

ATTACHMENT 1

Planning and Economic Development Commission Resolution

Recording Requested by and
When Recorded Mail To:

Town of Mammoth Lakes
Community & Economic Development Department
P.O. Box 1609
Mammoth Lakes, CA 93546

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Recordation fee exempt per Government Code §27383
Space Above for Recorder's Use

RESOLUTION NO. PEDC 2021-04
A RESOLUTION OF THE MAMMOTH LAKES PLANNING AND
ECONOMIC DEVELOPMENT COMMISSION
APPROVING USE PERMIT 21-002
TO ALLOW A COMMERCIAL CANNABIS CULTIVATION,
MANUFACTURING, AND DISTRIBUTION FACILITY
LOCATED AT 312 COMMERCE DRIVE, UNITS A AND B
(APN: 037-200-053-000)

WHEREAS, a request for consideration of a Use Permit was filed by Peter Sheldon on behalf of Elevation Green, LLC to allow a commercial cannabis cultivation, manufacturing, and distribution facility, in accordance with Chapter 17.28 (Industrial Zoning District), Section 17.52.085 (Cannabis - Commercial Businesses), Chapter 17.68 (Use Permits) and Chapter 5.38 (Commercial Cannabis Permits) of the Town of Mammoth Lakes Municipal Code, for property located at 312 Commerce Drive, Units A and B; and

WHEREAS, the Planning and Economic Development Commission conducted a noticed public hearing on July 14, 2021, at which time all those desiring to be heard were heard; and

WHEREAS, the Planning and Economic Development Commission considered, without limitation:

1. The staff report to the Planning and Economic Development Commission with attachments;
2. The General Plan, Municipal Code, and associated Land Use Maps;
3. Oral evidence submitted at the hearing; and
4. Written evidence submitted at the hearing.
5. Project narrative and plans received by the Town of Mammoth Lakes on March 12, 2021 and May 7, 2021.

NOW THEREFORE, THE PLANNING AND ECONOMIC DEVELOPMENT COMMISSION OF THE TOWN OF MAMMOTH LAKES DOES RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1. FINDINGS.

1. CEQA.

The project has been determined to be categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities) of Title 14 of the California Code of Regulations. The categorical exemption described in CEQA Guidelines Section 15301 applies to projects that consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion or use beyond that existing at the time of the lead agencies determination, for which the State has determined to be a class of projects that will not have a significant effect on the environment. The project qualifies for this exemption because it involves the leasing of an existing private structure for the operation of a commercial cannabis cultivation, manufacturing, and distribution facility and does not include any expansion of the structure beyond that existing at the time of review. Additionally, none of the exceptions set forth in CEQA Guidelines Section 15300.2, which would preclude a project from using a categorical exemption, are applicable, as described below:

- a) Projects that meet the criteria for the “Existing Facility” categorical exception are classified as a Class 1 project pursuant to the CEQA Guidelines and are not subject to the special circumstances applicable to projects classified as Classes 3, 4, 5, 6, or 11;
- b) The cumulative impact from successive projects over time will not be significant because the proposed use is consistent with the allowed and previously anticipated uses for the zone and no additional site disturbance beyond what was previously disturbed will occur as a result of this project since the project will occupy an existing facility;
- c) The proposed activity will not have a significant effect on the environment due to unusual circumstances because the site has been previously developed, and no new development will occur on the site as a result of this project;
- d) The project site is not located adjacent to a scenic highway, and therefore, no impacts to scenic resources within a highway designated as a state scenic highway could occur;
- e) The project site is not located on a hazardous waste site pursuant to the list of Hazardous Waste and Substances maintained by the Town; and
- f) The site has previously been disturbed and no new development will occur as a result of this project, and therefore, there is no possibility of causing a substantial adverse change in the significance of an established historical resource as a result of the project.

Therefore, the project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(2) since the project meets the criteria for use of the Existing Facilities categorical exemption (*Class 1*) and the application of that categorical exemption

is not barred by one of the exceptions set forth in Section 15300.2 of the CEQA Guidelines.

