



**APPLICATION FORM**  
**Humboldt County Planning and Building Department**  
 Current Planning Division 3015 H Street Eureka, CA 95501-4484  
 Phone (707) 445-7541 Fax (707) 268-3792



**INSTRUCTIONS:**

1. Applicant/Agent complete Sections I, II and III below.
2. It is recommended that the Applicant/Agent schedule an Application Assistance meeting with the Assigned Planner. Meeting with the Assigned Planner will answer questions regarding application submittal requirements and help avoid processing delays. A small fee is required for this meeting.
3. Applicant/Agent needs to submit all items marked on the reverse side of this form.

**SECTION I**

**APPLICANT** (Project will be processed under Business name, if applicable.)

**AGENT** (Communications from Department will be through Agent)

Business Name: The Bluff Creek Company, Inc.  
 Contact Person: Lucien Smith, President  
 Mailing Address: Box 620 AC67  
 City, St, Zip: Hoopa, CA, 95546  
 Telephone: (415) 889-6634 Fax: \_\_\_\_\_  
 Email: lucien@bluffcreekco.com

Business Name: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, St, Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

*New file?  
existing Bds.  
Priority  
3/11/19*

**OWNER(S) OF RECORD** (If different from applicant)

Owner's Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, St, Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Owner's Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City, St, Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**LOCATION OF PROJECT**

Site Address: AC67 Box 620 Hoopa, CA 95546  
 Community Area: \_\_\_\_\_

Assessor's Parcel No(s): 530-102-004, 520-101-010, 520-101-009  
 Parcel Size (acres or sq. ft.): Approx. 14 acres

Is the proposed building or structure designed to be used for designing, producing, launching, maintaining, or storing nuclear weapons or the components of nuclear weapons?  
 YES  NO

**SECTION II**

**PROJECT DESCRIPTION**

Describe the proposed project (attach additional sheets as necessary): Bluff Creek Co. appeal to Board of Supervisors

**SECTION III**

**OWNER'S AUTHORIZATION & ACKNOWLEDGEMENT**

I hereby authorize the County of Humboldt to process this application for a development permit and further authorize the County of Humboldt and employees of the California Department of Fish and Wildlife to enter upon the property described above as reasonably necessary to evaluate the project. I also acknowledge that processing of applications that are not complete or do not contain truthful and accurate information will be delayed, and may result in denial or revocation of approvals.

[Signature]  
 Applicant's Signature

22 FEB 19  
 Date

**If the applicant is not the owner of record:** I authorize the applicant/agent to file this application for a development permit and to represent me in all matters concerning the application.

\_\_\_\_\_  
 Owner of Record Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Owner of Record Signature

\_\_\_\_\_  
 Date

**This side completed by Planning and Building Staff**

Checklist Completed by: Catt C. Date: 2/11/19

**THE FOLLOWING ITEMS MUST BE SUBMITTED WITH THIS APPLICATION**

| Item   | Received                 | Item   | Received                 |
|--|--------------------------|--|--------------------------|
| <input checked="" type="checkbox"/> Filing Fee of \$ <u>1270.00</u>  | <input type="checkbox"/> | <input type="checkbox"/> Agricultural Feasibility Study  | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Fee Schedule (see attached, please return completed fee schedule with application)   | <input type="checkbox"/> | <input type="checkbox"/> Architectural Elevations  | <input type="checkbox"/> |
| <input type="checkbox"/> Plot Plan 12 copies (folded if > 8½" x 14")   | <input type="checkbox"/> | <input type="checkbox"/> Design Review Committee Approval  | <input type="checkbox"/> |
| <input type="checkbox"/> Tentative Map 12 folded copies (Minor Subd)   | <input type="checkbox"/> | <input type="checkbox"/> Environmental Assessment  | <input type="checkbox"/> |
| <input type="checkbox"/> Tentative Map 18 folded copies (Major Subd)   | <input type="checkbox"/> | <input type="checkbox"/> Exception Request Justification   | <input type="checkbox"/> |
| [Note: Additional plot plans/maps may be required]   |                          | <input type="checkbox"/> Joint Timber Management Plan  | <input type="checkbox"/> |
| <input type="checkbox"/> Tentative Map/Plot Plan Checklist (complete and return with application)                        | <input type="checkbox"/> | <input type="checkbox"/> Lot Size Modification Request Justification                                     | <input type="checkbox"/> |
| <input type="checkbox"/> Division of Environmental Health Questionnaire  | <input type="checkbox"/> | <input type="checkbox"/> Military Training Route (see County GIS)  | <input type="checkbox"/> |
| <input type="checkbox"/> On-site sewage testing (if applicable)  | <input type="checkbox"/> | <input type="checkbox"/> Parking Plan  | <input type="checkbox"/> |
| <input type="checkbox"/> On-site water information (if applicable)   | <input type="checkbox"/> | <input type="checkbox"/> Plan of Operation   | <input type="checkbox"/> |
| <input type="checkbox"/> Solar design Information  | <input type="checkbox"/> | <input type="checkbox"/> Preliminary Hydraulic and Drainage Plan   | <input type="checkbox"/> |
| <input type="checkbox"/> Chain of Title  | <input type="checkbox"/> | <input type="checkbox"/> R1 / R2 Report (Geologic/Soils Report, 3 copies with original signatures)       | <input type="checkbox"/> |
| <input type="checkbox"/> Grant Deed  | <input type="checkbox"/> | <input type="checkbox"/> Reclamation Plan, including engineered cost estimate for completing reclamation | <input type="checkbox"/> |
| <input type="checkbox"/> <input type="checkbox"/> Current <input type="checkbox"/> Creation                              | <input type="checkbox"/> | <input type="checkbox"/> Second Dwelling Unit Fact Sheet   | <input type="checkbox"/> |
| <input type="checkbox"/> Lot Book Guarantee (prepared within the last six months prior to application)                   | <input type="checkbox"/> | <input type="checkbox"/> Variance Request Justification  | <input type="checkbox"/> |
| <input type="checkbox"/> Preliminary Title Report (two copies, prepared within the last six months prior to application) | <input type="checkbox"/> | <input type="checkbox"/> Vested Right Documentation/Evidence   | <input type="checkbox"/> |
|  |                          | <input type="checkbox"/> Other _____   | <input type="checkbox"/> |
|  |                          | <input type="checkbox"/> Other _____   | <input type="checkbox"/> |
|  |                          | <input type="checkbox"/> Other _____   | <input type="checkbox"/> |
|  |                          | <input type="checkbox"/> Other _____   | <input type="checkbox"/> |

