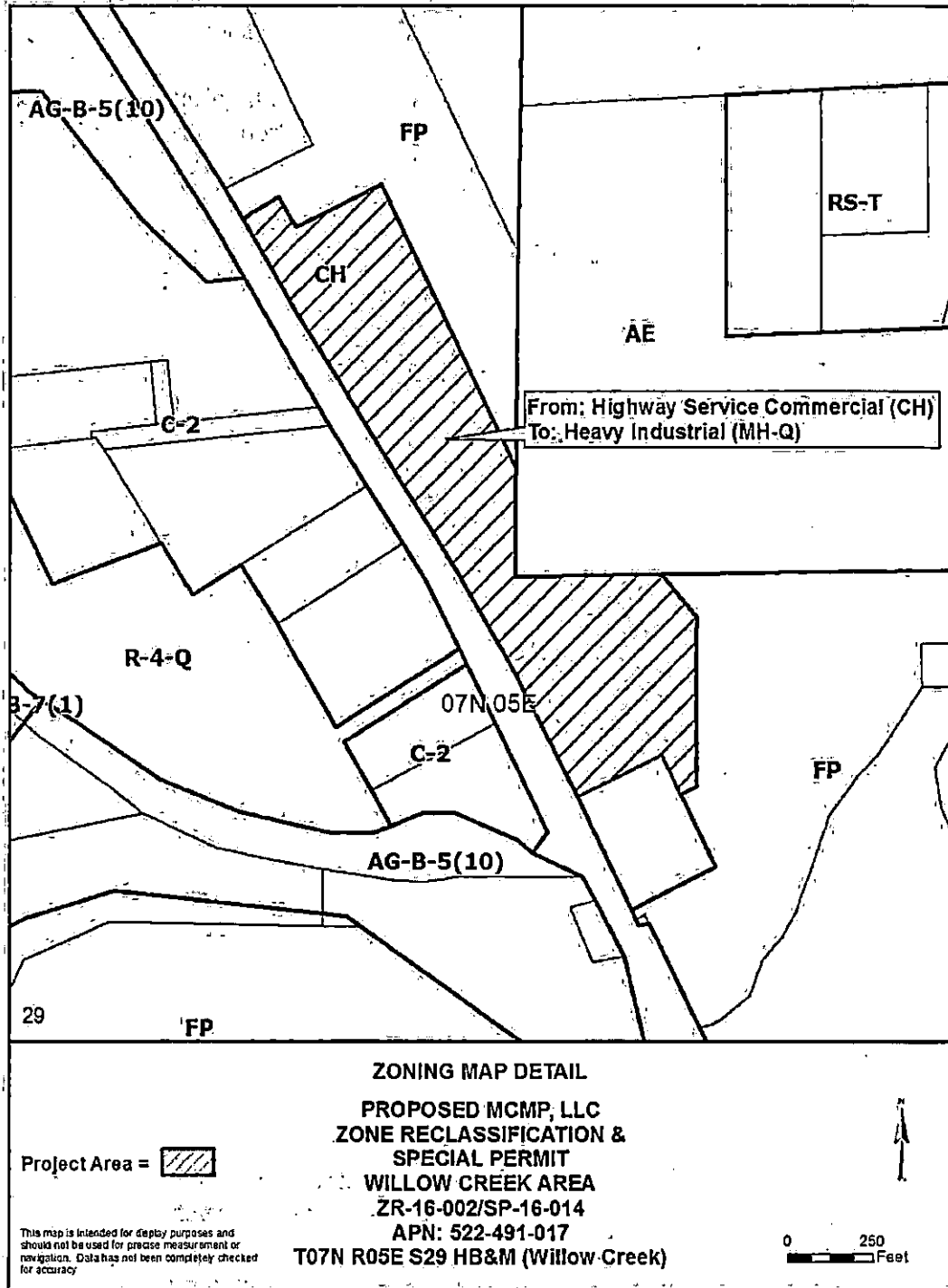
Chairperson of the Board of Supervisors of the
County of Humboldt, State of California

(SEAL)

ATTEST:
Kathy Hayes
Clerk of the Board of Supervisors of the
County of Humboldt, State of California

Deputy

Exhibit B



SUPPLEMENTAL #2: ITEM 3

1. Email from Adam Hall in opposition to the project received by the Planning and Building Department on November 30, 2018.
2. An email from Alicia Adrian dated November 24, 2018, in opposition to the project.
3. A letter from Vivienne Orcutt in opposition to the project received by the Planning and Building Department on December 4, 2018.
4. A letter from the Hoopa Valley Tribe in opposition to the project received by the Planning and Building Department December 3, 2018

#1:

From: adam hall <adamwalkerhall@gmail.com>

Sent: Thursday, November 29, 2018 4:08 PM

To: Eberhardt, Brooke <BEberhardt@co.humboldt.ca.us>

Subject: Public Comment Re: Opposed to Mercer-Fraser Willow Creek Zoning Change

Members of the Board of Supervisors:

I am writing to express my opposition to and profound concern about the proposed zoning changes to the Mercer-Fraser site on Highway 96 in Willow Creek. The existing situation with this site is barely tolerable. Granting a change to Industrial zoning will almost certainly make the situation worse as many new unwelcome industrial activities would then be principally permitted and the ability of the public to weigh in on whatever plans Mercer-Fraser may have for this site will be significantly restricted.

The location of this gravel and cement plant across from the Trinity Valley Elementary School is an unfortunate circumstance to begin with. Large amounts of dust impacting air quality and a great deal of noise from both rock moving and heavy truck traffic are a constant nuisance to my neighbors and myself as much as a mile up Highway 96 from the site. I can only imagine what the noise and dust are like for the students and staff of the elementary school.

I can however accept that these activities occur on a conditionally permitted basis because the Mercer-Fraser company plays an important role in road construction and maintenance which our community depends on. There is, however, no public good served by developing this site for solvent based cannabis product manufacturing. There is also the concern that other industrial activities that may become principally permitted under the new zoning would have further unknown harmful effects on the children at Trinity Valley Elementary as well as the Big Rock recreation site that is enjoyed by so many of us.

The County has gone to great lengths to develop a regulatory framework to balance the economic value of the cannabis industry with the environmental, social, and safety concerns of the wider community. The Planning and Code Enforcement departments have taken a very strict and circumspect view of proposed and existing cannabis operations, but for some reason this new project is being given special consideration. If this zoning change is approved it will only confirm the worst fears and most cynical views of Humboldt County citizens about the Supervisor's approach to regulation of legal cannabis.

File #18-1592
Supplemental #2: Item 3

When Mercer-Fraser attempted to develop a similar project on the banks of the Mad River the public outcry was widespread and Mr. Sundberg went to great lengths to distance himself from the project and then took credit for supposedly negotiating away the proposed solvent extraction site in Glendale. Now Mercer-Fraser is seeking to impose the same environmentally reckless project on the communities of the Trinity Valley, and this time it is adjacent to an elementary school as well as being in a sensitive riparian area.

I hope that the Board of Supervisors will not allow this project to be foisted upon us simply because our community is smaller, unincorporated, and we have to drive farther to come to your meetings and make our voices heard. It has already been made clear by the Hoopa Tribe, the Willow Creek Community Service District, and the Klamath-Trinity Unified School District, virtually every government entity in our community, that this project is not wanted here. Please listen to the voices of those who represent our community and do not grant the zoning changes to this site. If Mercer-Fraser wants to be engaged in the cannabis business they should find an appropriate site that meets the criteria for cannabis business established under state and local rules.

Sincerely,
Adam Hall
Willow Creek Resident

#2:

Hayes, Kathy

From: alicia adrian <kudravage@gmail.com>
Sent: Thursday, November 29, 2018 3:44 PM
To: Hayes, Kathy
Subject: Mercer-Fraser Site Re-zoning

F2

Hi,

We live on Horse Mtn, technically Blue Lake but closer to Willow Creek. Not sure who our Supervisor is, could you please pass on the message that we do not want an extraction business right there in that specific location. We don't have objections to the cannabis industry, just do not want Big Rock and the Trinity River impacted in any way, shape or form. The Blue Lake site sounds ill-advised, as well.

Thank you!
Alicia Adrian

#3:

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

December 3, 2018

Dear Humboldt County Board of Supervisors,

I am writing as the mother of Trinity Valley Elementary School students, a tribal member with federally reserved fishing rights, lifetime Humboldt County Resident, and long-time Trinity River clean water advocate to express my strong opposition to the proposed zoning changes for the Mercer-Fraser property located on Highway 96 and any approval of cannabis extraction activity beside the Trinity River. Remember, the Willow Creek area is the ancestral territory of the Hupa People. Although, this property was stolen, we will always possess great care and concern about these lands. Further, it was very disheartening to learn that the county lessened the cannabis extraction restrictions to force permits such as this to proceed with complete disregard for the state restrictions of protecting traditional territories, burials, and school children areas/bus stops.

Also, I feel that it's vital to mention that there was a 3.6 earthquake in the Willow Creek area earlier today. If you look at the stability diagram for the small Willow Creek bridge in this same particular area that you are considering permitting a dangerous and volatile hash lab facility. You will notice that any compromise or safety issue affecting that small bridge will cut-off access to the Trinity Valley Elementary School students from receiving any emergency fire and medical services. I hope that you would personally take notice of the lack of evacuation routes and children's safety into consideration prior to placing a warehouse filled with butane and ethanol 56 feet from the property line of our children's elementary school should a lawsuit be brought against the Mercer-Fraser, Humboldt County and/or its elected officials. We are requesting a recorded roll-call vote should any unfortunate future wrongful death lawsuits result from recklessly fast-tracking these Mercer-Fraser permits without lawful regard for the Trinity Valley Elementary School students/staff, community safety, chemical spills in the community's consumptive drinking water supply, detriment to the fishery and environment occur. Also, please note the disregard over the lack of emergency services and response times to eastern Humboldt should the unfortunate event of any future explosions, earthquakes, robberies, cartel/security firearm discharges, or added dangers resulting from the yearly wild land forest fires for the record as well.

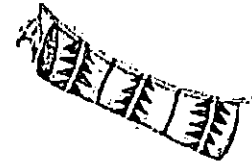
Thank you,
Vivienna Orcutt
Mother, Fish & Water Advocate, and Hoopa Tribal Member

#4:



HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe
Post Office Box 1348 Hoopa, California 95546
PH (530) 625-4211 - FX (530) 625-4594
www.hoopa-nsn.gov



Chairman Ryan Jackson

December 3, 2018

Amendment to Letter Dated November 30, 2018

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

**RE: APPLICATION NUMBER 10243; CASE NUMBERS ZR-16-002 AND SP-16-014;
THE RECLASSIFICATION OF THE MERCER-FRASER PROPERTY (APN 522-
491-017) AND OPPOSITION TO A CANNABIS MANUFACTURING FACILITY
BESIDE THE TRINITY RIVER**

Dear Humboldt County Board of Supervisors:

The Hoopa Valley Tribe ("Tribe") requests that you deny the proposed action. We are writing to express strong opposition to the proposed change in the zoning of the Mercer-Fraser property located on Highway 96 and the approval of a cannabis manufacturing facility on the Trinity River. This property is the Ancestral Territory of the tribe. The proposed rezoning of this property will have a significant and detrimental impact to the Trinity River, salmon fisheries, and cultural resources of the Hupa people. Approval of a cannabis manufacturing facility will have similar impacts. We have serious concerns about the health impacts to our people, the potential environmental hazards, health and safety of our children, and federally listed endangered species.

The zoning reclassification to MH-Q and approval of a cannabis manufacturing facility will have a significant and detrimental impact to the Trinity River, salmon fisheries, and cultural resources of the Hupa people because it will result in an increased risk to local water quality:

The reclassification of this property and the approval of a cannabis manufacturing facility will increase the risk to the water quality and consumptive drinking water for approximately 5,000 residents of the Hoopa Valley Indian Reservation. This property lies within the 100-year flood plain for the Trinity River and has historically been under water. Therefore, any heavy industry activities will have the potential to negatively affect the quality of water.

The Hoopa Valley Tribe is a sovereign Indian Nation with a tribal Water Quality Control Plan approved by EPA under 33 U.S.C. §1377(e), the failure to obtain proper certification and testing also violates the Tribe's rights to ensure project-consistency with downstream water quality standards. The Water Quality Control Plan, which consists of water quality criteria, standards, anti-degradation policy, and implementation plans, in accordance with the Pollutant Discharge Prohibition Ordinance (PDPO), which declares protection of the quality of surface and groundwater.

Furthermore, the Wild and Scenic Rivers Act of 1968 (the "Act") states that it is "the policy of the United States that certain selected rivers of the Nation which, with their immediate

environments, possess outstanding remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural and other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations." On January 19, 1981, the U.S. Congress designated the Trinity River and its tributaries, from the confluence with the Klamath River to 100 yards below Lewiston Dam, as a Wild and Scenic River.

The Act states that "the agency charged with the administration of each component on the Wild and Scenic Rivers System shall prepare a Comprehensive Management Plan ("CMP") for such river segments to provide for the protection of river values." The purpose of a CMP is to: preserve the resource values associated with the river and the river's ecosystem, including the free-flowing character of the river; determine a detailed boundary for the river corridor; and to protect and enhance those values determined to be outstandingly remarkable. To our knowledge the agency charged with the administration this portion of the Trinity River has not developed a CMP. It would be an error to approve the change in zoning of this property.

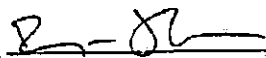
The zoning reclassification to MH-Q and approval of a cannabis manufacturing facility creates a substantial risk to the children who attend the Trinity Valley Elementary School:

The property line is merely 56 feet away from the Trinity Valley Elementary School and therefore there is a substantial risk to the children who attend the elementary school. The proposed use is an entirely new use of the property which is substantially different than the current use. With this proposed new use there is a substantial risk to the elementary school due to the possibility of spills, contamination of soil, explosions, and the overall movement of cannabis to and from the property.

The reclassification and potential approval of a cannabis manufacturing facility creates a substantial risk to the Tribe; the children, who attend the elementary school; to the residents of Willow Creek; and the community at large. Allowing for the reclassification of this property and the new use does not protect or preserve the quality of drinking water, nor does it protect the health and safety of the residents of Eastern Humboldt County.

Due to the risk of negatively affecting the Trinity River, salmon fisheries, and cultural resources of the Hupa people and the close proximity to the Trinity Valley Elementary School, the Tribe requests that the Board of Supervisors deny the reclassification and do not approve a cannabis manufacturing facility on the Mercer-Fraser property. A decision to approve these proposals will negatively affect the lives of our children, our home, and other Eastern Humboldt constituents.

On behalf of the Hoopa Valley Tribe,

By: 
Ryan P. Jackson, Chairman
Hoopa Valley Tribe

SUPPLEMENTAL #2: ITEM 4

Letters from the applicant's representatives:

- (a) To the Planning Commission, dated January 11, 2012, regarding the designation of the entire Willow Creek as Industrial Resource Related (IR).
- (b) To the Board of Supervisors, dated June 22, 2015, regarding the designation of the entire Willow Creek as Industrial Resource Related (IR).
- (c) Response to Patrick O'Brien comments contained in Attachment 6, received by the Planning and Building Department on November 30, 2018.
- (d) Response to North Coast Environmental Center comments contained in Supplemental #1, received by the Planning and Building Department on November 30, 2018.

HARRISON
TEMBLADOR
HUNGERFORD
& JOHNSON

MINING
LAND USE
NATURAL RESOURCES

980 9TH STREET
SUITE 1400
SACRAMENTO, CA 95814
TEL 916.382.4377
FAX 916.382.4380
WWW.HTHJLAW.COM

January 11, 2012

VIA E-MAIL & USPS

Mary Gearheart, Chair
Humboldt County Planning Commission
Clark Complex
3015 H Street
Eureka, CA 95501

Re: *General Plan Update/ Mercer-Fraser Company Willow Creek Site*
(APN 522-49-115; 522-49-117; 522-49-120; 522-49-121)

Dear Chair Gearheart:

On behalf of our client, the Mercer-Fraser Company ("Mercer-Fraser"), we would like to thank the Planning Commission ("Commission") for the opportunity to provide comments at the Humboldt County General Plan Update hearing on January 5, 2012. At the hearing, we requested that the Commission designate the entirety of Mercer-Fraser's Willow Creek site "IR" (Industrial, Resource Related) in the General Plan Update. The IR land use designation is compatible with existing uses on the site and would allow Mercer-Fraser to continue performing operations on the site as it has since the 1960s.

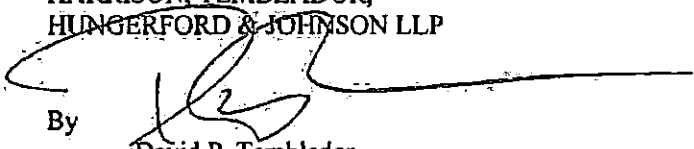
The purpose of this letter is to confirm the Commission's unanimous straw vote in which it indicated its preference for General Plan Update Alternative B. The vote was coupled with the understanding that Mercer-Fraser and the County would pursue additional analysis to determine whether additional portions of the site should be designated IR. We are eager to proceed with these discussions.

Again, we greatly appreciate your attention to this very important matter. Of course, please feel free to contact me at (916) 706-2639 should you have any questions or concerns regarding this matter.

