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*Attorneys for Respondents  
Mendocino County Air Quality Management District  
Robert A. Scaglione and his successors*

ADDITIONAL COUNSEL CONTINUED ON NEXT PAGE

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MENDOCINO**

FRIENDS OF OUTLET CREEK, an  
unincorporated association,

Petitioner and Plaintiff,

v.

HEARING BOARD OF THE MENDOCINO  
COUNTY AIR QUALITY MANAGEMENT  
DISTRICT, et al.,

Respondents,

GRIST CREEK AGGREGATES, LLC, et al.,

Real Parties in Interest.

Case Nos. #SCUK-CVPT-15-66445

STIPULATION FOR SETTLEMENT AND  
RELEASE

(CEQA)

Judge: Hon. Cindee Mayfield  
Action Filed: September 30, 2015  
Department: C

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16 MATTHEW T. KIEDROWSKI, SBN 238353  
17 OFFICE OF THE COUNTY COUNSEL  
18 COUNTY OF MENDOCINO  
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25 *Board of Supervisors for the County of Mendocino*

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*Hearing Board of the Mendocino County Air Quality Management District*

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aguernsey@hthjlaw.com  
*Attorneys for Real Parties in Interest, Defendants, and Plaintiffs Grist Creek Aggregates, LLC,*  
*Mercer-Fraser Company, and Brian Hurt*

1 The parties to the above captioned cases, and each of them, do stipulate as follows:

2 **RECITALS & STIPULATION**

3 A. This Settlement Agreement and Mutual Release of Claims ("Agreement") is  
4 entered into between the parties and regarding the legal actions indicated below in the Recitals.  
5 Each party mentioned in the Recitals is a "Party" to this Agreement and all parties are  
6 collectively referred to as "Parties" to this Agreement. This Agreement shall be deemed to have  
7 been entered into on February 6, 2018 ("Effective Date").

8 B. This Settlement Agreement finally and conclusively resolves all claims, defenses,  
9 cross-claims, and counterclaims asserted in the following civil actions (collectively, "Legal  
10 Actions") by the following parties:

11 (1) *Friends of Outlet Creek v. County of Mendocino*, Mendocino Sup. Ct.  
12 Case No. 15-65618, and First District Court of Appeals Case No. A14749, hereafter, the  
13 "County Action". The parties to this action are Friends of Outlet Creek ("Friends"), Brian  
14 Hurt, County of Mendocino ("County"), and the Board of Supervisors of the County of  
15 Mendocino ("BOS").

16 (2) *Grist Creek Aggregates et al. v. Mendocino County Air Quality*  
17 *Management District*, Mendocino Sup. Ct. Case No. 15-66620. The parties to this action  
18 are Grist Creek Aggregates, LLC ("Grist Creek"), Mercer-Fraser Company ("Mercer-  
19 Fraser"), the Mendocino County Air Quality Management District ("Air District"), Robert  
20 A. Scaglione (and his successors, collectively "APCO"), Donna Roberts-Nash, the Air  
21 District's Hearing Board ("Hearing Board"), and the Air District Board. In addition, Brian  
22 Hurt, dba Grist Creek Aggregates, LLC, is also considered to be a party to this action and  
23 all claims asserted in his April 12, 2017, Notice of Claim to the District are deemed to be  
24 part of this action.

25 (3) *Friends of Outlet Creek v. Mendocino County Air Pollution Control*  
26 *District*, Mendocino Sup. Ct. Case No. 16-66445, hereafter, "Friends I." The parties to  
27 this action are Friends, the Air District, the APCO, the Hearing Board, and Grist Creek.  
28

(4) *Friends of Outlet Creek v. Mendocino County Air Pollution Control District*, Mendocino Sup. Ct. Case No. 16-67449, hereafter, “Friends 2.” The parties to this action are Friends, the Air District, the APCO, the Hearing Board, and Grist Creek.

