

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Andrew Merkel **REPORT BY:** Leslie Hubbard, Interim Planning Director

APN: 019-690-20-00

PROJECT DESCRIPTION:

Appeal to Denial of Commercial Cannabis Cultivation License

LOCATION: 3620 Wildwood Road, Wildwood

BACKGROUND INFORMATION:

On December 15, 2016, Trinity County Planning Department (County) issued a Commercial Cannabis Cultivation license to Andrew Merkel and Dustin Rohleder (Exhibit A). On June 20, 2017, the County received a copy of the Notice of Violation of Fish and Game Code Sections 1602, 5650, 5652 issued to Andrew Merkel (applicant) from the California Department of Fish and Wildlife (Exhibit B) for activities conducted in conjunction with Cannabis cultivation.

After receiving the Notice of Violation, the County contacted the California Department of Fish and Wildlife (the department) at least six times to verify if the violations had been cleared. The department repeatedly confirmed that the violations had not been addressed and that Merkel had filed a lawsuit against the department and against one of the Watershed Enforcement Team officers who had been on site during the June 8, 2017 site visit when the violations were identified.

Trinity County Ordinance 315-823 provides regulations for the commercial cultivation of Cannabis. Section 7 of the ordinance provides guidance regarding the denial and/or revocation of commercial Cannabis cultivation licenses and states, "Applicant shall be denied a license or the approval of a license shall be revoked if the County becomes aware that:

- i. The applicant has provided materially false documents or testimony; or
- ii. The applicant has not complied fully with the provisions of this Ordinance, including any of the requirements of NCRWQCB Order #2015-00232, SWRCB, or CDFW;..."

After receiving confirmation from the department that none of the Fish and Game Code violations had been addressed, the County denied a 2017-2018 commercial Cannabis cultivation license (Exhibit C) in a letter on October 10, 2017.

STAFF RECOMMENDATION:

Staff recommends the following:

Item No 7.

Meeting Date: January 11, 2018

Uphold denial by Interim Planning Director of the commercial Cannabis cultivation license until the applicant has resolved outstanding violations with the California Department of Fish and Wildlife. Once the violations have been resolved, the applicant may apply for a new commercial Cannabis cultivation license.

Respectfully submitted,



Leslie Hubbard
Interim Planning Director

COUNTY OF TRINITY COMMERCIAL CANNABIS CULTIVATION LICENSE

LICENSE NUMBER: CCL-2016-021
 PARCEL NUMBER: 019-690-20-00
 LICENSE HOLDER: Andrew Merkel &
Dustin Rohleder

FILE COPY

Andrew Merkel
 Dustin Rohleder
 3620 Wildwood Road Box 6
 Wildwood, CA 96076

DATE ISSUED: December 15, 2016

3620 Wildwood Road, Wildwood, CA 96076

TYPE 2 – TIER 2 (10,000 SQ. FT.)

Valid until March 31, 2017

NOTE TO LICENSE HOLDER

As the undersigned license holder, you are agreeing to abide by all terms, conditions and regulations set forth within the Trinity County Ordinance No. 315-816 and reaffirm the Indemnification Form and Acknowledgement Form as agreed upon as part of this license application. This license is non-transferable, and is only valid for the above mentioned license holder(s) and property.

Any changes to the project or property affecting your project must be reported to the Trinity County Planning Department in written form prior to any revisions taking place. Any changes not reported will be subject to a Notice of Correction where action can be take up to and including the revocation of license.

This license is subject to all applicable codes and as set forth in Trinity Count Ordinance No. 315-816 and shall be maintained on property and available for review upon demand of a public official.

This is a provisional license subject to the attached agreed upon conditions



Richard Tippett, Director

Trinity County Planning Department



Andrew A. Merkel
 Owner / Authorized Agent of Record

WARNING: IT IS ILLEGAL TO COPY THIS LICENSE: VOID IF ALTERED

COUNTY OF TRINITY
COMMERCIAL CANNABIS
CONDITIONS TO LICENSE

APPLICATION NUMBER:	CCL-2016-021
PARCEL NUMBER:	019-690-20-00
APPLICANT:	Andrew Merkel & Dustin Rohleder

Address: 3620 Wildwood Road, Wildwood, CA 96076

CONDITION TO LICENSE

The below conditions are set forth below:

- All areas within the 350 foot setback from the neighboring dwelling is excluded from this license**
- At least a 6 foot fence is needed around cultivation area to screen visibility from public right of way by *March 31, 2017*.
- Greenhouses need to be removed and schedule an inspection to confirm compliancy; or permitted; progress must be show by *January 31, 2017*

***Any permitted use of an area within the 350 foot setback needs to be approved by a variance. Prior to the renewal of your license for the 2017-18 year, either apply for a variance to be within the setback, or ensue the designated area excludes the area within this setback. If the area is revised, provide evidence that the Water Bard has been notified of this revision.*

I Andrew Merkel & Dustin Rohleder acknowledge the above conditions and agree to comply by the date given.

