



HUMBOLDT BAY MUNICIPAL WATER DISTRICT

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January 9, 2019

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

**RE: Zoning Reclassification and CEQA Exemption
For January 15, 2019 Board of Supervisor's Meeting**

Dear Board of Supervisors,

The Humboldt Bay Municipal Water District (District) submits this letter in response to the proposed Zoning Text Amendments and Zone Reclassifications to Implement the General Plan (Zoning Update), continued from the Board's December 11, 2018 hearing. The District provides safe and consistent high quality drinking water to more than 88,000 customers in Humboldt County and actively works to provide protection to the Mad River watershed in general.

In advance of, and during the December 11, 2018 hearing on the Zoning Update, the District, along with numerous members of the public, objected to the Board's approval of several aspects of the proposed Zoning Update including approving zoning amendments for the Blue Lake and Glendale/Fieldbrook areas in advance of finalizing those community plans and approving any heavy industrial zoning (MH) in the floodplain. (See Attachment A, December 6, 2018 letter from District to Board of Supervisors.) The District further objected to reliance on the General Plan Environmental Impact Report (GPEIR) as a basis for concluding both that sufficient public outreach on the Zoning Update has been conducted and the environmental impacts of the proposed Zoning Update have been considered and disclosed. The District reiterates those concerns. The District further requests that the Board use the powers vested in it to protect the health, safety, and welfare of its residents, to apply zoning classifications protective of the environment and public welfare, rather than to resolve longstanding land use disputes.

A. The Board of Supervisors Should Defer Decision on Any Zoning Changes in the Blue Lake and Glendale/Fieldbrook Areas Until Community Plans Are Updated and Adopted.

Planning and Zoning Law (Government Code section 65000 et seq.) and the Humboldt County General Plan identify hierarchical processes for developing land use designations. Under Planning and Zoning Law, the general plan is a constitution for future development located at the top of the hierarchy of local government law regulating land use. (*Leshar Communications, Inc. v.*

City of Walnut Creek (1990) 52 Cal.3d 531, 540; *Foothills Communities Coalition v. County of Orange*, supra, 222 Cal.App.4th at p. 1310.) A specific plan is one step down in the land use approval hierarchy. (Curtin, *California Land Use & Planning Law*, (2014) p. 35.) The specific plan is usually more detailed than a general plan and covers specific parts of the community. Zoning is the next step down in the hierarchy and must be consistent with both general and specific plans. (Gov. Code, §§ 65455, 65867.5.)

The Community Plans in Humboldt County are akin to Specific Plans. The Humboldt County General Plan explains that Community Plans are “designated in various areas of the County to allow for more precise mapping and application of Plan policies.” (General Plan, p.4-5.) The County is required to “periodically update Community Plans to ensure they meet the specific planning needs of individual communities and that demographic, land use, and municipal service information remains current.” (General Plan Policy, GP-P1.) To adopt zoning in advance of concluding the Community Plan Update undermines the hierarchical process set forth in both Planning and Zoning law and the County’s own General Plan. It also would likely result in zoning inconsistent with the Community Plan.

Further, while the Board has repeatedly stated that the General Plan was a multi-year process including extensive public outreach, the GPEIR reflects written comments from only eight members of the community. (See GPEIR p. 2-1.) Further, at least one member of the public has alleged that the May 2006 Community Plan for the Fieldbrook Glendale Community Plan that was prepared as input to the County’s General Plan was never adopted by the County, meaning that public input was excluded from the General Plan process. Updating and adopting the Community Plans in advance of the zoning designations provides a potential remedy for this, providing a venue for adequate public input. Both the Planning Commission and Board of Supervisors have heard repeated requests from the community to adopt the Blue Lake and Glendale/Fieldbrook Community Plans in advance of adopting zoning for those areas. The District echoes this request so that the District may influence land use decision as they impact habitat, water quality and water supply.

B. Zoning of Heavy Industrial in the 100- and 200-year Floodplain Should be Prohibited.

As a preliminary matter, the maps and GIS mapping tools provided to date do not clearly show the proposed zoning for all properties within the 100-year and 200-year floodplains and adjacent to the Mad River. In advance of any action on parcels within the floodplain, the District requests parcel specific information about the proposed zoning for parcels in the floodplain be made available.

The District objects to any parcels within the floodplain being zoned heavy industrial (MH). The MH permits industrial and other manufacturing. (Humboldt County Zoning Ordinance, § 314-3.) While Chapter 4 of the zoning ordinance does not contain a definition of industrial manufacturing, Chapter 3 defines Heavy Industrial as “industrial plants engaged in manufacturing, compounding, processing, assembling, packaging, treatment or fabrication of materials and products, wrecking and salvage yards, petroleum refining, animal and fish products processing, electrical generation and distribution, and pulp mills, but excludes activities included within the Hazardous Industrial Use Type.” It is unclear if the Hazardous Industrial Use type is also excluded from the uses permitted in the MH zone, but in either case, many of the permitted uses, especially manufacturing activity, are incompatible with the preservation of designated critical habitat for the

Endangered Species Act (ESA)-listed coho salmon, Chinook salmon, steelhead, and Pacific eulachon. Development in the floodplain poses a direct risk to the designated critical habitat and the potential effects to these species have not been sufficiently evaluated by the County. Furthermore, the cumulative potential impacts of increased heavy industrial activities within the Mad River watershed have not been addressed in the GPEIR.

As described in the California Department of Fish and Wildlife comment letter dated February 27, 2018, floodplains are important parts of riverine ecosystems and provide habitat and functions critical to the species' recovery. (See Attachment D of the attached December 6th letter, February 27, 2018 Letter from California Department of Fish and Wildlife.) Specifically, as described in the letter, the 100-year floodplain provides areas for channel migration and habitat creation that are critical for salmon recovery as well as unique attributes of designated critical habitat such as slow water velocity refuge, and riparian vegetation for shade, cover, and food. The floodplain facilitates the growth of trees and vegetation that anchor riverbeds and prevent bank erosion. The floodplain sustains listed anadromous salmonid populations and thereby commercial fisheries by providing river habitat such as shade, over-hanging banks, habitat complexity, large woody debris, inset foliage drop contributing to the aquatic food chain, and high-flow refugia for fish during flood events. The floodplain provides vitally important habitat to numerous riparian-dependent wildlife species, such as reptiles, amphibians, bats, and migratory songbirds. The floodplain also functions as a natural filter, absorbing nutrients and other pollutants from water and making rivers healthier for drinking, swimming, and supporting fish and wildlife. For this reason, CDFW recommends agencies prevent the construction of new, non-essential residential and commercial structure in the floodplain. An MH designation is inconsistent with this recommendation.

C. The County Cannot Rely on the General Plan to Zone Heavy Industrial in the Floodplain Pursuant to CEQA Guidelines Sections 15168(c) and 15162.

The December 11, 2018 staff report states that the County intends to rely on the GPEIR to approve the Zoning Reclassification and forgo environmental review required by the California Environmental Quality Act (CEQA). (Pub. Resources Code, §§ 21000 et seq.) Because the GPEIR does not consider industrial development in the floodplain, additional environmental review is required.

CEQA Guidelines section 15168 subsection (c) only allows the County to rely on the GPEIR if no new effects could occur or no new mitigation measures would be required. Otherwise, a new environmental document is required. CEQA Guidelines section 15162 provides new effects meriting a new environmental document are: (1) substantial changes to project requiring major revision to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, (2) substantial change to the project circumstances requiring major revision to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, or (3) new information of substantial importance is presented.

While the General Plan consistency matrix identifies a range of possible uses in areas designated as Industrial, Resource Related, nowhere does the General Plan state or analyze that heavy industrial uses will be permitted in the floodplain. The proposal to zone these properties in the floodplain MH where heavy industrial activities were not previously permitted on site constitutes a substantial change in the project requiring major revisions to the GPEIR due to the

involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. (CEQA Guidelines, § 15162(a)(2).)

The District has submitted substantial evidence that this project change will result in significant environmental effects. This substantial evidence includes the February 2018 letter from California Department of Fish and Wildlife discussed in section B above and the May 19, 2018 letter from the National Oceanic and Atmospheric Administration stating that many of the proposed uses in the Heavy Industrial Zone are “incompatible with designated critical habitat for salmon, steelhead and Pacific eulachon, in particular hazardous materials and manufacturing. (See Attachment B of the attached December 6th letter, May 19, 2018 letter from National Oceanic and Atmospheric Administration.) Finally, the District submitted a memorandum from GHD Professional Engineers identifying the potential impacts of rezoning the Mercer Fraser parcel (APN 504-161-010) in the vicinity of the District’s wells and within the Floodplain. Specifically, GHD opined that rezoning property adjacent to the District’s wells to allow for industrial activities using chemicals poses a distinct threat to the groundwater quality that provides the raw water to the community. The groundwater studies and groundwater model indicated that the zone of capture for the District’s pump stations extend directly below the Mercer Fraser property. Any industrial chemicals that find their way into the soil and groundwater could flow directly to the District’s pumps. “Any contamination could reduce production capacity by 75%-85% until contamination is cleaned up and system flushed. And as you all know, environmental clean ups can take months, years or decades, and during that time, water from Collectors 1, 2 and 3 may not be available.”

The County is required to prepare a new environmental document to address the environmental impact from industrial development on the floodplain as these particular impacts were not discussed in any way in the previous EIR. As such, it would be improper for the Board to rely on the CEQA Guidelines section 15168 and 15162 to forgo additional environmental review.

D. The Zoning Code Should Be A Tool to Protect the Health, Safety, and Welfare of the County Residents, Not Remedy Past Zoning Violations

Although the Agenda for the January 15, 2010 Board of Supervisors meeting does not include proposed actions on the Mercer Fraser parcel, the District wishes to clarify that it objects both generally to the designation of floodplain properties a MH and also specifically objects to the designation of the Mercer Fraser property, adjacent to and in the vicinity of the District’s water intake wells, as MH. The stated intent of applying the Heavy Industrial zoning to the Mercer Fraser property is to permit what has historically occurred. However, as evidenced by the letters submitted in conjunction with the Planning Commission’s November 1, 2018 consideration of the Zoning Update, there has been a significant, unresolved, discrepancy between what uses are actually allowed by virtue of their vested rights, and what uses have occurred illegally on site. (See December 11, 2018 Board of Supervisors Agenda Item F.2, Exhibit 5b 2007 and 2008 letters from Mercer Fraser to Humboldt County.) For example, the parties disputed the propriety of the importation of aggregate or construction debris materials, AC hot plant and ready mix plants. (2007 letter, p. 14.) The 2008 letter demonstrates that Mercer Fraser understood that the County would cease enforcement actions and instead legalize any illegal uses by changing the General Plan land use designation and zoning on site. In the circumstances present at the Mercer Fraser site, this resolution stretches the limits of the County’s police powers.

The County's zoning powers are derived from its power to regulate to protect the health, safety, and welfare of the County's residents. (Cal. Cost. Art. XI, § 7; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604.) Zoning ordinance must be reasonably related to the public welfare. (*Ibid.*) To use the zoning update to permit activities which previously were deemed in violation of ordinances which were themselves adopted to protect the health, safety, and welfare of the residents runs afoul of the County's obligations.

A "Q Overlay" will not remedy this deficiency. Mercer Fraser proposes a Q Overlay in conjunction with the MH zone for its site, ostensibly to limit its operations to its vested rights. The Q Overlay submitted by the applicant states the Permitted Uses are "Uses consistent with the property's vested rights and/or historical industrial use, including surface mining operations, portable aggregate and construction materials processing plants, and equipment and materials storage." These "permitted" uses far exceed the historically *permitted* uses on site and leave broad discretion as to what is "consistent" with the property's vested rights. Further, the Q Overlay provides inadequate protections to the floodplain and habitat therein.

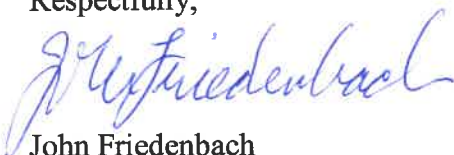
* * * * *

For the above reasons, the District asks that the Board take the following actions:

- (1) Commit to updating and adopting Community Plans in the Blue Lake and Glendale/Fieldbrook Areas in advance of adopting zoning ordinances in those areas so that the District and residents can participate.
- (2) Deny all requests to rezone property within the 100-year and 200-year floodplains as Heavy Industrial.
- (3) Adopt the specific terms of any proposed Q combining district through a public process.

