



THE CITY OF SAN DIEGO

## REPORT TO THE PLANNING COMMISSION

**DATE ISSUED:** June 10, 2015 **REPORT NO.** PC-15-060

**ATTENTION:** Planning Commission, Agenda of June 18, 2015

**SUBJECT:** APPEAL OF THE HEARING OFFICER'S DECISION TO APPROVE A CONDITIONAL USE PERMIT FOR EJ MARKETING MMCC - PROJECT NO. 368343 (PROCESS 3).

**REFERENCE:** Report to the Hearing Officer; Report No. HO-15-037 (Attachment 1-12).

**OWNER/  
APPLICANT:** REAL OUTRAGEOUS PARTNERS (ROP) LLC/  
Green Nectar EJM Cooperative, Inc., Ebon A. Johnson Sr.

### SUMMARY

**Issue:** Should the Planning Commission approve or deny an appeal of the Hearing Officer's decision to approve a Conditional Use Permit (CUP) to allow a Medical Marijuana Consumer Cooperative (MMCC) to operate in a 1,055 square-foot tenant space within an existing 28,449 square-foot development within the Mira Mesa Community Plan Area.

**Staff Recommendation:** Deny the appeal and Uphold the Hearing Officer's decision to Approve Conditional Use Permit No.1296361.

**Community Planning Group Recommendation:** On August 18, 2014, the Mira Mesa Community Planning Group voted under Special Rules for Consideration of the MMCC applications and did not recommend approval of this project (Attachment 10).

**Environmental Review:** This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on October 27, 2014 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination.

**Fiscal Impact Statement:** None with this action. All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

**Code Enforcement Impact:** None with this action.

**Housing Impact Statement:** None with this action.

## **BACKGROUND**

In 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, which allows the use of marijuana for medical purposes when recommended by a physician and excludes the patient and the primary caregiver from criminal prosecution. In 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP) became law. The MMP requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. In 2008 the California Attorney General established guidelines for Medical Marijuana Collective Operations and allowed cities to adopt and enforce laws consistent with the MMP.

On March 25, 2014 the City of San Diego adopted Ordinance No. O-20356, to implement zoning regulations for Medical Marijuana Consumer Cooperatives (MMCC). MMCCs are allowed with a Conditional Use Permit, Process 3, Hearing Officer Decision. A limit of four MMCCs per Council District (36 city-wide) was adopted in order to minimize the impact on the City and residential neighborhoods.

The proposed project is a request for a Conditional Use Permit (CUP) to operate a MMCC in a 1,055 square-foot tenant space within an existing 28,449 square-foot building on a 1.9-acre site. The proposed MMCC site is located at 7128 Miramar Road, north of Miramar Road, east of Camion Santa Fe, and west of Carroll Road (Attachment 2). The site is in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area. The site was developed per Building Permit No. A29763-4 and Grading Plan 21606-1-D.

Subsequent to the Hearing Officer's approval on March 25, 2015 and summarized in the appeal filed by David S. Demian, a discrepancy in the total building area and required parking spaces was identified. The previously approved site plan inaccurately identified the overall existing building area as 21,500 square feet and 130 off-street parking spaces; the correct building area is 28,449 square feet and the required parking is 139 off-street parking spaces. A revised site plan is included in this report (Attachment 18) identifying the correct overall square footage and the required 139 off-street parking spaces.

The site is in the Miramar Subarea, designated Light Industrial by the Mira Mesa Community Plan. The Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The Miramar Subarea is designated Light Industrial which encourages a mix of light industrial and specialized commercial uses. The proposed MMCC was reviewed by MCAS Miramar and determined to be consistent with the Air Installation Compatible Use Zone (AICUZ) noise and safety compatibility guidelines. The parcels to the north, east and west are within the IL-3-1 Zone, the parcel to the south is within the AR-1-1 Zone. The existing surrounding uses within the IL-3-1 Zone are consistent with the Light Industrial designation of

the community plan. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit within this community plan.

MMCCs must comply with San Diego Municipal Code (SDMC) Section 141.0614 which requires a 1,000 foot separation, measured between property lines, from; public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC Conditional Use Permits expire five years from date of issuance. MMCC's must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

Staff determined that the proposed MMCC met all applicable development regulations, including the minimum distance requirements and recommended approval of the project. On March 25, 2015, the Hearing Officer approved the project.

## **DISCUSSION**

**Appeal:** An appeal of the Hearing Officer's decision was filed on March 25, 2015 by Jay Davis on the grounds of Findings not supported (Attachment 13). On April 7, 2015, Scott Chipman filed an appeal on the grounds of Findings not supported (Attachment 14). On April 9, 2015, David S. Demian filed an appeal on behalf of Rick Engebretsen on the grounds of Factual Error, Conflict with matters, Findings not supported and New Information (Attachment 15).

The appellants' summarized grounds for appeal issues and staff responses are as follows:

### **Appeal Issues:**

1. *Finding SDMC 126.0305(b), "the proposed development will not be detrimental to the public, health, safety and welfare" is not supported. This project will expose the public to loitering, marijuana smoking at the premises and hash oil explosion.*

**Staff Response:** The CUP permit (Attachment 16) contains the following required and voluntary conditions to ensure the public, health, safety and welfare of the community: 1) No consultations by medical professionals on site; 2) no vending machines without a human intermediary; 3) interior and exterior lighting; 4) surveillance camera (recordings maintained a minimum of 30 days); 5) metal detector; 6) alarm; 7) armed security guard during hours of operation; 8) no loitering; 9) no smoking on site; 10) hours of operation from 7:00 a.m. to 9:00 p.m. seven days a week; 11) permit expires in five years; 12) compliance with Chapter 4, Article 2, Division 15; and 13) MMCC permit (fingerprinting and background checks of all responsible persons).

State law prohibits medical marijuana smoking (a) where smoking is prohibited by law, (b)

at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat.

Health & Safety Code § 11362.79. Our local smoking prohibitions are in Chapter 4, Article 3, Division 10 and apply to the smoking of tobacco or any weed or plant.

State law prohibits the concentration of controlled substances by chemical extraction. Health & Safety Code § 11379.6.

2. *The site appears to be within 1,000 feet of the Marine Corps Air Station (MCAS) Miramar which provides childcare services.*

Staff Response: Land use regulations contained in Chapters 11 through 15 of the San Diego Municipal Code are enforced by the City of San Diego. These regulations are not applicable to federally owned lands, including military bases. Although childcare services may be offered at MCAS Miramar, these services are not recognized as a child care centers for purposes of the SDMC. The City does not regulate federal uses and normally would not be aware of the uses as they occur within a secure facility.

3. *Adequate public safety measures are not planned or within the ordinance.*

Staff Response: The Conditional Use Permit (Attachment 4) contains the following required conditions to ensure the public, health, safety and welfare of the community: 1) No consultations by medical professionals on site; 2) no vending machines without a human intermediary; 3) interior and exterior lighting; 4) surveillance camera; 5) alarm; 6) security guard during hours of operation; 7) no loitering; 8) no smoking on site; 9) hours of operation from 7:00 a.m. to 9:00 p.m. seven days a week; 10) permit expires in five years; 11) compliance with Chapter 4, Article 2, Division 15 of the SDMC; and 12) MMCC permit (fingerprinting and background checks of all responsible persons).

4. *This application appears to be within 1,000 feet of an existing church located at 7060 Miramar Road (Pacific Lighthouse Christian Fellowship).*

Staff Response: Pacific Lighthouse Christian Fellowship is not within 1,000 feet of this site.

5. *This site appears to be within 1,000 feet of a minor-oriented facility located at 9586 Distribution Avenue (Champion Rhythmics).*

Staff Response: "Minor-oriented facility" means any after school program, teen center, club for boys and/or girls, children's theater, children's museum, or other establishment where the **primary use** is devoted to people under the age of 18 (SDMC Section 113.0103). Champion Rhythmics (gymnastics academy) is not the primary use on the site.

6. *Overall building area is not accurately represented and corresponding parking will not satisfy the minimum parking requirement of the proposed project or the overall site.*

Staff Response:

The approved site plan within the Hearing Officer's Report (Attachment 9) inaccurately



reflected the total overall site square footage as 21,500 square feet, subsequently requiring 130 off-street parking spaces. Based on the prior approved plans, Building Permit No. A29763-4 (Attachment 19), the correct overall site square footage is 28,449 and the corresponding required off-street parking is therefore, 139 spaces. Transportation staff has reviewed the revised site plan provided by the applicant (Attachment 18) and confirmed it accurately represents the required 139 off-street parking spaces (four ADA compliant) based on the overall building area of 28,449 square feet. The minimum parking requirement for the site is based on the previously approved Building Permit No. A29763-4 requirement of 139 off-street parking spaces (Attachment 19). The previously conforming calculated parking ratio of 4.89 parking spaces per 1,000 square feet results in an off-street parking requirement of 5 spaces for the project site of 1,055 square feet. Using the current SDMC requirements, the minimum off-street parking requirement for the proposed 1,055 square-foot MMCC is, likewise, 5 off-street parking spaces. The 5 parking spaces are included in the overall 139 parking space requirement. The existing surface parking will be restriped to provide the required 139 required parking spaces for the overall site.

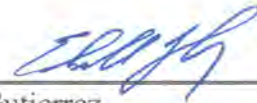
**Conclusion:**

Staff is recommending denial of the appeal and approval of the project as it meets all applicable development regulations, including the minimum distance requirements.

Respectfully submitted,



Mike Westlake  
Assistant Deputy Director  
Development Services Department



Edith Gutierrez  
Development Project Manager  
Development Services Department

**Attachments:**

- 1-12 Report to the Hearing Officer – Report HO-15-031
- 13. Appeal Application, Jay Davis
- 14. Appeal Application, Scott Chipman
- 15. Appeal Application, David S. Demian
- 16. Draft Permit with Conditions
- 17. Draft Permit Resolution with Findings
- 18. Revised Site Plan
- 19. Approved Building Permit No. A29763-4
- 20. Approved Grading Plan 21606-1-D



THE CITY OF SAN DIEGO

## REPORT TO THE HEARING OFFICER

HEARING DATE: March 25, 2015

REPORT NO. HO-15-037

ATTENTION: Hearing Officer

SUBJECT: EJ MARKETING MMCC  
PROJECT NUMBER: 368343

LOCATION: 7128 Miramar Road

APPLICANT: Ebon A Johnson Sr.

### SUMMARY

Issue(s): Should the Hearing Officer approve a Conditional Use Permit to allow a Medical Marijuana Consumer Cooperative (MMCC) to operate in a 1,055 square foot tenant space within an existing 21,500 square foot building within the Mira Mesa Community Plan Area?

Staff Recommendation: APPROVE Conditional Use Permit No. 1296361.

Community Planning Group Recommendation: On August 18, 2014, the Mira Mesa Community Planning Group voted under Special Rules for Consideration of the MMCC applications and did not recommend approval of this project (attachment 10).

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 Section 15303, New Construction or Conversion of Small Structures on October 27, 2014 (Attachment 8). An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on January 13, 2015. The scope of the Hearing Officer's decision only includes the project, and not the environmental determination.

### BACKGROUND

In 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, which allows the use of marijuana for medical purposes when recommended by a physician and excludes the patient and the primary caregiver from criminal prosecution. In 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP) became law. The MMP requires the

California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. In 2008 the California Attorney General established guidelines for Medical Marijuana Collective Operations and allowed cities to adopt and enforce laws consistent with the MMP.

On March 25, 2014 the City of San Diego adopted Ordinance No. O-20356, to implement zoning regulations for Medical Marijuana Consumer Cooperatives (MMCC). MMCC's are allowed with a Conditional Use Permit, Process 3, Hearing Officer Decision. A limit of four MMCC's per Council District (36 city-wide) was adopted in order to minimize the impact on the City and residential neighborhoods.

This proposed project is a request for a Conditional Use Permit (CUP) to operate a MMCC in a 1,055 square foot tenant space within an existing 21,500 square foot building on a 1.9-acre site. The proposed MMCC site is located at 7128 Miramar Road, north of Miramar Road, east of Camion Santa Fe, and west of Carroll Road (Attachment 2). The site is in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area. The site was developed in 1988 per Building Permit No. A29764.

The site is in the Miramar Subarea, designated Light Industrial by the Mira Mesa Community Plan. The Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The Miramar Subarea is designated Light Industrial which encourages a mix of light industrial and specialized commercial uses. The proposed MMCC was reviewed by MCAS Miramar and determined to be consistent with the Air Installation Compatible Use Zone (AICUZ) noise and safety compatibility guidelines. The parcels to the north, east and west are within the IL-3-1 Zone, the parcel to the south is within the AR-1-1 Zone. The existing surrounding uses within the IL-3-1 Zone are consistent with the Light Industrial designation of the community plan. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit within this community plan.

## DISCUSSION

The project site located at 7128 Miramar Road is a 1.9-acre site developed with four buildings in a shopping center. The proposed tenant space is currently vacant. The MMCC proposes interior improvements that include a reception area, dispensary area, office and storage. The tenant improvement building permit will require compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted referenced standards. Public improvement for this project include replacement of the existing curb ramps located on both sides of the signalized entrance with City standard curb ramps with truncated domes and installation of a wheelchair lift to provide Americans with Disabilities Act (ADA) access to the project site.

MMCC's must comply with San Diego Municipal Code (SDMC), Section 141.0614 which requires a 1,000 foot separation, measured between property lines, from; public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCC's prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard for the tenant/facility space and directly adjacent area. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC Conditional Use Permits expire five years from date of issuance. MMCC's must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The applicant has voluntarily agreed to the following conditions in order avoid adverse impact to the community: 1) operable surveillance cameras and a metal detector to the satisfaction of the San Diego Police Department 2) the cameras shall have and use a recording device that maintains the records for a minimum of 30 days 3) an armed security guard to the extent the possession of a firearm by the security guard is not in conflict with 18 U. S.C. § 922(g) and 27 C.F.R. § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws 4) the security guard is required to be on the premises 24 hours a day, seven days a week and 5) graffiti must be removed within 24 hours (Attachment 4, Conditions Number 16 & 20).

The City of San Diego, Development Services staff has reviewed the 1,000 foot radius map (Attachment 6) and 1,000 foot spreadsheet exhibit (Attachment 7) provided by the applicant identifying all the existing uses. Staff has determined that the proposed MMCC meets all applicable development regulations, including the minimum distance requirements. The permit has been conditioned to include all development restrictions and the applicant has willingly proposed additional conditions in order to avoid adverse impacts upon the health, safety and general welfare of persons patronizing, residing or working within the surrounding area.

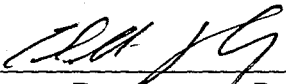
### CONCLUSION

The Conditional Use Permit for the proposed MMCC may be approved if the Hearing Officer finds that the MMCC meets all applicable regulations. Staff has reviewed the proposed MMCC and has determined that it meets all applicable sections of the San Diego Municipal Code, the Mira Mesa Community Plan and the General Plan. Additionally, the required findings can be made and therefore, staff is recommending approval of the project as proposed.

### ALTERNATIVE

1. Approve Conditional Use Permit No. 1296361, with modifications.
2. Deny Conditional Use Permit No. 1296361, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

  
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Edith Gutierrez, Development Project Manager

Attachments:

1. Aerial Photograph
2. Project Location Map
3. Community Plan Land Use Map
4. Draft Permit with Conditions
5. Draft Permit Resolution with Findings
6. 1000 Foot Radius Map
7. 1000 Foot Radius Map Spreadsheet
8. Notice of Right to Appeal
9. Project Site Plan(s)
10. Community Planning Group Recommendation
11. Ownership Disclosure Statement
12. Crime Prevention Through Environmental Design recommendations





## Location Aerial Photo

EJ MARKETING MMCC- 7128 Miramar Road  
PROJECT NO. 368343



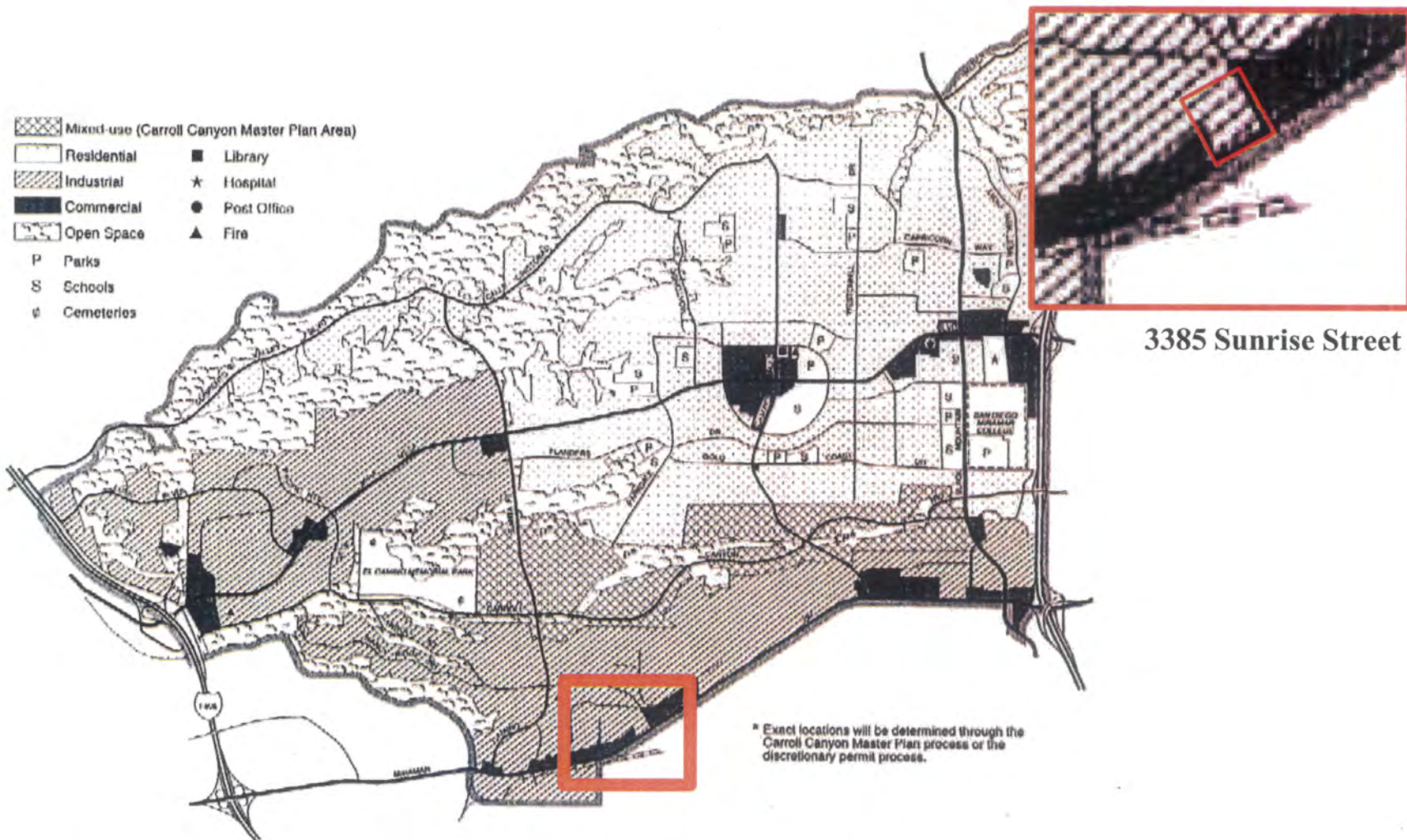




## Project Location Map

EJ MARKETING MMCC- 7128 Miramar Road  
PROJECT NO. 368343





## Southeastern San Diego Community Plan Land Use



### Land Use Map

EJ MARKETING MMCC- 7128 Miramar Road  
PROJECT NO. 368343





**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION 501

**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004659.

**CONDITIONAL USE PERMIT NO. 1296361**  
**EJ MARKETING MMCC - PROJECT NO. 368343**  
**HEARING OFFICER**

This Conditional Use Permit No. 1296361 is granted by the Hearing Officer of the City of San Diego to REAL OUTRAGEOUS PARTNERS (ROP), LLC, Owner and GREEN NECTAR EJM COOPERATIVE, INC, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 1.9-acre site is located at 7128 Miramar Road in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone, and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area. The project site is legally described as: Lot 1 of Barlow Subdivision, Map No. 7084, October 18, 1971.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) and subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated March 25, 2015, on file in the Development Services Department.

The project shall include:

- a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 1,055 square foot tenant space within an existing 21,500 square foot building on a 1.9-acre site;
- b. Existing landscaping (planting, irrigation and landscape related improvements);
- c. Existing off-street parking;
- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality

Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by April 10, 2018.
2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on April 10, 2020.
3. In addition to the provisions of the law, the MMCC must comply with; Chapter 4, Article 2, Division 15 and Chapter 14, Article 1, Division 6 of the San Diego Municipal Code.
4. No construction, occupancy, or operation of any facility or improvement described herein shall commence, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department.
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
  - c. A MMCC Permit issued by the Development Services Department is approved for all responsible persons in accordance with SDMC, Section 42.1504.
5. While this Permit is in effect, the MMCC shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
6. This Permit is a covenant running with the MMCC and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).



9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

#### **PLANNING/DESIGN REQUIREMENTS:**

13. The use within the 1,055 square foot tenant space shall be limited to the MMCC and any use permitted in the IL-3-1 Zone.

14. Consultations by medical professionals shall not be a permitted accessory use at the MMCC.
15. Lighting shall be provided to illuminate the interior of the MMCC, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
16. Security shall include operable cameras and a metal detector to the satisfaction of the San Diego Police Department, alarms, and an armed security guard to the extent the possession of a firearm by the security guard is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R. § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guard shall be licensed by the State of California and be on the premises 24 hours a day, seven days a week. The security guard should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days.
17. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the MMCC in character size at least two inches in height.
18. The MMCC shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
19. The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this section and condition, a vending machine is any device which allows access to medical marijuana without a human intermediary.
20. The Owner/Permittee or operator shall maintain the MMCC, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed within 24 hours.
21. Medical marijuana shall not be consumed anywhere within the 1.9-acre site.
22. The Owner/Permittee or operator shall post anti-loitering signs near all entrances of the MMCC.
23. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Sign colors and typefaces are limited to two. Ground signs shall not be pole signs. A sign is required to be posted on the outside of the MMCC and shall only contain the name of the business.

**ENGINEERING REQUIREMENTS:**

24. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the replacement of the existing curb ramps, located on both sides of the signalized entrance, with City standard curb ramps with truncated domes, satisfactory to the City Engineer.
25. Prior to the issuance of the building occupancy, the Owner/Permittee shall install a wheelchair lift to provide Americans with Disabilities Act (ADA) access to the project site.

**TRANSPORTATION REQUIREMENTS:**

26. No fewer than 130 off-street parking spaces (with 136 off-street parking spaces provided) shall be permanently maintained on the property within the approximate location shown on the project's Exhibit "A". Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

**POLICE DEPARTMENT RECOMMENDATION:**

27. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Hearing Officer of the City of San Diego on March 25, 2015 and Resolution No. HO-XXXX.

Conditional Use Permit No.1296361/PTS No. 368343

Date of Approval: March 25, 2015

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

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Edith Gutierrez  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

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**The undersigned Owner/Permittee**, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

REAL OUTRAGEOUS PARTNERS, LLC  
Owner

By \_\_\_\_\_  
Ralph Rischman  
Partner

REAL OUTRAGEOUS PARTNERS, LLC  
Owner

By \_\_\_\_\_  
Steve Blumkin  
Partner

REAL OUTRAGEOUS PARTNERS, LLC  
Owner

By \_\_\_\_\_  
Ross Margolin  
Partner

GREEN NECTAR EJM COOPERATIVE, INC.  
Permittee

By \_\_\_\_\_  
Ebon A Johnson Sr.  
Director

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**



HEARING OFFICER  
RESOLUTION NO. HO-  
CONDITIONAL USE PERMIT NO. 1296361  
**EJ MARKETING MMCC - PROJECT NO. 368343**

WHEREAS, REAL OUTRAGEOUS PARTNERS (ROP), LLC, Owners and GREEN NECTAR EJM COOPERATIVE, INC, Permittee, filed an application with the City of San Diego for a permit to construct and operate a Medical Marijuana Consumer Cooperative (MMCC) in a 1,055 square foot tenant space within an existing 21,500 square foot building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1296361), on portions of a 1.9-acre site;

WHEREAS, the project site is located 7128 Miramar Road in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone, and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area;

WHEREAS, the project site is legally described as Lot 1 of Barlow Subdivision, Map No. 7084, October 18, 1971;

WHEREAS, on March 25, 2015, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 1296361 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 27, 2014, 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 Guidelines Section 15303 (New Construction or Conversion of Small Structures); and the Environmental Determination was appealed to City Council, which heard and denied the appeal on January 13, 2015 pursuant to Resolution No. 309478;

NOW, THEREFORE, BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That the Hearing Officer adopts the following written Findings, dated March 25, 2015.

FINDINGS:

**Conditional Use Permit Approval – Section §126.0305**

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

The proposed project is a request for a Conditional Use Permit to operate a MMCC in a 1,055 square foot tenant space within an existing 21,500 square foot building. The 1.9-acre site is located at 7128 Miramar Road in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area.

The site is in the Miramar Subarea, designated Light Industrial by the Mira Mesa Community Plan.

The Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The Miramar Subarea is designated Light Industrial which encourages a mix of light industrial and specialized commercial uses. The proposed MMCC was reviewed by MCAS Miramar and determined to be consistent with the Air Installation Compatible Use Zone (AICUZ) noise and safety compatibility guidelines.

The parcels to the north, east and west are within the IL-3-1 Zone, the parcel to the south is within the AR-1-1 Zone. The existing surrounding uses within the IL-3-1 Zone are consistent with the Light Industrial designation of the community plan. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit and is consistent with the community plan, therefore will not adversely affect the applicable land use plan.

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

The proposed project is a request for a Conditional Use Permit to operate an MMCC in a 1,055 square foot tenant space located at 7128 Miramar Road which is currently vacant. The project proposes interior improvements that include a reception area, dispensary area, office and storage. The tenant improvement building permit will require compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted referenced standards. Public improvement for this project include replacement of the existing curb ramps located on both sides of the signalized entrance with City standard curb ramps with truncated domes and installation of a wheelchair lift to provide Americans with Disabilities Act (ADA) access to the project site.

The City of San Diego conducted an environmental review of this site in accordance with the California Environmental Quality Act (CEQA) guidelines. The project was determined to be categorically exempt from CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures).

MMCCs are restricted to four per Council District, 36 city-wide, within commercial and industrial zones in order to minimize the impact on the City and residential neighborhoods. MMCCs require compliance with San Diego Municipal Code (SDMC), section 141.0614 which require a 1,000 foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The project requires compliance with the development conditions in effect for the subject property as described in Conditional Use Permit No. 1296361. The Conditional Use Permit is valid for five years, however may be revoked if the use violates the terms, conditions, lawful requirements, or provisions of the permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety and general welfare of persons patronizing, residing or working within the

surrounding area and therefore, the proposed MMCC will not be detrimental to the public health, safety and welfare.

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

The proposed project is a request for a Conditional Use Permit to operate an MMCC in a 1,055 square foot tenant space located at 7128 Miramar Road on a 1.9-acre site. The project proposes interior improvements that include a reception area, dispensary area, office and storage. The tenant improvement building permit will require compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted referenced standards. Public improvement for this project include replacement of the existing curb ramps located on both sides of the signalized entrance with City standard curb ramps with truncated domes and installation of a wheelchair lift to provide Americans with Disabilities Act (ADA) access to the project site.

MMCCs are allowed in the IS-1-1 Zone with a Conditional Use Permit (CUP). The CUP requires MMCCs to comply with SDMC, section 141.0614 which requires a 1,000 foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The proposed MMCC is consistent with the land use designation of Light Industrial. The proposed MMCC meets all development regulations, no deviations are requested, and the permit as conditioned assures compliance with all the development regulations of the San Diego Municipal Code. The proposed MMCC therefore complies with the regulations of the Land Development Code.

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

The proposed project is a request for a Conditional Use Permit to operate an MMCC in a 1,055 square foot tenant space within an existing 21,500 square foot building. The site is in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone, the 70-75 dB CNEL for Miramar and within the Miramar Subarea which is designated Light Industrial by the Mira Mesa Community Plan. The Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The Miramar Subarea is designated Light Industrial which encourages a mix of light industrial and specialized commercial uses. The proposed MMCC was reviewed by MCAS Miramar and determined to be consistent with the Air Installation Compatible Use Zone (AICUZ) noise and safety compatibility guidelines. The proposed MMCC, classified as commercial services, is therefore consistent with the community plan.

MMCCs are allowed in the IL-3-1 Zone with a Conditional Use Permit (CUP). The CUP requires MMCCs to comply with SDMC, section 141.0614 which requires a 1,000 foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and

schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The San Diego Municipal code limits MMCCs to commercial and industrial zones and the number of MMCCs to only four per Council District, 36 city-wide, in order to minimize the impact on the City and residential neighborhoods. The parcels to the north, east and west are within the IL-3-1 Zone, the parcel to the south is within the AR-1-1 Zone. The existing surrounding uses in the IL-3-1 Zone are consistent with the Light Industrial designation of the community plan and compatible uses with MMCCs. Therefore, the proposed MMCC is an appropriate use at the proposed location.

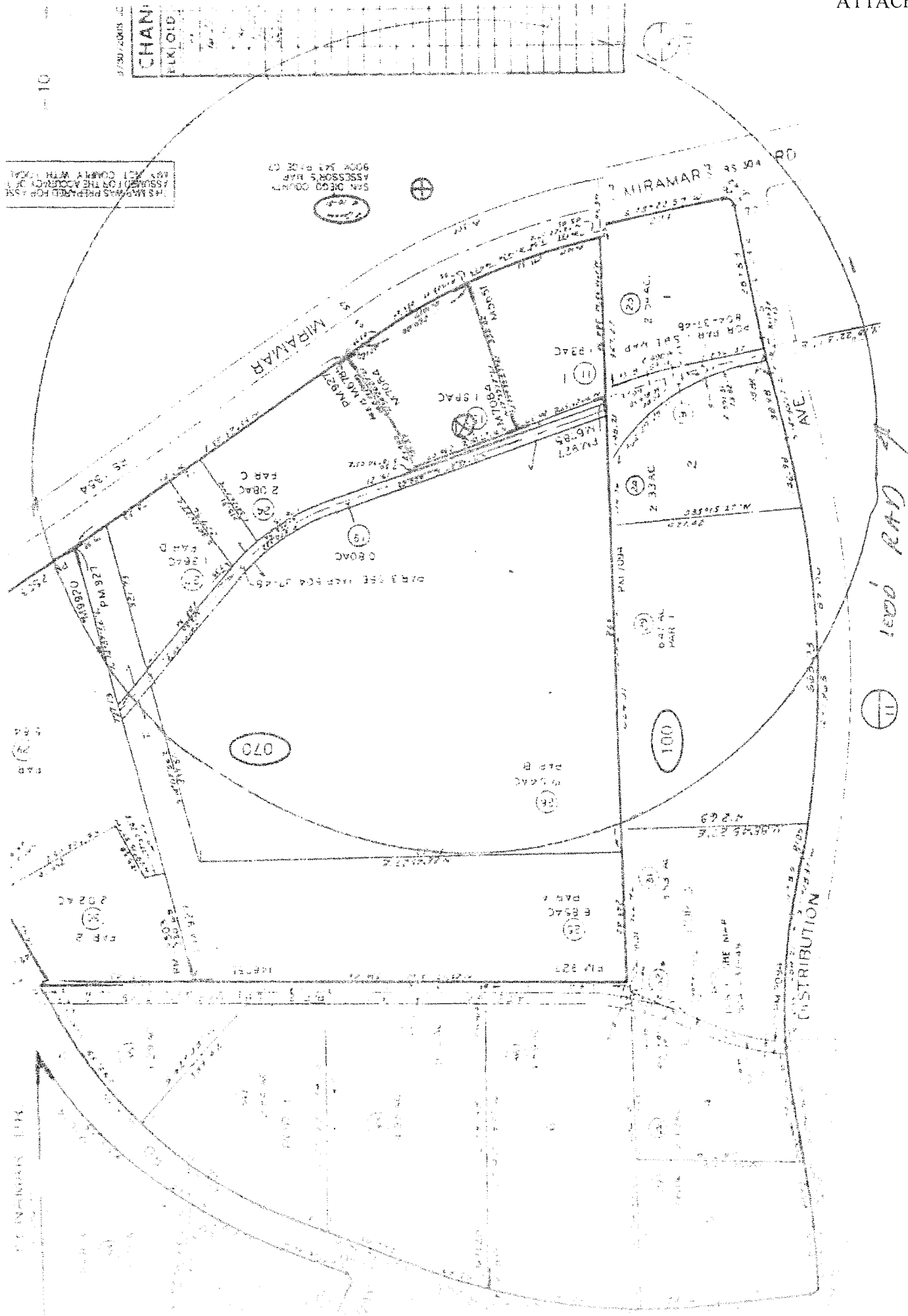
BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 1296361 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1296361, a copy of which is attached hereto and made a part hereof.

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Edith Gutierrez  
Development Project Manager  
Development Services

Adopted on: March 25, 2015

Job Order No. 24004659



MAP 7674 - G-W INDUSTRIAL PARK UNIT NO. 2  
MAP 7813 - G-W INDUSTRIAL PARK ANNEX  
MAP 7120 - G-W INDUSTRIAL PARK UNIT NO. 1 - 200' LOT

THIS MAP WAS PREPARED FOR ASSASSIN IN PURPOSE ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSASSIN'S OFFICE MAY NOT COMPLY WITH LOCAL JURISDICTION OF BUILDING ORDINANCES.

NO 107-5, 108-5, 109-5, 110-5, 111-5, 112-5, 113-5, 114-5, 115-5, 116-5, 117-5, 118-5, 119-5, 120-5, 121-5, 122-5, 123-5, 124-5, 125-5, 126-5, 127-5, 128-5, 129-5, 130-5, 131-5, 132-5, 133-5, 134-5, 135-5, 136-5, 137-5, 138-5, 139-5, 140-5, 141-5, 142-5, 143-5, 144-5, 145-5, 146-5, 147-5, 148-5, 149-5, 150-5, 151-5, 152-5, 153-5, 154-5, 155-5, 156-5, 157-5, 158-5, 159-5, 160-5, 161-5, 162-5, 163-5, 164-5, 165-5, 166-5, 167-5, 168-5, 169-5, 170-5, 171-5, 172-5, 173-5, 174-5, 175-5, 176-5, 177-5, 178-5, 179-5, 180-5, 181-5, 182-5, 183-5, 184-5, 185-5, 186-5, 187-5, 188-5, 189-5, 190-5, 191-5, 192-5, 193-5, 194-5, 195-5, 196-5, 197-5, 198-5, 199-5, 200-5

CHAN  
ELK OLD

THIS MAP WAS PREPARED FOR ASSASSIN IN PURPOSE ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSASSIN'S OFFICE MAY NOT COMPLY WITH LOCAL JURISDICTION OF BUILDING ORDINANCES.



