

SAN FRANCISCO BOARD OF APPEALS

LIBKRA INVESTMENT CORP.,

Appellant,

v.

DBI, PDA,

Respondents;

Bayview Ventures, Inc.,

Permit Holder.

Appeal No.: 22-002

**APPELLANT’S BRIEF IN SUPPORT OF
APPEAL**

Appellant Libkra Investment Corp. (“Libkra”) submits this brief in support of Appeal No. 22-002, challenging the issuance of the alteration permit issued to Respondent Bayview Ventures, Inc. for a proposed cannabis facility to be located at 2000 Oakdale Avenue. In addition to this appeal, Libkra has filed an appeal with the Board of Supervisors challenging the Planning Department’s use of a common sense exemption from environmental review under the California Environmental Quality Act (“CEQA”). Libkra requests the Board of Appeals to vacate and remand the alteration permit issued for the project in order to ensure the permit and proposed plans identify and incorporate the necessary odor control equipment and components. Libkra also challenges the permit as premature because the Planning Department has improperly relied on the common sense exemption under CEQA and must properly comply with CEQA prior to issuance of any permit for the facility, including the alteration permit.

The facility is proposed to include a cannabis dispensary storefront, delivery operations, manufacturing, packaging and distribution. Libkra owns the property directly across Rankin Street from the proposed operation. Libkra’s tenant employs or will employ

up to about 70 people in Libkra's building. Having already experienced nuisance levels of cannabis odors in the neighborhood from a nearby cannabis facility located at 75 Industrial Street, Libkra is concerned that the 2000 Oakdale facility has not yet formulated or addressed a plan to control the cannabis odors that will occur at the business as it engages in manufacturing and packaging activities at the site. In order to evaluate the odor concerns, Libkra's counsel retained Professional Engineer and Certified Industrial Hygienist Bud Offermann, PE CIH, to review the proposed facility, evaluate the likelihood of odor emissions to the surrounding neighborhood, and identify the structural and management controls necessary to ensure no odors would be released from the facility. Mr. Offermann is an indoor air scientist and engineer with 40 years of experience measuring indoor air pollution and odors and designing mitigation measures, including those related to cannabis odors. Mr. Offermann's review and his qualifications are attached as Exhibit A.

As Mr. Offermann explains:

Growing, curing, and dried cannabis all produce large amounts of volatile organic compounds with low odor thresholds, including nonanal, decanol, o-cymene, isobutyraldehyde, 1-chloroacetophenone, nerol, propylamine, o-guaiacol, linalyl acetate, methyl, anthranilate, benzaldehyde, and limonene.

Exhibit A, p. 1 (citing Rice and Koziel, 2015). Reviewing the floor plan for the proposed facility, Mr. Offermann identified specific odor mitigation measures that his expert evaluation indicated were necessary to incorporate into the facility's design and operation in order to prevent odor impacts to the surrounding neighborhood. *Id.* These included specific measures for each room at the facility where processing or packaging of unpackaged cannabis or cannabis in packaging that is not odor tight will occur. The measures included:

1. Each such room must be equipped with automatic door closers that close the doors within 3 seconds and operational controls to minimize door openings to these rooms.
2. For each of those rooms, air exhaust equipment must be installed “to maintain a minimum negative air pressure of 0.02 inches of water with respect to the adjacent spaces at all times that the door is closed and cannabis odors are present in the room.” *Id.*, p. 2. Mr. Offermann would require the installation of an air pressure sensor “capable of displaying the negative air pressure inside and outside of the room.” *Id.* Mr. Offermann provides an alternative to having the exhaust fan run continuously, noting that the fan must be operated “at all times there is unpackaged cannabis or cannabis in packaging that is not odor tight and continue for a minimum of 5 air changes following the sealing of all unpackaged cannabis or cannabis in packaging that is not odor tight into odor tight containers, or until such time there is no detectible cannabis odor in the room.” *Id.*
3. In order to address odors in the exhaust air, Mr. Offermann specifies the criteria that will dictate the thickness of activated charcoal media necessary to eliminate odors in the exhaust air:

The exhaust air from the room shall pass through an activated charcoal filter before being exhausted outdoors, such that the contact time through the media (i.e., thickness of activated charcoal packed bed divided by the airflow rate) is no less than 0.06 seconds. The selected activated carbon and design contact time shall be such that no perceptible cannabis odor is detectable from the exhaust air at the discharge point into the outdoor air with the maximum cannabis odor is present in the room.

