

# EMERALD LAW GROUP

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Mendocino County Board of Supervisors

November 30, 2023

SUBJECT: APPEAL OF DENIAL OF ADMINISTRATIVE PERMIT AP 2023-0015

DATE: DECEMBER 5, 2023

The primary issue in this case turns on the interpretation of the regulation governing Drive-In/Drive Through service for cannabis retailers.

Title 4 CCR § 15025 subsection (e) provides:

(e) Notwithstanding subsection (a), a commercial cannabis business may have a drive-in or drive-through window only if, prior to June 1, 2018:

(1) The commercial cannabis business received a license or permit from the local jurisdiction for a premises including a drive-in or drive-through window which was disclosed on the local application; or

(2) The commercial cannabis business has submitted an application to the local jurisdiction for a license or permit which, at the time of submission of the application, included information that a drive-in or drive-through window was already part of, or proposed to be part of, the premises, and after June 1, 2018, the local jurisdiction approves the premises with a drive-in or drive-through window.

The phrase "a drive-in or drive-through window" is where the contention arises. Since the writer did not include a comma after "drive-in", "drive-in" is separate from "window." In other words the term "drive-in" is not a modifier of the term "window." This is consistent with the fact that a "drive-through window" is not referred to as a "drive-in window". For example: People often go through the "drive-through" at Starbucks or McDonalds. In the past people went to a "drive-in" theater to see a movie.

Kure's permit application clearly "included information" that a drive-in was already part of, or proposed to be part of, the premises. The drive-in was identified as an "Existing Drive" as opposed to the "Existing Road" identified on the same plot map. The "Existing Drive" is "information" on its existing "drive-in." (See attached.)

Since "information" on an existing "drive-in" was included within Kure's application, Kure met the preexisting condition necessary to qualify for a drive-in or drive-through window under 4 CCR § 15025 (e).

The next area of interpretation is whether a pre-existing "drive-in" will enable an applicant to install a "drive-through window."

Under 4 CCR § 15025 (e) an applicant may have a "drive-in or drive-through window" only if ... "The commercial cannabis business has submitted an application ...which, ... included information that a drive-in or drive-through window was already part of, or proposed to be part of, the premises." There is nothing in this regulation which excludes one or the other. If the application "included information that a drive-in ... was already part of, or proposed to be part of, the premises," then the "cannabis business may have a drive-in or drive-through window." There is no limitation as to which option may be exercised. In fact under the reading of the regulation the cannabis business may have both, a drive-in and a drive-through window.

As for the case at hand, the Department of Planning and Building is taking the most restrictive interpretation of 4 CCR § 15025 (e). Rather than seeking a means to increase business in Mendocino County, the Department of Planning and Building is doing everything it can to shut down business.

The Kure Wellness facility is not located on the border between a residential area, and an industrial area. The area is more appropriately described as being industrial, with the Mendocino Redwood mill being nearby, and the PG&E substation next door to the facility. There is no reason to take a restrictive position in this matter. A drive-through window will not foreseeably increase, crime, traffic, blight or any other negative consequence. On the other hand, a drive-through window may increase foreseeably security, safety, and should there be another epidemic, increase isolation between persons. Finally, a drive-through may foreseeably increase business, and thus tax revenue for the community.

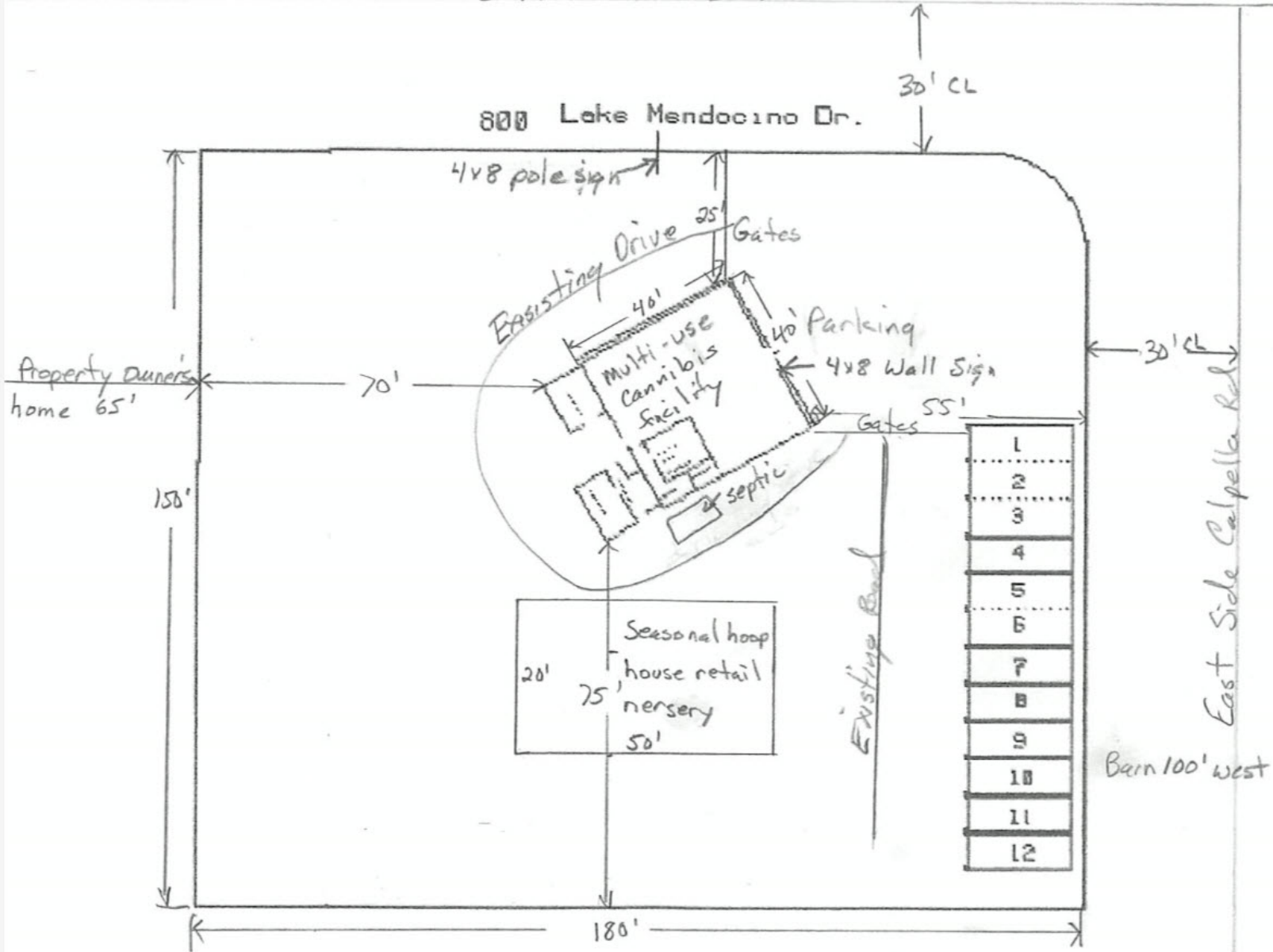
With that said, nothing in the law prevents the County of Mendocino from approving Kure Wellness' Appeal. Their permit application for a drive-through window should be approved.

Editte Lerman, Esq.

Nearest house to the south  
Approx 150'

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800 Lake Mendocino Dr.  
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Lake Mendocino Drive



1" = 30' ± N  
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Nearest house to the north 300'