PROJECT TITLE:		368343				
<u>Parcel Number -</u> (This information is needed for all Occupants and On-site tenants)	<u>First &amp; Last Name or-</u> Owners / Occupant / On-site tenants	<u>Address of the -</u> Owners / Occupants / On-site tenants (including Apt/Ste #)	City	State	Zip Code (5 Digit)	Plus 4 Zip Code (Optional)
343-070-11-00	Smith Ben F Inc	P.O. Box 5945	El Monte	CA	91734	
343-070-11-00	Athlete's Nutrition	7094 Miramar Road Suite #101	San Diego	CA	92121	
343-070-11-00	JF Remodeling	7094 Miramar Road Suite #102	San Diego	CA	92121	
343-070-11-00	Kim's Mart	7094 Miramar Road Suite #103	San Diego	CA	92121	
343-070-11-00	Lee's Hair Cut	7094 Miramar Road Suite #106	San Diego	CA	92121	
343-070-11-00	Kabob	7094 Miramar Road Suite #110	San Diego	CA	92121	
343-070-11-00	Miramar Pizza	7094 Miramar Road Suite #111	San Diego	CA	92121	
343-070-11-00	Dentist	7094 Miramar Road Suite #112	San Diego	CA	92121	
343-070-11-00	Churchill's Cigar Lounge	7094 Miramar Road Suite #113	San Diego	CA	92121	
343-070-11-00	Motor City Deli	7094 Miramar Road Suite #114	San Diego	CA	92121	
343-070-11-00	CKO	7094 Miramar Road Suite #115	San Diego	CA	92121	
343-070-11-00	American Reprographics	7094 Miramar Road Suite #117	San Diego	CA	92121	
343-070-11-00	Commercial Lock	7094 Miramar Road Suite #118	San Diego	CA	92121	
343-070-11-00	Roberto's Taco Shop	7094 Miramar Road Suite #119	San Diego	CA	92121	
343-070-11-00	Miramar Relax Spa	7094 Miramar Road Suite #121	San Diego	CA	92121	
343-070-19-00	Atchison Topeka & Santa Fe Railway					
343-070-15-00	Ralph Rischman	5055 Avenida Encinas #100	Carlsbad	CA	92008	
343-070-15-00	Top Bun Sandwiches	7128 Miramar Road Suite #1	San Diego	CA	92121	
343-070-15-00	Flooring Depot	7128 Miramar Road Suite #3	San Diego	CA	92121	
343-070-15-00	Outrageous Rugs Corp Offcs	7128 Miramar Road Suite #4	San Diego	CA	92121	
343-070-15-00	SD Fight Shop	7128 Miramar Road Suite #5	San Diego	CA	92121	
343-070-15-00	Mattress By Appointment	7128 Miramar Road Suite #6	San Diego	CA	92121	
343-070-15-00	Miramar Café	7128 Miramar Road Suite #8	San Diego	CA	92121	
343-070-15-00	Keepsake Companies	7128 Miramar Road Suite #11	San Diego	CA	92121	
343-070-15-00	Tattoo Shop	7128 Miramar Road Suite #12	San Diego	CA	92121	
343-070-15-00	City Property Mgmt..	7128 Miramar Road Suite #14A	San Diego	CA	92121	
343-070-15-00	STEP Project	7128 Miramar Road Suite #14B	San Diego	CA	92121	
343-070-24-00	Priority One Properties	P.O. Box 420404	San Diego	CA	92142	
343-070-24-00	McDonalds	7140 Miramar Road	San Diego	CA	92121	

<b>Parcel Number -</b> (This information is needed for all Occupants and On-site tenants)	<b>First &amp; Last Name or-</b> Owners / Occupant / On-site tenants	<b>Address of the -</b> Owners / Occupants / On-site tenants (including Apt/Ste #)	<b>City</b>	<b>State</b>	<b>Zip Code</b> (5 Digit)	<b>Plus 4 Zip</b> <b>Code</b> (Optional)
343-070-24-00	Hanna Garden	7160 Miramar Road Suite #124	San Diego	CA	92121	
343-070-24-00	Sima's Grill & Deli	7160 Miramar Road Suite #100	San Diego	CA	92121	
343-070-24-00	Chung Hing	7160 Miramar Road Suite #112	San Diego	CA	92121	
343-070-24-00	Golden Rugs Gallery	7160 Miramar Road Suite #126	San Diego	CA	92121	
343-070-24-00	Elite Salon & Day Spa	7160 Miramar Road Suite #108	San Diego	CA	92121	
343-070-24-00	Four Seasons Yoga	7160 Miramar Road Suite #116	San Diego	CA	92121	
343-070-24-00	Factory Direct Floor	7160 Miramar Road Suite #118	San Diego	CA	92121	
343-070-24-00	Lighthouse Cleaners	7160 Miramar Road Suite #104	San Diego	CA	92121	
343-070-24-00	Kitchens Plus	7160 Miramar Road Suite #106	San Diego	CA	92121	
343-070-26-00	Morgan Stanley Real Estate	555 California Street #21	San Francisco	CA	94104	
343-070-26-00	Shinoda Design Center	7130 Miramar Road	San Diego	CA	92121	
343-070-26-00	Bedrosians	7130 Miramar Road	San Diego	CA	92121	
343-070-26-00	ATK Space Systems	7130 Miramar Road	San Diego	CA	92121	
343-070-26-00	World Trans	7130 Miramar Road	San Diego	CA	92121	
343-100-23-00	Spectrum Property Mgmt	8799 Balboa Ave #260	San Diego	CA	92123	
343-100-24-00	Anhay LLC	9555 Distribution Ave	San Diego	CA	92121	
343-100-24-00	Discount Glass & Mirror	9555 Distribution Ave	San Diego	CA	92121	
345-060-06-00	USA	MCAS	San Diego	CA	92121	
ALL	Mira Mesa Community Planning	1606 Camino Ruiz PMB 230	San Diego	CA	92126	



THE CITY OF SAN DIEGO

Date of Notice: October 27, 2014

# NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

SAP No. 24004659

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**PROJECT NAME/NUMBER:** EJ Marketing MMCC/368343**COMMUNITY PLAN AREA:** Mira Mesa Community Plan**COUNCIL DISTRICT:** 6**LOCATION:** The project is located at 7128 Miramar Road, San Diego, CA 92121

**PROJECT DESCRIPTION:** The proposed project is a request for a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative (MMCC). The facility is proposing to operate within a 1,055 square foot suite within an existing 21,500 square foot building on a 1.9 acre site located at 7128 Miramar Road within the Mira Mesa Community Plan Area; it is designated for Light Industrial use. The project is zoned IL-3-1 and is subject to the Airport Influence Area for Miramar, the Part 77 Noticing, the 70-75 dB CNEL for MCAS Miramar.

**ENTITY CONSIDERING PROJECT APPROVAL:** City of San Diego Designated Staff

**ENVIRONMENTAL DETERMINATION:** CEQA Exemption 15303 (New Construction or Conversion of Small Structures)

**ENTITY MAKING ENVIRONMENTAL DETERMINATION:** City of San Diego

**STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:** 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 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. The exceptions listed in CEQA Section 15300.2 would not apply.

**DEVELOPMENT PROJECT MANAGER:****MAILING ADDRESS:****PHONE NUMBER:**

Edith Gutierrez

1222 First Avenue, MS 501

San Diego, CA 92101

(619) 446-5147

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On October 27, 2014, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to

the City Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

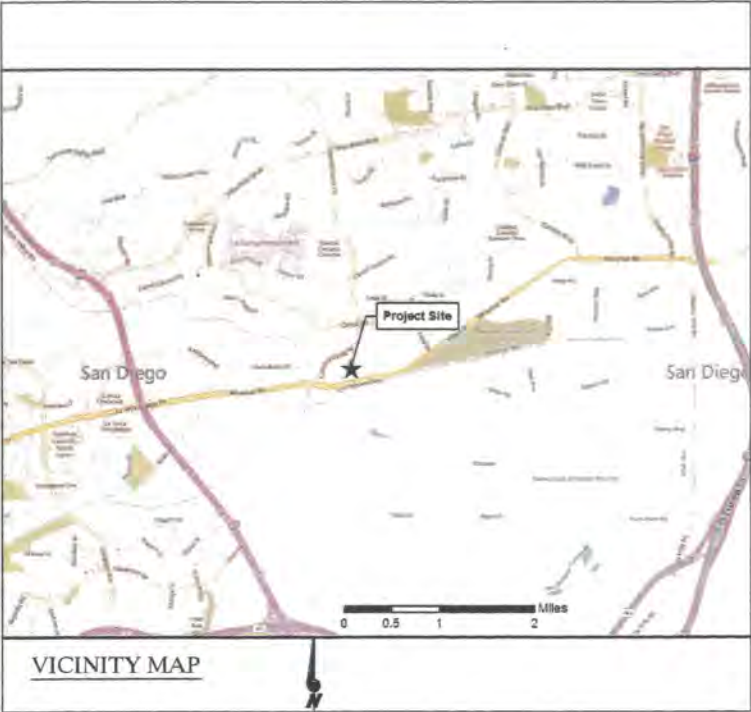
Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (November 10, 2014). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD	
Posted	<u>OCT 27 2014 <i>mu</i></u>
Removed	<u>NOV 12 2014</u>
Posted by	<u><i>myalee</i></u>

THE FOLLOWING ARE A COMPLETE LIST OF THE REQUIRED FINDINGS:

- Findings for Conditional Use Permit Approval - Section §126.0305**  
An application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the following findings:
- (a) The proposed development will not adversely affect the applicable land use plan;
  - (b) The proposed development will not 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; and
  - (d) The proposed use is appropriate at the proposed location.



7128 Miramar Road MMCC

DEVELOPMENT SUMMARY

- 1. SUMMARY OF REQUEST
  - PROCESS A MEDICAL MARIJUANA CONSUMER COOPERATIVE CONDITIONAL USE PERMIT
  - TENANT IMPROVEMENTS TO AN EXISTING TENANT UNIT
- 2. REQUIRED DISCRETIONARY PERMITS
  - CONDITIONAL USE PERMIT

STREET ADDRESS:  
3. 7128 MIRAMAR ROAD, Suite #10, SAN DIEGO, CA. 92121

4. GENERAL PLAN LAND USE: INDUSTRIAL

5. ZONING: IL-3-1

LEGAL DESCRIPTION: LOT 1 OF BARLOW SUBDIVISION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7084, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 18, 1971.

- 6. ASSESSORS PARCEL NUMBER: 343-070-15-00
- 7. LAMBERT COORDINATES: 258-1719
- 9. EXISTING USE: VACANT
- 10. PROPOSED USE: MEDICAL MARIJUANA CONSUMER COOPERATIVE ACCORDING TO THE SAN DIEGO MUNICIPAL CODE, SECTION 141.0614 AND CHAPTER 4, ARTICLE 2, DIVISION 15.

- 11. ADDITIONAL PROJECT DATA RELATED TO USE:
  - PER SAN DIEGO MUNICIPAL CODE §141.0614:
    - (B) CONSULTATIONS BY MEDICAL PROFESSIONALS SHALL NOT BE A PERMITTED ACCESSORY USE AT A MEDICAL MARIJUANA CONSUMER COOPERATIVE.
    - (C) LIGHTING SHALL BE PROVIDED TO ILLUMINATE THE INTERIOR OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE, FACADE, AND THE IMMEDIATE SURROUNDING AREA, INCLUDING ANY ACCESSORY USES, PARKING LOTS, AND ADJOINING SIDEWALKS. LIGHTING SHALL BE HOODED OR ORIENTED SO AS TO DEFLECT LIGHT AWAY FROM ADJACENT PROPERTIES.
    - (D) SECURITY SHALL BE PROVIDED AT THE MEDICAL MARIJUANA CONSUMER COOPERATIVE WHICH SHALL INCLUDE OPERABLE CAMERAS, ALARMS, AND A SECURITY GUARD. THE SECURITY GUARD SHALL BE LICENSED BY THE STATE OF CALIFORNIA AND BE PRESENT ON THE PREMISES DURING BUSINESS HOURS. THE SECURITY GUARD SHOULD ONLY BE ENGAGED IN ACTIVITIES RELATED TO PROVIDING SECURITY FOR THE FACILITY, EXCEPT ON AN INCIDENTAL BASIS.
    - (E) SIGNS SHALL BE POSTED ON THE OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE AND SHALL ONLY CONTAIN THE NAME AND EMERGENCY CONTACT PHONE NUMBER OF AN OPERATOR OR MANAGER AND SHALL BE POSTED IN A LOCATION VISIBLE FROM OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE IN CHARACTER SIZE AT LEAST TWO INCHES IN HEIGHT, LIMITED TO TWO COLORS AND 2 TYPEFACES. POLE SIGNS ARE PROHIBITED. IN ADDITION; ALL SIGNS ASSOCIATED WITH THIS DEVELOPMENT SHALL BE CONSISTENT WITH SIGN CRITERIA ESTABLISHED BY CITY-WIDE SIGN REGULATIONS AND SHALL FURTHER BE RESTRICTED BY THIS PERMIT. SIGN COLORS ARE LIMITED TO TWO. A SIGN IS REQUIRED TO BE POSTED ON THE OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE AND SHALL ONLY CONTAIN THE NAME OF THE BUSINESS.
    - (F) THE NAME AND EMERGENCY CONTACT PHONE NUMBER OF AN OPERATOR OR MANAGER SHALL BE POSTED IN A LOCATION VISIBLE FROM THE OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE IN CHARACTER SIZE AT LEAST TWO INCHES IN HEIGHT.
    - (G) THE MEDICAL MARIJUANA CONSUMER COOPERATIVE SHALL OPERATE ONLY BETWEEN THE HOURS OF 7:00 A.M. AND 9:00 P.M., SEVEN DAYS A WEEK.
    - (H) THE USE OF VENDING MACHINES WHICH ALLOW ACCESS TO MEDICAL MARIJUANA EXCEPT BY A RESPONSIBLE PERSON, AS DEFINED IN SAN DIEGO MUNICIPAL CODE SECTION 42.1502, IS PROHIBITED. FOR PURPOSES OF THIS SECTION, A VENDING MACHINE IS ANY DEVICE WHICH ALLOWS ACCESS TO MEDICAL MARIJUANA WITHOUT A HUMAN INTERMEDIARY.
    - (I) A PERMIT SHALL BE OBTAINED AS REQUIRED PURSUANT TO CHAPTER 4, ARTICLE 2, DIVISION 15.

- 12. TYPE OF CONSTRUCTION: TYPE V (EXISTING BUILDING)
- 13. BUILDING CONSTRUCTED: 1986
- 14. BUS STOPS: LOCATED IN FRONT OF THE SHOPPING CENTER, APPROXIMATELY 100 FEET EAST OF THE PARCEL BOUNDARY.
- 15. OCCUPANCY GROUP: B
- 16. SITE AREA: 1.88 ACRES PARCEL, LOT 1 OF MAP 7084.
- 17. FLOOR AREA: PROPOSED MMCC: 1,055 SQUARE FEET (SUITE #10 LOCATED ON THE SECOND FLOOR) OVERALL EXISTING BUILDING IS 18,966 SQ. FT. (SUITES 9, 10, 11, 12, 13, 14A AND 14B COMBINED)
- 18. PARKING: WILL BE PER PREVIOUSLY APPROVED SITE PLAN. NO ADDITIONAL OFFICE AREA IS PROPOSED - PREVIOUSLY APPROVED SHOPPING CENTER (MIRAMAR GALLERIA) AND PERMITTED USES TO REMAIN.
  - Parking Calculations:
    - Proposed (IL 3-1 Zone): Commercial Services:
      - 1,055 SF x 5.0 spaces/1,000 SF = 5 automobile parking spaces
    - Existing to remain:
      - MXN Mexican Restaurant:
        - 2,352 SF x 15 spaces/1,000 SF = 35 spaces Office/retail/restaurant/Other Uses:
      - (21,500 SF - 2,352 SF - 1,055 SF) =
      - 18,093 SF x 5 spaces/1,000 SF = 90 spaces
    - Overall parking requirement: (35 + 90 + 5) = 130 automobile parking spaces
- 19. WATER SERVICE / SEWER SERVICE: CITY OF SAN DIEGO
- 20. BUILDING CODE: 2010 C.B.C.
- 21. OWNERS NAME & ADDRESS: REAL-OUTRAGEOUS PARTNERS (ROP) LLC, 5055 AVENIDA ENCINAS SUITE 100, CARLSBAD, CA 92008-4375
- 22. FUTURE USES ARE LIMITED TO USES PERMITTED BY THE IL-3-1 ZONE.
- 23. PROJECT TEAM: ENGINEER: SHAPOURI ENGINEERING COMPANY, INC., 18029 CALLE AMBIENTE, PO BOX 3275, RANCHO SANTA FE, CA 92067. Phone: 858-412-0033. CONTACT: M. H. SHAPOURI, RCE

LEGAL: JESSICA C. MCELFRISH, ATTORNEY-AT-LAW, LAW OFFICE OF JESSICA C. MCELFRISH, P.O. Box 230363, ENCINITAS, CA 92023, PHONE: 858-756-7107

CONSULTANT:

SHAPOURI ENGINEERING  
COMPANY, INC

18029 Calle Ambiente, Suite 502, P.O. Box 3275, Rancho Santa Fe,  
California 92067  
Phone: (858) 412-0033 Fax: (858) 756-8344

General Notes and  
Vicinity Map

MMCC CUP PLAN  
SUITE #10  
7128 Miramar Road  
SAN DIEGO, CALIFORNIA

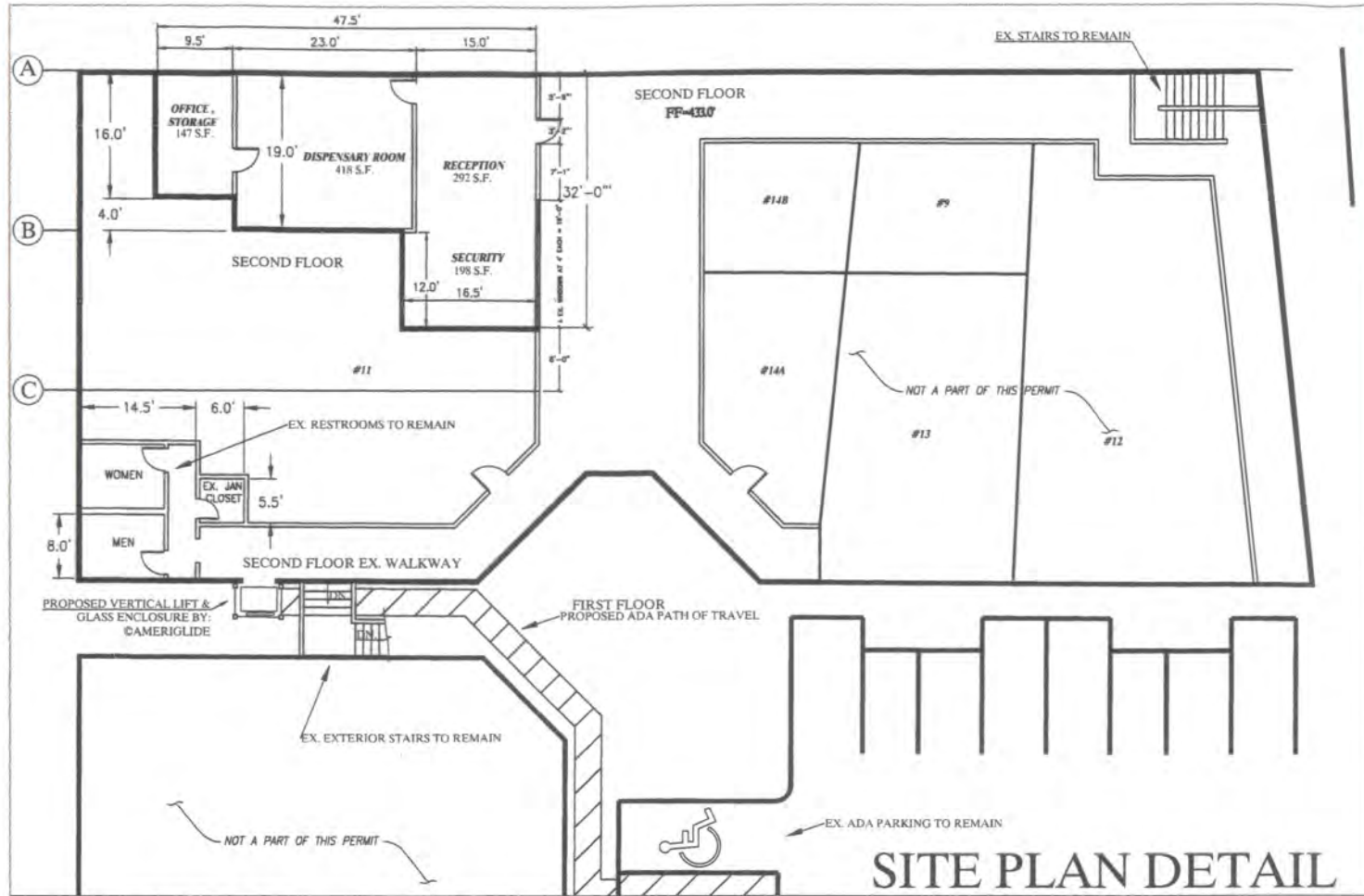
SHEET TITLE:

DATE: 2014-07-21, REVISED ON:  
2014-09-13, 2014-09-17,  
2014-09-25

CITY OF SAN DIEGO  
PROJECT NO: 368343

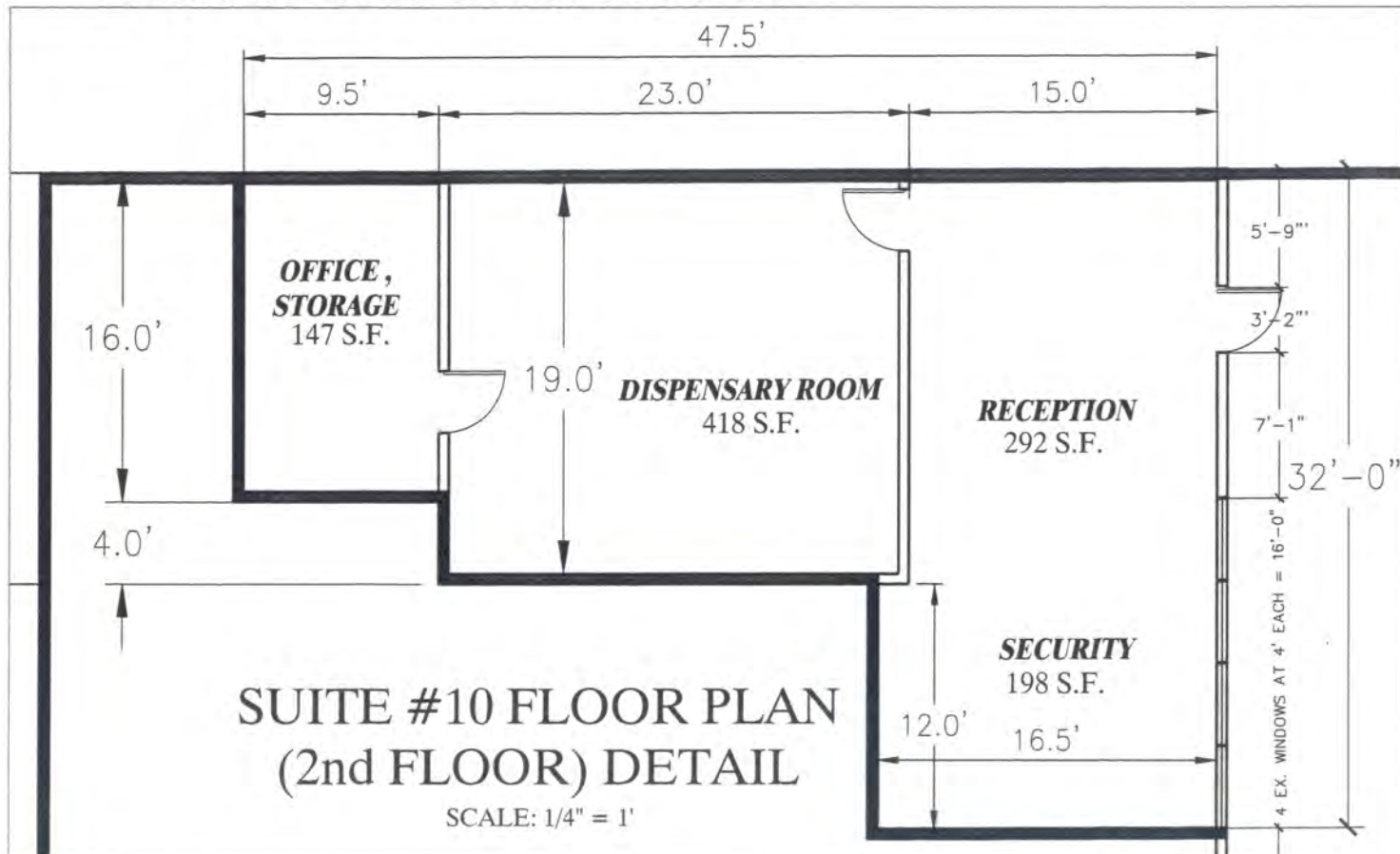
SHEET NO.





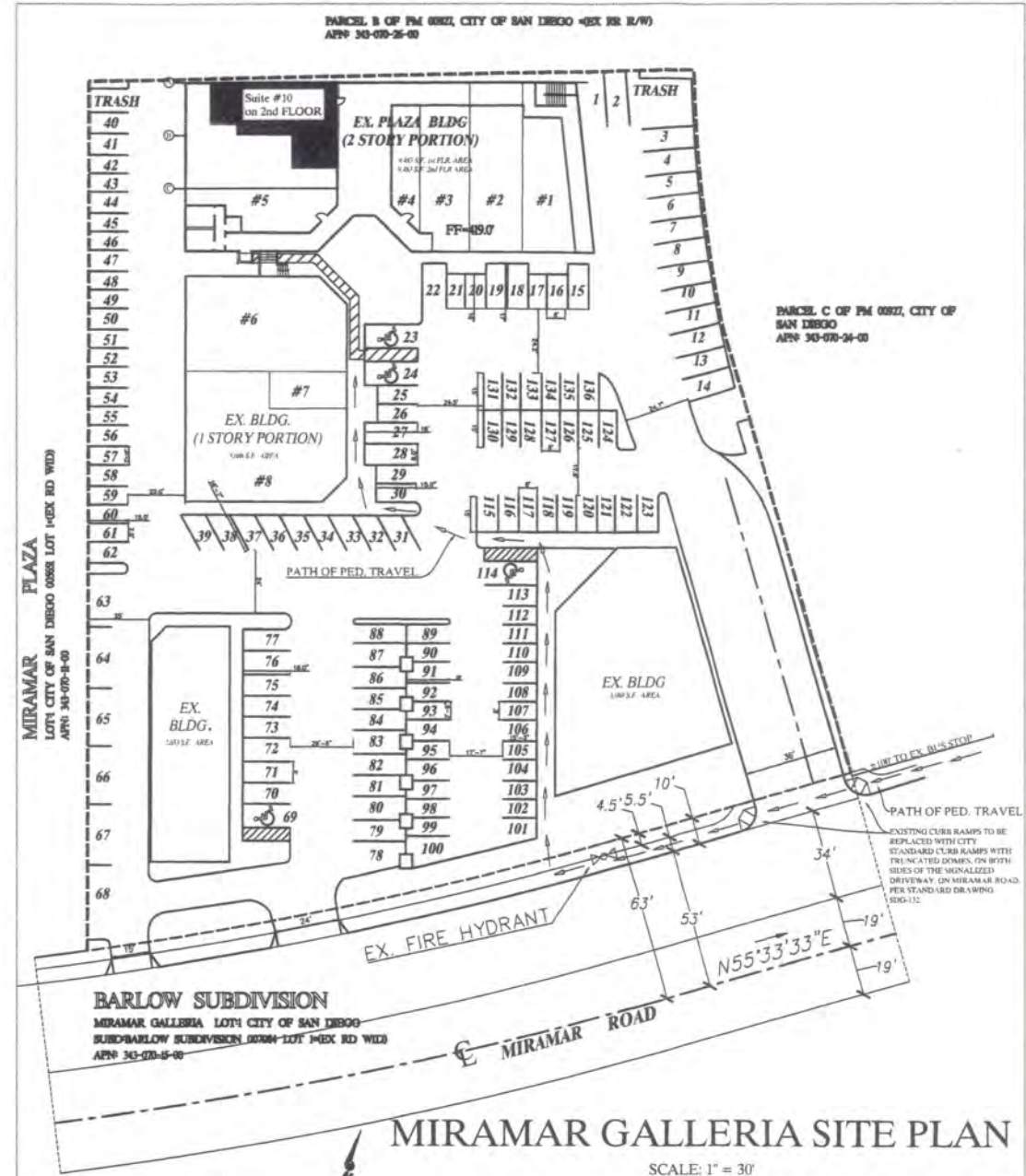
7128 Miramar Road MMCC

SCALE: 1" = 10'



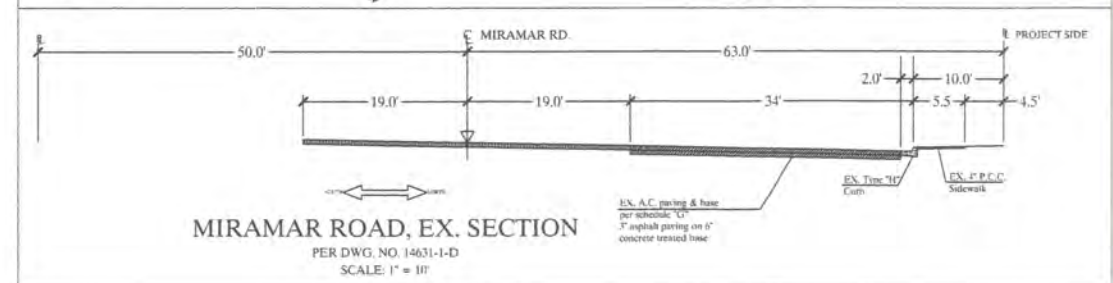
SUITE #10 FLOOR PLAN  
(2nd FLOOR) DETAIL

SCALE: 1/4" = 1'



MIRAMAR GALLERIA SITE PLAN

SCALE: 1" = 30'



MIRAMAR ROAD, EX. SECTION

PER DWG. NO. 14631-1-D  
SCALE: 1" = 10'

CONSULTANT:

**SHAPOURI ENGINEERING  
COMPANY, INC**

18029 Calle Ambiente, Suite 502, P.O. Box 3275, Rancho Santa Fe,  
California 92067  
Phone: (858) 412-0033 Fax: (858) 756-8344