**FOR INTERNAL USE**

|   |  |   |
|---|--|---|
| <input type="checkbox"/> Ag. Preserve Contract<br><input type="checkbox"/> Certificate of Compliance<br><input type="checkbox"/> Coastal Development Permit<br><input type="checkbox"/> <input type="checkbox"/> Administrative<br><input type="checkbox"/> Planning Commission<br><input type="checkbox"/> Design Review<br><input type="checkbox"/> <input type="checkbox"/> Inland<br><input type="checkbox"/> Coastal<br><input type="checkbox"/> Determination of Legal Status<br><input type="checkbox"/> Determination of Substantial Conformance<br><input type="checkbox"/> Extension of _____<br><input type="checkbox"/> Fire Safe Exception Request | <input type="checkbox"/> General Plan Amendment<br><input type="checkbox"/> General Plan Petition<br><input type="checkbox"/> Information Request<br><input type="checkbox"/> Modification to _____<br><input type="checkbox"/> Lot Line Adjustment<br><input type="checkbox"/> Preliminary Project Review<br><input type="checkbox"/> Special Permit<br><input type="checkbox"/> <input type="checkbox"/> Administrative<br><input type="checkbox"/> <input type="checkbox"/> Planning Commission<br>H.C.C. \$ _____<br><input type="checkbox"/> Subdivision<br><input type="checkbox"/> <input type="checkbox"/> Parcel Map<br><input type="checkbox"/> <input type="checkbox"/> Final Map<br><input type="checkbox"/> Exception to the Subdivision Requirements | <input type="checkbox"/> Reclamation Plan<br><input type="checkbox"/> Surface Mining Permit<br><input type="checkbox"/> Surface Mining Vested Right Determination<br><input type="checkbox"/> Timber Harvest Plan Information Request<br><input type="checkbox"/> Use Permit<br>H.C.C. \$ _____<br><input type="checkbox"/> Variance<br>H.C.C. \$ _____<br><input type="checkbox"/> Zone Reclassification<br><input type="checkbox"/> Other _____<br><input type="checkbox"/> Other _____ |
|---|--|---|

Application Received By: \_\_\_\_\_ Date: \_\_\_\_\_ Receipt Number: \_\_\_\_\_

**General Plan Designation:** \_\_\_\_\_

**Plan Document:** \_\_\_\_\_

**Land Use Density:** \_\_\_\_\_

**Zone Designation:** \_\_\_\_\_

**Coastal Jurisdiction Appeal Status:**     Appealable     Not Appealable

**Preliminary CEQA Status:**

Environmental Review Required

Categorically Exempt From Environmental Review:    Class \_\_\_\_\_    Section \_\_\_\_\_

Statutory Exemption:    Class \_\_\_\_\_    Section \_\_\_\_\_

Not a Project

Other \_\_\_\_\_



**County of Humboldt**

3015 H ST  
EUREKA, CA 95501

Telephone: 707-445-7245

Receipt No.: **PLR19\_0324**

Receipt Date: **02/25/2019**

# RECEIPT

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**RECORD & PAYER INFORMATION**

Record ID: PLN-2019-15412  
Record Type: Planning Application  
Property Address:  
Description of Work: The Bluff Creek Company, Inc. Appeal of APPS 12834  
Payer: The Bluff Creek Company, Inc.  
Applicant:  
The Bluff Creek Company, Inc.  
Box 620 HC 67  
Lucien Smith, President  
Hoopa, CA 95546

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**PAYMENT DETAIL**

| Date       | Payment Method | Reference | Casher | Comments | Status | Amount   |
|------------|----------------|-----------|--------|----------|--------|----------|
| 02/25/2019 | Credit Card    |           | EM     |          | Paid   | 1,270.00 |

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**FEE DETAIL**

| Fee Description             | Invoice # | Quantity | Fee Amount        | Current Paid      |
|-----------------------------|-----------|----------|-------------------|-------------------|
| Co Counsel: Appeal to BOS   | 2869      | 1.00     | \$520.00          | \$520.00          |
| Appeal Board of Supervisors | 2869      | 1.00     | \$750.00          | \$750.00          |
|                             |           |          | <u>\$1,270.00</u> | <u>\$1,270.00</u> |

Before The Honorable Board of Supervisors  
Humboldt County California  
825 5<sup>th</sup> Street  
Eureka, CA 95501



Appellant: The Bluff Creek Company, Inc.  
Lucien James Smith, President

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.

