

Lake Mont Pines Home Owners Association
3211 Lake Mont Drive P.O. Box 729, Arnold, CA 95223 (209) 795-1592



Via Email Only to JFranklin@co.calaveras.ca.us

John Franklin
Planner, Calaveras County

Re: Comment from Lake Mont Pines HOA regarding AUP
Application for Cannabis Dispensary
2833 McKenzie Avenue, Arnold, CA

Dear Mr. Franklin,

The Lake Mont Pines Home Owners Association ("Association") manages and maintains the Lake Mont Pines common interest development. The Commercial Lot located at 2833 McKenzie Avenue, Arnold, CA ("Commercial Lot") which is the subject of a recent administrative use permit ("AUP") application for a cannabis dispensary is located in the Association and is subject to the Association's governing documents, including the CC&Rs and rules. **The Association is opposed to the approval of an AUP for a cannabis dispensary at 2833 McKenzie Avenue because such a use is contrary to those authorized by the Association's CC&Rs, because the applicant has not made a proper application to the Association for a change in use of the Commercial Lot (which use cannot be approved), and because the proposed use as a cannabis dispensary is likely to result in a severe nuisance situation which will negatively affect both the neighboring Lots and the Association as a whole.**

1. The Association's CC&Rs Do Not Allow Cannabis Dispensaries

The Association is a common interest development (a "planned development" pursuant to Civil Code section 4175) and as such, is controlled by its recorded CC&Rs. All owners agree to abide by the CC&Rs when they accept deeds to their Lots. The CC&Rs further require owners to ensure that all tenants, residents, guests, and invitees of the owner comply with the covenants and restrictions contained in the CC&Rs, as well as the Association's rules and policies.

In addition to the dispensary being a nuisance and disrupting others' quiet enjoyment of the Association (discussed below), use of a Lot as a cannabis dispensary is a violation of the CC&Rs because it is a violation of the law, in this case federal law. The CC&Rs at § 3.09 state in relevant part: "No Owner shall permit anything to be done or kept in his Lot or in the Common Area that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body." While the sale and distribution of cannabis *might* be legal pursuant to county and state law, it is definitely *not* legal pursuant to federal law. The federal government classifies cannabis, along with heroin and cocaine, as a Schedule I drug

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with high potential for abuse and little to no medical benefit. The use, distribution, and sale of cannabis is unquestionably a violation of federal law, even if in California such laws are rarely enforced.

The CC&Rs, however, state that all levels of laws must be adhered to, including federal law. Therefore, the cannabis dispensary use is a prohibited use pursuant to CC&Rs § 3.09 and the Association cannot allow such a use to be maintained at the Association.

2. The Applicant Must Apply to the Association for Permission to Change the Use to a Cannabis Dispensary and Such Use Cannot Be Approved

The Association's CC&Rs also require that permission be obtained from the Association when a change in use of a Commercial Lot is contemplated. The CC&Rs at § 3.01.B state in relevant part:

Limited Commercial Use of Certain Lots. ... Lot [29] ... may be used for either residential or business or commercial purposes at the election of the Owners of such Lots. Prior to conversion to or improvement for commercial use, the Owner of any such Lot shall obtain the written approval of the [Architectural Control] Committee of the intended uses and proposed improvements on such Lot. [Emphasis added.]

At this time, the applicant failed to follow the proper procedures for changing the use of a Commercial Lot as no application has been made to the Association for this change of use pursuant to CC&Rs § 3.01.B. However, for the reasons set forth here, among others, the Board has determined that use of the Commercial Lot as a cannabis dispensary is not a permissible use at Lake Mont Pines and will not be approved.

3. A Cannabis Dispensary at 2833 McKenzie Avenue Will Result in a Nuisance Which Will Negatively Affect the Association and its Residents

As is the case with all uses and improvements of Lots at Lake Mont Pines, uses and improvements must be reasonable and in keeping with the existing character of the community. Further, activities which may cause a "disturbance or annoyance to other Owners in the enjoyment of their property, or in enjoyment of Common Areas" are prohibited pursuant to CC&Rs § 3.03.

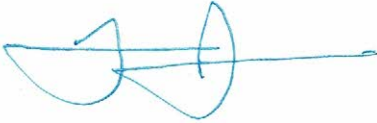
Currently, the Commercial Lots are used by professional and medical service providers, which results in minimal disruption or disturbance to the community. There is little traffic and few security risks to the community as a result of such uses. A cannabis dispensary, on the other hand, will likely result in a considerable increase in traffic as well as demand for parking. Further, the security risks of storing and selling cannabis, often on a cash-only basis, are well documented. No information regarding mitigation of such security risk has been provided to the Association and it is unlikely that such risk could be reduced significantly in the proposed location. The hours of operation of a retail cannabis establishment, which typically does robust business in the evenings and on weekend, is antithetical to the current professional medical office use, which businesses operate during daylight business hours Monday-Friday only. Finally, the neighboring commercial tenants and residential residents are opposed to the proposed use of the Commercial Lot as a cannabis dispensary because of the high likelihood of nuisance activity and disruption of quiet enjoyment of this bucolic rural community.

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Conclusion

For all of these reasons, the Association is opposed to use of the Commercial Lot as a cannabis dispensary and will not approve an application for such a use, if an application is made pursuant to CC&Rs § 3.01.B. Accordingly, we request that the application for an AUP be denied.

Very truly yours,



Frederic Jacobus
President, Lake Mont Pines Home Owners Association

cc: Board of Directors, Lake Mont Pines HOA
Melissa Bauman Ward, Esq., CCAL