

SUPPLEMENTAL INFORMATION #1

For Planning Commission Agenda of:
June 11, 2019

[X] Consent Agenda Item

Item No.: H-1

Re: **Pacific Cannabis Growers Inc**

Case Numbers: ZCC-16-135/ZCC-16-136

Assessor Parcel Number(s) 202-171-017

Record Numbers: 11428, 13884

Attached for the Planning Commission's record and review are the following supplementary information items:

1. July 10, 2019 letter and packet from applicant's attorney in response to staff report.

Dustin E. Owens, Esq.
Laurence S. Ross, Esq.
Stefanie C. Cox, Paralegal
Katelynn Merritt, Legal Secretary



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July 10, 2019

Humboldt County Planning Commission
~~825 5th Street~~ 3015 H Street
Eureka, CA 95501

**RE: Cannabis Zoning Clearance Certificates 11428 and 13884 on APN 202-171-017
Public Hearing, July 11, 2019 6:00 p.m.
ZCC Holder: Pacific Cannabis Growers, Inc., Attn: Josh Clark**

Dear Commissioners:

I am an attorney in Eureka, California. I represent Pacific Cannabis Growers, Inc. with regard to the above-referenced public hearing. Please consider this written statement in making your determination.

General Background

Pacific Cannabis Growers, Inc. is owned by Josh Clark and his family. The company is owned by Josh Clark and his wife. It operates slightly less than 30,000 square feet of mixed light cannabis cultivation at APN: 202-171-017, which is approximately 5 acres of agricultural property located at 109 Pampas Lane, Fortuna, California ("Subject Property"). It operates this cultivation in accordance with two Zoning Clearance Certificates, Application Number 11428 and 13884. These certificates were submitted on November 10, 2016 and became effective on May 15, 2017, under Ordinance 1.0. The property is owned by Mr. Clark's parents, Terrance and Cindy Zercher. Pacific Cannabis Growers is a family operation that Mr. Clark and his family have dumped their life savings into. They have invested over \$1,250,000.00 into acquiring this property, obtaining permits to lawfully cultivate cannabis, and improving the property. There is currently a growing crop on the property, that is likely valued at \$1,000,000.00. It would financially destroy this family to terminate their zoning clearance certificates.

Complaint History

This project has a lengthy history of complaints made by the property's vexatious neighbors who, simply put, do not want cannabis cultivation to occur near them and will do whatever it takes to try to stop it.

False CC&Rs. Initially, in April of 2017, these neighbors hired an attorney and fabricated a claim that this use of the Subject Property was prohibited by recorded Covenants, Conditions, and Restrictions. Under this guise, they held a series of Homeowner's Association meetings. Mr. Clark attended these meetings and offered every accommodation possible; however, these neighbors refused to

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consent to his use. These neighbors even attempted to circulate for signature and recording some amended CC&Rs to prohibit this use. Ultimately, Pacific Cannabis Growers and its legal counsel were able to confirm that Mr. Clark's property was not subject to the original CC&Rs, because they were never signed by the person who owned the portion of the Subject Property where the cultivation would take place.

False Complaints And Other Vexatious Actions. After these vexatious neighbors determined that they could not prevail on their fabricated CC&R claim, they engaged in a series of other tactics to try to interfere with Pacific Cannabis Growers' lawful use of its properties. Primarily, this has involved repeatedly filing false complaints with the planning department. This occurred throughout 2017 and 2018. The false complaints has included the following:

- False complaints about noxious odor, even though Pacific Cannabis Growers has working carbon filters installed in advance of the deadline to do so. Notably, the County has checked the site for odor and determined that they did not smell cannabis off the property.
- False complaints about "vicious attack dogs," which were in fact two 5 month old Great Pyrenees puppies.
- False complaints that Pacific Cannabis Growers was using more than its permitted cultivation canopy. The County inspected and found no violation.
- False complaints of excessive traffic, when Pacific Cannabis Growers had deliveries of building supplies over its deeded easement.
- False complaints that people were walking around the Subject Property with guns, which were, in fact, screw guns / nail guns.

