Item 8.6
3/6/18

Robert Adelman
Benmore Valley Road
Lakeport, CA 95453
4 March, 2018

County of Lake
Board of Supervisors
255 N. Forbes Street
Lakeport, CA 95453

Supervisors:

I am writing to address inconsistencies between Lake County policy and California State Law.

The problem is that the state may not issue a temporary cultivation license unless the county license is activated, therefore we cannot move forward. See the attached memorandum on the subject. The solution is simple: activate the temporary cultivation permits for those applicants who have been self-certified under Article 72 and have State Water Board Permits so they can move forward with the state. If any of that small group is out of compliance of the replacement ordinance, once adopted, notify the state that the local cultivation permit has been rescinded. The county retains total control over which operations are permitted.

Under the Urgency Ordinance, applicants who have been certified as compliant under the Article 72 Self-Certification Program and have State Water Board Permits issued have been assured by the board that they are qualified to receive State Temporary Cultivation Licenses.

I was told by staff during site inspections for Article 72 compliance that it was county policy to inform the state that those who were compliant would be qualified to receive State Temporary Cultivation Licenses.

During the second hearing on the Urgency Ordinance, the direction of the board was clarified: let Article 72 Self-Certified applicants move forward with the process of acquiring state licenses. I believe there are around 20-30 such applicants approved countywide.

The county has published criteria for "early activation" of a major or minor use permit in the draft ordinance:

1. Article 72 Self-Certified.
2. State Water Board enrollment.
3. Complete application submitted for major or minor use permit.

4. All planting on developed farmland with no grading, tree removal, or other land disturbing activities.

I am asking the board to clarify the intention under the Urgency Ordinance to allow qualified applicants to move forward with Temporary State Cultivation Licenses. I believe the direction of the board was clear as represented at the board meetings.

To do so:

1. Staff should activate a temporary permit for the applicants who have been certified as compliant with Article 72 and have State Water Board Permits, so that the state will issue the a temporary cultivation license.
2. Staff should require that the applicant have a complete application filed for a county use permit within 60 days of the date the replacement ordinance takes effect or the temporary county permit can be rescinded.

If an applicant does not follow through with (2) above and have a complete application submitted, the county can contact the state and rescind the local permit. The above recommendation allows the small group of people who have been working diligently with the county, and following the rules, to move forward now, but the county retains the right to shut down those that do not meet all the requirements of the new ordinance.

As of now, I know of several black market cultivations sites being prepared for planting on land adjacent to the Benmore Valley Ranch. There are only 20-30 or so applicants planning legal operations in the entire county for 2018. Please work with us to bring up legitimate businesses. I want the county to have the revenue for the enforcement resources to help limit further ecological damage to our sensitive watershed. A policy that does not let legal businesses get to work supports the black market.

Please note that the operations planned on the Benmore Valley Ranch for 2018 will generate around $300,000 in Measure C tax revenue, which will be assessed at the time the temporary permit is activated.

Thank you for your time and consideration.

Sincerely,

Robert Adelman

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MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED AND CONFIDENTIAL

FROM: Brad Johnson, Esq.

TO: Robert Adelman

RE: **Article 72 Compatibility with State Cannabis Licensing Laws**

DATE: February 1, 2018

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1. *Question and Short Answer*

Robert, you asked us to evaluate whether a "Letter of Authorization" issued under "Article 72" of the Lake County Zoning Code qualifies as "a valid license, permit, or other authorization" as necessary to obtain a temporary cultivation license from the State Department of Food and Agriculture, CalCannabis Cultivation Licensing division ("CalCannabis").

A Letter of Authorization under Article 72, in short, does not meet state requirements for a local authorization or permit because it does not actually authorize the holder to cultivate cannabis on a commercial basis on a particular property. As explained below, it should be possible for Lake County applicants to obtain a state Type 1 or Type 2 license under Article 72, but CalCannabis will not likely issue a temporary cultivation Type 3 license to Lake County applicants bearing only a Letter of Authorization.

2. *State Temporary License Requirements*

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (Bus. & Prof. Code § 26000 et seq. [the "State Act"] includes provisions allowing CalCannabis to issue a temporary license to cultivate cannabis on a commercial basis for both medicinal and adult uses. (Bus. & Prof. Code § 26050.1.) The State Act enumerates several criteria necessary to obtain such a temporary license, including a requirement that an applicant provide proof of a local permit or authorization. (Bus. & Prof. Code § 26050.1 (a)(2).)

