



THE CITY OF SAN DIEGO

## Report to the Hearing Officer

DATE ISSUED: May 8, 2019 REPORT NO. HO-19-045

HEARING DATE: May 15, 2019

SUBJECT: MPF 9850 Via De La Amistad, Process Three Decision

PROJECT NUMBER: [611944](#)

OWNER/APPLICANT: Barob Group LTD., Owner and Bear Realty LLC., Applicant

### SUMMARY

Issue: Should the Hearing Officer approve a Marijuana Production Facility located at 9850 Via De La Amistad in the IL-2-1 Zone of the Otay Mesa Community Plan area?

Staff Recommendation: Deny Conditional Use Permit No. 2172905.

Community Planning Group Recommendation: On April 17, 2019, the Otay Mesa Community Planning Group voted 12-0-0 to recommend approval of the proposed project with no conditions (Attachment 6).

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Section 15303(c), New Construction or Conversion of Small Structures (Attachment 5). The environmental exemption determination for this project was made on February 19, 2019, and the opportunity to appeal that determination ended March 5, 2019. An appeal of the environmental determination was previously filed and was withdrawn on March 25, 2019. The scope of the subject hearing only includes the project, and not the environmental determination.

### BACKGROUND

The project is a request for a Conditional Use Permit (CUP) pursuant to San Diego Municipal Code (SDMC) section 126.0303 to operate a Marijuana Production Facility (MPF) within an existing 7,470 square-foot building. The 0.53-acre site is located at 9850 Via De La Amistad in IL-2-1 Zone, Prime Industrial Lands, Transit Priority Area, Community Plan Implementation Overlay Zone – Type A (CPIOZ-A), Federal Aviation Authority (FAA) Part 77 Noticing Area, Airport Influence Area (Brown Field – Review Area 2), and Airport Land Use Compatibility Overlay (Brown Field) Zones within the Otay

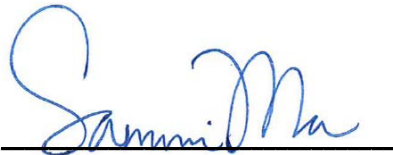
Mesa Community Plan area (Attachment 2). The site is improved with a one-story building constructed in 1990 and is currently being used as a warehouse and shipping facility (Attachment 3).

Pursuant to SDMC section 141.1004, MPFs are restricted to forty City-wide, within light and heavy industrial zones. As of the published date of this report, 30 CUP applications for MPFs have been approved. 10 additional CUP applications for MPFs have been approved by the Hearing Officer; however, the decisions of the Hearing Officer on these applications have been appealed to the Planning Commission. The appeals to Planning Commission are currently in process.

Conclusion:

As of April 3, 2019, the City of San Diego Hearing Officer has approved a total of 40 CUP applications for MPFs. Pursuant to SDMC section 141.1004, no more than 40 MPFs may be permitted in the City of San Diego. Therefore, City staff cannot support the Project's CUP findings for approval (Attachment 4), specifically SDMC section 126.0305 (b), (c) and (d), and recommends the Hearing Officer deny the Project as no more than 40 MPFs are allowed City-wide by the adopted City ordinance.