The vexatious actions have gone so far that, in October of 2017, these neighbors trespassed upon the subject property. They drove their trucks onto it, climbed into the truck beds so they could see over the fence, and took pictures of a private area of the Subject Property. They then refused to leave when asked to do so.

In 2018, this group informed the County that they would continue to make complaints even if there was nothing to complain about.

The Current Series of Complaints

The current issue involves a series of complaints about light allegedly escaping from the greenhouses at the subject property. The series of complaints can best be described as follows:

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- **October 24, 2018.** A neighbor complained about lights being on “all night long” in one of the greenhouses at the Subject Property. On October 30, 2018, the County send a notice of the complaint to Pacific Cannabis Growers, requiring a repair by November 14, 2018. Prior to the two week deadline, the same neighbor made an additional complaint that there was overnight lighting in 4 of the greenhouses. **Although this complaint was completely false,** Pacific Cannabis Growers timely responded to this complaint and indicated that it would employed internal blackout measures so that they could not be accidentally removed by wind or other natural phenomenon. **Notably, this complaint was never verified by the County and it is disputed.** The complaining neighbor stated that the light was coming from four separate greenhouses, when only one greenhouse had any lighting whatsoever attached to it. In any event, on December 7, 2018, Pacific Cannabis Growers invited the County to again inspect the property. On January 10, 2019, the County did inspect the property, verified that there was no light pollution, and that an internal tarp system was installed.
- **March 29, 2019.** The same neighbor, neighbor 1 again complained about light pollution and provided pictures to the County. The pictures, quite obviously, show that the **light is being shined on the greenhouses from an external source.** This is believed to be from motion-sensor activated security lights (which do have appropriate, county approved shielding) or, perhaps, a flashlight shined by the complaining neighbor. On April 23, 2019, the County reached out to Pacific Cannabis Growers, who responded the same day.
- **June 2019 Complaints.** On June 12, 2019 and June 22, 2019, the same neighbor again complained about light pollution and provided photos which appear to show light emanating from two greenhouses. Notably, these photos are neither date-stamped, time-stamped, nor GPS tagged. **In any event, the County finally informed Pacific Cannabis Growers of these complaints on June 26, 2019, the same date that it set the subject hearing and first provided Pacific Cannabis Growers a notice to correct the violations. Mr. Clark responded the same day and proposed additional measures that could be taken to help alleviate the alleged problem.** On the same date, the County sent Pacific Cannabis Growers a notice that they would have until July 8, 2019 to bring the property into compliance. Pacific Cannabis Growers worked diligently and met this deadline.

As noted in the Staff Report, the County “has not been able to independently verify the light pollution because it does not appear to occur on a frequent basis.” The source of the lighting is not entirely clear and may be “external to the greenhouses and shining through.”

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Pacific Cannabis Growers and Joshua Clark's Responses

As noted in the staff report, Pacific Cannabis Growers and Joshua Clark are utterly responsible. Every time that the County has notified them of any issues concerning the cultivation operation, they have timely responded and followed up. A detailed review of the staff report shows that, in fact, Pacific Cannabis Growers and Joshua Clark have constantly offered to go above and beyond what was required by the County in order to accommodate his neighbors. Pacific Cannabis Growers and Mr. Clark will continue to do that, despite their vexatious actions. In fact, Mr. Clark has ordered commercial light deprivation kits to ensure that there are no light leaks in the future. Again, he will continue to go above and beyond to limit the impact on his vexatious neighbors.

Legal Analysis

Applicable County Code Sections

The statutory law applicable to this hearing can be boiled down to three Humboldt County Code provisions.