**SITE PLAN  
AND  
FLOOR PLAN**

**MMCC CUP PLAN  
SUITE #10**  
7128 Miramar Road  
SAN DIEGO, CALIFORNIA

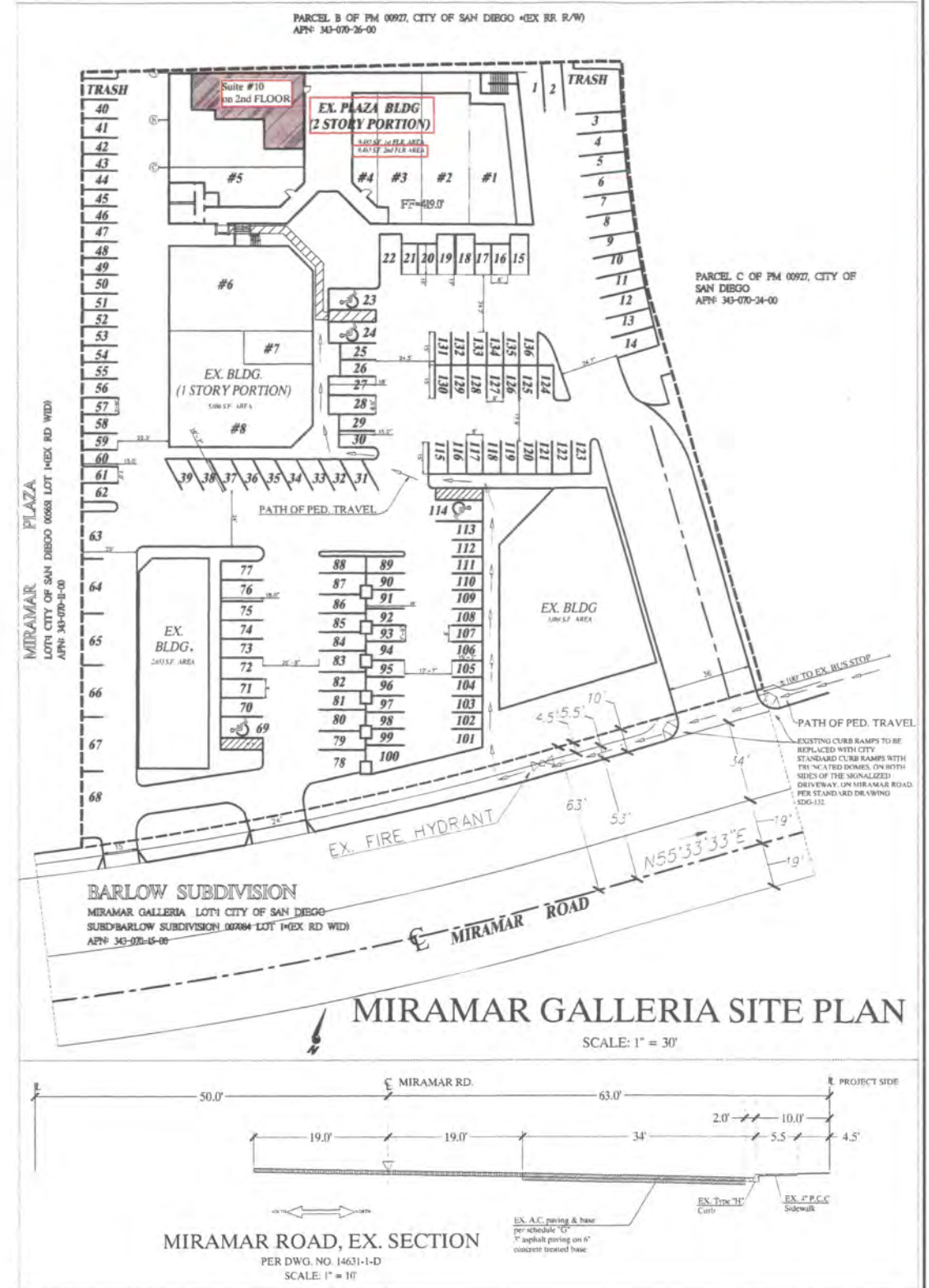
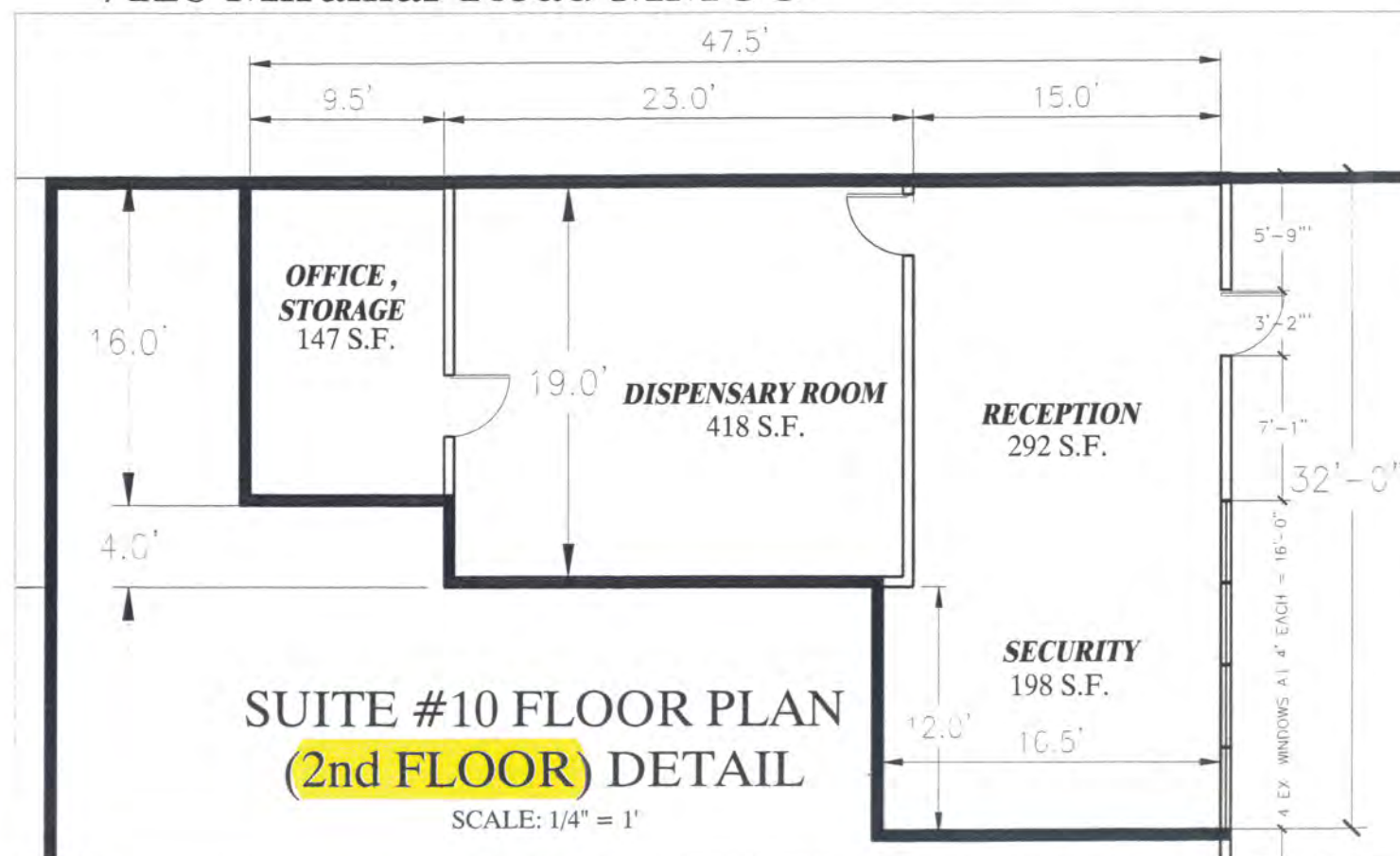
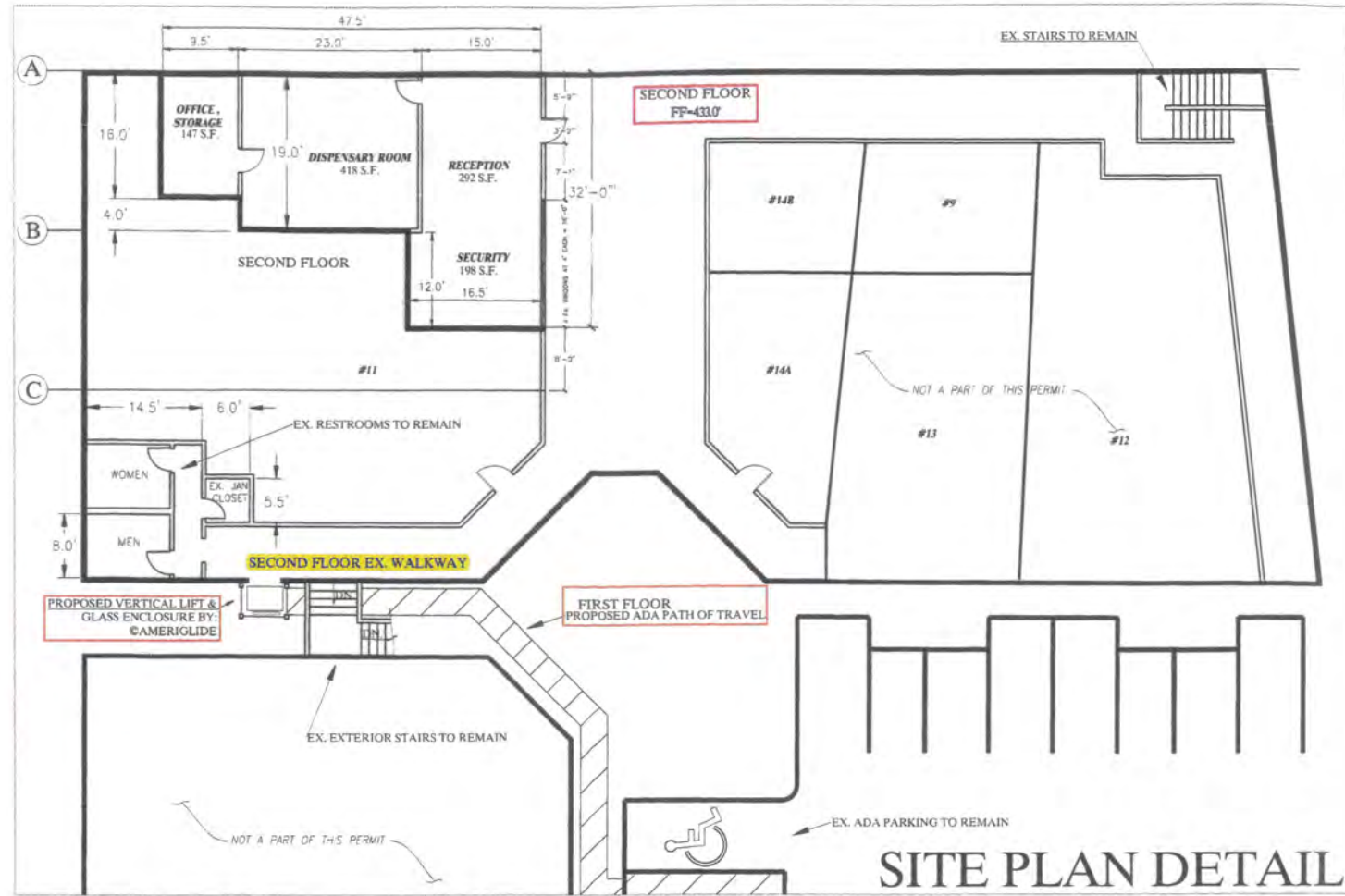
SHEET TITLE:

DATE: 2014-08-21, REVISED ON:  
2014-09-13, 2014-09-17,  
2014-09-25

CITY OF SAN DIEGO  
PROJECT NO: 368343

SHEET NO.





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DATE: 2014-08-21, REVISED ON:  
2014-09-13, 2014-09-17,  
2014-09-25

CITY OF SAN DIEGO  
PROJECT NO: 368343

SHEET NO.



## My Recommendation to the Mira Mesa Community Planning Group

1. Recommend to the Hearing Officer that all CUP requests be tabled until such time as the illegal “dispensaries” in the area are closed and the City demonstrates that it has the wherewithal to both **keep** illegal marijuana dispensaries closed **and** to properly regulate MMCCs.
2. Place the CUP requests in order based upon our assessment as to their ability to serve the purposes intended by Proposition 215 with a recommendation that once the conditions above are satisfied, a maximum of two CUPs within Mira Mesa be issued to the two top applicants.

ATTACHMENT 10

Motion made by Ted Brengel prior to vote in accordance with Special Rules of Order above.

August 19, 2014

City of San Diego, Planning Department  
1222 1st Avenue, MS 413  
San Diego CA 92101

To the Director:

At our August 18, 2014 meeting the Mira Mesa Community Planning Group heard a second round of presentations by four applicants for Conditional Use Permits (CUP) to operate Medical Marijuana Community Cooperatives. Please accept this letter as our report and recommendations on this matter.

It is our strong belief that current enforcement measures on illegally operating medical marijuana shops are grossly inadequate. As such, we request that the Hearing Officer table consideration of the permit applications until such a time as the illegal "dispensaries" in the area are closed and the City demonstrates that it has the wherewithal to both keep illegal marijuana dispensaries closed and to properly regulate MMCCs.

This notwithstanding, the presentations we heard were informative, thorough and educational. Two applicants stood out in this respect and we have voted to express our preference for these two applicants. Our first preference is for Glass Tech Entities (Project # 368509). Due to the Municipal Code restrictions disallowing MMCCs within 1,000 feet of each other, this recommendation precluded us from recommending the MEDBOX application (#368322). The second applicant most preferred by the Planning Group was that of Ms. Nicole Britvar (#370687).

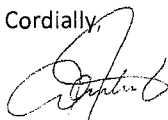
At such a time as illegal dispensaries are closed and effective enforcement mechanisms are in place to prevent them from simply opening up in a new location, we can support the awarding of only two CUPs to the two applicants mentioned above. This will allow the other two CUPs allowed for the 6<sup>th</sup> District to be awarded to applicants in Kearney Mesa with the guidance of the Kearney Mesa Community Planning Group.

This matter has of course been controversial. Numerous residents expressed their concern and opposition. However, we recognize that Proposition 215 is state law as expressed by the voters and the City Council has acted in their capacity as our representatives to craft a Municipal Ordinance to implement this law in San Diego. We wish to assist the City in implementing this Ordinance in our Community in keeping with the four criteria specified in the Municipal Code in support of necessary findings for these permits, these four criteria being:

- The proposed development will not adversely affect the applicable land use plan;
- The proposed development will not be detrimental to the public health, safety and welfare;
- The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and
- The proposed use is appropriate at the proposed location.

It is especially in light of the second of these four criteria that we insist that the City first remedy the inadequacies of current enforcement on illegal cooperatives. Subsequent to that, we ask that the two named applicants above be preferred in the deliberations on awarding two of the four allowable CUPs.

Cordially,



John Horst  
Chairman, Mira Mesa Community Planning Group

**MIRA MESA COMMUNITY PLANNING GROUP  
SPECIAL RULES OF ORDER FOR ITEM #4(d) ON THE AGENDA FOR 18 AUGUST 2014**

1. The Chair will make a motion to adopt the following as Special Rules of Order for the consideration of the Medical Marijuana Community Cooperative applications before the Planning Group for a recommendation to the City Council.
2. Members of the Planning Group will base their evaluation of the applicants on the following four criteria from the Municipal Code (Section §126.0305):
  - a. The proposed development will not adversely affect the applicable land use plan;
  - b. The proposed development will not 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; and
  - d. The proposed use is appropriate at the proposed location.
3. Due to the Municipal Code restriction limiting each Council District to four permits the Mira Mesa Community Planning Group will consider approval for only two among the four applicants, leaving two permits available for applicants in the Convoy/Kearny Mesa area of Council District 6.
4. Voting on the applicants before the Planning Group for a recommendation shall proceed as follows:
  - a. Voting: The Chair will request each member to express their preference for applicants by indicating the order in which the member believes they merit a recommendation of approval. The rankings shall be recorded on a spreadsheet which shall be projected for the view of those attending the meeting.
  - b. The First Vote
    - i. If a member does not wish to recommend approval for any applicant, the member will state to the Chair that he/she does not wish to recommend any of the applicants.
    - ii. Each member who wishes to recommend approval for an applicant or applicants will state their order of preference. The member may rank all four applicants, or choose to rank only those he or she feels merits a recommendation, at the member's discretion.

- iii. If an applicant receives 10 or more #1 rankings, that applicant shall receive the first recommendation for approval and voting shall proceed to the Second Vote except as provided for in 3(b)(vi) vi below.
  - iv. If no applicant receives 10 or more #1 rankings, points shall be awarded as follows:
    - 1. #1 vote = 4 points.
    - 2. #2 vote = 3 points.
    - 3. #3 vote = 2 points.
    - 4. #4 vote = 1 point.
  - v. A show of hands will then be taken for each of the two highest scoring applicants. ***Members not wishing to recommend any applicant may abstain from this vote.*** The applicant receiving the most votes numbering 10 or more (a majority of the entire Planning Group Executive Committee) in this show of hands shall receive the first recommendation for approval.
  - vi. As a result of the awarding of the first recommendation for approval, if one of the remaining applicants has applied for a location within 1,000 feet of the first recommended applicant, due to Municipal Code restrictions disallowing MMCCs within 1,000 feet of each other, that applicant shall be ineligible for a recommendation. Voting shall proceed to the Third Vote.
  - vii. Should the First Vote fail to secure 10 or more votes for the first recommendation as a result of this process, no applicant will be recommended and voting shall be concluded.
- c. The Second Vote
- i. If a member does not wish to recommend approval for any of the remaining applicants, the member will state to the Chair that he/she does not wish to recommend any of the remaining applicants.
  - ii. Each member who wishes to recommend approval for a second applicant will state their order of preference. The member may rank all three remaining applicants, or choose to rank only those he or she feels merits a recommendation, at the member's discretion.
  - iii. If a single applicant receives 10 or more #1 rankings, that applicant shall receive the second recommendation for approval and voting shall be concluded.

- iv. If no applicant receives 10 or more #1 rankings, points shall be awarded as follows:
    - 1. #1 vote = 3 points
    - 2. #2 vote = 2 points.
    - 3. #3 vote = 1 point.
  - v. A show of hands will be taken between the two highest scoring applicants. **Members not wishing to recommend any applicant may abstain from this vote.** The applicant receiving the most votes numbering 10 or more (a majority of the entire Planning Group Executive Committee) in this show of hands shall receive the second recommendation of approval and voting shall be concluded.
5. The Third Vote (if necessary per 3(b)(vi) above)
- a. The Third Vote shall be between two remaining applicants.
  - b. Each of the two remaining applicants shall receive a vote by show of hands. **Members not wishing to recommend a second applicant may abstain from these two votes.**
  - c. The applicant receiving the most votes numbering 10 or more (a majority of the entire Planning Group Executive Committee) shall receive the second recommendation.
  - d. Should neither of the two remaining applicants receive 10 or more votes at the Third Vote, no second recommendation shall be given.
6. Members are expressly under NO OBLIGATION to explain the reasons for their preferences as expressed by their votes.

**MIRA MESA COMMUNITY PLANNING GROUP  
SPECIAL RULES OF ORDER FOR MMCC RECOMMENDATIONS**

		<b>GLASS TEC</b>		<b>EJ MARKETING</b>		<b>MEDBOX</b>		<b>NICOLE BRITVAR</b>	
		<b>RANK</b>	<b>SCORE</b>	<b>RANK</b>	<b>SCORE</b>	<b>RANK</b>	<b>SCORE</b>	<b>RANK</b>	<b>SCORE</b>
R01	Kent Lee	0	0	0	0	0	0	0	0
R02	Joe Punsalan	0	0	0	0	0	0	0	0
R03	Joe Frichtel	0	0	0	0	0	0	0	0
R04	Ted Brengel	1	4	0	0	0	0	0	0
R05	Bruce Brown	0	0	0	0	0	0	0	0
R06	Tom Derr	1	4	0	0	0	0	2	3
R07	James Ludwick	0	0	0	0	0	0	0	0
R08	Robert Mixon	1	4	0	0	0	0	2	3
R09	John Horst	0	0	0	0	0	0	0	0
R10	Jeff Stevens	0	0	0	0	0	0	0	0
R11	Pat O'Donohoe	0	0	2	3	0	0	1	4
B01	Marvin Miles	0	0	0	0	0	0	0	0
B02	Craig Radke	1	4	0	0	0	0	2	3
B03	Julia Scribner	1	4	0	0	0	0	2	3
B04	Eileen Magno	0	0	0	0	0	0	0	0
B05	Walter Kanzler	0	0	0	0	0	0	1	4
L01	Ralph Carolin	1	4	0	0	0	0	2	3
L02	Matt Woods	0	0	0	0	0	0	0	0
L03	Mike Linton	0	0	0	0	0	0	0	0
<b>TOTAL</b>			<b>24</b>		<b>3</b>		<b>0</b>		<b>23</b>

**Members with all zeroes elected not to recommend any applicant.**





City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101  
(619) 446-6000

## Ownership Disclosure Statement

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 CUP/MMCC

Project Title

Project No. For City Use Only

EJ MARKETING

508343

Project Address:

7126 MIRAMAR ROAD, SAN DIEGO CA 92121

### Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, 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) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. 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.

Additional pages attached ☐ Yes ☐ No

Name of individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Project Title: <u>ES Marketing</u>	Project No. (For City Use Only)
------------------------------------	---------------------------------

**Part II - To be completed when property is held by a corporation or partnership**

**Legal Status (please check):**  
☐ Corporation ☒ Limited Liability -or- ☐ General What State? Ca Corporate Identification No. 200416910022  
☐ Partnership

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, 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 names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. 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. Additional pages attached ☒ Yes ☐ No

**Corporate/Partnership Name (type or print):**  
Green Nectar  
☐ Owner ☒ Tenant/Lessee

**Street Address:**  
3985 LINDSEY LANE  
**City/State/Zip:**  
San Diego California 92119  
**Phone No:** (619) 319-7878 **Fax No:** N/A  
**Name of Corporate Officer/Partner (type or print):**  
EBON A. JOHNSON Sr  
**Title (type or print):**  
OWNER/COOPERATIVE INC  
**Signature:** [Signature] **Date:** 09/14/2014

---

**Corporate/Partnership Name (type or print):**  
ROP, LLC  
☒ Owner ☐ Tenant/Lessee

**Street Address:**  
7128 Miramar Road  
**City/State/Zip:**  
San Diego CA 92121  
**Phone No:** 760-918-9300 **Fax No:** 760-448-4400  
**Name of Corporate Officer/Partner (type or print):**  
Steve Bluman  
**Title (type or print):**  
Partner  
**Signatures:** \_\_\_\_\_ **Date:** \_\_\_\_\_

---

**Corporate/Partnership Name (type or print):**  
☐ Owner ☐ Tenant/Lessee

**Street Address:**  
 \_\_\_\_\_  
**City/State/Zip:**  
 \_\_\_\_\_  
**Phone No:** \_\_\_\_\_ **Fax No:** \_\_\_\_\_  
**Name of Corporate Officer/Partner (type or print):**  
 \_\_\_\_\_  
**Title (type or print):**  
 \_\_\_\_\_  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Corporate/Partnership Name (type or print):**  
ROP, LLC  
☒ Owner ☐ Tenant/Lessee

**Street Address:**  
7128 Miramar Road  
**City/State/Zip:**  
San Diego CA 92121  
**Phone No:** 760-918-9300 **Fax No:** 760-448-4400  
**Name of Corporate Officer/Partner (type or print):**  
ROSS Margolin  
**Title (type or print):**  
Partner  
**Signature:** [Signature] **Date:** 4-16-14

---

**Corporate/Partnership Name (type or print):**  
ROP, LLC  
☒ Owner ☐ Tenant/Lessee

**Street Address:**  
7128 Miramar Road  
**City/State/Zip:**  
San Diego CA 92121  
**Phone No:** 760-918-9300 **Fax No:** 760-448-4400  
**Name of Corporate Officer/Partner (type or print):**  
ROSS Margolin  
**Title (type or print):**  
Partner  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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**Corporate/Partnership Name (type or print):**  
☐ Owner ☐ Tenant/Lessee

**Street Address:**  
 \_\_\_\_\_  
**City/State/Zip:**  
 \_\_\_\_\_  
**Phone No:** \_\_\_\_\_ **Fax No:** \_\_\_\_\_  
**Name of Corporate Officer/Partner (type or print):**  
 \_\_\_\_\_  
**Title (type or print):**  
 \_\_\_\_\_  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

PART II





### SDPD CPTED REVIEW OF 7128 MIRAMAR ROAD MMCC

**Date:** March 9, 2015  
**To:** Jessica McElfresh, Attorney-at-Law  
**From:** Ted Parker, SDPD Crime Prevention  
**Copies to:** Edith Gutierrez, Development Services Department  
 Linda Griffin, A/Lieutenant, SDPD Vice Administration  
 Shannah Oliveras, SDPD Northeastern Division Community Relations Officer (CRO)

I have a few advisory suggestions for crime prevention measures in the design of this project. They are based on the following four CPTED concepts that are widely used to reduce the incidence and fear of crime, and improve the quality of life in land-development projects. These concepts are defined briefly as follows:

1. *Surveillance.* Involves the use of electrical and mechanical devices, and the location of physical features, activities, and people to provide good visibility in the environment. Creates a risk of detection for offenders and a perception of safety for legitimate users.
2. *Access control.* Uses electrical and mechanical devices, people, and natural measures to create a perception of risk to offenders and deny them access to targets and escape routes. Also guides legitimate users safely through the environment.
3. *Territorial reinforcement.* Uses physical features and signs to define ownership and control activities in the environment. Delineates spaces with limited or no public access.
4. *Maintenance.* Allows the continued use of spaces for their intended purposes. Maintains the effectiveness of measures employed for surveillance, access control, and territoriality.

Feel free to call me at (858) 523-7049 if you want to discuss these suggestions further.

### SUGGESTIONS

#### Alarms

The San Diego Municipal Code (SDMC) Sec. 141.0614(d) requires alarms but does not say what kind. Both robbery and burglar alarm systems should be installed. The robbery alarm is a silent panic button that an employee would push in the event of a holdup. It would signal the alarm company to call **911** to report a robbery in progress and not call back to confirm the alarm. The burglar alarm system should include sensors on the common interior wall with adjacent suite (#11), the ceiling, and the front door, windows, and wall. The sensors on the walls and ceiling would detect any attempts to drill or otherwise break through them. (If permitted in the lease, the front and common walls should be hardened to prevent break-throughs.) Note that the parapet shields anyone on the roof from being seen from the street. These alarm systems should have batteries for backup power.

#### Utilities

The door to the room for electric meters, circuit breakers, and fuses should be locked with a deadbolt, as should the room for the telephone equipment and lines. This is to prevent someone for shutting off electric power for the lights and security systems, and cutting communications with the alarm company

## Cameras

The SDMC Sec. 141.0614(d) requires cameras but does not say what kind or where they should be installed. Cameras can be wired or wireless. They can record continually, when motion is detected, at specified times, or on an alarm. After a crime occurs the imagery can be reviewed for usable evidence. Any camera system that is installed should be designed to provide high-quality, color imagery of persons and activities inside and outside the MMCC in any lighting condition for use by the SDPD in investigating crimes. It should operate 24/7 and have backup power for at least 12 hours in the event of a power failure. The cameras should cover the suite front door, the walkway outside the front door, the reception and cashier areas, and all rooms in the suite. Their imagery should enable clear and certain identification of any individual on the premises. The video should be recorded and kept in a secure room for at least 30 days.

The existence of cameras helps to deter crime but not to stop a crime in progress. However, if suites with robbery and burglary alarms also have Internet Protocol (IP) cameras, the imagery can be transmitted to the alarm company so personnel there can look at the imagery and see what is happening. Or it can be transmitted to a web-enabled mobile device. (This should be done over a secure Internet link protected by a strong password. Microsoft Windows suggests that these passwords be at least eight characters long, with at least one capital letter, one lowercase letter, one number, and one symbol. Use of non-dictionary words or easily-remembered phrases is recommended.) If a crime in progress is seen, **911** should be called and the dispatcher given the details. This will lead to a higher call priority and a faster response than would occur for an unverified alarm call. Officers might even arrive in time to catch the perpetrators. If something suspicious is seen, it should be reported to the SDPD on its non-emergency number, **(619) 531-2000** or **(858) 484-3154**.

For actions that don't trigger alarms, "smart" cameras with video-analytics or intelligent-video software can be installed and programmed to detect anything unusual or suspicious. When an alert condition occurs, the imagery would be recorded and transmitted to the alarm company or to a web-enabled mobile device so security personnel can see what is happening and take appropriate action. Again, if a crime in progress is seen, **911** should be called and the dispatcher given the details. This will lead to a high call priority and a relatively fast response. Officers might even arrive in time to catch the perpetrators.

In either case, if something suspicious is seen, it should be reported to the SDPD on its non-emergency number, **(619) 531-2000** or **(858) 484-3154**. Or if there is a guard on-site or one in a patrol car that can respond quickly, the alarm company should be called to investigate.

IP cameras that view areas in which crimes might be in progress, such as the MMCC cash register location, should also be capable of providing real-time streaming video to the SDPD in Operation Secure San Diego. This program is one of the SDPD's new technology public safety and crime fighting activities. It will enable officers arriving at the scene to make better, more-informed tactical decisions and determine whether additional officers and emergency services are required. Contact the CRO in the SDPD's Northeastern Division at **(858) 538-8000** if you wish to partner with the SDPD in this program.

Signs regarding cameras should be posted in order to deter crimes. They should use words like **CAMERAS ARE ON THE PREMISES**, **SURVEILLANCE IS IN PROGRESS**, or **ALL ACTIVITIES ARE RECORDED TO AID IN THE PROSECUTION OF CRIMES COMMITTED ON THE PREMISES**. One such sign is shown below.



Because cameras are susceptible to damage by criminals attempting to hide their actions, measures should be taken to make less vulnerable. Here are some possibilities.

- Mount cameras as high as possible.
- Use damage-resistant cameras.
- Use armored conduits for electrical cables.
- Install cameras where they are within the field of view of at least one other camera.
- Include measures to detect lens blockage and other tampering.

### **Lighting**

Lighting should comply with SDMC Sec. 141.0614(c). The walkway outside the MMCC should be well-lighted from sunset to sunrise. Like cameras, light fixtures should also be damage-resistant.

### **Front Windows**

These should be made of a burglar-resistant material that meets UL 972 standards. These materials look like safety glass but will not shatter easily, even after repeated blows. The following materials can be used:

- **Laminated glass** is made with a vinyl or plastic inter-layer sandwiched between two layers of glass. This type of glass adds additional strength to your windows. To gain entry a burglar would have to strike the glass repeatedly in the same spot in order to make a small opening. Most burglars are reluctant to create this type of noise for fear of being detected.
- **Tempered glass** is made by placing a piece of regular glass in an oven, bringing it almost to the melting point, and then chilling it rapidly. This causes a skin to form around the glass. Fully tempered glass is four to five times stronger than regular glass.
- **Wired glass** adds the benefit of a visible deterrent. Extra effort will be needed to break the glass and then cut through the wire located within the glass in order to gain entry.
- **Plastic acrylics** are more than ten times stronger than glass of the same thickness and are commonly called Plexiglas.
- **Polycarbonate** sheets are superior to acrylics and are advertised as 250 times more impact resistant than safety glass, and 20 more times than other transparent plastic.

Glass with a security film attached to the inside can also be burglar-resistant. It requires repeated blows to break through, which take time and make noise. A burglar faced with this task might give up and go away or look for another way or place to break in.

Another way to make windows burglar-resistant is to install security screens, which should have the following features so they cannot be broken through or pried open:

- Four-sided, stainless-steel frame
- Frame secured to the building
- Steel mesh that cannot be cut with a knife
- Mesh secured to frame to resist dynamic impacts
- Rust and corrosion resistant
- Passed Australian Standards (AS) knife shear, dynamic impact, jimmy, and salt spray tests

Exterior windows should also be tinted or have a reflective film on them to prevent a person from seeing in during the day. And if the interior of the suite is lighted after dark, e.g., by employees or janitors, shutters or blinds will need to be used inside the windows because reflective materials are not effective then.

Another way to secure the suite is with a folding security gate or a roll-down security shutter.



## Front Door

If it is to be bullet-resistant, it should be made of steel or reinforced with steel, and be tested in accordance with UL 752 and assigned a protection level from 1 to 10. The door should also have a steel frame or a steel reinforcing device mounted on the lock side of the frame that extends at least 2 feet above and below the strike plate.

If it is to be transparent, it should be made of a burglar-resistant glass or plastic that meets UL 972 standards as suggested above for the front windows. Or a security film can be attached to the inside of an existing glass door to make it burglar-resistant. The door should also be tinted or have a reflective film on them to prevent a person from seeing in during the day. And if the interior of the suite is lighted after dark, e.g., by employees or janitors, shutters or blinds will need to be used inside the door because reflective materials are not effective then.

And if a folding security gate or a roll-down security shutter is used for the windows, it should also extend across the door.

If the door is locked magnetically and does not have a push or press bar that unlocks them from the inside, it must open automatically when a person approaches them from inside of the suite. The sensor that detects this motion or heat needs to be located or aimed far enough back from the door so a person outside cannot slip something between the door and its frames to create motion or a heat signature and to open the door. Or a strip of metal or other material can be attached to the outside of a door to close the gap and prevent a person from inserting anything between the door and its frames. Another way to prevent this is to replace the sensor with a button that would be pushed to open a door from the inside. Doors with magnetic locks will need backup power to keep them locked and enable the button to work during a power failure.

When the suite is unoccupied, front door can be locked with single-cylinder deadbolt that is separate from another locking mechanism. This lock should have a throw of at least one inch, be key-operated on the outside, and have a thumb turn on the inside. It cannot be used when the suite is occupied because California Fire Code Sec. 1008.1.9 states that egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort. The thumb turn is deemed to require special knowledge. It also requires twisting of the wrist to open the door, which makes it prohibited in the California Fire Code. When a deadbolt is installed a sign must be posted on or adjacent to the door saying THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED per California Fire Code Sec. 1008.1.9.3.

## Interior Doors

The following measures apply to interior doors that are opened on the inside with push or press bars, or lever arms and not locked with a deadbolt.

Doors with beveled latches that are visible from the outside should have latch guards that extend at least 12 inches above and below the latches. This will prevent a person from sliding something between the door and its frame to push in the latch.

Doors that are opened on the inside by a push or press bar and have a gap between them and their frames can be opened with an L-shaped rod that is inserted next to the bar, turned 90 degrees, and pulled to depress the bar. This can be prevented by attaching a strip of metal or some other material to the door to cover the gap. It is better if there is no gap between the door and its frame.

Doors that are opened on the inside by a lever arm and have a gap underneath them can also be opened with a lever-opening tool like the Keedex K-22. Its wire would be inserted under the door and raised to hook over the lever arm on the inside of the door. The wire is then pulled to rotate the lever arm downward to open the door. This can be prevented by attaching a threshold strip to the floor under the door and a brush-sweep to on the bottom of the door. They would close the gap and prevent the tool from being inserted.

Doors that are opened on the inside by a press bar, i.e., one that rotates downward when pushed, and have a gap underneath them can be opened with a lever-opening tool like the Keedex K-22 as described above. Use of a threshold strip and door brush-sweep would close the gap and prevent the tool from being inserted.

## **Consumer Movement in the MMCC**

First, consider reversing the reception and security areas and adding another door to the dispensary at the other end of the wall. This would be an entry door. The door shown on the floor plan would be an exit door.

Security could begin outside the front door with a video intercom. Then consumers entering the suite could go through a mantrap and a metal detector, as discussed below, and check-in with the receptionist, who would unlock the door to the dispensary where the consumer would select products, pay for them, and exit past security.

Consumers should not have any access to offices and rooms for safes, camera recordings, and marijuana storage, processing, and packaging. Doors to these rooms should be kept locked at all times. Employees would have keys, keypad codes, fobs, or access cards to open them. An advantage of the latter is that a record of employee access can be kept.

### **Video Intercom**

With a video intercom, the front door would be locked and a person wanting to enter would push a button to talk to the receptionist, who would be able to see the person on a camera monitor and ask to see the person's identification and membership card. The person would be buzzed in if his or her identity and membership are verified.

### **Mantrap**

To prevent a person from following another into the suite, i.e., tailgating, the front door could lead to a mantrap, i.e., a secured space for one person equipped with two interlocking doors to insure that only one person at a time can pass through into the lobby. Employees of the MMCC would be able to open both doors with their individual access cards, fobs, or keypad codes. Others would be buzzed through by the receptionist. To prevent someone who has stolen an employee's access means from entering the building, a biometric sensor like a fingerprint reader could be installed at the second door. Thus, only employees would be able to enter through the mantrap without being buzzed in by the receptionist. Consumers would leave through the mantrap to prevent someone from entering the suite when the entry door is open.

### **Carry-in Items**

These include backpacks, brief cases, reusable grocery bags, purses, laptops, wallets, etc. The MMCC should have a policy that defines the items can be brought into the showroom. A safe place for consumers to store other items would need to be provided in the lobby or some other place.

### **Metal Detector**

If a metal detector is installed at the front door, a security guard will be needed to check all allowed carry-in items and any metal items detected on people entering the building. This guard should be armed, wear a bullet-resistant vest, and be trained in how to deal with people who have weapons, refuse to be searched, or use their weapons.

An alternative to a metal detector is a wand used by a security guard to search a person for metal objects. The guard would request the person to remove any objects detected for inspection.

### **Receptionist**

The receptionist should be able to observe the metal detection process directly. If the person's identity and membership was verified with a video intercom, the receptionist could unlock the door to the dispensary when the guard indicates it is safe to do so. If there is no metal detector, the receptionist or security guard on duty in the reception room would verify the consumer's identity and membership, check all allowed carry-in items, and unlock the door to the dispensary for those who are granted entry.

If there is a limit on the number of consumers in the dispensary, the receptionist would ask other consumers to sit and wait until he or she can be admitted.

## Employee Protection

Consider protecting the receptionist and cashier in the dispensary with a bullet-resistant glass, plastic, or laminate enclosure and a bullet-resistant door.

## CAVEATS ON CPTED

CPTED measures employ three elements -- people, devices, and design features -- to deter crimes of opportunity by making it more difficult for an offender to commit a crime and escape without being stopped or detected. Although devices and design features are important, the human element is the critical one. People in the environment must:

- Take advantage of the visibility provided to observe and question intruders.
- Report suspicious behavior and criminal activities.
- Use the access control measures provided to keep intruders out.
- Use security measures to protect themselves and their property.
- Exercise control over their environment.