At its February 7, 2019 meeting, the Humboldt Planning Commission, following Staff recommendation, denied Appellant's Cannabis Cultivation Project and Application. Appellant request the Board approve Appellant's Cannabis Cultivation Project and Application on the following grounds:

The decision to deny the Application is stated as: "Staff is recommending denial of the project because it does not meet the required 600-foot setback from a Tribal Cultural Resource (TCR) per Ordinance 2559, passed 09/13/2016, the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) Section 55.4 11 (d)." Appellant believes the decision to deny the Application on said grounds is unlawful under the County Code that applies to the Application; unlawfully denies the legal use of the property (Appellant is a Beneficiary of the Lucien E. Saunders Trust, a family Trust and one of the heirs to the subject real property. Appellant leased a portion of the property from the Trust.); was done without compliance with controlling State law, to include the Brown Act, Government Code § 50001-57550 ; subjects all activity on the property to control of the Yurok and/or the Karuk Tribes without lawful authority; devalues the property, violates Appellant's constitutional right to free exercise of religion; violates Appellant's constitutional right to due process of law in the taking of the subject property by the County without a hearing or any other lawful process in which Appellant was involved, action which, if allowed to become final, will result in an unconstitutional taking of the property as well as a violation of due process and equal protection of law; Appellant's constitutional right to a representative form of government, and State and Federal law, to include precedent setting case law as follows:



Unlawful Under County Code 314-55.4.11 (d)

To assure compliance with Sec. 55.4.7 “Area of Tribal Cultural Affiliation,” Appellant, before submitting Application 12834, checked with Humboldt Planning and Building for any maps showing areas of traditional and tribal use by indigenous people, and was told by the Planning Department that no such maps existed showing any such areas. In good faith reliance on that information, Appellant proceeded with the Application in full compliance with Sec. 55.4.7 and submitted the Application on August 16, 2016, final acceptance by the Planning Department was on December 29, 2016. Planning Commission Staff continued to communicate with Appellant and required that Appellant meet all permit time lines in order to comply with both State and County permits and licenses. Experts were retained, studies and surveys completed. Money was borrowed, legal debt was incurred, fees were paid, and investments made based on the information received that the subject property was not in an Area of Tribal Cultural Affiliation identified by the County, the State or by any Indian Tribe, and representations by Staff that they saw no problem in the issuance of the Permit. (Appellant reserves the right to claim these costs and other expenses as damages in any action on the Application.) Appellant checked with the State Register of Historical Resources, the County Register, the National Park Services Register and Appellant’s property was not listed in any of those Registers. Appellant is not allowed access to any Tribal Register.

Appellant was informed by Staff and believes that such maps claiming the subject property was within an Area of Tribal Cultural Resource were filed by the Yurok Tribe sometime in August, 2018, two years after the Application was filed. Information in the record seems to reflect that the Yurok Tribe did not file anything until after November 9, 2018, the date of Tribal Resolution 18-87, attached hereto as Attachment “A” and made a part hereof. Appellant does not know if the subject property is located within the mapped area as no one is allowed to see the maps, and Appellant is *required to take the county’s statement of inclusion as fact*, a further denial of due process of law. Appellant’s reliance on information provided by the County’s Planning Department Staff and on information in the State Register of Historical Resources, the County Register and The National Park Service Register was reasonable and justifiable, to Appellant’s detriment, and the County must be enjoined and estopped from denying the Application on information received after the Application was submitted and accepted.

Brown Act Violation:

Appellant requested information regarding any meeting the Planning Staff, Planning Commission or Board of Supervisors held in deciding to accept the Yurok Tribe’s Resolution as fact and thus determine that Appellant’s property was no longer eligible for legal cannabis cultivation, and no such information was provided. Appellant therefore alleges that the County acted in violation of the Brown Act by either failing to have a meeting giving the notice required thereby, or held such meeting(s) without giving required notice. Appellant requests that action taken to deny the subject Application be void and that future action adverse to Appellant’s application be enjoined. See *Feduniak v. Coastal*

*Commission (2007) 148 Cal. App. 4<sup>th</sup> 1346*, and other authorities, statutes and cases cited therein.

### California Public Resources Code

The County must not be allowed to deny the Application by the ex-post facto filing of such maps by the Yurok Tribe and its unsubstantiated Resolution 18-87, reflecting Appellant's property as a Tribal Cultural Resource. The CMMLUO Sec. 55.4.7 Definitions, "Tribal Cultural Resources" incorporates California Public Resources Code sections 21074, 21083.2(g) and 21084.1 into its definition and adds: "Tribal Cultural Resources shall also include sites or resources identified by the tribe through an action of the Tribal Council or equivalent body." This definition as applied by Planning Staff includes non-tribal fee lands located outside the exterior boundaries of a tribe's reservation, i.e., off the reservation and not under the jurisdiction of a tribal government and allegedly includes the Appellant's property. The added definition of the CMMLUO is vague and ambiguous, and denies parties equal protection and due process of law in that no process is stated as to how such determinations by a tribal government would be evaluated by the County and does not provide impacted property owners any opportunity to object or otherwise address the action.

The County's action is without legal precedence or authority, contrary to public policy, and in direct violation of Public Resources Code Sections 5024.1 and 21080.3.2(c)(1), in that the procedure set forth therein was not followed by either Tribe and it was not followed by the County. The mere unsubstantiated declarations by the Yurok Tribe and by the Karuk Tribe of Appellant's property being a "Tribal Cultural Resource" does not make it so; they are required to prove their claim by substantial evidence pursuant to the procedures set forth in controlling law, and all affected property owners must be given notice and the right to be heard and agree or object.

Under the State Public Resources Code, Sec. 21074, (cited in Ord. Sec. 55.4.7) a Tribal Cultural Resource is defined as either:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

The property is not included nor has it been determined to be eligible for inclusion, nor is the ancestral territory claimed by either Tribe. The procedure for eligibility for and inclusion in the California Register of Historical Resources has not been complied with.

