DATE: May 18, 2020

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department – Planning Division

SUBJECT: ADOPTION OF A RESOLUTION RECOMMENDING DENIAL OF A CONDITIONAL USE PERMIT (CUP19-00020) TO OPERATE A MEDICAL CANNABIS MANUFACTURING FACILITY WITHIN AN EXISTING BUILDING LOCATED AT 1629 ORD WAY – LEFT COAST, LLC – APPLICANT: ALEXANDRIA KOMETAS

RECOMMENDATION

Staff recommends that the Planning Commission, by motion:

Adopt Planning Commission Resolution No. 2020-P14, recommending the City Council deny Conditional Use Permit (CUP19-00014) to operate a medical cannabis manufacturing facility located at 1629 Ord Way.

PROJECT DESCRIPTION AND BACKGROUND

Site Review & Background: The business proposes to use an existing industrial building at 1629 Ord Way. The property has a General Plan Land Use designation of Light Industrial (LI) and is zoned Limited Industrial (IL). The surrounding zoning is IL to the north, east, and west and residential to the south. The site is located within the Peacock Neighborhood Planning Area. The building is part of an industrial park that was approved and constructed in the early 2000s.

On April 11, 2018, the City Council adopted Ordinance 18-0R0199-1 to allow, subject to certain requirements and limitations, commercial medical cannabis businesses, (excluding dispensaries) in specific industrial and agricultural zoning districts, subject to the issuance of a Local License pursuant to Chapter 7, Article XIII of the City Code and approval of a conditional use permit (CUP). On June 20, 2018, the City Council amended Articles 4, and 36 of the Zoning Ordinance to permit waivers of the 1,000-foot separation requirement for commercial cannabis businesses in the Industrial districts on a case by case basis.
**Project Description:** The proposed project consists of a request of a Conditional Use Permit (CUP19-00020) to operate a medical cannabis manufacturing facility. The proposal consists of dividing the building at 1629 Ord Way into two tenant spaces and Left Coast, LLC would occupy the southern unit.

**ANALYSIS**

The project is subject to review for consistency with the following plans, policies, and ordinances:

1. General Plan Land Use Element
2. Zoning Ordinance
4. State Licensing

1. **General Plan Consistency**

The General Plan Land Use Map designates the subject property as LI (Light Industrial) and the Land Use Element establishes the following specific policies for LI-designated properties:
Objective: To provide and protect industrial lands that can accommodate a wide range of moderate to low intensity industrial uses capable of being located adjacent to residential areas with minimal buffering and attenuation measures.

Staff's preliminary analysis is that the project is consistent with the General Plan. However, staff is not providing a full analysis of General Plan consistency because the recommendation is for denial as noted elsewhere in this report. If the Planning Commission recommends approval, staff will return to the next Planning Commission meeting with a resolution for approval that will include the necessary analysis.

2. Zoning Compliance

Zoning Ordinance Article 13 (Industrial Districts) allows medical cannabis manufacturing use, as defined in Article 4, subject to compliance with Zoning Ordinance Article 36, the Local License requirements in Chapter 7 of the Oceanside City Code, and all applicable state licensing requirements. Article 41 of the City’s Zoning Ordinance establishes specific findings which must be made in order for the City to approve a Conditional Use Permit, as follows:

Conditional Use Permit (CUP) Findings: Prior to the granting of a conditional use permit by the City, the applicant is required to demonstrate to the City that the following criteria have been or will be met:

(1) That the proposed location of the use is in accord with the objectives of this ordinance and the purposes of the district in which the site is located.

(2) That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city.

(3) That the proposed conditional use will comply with the provisions of this ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located.

Waiver of Locational Criteria: Article 36, Section 3604 of the Zoning Ordinance provides that medical cannabis facilities are subject to a minimum separation distance of 1,000 feet to any other regulated use and a 1,000-foot separation from public or private schools, childcare or pre-school facilities, public recreation facilities, churches or similar religious facilities, and residential districts.

The proposed business location is less than 1,000 feet away from a residential district. The applicant is allowed to request approval of a “Waiver of Locational Criteria” per Section 3605, which requires the following findings be made for any approval:
(a) The proposed use will not be contrary to the public interest.

(b) The proposed use will not be contrary to the spirit or intent of Article 13 or Article 36 of the Zoning Ordinance.

(c) The proposed use will not impair nearby property or the integrity of the underlying district.

(d) The proposed use will not encourage the development of an adult entertainment area or otherwise promote community blight.

(e) The proposed use will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

Staff's preliminary analysis is that the project is in compliance with the Zoning Ordinance. However, staff is not providing a full analysis of Zoning Ordinance compliance because the recommendation is for denial as noted elsewhere in this report. If the Planning Commission recommends approval, staff will return to the next Planning Commission meeting with a resolution for approval that will include the necessary analysis.


Chapter 7, Article XIII, Section 7.119 requires:

Prior to initiating operations, and as a continuing requisite to operating a medical cannabis facility, the legal representative of the persons wishing to operate a medical cannabis facility shall first obtain a local license from the city manager or designee and then a conditional use permit pursuant to all applicable provisions of the Oceanside Zoning Ordinance.