But even all of this will not stop many types of offenders. Other concepts and strategies will be needed to deal with offenders who are:

- Determined and skillful in defeating surveillance and access control measures,
- Irrational in their behavior,
- Acting as a member of an organized gang,
- Under the influence of drugs or alcohol,
- Reckless or undeterred by the risks of detection and apprehension,
- Unconcerned about possible punishment, or
- Legitimately in the area.

The need for the community, police, and other agencies and organizations to work together as partners to employ other concepts and strategies is especially critical in dealing with organized gangs because gangs can also use surveillance, access control, and territoriality measures, along with terror and intimidation, to make an environment safe for their criminal activities.

Finally, CPTED measures do not deal with many types of crimes that occur in social, home, and business environments. For example, they do not help to prevent crimes in which the victim knows or provides access to the offender, i.e., domestic violence, child abuse, and acquaintance rape. Nor do they help prevent substance abuse, workplace violence, fraud, forgery, and other financial crimes. Counseling, education, enforcement, and other measures are needed to deal with these situations.

 <small>THE CITY OF SAN DIEGO</small>	City of San Diego <b>Development Services</b> 1222 First Ave. 3rd Floor San Diego, CA 92101	<b>Development Permit/ Environmental Determination Appeal Application</b>	<b>FORM DS-3031 OCTOBER 2012</b>
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See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

**1. Type of Appeal:**

- ☐ Process Two Decision - Appeal to Planning Commission      ☐ Environmental Determination - Appeal to City Council  
☒ Process Three Decision - Appeal to Planning Commission      ☐ Appeal of a Hearing Officer Decision to revoke a permit  
☐ Process Four Decision - Appeal to City Council

**2. Appellant** *Please check one*    ☐ Applicant    ☐ Officially recognized Planning Committee    ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name: Jay Davis		E-mail Address: info@nhawkpi.com	
Address: 12707 High Bluff Drive	City: San Diego	State: CA	Zip Code: 92130    Telephone: (858) 436-5286

**3. Applicant Name** (As shown on the Permit/Approval being appealed). Complete if different from appellant.

EJ MARKETING MMCC - PROJECT NO. 368343

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.: CUP No. 1296361	Date of Decision/Determination: March 25, 2015	City Project Manager: Edith Gutierrez
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Decision (describe the permit/approval decision):

Conditional approval by the Hearing Officer.

**5. Grounds for Appeal** (Please check all that apply)

- ☐ Factual Error      ☐ New Information  
☐ Conflict with other matters      ☐ City-wide Significance (Process Four decisions only)  
☒ Findings Not Supported

**Description of Grounds for Appeal** (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

§126.0305 Finding (b) "The proposed development will not be detrimental to the public health, safety, and welfare" is not supported.

This project will expose the public to loitering, marijuana smoking at the premises and hash oil explosions.

RECEIVED

MAR 25 2015

DEVELOPMENT SERVICES

**6. Appellant's Signature:** I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:       Date: 3-25-15

**Note:** Faxed appeals are not accepted. Appeal fees are non-refundable.

 THE CITY OF SAN DIEGO	City of San Diego <b>Development Services</b> 1222 First Ave. 3rd Floor San Diego, CA 92101	<h2 style="margin: 0;">Development Permit/ Environmental Determination Appeal Application</h2>	<b>FORM DS-3031 OCTOBER 2012</b>
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**See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.**

**1. Type of Appeal:**

- |  |   |
|--|---|
| <input type="checkbox"/> Process Two Decision - Appeal to Planning Commission<br><input checked="" type="checkbox"/> Process Three Decision - Appeal to Planning Commission<br><input type="checkbox"/> Process Four Decision - Appeal to City Council | <input type="checkbox"/> Environmental Determination - Appeal to City Council<br><input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit |
|--|---|

**2. Appellant** Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name: Scott Chipman	E-mail Address: scott@chipman.info
Address: 2247 Emerald St.	City: San Diego State: CA Zip Code: 92109 Telephone: (619) 990-7480

**3. Applicant Name** (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Evon A Johnson Sr.

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.: 368343	Date of Decision/Determination: March 25, 2015	City Project Manager: Gutierrez
--	--	---------------------------------

Decision (describe the permit/approval decision):  
DSD Conditional Use Permit Approved

**5. Grounds for Appeal** (Please check all that apply)

- |  |   |
|--|---|
| <input type="checkbox"/> Factual Error<br><input type="checkbox"/> Conflict with other matters<br><input checked="" type="checkbox"/> Findings Not Supported | <input type="checkbox"/> New Information<br><input type="checkbox"/> City-wide Significance (Process Four decisions only) |
|--|---|

**Description of Grounds for Appeal** (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

The address appears to be within 1000 feet of one or more childcare facilities on the Marine Corps Air Station Miramar

Adequate public safety measures are not planned or within the ordinance.

7128 Miramar Road appears to be within 1,000' of an existing church Pacific Lighthouse Christian Fellowship 7060 Miramar Road

Champion Rythmics 9586 Distribution Avenue appears to be a minor oriented facility.

RECEIVED

APR 07 2015

DEVELOPMENT SERVICES

**6. Appellant's Signature:** I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Note:** Faxed appeals are not accepted. Appeal fees are non-refundable.





City of San Diego  
Development Services  
1222 First Ave. 3rd Floor  
San Diego, CA 92101

THE CITY OF SAN DIEGO

# Development Permit/ Environmental Determination Appeal Application

FORM  
**DS-3031**  
OCTOBER 2012

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

## 1. Type of Appeal:

- ☐ Process Two Decision - Appeal to Planning Commission  
☒ Process Three Decision - Appeal to Planning Commission  
☐ Process Four Decision - Appeal to City Council  
☐ Environmental Determination - Appeal to City Council  
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name: David S. Demian on behalf of Rick Engebretsen E-mail Address: ddemian@ftblaw.com  
 Address: 4747 Executive Dr, Ste 700 City: San Diego State: CA Zip Code: 92121 Telephone: (858) 737-3100

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

EJ Marketing MMCC - Project No. 368343

## 4. Project Information

Permit/Environmental Determination & Permit/Document No.: CUP No. 1296361	Date of Decision/Determination: March 25, 2015	City Project Manager: Edith Gutierrez
--	---	--

Decision (describe the permit/approval decision):  
Approval by the Hearing Officer.

## 5. Grounds for Appeal (Please check all that apply)

- ☒ Factual Error  
☒ Conflict with other matters  
☒ Findings Not Supported  
☒ New Information  
☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

1. Factual Error - The statements or evidence relied upon by the decision maker when conditionally approving the permit were inaccurate

2. New Information - New information is available that was not available at the time of the decision.

3. Findings Not Supported - The decision maker's stated findings to conditionally approve the permit are not supported by the information provided to the decision maker.

4. Conflicts - The decision to conditionally approve the permit is in conflict with a land use plan and the Municipal Code.

See attached letter setting forth grounds for appeal in more detail.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: April 9, 2015

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

April 9, 2015

VIA HAND DELIVERY

City of San Diego Planning Commission  
c/o City of San Diego Development Services  
1222 First Avenue, 3rd floor  
San Diego, California 92101

Re: *Appeal Of Hearing Officer Decision Approving  
Conditional Use Permit For EJ Marketing MMCC – Project 368343*

Dear Chairman Golba and Honorable Members of the Planning Commission:

I. INTRODUCTION

We are attorneys for Mr. Rick Engebretsen, the owner of the property located at 7625 Carroll Road – Project 370687 for a Conditional Use Permit (“CUP”) to operate a Medical Marijuana Consumer Collective (“MMCC”). We write this letter to appeal the approval of a CUP for EJ Marketing MMCC – Project 368343 (the “Project”) for the property located at 7128 Miramar Road [APN 343-070-15] (the “Project Site”), on the grounds set forth in our argument to the Hearing Officer (attached as Exhibit “A”) and based on additional grounds set forth in this letter. In particular, it is clear that the parking for this Project Site does not comply with the Land Development Code or the ADA, and is fatally inadequate. Specifically:

(1) the Project Site offers only 126 parking spaces, which does not satisfy either the 161 required to satisfy the current standards of the San Diego Municipal Code (“SDMC”), or the much lesser number of 136 spaces set forth on the 1984 Grading Plan submitted by EJ Marketing MMCC as a previously conforming parking; and

(2) even assuming the 1984 Grading Plan establishes the base line for a previously conforming parking, which is disputed and EJ Marketing MMCC has the burden of showing, it does not appear it is possible for the Project Site to (a) be restriped and reconfigured to increase the current 126 spaces back to the 136 spaces needed to conform to the previously conforming parking; while (b) still satisfying the minimum parking space and aisle dimension requirements at SDMC section 142.0560, subdivision (e)(2).

Therefore, we request that the Planning Commission approve our appeal and reverse the Hearing Officer’s decision to approve Conditional Use Permit No. 1296361 for EJ Marketing MMCC – Project 368343.

## II. PROCEDURAL MATTERS

### A. Standing

This letter supplements our March 24, 2015 letter and public comments delivered to the Hearing Officer at the March 25, 2015 hearing for the Project (attached as Exhibit "A"). Accordingly, I qualify as an "interested person" as defined by SDMC section 113.0103. This appeal is submitted on April 9, 2015, within 10 business days of the date of the Hearing Officer's decision and is timely.

### B. Standard Of Review

SDMC section 126.0305 provides the standards for approval of a Conditional Use Permit where: "... (a) The proposed development will not adversely affect the applicable land use plan; (b) The proposed development will not 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; and (d) The proposed use is appropriate at the proposed location."

As set forth in detail below, this appeal is based on arguments that meet the permissible grounds for appeal under all four prongs of the requirements of SDMC section 112.0506, subdivision (c). Namely: (1) the statements and evidence relied upon by the Hearing Officer when approving the permit were inaccurate; (2) new information is available that was not available at the time of the decision; (3) the Hearing Officer's stated findings to approve the CUP are not supported by the information provided to the Hearing Officer; and (4) the decision to approve the CUP is in conflict with the San Diego Municipal Code.

## III. PROJECT SITE PARKING IS NON-COMPLIANT WITH THE LAND DEVELOPMENT CODE AND THE ADA, AND IS FATALLY INADEQUATE

Any casual visitor to the Project Site can see that the parking lot at the Project Site is cramped and crowded. EJ Marketing MMCC's submitted site plan ("Submitted Site Plan") (attached as Exhibit "B") confirms this to be the case (even assuming the measurements are accurate, which, as discussed at length below, is a risky assumption) as it reveals drive aisles that are in two cases as narrow as 17 feet 7 inches and 17 feet 9 inches whereas the current standard is 24 feet width. Similarly, parking spaces on the Project Site are predominantly 8 feet wide by 15 feet long, whereas the current standard is 8 feet 3 inches wide by 18 feet long. As a proposed location to house one of the limited MMCC's in the City of San Diego, this is a poor choice. No doubt this is one of the many reasons why the Mira Mesa Community Planning Group did not recommend EJ Marketing MMCC. While this fact alone is grounds to deny the requested CUP, a close inspection of the parking conditions at the Project Site reveals that the spaces are too few and too small and that this CUP therefore cannot be issued.

### A. The Overall Minimum Parking Requirement For This Project Is 161 Spaces And The Project Site Currently Offers Only 126

The Project Site does not satisfy the overall minimum parking requirements of the SDMC. City Staff's assessment approving the parking is in error, apparently because City Staff's analysis miscalculates the number of parking spaces required and also incorrectly gives credit for non-existent parking spaces.

In sum:

(1) City Staff incorrectly calculated that the Project Site requires 130 spaces<sup>1</sup> as it apparently relied on EJ Marketing MMCC's project synopsis which listed the Project Site square footage as 21,500 SF when in actuality it is an estimated 32,195 SF; and

(2) City Staff was misled by the Submitted Site Plan which shows 136 parking spaces on the Project Site when in actuality there are just 126 parking spaces.

1. City Staff Failed To Include The Square Footage Of All Four Buildings On The Project Site

SDMC section 142.0560(a)(2) provides: "For mixed uses on the same *premises*, the required parking spaces shall be either of the following: (A) The sum of the requirements for each individual use computed separately; or (B) In compliance with Section 142.0545 *shared parking* requirements." Here, there are no shared parking agreements and the premises is Assessor's Parcel Number 343-070-15, commonly known as 7122-7128 Miramar Road, comprised of 4 buildings with an estimated total gross floor area of 32,195 square feet. According to City Staff's Cycle Issues report dated September 10, 2014 (see attached Exhibit "C," Page 8 of 9), the Project Site's overall minimum parking requirement was computed as follows:

Parking Calculations:

Proposed (IL 3-1 Zone):

Commercial Services:

1,055 SF x 5.0 spaces/1,000 SF = 5 automobile parking spaces

Existing to remain:

MXN Mexican Restaurant:

2,352 SF x 15 spaces/1,000 SF = 35 spaces

Office/retail/restaurant/Other Uses:

(21,500 SF – 2,352 SF – 1,055 SF) =

18,093 SF x 5 spaces/1,000 SF = 90 spaces

Overall parking requirement: (35 + 90 + 5) = 130 automobile parking spaces

However, according to the original site plan and grading plan from 1984 ("1984 Plans") (attached as Exhibit "D"), there are four distinct buildings on the Project Site with square footage as follows: (1) the Plaza Building Two-Story portion (9,483 SF x 2 floors = 18,966 SF); (2) the Plaza Building One-Story portion (5,488 SF); (3) the Charlotte Russe Building (5,088 SF); and the (4) Future Building N.I.C. (estimated 2,653 SF). These four buildings total an estimated 32,195 square feet. The Submitted Site Plan indicates similar information.

<sup>1</sup> Section 26 of Conditional Use Permit No. 1296361 states: "No fewer than 130 off-street parking spaces (with 136 off-street parking spaces provided) shall be permanently maintained on the property within the approximate location shown on the project's Exhibit "A". Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC."

City of San Diego Planning Commission

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Pursuant to SDMC section 142.0530(a) and Table 142-05E, an IL-3-1 zone requires 5.0 spaces per 1,000 square feet of floor area for mixed-use development. Thus, the overall minimum parking requirement for the Project Site should be 161 parking spaces (32,195 SF x 5.0 spaces / 1,000 SF = 160.975). As discussed hereafter, the Project Site actually includes just 126 spaces.

2. Project Site's Actual Conditions Do Not Conform To SDMC, Even Assuming The  
130 Space Requirement As There Are Just 126 Spaces

The Submitted Site Plan misrepresents the actual conditions of the Project Site. The Submitted Site Plan indicates 136 parking spaces. However, the reality is the Project Site includes just 126 spaces.

Attached as Exhibit "E" is an independent expert analysis, conducted by Joelson Vale Associates ("JVA"), of the observable parking space deficiencies of the Project Site in relation to the Submitted Site Plan. JVA's analysis divides the parking lot into distinct groups of spaces labeled from A through M and then counts the spaces within each of those groups. The parking count table is set forth as follows:

Parking Count Table (Exhibit E, Page 13)

<u>GROUP</u>	<u>RANGE</u>	<u>APPLICANT</u>	<u>JVA</u>	<u>NOTES</u>
A	1-14	14	14	
B	15-22	8	7	SPACE #22 IS A REDSTRIPED NO PARKING ZONE
C	23-30	8	8	
D	31-39	9	9	
E	40-62	23	21	SPACES 58 AND 59 TAKEN BY A TRANSFORMER
F	63-68	6	5	SPACE #83 IS A DUMPSTER / NOT A SPACE
G	69-77	9	7	SPACE #70 IS CURRENTLY A VAN AISLE / MISCOUNT
H	78-88	11	10	SPACE #88 HAS A TRANSFORMER / NOT A SPACE
I	89-100	12	11	MISCOUNT
J	101-114	14	12	SPACE #113 IS CURRENTLY A VAN AISLE / MISCOUNT
K	115-123	9	9	
L	124-130	7	7	
M	131-136	6	6	
TOTALS:		136	126	

Thus, in Groups B, E, F, G, H, I and J, EJ Marketing MMCC's count of parking spaces - mirrored on the 1984 Plans - overstates the actual spaces on the Project Site. This counting of non-existent parking spaces is the result of two different causes: (i) miscounting spaces - in which case the Project Site would have to be restriped into even narrower parking spaces to achieve the desired parking space count; or (ii) the spaces are unavailable for parking because they are obstructed by electric transformer boxes, garbage dumpsters, red-striped no parking, or serving as a van accessible isle. (See the Notes column above.)

Of course, obstructions in parking spaces violate the SDMC, which provides at section 142.0510(b) that all off-street parking spaces and aisles shall be kept clear of any temporary or permanent obstructions. In that regard, parking spaces #58, #59, and #88 on the Submitted Site Plan are occupied by



City of San Diego Planning Commission

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two separate electrical transformer boxes (see Exhibit E, Pages 9 and 11). Space #83 is occupied by a trash dumpster serving the Mexican restaurant (see Exhibit E, Page 10).

In addition, spaces #70 and #113 cannot be counted because they serve as access aisles for ADA van accessible parking spaces (see Exhibit E, Pages 10 and 12). Space #22 is red striped as “No Parking” (see Exhibit E, Page 8).

Again, three spaces in ranges #69-77, #89-100, and #101-114 simply do not exist in the current environment as striped (see Exhibit E, Pages 10-12). In actuality, there are at most 126 available parking spaces at the Project Site in the current environment.

B. The Project Site Parking Spaces Do Not Conform  
To SDMC Requirements For Parking Size And Aisle Dimensions

As set forth in Section 26 of the proposed CUP, “parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.” (See Footnote 1 above.)

The Project Site has a mixture of retail sales, eating and drinking establishments, and commercial services. SDMC section 142.0560(b), Table 142-05K requires parking spaces to be 8 feet 3 inches wide by 18 feet long for retail sales uses and eating and drinking establishments, and 8 feet wide by 18 feet long for all other uses. The Submitted Site Plan shows a majority of the Project Site’s parking spaces to be 8 feet wide (a few as narrow as 7 feet) by only 15 feet long. In light of the glaring and inexcusable errors in the Submitted Site Plan as to the number of spaces, we are extremely concerned that the dimensions represented are equally unreliable. Regardless, even as presented, the spaces are not allowable.

Similarly, SDMC section 142.0560, subdivision (c), Table 142-05L requires parking aisles to be 24 feet wide where the parking spaces are perpendicular to the aisle. The Submitted Site Plan shows over a third of the parking spaces to have parking aisles less than 24 feet wide (as narrow as 17 feet 7 inches). Again, there are questions as to the accuracy of the dimensions furnished. However, even as presented the Submitted Site Plan does not satisfy the requirements of the SDMC.

C. Previously Conforming Premises Exemption Does Not Apply

In its Applicant Response to Cycle Issues (attached as Exhibit “F”), EJ Marketing MMCC repeatedly asserts that the Project Site is exempt from having to satisfy the current parking regulations of the SDMC because of previously conforming parking. Preliminarily, we have no reason to believe this is true beyond the mere existence of the 1984 Plans, which, as discussed above, do not match current Project Site conditions. Prior to issuance of this CUP, at a minimum, a finding as to whether the Project Site is approved via previously conforming parking must be made by the Planning Commission and the burden is on EJ Marketing MMCC.

D. Even Assuming, Arguendo, A Previously Conforming  
Parking, The Project Site Cannot Be Reconfigured To Meet  
SDMC Requirements For Size Of Aisles And Parking Spaces

Even assuming EJ Marketing MMCC is able to prove it is entitled to rely on a previously conforming parking, it will still be unable to satisfy the requirements of the SDMC. This is because EJ Marketing MMCC, in order to apply the benefit of previously conforming parking, will need to restripe

and materially modify the Project Site in order to restore the purported 136 parking spaces listed on the 1984 Plans. This construction activity to correct the deficiencies in the Submitted Site Plan will necessarily require materially narrowing many of the parking spaces to sizes that are not allowed under the provisions of SDMC section 142.0560(e), and would very likely also violate the aisle size requirements of SDMC section 142.0560(e).

Minimum dimensions for parking spaces and aisles and previously conforming dimensions are addressed in SDMC sections 142.0560(b), (c), and (e), which state as follows:

(b) Minimum Dimensions for *Off-street Parking Spaces*. The minimum dimensions for single and tandem spaces for specific types of parking spaces are shown in Table 142-05K, except as provided in Section 142.0560(e) for certain pre-existing parking facilities. Compact spaces are not permitted.

...

(c) Minimum Dimensions for Automobile Parking Aisles. The minimum dimensions for automobile parking aisles at permitted angles for one-way and two-way circulation are shown in Table 142-05L and illustrated in Diagram 142-05B, except as provided in Section 142.0560(e) for certain pre-existing parking facilities.

...

(e) Minimum Parking and Aisle Dimensions for Pre-existing Parking Facilities. Required *off-street parking spaces* approved before January 1, 2000 need not be restriped to comply with this section when enlargement or a change in use is undertaken if the spaces required for both the existing use and enlargement comply with the following standards:

(1) The parking stall dimensions for 90-degree parking are 8 feet, 6 inches wide by 20 feet long with 21-foot aisles; or

(2) A maximum of 60 percent of the total number of spaces may be 7 feet, 6 inches wide by 15 feet long with 18-foot aisles.

Notwithstanding the alleged previously conforming parking, where there is a change in use, the Project Site must still meet the minimum requirements of either subsection (e)(1) or (e)(2) of SDMC section 142.0560. Here, the proposal for opening an MMCC effects a change in use. Further, without question, the Project Site cannot satisfy subsection (e)(1).

Thus, in order for EJ Marketing MMCC to claim that the existing parking space dimensions are previously conforming and compliance with the current parking standards of section 142.0560 subdivisions (b) and (c), it must satisfy SDMC section 142.0560, subsection (e)(2), which provides that no more than 60 percent of the total number of spaces may be 7.5 feet wide by 15 feet long with 18-foot aisles. A close review of the Submitted Site Plan as drawn reveals that this is not possible. The physical space limitations of the Project Site preclude EJ Marketing MMCC from restriping and reconfiguring the lot to contain 136 spaces, while still satisfying the qualitative requirements of Section 142.0560, subsection (e)(2).

E. Project Site's Actual Conditions Do Not Conform To ADA Regulations

Also included in JVA's independent expert analysis (Exhibit E) are several observable deficiencies of the Project Site's compliance with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") and the California Building Code ("CBC"). To summarize the report, the existing accessible parking is not compliant with either the federal or state accessibility standards for the following reasons:

- (1) the stall identification signage is either missing or obsolete (see Exhibit E, Pages 8, 10, 12);
- (2) pavement striping and the International Symbol of Accessibility (ISA) is faded and indistinct (see Exhibit E, Pages 8, 10, 12);
- (3) the required "No Parking" message at the foot of the aisle is missing (see Exhibit E, Pages 8, 10, 12); and
- (4) the curb ramp serving the Project's building projects into the accessible aisle next to the accessible space contrary to standards (see Exhibit E, Page 8).

In addition, ADAAG and CBC require 5 ADA accessible spaces for parking lots with a total of 101-150 parking spaces. The Submitted Site Plan only has 4. In that regard, City Staff's Cycle Issues report originally specified that the parking requirement for the Project is 5 automobile parking spaces including at least 1 disabled accessible space (van accessible design) (see Exhibit C, Page 2). The Submitted Site Plan does not indicate any van accessible parking spaces. The closest accessible spaces to the Project, spaces #23 and #24, are not currently van accessible. While spaces #69 and #114 are van accessible in the current environment, their respective distances from the Project would make parking in those spaces by prospective disabled MMCC visitors impractical.

Furthermore, the Submitted Site Plan indicates a Path of Travel by arrows on the plan. However, there currently is no Accessible Route between the Public Right of Way (PROW) and the Project. There is no marked path of travel, no directional signage for guidance, and no curb ramps at the end of sidewalks to facilitate a wheelchair user to descend down to the asphalt surface and ascend to the opposing sidewalk across the driveway.

IV. APPLICANT PREVIOUSLY OPERATED AN ILLEGAL DISPENSARY AND CONTINUES TO OPERATE A DELIVERY SERVICE

The applicant for EJ Marketing MMCC is Green Nectar EJM Cooperative, Inc., whose President is Ebon A. Johnson, Sr. In July 2014, the City of San Diego filed a lawsuit against Green Nectar EJM Cooperative, Inc. ("Green Nectar") dba EJ Marketing dba Green Nectar Co-Op Delivery Service and Mr. Johnson for "growing, selling and distributing marijuana" in violation of the San Diego Municipal Code and the California Health and Safety Code (see Complaint attached as Exhibit "G"). Among other things, Green Nectar was alleged to operate an illegal dispensary within 600 feet of a K-8 charter school. In August 2014, Green Nectar agreed to a stipulated judgment to cease operating its illegal dispensary and to pay a \$10,000.00 civil penalty. Green Nectar continues to operate its delivery service as of this date (see Reviews as recent as April 1, 2015 attached as Exhibit "H").

City of San Diego Planning Commission  
April 9, 2015  
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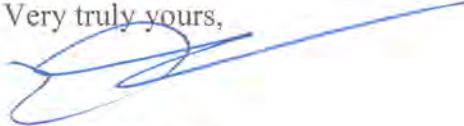
V. THE RECOMMENDATIONS OF THE MIRA MESA PLANNING GROUP SHOULD BE RESPECTED AND THIS CUP SHOULD BE HEARD CONCURRENTLY WITH THE PENDING APPLICATIONS IN DISTRICT 6

As set forth in detail in our March 24, 2015 submission to the Hearing Officer (Exhibit "A"), we encourage the Planning Commission to take note of and give significant weight to the recommendations of the Mira Mesa Planning Group, which did not recommend EJ Marketing MMCC for approval. Again, consideration of this CUP in a vacuum and without giving consideration to the existence of the other applications to be heard is a mistake. These arguments are incorporated into this appeal as grounds to deny the CUP.

VI. CONCLUSION

Simply put, EJ Marketing MMCC cannot conform to the existing conditions of the Project Site to the Submitted Site Plan while also meeting the parking regulations of the SDMC and Federal law. From a land use planning standpoint, allowing the current parking layout to continue to exist as previously conforming would be detrimental to public health, safety and welfare. Accordingly, we request that the Planning Commission approve this appeal and reverse the Hearing Officer's decision to approve Conditional Use Permit No. 1296361 for EJ Marketing MMCC – Project 368343.

Very truly yours,



David S. Demian,  
Partner

Enclosures

DSD:hjg/3843744

cc: City of San Diego Development Services Department  
Attn: Ms. Edith Gutierrez (via email only)

 THE CITY OF SAN DIEGO	City of San Diego <b>Development Services</b> 1222 First Ave. 3rd Floor San Diego, CA 92101	<h2 style="margin: 0;">Development Permit/ Environmental Determination Appeal Application</h2>	<b>FORM</b> <b>DS-3031</b> OCTOBER 2012
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See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

**1. Type of Appeal:**

- |  |   |
|--|---|
| <input type="checkbox"/> Process Two Decision - Appeal to Planning Commission<br><input checked="" type="checkbox"/> Process Three Decision - Appeal to Planning Commission<br><input type="checkbox"/> Process Four Decision - Appeal to City Council | <input type="checkbox"/> Environmental Determination - Appeal to City Council<br><input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit |
|--|---|

**2. Appellant** Please check one ☐ Applicant ☐ Officially recognized Planning Committee ☒ "Interested Person" (Per M.C. Sec. 113.0103)

Name: David S. Demian on behalf of Rick Engebretsen	E-mail Address: ddemian@ftblaw.com
Address: 4747 Executive Dr, Ste 700	City: San Diego State: CA Zip Code: 92121 Telephone: (858) 737-3100

**3. Appellant Name** (As shown on the Permit/Approval being appealed). Complete if different from appellant.

EJ Marketing MMCC - Project No. 368343

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.: CUP No. 1296361	Date of Decision/Determination: March 25, 2015	City Project Manager: Edith Gutierrez
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Decision (describe the permit/approval decision):  
Approval by the Hearing Officer.

**5. Grounds for Appeal** (Please check all that apply)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Factual Error<br><input checked="" type="checkbox"/> Conflict with other matters<br><input checked="" type="checkbox"/> Findings Not Supported | <input checked="" type="checkbox"/> New Information<br><input type="checkbox"/> City-wide Significance (Process Four decisions only) |
|--|--|

**Description of Grounds for Appeal** (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

1. Factual Error - The statements or evidence relied upon by the decision maker when conditionally approving the permit were inaccurate

2. New Information - New information is available that was not available at the time of the decision.

3. Findings Not Supported - The decision maker's stated findings to conditionally approve the permit are not supported by the information provided to the decision maker.

4. Conflicts - The decision to conditionally approve the permit is in conflict with a land use plan and the Municipal Code.

See attached letter setting forth grounds for appeal in more detail.

**6. Appellant's Signature:** I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: April 9, 2015

**Note:** Faxed appeals are not accepted. Appeal fees are non-refundable.



March 24, 2015

VIA HAND DELIVERY

Mr. Kenneth Teasley  
Hearing Officer  
Development Services Department  
1222 First Avenue, MS 501  
San Diego, California 92101

Re: EJ Marketing MMCC – Project 368343 Application for Conditional Use Permit

Dear Hearing Officer Teasley:

1. Introduction

This office represents Mr. Rick Engebretsen as the owner of the property located at 7625 Carroll Road, San Diego, California 92126, located in the Mira Mesa neighborhood of City Council District 6. 7625 Carroll Road – Project 370687 is an applicant for a Conditional Use Permit (“CUP”) to operate a Medical Marijuana Consumer Collective (“MMCC”).

We write this letter in opposition to the application for a CUP for EJ Marketing MMCC – Project 368343 (the “Project”) for the property located at 7128 Miramar Road, San Diego, California 92126, on the bases that (i) the City Staff’s previous direction to you to ignore other pending applications contradicts San Diego Municipal Code § 126.0305; (ii) the fact that the Mira Mesa Community Planning Group (“Mira Mesa CPG”) does not recommend EJ Marketing MMCC for approval relative to two other pending applications is at risk of not being considered; and (iii) the unavailability of the Project file for public viewing prior to the Project’s hearing prevents accountability and public verification of the Project applicant’s submissions and City Staff’s findings for recommending approval.

We respectfully request that you (i) continue the hearing on the application for a CUP for EJ Marketing MMCC – Project 368343 to April 22, 2015 for the reasons set forth below so that it can be considered relative to the four other applications for CUPs in City Council District 6 set for hearing on that day; and (ii) at such April 22 hearing, take into account the recommendations of the Mira Mesa CPG with respect to those applications for CUPs in the Mira Mesa community. In the alternative, we request the permit be denied.

2. Ignoring Other Pending Applications Contradicts San Diego Municipal Code § 126.0305

During the December 3rd, 2014 hearing for 3452 Hancock MMCC – Project 368344, the record shows that you asked City Staff if you were allowed to consider whether the application was appropriate



Hearing Officer Teasley  
 March 24, 2015  
 Page 2 of 4

and promoted public safety and welfare relative to other pending CUP applications (the analysis performed by Community Planning Groups in each City Council district). City Staff said no.

San Diego Municipal Code (“SDMC”) § 126.0305 (the “CUP Findings”) requires the Hearing Officer to determine, among other things, whether a proposed development will not be detrimental to the “public health, safety and welfare” and whether the proposed use is “appropriate” at the proposed location. City Staff’s direction to you as the Hearing Officer to ignore pending applications contradicts the CUP Findings statute.

The existence of other pending MMCC CUP applications is itself a relevant fact that must be considered as part of the issuance of CUPs for MMCCs. The CUP Findings statute requires the Hearing Officer to answer broad questions: whether the proposed use is appropriate and whether the proposed development will not be detrimental to public health, safety and welfare. Neither the CUP Findings statute, nor the Land Development Manual, nor any provision within the Land Development Code constrains or limits the facts to be considered in making that determination. Rather, SDMC § 111.0204 requires the Hearing Officer consider the application, written reports prepared prior to the hearing, and information received at the hearing.

Rather than consider pending applications clearly relevant to the issuance of a limited number of CUPs, City Staff, without any citation to the Land Development Code, has chosen to treat such current, pending applications as not being part of the process. The result is to undermine the single most important objective of the Land Development Code, which is set forth in the very first provisions of that Code:

“The intent of these procedures and regulations is to facilitate fair and effective decision-making and to encourage public participation.” (SDMC § 111.0102.)

City Staff’s determination to hear permits in isolation, while at first blush may appear a reasonable methodology, upon closer inspection is again, not only contrary to the language of the Land Development Code, but violates the guiding principles of the Land Development Process.

### 3. Mira Mesa Community Planning Group Does Not Recommend EJ Marketing MMCC

On August 18, 2014, the Mira Mesa CPG evaluated, based on the four criteria of the CUP Findings statute, the project applications for four MMCCs, including EJ Marketing MMCC, proposed for the Mira Mesa community (minutes for the August 18 meeting are attached as Exhibit “A”). After an extensive analysis of each proposed project’s effect on the community, the Mira Mesa CPG conducted a special vote to consider approval for only two among the four applicants. The Mira Mesa CPG’s recommendation letter (attached as Exhibit “B”) states:

“[T]he presentations we heard were informative, thorough and educational. Two applicants stood out in this respect and we have voted to express our preference for these two applicants. Our first preference is for Glass Tech Entities (Project # 368509). ... The second applicant most preferred by the Planning Group was that of [7625 Carroll Road – Project 370687]. ... [W]e ask that the two named applicants [Project #368509 and Project #370687] be preferred in the deliberations on awarding two of the four allowable CUPs.”

Hearing Officer Teasley  
March 24, 2015  
Page 3 of 4

The Mira Mesa CPG analyzed which proposed projects would be the “safest and least obtrusive” on the community. The Mira Mesa CPG recommended two projects over EJ Marketing MMCC. In that regard, EJ Marketing MMCC only received a single vote throughout the whole ranked voting process compared to nine votes and seven votes for the two recommended projects.

Council Policy 600-24 states that Community Planning Groups have been formed and recognized by the City Council to make recommendations to the City Council, Planning Commission, City Staff, and other governmental agencies on land use matters specifically concerning the preparation of, adoption of, implementation of, or amendment to, the General Plan or a land use plan when a plan relates to each recognized community planning group’s planning area boundaries.

Community Planning Groups provide citizens with an opportunity for involvement in advising the City Council, the Planning Commission, and other decision-makers on development projects, general or community plan amendments, rezonings and public facilities. The recommendations of the planning groups are integral components of the planning process, and are highly regarded by the City Council and by staff.<sup>1</sup>

One result of ignoring the fact of competing applications is to stymie the public participation of the Community Planning Groups, whose members actually reside in the communities and have the greatest interest in where the MMCCs intend to operate. This is certainly the case in City Council District 6, where the Mira Mesa CPG reviewed all the applications and approved two applications above all the others in its community based on the CUP Findings statute. These recommendations are not being heard as a result of the City Staff’s process.

