



THE CITY OF SAN DIEGO  
**REPORT TO THE PLANNING COMMISSION**

**DATE ISSUED:** March 5, 2015 **REPORT NO. PC-15-017**

**ATTENTION:** Planning Commission, Agenda of March 12, 2015

**SUBJECT:** APPEAL OF A HEARING OFFICER'S DECISION TO GRANT A  
CONDITIONAL USE PERMIT TO 658 E. SAN YSIDRO MMCC -  
PROJECT NO. 368312, PROCESS 3

**REFERENCE:** Report to the Hearing Officer; Report No. HO-14-078 (Attachments 1-12).

**OWNER/  
APPLICANT:** LIGHTHOUSE FAMILY TRUST /  
Wayne Scherer

**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 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site within the San Ysidro Community Plan area?

**Staff Recommendation:** Deny the appeal Uphold the Hearing Officer's decision to Approve Conditional Use Permit No. 1298246.

**Community Planning Group Recommendation:** On June 16, 2014, the San Ysidro Community Planning Group voted 8-1-0 to deny the project (Attachment 11).

**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 31, 2014, a Notice of Right to Appeal (NORA) was posted. The opportunity to appeal the determination ended on November 17, 2014.

**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.

This proposed project is a request for a Conditional Use Permit (CUP) to operate in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site. The site is located at 658 E. San Ysidro Blvd, south of Virginia Ave, east of Interstate 5, north of Camino De La Plaza and west of East San Ysidro Blvd. The site is in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area. The site contains three existing buildings constructed between 1981-1985, per Building Permit No's. S12918, A30938 & A41689; Building A, one-story, 16,302 square feet, Building B one-story, 1,891 square feet, Building C, two-story, 5,830 square feet. The proposed 6,868 square foot tenant space is located in Building A and is currently being used for retail (Bargain Mart).

The existing businesses within the 0.85-acre site include retail, commercial services and professional offices. The CSR zone is intended to allow for commercial strip development which includes retail, wholesale and commercial services. The Recreational-Commercial Category-3 is intended to provide for establishments catering to the lodging, dining, and general entertainment uses of the community and for visitors to the community. The proposed MMCC is a commercial service, therefore consistent with the zone.

The site is designated Border Commercial by the San Ysidro Community Plan and is also within an area known as the Casas de Cambio and Visitor Serving District 3. This area is known for uses which include Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to preserve and enhance the community-oriented character in the historic commercial district; encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents. The proposed MMCC, commercial services, is consistent with the land use

designation.

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.

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

**Public Hearing:** On December 17, 2014, the Hearing Officer of the City of San Diego approved Conditional Use Permit No. 1298246 to allow the operation of a MMCC in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site.

Subsequent to the Hearing Officer's granting of the CUP, the applicant has agreed to incorporate modified conditions into their permit as follows: 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 15, Conditions Number 16 & 20).

## **DISCUSSION**

**Appeal:** Two appeals of the Hearing Officer's decision were filed. On December 19, Jason M-B Wells OBO San Ysidro filed an appeal on the grounds of Factual Error, Conflict with matters, and Findings Not Supported (Attachment 13). On December 30, 2014, Bertha Alicia Gonzalez filed an appeal on the grounds of Factual Error, Conflict with matters, and Findings Not Supported (Attachment 14).

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

1. *The San Ysidro Planning Group opposed this project. It is not in compliance with the*

*community plan intent.*

Staff Response: The proposed MMCC is located in an area designated Border Commercial, Casas de Cambio and Visitor Serving District 3 in the San Ysidro Community Plan. This area is known for uses which include Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents. The Compassionate Use Act, approved in 1996 by the California voters, decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. The proposed MMCC, classified as "commercial services" is consistent with the community plan designation. The MMCC CUP includes conditions to be in harmony with the surrounding uses and is consistent with the goal of providing new community-serving commercial uses which meet the needs of the residents.

2. *The proposed MMCC is not in compliance with the parking requirements for the zone.*

Staff Response: The 0.85-acre site is developed with three buildings totaling 24,023 square feet. The approved 1985 Exhibit "A" shows 30 automobile parking spaces for this site. Section 142.0510(d)(2) of SDMC states that when a change in use is proposed that requires the same or fewer off-street parking spaces than the previous use, no change in parking spaces is required. The SDMC Table 142-05E identifies the required automobile parking spaces for retail sales and commercial services as the same rate of 2.5 per 1,000 square feet in the San Ysidro Planned District. Therefore, the change in use requires the same parking ratio. No additional parking spaces beyond the existing previously conforming number of parking spaces are required.

3. *The proposed MMCC is not consistent with Zone Category 3 which is intended to provide for establishments catering to lodging, dining and general entertainment uses of the community and visitors.*

Staff Response: The site is in the CSR-3 Zone of the San Ysidro Planned District. The CSR zone is intended to allow for commercial strip development which includes retail, wholesale and commercial services. The Recreational-Commercial Category-3 is intended to provide for establishments catering to the lodging, dining, and general entertainment uses of the community and for visitors to the community. The proposed MMCC is a commercial service allowed with a CUP and consistent with the zone. The CUP as conditioned includes security restrictions in order to avoid adverse impacts upon the health, safety and general welfare of the community and will be in harmony with the surrounding uses.

4. *The proposed MMCC would be detrimental to the business in San Ysidro's commercial core.*

Staff Response: The proposed MMCC is a commercial use that is consistent with the zone and community plan. The community plan encourages the maintenance of existing uses and the development of new community-serving commercial uses. The CUP

security requirements include interior and exterior lighting, 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.). 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. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC's must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation. The MMCC CUP as conditioned will be in harmony with the surrounding uses and will avoid adverse impacts upon the health, safety and general welfare of the community.

5. *There is no available law enforcement to monitor the site.*

Staff Response: The MMCC CUP requires the following security requirements; interior and exterior lighting, 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.). 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. All responsible persons operating the MMCC are required to undergo fingerprinting and a background check. Code Enforcement Division will be conducting inspections for compliance with permit conditions. Additionally, the CUP may be revoked if determined to be in violation of the terms, conditions, lawful requirements, or provisions of the permit. If an emergency call is placed to the San Diego Police Department, officers will respond in accordance with their emergency category procedures. The CUP requirements and voluntary enhancement of security measures by the applicant will avoid adverse impacts upon the health, safety and general welfare of the community.

6. *The proposed MMCC does not meet the distance requirement; it is adjacent to Bargain Mart, the recreation/community center, and numerous children's stores. It is also within 1,000 feet of apartments.*

Staff Response: The 1,000 foot distance separation requirement for MMCCs is from; public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is a 100 foot distance requirement from residential zones. Staff determined that the proposed MMCC met all applicable development regulations, including the minimum distance requirements. The recreation/community center and children's stores are not restricted uses. Although there may be children present during business hours, it does not meet the definition of minor-oriented facility. "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. Primary use means the allowed use on a premises that occupies a majority of the area of the premises.

7. *Marijuana is illegal under Federal Law.*

Staff Response: Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substance Act (CSA). Neither Proposition 215, nor the Medical Marijuana Program Act (MMP), conflict with the CSA because, in adopting these laws, California did not “legalize” medical marijuana, but instead exercised the state’s reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. 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. The City of San Diego adopted Ordinance No. O-20356 to implement zoning regulations to provide safe access for medical marijuana in compliance with state law and included numerous restrictions in order to avoid adverse impacts upon the health, safety and general welfare of the community.


Conclusion:

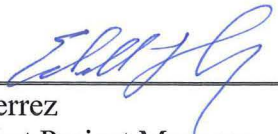
The Hearing Officer reviewed the proposed CUP, resolution/findings and determined the project consistent with the San Ysidro Community Plan, Land Development Code regulations and the General Plan. The applicant has voluntarily agreed to additional safety conditions to avoid adverse impact upon the health, safety and general welfare of the community. Staff recommends the Planning Commission deny the appeal and uphold the Hearing Officer’s decision with the modified conditions.

ALTERNATIVE

1. **Deny the appeal and APPROVE Conditional Use Permit No. 1298246, with modifications.**
2. **Approve the appeal and Deny Conditional Use Permit No. 1298246, if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,

  
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Mike Westlake  
Assistant Deputy Director  
Development Services Department

  
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Edith Gutierrez  
Development Project Manager  
Development Services Department

Attachments:

- 1-11 Report to the Hearing Officer – Report HO-14-078
- 12. Appeal Application, Jason M-B Wells OBO San Ysidro Business Association
- 13. Appeal Application, Berta Alicia Gonzalez
- 14. Response to Appeals, Jessica McElfresh
- 15. CUP Permit with Conditions
- 16. CUP Resolution with Findings



THE CITY OF SAN DIEGO

## REPORT TO THE HEARING OFFICER

HEARING DATE: December 17, 2014

REPORT NO. HO-14-078

ATTENTION: Hearing Officer

SUBJECT: 658 E. SAN YSIDRO MMCC  
PROJECT NUMBER: 368312

LOCATION: 658 E. San Ysidro Boulevard

APPLICANT: Wayne Scherer

### SUMMARY

Issue(s): Should the Hearing Officer approve a Conditional Use Permit to allow a Medical Marijuana Consumer Cooperative (MMCC) to operate in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site within the San Ysidro Community Plan area?

Staff Recommendation: APPROVE Conditional Use Permit No. 1298246.

Community Planning Group Recommendation: On June 16, 2014, the San Ysidro Community Planning Group voted 8-1-0 to deny the 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 (Attachment 8). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on October 31, 2014, the opportunity to appeal that determination ended on November 17, 2014.

### 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.

This proposed project is a request for a Conditional Use Permit (CUP) to operate in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site. The site is located at 658 E. San Ysidro Blvd (Attachment 1), south of Virginia Ave, east of Interstate 5, north of Camino De La Plaza and west of East San Ysidro Blvd (Attachment 2). The site is in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area. The site contains three existing buildings constructed between 1981-1985, per Building Permit No's. S12918, A30938 & A41689; Building A, one-story, 16,302 square feet, Building B one-story, 1,891 square feet, Building C, two-story, 5,830 square feet. The proposed 6,868 square foot tenant space is located in Building A and is currently being used for retail (Bargain Mart).

The existing businesses within the 0.85-acre site include retail, commercial services and professional offices. The CSR zone is intended to allow for commercial strip development which includes retail, wholesale and commercial services. The Recreational-Commercial Category-3 is intended to provide for establishments catering to the lodging, dining, and general entertainment uses of the community and for visitors to the community. The proposed MMCC is a commercial service, therefore consistent with the zone.

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## DISCUSSION

The project site located at 658 E. San Ysidro Boulevard is on a 0.85-acre site. The proposed 6,868 square foot tenant space, within an existing 16,302 square foot one-story building is currently being used for retail (Bargain Mart). The project proposes interior improvements that include a reception area, dispensary area, office, storage and restrooms. 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 improvements include replacing the existing westerly driveway, serving the project site on E. San Ysidro Boulevard, with an ADA-compliant City standard driveway.

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. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

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 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 in order to avoid adverse impacts upon the health, safety and general welfare of persons patronizing, residing or working within the surrounding area.

#### SAN YSIDRO COMMUNITY PLANNING GROUP

On June 16, 2014, the San Ysidro Community Planning Group voted 8-1-0 to deny the project. The majority of the members agreed that a MMCC would not fit well in the primarily tourist-focus shopping area of San Ysidro.

#### CONCLUSION

The Conditional Use Permit for the proposed MMCC may be approved if the Hearing Officer determines that the findings can be made. Staff has reviewed the proposed MMCC and has determined that it meets all applicable sections of the San Diego Municipal Code, San Ysidro Community Plan and the General Plan. Staff is recommending that the Hearing Officer approve the project as proposed.