2. MUNICIPAL CODE FINDINGS.

FINDINGS FOR USE PERMIT

(Municipal Code §17.68.050 and §17.52.085.I)

- a. *The proposed use is consistent with all applicable sections of the General Plan and Title 17 and is consistent with any applicable specific plan or master plan.*

The proposed project is consistent with the General Plan because the proposed commercial cannabis manufacturing and distribution facility will operate within the scope of the “Industry, General” use classification. Uses that are consistent with the “Industry, General” land use classification includes I “Manufacturing of products from extracted or raw materials or recycled or secondary materials, or bulk storage and handling of such products and materials.” The General Plan Land Use Goal L.5 (“Provide an overall balance of uses, facilities, and services to further the town’s role as a destination resort community”) recognizes that manufacturing land uses are appropriate and essential operations within the Industrial zoning district, providing the Town with an overall balance of uses while maintaining its destination resort community character.

The proposed use is consistent with the Zoning Code (Title 17 of the Municipal Code) because commercial cannabis cultivation, nonvolatile manufacturing, and distribution uses are specifically permitted within the Industrial zoning district with approval of a Use Permit. Additionally, the proposed business operations are consistent with the “commercial cannabis cultivation,” “commercial cannabis nonvolatile manufacturing,” and “commercial cannabis distribution” use classifications provided in Municipal Code Section 17.144.040 and the regulations and operating standards specified in Municipal Code Section 17.52.085 (Cannabis – Commercial Businesses) and Chapter 5.38 (Commercial Cannabis Permits) for the various cannabis activities.

A determination as to whether the existing structure is consistent with the Industrial zone development standards, such as setbacks, height, and snow storage, is not necessary since the structure where the use will be operated is existing and no expansion or exterior alterations are proposed, and pursuant to MC §17.100.040.B.3, interior alterations that do no impact the exterior of a building are permitted to occur without limitation regardless of whether the structure is conforming or nonconforming. The existing parking on the project site is nonconforming since five (5) spaces are required based upon the applicable Industrial use parking ratio and only three (3) parking spaces are allocated to the two units. However, since the uses on the site are not changing (i.e., ongoing use of the site for Industrial uses), continued use of the site and structure is permitted pursuant to MC §17.100.030 since the structure is not being enlarged or altered. Therefore, the proposed use is consistent with all applicable development standards.

- b. *The proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health and safety nor materially injurious to properties or improvements in the vicinity.*

The proposed use will be operated in such a way that it will be compatible with surrounding land uses and will not be detrimental to the public health, safety, and welfare, nor will it be materially injurious to properties or improvements in the vicinity because the proposed commercial cannabis cultivation, nonvolatile manufacturing, and distribution facility is in an appropriate location in the Industrial zoning district and will operate in accordance with the requirements set forth in Municipal Code §17.52.085.E (Regulations for Commercial Cannabis Cultivation), §17.52.085.F (Regulations for Commercial Cannabis Manufacturing), and §17.52.085.G (Regulations for Commercial Cannabis Distribution).

Tenant improvements are reviewed and inspected by the Building Division and the Mammoth Lakes Fire Protection District (MLFPD) to ensure all applicable Building Codes and Fire Codes are satisfied. MLFPD's conditions of approval included in this resolution require all life-safety measures to be verified prior to issuance of a certificate of occupancy.

A safety and security plan has been provided to the Town and identifies specific measures that will be used to monitor and restrict access to the structure on a continuous basis. The Police Department has reviewed and accepted the security plan with the addition of requiring window security on the office windows and a bollard in front of the roll up doors.

- c. *The commercial cannabis business, as proposed, has demonstrated that it can and will comply with all of the requirements of the State and the Town for all of the commercial cannabis activities proposed.*

The application submittal provides detailed and complete information on how the applicant will comply with all of the requirements of the State and the Town for the proposed commercial cannabis cultivation, manufacturing, and distribution uses. The applicant has applied to the State for an annual Microbusiness Type 12 indoor cultivation, manufacturing, and distribution license. Prior to the State issuing the annual licenses, the State will verify compliance with all of the State regulations, which includes verifying with the local jurisdiction that they are authorized for the requested cannabis use. Lastly, as part of the annual commercial cannabis permit renewal process, the Town will verify compliance with applicable State and Town requirements through the annual regulatory audit and financial audit.

