



Potential for Gaps in Licensing Between Temp & Provisional/Annual

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HN clients look for more detailed instructions in separate document.

I spent hours emailing back and forth and then eventually having a phone conference with CDFA regarding the transition to Provisional licensing. To begin with, I was merely asking about technical issues related to whether a Temp for one thing would be allowed to spur two separate Provisional/Annuals of the same or even of different sizes or types (yes, the Provisional will match how the annual are applied for, not how the Temp was issued) and a few other questions. However, the CDFA answers led to more questions and finally, Kevin Ponce, the person that signs off on every single cultivation license in the state asked if we could do a phone conference. During the call, I focused on the issues relating to reducing the likelihood of a gap in licensing. There are three components: what the applicant can do, what the local jurisdiction can do and what CDFA can do. Here are the salient points from my discussion with Mr. Ponce:

1. While I was previously told that CDFA does not look at the date a Temp expires in determining when to process an annual app, Mr. Ponce said that his unit IS in fact trying to prioritize applications in accordance with temp license expiration for those batches of apps that have gotten to his units. In the section below I explain the application processing flow through the different departments of CDFA.
2. It is imperative that Local Ag does all it can to expedite local authorization submission to the state. The state application will not be processed further until AFTER the local authorization is obtained. If a local jurisdiction does not reply and instead takes the path of remaining silent (which would also eventually allow CDFA to go ahead), then CDFA has to wait 60 days before sending the application further along for any processing. Even if folks need to move from an embossed receipt (from local Ag) to a final Permit (from local Ag) before the CDFA license can be issued, it is important that the initial local authorization is not held up at all and anything that the County can do to have those processed as soon as they come in, would be very helpful. I know for a fact that Sarah Dukett and then Chevon Holmes, each as the County representative that was responsible for that task, were great at quickly submitting local authorization when folks were applying for their temps. I have not checked in recently to see whether the current County representative (I think still Chevon) still has a very quick turn around on local authorizations or if there is now a delay or a different approach to verification for annual apps (such as simply not responding and allowing CDFA to authorize after 60 days). Again, there are TWO SEPARATE issues: First, initial local authorization that needs to happen BEFORE CDFA can pass the application on for any further processing. Second (sometime before CDFA is done processing the annual app), final Permit issuance (as opposed to embossed receipt only) needs to be done (obviously, this is dependent on the applicant



having properly submitted all correct and completed docs to local Ag and having passed inspection and paid the annual license fee. I know local Ag is working hard on getting final Permits issued as soon as possible and that most of the delays now are because of application deficiencies. There is one more way that local Ag can assist in reducing the possibility of a gap in licensing: provide evidence to the applicant that a site-specific CEQA analysis is underway (see below for more on CEQA and what is needed).

3. Here is the state cultivation license application processing workflow for CDFA: Once an annual app is actually submitted (including all Owner apps and the DRP's Final Declarations and full payment for the app for the type and size of license being applied for), local jurisdiction authorization is needed to push the application further through the process. After the local authorization comes back, or, if no answer after 60 days, then the application is sent to the Administrative Review department for its part of the processing (correct and complete list of financial interest holders, correct and complete Owner apps along with proper uploads like IDs, LiveScan for every owner and any criminal conviction disclosure forms or additional docs including rehabilitation docs so they can do a complete review of any criminal convictions, correct and complete entity formation docs, completed and signed bond, etc.). After that, and only if it passes and any deficiencies that might have been present during this phase of the review are corrected and cleared in the time given, it proceeds to the Scientific Review department for two separately tracked reviews that proceed at the same time: approval of the cultivation plan (all parts), verification of correct water board docs (water quality and water rights), and CDFW docs on one track and CEQA on the other track. So long as they receive proof from the applicant or from the local jurisdiction that a site-specific CEQA analysis is underway, and all other items have passed, they will issue a Provisional license. It will help if the County can provide evidence that a site specific CEQA analysis is under way (CDFA is preparing a form for local jurisdictions to provide sufficient "project descriptions" so the site-specific description for that applicant's "project" can provide a basis for CDFA to see that the CEQA analysis has been conducted and that the "project" (the activity that is the subject of the application) can pass CEQA muster. Applicants must have the correct water board docs and may even have to have final LSA, Determination Letter (that an LSA is not needed), or Operation of Law letter (if CDFW waited too long to process it). I say "may" because right now, they are requiring the final CDFW docs and are calling CDFW for all applicants that state they are still waiting on CDFW. However, there is a possibility that given the severe backlog with CDFW, the legislature will pass some emergency legislation to allow more time for the final CDFW docs or some other solution is implemented. CDFA is well aware of the problem and is working hard to try to come up with workable and lawful solutions. In addition to the knowledge CDFA had regarding delayed processing of CDFW docs, I made them aware of some additional issues that could delay the submission of a fully executed LSA (one specific example is if CDFW proposes an LSA with terms that the applicant disagrees with or the applicant needs to negotiate additional time frames to do work required under the LSA. In those cases, it could take a much longer time from the time CDFW does finally issue a proposed LSA to



the time a fully executed agreement is in place). I wanted to forewarn Mr. Ponce, since if they give some extra time for the LSA, I didn't want them to make it so short that these legitimate processes of negotiating the LSA are not taken into account.

4. Applicants need to double-check all parts of their applications and uploaded docs. Many things have changed or have been clarified since some folks initially submitted their annual apps. They also need to do whatever tasks are needed to get a final Permit locally. They need to follow-up and continue to follow up with all parts of the process, including outside agencies. Many folks are forgetting to update all relevant agencies both locally and at the state levels. If records don't match or annual reports are not filed, that could delay an applicant's license since CDFA checks to make sure folks are in good standing. Likewise, all entity issues must be up to date. If folks have not filed their Statements of Information with the Secretary of State every year or every other year, or have not filed an entity tax return (even if zero income) and paid the Franchise Tax Board the annual entity fee, then their entity might be suspended and that could hold things up. There are tons of other details and each situation has nuances. I am providing my clients with more details and I am offering to conduct thorough reviews for them to help minimize the chances of a gap in licensing. I encourage every applicant and licensing consultant to go back and double check that everything has been done to the current standards. You can wait until you receive a Deficiency letter, but why? There will be limited time to correct the deficiency and it will further delay processing. If a temp is about to expire, why not take care of as much as possible before it is noticed as a deficiency?

To re-cap, the County can do a number of things to help minimize the chance of a gap in licensing: it can ensure that it continues to provide a very rapid response to the initial local authorization request. It can continue to help people get their final local Permit. It can do what it can to provide the proof necessary that a proper CEQA analysis is underway for that particular site. I believe that doing the initial authorization immediately, even if folks still have things to perfect in order to get their final local Permit would be helpful, but applicants must do everything they can to not only perfect the local permit requirements, but also really carefully review their CDFA application materials to ensure they actually meet the CURRENT requirements. There have been many refinements and new interpretations of exactly how certain things have to be done, so even if someone thought they were doing it right before, it may have changed and it is worth a careful review. Finally, if a Deficiency Notice is issued by CDFA, it is important to not only correct the item(s) quickly, but also to do the correct process (a pain in the butt) to clear the deficiency in the CDFA system. That is not a straightforward process, but it must be done.

Hannah