



July 6, 2016

Ms. Carmel Angelo, Chief Executive Officer  
County of Mendocino  
501 Low Gap Road, Room 1010  
Ukiah, CA 95482

Dear Ms. Angelo:

We are writing to articulate our understanding of the recent voter approved Measure V initiative and its applicability to timber operations occurring on our ownership in Mendocino County. In short, Measure V declares trees intentionally killed and left standing a public nuisance, and as such are potentially subject to County abatement procedures or civil action. As you are aware, we practice a specific silvicultural treatment as part of our timber operations wherein excess hardwood trees inhibiting the establishment or development of the forest are treated with herbicides and left standing. The treatment is commonly referred to as "Hack and Squirt" or "Frilling". We practice this to ensure adequate reforestation, control stand densities, promote growth and ensure stand development. For the reasons we will set forth below, we conclude timber operations to be exempt from a public nuisance determination. Furthermore, only the State has the independent authority to regulate timber operations. Throughout state law, the legislature has repeatedly expressed its intent to protect the productivity of the state's resources from undue restrictions resulting from pressures associated with increasing urbanization and alternative land use desires of a population encroaching into agricultural areas of the state.

**This practice is protected by State Law.**

California state law protects all agricultural operations, specifically including timber operations, from being declared a public nuisance. California Civil Code Division 4 Part 3 Title 1 Section 3482.5 (a) (1) states:

*No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began.*

Section 3482.5 (d) states in part:

*This section shall prevail over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state.*

Section 3482.5 (e) states in part:

For purposes of this section, the term "agricultural activity, operation, or facility, or appurtenances thereof" shall include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, ..., and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations,

We have practiced this specific silvicultural treatment, since the inception of our company in 1998, for the commercial purpose of enhancing growth and stand development of commercial timber as part of our long term timber management. This treatment is conducted in accordance with California Environmental Policy Act as administered by the Department of Pesticide Regulation and Mendocino

County Agriculture Commissioner. It is an accepted forest management treatment, practiced throughout the United States. It is practiced locally by large and small forest managers alike.

This practice clearly meets the state standard for an agricultural activity pursuant 3482.5 (a)(1) and, as such, is exempt from a public nuisance declaration. This protection is independent and prevails over any County ordinance.

**This practice is protected by County ordinance.**

County code Chapter 10.13 provides protection for agricultural operations from being declared a public nuisance. Section 10A.13.020 states in part:

*No existing or future agricultural operation or any of its appurtenances, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, shall become or be a nuisance, private or public, for adjacent land uses in or about the locality thereof after the same has been in operation for more than three (3) years, when such action was not a nuisance at the time it began; provided that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.*

The County code provides much the same protections as State law. However it provides for additional protections in Section 10A.13.060 which states:

*It is the finding of the Board of Supervisors that this Ordinance is to take precedence over all ordinances or parts of ordinance or resolutions or parts of resolutions in conflict herewith and same are hereby repealed to the extent of such conflict and no further.*

This County code mirrors and provides additional protections from this practice being declared a public nuisance. This code also indicates any actions taken by the county in response to Measure V in the form of adopting any ordinance or resolution declaring this practice a public nuisance would be automatically repealed by matter of law.

**State law limits enforcement and validity of local ordinances pertaining to timber operations.**

The Forest Practice Act, Public Resource Code section 4516.5 provides specific mechanisms for counties to recommend additional rules and regulations pertaining to timber operations. Stating in part in 4516.5(a):

*For purposes of this section, "timber operations" includes, but is not limited to, soil erosion control, protection of stream character and water quality, water distribution systems, flood control, stand density control, reforestation methods, mass soil movements, location and grade of roads and skid trails, excavation and fill requirements, slash and debris disposal, haul routes and schedules, hours and dates of logging, and performance bond or other reasonable surety requirements for onsite timber operations and for protection of publicly and privately owned roads that are part of the haul route.*

It further states in 4516.5(d):

*Except as provided in subdivision (e), individual counties shall not otherwise regulate the conduct of timber operations, as defined by this chapter, or require the issuance of any permit or license for those operations.*

This practice as conducted by our company meets the definition of timber operations and, as such, any additional rules or regulations proposed by the County are restricted by state law.

### **Additional Intent.**

In addition to the regulations cited above, other State and County rules governing agricultural operations frequently cite as policy or intent the protection of the state's agricultural resources. State and County law has long identified the risk of increasing urban populations encroaching into rural areas and the associated conflicts. This is mostly clearly articulated within the California Timberland Productivity Act of 1982, Government Code section 51101 which states in part:

- The Legislature hereby finds and declares all of the following:*
- (a) The forest resources and timberlands of this state, together with the forest products industry, contribute substantially to the health and stability of the state's economy and environment by providing high quality timber, employment opportunities, regional economic vitality, resource protection, and aesthetic enjoyment.*
  - (b) The state's increasing population threatens to erode the timberland base and diminish forest resource productivity through pressures to divert timberland to urban and other uses and through pressures to restrict or prohibit timber operations when viewed as being in conflict with nontimberland uses.*
  - (c) A continued and predictable commitment of timberland, and of investment capital, for the growing and harvesting of timber are necessary to ensure the long-term productivity of the forest resource, the long-term economic viability of the forest products industry, and long-term stability of local resource-based economies.*

The above referenced laws and ordinances clearly demonstrate the knowledge and anticipation of measures such as Measure V. State and County laws have been enacted to specifically limit future attempts to declare timber operations a public nuisance. For these reasons we conclude the specific silvicultural treatment referred to as "Hack and Squirt" or "Frilling", is exempt from a public nuisance determination and the county lacks independent authority to adopt any ordinance restricting its practice. This is a safe, well established and essential forest management operation within the county. Should you have any questions or disagree with our conclusion please contact us at your earliest convenience.

We remain committed to managing our forests with a high degree of environmental stewardship and welcome any requests to visit our forestland to see our practices first hand.

Sincerely,

*Dennis Thibeault*

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### **ABOUT MRC**

*Mendocino Redwood Company (MRC) was created in 1998 from lands purchased in Mendocino and Sonoma counties with the publicly declared mission to be good stewards of the forest and at the same time run a successful business. We have made significant progress in that regard:*

- 1. Adopting policies to make MRCs forestlands FSC certified (since November 2000);*

Ms. Carmel Angelo, Chief Executive Officer

County of Mendocino

July 6, 2016

Page 4

2. *Adding more than 1 billion board feet of redwood and Douglas fir trees by lowering the rate of harvest;*
3. *Defining of old growth down to the level of an individual tree, along with implementation of a policy to protect all individual old growth trees across our property;*
4. *Elimination of traditional clear cutting from our property;*
5. *Long term investments to improve habitat for fish across the property by controlling or holding back more than 1 million cubic yards of sediment (more than 100,000 dump trucks of dirt) from the coastal streams flowing through our forest;*
6. *Removal of more than 36 long time fish barriers, increasing fish bearing streams by more than 20 miles.*
7. *Operating as an open and transparent business; including an open invitation to take interested individuals anywhere in the forest;*
8. *Completing a substantial rebuild of our Ukiah sawmill, assuring that Mendocino County will have infrastructure in the processing of wood products for many years to come; and*
9. *Employing about 300 skilled employees in Mendocino County earning family-level wages and benefits.*