(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

The property is not, nor is the ancestral territory claimed by the Tribes listed in any historical resources register for Humboldt County. PLEASE NOTE, the

County could not have listed the property in a local register prior to Staff recommendation to deny the Application, since the County did not receive Yurok Resolution 18-87 until after November 9, 2018, the date the Tribe enacted it. And the County's notice of denial was received by Appellant on October 16, 2018, **24 days before the Tribe passed Resolution 18-87.**

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

Section 5024.1 is too lengthy to cite in full, but a copy is attached hereto as Attachment "C" and made a part hereof and I request the Board take judicial notice thereof. There is no evidence in the record that the four items in subdivision (c) were addressed by the County. It is obvious from a reading of the statute that no action can be taken on the mere declaration of a Tribe. Per the statute, every property owner impacted by a request for inclusion in the California Register of Historical Resources **shall** be given notice and an opportunity to object. The application of subdivision (c) does not eliminate the lead agency's requirement of giving the notice required by subdivision (f)(4). Appellant was not notified by the State of any such application by either Tribe to include the property as a cultural resource suitable for registration as a historical resource, nor was Appellant notified by the County. As previously discussed, Appellant has not been allowed discovery of the process used by the County to accept the declarations by the Tribe's as supported by substantial evidence and do not know whether the Board of Supervisors was not made aware of the statutory requirements of Sec. 5024.1(f)(4), or merely chose to ignore the notice requirements to affected property owners, and the requirement of providing said property owners with proof of such substantial evidence proffered by the Tribe's.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

The Yurok and Karuk claimed landscape, ancestral territories, could contain hundreds, perhaps thousands of square miles and Appellant has no idea of the size and scope and does not know if the County used this subsection in making its determination to deny the Application, and Staff will not allow Appellant to see the maps or any information to insure the property is even included.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Section 21083.2 may also be a tribal resource if it conforms with the criteria of subsection (a).



This section is properly interpreted to mean that the public has to be given an opportunity to comment to the County regarding the significance of the tribal cultural resources and to suggest appropriate mitigation measures. As a proponent of the Project, the County did not provide Appellant with notice of an opportunity to comment or otherwise be heard on its action negatively impacting Appellant's property. Section (c)(2) allows a proponent to "incorporate changes and additions to the project as a result of the consultation. . . ." Section (d) provides "If the project proponent or its consultant participate in the consultation, those parties shall respect the principles set forth in this section.", as proponents of the Project Appellant was not given an opportunity to participate in mitigation discussions, and, as previously stated herein, the Tribe's would not meet with Appellant when invited to do so, and the County did not notice Appellant as required by law. The County and the Tribes did not act in good faith and failed to comply with the law.

### Other Legal Issues

The County action in denying the Appellant's Permit raises other legal issues impacting Appellant and the property, some of which are as follows:

1. U. S. Constitution, Article 6: ". . . This Constitution and the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. . . ."

Appellant contends State and local laws cannot be enacted that violate the U.S. Constitution, and that the County CMMLUO, parts thereof, and some parts of the State Public Resources Code as addressed above, in as much as they do so, are unconstitutional.

2. U. S. Constitution, Article 4, Section 4: "The United States shall guarantee to every State in this Union a Republican form of Government . . ."

A republican form of government is a "representative" form of government. The County's authorization allowing the Yurok and Karuk Indian Tribes jurisdiction over the property and the County's action is in violation of Article 4, Section 4, in that Appellant does not have any rights before these tribes. Appellant cannot become a member, cannot vote, cannot hold office, cannot attend Council meetings, and cannot exercise any other U. S. or State Constitutional rights before these nonrepresentative tribal governments. The County action must be enjoined and declared void.

Further, since the Yurok Vice-Chairman testified at the February 7, 2019 Planning Commission Hearing that **the Tribe's position was "not about cannabis,"** must mean the Tribe's position of jurisdiction requires the Tribe approve all activity on Appellant's property, and only *incidentally* to include cannabis cultivation.



If this is not about “cannabis” then why are we here? The CMMLUO does not surrender off reservation fee lands to the jurisdiction of the Tribe except for the sole purpose of cannabis cultivation pursuant to its terms.

3. U. S. Constitution, Amendment I: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .”

The County’s CMMLUO restricting the legal use of the property prohibits the free exercise of Appellant’s religious beliefs in that it would compel and coerce Appellant to comport his behavior and legal use of the property to the religious beliefs and practices of the Yurok and Karuk tribes which are unknown to Appellant and not discoverable. The U.S. Supreme Court in finding against the Yurok, Karuk and Tolowa tribes held that the free exercise clause is implicated only by government actions that coerce individuals into violating their beliefs, either through direct penalties or through withholding benefits or privileges afforded other citizens. *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988).

The County CMMLUO, parts thereof, result in an unconstitutional violation of Appellant’s free exercise of religion and violates his liberty to enjoy the free exercise thereof since it coerces Appellant to comport his conduct and use of the property to the religious beliefs of the tribes, and therefore the County’s action must be enjoined and declared void.

4. U. S. Constitution, Amendments 5 and 14: 5: “No person shall be . . . deprived of life, liberty, or property, without due process of law . . .” and 14: Section 1, “. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

If the County follows the Planning Department recommendation to deny Appellant’s Permit, effectively depriving Appellant of his liberty by prohibiting a legal use of Appellant’s property, effectively devaluing the property, effectively depriving Appellant and other property owners of their liberty to engage in legal conduct and to follow their religious beliefs forcing them to comport to unknown Tribal religious or ceremonial practices in the use of the property, subjecting Appellant, the property owners and the property to the control of non-republican governments in which they have none of the rights guaranteed as citizens of the United States of America, will result in a taking of the property and denial of other protected rights without equal protection and due process of law. The County’s act in doing so is unconstitutional and must be enjoined.

