

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: KRISTINAE TOOMIANS, SENIOR PLANNER
PLANNING & ECONOMIC DEVELOPMENT
SUBJECT: APPEAL OF PLANNING COMMISSION DECISION FOR NT
VENTURES, A COMMERCIAL CANNABIS ADULT USE AND
MEDICINAL VOLATILE MANUFACTURING AND DISTRIBUTION
FACILITY, PROPOSED WITHIN 3,869-SQUARE-FEET OF AN
EXISTING 4,874-SQUARE-FOOT INDUSTRIAL BUILDING (SUITE
B) ON A 2.09-ACRE DEVELOPED INDUSTRIAL PARK SITE,
LOCATED AT 444 YOLANDA AVE, SUITE B, SANTA ROSA, CA
95404; ASSESSOR'S PARCEL NUMBER 044-091-065; FILE NO.
CUP18-008.

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning & Economic Development Department and the Planning Commission that Council, by resolution, deny the appeal and approve the Major Conditional Use Permit for commercial Cannabis Medicinal and Adult Use Manufacturing – Level 2 (volatile) (Type 7) uses at 444 Yolanda Ave, Suite B.

EXECUTIVE SUMMARY

The proposal includes commercial Cannabis Medicinal and Adult Use Manufacturing – Level 2 (volatile) (Type 7) uses within 3,869-square-feet of an existing 4,874-square-foot industrial building (Suite B). The proposed facility will include: approximately 1,500-square-feet of volatile manufacturing (Type 7); approximately 730-square-feet of warehousing on the first floor; and 444-square-feet of shipping and distribution. While there are no exterior modifications to the existing building, the applicant proposes an approximately 1,528-square-foot mezzanine, which will include 829-square-feet of "dry storage," and 699-square-feet of equipment storage. The subject property is located in a Light Industrial Zoning District. The site is surrounded on three sides by industrial uses, and a single-family residential neighborhood to the south. No exterior building or landscape modifications are proposed, other than new accessible parking striping, signage, and other related ADA upgrades. The project site is zoned for light industrial

land uses, and the tenant space was previously used for a flood/fire damage and mold restoration company. On July 26, 2018, the Planning Commission approved a Major Conditional Use Permit for the NT Ventures project. On August 3, 2018, Matthew and Shelly Earnshaw filed an appeal of the Planning Commission's action. The grounds for appeal question the Planning Commission's consideration of General Plan policies concerning cannabis uses, setback considerations for cannabis uses near residential uses, general safety of volatile cannabis manufacturing and distribution, the ability for Yolanda Avenue to handle increased traffic, and the general compatibility of industrial uses near residential.

BACKGROUND

On October 9, 2015, Governor Brown signed into law the Medical Marijuana Regulation and Safety Act (MMRSA), which went into effect on January 1, 2016. MMRSA established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, testing, storage, distribution, and sale of medical cannabis through Assembly Bills 243 and 266, and Senate Bill 643.

The 2016 City Council (Council) Goal Setting Workshop established five priorities to better focus staff efforts towards achieving established Council Goals. One of the Tier 1 priorities (projects that are underway or receiving the highest attention) identified is to "pursue current opportunities for medical marijuana, cannabis cultivation, lab and employment development. Prepare for impacts of legalized recreational marijuana."

In accordance with Council goals, and in response to the State's adoption of the MMRSA, the Council asserted its interest in retaining local authority over medical cannabis operations.

On January 19, 2016, the Council initiated a comprehensive policy effort to regulate medical cannabis operations, and reconvened the Medical Cannabis Policy Subcommittee.

On August 3, 2016, The City's Zoning Administrator, at the direction of the City Council, issued an Official Zoning Code Interpretation to address Medical Cannabis support uses, specifically addressing the light manufacturing (non-volatile), distribution, laboratory testing and transportation operations of the industry. The interpretation aligned these operational uses with their non-cannabis counterparts. Attached to the interpretation were standards regarding odor, lighting, security and noise to ensure compliance with State law and City ordinances given the specific issues surrounding cannabis.

On December 19, 2017, the City Council unanimously adopted the City's Comprehensive Cannabis Ordinance. The regulations address the locational and operational requirements for commercial cannabis related businesses, identifying the permit compliance path for both medical and adult cannabis uses. The ordinance allows the City to direct these land uses to appropriate areas of the City, and also establishes a public review process for permits, and locational and operational requirements to address: land use compatibility, odor, security, safety, health, lighting, parking and noise. The ordinance specifically addresses volatile cannabis manufacturing, requiring a

Major Conditional Use Permit in the IL – Light Industrial and IG – General Industrial Zoning Districts.

1. Project Description

The applicant proposes to operate a commercial Cannabis Medicinal and Adult Use Manufacturing – Level 2 (volatile) (Type 7) licensed facility within an existing 3,869-square-foot tenant space, located at 444 Yolanda Ave, Suite B. The facility is not open to the public. The proposed project will include all activities permitted by a commercial cannabis Manufacturing Level 2 (volatile) license, including but not limited to:

- receiving raw bulk dried materials;
- light manufacturing and processing of bulk materials;
- packaging/re-packaging, including, but not limited to, sorting, grading, quality control, labeling/re-labeling, inventory controls;
- internal testing for quality control;
- research and development;
- manufacturing of cannabis oils, products and compounds, using nonvolatile and volatile extraction;
- post-processing and refining of cannabis oils;
- pesticide remediation;
- storage of raw materials and manufactured products; and
- production of value added products, such as, but not limited to, edibles, vape cartridges, topicals and tinctures.

The proposed facility will include: approximately 1,500-square-feet of volatile manufacturing (Type 7); approximately 730-square-feet of warehousing on the first floor; and 444-square-feet of shipping and distribution. While there are no exterior modifications to the existing building, the applicant proposes an approximately 1,528-square-foot mezzanine, which will include 829-square-feet of "dry storage," and 699-square-feet of equipment storage. The parking area specifically allocated to this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of material to and from the business. While the building footprint is 30-feet away from the property line of the nearest residential property, per the floorplan, the volatile manufacturing will occur in a room within the tenant space nearly 60-feet away.