Richard Tippett, Director
Trinity County Planning Department


Owner / Authorized Agent of Record

WARNING: IT IS ILLEGAL TO COPY THIS LICENSE: VOID IF ALTERED

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Region 1 - Northern
601 Locust Street
Redding, CA 96001
(530) 225-2300
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



June 20, 2017

CERTIFIED MAIL:

7008 1140 0000 8010 1852

Andrew Merkel
844 Morninghome Court
Chico, CA 95926

Subject: Notice of Violation of Fish and Game Code Sections 1602, 5650, and 5652 in
Conjunction with Cannabis Cultivation

Dear Mr. Merkel:

On June 8, 2017, California Department of Fish and Wildlife (Department) staff visited your property, Assessor Parcel Number 019-690-20, located on Hayfork Creek, tributary to the South Fork Trinity River in Trinity County. During the visit, staff observed the activities described below, which are in violation of Fish and Game Code (FGC) sections 1602, 5650 and 5652. Staff also observed active cannabis cultivation in conjunction with this activity or these activities.

- Substantial obstruction of the natural flow and alteration of the bed, channel and banks of an unnamed tributary to Hayfork Creek caused by the construction of an earthen fill road crossing within the stream channel. The alteration to the stream channel includes changing and using material from the bed, channel and banks of the streams and depositing debris directly into or where it may pass into the streams.
- The deposition of crushed aggregate material directly into approximately 298 feet of stream channel, resulting in the substantial alteration the bed, bank, and channel of the unnamed tributary to Hayfork Creek.
- Discharge of fine sediment and debris into Hayfork Creek caused by propagating head cut erosional feature caused by a lack of proper erosion control measures and maintenance along the modified segment of the unnamed tributary to Hayfork Creek.
- The placement of deleterious material (garbage) where it can pass into Hayfork Creek, a waters of the state.
- Substantial alteration of the bank of Hayfork Creek by the installation of an unarmored and unimproved 4x4 access track into the stream including substantially changing material from the bed, channel, or bank of the stream.

Conserving California's Wildlife Since 1870

Mr. Andrew Merkel
June 20, 2017
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FGC section 1602 requires a person to submit a written notification to the Department before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. Hence, any person who engages in an activity subject to FGC section 1602 without first notifying the Department violates section 1602.

FGC sections 5650 and 5652 make it unlawful to pollute waters of the state. FGC section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state any substance or material deleterious to fish, plant life, mammals, or bird life, including, but not limited to gasoline and oil, as well as sediment. FGC section 5652 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any garbage, refuse, or waste, among other materials.

In the Department's view, notification under FGC section 1602 was required because the activities substantially diverted/obstructed/diverted and obstructed the natural flow of the unnamed tributary to Hayfork Creek, substantially changed or used material from the bed, channel, and bank of Hayfork Creek and its unnamed tributary, and deposited or disposed of debris or waste where it may pass into Hayfork Creek and its unnamed tributary. However, the Department was unable to locate a notification for these activities.

A person who violates FGC sections 1602, 5650, and 5652 in conjunction with the cultivation or production of cannabis is subject to significant penalties or fines. Specifically, the Department may impose civil penalties administratively against any person found by the Department to have violated these FGC sections in connection with the production or cultivation of cannabis following a complaint and, if requested, a hearing.

The Department may request a maximum civil penalty of \$8,000 for each violation of FGC section 1602, and \$20,000 for each violation of FGC sections 5650 or 5652. Each day the violation occurs or continues to occur constitutes a separate violation. (FGC, section 12025, subds. (b)(1)(A), (b)(1)(B), (b)(1)(C), (2); (e).) Also, the District Attorney or the Attorney General may enforce a violation of FGC sections 1602 and 5650 civilly. Specifically, under FGC sections 1615 and 5650.1, a person who violates FGC sections 1602 or 5650 is subject to a maximum civil penalty of \$25,000 for each violation. The District Attorney or the Attorney General may also enforce a violation of FGC sections 1602, 5650, and 5652 criminally. Under FGC section 12000, each violation is a misdemeanor.