(5) *People ex rel. Mendocino Air Quality Management District v. Grist Creek Aggregates*, et al., Mendocino Sup. Ct. Case No. 16-67314, hereafter “the Penalty Action.” The Parties to this action are the Air District, Brian Hurt, Grist Creek, and Mercer-Fraser.

C. The Parties incorporate by reference into this Agreement the operative pleading in each action existing on the Effective Date for purposes of more specifically describing the disputes resolved by this Agreement.

D. Without making any admissions, the Parties through this Agreement seek to resolve their outstanding disputes in a manner that allows them to forego the expenses, burdens, and time commitment of a trial and any further proceedings in the Legal Actions.

## AGREEMENT

1. The Parties incorporate the above-stated Recitals as material terms of this Agreement.

2. The Parties agree that Authorities to Construct No. 1416-5-01-15-26 (for an asphalt plant) and No. 1416-5-01-15-59 (for a crumb rubber unit), issued by the District Air Pollution Control Officer to Grist Creek on June 2, 2015 and November 17, 2015, respectively, for use on the property located at 37342 Covelo Road, in Longvale ("Property"), are no longer valid and in effect.

3. Should Grist Creek, or any party associated with Grist Creek, seek to place an asphalt or concrete plant on the Property, Grist Creek and/or the associated party will be required to obtain a new authority to construct and any other required authorizations pursuant to the Air District's Rules and Regulations from the Air District before constructing, assembling, or operating the plant or any associated equipment. As part of any new or renewed application, Grist Creek and any associated party that submits an application to the District agrees to

1 indemnify the District for all litigation costs, expenses, attorney fee awards, damages, or other  
2 compensation that might be incurred in or awarded to any party in any litigation challenging any  
3 approval of any authorizations the District issues, as may be required by the District's Rules and  
4 Regulations that are generally applicable.

5 4. Grist Creek agrees to provide 60 days' advance written notice to Friends of intent  
6 to submit any application to the Air District for an authority to construct for an asphalt or  
7 concrete plant.

8 5. The Parties agree that before placing an asphalt or concrete plant at the Property,  
9 Grist Creek or any affiliate or any party associated with Grist Creek shall submit an application  
10 for Development Review pursuant to Mendocino County Zoning Code Chapter 20.188.

11 6. Grist Creek agrees to provide 60 days' advance written notice to Friends of intent  
12 to submit any application for Development Review to Mendocino County. As part of any  
13 application filed, Grist Creek agrees to indemnify Mendocino County for all litigation costs,  
14 expenses, attorney fee awards, damages, or other compensation that might be incurred in or  
15 awarded to any party in any litigation challenging any approval of any authorizations the County  
16 issues, as may be required by the County Code and which are generally applicable.

17 7. The Parties expressly reserve all rights, claims, and defenses that may be had  
18 regarding any action undertaken pursuant to Paragraphs 3 to 6. Subject to the foregoing  
19 reservation, nothing in this Agreement shall be construed to waive, bar, or limit in any way, any  
20 of the respective Parties' legal rights, duties, including any administrative appeals and/or judicial  
21 review, regarding any action undertaken pursuant to Paragraphs 3 to 6, above

22 8. Within 60 days of the Effective Date, the BOS will take all necessary actions to  
23 rescind Resolutions Number 15-054 (March 17, 2015) and Number 15-087 (June 16, 2015). The  
24 Parties agree these resolutions are of no legal or precedential effect on the right of Grist Creek or  
25 any other party to operate an asphalt or concrete plant at the Property.

26 9. Within 15 days of the Effective Date, Mercer-Fraser shall pay the District the sum  
27 of \$60,000.00 toward payment for penalties for violations alleged in the Penalty Action. The  
28

1 payment of this sum, and any allegations in Notice of Violations Nos. 15-042, 15-44, or 15-048,  
2 shall not be deemed to be a past violation that may be considered in any future action against  
3 Grist Creek or Mercer-Fraser in any action under Health & Safety Code section 42400 or other  
4 applicable law.

5 10. The Air District and County are jointly and severally obligated to, within 30 days  
6 of the Effective Date, pay Friends the sum of \$260,000.00 in full satisfaction for Friends'  
7 attorney fees and costs in the County Action, Friends 1, and Friends 2.