(Re Property Taking See: *Siskiyou County Farm Bureau v. Department of Fish and Wildlife*, 35, Cal. App. Third (2015) and authorities, statutes and cases cited therein)

## Conclusion

Congress has declared and courts have held that Native American governments are dependent sovereignties. Their exercise of government powers is dependent on federal recognition by Congress. As a general rule, tribes do not have powers not expressly authorized by Congress, federal statutes or federal case law. Tribes do not have jurisdiction over non-members or their fee lands on Indian reservations except as provided by Congress, federal statutes or federal case law, and tribes have absolutely no jurisdiction over fee lands not tribally owned that are located off their reservations. Tribes do not have the power of eminent domain. Congress has not given them that power. Appellant contends that neither the State nor the County can give the local Tribes any authority that results in an exercise of that power. Tribes cannot compel anyone to comport their conduct on private non-reservation property to the Tribe's religious beliefs. Tribes do not have jurisdiction over non-tribal members absent a specific federal finding or voluntarily given. The County CMMLUO, and the State Public Resources Code, to the extent they allow the tribes in the County to effectively exercise eminent domain or any other jurisdictional power over non-reservation lands and non-member individuals over which they have no jurisdiction, are unconstitutional and unenforceable. The tribes in the County cannot do indirectly that which they have no lawful authority to do directly and the State Legislature or the County's governing body cannot lawfully permit this unlawful jurisdiction by the tribes over fee lands in the county and non-member individuals. Please See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), *Duro v. Reuina*, 110 S. Ct. 2053 (1990), *Montana v. United States*, 450 U.S. 544, (1981), *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989), *Evans DBA LP v. Shoshoni Bannock Land Use Policy Commission*, No. 13-3503, 9<sup>th</sup> Cir. (2013), *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), and other authorities, statutes and cases cited therein.)

The County Board of Supervisors enacted an ordinance permitting the tribes in Humboldt County final approval of all cannabis permits in the county if the land to be used for cannabis production is within a tribe's claimed ancestral territory. In exercising the power given to them by the Board, the Yurok Tribe and Karuk Tribe demand the signing of non-negotiable contracts and surrender of fee lands and fee property owners to tribal jurisdiction and tribal laws. Appellant found that Tribal laws are either non-existent or not available for review. Refusal to submit to those demands results in a denial of the permit by the Tribe, followed by the County. Appellant is informed that surrendering to tribal jurisdiction will and has resulted in permit approval by the tribes and the County. Appellant refused to sign away the constitutional rights of the impacted parties, the tribes denied the Application, the County Planning Staff then recommended the Application be denied, concluding at a time unknown and undiscoverable to Appellant, that our land is within tribal ancestral territory, and can never meet the required 600 foot set-back to a Tribal Cultural Resource required by the CMMLUO without tribal approval.

Appellant met with the Yurok Tribe Cannabis Task Force and the Tribal Historic Preservation Officer (THPO) on November 8, 2018 in an effort to discuss receiving Tribal approval and was informed that the Tribe's cultural map was developed after meeting with property owners and cultivators (Appellant was not given notice of such meeting and was not invited to participate), and the Tribe concluded that our property has cultural resources of ceremonial significance on it, and that Appellant does not have to be told what they are, adding that the Tribe decided that mitigation was not a possibility. The Yurok Tribe completed its Resolution 18-87 on November 9, 2018, the day after Appellant's meeting with the Tribal Historic Preservation Officer and the Yurok Cannabis Task Force. It is Appellant's opinion that the State and County have unwittingly allowed the Tribes to engage in fraud and extortion so one of the two Tribes, or both, (Yurok and Karuk) can eventually acquire the property by never approving any future development or improvement that would require a County or State permit.

Allowing the Tribe's this kind of jurisdiction is contrary to all constitutional law, federal law and federal cases ruling on the jurisdiction of Tribal governments over non-members and fee lands off the reservation. Tribes are not even allowed such jurisdiction on their reservations except in rare exceptions. See *Evans*, supra. Appellant's opinion was reinforced when the Yurok Tribe's Vice-Chairman, the THPO Appellant met with on November 8th, testified at the Planning Commission Hearing that **the Tribe's position was not about cannabis**. In truth, it is about reacquiring lands lost in the 1850's. Reacquiring all ancestral territory is an objective set forth in the Yurok Constitution (Appellant has always approved of this goal provided it is done lawfully. My father, through negotiations with his friend, the late Tribal Councilman Thomas Wilson, sold Bluff Creek Resort to the Yurok Tribe for less than market value so that the Tribe could reacquire land in the northern reach of the Tribe's ancestral territory.), and reacquisition of lost lands by any means is the goal and purpose of the tribally supported local movement to *Kill the Settler to Save the Human* which is active in Eastern Humboldt County. See [www.unsettlingklamathriver.wordpress.com](http://www.unsettlingklamathriver.wordpress.com)

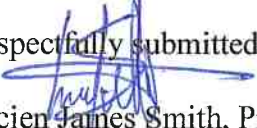
As stated above, in approving and in applying Yurok Tribal Resolution 18-87, the Board did not give notice to impacted property owners as required by State law, Public Resources Code Sections 5024.1 and 21080.3.2(c)(1), and CMMULO sections allowing tribal authority over fee land cannabis production activities. The State Code and County Ordinance must be followed and cannot lawfully be enforced until impacted property owners are given notice and given an opportunity to be heard. Impacted property owners are guaranteed due process of law. Appellant's Application and Permit cannot lawfully be denied until the County complies with the due process and equal protection provisions of the law.

I respectfully request that Board of Supervisors reconsider the decision to deny the Appellant's Application 12834, reject the Planning Commission's decision to deny the Project and Application, and approve the Project and Application.



In the event the Board decides to follow the Planning Commission's decision, in order to prevent irreparable harm to Appellant and the property, Appellant respectfully request that no final action be taken to cancel Applicant's Temporary Permit to operate, and that Appellant be allowed to continue the Project pending a final decision on appeal, and that Appellant be allowed a minimum of six (6) months to continue trying to acquire property for Retirement, Remediation, and Relocation (RRR) pursuant to CMMULO Section 55.4.14.