Chapter 7, Article XIII, Section 7.119.c. states:

It shall be unlawful for any person or entity to operate a medical cannabis facility in the city unless it has been granted a state license, a local license pursuant to this chapter, and a conditional use permit as required by the Oceanside Zoning Ordinance.

The City's Municipal Code requires approval of a local license, and a conditional use permit (CUP) prior to initiating operation of any medical cannabis facility. And the Municipal Code requires that the local license must be obtained prior to application for a CUP.

On January 31, 2020, City staff was contacted by California Department of Public Health (CDPH), Manufactured Cannabis Safety Branch regarding Left Coast, LLC. CDPH staff informed the City that it appeared Left Coast, LLC was manufacturing, distributing, and
holding cannabis and cannabis products on the site.

On February 11, 2020, CDPH and Oceanside Code Enforcement staff performed an inspection at 1629 Ord Way. According to CDPH staff, during an interview with the business owners, they admitted to manufacturing and distributing cannabis products on the site. Additionally, CDPH staff said the business owners also admitted during the inspection that there was cannabis within a portion of the building, which was locked.

CDPH staff stated the applicant was operating a medical cannabis manufacturing facility without video surveillance and digital storage, record keeping, and implementing a security plan, which are also requirements per Municipal Code Sections 7.120 and 7.126.

In communications with City staff, Left Coast does not dispute that it was manufacturing and disturbing cannabis project on the site, but argues they were required by the State to order cannabis product, see Attachment No. 2.

Based on the above, Left Coast was operating in violation of the Municipal Code because a CUP and a State license had not been approved and operational requirements were not met. While the City issued Left Coast a local license in May of 2019, the license did not grant the licensee approval to operate until the applicant obtained approval of a CUP, and the license included compliance with operational requirements.

On April 17, 2020, the State suspended Left Coast’s provisional license.

Chapter 7, Article XIII, Section 7.123 states:

Unless the city has expressly authorized in writing the renewal of the local license, a local license is immediately invalid upon expiration and the medical cannabis facility shall cease operations. The city manager or designee shall approve or deny the application for renewal based upon the grounds set forth in section 7.121.

On May 5, 2020 the Left Coast local license was due to expire. However, prior to the license expiring, Left Coast submitted a request to renew the local license. At this time, the City is tolling the expiration of the license, pending review and decision of whether or not to renew the license.

Chapter 7, Article XIII, Section 7.121 states the following:

(a) The city manager or designee shall reject an application for a local license upon a finding of good cause.

(c) All persons who are engaged in or who are attempting to engage in a medical cannabis activity in any form shall do so only in strict
compliance with the terms, conditions, limitations and restrictions of state law, this chapter, the Oceanside Zoning Ordinance, and all other applicable state and local laws and regulations.

(c) A local license issued by the local licensing authority constitutes a revocable privilege. The applicant has the burden of proving its qualifications for a local license at all times.

In light of the applicant operating in violation of the Municipal Code as noted above, and the State suspension of the provisional license, it is questionable whether the renewal of the local license will be approved.

The above analysis regarding the Municipal Code forms the basis for the staff recommendation of denial of the CUP application.

4. State Licensing

California Code of Regulations, Title 17, Division 1, Chapter 13 Manufactured Cannabis Safety contains applicable state regulations for the medical cannabis facility. On April 17, 2020, the California Department of Public Health, Manufactured Cannabis Safety Branch issued a Notice of License Suspension to the facility, see Attachment No. 3.

The violation states failure to comply with operational requirements, failure to implement security and video surveillance requirements, and failure to keep required records.

The State also provided Left Coast Trak-and-Trace information, which indicate the site had been used for cannabis activity starting on November 15, 2019.

The above information regarding failure to comply with state requirements also forms the basis for the staff recommendation of denial of the CUP application.

5. CEQA

The California Environmental Quality Act of 1970 (CEQA) and State Guidelines Section 15270 “Projects Which are Disapproved”, provides in subsection (a) CEQA does not apply to a project which a public agency rejects or disapproves; and subsection (b) allows for an initial screening of projects on the merits for quick disapprovals prior to initiation of the CEQA process where the agency can determine that the project cannot be approved. Should the Planning Commission recommend approval of the CUP, staff will return to the next Planning Commission meeting with a resolution of approval including a Class 1 categorical exemption per CEQA Guidelines Section 15301, “Existing Facilities.”

PUBLIC NOTIFICATION

Legal notice was published in the newspaper and mailed notices were sent to property owners of record within 1,500 feet and tenants within 100 feet of the subject property and interested parties.
City staff was contacted by the Oceanside Gateway Business Park Owner's Association, which opposes the project (see Attachment No. 3). The Association subsequently amended the recorded CC&Rs for the park to prohibit any type of cannabis establishment.

SUMMARY

Staff recommends that the Planning Commission adopt Resolution No. 2020-P14 recommending City Council deny Conditional Use Permit (CUP19-00014) to operate a medical cannabis manufacturing facility to be located at 1629 Ord Way.