Very truly yours,

HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By


David P. Temblador

DPT/ajs

cc: Justin Zabel, Mercer-Fraser Company
Mark Benzinger, Mercer-Fraser Company
Kirk Girard, Humboldt County Department of Community Development Services

HARRISON
TEMBLADOR
HUNGERFORD
& JOHNSON

MINING
LAND USE
NATURAL RESOURCES

980 9TH STREET
SUITE 1400
SACRAMENTO, CA 95814
TEL 916.382.4377
FAX 916.382.4380
www.hj.com

June 22, 2015

VIA ELECTRONIC & U.S. MAIL

Honorable Estelle Fennell, Chairperson
Board of Supervisors
County of Humboldt
825 5th Street
Eureka, CA 95501

- Re: Mercer Fraser Company / General Plan Land Use Designations*
- *Willow Creek Site (APN 522-49-115; 522-49-117; 522-49-120; 522-49-121)*
 - *Essex Site (APN 504-16-110)*

Honorable Chair Fennell:

Mercer Fraser Company ("Mercer Fraser") appreciates the opportunity to provide comments on the Draft General Plan land use designations being considered at the Board's June 22, 2015 Board Meeting. Mercer Fraser has been an active participant in the General Plan update process and previously provided extensive comments to the County Planning Commission on the appropriate land use designations for its Willow Creek and Essex sites.

On January 5, 2012, the Planning Commission considered Mercer Fraser's comments and took the following actions as respects the recommended land use designations for each:

- Essex – The Planning Commission unanimously voted to designate the entirety of the site as industrial, resource related (IR) under the General Plan.
- Willow Creek – The Planning Commission expressed a preference for General Plan Update Alternative B, but unanimously supported the designation of the operational portions of the site as IR.

(**Exhibit 1** – Planning Commission Staff Report, Pages 25-26, Dated January 26, 2012.)

In reviewing the General Plan land use designations currently being presented to the Board for consideration, the land use designation of the Essex site, APN 504-16-110, is consistent with the Planning Commission's recommendation with the entire site being identified as IR.


As respects the Willow Creek site, however, the portion of the existing operations on APN 522-49-117 is designated as IR, but the operations on APN 522-49-120 are showing a proposed commercial recreation (CR) designation. (**Exhibit 2.**) This is inconsistent with the

Planning Commission's recommendation. Therefore, Mercer Frazer is requesting that APN 522-49-120 be designated as IR consistent with the Planning Commission's recommendation on January 5, 2012.

Thank you, in advance, for your attention to this very important matter.

Very truly yours,
HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By


David P. Temblador

DPT/III

Enclosures

cc: Humboldt County Board of Supervisors
Justin Zabel, Mercer-Fraser Company

EXHIBIT I

HUMBOLDT COUNTY PLANNING COMMISSION
GENERAL PLAN UPDATE

MEETING OF JANUARY 26, 2012
STAFF REPORT

Revised Recommended Commission Agenda

For tonight's meeting staff recommends that the Commission:

1. Review the outstanding issue for Section 1.6, Economy (Narrative portion of Chapter 1).
2. Review the outstanding policy decisions for Chapter 11, Energy and Section 4.4, Rural Lands.
3. Allow time for public comments.
4. Receive a staff presentation on the proposed countywide mapping changes.
5. Allow time for public comments.
6. Review and deliberate the land use mapping changes.
7. Review and deliberate on Appendix C, Community Plan Policies.
8. Continue the hearing to February 2nd or other date chosen by the Commission.

Please Note: For background information on the proposed mapping changes, please see the December 8th, January 5th and January 24th Planning Commission Staff Report posted on www.planupdate.org

Outstanding Issues for Chapter 1, Introduction

The Commission was concerned regarding the unemployment numbers included in the revised Section 1.6, Economy and requested that these be deleted. Staff has provided revised language for this section in Attachment 1.

Outstanding Issues for Chapter 12, Energy and Section 4.4, Rural Lands

E-S3. Wind Generating Facilities

The Commission asked staff to again revise E-S3 to address continuing concerns on the wording of provision C.3 regarding effects on coastal resources. Discussion has focused around the term "adverse" in C.3, with staff suggesting "avoidable" to allow for a statement of overriding considerations be made.

Perhaps at the core of the problems with this provision is that it came from our LCP, hence the reference to "coastal resources". It's been a required finding for more than 25 years, and is implemented in the Coastal Zoning Regulations with this language:

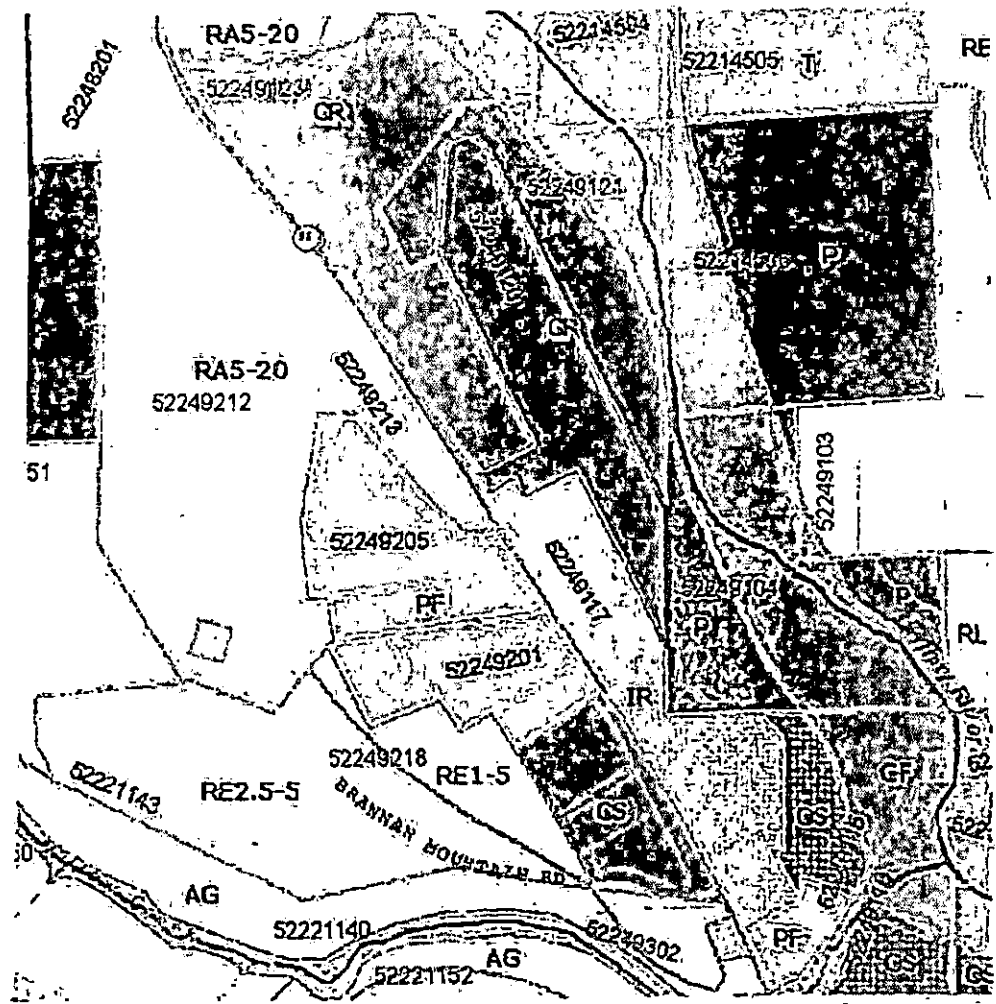
312-31.3.1 The facility will have no significant adverse impact on sensitive habitat resources.

Perhaps the clarification needed is that for sensitive resources within the coastal zone, the stricter finding will continue to apply.

Draft Land Use Maps: Geographic Areas				Vote R,M,D
Highway 299 East: Includes Unincorporated Blue Lake, Glendale Willow Creek and Surrounding Areas				
63	RIBAR-COX TIMBERLANDS LP	Alternative B is RR5-20; owner wants Alternative C (RE2.5-5) for 38 acre parcel, Glendale / Liscomb Hill area	Alternative C accommodates request, staff continues to recommend Alt B	Okay w/split between RR 5 and T new map on 1-24-12
63	Merritt Lindrom-Ribar -Cox 1-5-12	Public Comments 1-5-12: 31205146 – timber co. bought this and cleaned it up and planted trees. Derelict MH on property, clean up costs for trailer want to re-coup for a subdivision, has sewer and water, wants to cluster parcels near road and keep in timberlands.	PC Discussion on 1-5-12: Staff - Zoned U, not TPZ David Blackwell – said they had done extensive planning on the property – reforestation. Support parcels as small as 2.5 if remainder would be timber	On 1-5-12 GPA
63		Public Comments 1-24-12: Owner submitted a new map that showed a split between RR5 and T	PC Discussion on 1-24-12 – Staff supports new map Straw Vote – all support change	PC supports
64	MERCER FRASER COMPANY	Alternative B is IR and CR, owner wants IR/MH on entire property Willow Ck area,	Alternative C could accommodate request, but warrants project level review. Staff continues to recommend Alt B based on community input. Should the plan support this industrial operation for entire parcel?	
1-5-12	Mercer Frasier See letter submitted 1-5-12	Essex parcels – see letter, No index number – recommended Alt B would be IR – support that. Willow Creek – #64 – in mineral resource use for 50 years. CUP extension. Wants Alt C. Alt B not consistent with existing operations. Split designations are difficult to manage over time. Want to know why if it is	See discussion below. Essex site was looked at carefully when it was before the Commission for vested rights. Has been used since the 30's – the IR is appropriate. Allows processing. Masten – we need to be consistent – IR versus CFR, Willow Creek site – we designated the	All Support IR for Essex Ind GPA

Draft Land Use Maps: Geographic Areas			Vote R.M.D	
Highway 299 East; Includes Unincorporated Blue Lake, Glendale Willow Creek and Surrounding Areas				
		not the case of not IR;	operational area as IR but not the entire ownership. Public access site here. Old air strip here. Community plan was CR with community input. They would not like to see the expansion of the footprint. Disiere – how about GPA? Yes All support.	Keep IR on a portion Alt B
New 1-5- 12	51617107 Blue lake Eureka ready mix Paul Krauss	Gravel operators would like specific zoning for processing of gravel. Along the Mad River. Mapping splits processing plant with Request to work with staff to be consistent with parcels. Upland portion is zoned AE, lower is CFR. Wants AE for the CFR portion where their shop is - or be IR. Rec plan does say go back to ag. Rob - This has been operations since the 60's and should be treated like the Essex site – arbitrary. If you have a different zoning, you are treated differently along the way.	AE zoning, Resource designation plan designation. These have CUP's and the reclamation plan is to restore to AE use. We support this as designating this to IR, but you would be changing the course for the rec plans. We planned the river channel, CFR, which allows mining. They do have an entitlement to take gravel, they have expanded, do processing that is permanent. Are issues with these sites that deserve consideration. Could qualify the zoning. Kirk – we may need to look at this long term planning – work with the industry as a whole. C. Faust – while it may be desirable to head to some goal, this has not been analyzed. This process in not the right process. GPA. Staff recommends CFR? TH – we may want to just keep as AE for the whole site and return PC supports staff.	Ind GPA Change CFR to AE
65	COHEN EDWARD	Alternative B is RR5-20; owner wants RE2.5-5 to allow for future subdivision. Warren Ck area	Current plan is 4 acre dispersed housing. Staff is not opposed to this change.	

EXHIBIT 2



HARRISON
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November 30, 2018

VIA ELECTRONIC MAIL ONLY

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***Re: Zone Reclassification 16-002 and Special Permit 16-014;
Response to Letter from Patrick O'Brien***

Dear Mr. Ford:

On behalf of Mercer-Fraser Company we write in response to comments from Patrick O'Brien, attached as **Exhibit 1**, regarding the above-referenced zone reclassification and special permit.

At the outset, we must emphasize that the Board of Supervisors is acting on a single issue regarding the property at issue during its December 4, 2018 hearing. The Board is acting on a request for a zone reclassification of the project site from Commercial Recreation (CR) to Heavy Industrial with a Qualified combining zone (MH-Q). Mr. O'Brien's comments, however, relate to the Planning Commission's approval of Special Permit 16-014 for the development and operation of a cannabis manufacturing facility. The Board is not taking any action regarding Special Permit 16-014. The Planning Commission approved Special Permit 16-014 on December 14, 2017. The Planning Commission's approval was not appealed and is final as a matter of law. Notwithstanding the fact that the Board is not acting, and cannot act, on the cannabis manufacturing permit, we nonetheless write to address Mr. O'Brien's comments.

Mr. O'Brien states that SP 16-014 cannot be granted because the proposed cannabis manufacturing facility would be located within a 600-foot setback area required for sensitive receptors. Specifically, the proposed facility would be located within 600 feet of picnic areas and river access at the Big Rock Day Use Area and Willow Creek Church property. Mr. O'Brien correctly notes that the County's Commercial Cannabis Land Use Ordinance ("CCLUO"), approved by the Board of Supervisor's on May 8, 2018, requires that all cannabis manufacturing facilities must observe the following setbacks from sensitive receptors:

Sensitive Receptors - Six hundred feet (600') from a Church or other Place of Religious Worship, Public Park, Tribal Cultural Resource, or School Bus Stop currently in use at

John Ford
Zone Reclassification 16-002
November 30, 2018

the time of project application submittal. For purposes of this section, the setback requirement applicable to Public Parks, other than lands managed for open space and/or wildlife habitat, shall only be applied to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership.


(See CCLUO §§ 55.4.6.4.4, 55.4.8.2.)

The CCLUO does not, however, govern SP 16-014. Rather, the Planning Commission approved SP 16-014 under the authority of the County's Commercial Medical Marijuana Land Use Ordinance ("CMMLUO")¹ prior to the adoption of the CCLUO. In circumstances like these, the CCLUO expressly provides that "[p]ermits issued for commercial cannabis activities pursuant to the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as set forth in Ordinance No. 2559 shall remain valid, and shall be governed by the terms and conditions of that ordinance until such time as the permit is modified." (CCLUO § 55.4.3.8 [emphasis added].) Accordingly, SP 16-014 is only subject to the CMMLUO's setback requirements.

The CMMLUO, in contrast to the later enacted CCLUO, does not require any setbacks for cannabis *manufacturing* facilities. The CMMLUO's setback requirements relate solely to cannabis *cultivation* activities. (CMMLUO § 55.4.11(d).) In summary, SP 16-014 is not subject to any setback requirements for potential sensitive receptors at the Big Rock Day Use Area and/or Willow Creek Church Property.

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

Very truly yours,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON


By
Adam K. Guernsey, Esq.

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

¹ The Board of Supervisor's approved the CMMLUO on September 13, 2016.

EXHIBIT 1

Tuesday, Nov. 27, 2018.

To Michelle Nielsen:

the gist of the following letter is simple: the permit that is being requested by MCMP Humboldt, LLC, cannot be granted because the proposed facility encroaches on the required 600 foot **Sensitive Receptors** setback to picnic areas and river and fishing access points to the east, and to the Willow Creek Church property, to the west.

The details pertain to the Case Numbers **ZR16-002** and **SP-16-014**. I will refer to the CCLUO document **Ord-No-2599-CCLUO-inland-certified-copy-PDF** as **docA**, and to the staff report of Dec 14, 2017, **ZR 16-002 SP 16-014 Staff Report** as **docB**.

Below are a number of sections copied from the underlying documents, **docA** and **docB**, which are annotated with reference to the PDF page number of those documents:

docA, page 7:

“Manufacturing” means a process whereby the raw agricultural product is transformed into a concentrate, an edible product, or a topical product, and the production, preparation, propagation, or compounding of cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

docA, page 16:

55.4.6.4.4 Setbacks

Standard Setbacks

Cultivation Site(s) must observe all of the following setbacks:

a) and b) removed - not relevant here

c) **Sensitive Receptors** - Six hundred feet (600') from a Church or other Place of Religious Worship, Public Park, Tribal Cultural Resource, or School Bus Stop currently in use at the time of project application submittal. For purposes of this section, the setback requirement applicable to Public Parks, other than lands managed for open space and/or wildlife habitat, shall only be applied to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership.

d) and e) removed - not relevant here

f) Notwithstanding the above described setbacks from Sensitive Receptors and Tribal Ceremonial Sites, the setback required from these areas may also be waived or reduced with the express written consent of qualified officials or representatives representing these protected uses. For publicly owned lands managed for open space and/or wildlife habitat purposes, a setback of less than 600 feet may be allowed with a Special Permit, provided that advance notice is given to the person or agency responsible for managing or supervising the management of those lands. For School Bus Stops, a setback of less than 600 feet may be allowed with a Special Permit, where it can be demonstrated that the cultivation site would not be detrimental to students at the bus stop, due to specific conditions

g) through m) removed - not relevant here

docA, page 23:

55.4.7 CANNABIS SUPPORT FACILITIES

Cannabis Support Facilities include facilities for Distribution, Off-Site Processing, Enclosed Nurseries, Community Propagation Centers and Cannabis Testing and Research Laboratories. **All Cannabis Support Facilities must meet or exceed the setbacks from Sensitive Receptors and Tribal Ceremonial Sites specified under 55.4.6.4.4(c) and (d), unless waived or reduced pursuant to 55.4.6.4.4(f).** Where conducted within an Enclosed setting, Cannabis Support Facilities shall not be subject to the setbacks from School Bus Stops prescribed within 55.4.6.4.4(c).

docA, page 25

55.4.8.2 MANUFACTURING

Manufacturing Sites must comply with all applicable performance standards, as well as meet the Eligibility Criteria specified in Section 55.4.6.3.1 and 55.4.6.3.2 as well as comply with the Siting Criteria specified in Sections 55.4.6.4.1, 55.4.6.4.2, 55.4.6.4.3, and 55.4.6.4.4 (c), (d) and (g). All Manufacturing activities shall be conducted within an Enclosed setting and shall not be subject to the setbacks from School Bus Stops prescribed for Open Air Cultivation Activities within 55.4.6.4.4(c), except where otherwise specified.

docB, page 3

Executive Summary: The ultimate objective of this application is to develop and operate a commercial medical cannabis manufacturing facility on a portion of a parcel...