#### ALTERNATIVE

1. Approve Conditional Use Permit No. 1298246, with modifications.
2. Deny Conditional Use Permit No. 1298246, 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 Environmental Determination
9. Project Site Plan(s)
10. Community Planning Group Recommendation
11. Ownership Disclosure Statement



### Location Aerial Photo

**658 E San Ysidro MMCC – 658 East San Ysidro Boulevard**  
**PROJECT NO. 368312**

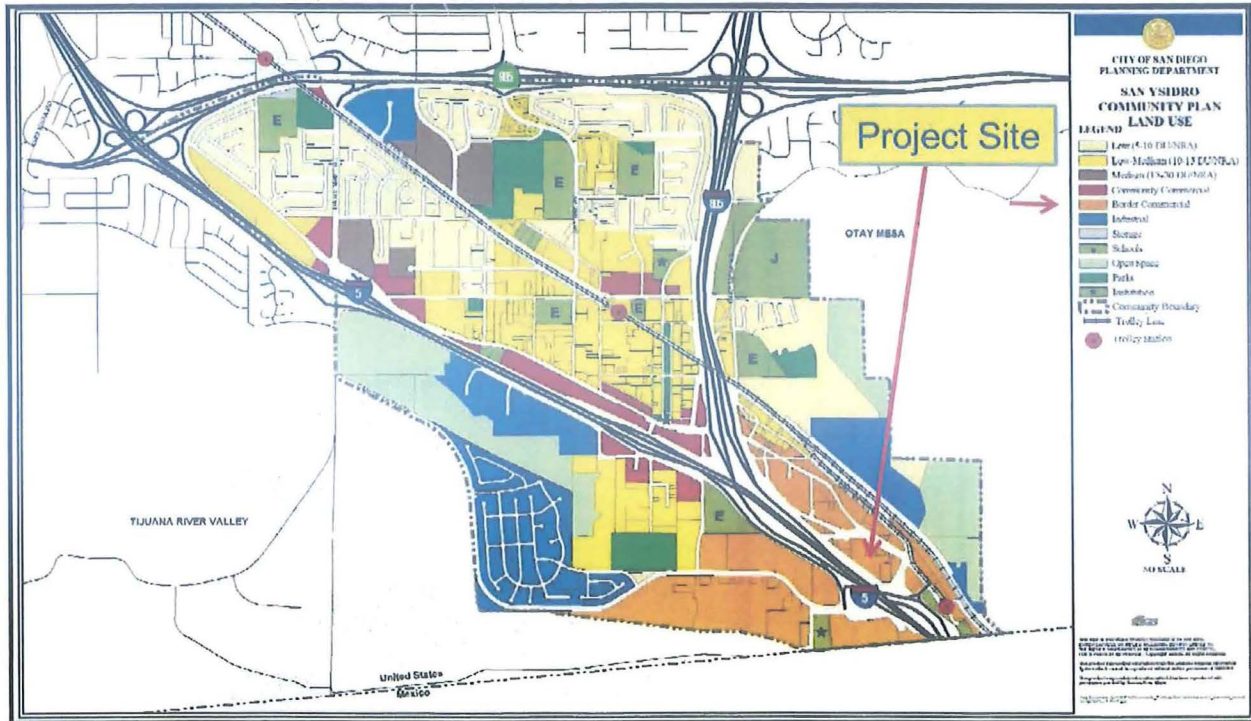




### Project Location Map

**658 E San Ysidro MMCC – 650 and 654 East San Ysidro Boulevard**  
**PROJECT NO. 368312**





## Land Use Map

658 E San Ysidro MMCC – 658 East San Ysidro Boulevard  
PROJECT NO. 368312



**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: 24004630

**CONDITONAL USE PERMIT NO. 1298246**  
**658 E. SAN YSIDRO MMCC - PROJECT NO. 368312**  
**HEARING OFFICER**

This Conditional Use Permit No. 1298246 is granted by the Hearing Officer of the City of San Diego to TRUSTEES OF THE LIGHTHOUSE FAMILY TRUST, Owner and WAYNE ALEXANDER SCHIERER, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 0.85-acre site is located at 658 E. San Ysidro Blvd in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area. The project site is legally described as all that portion of the Northeast Quarter of the Southeaster Quarter of Section 1, Township 19 South, Range 2 West, San Bernardino Base and Meridian, State of California, June 17, 1953, Document No. 1953-082665 in Book 4893, Page 306.

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 December 17, 2014, on file in the Development Services Department.

The project shall include:

- a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-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 \_\_\_\_\_.
2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on \_\_\_\_\_.
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 6,868 square foot tenant space shall be limited to the MMCC and any use permitted in the CSR-3 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, 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.
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 48 hours.
21. Medical marijuana shall not be consumed anywhere within the 0.85-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 westerly driveway, serving the project site at E. San Ysidro Boulevard, maintaining the current width with a City standard driveway, per Standard Drawing SDG-159, satisfactory to the City Engineer.

**TRANSPORTATION REQUIREMENTS:**

25. No fewer than 9 parking spaces (including 1 van accessible space) for the proposed 6,868 square foot MMCC, and 32 parking spaces (including 2 accessible spaces) for the entire 0.85-acre site (with 32 parking spaces including 2 accessible spaces provided), shall be maintained on the property at all times in the approximate locations shown on Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

**POLICE DEPARTMENT RECOMMENDATION:**

26. 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 December 17, 2014 and Resolution No. HO-XXXX.

Conditional Use Permit No. 1298246 /PTS No. 368312  
Date of Approval: December 17, 2014

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.**

TRUSTEES OF THE LIGHTHOUSE  
FAMILY TRUST

Owner

By \_\_\_\_\_  
Constantine A. Coss  
Trustee

Owner

By \_\_\_\_\_  
Sophia L. Coss  
Trustee

WAYNE ALEXANDER SCHERER  
Permittee

By \_\_\_\_\_  
Wayne Alexander Scherer  
Permittee

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

HEARING OFFICER  
RESOLUTION NO. HO-  
CONDITONAL USE PERMIT NO. 1298246  
**658 E. SAN YSIDRO MMCC PROJECT NO. 368312**

WHEREAS, TRUSTEES OF THE LIGHTHOUSE FAMILY TRUST, Owner and WAYNE ALEXANDER SCHERER, Permittee, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1298246), on portions of a 0.85-acre site;

WHEREAS, the project site is located 658 E. San Ysidro Boulevard in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area;

WHEREAS, the project site is legally described as all that portion of the Northeast Quarter of the Southeaster Quarter of Section 1, Township 19 South, Range 2 West, San Bernardino Base and Meridian, State of California, June 17, 1953, Document No. 1953-082665 in Book 4893, Page 306;

WHEREAS, on December 17, 2014, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 1298246 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 31, 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 there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

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 December 17, 2014.

FINDINGS:

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

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

This proposed project is a request for a Conditional Use Permit (CUP) to operate in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site. The site is in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area.

The site is designated Border Commercial by the San Ysidro Community Plan and is also within an area known as the Casas de Cambio and Visitor Serving District 3. This area is known for uses which include Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to preserve and enhance the community-oriented character in the historic commercial district; encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents. The proposed MMCC, commercial services, is consistent with the land use designation.

The proposed use is allowed with an approved CUP within the CSR-3 zone of the San Ysidro Planned District and is consistent with the community plan designation, therefore the proposed MMCC 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 6,868 square foot MMCC site located at 658 E. San Ysidro Boulevard is within an existing 16,302 square foot two-story building on a 0.85-acre site. The existing tenant space is currently vacant. The project proposes interior improvements that include a lobby/information center, office, storage, retail room and restrooms. 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 improvements include replacing the most westerly driveway, serving the project site on E. San Ysidro Boulevard, with an ADA-compliant City standard driveway.

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. 1310456. 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 6,868 square foot MMCC located at 658 E. San Ysidro Boulevard is within an existing two-story building. The 0.85-acre site is zoned CSR-3 Zone of the San Ysidro Planned District. The site contains three existing buildings constructed between 1981-1985, per Building Permit No's S12918, A30938 & A41689; Building A, one-story, 16,302 square feet, Building B one-story, 1,891 square feet, Building C, two-story, 5,830 square feet. The proposed 6,868 square foot tenant space is located in Building A and is currently vacant.

The existing businesses within the 0.85-acre site include retail, commercial services and professional offices. The CSR zone is intended to allow for commercial strip development which includes retail, wholesale and commercial services. The Recreational-Commercial Category-3 is intended to provide for establishments catering to the lodging, dining, and general entertainment uses of the community and for visitors to the community.

The project proposes interior improvements that include a reception area, dispensary area, office, storage and restrooms. 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 improvements include replacing the existing westerly driveway, serving the project site on E. San Ysidro Boulevard, with an ADA-compliant City standard driveway.

MMCCs are allowed in the CSR-3 zone of the San Ysidro Planned District 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 Border Commercial. 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 6,868 square foot MMCC located at 658 E. San Ysidro Boulevard is within an existing two-story building on a 0.85-acre site. The site is zoned CSR-3 Zone of the San Ysidro Planned District. The site is designated Border Commercial by the San Ysidro Community Plan and is also within an area known as the Casas de Cambio and Visitor Serving District 3. This area is known for uses which include



Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to preserve and enhance the community-oriented character in the historic commercial district; encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents.

MMCCs, classified as commercial services, are allowed in the CSR-3 Zone of the San Ysidro Planned District with an approved Conditional Use Permit (CUP) and are consistent with the land use designation of Border Commercial. 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 proposed MMCC is in a 6,868 square foot tenant space within an existing 16,302 square foot building. The uses within the building include mostly retail, commercial services and professional offices. The proposed MMCC is a permitted use in the CSR-3 Zone of the San Ysidro Planned District with an approved CUP and is consistent with the community plan designation, therefore the use is appropriate at the proposed location.

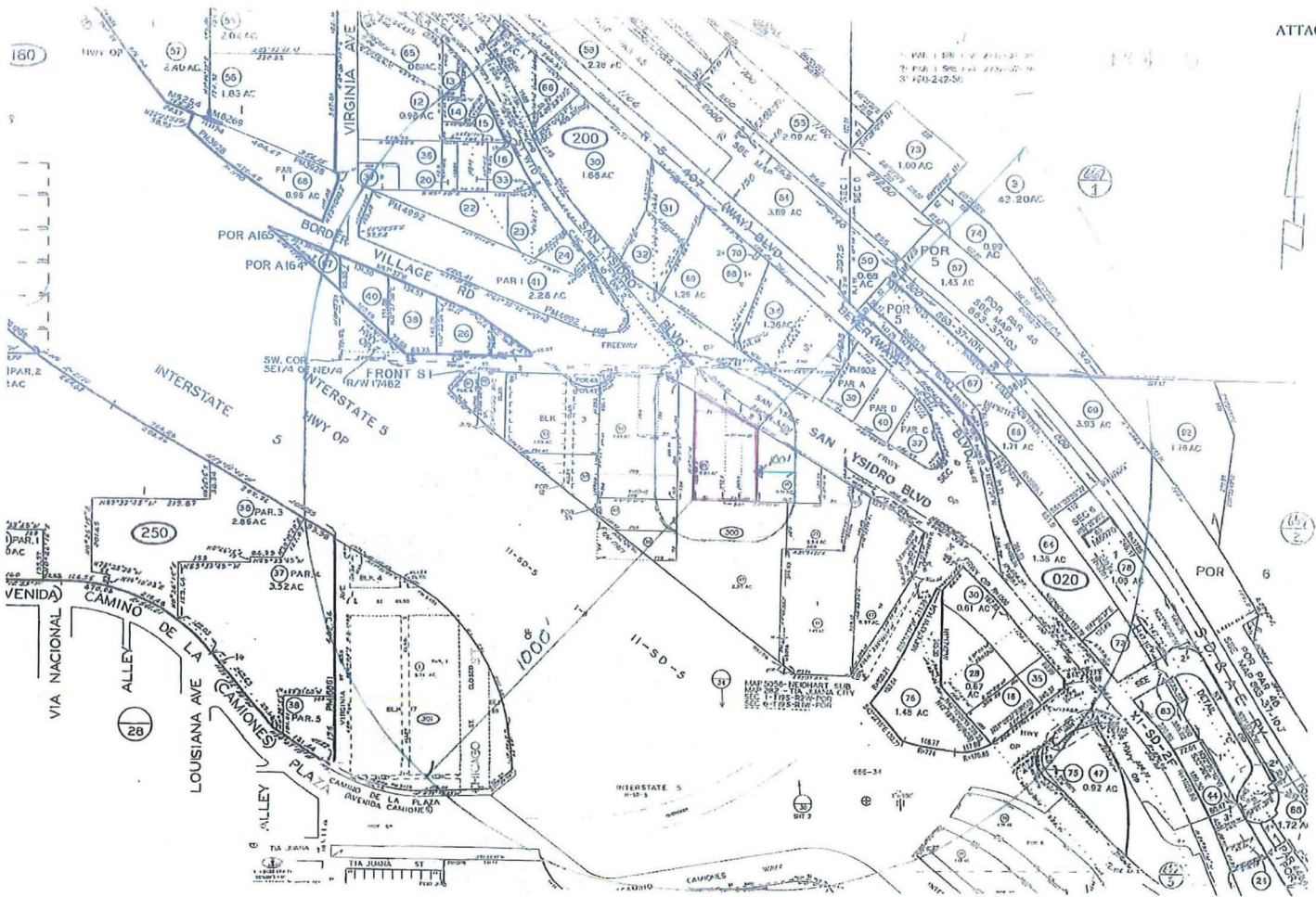
BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 1298246 is hereby GRANTED by the Hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1298246, a copy of which is attached hereto and made a part hereof.