#### 4. The Unavailability Of The Project File Prevents Accountability And Verification

On March 5, 2015, this office requested an appointment with City Staff to copy the Project file. On March 10, 2015, we were informed that the Project file would not be available for copying for at least two weeks because City Staff needed it to prepare for this hearing. We requested notification when the Project file would be available so that we could conduct a meaningful review in advance of this hearing, and City Staff stated they would notify us. However, ultimately, after two rounds of follow up on our part, City Staff stated the Project file would be available at 2 PM on March 24, 2015, the day before this hearing.

We appreciate there is an extraordinary burden upon City Staff as a result of this unique permitting situation. In all of our interactions, City Staff has been professional and responsive and performed their duties to the best of their abilities and resources. However, the result of the delay in access to this file is that we were deprived of our right under the Public Records Act and of our opportunity to conduct a meaningful review of the Project file. The information contained therein would have been insightful as we have already identified potential discrepancies with the Project just on review of the City’s Staff Report to Hearing Officer, but have not had sufficient time to audit and present them for this hearing. For instance, we observe that there may be potential issues with the Project’s minimum overall parking

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<sup>1</sup> <http://www.sandiego.gov/planning/community/cpg/>.

Hearing Officer Teasley  
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requirement, which appear to be non-conforming from the site plan. In addition, an initial investigation reveals that in July 2014 the City of San Diego filed a lawsuit against the Project applicant, Green Nectar EJM Cooperative, Inc. dba EJ Marketing dba Green Nectar Co-Op Delivery Service and Mr. Ebon Johnson for "growing, selling and distributing marijuana" in violation of the San Diego Municipal Code and the California Health and Safety Code. The Project applicant agreed to a stipulated judgment to cease operating its illegal dispensary and to pay a \$10,000 civil penalty.

Without the opportunity to review the Project file, the public has been deprived of its right to verify the Project applicant's submissions and City Staff's findings in recommending approval of the CUP, and deprived of its right to hold City Staff accountable for errors and omissions for same.

5. Conclusion

SDMC § 111.0105 sets forth the hierarchy of decision-making authority, and in that regard the Hearing Officer has greater authority than City Staff. As indicated in section 2 above, contrary to City Staff's previous direction, you do indeed have the authority and the discretion to consider whether an application is appropriate and promotes public health, safety and welfare relative to other pending CUP applications as information received at the hearing.

Accordingly, we request that you exercise your authority to: (i) continue the hearing on the application for a CUP for EJ Marketing MMCC – Project 368343 to April 22, 2015 so that it can be considered relative to the four other applications for CUPs in City Council District 6 set for hearing on that day; and (ii) at such April 22 hearing, take into account the recommendations of the Mira Mesa CPG with respect to those applications for CUPs in the Mira Mesa community so that their time and effort is not wasted and ignored. In the alternative, we request the permit be denied.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David S. Demian", with a long horizontal flourish extending to the right.

David S. Demian,  
Partner

Enclosures

DSD:hjg/3828235

cc: City of San Diego Development Services Department  
Attn: Ms. Edith Gutierrez, (via email only)

# **EXHIBIT A**

**Mira Mesa Community Planning Group  
Meeting Minutes, August 18, 2014 7PM  
7220 Trade Street, San Diego CA 92121**

Call to Order – PG Members In attendance:

1.	Ted Brengel	6.	Tom Derr	11.	Joe Frichtel	16.	Mike Linton
2.	Bob Mixon	7.	James Ludwick	12.	Ralph Carolin		
3.	Bruce Brown	8.	Julia Schriber	13.	Matt Woods		
4.	Craig Radke	9.	Kent Lee*	14.	Eileen Magno		
5.	Pat O'Donohoe	10.	Walt Kanzler	15.	Joe Punsalan		

1. The Chair presented for unanimous consent to proceed with all business other than the MMCC applications first to allow other applicants to complete their business with the group before discussing and voting on the MMCC applications. No objections were raised.
2. Non-Agenda Public Comments:
  - a. Julia Schriber made a motion to place the request of the Sorrento Valley Town Council for signage on the agenda for the next meeting. The Chair ruled the motion out of order as not pertaining to the draft agenda pending before the group. Ms. Schriber referred to Roberts Rules in general and City Council Policy 600-24. The Chair disagreed with respect to Roberts Rules which specifies the mechanism for changing an agenda on page 373 of the 11<sup>th</sup> Edition. The Chair also disagreed with Ms. Schriber's interpretation of Council Policy and directed her to refer the matter to the City for clarification.
  - b. Jolene Tomenaga- request for a stop sign 4 way stop Acama and Andosal.
3. Adopt Draft Agenda –Ted Brengel motion, Bruce Brown second. Motion carried 16-0-0.
4. Adopt Previous Meeting Minutes – No changes were requested. Motion to adopt by Bob Mixon/Joe Frichtel. Motion carried 12-0-4. Abstentions were due to not being present at June meeting.
5. Old Business
  - a. Barnes Canyon easement - SWS Engineering
    - i. Lot 95 of Lusk Industrial Park
    - ii. No longer loop system.
    - iii. Easement vacation requested
    - iv. Raised planter and deck not allowed to construct
    - v. Water department has approved.
    - vi. 12" water line
    - vii. Motion to recommend approval: Bob Mixon, Ted Brengel second Motion carried

**Mira Mesa Community Planning Group  
Meeting Minutes, August 18, 2014 7PM  
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15-0-0 approved

- b. Sorrento Gateway SCR: Kilroy Realty not in attendance.
- c. Carroll Canyon Commercial Center: Scripps Ranch Planning Group- Wally Wolpeck, Chairman updated the MMCPG on the progress of the commercial center development project just east of the I-15.

**6. New Business**

- a. San Diego Ice Arena
  - i. Solar Arrays in progress in parking lot. Project is Process 1 and does not require CPG recommendation. SD Ice is updating the CPG as a courtesy.
  - ii. Enhanced landscaping
  - iii. 45-60% of energy use
  - iv. \$1 million project.
  - v. Reduce energy use by 50%
  - vi. Expect to be in place for 20 years
- b. SDGE Easement Mira Sorrento substation
  - i. Claudia Valenzuela 858-654-8307
  - ii. City of san diego easement removal
  - iii. Landscaping buffer and welcome to Mira mesa monument signage
  - iv. Motion to promote Ted B, Joe Frichtel second. Motion carried 15-0-0.
- c. San Diego Food Bank Information item:
  - i. Annie Rosenthal OBR architecture
  - ii. Goal to create zero waste- cannot be redistributed
  - iii. Utilize composting, bail and pair down on site, for recycling elsewhere
  - iv. Three requests
    - 1. Sewer Easement vacation, City records do not show easement
    - 2. Proposed Rezone IL-1-1, City of SD recommended this rezone
    - 3. CUP to allow composting, install digester into existing warehouse space
- d. Medical Marijuana Consumer Cooperatives
  - i. Glass Tech Entities
    - 1. Michael Rollins – Rollins Construction presenting
    - 2. 9212 Mira Este Court
    - 3. Near Miramar Road
    - 4. Why Glass Tech? Building is non descript- no signage- very discreet
    - 5. Mutual Benefit- Not for Profit. Alliance for medical access.
    - 6. Separate illegal operations from legal medical use
    - 7. Steve Dizaiy- Chemist- Safety protocol- testing for pesticides- patient safety
    - 8. Wayne Kelly- Safe, legal reliable access to medical canibis, MS patients alternative to pharmaceuticals, canibis is a benign treatement.
    - 9. Ted Brengel- how will you get marijuana to the facility. Not answered.



**Mira Mesa Community Planning Group  
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10. Location is not accessible? No elevator provided. 20% ADA upgrades to meet accessibility requirements.
11. Per city comments: Within 1000' of three child care centers.
12. 2 other sites within 1000' minor oriented.
13. 1000' radius to property vs. entry to buildings.
14. Spoke to church – not in opposition
15. Paint ball and model not minor oriented

ii. EJ Marketing

1. Jessica McElfresh, Attorney
2. 7128 Miramar Road
3. It is 1000' from all prohibited uses
4. Radius clips corner of base and city is ok with this.
5. Distance from Pacific Lighthouse Christian Fellowship- suggesting that the Church is not a permitted use.
6. Champion Rhythmics- not a minor oriented facility? Primary use is devoted to people under the age of 18. Affidavit by owner Alex Weitz that Champion Gymnastics is not a minor-oriented facility.
7. Plan to update building to full ADA access. Including lift and restroom upgrades
8. Driveways may require update to meet current code
9. Safety and Security plan
10. Metal detector in entry way
11. Responsible operation items listed.
12. Security guard will monitor parking lot and adjacent areas.
13. Health and Safety permit required. Annual site review
14. CUP valid for 5 years

iii. MedBOX

1. Oscar Urtehea- Cynthia Morgan presenting
2. 8008 Miramar Road
3. Presented site photos, camera location,
4. 10 parking + 1 accessible park
5. Signage and hours presented in compliance with City guidelines
6. Security to exceed state and local requirements
7. Fully ADA compliant
8. State registered pharmacist to operate
9. District manager will provide oversight
10. Benefits of MEDBOX.
11. System to track from seed to sale
12. Request to approve application
13. CUP findings presented-
14. Site complies with Land Development Code
15. United Training, Game Sync, uses not properly zoned
16. Operating in 3 other states- Nevada, Oregon, Arizona
17. How does this comply with non profit- MMCC member of joint cooperative

**Mira Mesa Community Planning Group  
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iv. Nicole Britvar: 7625 Carroll Rd

1. Meet all city conditions- cycle issue reports
2. Meeting with Edith Gutierrez- PM recommends approval
3. 23 parking spaces provided
4. Will meet all driveway requirements
5. Fully ADA accessible

v. Public Comment- open by John H.

1. Rob Hall lives near a MMCC. Distributed Union tribune article
  - Recommending not approving any due to various concerns
2. Carol Green- Security concerns for the community.
  - Follow city council rules
  - There are locations that meet this criteria.
  - Does not see how this will benefit the community
3. Barbara Gordon
  - Issues- loitering, smoking, fearful adjacent to dispensary on Oberlin
  - There is an overall negative impact to the area.
4. Kathleen Lippit
  - Youth access- weedmaps.com available throughout San Diego. Suggesting City will not be able to limit illegal dispensaries. Why are we approving legal dispensaries? May want to consider limiting advertising for medical use only.
5. Judy ?
  - Pot shops in Pacific Beach
  - GW Pharmaceuticals- non smoking products
  - Approved FDA process
  - Is MEDBOX using vending machine
  - Check out clientele at existing
  - Marketing to young people.
6. Ted Brengel- A few facts to Consider- Prop 215
  - What is a cooperative? Definition shared.
  - Is the dispensary a primary care giver
  - None of the presenters addressed this.
  - Health and Safety concerns.

vi. Vote process

1. The applications are in Process 3, which means a Hearing Officer will make the final decision. If MMCPG declines to approve any of the applicants, it may abdicate its prerogative to provide guidance to City.
2. The Chair presents the Special Rules of Order distributed with the agenda (attached below) for consideration. Motion to adopt the Special Rules of Order was made/seconded by Pat O'Donohoe/Ted Brengel.
3. The mechanics of the vote were discussed, with a spreadsheet projected for

**Mira Mesa Community Planning Group  
Meeting Minutes, August 18, 2014 7PM  
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all attendees to see. Spreadsheet showed how each member ranked the applicants. Members were able to not rank any applicant, essentially abstaining from the vote.

4. The motion to adopt the Special Rules of Order carried 14-2-0. The Chair polled each member and the member's vote was recorded on the spreadsheet. The results are attached below.
5. The first vote to recommend Glass Tech Entities was 7-1-8. This precluded consideration of MEDBOX, it being within 1,000 feet of Glass Tech. This forwarded voting to a "third" vote to recommend Nicole Britvar over EJ Marketing. This vote was 9-0-7.

vii. Motion to conditionally recommend Glass Tech Entities and Nicole Britvar, with conditions expressed in Ted Brengel's presentation (included below, slide #9) was made/seconded by Ted Brengel/Pat O'Donohoe. Motion carried 16-0-0.

**7. Announcements**

- a. Community Artist (Leo Angelo Reyes) – Will propose a mural for second Casa Mira View parking garage. Also needs \$\$ to complete electrical transformer boxes. Matter will be referred to Mira Mesa Town Council. Will look at wall facing sidewalk at Salk Elementary.
- b. Miramar Ranch 5k Saturday Dec 6
- c. Mira Mesa Festival of Beers, August 23

**8. Elected Officials/Government Agencies**

- a. United States Congress – Scott Peters, California 52nd District: No Info
- b. California Senate –Marty Block, District 39: No Info
- c. California Assembly – Brian Maienschein, District 77: No Info
- d. San Diego County – Dave Roberts, Board of Supervisors District 3: No Info
- e. City of San Diego – Mayor's Office: No Info
- f. City of San Diego – Lorie Zapf, City Council District 6: Ryan Purdy, [rpurdy@sanidiego.gov](mailto:rpurdy@sanidiego.gov) 619-236-6616
  - i. Brief updates- city budget passed
  - ii. Library hours added
  - iii. Police cameras
  - iv. Land Use policy
  - v. Pacific Beach, North Park, Alcohol consumption concerns.
  - vi. Enforce laws on the books
  - vii. Lions Club- flag raised fine?
- g. San Diego Unified School District: No Info

**Mira Mesa Community Planning Group  
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- h. MCAS Miramar –Fairy Shrimp Environmental Management Department stickers provided
  - i. Date of Airshow October 3-5. Original format.
  - i. CalTrans: No Info

9. Reports held over for next meeting.

Adjourn: 9:47 PM

Jay Dichoso- 10746 Glendover Lane, Mira Mesa reviewing MMCPG, observer interested in joining the Planning Group.

**MIRA MESA COMMUNITY PLANNING GROUP  
SPECIAL RULES OF ORDER FOR ITEM #4(d) ON THE AGENDA FOR 18 AUGUST 2014**

1. The Chair will make a motion to adopt the following as Special Rules of Order for the consideration of the Medical Marijuana Community Cooperative applications before the Planning Group for a recommendation to the City Council.
2. Members of the Planning Group will base their evaluation of the applicants on the following four criteria from the Municipal Code (Section §126.0305):
  - a. The proposed development will not adversely affect the applicable land use plan;
  - b. The proposed development will not 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; and
  - d. The proposed use is appropriate at the proposed location.
3. Due to the Municipal Code restriction limiting each Council District to four permits the Mira Mesa Community Planning Group will consider approval for only two among the four applicants, leaving two permits available for applicants in the Convoy/Kearny Mesa area of Council District 6.
4. Voting on the applicants before the Planning Group for a recommendation shall proceed as follows:
  - a. Voting: The Chair will request each member to express their preference for applicants by indicating the order in which the member believes they merit a recommendation of approval. The rankings shall be recorded on a spreadsheet which shall be projected for the view of those attending the meeting.
  - b. The First Vote
    - i. If a member does not wish to recommend approval for any applicant, the member will state to the Chair that he/she does not wish to recommend any of the applicants.
    - ii. Each member who wishes to recommend approval for an applicant or applicants will state their order of preference. The member may rank all four applicants, or choose to rank only those he or she feels merits a recommendation, at the member's discretion.

- iii. If an applicant receives 10 or more #1 rankings, that applicant shall receive the first recommendation for approval and voting shall proceed to the Second Vote except as provided for in 3(b)(vi) vi below.
  - iv. If no applicant receives 10 or more #1 rankings, points shall be awarded as follows:
    - 1. #1 vote = 4 points.
    - 2. #2 vote = 3 points.
    - 3. #3 vote = 2 points.
    - 4. #4 vote = 1 point.
  - v. A show of hands will then be taken for each of the two highest scoring applicants. ***Members not wishing to recommend any applicant may abstain from this vote.*** The applicant receiving the most votes numbering 10 or more (a majority of the entire Planning Group Executive Committee) in this show of hands shall receive the first recommendation for approval.
  - vi. As a result of the awarding of the first recommendation for approval, if one of the remaining applicants has applied for a location within 1,000 feet of the first recommended applicant, due to Municipal Code restrictions disallowing MMCCs within 1,000 feet of each other, that applicant shall be ineligible for a recommendation. Voting shall proceed to the Third Vote.
  - vii. Should the First Vote fail to secure 10 or more votes for the first recommendation as a result of this process, no applicant will be recommended and voting shall be concluded.
- c. The Second Vote
- i. If a member does not wish to recommend approval for any of the remaining applicants, the member will state to the Chair that he/she does not wish to recommend any of the remaining applicants.
  - ii. Each member who wishes to recommend approval for a second applicant will state their order of preference. The member may rank all three remaining applicants, or choose to rank only those he or she feels merits a recommendation, at the member's discretion.
  - iii. If a single applicant receives 10 or more #1 rankings, that applicant shall receive the second recommendation for approval and voting shall be concluded.



- iv. If no applicant receives 10 or more #1 rankings, points shall be awarded as follows:
    - 1. #1 vote = 3 points
    - 2. #2 vote = 2 points.
    - 3. #3 vote = 1 point.
  - v. A show of hands will be taken between the two highest scoring applicants. **Members not wishing to recommend any applicant may abstain from this vote.** The applicant receiving the most votes numbering 10 or more (a majority of the entire Planning Group Executive Committee) in this show of hands shall receive the second recommendation of approval and voting shall be concluded.
5. The Third Vote (if necessary per 3(b)(vi) above)
- a. The Third Vote shall be between two remaining applicants.
  - b. Each of the two remaining applicants shall receive a vote by show of hands. **Members not wishing to recommend a second applicant may abstain from these two votes.**
  - c. The applicant receiving the most votes numbering 10 or more (a majority of the entire Planning Group Executive Committee) shall receive the second recommendation.
  - d. Should neither of the two remaining applicants receive 10 or more votes at the Third Vote, no second recommendation shall be given.
6. Members are expressly under NO OBLIGATION to explain the reasons for their preferences as expressed by their votes.

# A Few Facts to Consider

About Medical Marijuana

# Cooperative

*“A cooperative can be defined for practical purposes as a democratic association of persons organized to furnish themselves an economic service under a plan that eliminates entrepreneur profit and that provides for substantial equality in ownership and control.”*

Israel Packel, The Organization and Operation of Cooperatives 2 (4<sup>th</sup> ed. 1970).

## Primary Caregiver

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).)

In light of the results of several California Supreme Court Cases (*People v. Mentch, supra, et al*), more aid to a person’s health than the mere dispensing of marijuana must occur for qualification as a primary caregiver.

# Attorney General's Guidelines

The California Attorney General promulgated a set of guidelines in August of 2008 which said in summary:

- Cooperatives and collectives must be non-profit entities
- Medical marijuana transactions are subject to sales tax, per a determination by the State Board of Equalization
- Cooperatives and collectives must follow generally accepted cash handling practices, such as maintaining a ledger of cash transactions
- Each member's status as a qualified patient or primary caregiver must be verified, either by possession of a valid Medical Marijuana ID Card or by authentication of a doctor's recommendation through contact with the issuing physician, and be documented in the records of the cooperative or collective
- Cooperatives and collectives must be self-contained; that is, they cannot distribute marijuana to or acquire marijuana from non-members.



## San Diego County Grand Jury 2009/2010

“When regulations and guidelines are adopted to govern cooperatives/collectives, there should be a distinction drawn between a small cooperative/collective and a large one.”

---

“Cooperatives or collectives that are providing a legitimate service to qualified patients, and are willing to follow the guidelines for their small group of medical marijuana patients, should not be forced to close because they cannot afford to remain in compliance with the new regulations.”

## Grand Jury Recommendation to the San Diego Mayor and City Council

10-114: Enact an ordinance creating an immediate moratorium on the opening of additional medical marijuana dispensaries in the City of San Diego, pending the adoption by the Council of guidelines regulating such establishments, as recommended by the Medical Marijuana Task Force with appropriate public input.

10-115: Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring of medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.

10-116: Adopt regulations which would allow for the closure of all unlicensed “dispensaries.”

# Health and Safety Concerns

## Safety

- The presence of both Marijuana and cash make MMCCs a lucrative target for criminals
- There are no specific requirements for security
- Cash business? (USA Today - July 13, 2014)

## Health

- Ordinary drugstores have rigid requirements to insure purity of dispensed drugs and safety of customers
- Marijuana Dispensaries including MMCCs have none.
- There have been instances of bad products with various funguses, molds, and adulterants including lead and feces.

## Minor-oriented Facilities

The MCAS Miramar Industrial area contains a number of youth-oriented businesses where children routinely participate in activities onsite.

Sky High Sports  
8190 Miralani drive



SD United Training Center  
7698 Miramar Road



Miramar Speed Circuit  
8123 Miralani Dr



Gamesync  
7905 Silverton Avenue



- There are many more of plus daycare centers and churches
- I did not count MCAS Miramar child care centers because access requires travel to a gate with a total distance to travel of over 1,000 feet.

## My Recommendation to the Mira Mesa Community Planning Group

1. Recommend to the Hearing Officer that all CUP requests be tabled until such time as the illegal “dispensaries” in the area are closed and the City demonstrates that it has the wherewithal to both **keep** illegal marijuana dispensaries closed **and** to properly regulate MMCCs.
2. Place the CUP requests in order based upon our assessment as to their ability to serve the purposes intended by Proposition 215 with a recommendation that once the conditions above are satisfied, a maximum of two CUPs within Mira Mesa be issued to the two top applicants.

## Proposition 215 - Compassionate Care Act

- To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.
- To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
- To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.



## Prop 215 (continued)

- Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.
- Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.
- Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.
- For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

**MIRA MESA COMMUNITY PLANNING GROUP  
SPECIAL RULES OF ORDER FOR MMCC RECOMMENDATIONS**

		<b>GLASS TEC</b>		<b>EJ MARKETING</b>		<b>MEDBOX</b>		<b>NICOLE BRITVAR</b>	
		<b>RANK</b>	<b>SCORE</b>	<b>RANK</b>	<b>SCORE</b>	<b>RANK</b>	<b>SCORE</b>	<b>RANK</b>	<b>SCORE</b>
R01	Kent Lee	0	0	0	0	0	0	0	0
R02	Joe Punsalan	0	0	0	0	0	0	0	0
R03	Joe Frichtel	0	0	0	0	0	0	0	0
R04	Ted Brengel	1	4	0	0	0	0	0	0
R05	Bruce Brown	0	0	0	0	0	0	0	0
R06	Tom Derr	1	4	0	0	0	0	2	3
R07	James Ludwick	0	0	0	0	0	0	0	0
R08	Robert Mixon	1	4	0	0	0	0	2	3
R09	John Horst	0	0	0	0	0	0	0	0
R10	Jeff Stevens	0	0	0	0	0	0	0	0
R11	Pat O'Donohoe	0	0	2	3	0	0	1	4
B01	Marvin Miles	0	0	0	0	0	0	0	0
B02	Craig Radke	1	4	0	0	0	0	2	3
B03	Julia Scribner	1	4	0	0	0	0	2	3
B04	Eileen Magno	0	0	0	0	0	0	0	0
B05	Walter Kanzler	0	0	0	0	0	0	1	4
L01	Ralph Carolin	1	4	0	0	0	0	2	3
L02	Matt Woods	0	0	0	0	0	0	0	0
L03	Mike Linton	0	0	0	0	0	0	0	0
<b>TOTAL</b>			<b>24</b>		<b>3</b>		<b>0</b>		<b>23</b>

**Members with all zeroes elected not to recommend any applicant.**

August 19, 2014

City of San Diego, Planning Department  
1222 1st Avenue, MS 413  
San Diego CA 92101

To the Director:

At our August 18, 2014 meeting the Mira Mesa Community Planning Group heard a second round of presentations by four applicants for Conditional Use Permits (CUP) to operate Medical Marijuana Community Cooperatives. Please accept this letter as our report and recommendations on this matter.

It is our strong belief that current enforcement measures on illegally operating medical marijuana shops are grossly inadequate. As such, we request that the Hearing Officer table consideration of the permit applications until such a time as the illegal "dispensaries" in the area are closed and the City demonstrates that it has the wherewithal to both keep illegal marijuana dispensaries closed and to properly regulate MMCCs.

This notwithstanding, the presentations we heard were informative, thorough and educational. Two applicants stood out in this respect and we have voted to express our preference for these two applicants. Our first preference is for Glass Tech Entities (Project # 368509). Due to the Municipal Code restrictions disallowing MMCCs within 1,000 feet of each other, this recommendation precluded us from recommending the MEDBOX application (#368322). The second applicant most preferred by the Planning Group was that of Ms. Nicole Britvar (#370687).


At such a time as illegal dispensaries are closed and effective enforcement mechanisms are in place to prevent them from simply opening up in a new location, we can support the awarding of only two CUPs to the two applicants mentioned above. This will allow the other two CUPs allowed for the 6<sup>th</sup> District to be awarded to applicants in Kearney Mesa with the guidance of the Kearney Mesa Community Planning Group.

This matter has of course been controversial. Numerous residents expressed their concern and opposition. However, we recognize that Proposition 215 is state law as expressed by the voters and the City Council has acted in their capacity as our representatives to craft a Municipal Ordinance to implement this law in San Diego. We wish to assist the City in implementing this Ordinance in our Community in keeping with the four criteria specified in the Municipal Code in support of necessary findings for these permits, these four criteria being:

- The proposed development will not adversely affect the applicable land use plan;
- The proposed development will not be detrimental to the public health, safety and welfare;
- The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and
- The proposed use is appropriate at the proposed location.

It is especially in light of the second of these four criteria that we insist that the City first remedy the inadequacies of current enforcement on illegal cooperatives. Subsequent to that, we ask that the two named applicants above be preferred in the deliberations on awarding two of the four allowable CUPs.

Cordially,



John Horst  
Chairman, Mira Mesa Community Planning Group

**EXHIBIT B**

August 19, 2014

City of San Diego, Planning Department  
1222 1st Avenue, MS 413  
San Diego CA 92101

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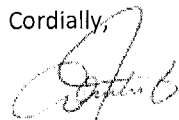
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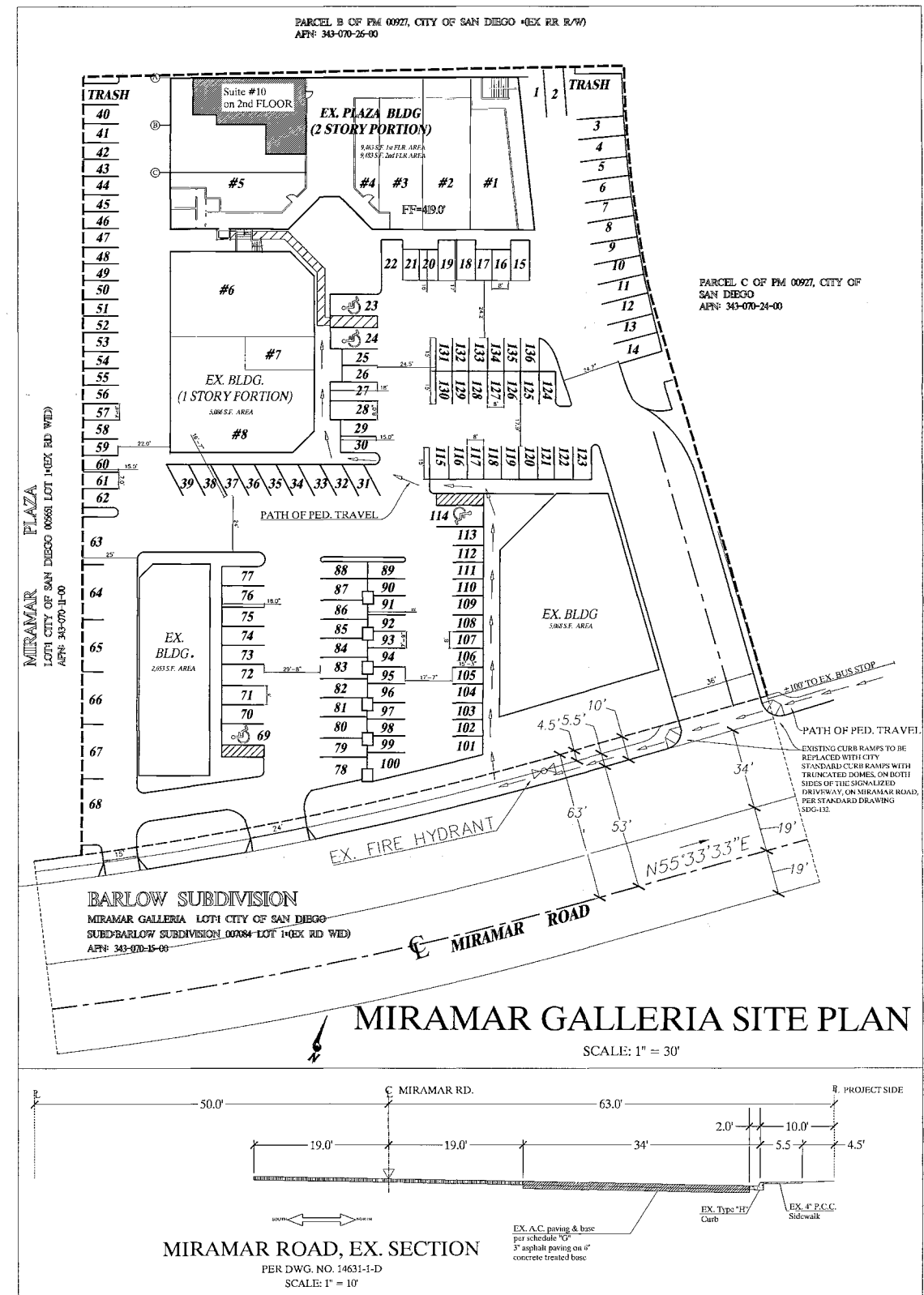
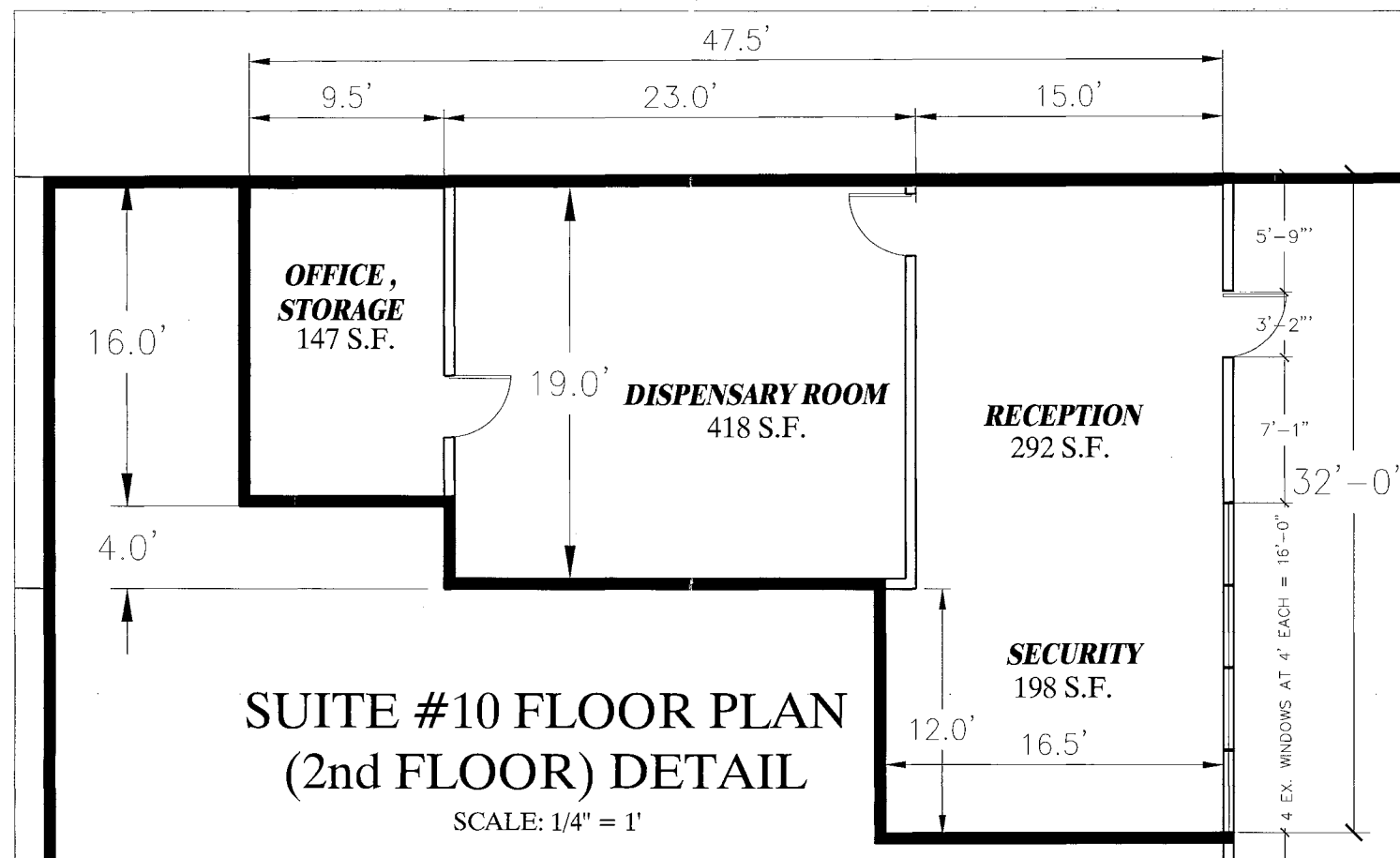
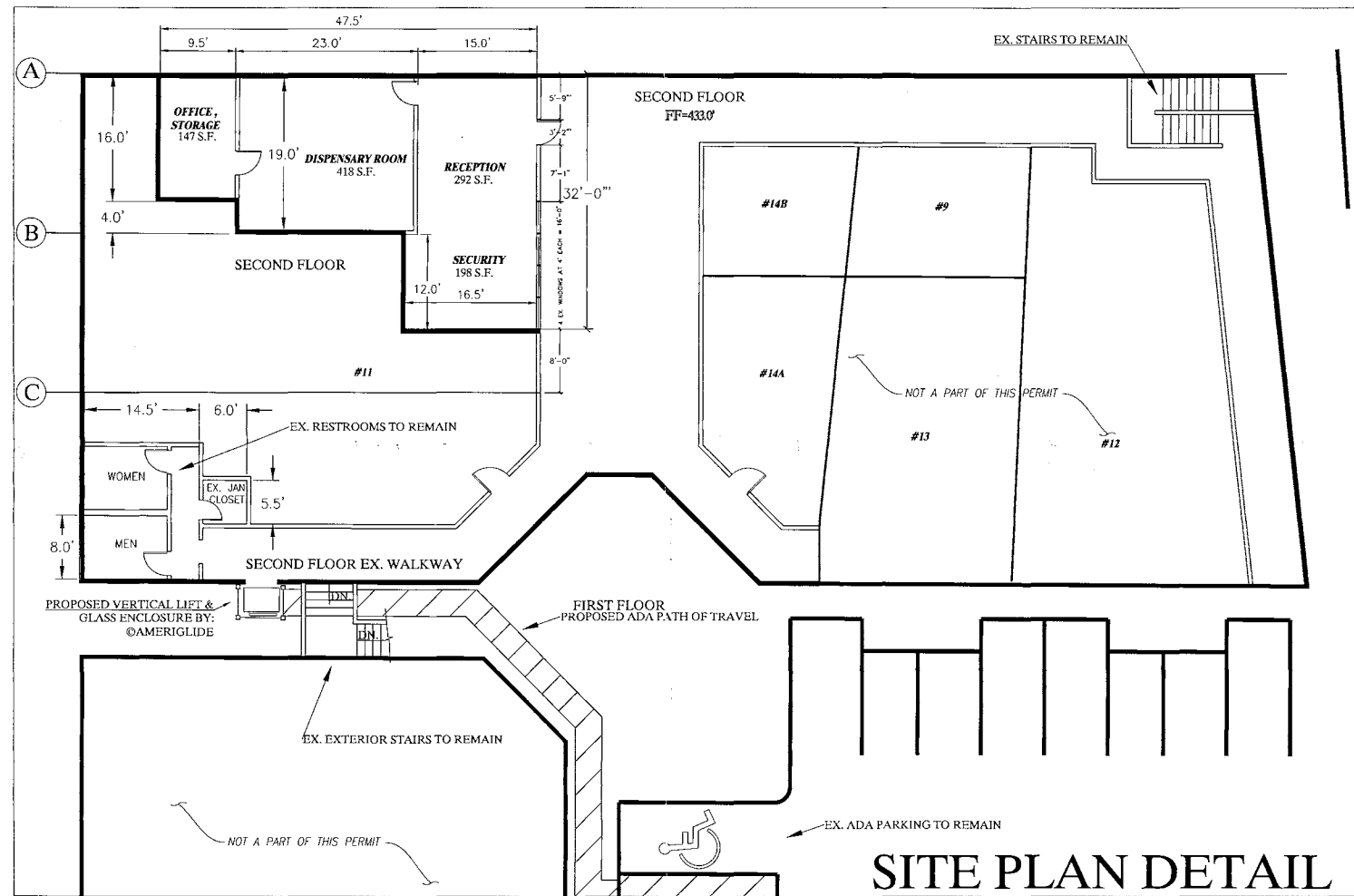
- The proposed development will not adversely affect the applicable land use plan;
- The proposed development will not be detrimental to the public health, safety and welfare;
- The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and
- The proposed use is appropriate at the proposed location.