PREPARED BY:

Stefanie Cervantes
Planner II

SUBMITTED BY:

Jeff Hunt
City Planner

Attachments:

1. Planning Commission Resolution 2020-P14
2. Letter from Alexandria Kometas dated May 5, 2020
3. California Department of Public Health, Notice of License Suspension, dated April 17, 2020
4. Letter from Oceanside Gateway Business Park Owner's Association
PLANNING COMMISSION
RESOLUTION NO. 2020-P14

A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF OCEANSIDE, CALIFORNIA RECOMMENDING
DENIAL OF A CONDITIONAL USE PERMIT ON CERTAIN
REAL PROPERTY IN THE CITY OF OCEANSIDE

APPLICATION NO: CUP19-00020
APPLICANT: LEFT COAST, LLC
LOCATION: 1629 ORD WAY

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES
RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms
prescribed by the Commission requesting a Conditional Use Permit for a Regulated Use under the
provisions of Articles 13, 36 and 41 of the Zoning Ordinance of the City of Oceanside to permit
the following:

To operate a medical cannabis manufacturing facility within an existing industrial
building
on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 18th
day of May, 2020 conduct a duly advertised public hearing as prescribed by law to consider said
application.

WHEREAS, the documents or other material which constitute the record of
proceedings upon which the decision is based will be maintained by the City of Oceanside
Planning Department, 300 North Coast Highway, Oceanside, California 92054.

WHEREAS, studies and investigations made by this Commission and on its behalf
reveal the following facts:

1. Article XIII, Section 7.119 of the Municipal Code requires persons wishing to
operate a medical cannabis facility shall first obtain a local license and then a
conditional use permit;

2. On February 11, 2020, the applicant admitted to manufacturing and distributing
cannabis products on the site. Additionally, the business owners admitted that there
was cannabis within a portion of the building, which was locked;
3. The applicant was also operating a medical cannabis manufacturing facility without video surveillance and digital storage, an alarm system, and security as required per the Municipal Code; and

4. Left Coast was operating in violation of the Municipal Code because a CUP and a State license had not been approved.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby RECOMMEND DENIAL of Conditional Use Permit CUP19-00020.

PASSED AND ADOPTED Resolution No. 2020-P14 on May 18, 2020 by the following vote, to wit:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Kyle Krahel, Chairperson
Oceanside Planning Commission

ATTEST:

Jeff Hunt, Secretary

I, JEFF HUNT, Secretary of the Oceanside Planning Commission, hereby certify that this is a true and correct copy of Resolution No. 2020-P14.

Dated:________________________

Applicant accepts and agrees with all conditions of approval and acknowledges impact fees may be required as stated herein:

__________________________________ Date:________________________
Applicant Signature
May 5, 2020

Ms. Stefanie Cervantes

Planner II

City of Oceanside

Development Services Department/Planning Division

Sent via electronic mail to scervantes@oceansideca.org

Dear Ms. Cervantes:

This letter is in response to the City of Oceanside’s most recent letter to Left Coast, LLC on April 30, 2020 in which the City requested additional clarifications of the information we provided the City in our initial response to the City’s Application Review Committee on April 21, 2020.

To provide the most complete and helpful responses, we have answered each section in detail below. Please let us know if there is any other information that would be helpful and we greatly appreciate the City’s hard work and assistance throughout this process. The sections in bold are from the City’s April 30, 2020 letter and our responses to each section follow below.

You state that you were required by California Department Public Health (CDPH) and Bureau of Cannabis Control (BCC) to order METRC tags and inventory; however, the emails you provided to do not reflect that requirement. Please explain and/or provide additional communications from the State that reflect that requirement.
As detailed in the attached e-mails we received from the State of California Department of Public Health, Bureau of Cannabis Control, and METRC Support, Left Coast was issued guidance reportedly indicating that our license would be suspended and revoked if we did not complete METRC training and order METRC tags and that this was a requirement under State law.

We received these e-mails from the State as early as October 21, 2019 and as late as within the last month on April 7, 2020. These e-mails also required Left Coast to order product in order to avoid entering inaccurate information into the METRC system.

Left Coast attempted to call and e-mail the Department of Public Health and Bureau of Cannabis Control to get further guidance and left numerous messages with no call back.

Left Coast then called METRC support on October 30, 2019 and was informed that while METRC does not itself regulate or control licensing, the State was requiring all licensees to order tags and inventory to avoid their licenses being suspended and revoked. Left Coast followed up with METRC again on Nov 5, 2019 and was again told that in order to be compliant we had to order METRC tags and inventory.

Generally, the guidance we received was circular and confusing insofar as the State would refer licensees to METRC support for METRC questions and METRC would refer those who contacted them back to the State with regards to license compliance questions.

Based on the guidance Left Coast did receive from the e-mails and our follow-ups; it was our understanding that the State required all state licensees to order tags and products even if they were not yet fully operational.