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Edith Gutierrez  
Development Project Manager  
Development Services

Adopted on: December 17, 2014

Job Order No. 24004630



Project Title: 658 E. San Ysidro Boulevard MMCC

Project Number: 368312

Prepared on 4/22/2014; Corrected 7/20/2014

Zone	Business Type	Address	APN	Business Name
SYIO-CSR-3	Public Transport	729 East San Ysidro Blvd, San Ysidro, CA 92173	6670207800	San Diego Transit Center
SYIO-CSR-3	Auto Vehicle Paid Parking Lot	729 East San Ysidro Blvd, San Ysidro, CA 92173	6670207800	ACE Parking
SYIO-CSR-3	Fast Food	727 East San Ysidro Blvd, San Ysidro, CA 92173	6670204400	McDonalds
SYIO-CSR-3	Duty Free Liquor Sales	723 East San Ysidro Blvd, San Ysidro, CA 92173	6670208300	Baja Duty Free
SYIO-CSR-3	Fast Food	721 East San Ysidro Blvd, San Ysidro, CA 92173	6670207200	Jack in the Box
SYIO-CSR-3	Auto Rental	710 East San Ysidro Blvd, San Ysidro, CA 92173	6670203500	USA International Car Rental
SYIO-CSR-3	Auto Vehicle Paid Parking Lot	710 East San Ysidro Blvd, San Ysidro, CA 92173	6670203500	Park Me
SYIO-CSR-3	Hotel/Motel & Vehicle Paid Parking Lot	701 East San Ysidro Blvd, San Ysidro, CA 92173	6670206400	Gateway Inn / Gateway Parking
SYIO-CSR-3	Fast Food	674 East San Ysidro Blvd, San Ysidro, CA 92173	6663004700	Burger King
SYIO-CSR-3	Retail Clothing Apparel	674 East San Ysidro Blvd, San Ysidro, CA 92173	6663004700	Kids Club
SYIO-CSR-3	Hotel/Motel & Vehicle Paid Parking Lot	672 East San Ysidro Blvd, San Ysidro, CA 92173	6663005500	Holiday Lodge Motel
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	670 East San Ysidro Blvd, San Ysidro, CA 92173	6663002300	Celcetin Y Cachucha
SYIO-CSR-3	Business Association(s)	663 East San Ysidro Blvd, San Ysidro, CA 92173	7602423000	San Ysidro Business Association
SYIO-CSR-3	Fast Food	660 East San Ysidro Blvd, San Ysidro, CA 92173	6663001800	Subway
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	660 East San Ysidro Blvd, San Ysidro, CA 92173	6663001800	Fashion Glow
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	660 East San Ysidro Blvd, San Ysidro, CA 92173	6663001800	Lee's Fasion
SYIO-CSR-3	Bus Transportation Sales	660 East San Ysidro Blvd, San Ysidro, CA 92173	6663001800	El Corral Camino
SYIO-CSR-3	Legal Services	650 East San Ysidro Blvd, San Ysidro, CA 92173	6663005300	Antonio Cervantes Attorney at Law
SYIO-CSR-3	Income Tax Services	650 East San Ysidro Blvd, San Ysidro, CA 92173	6663005300	Sylvia Cervantes Tax Services
SYIO-CSR-3	Retail Clothing Apparel	650 East San Ysidro Blvd, San Ysidro, CA 92173	6663005300	La Estrella
SYIO-CSR-3	Tax Services	650 East San Ysidro Blvd, San Ysidro, CA 92173	6663005300	CC Tax Service
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	650 East San Ysidro Blvd, San Ysidro, CA 92173	6663005300	Bargain Mart
SYIO-CSR-3	International Currency Conversion	650 East San Ysidro Blvd, San Ysidro, CA 92173	6663005300	JSD
SYIO-CSR-3	Retail Convenience Store	644 East San Ysidro Blvd, San Ysidro, CA 92173	6663005400	7-11 Market
SYIO-CSR-3	Tax Services	644 East San Ysidro Blvd, San Ysidro, CA 92173	6663005400	E. Lozano Inc
SYIO-CSR-3	Bank	644 East San Ysidro Blvd, San Ysidro, CA 92173	6663005400	Citibank
SYIO-CSR-3	Mobile Phone Sales & Services	644 East San Ysidro Blvd, San Ysidro, CA 92173	6663005400	Simple Mobile Solutions
SYIO-CSR-3	Storage Facility	644 East San Ysidro Blvd, San Ysidro, CA 92173	6663005400	San Ysidro Self Storage
SYIO-CSR-3	Hotel/Motel	643 East San Ysidro Blvd, San Ysidro, CA 92173	6662006900	Rhodeway Inn
SYIO-CSR-3	Retail/Wholesale Perfume Sales	641 East San Ysidro Blvd, San Ysidro, CA 92173	6662006900	Perfume Center
SYIO-CSR-3	Mail and Shipping Services	641 East San Ysidro Blvd, San Ysidro, CA 92173	6662006900	Postal Annex
SYIO-CSR-3	Mobile Phone Sales & Services	641 East San Ysidro Blvd, San Ysidro, CA 92173	6662006900	Cricket Mobile

SYIO-CSR-3	Bank	641 East San Ysidro Blvd, San Ysidro, CA 92173	6662006900	Bank of America
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	641 East San Ysidro Blvd, San Ysidro, CA 92173	6662006900	Solach Boutique
SYIO-CSR-3	Bank	640 East San Ysidro Blvd, San Ysidro, CA 92173	6662002400	US Bank
SYIO-CSR-3	Vehicle Part and Accessory Store	636 East San Ysidro Blvd, San Ysidro, CA 92173	6662002200	Autozone
SYIO-CSR-3	Tax Services	631 East San Ysidro Blvd, San Ysidro, CA 92173	6662003000	H&R Block
SYIO-CSR-3	Fast Food	631 East San Ysidro Blvd, San Ysidro, CA 92173	6662003000	Little Cesaers
SYIO-CSR-3	Shoe Sales	631 East San Ysidro Blvd, San Ysidro, CA 92173	6662003000	Foot Locker
SYIO-CSR-3	Retail Market Store	631 East San Ysidro Blvd, San Ysidro, CA 92173	6662003000	Duty Free City
SYIO-CSR-3	Auto Insurance Services	631 East San Ysidro Blvd, San Ysidro, CA 92173	6662003000	R-Safe Auto Insurance
SYIO-CSR-3	Accessories and Apparel	631 East San Ysidro Blvd, San Ysidro, CA 92173	6662003000	West Point Imports & Accessories
SYIO-CSR-3	Mail and Shipping Services	628 East San Ysidro Blvd, San Ysidro, CA 92173	6662001600	Correo National Express
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	628 East San Ysidro Blvd, San Ysidro, CA 92173	6662001600	Todo Fashion Wholesale
SYIO-CSR-3	Pawn Shop	561 East San Ysidro Blvd, San Ysidro, CA 92173	6662006600	Casa de Empeño
SYIO-CSR-3	Tax Services	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	H&R Block
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	Yesterdays Bargain
SYIO-CSR-3	Mobile Phone Sales & Services	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	Metro PCS
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	Freestyle Fashion
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	Sweet & Glamour
SYIO-CSR-3	Legal Document Preparation Services	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	Multi-Purpose Center
SYIO-CSR-3	Shoe Sales	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	K Shoes
SYIO-CSR-3	Retail/Wholesale Intimate Apparel	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	Coqueta Intima
SYIO-CSR-3	Sports Clothing and Accessories	524 East San Ysidro Blvd, San Ysidro, CA 92173	6662001500	JIRE Sports
SYIO-CSR-3	Small Loan Lending and Payments	517 East San Ysidro Blvd, San Ysidro, CA 92173	6662001300	Progreso Financiero
SYIO-CSR-3	Mail and Shipping Services	514 East San Ysidro Blvd, San Ysidro, CA 92173	6662001300	Mr. Mail
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	507 East San Ysidro Blvd, San Ysidro, CA 92173	6662001300	Fajas Colombianas
SYIO-CSR-3	Auto Insurance Services	505 East San Ysidro Blvd, San Ysidro, CA 92173	6662001300	Adrianas Insurance
SYIO-CSR-3	Shoe Sales	501 East San Ysidro Blvd, San Ysidro, CA 92173	6662001300	Payless Shoes
SYIO-CSR-3	Retail Item Donations and Sales	628 Front Street, San Ysidro, CA 92173	6663003300	Goodwill Industries
SYIO-CSR-3	Retail Item Donations and Sales	626 Front Street, San Ysidro, CA 92173	6663003300	Goodwill Industries
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	3060 East Beyer Blvd, San Ysidro, CA 92173	6670203700	Bargain Zone
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	3020 East Beyer Blvd, San Ysidro, CA 92173	6670204000	Fashion Xperts
SYIO-CSR-3	Retail/Wholesale Clothing Apparel	3010 East Beyer Blvd, San Ysidro, CA 92173	6670203900	Bargain Zone
SYIO-CSR-3	Fast Food	4698 Border Village Road, San Ysidro, CA 92173	6662002500	Kentucky Fried Chicken
SYIO-CSR-3	Adult Store	4650 Border Village Road, San Ysidro, CA 92173	6662002500	International Prime

SYIO-CSR-3	Adult Store	4650 Border Village Road, San Ysidro, CA 92173	6662002500	Roys Adult Fantasy Outlet
SYIO-CSR-3	Mobile Phone Sales & Services	4650 Border Village Road, San Ysidro, CA 92173	6662002500	Boost Mobile
SYIO-CSR-3	Check Cashing and Small Loan	4650 Border Village Road, San Ysidro, CA 92173	6662002500	Check Mate
SYIO-CSR-3	Immigration Services	4635 Border Village Road, San Ysidro, CA 92173	6662002500	Alianza Latina
SYIO-CSR-3	Barber Shop	4635 Border Village Road, San Ysidro, CA 92173	6662002500	Felipes Barber Shop
SYIO-CSR-3	Wholesale Liquor Sales	4630 Border Village Road, San Ysidro, CA 92173	6662004100	UETA Duty Free
SYIO-CSR-3	Retail Musical Instrument Sales	4630 Border Village Road, San Ysidro, CA 92173	6662004100	Guitar Choice
SYIO-CSR-3	Tax Services	4630 Border Village Road, San Ysidro, CA 92173	6662004100	SOS Tax
SYIO-CSR-3	Health Services	4630 Border Village Road, San Ysidro, CA 92173	6662004100	Su Doctor
SYIO-CSR-3	Tax Services	4630 Border Village Road, San Ysidro, CA 92173	6662004100	Correo South Pacific
SYIO-CSR-3	Tax and Notary Services	4630 Border Village Road, San Ysidro, CA 92173	6662004100	Terra Nova
SYIO-CSR-3	Financial Service Advisors	4630 Border Village Road, San Ysidro, CA 92173	6662004100	M&P Financial Advisors
SYIO-CSR-3	Tax Services	4630 Border Village Road, San Ysidro, CA 92173	6662004100	Herreras Consulting Services
SYIO-CSR-3	Auto Sales & Financing Office	4630 Border Village Road, San Ysidro, CA 92173	6662004100	Leader Auto Sales
SYIO-CSR-3	Hotel/Motel	4625 Border Village Road, San Ysidro, CA 92173	6662002600	Flamingo Motel
SYIO-CSR-3	Duty Free Retail Item Sales	4605 Border Village Road, San Ysidro, CA 92173	6661806700	Image Duty Free
SYIO-CSR-3	Auto Part Store	4550 Border Village Road, San Ysidro, CA 92173	6661806800	O'Rielly Auto Parts
SYIO-CSR-3	Used Clothing Apparel	29 Virginia Avenue, San Ysidro, CA 92173	6662003700	La Frontera Ropa Usada
SYIO-CSR-3	Wholesale Ice Cream Cart Vendor	137 Virginia Avenue, San Ysidro, CA 92173	6662001200	Circus Ma'am Ice Cream
SYIO-CT-2-3	Retail/Wholesale Clothing Apparel	4460 Camino De La Plaza, San Ysidro, CA 92173	6662503700	OshKosh B'Gosh



THE CITY OF SAN DIEGO

Date of Notice: October 31, 2014

This notice was originally posted on October 27, 2014. It is being reposted with the correct project site address. The public appeal period will be extended to November 17, 2014.

# NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

SAP No. 24004630

**PROJECT NAME/NUMBER:** 658 East San Ysidro MMCC/368312

**COMMUNITY PLAN AREA:** San Ysidro Community Plan

**COUNCIL DISTRICT:** 8

**LOCATION:** The project is located at 658 East San Ysidro Boulevard, San Diego, CA 92173

**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 the MMCC within a 6,800 sq. ft. suite in a 70,400 sq. ft. existing building located at 658 E. San Ysidro Boulevard. The 0.85-acre site is located within the San Ysidro Community Plan Area and SYIO-CSR-3 Zone. The community plan designates the site as Border Commercial.

**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:**

**Edith Gutierrez**

**MAILING ADDRESS:**

**1222 First Avenue, MS 501**

**San Diego, CA 92101**

**PHONE NUMBER:**

**(619) 446-5147**

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.

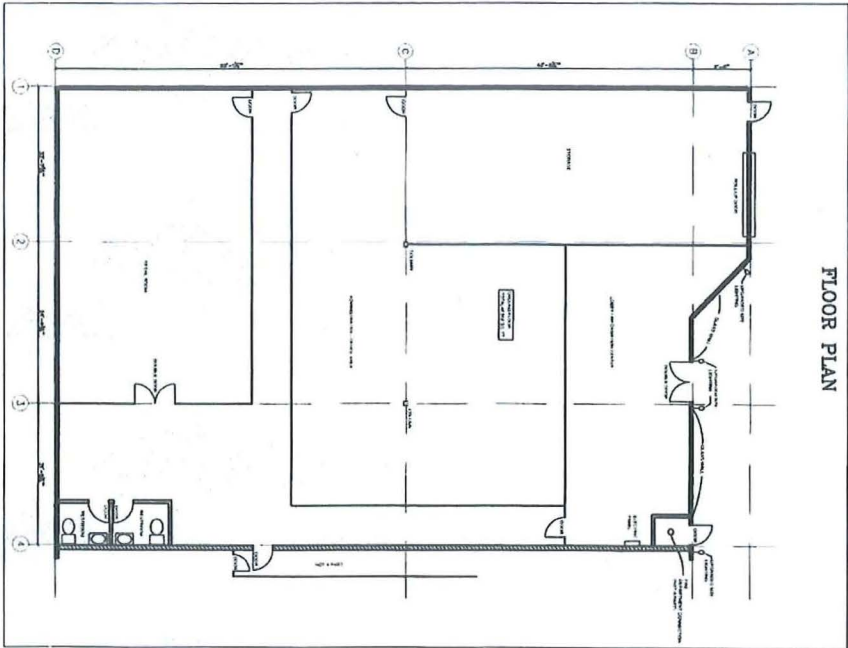
Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (November 17, 2014). The appeal application can be obtained from the City Clerk, 202 '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 OCT 31 2014 *ml*  
Removed NOV 18 2014  
Posted by myralee

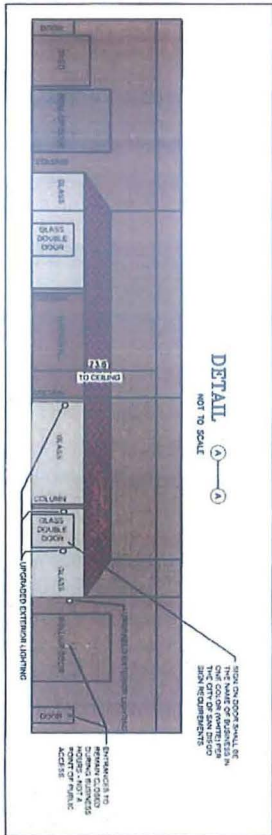






FLOOR PLAN

- WALL LEGEND
- EXISTING EXTERIOR WALL
  - EXISTING LIGHT PARTITION WALL
  - EXISTING INTERIOR WALL TO REMAIN
  - NEW INTERIOR WALL FOR PROPOSED TENANT IMPROVEMENT



**MMCC CUP PLAN**  
 658 E. SAN YSIDRO BLVD.  
 SAN DIEGO, CALIFORNIA

DATE: 7/24/2014  
 DRAWN BY: B/W/C  
 PROJECT NO.: 112724  
 SCALE: 1/8"=1'-0"

**BURKETT & WONG** STRUCTURAL & CIVIL ENGINEERS & SURVEYORS, 3434 Fourth Avenue, San Diego, CA 92103-4341; Phone (619) 299-5550





THE CITY OF SAN DIEGO

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

## Community Planning Committee Distribution Form Part 1

<b>Project Name:</b> 650 E San Ysidro MMCC		<b>Project Number:</b> 368312		<b>Distribution Date:</b> 5/22/14	
<b>Project Scope/Location:</b> SAN YSIDRO Conditional Use Permit (Process 3) for a Medical Marijuana Consumer Cooperative (MMCC) to operate in a 6,800 square foot suite within an existing 70,400 square foot building located at 650 E. San Ysidro. The 0.85-acre site is located in the SYIO-CSR-3 Zone within the San Ysidro Planned District and San Ysidro Community Plan Area. Council District 8. Notice Card=1.					
<b>Applicant Name:</b> Scherer, Scott			<b>Applicant Phone Number:</b> (858) 260-8815		
<b>Project Manager:</b> Gutierrez, Edith		<b>Phone Number:</b> (619) 446-5147	<b>Fax Number:</b> (619) 446-5245	<b>E-mail Address:</b> EGutierrez@sandiego.gov	
<b>Project Issues (To be completed by Community Planning Committee for initial review):</b>  <div style="font-family: cursive; font-size: 1.2em; padding: 10px;"> <p>The majority seemed to feel that this business would not fit well in the primarily tourist-focus shopping area of San Ysidro.</p> </div>					
<i>Attach Additional Pages If Necessary.</i>			<b>Please return to:</b> Project Management Division City of San Diego Development Services Department 1222 First Avenue, MS 302 San Diego, CA 92101		
Printed on recycled paper. Visit our web site at <a href="http://www.sandiego.gov/development-services">www.sandiego.gov/development-services</a> . Upon request, this information is available in alternative formats for persons with disabilities.					



THE CITY OF SAN DIEGO

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

## Community Planning Committee Distribution Form Part 2

Project Name: 650 E San Ysidro MMCC		Project Number: 368312	Distribution Date: 5/22/14
Project Scope/Location: SAN YSIDRO Conditional Use Permit (Process 3) for a Medical Marijuana Consumer Cooperative (MMCC) to operate in a 6,800 square foot suite within an existing 70,400 square foot building located at 650 E. San Ysidro. The 0.85-acre site is located in the SYIO-CSR-3 Zone within the San Ysidro Planned District and San Ysidro Community Plan Area. Council District 8. Notice Card=1.			
Applicant Name: Scherer, Scott		Applicant Phone Number: (858) 260-8815	
Project Manager: Gutierrez, Edith	Phone Number: (619) 446-5147	Fax Number: (619) 446-5245	E-mail Address: EGutierrez@sandiego.gov
Committee Recommendations (To be completed for Initial Review):			
<input type="checkbox"/> Vote to Approve	Members Yes	Members No	Members Abstain
<input type="checkbox"/> Vote to Approve With Conditions Listed Below	Members Yes	Members No	Members Abstain
<input type="checkbox"/> Vote to Approve With Non-Binding Recommendations Listed Below	Members Yes	Members No	Members Abstain
<input checked="" type="checkbox"/> Vote to Deny	Members Yes 8	Members No 1	Members Abstain 0
<input type="checkbox"/> No Action (Please specify, e.g., Need further information, Split vote, Lack of quorum, etc.)			<input type="checkbox"/> Continued
CONDITIONS:			
NAME: MICHAEL R. FREEDMAN		TITLE: CHAIRMAN	
SIGNATURE: <i>Michael R. Freedman</i>		DATE: 6/16/2014	
Attach Additional Pages If Necessary.		Please return to: Project Management Division City of San Diego Development Services Department 1222 First Avenue, MS 302 San Diego, CA 92101	
Printed on recycled paper. Visit our web site at <a href="http://www.sandiego.gov/development-services">www.sandiego.gov/development-services</a> . Upon request, this information is available in alternative formats for persons with disabilities.			



City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101  
(619) 446-5000

# 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

**Project Title:** E. SAN YSIDRO MMCC **Project No. For City Use Only:** 368312

**Project Address:** 658 E. SAN YSIDRO BLVD #B, SAN YSIDRO, CA 92173

**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 *Property held by a family trust.*

Name of individual (type or print): LIGHTHOUSE FAMILY TRUST by Trustee  
 Owner  Tenant/Lessee  Redevelopment Agency  
 Street Address: CONSTANTINE COSS  
8720 MARIPOSA STR. LA MESA  
 City/State/Zip: CA 91941  
 Phone No: 619-888-7175 Fax No: 619-825-7120  
 Signature: [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: \_\_\_\_\_



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

# 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: Jason M-B Wells OBO San Ysidro Business Association		E-mail Address: jwells@sanysidro.biz	
Address: 663 E San Ysidro Blvd	City: San Ysidro	State: CA	Zip Code: 92173 Telephone: (619) 428-1281

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

Wayne Sherer

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
368312	12/17/2014	Edith Gutierrez

Decision (describe the permit/approval decision):  
 Hearing Officer Teasley approved the permit

**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. The San Ysidro Planning Group Opposed this Project. So it is **NOT IN COMPLIANCE** with **Community Plan** intent.
2. Project **NOT IN COMPLIANCE** with **Parking Req.** DPM Gutierrez stated to Hearing Officer Teasley that sufficient parking does exist - **THIS IS NOT TRUE.** Per Report HO-14-078, Attach. 5 (attached hereto, the three buildings on the Project premises comprise 24,023 SF, necessitating (per San Ysidro Planned District Rq of 2.1 spaces/ 1,00SF) 50.45 parking spaces. Only 33 exist.
3. Permit was approved based on the MMCC being consist with Zone Category. Per HO Report-"Cat. 3 is intended to provide for establishments catering to the lodging, dining and general entertainentuses of the community and for visitors of the community." The proposed MMCC is not compliant with any of the aforementioned description - therefore **NOT CONSISTENT WITH ZONE.**
4. The precise location of **Project conflicts with economic development** of San Ysidro. Over 70,000 pedestrian traverse the storefront of the Project site each day. The well-being of San Ysidro's business community and, therefore, community livliehood rest on best and most appropriate use of its land. If the **Project** truly caters to those with medical prescriptions for thier product, a location on San Ysidro Blvd is not only unwarranted, but **detrimental** to the other business in San Ysidro's commercial core.