In addition to controlled facility access, the security plan includes door sensors, window sensors, motion detectors, exterior lighting, and high resolution cameras. The operator will contract with a security service provider to provide 24-hour security for the facility. All inventory will be tracked from the point of delivery to

distribution. In accordance with State law, all employees are subject to a background check. Product transport to and from the facility will take place in unmarked vehicles, equipped with antitheft devices and systems.

Cannabis Manufacturing—Level 2 refers to the processing or manufacturing of medical or adult use cannabis products using “volatile solvents.” The State of California Health & Safety Code defines a “volatile solvent” as a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include, but are not limited to, butane, hexane, and propane. The volatile cannabis manufacturing process requires the use of a closed-loop vacuum system. A closed-loop system is an oil extraction method used to create cannabis concentrates. During the process, no solvents are exposed to the open air and remain contained within a closed-loop system. The closed-loop extraction system is not unique to the cannabis manufacturing industry, in that it has been used for decades to produce perfume, food additives, and beauty products. The applicant proposes to use liquid butane within a closed-loop vacuum extraction system.

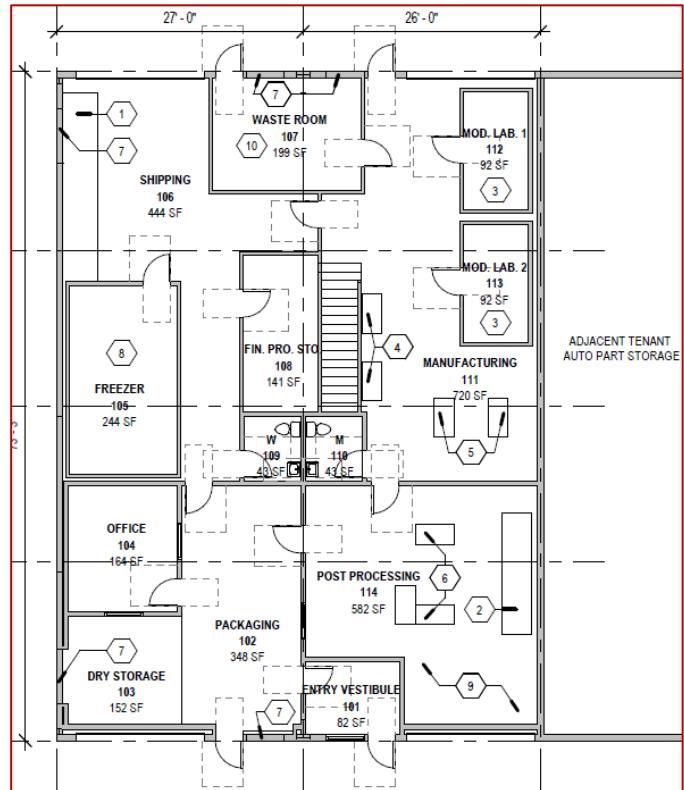


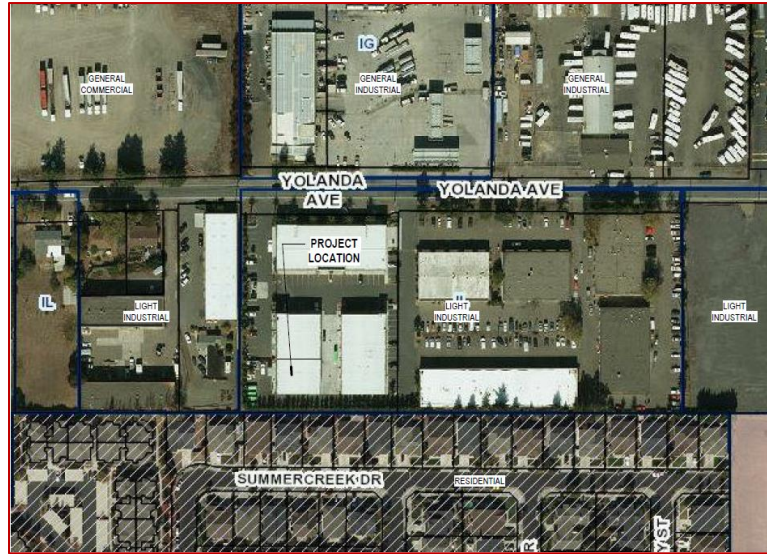
Figure 1 First Floor - Floor Plan (Manufacturing shown on the middle, right)

Per Zoning Code Section, 20-46.070(C), the City of Santa Rosa requires that the closed-loop system be listed or otherwise certified by an approved third-party testing agency or licensed professional engineer, and approved for the intended use by the City’s Building Official and Fire Code Official.

Per 20-46.070(D), the City also requires that a licensed professional engineer annually recertify the extraction equipment. The applicant will also comply with inspection and certification requirements by State agencies. Also, as required for State licensing, the applicant will prepare and implement standard operating procedures for all manufacturing processes and use of all equipment.

2. Surrounding Land Uses

The proposed site is located within an area of industrially developed and used land, and is surrounded on the north, east, and west sides by Light Industry land uses. The proposed site is adjacent to a single-family residential neighborhood to the south.



3. Existing Land Use – Project Site

The proposed project is located on the south side of Yolanda Avenue, in a predominantly industrialized area which spans the distance between Santa Rosa Avenue to the west and Petaluma Hill Road to the east.