In summary, Left Coast repeatedly received guidance and communications from the State as well as METRC support indicating that Left Coast had to order METRC Tags in order to be compliant.
You state that the commercial activity on site was not in violation of state law; however, a Notice of Suspension and a Notice of Violation on your license was issued by CDPH on April 17, 2020. Please explain.

The Notice of Suspension and Notice of Violation all refer to correctable issues that resulted solely from Left Coast, LLC not being operational at the time of the inspection.

Left Coast, as stated above, ordered a limited amount of METRC tags and products based on the guidance it received from the State and METRC support that it was required to do so.

Left Coast, as it was still working through its final approvals with the City, was non-operational at the time of the State inspection and therefore had not and could not have completed all of the items referred to in the State’s Notice of Violation prior to the inspection.

The items in the Notice of Suspension and Notice of Violation do not refer to any unlicensed or unpermitted activity that was in violation of State Law but rather items that would be completed and finalized by Left Coast prior to the facility being fully operational after completing all City final approvals.

At the time of the February 11 inspection, Left Coast was fully licensed by the State. The items do refer to and reflect the fact that Left Coast was and is non-operational at the time of the inspection and remains and will remain so pending all final approvals and permits from the City of Oceanside.

Left Coast is strongly committed to being fully compliant with all local and state regulations prior to being fully operational and will make all required changes and additions to be compliant with all items noted in the Notice of Suspension as well as all other City of Oceanside and state requirements.
You also stated that you engaged in “numerous rounds of communications with multiple state agencies;” however, that information has not been provided to the City. Please provide copies of those emails and/or a summary of phone conversations.

We have attached all copies of e-mails to or from any state agencies which are in our possession and exist to our knowledge.

All such communications were in two categories: 1) the initial state requirement that licensees order METRC tags and products to avoid suspension of their licenses and our attempts to get clarification and better guidance from the State on how we should remain in compliance under this requirement and 2) our communications with Lisa Schlembach from the California Department of Public Health regarding the scheduling of and preparation for an inspection that was held on February 11, 2020 and our follow-ups prior to and subsequent to that hearing. We have attached all such communications in written form.

In addition, we had a series of phone communications which can be summarized as follows: Telephone calls with METRC Support on October 30, 2019 and November 5, 2019 as described in our answer above, and two calls with Ms. Schlembach from the California Department of Public Health regarding the scheduling and preparation for our February 11, 2020 inspection – these calls were during the last week of January and the first week of February, respectively, prior to the inspection.

In addition to the above, please also provide the name and state license number of the facilities from which you obtained your product and to which you sold product.

The information you provide will included in the staff report to the Planning Commission.
We obtained products from the following state licensed manufacturers in order to order METRC tags under the requirements and guidance we received from the State as described in our above response:

Blessed Extracts LLC License #: [CDPH-10002055]

GHC Ventures, LLC License #: [C11-0000855-LIC]

Baldwin Park TALE Corporation License #: [CDPH-10003462]

Products were sold to the following licensed state retailers:

Balboa Ave COOP License #: [C10-0000180-LIC]

Red Moon INC License #: [C12-0000223-LIC]

Metro Health Systems License #: [C10-0000520-LIC]

GDP Management License #: [C9-0000068-LIC]

Valley Holistic Caregivers, Inc. License #: [C10-0000560-LIC]

Sinsemilla Indo Group License #: [C12-0000238-LIC]

Valley Earth Essential LLC License #: [C10-0000294-LIC]

LAHC INC License#: [C10-0000625-LIC]

Green Kong License#: [C10-0000189-LIC]

At no point did Left Coast transact with any non-licensed entities and all such transactions were for the express purpose of ordering METRC tags and engaging in METRC transactions as was our understanding that we were required to do so based on the guidance we received from the
State at the time. Left Coast also at no point obtained or sold products from any individuals, companies, or entities in the City of Oceanside.

We hope that these responses are helpful and please let us know if there is anything else the City needs at any time.

Best regards,

Alex Kometas

Left Coast, LLC
April 17, 2020

NOTICE OF LICENSE SUSPENSION – EFFECTIVE IMMEDIATELY

Ms. Alexandria Kometas, President
Mr. Coltin Bardoy, Managing Partner
Left Coast, LLC
1629 Ord Way
Oceanside, CA 92056

Re: Suspension of Provisional License No. CDPH-10003930
Premises Address: 1629 Ord Way, Oceanside, CA 92056

Dear Ms. Kometas and Mr. Bardoy,

This letter is to inform you that the California Department of Public Health Manufactured Cannabis Safety Branch (Department) is suspending your license for the above-referenced premises, effective immediately. On February 11, 2020, the Department conducted an inspection of your premises and found several serious violations of the Medicinal and Adult-Use Cannabis Regulation and Safety Act, Business and Professions Code section 26000 et. seq. (MAUCRSA), and its implementing regulations, California Code of Regulations, title 17, section 40100 et seq. (17 CCR). The violations include, but are not limited to, the following:

• Failure to notify and obtain the Department’s approval for material and substantial alterations in the use of the licensed premises. At the time of the inspection, a steel fabrication company was operating within the cannabis manufacturing area of the licensed premises. The licensee also stated that it was conducting its manufacturing operations in an office located in an area that was omitted from the premises diagram submitted to the Department. (17 CCR § 40177; B&PC § 26055);