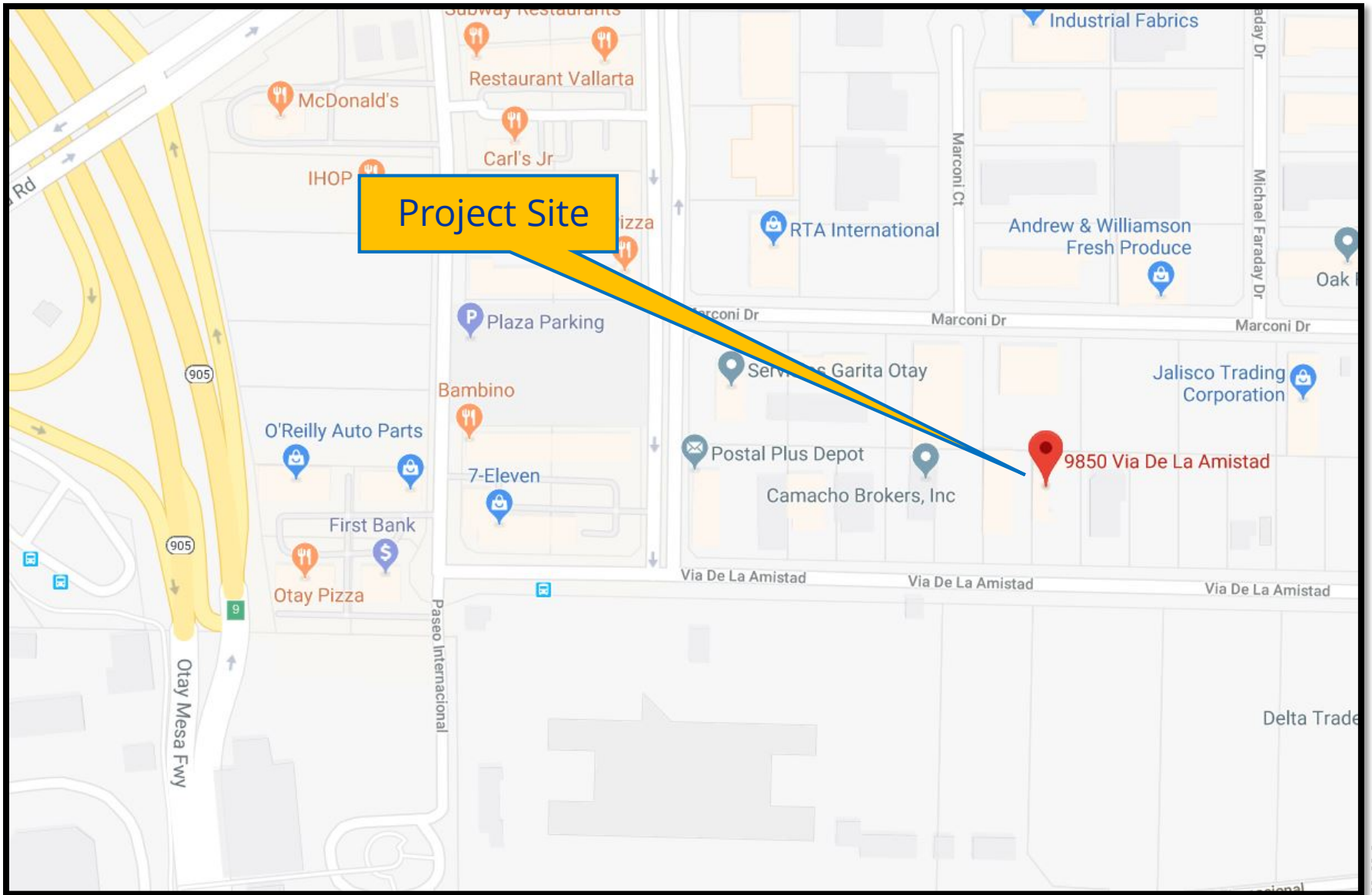
Respectfully submitted,



Sammi Ma, Development Project Manager

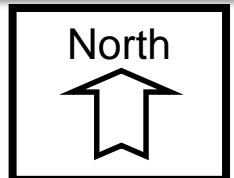
Attachments:

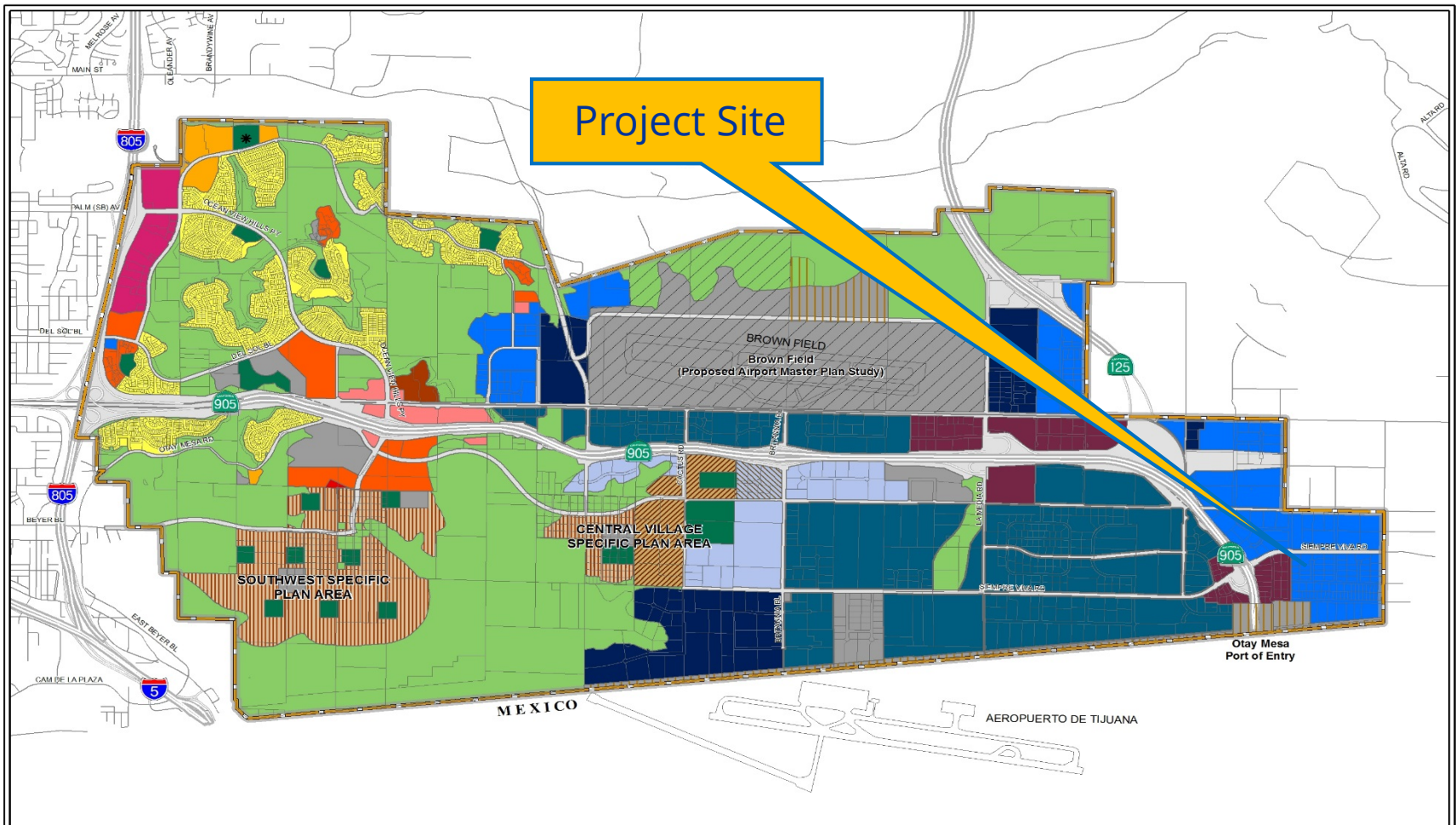
1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Draft Resolution with Findings
5. Environmental Exemption
6. Community Planning Group Recommendation
7. Ownership Disclosure Statement