The General Plan Land Use designation for the subject parcel and adjacent parcels to the north, east, and west is Light Industry and the zoning is Light Industrial (IL). The subject parcel is immediately adjacent to the Harvest Park Planned Development, single-family residential neighborhood to the south. A majority of the parcels in the immediate area have been developed for industrial uses, although there are expanses of

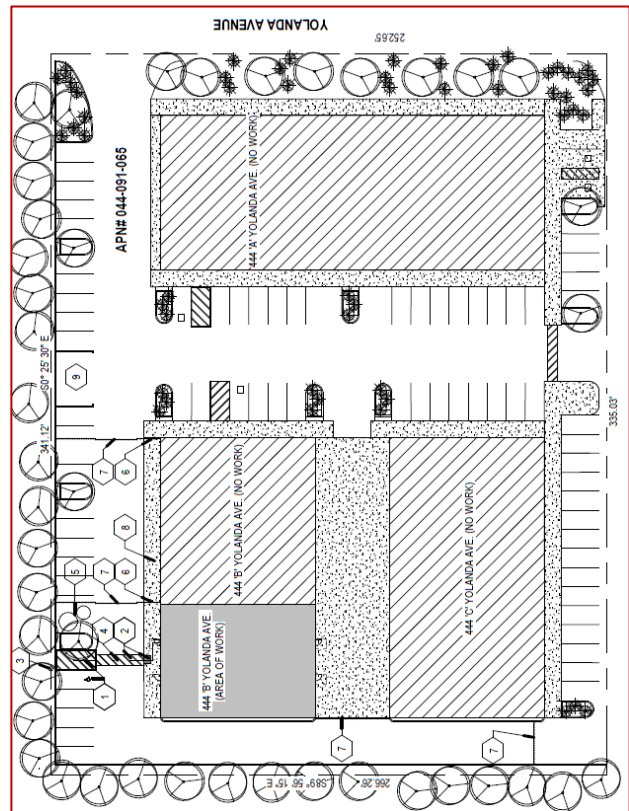


Figure 2 - Site Plan (proposed security gate is indicated as item 7)

paved surface parking at various locations that may be developed through building site expansions in the future. The project site is a 2.09-acre parcel, developed in 2009 with three metal, industrial buildings, surrounded by shared parking. The applicant proposes to locate within a tenant space in “Building B,” which is located at the southwest corner of the parcel. The remainder of the building is currently vacant, but could house any number of uses allowed in the IL – Light Industrial Zoning District. No major modifications are proposed to the site or the exterior of the building, other than required ADA upgrades. The parking area specifically allocated for this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of material to and from the business. While the building footprint is 30-feet away from the property line of the nearest residential property, per the floorplan, the volatile manufacturing will occur in a room within the tenant space nearly 60-feet away.

4. Project History

January 19, 2018	The CUP application was submitted to the Planning and Economic Development Department.
February 9, 2018	Notice of Application was distributed to property owners within 400 feet of the site.
March 14, 2018	A Neighborhood Meeting was held.
June 27, 2018	Project application was deemed complete.
July 26, 2018	The Planning Commission approved a Major Conditional Use Permit for the project (Resolution No. 11908).
August 3, 2018	Matthew and Shelly Earnshaw filed an appeal of the Planning Commission’s decision with the City Clerk’s office.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

1. General Plan

The project site is designated Light Industry on the Santa Rosa General Plan 2035 land use diagram. This classification is intended to accommodate light industrial, warehousing and heavy commercial uses.

The following General Plan goals and policies are applicable to the proposed commercial Cannabis Medicinal and Adult Use Manufacturing – Level 2 (volatile) (Type 7) uses:

- LUL-I-1** Provide a range of commercial services that are easily accessible and attractive, that satisfies the needs of people who live and work in Santa Rosa and that also attracts a regional clientele.
- LUL-K** Protect industrial land supply and ensure compatibility between industrial development and surrounding neighborhoods.
- EV-A** Maintain a positive business climate in the community.
- EV-A-1** Continue to promote Santa Rosa as the North Bay's premier location for technology, clean/green technologies, and entrepreneurial businesses, which create new products and business models that will attract national and international markets.
- EV-A-5** Maintain diversity in the types of jobs available in Santa Rosa to lessen the impact of economic cycles.
- EV-D** Maintain the economic vitality of the downtown, business parks, offices and industrial areas.
- EV-D-2** Maintain space in business parks for distribution and research uses. Attract a wide range of industries which serve local and regional needs and contribute to the community's economic vitality, and at the same time protect the local environment and quality of life.
- NS-B-5** Pursue measures to reduce noise impacts primarily through site planning. Engineering solutions for noise mitigation, such as sound walls, are the least desirable alternative.

The City specifically identified Business Park (BP), Light Industrial (IL), and General Industrial (IG) Zoning Districts as Zoning Districts where this type of use would be appropriate. Although Cannabis uses are not explicitly addressed in the General Plan, these industrial Zoning Districts implement the industrial designations intended for many uses that are similar to commercial Cannabis manufacturing.

Staff has determined that the proposed Commercial Cannabis Manufacturing – Level 2 (volatile) use is consistent with the applicable aforementioned General Plan goals and policies, and the associated Light Industry General Plan land use designation. The proposed use would assist in maintaining the economic viability of the area, broaden the available full and part time jobs within the City, and provide a viable commercial service, while ensuring



Figure 3- General Plan Designation Map

compatibility with the surrounding neighborhoods through proposed operations and security measures.

2. Zoning

The project site is located within a Light Industrial (IL) Zoning District and is surrounded by IL – Light Industrial zoned properties supporting various manufacturing, processing, wholesale, retail, or general services uses. The IL zone, which is consistent with the Light Industry General Plan land use designation, is applied to areas appropriate for light industrial uses, as well as commercial service uses and activities that may be incompatible with residential, retail, and/or office uses.

City Council Ordinance No. ORD-2017-025, Comprehensive Cannabis Ordinance, amended Section 20-24.030, Table 2-10 – Allowable Land Uses and Permit Requirements for Industrial Districts to include Commercial Cannabis Manufacturing – Level 2 (volatile) uses, which require an approved Major Conditional Use Permit, regardless of the size of the proposed use. In the same Ordinance, Cannabis Businesses (Medical and Adult Use) were permitted in compliance with the provisions of Division 2 (Zoning Districts and Allowable Land Uses). The applicant has met the permit requirements by filing this application for a Major Conditional Use Permit for commercial Cannabis Medicinal and Adult Use Manufacturing – Level 2 (volatile) (Type 7) uses.

Zoning Code Section 20-46.050 describes general operating requirements applicable to all cannabis businesses, and Section 20-46.070 specifies additional operating requirements for Cannabis Manufacturing. The applicant has demonstrated compliance with all general operating requirements and those specific to Cannabis Manufacturing.