The District appreciates the Board's attention to these concerns as the Board and the District work together to ensure the protection of the Mad River watershed and the drinking water source of the majority of the residents of Humboldt County.

Respectfully,



John Friedenbach
General Manager

Cc: Leslie Walker, Thomas Law Group
Justin Ly, National Marine Fisheries
Gordon Leppig, California Fish and Wildlife
Jen Kalt, Humboldt Baykeeper
Larry Glass, Northcoast Environmental Center

Attachment A



HUMBOLDT BAY MUNICIPAL WATER DISTRICT

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GENERAL MANAGER

JOHN FRIEDENBACH

December 6, 2018

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

**RE: Zoning Text Amendments and Zone Reclassifications
December 11, 2018**

Dear Board of Supervisors,

Humboldt Bay Municipal Water District (District) submits this letter in response to the Zoning Reclassification proposed to implement the General Plan generally and for Assessor Parcel Number 504-161-010 (Parcel) specifically. The District provides high quality drinking water to more than 88,000 customers in Humboldt County. The District is concerned with the reclassification of properties near the Mad River because of their likely impact on the habitat and water quality.

The District would like to acknowledge the cooperation it received from the Planning Department staff during the formation of the language for the two new combining zones "RR – Railroad" Combining Zone and the "MR – Mineral Resources" Combining Zone. The District appreciates the collaborative effort by Planning staff in reaching a mutually agreeable resolution of concerns raised by the District in regards to these two new zoning districts.

However, as of the writing of this letter, less than one week before the Board of Supervisors is to take action on the Zoning Reclassification, as described below, significant questions remain about the scope and content of the proposed zoning amendments. Members of the public have expressed overwhelming interest in and concern with the proposed zoning and should have an opportunity to more clearly understand the proposed zoning amendments. The District requests the Board of Supervisors direct staff to clarify the proposal and provide sufficient time for interested members of the public to review and comment on the proposals.

A. The Board of Supervisors Should Not Approve the Planning Commission Recommendation without Further Restrictions and Safeguards to Protect Mad River Habitat and Water Quality.

Pursuant to Resolution No. 18-87, the Planning Commission has recommended that the Board of Supervisors reclassify the Parcel as AE-MR-newQ and AE-MR-newQ-WR. While the District does not

object in general to zoning the Parcel, and other parcels near the Mad River AG with a Q combining zone to protect the Mad River habitat and water quality, the details of the Q zone as stated are ambiguous and must be defined in the Ordinance. (County Code, § 314-32.1.) Prior to adoption of the Zoning Reclassification, the staff should identify, and the public should have an opportunity to comment on, the restrictions imposed by the Q zone. The Q zone should prohibit all uses detrimental to the Mad River habitat and water quality. For example, the Q zone should prohibit the use of chemicals such as ethanol in any agricultural processing plants near the Mad River.

The District has similar concerns with the MR designation, which applies to all parcels with vested or permitted surface mining operations. The MR designation should clarify that it is not intended to permit otherwise unpermitted activities, or to expand the scope of any vested rights. It should in no way supplant a landowner's obligation to demonstrate its vested rights.

B. The Board of Supervisors Should Not Approve the Individual Zoning Requests Because They Are Detrimental To Mad River Habitat and Water Quality.

The Planning Commission staff report identified a number of landowner "Individual Zoning Requests." (Planning Commission Staff Report, Exhibit 4.) The Planning Commission did not recommend the approval of the Individual Zoning Requests, but in the event that the Board elects to consider them, the District reiterates its prior objection to them. (See Attachment 1, November 1, 2018 letter from District to Planning Commission.) These Individual Zoning Requests propose, in part, to reclassify a number of parcels, including the Parcel of primary concern, as MH-Q to permit heavy industrial activities. The District objects to such designation on any parcel adjacent to the Mad River or in the Mad River watershed. In particular, the District objects to the designation of the Parcel, which is immediately adjacent to the District's the drinking water intake wells. MH zoning would allow industrial manufacturing "subject only to regulations as are needed to control congestion and protection of surrounding areas," yet no potential regulations are identified. (Zoning Ordinance 314-3.3.) Such a significant zoning change could allow for the expansion of industrial uses on the Parcel, without any protections in place to preserve the nearby habitat and water quality.

The absence of these protections is of particular concern in light of the history of reported violations of the Humboldt County Code and the Regional Water Board's Basin Plan on the Parcel at issue. Records demonstrate violations identified by the Humboldt County Department of Environmental Health, the Department of Fish and Game, and the North Coast Region of the Water Quality Control Board for importation of new construction debris and storage of stockpiles in proximity to the Mad River. As discussed in Thomas Law Group's May 15, 2018 letter on behalf of the District, the District itself has had ongoing concerns with the operations on the Parcel for the last 20 years because the volume of on-site gravel extraction exceeded the vested rights. (Attachment 2, May 17, 2018 letter.)

Rezoning the Parcel or other properties near the Mad River as MH would likely exacerbate degradation of water quality. The National Oceanic and Atmospheric Administration has similarly commented that industrial zoning, particularly hazardous materials and manufacturing, is incompatible with the designated critical habitat for salmon, steelhead and Pacific eulachon. (See Attachment 3, March 19, 2018 letter from National Oceanic and Atmospheric Administration to Humboldt County Board of Supervisors.) Additionally, the California Department of Fish and Wildlife suggests that at least one manufacturing use on the Parcel would result in the degradation of both aquatic and riparian habitat in the Mad River. (See Attachment 4, February 27, 2018 California Department of Fish and Wildlife CEQA Referral Checklist.) The Q overlay identified as part of the MH zoning is insufficient to protect the Mad River resources for the same reason that the Q combining district proposed with the AE-MR

zone is insufficient. No actual restrictions have been identified as part of the Q combining district leaving its protections ambiguous at best. Those restrictions should be identified in a public process with opportunity for input from members of the public to ensure adequate environmental protections.

Further, the MH designation is unnecessary to bring the Parcel into compliance with the Parcel's Industrial, Resource Related General Plan designation or to allow the existing on-site gravel processing to continue. The Parcel can be zoned AE, or even Limited Industrial (ML), and be equally consistent with the General Plan designation. Under either of these designations, existing gravel processing will be permitted to continue as a legal nonconforming use to the extent it was legal at the time of the zoning change. (County Code, § 313-131.3.) Zoning the site to MH will permit not only gravel operations, but more intense industrial uses of the site, into perpetuity rather than simply preserving the existing permitted gravel operations. Such action is both inconsistent with the County policy of “[e]nsur[ing] that land use decisions conserve, enhance, and manage water resources on a sustainable basis to assure sufficient clean water for beneficial uses and future generations” and unnecessary to permit existing, legal uses to continue. (2017 General Plan, WR-P1.) Zoning the site MH would locate intensive industrial uses within a 100-year floodplain.

Finally, the Board of Supervisors should not approve the Individual Zoning Requests because the evidence does not support the findings necessary to support a potential rezone to MH. In particular, the Board of Supervisors is required to find that the zoning change is in the public interest. Selecting the most environmentally intensive land use adjacent to the Mad River is inconsistent with this finding. (Humboldt County Zoning Ordinance, § 312-50.) Similarly, changing the zoning on the Parcel to MH does not qualify for streamlined CEQA review under CEQA Guidelines section 15168 (c)(2) and 15162 because the location of heavy manufacturing adjacent to the Mad River was not part of the project described in the General Plan Environmental Impact Report and therefore was not analyzed or mitigated.

C. The Board of Supervisors Should Defer Decision on Any Zoning Changes in the Blue Lake and Glendale/Fieldbrook Areas Until Community Plans Are Prepared.

During the Planning Commission's hearing on November 1, 2018, there was considerable public comment concerning the lack of consideration of the local community planning efforts in the Blue Lake and Glendale/Fieldbrook areas. So much so, that the Planning Commission recommends to the Humboldt County Board of Supervisors that you not consider adopting those individual property owner zoning change requests (pages 41 – 46 of the November 1, 2018 planning staff report) until such time as thorough and transparent community planning effort can be undertaken in those areas. In fact, it has been stated that the May 2006 Community Plan for the Fieldbrook Glendale Community Plan that was prepared as input to the County's General Plan was never adopted by the County. Therefore, it may be concluded that the local public concerns and suggestions were not incorporated into the General Plan Update of 2017 for these areas.

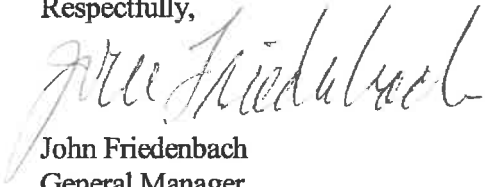
On December 3, 2018, the Planning Department staff conducted an initial public meeting to begin the process of soliciting public input from the Blue Lake and Glendale area residents regarding the proposed zoning changes in those areas in accordance with the direction given by the Planning Commission on November 1, 2018. When asked by the Planning Commission how long the Community Plan process would take, Planning staff responded that it would be a two-year process. Although the meeting was well attended, many of the attendees complained that the noticing outreach was inadequate and they only heard about the meeting via word of mouth. At the conclusion of that meeting, it was evident that a community planning effort should be undertaken in those areas for the General Plan zoning updates.

It was also clarified by the Planning Department staff that there was no specific deadline under the General Plan 2017 update for the adoption by the County for any zoning changes as a result of land use designation changes within the General Plan.

D. Conclusion and Recommendation

For the reasons discussed above, the District respectfully requests that the Board of Supervisors defer action on the Zoning Reclassification as recommended in the Planning Commission's Resolution Number 18-87 BE IT FURTHER RESOLVED sub-paragraph 3 until the proposed ordinance identifies the zoning restrictions and safeguards in place to protect the Mad River resources and adequate time is provided to the local communities to complete their Community Plans. Those community plans should be adopted by the County and fully considered for any proposed zoning changes within their respective areas. Should the Board elect to take action on the Zoning Reclassification at the hearing on December 11, the District requests that it adopt the Planning Commission recommendation amended to include enhanced protections for the Mad River.

Respectfully,

A handwritten signature in cursive script, appearing to read "John Friedenbach".

John Friedenbach
General Manager

Attachment 1



HUMBOLDT BAY MUNICIPAL WATER DISTRICT

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GENERAL MANAGER

JOHN FRIEDENBACH

November 1, 2018

Planning Commission
Humboldt County
3015 H Street
Eureka, CA 95501

**RE: Zoning Text Amendments and Zone Reclassifications
November 1, 2018**

Dear Planning Commission,

Humboldt Bay Municipal Water District (District) submits this letter in response to the Zoning Reclassification proposed for Assessor Parcel Number 504-161-010 (Parcel) currently zoned Agriculture General (AG). The Parcel is the subject of the District's January 26, 2018 appeal to Humboldt County. While the zoning changes proposed in early October 2018 designated the Parcel Agriculture Exclusive (AE), with Mineral Resource (MR) and Streamside Management Areas and Wetlands (WR) combining districts, page 44 of the November 1, 2018 Planning Commission staff report suggests that staff now proposes to zone the Parcel Heavy Industrial (MH) with an unspecified Qualified combining district. For the reasons stated below, as well as in our prior letters, the District continues to oppose rezoning the Parcel to permit heavy industrial activities adjacent to the Mad River and the drinking water intake infrastructure.

The County proposes rezoning various parcels to make them consistent with their land use designations under the 2017 General Plan. The 2017 General Plan designates the Parcel Industrial, Resource Related (IR). "This designation provides areas for resource-related industrial processing such as timber, agriculture and mineral products processing in areas not typically served by urban services and therefore not suitable for a broader range of industrial uses." (General Plan, p. 4-49.) The 2017 General Plan identifies five zoning classifications consistent with the IR General Plan Designation: Limited Industrial with a Qualified combining zone (ML), Heavy Industrial with a Qualified combining zone (MH), Flood Plain (FP), Agriculture Exclusive (AE), and Timber Production Zone (TPZ). (2017 General Plan Table 4-H.) and current staff report page 48.

