

Additional Statement and Legal Argument of Phillip Wayne Smith in Support of the Appeal of Appellant : The Bluff Creek Company, Inc. Lucien James Smith, President Before The Honorable Board of Supervisors, Humboldt County, California.

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AUG 23 2019

Clerk
Board of Supervisors

Hearing Date: ~~July 16, 2019~~ *Sept 3, 2019*

Re: Appeal to the Humboldt County Board of Supervisors by The Bluff Creek Company, Inc., Lucien J. Smith, President, Appellant, of Planning Commission Decision in Case Number: SP16-667; Application Number 12834 (filed 12/29/2016); Assessor Parcel Numbers: 530-102-004, 530-101-009 & 530-101-010, to Deny the Application and Cannabis Cultivation Project.

My name is Phillip Wayne Smith and I am the Trustee/Lessor of the above-referenced Parcels impacted by the County Planning Commission action denying the above-referenced Application and Cannabis Cultivation Project. I support the Appeal and adopt all of the positions stated in the Appeal filed in this matter. And I herein submit additional Statement and Legal Argument in support of my appeal as follows:

I believe the following U.S. Supreme Court Cases are applicable and controlling in this matter of whether Humboldt County can enforce a law compelling me to comport my personal behavior and my lawful conduct on my real property to the religious beliefs of the Yurok and Karuk Tribes located in Humboldt County, California.

In 1940, in *Cantwell v. Connecticut*, 310 U.S. 296, 303-304, the Court said: “The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. . . . Thus the Amendment embraces two concepts, - freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be.”

Later, in 1947, the court decided *Everson v. Board of Education*, 330 U.S. 1 and said this at pages 15 and 16: “The establishment of religion clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. *Neither can pass laws which aid one religion, or prefer one religion over another* (emphasis added). And in Justice Frankfurter’s dissent in *Everson* stated: ‘ . . . we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.’”

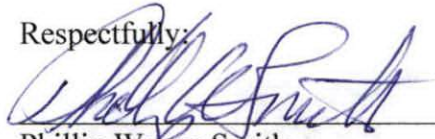
And as late as March, 2019, in *Morris County BD, of Chosen Freeholders v. Freedom From Religion Foundation*, No. 18-364, reaffirmed the above-referenced cases stating that “ In the words of Justice Brennan, the “*government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits.*” (emphasis added). In the matter instant the County is using the claim of the Yurok Tribe and the Karuk Tribe that my lawful conduct on my property somehow offends their religious and sacred beliefs, a *classification* and *special privilege* granted to the Tribe’s upon their mere statement that it is so, and *denying me* the right to lease my property for lawful cannabis cultivation activities, *imposing a duty on me to*

refrain my lawful conduct which results in a severe penalty. The County law doing so is constitutionally prohibited.

While there are underlying differences in the cases herein cited, the basic principles of the First and Fourteenth Amendments to the Constitution Free Exercise Clause prohibits states from penalizing one citizen's belief and lawful conduct simply because, and in this matter, with no positive showing whatsoever, the lawful conduct may or may not offend another citizen's sacred, spiritual or religious beliefs and customs. The state simply cannot enforce such laws.

Therefore, in addition to facts and allegations contained in my statement dated February 22, 2019, I respectfully request that Applicant's Permit be approved and that I not be burdened by the unconstitutional restrictions the Board is placing on me and on my property.

Respectfully:



Phillip Wayne Smith
H C 67 Box 620
Hoopa, CA 95546

at Hoopa/Weitchpec, California, ~~June 24, 2019.~~

August 22, 2019