



**COUNTY OF HUMBOLDT**  
**PLANNING AND BUILDING DEPARTMENT**  
**CURRENT PLANNING DIVISION**

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Hearing Date: August 2, 2018

To: Humboldt County planning Commission

From: John H. Ford, Director of Planning and Building

Subject: County of Humboldt Extraction Review Team (CHERT) Ordinance (Establishing Procedures for Appointment, Duties and Compensation Mechanism for CHERT members)

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Please contact Michael Wheeler at 268-3730 if you have any questions about the scheduled public hearing item.

## AGENDA ITEM TRANSMITTAL

<b>Hearing Date</b> August 2, 2018	<b>Subject</b> CHERT Ordinance (Establishing Procedures for Appointment, Duties and Compensation of CHERT members)	<b>Contact</b> Michael Wheeler
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**Project Description:** The enactment of an Ordinance adding Chapter 2 to Division 9 OF Title III of the Humboldt County Code relating to the County of Humboldt Extraction Review Team. The Ordinance would specify the procedures for appointment of team members, duties and compensation. The provisions of the Ordinance would be applicable throughout the unincorporated area of the County of Humboldt.

**Project Location:** Unincorporated lands within Humboldt County

**Applicant**

Humboldt County  
Planning and Building Department  
Planning Division  
3015 H Street  
Eureka, CA 95501  
(707) 445-7541

**Environmental Review:**

Exempt per the State CEQA Guidelines; Determination of Non-project status

**Major Issues:** None.

**State Appeal Status:** Project is NOT appealable to the California Coastal Commission

**CHERT Ordinance**  
Case Number: OR-18-002

**RECOMMENDED COMMISSION ACTION:**

1. Describe the application as part of the Public Hearing Agenda;
2. Allow staff to present the project;
3. Open the public hearing; and;
4. After receiving testimony, make a motion(s) to:

*"I move to adopt the draft resolution in the staff report which recommends that the Board of Supervisors adopt the proposed Ordinance establishing procedures for appointment, duties and compensation mechanism for CHERT members"*

**Executive Summary**

**Background**

The Humboldt County in-stream gravel mining program is conducted pursuant to the Surface Mining and Reclamation Act (SMARA). In-stream mining is also governed by the California Department of Fish and Game the US Army Corps of Engineers. The County of Humboldt Extraction Review Team's (CHERT) role in the review of in-stream gravel mining is authorized by SMARA and the Programmatic Environmental Impact Report (PEIR) on Gravel Removal from the Lower Mad River certified by the Humboldt County Board of Supervisors on May 31, 1994.

CHERT is responsible for carrying out the Adaptive Management Program adopted in the PEIR to enable on-going gravel mining operations, while restricting and monitoring gravel extraction volumes to minimize degradation of the affected environment. The lower Mad River contains multiple closely spaced mining sites. Gravel extraction from these sites in the lower Mad River reach has the potential for greater cumulative impacts than extraction at more isolated mining sites. The Adaptive Management Program was adopted to direct mining activities and allow intensive technical data collection and analyses of mining effects through the review of survey cross sections, air photos, hydrologic information, and biological surveys.

As originally established by Board resolution, the CHERT consists of five members appointed by the Humboldt County Board of Supervisors with expertise in hydrology, fluvial geomorphology, fisheries, and river ecology. CHERT members serve as agents of the County for the purpose of providing technical expertise and reviews of mining proposals for in-stream gravel operations within the County. These reviews are a required component of the Adaptive Management Strategy.

CHERT provides recommendations for extraction quantities, extraction methods, disturbance minimization measures, and mitigations that tier to the PEIR's general project design features and mitigation measures. CHERT is also concerned with possible adverse impacts to infrastructure such as levees, bridges, and the water district facilities. The Corp of Engineers and the Department of Fish and Game also make use of the CHERT review process for assessing gravel extraction effects including impacts to listed salmonids and designated critical habitat.

**The CHERT Ordinance**

The continued role of CHERT in the adaptive management program has the support of state and federal resource agencies and the mining community. However, in order to function effectively for the long term it is beneficial to clearly establish in Code the procedures for

appointment, duties and compensation mechanism for CHERT members.

CHERT composed of a five member scientific panel was formed by Resolution of the Humboldt County Board of Supervisors (the Board) on May 14, 1996. Since that time, one CHERT member has died and one has resigned. The County is in need of a method to fill vacancies on CHERT and desires to codify that process and the roles and responsibilities of CHERT. To this end, the ordinance would add Chapter 2 of Division 9 of Title III of the Humboldt County Code.