• Failure to provide access to all areas of the manufacturing premises during the inspection. The licensee failed to provide the Department access to a locked unit on the licensed premises where the licensee stated it was storing cannabis products. (17 CCR § 40550; B&PC § 26160);
• Failure to implement a security plan that prevents access to the premises by unauthorized persons and that prevents against the loss or theft of cannabis and cannabis products. The licensee had no method to monitor or control persons entering and leaving the premises. (17 CCR § 40200);

• Failure to comply with video surveillance requirements. The licensee failed to have a video surveillance system in place and could not provide surveillance footage to the Department. (17 CCR § 40205);

• Failure to keep required records, including shipping manifests, sales invoices and receipts, and batch production records, and make such records available to the Department on request. (17 CCR § 40500; B&PC § 26160).

These violations are detailed in the Notice of Violation issued herewith.

Failure to comply with the provisions of MAUCRSA or the regulations adopted pursuant thereto are grounds for license suspension pursuant to Business and Professions Code (B&PC) section 26030. Because you are operating under a provisional license issued by the Department pursuant to B&PC section 26050.2, the suspension of your license does not entitle you to a hearing or appeal of the decision.

You are directed to immediately cease manufacturing cannabis products and you may not receive or transfer cannabis or cannabis products from the premises until such time as your license has been reinstated. Pursuant to B&PC section 26038 and 17 CCR section 40115, it is unlawful to engage in commercial cannabis activity without a valid license. Should it be determined that you are manufacturing cannabis products or otherwise engaging in commercial cannabis activity without a valid license, the Department may initiate further action against your business. Your license will remain suspended until such time as the steel fabrication company is no longer operating within the premises and all other provisions of MAUCRSA and the regulations have been complied with.

If you have any questions regarding this matter, please contact Licensing Section Chief, Michael Cheng, at Michael.Cheng@cdph.ca.gov.

Sincerely,

[Signature]

Asif Maan, Ph.D.
Branch Chief
Manufactured Cannabis Safety Branch
California Department of Public Health
Enclosure

CC: Michael Cheng,  
Licensing Section Chief  
Manufactured Cannabis Safety Branch  
California Department of Public Health

Zarha Ruiz  
Inspection and Compliance Section Chief  
Manufactured Cannabis Safety Branch  
California Department of Public Health

Jill Baltan  
San Diego Inspection Unit Supervisor  
Manufactured Cannabis Safety Branch  
California Department of Public Health

Stefanie Cervantes  
Planning Division  
City of Oceanside
DECLARATION OF SERVICE
PROOF OF SERVICE

I declare that I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to the within cause. My business address is California Department of Public Health, Manufactured Cannabis Safety Branch, P.O. Box 997377, MS 7606, Sacramento, CA 95899-7377.

On the date indicated below, I served the forgoing document(s) described as Citation and Order of Abatement on the interested parties, in a sealed envelope addressed as follows:

<table>
<thead>
<tr>
<th>Name:</th>
<th></th>
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<tbody>
<tr>
<td>Ms. Alexandria Komotis</td>
<td>Mr. Collin Bardoy</td>
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<tr>
<td>Left Coast, LLC</td>
<td></td>
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<tr>
<td>1629 Ord Way</td>
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<tr>
<td>Oceanside, CA 92056</td>
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[ ] BY MAIL: I am readily familiar with California Department of Public Health's practice of collection and processing mail. Under the practice, it would be deposited with U.S. Postal Service on the same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. Said envelope was placed, on this date, in the California Department of Public Health mail system to be processed, and deposited in the United States Mail at Sacramento, CA, with postage thereon fully prepaid.

[ X] BY OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

[ ] Certified Mail Return Receipt Requested Parcel No.:

[ X] Overnight Delivery (GSO): Placing a true copy of the above-listed documents in a separate package with a GSO Shipping Label to the above-listed address.

[ ] Electronic Mail Delivery: Causing the above-listed documents to be sent to the person at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[ ] PERSONAL SERVICE: By delivering by hand and leaving a true copy with the person(s) and/or secretary at the above listed address(es).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed and served on, April 17, 2020, at Sacramento, California.

Chiamin Cheng
Name
NOTICE OF VIOLATION
MANUFACTURED CANNABIS SAFETY BRANCH

<table>
<thead>
<tr>
<th>BUSINESS INFORMATION</th>
<th>INSPECTOR INFORMATION</th>
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<tbody>
<tr>
<td>License Number</td>
<td>Date of Inspection</td>
</tr>
<tr>
<td>CDPH-10003930</td>
<td>2/11/2020</td>
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<tr>
<td>License Type</td>
<td></td>
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<tr>
<td>M-6</td>
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<table>
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<tr>
<th>Business Name</th>
<th>Lead Inspector</th>
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<tbody>
<tr>
<td>Left Coast, LLC</td>
<td>Lisa Schlembach</td>
</tr>
<tr>
<td></td>
<td>ID # 022</td>
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<tr>
<th>Premises Address</th>
<th>Lead Inspector Email Address</th>
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<tbody>
<tr>
<td>1629 Ord Way, Oceanside, CA 92056</td>
<td><a href="mailto:Lisa.Schlembach@cdph.ca.gov">Lisa.Schlembach@cdph.ca.gov</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Representatives Present During Inspection (name and title)</th>
<th>Other MCB Inspectors Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alexandro Komitas, Owner</td>
<td>Jill Baltan, Matthew Rico</td>
</tr>
<tr>
<td>Colin Barody, Owner and Manager</td>
<td>ID # 011.028</td>
</tr>
</tbody>
</table>