**\*\* (Appeal Points 5 & 6 attached.) \*\***

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

Signature:  Date: 12/19/2014

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

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 DEC 19 2014  
 DEVELOPMENT SERVICES

5. Appropriate law enforcement is not available for Project site. The Project site is within walking distance of the World's Busiest Land Border Crossing. I sit on the SDPD Southern Division Captain's Advisory Board and the SDPD Chief's Latino Advisory Board and can attest to the fact that between a dire shortage of officers and the need for officers to tend to border-related incidents, there is **NO available law enforcement to ensure the restraint of activities for the subject project**. State law enforcement in San Ysidro is non-existent.

6. San Diego Municipal Code (SDMC) Section 141.0614 requires a 1,000 ft 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. If approved, this MMCC will be physically adjacent to Bargain Mart – who specializes in children's clothing. This proposed MMCC will be next to a minor-oriented **facility IN VIOLATION OF SDMC Section 141.0614**.

## ATTACHMENT 5

HEARING OFFICER  
RESOLUTION NO. HO-  
CONDITIONAL USE PERMIT NO. 1298246  
**658 E. SAN YSIDRO MMCC PROJECT NO. 368312**

WHEREAS, TRUSTEES OF THE LIGHTHOUSE FAMILY TRUST, Owner and WAYNE ALEXANDER SCHERER, Permittee, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1298246), on portions of a 0.85-acre site;

WHEREAS, the project site is located 658 E. San Ysidro Boulevard in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area;

WHEREAS, the project site is legally described as all that portion of the Northeast Quarter of the Southeaster Quarter of Section 1, Township 19 South, Range 2 West, San Bernardino Base and Meridian, State of California, June 17, 1953, Document No. 1953-082665 in Book 4893, Page 306;

WHEREAS, on December 17, 2014, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 1298246 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 31, 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 there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

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 December 17, 2014.

**FINDINGS:**

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

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

This proposed project is a request for a Conditional Use Permit (CUP) to operate in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site. The site is in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area.

## ATTACHMENT 5

The site is designated Border Commercial by the San Ysidro Community Plan and is also within an area known as the Casas de Cambio and Visitor Serving District 3. This area is known for uses which include Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to preserve and enhance the community-oriented character in the historic commercial district; encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents. The proposed MMCC, commercial services, is consistent with the land use designation.

The proposed use is allowed with an approved CUP within the CSR-3 zone of the San Ysidro Planned District and is consistent with the community plan designation, therefore the proposed MMCC 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 6,868 square foot MMCC site located at 658 E. San Ysidro Boulevard is within an existing 16,302 square foot two-story building on a 0.85-acre site. The existing tenant space is currently vacant. The project proposes interior improvements that include a lobby/information center, office, storage, retail room and restrooms. 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 improvements include replacing the most westerly driveway, serving the project site on E. San Ysidro Boulevard, with an ADA-compliant City standard driveway.

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. 1310456. 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 6,868 square foot MMCC located at 658 E. San Ysidro Boulevard is within an existing two-story building. The 0.85-acre site is zoned CSR-3 Zone of the San Ysidro Planned District. The site contains three existing buildings constructed between 1981-1985, per Building Permit No's S12918, A30938 & A41689; Building A, one-story, 16,302 square feet, Building B one-story, 1,891 square feet, Building C, two-story, 5,830 square feet. The proposed 6,868 square foot tenant space is located in Building A and is currently vacant.

The existing businesses within the 0.85-acre site include retail, commercial services and professional offices. The CSR zone is intended to allow for commercial strip development which includes retail, wholesale and commercial services. The Recreational-Commercial Category-3 is intended to provide for establishments catering to the lodging, dining, and general entertainment uses of the community and for visitors to the community.

The project proposes interior improvements that include a reception area, dispensary area, office, storage and restrooms. 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 improvements include replacing the existing westerly driveway, serving the project site on E. San Ysidro Boulevard, with an ADA-compliant City standard driveway.

MMCCs are allowed in the CSR-3 zone of the San Ysidro Planned District 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 Border Commercial. 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 6,868 square foot MMCC located at 658 E. San Ysidro Boulevard is within an existing two-story building on a 0.85-acre site. The site is zoned CSR-3 Zone of the San Ysidro Planned District. The site is designated Border Commercial by the San Ysidro Community Plan and is also within an area known as the Casas de Cambio and Visitor Serving District 3. This area is known for uses which include

## ATTACHMENT 5

Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to preserve and enhance the community-oriented character in the historic commercial district; encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents.

MMCCs, classified as commercial services, are allowed in the CSR-3 Zone of the San Ysidro Planned District with an approved Conditional Use Permit (CUP) and are consistent with the land use designation of Border Commercial. 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 proposed MMCC is in a 6,868 square foot tenant space within an existing 16,302 square foot building. The uses within the building include mostly retail, commercial services and professional offices. The proposed MMCC is a permitted use in the CSR-3 Zone of the San Ysidro Planned District with an approved CUP and is consistent with the community plan designation, therefore the use is appropriate at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Conditional Use Permit No. 1298246 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. 1298246, a copy of which is attached hereto and made a part hereof.

---

Edith Gutierrez  
Development Project Manager  
Development Services

Adopted on: December 17, 2014

Job Order No. 24004630

PTS# 368312

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 City of San Diego Development Services 1222 First Ave. 3rd Floor San Diego, CA 92101 THE CITY OF SAN DIEGO	<h2 style="margin:0;">Development Permit/ Environmental Determination Appeal Application</h2>	FORM <h1 style="margin:0;">DS-3031</h1> 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              | <input type="checkbox"/> Environmental Determination - Appeal to City Council    |
| <input checked="" type="checkbox"/> Process Three Decision - Appeal to Planning Commission | <input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit |
| <input type="checkbox"/> 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: Bertha Alicia Gonzalez		E-mail Address: ahoranow2008@hotmail.com	
Address: 378 East San Ysidro Blvd	City: San Ysidro	State: CA	Zip Code: 92173 Telephone: (619) 428-2277

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

Wayne Sherer

**4. Project Information**

Permit/Environmental Determination & Permit/Document No.: Conditional Use Permit No. 1298246	Date of Decision/Determination: 12/17/2014	City Project Manager: Edith Gutierrez
---	---	--

Decision (describe the permit/approval decision):  
Conditional Use Permit approved for Medical Marijuana Consumer Cooperative

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

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Factual Error               | <input type="checkbox"/> New Information                                      |
| <input checked="" type="checkbox"/> Conflict with other matters | <input type="checkbox"/> City-wide Significance (Process Four decisions only) |
| <input checked="" type="checkbox"/> 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.)

The project located at 658 E. San Ysidro Blvd is not in compliance with the San Ysidro Community Planning (PDO) and the Conditional Use Permit should not be granted. This project is for the development of a Medicinal Marijuana Dispensary. This project would not be in compliance with San Diego Municipal Code Section 141.0614 as it within a 1,000 feet of the recreation/community center where the San Ysidro Business Association and the San Ysidro Chamber of Commer conduct their meetings. There is also a children's program at this location. There are numerous children stores in the area including Factory 2 U, Bizmart, and Goodwill among other children's stores.

This project will also impede on the standard of living for this living in apartments wich are within 1,000 feet of the project. There has been a big effort to clean up the San Ysidro Business Corridor because it is the gateway not just for to California but also to the United States of America. This efford would go down in vain if this establishment would be permitted on the main thoroughfare of San Ysidro, San Ysidro Blvd. There are thousands of tourist who pass by this location daily. This would be a bad representation of the City of San Diego the Great State of California and the Country.

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Continue in next page.....

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

Signature: B a Gonzalez Date: 12/30/2014

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

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DS-3031 Appeal of Conditional Use Permit No. 1298246 12/17/2014

As per City of San Diego Parcel Information Report Number 101 (Exhibit A), this project does not meet the parking requirements for this commercial shopping center (Exhibit A, page 3).


Permitting a Medical Marijuana Dispensary jeopardizes the Public safety of the citizens in the area. On December 9, 2014, two people tried to rob a Dispensary in Casa de Oro, Spring Valley. (Exhibit B). An Employee of the dispensary was shot, and the robbers put the rest of the community in danger by resisting the arrest and trying to get away. On April 25, 2014, two suspects tried to rob a dispensary in North Park. (Exhibit C) One suspect was fatally shot, and the security guard of the dispensary was shot in the abdomen. Marijuana Dispensaries are susceptible to armed robbery and other types of violence due to the amount of cash on hand and the criminal element that frequent these establishments. This location would also present a clear route to Mexico in an attempt to get away from the scene of the crime after a robbery.

Lastly, marijuana is illegal under federal law. (Exhibit D) The federal government has shut down marijuana dispensaries, criminally prosecuted dispensary owners, and confiscated their property even though they are operating legally under the state's medical marijuana law. So this is a clear violation of the federal law.

OC-01 – The businesses in question, two cellular phone device kiosks fall under the indoor/outdoor scenario. In order for these businesses to operate in legal fashion, the seller must not gather clients on City property. No one at any point in time must be doing business on a public sidewalk. Any business can come in from the sidewalk, but is only allowed to have costumers inside the property.

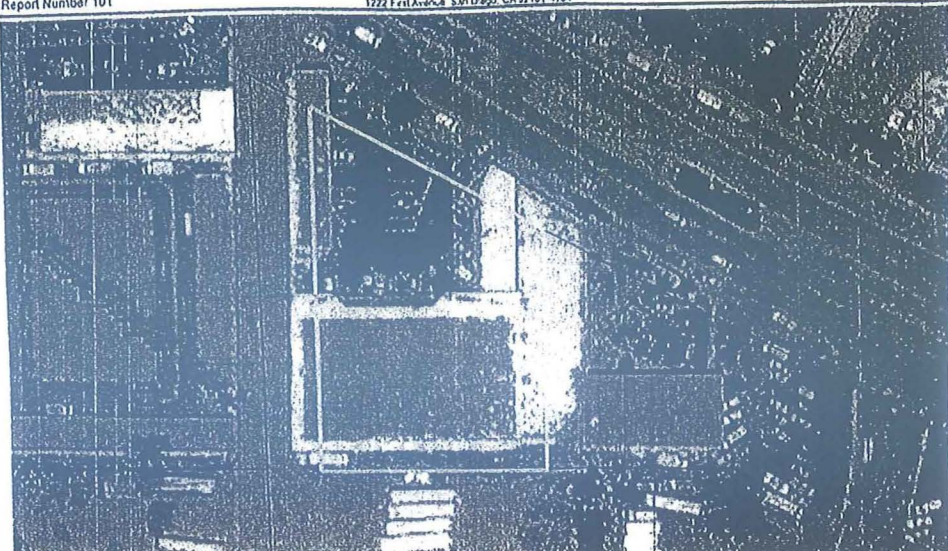
### Parcel Information Report

Report Number 101



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

4/18/2014 14:22:07  
Page 1 of 1



North (↑) 33 feet Scale is Approximate

#### Map Layers Included in Report

Description	Visible	Transparent	Has Intersecting Features
Roads	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No
Freeways	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No
Parcels	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Yes
Base Zones ("Official Zoning Map")	<input type="checkbox"/>	<input type="checkbox"/>	Yes
Orthophotos (1999)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No

Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

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#### Intersecting Features

#### Parcels

APN	Recordation	Owner Information	Valuation	Other
66300-5300	Record 080507 Date 2/2/2006	LIGHTHOUSE FAMILY TRUST 12-27-05	Land \$925,000	Units 1
	Legal	P O BOX 2463	Imp. \$2,714,000	Taxable <input checked="" type="checkbox"/>
Address(es)	SEC 1-19-2W SEQ PARS 2&3	LA JOLLA CA 92038	Total \$3,639,000	Ovn Occ <input type="checkbox"/>
650 SAN YSIRO BL				

#### Base Zones ("Official Zoning Map")

Zonename	Ordinance Number	Implementation Date
SYIO-CSR-3	R-301263	02/28/2008

PK 02 23 14  
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CBRAUN

PARCEL INFORMATION REPORT NUMBER 101

Exhibit A

OC-02 – The City of San Diego and its Parcel Information Report Number 101 for this commercial lot at 650 E San Ysidro Blvd. has a property line that does not match the property lines of the actual development that exists there. (See attached Parcel Information Report).