The first code provision is HCC 314-55.4.11(v) [from Ordinance No. 2559], which provides in full as follows:

“v) 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 second code provision is HCC 314-55.4.11(w) [from Ordinance No. 2559], which provides in full as follows (emphasis added):

“w) 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.**”

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The third code provision is HCC 312-2.5, which provides in full as follows:

A Zoning Clearance certificate shall expire at the end of the 180th calendar day after issuance, unless otherwise indicated on the clearance, or when the proposed development no longer conforms with the County Zoning Regulations. However, if the proposed development has commenced, as authorized by any required County permits, the certificate shall not expire as long as the required building permit does not expire, as specified in the Uniform Building Code (currently Section 106.4.4).

Application to The Case At Hand

Lack of Authority to Terminate. Insofar as these ordinances are applied to the case at hand, they lead us to a clear answer. The Planning commission *has absolutely no authority to* terminate Pacific Cannabis Growers' Zoning Clearance Certificates. There are no Humboldt County Code sections that give the planning commission any sort of discretion or ability to terminate Zoning Clearance Certificates. There is no evidence that the site no longer conforms with the County Zoning Regulations and, in fact, all of the direct evidence is that it does in fact conform to those regulations. These are ministerial permits. They are not discretionary. The County has a ministerial duty to keep my client's permits in place, because it is in compliance.

The Compliance Period. The Humboldt County Code directly provides that there is a 10 working day time period for compliance in the event that the County receives any complaints about violations, *following receipt of written notification that a complaint has been made.* With regard to the case at hand, the County *improperly* provided a notice of termination and set a public hearing at the same time that it gave Pacific Cannabis Growers a written notification that a complaint was made. It is absolutely improper to even schedule this hearing, without first providing Pacific Cannabis Growers a 10 day time period to bring the property into compliance.

The Reference to Multiple Complaints is Misleading, Because Notifications Under HCC 314-55.4.11(w) Were Only Actually Given Twice, And On One Of Those Occasions Was Completely Unfounded and Unsupported. Initially, it is understood that the Code Enforcement staff is in a difficult position. They are receiving numerous unfounded complaints from Pacific Cannabis Growers' vexatious neighbors. The Humboldt County Code itself provides no provisions for the procedure for terminating a zoning clearance certificate and, furthermore, provides no limitation on the numbers of opportunities to cure a violation of performance standards under HCC 314-55.4.11(w). However, **it needs to be made abundantly clear that Pacific Cannabis Growers was only ever provided two written notices of violations of the lighting performance standards, that one of those was**

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completely unfounded in the first place, and that they were given no opportunity to cure before this public hearing was scheduled when the second notice was sent. With regard to the first notice, the county inspected and found no violation. With regard to the second notice, it was timely cured. In reality, this hearing was scheduled at the same time that the County gave Pacific Cannabis Growers written notice and an opportunity to cure.

The Planning Commission Must Make Its Policy Decisions Through The Legislative Process, Via Regulations Adopted by the Board of Supervisors, Not Through A Public Hearing To Perform An Action Which Is Not Authorized by the Code. The zoning regulations that are applicable to the case at hand are exactly what they are. There is no provision in those ordinances that give the Planning Commission any discretion to terminate Pacific Cannabis Growers' Zoning Clearance Certificates after they have timely cured the alleged violation of the lighting performance standards. There is no provision in the applicable ordinances that provides a limit on the number of opportunities to cure. If the Planning Commission needs to make a policy decision to the contrary (as suggested by staff) it must follow the legislative process. That is, the Board of Supervisors must adopt a resolution amending the applicable zoning ordinances.

In Any Event, An Expiration Of Pacific Cannabis Growers' Zoning Clearance Certificates Is Not Warranted In This Case. This case, at its core, deals with a number of vexatious neighbors who do not want Pacific Cannabis Growers' lawfully cultivating cannabis in their neighborhood. They will do, or say, whatever they can to put a stop to it. They have made numerous false complaints and have gone so far as to pretend like this use was prohibited by CC&Rs, which did not even effect Pacific Cannabis Growers' property. We are here today to deal with one specific alleged violation. That is, an alleged violation of the mixed-light performance standards that allegedly occurred in June of 2019. There was a previous notice of violation alleged in October of 2018, 8 months prior; however, it was never verified by anyone. With regard to the current alleged violation, this public hearing was set without first giving Pacific Cannabis Growers' any *notice* and opportunity to cure as required by HCC 314-55.4.11(w). A notice and opportunity to cure was only given concurrently with the scheduling of this hearing. That cure was timely completed. The property, and Pacific Cannabis Growers' use of the property, conforms to applicable zoning regulations and therefore the Zoning Clearance Certificates have not expired (HCC 312-2.5).

