



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION

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ZONING CLEARANCE CERTIFICATE EVALUATION

Project: Pursuant to the Humboldt County Commercial Medical Marijuana Land Use Ordinance (CMMLUO), Section 314-55.4.1 et seq., issuance of a Zoning Clearance Certificate for 10,000 square feet of new mixed-light cultivation. The cultivation area will be located in six greenhouses that are currently in existence from a prior orchid farm. The project is located within an area of prime agricultural soils, in the Agriculture Exclusive (AG) zoning district, and with slopes of 15% or less. The water source for Irrigation is provided by the McKinleyville Community Services District. Water use is estimated to be 78,000 gallons per year with approximately 4-5 cycles per year. Harvested plants will be dried, cured and stored on site in an existing storage shed. All processing will be performed off site at a licensed facility. The property is currently enrolled in the Commercial Cannabis Waste Discharge Regulatory Program (CCWDRP) administered by the North Coast Regional Water Quality Control Board (RWQCB). This project is located within the Arcata-Eureka Airport in Airport Zone A. The project is not subject to a Compliance Agreement. Documentation for the activity type has been submitted in accordance with the CMMLUO.

Project Location: The project is located in Humboldt County, in the McKinleyville area, on the east side and adjacent to Central Avenue, approximately .76 miles south from the intersection of US Highway 101 and Central Avenue, on the property known as 4373 Central Avenue, McKinleyville.

Present Plan Designations: Agricultural Rural (AR-Rural), McKinleyville Community Plan (MCCP), Density: 20 to 5 acres per dwelling unit, Slope Stability: Low Instability (1), Moderate Instability (2)

Present Zoning: Agriculture General (AG)

Application Number: 12642 **Case Number:** ZCC-16-524

Assessor Parcel Number(s): 511-321-031.

Applicant

Bosim 4373, LLC
2500 Broadway, Suite 125
Santa Monica CA 90404

Owner

McKinleyville Central Ave, LLC
Scott Boxenbaum
324 S. Beverly Dr., #727
Beverly Hills, CA 90212

Agent

Green Road Consulting, Inc.
Kaylie Saxon
1650 Central Ave. Suite C
McKinleyville, CA 95519

Pursuant to Humboldt County Code Section 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 of the Record

An application has been submitted to the Planning Division for a Zoning Clearance Certificate for 10,000 square feet of new mixed-light commercial medical cannabis cultivation. This commercial cannabis activity is authorized by Section 314-55.4.2 of the CMMLUO. The application meets the requirements of zoning, size of cultivation area, setbacks from property lines and listed incompatible uses (e.g., schools), and is accompanied by the documentation, plans, descriptions, and agency clearances set forth in the CMMLUO.

The parcel where the activity is to be located is a legal lot created in compliance with all applicable state and local subdivision requirements. The property is not subject to an approved land use permit or subdivision to which terms and conditions apply to new development.

The proposed development is not located on property where one or more violations of the Humboldt County Code exists. The use or development is a part of the commercial cannabis activity. The exceptions under 312-2.4.1.3 and 314-55.4.11(a) do not apply. There is no non-permitted development and a Compliance Agreement is not required.

Determination

It is the determination of the Planning Division that:

- ☒ A Zoning Clearance Certificate is approved. The terms, responsibilities and outstanding obligations set forth in Exhibits A and B hereto shall be satisfied by the Permittee.
- ☐ A Provisional Zoning Clearance Certificate is approved. 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 application 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: 9/11/2017

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 15th to October 31st 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 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. Under these guidelines, generator noise may not exceed 50dB as measured at 100 feet from the generator or at the edge of the nearest Marbled Murrelet or Spotted Owl habitat, whichever is closer. The permittee must ensure that the generator type and specifications, placements, and any associated structures or noise reduction measures achieve the performance standard.

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.

Permittee further acknowledges and declares that:

- (1) All commercial cannabis activity that I, my agents, or employees conduct pursuant to a permit from the County of Humboldt shall be solely for medical purposes and all commercial cannabis products produced by me, my agents, or employees are intended to be consumed solely by qualified patients entitled to the protections of the Compassionate Use Act of 1996 (codified at Health and Safety Code section 11362.5);
- (2) All cannabis or cannabis products under my control, or the control of my agents or employees, and cultivated or manufactured pursuant to local Ordinance and the California Medical Marijuana Regulation and Safety Act will be distributed within the State of California; and
- (3) All commercial cannabis activity conducted by me, or my agents or employees pursuant to a permit from the County of Humboldt will be conducted in compliance with the California Medical Marijuana Regulation and Safety Act.

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 are 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.

Inadvertent Discovery Protocol

If cultural resources are encountered during construction activities, the contractor on site shall cease all work in the immediate area and within a 50 foot buffer of the discovery location. A qualified archaeologist as well as the appropriate Tribal Historic Preservation Officer(s) are to be contacted to evaluate the discovery and, in consultation with the applicant and lead agency, develop a treatment plan in any instance where significant impacts cannot be avoided.

The Native American Heritage Commission (NAHC) can provide information regarding the appropriate Tribal point(s) of contact for a specific area; the NAHC can be reached at 916-653-4082. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. If human remains are found, California Health and Safety Code 7050.5 requires that the County Coroner be contacted immediately at 707-445-7242. If the Coroner determines the remains to be Native American, the NAHC will then be contacted by the Coroner to determine appropriate treatment of the remains pursuant to PRC 5097.98. Violators shall be prosecuted in accordance with PRC Section 5097.99

The applicant/permittee is ultimately responsible for ensuring compliance with this condition.

EXHIBIT B

Zoning Clearance Certificate Responsibilities and Outstanding Obligations

Items from Project Description/Operations Plan to be satisfied before initiation of commercial cannabis operations

1. Provide portable toilets to meet the needs of cultivation staff. Annual contracts or invoices confirming service are required and will be provided to Humboldt County Health and Human Services, Department of Environmental Health (DEH).
2. Install an approved double check valve or reduced pressure principal device just past the water meter and test on installation and annually in accordance with McKinleyville Community Services District requirements.
3. Obtain and comply with all building permit requirements for alterations to existing greenhouses and sheds that have a nexus to the medical cannabis activity. **NOTE: This alteration shall include the greenhouse modification as set forth in the email from Jack Kessler dated July 24, 2017 to remove the greenhouse roofing over 1 of the sheds and install a permanent roof such that the total greenhouse area for cannabis cultivation does not exceed 10,000 square feet.**

The following items are currently demonstrated but must remain satisfied for the life of the project per the Project Description and Operations Plan

4. Artificial light used in cultivation and clone/start propagation operations will adhere to shielding and International Dark Sky Association standards as set forth in the CMMLUO.
5. Water will be sourced from the McKinleyville Community Services District under a valid "will serve" letter.
6. Maintain compliance with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. 2015-0023. Obtain approval from NCRWQCB completion of a Water Resource Protection Plan when appropriate and adhere to all recommendations stated within.
7. Adhere to recommendations in the Cultural Resources Investigation, including the Inadvertent Discovery Protocol.
8. Cannabis will be processed off-site at a licensed processing facility. No employees will be engaged in this activity.
9. Comply with the Flood Damage Prevention Ordinance of Humboldt County Code section 335.1 et seq.
10. Install one 2,500 gallon hard plastic water tank at each of the six greenhouses for irrigation water storage.

Permits or clearances from State Agencies to be secured, when available

11. Secure state licensing under MMRSA (when available).