- d. *The commercial cannabis business includes adequate measures that minimize, to the extent feasible, nuisance to the immediate neighborhood and community including, but not limited to, minimizing detection of odor from off-site, minimizing the effects of loitering, provision of adequate parking, and provision of adequate security measures.*

The location proposed for the commercial cannabis cultivation, manufacturing, and distribution use is accessed from a private road located off the main circulation street (Commerce Drive) which has little to no visibility to through traffic. The facility design does not draw attention to the operations that occur entirely within the enclosed structure, and there are no signs identifying the facility as a cannabis business.

The operation plan provides sufficient detail regarding operating procedures, and addresses minimizing detection of odor from off-site, preventing loitering, and providing adequate security measures. The security measures proposed for the facility adequately deter loitering, unauthorized access, and property crimes. The Police Department has reviewed and accepted the security plan and floor plan provided with the application.

Parking needs at the site are reduced by the fact that the facility is not open to the public and any unauthorized individuals/vehicles on the site will be contacted immediately by the facility manager. The facility currently provides three parking spaces and a separate loading area, which the applicant has indicated will provide sufficient parking for employees.

- e. *For cannabis cultivation facilities, a finding shall also be made that the cannabis cultivation facility includes adequate measures that minimize use of water for cannabis cultivation at the site.*

The cannabis cultivation facility will utilize water supplied from the Mammoth Community Water District's municipal water system. Water will be stored in a 55-gallon drum and a 150-gallon tank. Both the drum and tank will be equipped with automated valves that fill the containers and shut off when they are full. A drip watering system will be utilized to automate the watering of plants. This will ensure plants are not oversaturated, and excess water drainage is not produced. MCWD has reviewed the proposed water supply and wastewater systems and has determined them to be adequate.

- f. *For cannabis manufacturing facilities, a finding shall be made that the manufacturing facility does not pose a significant threat to the public or to neighboring uses from explosion or from the release of harmful gases, liquids, or substances.*

The proposed manufacturing processes do not involve any volatile materials. Cannabis concentrates used in manufacturing will be obtained from licensed manufacturers or produced through non-volatile mechanical extraction methods. The proposed equipment is reviewed by the Building Division and the Mammoth Lakes Fire Protection District to ensure that all applicable Building and Fire Codes are satisfied, and that the necessary fire and life-safety measures are in place prior to issuance of a certificate of occupancy.

SECTION 2. PLANNING AND ECONOMIC DEVELOPMENT COMMISSION ACTIONS. The Planning and Economic Development Commission hereby takes the following actions:

1. Finds that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301. Existing Facilities, of the CEQA Guidelines; and
2. Approves Use Permit 21-002 subject to the following conditions:
(SEE EXHIBIT “A”); and
3. Directs staff to file a Notice of Exemption.

PASSED AND ADOPTED this 14th day of July 2021, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

Sandra Moberly,
Community and Economic
Development Director
Commission

Michael Vanderhurst,
Chair of the Mammoth Lakes Planning
and Economic Development

NOTE: This action is subject to Chapter 17.104 of the Municipal Code, which specifies time limits for legal challenges.

APPLICANT:

I, Peter Sheldon, the applicant, do hereby attest that I have read, and understand, the conditions stipulated within this Resolution.

Peter Sheldon
Elevation Green, LLC
(Notary Required)

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Mono }

On _____ before me, _____
personally appeared _____

who proved to me on the basis of satisfactory evidence to be the persons whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity (ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

OWNERS:

We, Stacey Crockett, David Crockett, and John Stoltzfus acting as the authorized signatory for the Stoltzfus Family Trust, the property owner(s), do hereby attest that we have read, and agree to, the conditions stipulated within this Resolution.