Recognizing the environmentally sensitive location of the Parcel, in early October of 2018, staff proposed designating the Parcel AE, with MR and WR combining districts. The AE designation is more appropriate for the Parcel located adjacent to the Mad River. On-site uses should be limited to all general agricultural uses and any vested rights that the property owner may currently possess. The WR

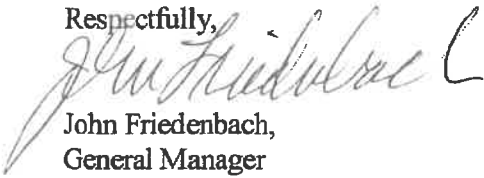
combining district would require compliance with the Streamside Management Area Ordinance, consistent with General Plan Policy BR-5. Instead, the zoning change to MH contained in the November 2018 staff report will allow industrial manufacturing “subject only to regulations as are needed to control congestion and protection of surrounding areas,” which regulations are not identified. (Zoning Ordinance 314-3.3.) This could allow for an expansion of industrial uses on the property in the future.

The District is concerned that such uses may be detrimental to water quality and watershed habitat. In fact, the National Oceanic and Atmospheric Administration’s comment to the County on the January 2018 effort to rezone the Parcel to MH stated that industrial zoning is incompatible with the designated critical habitat for salmon, steelhead and Pacific eulachon, in particular hazardous materials and manufacturing. (See March 19, 2018 letter from National Oceanic and Atmospheric Administration to Humboldt County Board of Supervisors.) The California Department of Fish and Wildlife suggests that at least one manufacturing use on the Parcel would result in the degradation of both aquatic and riparian habitat in the Mad River. (See February 27, 2018 California Department of Fish and Wildlife CEQA Referral Checklist.) The zoning proposed in early October respected the sensitive location of the Parcel by designating it AE and subject to the WR combining district. The current proposal abandons this approach without explanation as to how the new proposal will comply with the Streamside Management Area Ordinance. The November staff report in fact proposes to zone all parcels designated IR in the 2017 General Plan MH if their existing zoning is not consistent with the IR designation. This means that all properties currently zoned for general agriculture within the IR designation will be rezoned to the most intensive and environmentally harmful use permitted under the IR General Plan land use designation. In fact, two of the parcels listed on page 44 of the November 1 staff report are currently zoned either MH-Q or AE which are consistent with the IR land use designation and to not require any zoning change to be consistent with the 2017 General Plan.

Given these concerns, the County is unable to make the findings necessary to support the proposed rezone. In particular, the changes are not in the public interest. (Humboldt County Zoning Ordinance, § 312-50.) The staff report does not include a discussion of how a sweeping rezone of parcels designated IR to the most environmentally intensive land use is in the public interest. Further, the County cannot find that the zoning qualifies for streamlined CEQA review under CEQA Guidelines section 15168 (c)(2) and 15162 because the location of heavy manufacturing adjacent to the Mad River was not part of the project described in the General Plan Environmental Impact Report and therefore was not analyzed or mitigated.

Of particular concern to the District is the lack of transparency with respect to this proposed change. While we appreciate County staff working with the District to alert us of the issue, it is not clear that other interested parties and agencies have received notice of this proposed change or have been able to locate it within the November 2018 staff report. The District respectfully requests the Planning Commission either: 1) zone the parcel AE with a WR combining district or 2) defer decision on this matter until the County has taken the following two actions: a) studied the full environmental impacts of locating heavy industrial uses adjacent to the Mad River and adopted mitigation measures to address those impacts; and b) informed and solicited input from all parties potentially interested in the rezone.

Respectfully,

A handwritten signature in cursive script, appearing to read "John Friedenbach", written in dark ink over a white background.

John Friedenbach,
General Manager

Attachment 2

T|L|G Thomas Law Group

TINA A. THOMAS
AMY R. HIGUERA
CHRISTOPHER J. BUTCHER

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H.B.M.W.D. MAY 21 2018

May 17, 2018

Mr. John Ford
Director
Planning and Building
Humboldt County
825 5th St., Room 110
Eureka, CA 95501

RE: Withdrawal of SP-16-015 and ZR-16-001

Dear Mr. Ford:

On behalf of Humboldt Municipal Water District ("District"), Thomas Law Group submits this letter in response to Mercer-Fraser Company and MCMP Humboldt, LLC's (collectively, MCMP) April 17, 2018 letter withdrawing Application Number 10244 ("Withdrawal"). Application Number 10244 sought to rezone Assessor Parcel Number 504-161-010 ("Site") from Agriculture General (AG) to Heavy Industrial with a qualified combining zone (MH-Q) (ZR-16-001) and also sought a special permit to develop a cannabis products manufacturing facility on the same parcel (SP-16-015) ("Project"). The purpose of this letter is to clarify the District's understanding of the Withdrawal and to correct a number of assertions made in the Withdrawal letter.

I. Effect of the Withdrawal

On January 11, 2018, the Humboldt County Planning Commission approved SP-16-015 and recommended the Board of Supervisors approve ZR-16-001. The District timely appealed SP-16-015 ("Appeal"), in part based on the County's improper reliance on an Addendum to the 1994 Program Environmental Impact Report on Gravel Removal from the Lower Mad River (PEIR) and the 1994 Supplemental Final Environmental Impact Report on Gravel Extraction on the Lower Mad River (SEIR) for the Project. As detailed in the District's Appeal, neither the Addendum nor the documents it relies on analyzed the impacts of proposed cannabis products manufacturing. (See Attachment A, January 26, 2018 Appeal letter.)

On April 17, 2018, MCMP submitted the Withdrawal letter. Based on this Withdrawal, the District will not pursue the Appeal, provided that Humboldt County will require MCMP or any future landowner or permittee to submit a new application, consistent with the Humboldt County Code, to rezone or obtain any use permit for the Site. In light of this, the County will not need to take action on the Appeal and the District requests the County refund the \$2,263.00 appeal fee paid by the District. The District further requests that if and when MCMP or any future landowner or permittee submits a new application, the County fully consider the potential environmental impacts under California Environmental Quality Act (Public Resources Code, section 21000 et seq., (CEQA)) of the application, including analyzing both the location of the parcel in the 100-year floodplain and the potential impact that any on-site activity may have on the adjacent groundwater wells which serves approximately 88,000 people in Humboldt County.

II. The Humboldt County 2017 General Plan Does Not Require the County to Designate the Site Heavy Industrial (MH).

MCMP states that the Humboldt County 2017 General Plan (“2017 General Plan”) designated the Site as Industrial, Resource Related (IR) consistent with the “current and historic industrial” and “vested” use of the Site and that as a result, the County must rezone the Site to Heavy Industrial (MH). This is inaccurate for at least three reasons.

First, it is not clear that the full scope of activities currently occurring at the Site is vested or permitted. Although the County determined MCMP had a vested right to the annual extraction of up to 40,000 cubic yards of gravel from the Mad River in 1998, to our knowledge MCMP has not requested or obtained vested rights determination pursuant to County Code section 391-6 as to the other operations, identified in the Withdrawal letter as “mining, aggregate processing, ready-mix concrete, and hot mix asphalt production.” (Withdrawal letter, p. 1; See *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 624 [determination of whether vested rights exist is made on a case-by-case basis by the lead agency.])

Second, the 2017 General Plan does not require the site to be zoned Heavy Industrial (MH). The IR general plan designation “provides areas for resource-related industrial processing such as timber, agriculture and mineral products processing in areas not typically served by urban services and therefore not suitable for a broader range of industrial uses.” (2017 General Plan, p. 4-49.) While MH may be consistent with this designation, so would the less intensive Limited Industrial (ML) which “is intended to apply to areas in which light manufacturing and heavy commercial uses of the non-nuisance type and large administrative facilities are the desirable predominant uses.”

(Humboldt County Code, § 314-3.2.) Similarly, the Agriculture Exclusive (AE) and Agriculture Grazing (AG) zones both permit the processing of agricultural and timber products with use permits, consistent with the IR designation. (Humboldt County Code, §§ 314-7.1; 314-7.2.) Therefore, contrary to the implications in the Withdrawal letter, the 2017 General Plan does not require the County to rezone the Site to MH.

In fact, applying MH zoning to the Site may be inconsistent with at least one other General Plan policy. Policy WR-P1 requires that the County “[e]nsure that land use decisions conserve, enhance, and manage water resources on a sustainable basis to assure sufficient clean water for beneficial uses and future generations.” (2017 General Plan, p. 11-8.) As stated in the National Oceanic and Atmospheric Administration’s (NOAA) March 19, 2018 letter commenting on the Project, “many of the stated uses of Heavy Industrial zoned land are incompatible with the designated critical habitat for salmon, steelhead and Pacific eulachon, in particular hazardous materials and manufacturing.” (See Attachment B, Letter from NOAA to Humboldt County Board of Supervisors, March 19, 2018, p. 2.)

Finally, even if the MH designation is permitted under the 2017 General Plan at the Site, the Board of Supervisors is not precluded from reconsidering the wisdom of locating such intensive uses in the 100-year floodplain and proposing a General Plan amendment. The District encourages further consideration of how the land use decisions authorized by the Board of Supervisors impact the Mad River, a public trust resource. The District is interested in pursuing a collaborative endeavor with the County on this topic for this and other sites within the Mad River watershed.

In sum, the 2017 General Plan does not require the County to rezone the Site MH.

III. The Qualified Q Zoning Does Not Provide Resource Protection.

The Qualified Q overlay does not remedy the incompatibility of the MH designation with the adjacent floodplain, habitat, and drinking water source. MCMP stated that the “Qualified combining zone would have restricted the industrial uses on the project site to only those historical and/or permitted uses.” (Withdrawal letter, p. 2.) However, the County Code requires “the qualified uses shall be specified in the ordinance applying the Q Zone to specific property.” (County Code, 314-32.1.) Because the Planning Commission resolution did not recommend any specific limitations on the uses permitted within the MH zone other than nominally stating that it is “qualified,” the Qualified Q zoning does not adequately limit the industrial uses on Site.

IV. The District Timely Commented on Both the General Plan and the Proposed Project.

MCMP's Withdrawal letter attempts to undermine the merits of the District's concerns about the Project by alleging that the District never expressed concerns about the Site's operations prior to January 2018 and failed to participate in the 2017 General Plan update. (Withdrawal letter, p. 1.) The contentions are unfounded for four reasons.

First, MCMP correctly states that the District had previously allowed MCMP to mine on the District's property. However, this occurred many decades ago, prior to advancements in understanding of the effect of mining and other industrial operations on drinking water wells and other District infrastructure.

Second, the District has raised concerns with MCMP's operations for the last twenty years. For example, in 1998 the District filed complaints with the County of Humboldt and the U.S. Army Corps of Engineers about MCMP's gravel extraction far exceeding the vested 40,000 cubic yards per year and participated in public hearings related to those complaints. The District also participated in the public process for revising the Letter of Permission (LOP) procedure for permitting gravel extraction projects in Humboldt County under Section 404 of the Clean Water Act, specifically LOP 96-1 and revision LOP 2004-1. The Public Notice for LOP 2004-1, Appendix G, imposing limits on gravel extraction in the Mad River due to its "degraded condition" specifically refers to the participation of the District. It states, in part, "[b]oth the Humboldt Bay Municipal Water District and the regional office of California Department of Transportation have determined that the river sediments around their structure including the Essex water intake structure, and the Highway 101 Bridges over the Mad River, are degraded."

Third, during the general plan update, the District expressed its concern with the impacts of gravel extraction on the surrounding environment and requested modification of general plan goal MR-G2 to require gravel extraction be performed in a manner that "preserves the natural bed-level elevation upstream and downstream of extraction sites." Based on negotiations with MCMP, this language was ultimately replaced with language requiring the extraction methods "not adversely impact public infrastructure." (See Attachment C, December 15, 2014 Letter from the District to the County Board of Supervisors.) While the District did not specifically object to the designation of the Site as IR, it understood that zoning changes implementing the 2017 General Plan would be consistent with the 2017 General Plan Environmental Impact Report and with the 2017 General Plan policy ensuring clean water for multiple generations. (See 2017 General Plan policy WR-P1.)