Parking:

The project site is developed with three industrial buildings and a shared perimeter parking lot with a total of 78 parking spaces. The minimum required parking for all types of Cannabis Manufacturing and Distribution uses at this site under the current Zoning Code is 5 (4 for Manufacturing @ 1/350sqft and 1 for Distribution @ 1/1000sqft). The 5 parking spaces specifically allocated to this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of materials to and from the business. The facility will not be open to the public. The applicant anticipates operating with eight full time employees, with staggered work shifts between 8:00am and 10:00pm. The parking facilities are sufficient to support the proposed cannabis manufacturing and distribution facility.

The Planning Commission must make all of the following findings as required in Zoning Code Section 20-52.050 (Conditional Use Permits), to grant the Major Conditional Use Permit. Each requisite finding is followed by a staff response.

The proposed use is allowed within the applicable Zoning District and complies with all other applicable provisions of this Zoning Code and the City Code.

Staff Response: The proposed Medicinal and Adult Use Commercial Cannabis Manufacturing – Level 2 (volatile) operation will occupy 3,869-square-feet of an existing 4,874-square-foot building in the Light Industrial Zoning District, which is allowed, subject to Planning Commission approval of a Major Conditional Use Permit.

The proposed use is consistent with the General Plan and any applicable specific plan.

Staff Response: The City identified specific General Plan land use designation areas, including Light Industry, as appropriate districts for the proposed land use. The proposed Medicinal and Adult Use Commercial Cannabis Manufacturing – Level 2 (volatile) use is consistent with the applicable underlying General Plan goals and policies related to industry, economic vitality, and the associated Light Industry General Plan land use designation. Staff identified several General Plan goals and policies that would be advanced through approval of the proposed project.

The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.

Staff Response: The proposed project would improve and re-tenant a previously occupied, but presently vacant, building within an industrial district that includes a mix of manufacturing, warehousing, distribution, and construction industry related. As such, the project is well-suited for the proposed cannabis manufacturing facility. The project site is developed for light industrial uses, and is consistent with the Light Industry General Plan designation. Parking is adequate for the staffing and operations of the proposed use, as well as for a facility that is not open to the public (see Parking in Analysis section). The project complies with the general operating requirements for cannabis businesses and those operating requirements specific to cannabis manufacturing. The parking spaces specifically allocated to this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of materials to and from the business. The facility will not be open to the public. While the building footprint is 30-feet away from the property line of the nearest residential property, per the floorplan, the volatile manufacturing will occur in a room within the tenant space nearly 60-feet away. In addition to controlled facility access, the security plan includes door sensors, window sensors, motion detectors, exterior lighting, and high resolution cameras. The operator will contract with a security service

provider for 24-hour security for the facility.

The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

Staff Response: The proposed use would be located entirely within a 3,869-square-foot tenant space of a 4,874-square-foot industrial building. Access to the site is provided via Yolanda Avenue, and the building will be fully accessible pursuant to American's with Disabilities Act (ADA) standards, though the business will not be open to the general public. All necessary utilities are available at the project site, including water, wastewater, storm drainage, gas and electric services.

Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and Zoning District in which the property is located.

Staff Response: The proposed project will be consistent with the surrounding land uses to the east, west, and north, which are within the IL Zoning District and comprise a variety of light manufacturing, services, warehousing, distribution uses. The project Odor Mitigation Plan has been certified by a licensed engineer ensuring that all mitigation controls are sufficient to effectively mitigate odors from all sources (see Attachment 7 – Certified Odor Mitigation Plan dated received June 27, 2018). The project Security Plan seeks to effectively prevent theft or diversion of any cannabis or currency, as well as to discourage loitering, crime, and illegal or nuisance activities, by installing an interior and exterior camera surveillance system, a professionally monitored alarm system, access controls, and secure storage and waste areas inventory controls, as well as implementing inventory controls, employee safety and security operational procedures, and training on such procedures. The parking area specifically allocated to this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of material to and from the business. The existing building is setback approximately 28-feet from the residential neighborhood to the south, and is separated by a 6-foot tall, wooden fence. Per Section 20-46.050 (E), the project is subject to building and fire permits as described in Building and Fire Code Requirements for Cannabis Related Occupancies including general requirements and those specific to volatile manufacturing. Additionally, an annual Fire Department Operational Permit is required for cannabis manufacturing facilities.

The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

Staff Response: The project qualifies for a Class 1 exemption under CEQA Guidelines Section 15301 in that it is the permitting and minor alteration of an existing private structure involving no expansion of use beyond that existing at the time of the lead agency's determination.

The proposed project does not propose an expansion of the structure's total square footage. The proposed interior and exterior alterations are negligible and will not result in any significant impact(s). The tenant space was previously used for a flood/fire damage and mold restoration company.

The City has further determined that no exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (CEQA Guidelines section 15300.2.)

3. Design Guidelines

No major changes are proposed to the exterior of the building. External modification to the existing building and site will be minimal. The parking lot will be restriped to accommodate current ADA standards and a security gate will be installed.

4. Neighborhood Comments

A neighborhood meeting was held on the evening of March 14, 2018. The meeting was well attended by neighbors of the proposed project who raised questions primarily related to safety of volatile manufacturing process, concerns with the proximity of this business to the single-family neighborhood to the south, and concerns with safety/security.

Neighborhood comments received in the days leading up to the Planning Commission public hearing, and at the hearing itself, included general concern with the proximity of the proposed use to the single-family residential neighborhood to the south. Concerns centered around the general safety of the volatile manufacturing process. Additionally, there were concerns about general security of the facility and the potential for attracting criminal activity to the area.

5. Public Improvements/On-Site Improvements

No public improvements/on-site improvements are required.

6. Appeal Statement and Council Options

Pursuant to Zoning Code Chapter 20-62, appeals of decisions made by the Planning Commission shall be evaluated by the Council. The Council may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for appeal.

With respect to the Conditional Use Permit, the Council may:

- Affirm, affirm in part, or reverse the action, the determination, or decision that is the subject of the appeal; or
- Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or
- If new or difference evidence is presented on appeal, the Council may refer the matter back to the Commission for further consideration.

The appellant has provided the following eleven grounds for the appeal. The full appeal Statement is provided as an attachment. Staff responses follow each item.