The property lines that the City of San Diego has documented are not particularly clear to be the property lines of the Site. For this matter, the planners were hesitant to provide precise information regarding the correct setbacks of the Site. We have done the setback research that you will find on OC-03, however, it is of the best interest of the business owner to provide us with a Land Survey by the Property owner in order for exact verification to complement and verify our setback study.

OC-03 – Setback studies of the site are the following. The front of the lot has a Zero Setback that is compatible with the wishes of the business owners. As long as there are no protruding structures to the front property of the City, in this case the sidewalk, then there is no problem having any type of business extending to any part of the front of the lot, in this case being, San Ysidro Boulevard.

The side yard setback however falls under the Rules for the CSR-3 Regulation which is depicted here in this chart:

**Table 1519-03I**  
**Minimum Yard Dimensions for Commercial Zones**

<b>Zone</b>	<b>Front Yard (ft)</b>	<b>Side Yard (Interior) (ft)</b>	<b>Side Yard (Street) (ft)</b>	<b>Rear Yard (ft)</b>
CSF-1,2,3	20	0 <sup>(1)</sup>	10 <sup>(2)</sup>	0 <sup>(1)</sup>
CSR-1,2,3	0	0 <sup>(1)</sup>	10 <sup>(2)</sup>	0 <sup>(1)</sup>
CT-1,2,3	15	0 <sup>(1)</sup>	15	0 <sup>(1)</sup>

**Footnotes for Table 1519-03I**

- <sup>1</sup> If adjacent to residentially zoned property, provide a 15-foot building setback with the exception that the first story can be placed along the property line (0-foot setback) provided that the second story is stepped back 15 feet. In all cases, the building shall be set back or stepped back from the required setback or property line an additional distance of 3 feet for each story above two.
- <sup>2</sup> Where the lot is less than 50 feet in width, the minimum Street Side Yard shall be as shown in Table 1519-03J.

The interior side yard setback for the street side is a 10 Foot one. The code says that if the building front is more than 50', then there will be

a side yard setback of 10'. Being that the front dimension is 194', then this setback applies.

The building was built under a different code thus the setback did not apply to the lot until recent changes to the code. No exception unless a variance is pursued. A setback variance for a commercial property in this zone can take approximately 3 to 6 months to pursue (sometimes even longer), with the outcome being uncertain. It is recommended by us that if you would like to pursue this variance, you do the appropriate feasibility study in order to see if the project is worth pursuing. Be prepared to spend the time, effort and funds for it, weighing in the fact that it may be rejected by officials at the end of the task. These variances are never a guarantee as it is not to us or building officials but also it is up the public and neighbors to decide.

OC-04 – Parking requirements for this commercial shopping center fall under the category of Parking Ratios for Retail Sales, Commercial Services, and Mixed-Use Development. Parking Spaces Required per 1,000 Square Feet of Floor Area Unless Otherwise Noted (Floor Area Includes Gross Floor Area plus below Grade Floor Area and Excludes Floor Area Devoted to Parking). The **approximate** square footage of the 3 buildings that stand on the site are as follows:

2 story north building:	3,960 SF
Single story west building:	14,175 SF
Single story south building:	<u>1,980 SF</u>
Approximate Square Footage:	19,955 SF

For this amount of square footage on all three buildings, there would have to be **approximately 42 parking spaces** for this property to comply per today's code.

OC-05 – There will have to be a Shared Parking Agreement between the property owner and the City of San Diego which will have to be pursued during the permit process. This agreement whether temporary or permanent will be officially documented and will be a part of the title of the property in question 650 E San Ysidro Blvd.

End of Report.

Project Name: San Ysidro Kiosk Projects

Project Number: 0.235

Early assistance plan check, preliminary design review with San Diego City Planners, mapping and zoning, DPI entering, parcel information checklist, Municipal code check, building code check, and all applicable verification to determine all possible compliance scenarios on the two projects of two projects located at 650 E San Ysidro Boulevard, in San Ysidro, California.

Report.

The property located at 650 E San Ysidro Blvd in San Ysidro California, is part of the San Ysidro Implementing Ordinance (SYIO – CSR-3) and must comply with all of the requirements under this ordinance. The revised Chapters and divisions pertaining to this investigation regarding the feasibility in question are the following:

Municipal Code Chapter 15, Article 18, Appendix A  
Article 18: San Ysidro Planned District  
Appendix A: Permitted Uses

Municipal Code Chapter 14, Article 02, Division 5  
Article 2: General Development Regulations  
Division 5: Parking Regulations

Municipal Code Chapter 13, Article 01, Division 5  
Article 1: Base Zones  
Division 5: Commercial Base Zones

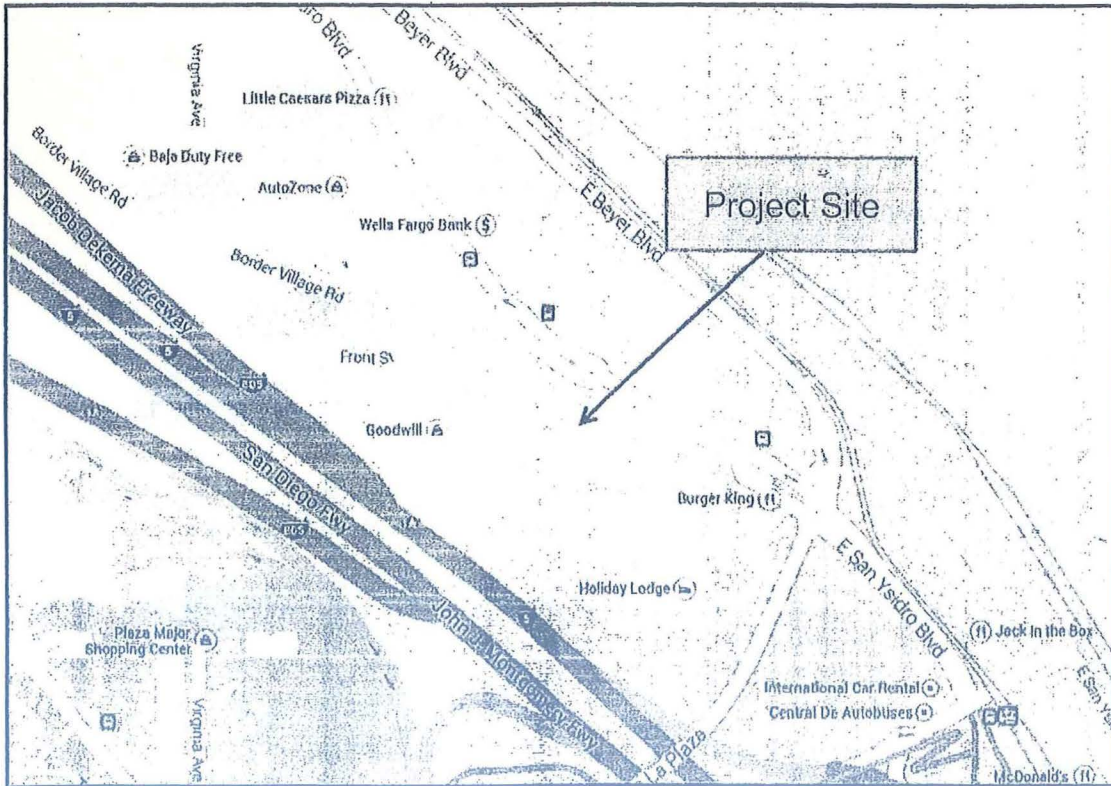
Municipal Code Chapter 15, Article 19, Division 03  
Article 19: Southeastern San Diego Planned District  
Division 3: Zoning  
Commercial Zone Regulations - CSF, CSR and CT

Attached is a Parcel Information Report Number 101

San Diego City Planners contacted for research: Corey Braun, Sara Osborne, Gary Geiler, Karen Bucey.

There are several observation and conclusions to this report, they will be catalogued in the following manner OC-01 for the first one, OC-02 for the second, and so forth.





**Project Location Map**

658 E San Ysidro MMCC – 650 and 654 East San Ysidro Boulevard  
 PROJECT NO. 368312



ATTACHMENT 2

Wild escape try after pot shop robbery | UTSanDiego.com

## Wild escape try after pot shop robbery

Two arrested a few blocks away from storefront; one was wounded

By [Lyndsay Winkley \(/staff/lyndsay-winkley/\)](#) 11:41 a.m. Dec. 9, 2014 Updated 7:31 p.m.

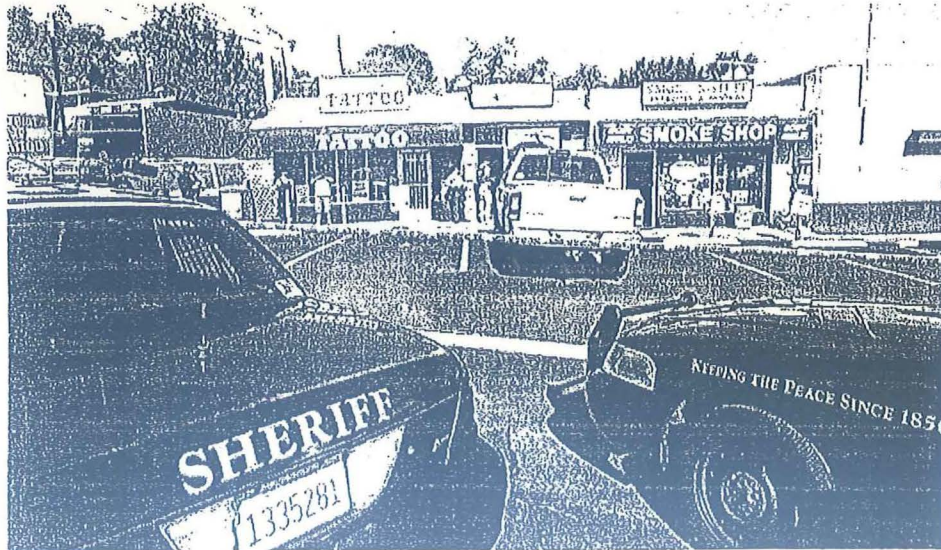


Exhibit B

Details are few in an apparent robbery at a medical marijuana dispensary in Casa de Oro that involved a shooting and someone being taken in to custody by a Sheriff dog. — *John Gibbins*

SPRING VALLEY — A bloodied would-be robber who held up an illegal marijuana dispensary clung to the top of a car in a dramatic getaway attempt, witnesses said, only to be arrested by deputies minutes later in Spring Valley Tuesday.

Ray Shealy said he was shopping in a smoke shop in a strip mall on Campo Road about 11 a.m., when a man walked in and asked if anyone knew what was happening at the dispensary next door. The man said a gunman had gone inside and dragged someone else in. The smoke shop owner and Shealy went to investigate and rang the doorbell at the dispensary.

"A voice was yelling, 'We're being robbed! Call police!'" Shealy said. "We heard gunshots. At the second shot, I ran to the bar and called 911." Shealy said he hid behind a cinder block wall at the Spring Valley Inn Cocktail Lounge, next to the smoke shop.

Sheriff's Lt. Christopher May said what unfolded during the robbery and subsequent shooting is still being investigated, but deputies believe an armed, 29-year-old robber tried to hold up the Spring Valley Greens dispensary, near Spring Drive, with a getaway car outside at the ready. People inside the dispensary struggled with the robber and he was shot.