[Last sentence of para 2 on page 3 of document B]:

The 600 foot setback requirement from schools, school bus stops, churches, etc. that applies to commercial cannabis cultivation does not apply to this project because 1) it does not include cultivation; and 2) **the setback requirement does not extend to commercial cannabis manufacturing.**

docB, page 13

This setback statement excludes the whole category of Sensitive Receptors (55.4.6.4.4, c), the existence of which are clearly visible in the aerial view on page 13, at most 200 feet to the N, E, and NE of the proposed facility. In particular, as seen in on page 13, the following setbacks are not met: "shall only be applied to designated and developed recreational facilities such as **picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership**"

docB, page 3

I would also take issue with the following: 5 lines from the bottom of para 2, it says "... Willow Creek Community Church's building is approximately 600 feet ...".

docB, page 15

Based on the diagram on page 15, the SW corner of the proposed facility is 380 feet to the fence line of the property on which the proposed facility would be located.

Not included in this diagram, but measured by me, it is at most 140 feet to the property line of the Willow Creek Community Church, which results in a total distance of 520 feet, **so this is also within the 600' Sensitive Receptor setback.**

From what I have read, the school bus stops are exempt for this manufacturing facility, but the other sensitive receptors clearly are not.

I request that the HCB&P department withhold support for this permit until these matters can be adequately addressed.

HARRISON
TEMLADOR
HUNGERFORD
& JOHNSON

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November 30, 2018

VIA ELECTRONIC MAIL ONLY

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***Re: Zone Reclassification 16-002 and Special Permit 16-014;
Response to Letter from the Northcoast Environmental Center***

Dear Mr. Ford:

On behalf of Mercer-Fraser Company, we write in response to the Northcoast Environmental Center's ("NEC") letter, attached as **Exhibit 1**, regarding the above-referenced zone reclassification and special permit.

At the outset, we must emphasize that the Board of Supervisors is acting on a single issue regarding the property at issue during its December 4, 2018 hearing. The Board is acting on a request for a zone reclassification of the project site from Commercial Recreation (CR) to Heavy Industrial with a Qualified combining zone (MH-Q). The NEC's comments, however, also relate to the Planning Commission's approval of Special Permit 16-014 for the development and operation of a cannabis manufacturing facility. The Board is not taking any action regarding Special Permit 16-014. The Planning Commission approved Special Permit 16-014 on December 14, 2017. The Planning Commission's approval was not appealed and is final as a matter of law. Notwithstanding the fact that the Board is not acting, and cannot act, on the cannabis manufacturing permit, we nonetheless address each of the NEC's comments in turn below.

1. The zone reclassification to MH-Q will not permit uses inconsistent with the current area characteristics.

NEC states that the proposed rezoning from Commercial Recreation to Heavy Industrial (MH) is not appropriate because it could allow other industrial uses that are incompatible with the Project location. NEC further states that the zone reclassification should prohibit any industrial use other than the existing aggregate operation. The County's approval of a Qualified combining zone on the project site will address the NEC's concerns.

The Project site's current zone classification is Highway Service Commercial (CH). Highway Service Commercial (CH) is inconsistent with the IR land use designation and inconsistent with the Project site's existing use. Accordingly, state law requires the County to change the Project site's zone classification to a classification consistent with the IR land use designation. Heavy Industrial (MH) is the only logical zone classification that is consistent with the IR designation and the existing and historical use of the site.

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

2. The approved cannabis manufacturing facility complies with all applicable setback requirements.

The NEC states that the approved cannabis facility would be located less than 200 feet from the Six Rivers National Forest's Big Rock Day Use Area and River Access. The NEC correctly notes that the County's Commercial Cannabis Land Use Ordinance ("CCLUO"), approved by the Board of Supervisors on May 8, 2018, requires that all cannabis manufacturing facilities must observe the following setbacks from sensitive receptors:

Sensitive Receptors - Six hundred feet (600') from a Church or other Place of Religious Worship, Public Park, Tribal Cultural Resource, or School Bus Stop currently in use at the time of project application submittal. For purposes of this section, the setback requirement applicable to Public Parks, other than lands managed for open space and/or wildlife habitat, shall only be applied to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership.

(See CCLUO §§ 55.4.6.4.4, 55.4.8.2.)

The CCLUO does not, however, govern the approved cannabis manufacturing facility. Rather, the Planning Commission approved SP 16-014 under the authority of the County's Commercial Medical Marijuana Land Use Ordinance ("CMMLUO")¹ prior to the adoption of the CCLUO. In circumstances like these, the CCLUO expressly provides that "[p]ermits issued for commercial cannabis activities pursuant to the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as set forth in Ordinance No. 2559 shall remain valid, and shall be governed by the terms and conditions of that ordinance until such time as the permit is modified." (CCLUO § 55.4.3.8 [emphasis added].) Accordingly, SP 16-014 is only subject to the CMMLUO's setback requirements.

¹ The Board of Supervisor's approved the CMMLUO on September 13, 2016.

The CMMLUO, in contrast to the later enacted CCLUO, does not require any setbacks for cannabis *manufacturing* facilities. The CMMLUO's setback requirements relate solely to cannabis *cultivation* activities. (CMMLUO § 55.4.11(d).) In summary, SP 16-014 is not subject to any setback requirements for potential sensitive receptors at the Big Rock Day Use Area

3. The zoning reclassification will not result in any increased risk to local water quality.

The NEC expresses concern that the parcel subject to zone reclassification and the approved cannabis manufacturing facility is located near the 100-year floodplain and would provide for the use of a septic system for wastewater disposal. These concerns are unfounded due to protections put in place as part of the Mercer-Fraser's current operations, conditions imposed on the approval of SP-16-014, and limitations imposed through the County's use of a Qualified combining zone, as discussed below.

The site is the location of an active and fully permitted sand and gravel mine and processing facility. Mining and processing operations have been ongoing at the Project site since at least 1969. Current processing operations include material crushing and sorting, storage of materials, production of asphalt, and weighing and hauling by truck. Aggregate materials mined at the site are temporarily stockpiled, loaded onto trucks, and transported to the on-site processing facility (e.g., for crushing and use in the hot mix asphalt plant) or to off-site locations for further processing. Power loaders, excavators, bulldozers, rock crushers, screens, trucks and trailers, scrapers, truck scale, pumps, settling basin, gate office, a concrete batch plant, and a hot mix asphalt plant are all currently authorized to operate on the project site. These uses have been ongoing for approximately 50 years without incident.

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

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

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

- Diverting and trapping of sediment laden runoff into basins to settle prior to releasing flows to receiving waters;
- A requirement that all leachfield areas that support the manufacturing facility's on-site wastewater treatment system ("OWTS") be located outside of the 100-year flood plain;

- Inspection prior to significant rain events to ensure control measures are working properly and correction of problems as needed; and
- Approval and permits from the Division of Environmental Health and Regional Water Quality Control Board for the OWTS.

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

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

4. The approved cannabis manufacturing facility complies with siting requirements as respects schools, and is less obtrusive than numerous permitted and unpermitted cannabis cultivation operations close to the school.

The NEC states that the approved cannabis manufacturing facility is an inappropriate and inconsistent land use located close to the public elementary school. Given the abundance of both permitted and unpermitted cannabis cultivation in the area, including the approval of the large-scale Emerald Family, LLC operation without negative comment, the NEC’s concerns regarding a non-descript and secure 5,000 square foot enclosed facility seems disingenuous.

As previously discussed, the CMMLUO, in contrast to the later enacted CCLUO, does not require any setbacks for cannabis *manufacturing* facilities from schools. The CMMLUO’s setback requirements relate solely to cannabis *cultivation* activities. (CMMLUO § 55.4.11(d).) In summary, SP 16-014 is not subject to any setback requirements for the local elementary school. Even if the setback requirements did apply, however, the approved cannabis manufacturing facility will be located more than 1,200 feet from the school—twice the required setback from schools—tucked away in the back corner of Mercer-Fraser’s industrial facility.

Moreover, the Willow Creek area is full of permitted and unpermitted cannabis cultivation. As shown on the attached **Exhibit 2**, there are at least six existing or approved cultivation sites located within a half-mile of the elementary school, including one located just 1,100 feet immediately to the west of the school. In addition, the County recently approved a large-scale cannabis facility for Emerald Family, LLC that includes a 23,000 square foot processing facility and a 30,000 square foot outdoor and greenhouse cultivation area. Emerald Family, LLC has also proposed additional expansion of the facility to include a 160,000 square foot greenhouse area, and 17,5000 square foot cannabis manufacturing facility. No negative comments have been submitted regarding these cultivation and manufacturing activities and proposals.

John Ford
Zone Reclassification 16-002
November 30, 2018


In contrast to the existing cannabis activities in the region, the approved 5,000 square foot cannabis manufacturing facility will be small, located in a non-descript building, and tucked away into a back corner of an existing heavy industrial facility. Common sense dictates that this small facility will be the least obtrusive cannabis operation—cultivation, manufacturing, or otherwise—in the area.

5. The application for zone reclassification is irrelevant to Mercer-Fraser's operations on U.S. Forest Service Lands.

Lastly, the NEC states that the County should not act on the zone reclassification until Mercer-Fraser resolves what NEC believes to be is unpermitted operations on U.S. Forest Service Lands, specifically, APN 522-491-004. The NEC's comment is irrelevant to the action before the Board, specifically, the zone reclassification of the project site, and is simply wrong from a factual standpoint. Moreover, it ignores the Board's legal obligation to approve a zone reclassification that is consistent with the recently approved General Plan land use designation.

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

Very truly yours,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON


By
Adam K. Guernsey, Esq.

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

EXHIBIT 1



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

November 28, 2018

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

Subject: Comments on Proposed MCMP, LLC (Mercer-Fraser Company), Zone Reclassification and Special Permit Application Number 10243 ("Project"), Case Numbers ZR-16-002 and SP-16-014 Assessor's Parcel Number (APN) 522-491-017

Dear Supervisors and Mr. Ford:

The Northcoast Environmental Center (NEC) submits the following comments on behalf of NEC's members, staff, and board of directors.

The Northcoast Environmental Center has engaged in conservation and environmental protection in northwestern California for over 45 years. Our mission includes educating agencies and the public about environmental concerns that may have an effect on our local resources and citizens. We appreciate the opportunity to comment on the Project.

The NEC appreciates that Humboldt County has strived to regulate cannabis cultivation and its environmental impacts. In an earlier letter to you, dated March 17, 2018 and regarding the then-proposed Ordinance to Regulate Commercial Cannabis Activities in Humboldt County, the NEC expressed concerns about the environmental impacts of cannabis activities. We believe that the proposed Project is not in the best interests of Humboldt County and its residents, and is not consistent with the County's own cannabis and land-use regulations.

We have the following specific concerns regarding the proposed project and rezoning:

1. **Proposed rezoning could permit a range of industrial uses inconsistent with the Project area characteristics.** The proposed rezoning classification to Heavy Industrial is not appropriate, as it could open the door to a variety of industrial uses incompatible with the

Project location. Any rezoning should prohibit any industrial use other than the current aggregate operation.

2. **The proposed cannabis processing facility would be adjacent to a public park and river access site, contrary to setbacks required by the County's Commercial Cannabis Land Use Ordinance (CCLUO).** The proposed cannabis facility would be located less than 200 feet at its nearest from the Six Rivers National Forest's Big Rock Day Use Area and River Access. CCLUO Section 55.4.6.4.4 (c) requires 600 feet setback of permitted commercial cannabis activities from public parks, including designated and developed recreational facilities such as picnic areas, campgrounds, and river and fishing access points under public ownership. The Big Rock Day Use Area and River Access clearly meets this criterion for a 600-foot setback. While the Executive Summary to the Project's staff report states that this setback does not apply to cannabis processing facilities, only to cannabis cultivation, we could find no further analysis or discussion of this issue in the report. We respectfully disagree with this interpretation of the CCLUO, which flies in the face of common sense--why prevent cannabis cultivation but allow an operation involving the handling and transportation of large quantities of cannabis, as well as the permitted use of toxic, flammable and volatile industrial solvents including acetone and heptane (pages 3 and 36 of staff report)?
3. **Location of industrial activities, including cannabis processing, close to the Trinity River and within its floodplain, should be avoided.** While portions of the parcel are within the 100-year floodplain (Staff Report, page 35-36) the proposed cannabis facility would be located just outside the mapped 100-year floodplain. However, it is still within a floodplain, and clearly at risk as evidenced by the 1964 flood level, which was many feet in elevation above the level of the proposed Project. With climate change affecting precipitation patterns and flooding patterns, caution is called for, particularly when considering new industrial uses so close to the regulatory 100-year floodplain. Use of a septic system for wastewater disposal (Staff Report, page 33) within the Trinity River floodplain is also a concern, particularly since the Staff Report contains conflicting information on whether volatile solvents such as acetone and heptane can be used by the proposed cannabis factory (page 33 recommends limiting manufacturing to "non-volatile based processes", while page 36 states that non-water based solvents such as heptane, butane, acetone would be used).
4. **Location close to Willow Creek's Trinity Valley Elementary School.** The project location is across Highway 96 from Willow Creek's public elementary school (Map 1 below). While cannabis use is legal in California for adults, we should recognize that locating a cannabis processing plant so close to an existing school sends a mixed message to the school's children, and is an inappropriate and inconsistent land use.
5. **No action should be taken by the County until correction of existing unpermitted Mercer-Fraser operations on public lands at the Project location.** Existing Mercer-Fraser operations on the site extend onto about 2.5 to 3 acres of public lands of the U.S. Forest Service (parcel 522-491-004, Map 2 below), based on information in the staff report, on the County's GIS web portal, and from an NEC site visit. Documents received in response to a Public Records request, as well as discussions with Forest Service staff, indicate that this use is currently

unpermitted, and has been so for more than a decade. The area of unpermitted use includes a large (estimated 20-30 feet high) waste pile of dirt, concrete and other materials as well as active portions of the aggregate plant.

In conclusion, we ask that the County deny the proposed rezoning of the Project parcel, and not take any action that would permit or otherwise allow any activities on the Project parcel other than current existing operations. Any rezoning, should it occur, should prohibit any cannabis processing, as well as prohibiting any industrial uses other than the current aggregate operations.

Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Glass", with a long horizontal flourish extending to the right.

Larry Glass
Executive Director
Northcoast Environmental Center

Appendix: Maps

Map 1: Imagery from Humboldt County web-GIS system, showing location of proposed cannabis processing plant relative to the public Big Rock Day Use Area and River Access, and to the Trinity Valley Elementary School (parcel 522-492-005).



Map 2: Imagery from Humboldt County web-GIS system, showing locations of Mercer-Fraser operations on public lands (Parcel 522-491-004).