- 1) *In accordance with City of Santa Rosa (City) ORD-2017-025 Sec. 1C, we believe a Conditional Use Permit (CUP) for NT Ventures, Inc. (Applicant) - Cannabis Manufacturing- Level 2 at 444 Yolanda Ave, Suite B, is not consistent with the City's goal to "establish a uniform regulatory structure for all cannabis uses in the City in accordance with State law." While the applicants have attempted to follow the City's current cannabis ordinance, we believe the approved CUP wholly disregards the intent of the State of California's allowance for individual Cities to approve their own respective setback requirements by interpreting the law to mean that manufacturing including volatile extraction while technically allowable with no setbacks to residential neighborhoods, schools and licensed daycare facilities, is exempt from other requirements such as required security, fire protection, air quality, and noise. As such we don't believe this CUP is in accordance with the intent of State law based on the lack of a minimum setback for residential unless the Cannabis business is retail. Certainly the intent of the State law was not to allow these types of business operations immediately proximal to residential neighborhoods, schools, parks, and child care facilities.*

Staff Response:

On December 19, 2017, the City Council unanimously adopted the City's Comprehensive Cannabis Ordinance. The regulations address the locational and operational requirements for commercial cannabis related businesses, identifying the permit compliance path for both medical and adult use cannabis activities. The ordinance allows the City to direct these land uses to appropriate areas of the City, and also establishes a public review process for permits, as well as locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise. The ordinance specifically addresses volatile cannabis manufacturing, requiring a Major Conditional Use Permit in the IL – Light Industrial and IG – General Industrial Zoning Districts.

The City specifically identified Business Park (BP), Light Industrial (IL), and General Industrial (IG) Zoning Districts as Zoning Districts where this type of use would be appropriate. Although Cannabis uses are not explicitly addressed in the General Plan, these industrial Zoning Districts implement the industrial designations intended for many uses similar to commercial

Cannabis manufacturing.

The volatile cannabis manufacturing process requires the use of a closed-loop vacuum system. A closed-loop system is an oil extraction method used to create cannabis concentrates. During the process, no solvents are exposed to the open air, and remain contained within a closed-loop system. The closed-loop extraction system is not unique to the cannabis manufacturing industry, in that it has been used for decades to produce perfume, food additives, and beauty products. Volatile extraction, when not associated with cannabis products, normally requires a Minor Use Permit, approved by the Zoning Administrator.

Per Zoning Code Section, 20-46.070(C), the City of Santa Rosa requires that the closed-loop system be listed or otherwise certified by an approved third-party testing agency or licensed professional engineer, and approved for the intended use by the City's Building Official and Fire Code Official.

Per 20-46.070(D), the City also requires that a licensed professional engineer annually recertify the extraction equipment. The applicant will comply with inspection and certification requirements by the State agencies as well as the City's Building and Fire Departments. Also, as required for State licensing, the Applicant will prepare and implement standard operating procedures for all manufacturing processes and use of all equipment.

- 2) *Further, it is clear the State of California has intended to keep cannabis related business away from children according to the mandated setbacks to K-12 schools and child care facilities given the requirements for retail operations. Harvest Park Neighborhood backs up to the applicant. The property boundary to Harvest Park is approximately 30 feet away to the South. Within 100 feet of the proposed site, anywhere from 10-40 children play, sleep, and/or reside. Within 350 feet of the proposed site, hundreds of children play and congregate at Harvest Park (a City of Santa Rosa park), sleep, and/or reside (Please see attached figure entitled Neighborhood Context Map). Two separate apartment complexes are immediately adjacent to Harvest Park which includes separate playground for toddler age kids and middle school age children, a dog park, and is frequently used by the local armed forces recruiter for training. We believe that this approved CUP increases the potential for crime and therefore represent a safety risk. The main access route for criminal activity would be through the backyard of residents and proximal to the City Park (Please see attached figure entitled Criminal Access Routes through Backyards). Before a CUP is approved, we recommend the City of Santa Rosa amend cannabis ordinance to include some concern in terms of setbacks to the children and families who play, sleep, and/or reside near cannabis related businesses.*

Staff Response:

The City Council unanimously adopted the City's Comprehensive Cannabis Ordinance. The regulations address the locational and operational

requirements for commercial cannabis related businesses. The ordinance specifically addresses locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise. Volatile manufacturing is not unique to the cannabis manufacturing industry, in that it has been used for decades to produce perfume, food additives, and beauty products. Volatile extraction, when not associated with cannabis products, normally requires a Minor Use Permit, approved by the Zoning Administrator, and is not heavily regulated by the State. Volatile cannabis manufacturing is subject to more stringent requirements. Per Section 20-46.050 (E), the project will be subject to Building and Fire permits, as described in Building and Fire Code Requirements for Cannabis Related Occupancies, including general requirements and those specific to volatile manufacturing. Additionally, an annual Fire Department Operational Permit is required for cannabis manufacturing facilities. The project will also be subject to strict State licensing and inspection requirements.

The proposed facility will not be open to the public. The parking area adjacent to the proposed facility will be secured with a chain link fence and rolling gate, with privacy screening. While the building footprint is 30-feet away from the property line of the nearest residential property, per the floorplan, the volatile manufacturing process will occur in a room within the tenant space nearly 60-feet away. In addition to controlled facility access, the security plan includes door sensors, window sensors, motion detectors, exterior lighting, and high resolution cameras. The operator will also contract with a security service provider to provide 24-hour security for the facility.

Planning staff consulted with the City's Police Department. They had no objections to the proposed project so long as the operator employs best practices in regards to security measures.

- 3) *In accordance with ORD-2017-025 Sec.1D, we believe a CUP for NT Ventures, Inc. - Cannabis Manufacturing- Level 2 at 444 Yolanda Ave, Suite B, goes against the General Plan and DOES NOT "direct commercial cannabis businesses to appropriate commercial and industrial districts designated to support such uses." Furthermore, we believe the approval of a CUP will be "detrimental to the public interest, health, safety, convenience, or welfare of the City," namely the residents of Harvest Park Neighborhood, including the aforementioned apartments and neighborhood park.*

Staff Response:

The City's Comprehensive Cannabis Ordinance addresses specific locational and operational requirements for commercial cannabis related businesses. The ordinance establishes locational and operational requirements to address land use compatibility, odor, security, safety, health, lighting, parking and noise.

