



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

3015 H Street • Eureka CA 95501  
Phone: (707) 445-7541 • Fax: (707) 268-3792  
<http://www.humboldt.gov/156>

## **ZONING CLEARANCE CERTIFICATE EVALUATION**

**Project:** Pursuant to the Humboldt County Commercial Medical Marijuana Land Use Ordinance (CMMLUO), Section 314-55.4.1 et seq., a Zoning Clearance Certificate, for 10,000 square feet of new mixed light cultivation, with no improved floors. The water source is a pre-1972 unpermitted well. The cultivation activities include three mixed light cycles, using approximately 52,445 gallons a year. Cultivation will be irrigated using poly-drip lines and accessing water directly from the well. The applicant intends to process onsite, cannabis will be dried and machine trimmed in an existing barn and garage. The applicant will file a Notice of Intent with the North Coast Water Quality Control Board under Tier 2 prior to initiation of cannabis cultivation activities. The applicant will have no employees, as it will be run by the family. A Cultural Resources Investigation was conducted by Alex DeGeorgey from Alta Archeological Consulting on April 26, 2017. The report concludes that no significant archaeological or historic period cultural resources, that for the purposes of CEQA would be considered an historical resource, exist in the subject parcel proposed for cannabis cultivation. However, Alta Archeological Consulting incorporated recommendations in Exhibit B for inadvertent discovery in the event that undocumented resources are identified during the conduct of the project.

**Project Location:** The project is located in Humboldt County, in the Fortuna area, on the east and west sides of Pampas Lane, approximately 1.05 miles north from the intersection of Rohnerville Road and South Loop Road on the property known as 109 Pampas Lane, Fortuna.

**Present Plan Designations:** Agricultural Suburban (AS), Fortuna Area Community Plan (FACP).

**Present Zoning:** Agriculture General with Building Site Combining Zone (AG-B-5(5) )

**Application Number:** 11428

**Case Number:** ZCC16-135

**Assessor Parcel Number(s):** 202-171-017.

**Applicant**

Pacific Cannabis Growers Inc./  
California Cannabis Growers, Inc.  
Josh Clark  
42112 Roanake Street  
Temecula, CA. 92591

**Owner**

Terrence and Cindy Zercher  
109 Pampas Lane  
Fortuna, CA. 95540

Pursuant to Humboldt County Code Section 312-1.1 and 312-2.4, a Zoning Clearance Certificate shall be approved and issued by the Planning Director if, based on the submitted information provided by the applicant, it is found that:

1. The proposed development conforms with all requirements of the Humboldt County Zoning Regulations; and
2. The proposed development complies with the terms and conditions of any applicable

permit and/or subdivision map that was previously approved for such development; and

3. The proposed development is not located on the same lot where conditions or activities are being conducted which are a part of the proposed development and in violation of the Humboldt County Code, unless the zoning clearance is necessary for the abatement of the existing violation.

### **Staff Analysis**

An application has been submitted to the Planning Division for a Zoning Clearance Certificate for 10,000 square feet of new mixed light cannabis cultivation. This commercial cannabis activity is authorized by Section 314-55.4.8.2 of the CMMLUO. The application meets the zoning requirements, meets the requirements related to cultivation area size, meets required setbacks from property lines and listed incompatible uses (e.g., schools, school bus stops, churches or other places of religious worship, public parks, or Tribal Cultural Resources ), and is accompanied by the required documentation, plans, descriptions, and agency clearances set forth in the CMMLUO.

A Cultural Resource Investigation was conducted by Alex DeGeorge, from Alta Archaeological Consulting and concluded that the project as presently designed is not expected to have an adverse effect on cultural resources.

**The parcel was legally created through Parcel Map 2865 recorded in Book 26 of Parcel Maps at page 26 of the Humboldt County Records and the activity is consistent with the terms of said map. No zoning violations currently exist on the property.**

### **Determination**

It is the determination of the Planning Division that:

- A Zoning Clearance Certificate is issued. The terms and responsibilities set forth in Exhibit A shall be satisfied by the Permittee.
- A Provisional Zoning Clearance Certificate is issued subject. The unmet performance standards in Exhibit B must be completed and a Compliance Agreement executed by the Permittee. Demonstrated progress towards completing these unmet standards will be reviewed at the end of the one year term of this clearance. The terms and responsibilities set forth in Exhibit A shall also be satisfied by the Permittee.
- The Zoning Clearance Certificate is denied. The reasons for this denial are set forth in the analysis above.

