

THE CITY OF SAN DIEGO

MEMORANDUM

DATE: February 12, 2015

TO: Honorable Council President, Sherri Lightner and Members of the City Council

FROM: Kerry Santoro, Deputy Director, Land Development Review Division,  
Development Services Department

RE: **Docket of March 3, 2015: Appeal of the Environmental Determination for the  
8863 Balboa # E CUP Medical Marijuana Consumer Cooperative (MMCC)  
Project (PTS No. 368347)**

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**Background**

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 in an existing 999-square-foot tenant suite within an existing 39,674- square-foot, one-story building on a 2.5-acre site located at 8863 Balboa Avenue within the Kearny Mesa Community Plan Area; it is designated for Industrial and Business Park use. The project is zoned IL-3-1 and is subject to the Airport Influence Area for Miramar and Montgomery Field, the Part 77 Noticing Area, Montgomery Field Safety Zone 2, 5 & 6 the 65-70 dB CNEL for Montgomery Field, and the 100 Year Flood Plain Overlay Zone.

On November 20, 2014, the Environmental Analysis Section (EAS) of the Development Services Department (DSD) determined that the project is exempt under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures) and posted a Notice of Right to Appeal ((NORA) the environmental exemption.

Two appeals were filed on December 1, and December 5, 2014. The appeals read as follows:

“This project should’ve used CEQA 15301 instead of CEQA 15303” and “CEQA 15301 should have been utilized in place of CEQA 15303”. The appellants did not include any information to support the appeals. This memorandum provides information to support EAS’ determination that the project is exempt under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures).

The exemption under CEQA states:

***Section 15303 (New Construction or Conversion of Small Structures)***

*Class 3 consists of construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of small structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to (only the relevant subsection of this exemption has been included here):*

*c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.*

Upon review of the project, EAS conducted a preliminary review consistent with CEQA Guidelines Section 15060, to determine if approval of the project to permit a Medical Marijuana Consumer Cooperative through a CUP, at this location and in this building, would result in any impacts to the environment and to identify required mitigation, if necessary, to address potential impacts. EAS staff coordinated with all of the reviewing disciplines, including: Engineering, Plan-Airports, Landscape, Plan-Historic, Transportation Development, and LDR-Planning to ensure that all potential issues were accurately and thoroughly addressed.

Upon completion of the staff team review, EAS was able to determine that the project would not result in a significant physical effect on the environment. Consistent with CEQA Guidelines Section 15061, EAS then made the determination that the project would be exempt from CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures). During permit and environmental review, EAS determined that the project qualified as a conversion of an existing small structure from one use to another with only minor modifications proposed to the exterior of the structure.

### **The Project Is Exempt Under CEQA Guidelines Section 15303**

#### *15303 Requirements*

Under CEQA Guidelines Section 15303, the “conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure” is categorically exempt from CEQA. Section 15303 then provides examples of projects that are included under this exemption. While this is not an exhaustive list, it specifically includes as an example “[a] store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances . . . and not exceeding 2,500 square feet in floor area.”

#### *CEQA Analysis*

The project meets the requirements within the exemption. The proposed MMCC project involves the conversion of an existing small structure from one use to another use with only minor

modifications to the structure. The only proposed modifications to the exterior structure involve the replacement of windows and doors, the addition of rooftop solar panels, and the installation of new security cameras and signage. The facility is proposing to operate in an existing 999-square-foot tenant suite within an existing 39,674- square-foot, one-story industrial/warehouse structure. The CUP limits the operation of the MMCC to the 999-square-foot tenant space. The conditional use permit does not apply to the remaining square footage in the building. The proposed MMCC, therefore, meets the 2,500-square-foot size requirement identified in CEQA Guidelines Section 15303. Furthermore, the proposed MMCC consists of a store or similar structure that would not involve the use of significant amounts of hazardous materials, so the exemption applies.

After determining that the project meets the exemption under CEQA Guidelines Section 15303, EAS then determined that the application of the categorical exemption for this project and project site was not barred by one of the exceptions set forth in Section 15300.2 (i.e. location, cumulative impact, significant effect, scenic highways, hazardous waste sites, historical resources).

### **Conclusion**

The project before the City Council has been reviewed in accordance with CEQA and was appropriately determined to be exempt. Based upon evidence in the record, the project is exempt pursuant to CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures) and would not result in a significant effect on the environment. Furthermore, the exceptions found in CEQA Guidelines Section 15300.2 do not apply.

The assertion by the appellant of the inapplicability of the environmental determination for the proposed CUP for the 8863 Balboa #E MMCC Project cannot be supported. Staff, therefore, recommends denial of the appeal of the environmental determination on the basis of the information stated above.



Kerry Santoro,  
Deputy Director