EXHIBIT 2



Google Earth

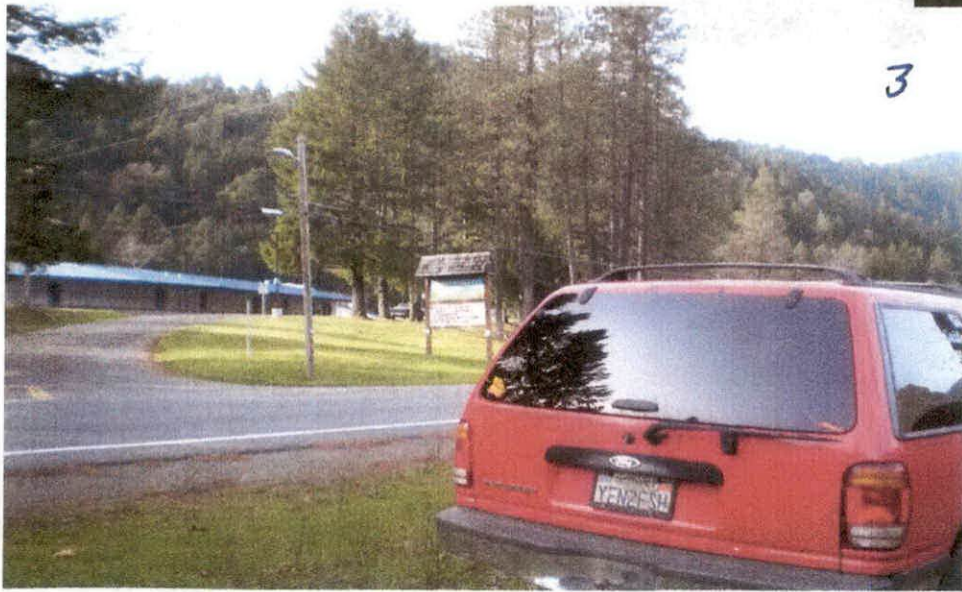
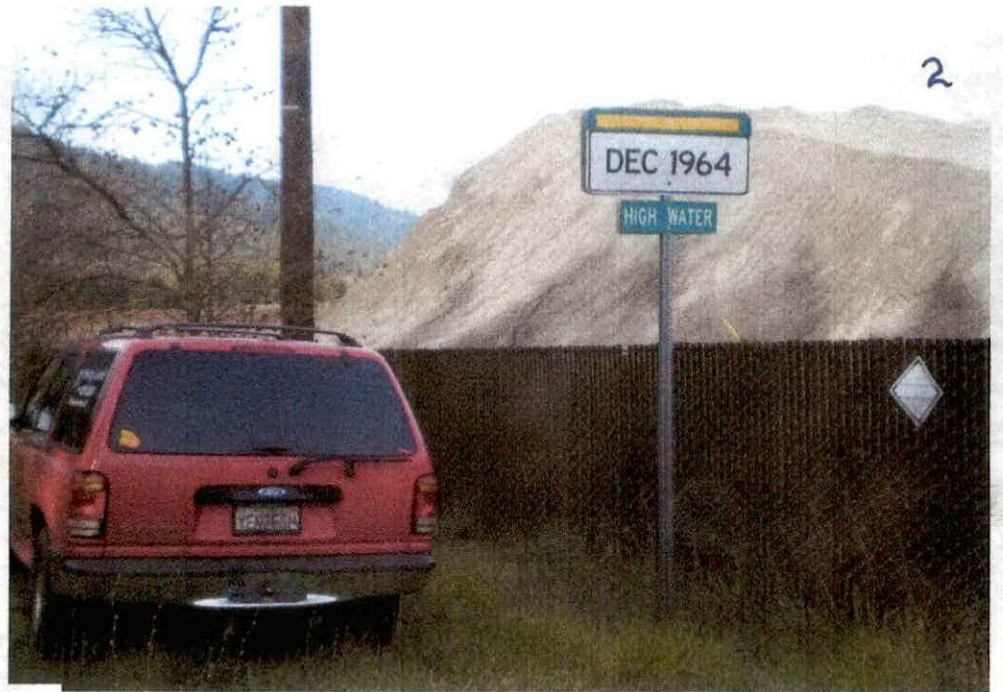
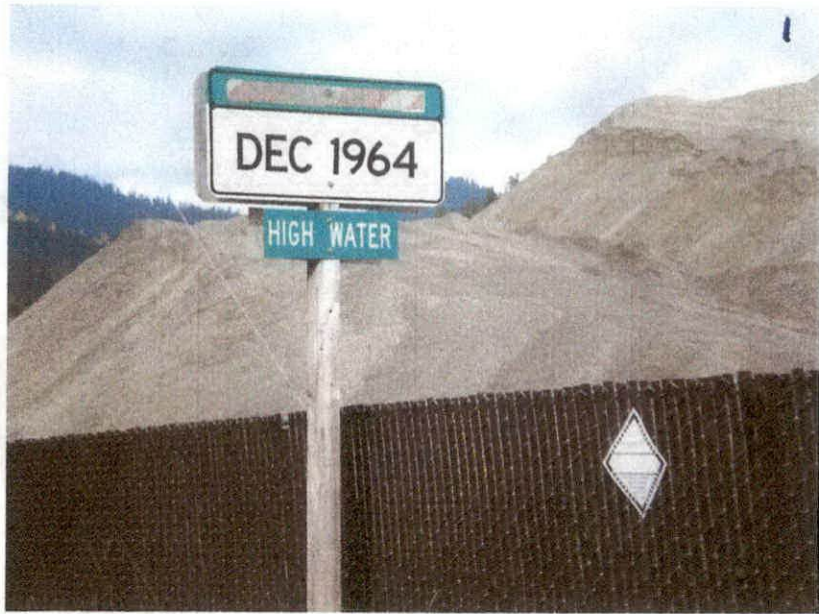
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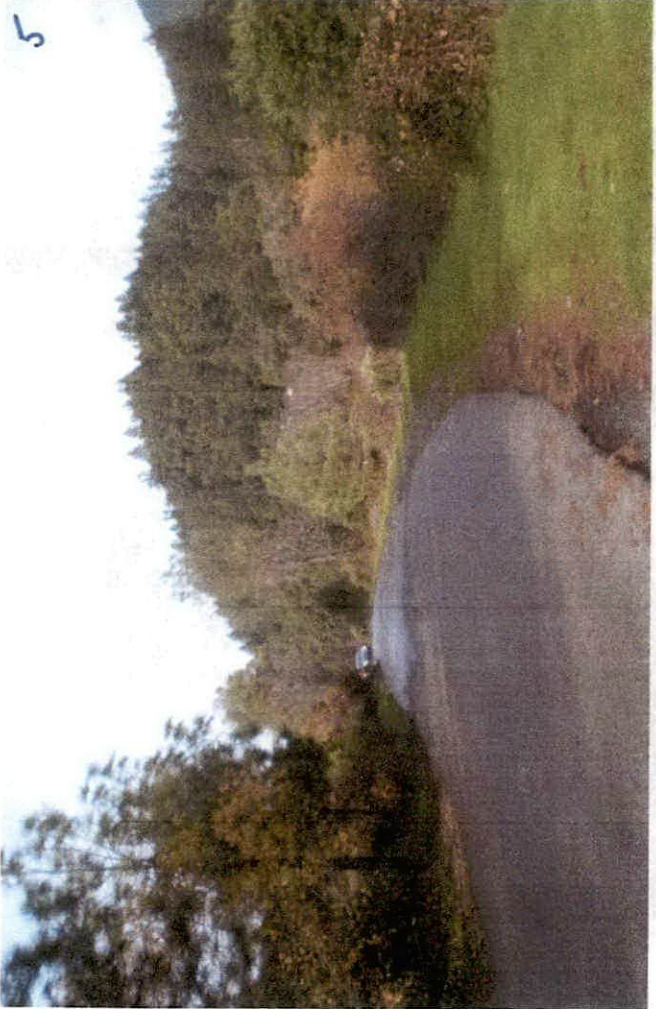
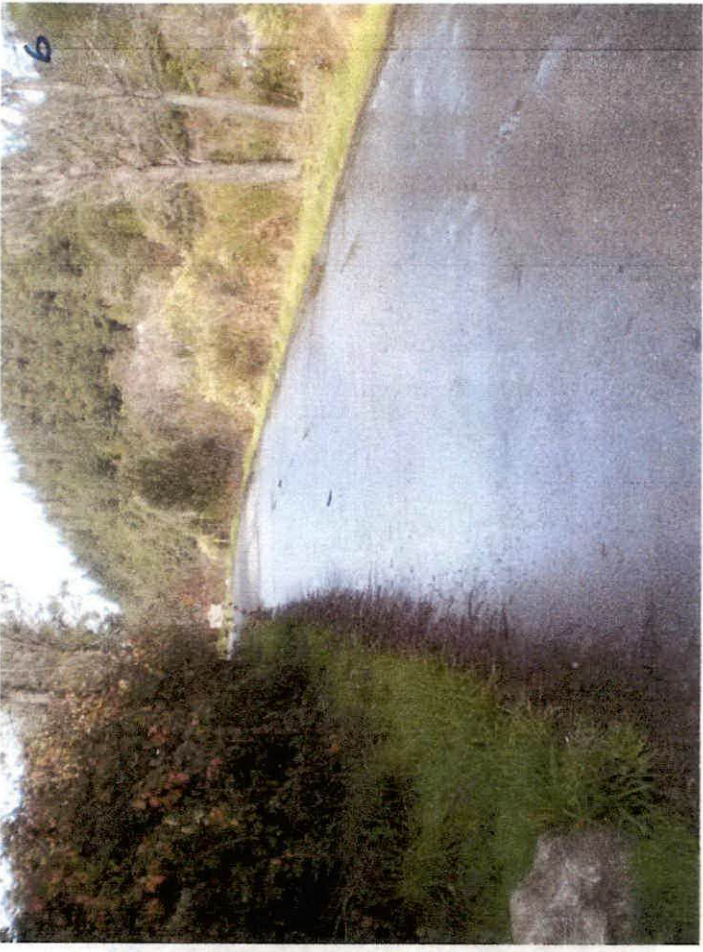
2006

PICTURES

December 2018

1. December 1964 Flood high water mark second 500 year Flood in 10 years.
2. Shows water higher than a car
3. Shows location of high water on Highway 96 at Trinity Valley Elementary School
4. Water flowing from Mercer Property to road into Big Rock Recreation area and Trinity River after rain event Nov. 25 to Dec 1, 2018.
- 5-6-7 Water leaching through berm of Mercer Frazer across road to Big Rock Recreation area into the Trinity River.





1986

The planning area was subject to a devastating flood in December of 1964 which caused extensive damage to private property and state highways and county roads. Six miles of Highway 299 along Willow Creek suffered considerable damage and the Highway 96 bridge over Willow Creek was destroyed.

The Federal Emergency Management Agency has mapped the flood plain of the Trinity River, including those areas affected by the 1964 flood. This mapping has been updated to reflect more detailed topographic information provided by the Willow Creek Community Services District as part of the plan preparation. To insure an added safety margin for planning future land uses, the 1964 flood level (500-year flood) was used instead of the standard 100-year flood level.

Parcels located within the flood plain are designated by the plan to restrict uses to those consistent with the hazard (flood plain zoning) or to limit future subdivisions (through parcel size combining zones). Most parcels within the Trinity River flood plain have an upland building site which is suitable for development. For these projects, a residential zone designation which restricts future subdivision development is adequate to meet Framework Plan goals.

The use of the 500-year flood plain is only intended to apply to land use planning and zoning. The existing flood plain building regulations should continue to apply to only those areas within 100-year flood plains.

The flood plain for the Trinity River in the planning area is included as Figure 3 of the Community Plan.

3220.2 Policy

Use the 500-year flood plain level (1964 flood) for land use planning and zoning purposes.

3220.4 Implementation

1. Request the Federal Emergency Management Agency to amend Willow Creek area Flood Insurance Rate Maps based on detailed topographic mapping available from the Willow Creek Community Services District.

3240 Noise

3250 Airport Safety

3280 Solid Waste

3400 Biological Resources

3500 Cultural Resources

WILLOW CREEK COMMUNITY PLAN

LAND USE

WCCP-P1 Commercial Recreation. In the Commercial recreation designation near the intersection of Brannan Mountain Road and Highway 96, visitor-serving uses are considered compatible with contiguous land use designations.

WCCP-P2 Public Lands. Public lands under the ownership of the United States Forest Service are designated with a Public lands land use designation and zoned Agriculture Exclusive (AE).

SAFETY

WCCP-P3 Flood Hazards. Use the 500-year flood plain level (1964 flood) for land use planning and zoning purposes. The flood plain for the Trinity River in the planning area is included in Figure 1 of the Community Plan

Comments for Board of Supervisors Meeting, December 4th, 2018 RE: MCMP LLC (aka Mercer-Fraser) Cannabis Manufacturing Plant Proposal at Mercer-Fraser Big Rock location, Willow Creek, CA

I ask the BOS to review the **already existing** Willow Creek Community Plan for direction on how to approach the current applications for zoning changes by those engaged in the recently regulated commercial cannabis industry. In particular, I draw the Supervisors attention to specific language from the Willow Creek Community Plan, dated June 27, 1986:

From Chapter 1 (OVERVIEW)

1343 The Public

One of the first goals approved in the beginning of this program was:

To maximize the opportunity for individuals and groups to have meaningful participation in the planning process.

This goal was developed from the understanding that the public will be more able to support policies guiding the development of the County when an opportunity to participate in the development and review of the general plan has been provided. Through this exposure, and the contributions it makes to the process and the product, the public will hopefully gain greater understanding of the plan. Participation not only in the review of this document, but also in proposing subsequent revisions to improve what is adopted, will help insure that this document will remain a current statement of public policy.

1452.2 Findings Required

In reviewing proposals for general plan amendments, the Board and Commission should remember that the general plan is a policy document for the entire County and that it may only be amended "in the public interest" (Government Code Section 65356.1) as determined by the Board of Supervisors. In other words, the plan should only be amended when the County, with the support of the broad consensus, determines a change is necessary, not merely because a property owner or a group of citizens desires the amendment. Every general plan amendment, additionally, must be consistent with the rest of the general plan or appropriate changes need to be made to maintain consistency.

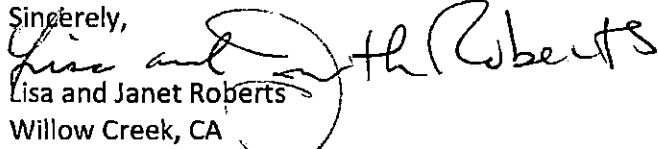
Amendment of this plan shall be considered upon making any of the following findings:

1. Base information or physical conditions have changed; or
2. Community values and assumptions have changed; or
3. There is an error in the plan; or
4. To maintain established uses otherwise consistent with a comprehensive view of the plan.

I can only conclude by the public comments and consternations the Planning Commission and the BOS have already heard regarding recent cannabis industry proposals in the Willow Creek area, that the Humboldt County Planning Department, Planning Commission, and the BOS themselves, have willfully ignored existing County approved guidance, as explicitly stated above, on how development should occur in the Willow Creek area, specifically in light of the now quasi-legalized cannabis industry. I say "quasi-legalized" because as you are aware, this industry is still federally illegal.

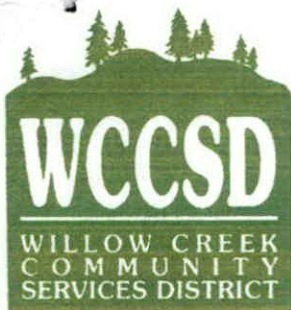
As you have heard today, all residents of the Willow Creek area have been asking for is an opportunity to engage with the County on what their concerns are regarding the commercial cannabis industry. We have questions regarding the safety and environmental hazards of volatile and semi-volatile cannabis manufacturing, and how our community might change with proposals of such significance. As I understand, the materials used in the proposed extraction method: butane, propane, and other petro-based gases are highly volatile, and the only thing I read about regarding volatile cannabis extraction in our County are the terrible explosions that occur when done incorrectly. How do I, as a resident of the Willow Creek area, who for 25 years has enjoyed taking my family to Big Rock to play in the clean waters of the Trinity, know that I will be safe with a potentially explosive plant right across the way? Or, that there aren't carcinogens escaping the plant into the air I breath, or the water I swim in? This is a logical fear because I know almost nothing about what is different about what is being proposed to be built vs. the known explosions occurring in the production of "hash oil." As has been stated by others previously, there is no legal requirement to rush through these zoning changes. The County, and the applicant, has time to work with our community to address our questions and concerns regarding the proposal at the Mercer-Fraser plant. As far as I can tell, the only "rush" to get this going is on the part of the applicant, but applicants are routinely directed to not make any irretrievable and irreversible commitment of resources while a proposal they are considering is being reviewed in accordance with public process review. In other words, don't count your chickens until they are hatched. I beg of you today, stick to what is already written for your direction. Yes, it might be dated guidance, but it is still very valid and germane to the needs of those of us who call the Willow Creek area our home. Do the right thing and hold the Big Rock plant proposal in abeyance until the community has a better understanding of what the heck this is all about and how it will serve in the public interest of our community. Thank you.

Sincerely,

The signature is written in cursive and appears to read "Lisa and Janet Roberts". It is written in black ink and is positioned to the right of the typed name.

Lisa and Janet Roberts

Willow Creek, CA



November 30, 2018

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

RE: Rezoning of Mercer Fraser property in Willow Creek (APN 522-491-017)

Dear Supervisors,

The Willow Creek Community Services District (Willow Creek CSD) would like to object to the proposed rezoning of the Mercer Fraser property in Willow Creek (APN 522-491-017) from Highway Service Commercial (CH) to Heavy Industrial with a Qualified Combining zone (MH-Q).

The Willow Creek CSD has always had a vested interest in our community. As part of the recent General Plan update, we have been expecting the County to initiate a new update to the Community Plan of Willow Creek, which was last updated in 1986.

In the last month, the Planning Department proposed zoning changes to many parcels in the Willow Creek area. The District asked the Planning Commission to delay changes until appropriate community outreach had occurred. We understand that they may have recommended approval of the zoning changes to you, the Board of Supervisors, but may have also suggested community outreach before you finalize the changes. We strongly encourage you to facilitate this outreach.

Even without an update to our plan, the amended and consolidated Willow Creek Community Plan, adopted as part of the General Plan update in October 2017 states, under the Safety section, WCCP-P3 Flood Hazards; *"Use the 500-year flood plain level (1964 flood) for land use planning and zoning purposes."*

The maps for the re-zoning of the Mercer Fraser property, as well as possibly other properties in Willow Creek, do not appear to use the 500-year flood plain for zoning purposes. They appear to only be using the 100-year flood plain.

I have read the staff report of the proposed zoning change to Heavy Industrial at the Mercer Fraser property. The Willow Creek Community Plan was mentioned in only one location, in Attachment 1, Exhibit A. This section mentions the Community Plan's 500 year flood plain requirement but then correlates it to the 1979 Clover Flat subdivision requirements, and discusses building construction rules. This is not using the 500 year flood plain for planning and zoning purposes.

A study of the appropriateness of Heavy Industrial use in a 500 year flood plain should have been discussed. It was not. This concerns us greatly. It is clear that the Planning Department has not used our local community plan as guidance in their process. I expect the same holds true for the larger set of zoning changes in the Willow Creek area, mentioned earlier.

The Humboldt County General Plan, updated in 2017, states that one of its purposes is to *"Establish a basis for subsequent planning efforts such as formulating specific development ordinances, preparing individual community plans, rezoning property, and conducting special studies."* As such, the approval of this zoning change, which does not use the Willow Creek Community Plan as guidance, would be a blatant disregard of your own doctrine.

The Willow Creek CSD requests that you withhold any zoning changes to the Mercer Fraser property, as well as the other zoning changes in the Willow Creek area, until the appropriate update to our Community Plan has occurred.

Sincerely,



Susan O'Gorman
General Manager

to construct a rock-processing and asphalt-production plant at Longvale. Gross also filed and pursued a lawsuit brought by the air district against Grist Creek Aggregates. Because Gross is married to newly appointed Air Pollution Control Officer Barbara Moed, she cannot represent the air district in court. But because she knows a great deal about the legal ins and outs of the several cases against the district, the county hired Gross as a subcontracting attorney.