Issued By:  \_\_\_\_\_  
John H. Ford  
Director, Planning and Building Department

Date: 5/15/2017

## EXHIBIT A

### **Zoning Clearance Certificate Permittee Terms and Requirements**

#### **PERMITTEE SHALL ADHERE TO THE FOLLOWING TERMS AND REQUIREMENTS FOR THE TERM OF THE ZONING CLEARANCE CERTIFICATE:**

##### **Zoning Clearance Certificate is specific to the project as described**

The zoning clearance certificate is specific to the project as represented in the accompanying application and all documents, plans, descriptions, and agency clearances attendant thereto. Except for a provisional zoning clearance certificate subject to an executed Compliance Agreement, initiation of the use is not to commence until all County permits have been secured and the improvements described herein are completed to the satisfaction of the responsible department.

##### **Performance Standards for Cannabis Cultivation Operations**

Cannabis cultivation and other commercial cannabis activity shall be conducted in compliance with all laws and regulations as set forth in the CMMLUO and MMRSA, as applicable to the permit type.

If operating pursuant to a written approved compliance agreement, permittee shall abate or cure violations at the earliest feasible date, but in no event no more than two (2) years of date of issuance of a provisional clearance or permit. Permittee shall provide plans for curing such violations to the Planning & Building Department within one (1) year of issuance of the provisional clearance or permit.

Possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MMRSA, and regulations promulgated thereunder, as soon as such licenses become available.

Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, at a minimum to include a statement of diversion of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101, or other applicable permit, license, or registration, as applicable.

Confinement of the area of cannabis cultivation, processing, manufacture or distribution to the location depicted on the approved site plan. The commercial cannabis activity shall be set back at least 30 feet from any property line, and 600 feet from any School, School Bus Stop, Church or other Place of Religious Worship, Public Park, or Tribal Cultural Resources, except where a reduction to this setback has been approved pursuant to Section 55.4.11(d).

Maintain enrollment in Tier 1, 2 or 3, certification with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the County of Humboldt or other responsible agency.

For cultivation area(s) for which no enrollment pursuant to NCRWQB Order No. 2015-0023 is required by that Order, comply with the standard conditions applicable to all Tier 1 dischargers.

Comply with the terms of any applicable Streambed Alteration Permit obtained from the Department of Fish & Wildlife.

Comply with the terms of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection (CAL-FIRE), if applicable.

Consent to an annual on-site compliance inspection, with at least 24 hours prior notice, to be conducted by appropriate County officials during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays).

Refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide.

Pay all applicable application and annual inspection fees.

Where surface water diversion provides any part of the water supply for irrigation of cannabis cultivation, permittee shall either: 1) forebear from any such diversion during the period from May 15<sup>th</sup> to October 31<sup>st</sup> of each year and establish on-site water storage for retention of wet season flows sufficient to provide adequate irrigation water for the size of the area to be cultivated, or 2) comply with the approved water management plan prepared by a qualified person such as a licensed engineer, hydrologist, or similar qualified professional, that establishes minimum water storage and forbearance period, if required, based upon local site conditions, or 3) adhere to the RWQCB approved Water Resources Protection Plan or other clearance issued by the agency. If the method of compliance changes during the term of the Zoning Clearance Certificate, permittee shall notify the Planning and Building Department and furnish appropriate documentation of compliance with this standard.

Water is to be sourced locally (on-site) and trucked water shall not be allowed, except for emergencies. For purposes of this provision, "emergency" is defined as: "a sudden, unexpected occurrence demanding immediate action." Permittee shall maintain a record of date(s), nature of the emergency, and the amount of trucked water delivered to demonstrate compliance with this standard.