The conditions or practices noted below were observed on the premises and date listed above. The observations on this Notice are not necessarily an exhaustive listing of violations of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Bus. & Prof. Code, §26000 et seq.) and its implementing regulations (Cal. Code Regs., Tit. 17, Div. 1, Chp. 13, §40100 et seq.) on the premises. The Department may seek administrative, civil, or other action for each of the violations. This Notice has been prepared to alert the management of the inspector's findings. It is the responsibility of the firm to assure compliance with all applicable laws and regulations.

1. Change in Licensed Operations (§40177; B&PC §25055)
   The licensee failed to notify and obtain the Department's approval for material and substantial alterations in the use of the licensed premises. At the time of the inspection, a steel fabrication company was operating within the cannabis manufacturing area of the licensed premises. The licensee verbally indicated that it had conducted manufacturing operations in an office (identified as Office 108 on the floor plan provided to the City of Oceanside), which was an area of the building that was omitted on the premises diagram submitted to the Department.

If more space is needed, please continue on page 2.

Signing this notice does not indicate admission of a violation but only receipt of the Notice of Violation.

<table>
<thead>
<tr>
<th>RECIPIENT INFORMATION</th>
<th>INSPECTOR INFORMATION</th>
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<tbody>
<tr>
<td>Name of Authorized Representative</td>
<td>Inspector Name</td>
</tr>
<tr>
<td>Alexandro Komitas and Colin Barody</td>
<td>Lisa Schlembach</td>
</tr>
<tr>
<td>Job Title/Position</td>
<td>Inspector Signature/Date of Notice</td>
</tr>
<tr>
<td>Owner and Owner/Manager</td>
<td>4/17/2020</td>
</tr>
<tr>
<td>Signature of Authorized Representative</td>
<td>Jill Baltan</td>
</tr>
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NOTICE OF VIOLATION
MANUFACTURED CANNABIS SAFETY BRANCH

Findings continued from previous page.

2. Security Plan (§40200(a))
The licensee failed to develop and implement a written security plan that included the following:
- Preventing access to the manufacturing premises by unauthorized persons
- Installing a security alarm system
- Establishing an identification and sign-in/sign-out procedures for authorized personnel, suppliers, and visitors
- Maintaining the premises such that security monitoring is possible
During the February 11, 2020 Inspection, CDPH staff observed a steel fabrication company operating in the cannabis manufacturing premises. A locked modular pod was observed in the area where steel fabrication was occurring, in which the licensee stated it was storing approximately four pounds of shatter. The licensee had no control over who entered and exited the premises, had not installed a security alarm system, and had not established an identification and sign-in/sign-out procedure for authorized personnel, suppliers, and visitors.

3. Video Surveillance (§40205)
The licensee failed to have a digital video surveillance system at the licensed premises:
- The licensee had no video surveillance in areas where cannabis and cannabis products are handled
- The licensee had no video surveillance of all interior and exterior entrances and exits to the premises
- The licensee failed to have video surveillance that covered a minimum of 90 days
- The licensee failed to have video surveillance recordings available for inspection by the Department.

4. Batch Production Record (§40258(a))
The licensee failed to prepare a written batch production record every time a batch of cannabis product was manufactured. During the February 11, 2020 Inspection, the licensee verbally indicated that they had purchased distillate and used it to fill vape pens, and that they had purchased bulk cannabis shatter and then packaged it into 1-gram, retail-ready packages. During the inspection, the licensee was unable to produce batch production records to document the manufacturing activities described above.

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<tr>
<th>License Number</th>
<th>Inspection Date</th>
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<td>CDPH-10003930</td>
<td>2/11/2020</td>
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5. Inventory Control – Cannabis and Cannabis Products (§40282(s))
The licensee failed to establish and implement a written inventory control plan capable of tracking the location and disposition of all cannabis and cannabis products at the licensed premises. During the February 11, 2020 inspection, the licensee was asked to demonstrate how they were tracking their inventory. The licensee stated that they use METRC to track inventory. The licensee was unable to log in to their METRC account during the time of the inspection. The licensee stated that they were unable to recall their METRC password.

6. Record Keeping Requirements (§40500(a); B&PC §26180)
The licensee failed to maintain shipping manifests, sales invoices, and sales receipts on the premises at all times, and failed to make the documents available to the Department upon request. During the February 11, 2020 inspection, CDPH staff requested to view shipping manifests, sales invoices, and sales receipts. The licensee verbally confirmed that they did not have any shipping manifests, sales invoices, or sales receipts.