Because this Ordinance only establishes procedures for appointment, duties and compensation mechanism for CHERT members and does not specifically address any one development project, staff believes that the finding can be made that the ordinance could not, in and of itself, have a significant effect upon the environment. When instream mining plans subsequently come forward for review under the regulatory process, they would be subject to full environmental review at that time. The Department has prepared a Determination of Non-Project Status (See Attachment 3) finding the enactment of the Ordinance to be exempt from environmental review under CEQA.

Planning staff finds that the draft Ordinance addresses the need to incorporate these CHERT procedures into Humboldt County Code and that the Commission recommend to the Board of Supervisors the adoption of the CHERT Ordinance.

**ALTERNATIVES:**

The Planning Commission could change the proposed Ordinance by modifying the text to adding additional clarity or to be more restrictive.

Attachment 1

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF  
HUMBOLDT ADDING CHAPTER 2 TO DIVISION 9 OF TITLE III OF THE  
HUMBOLDT COUNTY CODE RELATING TO THE COUNTY OF HUMBOLDT  
EXTRACTION REVIEW TEAM**

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

**SECTION 1. Legislative Findings:**

**Whereas**, the County of Humboldt Extraction Review Team (CHERT) was formed by Resolution of the Humboldt County Board of Supervisors (the Board) on May 14, 1996.

**Whereas**, on May 14, 1996, the Board appointed five scientists to CHERT.

**Whereas**, three out of the five original appointees still actively serve.

**Whereas**, the County is in need of a method to fill vacancies on CHERT and desires to codify that process and the roles and responsibilities of CHERT.

**SECTION 2.** Chapter 2 of Division 9 of Title III of the Humboldt County Code is hereby added as follows.

**§XXXX County of Humboldt Extraction Review Team (CHERT); members; duties; lead scientist; succession.**

The County of Humboldt Extraction Review Team is hereby codified and shall hereinafter be referred to as CHERT.

(a) Composition:

- (1) CHERT shall consist of at least three and no more than five appointees who shall serve at the pleasure of the Board of Supervisors. New appointees shall be recommended to the Board of Supervisors for ratification as needed to fill vacancies by a membership review panel comprised of (1) representatives from the Humboldt County Planning and Building Department, (2) one representative from the US Army Corps of Engineers, (3) one representative from the California Department of Fish and Wildlife Services, and (4) one representative from the National Marine Fisheries Service. The Planning and Building Department shall bring requests for appointment of new members to the Board of Supervisors.

(2) Appointment Criteria:

Appointees to CHERT shall possess, at a minimum, a Bachelor of Science or advanced degree (Master of Science or PhD) in hydrology, fluvial geomorphology, riparian ecology, or a related field of study.

At any one time, CHERT shall, when taken as a whole, possess expertise in all of the above-listed fields except in the event of unexpected vacancies while

replacement members are being sought and selected.

Appointed members will serve a five year appointment and may serve successive terms if continuation is recommended by the review panel and approved by the Board of Supervisors. Members may be removed for cause at any time during their appointment if recommended by the review panel majority and approved by the Board of Supervisors.

Appointees shall not be directly affiliated with a company or individual subject to the review activities of CHERT.

(3) Lead scientist:

The Director of the Planning and Building Department shall, in consultation with CHERT, select and appoint a lead scientist for CHERT from the CHERT members. The lead scientist shall coordinate with other members to distribute work, coordinate site visits, and be the point of contact for the Planning Department, gravel operators, and regulatory agencies. The lead scientist shall ensure that CHERT completes the duties listed below.

The term of office for the lead scientist shall be five years, and may be appointed for successive terms if recommended by the review panel majority and approved by the Board of Supervisors.

(b) Duties of CHERT:

CHERT appointees shall, as individual contractors to the County, review gravel mining proposals submitted each year by gravel operators as part of a multi-agency review process. CHERT shall advise gravel operators and regulatory agencies on mining methods and volumes that minimize adverse impacts to riparian plant and animal species, their habitats, and river infrastructure.