8 11. Upon full payments received in accordance with Paragraphs 9 and 10, each Party  
9 that is a plaintiff or petitioner in the actions specified in Recital B shall, within 5 business days of  
10 receipt of such payments, file the agreed upon Stipulated Judgment of Dismissal separately  
11 approved as to form by the parties in its respective case(s), and serve notice of the same on all  
12 parties appearing in the action(s). Service shall be accomplished by electronic mail to all of the  
13 following: rdoughty@greenfirelaw.com, jrf@atalawgroup.com, elliotk@mendocinocounty.org,  
14 kiedrowskim@mendocinocounty.org, dcole@cotalawfirm.com, drapport@pacbell.net,  
15 aguernsey@hthjlaw.com.

16 12. For any purpose where notification is required by this Agreement, except service  
17 in paragraph 11, Parties agree to electronic notification as follows:

18 (1) Friends of Outlet Creek: rdoughty@greenfirelaw.com,  
19 jrf@atalawgroup.com, dkerseg@icloud.com,  
20 amy24youandyou@icloud.com

21 (2) BOS: elliotk@mendocinocounty.org, kiedrowskim@mendocinocounty.org

22 (3) APCO: dcole@cotalawfirm.com

23 (4) Air District: dcole@cotalawfirm.com

24 (5) Hearing Board: drapport@pacbell.net

25 (6) Grist Creek: aguernsey@hthjlaw.com

26 (7) Brian Hurt: aguernsey@hthjlaw.com

27 (8) Mercer-Fraser: aguernsey@hthjlaw.com

1           13.     Except as separately provided in this agreement, the Parties agree each Party shall  
2 bear its/his/her own costs and attorney fees incurred in the Legal Actions and that no Party shall  
3 file a memorandum of costs or motion for attorney fees against any other party for fees and costs  
4 and attorney fees incurred in the Legal Actions. However, this agreement does not address or  
5 resolve the issue of fees and costs in the event of an enforcement action. In the event that any  
6 Party seeks to enforce the terms of this action, nothing herein shall act as a bar to any Party to  
7 petition the Court for fees and costs related to that enforcement action under Code of Civil  
8 Procedure section 1021.5.

9           14.     Upon service of notice of entry of the Stipulated Judgments of Dismissal required  
10 by Section 11, each Party and his/her/its heirs, executors, administrators, predecessors,  
11 successors in interest, affiliates, partners, assigns, agents, officers and directors hereby forever  
12 generally, completely and mutually release and discharge the other Parties, including, but not  
13 limited to, their heirs, executors, administrators, trustees, settlors, beneficiaries, issue, directors,  
14 officers, shareholders, agents, predecessors, assigns, employees and attorneys, from any and all  
15 claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments,  
16 liens, acts, costs, expenses, sums of money, suits, dues, actions and/or causes of action of every  
17 kind and nature in law, equity, or otherwise, known and unknown, matured and unmatured,  
18 suspected and unsuspected, disclosed and undisclosed, and in particular from all claims and  
19 demands of every kind and nature, known and unknown, matured and unmatured, suspected and  
20 unsuspected, disclosed and undisclosed, for damages actual and consequential, past, present, and  
21 after, arising out of their respective obligations, activities and/or dealings with one another  
22 arising out of or based upon the disputes claimed in the subject matter of the Legal Actions.

23           15.     This Agreement pertains to disputed claims and is the result of compromise. No  
24 Party admits any fault or liability with respect to the claims alleged in the Legal Actions, and this  
25 Agreement does not constitute, and will not in any circumstance be deemed to constitute, an  
26 admission or fault or liability by any Party.