A 32-year-old employee of the smoke shop next door was also shot in the lower body when he tried to help the robbery victims, May said. Deputies believe the robber's handgun was fired in the incident, but weren't clear who shot the weapon. A second weapon was found at the location and deputies are investigating whether that gun was fired.

He said it was unclear whether anything was taken from the shop.

Minutes after the shooting, deputies saw a car speeding from the dispensary parking lot. Witnesses told deputies the injured robber ran from the shop and hopped onto the hood of a getaway car. He held on to the hood for a short way before falling into the street. The driver, a 30-year-old man, stopped, helped the injured man into the car and sped off.

A salesman at Imports Auto Outlet on Campo Road and Citradora Drive said he heard a car speeding down Campo Road. He looked up and saw a Dodge Charger stopped at Bancroft Drive and another man running toward it. That man was being chased by two men, one wielding a baseball bat. The man was getting hit with the bat before he jumped on the hood of the car, the salesman said.

Another witness said he was driving into the strip mall when he saw some men from the dispensary chasing a bloodied man from the shop.

May said deputies are trying to verify the witness accounts, and he could not confirm that people from the dispensary had chased

<http://www.utsandiego.com/news/2014/dec/09/robbery-one-shot-spring-valley/all/2print>

12/10/2014

"We went to see. The car had taken off, driving real fast — 'Dukes of Hazzard' fast," he said.

Deputies tried to pull the speeding car over, but the driver didn't stop for several blocks, May said. When the car did stop, on Camino Paz, the injured robber tried to run. He only made it across the street before turning back toward the car and getting on the ground, May said. Deputies said the driver didn't comply with their requests and deputies sent a sheriff's dog to apprehend him.

Both men were taken to hospitals, the robber with multiple gunshot wounds and the driver with injuries from the dog. Neither of their injuries was considered life-threatening, May said. The two men were arrested.

Campo Road was closed between Spring Drive and Camino Paz for several hours while deputies investigated. Broken bottles of marijuana and a bullet casing could be seen on the floor of the shop, left disordered by the robbery.

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## Suspect arrested in fatal marijuana dispensary robbery

Posted: Sep 24, 2014 4:41 PM PDT

Updated: Sep 24, 2014 7:10 PM PDT

SAN DIEGO (CNS) - A suspected gang member was behind bars in Texas today for allegedly taking part in a North Park marijuana-dispensary robbery during which one of the perpetrators died in a shootout with a security guard.

Federal agents took 21-year-old Jonathan Collins into custody on suspicion of murder Tuesday evening at a Houston apartment complex, Deputy U.S. Marshal Alfredo Perez said. The suspect, the second arrested in the case, was booked into Harris County Jail pending extradition proceedings.

Collins was the subject of a warrant from San Diego in connection with the holdup and fatal shooting at a medicinal-cannabis shop in the 3800 block of Ray Street on April 25.

Shortly before 12:30 that afternoon, one of two teenagers trying to rob the business exchanged gunfire with a security officer. The other youth, 18-year-old Marlon Thomas of San Diego, died at the scene. The guard suffered a non-fatal bullet wound to the abdomen.

In May, the suspected fugitive gunman, Kurese Bell, then 17, was arrested at a Los Angeles-area motel. He was charged as an adult with murder, attempted murder and robbery and faces life in prison if convicted.

Homicide Lt. Paul Rorrison declined to disclose Collins' suspected involvement in the crime.

Four days before the fatal shootout, Bell and Thomas allegedly held up an employee at a smoke shop on El Cajon Boulevard. The robbery was interrupted when a second worker yelled out, sending the suspects fleeing. Before leaving, Bell trained his gun on one of the victims and fired off a round, but missed, according to prosecutors.

Exhibit C



Choices offer free marijuana to new voters

es told by

Below: Map Photos Video Discuss Related  
 U.S. prosecutors send letters even though state law allows

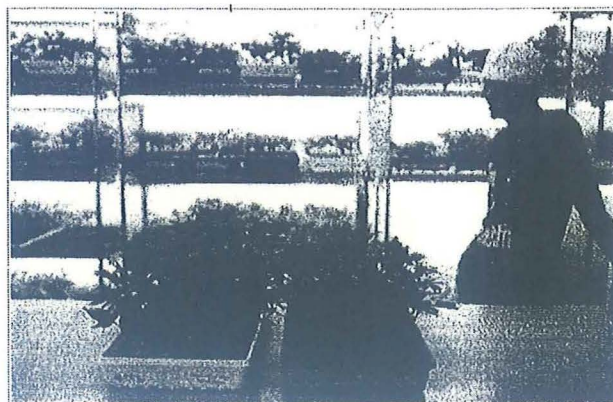
By  
**LISA LEFF**

Associated Press

updated 10/8/2011 7:56:13 PM ET

**SAN FRANCISCO** — Federal prosecutors are cracking down on some pot dispensaries in California, warning the stores that they must shut down in 45 days or face criminal charges and confiscation of their property even if they are operating legally under the state's 15-year-old medical marijuana law.

In an escalation of the ongoing conflict between the U.S. government and the nation's burgeoning medical marijuana industry, at least 16 pot shops or their landlords received letters this week stating they are violating federal drug laws, even though medical marijuana is legal in California. The state's four U.S. attorneys were scheduled Friday to announce a broader coordinated crackdown.



Marijuana plants are shown for sale in a medical marijuana dispensary in Oakland, Calif.

Their offices refused Thursday to confirm the closure orders. The Associated Press obtained copies of the letters that a prosecutor sent to at least 12 San Diego dispensaries. They state that federal law "takes precedence over state law and applies regardless of the particular uses for which a dispensary is selling and distributing marijuana."

IRS ruling strikes fear in medical marijuana industry

"Under United States law, a dispensary's operations involving sales and distribution of marijuana are illegal and subject to criminal prosecution and civil enforcement actions," according to the letters signed by U.S. Attorney Laura Duffy in San Diego. "Real and personal property involved in such operations are subject to seizure by and forfeiture to the United States ... regardless of the purported purpose of the dispensary."

The move comes a little more than two months after the Obama administration toughened its stand on medical marijuana. For two years before that, federal officials had indicated they would not move aggressively against dispensaries in compliance with laws in the 16 states where pot is legal for people with doctors' recommendations.

The Department of Justice issued a policy memo to federal prosecutors in late June stating that marijuana dispensaries and licensed growers in states with medical marijuana laws could face prosecution for violating federal drug and money-laundering laws. The effort to shutter California dispensaries appeared to be the most far-reaching effort so far to put that guidance into action.

"This really shouldn't come as a surprise to anyone. The administration is simply making good on multiple threats issued since President Obama took office," said Kevin Sabet, a former adviser to the president's drug czar and a fellow at the University of Pennsylvania's Center for Substance Abuse Solutions. "The challenge is to balance the scarcity of law enforcement resources and the sanctity of this country's medication approval process. It seems like the administration is simply making good on multiple statements made previously to appropriately strike that balance."

Greg Anton, a lawyer who represents dispensary Marin Alliance for Medical Marijuana, said its landlord received an "extremely threatening" letter Wednesday invoking a federal law that imposes additional penalties for selling drugs within 1,000 feet of schools, parks and playgrounds.

The landlord was ordered to evict the 14-year-old pot club or risk imprisonment, plus forfeiture of the property and all the rent he has collected while the dispensary has been in business, Anton said.

Marin Alliance's founder "has been paying state and federal taxes for 14 years, and they have cashed all the checks," he said. "All I hear from Obama is whining about his budget, but he has money to do this which will actually reduce revenues."

Kris Hermes, a spokesman for the medical marijuana advocacy group Americans for Safe Access, said the warnings are part of what appears to be an attempt by the Obama administration to curb medical marijuana on multiple fronts and through multiple agencies. A series of dispensary raids in Montana, for example, involved agents from not only the FBI and U.S. Drug Enforcement Agency, but the Internal Revenue Service and

Exhibit D

Environmental Protection Agency.

Going after property owners is not a new tactic though, Hermes said. Five years ago, the Department of Justice under President George W. Bush made similar threats to about 300 Los Angeles-area landlords who were renting space to medical marijuana outlets, some of whom were eventually evicted or closed their doors voluntarily, he said.

"It did have an impact. However, the federal government never acted on its threats, never prosecuted anybody, never even went to court to begin prosecutions," Hermes said. "By and large, they were empty threats, but they relied on them and the cost of postage to shut down as many facilities as they could without having to engage in criminal enforcement activity."

Besides the dozen dispensaries in San Diego and the one in Marin County, at least three shops in San Francisco already have received closure notices, said Dale Gieringer, director of the California chapter of the National Organization for the Reform of Marijuana Laws.

The San Diego medical marijuana outlets put on notice were the same 12 that city officials sued last month for operating illegally, after activists there threatened to force an election on a zoning plan adopted to regulate the city's fast-growing medical marijuana industry, City Attorney Jan Goldsmith said. A judge on Wednesday ordered nine of the targeted shops to close, while the other three shut down voluntarily, Goldsmith said.

Duffy, the U.S. attorney for far Southern California, planned to issue warning letters to property owners and all of the 180 or so dispensaries that have proliferated in San Diego in the absence of compromise regulations, according to Goldsmith.

"The real power is with the federal government," he said. "They have the asset forfeiture, and that means either the federal government will own a lot of property or these landlords will evict a lot of dispensaries."

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## LAW OFFICE OF JESSICA C. MCELFRISH

January 30, 2015

Planning Commission  
City of San Diego  
1222 First Avenue, 5th Floor  
San Diego, CA 92101

Edith Gutierrez  
Development Project Manager  
City of San Diego  
Development Services  
1222 First Avenue  
San Diego, CA 92101-4154

**RE: Response to Development Permit Appeal Applications Filed for 658 E. San Ysidro Boulevard/Project No. 368312/Internal Order No. 24004630**

Dear Planning Commission Chair Golba, Vice-Chair Haase, Commissioners Austin, Peerson, Quiroz, Wagner, and Whalen, and Ms. Gutierrez:

My office represents San Diego Alternative Treatment Center (SDATC), and its directors, including Wayne Scherer. SDATC seeks a conditional use permit from the City of San Diego to operate a medical marijuana consumer cooperative (MMCC) at 658 E. San Ysidro Boulevard, San Diego, California, 92173. Though Development Services staff recommended approval of this project and Hearing Officer Kenneth Teasley also granted this project a conditional use permit, Jason Wells and Bertha Alicia Gonzalez filed Development Permit Appeal Applications.

The project's proposed location, 658 E. San Ysidro, perfectly complies with the City of San Diego's medical marijuana consumer cooperative land use ordinance, has appropriate zoning, and meets the distance requirements of the San Diego Municipal Code for a MMCC. Despite this, in the appeal filed by Ms. Gonzalez and received by DSD on December 30, 2014, Ms. Gonzalez contends that SDATC should not receive a conditional use permit because a MMCC does not comply with the San Ysidro Community Plan or the City's MMCC zoning ordinance, set forth at San Diego Municipal Code (SDMC) section 141.0614. She is incorrect.

First, as for her claim that SDATC is within 1,000 feet of a "recreation/ community center" – specifically the building where the San Ysidro Chamber of Commerce is located – recreation and community centers are not among the sensitive uses listed in subdivision (a)(1) of SDMC section 141.0614. Ms. Gonzalez also mentions that the Chamber may have a youth program, and mentions that some nearby clothing stores sell some children's clothes, including Factory 2U, Bizmart, and Goodwill.

SDMC section 141.0614, subdivision (a)(1), requires that MMCCs not be within 1,000 feet of a minor-oriented facility, but the Chamber of Commerce building is not a minor-oriented facility. Clothing stores that offer some items for children are also not minor-oriented facilities. Rather, as discussed in earlier letters in this project's file, a minor-oriented facility is a facility designed to appeal to and serve minors exclusively or near exclusively. DSD has concluded that a minor-oriented facility is

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limited to the specific examples listed in the definition set forth at SDMC section 113.0103, or “other establishment[s] where the primary use is devoted to people under the age of 18.”