Fourth, the District's earlier comment on the Project itself was precluded by the failure of MCMP and the County to provide timely notice of the Project to the District. Humboldt County Code section 312-6, subsection 6.1.3 requires that as part of plan check, the County planning department "shall refer copies of the application to any County department, Design Review Committee, State or Federal agency, or other individual or group that the Department believes may have relevant authority or expertise." On July 10, 2016, more than a year before the Planning Commission took action on the Project, the County referred the Project to fifteen different departments and agencies including Building Inspection, Public Works Land Use Division, Health and Human Services Environmental Health Division, Supervising Planner, Current Planning Division, County Counsel, CalFire, California Department of Fish and Wildlife, Northwest Information Center, Bear River Band Rohnerville Rancheria, Blue Lake Rancheria, Wiyot Tribe, Regional Water Quality Control Board, Arcata Fire Protection District, and the District Attorney, but did not provide notice to the District. (January 11, 2018 Humboldt County Planning Commission Staff Report, p. 89.) The District received notice of the Project approximately ten days prior to the hearing on the Project and timely responded to that notice. (See Attachment A, Appeal letter.)

The District's comments on both the General Plan and the Project were timely. In order to enable the District to provide input on future projects having an impact on the District, we request notification of any applications for projects related to properties adjacent to the District within ten days of the County's receipt of the application.

V. Any Cannabis Manufacturing Facility Should Comply with the County's Updated Cannabis Ordinance and Should Receive Full Environmental Review.

A. Humboldt County Cannabis Ordinance

MCMP notes that the previously proposed cannabis manufacturing facility is permitted by the "State's Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), the Bureau of Cannabis Control's Regulations for the manufacture of cannabis products, and the County's Commercial Medical Marijuana Land Use Ordinance ("CMMLUO"), and all best practices for the manufacture of cannabis products." (Withdrawal letter, p. 2.) First, State requirements do not usurp local land use authority over the facilities. (Bus. & Prof. Code, § 26200.) Second, the Commercial Cannabis Land Use Ordinance approved on May 8, 2018 appears to have been modified prior to its final approval to permit flammable extraction on Agriculture General Property (AG) with a conditional use permit, so long as the use is conducted within the footprint of an existing structure and meets certain siting criteria. The County's review of a use

permit for cannabis manufacturing, especially that using flammable extraction methods, should consider the potential environmental impacts of transporting, handling, disposing, and storing liquid solvents regardless of the property's zoning and particularly addressing these potential environmental impacts within the groundwater basin where the property is located. The relevance of considering these environmental impacts was brought to your attention during the last several months for the source water drinking wells serving Humboldt County residents. Again, if a cannabis-related activity is proposed adjacent to the District's groundwater wells, the District requests the County provide timely notice so that the District can ensure compliance with the updated Commercial Cannabis Land Use Ordinance and CEQA in issuing the permit.

B. Environmental Impact Report

While MCMP alleges that it met with the District in "good faith" and worked toward resolving the District's concerns, MCMP still has not addressed the District's fundamental concern: the failure to study the likely deleterious environmental impact of the proposed cannabis manufacturing facility. Not only has the District raised concerns about the conclusory reliance on the PEIR and SEIR, but NOAA finds that the Addendum to the PEIR and SEIR "does not analyze the potential impacts associated with a cannabis extraction and manufacturing facility at the gravel processing site, nor do the gravel mining EIRs." NOAA states that it is concerned with: "1) the location of the proposed facility within the 100-year floodplain that is within designated critical habitat for Endangered Species Act (ESA) listed coho salmon, Chinook salmon, steelhead and Pacific eulachon, 2) potential effects on ESA listed salmon, steelhead and Pacific eulachon, and 3) the proposed zoning change of the parcel to Heavy Industrial." NOAA further states "the cannabis facility will use volatile and nonvolatile solvents that were not analyzed for potential impacts in the gravel extraction PEIR or SEIR." (See Attachment B, p. 1.)

Similarly, the California Department of Fish and Wildlife (CDFW) recommended denial of the Project because it proposes "construction of a permanent cannabis manufacturing facility within the 100-years floodplain." CDFW notes that the project is located along the Mad River, which has "significant biological values . . . for numerous commercially important fish species and State and federally-listed or otherwise sensitive species." (See Attachment D, California Department of Fish and Wildlife CEQA Referral Checklist February 27, 2018, p. 1.) CDFW concludes, "this Project, as proposed will result in the degradation of both aquatic and riparian habitat in the Mad River." (See Attachment D, p. 2.)

These sensitive environmental conditions are also identified in Appendix G of Public Notice for LOP 2004-1 related to gravel extraction in the Mad River. The appendix states: "There are several details that indicate the Mad River's bed elevation is in a degraded condition, i.e., at a lower elevation than during an earlier, 'normal' period. Both the Humboldt Bay Municipal Water District and the regional office of California Department of Transportation have determined that the river sediments around their structure including the Essex water intake structure, and the Highway 101 Bridges over the Mad River, are degraded. ... At the same time, the Mad River is important for federally listed coho, chinook and steelhead life history stages. For these reasons, the Mad River contains extra conditions to further limit adverse impacts. ..." If and when the County reconsiders a proposal similar to the Project, the County must study the impacts of locating a cannabis or other manufacturing activity in the floodplain, in or adjacent to habitat for federally listed species, and next to a drinking water source.

VI. The Water District's Position is Publicly Supported by all District Municipal Water Service Customers; Allegations of Working "Behind the Scenes" Are Unfounded.

Every one of the District's seven municipal water service customers shares the District's concerns with the threat that the proposed Project poses to the drinking water of the residents of Humboldt County. (See Attachment E, letters from City of Arcata, City of Blue Lake, City of Eureka, Fieldbrook Glendale CSD, Humboldt CSD, Manila CSD, McKinleyville CSD, January 11, 2018 through February 28, 2018.) Contrary to MCMP's representation that the District somehow covertly garnered the support of its customers in opposing the Project, the District publicly met with every one of its municipal customers' board or city council requesting they consider taking action to protect their water source. Every one of the customers discussed the concern during open session at the board/council meetings and every one publicly took action to protect its water source. (See Attachment E.) The District had no assurance until the April 17, 2018 letter that MCMP would not continue to pursue the operation and the letter provides no assurance that MCMP will not pursue a similar project in the future. As a result, the District was more than reasonable in providing information to its customers about the need to oppose the Project in January and February of this year. The customers of the District, as the ultimate consumers of the District's source water, are entitled to be informed about any proposed project and to be assured that any project that could potentially affect water quality undergoes adequate environmental review. Further, given that the proposed Project is adjacent to the Mad River, a resource subject to the Public Trust Doctrine, the District is well within its right to encourage its customers and citizens of Humboldt County to advocate for the protection of the resource for its public uses. (*Cal. ex rel.*

State Lands Com v. Superior Court (1995) 11 Cal.4th 50, 63 [the beds of navigable rivers are owned by the state in trust for the public.]

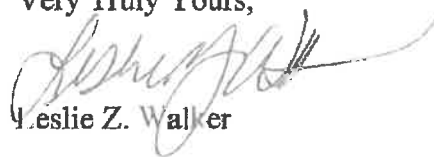
VII. MCMP's Contention that a Fair Hearing is Impossible is Untrue.

Finally, MCMP suggests that the County Board of Supervisors will not give MCMP a fair hearing. Although the County did not hold the appeal hearing requested by the District within the required 30 working days (County Code, section 312-13, 13.5), MCMP contends that were the County to carry out its duty to hold the hearing, it would not be a "fair hearing." There is no evidence to suggest that the District or any other person or agency has or will undermine MCMP's opportunity for a fair hearing. To the extent that any members of the Board of Supervisors have met with their constituents to learn their opinions of the Project, they are fulfilling their obligation as elected officials. (*Hauser v. Ventura County Bd. Of Supervisors* (2018) 20 Cal.App.5th 572, 580 ["A councilman has not only a right but an obligation to discuss issues of vital concern with his constituents. . . Bias and prejudice must be established by clear evidence."]; see also *Independent Roofing Contractor's v. California Apprenticeship Council* (2003) 114 Cal.App.4th 1330, 1340 ["Even public advocacy on an issue does not disqualify a member from voting on the issue in a quasi-judicial administrative proceeding."]) Any action by the Supervisors to hear constituents concerns about the Project does not amount to an interference with the parties' right to a fair hearing.

* * *

The District appreciates MCMP's withdrawal of its application and looks forward to continuing to collaborate with the County to ensure the protection of Mad River and the drinking water of Humboldt County.

Very Truly Yours,



Leslie Z. Walker

cc: Humboldt County Board of Supervisors
Humboldt Bay Municipal Water District Board of Directors
Jeffrey S. Blanck, Humboldt County, County Counsel
California Department of Fish and Wildlife
United States Department of Commerce, National Oceanic and
Atmospheric Administration

ATTACHMENT A



Andrea A. Matarazzo

Partner

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direct: (916) 287-9502

January 26, 2018

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

**RE: Appeal of Planning Commission Approval of Special Permit for
Project SP-16-015**

To the Humboldt County Board of Supervisors:

The Humboldt Bay Municipal Water District ("HBMWD") appeals the January 11, 2018 Planning Commission decision to approve a special permit for a 5,000-square foot volatile and non-volatile cannabis manufacturing facility, and to approve an Addendum to the Environmental Impact Report ("EIR") as satisfying the requirements of the California Environmental Quality Act ("CEQA").

The project approval coincides with a zoning change request requiring Board approval for the subject project. As it pertains to this appeal, HBMWD further opposes the zoning change request by the project applicant, MCMP, LLC, from Agricultural Exclusive (AE) to Heavy Industrial with a Qualified overlay zone (MH-Q). (Project ZR 16-001.) HBMWD reserves the right to submit further objections to the zoning change request and to submit further information in support of its appeal of the Planning Commission's actions before the Board of Supervisors.

HBMWD is a municipal water district supplying high quality water to the greater Humboldt Bay Area. Its responsibilities to the residents and businesses of Humboldt County necessitate that HBMWD vigorously protect the supply and quality of its water sources. HBMWD owns many of the surrounding properties to this proposed project property and operates Ranney wells in the adjoining Mad River that supplies many of the downstream municipalities. This project, the manner in which it was processed, and its attempt to skirt an adequate environmental analysis, threaten the area's water supply, water quality, and other environmental resources, as well as HBMWD's ability to ensure it can meet its responsibilities to its consumers.

The project and the County's truncated process of reviewing it violate state and federal environmental regulations, including but not limited to the state's Planning &

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Zoning Law, commercial cannabis statutes and regulations, federal and state water quality regulations, and CEQA.

1. Supplemental Environmental Review of the Project is Required Under CEQA. The Addendum is Insufficient to Analyze and Mitigate the New and Substantially More Severe Environmental Impacts of the Proposed Project, Which Conflicts with the County's Policies and Regulations.

Under CEQA, an addendum to an EIR is only appropriate if none of the following conditions are present:

- Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant, environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(CEQA Guidelines, § 15162.)

The County's Addendum fails to analyze the new and substantially more severe environmental impacts peculiar to the proposal to place manufacturing facility (involving a volatile and non-volatile solvents and other chemicals) on a property that sits near the collection wells for a municipal water district servicing approximately 86% of Humboldt County's residents. (See, e.g., Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162-16164, 15168.) A conclusory comparison of the effects of a manufacturing facility to the existing aggregate surface mining is the extent of the Addendum's environmental "analysis." (Staff Report, p. 49.)

The Addendum describes the project and its new uses as a "resource-related industrial use" that has "fewer and less substantial impacts than the existing use." (Staff Report, p. 49.) This project description is misleading, and the conclusions derived from it lack the evidentiary support CEQA requires. The Addendum attempts to sidestep important environmental issues and minimizes potential environmental risks by mischaracterizing manufacturing impacts, including potentially significant offsite and cumulative impacts, and by overstating the overall degraded quality of the existing site due to extensive mining activities. To comply with CEQA and meaningfully evaluate the potential impacts of the project, the County's environmental review must be substantially revised to start with an accurate and meaningful description of the proposed project as well as the existing environmental setting or "baseline." (CEQA Guidelines, § 15125.)