1           16. It is the intention of the Parties that, upon full satisfaction of the conditions set  
2 forth above, this Agreement shall be effective as a full and final accord and satisfaction, and as a  
3 bar to all actions, causes of action, and obligations, costs, expenses, attorneys' fees, damages,  
4 losses, claims, liabilities, and demands of whatsoever nature, character, or kind, known or  
5 unknown, suspected or unsuspected, which could have been brought as part of the Legal Actions,  
6 with the exception of the Parties' rights and obligations under this Agreement. All of the Parties  
7 hereto acknowledge that they are familiar with Section 1542 of the California Civil Code and  
8 expressly waive the benefits thereof. Section 1542 reads as follows:

9                   **A GENERAL RELEASE DOES NOT EXTEND TO**  
10                   **CLAIMS WHICH THE CREDITOR DOES NOT KNOW**  
11                   **OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**  
12                   **THE TIME OF EXECUTING THE RELEASE WHICH IF**  
13                   **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**  
14                   **AFFECTED HIS OR HER SETTLEMENT WITH THE**  
15                   **DEBTOR.**

16           17. The Parties acknowledge they have received the advice of counsel regarding the  
17 advisability of all releases provided for within, including the waiver of California Civil Code  
18 section 1542. The Parties are aware that, following execution of this Agreement, they may  
19 discover claims or facts in addition to or different from those they now know or believe to be  
20 true in relation to the Legal Actions. Nonetheless, it is their intention to fully and finally settle  
21 and release all claims they have or may have against each other, except as reserved herein.

22           18. The Parties acknowledge they have read this Agreement, have had the opportunity  
23 to have the Agreement explained to them by counsel of their choice, are aware of its content and  
24 legal effect, and are signing this Agreement freely and voluntarily.

25           19. This Agreement shall be effective upon its full execution. Each of the undersigned  
26 represents that he/she has the authority to bind the Party on whose behalf that he/she has  
27 executed this Agreement. The Agreement may be executed in counterparts and in duplicate  
28

1 originals. If so executed, then upon proof of execution of at least one copy, the Agreement shall  
2 be effective from the date of the last signature. If executed in duplicate, each duplicate copy  
3 shall be valid as an original copy.

4 20. The Parties each warrant that he/she/it has not assigned or transferred, attempted to  
5 assign or transfer, and will not assign or transfer, any claim which was raised, or could have been  
6 raised, in connection with the Legal Actions. Should any controversy arise over any assignment  
7 or transfer of any claim in this Agreement, the Parties further agree that the Party who is alleged  
8 to have made such assignment or transfer shall fully indemnify the other Parties as to that  
9 controversy, including any Legal Actions arising from it.

10 21. This Agreement has been jointly negotiated and drafted. The language of this  
11 Agreement shall be construed as a whole according to its fair meaning, and not strictly for or  
12 against any Party.

13 22. This Agreement constitutes the entire agreement between the Parties. No  
14 modification of this Agreement shall be valid unless in writing and signed by the Parties. The  
15 Parties shall not be bound by any representation, warranty, promise, or statement unless it is  
16 specifically set forth in this Agreement.

17 23. This Agreement shall be deemed to have been entered into and shall be construed  
18 and enforced in accordance with the laws of the State of California. Should any term of this  
19 Agreement be deemed unlawful, that provision shall be severed, or construed in accordance with  
20 applicable law as nearly as possible to reflect the Parties' mutual original intent, and all  
21 remaining terms shall continue to be valid and fully enforceable. Furthermore, the place of  
22 performance shall be the County of Mendocino, State of California, in the event of litigation.

23 24. This Agreement shall bind the heirs, personal representatives, successors, and  
24 assigns of the Parties, and inure to the benefit of each Party, its successors and assigns.

25 25. The Parties agree to execute and deliver any other instrument or document  
26 convenient or necessary to carry out the terms of this Agreement.

1           26.     The Parties shall jointly request this Court, pursuant to Code of Civil Procedure  
2 section 664.6, to retain jurisdiction of this case and over the parties personally until final  
3 performance of the Agreement stated herein. This includes tolling of any applicable statute, rule,  
4 or court order affecting timely prosecution of this action that currently exist, including the 5-year  
5 dismissal statute.