The City specifically identified industrial Zoning Districts where volatile cannabis manufacturing would be appropriate. Although cannabis related uses are not explicitly addressed in the General Plan, the industrial Zoning Districts are intended for many uses similar to commercial Cannabis manufacturing. The ordinance specifically addresses volatile cannabis manufacturing, requiring a Major Conditional Use Permit in the IL – Light Industrial and IG – General Industrial Zoning Districts. Volatile extraction, when not associated with cannabis products, normally requires a Minor Use Permit, approved by the Zoning Administrator.

- 4) *Volatile extraction methods for cannabis are not a proven safe business practice. Volatile solvents are described by the State Code as "volatile organic compounds, including: (1) explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O₂ or H₂; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Is-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Tri-chloro-ethylene." The safety mechanism for the solvent includes an exhaust hood that evacuates the solvent storage area by exhausting to the roof. Most solvents (including butane) are heavier than air in their original unmixed form and would therefore sink to the ground when evacuated to the roof. A simple breaking of the valve while filling from a tanker would present a fire hazard or potential inhalation hazard to the nearby residents including children.*

Staff Response:

Volatile Cannabis Manufacturing refers to the processing or manufacturing of medical or adult use cannabis products using “volatile solvents.” The State of California Health & Safety Code defines a “volatile solvent” as a solvent that is or produces a flammable gas or vapor that, when present in the open air in sufficient quantities, will create explosive or ignitable mixtures. Examples of volatile solvents include, but are not limited to, butane, hexane, and propane. The volatile cannabis manufacturing process requires the use of a closed-loop vacuum system. A closed-loop system is an oil extraction method used to create cannabis concentrates. During the process, no solvents are exposed to the open air and remain contained within the closed-loop system. As mentioned previously, the closed-loop extraction system is not unique to the cannabis manufacturing industry, in that it has been used for decades to produce perfume, food additives, and beauty products. The applicant proposes to use liquid butane within a closed-loop vacuum extraction system.

Per Zoning Code Section, 20-46.070(C), the City of Santa Rosa requires that the closed-loop system be listed or otherwise certified by an approved third-party testing agency or licensed professional engineer and approved for the intended use by the City’s Building Official and Fire Code Official. Per 20-46.070(D), the City also requires that a licensed professional engineer annually recertify the extraction equipment. The applicant will comply with inspection and certification requirements by State agencies, as well as the City’s Building and Fire Departments. Also, as required for State licensing, the

applicant will prepare and implement standard operating procedures for all manufacturing processes and use of all equipment.

Per Section 20-46.050 (E), the project is subject to Building and Fire permits as described in Building and Fire Code Requirements for Cannabis Related Occupancies including general requirements and those specific to volatile manufacturing. Additionally, an annual Fire Department Operational Permit is required for cannabis manufacturing facilities.

The proposed project was reviewed by City staff, including representatives of the Building Division and Fire Department. The project as proposed and conditioned is consistent with the Zoning Code and adopted City policy.

- 5) *Manufacturing of hash oil creates a product that is highly desirable by criminal elements because of its value on the black market. The applicant estimates manufacturing approximately \$50,000 of hash oil per day for shipment. Armed guards with loaded guns would pick up the shipment at random times during the day. These armed guards would be within 35 feet of our neighborhood and potentially our children. We may not let our kids play in our neighbor's backyard for fear. These are the types of questions that we are asking ourselves. In light of the recent crimes and killings surrounding cannabis related businesses, this creates an undeniable and reasonable fear for parents and does not convey a suitable living environment for residents in Santa Rosa. Furthermore, a single stray bullet in the midst of a volatile solvent tank may cause an explosion, off-gassing, etc.*

Staff Response:

The project complies with the general operating requirements for cannabis businesses and those operating requirements specific to cannabis manufacturing. The parking spaces specifically allocated to this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of materials to and from the business. The facility will not be open to the general public.

In addition to controlled facility access, the security plan includes door sensors, window sensors, motion detectors, exterior lighting, and high resolution cameras. The operator will contract with a security service company to provide 24-hour security for the facility. All inventory will be tracked from the point of delivery to distribution. In accordance with State law, all employees are subject to a background check. Product transport to and from the facility will take place in unmarked vehicles, equipped with antitheft devices and systems.

Violent crime associated with cannabis rarely involves legally permitted cannabis facilities, but rather illegal cannabis businesses that operate without benefit of a permit and regulation.

- 6) *The transport of cannabis to the facility for processing creates another item for potential theft, odor, noise, dust, pesticides, bugs, etc. No one knows where this agricultural product is coming from and what was sprayed on it prior to transport. We are assuming armed guards would also be necessary for this transfer of raw materials. This would also constitute a nuisance to the nearby residents and potential for theft and gunfire in our neighborhood.*

Staff Response:

Theft & Security. Per Section 20-46.050, cannabis business operators are required to implement procedures for safe and secure transportation and delivery of cannabis products in accordance with State law. Section 20-46.050 also requires that the operator install a security surveillance system and a professionally monitored alarm system. The project security plan complies with this Code section, and will effectively prevent theft or diversion of any cannabis or currency, as well as to discourage loitering, crime, and illegal or nuisance activities, by installing an interior and exterior camera surveillance system, a professionally monitored alarm system, access controls, secure storage, secure waste areas, as well as implementing inventory controls, employee safety and security operational procedures, and training on such procedures. The parking area specifically allocated to this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of material to and from the business. The applicant has no plans to employ “armed guards” for any delivery or transportation needs.

Odor. City Code requires that all structures used for cultivation be equipped with odor control filtration and ventilation systems such that the odors of cannabis cannot be detected from outside of the structure. The applicant submitted an Odor Mitigation Plan, which has been prepared and certified by Andrew Souza at TEP Engineering, ensuring that all mitigation controls are sufficient to effectively mitigate odors from all sources (see Certified Odor Mitigation Plan dated received June 27, 2018).