It is especially in light of the second of these four criteria that we insist that the City first remedy the inadequacies of current enforcement on illegal cooperatives. Subsequent to that, we ask that the two named applicants above be preferred in the deliberations on awarding two of the four allowable CUPs.

Cordially,



John Horst  
Chairman, Mira Mesa Community Planning Group



CONSULTANT:

**SHAPOURI ENGINEERING  
COMPANY, INC**

18029 Calle Ambiente, Suite 502, P.O. Box 3275, Rancho Santa Fe,  
California 92067  
Phone: (858) 412-0033 Fax: (858) 756-8344

**SITE PLAN  
AND  
FLOOR PLAN**

**MMCC CUP PLAN  
SUITE #10**  
7128 Miramar Road  
SAN DIEGO, CALIFORNIA

SHEET TITLE:

DATE: 2014-08-21, REVISED ON:  
2014-09-13, 2014-09-17,  
2014-09-25

CITY OF SAN DIEGO  
PROJECT NO: 368343

SHEET NO.

2 of 2



## Cycle Issues DRAFT



THE CITY OF SAN DIEGO  
Development Services

1222 First Avenue, San Diego, CA 92101-4154

9/10/14 9:19 am

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## Review Information

<b>Cycle Type:</b> 5 Submitted (Multi-Discipline)	<b>Submitted:</b> 08/22/2014	Deemed Complete on 08/25/2014
<b>Reviewing Discipline:</b> LDR-Transportation Dev	<b>Cycle Distributed:</b> 08/25/2014	
<b>Reviewer:</b> Jauregui, Rudy (619) 557-7985 rjauregui@sandiego.gov	<b>Assigned:</b> 08/26/2014	
	<b>Started:</b> 09/09/2014	
<b>Hours of Review:</b> 2.50	<b>Review Due:</b> 09/09/2014	
<b>Next Review Method:</b> Submitted (Multi-Discipline)	<b>Completed:</b> 09/09/2014	
	<b>Closed:</b>	

- . The review due date was changed to 09/12/2014 from 09/12/2014 per agreement with customer.
- . The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs.
- . The reviewer has requested more documents be submitted.
- . Your project still has 12 outstanding review issues with LDR-Transportation Dev (10 of which are new issues).
- . The reviewer has not signed off 1 job.

## 24004659 - CUP (MMCC) - 1st Re

<u>Issue</u>		
<u>Cleared?</u>	<u>Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	1	Project Information:  The proposed project is to process a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative (MMCC). The facility is proposing to operate within 968 square feet of an existing 21,500 square foot, two-story building located at 7128 Miramar Road; on a 1.9-acre -acre site located in the IL-3-1 zone and Airport Influence Area (MCAS Miramar) within the Mira Mesa Community Plan Area  (From Cycle 2)
<input checked="" type="checkbox"/>	2	General Information:  The existing use for 7128 Miramar Road has not been identified. Per the plan submittal, the proposed project will occupy 968 square feet of the second story of the subject building. However, additional information will be required for the existing development to remain on the project site; remaining 20,532 square feet of subject building and the other buildings on the project site. With the next plan submittal, please provide building areas and associated uses to remain on the project site, if the building(s) is(are) currently occupied.  (continues)
<input checked="" type="checkbox"/>	3	(From Cycle 2) (continued)  If not, how long have they been vacant? Revise site plan submittal accordingly.
<input checked="" type="checkbox"/>	4	(From Cycle 2) General Information:  Please provide any discretionary permits governing the project site, including the corresponding Exhibit "A," or any documentation that is verifiable. Pending receipt and review of all requested information, existing non-conforming parking may be considered in satisfying the minimum parking requirement. All of the following comments have been provided without this information and may be revised pending review of a future plan submittal.
<input checked="" type="checkbox"/>	5	(From Cycle 2) Trip Generation:  The proposed 968 square feet of commercial service use is expected to generate approximately 39 average daily trips (ADT), at 40 trips per 1,000 square feet; with 1 morning peak hour trips and 3 afternoon peak hour trips. A transportation impact analysis will not be required.  (From Cycle 2)

For questions regarding the 'LDR-Transportation Dev' review, please call Rudy Jauregui at (619) 557-7985. Project Nbr: 368343 / Cycle: 5



## Cycle Issues DRAFT



THE CITY OF SAN DIEGO  
Development Services

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1222 First Avenue, San Diego, CA 92101-4154

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	6	<p>Parking Requirement:</p> <p>An overall parking requirement will be determined for the project site, pending receipt of additional information requested above. Per the City of San Diego Municipal Code (SDMC) Section 142.0530 Table 142-05E and Table 142-05G, the minimum parking requirement for the proposed facility is 5 automobile parking spaces (as calculated below) including at least 1 disabled accessible space (van accessible design). It is unclear if the parking as proposed provides the minimum overall parking required for the project site.</p> <p>(continues)</p> <p>(From Cycle 2)</p>
<input checked="" type="checkbox"/>	7	<p>(continued)</p> <p>Provide all additional information requested above to determine an overall project site minimum parking requirement. With a revision of the submittal, please include all parking calculations on the revised plan submittal.</p> <p>(From Cycle 2)</p>
<input checked="" type="checkbox"/>	8	<p>Parking Calculations:</p> <p>Proposed (IL 3-1 Zone): Commercial Services: 968 SF x 5.0 spaces/1,000 SF = 5 automobile parking spaces</p> <p>Existing to remain: Office/retail/restaurant/Other Uses: @ 5 parking spaces/1,000 SF or respective parking ratios</p> <p>Overall parking requirement is to be determined with the receipt of additional information for all existing development remaining on site.</p> <p>(From Cycle 2)</p>
<input type="checkbox"/>	9	<p>Parking Space Dimensions:</p> <p>Per the SDMC Section 142.0560, Table 142-05K are 8 feet (8.3 feet for retail, commercial service uses and eating and drinking establishments) wide by 18 feet long, 9 feet wide by 18 feet long for spaces with one side abutting an obstacle and 9.5 feet wide by 18 feet long for spaces with two sides abutting obstacle. Clearly dimension all parking spaces.</p>
<input checked="" type="checkbox"/>	10	<p>(From Cycle 2)</p> <p>Shared Parking Agreements:</p> <p>Provide copies of all existing/proposed Shared Parking Agreements between all affected properties. Should the subject agreement(s) be reviewed as acceptable, they will be conditions of the permit.</p>
<input checked="" type="checkbox"/>	11	<p>(From Cycle 2)</p> <p>Parking:</p> <p>Clearly identify and provide a sequential count of all parking spaces on the project site. Revise plan submittal accordingly.</p>
<input type="checkbox"/>	12	<p>(From Cycle 2)</p> <p>Parking Drive Aisles:</p> <p>All existing/proposed drive aisles on the plan submittal must be dimensioned. Refer to SDMC Section 142.0560 (c) Table 142-05L for minimum requirements. With the revised plan submittal, please dimension all drive aisles that are to be considered as part of the proposed project. Revise plan submittal accordingly.</p>
<input checked="" type="checkbox"/>	13	<p>(From Cycle 2)</p> <p>Street Cross-Section:</p> <p>Please provide a cross-section for Miramar Road, including centerline to curb line and centerline property line dimensions. Revise plan submittal accordingly.</p> <p>(From Cycle 2)</p>

On Issue No. 9 and 12: Please note that the existing parking stalls and layout have been previously approved by the City, see attached Grading, Site and Architectural Plans from 1984. Also please see explanation letter (attached) from Attorney Jessica C. McElfresh, dated 2014-09-15, regarding Definition of Previously Conforming Structure and Premises (SDMC Section 113.0103)



## Cycle Issues DRAFT



THE CITY OF SAN DIEGO  
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1222 First Avenue, San Diego, CA 92101-4154

Cleared?	Issue Num	Issue Text
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<input checked="" type="checkbox"/>	14	Driveways:
-------------------------------------	----	------------

Per the SDMC Section 142.0560 (j) Table 142-05M, the minimum required and maximum allowed, two-way driveway widths for the proposed nonresidential development are 24 and 30 feet respectively. With the next submittal, please revise the plan submittal to clearly identify and dimension the project site driveways accordingly.

<input checked="" type="checkbox"/>	15	(From Cycle 2) Driveway Access:
-------------------------------------	----	------------------------------------

It appears that access to project parking and the proposed project building is through a mutual parcel with other uses; all on one parcel. However, if there is more than one parcel using the driveway shown, clearly identify all properties taking access from a mutual driveway on the plan submittal and provide copies of signed Joint Use Driveway/Mutual Access Agreements. Should the subject agreement(s) be reviewed as acceptable, they will be conditions of the permit.

<input checked="" type="checkbox"/>	16	(From Cycle 2) Additional comments and conditions may be provided pending further review or redesign of this project.
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(From Cycle 2)

24004659 - CUP (MMCC) 2nd Revi

Cleared?	Issue Num	Issue Text
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<input type="checkbox"/>	17	Please address all remaining issues from the first LDR - Transportation Development Review
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(New Issue)

<input type="checkbox"/>	18	Project Information (Update):
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The proposed project is to process a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative (MMCC). The facility is proposing to operate within 1,055 square feet of an existing 21,500 square foot, two-story building located at 7128 Miramar Road; on a 1.9-acre -acre site located in the IL-3-1 zone and Airport Influence Area (MCAS Miramar) within the Mira Mesa Community Plan Area.

<input type="checkbox"/>	19	(New Issue) Project Information (Update):
--------------------------	----	--

The response to comments provided with this plan submittal states the previously approved building and site place for the project site identifies the building area as being 2-floors of 9,483 SF each; total building area of 18,966 SF. Although, copies were said to be provided not were received as part of the plan submittal. The project site description identifies the overall site as 21,500 square feet this is not consistent with the building area identified with this submittal. (New Issue)

<input type="checkbox"/>	20	(continued)
--------------------------	----	-------------

Please provide copies of the approved plans being sited so that staff may verify the new building areas and assure consistency.

<input type="checkbox"/>	21	(New Issue) General Information:
--------------------------	----	-------------------------------------

The response to comments provided with this plan submittal identify the existing uses for 7128 Miramar Road as Miramar Café, MXN Mexican Restaurant, 3 Rug and Carpet, an MMA fight supply store, and In-Home care-giver agency, a veteran's benefits agency and a mattress retailer. Per the plan submittal, the proposed project will occupy 1,055 square feet of the second story of the subject building; suite #10.

<input type="checkbox"/>	22	(New Issue) General Information:
--------------------------	----	-------------------------------------

The response to comments did not address the request for any existing discretionary permits governing the project site. The assumption being made is that there are none. Should a permit arise that requires additional information/facilities of the project/project site, it is to be understood that all requirements and conditions of existing discretionary permits will need to be satisfied.

(New Issue)

Copy of previously approved Grading, Site and Architectural plans are being submitted again.

Comments noted.





# Cycle Issues DRAFT

THE CITY OF SAN DIEGO  
Development Services

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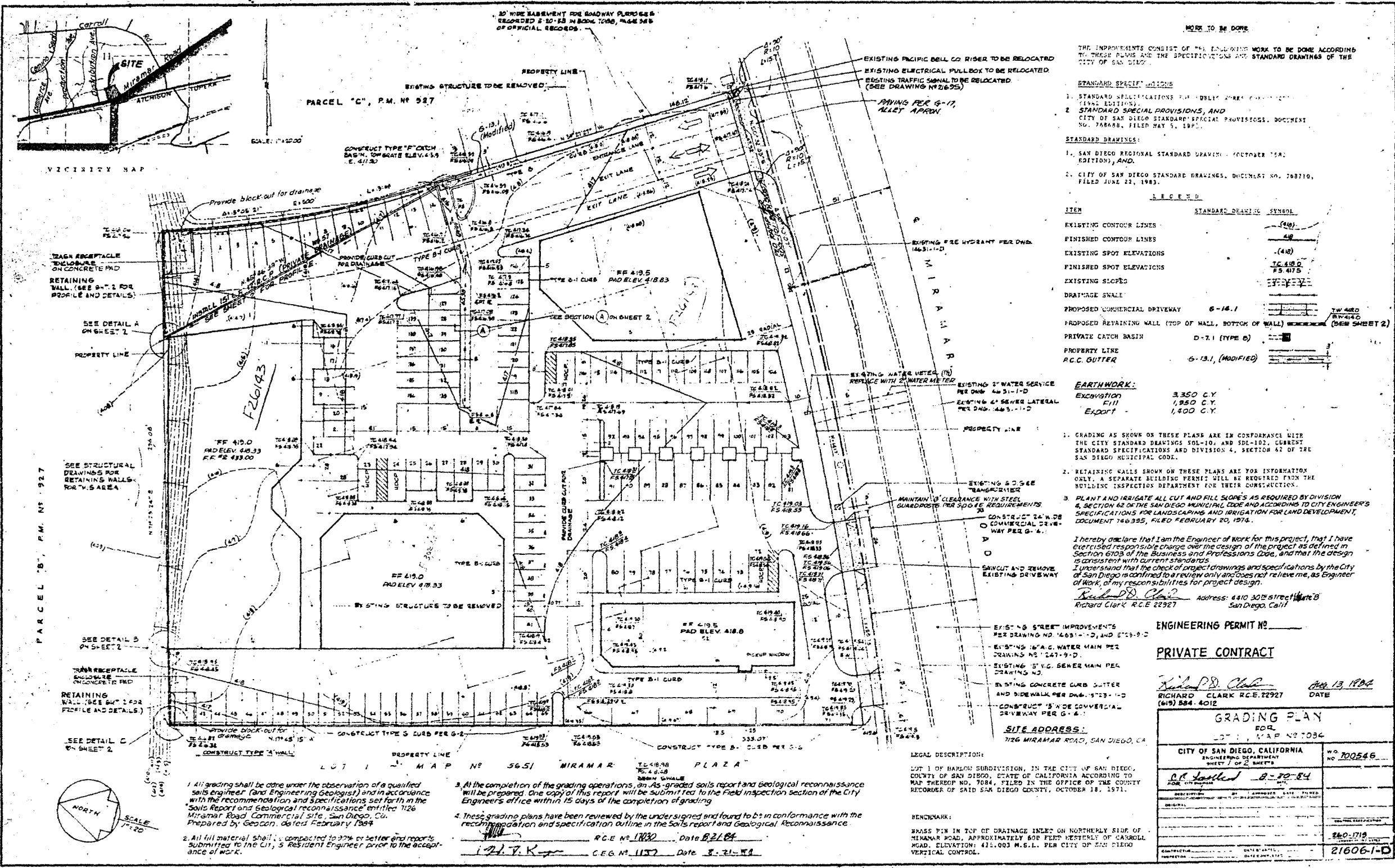
9/10/14 9:19 am

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L64A-003B

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	23	Trip Generation:  The proposed 1,055 square feet of commercial service use is expected to generate approximately 42 average daily trips (ADT), at 40 trips per 1,000 square feet; with 1 morning peak hour trips and 4 afternoon peak hour trips. A transportation impact analysis will not be required. (New Issue)
<input type="checkbox"/>	24	Parking Requirement:  Although a building area breakdown of all uses identified was not provided with the plan submittal, and assuming a stand-alone parking ratio for the MXN Mexican Restaurant of 15 spaces/1,000 SF and a scaled building area of 2,352 SF, it appears that the 136 parking spaces shown for the overall site may support the minimum requirement for the site of 130 automobile parking spaces including the proposed MMCC minimum parking requirement of 5 automobile parking spaces.  (New Issue)
<input type="checkbox"/>	25	Parking Calculations:  Proposed (IL 3-1 Zone): Commercial Services: 1,055 SF x 5.0 spaces/1,000 SF = 5 automobile parking spaces  Existing to remain: MXN Mexican Restaurant: 2,352 SF x 15 spaces/1,000 SF = 35 spaces Office/retail/restaurant/Other Uses: (21,500 SF - 2,352 SF - 1,055 SF) = 18,093 SF x 5 spaces/1,000 SF = 90 spaces  Overall parking requirement: (35 + 90 + 5) = 130 automobile parking spaces
<input type="checkbox"/>	26	(New Issue) Additional comments and conditions may be provided pending further review or redesign of this project.  (New Issue)

Comments noted.











# Joelson Vail Associates LLC

• Architects • General Contractors • Forensic Consultants •

April 6, 2015

Steven Hwang, Esq.  
Attorney at Law

Finch, Thornton & Baird  
4747 Executive Drive, Suite 700  
San Diego, CA 92121

Re: Shopping Center at 7128 Miramar Road, San Diego, CA 92121  
Subject: EJ MARKETING MMCC  
PROJECT NO. 368343

Dear Mr. Hwang,

Pursuant to your request, the following is my analysis of the application and supporting documents relative to the proposed Medical Marijuana Consumer Cooperative (MMCC). The focus of this analysis pertains to the applicant's area computation of the buildings and existing parking stall count on the site plan.

On March 23<sup>rd</sup>, I inspected the site to confirm the accuracy of the conditions and parking stall count proposed by the applicant. In addition, I visited the City of San Diego Records Office on March 24, 2015, to research availability of permit records for the project. I found microfilm records of the original construction permit for the project, approved plans including the site plan, and a plan check correction sheet. In addition, permits and plans for subsequent tenant improvements were reviewed, however, given the city restrictions on copying "architect's or engineer's work project", I was only authorized to copy site plans / title sheet for the proposed work and relevant building permits.

The following are my observations and comments after a review of the applicant's submittal to the city, my site inspection photos and a review documents obtained during the records search.

330 Encinitas Blvd., Suite 202-G, Encinitas, CA 92024

(858) 836-3210 / Fax (760) 230-2507

Website: [www.joelsonvail.com](http://www.joelsonvail.com) / CSLB No. 740477





April 6, 2015

Steven Hwang, Esq.  
Finch, Thornton & Baird  
Re: 7128 Miramar Road., San Diego, CA 92121

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1. The applicant's site plan is inaccurate and does not reflect current conditions. The original site plan with minor modifications and a total of 136 parking spaces was presented without an update to reflect major and subsequent changes made over the last 30 years.
2. According to my count of open spaces, there are 126 spaces, 10 less than proposed by the applicant. Refer to the attached "Comparative Parking Stall" spreadsheet which indicates the basis for the difference. Also reference to the attached marked up site that indicates the distribution of the spaces and clusters discussed below.
3. The existing accessible parking is not compliant with either the federal or state accessibility standards—A) The stall identification signage is either missing or obsolete; B) pavement striping and the ISA is faded and indistinct; C) the required "No Parking" message at the foot of the aisle is missing; and D) the curb ramp at Group C projects into the accessible aisle next to the accessible space contrary to standards. Refer to the in depth discussion of issues below.
4. The differences are summarized as follows:
  - a) Group A—Applicant count—14 spaces. JVA count—14 spaces. The applicant counts two spaces to the left of the rear dumpster to substitute for those lost with the installation of the portable building that houses the computer repair business. Refer to Photos 1 and 2.
  - b) Group B—Applicant Count—8 spaces. JVA count—7. Note: Space #22 on the original plan is currently marked with white, diagonal stripes and red curbs at the head and left-side (driver's side). Based on these marks, the reasonable perception is that no parking or stopping is allowed. I suspect that this space marked out this way to avoid a conflict with the adjacent accessible space-#23 in Cluster C. If the length of car or truck exceeds the depth of space #22, it may prevent a person from pulling into or backing out from #23. Refer to Photo 3.
  - c) Group C—Applicant Count—8 spaces. JVA count—8 spaces. Note: The 2 space accessible parking cluster, as noted on the applicant's plans, was illustrated on the original construction



April 6, 2015

Steven Hwang, Esq.  
Finch, Thornton & Baird  
Re: 7128 Miramar Road., San Diego, CA 92121

plan in the same form and configuration as built. The applicant notes these two accessible spaces will serve the subject MMCC. I observed that the aisle is a “regular” style or 60” wide rather than van accessible or 96”. Furthermore, a built-up, asphalt curb ramp is placed within the aisle in direct conflict with the requirements of the Americans with Disabilities Act of 1990 and current California Building Code—2013 (Title 24, Part 2, Volume 1). The Americans with Act Accessibility Guidelines-2010 (ADAAG-2010) specifically states that the ramp cannot project out into the aisle according to 502.4. The slope of the surface must not exceed 1:48 or ¼” per foot. CBC-2013—11B-502.4 states the same requirement. In its current configuration, both spaces and the aisle itself are not compliant with either the state and federal requirements. Resolution of this condition will require removal of the built-up ramp and relocation in the plane of the sidewalk at the head along the building outside the “Outrageous Rugs Gallery” store. In addition, the pavement markings for both spaces and the aisle will be required to be restriped and stall signage updated according to the current CBC-2013 standards according to 11B-502. The challenge will be to remove the existing ramp and provide a proper layout without conflicting with the entry door and requirement for a level landing outside the aforementioned store. Refer to Photo 4.

- d) Group D—Applicant Count—9. JVA Count—9. Nine (9) diagonal parking spaces are located in front of and south of the Miramar Café.
- e) Group E—Applicant Count—23. JVA Count—21. The applicant’s plan does not account for the installation of protective bollards on either side and the electrical transformer that consumed Spaces 59 and 58. Refer to Photo 6.
- f) Group F—Applicant Count—6. JVA count—5. The applicant’s plan does not account for the trash dumpster for the Mexican Restaurant installed in Space 63. Refer to Photo 7.





April 6, 2015

Steven Hwang, Esq.

Finch, Thornton & Baird

Re: 7128 Miramar Road., San Diego, CA 92121

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- g) Group G—Applicant Count—9. JVA count—7. The difference is based on the applicant's over-count of spaces and inclusion of Space 70, currently used as van-sized accessible aisle located on the passenger side of the Space 69—the accessible space the serves the Mexican Restaurant. Removal of the aisle is not feasible or reasonable since the current arrangement provides a van accessible stall dedicated for the freestanding store which is remote and not directly linked to an accessible route to the other two buildings on site. Access from the van aisle is provided by the built-up curb ramp in the "striped zone" on the driver's side of the space. This arrangement is compliant with both ADAG and CBC-2013, however the stripping and signage are not compliant and should be updated to comply with the current codes and standards. Refer to Photo 8 and 9.
- h) Group H—Applicant Count—11. JVA Count—10. The applicant does not account that Space 88 is occupied by an electrical transformer. Refer to Photo 10.
- i) Group I—Applicant Count—12. JVA Count—11. Original plan indicates 12 spaces, however, as-built and stripped in the field there are only 11 spaces.
- j) Group J—Applicant Count—14. JVA Count—12. Note Original plan illustrates 14 spaces with #114 as an accessible space that is illustrated without an accessible aisle on the passenger's side. This arrangement is currently not compliant with ADAAG and CBC since both require the aisle in Space 113. As-built and as a stripped in the field there 12 spaces including the accessible space with a van-sized aisle. This accessible space and aisle is designed and located to serve the retail store in the southeast corner of the property. In my opinion it should remain in the current position and restriped with new signage as required to comply with current CBC standards. Refer to Photo 11.
- k) Group K—Applicant Count—9. JVA Count—9.



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Re: 7128 Miramar Road., San Diego, CA 92121

- l) Group L—Applicant Count—7. JVA Count—7.
- m) Group M—Applicant Count—6. JVA Count—6.
- 5. Based on the total number of spaces counted on site—126, a total of 5 accessible parking spaces are required by both ADAAG 208 and CBC-2013-11B-208. Since only four spaces are provided, one additional space should be provided to comply otherwise the property owner will be at risk of an ADA Discrimination Lawsuit.. The space may be combined with the single spaces in Group G or J, and placed on the right side of the accessible aisle currently provided. This approach would not affect the total parking space count since either #71 or #113, adjacent to existing aisles, could be converted from a regular to accessible parking stall. Otherwise, if the space is located in another cluster in front of the rear, one or two story buildings, it is likely one regular space would be converted to accessible and another lost, or converted to an accessible aisle. This second approach would reduce the total space count by one to 125 Spaces.
- 6. The applicant indicates a Path of Travel by 5 arrows on the plan. The origin is not identified and destination is assumed to be the subject MMCC. According to my observations, there currently is no Accessible Route between the Public Right of Way (PROW) and MMCC. There is no marked path of travel, no directional signage for guidance and no curb ramps at the end of sidewalks to facilitate a wheelchair user to descend down to the asphalt surface and ascend to the opposing sidewalk across the driveway.

In summary, the plan presented by the applicant does not reflect:

- A. Actual site conditions in terms of the total parking count;
- B. Status of accessible parking as it exists versus proposed versus required by the state and federal codes and standards;
- C. Current state and federal requirements for 5 accessible parking spaces—not 4.
- D. Conditions of the Accessible Route from the PROW.





April 6, 2015

Steven Hwang, Esq.  
Finch, Thornton & Baird  
Re: 7128 Miramar Road., San Diego, CA 92121

Should you have any questions please do not hesitate to email or call. Thank you for the opportunity to assist you in this matter.

Thank you.

Sincerely,

**JOELSON VAIL ASSOCIATES LLC**

Paul A. Joelson AIA NCARB CASp—Architect



California Licensed Architect—(CA-23998)  
Certified—National Council of Architectural Registration Boards (NCARB)—69373  
DSA-CA Certified Access Specialist—CASp #061  
California Licensed General Contractor—(B-454727 and B-740477)  
ICBO / ICC Certified Building Inspector—(0426540-01 and 10)  
ICC Certified Accessibility Inspector & Plans Examiner (0426540-21)  
Certified Access Specialist Institute (CASI)—Founding Member



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Photo 1—Group A—Applicant counted two spaces to left of Trash Dumpster (with truck and car—Red Arrows), whereas, the original plans did not indicate this area as parking.



Photo 2—Group A—This portable building for a computer repair business was installed in Spaces 13 and 14 (according to original plan) thereby removing two from the group. The applicant added the two lost to the area left of Dumpster per Photo 1 to maintain the Group A total of 14.

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Photo 3—Group B—Curb is painted red at head and left-side of Space #22. Space is white striped indicating it is not used as a parking space.



Photo 4—Group C—Two accessible spaces with a regular 5' wide (not van accessible) aisle. Built-up curb ramp (Red Arrow) projects into accessible aisle contrary to state and federal standards. Achieving compliance will require a new curb ramp in the field of the sidewalk at head of both spaces.





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Photo 5—Group D—Applicant and JVA count is 9 diagonal spaces.



Photo 6—Group E—Applicant indicates 23 spaces in this group along the west side of property between the palm trees on left and dumpster at rear of property. Transformer consumes at least two spaces. JVA count is 21.



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Photo 7—Group F behind Tony's Restaurant. Applicant indicates the 6 spaces (JVA 5) along the west property between palm tree on right and street to the left. Applicant does not consider the dumpster consumed one space.



Photo 8—Group G—on east side of Tony's Restaurant. Applicant Count is 9 and JVA Count is 7. Applicant erroneously counts the van-sized aisle to the right of the accessible space as a parking space (Red Arrow).





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Photo 9—Group G at north end. The overall width of the cluster is also reduced approximately 3-4' by the encroachment of the drive-up sign and protective bollard into the asphalt parking area.



Photo 10—Group H—Applicant Count is 11. JVA Count is 10. Applicant does not consider the electrical equipment and protective bollards.



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Photo 11—Group J—Applicant Count 14. JVA Count 12. Difference—miscount by applicant—Counted accessible aisle (112-Red Arrow) to the right of accessible space (113-Yellow Arrow) at a regular parking space.



Photo 12—Applicant Count 9. JVA Count 9.



April 6, 2015

Steven Hwang, Esq.  
 Finch, Thornton & Baird  
 Re: 7128 Miramar Road., San Diego, CA 92121

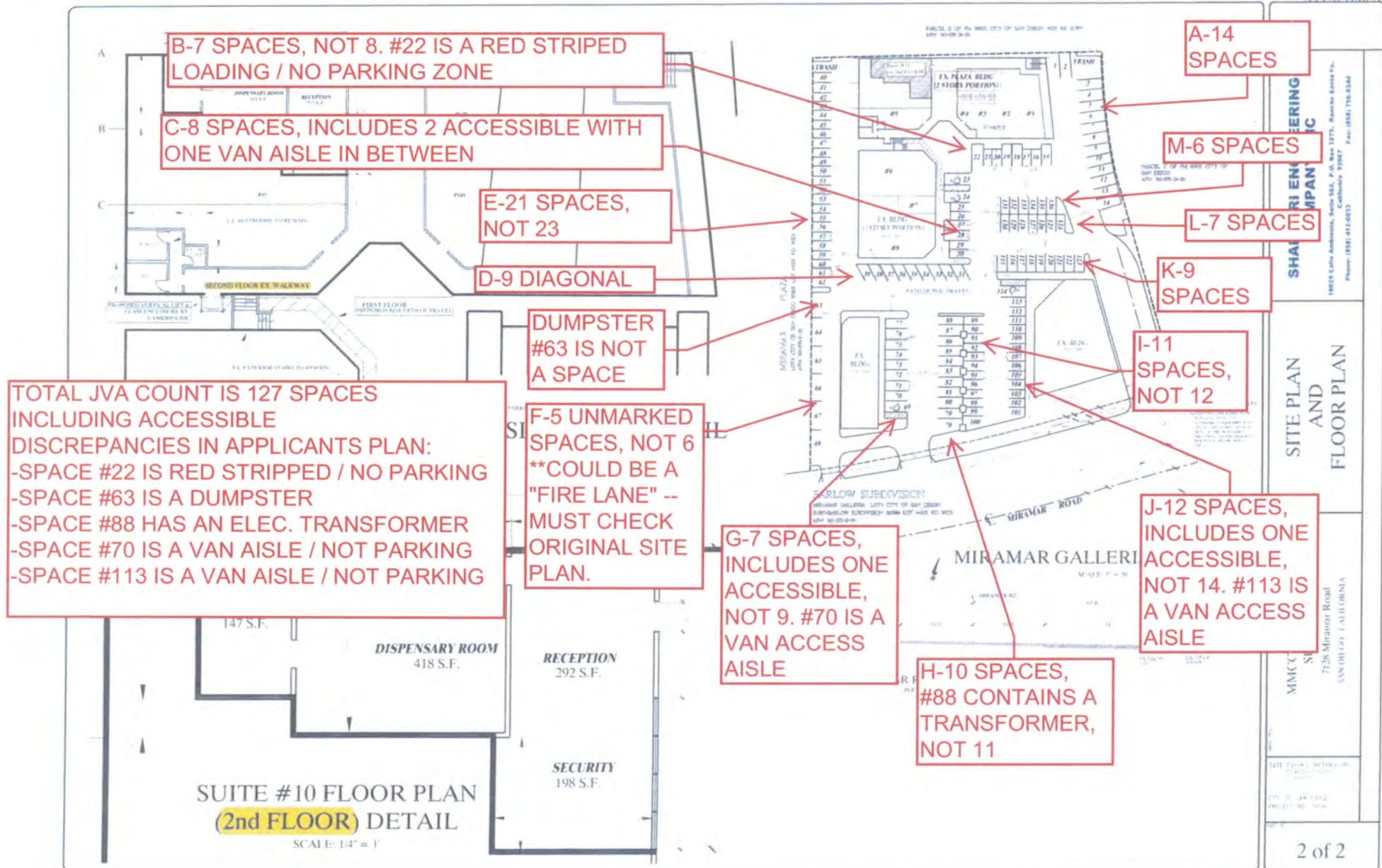


Photo 13—Groups L and M—Applicant Count 7 and 6 respectively. JVA count in agreement with applicant.