Furthermore, a manufacturing facility and the resulting environmental effects are different from a gravel mine. In many ways, the potential environmental impacts of manufacturing uses are not comparable to those of a quarry, yet the Addendum provides no substantive discussion or analysis of the potentially significant impacts, necessary mitigation, or a reasonable range of alternatives to use of the site as a commercial cannabis manufacturing facility. Nor are these fundamental elements of CEQA compliance provided in any of the previous iterations of the County's environmental review upon which the project purports to rely. For example, no discussion is provided regarding potential water supply impacts, water quality impacts, the project's likely energy demands or air quality emissions, odors, or other critical issue areas such as groundwater and soil resources, land uses (such as agricultural resources), tribal cultural resources, biological resources (particularly fisheries), and impacts related to recreation, climate change and the potential to exacerbate existing hazardous conditions.

Potentially significant impacts to recreation and sensitive uses at the park across the river, and to the public who regularly swim in that portion of the Mad River, have not been evaluated. The impacts of industrial cannabis manufacturing and the odors cannabis facilities produce are potentially significant conflicts with recreational uses in the vicinity, which must be properly evaluated before the project can be approved. The Addendum fails to address the potentially significant impacts of odor from a

manufacturing plant – which the applicant proposes to operate at all hours – will have on neighbors and nearby parks, and what potential mitigation or alternatives are available. These are new and substantially more severe environmental impacts that were not analyzed in the original environmental documents.

As explained below, current drafts of the County's new comprehensive commercial cannabis ordinance require a six-hundred-foot setback of manufacturing facilities from sensitive uses such as schools and public parks. Nothing about this particular project dictates or even suggests that it should be treated differently from other potential cannabis facilities in the County. The project conflicts with the County's policies and regulations regarding commercial cannabis facilities, and the permit should be denied on this basis alone.

2. Failure to Provide Proper Notice to Neighbors and Other Agencies, Including HBMWD.

HBMWD received no notice or information concerning this proposed project until mere days before the January Planning Commission hearing. Any alleged "delay" in the appearance of HBMWD in these proceedings is a delay orchestrated by the County and the applicant, neither of whom can credibly claim "inadvertence" in overlooking notice to HBMWD. HBMWD is a neighboring property owner with intake facilities mere feet from the project site. Moreover, as a municipal water district, HBMWD is a public agency having jurisdiction by law over natural resources affected by this project. When information concerning this project was circulated in June of 2016, it was not sent to HBMWD, the neighboring property owner most directly affected by the proposed project. (See Staff Report, p. 89.) The County's extremely late notice to HBMWD was a prejudicial failure to proceed in the manner required by law, and it delayed HBMWD's meaningful comment as a public agency and as a member of the affected community.

3. As Proposed, the County Cannot Make the Required Finding that the Project Will Not Be Detrimental to the Public Health, Safety, or Welfare or Materially Injurious to Properties or Improvements in the Vicinity.

The Humboldt County Code requires permit applications to evidence that the new use, as proposed and conditioned, will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. (Humboldt County Code §312-17.1.4.) In support of this finding, County staff merely restates this provision, asserts that the project is consistent with the General Plan and the proposed re-zone to MH-Q, and that it is not expected to cause significant environmental damage. (See Staff Report, pg. 49.) The Addendum's conclusory discussions of environmental effects lack the requisite evidentiary support to make the

necessary findings. For example, the Addendum and the prior documents upon which it purports to rely fail to adequately analyze the project's potential adverse impacts to visual resources and aesthetics as well as odors and water quality in relation to HBMWD or the nearby public park and its users.

The nearby Ranney wells rely on the porous groundwater basin surrounding the subject property to filter and collect water. This basin acts as a natural filter to ensure the water supplied to the Humboldt Bay municipalities is of sufficient quality. The potential solvents to be utilized, and the safe threshold of amounts that may be stored, used and discharged must be fully described and analyzed. Potential mitigation and alternatives must be explored. Approving this project without sufficient environmental review puts a significant portion of the area's water supply at risk.

4. The Proposed Project Fails to Properly Describe, and the EIR Addendum Fails to Analyze, Potential Significant Risks to Water Quality from Solvents Associated with Commercial Cannabis Manufacturing.

The project proposes the conditional use of commercial cannabis manufacturing. In the project application, the applicant provided an Operations Manual; however, the applicant acknowledges that it will not operate the facility. Rather, the applicant will lease the facility to be operated by someone else. It is unclear from the Operations Manual what, how, or in what quantity the actual operator will utilize solvents in the manufacturing of products. The prior EIRs upon which the Addendum purports to rely generally analyzed the effects of gravel mining; they did not assess impacts peculiar to this project or its proposed manufacturing uses. The Addendum fails to comply with CEQA, which requires the County meaningfully discuss and disclose the project's environmental impacts in an environmental impact report.

5. The Addendum Fails to Analyze Potentially Significant Impacts to Water Supply.

The Addendum purports to rely on previous environmental analysis and assessments regarding the risks associated with surface gravel mining in the area. Those prior documents did not analyze the potential impacts, mitigation measures, and alternatives for the storage, use, and discharge of manufacturing solvents on the water supply. As explained above, the nearby Ranney wells provide water to a significant portion of residents in the Humboldt Bay region. The Addendum fails to account for the potentially significant impacts on water supply and water quality that will occur from a disruption to the operation of the Ranney wells caused by the manufacturing facility. These impacts must be fully analyzed, and appropriate mitigation and alternatives

proposed to ensure a safe and reliable water supply in terms of both quantity and quality.

6. The EIR Addendum Fails to Analyze Potentially Significant Impacts Associated with Energy Use, Climate Change, and the Potential for the Project to Exacerbate Existing Hazards.

The Addendum does not analyze the unique impacts associated with energy use, climate change, and the potential to exacerbate existing hazards resulting from the decision to site a 24-hour operational manufacturing facility in an environmentally sensitive area near the Ranney wells. Reliance on prior EIRs that are largely irrelevant to this project as a substitute for examining this novel use fails to account for potentially significant environmental impacts peculiar to the project and the parcel, which violates CEQA.

7. Approval of the Proposed Project is Contrary to the Public Interest.

The County is in the process of preparing a comprehensive land use ordinance for the commercial cultivation, processing, manufacturing, distribution, testing and sale of medicinal or adult use cannabis. (Commercial Cannabis Land Use Ordinance, Planning Commission Hearing Draft, Jan. 11, 2018, §55.4.6.4.4, (c).) The County has held public scoping meetings and workshops to intelligently design the ordinance to eliminate numerous potential issues for a complex industry. Recently, at the same night as this project, the Planning Commission reviewed the proposed ordinance.

The current ordinance, drafted in haste in 2016 to protect local rights, is bereft of any substantial discussion on cannabis manufacturing facilities. Approving this project now will contravene the important work of the County staff, the Board of Supervisors, and the public to create a regime that is fair to the public, the industry, and the neighbors of proposed cannabis projects.

A number of important differences between the proposed ordinance and this project exist. First, the current ordinance establishes reasonable setbacks for commercial cannabis cultivation facilities from sensitive uses such as churches, schools, and public parks. (Humboldt County Code, §§ 314-55.4.11, (d).) Although the current code does not extend this rule to manufacturing facilities, this clear oversight is corrected in the proposed ordinance. (*Ibid.*) Under the new code, manufacturing facilities must be six hundred feet from any public park. (Commercial Cannabis Land Use Ordinance, Planning Commission Hearing Draft, Jan. 11, 2018, §55.4.6.4.4, (c).) This is particularly important, because the staff report fails to detail the distance between its proposed manufacturing site and HBMWD's park on the adjacent parcel across the Mad River. The park is regularly used by families who enjoy the area for

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picnics and to play in the river. According to the information provided regarding the proposed project, the manufacturing facility will be in close proximity not only to picnickers on the banks, but also the public that regularly wade into the Mad River.

Second, the proposed ordinance only allows flammable (volatile) manufacturing in MH zones that are accompanied by the Industrial General (IG) land use designation in the General Plan. (55.4.8.2.1.) The property is in the Industrial Resource (IR) land use designation and does not propose a General Plan amendment to resolve this inconsistency. Approving this project as proposed will conflict with the public policies that reflect the County's better judgment in the drafting the comprehensive ordinance, as well as the underlying environmental analysis in the EIR for the proposed ordinance.

For the foregoing reasons, HBMWD respectfully requests that the Board of Supervisors deny the project, or in the alternative, continue the matter so that an EIR, Supplemental EIR or Subsequent EIR can be prepared in compliance with CEQA to analyze the project's new and substantially more severe environmental impacts that are absent from consideration in the Addendum.

Sincerely,



Andrea A. Matarazzo

ATTACHMENT B



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1655 Heindon Road
Arcata, California 95521-4573

MAR 19 2018

In response refer to:
10012WCR2018AR00017

Humboldt County Board of Supervisors
825 Fifth Street
Eureka, CA 95501

Dear Supervisors:

I'm writing to provide comments from NOAA's National Marine Fisheries Service (NMFS) on the proposed Mercer Fraser MCMP, LLC, Zone Reclassification and Special Permit for a cannabis extraction facility in the Glendale Drive area of the Mad River. In particular, the California Environmental Quality Act (CEQA) Addendum (dated December 2017) to the Program and Supplemental Environmental Impact Reports (PEIR, SEIR) on Gravel Extraction on the Lower Mad River does not analyze the potential impacts associated with a cannabis extraction and manufacturing facility at the gravel processing site, nor do the gravel mining EIRs. In addition to the lack of CEQA analysis, we are also concerned with: 1) the location of the proposed facility within the 100-year floodplain that is within designated critical habitat for Endangered Species Act (ESA) listed coho salmon, Chinook salmon, steelhead and Pacific eulachon, 2) potential effects on ESA listed salmon, steelhead and Pacific eulachon, and 3) the proposed zoning change of the parcel to Heavy Industrial.

As described in the January 11, 2017, staff report from the Planning and Building Department to the Humboldt County Planning Commission (staff report) for the MCMP, LLC, Zone Reclassification and Special Permit, the gravel extraction PEIR and SEIR analyze the effects of gravel removal, and the associated activity of aggregate material being temporarily stockpiled and processed on site; processing operations involve crushing, sorting and storage of the rock. The staff report states that the new facility has fewer and less substantial impacts than the existing gravel extraction and processing use and that these changes are minor in nature and do not require additional mitigation measures relative to the original PEIR (1994) or the more recent SEIR (2014).

The cannabis facility will use volatile and nonvolatile solvents that were not analyzed for potential impacts in the gravel extraction PEIR or SEIR. In addition, the cannabis extraction proposal includes 24-hour operation of the facility and deliveries around the clock during the peak season. In contrast, the PEIR states that trucking operations associated with gravel mining be contained to the hours of 9:00 am to 5:00 pm, Monday through Friday. The gravel mining EIRs focused on the physical effects of removing gravel from the river (e.g., changes in channel bed elevation and river planform). Gravel mining mitigation measures described in the PEIR and the SEIR include leaving a head of bar buffer as an unmined portion of a gravel bar to protect river form, and having a team of experts recommend annual mining plans to prevent over-extraction and bed degradation.



The staff report describes mitigation measures for the cannabis facility, such as the closed loop system for solvents and limits on the amount of chemicals stored on site that do not pertain to gravel mining or processing, which further indicates that the two types of actions are not similar. These additional mitigation measures required for cannabis extraction and manufacturing are not described in the gravel mining PEIR or SBIR. Since there is essentially no analysis describing the potential for impacts from the cannabis facility, it is difficult to discern how much the proposed mitigations reduce the risk of chemical spills into the Mad River or its riparian habitat, or what the impacts would be on water quality and listed salmon, steelhead and Pacific eulachon if a chemical spill did occur.