Beyond that, Pacific Cannabis Growers', is a model citizen. Although no violation actually occurred in October of 2018, Pacific Cannabis Growers promptly responded to the County and employed additional measures to help ensure that no light would escape from its greenhouses. Again, in response to the alleged violations in June of 2019, Pacific Cannabis Growers promptly responded to the County and employed additional measures to ensure that no light would escape from its greenhouses. Pacific Cannabis Growers has always offered inspections to the County, done what it promised to do,

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and has done everything in a timely fashion. Pacific Cannabis Growers has, at all times offered, and still offers, to take additional measures beyond those required by the zoning regulations to reduce the impacts upon its neighbors.

Pacific Cannabis Growers is a family operation that Mr. Clark and his family have dumped their life savings into. Mr. Clark is a family man, with a wife and children. This family has invested over \$1,250,000.00 into acquiring this property, obtaining permits to lawfully cultivate cannabis, and improving the property. There is currently a growing crop on the property, that is likely valued at \$1,000,000.00. It would financially destroy this family to terminate their zoning clearance certificates and would be completely and utterly unjust. In fact, it would be an unlawful taking. This is particularly true when Pacific Cannabis Growers has, every time a complaint has been presented (be they truthful or false) offered to do whatever is necessary to remedy its neighbors' concerns.

Sincerely,

Dustin E. Owens

DEO
Enclosures
Cc: client

The Law Offices of
Thomas M. Herman

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FORTUNA, CALIFORNIA 95540
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April 6, 2017

David and Carol Owren
99 Pampas Lane
Fortuna, California 95540
APN: 202-171-008

Clark and Janine Ross
60 Pampas Lane
Fortuna, California 95540
APN: 202-171-012

Greg and Sandra Dale
100 Pampas Lane
Fortuna, California 95540
APN: 202-171-014

Donald and Linda Mueller
1201 E. Camino De Los Padres
Tucson, Arizona 85718
APN: 202-171-015

Terrence and Cindy Zercher
16690 Mount Hoffman Circle
Fountain Valley, California 92708
APN: 202-171-017

Re: Notice of Meeting of the Pampas Lane Homeowner's Association

Dear Landowners:

I am an attorney representing the Pampas Lane Homeowner's Association ("Association"), an unincorporated association created by that certain Declaration of Road and Utility Easements; Road and Utility Covenants, Conditions and Restrictions; Road Maintenance Association Bylaws; and Land Use Covenants, Conditions and Restrictions ("Pampas Lane CC&Rs") executed on June 27, 1988, and recorded on July 14, 1988, in Volume 1879, Page 1186, of the Official Records of Humboldt County, California. The Pampas Lane CC&Rs are binding on all your parcels of real property located on Pampas Lane.

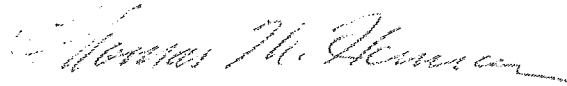
You are hereby notified that, pursuant to section 5.03 of the Pampas Lane CC&Rs, the Association will hold a special meeting on April 26, 2017, at 8:00 PM, at Greg and Sandra Dale's residence located at 100 Pampas Lane, Fortuna, California 95540. The meeting has been called by owners and members Greg and Sandra Dale.