Exhibit A, p. 2.

4. In addition to maintaining negative air pressure and filtering exhaust air, Mr. Offermann also identifies the need, during the operational hours in these packaging and

processing rooms, to operate an air purifier “with an activated carbon filter such that a minimum of six air changes per hour is delivered to the room.” *Id.* This is in addition to the exhaust filter.

Mr. Offermann also specifies the need to regularly check for the presence of cannabis odors at the facility’s exterior doors and the exhaust air discharge points; the prompt sealing of unpackaged cannabis to abate the odor; the use of a log of that monitoring and any responses; the maintenance of the filters and equipment; and the training of staff. Exhibit A, pp. 2-3.

The specific location and sizes of the exhaust duct and filtering equipment should be evaluated prior to the approval of plans and specifications. The plans relied upon by the City do not incorporate or anticipate any odor control equipment that would be installed during construction, including exhaust duct work and the necessary exhaust carbon filter. In order to ensure the proposed plans can accommodate all necessary odor control equipment, the facility’s odor control plan had to be evaluated prior to the issuance of the building permits and the necessary equipment and building components should be specified in the permit conditions.

The issuance of the facility’s permit also should be vacated because the Planning Department erred in relying on a commonsense exemption to avoid CEQA review of the facility’s potentially significant odor impacts. In light of Mr. Offermann’s expert comments and the extremely low odor thresholds emitted by cannabis products, the Planning Department has not produced any evidence to show there is no possibility that the facility will not emit significant odors to the adjacent neighborhood and the many people working in Libkra’s building and other adjacent properties and passing by the facility on a daily basis.

The Common Sense Exemption provides:

The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

14 Cal. Code Regs. § 15061(b)(3). “[W]hether a particular activity qualifies for the common sense exemption presents an issue of fact, that the agency invoking the exemption has the burden of demonstrating it applies.” *Muzzy Ranch Co. v. Solano Cty. Airport Land Use Com.* (2007) 41 Cal.4th 372, 386, citing *Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 114, 62 Cal.Rptr.2d 612. “An agency’s duty to provide such factual support ‘is all the more important where the record shows ... that opponents of the project have raised arguments regarding possible significant environmental impacts.’ *Id.*, at p. 117, 62 Cal.Rptr.2d 612. “[I]t was not appellant’s burden to produce substantial evidence here, in the absence of any evidence produced by the City supporting its exemption determination. *Davidon Homes*, 54 Cal. App. 4th at 117. “[T]he showing required of a party challenging an exemption under subdivision (b)(3) is slight, since that exemption requires the agency to be *certain* that there is *no possibility* the project may cause significant environmental impacts.” *Id.* (emphasis supplied). “If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt.” *Id.* “[T]he exemption under subdivision (b)(3) should be reserved for those “obviously exempt” projects, “where its absolute and precise language clearly applies.” *Id.*, citing *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 425.

Where, as here, the Planning Department has not received any plan from the facility indicating how it will control odors from the facility, there is no evidence the Planning

Department can rely on to support a conclusion that “there is no possibility” that the facility will not emit significant odors to the surrounding neighborhood. On the contrary, Mr. Offermann has submitted substantial evidence which, based on his expert knowledge of cannabis odors and available control equipment and measures, concludes that “if adequate odor mitigation measures are not incorporated into the design and operation of the facility, there will be significant odors introduced into the surrounding ambient air.” Exhibit A, p. 1. Because it is unknown what control measures will be required or whether they will be adequate, there is a possibility that the facility’s operation may have significant odor impacts.

The only indication of what types of odor control efforts would be implemented by the facility is an odor control plan prepared for a facility in Oakland. See *Breeze Distro, Facilities Odor Mitigation Plan* (attached as Exhibit B). However, no odor control management plan for the Project has been prepared and Mr. Offermann raised legitimate questions of a likelihood that the Project will have odor impacts on the surrounding neighborhood. Because Mr. Offermann raises legitimate questions that there is a possibility of significant odor effects from the Project and disputes there is no possibility of an odor impact, the City cannot rely on the Common Sense Exemption. See *Davidon Homes*, 54 Cal. App. 4th at 117.