A history of the dispute In 2002, a 10-year use permit for rock processing and asphalt production at the Grist Creek site was issued to Parnum Paving, owner of the property at that time. Industrial activity there – primarily rock processing – ceased around 2006, and the use permit expired in June 2012. In 2011, the property was purchased by Covelo resident Brian Hurt, who owned and operated Grist Creek Aggregates. In March 2015, supervisors, led by then newly elected Third District Supervisor Tom Woodhouse, approved resumption of rock processing and asphalt production at the Longvale site by Grist Creek Aggregates. Supervisors argued that, because a rock processing plant and a small, seldom-used asphalt plant at the site had been given a 10-year use permit in 2002, the industrial activities proposed for the Longvale site were not a substantial change from the previous use, a use permit for a new project there would be unnecessary, and no California Environmental Quality Act study on the project would have to be undertaken. New industrial activities – including rock processing and asphalt production – would be allowed, based on the expired 2002 use permit. Claiming that a new, potentially environmentally destructive industrial use had been approved without having to undergo the CEQA process, Friends of Outlet Creek filed suit in April 2015. Then, in June 2015, supervisors rescinded their March resolution. By doing that, the county, in essence, said the Longvale project was not, legally speaking, a project. Nevertheless, the project that was not a project went forward without the CEQA study.

Friends of Outlet Creek filed an amended suit in July 2015. In a tersely worded ruling that October, former Mendocino County Superior Court Judge Richard Henderson ruled in favor of Mendocino County. “County demurrers to the first amended petition on the grounds the county’s adoption of the rescinding resolution renders the writ petition moot,” Henderson wrote. “County is correct. The court grants the request for judicial notice.” In January 2016, the Friends group appealed its lawsuit against the Mendocino County Board of Supervisors to the California Court of Appeals. In June 2015, the Mendocino County Air Quality Management District issued an “authority to construct” for the project. According to court documents prepared by Rachel Doughty, attorney for Friends of Outlet Creek, “a statement regarding CEQA compliance is required to be affixed to any issued permit. However, the county air district did not prepare any CEQA statement for the authority to construct. Instead, a memorandum prepared by county air district staff stated the county was lead agency for the project for CEQA purposes.” Again, claiming a violation of CEQA, Friends of Outlet Creek filed a second suit, known as “MAQMD I” in June 2015, this time against the air district.

In September 2015, Grist Creek Aggregates, using the **MercerFraser Company** as its operator, started up plant operations. The air district was immediately inundated with a barrage of calls and letters from residents living in the vicinity of the Longvale site. Local residents, advised by former Bay Area air district staffer and Outlet Creek neighbor Glen Colwell, alerted the California Air Resources Board of what neighbors claimed were gross violations of air standards and management protocols. The state air resources board investigated activities at the plant and notified Mendocino County Air Pollution Officer Robert Scaglione of numerous violations. In response to the public outcry, Scaglione instructed his field officers to keep a close eye on plant operations. Those officers, and Scaglione himself, found a number of violations, including that Grist Creek and **MercerFraser** had incorporated a major component of its operations – a crumb rubber heating and blending unit – without securing a separate permit for the unit. In October 2015, the air district issued two notices of violation, shutting down operations at the plant until Grist Creek could secure a permit for the crumb rubber unit. It also fined Grist Creek twice, for a total of \$173,225. Grist Creek quickly applied for the separate authority to construct, but failed to pay the fine. Instead, it sued the air district, claiming that in requiring a second authority to construct for the crumb rubber unit the district was violating the authority to construct granted in June 2015, in which the air district stated no additional permits would be required. “Perhaps in response to public pressure, or for other reasons unknown, the air district has recently taken a series of illegal, unfounded, misguided and erratic actions that appear intended to interfere with petitioner’s [Grist Creek Aggregates’] operation of the asphalt plant,” wrote Grist Creek attorney Mark Harrison in a November 6, 2015, complaint against the air district. “Respondents [the air district and Scaglione, who was named separately] have issued two notices of violation without supporting evidence, have attempted to shut down the asphalt plant in the middle of a Caltrans pavement project, have

asked for further permits in contradiction to prior direction that no further permits were required, and then refused to process petitioner's application for those additional permits, and have asserted to the public media that petitioner has committed other violations for which respondents have issued no notice of violation and have never discussed with the petitioner." In November 2015, the air district granted the permit for the crumb rubber heating and blending unit. Once again, citing a failure to undertake a CEQA study on the environmental impacts of the crumb rubber unit, Friends of Outlet Creek sued the air district. This is the third lawsuit against the project brought by Friends of Outlet Creek, called "MAQMD II." In January 2016, the air district referred its November 2015 decision to grant the permit for the crumb rubber unit to the district's hearing board. At that time, the hearing board had only four regular members and three alternates. However, for the Grist Creek hearings, two members who were engineers – George Rau and Chris Watt – recused themselves, and the alternate physician member of the hearing board, Dr. Robert Calson, was not able to attend either hearing. Thus, the hearing board only had four members able to attend: Redwood Valley attorney Tom Johnson, Ukiah businessman Eric Crane, Ukiah resident Chet Koehn, and Willits paralegal Marc Komer. After hearing testimony from neighbors about health effects they suffered as a result of the plant, the hearing board deadlocked on a motion to revoke the crumb rubber heating and blending unit authority to construct. The board revisited the issue two months later, with the same board members and the same result. The air district allowed Grist Creek Aggregates to reopen the plant briefly in the spring of 2016 so the company could fulfill its contractual obligations to Caltrans. The plant operated for two weeks and then shut down. Representatives from Grist Creek Aggregates and the air district met several times over the summer and fall of 2016 to attempt to reach a settlement on the notice of violations and the \$173,255 fine. Negotiations broke down, and the air district sued Grist Creek Aggregates on April 7, 2016. In addition, Friends of Outlet Creek sued the board of supervisors in federal court for violating the Clean Water Act. Friends' attorney Doughty is set to take the case to trial in September. This makes a total of six lawsuits that have arisen from supervisors' decision to approve the continuation of asphalt operations at the Longvale site without CEQA review or issuing a new permit. There is the Clean Water Act federal lawsuit, the CEQA lawsuit against the board of supervisors, MAQMD I, MAQMD II, the Grist Creek lawsuit against the air district, and the air district's lawsuit against Grist Creek Aggregates. Friends vs. supervisors the four lawsuits filed by Friends of Outlet Creek are at various points on the adjudicatory curve. The first lawsuit against the board of supervisors is now in appeals court. It has been fully briefed and the parties are awaiting a decision. In that suit, Deputy County Counsel Matt Kiedrowski, who is defending the county and the board of supervisors against Friends of Outlet Creek, argued Judge Henderson's ruling should be upheld. "The trial court justifiably concluded the only reasonable interpretation of the June resolution is that it rescinded and voided, in its entirety, whatever determination had been made or project approval had been given in the March resolution," Kiedrowski told the court, "and the appellant's characterization in amended paragraph 36 'is not reasonable and [is] clearly contradicted by the language of the June resolution, of which the court takes judicial notice.' "Appellant asserts that its claims are not moot because the June resolution did not completely rescind the March resolution, and therefore the respondents approved a project for CEQA purposes. Appellants' arguments read a secret meaning into the June resolution that is contrary to the June resolution's plain language," Kiedrowski argued. Friends' attorney Doughty rebuffed the county's argument that its suit is moot. "The county of Mendocino and its board of supervisors argue that the question presented by my client's action is 'whether a CEQA lawsuit challenging an action can go forward when that action has been rescinded.' This presupposes an answer to the question actually presented by the case: Whether the county's fumbling attempt to withdraw a resolution, without reversing its underlying approval, somehow achieved its professed intent to circumvent CEQA and the development review required by law. "The asphalt plant was actually constructed subsequent to the county's review of Grist Creek Aggregates' and Brian Hurt's project proposal, and subsequent to the filing of this lawsuit," Doughty argued. "The ongoing harms from an asphalt plant approved, timely challenged, constructed and operational to this day [July 18, 2016] are not moot." MAQMD I The Friends' first lawsuit against the air district, MAQMD I, has caused a split between the respondents. The first respondent, the air district, is arguing that the suit should be thrown out because the authority to construct has expired and there is no project to stop. However, Grist Creek Aggregates has demurred, insisting the authority to construct issued by the air district in June 2015 is not expired, but was automatically renewed when Grist Creek offered to pay the air district for a renewal of the permit in May 2016. In defense of the county, attorney Gross argues: "The air district determined that outstanding and unresolved violations warranted denial of the permit. [Grist Creek Aggregates] failed to appeal the district's denial, thus

leaving the expired permit terminated. [The company] and the district attempted to, but were unable to, resolve the outstanding violations. The settlement negotiations reached an impasse on December 20, 2016. "Since the permit had expired and has not been renewed, any resolution of these violations required [Grist Creek Aggregates] to apply for a new permit before any asphalt production at the site would continue. "Now, without any resolution to the disputed violations imminent, there are no permits pending, and therefore no asphalt production activity at the site.... Any decision by this court arising from the adjudication of the expired permit ... will offer no meaningful relief to any party," Gross asserts. Adam Guernsey, an attorney representing Grist Creek Aggregates, believes the county's contention that the case is moot is incorrect. "[The air district's] position is factually and legally wrong, as the real party's authority to construct automatically renewed upon the tender of payment to the air district on May 26, 2016. This issue will be determined in Mendocino County Superior Court on its merits, and does not prohibit this court from ruling on the issues before it – [which is] whether petitioner [Friends of Outlet Creek] is entitled to bring its lawsuit challenging the air district hearing board's action under CEQA." Guernsey continued: "A dispute exists between [Grist Creek Aggregates and its contractor, the Mercer-Fraser Company] and [the air district and Robert Scaglione, former air pollution control officer for Mendocino County] as to the validity of the authority to construct. That issue will be litigated in the proper forum that has original jurisdiction over such matters. Resolution of that dispute on the merits could take years. Here and now, however, this court can provide the parties effective relief on the issue of whether or not the petitioner is entitled to bring its lawsuit challenging the air district's hearing board's action under CEQA. "Accordingly, the petitioner's appeal is not moot," Guernsey concluded. Doughty explained why Friends' right to sue cannot be abridged. "Under CEQA's citizen suit provision, a petitioner has the right to seek a judicial review of any public agency's approval for CEQA noncompliance, subject to limited exceptions not relevant here. "The appellant's petition was properly pled, pursuant to the Code of Civil Procedures and the citizen suit provisions of CEQA, and there is no support for the argument that the language of Health and Safety Code Section 40864 ... was intended to repeal by implication the citizens' right to petition pursuant to CEQA." MAQMD II Friends of Outlet Creek's lawsuit against the air district relative to its November 2015 granting of authority to construct the crumb rubber heating and blending unit has been partially pled. But another layer of complexity has been added to the legal martini because, in August 2016, the board of supervisors appointed Dr. Mills Matheson of Willits to the air district hearing board. Part of the Friends group's argument for why the case is ripe to be heard in court is that, after two trips to the air district's hearing board – both of which resulted in a deadlock – it has exhausted its administrative remedies and therefore is entitled to sue. However, with the addition of Matheson to the board, the respondents argue that the Friends' claim that going back to the hearing board would be futile, is defunct. The addition of Matheson gives the hearing board five regular members and three alternates. Another trip to the hearing board to seek a revocation of the November 2015 authority to construct the crumb rubber heating and blending unit would be heard by a five-person board and would result in a decision. Attorney Doughty argued the air district was fundamentally in error when it issued the November 2015 permit without recourse to CEQA. "Respondents [Scaglione and the county air district] were required to undertake an environmental review of the project pursuant to CEQA because the respondents' granting of the November authority to construct to Grist Creek Aggregates was a discretionary action [signaling] approval [of an important element] that is part of a project (a) for which no other agency had assumed the lead, (b) for which no existing CEQA document covering the circumstances and environmental effects peculiar to the project exists, and (c) to which no CEQA exemption applies," she argued. City of Ukiah attorney David Rapport, who also is the attorney for the air district's hearing board, argued Friends has not exhausted its potential administrative remedies, and therefore their lawsuit is premature. "The Mendocino County Code of Ordinances provides an administrative code enforcement procedure for the county's planning department to determine where a use is proper under the relevant zoning and land use entitlements.... Any party may initiate code enforcement proceeding by filing a complaint with the planning department. This process creates a robust administrative record satisfactory for use in court, should any party seek judicial review of the board of supervisors' determination," Rapport argued. On this suit, attorneys representing Grist Creek Aggregates agreed with Rapport, and filed a demurrer against MAQMD II. "The demurrer is made on the grounds that the petitioner fails to allege facts sufficient to state a cause of action and because the court lacks jurisdiction, because this petition is improperly pleaded as a CEQA action," wrote attorney Harrison. "Petitioner does not allege any facts showing that it exhausted its administrative remedies by complying with the county's code enforcement procedures to determine whether Grist Creek's operations are allowed under the property's

existing entitlements," Harrison wrote. In remarks made to Willits Weekly, Friends' attorney Doughty said the MAQMD II case has been riddled with writs of mandate, demurrers and emergency appeals. "We are stuck in purgatory," Doughty said. Grist site floods in January storm January 10's heavy rainfall flooded numerous areas in Mendocino County, including the Grist Creek Aggregates site. Neighbors took pictures of the plant during the storm, appearing to show water pouring onto the site from nearby Outlet Creek. Other photographs show equipment and buildings submerged under two to three feet of storm water. According to Andrew Watson, Mendocino County branch chief for the U.S. Geological Survey, the January 10 flooding was a five-year rain event. Watson said he based his assessment of the storm's intensity on information gathered by his staff on the main stem of the Eel River near Leggett. Information gathered by other U.S. Geological Survey staff for the same storm concluded that, on the Russian River near Guerneville, the January 10 storm was a two-year storm. Mona Dougherty, supervisor of the North Coast Regional Water Quality Control Board's Storm Water Management program, was asked to comment on the significance of the Grist Creek site's January 10 flooding. Dougherty said the managers at the Grist Creek site had done some good things, such as moving their heavy equipment and any chemicals that were still on site, to a high location. "That was good," she said. Dougherty said the water board has been paying close attention to Grist Creek operations and that, so far, managers there have been in compliance with their permit. "Our inspector has gone out to the site many times. He hasn't noted any violations of the storm water permit." When told that the flooding at the Grist Creek site was the result of what had been described as a five-year rainfall event, Dougherty said placing an asphalt plant on a flood plain was not a good decision. "It really is best for officials to consider water quality when they site an industrial plant. With a five-year event, you would not expect to see flooding. Any time you see flooding at a five-year event that is not a good siting decision."

December 4, 2018

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

Re: Zone Reclassification 16-002

Dear Mr. Ford:

On behalf of Mercer-Fraser Company ("Mercer-Fraser"), we write in support of the Board of Supervisor's ("Board") action on Zone Reclassification 16-002. Zone Reclassification 16-002 will change APN 522-491-017 (the "Project site") from Highway Service Commercial (CH) to Heavy Industrial, with a Qualified combining zone (MH-Q), consistent with the rationale for the recent General Plan Update, and will ensure the continuation of Mercer-Fraser's existing and historical uses as of right.

It is important to emphasize that the Board has a single issue before it. The Board is acting on a request for a zone reclassification to MH-Q, to implement the Board's recent General Plan Update. On October 23, 2017, the Board approved the General Plan Update as the new General Plan for Humboldt County. The General Plan is a comprehensive update and revision of the 1984 Framework Plan. Among other things, the General Plan applied land use designations consistent with existing uses throughout the entire inland portion of the County. Relevant here, the General Plan changed the Project site's land use designation from Commercial Recreation (CR) to Industrial, Resource Related (IR). The IR designation is consistent with the Project site's existing and historical use as a heavy industrial aggregate and construction materials processing site.

The Project site's current zone classification is Highway Service Commercial (CH). Highway Service Commercial (CH) is inconsistent with the IR land use designation and inconsistent with the Project site's existing use. Accordingly, state law requires the County to change the Project site's zone classification to a classification consistent with the new IR land use designation.

There are only five zone classifications that are consistent with the IR land use designation: (1) Heavy Industrial (MH); (2) Limited Industrial (ML); (3) Exclusive Agriculture (AE); (4) Flood Plain; and (5) Timber Production Zone (TPZ). Of those five zone classifications, only MH is consistent with the Project site's existing and historical uses. Approval of any other zone classification would render Mercer-Fraser's existing uses non-conforming, thwarting the Board of Supervisor's intent in changing the site's land use designation in the first place.

It is also important to emphasize what is not before the Board. Despite public comments to the contrary, the Board is not taking any action regarding Special Permit 16-014, which allows for a cannabis manufacturing facility. The Planning Commission approved Special Permit 16-014 on December 14, 2017. The Planning Commission's approval was not appealed and is final as a matter of law.

This letter outlines the relevant factual history of the Project site and discusses why a Heavy Industrial (MH) zone reclassification with Mercer-Fraser's proposed Qualified combining zone (Q) will best reflect the existing and historical uses of the site and effectuate the Board's intent of approving a IR land use designation for the Project site.

BACKGROUND

Site Background

The Project site is located one-half mile north of Willow Creek, on the east side of State Highway 96, north of State Highway 299. The Project site is located on the western banks of the Trinity River near the intersection of State Highway 96 and Brennan Mountain Road.