In addition, we are concerned that the facility is proposed for construction within the 100-year floodplain of the Mad River. As described in the California Department of Fish and Wildlife (CDFW) comment letter dated February 28, 2018, floodplains are important parts of riverine ecosystems and provide habitat and functions critical to federally and State listed salmon and steelhead survival and recovery. In their role as the State Trustee and Responsible Agency for CEQA for issues pertaining to wildlife and fisheries, CDFW has recommended denial of the special permit for the facility due to the location within the 100-year floodplain. The 100-year floodplain provides areas for channel migration and habitat creation that are critical for salmon recovery as well as unique attributes of designated critical habitat such as slow water velocity refuge, and riparian vegetation for shade, cover and food.


The staff report also describes that the proposed facility would be elevated two feet above the 100-year flood elevation. However, flood recurrence intervals are approximations of risk, and elevating the proposed facility by two feet may not be adequate to ensure protection from 100-year flood waters given the imprecision of the recurrence interval estimate and climate change. We updated the flood frequency estimates for the Mad River at Arcata and the 100-year peak flow estimate is 81,870 cubic feet per second (cfs), with 90 percent confidence intervals of 68,490 cfs and 102,600 cfs, respectively. The large range of the confidence interval indicates that requiring a 2-foot elevation above the 100-year flood level may not be protective enough, especially when considering climate change.

Also, we are concerned with the proposed zoning change of the property from Agricultural Grazing to Heavy Industrial. While we understand that the most recent Humboldt County General Plan designated this parcel as Industrial Resource Related, and that gravel mining and processing is currently found within the 100-year floodplain, we do not support the zoning change to Heavy Industrial for this or other parcels along the floodplain of the Mad River due to the general incompatibility of heavy industry with a 100-year floodplain. Many of the stated uses of Heavy Industrial zoned land are incompatible with designated critical habitat for salmon, steelhead and Pacific eulachon, in particular hazardous materials and manufacturing. We suggest using a zoning designation that acknowledges the gravel mining uses, but also acknowledges the important habitat value of the 100-year floodplain for listed fish. In addition, we are concerned about the cumulative effects of the zoning change and additional heavy industry located within the 100-year floodplain of the lower Mad River.

Since the proposed facility has the potential to impact federally and State listed fish species and their habitat in ways that are different than gravel mining and processing, requires development and use of hazardous materials within the 100-year floodplain, and requires a zoning change to Heavy Industrial which we see as incompatible with habitat for salmon, steelhead and Pacific eulachon, we recommend the Board of Supervisors reconsider the Planning Commission's approval of the special permit and not allow for the zoning change to Heavy Industrial.

If you would like to discuss our comments or recommendations, please contact Justin Ly at 707-825-5154, or by email at Justin.Ly@noaa.gov.

Sincerely,


fn Lisa Van Atta,
Assistant Regional Administrator
California Coastal Office

cc: Kalyn Bocast, CDFW, Eureka, CA
John Friedenbach, HBMWD, Eureka, CA

ATTACHMENT C



HUMBOLDT BAY MUNICIPAL WATER DISTRICT

828 SEVENTH STREET, PO BOX 95 • EUREKA, CALIFORNIA 95502-0095

OFFICE 707-443-5018 ESSEX 707-822-2918

FAX 707-443-5731 707-822-8245

EMAIL OFFICE@HBMWD.COM

BOARD OF DIRECTORS
ALDARON LAIRD, PRESIDENT
BARBARA HECATHORN, VICE-PRESIDENT
J. BRUCE RUPP, SECRETARY-TREASURER
KAITLIN SOPOC-BELKNAP, DIRECTOR
SHERI WOOD, DIRECTOR

GENERAL MANAGER
CAROL RISCHÉ

December 15, 2014

(update to December 10th letter)

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

RE: GPU Mineral Resource Element - Goal MR-G2

Dear Supervisors,

In late October, we shared our interest and concerns regarding changes that were made to Mineral Resource Goal MR-G2 at your September 22nd meeting. Thank you for bringing this goal back for consideration.

Goal MR-G2 was modified and approved on September 22nd by a straw vote as follows:

In-stream Sand and Gravel Extraction. Continued supplies of in-stream sand and gravel using extraction methods and rates that are consistent with state and federal endangered species regulations. Where possible, extraction can should take place in manner beneficial to endangered or threatened species, support threatened or endangered species recovery, protect riparian corridors and preserve existing river bed elevations.

As previously communicated, we are not opposed to mining on the Mad River. Our concern centers on removing preservation of the existing river bed elevation.

This letter is an update to the letter we sent on December 10th. It contains two changes given input from gravel operators on the Mad River. The changes are shown below in track-change mode.

In-stream Sand and Gravel Extraction - Continued supplies of in-stream sand and gravel using extraction methods and rates that are consistent with state and federal endangered species regulations and will not adversely impact public infrastructure and preserve the natural bed level elevation upstream and downstream of extraction sites. Where possible, extraction should take place in a manner beneficial to endangered or threatened species.

Last week, we learned that County Planning staff is proposing addition of a following policy statement. We request an addition to that policy as follows:

MIR-P13. Protection of In-stream Water Collection and Transmission Facilities on the Mad River.
Prescribed sand and gravel extraction rates shall not cause channel bed degradation to levels that adversely impact public infrastructure, or the source-water classification of the drinking water for the regional water system.

Once again, we appreciate re-consideration of this matter. We will attend the GPU Hearing later today to present this recommendation and answer questions.

Sincerely,



Carol Rische
General Manager

cc: Justin Zabel and Mark Benzinger, Mercer-Fraser
Paul Krause, Eureka Ready Mix
Kevin Hamblin, Michael Wheeler, Humboldt County Planning Department
John Winzler, GHD, District Engineer

ATTACHMENT D



**California Department of Fish and Wildlife
CEQA Referral Checklist**

Applicant: Mercer Fraser MCMP LLC		Date: 2/27/2018	
APPS No.: 10244	APN: 504-161-010	CDFW CEQA: 2017-0176	Case No.: SP16-015, ZR16-001
<input checked="" type="checkbox"/> New	<input type="checkbox"/> Existing	<input type="checkbox"/> Mixed-light (SF):	<input type="checkbox"/> Outdoor (SF): <input type="checkbox"/> Indoor <input checked="" type="checkbox"/> Other

Thank you for the opportunity to comment on the Mercer Fraser MCMP LLC Zoning Reclassification and Special Permit. Due to staffing changes and workload, CDFW was not able to provide comprehensive comments on the initial referral. Based on the current status of the project, CDFW understands that the County will accept comments from CDFW prior to the next hearing for the Project. Therefore, CDFW offers the following comments on the Project in our role as a Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Public Resource Code section 21000 et seq.).

Please note the following information:

Recommend Denial. See comments below.

Thank you for the opportunity to comment on the Mercer Fraser MCMP LLC Zoning Reclassification and Special Permit. Due to staffing changes and workload, CDFW was not able to provide comprehensive comments on the initial referral. Based on the current status of the project, CDFW understands that the County will accept comments from CDFW prior to the next hearing for the Project. Therefore, CDFW offers the following comments on the Project in our role as a Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Public Resource Code section 21000 et seq.).

The Project proposes a zoning change from Agriculture General to Heavy Industrial for the parcel, and construction and operation of a cannabis manufacturing facility of approximately 5000 square feet in size. The facility will use volatile and nonvolatile solvents in the manufacturing process and may operate 24 hours a day. The facility is proposed to be located within the 100-year floodplain of the Mad River.

CDFW's primary concern with the project relates to the proposed construction of a permanent cannabis manufacturing facility within the 100-year floodplain. Floodplains are an important physical and biological part of riverine ecosystems. All rivers flood, and flooding is a natural and recurring event in river systems such as the Mad River. CDFW strongly supports the conservation and restoration of floodplain habitats. CDFW is especially concerned with maintaining the floodplain and riparian habitat along the Mad River because of the significant biological values the Mad River has for numerous commercially important fish species and State and federally-listed or otherwise sensitive species.

Riverine floodplains provide many ecological services, including but not limited to:

- Facilitating growth of trees and vegetation that anchor riverbanks and prevent bank erosion.
- Sustaining listed anadromous salmonid populations and thereby commercial fisheries by providing river habitat such as shade, over-hanging banks, habitat complexity, large woody debris, insect and foliage drop contributing to the aquatic food chain, and high-flow refugia for fish during flood events.
- Providing vitally important habitat to numerous riparian-dependent wildlife species, such as reptiles, amphibians, bats, and migratory songbirds.
- Functioning as natural filters that absorb nutrients and other pollutants from water and making rivers healthier for drinking, swimming, and supporting fish and wildlife species.

Development in flood-prone areas disconnects rivers from their natural floodplains and displaces, fragments, and degrades important riparian habitat. Development in floodplains often eliminates benefits of natural flooding regimes such as deposition of river silts on valley floor soils, and recharging of wetlands. In addition, development can prevent the formation of braided channel structure, off-channel fish habitat, and backwaters, resulting in higher velocity flows. These changes lower habitat suitability for salmon, which need low-velocity refugia during flood flows.

Development in floodplains is vulnerable to erosion and flood damage. Once structures are built and threatened by river flooding, property owners often seek to armor riverbanks or build or raise levees to prevent future property damage. Thus, not only does development displace riparian and floodplain habitat when it is built, it often results in further riparian and floodplain habitat loss through rock armoring and levee construction. Floodplains also provide vital water storage capacity during flood events. Flood-damaged properties also have a high potential to result in contaminant releases into river systems.

CDFW recommends that local agencies permit only vital public infrastructure in floodplains (e.g., transportation structures and water, sewer, natural gas, and electrical transmission facilities). Public facilities built in floodplains should be able to withstand flood events without significant damage or pollution release. Given their biological importance, and propensity to flood, CDFW believes ideal land uses for floodplains are parks, picnic areas, boat ramps, agriculture, open space, and, especially, lands dedicated to the maintenance and enhancement of riparian wildlife habitat. To best protect California's riverine and riparian habitats, CDFW believes it is wise public policy to maintain and restore floodplain functions and to prevent, whenever practicable, the development of residential and commercial structures in areas that are not already protected by existing levee systems.

Allowing non-essential development and habitat conversion in floodplains will result in degradation of riverine and riparian habitats and negatively impact the fish and wildlife species that depend upon them. Consequently, this Project, as proposed, will result in the degradation of both aquatic and riparian habitat of the Mad River. For this reason, CDFW recommends the project be redesigned to keep permanent structures out of the Mad River's 100-year floodplain.

This project has the potential to affect sensitive fish and wildlife resources such as Chinook Salmon (*Oncorhynchus tshawytscha*), Coho Salmon (*O. kisutch*), Steelhead Trout (*O. mykiss*), Coast Cutthroat Trout (*O. clarkii clarkii*), Eulachon (*Thaleichthys pacificus*), Pacific Lamprey (*Entosphenus tridentatus*), Green Sturgeon (*Acipenser medirostris*), White Sturgeon (*Acipenser transmontanus*), Northern Red-legged Frog (*Rana aurora*), Foothill Yellow-legged Frog (*Rana boylei*), Tailed Frog (*Ascaphus truei*), Pacific Giant Salamander (*Dicamptodon tenebrosus*), Western Pond Turtle (*Actinemys marmorata marmorata*), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

Thank you for the opportunity to comment on this Project. Please send all inquiries regarding these comments to kalyn.bocast@wildlife.ca.gov.

Please confirm that you have received this email.

Sincerely,

California Department of Fish and Wildlife
619 2nd Street
Eureka, CA 95501

ATTACHMENT E



736 F Street
Arcata, CA 95521

February 7, 2018

<i>City Manager</i> (707) 822-5953	<i>Police</i> 822-2428	<i>Recreation</i> 822-7091
<i>Community Development</i> 822-5955	<i>Finance</i> 822-5951	<i>Transportation</i> 822-3775
<i>Environmental Services Streets/Utilities</i> 822-5957	<i>Environmental Services Community Services</i> 822-8184	<i>Engineering & Building</i> 822-2128

Humboldt County Board of Supervisors
825 5th Street
Eureka, Ca. 95521


Dear Chairperson Sundberg,

The City of Arcata is in support of the Humboldt Bay Municipal Water District's (HBMWD) appeal of the January 11, 2018 Planning Commission decision to recommend re-zoning for the Mercer-Fraser property (APN 504-161-010) and a special permit for a 5,000 sq. ft. cannabis extraction manufacturing facility. As the project is located just outside of Arcata's Sphere of Influence, we did not receive a project referral and, therefore, learned of the project late in the process.