## Project Location Map

MPF 9850 Via De La Amistad  
PROJECT NO. 611944





**OTAY MESA COMMUNITY PLAN UPDATE - Figure 2-1**



THE CITY OF SAN DIEGO  
 PLANNING, NEIGHBORHOOD &  
 ECONOMIC DEVELOPMENT DEPARTMENT  
 3/11/2014

**Legend**

- |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                               |                                                                                                                                                             |                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li> Open Space</li> <li> Parks</li> <li> Institutional</li> <li><b>Village Centers</b></li> <li> Neighborhood Village 15-25 du/ac</li> <li> Community Village 30-35 du/ac</li> </ul> | <ul style="list-style-type: none"> <li><b>Residential</b></li> <li> Residential - Low 5-9 du/ac</li> <li> Residential - Low Medium 10-14 du/ac</li> <li> Residential - Medium 15-20 du/ac</li> <li> Residential Medium High 30-44 du/ac</li> </ul> | <ul style="list-style-type: none"> <li><b>Commercial - Residential Prohibited</b></li> <li> Community Commercial</li> <li> Regional Commercial</li> <li> Heavy Commercial</li> <li> Neighborhood Commercial</li> <li> Potential Residential Site if Park Relocated</li> </ul> | <ul style="list-style-type: none"> <li><b>Industrial</b></li> <li> Business Park - Office Permitted</li> <li> Light Industrial</li> <li> Heavy Industrial</li> <li> Business Park - Residential Permitted 15 - 44 du/ac</li> <li> Business and International Trade</li> </ul> | <ul style="list-style-type: none"> <li><b>Overlays</b></li> <li> U.S. Government Facility</li> <li> Brown Field Boundary</li> <li> Planning Area</li> </ul> | <ul style="list-style-type: none"> <li><b>Other</b></li> <li> Right-Of-Way</li> </ul> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|

Scale: 0 1000 2000 4000

North arrow pointing up.

**SatGIS**

THIS MAP IS PROVIDED AS A PRELIMINARY INDICATION OF LAND USE DESIGNATIONS. IT IS NOT A GUARANTEE OF ANY KIND. OTHER CODES OR MARKS INCLUDING BUT NOT LIMITED TO THE APPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Copyright: SanGIS. All Rights Reserved.

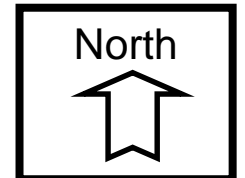
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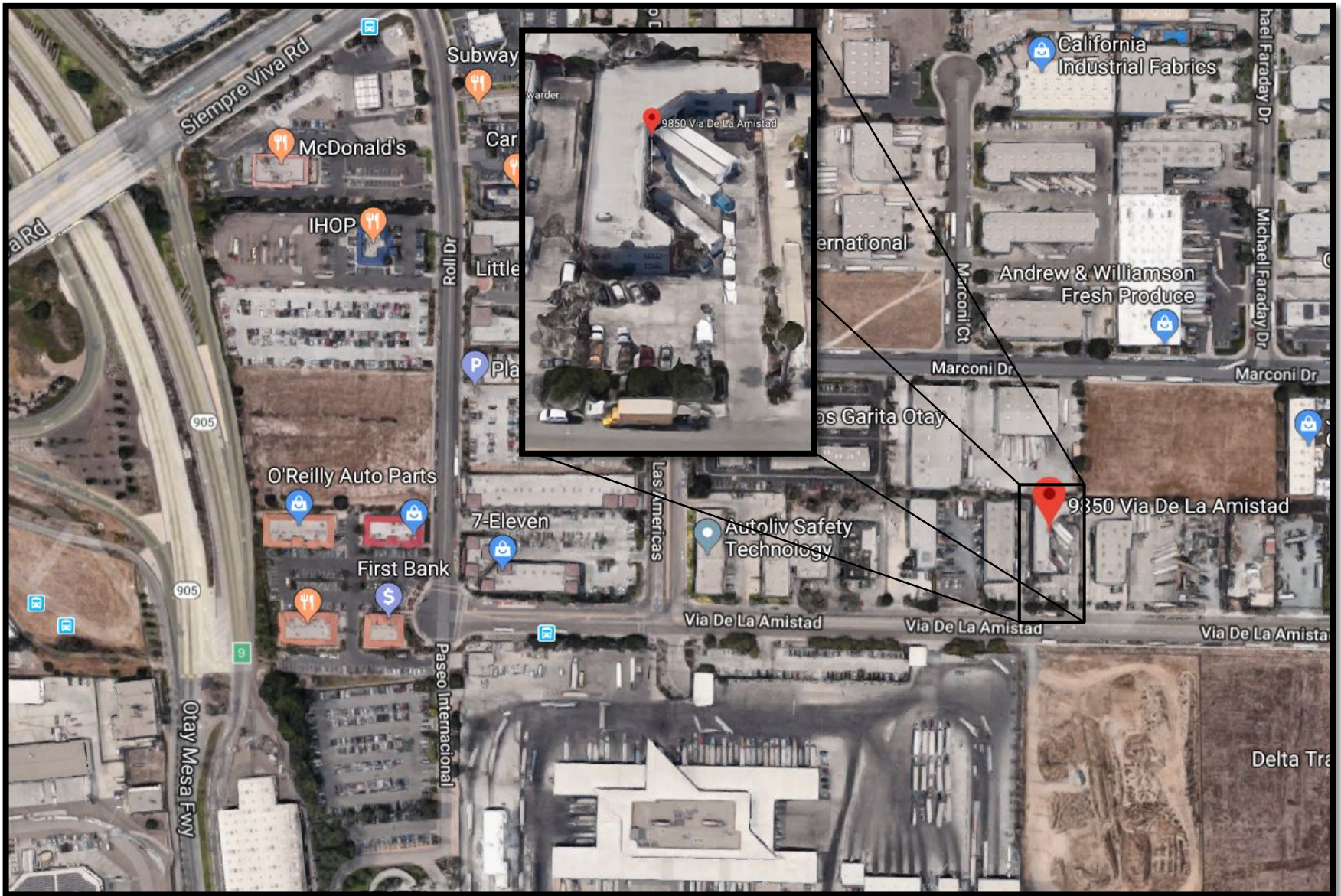
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DATE: 11/20/13