An agenda for the meeting and a copy of the Pampas Lane CC&Rs are enclosed. Your attendance at the meeting is important as a quorum consists of and actions may be taken by a majority of the five members. As reflected on the enclosed agenda, amendment of the

Pampas Lane CC&Rs will be discussed and considered. Any amendment to the Pampas Lane CC&Rs will affect your property rights. Your participation and input are critical.

If you have any questions regarding the meeting or need directions to the meeting site, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas M. Herman".

Thomas M. Herman

TMH:th
enclosures as stated

**AGENDA
FOR
SPECIAL MEETING OF THE PAMPAS LANE HOMEOWNER'S ASSOCIATION**

Date: April 26, 2017
Time: 8:00 PM
Place: 100 Pampas Lane, Fortuna, California 95540

1. Introductions
2. Election of Officers
3. Discussion of Application for Cannabis Cultivation and Processing at 109 Pampas Lane by Pacific Cannabis Growers, Inc. and California Cannabis Growers, Inc.
4. Review of Pampas Lane CC&Rs
5. Discussion and Consideration of Amendment to Pampas Lane CC&Rs (Motions to amend the existing CC&Rs will be accepted and amendments may be adopted at the meeting by a majority vote of the members.)
6. Discussion and Consideration of Association Assessments
7. Other Business Initiated by the Members



Dustin Owens <dustin.owens@gmail.com>

Pampas Lane Association

Dustin Owens <dustin.owens@gmail.com>

Sat, Jun 3, 2017 at 3:33 PM

To: Thomas Herman <tmh@thomasmherman.com>

Bcc: Joshua Clark <jcog323@yahoo.com>

Dear Tom:

This e-mail is in response to the letter from the purported "Pampas Lane Association" dated May 17, 2017. In short, the fence will not be removed and the lawfully permitted agricultural operations will be moving forward.

Although we completely disagree with your analysis regarding the applicability or enforce-ability of any portion of the CC&Rs against any portion of my client's property, I don't need to go through that analysis in detail in this e-mail. I will mention, briefly, that it is clear that there was never anyone to submit plans to prior to construction of the fence. The purpose of the "special meeting" was to appoint such persons, quite obviously for the first time by the very terms of the notice. We will not cede to your clients attempts to retroactively appoint persons (when there was no committee to even review plans before) and have my client remove improvements, or not undertake lawfully permitted operations, that were already invested in significantly.

In any event, my client stands on very solid ground. The portion of the property upon which his fence lies and upon which his lawfully permitted agricultural operation will be conducted is not subject to the CC&Rs as a *matter of law*. This has been confirmed by my title expert. The original CC&Rs define the property subject to them, in relevant part as "... Tract C owned by Lawrence A. Sierk and Marjorie H. Sierk." However, the Sierks did not sign the declaration. Feel free to review the documents yourself. As a result of the Sierks failure to sign the declarations, the portion of the land described as Tract C is not subject to the CC&Rs. This is a basic principal of law. Furthermore, the County records do not have the CC&Rs indexed in the Sierks' names (it is their strict rule not to index documents, excepting court orders, with parties' names who did not sign them). As a result, there would be no constructive notice that Tract C is subject to any CC&Rs, even if they were otherwise applicable. Without constructive notice, my client would not be subject to the CC&Rs for that portion of his property even if they were otherwise enforceable (which they are not). Tract C includes all of the portion of my client's property upon which the fencing lies and upon which his lawfully permitted agricultural operations will take place. Tract C also includes other parcels, which would affect the voting rights under the purported Pampas Lane CC&Rs. I have enclosed a color coded map for your review.

I trust that this puts this issue to bed. The evidence and application of the law is clear and indisputable. In fact, it is subject to judicial notice. Any further attempts by your clients to interfere with my clients' lawful rights, use of their property, and/or agricultural operations will not be tolerated.