### Parking Count Table

GROUP	RANGE	APPLICANT	JVA	NOTES
A	1-14	14	14	
B	15-22	8	7	SPACE #22 IS A REDSTRIPED NO PARKING ZONE
C	23-30	8	8	
D	31-39	9	9	
E	40-62	23	21	SPACES 58 AND 59 TAKEN BY A TRANSFORMER
F	63-68	6	5	SPACE #83 IS A DUMPSTER / NOT A SPACE
G	69-77	9	7	SPACE #70 IS CURRENTLY A VAN AISLE / MISCOUNT
H	78-88	11	10	SPACE #88 HAS A TRANSFORMER / NOT A SPACE
I	89-100	12	11	MISCOUNT
J	101-114	14	12	SPACE #113 IS CURRENTLY A VAN AISLE / MISCOUNT
K	115-123	9	9	
L	124-130	7	7	
M	131-136	6	6	
TOTALS		136	126	





Cycle Issues		
6/18/14 8:34 am		
THE CITY OF SAN DIEGO		
Development Services		
Page 6 of 10		
L64A- 003A o, CA 92101- 4154	1222 First Avenue, San Dieg	
<b>Review Information</b>		
<b>Cycle Type:</b>		
2 Submitted (Multi-Discipline)		
Submitted: 05/16/2014 Deemed Complete on 05/16/2014		
<b>Reviewing Discipline:</b>		
<b>Reviewer:</b>		
LDR-Transportation Dev		
<b>Jauregui, Rudy (619) 557-7985</b>		
rjauregui@sandiego.gov		
<b>Cycle Distributed:</b>		
<b>Assigned: Started:</b>		
<b>Review Due:</b>		
05/16/2014		
05/16/2014		
06/06/2014		
06/02/2014		
Hours of Review: 3.00		
<b>Completed:</b>		
06/06/2014		
<b>COMPLETED LATE</b>		
<b>Next Review Method:</b>		
Submitted (Multi-Discipline)		
<b>Closed:</b>		
06/18/2014		
. The review due date was changed to 06/05/2014 from 06/05/2014 per agreement with customer.		
. The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.		
. We request a 2nd complete submittal for LDR-Transportation Dev on this project as: Submitted (Multi-Discipline).		
. The reviewer has requested more documents be submitted.		
. Your project still has 16 outstanding review issues with LDR-Transportation Dev (all of which are new).		
. The reviewer has not signed off 1 job.		

. Last month LDR-Transportation Dev performed 45 reviews, 86.7% were on-time, and 38.9% were on projects at less than < 3 complete submittals.		
<b>24004659 - CUP (MMCC) - 1st Re</b>		
<b>Issue</b>		
<b>Num</b>	<b>Issue Text</b>	<b>Cleared?</b>
1	Project Information:	
	The proposed project is to process a Conditional Use Permit (CUP) for a Medical Marijuana Consumer	
	Cooperative (MMCC). The facility is proposing to operate within 968 square feet of an existing 21,500 square foot, two-story building located at 7128 Miramar Road; on a 1.9-acre - acre site located in the IL-3-1 zone and Airport Influence Area (MCAS Miramar) within the Mira Mesa Community Plan Area	According to the previously approved building and site plans for this shopping center the existing 2 story building has 9,483 square feet of gross area on each floor. The total parcel gross area is 1.88 Acres.
	(New Issue)	
2	General Information:	
	The existing use for 7128 Miramar Road has not been identified. Per the plan submittal, the proposed project	
	will occupy 968 square feet of the second story of the subject building. However, additional information will be required for the existing development to remain on the project site; remaining 20,532 square feet of subject building and the other buildings on the project site. With the next plan submittal, please provide building areas and associated uses to remain on the project site, if the building(s) is(are) currently occupied.	According to the previously approved building and site plans for this shopping center the existing 2 story building has 9,483 square feet of gross area on each floor. The building areas are now shown on the site plan.
	(continues)	
	(New Issue)	
3	(continued)	
	If not, how long have they been vacant? Revise site plan submittal accordingly.	The proposed suite #10 has been vacant for approximately 5 months. Other uses on the property include: Miramar Café, MXN Mexican Restaurant, 3 Rug and Carpet businesses, A MMA Fight supply store, An in home care-giver agency, Veterans benefits agency and Mattress retailer
4	General Information:	

Please provide any discretionary permits governing the project site, including the corresponding Exhibit "A," or any documentation that is verifiable. Pending receipt and review of all requested information, existing non-conforming parking may be considered in satisfying the minimum parking requirement. All of the following comments have been provided without this information and may be revised pending review of a future plan submittal. (New Issue)		Existing parking stalls are now shown on the revised site plans.
5 Trip Generation:		
The proposed 968 square feet of commercial service use is expected to generate approximately 39 average daily trips (ADT), at 40 trips per 1,000 square feet; with 1 morning peak hour trips and 3 afternoon peak hour trips. A transportation impact analysis will not be required. (New Issue)		Condition is noted and accepted by the applicant.
6 Parking Requirement:		
An overall parking requirement will be determined for the project site, pending receipt of additional information requested above. Per the City of San Diego Municipal Code (SDMC) Section 142.0530 Table 142-05E and Table 142-05G, the minimum parking requirement for the proposed facility is 5 automobile parking spaces (as calculated below) including at least 1 disabled accessible space (van accessible design). It is unclear if the parking as proposed provides the minimum overall parking required for the project site. (New Issue)		Existing parking layout is built per previously approved plans by the City and the applicant is unable to modify the existing non-conforming conditions of this shopping center. Copy of the approved Grading Plan (City DWG. No. 216061-1-D) is attached.
(continues)		
7 (continued)		
Provide all additional information requested above to determine an overall project site minimum parking requirement. With a revision of the submittal, please include all parking calculations on the revised plan submittal. (New Issue)		Existing parking layout is built per previously approved plans by the City and the applicant is unable to modify the existing non-conforming conditions of this shopping center. Copy of the approved Grading Plan (City DWG. No. 216061-1-D) is attached.
8 Parking Calculations:		
Proposed (IL 3-1 Zone):		
Commercial Services:		
968 SF x 5.0 spaces/1,000 SF = 5 automobile parking spaces		
Existing to remain:		
Office/retail/restaurant/Other Uses:		



@ 5 parking spaces/1,000 SF or respective parking ratios Overall parking requirement is to be determined with the receipt of additional information for all existing development remaining on site. (New Issue)		
9 Parking Space Dimensions:		
Per the SDMC Section 142.0560, Table 142-05K are 8 feet (8.3 feet for retail, commercial service uses and eating and drinking establishments) wide by 18 feet long, 9 feet wide by 18 feet long for spaces with one side abutting an obstacle and 9.5 feet wide by 18 feet long for spaces with two sides abutting obstacle. Clearly dimension all parking spaces. (New Issue)		Existing parking layout is built per previously approved plans by the City and the applicant is unable to modify the existing non-conforming conditions of this shopping center. Copy of the approved Grading Plan (City DWG. No. 216061-1-D) is attached.
10 Shared Parking Agreements:		
Provide copies of all existing/proposed Shared Parking Agreements between all affected properties. Should the subject agreement(s) be reviewed as acceptable, they will be conditions of the permit. (New Issue)		There is only 1 parcel of land and parking is managed by the property owner. Applicant is not aware of a shared parking agreement.
11 Parking:		
Clearly identify and provide a sequential count of all parking spaces on the project site. Revise plan submittal accordingly. (New Issue)		Done, Please see revised Site Plans.
12 Parking Drive Aisles:		
All existing/proposed drive isles on the plan submittal must be dimensioned. Refer to SDMC Section 142.0560 (c) Table 142-05L for minimum requirements. With the revised plan submittal, please dimension all drive aisles that are to be considered as part of the proposed project. Revise plan submittal accordingly. (New Issue)		All existing drive isles layout are built per previously approved plans by the City and the applicant is unable to modify the existing non-conforming conditions of this shopping center. Copy of the approved Grading Plan (City DWG. No. 216061-1-D) is attached. There are no proposed parking or drive isles modifications.
13 Street Cross-Section:		
Please provide a cross-section for Miramar Road, including centerline to curb line and centerline property line dimensions. Revise plan submittal accordingly. (New Issue)		Done, Please see revised Site Plans.
Cycle Issues 6/18/14 8:34 am L64A-003A		

Issue		
THE CITY OF SAN DIEGO		
Development Services		
1222 First Avenue, San Diego, CA 92101-4154		
Page 8 of 10		
Num	Issue Text	Cleared? Response
14	Driveways:	
	Per the SDMC Section 142.0560 (j) Table 142-05M, the minimum required and maximum allowed, two-way driveway widths for the proposed nonresidential development are 24 and 30 feet respectively. With the next submittal, please revise the plan submittal to clearly identify and dimension the project site driveways accordingly. (New Issue)	The existing shopping center is served by 3 existing driveways per previously approved plans (Grading Plan No. 21606-1-D) copy of this plan is attached for reference. The existing driveway widths are 36', 24' and 15' as shown on the revised site plan.
15	Driveway Access:	
	It appears that access to project parking and the proposed project building is through a mutual parcel with other uses; all on one parcel. However, if there is more than one parcel using the driveway shown, clearly identify all properties taking access from a mutual driveway on the plan submittal and provide copies of signed Joint Use Driveway/Mutual Access Agreements. Should the subject agreement(s) be reviewed as acceptable, they will be conditions of the permit. (New Issue)	The existing shopping center is served by 3 existing driveways per previously approved plans (Grading Plan No. 21606-1-D) copy of this plan is attached for reference. There is only 1 parcel associated with this shopping center, identified by Assessor Parcel Number: 343-070-15-00. Addressed as: 7126 Miramar Road.
16	Additional comments and conditions may be provided pending further review or redesign of this project. (New Issue)	

FILED  
CIVIL BUSINESS OFFICE 17  
CENTRAL DIVISION  
No Fee GC §6103

14 JUL -7 PM 2:37

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

FILED  
Clerk of the Superior Court

JUL 07 2014

JUL 7 2014 PM 2:37

JAN I. GOLDSMITH, City Attorney  
MARLEA DELL'ANNO, Assistant City Attorney  
MARSHA B. KERR, Deputy City Attorney  
California State Bar No. 171159  
Office of the City Attorney  
Community Justice Division/Code Enforcement Unit  
1200 Third Avenue, Suite 700  
San Diego, California 92101-4103  
Telephone: (619) 533-5500  
Fax: (619) 533-5696  
[MKerr@sandiego.gov](mailto:MKerr@sandiego.gov)

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal  
corporation,

Case No. 37-2014-00022324-CU-MC-CTL

Plaintiff,

UNLIMITED JURISDICTION

v.

COMPLAINT FOR INJUNCTION,  
CIVIL PENALTIES AND OTHER  
EQUITABLE RELIEF

RM-USE, LLC, a California Limited Liability  
Company; RONALD LEE REYNOLDS, also  
known as RON REYNOLDS, an individual;  
CHARLES A. MILLER, an individual;  
GREEN NECTAR EJM COOPERATIVE,  
INC., a California corporation dba EJ  
MARKETING dba GREEN NECTAR CO-OP  
DELIVERY SERVICE;  
EBON JOHNSON, an individual; and  
DOES 1 through 50, inclusive,

Defendants.

Plaintiff City of San Diego, appearing through its attorneys, Jan I. Goldsmith, City  
Attorney, and Marsha B. Kerr, Deputy City Attorney, alleges the following based on information  
and belief:

JURISDICTION AND VENUE

1. Plaintiff City of San Diego, by this action and pursuant to San Diego Municipal Code  
(SDMC) sections 12.0202 and 121.0311, and California Code of Civil Procedure section 526,  
seeks to enjoin Defendants from using or maintaining a property in violation of the SDMC and  
California Health and Safety Code (Health & Safety) as alleged in this Complaint, and seeks a

1 preliminary injunction, and permanent injunction prohibiting Defendants from operating or  
2 maintaining a marijuana cooperative, collective, dispensary or other distribution or sales  
3 business; and also seeks to obtain civil penalties, costs and other equitable relief for the  
4 Defendants' violations of law.

5 2. The omission or commission of acts and violations of law by Defendants as alleged in  
6 this Complaint occurred within the City of San Diego, State of California. Each of the Defendants  
7 at all times mentioned in this Complaint has transacted business within the City of San Diego or  
8 are residents of San Diego County, within the State of California, or both.

9 3. The property where the business acts and practices described in this Complaint were  
10 performed is located in the City of San Diego.

#### 11 THE PARTIES

12 4. At all times mentioned in these pleadings, Plaintiff City of San Diego, was and is a  
13 municipal corporation and a chartered city, organized and existing under the laws of the State of  
14 California.

15 5. The owner of record of 2110 Hancock Street, San Diego, California (PROPERTY),  
16 where the acts described in this Complaint occurred, is RM-USE, LLC, a California limited  
17 liability company (RM-USE), according to the Grant Deed recorded as Document No. 2008-  
18 0166415 on March 28, 2008, in the office of the San Diego County Recorder.

19 6. RM-USE is strictly liable for all code violations occurring at the PROPERTY pursuant  
20 to SDMC section 121.0311 and applicable California law.

21 7. Defendant RONALD LEE REYNOLDS, also known as RON REYNOLDS  
22 (REYNOLDS), is an individual and resident of the County of San Diego, State of California, and  
23 at all times relevant to this action was a Member and/or Manager of RM-USE. Plaintiff is  
24 informed and believes REYNOLDS is the property manager who handles the leasing, collection  
25 of rents and communications with the tenants at the PROPERTY.

26 8. Defendant CHARLES A. MILLER (MILLER) is an individual and resident of the  
27 County of San Diego, State of California, and at all times relevant to this action was a Member  
28 and/or Manager of RM-USE.

1 9. Defendant GREEN NECTAR EJM COOPERATIVE, INC. (GREEN NECTAR) is a  
2 California corporation organized and existing under the laws of the State of California, according  
3 to the records of the California Secretary of State. Plaintiff is informed and believes GREEN  
4 NECTAR is doing business as EJ MARKETING and/or GREEN NECTAR CO-OP DELIVERY  
5 SERVICE in Suites 202 and/or 300 of the PROPERTY.

6 10. Defendant EBON JOHNSON (JOHNSON) is an individual and resident of the  
7 County of San Diego, State of California. JOHNSON is the agent for service for GREEN  
8 NECTAR and sole proprietor of EJ MARKETING. Plaintiff is informed and believes JOHNSON  
9 is growing, selling and distributing marijuana from Suites 202 and/or 300 at the PROPERTY.

10 11. Defendants are "Responsible Persons"<sup>1</sup> under SDMC section 11.0210, as each is  
11 allowing or maintaining violations of the SDMC at the PROPERTY.

12 12. Defendants DOES 1 through 50, inclusive, are sued as fictitious names, under the  
13 provisions of California Code of Civil Procedure section 474, their true names and capacities  
14 being unknown to Plaintiff. The City is informed and believes that each of the Defendants DOES  
15 1 through 50 is in some manner responsible for conducting, maintaining or directly or indirectly  
16 permitting the unlawful activity alleged in this Complaint. Plaintiff will ask leave of the court to  
17 amend this Complaint and to insert in lieu of such fictitious names the true names and capacities  
18 of DOES 1 through 50 when ascertained.

19 13. At all relevant times mentioned in this Complaint, all Defendants were and are  
20 agents, principals, servants, lessors, lessees, employees, partners, associates and/or joint venturers  
21 of each other Defendant and at all times were acting within the course, purpose and scope of said  
22 relationship and with the authorization or consent of each of their co-defendants.

### 23 PROPERTY

24 14. The legal address of the PROPERTY is 2110 Hancock Street, San Diego, County of  
25 San Diego, State of California. The PROPERTY is identified as Assessor's Parcel Number

26 \_\_\_\_\_  
27 <sup>1</sup> SDMC section 11.0210 defines "Responsible Person" as "[a] person who a Director determines  
28 is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or  
applicable state codes. The term "Responsible Person" includes but is not limited to a property owner,  
tenant, person with a Legal Interest in real property or person in possession of real property."

1 450-583-12-00 according to records of the San Diego County Treasurer-Tax Collector. The legal  
2 description of the PROPERTY is:

3 Parcel 1 of Parcel Map No. 16495, in the City of San Diego,  
4 County of San Diego, State of California, filed in the Office of the  
5 County Recorder of San Diego County, June 6, 1991 as File No.  
6 91-0271367 of Official Records.

7 15. The PROPERTY is located in an Industrial-Small Lot zone (IS-1-1) in the Old Town  
8 area of the City of San Diego.

### 9 **FACTUAL AND ZONING BACKGROUND**

10 16. SDMC section 131.0622 and corresponding Table 131-06B list the permitted uses for  
11 the IS-1-1 zone where the PROPERTY is located.

12 17. Table 131-06B lists medical marijuana consumer cooperatives (MMCC's) as  
13 requiring a conditional use permit (CUP) within the IS-1-1 zone.

14 18. SDMC section 141.0614 affirms a CUP is required and lists the local regulations  
15 which govern MMCC's.

16 19. SDMC section 126.0306 makes it unlawful for any person to maintain, use or develop  
17 any premises without obtaining a required CUP.

18 20. No CUP has issued for the operation of a MMCC at the PROPERTY.

### 19 **FACTUAL ALLEGATIONS**

20 21. On or about October 11, 2011, a Notice of Violation (NOV) was issued to RM-USE  
21 and its tenant at the time, a MMCC named "Old Town Care Cooperative," which was operating  
22 in Suite 201 on the PROPERTY. The NOV ordered the property owner and the MMCC to  
23 immediately cease maintaining and operating the MMCC, as the use violated zoning laws of the  
24 City of San Diego.

25 22. On January 3, 2012, the Honorable Ronald Prager signed a Stipulation for Entry of  
26 Final Judgment and Permanent Injunction in Civil Case Number 37-2011-00100133-CU-MC-  
27 CTL, prohibiting RM-USE and REYNOLDS from operating or maintaining a marijuana  
28 dispensary, cooperative, or collective anywhere in the City of San Diego.



1           23. On April 24, 2013, an armed robbery occurred at Suite 300 at the PROPERTY.  
2 Although the tenant was allegedly named "Mid City Art Supply," in fact a MMCC was operating  
3 at the location. Upon learning of the illegal use of the PROPERTY in violation of the injunction,  
4 the City Attorney's Office demanded that RM-USE evict the tenant.

5           24. On March 28, 2014, another armed robbery occurred at Suite 300 at the PROPERTY.  
6 Police officers noted a strong smell of marijuana and found business cards for a medical  
7 marijuana delivery service and garbage bags containing leftover stems from cultivated marijuana  
8 at the premises. In response to this incident, REYNOLDS allegedly evicted the tenant, identified  
9 as Progressive San Diego.

10           25. On or about May 5, 2014, undercover San Diego Police detectives purchased  
11 marijuana from Suites 202 and 300 at the PROPERTY. Suite 202 was identified as EJ  
12 MARKETING. A sign on the door specified to ring the bell and then push the door when it  
13 clicked. The detective rang the door bell to the right of the door. The door buzzed, and he entered  
14 a hallway. He could hear air purifiers and saw two air freshener machines. The detective could  
15 smell marijuana. There was a curtain separating the hallway from another area behind it. A  
16 doorway on the left opened into a waiting room with several chairs and two desks occupied by  
17 two males. One of the males asked the detective for his doctor's recommendation letter and  
18 driver's license. He was given paperwork to complete and a brochure entitled "GREEN NECTAR  
19 CO-OP DELIVERY SERVICE -- Bring the Store Front to Your Door Front!" The detective was  
20 then taken to another room in which there were two glass display cases with a table in the middle.  
21 One of the cases contained edible marijuana products and the other contained glass jars of  
22 marijuana and hashish. The containers were marked with prices on top. The detective purchased  
23 1/8 ounce of Blue Dragon, a Sativa strain of marijuana, for \$50. The marijuana was placed in a  
24 green bottle. The detective was also given a pre-rolled marijuana cigarette for being a first-time  
25 buyer. The bottle and cigarette were put into a large envelope and sealed with a sticker which  
26 specified in red letters, "Please, DO NOT OPEN on property! Thank you."

27           26. Suite 300 did not have a name on the door. Through the glass door and large  
28 windows, the SDPD detective could see a room with two desks and chairs. A female was sitting

1 behind one of the desks. There was a doorbell to the right of the door. Before the detective rang  
2 the bell, the woman opened the door and asked if she could help him. He asked if it was a  
3 dispensary, whereupon she closed the door and went through a door behind the desks. A male  
4 came to the door and asked for the detective's recommendation letter and identification. The  
5 detective told him he was a new customer. He was asked to sit at the empty desk while the male  
6 typed some information into the computer and then was invited into the back room. There were  
7 six glass display cases along two walls of the room. The cases on one wall contained glass jars of  
8 marijuana. The cases on the other wall contained edibles and prepackaged items. There was a  
9 menu and price list on the wall. The detective purchased 3.5 grams of Sativa marijuana for \$40.  
10 The marijuana was placed in a plastic bag and sealed with a sticker. The detective obtained a  
11 written receipt for product identified as "Dream."

12 27. On June 27, 2014, Land Development Investigators Cameron Clark and Leslie  
13 Sennett went to the PROPERTY based upon citizen complaints about a MMCC operating at the  
14 PROPERTY. Suite 202 was labeled EJ MARKETING, and there were security cameras mounted.  
15 The inspectors pressed a doorbell at the entrance, and the door was remotely unlocked. They  
16 entered a lobby where a female was at a desk talking on the phone. A man approached the  
17 investigators from the area behind a curtain. The investigators identified themselves and asked to  
18 speak to a manager. The investigators told the male a MMCC could not operate at the location  
19 without a CUP.

20 28. The investigators then went to Suite 300. There were security cameras but no  
21 identifying signage. There was an armed security guard outside the door. Sennett asked if he was  
22 security for the MMCC, and the guard said he was. The investigators asked to speak to a  
23 manager. The guard went inside and returned with a woman, who said there was no manager on  
24 site. She would not allow the investigators to inspect the premises.

25 29. Health & Safety Code section 11362.768(b) prohibits medical marijuana  
26 cooperatives, collectives, dispensaries, operators, or establishments from operating within a 600  
27 foot radius of a school. In addition, SDMC section 141.0614 prohibits medical marijuana  
28 consumer cooperatives within 1,000 feet of a school.

30. Old Town Academy K-8 Charter School is located at 2120 San Diego Avenue, San Diego, California. Old Town Academy is the type of school listed in Health & Safety Code section 11362.768(h). On June 27, 2014, Sennett measured the distance from the PROPERTY to Old Town Academy in accordance with Health & Safety Code section 11362.768(b). Sennett confirmed that the PROPERTY is located within a 600 foot radius of Old Town Academy.

31. Prior to the filing of this lawsuit, Defendants RM-USE and REYNOLDS had ample notice the operation of a MMCC at the PROPERTY is unlawful. Defendants RM-USE and REYNOLDS have known since at least October 2011 that a MMCC is not a permitted use at the PROPERTY, and yet they continue to violate the law. Moreover, RM-USE and REYNOLDS have been under a court order since January 2012 not to lease to MMCC's. Despite a court injunction, RM-USE continues to operate and maintain MMCC's at the PROPERTY in violation of local zoning laws.

32. Plaintiff is informed and believes that Defendants are blatantly and willfully violating state and local laws and will continue to maintain the unlawful code violations in the future unless the Court enjoins and prohibits such conduct. Absent injunctive relief, the City will be irreparably harmed and the ongoing violations will continue to harm the health, safety and welfare of the citizens of San Diego.

# I

## FIRST CAUSE OF ACTION

### VIOLATIONS OF THE SAN DIEGO MUNICIPAL CODE ALLEGED BY PLAINTIFF CITY OF SAN DIEGO AGAINST ALL DEFENDANTS

33. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1 through 32 of this Complaint as though fully set forth here in their entirety.

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34. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use any premises in violation of any of the provisions of the Land Development Code,<sup>2</sup> without a required permit, contrary to permit conditions, or without a required variance."

35. SDMC section 131.0622 and corresponding Table 131-06B list the permitted uses for the IS-1-1 zone where the PROPERTY is located. SDMC section 131.0620(b) states:

Within the industrial zones, no structure or improvement, or portion thereof, shall be constructed, established, or altered, nor shall any premises be used or maintained except for one or more of the purposes or activities listed in Table 131-06B. It is unlawful to establish, maintain, or use any premises for any purpose or activity not listed in this section or Section 131.0622.

Table 131-05B specifies medical marijuana consumer cooperatives in zone IS-1-1 require a CUP. Moreover, prior to April 24, 2014, marijuana dispensaries, cooperatives, or collectives were not permitted anywhere in the City of San Diego.

36. SDMC section 126.0306 makes it unlawful for any person to maintain, use, or develop any premises without a conditional use permit if such permit is required under the applicable zoning regulations.

37. Beginning on an exact date unknown to Plaintiff but since at least May 5, 2014, Defendants have maintained and used the PROPERTY for a use requiring a CUP under SDMC section 131.0622 without a CUP, in violation of SDMC sections 121.0302(a) and 126.0306.

38. Absent the relief requested by Plaintiff, the City is unable to enforce its zoning laws and therefore unable to ensure the compatibility between land uses. Irreparable harm will be suffered by Plaintiff in that the City's land use scheme and regulations under the Municipal Code become meaningless and the public is left unprotected from the direct and indirect negative effects associated with unpermitted and incompatible uses in their neighborhoods.

39. Absent immediate injunctive relief, the justifiable expectation by citizens that state law and local zoning laws be enforced and their safety and quality of life be protected remains

<sup>2</sup> Chapters 11, 12, 13, 14, and 15 of the City of San Diego Municipal Code shall be known collectively, and may be referred to, as the Land Development Code. SDMC §111.0101 (a).

1 frustrated. Plaintiff has no adequate remedy and seeks an immediate injunction to prohibit  
2 Defendants from violating the law.

## 3 II

### 4 SECOND CAUSE OF ACTION

#### 5 VIOLATION OF THE CALIFORNIA HEALTH AND 6 SAFETY CODE AS ALLEGED BY PLAINTIFF CITY OF 7 SAN DIEGO AGAINST ALL DEFENDANTS

8 40. Plaintiff City of San Diego incorporates by reference all allegations in paragraphs 1  
9 through 39 of this Complaint as though fully set forth here in their entirety.

10 41. Health & Safety Code section 11362.768(b) prohibits medical marijuana  
11 cooperatives, collectives, dispensaries, operators, establishments, or providers who possess,  
12 cultivate, or distribute medical marijuana pursuant to this article from operating within a 600-foot  
13 radius of a school. Health & Safety Code section 11362.768(h) defines a school as "[a]ny public  
14 or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not  
15 include any private school in which education is primarily conducted in private homes."

16 42. Defendants are maintaining and operating a MMCC within a 600 foot radius of a  
17 school, in blatant violation of Health & Safety Code section 11362.768(f). Pursuant to the Health  
18 & Safety Code, the State has established a "MMCC-free zone" where these businesses cannot  
19 operate. Absent immediate injunctive relief, Plaintiff is unable to protect the public, specifically  
20 school children, from the negative effects caused by the MMCC. These detrimental effects  
21 include, but are not limited to, increased crime, loitering, drug use and traffic.

22 43. Absent immediate injunctive relief the City is unable to enforce the Health & Safety  
23 Code which seeks to protect children and students attending school from the negative effects of  
24 marijuana dispensaries.

25 44. The threat of this irreparable harm justifies the Court's issuance of an injunction as  
26 authorized by the San Diego Municipal Code and general principles of equity.

27 . . . . .

28 . . . . .



## PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. That the PROPERTY be declared in violation of:

San Diego Municipal Code sections

121.0302 (a)	126.0306	131.0620 (b)
131.0622	Table 131-05B	141.0614

California Health and Safety Code section

11362.768(b)

2. That pursuant to SDMC sections 12.0202 and 121.0311, California Code of Civil Procedure section 526 and the Court's inherent equity powers, the Court grant a preliminary injunction and permanent injunction enjoining and restraining Defendants and their agents, servants, employees, partners, associates, officers, representatives and all persons acting under or in concert with or for Defendants, from engaging in any of the following acts:

a. Maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the Health & Safety Code;

b. Maintaining, operating, or allowing the operation of any unpermitted use at the PROPERTY;

c. Maintaining, operating, or allowing the operation of any unpermitted use anywhere within the City of San Diego, including but not limited to any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the Health & Safety Code;

d. Maintaining signage on the PROPERTY advertising a MMCC;

e. Advertising in any manner, including on the Internet, the existence of any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or

1 distribution of marijuana, including but not limited to any marijuana dispensary, collective, or  
2 cooperative organized pursuant to the Health and Safety Code at the PROPERTY;

3 f. Violating any provisions of the SDMC at the PROPERTY.

4 3. That Defendants allow personnel from the City of San Diego access to the  
5 PROPERTY to inspect and monitor for compliance upon 24 hour verbal or written notice.  
6 Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

7 4. That Plaintiff City of San Diego recover all costs incurred by Plaintiff, including the  
8 costs of investigation, as appropriate.

9 5. That pursuant to SDMC section 12.0202(b), Defendants be assessed a civil penalty of  
10 \$2,500 per day for each and every SDMC violation maintained at the PROPERTY.

11 6. That Plaintiff be granted such other and further relief as the nature of the case may  
12 require and the Court deems appropriate.

13 Dated: July 7, 2014.

JAN I. GOLDSMITH, City Attorney

14 By 

15 Marsha B. Kerr  
16 Deputy City Attorney

17 Attorneys for Plaintiff  
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★★★★★ 4.8 Avg. Rating

Overall Rating ★★★★★ 5.0  
Reliability ★★★★★ 5.0  
Price ★★★★★ 5.0  
Staff ★★★★★ 5.0  
Professionalism ★★★★★ 5.0  
Bud Quality ★★★★★ 5.0

### Awesome as Always!

Had the pleasure of meeting new budtender Ben, he was very friendly and knowledgeable! Sara made sure he had the cartridge I was looking for and had him out to me within 45 minutes on a busy weekend! Just awesome as always! PpP :)--



Unidentified BudBuyer  
April 1st, 2015



Please login or sign up to comment.

View all reviews for  
Green Nectar

Overall Rating ★★★★★ 5.0  
Bud Quality ★★★★★ 5.0  
Price ★★★★★ 5.0  
Professionalism ★★★★★ 5.0  
Staff ★★★★★ 5.0  
Reliability ★★★★★ 5.0

### Another beautiful delivery from Green Nectar....

Thank you Travis!! And, a big thank you to all the GN folks XX Axel



Unidentified BudBuyer  
February 18th, 2015



Please login or sign up to comment.

View all reviews for  
Green Nectar

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL STATION 501

**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
**MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004659

**CONDITIONAL USE PERMIT NO. 1296361**  
**EJ MARKETING MMCC - PROJECT NO. 368343**  
**PLANNING COMMISSION**

This Conditional Use Permit No. 1296361 is granted by the Planning Commission of the City of San Diego to REAL OUTRAGEOUS PARTNERS (ROP), LLC, Owner and GREEN NECTAR EJM COOPERATIVE, INC, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 1.9-acre site is located at 7128 Miramar Road in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone, and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area. The project site is legally described as: Lot 1 of Barlow Subdivision, Map No. 7084, October 18, 1971.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) and subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated June 18, 2015, on file in the Development Services Department.

The project shall include:

- a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 1,055 square foot tenant space within an existing 28,449 square foot building on a 1.9-acre site;
- b. Existing landscaping (planting, irrigation and landscape related improvements);
- c. Existing off-street parking;
- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in

accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by June 18, 2018.
2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on June 18, 2020.
3. In addition to the provisions of the law, the MMCC must comply with; Chapter 4, Article 2, Division 15 and Chapter 14, Article 1, Division 6 of the San Diego Municipal Code.
4. No construction, occupancy, or operation of any facility or improvement described herein shall commence, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department.
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
  - c. A MMCC Permit issued by the Development Services Department is approved for all responsible persons in accordance with SDMC, Section 42.1504.
5. While this Permit is in effect, the MMCC shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
6. This Permit is a covenant running with the MMCC and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies

including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.



**PLANNING/DESIGN REQUIREMENTS:**

13. The use within the 1,055 square foot tenant space shall be limited to the MMCC and any use permitted in the IL-3-1 Zone.
14. Consultations by medical professionals shall not be a permitted accessory use at the MMCC.
15. Lighting shall be provided to illuminate the interior of the MMCC, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
16. Security shall include operable cameras and a metal detector to the satisfaction of the San Diego Police Department, alarms, and an armed security guard to the extent the possession of a firearm by the security guard is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R. § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guard shall be licensed by the State of California and be on the premises 24 hours a day, seven days a week. The security guard should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days.
17. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the MMCC in character size at least two inches in height.
18. The MMCC shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
19. The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this section and condition, a vending machine is any device which allows access to medical marijuana without a human intermediary.
20. The Owner/Permittee or operator shall maintain the MMCC, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed within 24 hours.
21. Medical marijuana shall not be consumed anywhere within the 1.9-acre site.
22. The Owner/Permittee or operator shall post anti-loitering signs near all entrances of the MMCC.
23. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Sign colors and typefaces are limited to two. Ground signs shall not be pole signs. A sign is required to be posted on the outside of the MMCC and shall only contain the name of the business.

**ENGINEERING REQUIREMENTS:**

24. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the replacement of the existing curb ramps, located on both sides of the signalized entrance, with City standard curb ramps with truncated domes, satisfactory to the City Engineer.

25. Prior to the issuance of the building occupancy, the Owner/Permittee shall install a wheelchair lift to provide Americans with Disabilities Act (ADA) access to the project site.

**TRANSPORTATION REQUIREMENTS:**

26. No fewer than 139 off-street parking spaces (including 4 disabled accessible spaces) shall be permanently maintained on the property within the approximate location shown on the project's Exhibit "A". Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

**POLICE DEPARTMENT RECOMMENDATION:**

27. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on June 18, 2015 and Resolution No. PC-XXXX.

Conditional Use Permit No.1296361/PTS No. 368343

Date of Approval: June 18, 2015

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

---

Edith Gutierrez  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

---

**The undersigned Owner/Permittee**, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

REAL OUTRAGEOUS PARTNERS, LLC  
Owner

By \_\_\_\_\_  
Ralph Rischman  
Partner

REAL OUTRAGEOUS PARTNERS, LLC  
Owner

By \_\_\_\_\_  
Steve Blumkin  
Partner

REAL OUTRAGEOUS PARTNERS, LLC  
Owner

By \_\_\_\_\_  
Ross Margolin  
Partner

GREEN NECTAR EJM COOPERATIVE, INC.  
Permittee

By \_\_\_\_\_  
Ebon A Johnson Sr.  
Director

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

PLANNING COMMISSION  
RESOLUTION NO. PC-  
CONDITIONAL USE PERMIT NO. 1296361  
**EJ MARKETING MMCC - PROJECT NO. 368343**

WHEREAS, REAL OUTRAGEOUS PARTNERS (ROP), LLC, Owners and GREEN NECTAR EJM COOPERATIVE, INC, Permittee, filed an application with the City of San Diego for a permit to construct and operate a Medical Marijuana Consumer Cooperative (MMCC) in a 1,055 square-foot tenant space within an existing 28,449 square-foot building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1296361), on portions of a 1.9-acre site;

WHEREAS, the project site is located 7128 Miramar Road in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone, and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area;

WHEREAS, the project site is legally described as Lot 1 of Barlow Subdivision, Map No. 7084, October 18, 1971;

WHEREAS, on June 18, 2015, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 1296361 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 27, 2014, 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 Guidelines Section 15303 (New Construction or Conversion of Small Structures); and the Environmental Determination was appealed to City Council, which heard and denied the appeal on January 13, 2015 pursuant to Resolution No. 309478;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated June 18, 2015.

FINDINGS:

**Conditional Use Permit Approval – Section §126.0305**

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

The proposed project is a request for a Conditional Use Permit to operate a MMCC in a 1,055 square-foot tenant space within an existing 28,449 square-foot building. The 1.9-acre site is located at 7128 Miramar Road in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone and the 70-75 dB CNEL for Miramar within the Mira Mesa Community Plan Area.