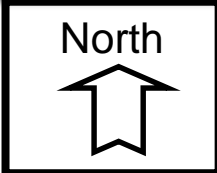
**Land Use Map**  
 MPF 9850 Via De La Amistad  
 PROJECT NO. 611944





## Aerial Photo

MPF 9850 Via De La Amistad  
PROJECT NO. 611944



HEARING OFFICER RESOLUTION NO. HO-XXXX  
CONDITIONAL USE PERMIT NO. 2172905  
**MPF 9850 VIA DE LA AMISTAD - PROJECT NO. 611944**

WHEREAS, BAROB GROUP, LTD., a California Limited Liability Company, Owner and BEAR REALTY INC., a California Limited Liability Company, Permittee, filed an application with the City of San Diego for a Conditional Use Permit to operate a Marijuana Production Facility on portions of a 0.53-acre site;

WHEREAS, the project site is located at 9850 Via La Amistad in IL-2-1 Zone, Prime Industrial Lands, Transit Priority Area, Community Plan Implementation Overlay Zone – Type A (CPIOZ-A), Federal Aviation Authority (FAA) Part 77 Noticing Area, Airport Influence Area (Brown Field – Review Area 2), and Airport Land Use Compatibility Overlay (Brown Field) Zones within the Otay Mesa Community Plan area;

WHEREAS, the project site is legally described as Lot 39 of Otay International Center Lots 8 and 9 Unit 1, according to Map thereof No. 11741 filed in the Office of the San Diego County Recorder;

WHEREAS, on February 19, 2019, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) under CEQA Guideline Section 15303(c), New Construction or Conversion of Small Structures, and the Environmental Determination was appealed to City Council, which appeal was withdrawn on March 25, 2019;

WHEREAS, on May 15, 2019, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 2172905 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Hearing Officer of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 2172905:

**A. CONDITIONAL USE PERMIT [SDMC Section 126.0305]**

**1. Findings for all Conditional Use Permits:**

**a. The proposed development will not adversely affect the applicable land use plan.**

The proposed project requests a Conditional Use Permit (CUP) to operate a Marijuana Production Facility (MPF) in an existing 7,470 square-foot building located at 9850 Via De La Amistad. The 0.53-acre site is located at 9850 Via De La Amistad in IL-2-1 Zone, Prime Industrial Lands, Transit Priority Area, Community Plan Implementation Overlay Zone – Type A (CPIOZ-A), Federal Aviation Authority (FAA) Part 77 Noticing Area, Airport Influence Area (Brown Field – Review Area 2), and Airport Land Use Compatibility Overlay (Brown Field) Zones within the Otay Mesa Community Plan (Community Plan) area.