The noise produced by a generator used for cannabis cultivation shall not be audible by humans from neighboring residences. The decibel level for generators measured at the property line shall be no more than 60 decibels. Where applicable, sound levels must also show that they will not result in the harassment of the Marbled Murrelet or Spotted Owl species. Conformance will be evaluated using current auditory disturbance guidance prepared by the United State Fish and Wildlife Service, and further consultation where necessary.

Storage of Fuel. Fuel shall be stored handled in compliance with applicable state and local laws and regulations, and in such a way that no spillage occurs.

Participation in the Medical Cannabis Track and Trace Program administered by the Humboldt County Agricultural Commissioner, when available.

Pay all applicable taxes as required by the Humboldt County Commercial Marijuana Cultivation Tax Ordinance (Humboldt County Code Section 719-1 et seq.).

## **Performance Standards for Cultivation and Processing Operations**

Pursuant to the MMRSA, Health and Safety Code section 19322(a)(9), an applicant seeking a cultivation license shall "provide a statement declaring the applicant is an 'agricultural employer,' as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law."

Cultivators shall comply with all applicable federal, state, and local laws and regulations governing California Agricultural Employers, which may include: federal and state wage and hour laws, CAL/OSHA, OSHA, California Agricultural Labor Relations Act, and the Humboldt County Code (including the Building Code).

Cultivators engaged in processing shall comply with the following Processing Practices:

- I. Processing operations must be maintained in a clean and sanitary condition including all work surfaces and equipment.
- II. Processing operations must implement protocols which prevent processing contamination and mold and mildew growth on cannabis.
- III. Employees handling cannabis in processing operations must have access to facemasks and gloves in good operable condition as applicable to their job function.
- IV. Employees must wash hands sufficiently when handling cannabis or use gloves.

All persons hiring employees to engage in commercial cannabis cultivation and processing shall comply with the following Employee Safety Practices:

- i. Cultivation operations and processing operations must implement safety protocols and provide all employees with adequate safety training relevant to their specific job functions, which may include:
  - 1) Emergency action response planning as necessary;
  - 2) Employee accident reporting and investigation policies;
  - 3) Fire prevention;
  - 4) Hazard communication policies, including maintenance of material safety data sheets (MSDS);
  - 5) Materials handling policies;
  - 6) Job hazard analyses; and
  - 7) Personal protective equipment policies, including respiratory protection.
- ii. Cultivation operations and processing operations must visibly post and maintain an emergency contact list which includes at a minimum:
  - 8) Operation manager contacts;
  - 9) Emergency responder contacts;
  - 10) Poison control contacts.
- iii. At all times, employees shall have access to safe drinking water and toilets and handwashing facilities that comply with applicable federal, state, and local laws and regulations. Plumbing facilities and water source must be capable of handling increased usage without adverse consequences to neighboring properties or the environment.
- iv. On site-housing provided to employees shall comply with all applicable federal, state, and local laws and regulations.

All cultivators shall comply with the approved Processing Plan as to the following:

- i. Processing Practices.
- ii. Location where processing will occur.
- iii. Number of employees, if any.

- iv. Employee Safety Practices.
- v. Toilet and handwashing facilities.
- vi. Plumbing and/or septic system and whether or not the system is capable of handling increased usage.
- vii. Drinking water for employees.
- viii. Plan to minimize impact from increased road use resulting from processing.
- ix. On-site housing, if any.

#### **Performance Standards for Mixed-Light Cultivation**

Those cultivators using artificial lighting for mixed-light cultivation shall shield greenhouses so that little to no light escapes. Light shall not escape at a level that is visible from neighboring properties between sunset and sunrise.

The light source should comply with the International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG). Should the Humboldt County Planning Division receive complaints that the lighting is out of alignment or not complying with these standards, within ten (10) working days of receiving written notification that a complaint has been filed, the applicant shall submit written verification that the lights' shielding and alignment has been repaired, inspected and corrected as necessary.

#### **Performance Standards for Indoor Cultivation**

Comply with the with the energy requirements in section 55.4.8.2.3 which provides that electrical power for indoor cultivation operations including but not limited to illumination, heating, cooling, and ventilation, shall be provided by on-grid power with 100% renewable source, on-site zero net energy renewable source, or with purchase of carbon offsets of any portion of power not from renewable sources. Permittee shall maintain records sufficient to demonstrate compliance with this standard.