7. Waste Management (§40290(f))
The licensee failed to comply with the requirements for self-hauling cannabis waste. During the inspection, the licensee verbally stated that they had self-hauled waste to a dump in Pismo, California. However, the licensee was unable to provide a certified weight ticket or receipt to evidence the activity.

8. Inspections (§40550, B&PC §26180)
The licensee failed to provide the Department access to all areas of the manufacturing premises. At the time of the inspection, there was a locked modular pod on the manufacturing premises in which the licensee stated it was storing cannabis products; however, neither owner had the key to the pod to allow access and inspection by the Department.
February 26, 2020

Stefanie Cervantes
City of Oceanside
Planning Division
300 North Coast Highway
Oceanside, CA 92054

Re: Objections to Proposed Conditional Use Permit (Project Number CUP19-00020)
Location: 1629 Ord Way (the "Property")
APN: 162-120-91
Applicant: Left Coast, LLC

Dear Ms. Cervantes:

We represent the Oceanside Gateway Business Park Owners' Association ("Association"). The Association provides certain management and maintenance services at the large commercial development known as Oceanside Gateway Business Park ("Business Park") that is located along most of Ord Way south of Oceanside Boulevard. The Association's Board of Directors ("Board") is aware of an application to the City for a conditional use permit to operate a proposed medical cannabis manufacturing facility at 1629 Ord Way (the "Project").

Please take notice that the Property is located within the Business Park and subject to the Association's recorded CC&Rs. The Owners within the Business Park recently voted and approved an amendment to the CC&Rs that prohibits any type of marijuana use from operating within the Business Park. As such, the proposed location for the Project is certainly not appropriate, and the City cannot make the findings of approval required under Section 4105 of the City's Zoning Ordinance.

Further, because the Property is located within the Business Park, the Association has an integral financial stake in the Property and any use established at the Property. As explained below, the Association serves a role similar to a landlord. For instance, the Association's insurer has already indicated that it would cancel the Association's property insurance coverage if any marijuana use is established anywhere within the Business Park because of the increased risk of liability arising from such use. In light of the Association's vital role and the potential adverse impacts of the Project on the Business Park, the City should obtain the Association's written consent before proceeding with the application for the Project.

The Proposed Project Cannot Meet the City's Required CUP Findings. Section 7.119 of the City's Zoning Ordinance requires that any proposed marijuana facility must obtain a Conditional Use Permit in addition to any required licenses.

With respect to conditional use permits, Zoning Ordinance Section 4105 sets forth the required findings for any CUP application. Most notably, the City cannot approve a CUP unless it finds,
among other things, that “the proposed location of the conditional use ... will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity.” As explained below, the proposed Project is already prohibited from operating at the proposed location. In this case, because of the nature and restrictions of the Business Park, the City cannot make all of the required findings, and should refrain from further consideration of the Project.

As an aside, we understand that the applicant has already been issued a license for marijuana manufacturing, and has also applied for two additional licenses for marijuana distribution. Thus, the full scope of the Project and its impacts are uncertain at this time. The City should hold off on consideration of the conditional use permit until such time as the full Project scope is clearly described and understood, including any proposed marijuana distribution. We also note that the Association was not given an opportunity to take part in the City’s consideration of the manufacturing license, despite its role managing the Business Park which contains the Property.

**Marijuana Production is Prohibited in the Business Park.** The Business Park (including the Property) is governed by that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements recorded on or about January 26, 2005 (the “CC&Rs”). The Business Park contains more than 80 different businesses that play a significant role in the City of Oceanside and the region.

The Members of the Association recently voted to amend the CC&Rs to prohibit marijuana uses from operating in the Business Park. The Members found certain uses (including marijuana businesses) constitute a nuisance and are incompatible with the rest of the Business Park, unless they receive the prior written approval of the Board. Consequently, the Members voted to amend the CC&Rs by adding Section 8.2 which prohibits “marijuana businesses of any type” from operating within the Business Park. This amendment has since been recorded against the subject Property. A copy of the recorded amendment is attached.

In short, the CC&Rs strictly and clearly prohibit any type of marijuana production facility from operating in the Business Park.

**California Law on Commercial Associations and Common Interest Developments.** Indeed, the Property does not exist in a vacuum; it is located within the Business Park, which constitutes a “common interest development” (Cal. Civ. Code § 6534) under California law. A commercial association should be treated similar to a property owner with a substantial financial stake for purposes of consideration of a marijuana application. Associations not only have a substantial financial interest, but also a legal interest in applications for marijuana use in their communities. The role and interest of a commercial association is essential. Without a basic understanding of this, the City cannot legitimately make the required CUP finding cited above regarding the proposed location and whether it would “be detrimental to properties or improvements in the vicinity.” Accordingly, before processing any application for a proposed marijuana use, the City must require the written consent of the Association.

**Relationship between Parcels; Treatment of Common Area.** As a common interest development, the Business Park is governed by the Commercial and Industrial Common Interest Development Act codified at California Civil Code Sections 6500 et seq.