CHERT shall be responsible for the following duties:

- (1) For each extraction year, CHERT shall furnish the County annual cost estimates for services in the Humboldt County gravel mining management program no later than January 30<sup>th</sup>.
- (2) Assume the duties of the Scientific Design and Review Committee for all gravel extraction operations on the Mad River that are covered by the Final Program EIR on Gravel Removal from Lower Mad River (certified May 31, 1994) and the Supplemental Programmatic EIR for Gravel Extraction on the Lower Mad River (certified December 16, 2014).
- (3) Perform CHERT duties as described in the Interim Monitoring Program for the Lower Eel and Van Duzen Rivers adopted July 2, 1996, and amended April 1, 1997.
- (4) Perform CHERT duties as described in the U.S. Army Corps of Engineers Letter of Permission Procedure adopted September 18, 2015, and as described in any future amendments.
- (5) Prepare an annual post-extraction compliance report as required in the Final Program EIR on Gravel Removal from the Lower Mad River certified on May 31, 1994, and a post-extraction report on the Lower Eel and Van Duzen Rivers as required in the Interim Monitoring Program and Adaptive Management Practices

for Gravel Removal from the Lower Eel and Van Duzen Rivers adopted July 2, 1996 and revised April 1, 2007.

- (6) Draft post-extraction reports shall be submitted on or before February 1<sup>st</sup> of each year to the County Planning Director, California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and National Marine Fisheries Service. The draft report shall be made available for public comment. If no comments are received, then the draft becomes the final report. If comments are received, CHERT shall draft responses and submit these along with a final report to the County for review and posting to the County's SMARA web page.
- (7) Other gravel-mining related tasks that are not part of the annual review process at the direction of the Department of Planning and Building.

(c) Compensation:

CHERT members shall be compensated at a rate to be determined by the Director of the Planning and Building Department. CHERT members shall enter into a contract with the County governing compensation and duties. The cost of CHERT activities shall be billed pro-rata to gravel operators and collected by Department of Planning and Building on a cost recovery basis.

(d) Legal Relationship with County:

CHERT is not an agency, board, commission, or department of the county of Humboldt, and CHERT members (and any employees or staff) are not employees or agents of the county of Humboldt. CHERT members are independent contractors.

(e) Conflict of Interest:

If a CHERT member has a conflict of interest on a particular project, the conflict of interest shall be disclosed to the Director of the Planning and Building Department for review in accordance with Departmental policies and procedures. A conflict of interest occurs when a CHERT member has professional or personal interests that compete with his or her services to the County as a CHERT member. Such competing interests may make it difficult for a CHERT member to fulfill his or her duties impartially. Should a conflict of interest exist be found to exist, the CHERT member shall not participate in the particular project for which a conflict of interest exists.

(f) Dispute Resolution Procedure:

Any party (gravel operator, public resources agency representative, member of the public, etc.) may contact the Director of the Humboldt County Planning and Building Department to provide feedback regarding CHERT. In the event the Director receives a complaint regarding CHERT, the Director or his/her designee shall meet with the complaining party and a representative of CHERT to attempt to resolve the issue. This meeting shall occur within thirty days of receipt of a complaint. If the parties are unable to resolve the dispute, the Director may recommend that the parties engage in mediation.

**RESOLUTION OF THE PLANNING COMMISSION  
OF THE COUNTY OF HUMBOLDT**

**Resolution Number 18-\_\_\_\_**

**MAKING THE REQUIRED FINDINGS FOR RECOMMENDING THAT THE BOARD OF SUPERVISORS CERTIFY  
COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND  
APPROVE THE CHERT ORDINANCE, ADDING CHAPTER 2 TO DIVISION 9 OF TITLE III OF THE HUMBOLDT  
COUNTY CODE**

**WHEREAS**, the Planning Division has reviewed and circulated a draft CHERT Ordinance which makes provision for adding Chapter 2 to Division 9 of Title III of the Humboldt County Code establishing procedures for appointment, duties and compensation mechanism for CHERT members; and

**WHEREAS**, the proposed ordinance to the County Regulations will not have a significant environment and have been determined to not meet the definition of a project pursuant to Sections 15061(b)(3), 15378(a)(1) and 15378(b)(5) of the California Environmental Quality Act (CEQA) Guidelines; and

**WHEREAS**, the Humboldt County Planning Commission held a public hearing on the proposed ordinance on August 2, 2018 to receive other evidence and testimony; and

**WHEREAS**, the Planning Commission has reviewed and considered said reports and other testimony presented to the Commission.