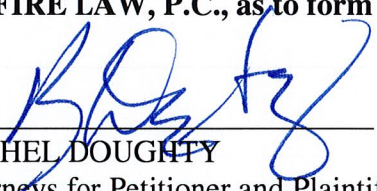
6           27.     Failure of any of the Parties to insist upon the strict observance of, or compliance  
7 with, all of the terms of this Agreement in one or more instances, shall not be deemed to be a  
8 waiver of any of the Parties' right to insist upon such observance or compliance with the other  
9 terms of this Agreement.

10          28.     This stipulation may be signed by PDF signatures. This stipulation may be signed  
11 in counterparts.

12           IT IS SO STIPULATED.

13          Dated: 2/16, 2018

**GREENFIRE LAW, P.C., as to form**

14  
15          By:   
16               RACHEL DOUGHTY  
17               Attorneys for Petitioner and Plaintiff  
              Friends of Outlet Creek

18          Dated: 2/14, 2018

**FRIENDS OF OUTLET CREEK**

19  
20          By:   
21               AMY LEE

22          Dated: \_\_\_\_\_, 2018

**COTA, COLE & HUBER LLP, as to form**

23  
24          By: \_\_\_\_\_  
25               DEREK P. COLE  
26               Attorneys for Respondents  
27               Mendocino County Air Quality Management  
28               District and Robert A. Scaglione

STIPULATION OF SETTLEMENT

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3 performance of the Agreement stated herein. This includes tolling of any applicable statute, rule,  
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5 dismissal statute.

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7 with, all of the terms of this Agreement in one or more instances, shall not be deemed to be a  
8 waiver of any of the Parties' right to insist upon such observance or compliance with the other  
9 terms of this Agreement.

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11 in counterparts.

12           IT IS SO STIPULATED.

13           Dated: \_\_\_\_\_, 2018

**GREENFIRE LAW, P.C., as to form**

14  
15           By: \_\_\_\_\_  
16               RACHEL DOUGHTY  
17               Attorneys for Petitioner and Plaintiff  
18               Friends of Outlet Creek

19           Dated: \_\_\_\_\_, 2018

**FRIENDS OF OUTLET CREEK**

20           By: \_\_\_\_\_  
21               AMY LEE

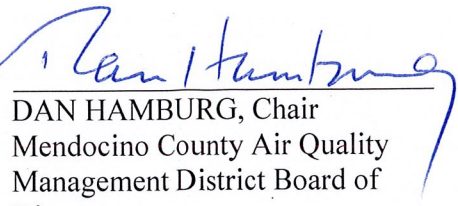
22           Dated: 2/5, 2018

**COTA, COLE & HUBER LLP, as to form**

23  
24           By: \_\_\_\_\_  
25               DEREK P. COLE  
26               Attorneys for Respondents  
27               Mendocino County Air Quality Management  
28               District and Robert A. Scaglione

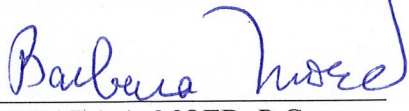
1 Dated: 2/23, 2018

**MENDOCINO COUNTY AIR QUALITY  
MANAGEMENT DISTRICT**

2  
3 By:   
4 DAN HAMBURG, Chair  
5 Mendocino County Air Quality  
6 Management District Board of  
7 Directors


8 Dated: 2/8, 2018

**AIR POLLUTION CONTROL OFFICER**

9 By:   
10 BARBARA A. MOED, P.G.

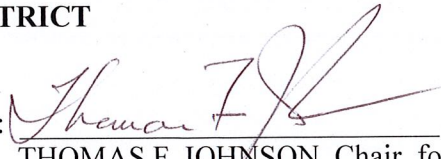
11 Dated: 2/8, 2018

**RAPPORT & MARSTON, as to form**

12 By:   
13 DAVID RAPPORT  
14 Attorneys for Respondent  
15 Hearing Board of the Mendocino County Air  
16 Quality Management District


