

May 7, 2018

Members of the Board of Supervisors  
County of Lake  
255 North Forbes Street  
Lakeport, CA 95453

***Re: Lake County Cannabis Cultivation – Early Activation, Benmore Ranch***

Members of the Board of Supervisors:

Thank you for adopting Lake County Ordinance No. 3073 (“Ordinance 3073”), which provides a framework for legal commercial cannabis cultivation in the County for the first time. This letter concerns Ordinance 3073’s “early activation” provision, and Planning staff’s failure so far to issue an early activation permit as required under the Ordinance.

Ordinance 3073 (§ 21-27.13(at)(4)(i)(e)) allows the Planning Division to grant an “early activation” permit to applicants that meet certain criteria, including submittal of a “complete” application for a minor or major use permit. An early activation permit allows an applicant to begin some cultivation activities while the County continues to process the full permit application. The Board intended, as referenced in Ordinance 3073 directly, to allow the Planning Division to issue an early activation permit allowing for “immediate activation” of proposed cannabis cultivation activities. (Lake County Code, §§ 21-27.13(at)(4)(i)(e); 21-27.4.) Board Chair Jim Steele confirmed at the April 24, 2018 Board meeting, in response to public comments, that the Board intended for early activation permits to be issued in time for qualified applicants to begin cultivating this year.

As the Board is aware and as we have commented previously, Planning staff have indicated that issuance of an early activation permit will take a significant amount of time – perhaps months – after an applicant submits a complete application. Planning staff have shifted the definition of when an application is “complete” (a requirement for issuance of an early activation permit), and have also indicated that applications must be sent out for “referral” to County departments and state agencies, which is an initial review process related to the full use permit application, and is not required under Ordinance 3073 prior to issuance of an early activation permit. These interpretations of Ordinance 3073 are inconsistent with the text of Ordinance 3073 and the Board’s stated intent for early activation.

Relating the above to a specific project, the Board should be aware that, following required pre-application meetings with Planning staff, five complete applications for cultivation

permits at the Benmore Ranch were submitted to the Planning Division on April 19. These applications contained all information necessary to be deemed “complete” under Ordinance 3073 and County Code. Planning staff have also referred the complete applications out for comments from reviewing County departments and state agencies. Further, Planning staff have indicated that they do not intend to take any action on the applications until at least May 14. Staff have provided no timeframe for issuing the requested early activation permits.

Planning staff’s interpretation of Ordinance 3073 in the above case is improperly interfering with the applicants’ rights to begin cultivation, and has or will very soon result in significant damages to the applicants as a result of the loss of this cultivation season. Staff’s actions have or will also result in the loss of Measure C tax revenue to the County.

The Board has recognized that Planning staff, in some cases, require further guidance in order to effectuate the Board’s intent in implementing Ordinance 3073. At the May 1, 2018 Board meeting, for example, the Board adopted a resolution “expressing the intent of the Board of Supervisors in prohibiting a cannabis cultivation site within 1000 feet of a water sphere of influence”. The Board took this action, within a week, to functionally amend Ordinance 3073 to allow a single applicant to apply who otherwise was clearly prohibited from doing so. Similar Board guidance is needed concerning issuance of early activation permits.

Attached to this letter is a simple resolution that clarifies for Planning staff the Board’s intent concerning early activation permits. The resolution reflects the current text of Ordinance 3073, as well as the Board’s own statements of intent. The attached resolution is in a form ready for adoption, of course subject to County Counsel’s concurrence. The attached resolution would clarify for Planning staff the Board’s intent that early activation permits should be issued “immediately” upon submittal of a complete application. This clarification will help avoid interference with applicants’ rights under Ordinance 3073 and state law and will help generate tax revenue for the County this year.

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Should you have any questions concerning the matters discussed herein, please do not hesitate to contact me by telephone at (916) 382-4377, or by e-mail at [bjohnson@hthjlaw.com](mailto:bjohnson@hthjlaw.com).

Very truly yours,  
HARRISON, TEMBLADOR, HUNGERFORD & JOHNSON

By   
Bradley Johnson

BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

RESOLUTION NO. \_\_\_\_\_

AN ORDINANCE ALLOWING

RESOLUTION EXPRESSING THE INTENT OF THE BOARD OF SUPERVISORS IN  
ISSUING EARLY ACTIVATION PERMITS IN LAKE COUNTY ORDINANCE NO. 3073

RECITALS

WHEREAS, Article 72 of the Lake County Zoning Ordinance, as amended by Ordinance No. 3073, presently provides that the Planning Division may issue an “early activation” permit to applicants that meet certain criteria identified therein; and

WHEREAS, it has come to the attention of the Board of Supervisors that the language used in the early activation provision has been subject to an interpretation or interpretations that have prevented, impaired, or delayed issuance of early activation permits to otherwise qualified applicants; and

WHEREAS, the Board of Supervisors desires that staff amend the language of Ordinance 3073 to further clarify the Board’s intention concerning the issuance of early activation permits; and

WHEREAS, the Board of Supervisors desires that its intent and interpretation of said early activation provision be implemented while said amendment is being advanced.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. In adopting the early activation provisions of Ordinance 3073 allowing Planning Division staff to issue early activation permits to applicants that satisfy the requirements outlined therein, it was the intention of this Board that such early activation permits be issued promptly (generally, within 10 days) following an applicant’s submittal of an application that, on its face, contains each of the required application elements under Ordinance No. 3073. The Board acknowledges and agrees that an early activation permit shall not be issued to applicants whose corresponding applications are not substantially complete under Ordinance No. 3073.

THIS RESOLUTION WAS PASSED AND ADOPTED by the Board of Supervisors of the County of Lake, State of California, at a regular meeting thereof on \_\_\_\_\_, 2018 by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

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CHAIR, Board of Supervisors