The project site is designated as Prime Industrial by the Economic Prosperity Element and Industrial Employment by the Land Use and Community Planning Element of the General Plan. The General Plan identifies a citywide shortage of land suitable for manufacturing activities and a need to protect a reserve of manufacturing land from non-manufacturing uses. The project site is also designated Light Industrial Zone in the South District by the Community Plan. Lands identified as prime industrial by the Community Plan are intended to support export-oriented base sector activities such as warehouse distribution, manufacturing, research and development uses, and supporting business service uses. The identification of lands as prime industrial is intended to protect these valuable employment lands and prevent future encroachment of uses that do not conform to the purpose of prime industrial. Surrounding properties are zoned IL-2-1 and include uses consistent with the Light Industrial designation of the community plan. The proposed MPF, classified as an industrial use, is consistent with the underlying zone and land use designation.

The operations of the proposed MPF include the cultivation, extraction, manufacturing, and distribution of cannabis products, which are classified as an industrial use. Therefore, the proposed development is consistent with the community plan, and will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The proposed project requests a CUP to operate a MPF in an existing 7,470 square-foot building located at 9850 Via De La Amistad. The project proposes tenant improvements to accommodate operations, including non-load bearing partitions, doors, lighting, security cameras and system, millwork, finishes throughout, and associated mechanical, electrical and plumbing improvements. No exterior building alterations would occur. Furthermore, the proposed improvements would require the Owner/Permittee to obtain

a change of use/occupancy building permit consistent with all California Codes and Regulations in effect at the time of building permit, satisfactory to the Building Official.

MPFs require compliance with SDMC section 141.1004, which require a 1,000-foot separation, measured between property lines from, resource and population-based City parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, residential care facilities, and schools. MPFs also require a minimum distance requirement of 100 feet from a residential zone. The proposed MPF complies with the separation requirements as set forth in SDMC section 141.1004(a).

As of April 3, 2019, the Hearing Officer of the City of San Diego has approved a total of 40 CUP applications for MPFs. Pursuant to SDMC section 141.1004, no more than 40 MPFs may be permitted in the City of San Diego. Therefore, the proposed MPF would be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

MPFs are allowed in the IL-2-1 Zone of the Otay Mesa Community Plan with a CUP. However, as of April 3, 2019, the Hearing Officer of the City of San Diego has approved a total of 40 CUP applications for MPFs. Pursuant to SDMC section 141.1004, no more than 40 MPFs may be permitted in the City of San Diego. Therefore, the proposed MPF will not comply with the regulations of the Land Development Code as 40 CUP applications for an MPF have been previously approved.

**d. The proposed use is appropriate at the proposed location.**

The proposed project requests a CUP to operate a MPF in an existing 7,470 square-foot building located at 9850 Via De La Amistad. The site is located in the IL-2-1 Zone within the Otay Mesa Community Plan area. Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The purpose and intent of the IL Base Zone is to permit a range of uses, including nonindustrial uses in some instances. Specifically, the IL-2-1 allows a mix of light industrial, office, and commercial uses. Surrounding properties are zoned IL-2-1 and include uses consistent with the Light Industrial designation of the community plan.

As of April 3, 2019, the Hearing Officer of the City of San Diego has approved a total of 40 CUP applications for MPFs. Pursuant to SDMC section 141.1004, no more than 40 MPFs may be permitted in the City of San Diego. Therefore, the proposed MPF is not an appropriate use at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.



BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 2172905, is hereby DENIED by the Hearing Officer to the referenced Owner/Permittee.