#### **Term of Commercial Cannabis Activity Zoning Clearance Certificate**

Any Commercial Cannabis Cultivation Zoning Clearance Certificate issued pursuant to this section shall expire after one (1) year after date of issuance, and on the anniversary date of such issuance each year thereafter, unless an annual compliance inspection has been conducted and the permitted site has been found to comply with all conditions of approval.

If the inspector or other County official determines that the site does not comply with the conditions of approval, the inspector shall serve the clearance certificate or permit holder with a written statement identifying the items not in compliance, and the action that the permit holder may take to cure the non-compliance, or file an appeal within ten (10) days of the date that the written statement is delivered to the permit holder. Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The permit holder may request a reinspection to determine whether or not the permit holder has cured all issues of non-compliance. Failure to request reinspection or to cure any items of non-compliance shall terminate the Zoning Clearance Certificate, Special Permit, or Use Permit, immediately upon the expiration of any appeal period, or final determination of the appeal if an appeal has been timely filed pursuant to section 55.4.13.

### **Acknowledgements to Remain in Full Force and Effect**

Permittee Acknowledges that the County reserves the right to reduce the size of the area allowed for cultivation under any clearance or permit issued in accordance with this Section in the event that environmental conditions, such as a sustained drought or low flows in the watershed in which the cultivation area is located will not support diversions for irrigation.

### **CMMLUO Zoning Clearances and Use Permits Are Non-Transferable**

Zoning Clearance Certificates and Use Permits for medical marijuana activities (cultivation, processing, distribution or manufacturing) under the Humboldt County Commercial Medical Marijuana Land Use Ordinance are non-transferable. The clearances or permits have a one-year term. The number of clearances or permits that one person (or related business entity) may hold is limited to four. There are a number of declarations and commitments imposed as conditions of application and approval that personal in nature. The rights and privileges to conduct medical marijuana activities on a specific parcel do not attach to title to the property and are not conveyed with the lease or sale of the property. Accordingly, Zoning Clearance Certificates or Use Permits may not be sold, assigned, leased or otherwise conveyed or transferred by the person or entity holding the Zoning Clearance Certificate or Use Permit to any third party not named on the application without a modification of the clearance or permit as described below.

Before anyone other than the applicant may engage in medical marijuana activities under the terms of a Zoning Clearance Certificate or Use Permit, they must submit an application to the Planning Director on the Cannabis Application/Permit Transfer Request Form available from the Planning and Building Department. The request shall be accompanied by such documentation as determined necessary by the Planning Director to show conformance with the requirements for a clearance or permit under the CMMLUO. A fee deposit shall be collected for this Transfer Request review process.

Examples of circumstances necessitating Director Review to approve a transfer include:

- The clearance or permit is obtained by the property owner, and the owner seeks to lease the marijuana cultivation area or other facility to a third party to operate.
- The clearance or permit is obtained by the property owner, and the owner sells the property. The new owner must apply for a permit modification before operating the marijuana facility.

## EXHIBIT B

Per Alex DeGeorgey from Alta Archeological Consulting the project as presently designed is not expected to have an adverse effect on cultural resources. However, the following recommendations shall apply:

### **Unanticipated Discovery of Cultural Resources**

If previously unidentified cultural resources are encountered during project implementation, avoid altering the materials and their stratigraphic context. A qualified professional archaeologist should be contacted to evaluate the situation. Project personnel should not collect cultural resources. Prehistoric resources include, but are not limited to, chert or obsidian flakes, projectile points, mortars, pestles, and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or abode foundations or walls; structures and remains with square nails; and refuse deposits or bottle dumps, often located in old wells or privies.

### **Encountering Native American Remains**

Although unlikely, if human remains are encountered, all work must stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist must be notified immediately so that an evaluation can be performed. If the remains are deemed to be Native American and prehistoric, the Native American Heritage Commission must be contacted by the Coroner so that a "Most Likely Descendant" can be designated and further recommendations regarding treatment of the remains is provided.