As for primary use, that means the allowed use on a premises that occupies a majority of the area of the premises. For minor-oriented facilities, this means that an establishment devoted to people under age 18 must be the primary use on a lot, or occupies a majority of the area on a lot. The Chamber of Commerce building cannot meet this definition, nor can a clothing store. Indeed, as part of its review of this project, DSD combed through and examined all uses within 1,000 feet of 658 E. San Ysidro Boulevard. DSD concluded that no sensitive uses, as set forth in the MMCC ordinance, or minor-oriented facilities are within 1,000 feet of the project.

Second, Ms. Gonzalez argues that the project is within 1,000 feet of apartments. However, the ordinance requires that MMCCs be a minimum of 100 feet away, measured in a radius, from residential zones (SDMC § 141.0106). This project satisfies that requirement. Ms. Gonzalez also states that a MMCC “would be a bad representation of the City of San Diego the Great State of California and the Country.” She also mentions that people have robbed unregulated and unlicensed dispensaries. She concludes, based on these reports, that “a criminal element [...] frequent these establishments.” However, Ms. Gonzalez is comparing unlicensed, unpermitted, and unregulated dispensaries – the sort that the City of San Diego has worked for years to close – to a licensed facility with a conditional use permit and a regulatory permit from the City of San Diego, staffed by responsible persons who have passed background checks conducted by San Diego Police Department. MMCCs such as this project must meet strict security, lighting, and safety requirements set forth in the San Diego Municipal Code.

The City Council imposed these rules to ensure public safety, as well as the safety of patrons of MMCCs, while permitting safe and affordable access to medical cannabis throughout the City of San Diego. To ensure safe access for all residents of San Diego and to avoid clustering, the City Council set a cap of four licensed MMCCs per council district, which must be 1,000 feet apart from each other, in addition to the rest of the zoning and distance requirements. Thus, Ms. Gonzalez is comparing unregulated, fly-by-night storefronts that the City seeks to close with court orders, with MMCCs that the City will regulate with two permits including a regulatory one renewed each year, annual audits upon request, background checks, and security measures including licensed guards whose sole duty is to ensure safety at the MMCC.

Third, Ms. Gonzalez points out that marijuana remains illegal under federal law. However, the City of San Diego decided to regulate MMCCs to ensure safe access as allowed under California law since 1996. The California Supreme Court and several California Courts of Appeal have concluded that the State of California and municipalities such as the City of San Diego uphold and are instruments of state law, not federal law, and comply with state law when they enact ordinances regulating medical marijuana. Such rulings include, but are not limited to, *City of Riverside v. Inland Empire Patients Health and Wellness Center* (2013) 56 Cal.4th 729, *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, and *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355.

Fourth, Ms. Gonzalez claims that this project does not have sufficient parking under the San Diego Municipal Code. However, per the cycle issue reports and the staff report to the hearing officer, DSD has concluded that the project does have sufficient parking, requiring no fewer than nine (9) spaces including one (1) van-accessible disabled parking space, be dedicated to the MMCC, and the property



January 30, 2015

shall have 32 parking spaces total, including two (2) disabled parking spaces. DSD staff addressed parking extensively in its review of this project, with which the applicant complied.

Fifth, Ms. Gonzalez has a few attachments to her appeal. Page 1 of Exhibit A of her appeal discusses cellphone kiosks. To be clear, this facility will operate inside of the building, not outside, at all times. Pages 2 and 3 discuss property and setback lines. Page 3 notes that when the building at 658 E. San Ysidro was constructed, the municipal code had different requirements. Thus, the current property lines and setback distances are previously conforming. Regardless, the applicant is not making any exterior changes that will alter the size or footprint of the building. Thus, no variance or land survey is required. Further, though Geographic Information Systems (GIS) measurements are imperfect by a few feet, the distances between the project and sensitive uses will not change by more than few feet, if a survey is performed. A change of a few feet will not change that the project complies with the City of San Diego's land use ordinance for MMCCs, or the staff's recommendation of approval. For all of these reasons, it would impose an atypical and undue burden on the applicant to have them perform a land survey for a project comprised of interior tenant improvements and no changes to the boundary lines or exterior footprint.

As for Mr. Wells, he makes many of the same arguments as Ms. Gonzalez made in his appeal, which DSD received on December 19, 2014. First, Mr. Wells claims that because the San Ysidro Community Planning Group voted not to approve the project, the project must not comply with the San Ysidro Community Plan. He also claims that a MMCC is not consistent with the uses allowed in the CSR-3 Zone of the San Ysidro Planned District. However, the City Council concluded that CSR-3 was a zone in which MMCCs could locate, acknowledging the need for safe access to medical marijuana throughout the City of San Diego, including for qualified patients in San Ysidro. Similarly, DSD staff concluded in its report to the hearing officer that a MMCC complies with the uses of the CSR-3 Zone of the San Ysidro Planned District, because a MMCC is a commercial use designed to serve the surrounding community and meet the needs of residents. As for Mr. Wells's concerns about distances between the project and a clothing store, parking requirements, and security, they echo Ms. Gonzalez's concerns, rebutted above.

For the reasons discussed above, San Diego Alternative Treatment Center respectfully requests that the City of San Diego Planning Commission deny the appeals and uphold the hearing officer's approval of a conditional use permit for this project.

Thank you.

Sincerely,

Jessica C. McElfresh  
Attorney-at-Law

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**PROJECT MANAGEMENT**  
**PERMIT CLERK**  
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004630

**CONDITONAL USE PERMIT NO. 1298246**  
**658 E. SAN YSIDRO MMCC - PROJECT NO. 368312**  
**PLANNING COMMISSION**

This Conditional Use Permit No. 1298246 is granted by the Planning Commission of the City of San Diego to TRUSTEES OF THE LIGHTHOUSE FAMILY TRUST, Owner and WAYNE ALEXANDER SCHERER, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 0.85-acre site is located at 658 E. San Ysidro Blvd in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area. The project site is legally described as all that portion of the Northeast Quarter of the Southeaster Quarter of Section 1, Township 19 South, Range 2 West, San Bernardino Base and Meridian, State of California, June 17, 1953, Document No. 1953-082665 in Book 4893, Page 306.

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 12, 2015, on file in the Development Services Department.

The project shall include:

- a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-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 March 12, 2018.
2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on March 12, 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 6,868 square foot tenant space shall be limited to the MMCC and any use permitted in the CSR-3 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 0.85-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 westerly driveway, serving the project site at E. San Ysidro Boulevard, maintaining the current width with a City standard driveway, per Standard Drawing SDG-159, satisfactory to the City Engineer.

**TRANSPORTATION REQUIREMENTS:**

25. No fewer than 9 parking spaces (including 1 van accessible space) for the proposed 6,868 square foot MMCC, and 32 parking spaces (including 2 accessible spaces) for the entire 0.85-acre site (with 32 parking spaces including 2 accessible spaces provided), shall be maintained on the property at all times in the approximate locations shown on Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

**POLICE DEPARTMENT RECOMMENDATION:**

26. 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 March 12, 2015 and Resolution No. PC-XXXX.

Conditional Use Permit No. 1298246 /PTS No. 368312  
Date of Approval: March 12, 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.

TRUSTEES OF THE LIGHTHOUSE  
FAMILY TRUST

Owner

By \_\_\_\_\_  
Constantine A. Coss  
Trustee

Owner

By \_\_\_\_\_  
Sophia L. Coss  
Trustee

WAYNE ALEXANDER SCHERER  
Permittee

By \_\_\_\_\_  
Wayne Alexander Scherer  
Permittee

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



PLANNING COMMISSION  
RESOLUTION NO. PC-  
CONDITONAL USE PERMIT NO. 1298246  
**658 E. SAN YSIDRO MMCC PROJECT NO. 368312**

WHEREAS, TRUSTEES OF THE LIGHTHOUSE FAMILY TRUST, Owner and WAYNE ALEXANDER SCHERER, Permittee, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1298246), on portions of a 0.85-acre site;

WHEREAS, the project site is located 658 E. San Ysidro Boulevard in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area;

WHEREAS, the project site is legally described as all that portion of the Northeast Quarter of the Southeaster Quarter of Section 1, Township 19 South, Range 2 West, San Bernardino Base and Meridian, State of California, June 17, 1953, Document No. 1953-082665 in Book 4893, Page 306;

WHEREAS, on March 12, 2015, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 1298246 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on October 31, 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 there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

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 March 12, 2015.

FINDINGS:

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

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

This proposed project is a request for a Conditional Use Permit (CUP) to operate in a 6,868 square foot tenant space within an existing 16,302 square foot, one-story building on a 0.85-acre site. The site is

in the CSR-3 Zone of the San Ysidro Planned District and the Coastal Height Limitation Overlay Zone within the San Ysidro Community Plan area.

The site is designated Border Commercial by the San Ysidro Community Plan and is also within an area known as the Casas de Cambio and Visitor Serving District 3. This area is known for uses which include Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to preserve and enhance the community-oriented character in the historic commercial district; encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents. The proposed MMCC, commercial services, is consistent with the land use designation.

The proposed use is allowed with an approved CUP within the CSR-3 zone of the San Ysidro Planned District and is consistent with the community plan designation, therefore the proposed MMCC 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 6,868 square foot MMCC site located at 658 E. San Ysidro Boulevard is within an existing 16,302 square foot two-story building on a 0.85-acre site. The existing tenant space is currently being used for retail (Bargain Mart). The project proposes interior improvements that include a lobby/information center, office, storage, retail room and restrooms. 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 improvements include replacing the most westerly driveway, serving the project site on E. San Ysidro Boulevard, with an ADA-compliant City standard driveway.

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, 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.). 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. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC's 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. 1310456. 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 6,868 square foot MMCC located at 658 E. San Ysidro Boulevard is within an existing two-story building. The 0.85-acre site is zoned CSR-3 Zone of the San Ysidro Planned District. The site contains three existing buildings constructed between 1981-1985, per Building Permit No's S12918, A30938 & A41689; Building A, one-story, 16,302 square feet, Building B one-story, 1,891 square feet, Building C, two-story, 5,830 square feet. The proposed 6,868 square foot tenant space is located in Building A and is currently being used for retail (Bargain Mart).

The existing businesses within the 0.85-acre site include retail, commercial services and professional offices. The CSR zone is intended to allow for commercial strip development which includes retail, wholesale and commercial services. The Recreational-Commercial Category-3 is intended to provide for establishments catering to the lodging, dining, and general entertainment uses of the community and for visitors to the community.

The project proposes interior improvements that include a reception area, dispensary area, office, storage and restrooms. 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 improvements include replacing the existing westerly driveway, serving the project site on E. San Ysidro Boulevard, with an ADA-compliant City standard driveway.

MMCCs are allowed in the CSR-3 zone of the San Ysidro Planned District 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, 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.). 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. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven

days a week. MMCC's 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 Border Commercial. 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 6,868 square foot MMCC located at 658 E. San Ysidro Boulevard is within an existing two-story building on a 0.85-acre site. The site is zoned CSR-3 Zone of the San Ysidro Planned District. The site is designated Border Commercial by the San Ysidro Community Plan and is also within an area known as the Casas de Cambio and Visitor Serving District 3. This area is known for uses which include Mexican insurance establishments, curio shops, motels, fast-food franchises and discount clothing stores. The goal of the community plan is to preserve and enhance the community-oriented character in the historic commercial district; encourage the maintenance of existing uses and the development of new community-serving commercial uses which meet the needs of the residents.

MMCCs, classified as commercial services, are allowed in the CSR-3 Zone of the San Ysidro Planned District with an approved Conditional Use Permit (CUP) and are consistent with the land use designation of Border Commercial. 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, 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.). 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. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC's 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 proposed MMCC is in a 6,868 square foot tenant space within an existing 16,302 square foot building. The uses within the building include mostly retail, commercial services and professional offices. The proposed MMCC is a permitted use in the CSR-3 Zone of the San Ysidro Planned District with an approved CUP and is consistent with the community plan designation, therefore the use is appropriate at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 1298246 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. 1298246, 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 12, 2015

Job Order No. 24004630