Furthermore, I sincerely hope that your clients did not record the purported First Amended Declaration that you sent in your last e-mail to me. Tract C as described on that purported amended declaration includes a portion of my client's lands which are not subject to the CC&Rs for the reasons previously indicated. If that documents has been recorded, it constitutes a slander of my client's title, which will need to be removed immediately or subject each of your clients to legal action and significant exposure. If it has not been recorded, and you do so in the future, that would be an intentional and malicious action subjecting your clients to exposure for punitive damages.

Sincerely,
Dustin E. Owens

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Privileged and Confidential Communication.

This electronic message and all attachments, are protected by the Electronic Communications Privacy Act (18 U.S.C. §§ 2510-2521), may contain confidential and/or legally privileged information, and are for the sole use of the intended recipient named above. If you have received this electronic message in error, please notify the sender and delete the

7/9/2019

Gmail - Pampas Lane Association

electronic message. Any disclosure, copying, distribution, or use of the contents of this communication if received in error is strictly prohibited.

On Thu, May 18, 2017 at 3:31 PM, Thomas Herman <tmh@thomasmherman.com> wrote:

[Quoted text hidden]



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568K



Done Inv_210_from_workhorse_welding_...



workhorse welding LLC

PO BOX 203
Miranda, CA 95553**INVOICE**

Date	Invoice #
7/5/2019	210

Bill To

pacific cannabiss growers

Project

Item	Quantity	Description	Rate	Amount
strong arm	7	Light deprivation management arm	1,000.00	7,000.00

Limited warranty does not cover any problems that is caused by
conditons, malfunctions or damage not resulting from defects in
material or workmanship.

Balance Due	\$7,000.00
Job Total Balance	\$7,000.00
Payments/Credits	\$0.00





Dustin Owens <dustin.owens@gmail.com>

Fw: 109 pampas light complaint

1 message

Joshua Clark <jcog323@yahoo.com>
To: Dustin Owens <dustin.owens@gmail.com>

Wed, Jul 10, 2019 at 8:24 AM

Hey Dustin here is the letter.-Joshua C

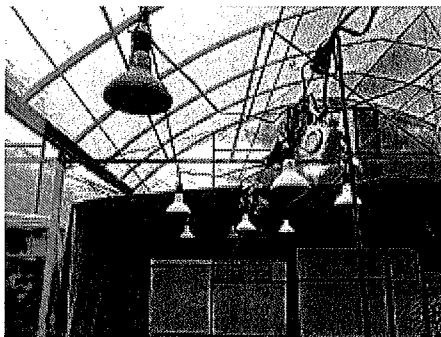
----- Forwarded Message -----

From: Joshua Clark <jcog323@yahoo.com>
To: "bhowton1@co.humboldt.ca.us" <bhowton1@co.humboldt.ca.us>
Cc: "sasantos@co.humboldt.ca.us" <sasantos@co.humboldt.ca.us>
Sent: Friday, July 5, 2019, 08:17:20 AM PDT
Subject: 109 pampas light complaint

To whom it may concern.

This letter is intended to address the light violation at 109 Pampas Ln, Fortuna CA.. I was unaware there was a light leak, and didn't believe their was a valid light complaints because we had unplugged all our lights at the end of May. Due to the pending public hearing on July 11th and my PRA request I was provided images with the actual complaint. As soon as we received the images we were able to figure out the problem. We have limited electric on-site and could only run so many lights with the power we have available, so we pulled a cord from our barn to power the last strip of lights. When it came time to unplug all the lights my uncle forgot about the back strip of lights and never unplugged them. This was truly a case of operator error. As soon as we were made aware of the problem and provided an image we were able to diagnose the problem and fix it. We strive to operate in compliance and regret missing the back row of lights and hope it did not affect our neighbors in a negative manner. This will not happen again we are currently in the middle of a power drop with PG&E and will have full power on the field and will not be running extension cords from our barn/house. All our lights will be on the same circuit with a hard timer wired in to prevent user error.-Joshua C

Sent from my iPhone

2 attachments**IMG_2735.jpg**
101K**IMG_2734.jpg**
106K

7/10/2019

Gmail - Fw: 109 pampas light complaint