Our concerns are mainly regarding the rezone from Agriculture to Heavy Industrial in such close proximity to the domestic water intakes at the Ranney collectors that supply the HBMWD, including the City of Arcata, with drinking water. The substrate there is quite porous and the vulnerable water extraction zone on the Ranney wells is not all that deep.

In our review of the record it does not appear that the zone change and special permit are in the best interest of protecting public health and safety over the long-term. Therefore, we respectfully request that the Board of Supervisors either uphold HBMWD's appeal or continue the matter so that additional information can be produced which indicates compliance with the CEQA findings required to verify that the proposed project, in its entirety, will not cause significant environmental impacts.

Performance Standards and BMPs may not be adequate to protect drinking water from industrial activities in this sensitive area. Again we support the appeal letter by the HBMWD and look forward to providing additional comments once an appeal date is set.

Sincerely,

Scott P. Peltola
Mayor



CITY OF BLUE LAKE

Post Office Box 458 • 111 Greenwood Road • Blue Lake, CA. 95525

Phone 707.668.5655 Fax 707.668.5916

February 20, 2018

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

Dear Board of Supervisors:

The Blue Lake City Council is writing this letter to express our concern, dismay and opposition to the proposed zoning change for the property owned by Mercer Fraser Company, located in the Essex area of Glendale (Planning Commission Application No. 10244, Case Nos. ZR-16-001 and SP 16-015).

The City Council discussed this project at City Council meetings held on January 23, 2018 and February 13, 2018, where numerous residents and concerned citizens voiced their strong opposition to this project and encouraged the City Council to take the necessary steps to insure that our community concerns and opposition are presented to the Board of Supervisors.

We are writing this letter to encourage you to deny this zoning change request and to take the necessary steps to insure that our community drinking water source and our river is protected from future industrial impacts. Allowing an increase in development at this site presents future impacts that are clearly too great to gamble on. In order to meet the needs of the County's General Plan we are asking that the parcel maintain its current zoning designation as Agriculture Exclusive; this zoning designation will provide protection to our drinking water source, the river and the general public.

After reviewing the proposal details, including the presentation by Mercer Fraser's consultants, it is clear to the City, and our residents, that this project has not been adequately vetted on a host of levels. The information provided to the public does not satisfy our concerns, nor does it provide any level of comfort that our river, our drinking water source or the public will be protected. The lack of adequate notification to the Humboldt Bay Municipal Water District, along with the cursory environmental analysis only serve to further our concerns and lack of confidence in this project.



CITY OF BLUE LAKE

Post Office Box 458 • 111 Greenwood Road • Blue Lake, CA 95525

Phone 707.668.5655 Fax 707.668.5916

January 11, 2018

Humboldt County Planning Commission
3015 H Street
Eureka, CA 95501

RE: Application Number 10244; Case Numbers ZR-16-001 and SP16-015

Dear Commissioners:

The City of Blue Lake is writing this letter in support of Humboldt Bay Municipal Water District's (HBMWD) letter dated January 3, 2018 regarding Application Number 10244, Case Numbers ZR-16-001 and SP16-015. As a municipal customer of HBMWD the City shares the same concerns identified by HBMWD as it relates to possible impacts presented by this zoning change.

The City of Blue Lake is also concerned that during the application process, Humboldt Bay Municipal Water District was not notified of the project, and as such was not given adequate time to notify its municipal water customers of the potential issues surrounding this application.

The City of Blue Lake was made aware of this project application during the first week of January, and as such, feels that it has not had enough time to fully evaluate or consider the potential impacts of the proposed zoning change and subsequent land uses.

As such, the City of Blue Lake stands in support of HBMWD's position that this zoning change be denied.

Thank you for your time and consideration.

Amanda Mager
City Manager
City of Blue Lake



CITY OF EUREKA

531 K Street • Eureka, California 95501-1146 • (707) 441-4144
fax (707) 441-4138

CITY MANAGER

Ryan Sundberg, Chair
825 5th Street, Room 111
Eureka, CA 95501

February 8, 2018

On February 6, the Eureka City Council considered the Glendale Zoning Change and Special Permit for Mercer Fraser. The city understands that in 2016, an application was submitted to the County by MCMP Humboldt, LLC to change the zoning of the site from Agriculture General (AG) to Heavy Industrial with a qualified combining zone (MH-Q). The application included a special permit to develop and operate a cannabis products manufacturing facility of approximately 5,000 square feet. County staff indicated in their staff report to the Planning Commission that the proposed zoning of the site is consistent with the County's recently adopted General Plan, which changed the land use designation for the site to Industrial Resource Related (IR). The IR land use designation was adopted in the General Plan to reflect the historic use of the site.

At the January 11, 2018 meeting of the Humboldt County Planning Commission, the special permit for the cannabis manufacturing facility at the site was approved, with conditions. One of the conditions of approval was that the zoning change must be approved by the Board of Supervisors before the special permit is effective.

On January 17, 2018, the Humboldt Bay Municipal Water District (HBMWD) met to discuss the Planning Commission approval of the MCMP project. The Board directed agency staff to appeal the Planning Commission's decision to the Board of Supervisors.

The City of Eureka shares the same concerns as HBMWD as to the long term safety of the municipal water supply that may result from a zoning change that allows Heavy Industrial use at the site. Therefore the City of Eureka supports the appeal of the Planning Commission decision to the Board of Supervisors based upon the seven factors noted in HBMWD's January 26 correspondence to the Board.

The City of Eureka respectfully requests that the Board of Supervisors deny the project, or require an EIR, Supplemental EIR, or Subsequent EIR be prepared to analyze the project's environmental impacts in a more comprehensive manner.

The City of Eureka would welcome the opportunity to be involved in discussions with county staff, HBMWD and municipal agencies, as well as MCMP to determine what additional safeguards may be put in place to ameliorate the potential hazards of the proposed project.

Sincerely,

Greg L. Sparks
City Manager

FIELDBROOK GLENDALE COMMUNITY SERVICES DISTRICT
P.O. BOX 2715 • MCKINLEYVILLE, CA 95519

February 27, 2018

Mr. Ryan Sundberg
Fifth District Supervisor
825 Fifth Street
Eureka, Ca 95501

RE: Support for Humboldt Bay Municipal Water District Appeal


Dear Supervisor Sundberg,

I am writing today at the request of the Fieldbrook Glendale Community Services District (FGCSD) board of directors representing nearly 1,800 residents in the Fieldbrook Valley and Glendale Area. The board supports the action by the Humboldt Bay Municipal Water District (HBMWD) Board to file an appeal of the Humboldt County Planning Commission's decision to rezone Assessor's Parcel number 504-161-001 and to issue a special permit to develop and operate a cannabis products manufacturing facility.

The FGCSD board of directors is deeply concerned the rezoning and subsequent special permit has the potential to degrade or pollute the surface water drawn for industrial uses and the aquifer which supplies the drinking water for much of Humboldt County. There has been public testimony from a sister agency which calls into question whether there is sufficient evidence to make the finding that the proposed development will not be detrimental to the public health, safety and welfare, and will not be materially injurious to properties or improvements in the vicinity (Section 312-17.1.4).

We encourage you to work with the management and board of HBMWD to find an alternative to the Heavy Industrial zoning and/or that the project be additionally conditioned to address the concerns raised by HBMWD.

Warm Regards,


Roy Sheppard
President
FGCSD

Cc: Supervisor Bass
Supervisor Bohn
Supervisor Fennel
Supervisor Wilson

Humboldt Community Services District

Dedicated to providing high quality, cost effective water and sewer service for our customers

February 16, 2018

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

Dear Supervisors,

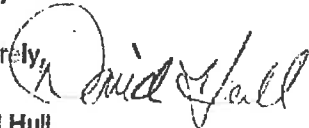
On behalf of the Humboldt Community Services District, (District) I would like to express our Board's support for the review of the Humboldt Bay Municipal Water District's (HBMWD) request to appeal the Planning Commission's decision on Special Permit for Project SP-16-015 to the Board of Supervisors and support for the HBMWD's continuing efforts to protect our water supply.

Approximately two-thirds of the water that our District supplies to the more than 22,000 residents that live within our 15 square-mile District originates within the Mad River at the HBMWD facilities. Therefore, any development that has the potential to degrade the quality of this water supply is of concern to our District.

We think it is important for you to remember the high priority that a clean water source is to any community. The people that set up the HBMWD built an amazing water system for generations of Humboldt County residents to use. We encourage the County to once again place the highest priority on our region's water supply.

We only have one major water source and the public has invested millions of dollars into making it safe and reliable. We encourage the Supervisors and the Planning and Building Department to recognize the importance and necessity of this sustainable water source and ensure that any request for heavy industrial zoning or uses within heavy industrial zoning along the Mad River are conditioned to protect the long-term public health and our water supply.

Sincerely,



David Hull
General Manager

C: Board of Directors



Manila Community Services District

1901 Park Street • Arcata, CA 95521 • 707-444-3803 • Fax 707-444-0231

Board of Directors

Jan Bramlett, President
John Woolley, Vice President
Carol VanderMeer, Finance Officer
Carla Leopardo, Secretary
Dendra Dengler, Safety Officer

General Manager
Christopher Drop

February 28th, 2018

COUNTY OF HUMBOLDT
BOARD OF SUPERVISORS
825 FIFTH STREET
EUREKA, CA 95501
SUPERVISORS' CHAMBER, FIRST FLOOR

Honorable Members of the Humboldt County Board of Supervisors,

At the regular February 15, 2018 meeting of the Manila Community Services District, the Board of Directors reviewed the body of materials presented and heard from Humboldt Bay Water District representatives regarding HBMWD appeal of the Humboldt County Planning Commission decision supporting the Mercer Fraser Project. The Board voted in support of the appeal. Our agency believes re-zoning the parcel, circumscribed by our drinking water wells; from AG to Heavy Industrial is an unnecessary and risky action as enumerated below:

1. There exists a ready inventory of other County parcels posing no such threat to our water supplies and the existing activities at the site are allowable without the change in zoning.
2. There was no notice provided to the HBMWD of the proposed project which undermined the lawful process of public review and comment.
3. The proponents of the project assert that our water sources will remain protected because MCMP "...has essentially eliminated the likelihood of any impacts to water quality" by reducing the quantity of solvents. We believe decreasing the quantities of proposed carcinogens at the site does not recalibrate the likelihood of contamination.
4. The number of proposed amendments by the project proponents, in and of themselves, necessitates that a full EIR be carried out in order for a more thorough examination of the project development activities be scrutinized. Allowing re-zoning of this parcel without an EIR is a negation of the processes in place specifically to protect these resources.
5. The project is 350' from a public park where visitors to the river could potentially access the site or be exposed in a contamination event.

Lastly, we ask that you consider HBMWD's appeal at your earliest convenience and avoid any delays on this important matter.

Respectfully,

Janette Bramlett
President of the Board
Manila Community Services District
1901 Park Street
Manila, CA 95521
707-444-3803

PHYSICAL ADDRESS:
1686 BUTTER ROAD
McKINLEYVILLE, CA 95519

MAILING ADDRESS:
P.O. BOX 2037
McKINLEYVILLE, CA 95519



MAIN OFFICE:
PHONE: (707) 838-3251
FAX: (707) 838-6488

PARKS & RECREATION OFFICE:
PHONE: (707) 888-8005
FAX: (707) 888-5864

February 16, 2018

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

RE: Glendale Zoning and Special Permit

Dear Board of Supervisors,

The McKinleyville Community Services District (MCS D) Board has serious concerns with the Glendale Zoning Change and Special Permit and hope the Board of Supervisors makes the right decision. We hope Mercer Fraser and the Humboldt Bay Municipal Water District (HBMWD) are able to reach common ground on this project.

We support the appeal by the HBMWD. Risks, scope and persistence of potential environmental damage to ground water need to be carefully reviewed. Flood plan development issues should have a margin of error for toxics and the 100 year flood plain. The site desirability for rezoning should be seriously questioned.