The Project site is the location of an active and fully permitted aggregate and construction materials processing facility. Aggregate and construction materials processing operations have been ongoing at the Project site continuously since at least 1969. Current operations including material crushing and sorting, importation and processing of recycled construction materials, storage of materials, production of asphalt and ready-mix concrete, and weighing and hauling by truck. Aggregate materials mined at the facility are temporarily stockpiled, loaded onto trucks, and transported to the onsite processing facility or to offsite locations for additional processing. Power loaders, excavators, bulldozers, rock crushers, screens, trucks and trailers, scrapers, truck scales, pumps, settling basins, gate office, concrete batch plant, and a hot mix asphalt plant are all currently authorized to operate on the Project site. These uses have been ongoing for approximately 50 years without incident.

General Plan Update

Mercer-Fraser was an active participant in the County's General Plan Update for the Project site. Mercer-Fraser attended numerous public hearings and workshops to ensure its industrial facilities were given proper land use designations. From the beginning, Mercer-Fraser openly worked with the County to align the Project site's land use designation with the existing and historical heavy industrial use of the site, and to allow those activities to continue by right in the future.

On January 5, 2012, Mercer-Fraser requested the Planning Commission designate the entirety of Mercer-Fraser's Willow Cree site Industrial, Resource Related (IR), which was compatible with existing and historical uses and would allow Mercer-Fraser to continue operations as it has since the 1960s. (See Letter from David P. Temblador to Mark Gearheart, dated January 11, 2012, attached as **Exhibit 1.**) The Planning Commission unanimously recommended the Project site's land use designation be changed to IR, with the understanding that Mercer-Fraser and the County would pursue additional analysis to determine whether additional portions of the Willow Creek site should be given the IR

designation. (*Ibid*; see also Planning Commission Staff Report, dated January 26, 2012, pp. 25-26, attached as **Exhibit 2.**)

On June 22, 2015, Mercer-Fraser again requested the Board of Supervisors designate the Project site IR, consistent with the Planning Commission's 2012 recommendation. (Letter from David P. Temblador to Supervisor Estelle Fennell, dated June 22, 2015, attached as **Exhibit 3.**) On October 23, 2017, the Board of Supervisors approved the change in the Project site's land use designation from CH to IR.

Application No. 10243

MCMP, LLC ("MCMP"), submitted Application No. 10243 seeking a zone reclassification of APN 522-142-017 from Highway Service Commercial (CH) to Heavy Industrial with a Qualified combining zone (MH-Q) in order to implement the General Plan land use designation of Industrial, Resource Related (IR) and ensure consistency with the existing and historical heavy industrial use of the Project site. At that time, MCMP also sought a special permit to develop and operate a cannabis products manufacturing facility approximately 5,000 square feet in size.

On December 14, 2017, the Planning Commission voted to recommend a zone reclassification of APN 522-142-017 from Highway Service Commercial (CH) to Heavy Industrial with a Qualified combining zone (MH-Q). The Planning Commission also approved SP-16-014 for a cannabis manufacturing facility on the property. The Planning Commission's approval of SP 16-014 was not appealed and is final as a matter of law.

CURRENT ACTION

The Board has a single issue before it. The Board is acting on a request for a zone reclassification to Heavy Industrial with a Qualified combining zone (MH-Q), which is necessary as a result of the Board's recent General Plan Update. Despite public comments to the contrary, the Board is not taking any action regarding Special Permit 16-014. The Planning Commission's approval was not appealed and is final as a matter of law.

Heavy Industrial (MH) Zone Reclassification

Mercer-Fraser is seeking a zone reclassification to MH-Q as the culmination in a decade-long effort to align the applicable General Plan land use designation and zoning classification with the Project site's existing and historical heavy industrial uses, and ensure those uses would continue as of right in the future. There are five zone classifications that are consistent with the IR land use designation: (1) Heavy Industrial (MH); (2) Limited Industrial (ML); (3) Exclusive Agriculture (AE); (4) Flood Plain; and (5) Timber Production Zone (TPZ).

As previously discussed, the Project site is the location of an active and fully permitted aggregate and constructions materials processing facility, which has been ongoing since at least 1969. The Heavy Industrial with Qualified combining zone (MH-Q) is the only logical choice for consistency with Mercer-Fraser's existing and historical use. Of the five potential zone classifications, only Heavy Industrial (MH) is consistent with the existing and historical uses. All four other potential zone

John Ford
Zone Reclassification 16-002
December 4, 2018

classifications do not allow Mercer-Fraser's existing uses either as of right or with a permit. Approval of any other zone classification would, therefore, immediately render Mercer-Fraser's operations non-conforming. Such an outcome is inconsistent with the Board's intent in designating the Project site IR as part of the recent General Plan Update.

Qualified Combining Zone

Q-zones function to modify and restrict the principally permitted uses and/or conditional uses. Mercer-Fraser agrees that a Q-zone is appropriate for this site. We met with County staff and have a common understanding that the proposed Q-zone will allow existing aggregate and construction materials processing uses to continue by-right, without a use permit.

Based on the foregoing, we respectfully request that the Board approve the zone reclassification from CH to MH, and approve Mercer-Fraser's proposed minor clarifications to the Q-zone language. This approval will effectuate the Board's intent in changing the Project site's land use designations for consistency with Mercer-Fraser's existing and historical uses, and will facilitate continuation of the longstanding uses going forward.

Very truly yours,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By
Adam K. Guernsey, Esq.

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

EXHIBIT 1

January 11, 2012

VIA E-MAIL & USPS

Mary Gearheart, Chair
Humboldt County Planning Commission
Clark Complex
3015 H Street
Eureka, CA 95501

*Re: General Plan Update/ Mercer-Fraser Company Willow Creek Site
(APN 522-49-115; 522-49-117; 522-49-120; 522-49-121)*

Dear Chair Gearheart:

On behalf of our client, the Mercer-Fraser Company ("Mercer-Fraser"), we would like to thank the Planning Commission ("Commission") for the opportunity to provide comments at the Humboldt County General Plan Update hearing on January 5, 2012. At the hearing, we requested that the Commission designate the entirety of Mercer-Fraser's Willow Creek site "IR" (Industrial, Resource Related) in the General Plan Update. The IR land use designation is compatible with existing uses on the site and would allow Mercer-Fraser to continue performing operations on the site as it has since the 1960s.

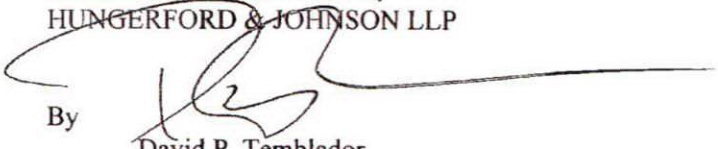
The purpose of this letter is to confirm the Commission's unanimous straw vote in which it indicated its preference for General Plan Update Alternative B. The vote was coupled with the understanding that Mercer-Fraser and the County would pursue additional analysis to determine whether additional portions of the site should be designated IR. We are eager to proceed with these discussions.

Again, we greatly appreciate your attention to this very important matter. Of course, please feel free to contact me at (916) 706-2639 should you have any questions or concerns regarding this matter.

Very truly yours,

HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By


David P. Temblador

DPT/ajs

cc: Justin Zabel, Mercer-Fraser Company
Mark Benzinger, Mercer-Fraser Company
Kirk Girard, Humboldt County Department of Community Development Services

EXHIBIT 2

HUMBOLDT COUNTY PLANNING COMMISSION
GENERAL PLAN UPDATE

MEETING OF JANUARY 26, 2012
STAFF REPORT

Revised Recommended Commission Agenda

For tonight's meeting staff recommends that the Commission:

1. Review the outstanding issue for Section 1.6, Economy (Narrative portion of Chapter 1).
2. Review the outstanding policy decisions for Chapter 11, Energy and Section 4.4, Rural Lands.
3. Allow time for public comments.
4. Receive a staff presentation on the proposed countywide mapping changes.
5. Allow time for public comments.
6. Review and deliberate the land use mapping changes.
7. Review and deliberate on Appendix C, Community Plan Policies.
8. Continue the hearing to February 2nd or other date chosen by the Commission.

Please Note: For background information on the proposed mapping changes, please see the December 8th, January 5th and January 24th Planning Commission Staff Report posted on www.planupdate.org)

Outstanding Issues for Chapter 1, Introduction

The Commission was concerned regarding the unemployment numbers included in the revised Section 1.6, Economy and requested that these be deleted. Staff has provided revised language for this section in Attachment 1.

Outstanding Issues for Chapter 12, Energy and Section 4.4, Rural Lands

E-S3. Wind Generating Facilities

The Commission asked staff to again revise E-S3 to address continuing concerns on the wording of provision C.3 regarding effects on coastal resources. Discussion has focused around the term "adverse" in C.3, with staff suggesting "avoidable" to allow for a statement of overriding considerations be made.

Perhaps at the core of the problems with this provision is that it came from our LCP, hence the reference to "coastal resources". It's been a required finding for more than 25 years, and is implemented in the Coastal Zoning Regulations with this language:

312-31.3.1 The facility will have no significant adverse impact on sensitive habitat resources.

Perhaps the clarification needed is that for sensitive resources within the coastal zone, the stricter finding will continue to apply.

Draft Land Use Maps: Geographic Areas				Vote R,M,D
Highway 299 East: Includes Unincorporated Blue Lake, Glendale Willow Creek and Surrounding Areas				
63	RIBAR-COX TIMBERLANDS LP	Alternative B is RR5-20; owner wants Alternative C (RE2.5-5) for 38 acre parcel. Glendale / Liscomb Hill area	Alternative C accommodates request, staff continues to recommend Alt B	Okay w/split between RR 5 and T new map on 1-24-12
63	Merritt Lindrom-Ribar -Cox 1-5-12	Public Comments 1-5-12: 31205146 – timber co. bought this and cleaned it up and planted trees. Derelict MH on property, clean up costs for trailer want to re-coup for a subdivision. has sewer and water, wants to cluster parcels near road and keep in timberlands.	PC Discussion on 1-5-12: Staff - Zoned U, not TPZ David Blackwell – said they had done extensive planning on the property – reforestation. Support parcels as small as 2.5 if remainder would be timber	On 1-5-12 GPA
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64	MERCER FRASER COMPANY	Alternative B is IR and CR, owner wants IR/MH on entire property Willow Ck area.	Alternative C could accommodate request, but warrants project level review. Staff continues to recommend Alt B based on community input. Should the plan support this industrial operation for entire parcel?	
1-5-12	Mercer Frasier See letter submitted 1-5-12	Essex parcels – see letter. No index number – recommended Alt B would be IR – support that. Willow Creek - #64 – in mineral resource use for 50 years. CUP extension. Wants Alt C. Alt B not consistent with existing operations. Split designations are difficult to manage over time. Want to know why if it is	See discussion below. Essex site was looked at carefully when it was before the Commission for vested rights. Has been used since the 30's – the IR is appropriate. Allows processing. Masten – we need to be consistent – IR versus CFR. Willow Creek site – we designated the	All Support IR for Essex Ind GPA

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New 1-5-12	51617107 Blue lake Eureka ready mix Paul Krauss	Gravel operators would like specific zoning for processing of gravel. Along the Mad River. Mapping splits processing plant with Request to work with staff to be consistent with parcels. Upland portion is zoned AE, lower is CFR. Wants AE for the CFR portion where their shop is - or be IR. Rec plan does say go back to ag. Rob - This has been operations since the 60's and should be treated like the Essex site – arbitrary. If you have a different zoning you are treated differently along the way.	AE zoning, Resource designation plan designation. These have CUP's and the reclamation plan is to restore to AE use. We support this as designating this to IR, but you would be changing the course for the rec plans. We planned the river channel, CFR, which allows mining. They do have an entitlement to take gravel, they have expanded, do processing that is permanent. Are issues with these sites that deserve consideration. Could qualify the zoning. Kirk – we may need to look at this long term planning – work with the industry as a whole. C. Faust – while it may be desirable to head to some goal, this has not been analyzed. This process in not the right process. GPA. Staff recommends CFR? TH – we may want to just keep as AE for the whole site and return PC supports staff.
65	COHEN EDWARD	Alternative B is RR5-20; owner wants RE2.5-5 to allow for future subdivision. Warren Ck area	Current plan is 1 acre dispersed housing. Staff is not opposed to this change.

EXHIBIT 3

June 22, 2015

VIA ELECTRONIC & U.S. MAIL

Honorable Estelle Fennell, Chairperson
Board of Supervisors
County of Humboldt
825 5th Street
Eureka, CA 95501

- Re: *Mercer Fraser Company / General Plan Land Use Designations***
- *Willow Creek Site (APN 522-49-115; 522-49-117; 522-49-120; 522-49-121)*
 - *Essex Site (APN 504-16-110)*

Honorable Chair Fennell:

Mercer Fraser Company ("Mercer Fraser") appreciates the opportunity to provide comments on the Draft General Plan land use designations being considered at the Board's June 22, 2015 Board Meeting. Mercer Fraser has been an active participant in the General Plan update process and previously provided extensive comments to the County Planning Commission on the appropriate land use designations for its Willow Creek and Essex sites.

On January 5, 2012, the Planning Commission considered Mercer Frazer's comments and took the following actions as respects the recommended land use designations for each:

- Essex – The Planning Commission unanimously voted to designate the entirety of the site as industrial, resource related (IR) under the General Plan.
- Willow Creek – The Planning Commission expressed a preference for General Plan Update Alternative B, but unanimously supported the designation of the operational portions of the site as IR.

(**Exhibit 1** – Planning Commission Staff Report, Pages 25-26, Dated January 26, 2012.)

In reviewing the General Plan land use designations currently being presented to the Board for consideration, the land use designation of the Essex site, APN 504-16-110, is consistent with the Planning Commission's recommendation with the entire site being identified as IR.

As respects the Willow Creek site, however, the portion of the existing operations on APN 522-49-117 is designated as IR, but the operations on APN 522-49-120 are showing a proposed commercial recreation (CR) designation. (**Exhibit 2.**) This is inconsistent with the

Planning Commission's recommendation. Therefore, Mercer Frazer is requesting that APN 522-49-120 be designated as IR consistent with the Planning Commission's recommendation on January 5, 2012.

Thank you, in advance, for your attention to this very important matter.

Very truly yours,
HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By


David P. Temblador

DPT/III

Enclosures

cc: Humboldt County Board of Supervisors
Justin Zabel, Mercer-Fraser Company

EXHIBIT 1

**HUMBOLDT COUNTY PLANNING COMMISSION
GENERAL PLAN UPDATE**

**MEETING OF JANUARY 26, 2012
STAFF REPORT**

Revised Recommended Commission Agenda

For tonight's meeting staff recommends that the Commission:

1. Review the outstanding issue for Section 1.6, Economy (Narrative portion of Chapter 1).
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Please Note: For background information on the proposed mapping changes, please see the December 8th, January 5th and January 24th Planning Commission Staff Report posted on www.planupdate.org)

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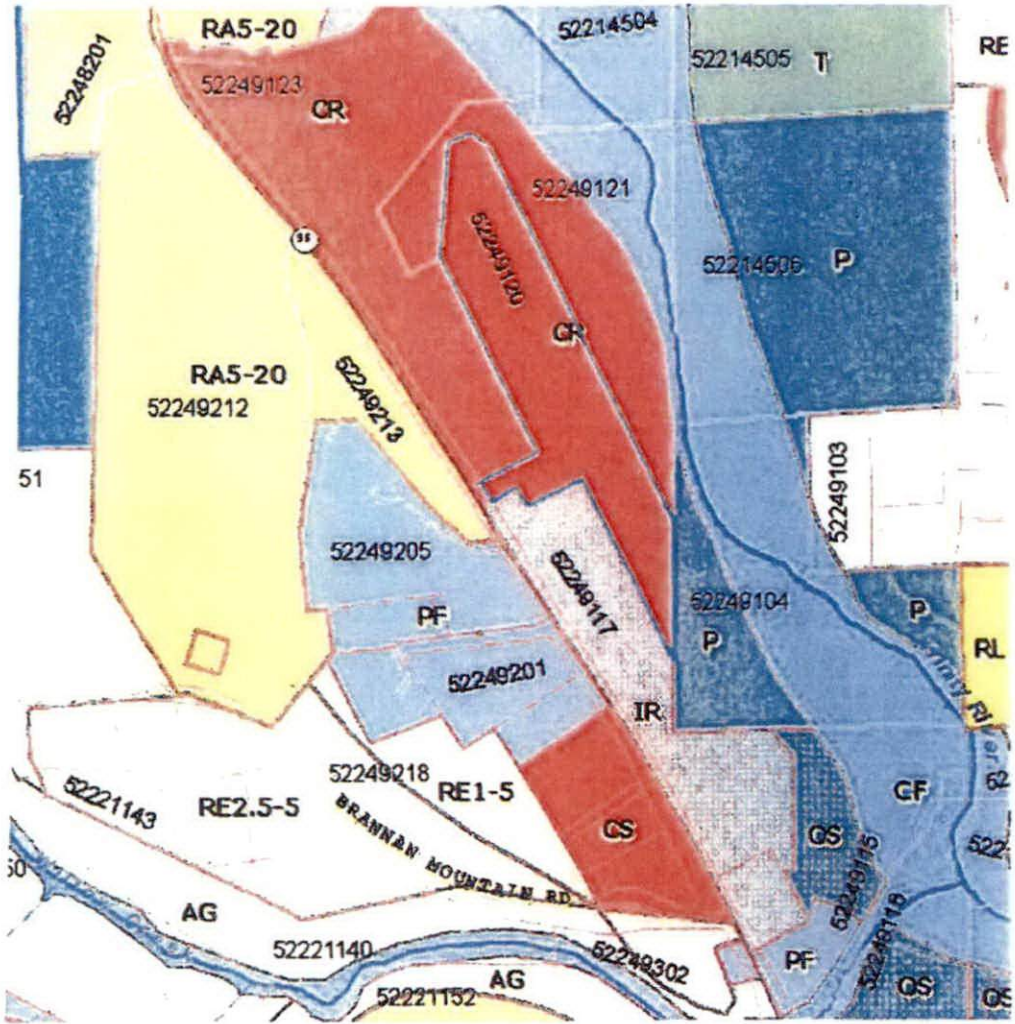
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EXHIBIT 2



F2



Northcoast Environmental Center
 PO Box 4259
 Arcata, CA 95518
 (707) 822-6918
 nec@yournec.org

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

November 28, 2018

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

Subject: Comments on Proposed MCMP, LLC (Mercer-Fraser Company), Zone Reclassification and Special Permit Application Number 10243 ("Project"), Case Numbers ZR-16-002 and SP-16-014 Assessor's Parcel Number (APN) 522-491-017

Dear Supervisors and Mr. Ford:

The Northcoast Environmental Center (NEC) submits the following comments on behalf of NEC's members, staff, and board of directors.