The only indication of what odor controls may be used at the facility is a short plan prepared for a facility in Oakland. Exhibit B. That example calls for the use of several portable air filters – the Airganics Filtration Model 700 each with an air changeover rate of 3X per hour. Thus, where that example includes two of those air filters in one room, this would only incorporate one of the elements of Mr. Offermann’s identified measures. The most important measures – to create a negative air pressure in order to contain odors within the relevant processing rooms and the filtering of the exhaust – is the only way to

ensure no significant odors are emitted from the facility. The Oakland example claims there is no ventilation to exterior. It also claims that air pressure is neutral though there is no way to verify whether that is the case. Without a negative air pressure and properly sized active carbon filter for the exhaust air, whenever doors are opened, odors will escape the rooms where the odors are generated. This incomplete plan for a different facility does not eliminate the legitimate questions raised by Mr. Offerman disputing the absence of any possibility of a significant odor impact from the facility.

On February 7, 2022, the Planning Department submitted a response to Libkra's parallel appeal of the common sense exemption to the Board of Supervisors. Planning Department Response to Common Sense Exemption Appeal (Feb. 7, 2022) ("Dep't Response") (attached as Exhibit C). The Department's response is notable for the lack of any facts supporting a common sense exemption. As a result, it confirms the Department has failed to meet its burden to establish the propriety of using the common sense exemption.

In its response, the Department only points to a future process involving the City's Department of Public Health and the applicant whereby an odor control plan will be devised. The Department then asserts that "[t]he multi-phased permitting process for the City's Office of Cannabis would ensure that no adverse odors escape the premises[.]" with no reference to any odor control that would actually be implemented or its effectiveness at the facility. Exhibit C, p. 3. Likewise, prior to the submittal of any proposal and apparently without any public process to review an odor control plan, the Planning Department asserts that "[t]he multi-phased permitting process for the City's Office of Cannabis would ensure that no adverse odors escape the premises." *Id.* Likewise, the Department states that "[i]n the second step of the process the applicants are required to demonstrate, through the responses to the relevant application forms, how they will prevent any noxious or offensive

cannabis-related odors from escaping the premises.” *Id.* It is appellant’s understanding that this second step has not yet occurred. Thus, in this latter assertion, the Department acknowledges that the applicant has not yet demonstrated it will be able to prevent any odors from escaping. The Department has never reviewed any specific odor controls proposed for the facility. As a result, the Department does not have any facts to support the common sense exemption which requires facts showing “with certainty that there is no possibility” the project may have odor impacts. 14 Cal. Code Regs. § 15061(b)(3).

The City’s cannabis ordinance does not specify what is to be included in a facility’s odor control plan or guarantee its effectiveness. See Article 16, § 1609(b)(11) (requiring an “Operations Plan that includes such information as may be required by the Director, including but not limited to: (A) An odor mitigation plan....”); §1618(v) (“Appropriate odor control equipment shall be installed in conformance with the approved odor plan and maintained to prevent any significant noxious or offensive odors from escaping the Premises”). In the absence of provisions specifying the equipment that can be confirmed will eliminate any possibility of potential odor impacts, the permitting procedures cited by the Department do not present facts meeting the common sense exemption criteria. 14 Cal. Code Regs. § 15061(b)(3).

Nor does the City’s permitting process requiring a future odor control plan undermine the legitimate questions raised by Mr. Offermann’s review. First, contrary to the Department’s assertion, where, as here, the Department has gathered no facts regarding the facility’s odor control plan prior to adopting a common sense exemption, it is not appellant’s burden to produce substantial evidence. *Davidon Homes*, 54 Cal. App. 4th at 117. Appellant need only raise legitimate questions which it has done by securing the assistance of an expert who prepared a detailed review.

Second, the City's permitting process provides no facts telling the Department or anyone what the facility's final odor control plan will include. Exhibit C, p. 4. There is no rule in the permitting process that requires this facility to adhere to Mr. Offermann's identified conditions. Until the facility commits to comply with those conditions, legitimate questions will remain regarding whether there is a possibility the facility may have significant odor impacts.