Noise. The Cannabis Ordinance requires that the use of any air conditioning and ventilation equipment be subject to Chapter 17-16 (Noise). The Odor Mitigation Plan, prepared and certified by Andrew Souza at TEP Engineering, States that, “HVAC equipment shall comply with the City of Santa Rosa’s Chapter 17-16 (Noise) requirements. These HVAC systems must be specified and sized properly by a Professional Mechanical Engineer and maintained by the Owner per the manufacturer’s instructions.”

The applicant states that deliveries and transport of goods and materials will only occur during normal business hours, which will limit any general delivery/transport noise. The cannabis manufacturing process will only occur indoors under a controlled setting.

Dust. The driving surfaces for the project site are paved, which will limit any dust from vehicles.

Pesticides & Bugs. The project site does not propose any cannabis cultivation onsite. The State imposes strict regulations on the types of pesticides that can be applied to cannabis products. Cannabis cultivators are required to test their products through a third-party licensed cannabis laboratory testing facility to determine whether there are any harmful levels of chemicals, insects, etc. prior to sale or transport. Cannabis manufacturers are also required to have their finished products tested by a third-party licensed cannabis laboratory testing facility. In addition, any cannabis waste (spent biomass) will be securely stored and destroyed, as required by State law.

- 7) *Cultivation of cannabis at the proposed location is not in accordance with the City's General Plan as it is an agricultural activity used for human consumption. It can be interpreted that General Industrial (IG) conforms to agricultural production and manufacturing processing and cannabis production should not be the only agricultural product allowed this type of zoning permit in light industrial zoning (IL).*

Staff Response:

While, the applicant is not proposing cannabis cultivation at this facility, the City Code identifies “Cannabis Cultivation” as a uniquely defined use, differentiated from “Agricultural Product Processing.”

The Code defines Cannabis Cultivation as: “Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Medical or Adult Use Cannabis. Includes cannabis nurseries.”

Agricultural Product Processing is defined as: “The processing of harvested crops to prepare them for on-site marketing or processing and packaging elsewhere. Examples of this land use include the following: alfalfa cubing, corn shelling, cotton ginning...[etc].”

Cannabis manufacturing is also specifically defined by City Code as: “The production, preparation, propagation, or compounding of medical or adult use cannabis or medical or adult use cannabis products either directly or indirectly or by extraction methods, or independently by mean of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical or adult use cannabis or medical or adult use cannabis products or labels or relabels its container.”

Again, the City identified specific industrial Zoning Districts where volatile cannabis manufacturing would be appropriate. The identified industrial Zoning Districts were chosen because they are also intended for many uses similar to commercial Cannabis manufacturing. The Cannabis Ordinance specifically addresses volatile cannabis manufacturing, requiring a Major Conditional Use Permit in the IL – Light Industrial and IG – General Industrial Zoning Districts. Volatile extraction, when not associated with cannabis products, normally requires a Minor Use Permit at this location, which is

reviewed by the Zoning Administrator.

- 8) *Our research appears to show that there is not another municipality in California that allows volatile extraction, manufacturing, cultivation, and distribution with no minimum setback to residential neighborhoods, schools, and child care facilities. A simple wooden fence is separating the proposed project from resident's backyards. The City appears to be taking on a huge liability by approving a project with no precedent. The current cannabis ordinance does not provide adequate protection for the residents of Santa Rosa.*

Staff Response:

There are municipalities in the Bay Area and Southern California that adopted a similar approach as the City of Santa Rosa. Most of these cities that allow volatile manufacturing require that they be located within industrial Zoning Districts. According to the State Bureau of Cannabis Control, volatile extraction licenses can be found in 14 counties, with more than half located in Los Angeles County, Santa Cruz County, and Humboldt County.

The City Council unanimously adopted the City's Comprehensive Cannabis Ordinance, which regulates the locational and operational requirements for commercial cannabis related businesses. The ordinance requires minimum setbacks for retail cannabis uses to schools and other retail cannabis uses. The ordinance does not require minimum setbacks for non-retail cannabis related uses from residential uses, schools, parks, etc. The proposed facility will be fenced and will not be open to the general public.

As Stated earlier, the City identified specific industrial Zoning Districts where volatile cannabis manufacturing would be appropriate. The identified industrial zoning districts were chosen because they are also intended for many uses similar to commercial Cannabis manufacturing. The City chose to adopt the same development standards for cannabis manufacturing as other similar types of manufacturing uses, but require a higher level of review. For example, volatile extraction, when not associated with cannabis products, normally requires a Minor Use Permit with a lower level review by the Zoning Administrator, rather than a Major Conditional Use Permit.

- 9) *Volatile extraction is not allowed in many pro-cannabis counties and cities, period. For example, the County of Sonoma and City of Sacramento does not allow volatile extraction. The City of Cotati allows volatile extraction but has strict limitation of number of businesses and suitable locations. It is our understanding that the current City of Santa Rosa Cannabis code does not contain a limit or setbacks between business that use volatile extraction, cultivate, distribute, etc. Current ordinance to setbacks and limitations pertains strictly to the retail of cannabis with no provisions to the cultivation, manufacturing, distribution of cannabis.*

Staff Response:

As stated earlier, the City chose to adopt the same development standards, such as setbacks, for cannabis manufacturing as are required for other similar types of manufacturing uses, but volatile cannabis manufacturing requires a higher level of entitlement permit review. For example, volatile extraction, when not associated with cannabis products, normally requires a Minor Use Permit with a lower level review by the Zoning Administrator, rather than a Major Conditional Use Permit reviewed by the Planning Commission. A Major Conditional Use Permit requires a public hearing with an onsite noticing sign, a public hearing notice posted in the newspaper, and a public hearing notice mailed to surrounding property owners.

- 10) *The condition of the road and traffic along Yolanda is not conducive to an increase in manufacturing businesses. With more than several proposed businesses being pursued along Yolanda Ave, a more thorough corridor study regarding traffic, water usage, integrity of septic system, and setbacks to each other need to be pursued. If approved, a CUP may set precedent for the remaining applicants along Yolanda Ave. with no setbacks to each other.*

Staff Response:

The applicant submitted a Traffic Memo, prepared by Mousa Abbasi, from Transpedia Consulting Engineers, dated June 4, 2018 (included as an attachment). The memo acknowledges that the only traffic generated by the proposed facility, “will be the arrival and departure of employees, vendors and deliveries.” The tenant space was previously used for a flood/fire damage and mold restoration company (ServPro). In comparison to the former use, the proposed project would reduce the total net daily trips. The project site is a 2.09-acre parcel, developed in 2009 with three metal industrial buildings. Full frontage improvements were required and installed by the developer at the time of construction.