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As a first step to address this matter, the Department requests you contact Adam McKannay, Senior Environmental Scientist (Specialist), at (530) 225-2124 or adam.mckannay@wildlife.ca.gov within 14 days of the date of this letter. Mr. McKannay may propose certain actions to protect fish and wildlife resources that have been or could be affected by the activities described above, and may ask you to submit a written notification and fee for the activities. While the Department, District Attorney, or Attorney General may still decide to initiate an enforcement action against you if they determine these activities are in violation of FGC sections 1602, 5650, or 5652, we encourage you to respond to this notice so that we may better assess the activities and limit any damage to resources.

The Department appreciates your cooperation.

Sincerely,



Lieutenant DeWayne Little
Watershed Enforcement Team

cc: Jeremy Valverde, Adam McKannay, Warden Steve Crowl, Ashley Worth, Donna Cobb and Curt Babcock
Department of Fish and Wildlife
jeremy.valverde@wildlife.ca.gov, adam.mckannay@wildlife.ca.gov,
steven.crowl@wildlife.ca.gov, ashley.worth@wildlife.ca.gov,
donna.cobb@wildlife.ca.gov, curt.babcock@wildlife.ca.gov

Taro Murano, Yvonne West, Skyler Anderson and Michael Vella
State Water Resources Control Board
taro.murano@waterboards.ca.gov, yvonne.west@waterboards.ca.gov,
skleyer.anderson@waterboards.ca.gov, michael.vella@waterboards.ca.gov

Diana Henriouille and Stormer Feiler
North Coast Regional Water Quality Control Board
diana.henriouille@waterboards.ca.gov, stormer.feiler@waterboards.ca.gov

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June 20, 2017
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Leslie Hubbard, Kristalynne Anderson and Tommi Morgenthal
Trinity County Planning Department
lhubbard@trinitycounty.org; kanderson@trinitycounty.org,
tmorgenthal@trinitycounty.org



TRINITY COUNTY PLANNING DEPARTMENT

P.O. BOX 2819 ♦ 61 AIRPORT ROAD
WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1351 ♦ FAX (530) 623-1353
Email: lhubbard@trinitycounty.org

October 10, 2017

Certified Mail Receipt: 7016 0600 0001 1992 8510

Andrew Merkel
8400 Morning Home Court
Chico, CA 95926

Re: Trinity County Cannabis Cultivation License Denial

It has been determined that the Trinity County Planning Department cannot issue your Commercial Cannabis Cultivation License CCL-2017-021 for the property located at 3620 Wildwood Road, Wildwood, CA 96076, parcel number 019-690-20-00, for applicants Andrew Merkel and Dustin Rohleder.

The Trinity County Planning Department cannot issue CCL-2017-021 for the following reason(s):

Ordinance No 315-823 Section 7(a)ii: Applicant's Application shall be denied or the approval of License rescinded if the County becomes aware that:

ii. *The Applicant has not complied fully with the provisions of this Chapter, including any of the requirements of NCRWQCB Order #2015-002, State Water Resources Control Board, or California Department of Fish and Wildlife*

The existence of violations of Fish and Game Code Sections 1602, 5650, and/or 5652 in conjunction with Cannabis cultivation associated with CCL-2017-021 necessitates denial of the license.

The applicants, Andrew Merkel and Dustin Rohleder, have the right to appeal this decision to the Trinity County Planning Commission at any time within ten (10) working days after this notice has been given. Such appeal is taken by filing a notice of appeal with the Planning Director and paying the required appeal fee (\$500.00). Upon filing a notice of appeal, the Planning Director shall within ten (10) days transmit to the Secretary of the Planning Commission all papers and documents on file with the Planning Director relating to the appeal and schedule the appeal for the Commission hearing.

If you believe this notice of license denial to be in error or have questions or comments, please contact the Trinity County Planning Department at (530) 623-1351 ext. 3 or by email at planning.cannabis@trinitycounty.org

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie J. Hubbard".

Leslie J. Hubbard
Interim Planning Director
Trinity County Planning Department



Law Office of Charnel James
A New Dawn in Legal Representation
Charnel James, Esq

October 20, 2017

RECEIVED
OCT 23 2017
TRINITY COUNTY
PLANNING DEPARTMENT

Trinity County Planning Department
61 Airport Rd
Weaverville, CA 96093

RE: Appeal of Denial of Cannabis Application CCL 2017-021

Dear Ms. Hubbard:

I represent the Applicants Andrew Merkel and Dustin Rohleder. We are in receipt of the denial letter dated October 2, 2017. The alleged allegations of violation are not accurate and we can defend the charges and prove that this is not true. We have proof that there is no violations of the Fish and Wildlife Code sections 1602, 5650, or 5632.

We are requesting an appeal on the denial of the licensed based on the above information. Please contact us to set up an appeal hearing, or to have a discussion to withdraw this denial. Please feel free to contact me for any further questions.

Sincerely,

Charnel James
Attorney at Law