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Sammi Ma  
Development Project Manager  
Development Services

Adopted on: May 15, 2019

IO#: 24007939

DRAFT

## NOTICE OF EXEMPTION

(Check one or both)

TO:  Recorder/County Clerk  
P.O. Box 1750, MS A-33  
1600 Pacific Hwy, Room 260  
San Diego, CA 92101-2400

FROM: City of San Diego  
Development Services Department  
1222 First Avenue, MS 501  
San Diego, CA 92101

Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

**Project Name/Number:** MPF 9850 Via De La Amistad / 611944 **SCH No.:** N.A.

**Project Location-Specific:** 9850 Via De La Amistad, San Diego, CA 92154

**Project Location-City/County:** San Diego / San Diego

**Description of nature and purpose of the Project:** Conditional Use Permit (CUP) for a Marijuana Production Facility to be located within an existing 7,470 square-foot light-industrial/office building. The project is located at 9850 Via De La Amistad, San Diego, CA 92154. Project operations would include the cultivation, trimming, extraction, manufacturing, packaging, and distribution of cannabis products to State of California licensed outlets. The project also includes various site improvements including reconstruction of a driveway to current City standards, and parking lot restriping that would include accessible parking. The developed .53-acre project site is designated Light Industrial and is zoned IL-2-1 within the Otay Mesa Community Plan area. Additionally, the project site is located within the Community Plan Implementation Overlay Zone (CPIOZ) A, Airport Land Use Compatibility Overlay Zone (Brown Field), Airport Influence Area (Review Area 2), Federal Aviation Administration (FAA) Part 77 Noticing Area, Very High Fire Hazard Severity Zone, Prime Industrial Lands, Transit Priority Area, and Council District 8. (LEGAL DESCRIPTION: Lot No. 39 of Otay International Center Lots 8 and 9, Unit No. 1, Map No. 11741).

**Name of Public Agency Approving Project:** City of San Diego

**Name of Person or Agency Carrying Out Project:** Barry Simons, Bear Realty LLC., 1330 Neptune Avenue, Encinitas, CA 92024 (760) 942-9541

**Exempt Status:** (CHECK ONE)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269 (b)(c))
- Categorical Exemption: Section 15303(c) (New Construction or Conversion of Small Structures)
- Statutory Exemptions:

**Reasons why project is exempt:** The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment. The project meets the criteria set forth in CEQA Section 15303(c) which allows for the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure as is the case with this project. Furthermore, the site is located an within existing urbanized area, and the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area, as is the case for the size of the suites under consideration, and the use does not propose the use of significant amounts of hazardous substances and the site located where all necessary public services and facilities are available and the

surrounding area is not environmentally sensitive. The exceptions listed in CEQA Section 15300.2 would not apply.

Lead Agency Contact Person: Chris Tracy, AICP Senior Planner

Telephone: (619) 446-5381

If filed by applicant:

- 1. Attach certified document of exemption finding.
- 2. Has a notice of exemption been filed by the public agency approving the project? ( ) Yes ( ) No

It is hereby certified that the City of San Diego has determined the above activity to be exempt from CEQA

 CHRIS TRACY AICP  
Senior Planner

Signature/Title

3/7/19  
Date

Check One:

- Signed By Lead Agency
- Signed by Applicant

Date Received for Filing with County Clerk or OPR:



City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101

## Community Planning Committee Distribution Form Part 2

<b>Project Name:</b> MPF 9850 Via de la Amistad		<b>Project Number:</b> 611944	<b>Distribution Date:</b>
<b>Project Scope/Location:</b> MPF 9850 Via de la Amistad			
<b>Applicant Name:</b> Joe Esposito		<b>Applicant Phone Number:</b> 619 236 0143	
<b>Project Manager:</b>	<b>Phone Number:</b>	<b>Fax Number:</b> (619) 321-3200	<b>E-mail Address:</b> jesposito@estradalandplan.com
<b>Committee Recommendations (To be completed for Initial Review):</b>			
<input checked="" type="checkbox"/> <b>Vote to Approve</b>	<b>Members Yes</b> 12	<b>Members No</b>	<b>Members Abstain</b>
<input type="checkbox"/> <b>Vote to Approve With Conditions Listed Below</b>	<b>Members Yes</b>	<b>Members No</b>	<b>Members Abstain</b>
<input type="checkbox"/> <b>Vote to Approve With Non-Binding Recommendations Listed Below</b>	<b>Members Yes</b>	<b>Members No</b>	<b>Members Abstain</b>
<input type="checkbox"/> <b>Vote to Deny</b>	<b>Members Yes</b>	<b>Members No</b>	<b>Members Abstain</b>
<input type="checkbox"/> <b>No Action (Please specify, e.g., Need further information, Split vote, Lack of quorum, etc.)</b>			<input type="checkbox"/> <b>Continued</b>
<b>CONDITIONS:</b>			
<b>NAME: Rob Hixson III</b>		<b>TITLE: Planning Group Chair</b>	
<b>SIGNATURE:</b> 		<b>DATE: April 17, 2019</b>	
<i>Attach Additional Pages If Necessary.</i>		<b>Please return to:</b> Project Management Division City of San Diego Development Services Department 1222 First Avenue, MS 302 San Diego, CA 92101	
Printed on recycled paper. Visit our web site at <a href="http://www.sandiego.gov/development-services">www.sandiego.gov/development-services</a> . Upon request, this information is available in alternative formats for persons with disabilities.			

	<p><b>City of San Diego Development Services</b> 1222 First Ave., MS 302 San Diego, CA 92101 (619) 446-5000</p>	<h1 style="margin:0;">Ownership Disclosure Statement</h1>	<p><b>FORM DS-318</b></p> <p>October 2017</p>
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**Approval Type:** Check appropriate box for type of approval(s) requested:  Neighborhood Use Permit  Coastal Development Permit  
 Neighborhood Development Permit  Site Development Permit  Planned Development Permit  Conditional Use Permit  Variance  
 Tentative Map  Vesting Tentative Map  Map Waiver  Land Use Plan Amendment •  Other \_\_\_\_\_

**Project Title:** GROW PROJECT **Project No. For City Use Only:** 611944  
**Project Address:** 9850 VIA DE LA AMISTAD, SAN DIEGO, CA 92154

**Specify Form of Ownership/Legal Status (please check):**  
 Corporation  Limited Liability -or-  General - What State? \_\_\_\_\_ Corporate Identification No. \_\_\_\_\_  
 Partnership  Individual

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the owner(s), applicant(s), and other financially interested persons of the above referenced property. A financially interested party includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver or syndicate with a financial interest in the application. If the applicant includes a corporation or partnership, include the names, titles, addresses of all individuals owning more than 10% of the shares. If a publicly-owned corporation, include the names, titles, and addresses of the corporate officers. (A separate page may be attached if necessary.) If any person is a nonprofit organization or a trust, list the names and addresses of **ANY** person serving as an officer or director of the nonprofit organization or as trustee or beneficiary of the nonprofit organization. A signature is required of at least one of the property owners. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

**Property Owner**  
 Name of Individual: D. BARRY SIMONS/ BAROB GROUP LTD.  Owner  Tenant/Lessee  Successor Agency  
 Street Address: 1330 NEPTUNE AVENUE  
 City: LEUCADIA State: CA Zip: 92024  
 Phone No.: 760.942.3437 Fax No.: 760.943.9541 Email: JSHAYMAN6@GMAIL.COM  
 Signature: *D Bc Simons* Date: 06/08/2018  
 Additional pages Attached:  Yes  No

**Applicant**  
 Name of Individual: D. BARRY SIMONS/ BEAR REALTY LLC  Owner  Tenant/Lessee  Successor Agency  
 Street Address: 1330 NEPTUNE AVE  
 City: LEUCADIA State: CA Zip: 92024  
 Phone No.: 760.942.3437 Fax No.: 760.943.9541 Email: JSHAYMAN6@GMAIL.COM  
 Signature: *D Bc Simons* Date: 06/08/2018  
 Additional pages Attached:  Yes  No

**Other Financially Interested Persons**  
 Name of Individual: \_\_\_\_\_  Owner  Tenant/Lessee  Successor Agency  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Additional pages Attached:  Yes  No