**NOW, THEREFORE**, be it resolved, determined, and ordered by the Planning Commission that, based on the Planning Division staff report:

1. The Ordinance adding Chapter 2 to Division 9 of Title III of the Humboldt County Code establishing procedures for appointment, duties and compensation mechanism for CHERT members has been determined to not meet the definition of a project under the California Environmental Quality Act pursuant to Sections 15061(b)(3), 15378(a)(1) and 15783(b)(5) of the California Environmental Quality Act Guidelines.

**BE IT FURTHER RESOLVED** that this Commission recommends that the Board of Supervisors of the County of Humboldt:

1. Hold a public hearing in the manner prescribed by law.
2. Find that adding Chapter 2 to Division 9 of Title III of the Humboldt County Code establishing procedures for appointment, duties and compensation mechanism for CHERT members has been determined to not meet the definition of a project under the California Environmental Quality Act pursuant to Sections 15061(b)(3), 15378(a)(1) and 15783(b)(5) of the California Environmental Quality Act Guidelines.
3. Direct the Clerk of the Board of Supervisors to publish the ordinance summary within 10 days of the adoption of the Ordinance, and to give notice of the decision to all persons requesting such notice.
4. Direct staff to file a Determination of Non-Project Status of Changes.



Adopted after review and consideration of all the evidence \_\_\_\_\_, 2018.

The motion was made by Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_.

AYES: Commissioners:  
NOES: Commissioners:  
ABSTAIN: Commissioners:  
ABSENT: Commissioners:

I, John Ford, Secretary of the Humboldt County planning Commission, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Planning Commission at a meeting held on the date noted above.

\_\_\_\_\_  
John H. Ford  
Planning and Building Department  
County of Humboldt

## Attachment 2

### Determination of "Non Project" Status

**Project Title:** Proposed CHERT Ordinance (Establishing Procedures for Appointment, Duties and Compensation)

**Lead Agency:** Humboldt County Department of Planning and Building  
3015 H Street, Eureka, CA 95501-4484

**Contact Person:** John Ford: Phone (707) 445-7541; Fax (707) 445-7446;  
E-Mail jford@co.humboldt.ca.us

**PROJECT LOCATION:** The unincorporated lands in Humboldt County.

**PRESENT PLAN DESIGNATIONS, GOALS, POLICIES & STANDARDS:**

Inland and Coastal: ALL.

**PRESENT ZONING REGULATIONS:**

Inland and Coastal: ALL.

**LAND USES AND SETTINGS:** ALL.

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:** NONE.

**DETERMINATION:**

Pursuant to section 15061(b)(3) of the CEQA Guidelines, the Planning Division, as lead agency, has determined that the ordinance establishing local procedures for the consideration, implementation and administration of development agreements is not subject to CEQA because:

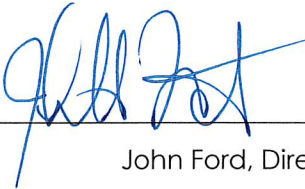
- The activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment; and
- There will not be a direct or foreseeable indirect physical change in the environment due to the ordinance revisions; and
- The activity is not a project as defined in Section 15378 of the CEQA Guidelines.

Section 15378(a)(1) specifically states in part that: "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is one of the following: (1) An activity directly undertaken by a public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Section 55100-65700."

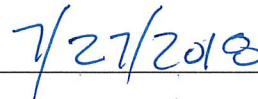
The proposed ordinance would add a section to the Administrative portion of the Humboldt County Code and would not change any zoning or general plan land use designations.

Adoption of the ordinance itself, which establishes a regulatory framework only, does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Only actual execution of instream gravel mining projects could result in potential environmental effects, and those that do come forward in the future would be subject to individual project environmental review. Because the proposed ordinance only establishes a regulatory framework, it fails to meet the definition of a "project" on both grounds that it does not have a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and it is not an activity directly undertaken by a public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Section 55100-65700

The proposed ordinance fails to meet the definition of a project for an additional reason. It is an administrative activity of government that will not result in direct or indirect physical changes in the environment. Section 15378(b)(5) specifically lists: "organizational or administrative activities of governments that will not result in physical changes in the environment" as not meeting the definition of a "project" which is subject to CEQA. The proposed ordinance represents a modification of the administrative section of Humboldt County Code and merely would establish an administrative framework for review of development agreements. Adopting this administrative framework, in and of itself, will not result in physical changes in the environment.



John Ford, Director



Date