Respectfully submitted.

  
Lucien James Smith, President, The  
Bluff Creek Company, Inc., Appellant



# YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548



## Resolution

with

### YUROK TRIBAL COUNCIL

**RESOLUTION:** 18-87

**DATE APPROVED:** November 9, 2018

**SUBJECT:** Ke'wet Ceremonial District

- WHEREAS:** The Yurok Tribe is a federally recognized Tribe; and
- WHEREAS:** The Yurok Tribal Council is the governing body of the Yurok Tribe under the authority of the Yurok Constitution of 1993; and
- WHEREAS:** The Yurok Tribe is eligible for all rights and privileges afforded to federally recognized Tribes; and
- WHEREAS:** The Yurok Constitution Article IV, Section 1(g), with certain conditions, authorizes the Tribal Chairperson to take such actions as are necessary to safeguard the health or safety of the Tribe from imminent danger pending action by the Tribal Council; and
- WHEREAS:** The Yurok Tribe has lived along the Klamath River, since the Spirit People, Wo-ge' made things ready for us and the Creator, Ko-won-no-ekc-on Ne-ka-nup-ceo, placed us here; and
- WHEREAS:** The Yurok Tribe has followed all the laws of the Creator from the beginning, which became the whole fabric of our tribal sovereignty; and
- WHEREAS:** In times past and now Yurok people bless the deep river, the tall redwood trees, the rocks, the mounds, and the trails. We pray for the health of all the animals, and prudently harvest and manage the great salmon runs and herds of deer and elk. we never waste and use every bit of the salmon, deer, elk, sturgeon, eels, seaweed, mussels, candlefish, otters, sea lions, seals, whales, and other ocean and river animals; and
- WHEREAS:** Yurok Tribal Council, by action March 22, 2018, designated the Ke'wet Ceremonial District, a Tribal Cultural Resource to be included to the Yurok Tribal Register and State Historic Register because of the features,

places, cultural landscapes, sacred places, and objects with cultural value to the Yurok Tribe; and


**BE IT RESOLVED:** That the Ke'wet Ceremonial District is a Tribal Cultural Resource; and

**BE IT FURTHER RESOLVED:** That the Ke'wet Ceremonial District be added Tribal Register and State Historic Register.

**C\*E\*R\*T\*I\*F\*I\*C\*A\*T\*I\*O\*N**

This is to certify that this Resolution was approved at a duly called meeting of the Yurok Tribal Council on November 9, 2018, at which a quorum was present and that this Resolution was adopted by at which a quorum was present and that this Resolution Number 18-87 was adopted by a vote of 5 for and 0 opposed and 0 abstentions<sup>SNP</sup> in accordance with Article IV, Section 5 and Article IV, Section 1(g) of the Constitution of the Yurok Tribe. This Resolution Number 18- has not been rescinded or amended in any way.

DATED THIS 9 DAY OF November, 2018

  
\_\_\_\_\_  
Joseph L. James., Chairman  
Yurok Tribal Council

ATTEST:

*FUR*   
\_\_\_\_\_  
Mindy Natt, Secretary  
Yurok Tribal Council



**State of California**

**PUBLIC RESOURCES CODE**

**Section 5024.1**

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5024.1. (a) A California Register of Historical Resources is hereby established. The California Register is an authoritative guide in California to be used by state and local agencies, private groups, and citizens to identify the state's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change. The commission shall oversee the administration of the California Register.

(b) The California Register shall include historical resources determined by the commission, according to procedures adopted by the commission, to be significant and to meet the criteria in subdivision (c).

(c) A resource may be listed as an historical resource in the California Register if it meets any of the following National Register of Historic Places criteria:

(1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.

(2) Is associated with the lives of persons important in our past.

(3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.

(4) Has yielded, or may be likely to yield, information important in prehistory or history.

(d) The California Register shall include the following:

(1) California properties formally determined eligible for, or listed in, the National Register of Historic Places.

(2) State Historical Landmark No. 770 and all consecutively numbered state historical landmarks following No. 770. For state historical landmarks preceding No. 770, the office shall review their eligibility for the California Register in accordance with procedures to be adopted by the commission.

(3) Points of historical interest which have been reviewed by the office and recommended for listing by the commission for inclusion in the California Register in accordance with criteria adopted by the commission.

(e) If nominated for listing in accordance with subdivision (f), and determined to be significant by the commission, the California Register may include the following:

(1) Individual historical resources.

(2) Historical resources contributing to the significance of an historic district under criteria adopted by the commission.

(3) Historical resources identified as significant in historical resources surveys, if the survey meets the criteria listed in subdivision (g).

(4) Historical resources and historic districts designated or listed as city or county landmarks or historic properties or districts pursuant to any city or county ordinance, if the criteria for designation or listing under the ordinance have been determined by the office to be consistent with California Register criteria adopted by the commission.

(5) Local landmarks or historic properties designated under any municipal or county ordinance.

(f) A resource may be nominated for listing as an historical resource in the California Register in accordance with nomination procedures adopted by the commission, subject to all of the following:

(1) If the applicant is not the local government in whose jurisdiction the resource is located, a notice of nomination in the form prescribed by the commission shall first be submitted by the applicant to the clerk of the local government. The notice shall request the local government to join in the nomination, to provide comments on the nomination, or if the local government declines to join in the nomination or fails to act upon the notice of nomination within 90 days, the nomination may be submitted to the office and shall include any comments of the local government.