Stacey Crockett
(Notary Required) Date: _____

David Crockett
(Notary Required) Date: _____

John Stoltzfus, Stoltzfus Family Trust
(Notary Required) Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Mono }

On _____ before me, _____
personally appeared _____

who proved to me on the basis of satisfactory evidence to be the persons whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity (ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT “A”
Resolution No. PEDC 2021-04
Case No. UPA 21-002

1. This approval authorizes the following: a commercial cannabis cultivation, manufacturing, and distribution uses located at 312 Commerce Drive, Units A and B, consistent with Municipal Code §17.52.085 (Cannabis - Commercial Businesses), §17.68 (Use Permits) and Chapter 5.38 (Commercial Cannabis Permits). The following uses are permitted at the facility: (1) on-site indoor cultivation of cannabis with a maximum canopy area of 500 square feet; (2) non-volatile extraction of cannabis oils and the manufacturing of cannabis products; and (3) distribution of cannabis products to legal commercial cannabis businesses. All activities and operations authorized under this Use Permit shall be conducted in compliance with State law, as it may be amended from time to time.
2. This permit shall be issued upon the commencement of business operations, site preparation or construction, provided such commencement occurs within 24 months from the Planning and Economic Development Commission decision date on the use permit application. Thereafter, such work shall be diligently carried on until completion, unless an extension of time has been granted in accordance with Municipal Code Section 17.64.060 (Time Limits and Extensions). Once the commercial cannabis manufacturing facility has begun operating, the use permit shall run with the land pursuant to Municipal Code Section 17.68.070 or require revocation by the Planning and Economic Development Commission pursuant to Municipal Code Chapter 17.128.
3. All new improvements constructed on the site shall be in compliance with all Town of Mammoth Lakes, County of Mono, Mammoth Community Water District, the Mammoth Lakes Fire Protection District, the Lahontan Regional Water Quality Control Board, Great Basin Air Pollution Control District, OSHA, State of California and United States of America laws, statutes, ordinances, regulations, directives, orders, and the like applicable thereto and in force at the time thereof. Any violation of the above may constitute grounds for revocation of the use permit under Chapter 17.128 of the Mammoth Lakes Municipal Code.
4. This resolution of approval, as conditioned herein, shall be recorded for the subject property by the Mono County Recorder’s Office to commence the approved use on the property or the issuance of any building permits for new or remodeled structures.
5. The site shall be maintained in a neat, clean and orderly manner. All improvements shall be maintained in a condition of good repair and appearance. Outdoor storage of equipment and other materials, except for firewood, is prohibited. Non-operating vehicles, equipment and materials inappropriate to the site and its use shall not be stored within outdoor areas on the site.
6. All conditions of this permit shall be met or secured prior to final occupancy approval of any tenant improvements or new structures.
7. All uses are subject to review by the Building Official of the Town of Mammoth Lakes and must conform to occupancy ratings of the structures to obtain occupancy approval.

8. Town staff shall have the right to enter the subject property to verify compliance with these conditions. The holder of any permit associated with this project shall make the premises available to Town staff during regular business and shall, upon request, make records and documents available to Town staff as necessary to evidence compliance with the terms and conditions of the permit.
9. Where compliance with the conditions of approval or applicant-initiated changes to the plans require additional staff review, that review time shall be billed at the Town's established billing rates. Prior to the issuance of a building or grading permit, the applicant shall pay all outstanding costs for the processing of this application.
10. This action may be appealed to the Town Council within fifteen (15) calendar days from the date of Planning and Economic Development Commission approval in accordance with Municipal Code Chapter 17.104.
11. The applicant shall defend, indemnify, and hold harmless the local agency and its agents, officers, and employees from any claim, action, or proceeding against the local agency and its agents, officers, or employees to attack, set aside, void, or annul, an approval of the local agency, advisory agency, appeal board, or legislative body concerning this approval. The Town shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense.
12. A certificate of occupancy is required for all future tenant improvements within the subject structure. Tenant improvements shall identify occupancy separation requirements, disabled access requirements, and compliance with all applicable building, electrical, plumbing, and fire code requirements.
13. All exterior lighting fixtures shall conform to the Section 17.36.030 of the Town of Mammoth Lakes Municipal Code, Exterior Lighting. Exterior light fixtures in excess of a total of 400 lumens but less than 1,000 lumens with a semi-translucent barrier, shall be equipped with shields to completely obscure the light source and to direct the light downward onto the structure or immediately surrounding grounds to the satisfaction of the Community Development Director. This shall be verified prior to final sign-off of the building permit.
14. Storage of construction materials and equipment off-site shall not be permitted without a permit issued by the Community and Economic Development Department. Any public or private property altered, damaged, or destroyed by site preparation, grading, construction, or use shall be restored to its pre-existing condition by the permittee.
15. A valid building permit is required before any work can begin on-site.
16. The approved site and building plans shall be adhered to and maintained for the duration of the permit.
17. Nothing in this approval of this project shall be construed to allow for the deviations, adjustment, variance, or non-conformance of any Municipal Code or ordinance, or of any local, State, or federal standard, policy, regulation or law, unless specifically provided for herein.