Thank you for consideration of the HBMWD appeal and our comments.

Sincerely,

A handwritten signature in cursive script that reads 'David R. Couch'.

David R. Couch
Board President

Attachment 3



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1655 Heindon Road
Arcata, California 95521-4673

MAR 19 2018

In response refer to:
10012WCR2018AR00017

Humboldt County Board of Supervisors
825 Fifth Street
Eureka, CA 95501

Dear Supervisors:

I'm writing to provide comments from NOAA's National Marine Fisheries Service (NMFS) on the proposed Mercer-Fraser MCMP, LLC, Zone Reclassification and Special Permit for a cannabis extraction facility in the Glendale Drive area of the Mad River. In particular, the California Environmental Quality Act (CEQA) Addendum (dated December 2017) to the Program and Supplemental Environmental Impact Reports (PEIR, SEIR) on Gravel Extraction on the Lower Mad River does not analyze the potential impacts associated with a cannabis extraction and manufacturing facility at the gravel processing site, nor do the gravel mining EIRs. In addition to the lack of CEQA analysis, we are also concerned with: 1) the location of the proposed facility within the 100-year floodplain that is within designated critical habitat for Endangered Species Act (ESA) listed coho salmon, Chinook salmon, steelhead and Pacific eulachon, 2) potential effects on ESA listed salmon, steelhead and Pacific eulachon, and 3) the proposed zoning change of the parcel to Heavy Industrial.

As described in the January 11, 2017, staff report from the Planning and Building Department to the Humboldt County Planning Commission (staff report) for the MCMP, LLC, Zone Reclassification and Special Permit, the gravel extraction PEIR and SEIR analyze the effects of gravel removal, and the associated activity of aggregate material being temporarily stockpiled and processed on site; processing operations involve crushing, sorting and storage of the rock. The staff report states that the new facility has fewer and less substantial impacts than the existing gravel extraction and processing use and that these changes are minor in nature and do not require additional mitigation measures relative to the original REIR (1994) or the more recent SEIR (2014).

The cannabis facility will use volatile and nonvolatile solvents that were not analyzed for potential impacts in the gravel extraction PEIR or SEIR. In addition, the cannabis extraction proposal includes 24-hour operation of the facility and deliveries around the clock during the peak season. In contrast, the PEIR states that trucking operations associated with gravel mining be contained to the hours of 9:00 am to 5:00 pm, Monday through Friday. The gravel mining EIRs focused on the physical effects of removing gravel from the river (e.g., changes in channel bed elevation and river planform). Gravel mining mitigation measures described in the PEIR and the SEIR include leaving a head of bar buffer as an unmined portion of a gravel bar to protect river form, and having a team of experts recommend annual mining plans to prevent over-extraction and bed degradation.



The staff report describes mitigation measures for the cannabis facility, such as the closed loop system for solvents and limits on the amount of chemicals stored on site that do not pertain to gravel mining or processing, which further indicates that the two types of actions are not similar. These additional mitigation measures required for cannabis extraction and manufacturing are not described in the gravel mining PEIR or SEIR. Since there is essentially no analysis describing the potential for impacts from the cannabis facility, it is difficult to discern how much the proposed mitigations reduce the risk of chemical spills into the Mad River or its riparian habitat, or what the impacts would be on water quality and listed salmon, steelhead and Pacific eulachon if a chemical spill did occur.

In addition, we are concerned that the facility is proposed for construction within the 100-year floodplain of the Mad River. As described in the California Department of Fish and Wildlife (CDFW) comment letter dated February 28, 2018, floodplains are important parts of riverine ecosystems and provide habitat and functions critical to federally and State listed salmon and steelhead survival and recovery. In their role as the State Trustee and Responsible Agency for CEQA for issues pertaining to wildlife and fisheries, CDFW has recommended denial of the special permit for the facility due to the location within the 100-year floodplain. The 100-year floodplain provides areas for channel migration and habitat creation that are critical for salmon recovery as well as unique attributes of designated critical habitat such as slow water velocity refuge, and riparian vegetation for shade, cover and food.


The staff report also describes that the proposed facility would be elevated two feet above the 100-year flood elevation. However, flood recurrence intervals are approximations of risk, and elevating the proposed facility by two feet may not be adequate to ensure protection from 100-year flood waters given the imprecision of the recurrence interval estimate and climate change. We updated the flood frequency estimates for the Mad River at Arcata and the 100-year peak flow estimate is 81,870 cubic feet per second (cfs), with 90 percent confidence intervals of 68,490 cfs and 102,600 cfs, respectively. The large range of the confidence interval indicates that requiring a 2-foot elevation above the 100-year flood level may not be protective enough, especially when considering climate change.

Also, we are concerned with the proposed zoning change of the property from Agricultural Grazing to Heavy Industrial. While we understand that the most recent Humboldt County General Plan designated this parcel as Industrial Resource Related, and that gravel mining and processing is currently found within the 100-year floodplain, we do not support the zoning change to Heavy Industrial for this or other parcels along the floodplain of the Mad River due to the general incompatibility of heavy industry with a 100-year floodplain. Many of the stated uses of Heavy Industrial zoned land are incompatible with designated critical habitat for salmon, steelhead and Pacific eulachon, in particular hazardous materials and manufacturing. We suggest using a zoning designation that acknowledges the gravel mining uses, but also acknowledges the important habitat value of the 100-year floodplain for listed fish. In addition, we are concerned about the cumulative effects of the zoning change and additional heavy industry located within the 100-year floodplain of the lower Mad River.

Since the proposed facility has the potential to impact federally and State listed fish species and their habitat in ways that are different than gravel mining and processing, requires development and use of hazardous materials within the 100-year floodplain, and requires a zoning change to Heavy Industrial which we see as incompatible with habitat for salmon, steelhead and Pacific eulachon, we recommend the Board of Supervisors reconsider the Planning Commission's approval of the special permit and not allow for the zoning change to Heavy Industrial.

If you would like to discuss our comments or recommendations, please contact Justin Ly at 707-825-5154, or by email at Justin.Ly@noaa.gov.

Sincerely,


for Lisa Van Atta,
Assistant Regional Administrator
California Coastal Office

cc: Kalyn Bocast, CDFW, Eureka, CA
John Friedenbach, HBMWD, Eureka, CA

Attachment 4



**California Department of Fish and Wildlife
CEQA Referral Checklist**

Applicant: Mercer Fraser MCMP LLC		Date: 2/27/2018	
APPS No.: 10244	APN: 504-161-010	CDFW CEQA: 2017-0176	Case No.: SP16-015, ZR16-001
<input checked="" type="checkbox"/> New	<input type="checkbox"/> Existing	<input type="checkbox"/> Mixed-light (SF):	<input type="checkbox"/> Outdoor (SF): <input type="checkbox"/> Indoor <input checked="" type="checkbox"/> Other

Thank you for the opportunity to comment on the Mercer Fraser MCMP LLC Zoning Reclassification and Special Permit. Due to staffing changes and workload, CDFW was not able to provide comprehensive comments on the initial referral. Based on the current status of the project, CDFW understands that the County will accept comments from CDFW prior to the next hearing for the Project. Therefore, CDFW offers the following comments on the Project in our role as a Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Public Resource Code section 21000 et seq.).

Please note the following information:

Recommend Denial. See comments below.

Thank you for the opportunity to comment on the Mercer Fraser MCMP LLC Zoning Reclassification and Special Permit. Due to staffing changes and workload, CDFW was not able to provide comprehensive comments on the initial referral. Based on the current status of the project, CDFW understands that the County will accept comments from CDFW prior to the next hearing for the Project. Therefore, CDFW offers the following comments on the Project in our role as a Trustee and Responsible Agency pursuant to the California Environmental Quality Act (CEQA; California Public Resource Code section 21000 et seq.).

The Project proposes a zoning change from Agriculture General to Heavy Industrial for the parcel, and construction and operation of a cannabis manufacturing facility of approximately 5000 square feet in size. The facility will use volatile and nonvolatile solvents in the manufacturing process and may operate 24 hours a day. The facility is proposed to be located within the 100-year floodplain of the Mad River.

CDFW's primary concern with the project relates to the proposed construction of a permanent cannabis manufacturing facility within the 100-year floodplain. Floodplains are an important physical and biological part of riverine ecosystems. All rivers flood, and flooding is a natural and recurring event in river systems such as the Mad River. CDFW strongly supports the conservation and restoration of floodplain habitats. CDFW is especially concerned with maintaining the floodplain and riparian habitat along the Mad River because of the significant biological values the Mad River has for numerous commercially important fish species and State and federally-listed or otherwise sensitive species.

Riverine floodplains provide many ecological services, including but not limited to:

- Facilitating growth of trees and vegetation that anchor riverbanks and prevent bank erosion.
- Sustaining listed anadromous salmonid populations and thereby commercial fisheries by providing river habitat such as shade, over-hanging banks, habitat complexity, large woody debris, insect and foliage drop contributing to the aquatic food chain, and high-flow refugia for fish during flood events.
- Providing vitally important habitat to numerous riparian-dependent wildlife species, such as reptiles, amphibians, bats, and migratory songbirds.
- Functioning as natural filters that absorb nutrients and other pollutants from water and making rivers healthier for drinking, swimming, and supporting fish and wildlife species.

Development in flood-prone areas disconnects rivers from their natural floodplains and displaces, fragments, and degrades important riparian habitat. Development in floodplains often eliminates benefits of natural flooding regimes such as deposition of river silts on valley floor soils, and recharging of wetlands. In addition, development can prevent the formation of braided channel structure, off-channel fish habitat, and backwaters, resulting in higher velocity flows. These changes lower habitat suitability for salmon, which need low-velocity refugia during flood flows.

Development in floodplains is vulnerable to erosion and flood damage. Once structures are built and threatened by river flooding, property owners often seek to armor riverbanks or build or raise levees to prevent future property damage. Thus, not only does development displace riparian and floodplain habitat when it is built, it often results in further riparian and floodplain habitat loss through rock armoring and levee construction. Floodplains also provide vital water storage capacity during flood events. Flood-damaged properties also have a high potential to result in contaminant releases into river systems.

CDFW recommends that local agencies permit only vital public infrastructure in floodplains (e.g., transportation structures and water, sewer, natural gas, and electrical transmission facilities). Public facilities built in floodplains should be able to withstand flood events without significant damage or pollution release. Given their biological importance, and propensity to flood, CDFW believes ideal land uses for floodplains are parks, picnic areas, boat ramps, agriculture, open space, and, especially, lands dedicated to the maintenance and enhancement of riparian wildlife habitat. To best protect California's riverine and riparian habitats, CDFW believes it is wise public policy to maintain and restore floodplain functions and to prevent, whenever practicable, the development of residential and commercial structures in areas that are not already protected by existing levee systems.

Allowing non-essential development and habitat conversion in floodplains will result in degradation of riverine and riparian habitats and negatively impact the fish and wildlife species that depend upon them. Consequently, this Project, as proposed, will result in the degradation of both aquatic and riparian habitat of the Mad River. For this reason, CDFW recommends the project be redesigned to keep permanent structures out of the Mad River's 100-year floodplain.

This project has the potential to affect sensitive fish and wildlife resources such as Chinook Salmon (*Oncorhynchus tshawytscha*), Coho Salmon (*O. kisutch*), Steelhead Trout (*O. mykiss*), Coast Cutthroat Trout (*O. clarkii clarkii*), Eulachon (*Thaleichthys pacificus*), Pacific Lamprey (*Entosphenus tridentatus*), Green Sturgeon (*Acipenser medirostris*), White Sturgeon (*Acipenser transmontanus*), Northern Red-legged Frog (*Rana aurora*), Foothill Yellow-legged Frog (*Rana boylei*), Tailed Frog (*Ascaphus truel*), Pacific Giant Salamander (*Dicamptodon tenebrosus*), Western Pond Turtle (*Actinemys marmorata marmorata*), and amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

Thank you for the opportunity to comment on this Project. Please send all inquiries regarding these comments to calvin.bocast@wildlife.ca.gov.

Please confirm that you have received this email.

Sincerely,

California Department of Fish and Wildlife
619 2nd Street
Eureka, CA 95501