(2) Prior to acting on the nomination of a survey, an individual resource, an historic district, or other resource to be added to the California Register, the commission shall notify property owners, the local government in which the resource is located, local agencies, other interested persons, and members of the general public of the nomination and provide not less than 60 calendar days for comment on the nomination. The commission shall consider those comments in determining whether to list the resource as an historical resource in the California Register.

(3) If the local government objects to the nomination, the commission shall give full and careful consideration to the objection before acting upon the nomination. Where an objection has been raised, the commission shall adopt written findings to support its determination concerning the nomination. At a minimum, the findings shall identify the historical or cultural significance of the resource, and, if applicable, the overriding significance of the resource that has resulted in the resource being listed in the California Register over the objections of the local government.

(4) If the owner of a private property or the majority of owners for an historic district or single property with multiple owners object to the nomination, the commission shall not list the property as an historical resource in the California Register until the objection is withdrawn. Objections shall be submitted to the commission by the owner of the private property in the form of a notarized statement certifying that the party is the sole or partial owner of the property, and that the party objects to the listing.

(5) If private property cannot be presently listed in the California Register solely because of owner objection, the commission shall nevertheless designate the property as eligible for listing.

(g) A resource identified as significant in an historical resource survey may be listed in the California Register if the survey meets all of the following criteria:

(1) The survey has been or will be included in the State Historic Resources Inventory.

(2) The survey and the survey documentation were prepared in accordance with office procedures and requirements.

(3) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.

(4) If the survey is five or more years old at the time of its nomination for inclusion in the California Register, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource.

(h) Upon listing an historical resource or determining that a property is an historical resource that is eligible for listing, in the California Register, the commission shall notify any owner of the historical resource and also the county and city in which the historical resource is located in accordance with procedures adopted by the commission.

(i) The commission shall adopt procedures for the delisting of historical resources which become ineligible for listing in the California Register.

(Added by Stats. 1992, Ch. 1075, Sec. 4. Effective January 1, 1993.)



Statement 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



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.

I am a citizen of the United States and the State of California and, as such, have constitutionally protected ownership rights to the legal use and enjoyment of our property. I was born at home in 1939 in the South Central Los Angeles community of Willowbrook. Los Angeles was a wonderful place to grow up. I watched Mr. Rodia build the Watts Towers, and along with other kids brought him bottles and rocks from the Pacific Electric track, and had many other amazing adventures with my brothers, sister and friends. I have witnessed many changes in California, some good and some not so good. In my wildest imagination I never thought I would be spending this time in my life fighting my County government to save our property from the unconstitutional actions you have taken in this matter. The property was purchased by our family in 1973, forty-six years ago, and we have lived on it since we purchased it. The property is located northeast of the Yurok Reservation on State Highway 96, it is not on the Reservation, it is fee land, and it is not under the jurisdiction of the Yurok Tribe, nor is it under the jurisdiction of the Karuk Tribe. These two Tribes can never legally control what we do on the land as you are attempting to allow, by giving them absolute authority to control what we do. You need to recognize our rights of a landowner, and you need to defend our constitutional rights to the legal use and enjoyment of our land, not take them away.

Before I discuss the Yurok and Karuk Tribe's total lack of jurisdiction over our property, there is one issue of jurisdiction that I need to raise, and that is the issues of damages. The Appellant has paid out tens of thousands of dollars on County taxes, license fees and permits, more thousands developing the quality cannabis the Company cultivates. Even more on developing a viable market. It has also expended thousands of hours and so many other costs and expenses, borrowed money and incurred debt, all of which has to be paid. How does one do that now that you have killed the business? The Company can't even engage in any kind of production this season as we've been told by Planning Staff that to do so would be illegal and subject everyone involved to criminal prosecution. Outrageous! Seed starts should be green housed now and being readied for planting. Who is going to compensate Appellant for lost revenues? That's only Company damages. There are our damages regarding what your action has done to the property owners and to the property; I intend to file a claim to recover them. The Board should have considered the consequences of its action, and should have spent a few dollars on retaining a legal expert in Native American jurisprudence, who could have explained

to you what Indian tribes can and cannot do, before finalizing Ordinance 2559. At a minimum, the Board should have stated impacted fee owner's due process rights pursuant to State law, or at least instituted process contained in state law since you incorporated that law into the Ordinance, and you should have required the Tribe's agree to waive their sovereign immunity from unconsented suit for damages or posted a multimillion dollar bond covering damage claims caused by their actions in denying cannabis cultivation permits and licenses on lands over which they have no jurisdiction, even if done under color of local law. Had you done so, we would not be here, as the Tribe's know they would lose in court.

In regard to the issue of jurisdiction: regardless of what the Yurok Tribe's constitution says, asserting jurisdiction over all their aboriginal territory, the Hoopa-Yurok Settlement Act (1988), which formally recognized the Yurok Tribe, and created the Yurok Tribes government, limited the tribes jurisdiction to land remaining in trust within the 1891 boundaries of the extension portion of the Hoopa Reservation, one mile on each side of the Klamath River, from Weitchpec to Klamath. Our land is a few miles outside of the of the Yurok Reservation. I ask you to read the Ninth Circuit Court of Appeals Decision, Evans DBA LP vs. Shoshoni Bannock Land Use Policy Commission, No.13-35003, 9<sup>th</sup> Cir. (Dec. 5, 2013). It explains much better than I can, the series of cases that the Yurok Tribe relies on for jurisdiction, involving the "exceptions" reiterated in the Montana vs. United States case.