The General Plan identifies Yolanda Avenue as a major regional/arterial street that marks the southern entry into Santa Rosa. Since the project site has a General Plan designation of Light Industry, the General Plan anticipated a variety of industrial uses fronting onto Yolanda Avenue. Frontage improvements are predominantly dependent on the redevelopment of parcels, which normally trigger right-of-way dedication as well as road and frontage improvements.

All uses in the Light Industrial – IL Zoning District are subject to the same development standards, including height, setbacks, parking, etc. Any proposed new development will be subject to review by various City departments.

- 11) *In accordance with City Code 3.11 NOISE, manufacturing and industrial are generally not compatible with residential neighborhoods as decibel limits will*

certainly be exceeded at the property line.

Staff Response

The Odor Mitigation Plan, prepared by Andrew Souza at TEP Engineering, States that, "HVAC equipment shall comply with the City of Santa Rosa's Chapter 17-16 (Noise) requirements. These HVAC systems must be specified and sized properly by a Professional Mechanical Engineer and maintained by the Owner per the manufacturer's instructions." The Cannabis Ordinance requires that the use of any air conditioning and ventilation equipment be subject to Chapter 17-16 (Noise).

The applicant States that deliveries and transport of goods and materials will only occur during normal business hours, which will limit any general delivery/transport noise. The cannabis manufacturing process will only occur indoors and under a controlled setting.

FISCAL IMPACT

Approval or denial of this appeal action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

The project qualifies for a Class 1 exemption under CEQA Guidelines Section 15301 in that it is the permitting and minor alteration of an existing private structure involving no expansion of use beyond that existing at the time of the lead agency's determination.

The proposed project does not propose an expansion of the structure's total square footage. The proposed interior and exterior alterations are negligible and will not result in any significant impact(s).

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

On July 26, 2017, the project went before the Planning Commission for consideration of a Conditional Use Permit. At the meeting, members of the Planning Commission discussed the proximity of the proposed use to the residential neighborhood to the south. Following the public hearing, the Planning Commission voted (4-1-1-1, four ayes, one no, 1 abstaining, and 1 absent) to approve the Conditional Use Permit for the project.

NOTIFICATION

The project was noticed as a Public Hearing per the requirements of Chapter 20-66 of the City Code. Notification of this public hearing was provided by: posting an on-site sign; publishing a notice in a newspaper of general circulation; mailed notice to surrounding property owners within 400-feet; electronic notice to parties that expressed interest in projects taking place in this geographic area of Santa Rosa; and, bulletin board postings at City Hall and on the City website.

ISSUES

Planning staff received several comments concerning the proposed volatile cannabis manufacturing facility and its proximity to residential uses. The public also expressed general concern about safety and security. The closed-loop volatile extraction system is not unique or novel to the cannabis manufacturing industry, in that it has been used for decades to produce perfume, food additives, and beauty products. Volatile extraction, when not associated with cannabis products, normally requires a Minor Use Permit, approved by the Zoning Administrator. The City specifically identified the IL – Light Industrial Zoning District as an area where this type of use would be appropriate. Per Zoning Code Section, 20-46.070(C), the City of Santa Rosa requires that the closed-loop system be listed or otherwise certified by an approved third-party testing agency or licensed professional engineer, and approved for the intended use by the City's Building Official and Fire Code Official. Per 20-46.070(D), the City also requires that a licensed professional engineer annually recertify the extraction equipment. The applicant will comply with inspection and certification requirements by the State agencies as well as the City's Building and Fire Departments. Also, as required for State licensing, the Applicant will prepare and implement standard operating procedures for all manufacturing processes and use of all equipment.

The project site is developed for light industrial uses, and is consistent with the Light Industry General Plan designation. The project complies with the general operating requirements for cannabis businesses, and those operating requirements specific to cannabis manufacturing. The facility will not be open to the public. The parking spaces specifically allocated to this proposed business will be secured with a chain link fence and rolling gate, with privacy screening. The fencing will facilitate secure transport of materials to and from the business. While the building footprint is 30-feet away from the property line of the nearest residential property, per the floorplan, the volatile manufacturing will occur in a room within the tenant space nearly 60-feet away. In addition to controlled facility access, the security plan includes door sensors, window sensors, motion detectors, exterior lighting, and high resolution cameras. The operator will also contract with a security service provider to provide 24-hour security for the facility.

Staff has determined that the proposed Commercial Cannabis Manufacturing – Level 2 (volatile) use is consistent with the applicable aforementioned General Plan goals and policies and the associated Light Industry General Plan land use designation. The proposed use would assist in maintaining the economic viability of the area, broaden the available full and part time jobs within the City, and provide a viable commercial service, while ensuring compatibility with the surrounding neighborhoods through proposed operations and security measures.

ATTACHMENTS

Attachment 1 – Disclosure Form
Attachment 2 – Location Map
Attachment 3 – Neighborhood Context Map
Attachment 4 – Appeal Statement, dated received on August 3, 2018
Attachment 5 – Project Description dated received May 21, 2018
Attachment 6 – Project Plans dated received May 21, 2018
Attachment 7 – Certified Odor Mitigation Plan dated received June 27, 2018
Attachment 8 – Public Correspondence
Attachment 9 – Exhibit A Memo from Engineering, dated July 18, 2018
Attachment 10 – Traffic Letter from Transpedia Consulting, dated June 4, 2018
Attachment 11 – Planning Commission Resolution No. 11908

Draft Resolution – Denying the appeal and approving the Major Conditional Use Permit

CONTACT

Kristinae Toomians, Senior Planner
Planning and Economic Development
100 Santa Rosa Avenue, Room 3
(707) 543-4692
KToomians@SRCity.org