18. The commercial cannabis business shall allow access to its facilities and records if requested by the Town, its officers, or agents, and shall pay for annual financial and regulatory compliance audits to be performed by the Town or its designee and submit to inspections from the Town or its officers to verify compliance with all relevant rules, regulations and conditions.
19. Any person operating a commercial cannabis business shall obtain a commercial cannabis permit pursuant to Municipal Code Chapter 5.38 prior to commencing operations and must maintain such permit in good standing in order to continue operations. The applicant shall comply with all commercial cannabis operating requirements pursuant to Municipal Code Section 5.38.090. as it may be amended from time to time
20. The commercial cannabis business shall operate only in accordance with the operating plans reviewed and approved by the Town.
21. The applicant and its successors of interest shall acknowledge and agree that the Town makes no representations or guarantees that operations carried out under the auspices of the use permit or the commercial cannabis permit will comply with federal law, that the applicant's premises and the real property in which the premises are situated will not be raided or closed by law enforcement personnel, and/or that the applicant, its staff, or anyone connected with the applicant's operations will not be criminally prosecuted under the applicable law.
22. By accepting this permit the applicant and its successors of interest in the commercial cannabis business shall indemnify, defend, and hold the Town harmless from and against any and all claims and proceedings, losses, damages, and cause of action relating to the approval of the permit or relating to any damage to property or person stemming from the commercial cannabis activity.
23. In the event the Town determines that it is necessary to take legal action to enforce any of the provisions of these conditions, and such legal action is taken, the applicant shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the Town, even if the matter is not prosecuted to a final judgement or is amicably resolved, unless the Town should otherwise agree with applicant to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails on every issue in the enforcement proceeding
24. Any modification to the operations of the approved use shall be requested in writing pursuant to Municipal Code §17.64.070 (Changes to an Approved Project) and may require the applicant apply for a modification to this Use Permit.
25. The project shall comply with all Mammoth Lakes Fire Protection District and Town of Mammoth Lakes Building Division requirements. A fire permit and a building permit are required for the change of occupancy and all applicable tenant improvements.
26. The commercial cannabis use shall comply with all of the regulations and operating requirements included within Municipal Code Sections 17.52.085.C (Prohibited Activities), E (Regulations for Commercial Cannabis Cultivation), F (Regulations for Commercial Cannabis Manufacturing), and G (Regulations for Commercial Cannabis Distribution), as they may be amended from time to time.

27. No odor shall be readily detectable beyond the commercial cannabis manufacturing facility. If odor is detected and verified by the Building Official, the applicant shall prepare and submit plans for tenant improvements or equipment modifications necessary to eliminate odor from being detected off-site. Installation of ventilation equipment and other tenant improvements shall be subject to review and approval by the Building Official.
28. No visual markers indicating that manufacturing of cannabis products is occurring on the site shall be visible from off-site. If signs are installed, all signs will require a sign permit and shall conform to Municipal Code §17.48 (Signs).
29. Deliveries and shipping activities to and from the property shall only occur during the hours of operation identified on the use permit application (7 a.m. through 10 p.m.).
30. The applicant shall obtain a valid weighmaster license issued by the California Department of Food and Agriculture prior to beginning business operations at the site.
31. The applicant shall obtain a business tax certificate, Town commercial cannabis permit, and State License prior to beginning business operations at the site.
32. The applicant shall submit a completed building permit application along with professionally prepared building plans prior to commencing any construction activity at the site. The building plans shall be prepared by a professional designer with relevant experience with non-residential design work. All plans shall be complete and detailed to the satisfaction of the Building Official.
33. Window security, such as security bars, shall be installed on the office windows. Installation of the bars shall be verified by the Chief of Police prior to issuance of the Commercial Cannabis Permit.
34. Bollards or other similar devices shall be required in front of the roll up doors. Installation of the bollards shall be verified by the Chief of Police prior to issuance of the Commercial Cannabis Permit.