On the issue of tribal jurisdiction over non-Indian owned fee land, the Supreme Court has made clear that on fee lands within the boundaries of their respective reservations:

1. Tribes do not have criminal jurisdiction over non-Indians, absent congressional delegation. (Oliphant vs. Suquamish Tribe 435 U.S. 191 (1978); Violence Against Women's Act).
2. Tribes do not have jurisdiction over non-Indian activity on fee lands or navigable streams within the boundaries of the reservation. Montana vs. United States , 450 U.S. 544 (1981).
3. Tribes do not have jurisdiction to zone fee land within the boundaries of the reservation. Brendale vs. Confederated Tribes and Bands of the Yakima Indian Nation. 109 S. Ct. 2994 (1989) (*with one minor exception; below*)

The Yurok and Karuk tribes have absolutely no jurisdiction over off reservation fee lands without the owner's consent. We do not consent.

The Yurok and Karuk Tribes rely on an exception to the Montana rule that said tribes "may regulate nonmember activity that directly affects the tribe's political integrity, economic security, health or welfare"; citing to a list of subsequent cases in which the tribes involved actually lost. The Yurok and Karuk Tribes base their assertion of rights on federal case law long dismissed by the U.S. Supreme Court. The Ninth Circuit in the Evans case stated: "The tribes face a formidable burden in this respect, because "with only one 'minor exception, [the Supreme Court has] never upheld under Montana the extension of tribal civil authority over nonmembers on non-Indian land." Evans.



The minor exception was in the Brendale case, that involved an allotment inherited by an heir ineligible for tribal membership. The Ninth Circuit said, "The Supreme Court recently emphasized the narrow scope of Brendale, explaining that the decision merely authorized tribal zoning on nonmember fee land isolated in the heart of a closed portion of the reservation." Evans. As I suggested earlier, you really need to hire a legal expert to advise you of what tribal jurisdiction over non-Indian fee property really is, as defined by the U.S. Supreme Court, before you assume to believe, or simply accept, what the Yurok and Karuk tribes say their jurisdiction is because they are here on false pretenses.

In regard to the area of Bluff Creek there is historical, anthropological, evidence from oral tradition handed down, that there was a village somewhere near Bluff Creek, but no archeological evidence of where the village actually was. The exact location of the village has never been identified, but I can tell you where it wasn't: there is no archeological evidence that it was on our land, or on the Bluff Creek campground land that we sold to the Yurok Tribe. There hasn't been an actual village at Bluff Creek for over 150 years. since the mid 19<sup>th</sup> century. Bluff Creek is another two miles, or approximately six miles from the Yurok Reservation and two miles from our land. I would be surprised if anyone could give the actual Yurok name for the village. The Yurok and Karuk tribes openly dispute between themselves whether it was a Yurok or Karuk Village, and I know of no such doctrine or law of "overlap jurisdiction" as claimed by the Karuk Tribe. Historically they zealously guarded their territories from incursion by other tribes. The Bluff Creek area was completely washed away by the 1955 and 1964 floods and there is no archeological evidence left to identify where the village actually was. There is no historical evidence that the village had cultural significance, or that it was a ceremonial site, and there is no federal law identifying or protecting it as such. There are general statutes, like the Archeological Resources Protection Act, The American Indian Religious Freedom Act, the Indian Graves Protection and Repatriation Act, etc., that give tribes the standing to challenge development on state or federal lands, but that is a challenge that would be made in a federal district court. There is a California process under the Public Resources Code for State recognition that you incorporated into your Ordinance, but there is no record of either Tribe pursuing that process.

The Yurok Tribe has selective memory loss regarding the Supreme Court's ruling in their very own case, Lyng v. Northwest Indian Cemetery Association 485 U.S. 439 (1988). The Supreme Court rejected the argument that the Indian Religious freedom Act afforded Yurok, Karuk and Tolowa Tribes rights under the free exercise clause of the first amendment, over the use of public lands. The Supreme Court said the First Amendment doesn't apply, that "the Constitution simply does not provide a principle that would uphold the respondents legal claims." Not my words...the Supreme Courts words. And if the Supreme Court says there is no constitutional principle to uphold the Yurok, Karuk or Tolowa legal claims over public lands, then there is no constitutional principle to uphold these Tribes legal claims over private lands either. The Yurok and Karuk Tribes asks you to provide them with recognition of what the U.S. Supreme Court has rejected, and what the Federal government does not recognize. The Constitution does not support these Tribal claims, but you actually do have a legal obligation to

Cannabis is a ruse used by the Tribes to gain control over our lands. People on the Yurok Reservation and Karuk people have been cultivating and marketing cannabis for years, and they always will. It is my understanding that the Yurok Tribe is enacting or has enacted after our hearing, a medical cannabis ordinance for cultivation and marketing cannabis on the Reservation. And why not? Why not give Tribal Members the same opportunity the rest of us have (had in our case) to participate in this new and challenging business? (You might take a look at the tight control the State has placed over tribal cannabis businesses.) After all, in Genesis 1:29-31, God gave us every herb bearing seed which is upon the face of all the earth and saw that it was very good. Since before recorded history mankind has used cannabis for food and medicine.

So, in conclusion, I would ask that you not allow the Yurok Tribe and Karuk Tribe to use your administrative permit approval processes for their political purposes. The State and County both have elected to legalize and regulate cannabis businesses. I would ask you to consider your obligation to County citizens and private land owners to protect their property rights, and ensure that administrative processes do not hinder or infringe on their constitutional right to the use and enjoyment of their private property. And, in the future, if the Yurok, or any other Indian Tribe, chooses to intervene in any administrative permit process involving non-Indian owned fee land, that they be required to waive their sovereign immunity from unconsented suit, or post a multimillion dollar bond to pay for any damages their action may cause.

You can amend the Ordinance, giving it retroactive effect for Applicant's falling within its jurisdiction, like Appellant, and avoid this injustice. Justice is not two words; I'd be willing to bet whatever you might care to wager, that Lady Justice is not winking under her blindfold.

Thank you for allowing me to address the Humboldt County Board of Supervisors on this matter.

Respectfully:



at Hoopa/Weitchpec, California, February 22, 2019.

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