The Northcoast Environmental Center has engaged in conservation and environmental protection in northwestern California for over 45 years. Our mission includes educating agencies and the public about environmental concerns that may have an effect on our local resources and citizens. We appreciate the opportunity to comment on the Project.

The NEC appreciates that Humboldt County has strived to regulate cannabis cultivation and its environmental impacts. In an earlier letter to you, dated March 17, 2018 and regarding the then-proposed Ordinance to Regulate Commercial Cannabis Activities in Humboldt County, the NEC expressed concerns about the environmental impacts of cannabis activities. We believe that the proposed Project is not in the best interests of Humboldt County and its residents, and is not consistent with the County's own cannabis and land-use regulations.

We have the following specific concerns regarding the proposed project and rezoning:

1. **Proposed rezoning could permit a range of industrial uses inconsistent with the Project area characteristics.** The proposed rezoning classification to Heavy Industrial is not appropriate, as it could open the door to a variety of industrial uses incompatible with the

Project location. Any rezoning should prohibit any industrial use other than the current aggregate operation.

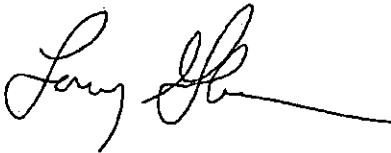
2. **The proposed cannabis processing facility would be adjacent to a public park and river access site, contrary to setbacks required by the County's Commercial Cannabis Land Use Ordinance (CCLUO).** The proposed cannabis facility would be located less than 200 feet at its nearest from the Six Rivers National Forest's Big Rock Day Use Area and River Access. CCLUO Section 55.4.6.4.4 (c) requires 600 feet setback of permitted commercial cannabis activities from public parks, including designated and developed recreational facilities such as picnic areas, campgrounds, and river and fishing access points under public ownership. The Big Rock Day Use Area and River Access clearly meets this criterion for a 600-foot setback. While the Executive Summary to the Project's staff report states that this setback does not apply to cannabis processing facilities, only to cannabis cultivation, we could find no further analysis or discussion of this issue in the report. We respectfully disagree with this interpretation of the CCLUO, which flies in the face of common sense—why prevent cannabis cultivation but allow an operation involving the handling and transportation of large quantities of cannabis, as well as the permitted use of toxic, flammable and volatile industrial solvents including acetone and heptane (pages 3 and 36 of staff report)?
3. **Location of industrial activities, including cannabis processing, close to the Trinity River and within its floodplain, should be avoided.** While portions of the parcel are within the 100-year floodplain (Staff Report, page 35-36) the proposed cannabis facility would be located just outside the mapped 100-year floodplain. However, it is still within a floodplain, and clearly at risk as evidenced by the 1964 flood level, which was many feet in elevation above the level of the proposed Project. With climate change affecting precipitation patterns and flooding patterns, caution is called for, particularly when considering new industrial uses so close to the regulatory 100-year floodplain. Use of a septic system for wastewater disposal (Staff Report, page 33) within the Trinity River floodplain is also a concern, particularly since the Staff Report contains conflicting information on whether volatile solvents such as acetone and heptane can be used by the proposed cannabis factory (page 33 recommends limiting manufacturing to "non-volatile based processes", while page 36 states that non-water based solvents such as heptane, butane, acetone would be used).
4. **Location close to Willow Creek's Trinity Valley Elementary School.** The project location is across Highway 96 from Willow Creek's public elementary school (Map 1 below). While cannabis use is legal in California for adults, we should recognize that locating a cannabis processing plant so close to an existing school sends a mixed message to the school's children, and is an inappropriate and inconsistent land use.
5. **No action should be taken by the County until correction of existing unpermitted Mercer-Fraser operations on public lands at the Project location.** Existing Mercer-Fraser operations on the site extend onto about 2.5 to 3 acres of public lands of the U.S. Forest Service (parcel 522-491-004, Map 2 below), based on information in the staff report, on the County's GIS web portal, and from an NEC-site visit. Documents received in response to a Public Records request, as well as discussions with Forest Service staff, indicate that this use is currently

unpermitted, and has been so for more than a decade. The area of unpermitted use includes a large (estimated 20-30 feet high) waste pile of dirt, concrete and other materials as well as active portions of the aggregate plant.

In conclusion, we ask that the County deny the proposed rezoning of the Project parcel, and not take any action that would permit or otherwise allow any activities on the Project parcel other than current existing operations. Any rezoning, should it occur, should prohibit any cannabis processing, as well as prohibiting any industrial uses other than the current aggregate operations.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Glass", with a long horizontal flourish extending to the right.

Larry Glass
Executive Director
Northcoast Environmental Center

F2

Eberhardt, Brooke

From: adam hall <adamwalkerhall@gmail.com>
Sent: Thursday, November 29, 2018 4:08 PM
To: Eberhardt, Brooke
Subject: Public Comment Re: Opposed to Mercer-Fraser Willow Creek Zoning Change

Members of the Board of Supervisors:

I am writing to express my opposition to and profound concern about the proposed zoning changes to the Mercer-Fraser site on Highway 96 in Willow Creek. The existing situation with this site is barely tolerable. Granting a change to Industrial zoning will almost certainly make the situation worse as many new unwelcome industrial activities would then be principally permitted and the ability of the public to weigh in on whatever plans Mercer-Fraser may have for this site will be significantly restricted.

The location of this gravel and cement plant across from the Trinity Valley Elementary School is an unfortunate circumstance to begin with. Large amounts of dust impacting air quality and a great deal of noise from both rock moving and heavy truck traffic are a constant nuisance to my neighbors and myself as much as a mile up Highway 96 from the site. I can only imagine what the noise and dust are like for the students and staff of the elementary school.

I can however accept that these activities occur on a conditionally permitted basis because the Mercer-Fraser company plays an important role in road construction and maintenance which our community depends on. There is, however, no public good served by developing this site for solvent based cannabis product manufacturing. There is also the concern that other industrial activities that may become principally permitted under the new zoning would have further unknown harmful effects on the children at Trinity Valley Elementary as well as the Big Rock recreation site that is enjoyed by so many of us.

The County has gone to great lengths to develop a regulatory framework to balance the economic value of the cannabis industry with the environmental, social, and safety concerns of the wider community. The Planning and Code Enforcement departments have taken a very strict and circumspect view of proposed and existing cannabis operations, but for some reason this new project is being given special consideration. If this zoning change is approved it will only confirm the worst fears and most cynical views of Humboldt County citizens about the Supervisor's approach to regulation of legal cannabis.

When Mercer-Fraser attempted to develop a similar project on the banks of the Mad River the public outcry was widespread and Mr. Sundberg went to great lengths to distance himself from the project and then took credit for supposedly negotiating away the proposed solvent extraction site in Glendale. Now Mercer-Fraser is seeking to impose the same environmentally reckless project on the communities of the Trinity Valley, and this time it is adjacent to an elementary school as well as being in a sensitive riparian area.

I hope that the Board of Supervisors will not allow this project to be foisted upon us simply because our community is smaller, unincorporated, and we have to drive farther to come to your meetings and make our voices heard. It has already been made clear by the Hoopa Tribe, the Willow Creek Community Service District, and the Klamath-Trinity Unified School District, virtually every government entity in our community, that this project is not wanted here. Please listen to the voices of those who represent our community and do not grant the zoning changes to this site. If Mercer-Fraser wants to be engaged in the cannabis business they should find an appropriate site that meets the criteria for cannabis business established under state and local rules.

Sincerely,

Adam Hall
Willow Creek Resident

11/11/2020

11/11/2020

11/11/2020

[Faint, illegible text]

[Faint, illegible text]

[Faint, illegible text]

Hayes, Kathy

From: alicia adrian <kudraridge@gmail.com>
Sent: Thursday, November 29, 2018 3:44 PM
To: Hayes, Kathy
Subject: Mercer-Fraser Site Re-zoning

F2

Hi,

We live on Horse Mtn, technically Blue Lake but closer to Willow Creek. Not sure who our Supervisor is, could you please pass on the message that we do not want an extraction business right there in that specific location. We don't have objections to the cannabis industry, just do not want Big Rock and the Trinity River impacted in any way, shape or form. The Blue Lake site sounds ill-advised, as well.

Thank you!
Alicia Adrian

F2

November 30, 2018

VIA ELECTRONIC MAIL ONLY

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

***Re: Zone Reclassification 16-002 and Special Permit 16-014;
Response to Letter from the Northcoast Environmental Center***

Dear Mr. Ford:

On behalf of Mercer-Fraser Company, we write in response to the Northcoast Environmental Center's ("NEC") letter, attached as **Exhibit 1**, regarding the above-referenced zone reclassification and special permit.

At the outset, we must emphasize that the Board of Supervisors is acting on a single issue regarding the property at issue during its December 4, 2018 hearing. The Board is acting on a request for a zone reclassification of the project site from Commercial Recreation (CR) to Heavy Industrial with a Qualified combining zone (MH-Q). The NEC's comments, however, also relate to the Planning Commission's approval of Special Permit 16-014 for the development and operation of a cannabis manufacturing facility. The Board is not taking any action regarding Special Permit 16-014. The Planning Commission approved Special Permit 16-014 on December 14, 2017. The Planning Commission's approval was not appealed and is final as a matter of law. Notwithstanding the fact that the Board is not acting, and cannot act, on the cannabis manufacturing permit, we nonetheless address each of the NEC's comments in turn below.

1. The zone reclassification to MH-Q will not permit uses inconsistent with the current area characteristics.

NEC states that the proposed rezoning from Commercial Recreation to Heavy Industrial (MH) is not appropriate because it could allow other industrial uses that are incompatible with the Project location. NEC further states that the zone reclassification should prohibit any industrial use other than the existing aggregate operation. The County's approval of a Qualified combining zone on the project site will address the NEC's concerns.

The Project site's current zone classification is Highway Service Commercial (CH): Highway Service Commercial (CH) is inconsistent with the IR land use designation and inconsistent with the Project site's existing use. Accordingly, state law requires the County to change the Project site's zone classification to a classification consistent with the IR land use designation. Heavy Industrial (MH) is the only logical zone classification that is consistent with the IR designation and the existing and historical use of the site.

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

2. The approved cannabis manufacturing facility complies with all applicable setback requirements.

The NEC states that the approved cannabis facility would be located less than 200 feet from the Six Rivers National Forest's Big Rock Day Use Area and River Access. The NEC correctly notes that the County's Commercial Cannabis Land Use Ordinance ("CCLUO"), approved by the Board of Supervisors on May 8, 2018, requires that all cannabis manufacturing facilities must observe the following setbacks from sensitive receptors:

Sensitive Receptors - Six hundred feet (600') from a Church or other Place of Religious Worship, Public Park, Tribal Cultural Resource, or School Bus Stop currently in use at the time of project application submittal. For purposes of this section, the setback requirement applicable to Public Parks, other than lands managed for open space and/or wildlife habitat, shall only be applied to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership.

(See CCLUO §§ 55.4.6.4.4, 55.4.8.2.)

The CCLUO does not, however, govern the approved cannabis manufacturing facility. Rather, the Planning Commission approved SP 16-014 under the authority of the County's Commercial Medical Marijuana Land Use Ordinance ("CMMLUO")¹ prior to the adoption of the CCLUO. In circumstances like these, the CCLUO expressly provides that "[p]ermits issued for commercial cannabis activities pursuant to the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as set forth in Ordinance No. 2559 shall remain valid, and shall be governed by the terms and conditions of that ordinance until such time as the permit is modified." (CCLUO § 55.4.3.8 [emphasis added].) Accordingly, SP 16-014 is only subject to the CMMLUO's setback requirements.

¹ The Board of Supervisor's approved the CMMLUO on September 13, 2016.

The CMMLUO, in contrast to the later enacted CCLUO, does not require any setbacks for cannabis *manufacturing* facilities. The CMMLUO's setback requirements relate solely to cannabis *cultivation* activities. (CMMLUO § 55.4.11(d).) In summary, SP 16-014 is not subject to any setback requirements for potential sensitive receptors at the Big Rock Day Use Area

3. The zoning reclassification will not result in any increased risk to local water quality.

The NEC expresses concern that the parcel subject to zone reclassification and the approved cannabis manufacturing facility is located near the 100-year floodplain and would provide for the use of a septic system for wastewater disposal. These concerns are unfounded due to protections put in place as part of the Mercer-Fraser's current operations, conditions imposed on the approval of SP-16-014, and limitations imposed through the County's use of a Qualified combining zone, as discussed below.

The site is the location of an active and fully permitted sand and gravel mine and processing facility. Mining and processing operations have been ongoing at the Project site since at least 1969. Current processing operations include material crushing and sorting, storage of materials, production of asphalt, and weighing and hauling by truck. Aggregate materials mined at the site are temporarily stockpiled, loaded onto trucks, and transported to the on-site processing facility (e.g., for crushing and use in the hot mix asphalt plant) or to off-site locations for further processing. Power loaders, excavators, bulldozers, rock crushers, screens, trucks and trailers, scrapers, truck scale, pumps, settling basin, gate office, a concrete batch plant, and a hot mix asphalt plant are all currently authorized to operate on the project site. These uses have been ongoing for approximately 50 years without incident.

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

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

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

- Diverting and trapping of sediment laden runoff into basins to settle prior to releasing flows to receiving waters;
- A requirement that all leachfield areas that support the manufacturing facility's on-site wastewater treatment system ("OWTS") be located outside of the 100-year flood plain;

- Inspection prior to significant rain events to ensure control measures are working properly and correction of problems as needed; and
- Approval and permits from the Division of Environmental Health and Regional Water Quality Control Board for the OWTS.

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

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

4. The approved cannabis manufacturing facility complies with siting requirements as respects schools, and is less obtrusive than numerous permitted and unpermitted cannabis cultivation operations close to the school.

The NEC states that the approved cannabis manufacturing facility is an inappropriate and inconsistent land use located close to the public elementary school. Given the abundance of both permitted and unpermitted cannabis cultivation in the area, including the approval of the large-scale Emerald Family, LLC operation without negative comment, the NEC’s concerns regarding a non-descript and secure 5,000 square foot enclosed facility seems disingenuous.

As previously discussed, the CMMLUO, in contrast to the later enacted CCLUO, does not require any setbacks for cannabis *manufacturing* facilities from schools. The CMMLUO’s setback requirements relate solely to cannabis *cultivation* activities. (CMMLUO § 55.4.11(d).) In summary, SP 16-014 is not subject to any setback requirements for the local elementary school. Even if the setback requirements did apply, however, the approved cannabis manufacturing facility will be located more than 1,200 feet from the school—twice the required setback from schools—tucked away in the back corner of Mercer-Fraser’s industrial facility.

Moreover, the Willow Creek area is full of permitted and unpermitted cannabis cultivation. As shown on the attached **Exhibit 2**, there are at least six existing or approved cultivation sites located within a half-mile of the elementary school, including one located just 1,100 feet immediately to the west of the school. In addition, the County recently approved a large-scale cannabis facility for Emerald Family, LLC that includes a 23,000 square foot processing facility and a 30,000 square foot outdoor and greenhouse cultivation area. Emerald Family, LLC has also proposed additional expansion of the facility to include a 160,000 square foot greenhouse area, and 17,5000 square foot cannabis manufacturing facility. No negative comments have been submitted regarding these cultivation and manufacturing activities and proposals.

John Ford
Zone Reclassification 16-002
November 30, 2018

In contrast to the existing cannabis activities in the region, the approved 5,000 square foot cannabis manufacturing facility will be small, located in a non-descript building, and tucked away into a back corner of an existing heavy industrial facility. Common sense dictates that this small facility will be the least obtrusive cannabis operation—cultivation, manufacturing, or otherwise—in the area.

5. The application for zone reclassification is irrelevant to Mercer-Fraser’s operations on U.S. Forest Service Lands.

Lastly, the NEC states that the County should not act on the zone reclassification until Mercer-Fraser resolves what NEC believes to be is unpermitted operations on U.S. Forest Service Lands, specifically, APN 522-491-004. The NEC’s comment is irrelevant to the action before the Board, specifically, the zone reclassification of the project site, and is simply wrong from a factual standpoint. Moreover, it ignores the Board’s legal obligation to approve a zone reclassification that is consistent with the recently approved General Plan land use designation.

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

Very truly yours,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By
Adam K. Guernsey, Esq.