California law establishes a relationship between the various parcels in a planned development, including easement rights in the common area as well as the allocation of maintenance responsibilities. An owner in a common interest development does not simply have rights to their separate interest (Parcel), their ownership is intertwined with the other owners in the development. When a marijuana use is established in a common interest development, that use
affects the development’s common area (i.e., streets, driveways, walkways, landscaping, etc.) which are owned by the Association, as well as other owners within the development. Like a landlord’s relationship with its tenant, what one person does in their Parcel and in the Common Area substantially impacts each of the other owners and their tenants (as well as the association by cancellation of insurance or a mortgage).

_California Law Treats Associations as Landlords._ Civil Code Section 6750 states that a common interest development “shall be managed by an association.” Such association is authorized to exercise the powers established under the Commercial and Industrial Common Interest Development Act and the powers granted to a nonprofit mutual benefit corporation (Civ. Code § 6752).

In _Frances T. v. Village Green Owners Association_ (1986) 42 Cal.3d 490, the California Supreme Court found that “the Association is, for all practical purposes, the Project’s ‘landlord.’ And traditional tort principles impose on landlords, no less than on homeowner associations that function as a landlord in maintaining the common areas of a large condominium complex, a duty to exercise due care for the residents’ safety in those areas under their control.”

In _O’Connor v. Village Green Owners Association_ (1983) 33 Cal.3d 790, 796, the Supreme Court explained as follows:

> "the association performs all the customary business functions which in the traditional landlord-tenant relationship rest on the landlord’s shoulders. A theme running throughout the description of the association’s powers and duties is that its overall function is to protect and enhance the project’s economic value."

The California Supreme Court regards associations as a landlord. With a clear function “to protect and enhance the project’s economic value” as explained in the _O’Connor_ decision, a commercial association holds an obvious landlord-like position which should be respected in this situation.

_Obtaining Association’s Written Consent._ In summary, commercial associations should be considered similar to landlords for purposes of the City’s consideration of a proposed marijuana facility, and their written consent must be obtained before an application for a marijuana use is processed. In reviewing an application for a proposed marijuana facility, the City should further consider the specifics of the proposed location, including (1) whether marijuana use would be allowed by the subject commercial association under its governing documents, and (2) the financial and other impacts the use would have on the association as well its other members. For instance, if the City were to allow a marijuana use in a common interest development whose recorded restrictions outright prohibit it, the City’s approval would likely trigger an immediate lawsuit. Obtaining the association’s written approval would avoid such a conflict and help ensure that the proposed use is appropriate at the proposed location.

_Specific Issues at the Business Park._

_Prohibition against Marijuana Use._ With respect to the Oceanside Gateway Business Park, as discussed above, its recorded CC&Rs specifically prohibit marijuana uses from operating in the Business Park, including at the subject Property.

_Insurance and Related Liability Issues._ The Association has already received notification from its insurer that, if a marijuana production facility were to operate within the Business Park, the common area insurer would cancel the Association’s insurance policy. From the insurer’s perspective, we understand that the proposed Project would generate a significant increase in risk of liability for the Business Park, which would be the reason for such cancellation.
The Association has been researching alternative policies through other carriers, and understands thus far that any insurer willing to insure the Common Area in a development containing a marijuana business would require tremendously higher premiums with reduced coverage. The reason for such higher premiums is again the increased risk of liability arising from the marijuana production facility. These higher premiums would be imposed on all of the Owners in the Business Park, even though the risk would be triggered by a single Owner on account of its marijuana use. This is grossly unfair, especially because the marijuana operator is the only one that would benefit from that use. In short, the proposed marijuana Project would only benefit a single owner within the Business Park, yet it would unfairly and inequitably affect the Association and the other owners with increased liability and significantly increased insurance costs.

Other Issues. Access to the Property is via Ord Way. Ord Way is a private street that is mostly owned by the Association as part of its Common Area. The fact that the Property’s sole means of access is along Ord Way, a private street owned by the Association, is another factor that weighs in favor of requiring the Association’s consent for any proposed marijuana use at the Property.

The Association is also concerned about other issues that the proposed Project may trigger, such as offensive odors, nuisance, and security impacts. The Association reserves the right to address these and other issues as it learns more about the Project (since the applicant has not provided the Association with any specific details about its Project).

Conclusion. In summary, a commercial association holds a legal and financial stake similar to a landlord. The City must specifically require that an application for a proposed marijuana use in a common interest development provide proof of the association’s written consent. Without the association’s consent, the City simply cannot make the finding required under Section 4105 of the Zoning Ordinance that the proposed location is essentially appropriate for the proposed use. In this case, a restriction has been recorded against the Property by way of a CC&R amendment specifically prohibiting any type of marijuana use, including the proposed Project.

We would be pleased to meet with you to further discuss these issues. In the meantime, please do not hesitate to call with any questions.

Very truly yours,

COMMUNITY LEGAL ADVISORS INC.

Michael

Michael J. Alti, Esq.