More specifically, the State Act requires an applicant for a temporary cultivation license to provide "[a] copy of a valid license, permit, or other authorization, issued by a local jurisdiction, that enables the applicant **to conduct commercial cannabis activity at the location requested for the temporary license**." (Bus. & Prof. Code § 26050.1 (a)(2) [emphasis added].) The CalCannabis emergency implementing regulations, codified at 3 C.C.R. § 8000 et seq., state further that the term "other authorization" includes "a written statement or reference that clearly

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indicates the local jurisdiction intended to grant permission to the applicant entity **to conduct commercial cannabis activity at the premises**." (3 C.C.R. § 8100(b)(6) [emphasis added].)

The State Act and CalCannabis regulations in this regard require a local permit or authorization to authorize the holder of such an approval to actually cultivate cannabis on a commercial basis on a particular property. While the text does not appear ambiguous on this point, we nevertheless confirmed with CalCannabis licensing staff that CalCannabis will not issue a temporary license where the local documentation does not allow a license applicant to cultivate commercial cannabis.

3. *Article 72 Requirements*

The County adopted Section 21-72 ("Article 72") of the County Zoning Code to specify regulations governing the cultivation of medical marijuana. The Board of Supervisors intended Article 72 to regulate "the cultivation of limited amounts of marijuana for medical purposes." (County Zoning Code, § 21-72.2.) Article 72 does not allow commercial cannabis activities, but does authorize qualified patients and/or caregivers as well as qualified cooperatives to cultivate limited numbers of cannabis plants for medicinal purposes only. (See County Code, § 21-72.5.)

On January 23, 2018, the Board of Supervisors adopted Ordinance 3071 as an emergency ordinance extending a prior emergency ordinance, Ordinance 3070, with the following effects:

- Commercial cannabis activities in all unincorporated areas of the County are prohibited. (Ordinance 3071, Section 2.)

- The Community Development Department "shall" issue a "Letter of Authorization" to persons who "(1) have submitted a self-certification application of compliance under Article 72 of the Zoning Ordinance which has been deemed complete by the Community Development Department; and (2) have submitted a signed affidavit of compliance with state law and the conditions of this Ordinance . . .." (Ordinance 3071, Section 3.)

- Such a Letter of Authorization allows the holder to "proceed with an application for temporary state licensure for a commercial cannabis cultivation state license, with the caveat that said authorization shall only serve to acknowledge the applicant's prior compliance with state and local law and present eligibility under this Ordinance to pursue a commercial cultivation permit when the County's permanent commercial cannabis ordinance is final." (Ordinance 3071, Section 3.)

- A Letter of Authorization, however, is not "local permit to cultivate cannabis, is not an adjudication, and is not a permit or approval of commercial cultivation at any particular location." (Ordinance 3071, Section 3.)

Ordinance 3071 will remain in effect for 10 months and 15 days following its enactment, unless extended by a subsequent vote of the Board of Supervisors.[1] (Ordinance 3071, Section 7.)

4. *Discussion*

The analysis on this question is straightforward: state law requires a local permit or authorization to enable the applicant "**to conduct commercial cannabis activity at the location requested for the temporary license.**" (Bus. & Prof. Code § 26050.1 (a)(2) [emphasis added]; 3 C.C.R. § 8100(b)(6).) Under Ordinance 3071 and Article 72, however, a Letter of Authorization expressly "shall not constitute a local permit to cultivate cannabis, is not an adjudication, and **is not a permit or approval of commercial cultivation at any particular location.**" (Ordinance 3071, Section 3 [emphasis added].) Under the strict letter of the law, CalCannabis licensing staff would be correct to deny all license applications submitted by Lake County applicants holding a Letter of Authorization.

Practically speaking, upon receiving an application for a temporary state license from a Lake County cultivator holding a Letter of Authorization, CalCannabis licensing staff will contact Lake County planning staff to confirm that the Letter of Authorization allows the applicant to commence commercial cannabis cultivation at a particular premises. (See 3 C.C.R. § 8110.) Lake County planning staff could, consistent with Article 72, confirm that the applicant is entitled to cultivate up to 6 mature plants (if an individual), or up to 48 matures plants (if a cooperative), which roughly corresponds to a state Type 1 license (for personal cultivation) or a Type 2 license (for cooperative cultivation). Thus, it is possible that, notwithstanding Ordinance 3071, the state could issue Type 1 or Type 2 licenses to Lake County applicants, who could then proceed to cultivate for medicinal purposes only consistent with Article 72. By contrast, Lake County planning staff probably could not, in strict adherence to Ordinance 3071/Article 72, confirm that Lake County applicants have present local authority to cultivate at the scales authorized under a Type 3 state license.

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[1] / Note that the ordinance contains a possible conflicting timeframe in Section 2, which states that the moratorium against commercial cannabis activities is adopted for 45 days "pending further review . . .". (Ordinance 3071, Section 2.)