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

EXHIBIT 1



Northcoast Environmental Center
PO Box 4259
Arcata, CA 95518
(707) 822-6918
nec@ournec.org

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

November 28, 2018

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

Subject: Comments on Proposed MCMP, LLC (Mercer-Fraser Company), Zone Reclassification and Special Permit Application Number 10243 ("Project"), Case Numbers ZR-16-002 and SP-16-014 Assessor's Parcel Number (APN) 522-491-017

Dear Supervisors and Mr. Ford:

The Northcoast Environmental Center (NEC) submits the following comments on behalf of NEC's members, staff, and board of directors.

The Northcoast Environmental Center has engaged in conservation and environmental protection in northwestern California for over 45 years. Our mission includes educating agencies and the public about environmental concerns that may have an effect on our local resources and citizens. We appreciate the opportunity to comment on the Project.

The NEC appreciates that Humboldt County has strived to regulate cannabis cultivation and its environmental impacts. In an earlier letter to you, dated March 17, 2018 and regarding the then-proposed Ordinance to Regulate Commercial Cannabis Activities in Humboldt County, the NEC expressed concerns about the environmental impacts of cannabis activities. We believe that the proposed Project is not in the best interests of Humboldt County and its residents, and is not consistent with the County's own cannabis and land-use regulations.

We have the following specific concerns regarding the proposed project and rezoning:

1. **Proposed rezoning could permit a range of industrial uses inconsistent with the Project area characteristics.** The proposed rezoning classification to Heavy Industrial is not appropriate, as it could open the door to a variety of industrial uses incompatible with the

Project location. Any rezoning should prohibit any industrial use other than the current aggregate operation.

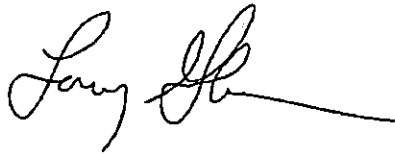
2. **The proposed cannabis processing facility would be adjacent to a public park and river access site, contrary to setbacks required by the County's Commercial Cannabis Land Use Ordinance (CCLUO).** The proposed cannabis facility would be located less than 200 feet at its nearest from the Six Rivers National Forest's Big Rock Day Use Area and River Access. CCLUO Section 55.4.6.4.4 (c) requires 600 feet setback of permitted commercial cannabis activities from public parks, including designated and developed recreational facilities such as picnic areas, campgrounds, and river and fishing access points under public ownership. The Big Rock Day Use Area and River Access clearly meets this criterion for a 600-foot setback. While the Executive Summary to the Project's staff report states that this setback does not apply to cannabis processing facilities, only to cannabis cultivation, we could find no further analysis or discussion of this issue in the report. We respectfully disagree with this interpretation of the CCLUO, which flies in the face of common sense--why prevent cannabis cultivation but allow an operation involving the handling and transportation of large quantities of cannabis, as well as the permitted use of toxic, flammable and volatile industrial solvents including acetone and heptane (pages 3 and 36 of staff report)?
3. **Location of industrial activities, including cannabis processing, close to the Trinity River and within its floodplain, should be avoided.** While portions of the parcel are within the 100-year floodplain (Staff Report, page 35-36) the proposed cannabis facility would be located just outside the mapped 100-year floodplain. However, it is still within a floodplain, and clearly at risk as evidenced by the 1964 flood level, which was many feet in elevation above the level of the proposed Project. With climate change affecting precipitation patterns and flooding patterns, caution is called for, particularly when considering new industrial uses so close to the regulatory 100-year floodplain. Use of a septic system for wastewater disposal (Staff Report, page 33) within the Trinity River floodplain is also a concern, particularly since the Staff Report contains conflicting information on whether volatile solvents such as acetone and heptane can be used by the proposed cannabis factory (page 33 recommends limiting manufacturing to "non-volatile based processes", while page 36 states that non-water based solvents such as heptane, butane, acetone would be used).
4. **Location close to Willow Creek's Trinity Valley Elementary School.** The project location is across Highway 96 from Willow Creek's public elementary school (Map 1 below). While cannabis use is legal in California for adults, we should recognize that locating a cannabis processing plant so close to an existing school sends a mixed message to the school's children, and is an inappropriate and inconsistent land use.
5. **No action should be taken by the County until correction of existing unpermitted Mercer-Fraser operations on public lands at the Project location.** Existing Mercer-Fraser operations on the site extend onto about 2.5 to 3 acres of public lands of the U.S. Forest Service (parcel 522-491-004, Map 2 below), based on information in the staff report, on the County's GIS web portal, and from an NEC site visit. Documents received in response to a Public Records request, as well as discussions with Forest Service staff, indicate that this use is currently

unpermitted, and has been so for more than a decade. The area of unpermitted use includes a large (estimated 20-30 feet high) waste pile of dirt, concrete and other materials as well as active portions of the aggregate plant.

In conclusion, we ask that the County deny the proposed rezoning of the Project parcel, and not take any action that would permit or otherwise allow any activities on the Project parcel other than current existing operations. Any rezoning, should it occur, should prohibit any cannabis processing, as well as prohibiting any industrial uses other than the current aggregate operations.

Thank you for considering our comments.

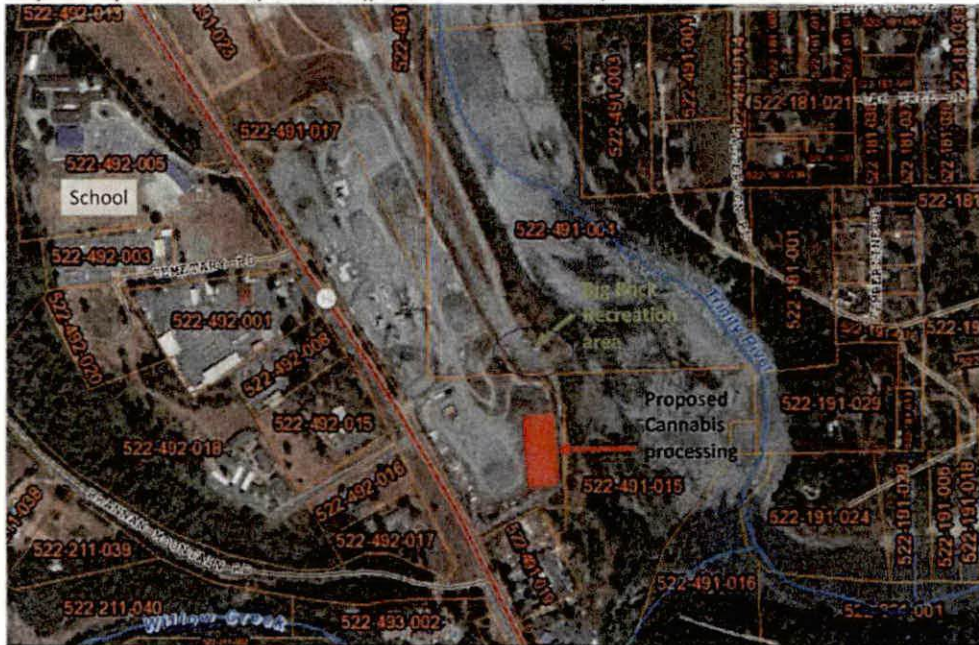
Sincerely,

A handwritten signature in black ink, appearing to read "Larry Glass", with a long horizontal flourish extending to the right.

Larry Glass
Executive Director
Northcoast Environmental Center

Appendix: Maps

Map 1: Imagery from Humboldt County web-GIS system, showing location of proposed cannabis processing plant relative to the public Big Rock Day Use Area and River Access, and to the Trinity Valley Elementary School (parcel 522-492-005).



Map 2: Imagery from Humboldt County web-GIS system, showing locations of Mercer-Fraser operations on public lands (Parcel 522-491-004).

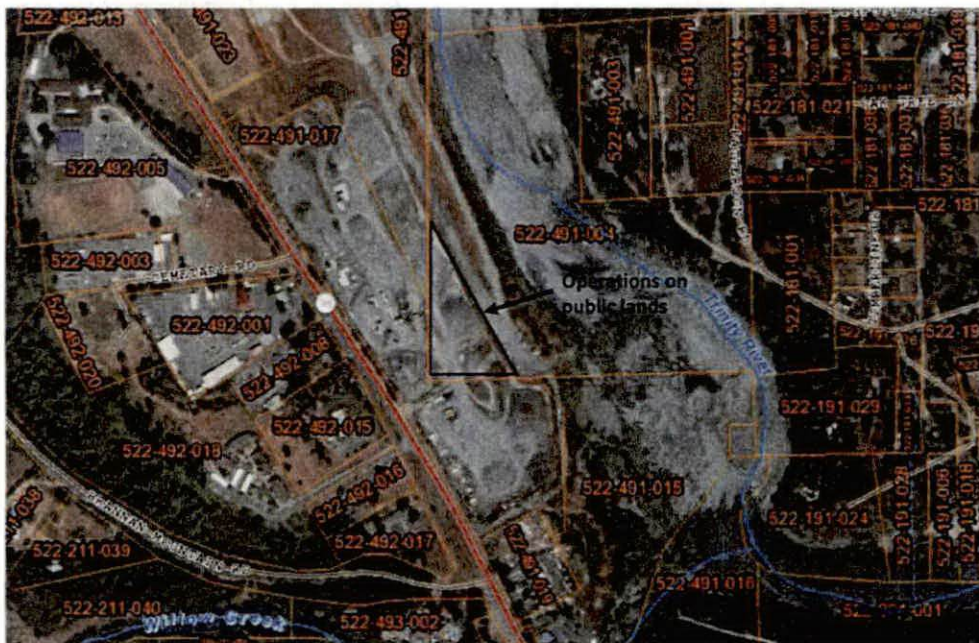


EXHIBIT 2



Google Earth

© 2013 Google

2000 ft



F2

November 30, 2018

VIA ELECTRONIC MAIL ONLY

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

***Re: Zone Reclassification 16-002 and Special Permit 16-014;
Response to Letter from Patrick O'Brien***

Dear Mr. Ford:

On behalf of Mercer-Fraser Company we write in response to comments from Patrick O'Brien, attached as **Exhibit 1**, regarding the above-referenced zone reclassification and special permit.

At the outset, we must emphasize that the Board of Supervisors is acting on a single issue regarding the property at issue during its December 4, 2018 hearing. The Board is acting on a request for a zone reclassification of the project site from Commercial Recreation (CR) to Heavy Industrial with a Qualified combining zone (MH-Q). Mr. O'Brien's comments, however, relate to the Planning Commission's approval of Special Permit 16-014 for the development and operation of a cannabis manufacturing facility. The Board is not taking any action regarding Special Permit 16-014. The Planning Commission approved Special Permit 16-014 on December 14, 2017. The Planning Commission's approval was not appealed and is final as a matter of law. Notwithstanding the fact that the Board is not acting, and cannot act, on the cannabis manufacturing permit, we nonetheless write to address Mr. O'Brien's comments.

Mr. O'Brien states that SP 16-014 cannot be granted because the proposed cannabis manufacturing facility would be located within a 600-foot setback area required for sensitive receptors. Specifically, the proposed facility would be located within 600 feet of picnic areas and river access at the Big Rock Day Use Area and Willow Creek Church property. Mr. O'Brien correctly notes that the County's Commercial Cannabis Land Use Ordinance ("CCLUO"), approved by the Board of Supervisor's on May 8, 2018, requires that all cannabis manufacturing facilities must observe the following setbacks from sensitive receptors:

Sensitive Receptors - Six hundred feet (600') from a Church or other Place of Religious Worship, Public Park, Tribal Cultural Resource, or School Bus Stop currently in use at

the time of project application submittal. For purposes of this section, the setback requirement applicable to Public Parks, other than lands managed for open space and/or wildlife habitat, shall only be applied to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership.

(See CCLUO §§ 55.4.6.4.4, 55.4.8.2.)

The CCLUO does not, however, govern SP 16-014. Rather, the Planning Commission approved SP 16-014 under the authority of the County's Commercial Medical Marijuana Land Use Ordinance ("CMMLUO")¹ prior to the adoption of the CCLUO. In circumstances like these, the CCLUO expressly provides that "[p]ermits issued for commercial cannabis activities pursuant to the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as set forth in Ordinance No. 2559 shall remain valid, **and shall be governed by the terms and conditions of that ordinance until such time as the permit is modified.**" (CCLUO § 55.4.3.8 [emphasis added].) Accordingly, SP 16-014 is only subject to the CMMLUO's setback requirements.

The CMMLUO, in contrast to the later enacted CCLUO, does not require any setbacks for cannabis *manufacturing* facilities. The CMMLUO's setback requirements relate solely to cannabis *cultivation* activities. (CMMLUO § 55.4.11(d).) In summary, SP 16-014 is not subject to any setback requirements for potential sensitive receptors at the Big Rock Day Use Area and/or Willow Creek Church Property.

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

Very truly yours,
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON



By
Adam K. Guernsey, Esq.

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

¹ The Board of Supervisor's approved the CMMLUO on September 13, 2016.

EXHIBIT 1

Tuesday, Nov. 27, 2018.

To Michelle Nielsen:

the gist of the following letter is simple: the permit that is being requested by MCMP Humboldt, LLC, cannot be granted because the proposed facility encroaches on the required 600 foot **Sensitive Receptors** setback to picnic areas and river and fishing access points to the east, and to the Willow Creek Church property, to the west.

The details pertain to the Case Numbers **ZR16-002** and **SP-16-014**. I will refer to the CCLUO document **Ord-No-2599-CCLUO-inland-certified-copy-PDF** as **docA**, and to the staff report of Dec 14, 2017, **ZR 16-002 SP 16-014 Staff Report** as **docB**.

Below are a number of sections copied from the underlying documents, **docA** and **docB**, which are annotated with reference to the PDF page number of those documents:

docA, page 7:

“Manufacturing” means a process whereby the raw agricultural product is transformed into a concentrate, an edible product, or a topical product, and the production, preparation, propagation, or compounding of cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

docA, page 16:

55.4.6.4.4 Setbacks

Standard Setbacks

Cultivation Site(s) must observe all of the following setbacks:

a) and b) removed - not relevant here

c) **Sensitive Receptors** - Six hundred feet (600') from a Church or other Place of Religious Worship, Public Park, Tribal Cultural Resource, or School Bus Stop currently in use at the time of project application submittal. For purposes of this section, the setback requirement applicable to Public Parks, other than lands managed for open space and/or wildlife habitat, shall only be applied to designated and developed recreational facilities such as picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership.

d) and e) removed - not relevant here

f) Notwithstanding the above described setbacks from Sensitive Receptors and Tribal Ceremonial Sites, the setback required from these areas may also be waived or reduced with the express written consent of qualified officials or representatives representing these protected uses. For publicly owned lands managed for open space and/or wildlife habitat purposes, a setback of less than 600 feet may be allowed with a Special Permit, provided that advance notice is given to the person or agency responsible for managing or supervising the management of those lands. For School Bus Stops, a setback of less than 600 feet may be allowed with a Special Permit, where it can be demonstrated that the cultivation site would not be detrimental to students at the bus stop, due to specific conditions

g) through m) removed - not relevant here

docA, page 23:

55.4.7 CANNABIS SUPPORT FACILITIES

Cannabis Support Facilities include facilities for Distribution, Off-Site Processing, Enclosed Nurseries, Community Propagation Centers and Cannabis Testing and Research Laboratories. **All Cannabis Support Facilities must meet or exceed the setbacks from Sensitive Receptors and Tribal Ceremonial Sites specified under 55.4.6.4.4(c) and (d), unless waived or reduced pursuant to 55.4.6.4.4(f).** Where conducted within an Enclosed setting, Cannabis Support Facilities shall not be subject to the setbacks from School Bus Stops prescribed within 55.4.6.4.4(c).

docA, page 25

55.4.8.2 MANUFACTURING

Manufacturing Sites must comply with all applicable performance standards, as well as meet the Eligibility Criteria specified in Section 55.4.6.3.1 and 55.4.6.3.2 as well as comply with the Siting Criteria specified in Sections 55.4.6.4.1, 55.4.6.4.2, 55.4.6.4.3, and 55.4.6.4.4 (c), (d) and (g). All Manufacturing activities shall be conducted within an Enclosed setting and shall not be subject to the setbacks from School Bus Stops prescribed for Open Air Cultivation Activities within 55.4.6.4.4(c), except where otherwise specified.

docB, page 3

Executive Summary: The ultimate objective of this application is to develop and operate a commercial medical cannabis manufacturing facility on a portion of a parcel...

[Last sentence of para 2 on page 3 of document B]:

The 600 foot setback requirement from schools, school bus stops, churches, etc. that applies to commercial cannabis cultivation does not apply to this project because 1) it does not include cultivation; and 2) **the setback requirement does not extend to commercial cannabis manufacturing.**

docB, page 13

This setback statement excludes the whole category of Sensitive Receptors (55.4.6.4.4, c), the existence of which are clearly visible in the aerial view on page 13, at most 200 feet to the N, E, and NE of the proposed facility. In particular, as seen in on page 13, the following setbacks are not met: “shall only be applied to designated and developed recreational facilities such as **picnic areas and campgrounds, trails, river and fishing access points, and like facilities under public ownership**”

docB, page 3

I would also take issue with the following: 5 lines from the bottom of para 2, it says “... **Willow Creek Community Church’s building is approximately 600 feet ...**”.

docB, page 15

Based on the diagram on page 15, the SW corner of the proposed facility is 380 feet to the fence line of the property on which the proposed facility would be located.

Not included in this diagram, but measured by me, it is at most 140 feet to the property line of the Willow Creek Community Church, which results in a total distance of 520 feet, **so this is also within the 600’ Sensitive Receptor setback.**

From what I have read, the school bus stops are exempt for this manufacturing facility, but the other sensitive receptors clearly are not.

I request that the HCB&P department withhold support for this permit until these matters can be adequately addressed.