17 Dated: 2/8, 2018

**HEARING BOARD OF THE MENDOCINO  
COUNTY AIR QUALITY MANAGEMENT  
DISTRICT**

18 By:   
19 THOMAS F. JOHNSON, Chair, for  
20 the Hearing Board of the  
21 Mendocino County Air Quality  
22 Management District

23 Dated: 2/8, 2018

**OFFICE OF THE COUNTY COUNSEL  
COUNTY OF MENDOCINO, as to form**

24 By:   
25 KATHARINE L. ELLIOTT  
26 Counsel for the Mendocino County  
27 Board of Supervisors and  
28

Mendocino County

Dated: 2/23, 2018

**MENDOCINO COUNTY BOARD OF SUPERVISORS**

By: [Signature]  
DAN HAMBURG, Chair  
Mendocino County Board of Supervisors

Dated: 2/13, 2018

**HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON LLP, as to form**

By: [Signature]  
ADAM GUERNSEY  
Attorneys for Real Party in Interest  
Grist Creek Aggregates, LLC, Brian Hurt, and  
Mercer-Fraser Company

Dated: \_\_\_\_\_, 2018

**BRIAN HURT**

By: \_\_\_\_\_  
BRIAN HURT

Dated: \_\_\_\_\_, 2018

**GRIST CREEK AGGREGATES, LLC**

By: \_\_\_\_\_  
BRIAN HURT

Dated: \_\_\_\_\_, 2018

**MERCER-FRASER COMPANY**

By: \_\_\_\_\_  
JUSTIN ZABEL

I hereby certify that according to  
the provisions of Government Code  
sections 25103, delivery of this  
document has been made.

**ATTEST:**

Carmel J. Angelo, Clerk of the Board  
Mendocino County Board of Supervisors

[Signature]  
Deputy

CARMEL J ANGELO  
Clerk of the Board

By: [Signature]  
Deputy

STIPULATION OF SETTLEMENT

Mendocino County

Dated: \_\_\_\_\_, 2018

**MENDOCINO COUNTY BOARD OF  
SUPERVISORS**

By: \_\_\_\_\_  
DAN HAMBURG, Chair  
Mendocino County Board of  
Supervisors

Dated: \_\_\_\_\_, 2017

**HARRISON, TEMBLADOR, HUNGERFORD  
& JOHNSON LLP, as to form**

By: \_\_\_\_\_  
ADAM GUERNSEY  
Attorneys for Real Party in Interest  
Grist Creek Aggregates, LLC, Brian Hurt, and  
Mercer-Fraser Company


Dated: \_\_\_\_\_, 2018

**BRIAN HURT**

By:  \_\_\_\_\_  
BRIAN HURT

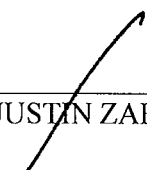
Dated: \_\_\_\_\_, 2018

**GRIST CREEK AGGREGATES, LLC**

By:  \_\_\_\_\_  
BRIAN HURT

Dated: \_\_\_\_\_, 2018

**MERCER-FRASER COMPANY**

By:  \_\_\_\_\_  
JUSTIN ZABEL

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Mendocino County

Dated: \_\_\_\_\_, 2018

**MENDOCINO COUNTY BOARD OF SUPERVISORS**

By: \_\_\_\_\_  
DAN HAMBURG, Chair  
Mendocino County Board of Supervisors

Dated: \_\_\_\_\_, 2017

**HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON LLP, as to form**

By: \_\_\_\_\_  
ADAM GUERNSEY  
Attorneys for Real Party in Interest  
Grist Creek Aggregates, LLC, Brian Hurt, and Mercer-Fraser Company

Dated: \_\_\_\_\_, 2018

**BRIAN HURT**

By: \_\_\_\_\_  
BRIAN HURT

Dated: \_\_\_\_\_, 2018

**GRIST CREEK AGGREGATES, LLC**

By: \_\_\_\_\_  
BRIAN HURT

Dated: 02/03, 2018

**MERCER-FRASER COMPANY**

By: \_\_\_\_\_  
JUSTIN ZABEL