The site is in the Miramar Subarea, designated Light Industrial by the Mira Mesa Community Plan.

The Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The Miramar Subarea is designated Light Industrial which encourages a mix of light industrial and specialized commercial uses. The proposed MMCC was reviewed by MCAS Miramar and determined to be consistent with the Air Installation Compatible Use Zone (AICUZ) noise and safety compatibility guidelines.

The parcels to the north, east and west are within the IL-3-1 Zone, the parcel to the south is within the AR-1-1 Zone. The existing surrounding uses within the IL-3-1 Zone are consistent with the Light Industrial designation of the community plan. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit and is consistent with the community plan, therefore will not adversely affect the applicable land use plan.

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

The proposed project is a request for a Conditional Use Permit to operate an MMCC in a 1,055 square-foot tenant space located at 7128 Miramar Road which is currently vacant. The project proposes interior improvements that include a reception area, dispensary area, office and storage. The tenant improvement building permit will require compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted referenced standards. Public improvement for this project include replacement of the existing curb ramps located on both sides of the signalized entrance with City standard curb ramps with truncated domes and installation of a wheelchair lift to provide Americans with Disabilities Act (ADA) access to the project site.

The City of San Diego conducted an environmental review of this site in accordance with the California Environmental Quality Act (CEQA) guidelines. The project was determined to be categorically exempt from CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures).

MMCCs are restricted to four per Council District, 36 city-wide, within commercial and industrial zones in order to minimize the impact on the City and residential neighborhoods. MMCCs require compliance with San Diego Municipal Code (SDMC), section 141.0614 which require a 1,000 foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The project requires compliance with the development conditions in effect for the subject property as described in Conditional Use Permit No. 1296361. The Conditional Use Permit is valid for five years, however may be revoked if the use violates the terms, conditions, lawful requirements, or provisions of the permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety and general welfare of persons patronizing, residing or working within the



surrounding area and therefore, the proposed MMCC will not be detrimental to the public health, safety and welfare.

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

The proposed project is a request for a Conditional Use Permit to operate an MMCC in a 1,055 square-foot tenant space located at 7128 Miramar Road on a 1.9-acre site. The project proposes interior improvements that include a reception area, dispensary area, office and storage. The tenant improvement building permit will require compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted referenced standards. Public improvement for this project include replacement of the existing curb ramps located on both sides of the signalized entrance with City standard curb ramps with truncated domes and installation of a wheelchair lift to provide Americans with Disabilities Act (ADA) access to the project site.

MMCCs are allowed in the IS-1-1 Zone with a Conditional Use Permit (CUP). The CUP requires MMCCs to comply with SDMC, section 141.0614 which requires a 1,000 foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The proposed MMCC is consistent with the land use designation of Light Industrial. The proposed MMCC meets all development regulations, no deviations are requested, and the permit as conditioned assures compliance with all the development regulations of the San Diego Municipal Code. The proposed MMCC therefore complies with the regulations of the Land Development Code.

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

The proposed project is a request for a Conditional Use Permit to operate an MMCC in a 1,055 square-foot tenant space within an existing 28,449 square-foot building. The site is in the IL-3-1 Zone, Airport Land Use Compatibility Overlay Zone, the 70-75 dB CNEL for Miramar and within the Miramar Subarea which is designated Light Industrial by the Mira Mesa Community Plan. The Light Industrial designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The Miramar Subarea is designated Light Industrial which encourages a mix of light industrial and specialized commercial uses. The proposed MMCC was reviewed by MCAS Miramar and determined to be consistent with the Air Installation Compatible Use Zone (AICUZ) noise and safety compatibility guidelines. The proposed MMCC, classified as commercial services, is therefore consistent with the community plan.

MMCCs are allowed in the IL-3-1 Zone with a Conditional Use Permit (CUP). The CUP requires MMCCs to comply with SDMC, section 141.0614 which requires a 1,000-foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and

schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The San Diego Municipal code limits MMCCs to commercial and industrial zones and the number of MMCCs to only four per Council District, 36 city-wide, in order to minimize the impact on the City and residential neighborhoods. The parcels to the north, east and west are within the IL-3-1 Zone, the parcel to the south is within the AR-1-1 Zone. The existing surrounding uses in the IL-3-1 Zone are consistent with the Light Industrial designation of the community plan and compatible uses with MMCCs. Therefore, the proposed MMCC is an appropriate use at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 1296361 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1296361, a copy of which is attached hereto and made a part hereof.

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Edith Gutierrez  
Development Project Manager  
Development Services

Adopted on: June 18, 2015

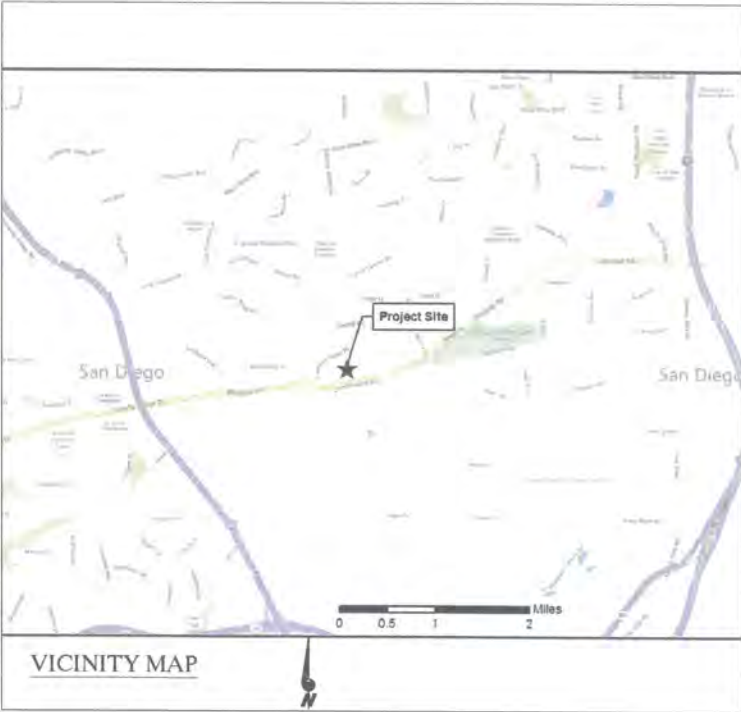
Job Order No. 24004659

7128 Miramar Road MMCC

THE FOLLOWING ARE A COMPLETE LIST OF THE REQUIRED FINDINGS:

Findings for Conditional Use Permit Approval - Section §126.0305  
An application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the following findings:

- (a) The proposed development will not adversely affect the applicable land use plan;
- (b) The proposed development will not 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; and
- (d) The proposed use is appropriate at the proposed location.



DEVELOPMENT SUMMARY

- 1. SUMMARY OF REQUEST  
-PROCESS A MEDICAL MARIJUANA CONSUMER COOPERATIVE CONDITIONAL USE PERMIT  
-TENANT IMPROVEMENTS TO AN EXISTING TENANT UNIT

- 2. REQUIRED DISCRETIONARY PERMITS  
-CONDITIONAL USE PERMIT

STREET ADDRESS:

- 3. 7128 MIRAMAR ROAD , Suite #10, SAN DIEGO, CA, 92121

- 4. GENERAL PLAN LAND USE: INDUSTRIAL

- 5. ZONING: IL-3-1

LEGAL DESCRIPTION: LOT 1 OF BARLOW SUBDIVISION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7084 , FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 18, 1971

- 6. ASSESSORS PARCEL NUMBER: 343-070-15-00
- 7. LAMBERT COORDINATES: 258-1719
- 9. EXISTING USE: VACANT
- 10. PROPOSED USE: MEDICAL MARIJUANA CONSUMER COOPERATIVE ACCORDING TO THE SAN DIEGO MUNICIPAL CODE, SECTION 141.0614 AND CHAPTER 4, ARTICLE 2, DIVISION 15.

11. ADDITIONAL PROJECT DATA RELATED TO USE:

PER SAN DIEGO MUNICIPAL CODE §141.0614:

- (B) CONSULTATIONS BY MEDICAL PROFESSIONALS SHALL NOT BE A PERMITTED ACCESSORY USE AT A MEDICAL MARIJUANA CONSUMER COOPERATIVE.
- (C) LIGHTING SHALL BE PROVIDED TO ILLUMINATE THE INTERIOR OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE, FACADE, AND THE IMMEDIATE SURROUNDING AREA, INCLUDING ANY ACCESSORY USES, PARKING LOTS, AND ADJOINING SIDEWALKS. LIGHTING SHALL BE HOODED OR ORIENTED SO AS TO DEFLECT LIGHT AWAY FROM ADJACENT PROPERTIES.
- (D) SECURITY SHALL BE PROVIDED AT THE MEDICAL MARIJUANA CONSUMER COOPERATIVE WHICH SHALL INCLUDE OPERABLE CAMERAS, ALARMS, AND A SECURITY GUARD. THE SECURITY GUARD SHALL BE LICENSED BY THE STATE OF CALIFORNIA AND BE PRESENT ON THE PREMISES DURING BUSINESS HOURS. THE SECURITY GUARD SHOULD ONLY BE ENGAGED IN ACTIVITIES RELATED TO PROVIDING SECURITY FOR THE FACILITY, EXCEPT ON AN INCIDENTAL BASIS.
- (E) SIGNS SHALL BE POSTED ON THE OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE AND SHALL ONLY CONTAIN THE NAME AND EMERGENCY CONTACT PHONE NUMBER OF AN OPERATOR OR MANAGER AND SHALL BE POSTED IN A LOCATION VISIBLE FROM OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE IN CHARACTER SIZE AT LEAST TWO INCHES IN HEIGHT, LIMITED TO TWO COLORS AND 2 TYPEFACES. POLE SIGNS ARE PROHIBITED. IN ADDITION; All SIGNS ASSOCIATED WITH THIS DEVELOPMENT SHALL BE CONSISTENT WITH SIGN CRITERIA ESTABLISHED BY CITY-WIDE SIGN REGULATIONS AND SHALL FURTHER BE RESTRICTED BY THIS PERMIT. SIGN COLORS ARE LIMITED TO TWO. A SIGN IS REQUIRED TO BE POSTED ON THE OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE AND SHALL ONLY CONTAIN THE NAME OF THE BUSINESS.
- (F) THE NAME AND EMERGENCY CONTACT PHONE NUMBER OF AN OPERATOR OR MANAGER SHALL BE POSTED IN A LOCATION VISIBLE FROM THE OUTSIDE OF THE MEDICAL MARIJUANA CONSUMER COOPERATIVE IN CHARACTER SIZE AT LEAST TWO INCHES IN HEIGHT.
- (G) THE MEDICAL MARIJUANA CONSUMER COOPERATIVE SHALL OPERATE ONLY BETWEEN THE HOURS OF 7:00 A.M. AND 9:00 P.M., SEVEN DAYS A WEEK.
- (H) THE USE OF VENDING MACHINES WHICH ALLOW ACCESS TO MEDICAL MARIJUANA EXCEPT BY A RESPONSIBLE PERSON, AS DEFINED IN SAN DIEGO MUNICIPAL CODE SECTION 42.1502, IS PROHIBITED. FOR PURPOSES OF THIS SECTION, A VENDING MACHINE IS ANY DEVICE WHICH ALLOWS ACCESS TO MEDICAL MARIJUANA WITHOUT A HUMAN INTERMEDIARY.
- (I) A PERMIT SHALL BE OBTAINED AS REQUIRED PURSUANT TO CHAPTER 4, ARTICLE 2, DIVISION 15.

- 12. TYPE OF CONSTRUCTION: TYPE V (EXISTING BUILDING)

- 13. BUILDING CONSTRUCTED: 1984

- 14. BUS STOPS: LOCATED IN FRONT OF THE SHOPPING CENTER, APPROXIMATELY 100 FEET EAST OF THE PARCEL BOUNDARY.

- 15. OCCUPANCY GROUP: B

- 16. SITE AREA: 1.9 ACRES PARCEL, LOT 1 OF MAP 7084.

- 17. FLOOR AREA: PROPOSED MMCC: 1,055 SQUARE FEET (SUITE #10 LOCATED ON THE SECOND FLOOR) OVERALL EXISTING BUILDING IS 15,633 SQ. FT. (9,023 SQ. FT. ON THE FIRST FLOOR AND 6,610 SQ. FT. ON THE 2ND FLOOR)THE ENTIRE SHOPPING CENTER HAS 4 BUILDINGS AND THE TOTAL FLOOR AREA IS APPROXIMATELY 28,449 SQ. FT.

- 18. PARKING: WILL BE PER PREVIOUSLY APPROVED SITE PLAN, NO ADDITIONAL OFFICE AREA IS PROPOSED - PREVIOUSLY APPROVED SHOPPING CENTER (MIRAMAR GALLERIA) AND PERMITTED USES TO REMAIN.

Previously approved in 1984, per Dwg. No. 21606-1-D:  
90 Compacts Spaces with minimum dimensions of: 7.5' wide x 15' long  
45 Standard Spaces with minimum dimensions of: 8.5' wide x 20' long  
4 ADA Compliant Spaces  
139 Total Spaces

Proposed Site Plan:  
90 Compact Spaces with minimum dimensions of: 7.5' wide x 15' long  
45 Standard Spaces with minimum dimensions of: 8.5' wide x 20' long  
4 ADA Compliant Spaces  
139 Total Spaces

- 19. WATER SERVICE / SEWER SERVICE: CITY OF SAN DIEGO

- 20. BUILDING CODE: 2010 C.B.C.

- 21. OWNERS NAME & ADDRESS: REAL-OUTRAGEOUS PARTNERS (ROP) LLC, 5055 AVENIDA ENCINAS SUITE 100, CARLSBAD, CA 92008-4375

- 22. FUTURE USES ARE LIMITED TO USES PERMITTED BY THE IL-3-1 ZONE.

- 23. PROJECT TEAM: ENGINEER: SHAPOURI ENGINEERING COMPANY, INC., 18029 CALLE AMBIENTE, PO BOX 3275, RANCHO SANTA FE, CA 92067, Phone: 858-412-0033.  
CONTACT: M. H. SHAPOURI, RCE

LEGAL: JESSICA C. MCELFRESH, ATTORNEY-AT-LAW, LAW OFFICE OF JESSICA C. MCELFRESH, P.O. Box 230363, ENCINITAS, CA 92023, PHONE: 858-756-7107

CONSULTANT:

SHAPOURI ENGINEERING  
COMPANY, INC

18029 Calle Ambiente, Suite 502, P.O. Box 3275, Rancho Santa Fe,  
California 92067  
Phone: (858) 412-0033 Fax: (858) 756-8344

General Notes and  
Vicinity Map

MMCC CUP PLAN  
SUITE #10  
7128 Miramar Road  
SAN DIEGO, CALIFORNIA

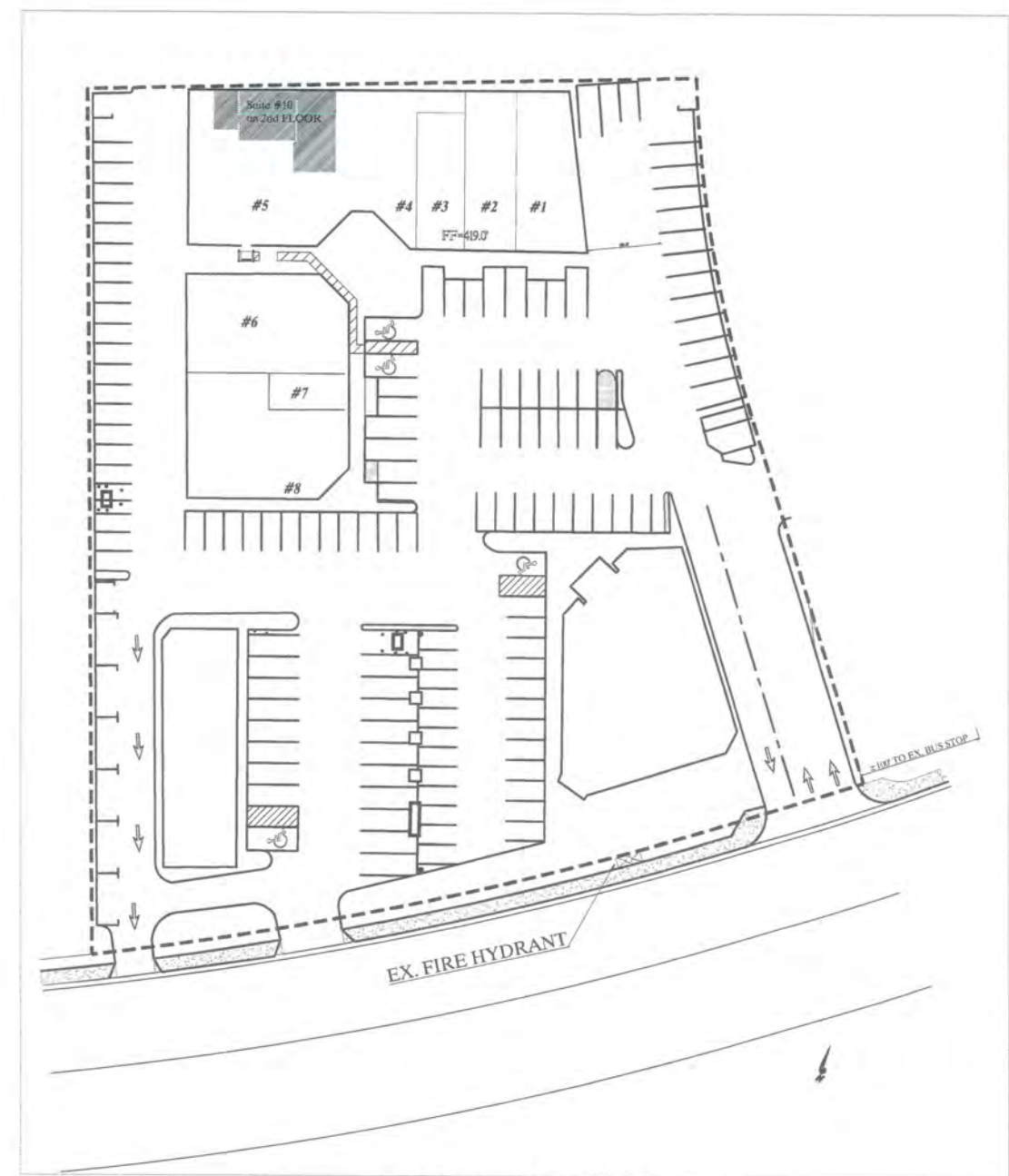
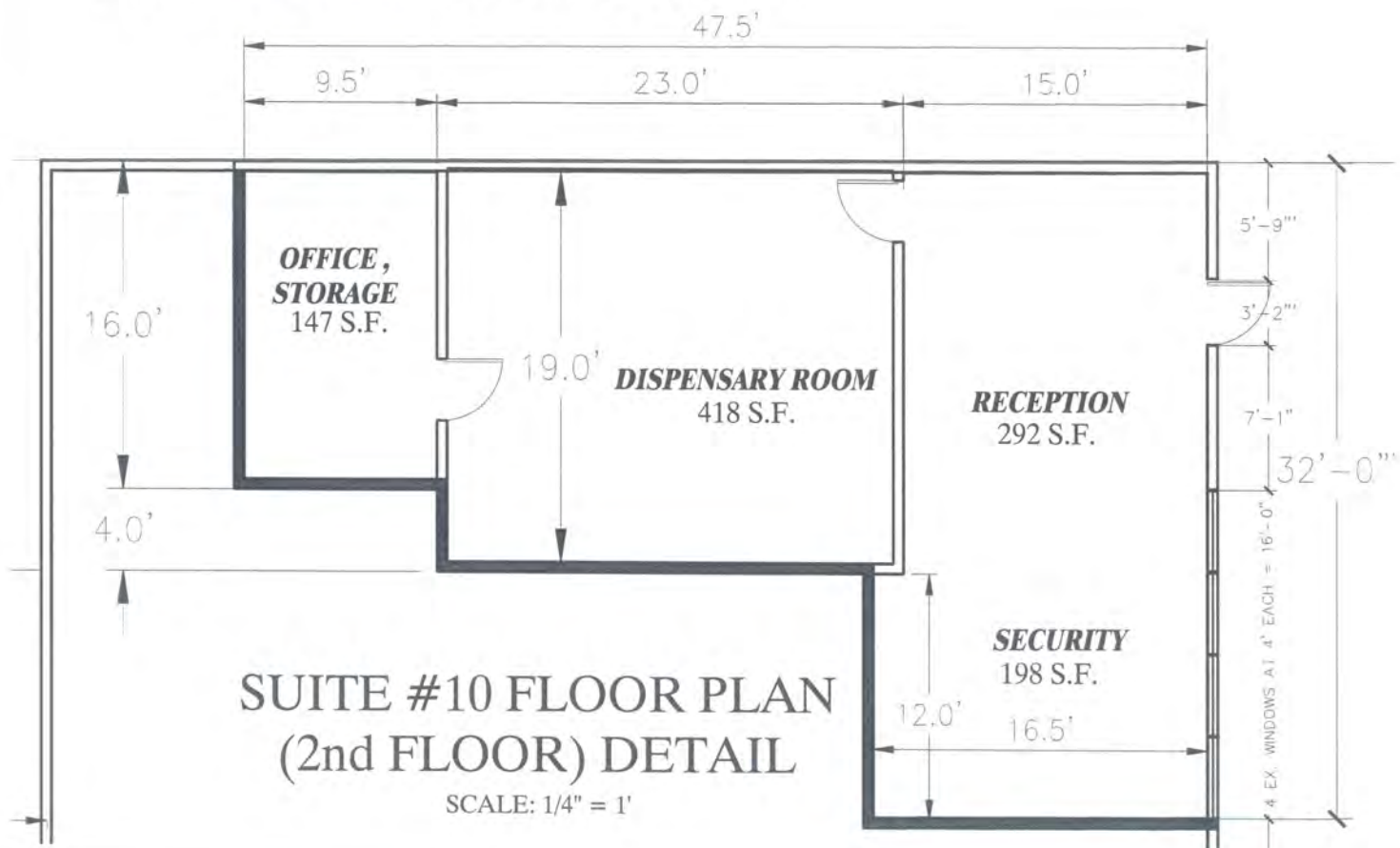
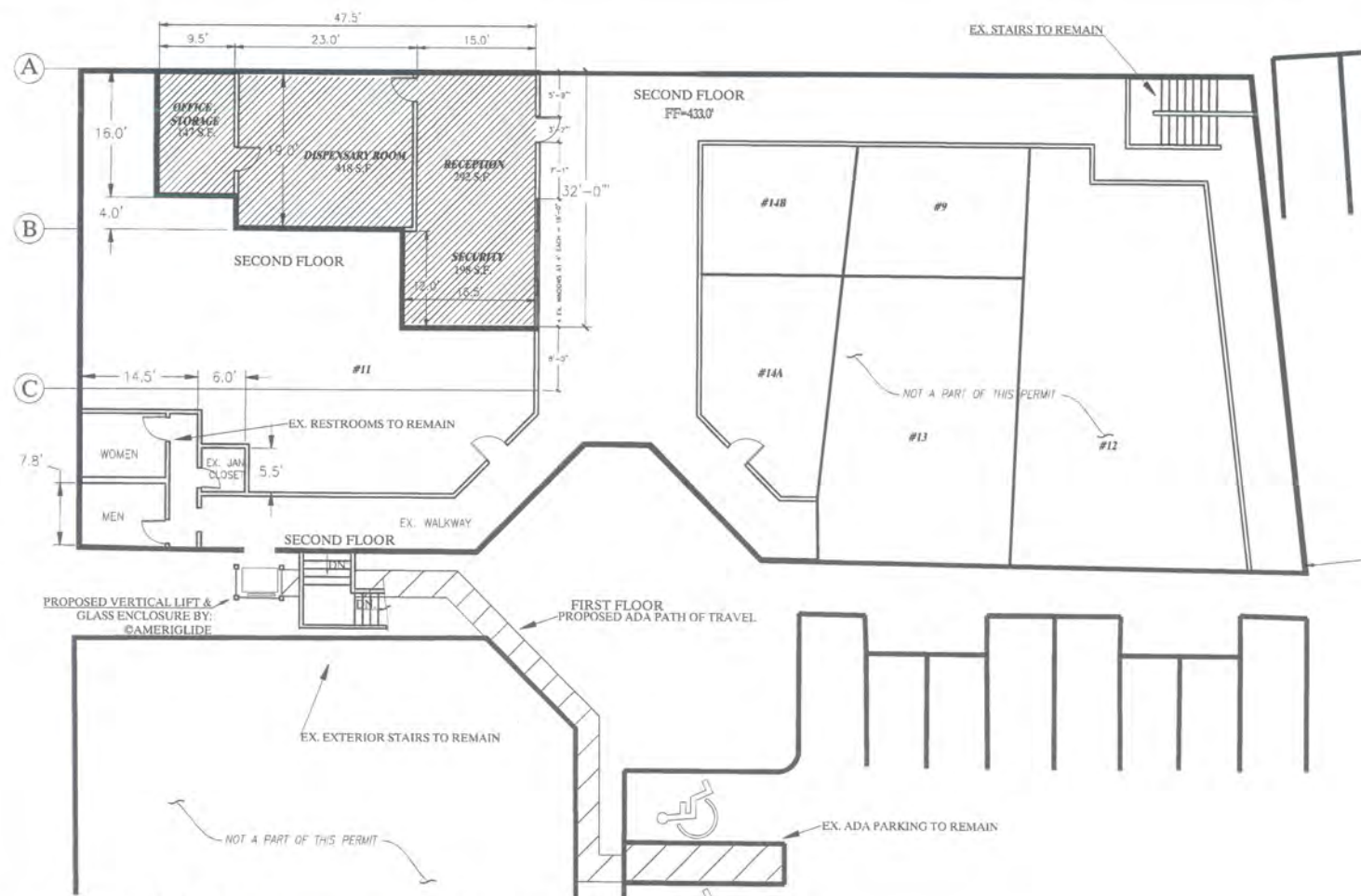
SHEET TITLE:

DATE: 2014-07-21, REVISED ON:  
2014-09-13, 2014-09-17,  
2015-06-01

CITY OF SAN DIEGO  
PROJECT NO: 368343

SHEET NO.





CONSULTANT:

**SHAPOURI ENGINEERING  
COMPANY, INC**

18029 Calle Ambiente, Suite 502, P.O. Box 3275, Rancho Santa Fe,  
California 92067  
Phone: (858) 412-0033 Fax: (858) 756-8344

**SITE PLAN  
AND  
FLOOR PLAN**

MMCC CUP PLAN  
SUITE #10  
7128 Miramar Road  
SAN DIEGO, CALIFORNIA

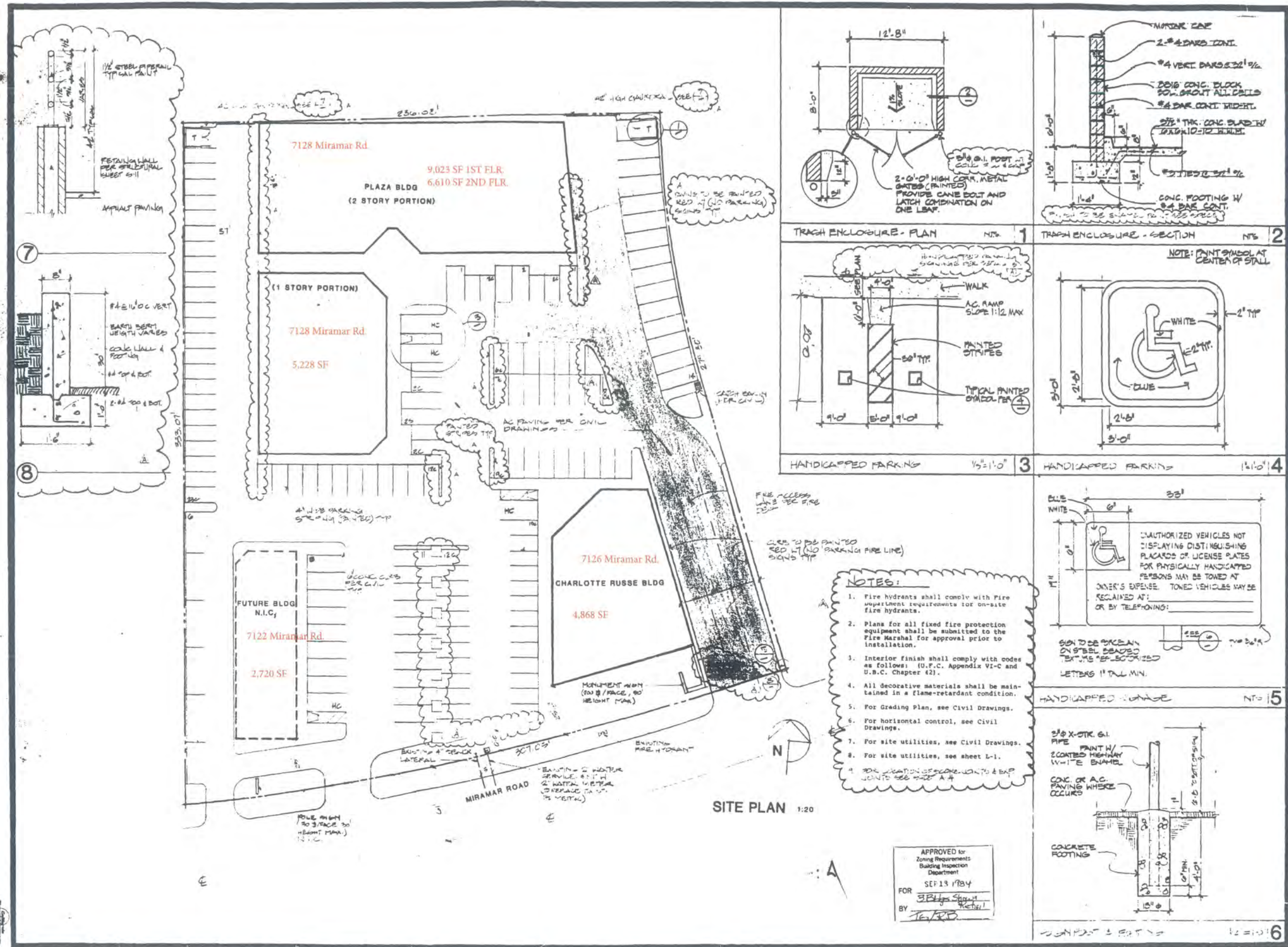
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2014-09-13, 2014-09-17,  
2015-06-01  
CITY OF SAN DIEGO  
PROJECT NO: 368343

SHEET NO.









MIRAMAR GALLERIA

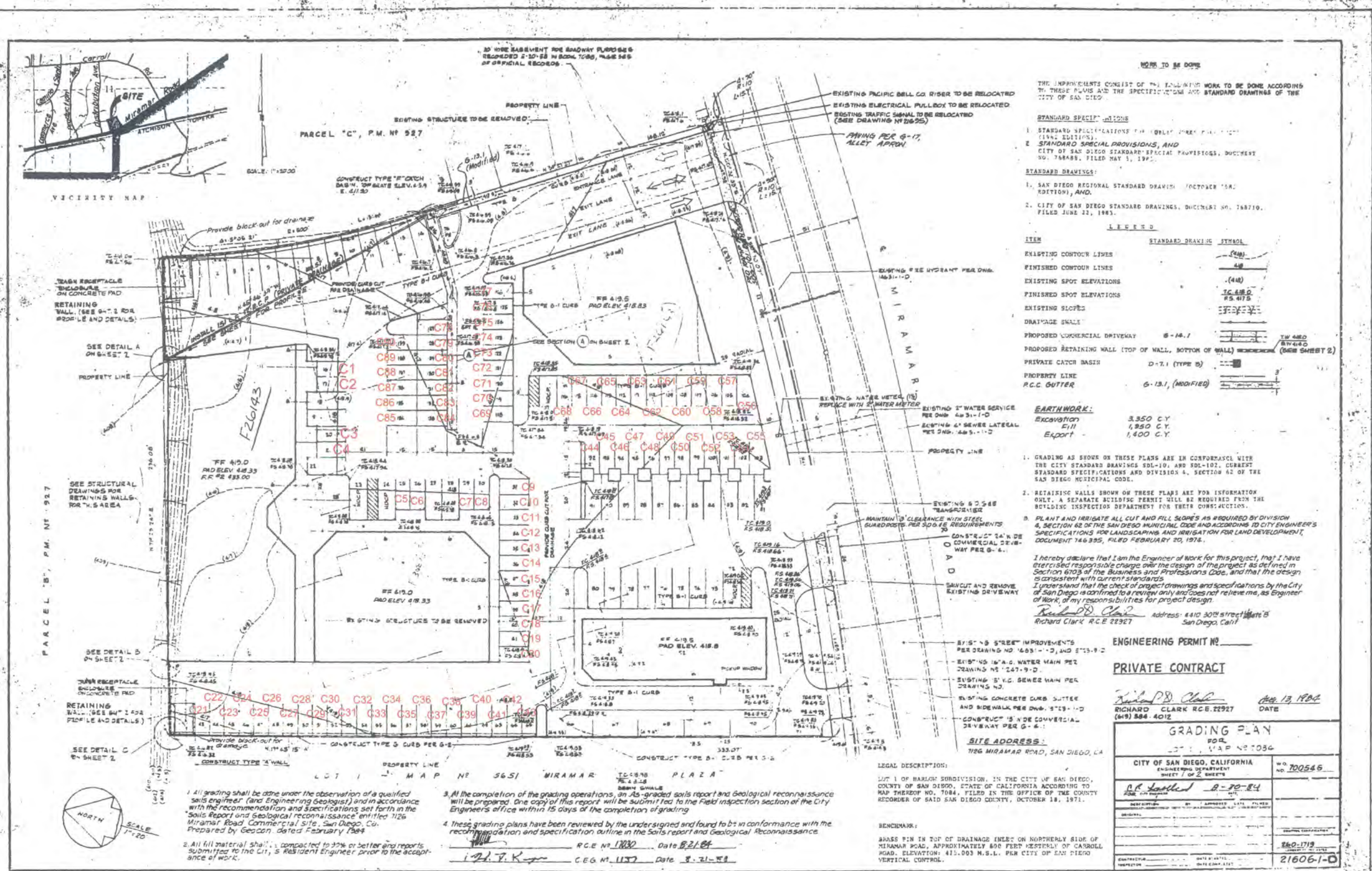
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 ISSUE

7304 S.W.  
 5204 S.W.  
 5204 S.W.

REVISIONS  
 A 5 29 84

AT  
 OF  
 SHEETS





Approved Grading Plan from 1984, showing 139 Total Parking Stalls, including 90 Compacts. Or approximately 65% ( $90/139 = 64.7\%$ )



Dated:  
2015-05-28