Because the Department erred in relying on the common sense exemption, the alteration permit should not have been issued until the Department complies with CEQA by preparing at least a mitigated negative declaration specifying the odor control measures that will be required. Environmental review of a project must occur **“[b]efore granting any approval of a project** subject to CEQA.” 14 CCR § 15004(a) (emphasis added). The City has a duty to manage the timing of its various approval processes to ensure that environmental review of the project occurs prior to any approvals of the project, including the challenged alteration permit. 14 CCR § 15004(c); PRC § 21003(a); *see also Orinda Assn. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 (holding that unconditional “demolition permit could not be issued until the entire CEQA process was completed and the overall Project lawfully approved”). Because the common sense exemption already issued by the Department is not valid, the permit approval must be vacated and an appropriate CEQA review conducted.

Respectfully submitted,

LOZEAU DRURY LLP



Michael R. Lozeau
Attorneys for Appellant Libkra Investment Corp.

EXHIBIT A



INDOOR ENVIRONMENTAL ENGINEERING



1448 Pine Street, Suite 103 San Francisco, California 94109

Telephone: (415) 567-7700

E-mail: offer mann@IEE-SF.com

<http://www.iee-sf.com>

Date: November 24, 2019
To: Michael Lozeau
From: Bud Offermann PE CIH
Subject: Cannabis Odor Control; 2000 Oakdale, San Francisco, CA
Pages: 3

I have review the proposed cannabis production and retail facility located at 2000 Oakdale, San Francisco, CA, and my expert opinion is that if adequate odor mitigation measures are not incorporated into the design and operation of the facility, there will be significant odors introduced into the surrounding ambient air.

Cannabis does not need to be smoked to produce odors. Growing, curing, and dried cannabis all produce large amounts of volatile organic compounds with low odor thresholds, including nonanal, decanol, o-cymene, isobutyraldehyde, 1-chloroacetophenone, nerol, propylamine, o-guaiacol, linalyl acetate, methyl, anthranilate, benzaldehyde, and limonene (Rice and Koziel, 2015).

I am an indoor air scientist and engineer with 40 years of experience in measuring indoor air quality and odors, and designing mitigation measures, including those related to cannabis odors.

The following are my recommendations for controlling cannabis odors from being released from the proposed cannabis production and retail facility located at 2000 Oakdale, San Francisco, CA.

For each room with any unpackaged cannabis or cannabis in packaging that is not odor tight (e.g. Cannabis Processing and Receiving Area, Cannabis Product Storage, etc.) the following odor mitigation measures shall be established.

1.) Doors to the room will have automatic door closers that close the door within 3 seconds. Daily door openings shall be kept to a minimum.

2.) Air shall be exhausted from the room to maintain a minimum negative air pressure of 0.02 inches of water with respect to the adjacent spaces at all times that the door is closed and cannabis odors are present in the room. An air pressure sensor shall be mounted in the room capable of displaying the negative air pressure inside and outside of the room. If the exhaust fan is not operated continuously (i.e., 24 hours per day, 7 days per week), then the exhaust fan will be operated at all times there is unpackaged cannabis or cannabis in packaging that is not odor tight and continue for a minimum of 5 air changes following the sealing of all unpackaged cannabis or cannabis in packaging that is not odor tight into odor tight containers, or until such time there is no detectible cannabis odor in the room.

3.) The exhaust air from the room shall pass through an activated charcoal filter before being exhausted outdoors, such that the contact time through the media (i.e., thickness of activated charcoal packed bed divided by the airflow rate) is no less than 0.06 seconds. The selected activated carbon and design contact time shall be such that no perceptible cannabis odor is detectable from the exhaust air at the discharge point into the outdoor air with the maximum cannabis odor is present in the room.

4.) In each room operate during periods that cannabis is unpackaged, or in packaging that is not odor tight, operate an air purifier with an activated carbon filter such that a minimum of six air changes per hour is delivered to the room.

5.) Odor Log. A written daily log of the presence of cannabis odor at each of the facilities entrances and at each of the exhaust air discharge points into the outdoor shall be conducted by a trained staff person during the time which the maximum cannabis odor is present in the room. The written daily log shall contain the date, time, location of odor measurement,

and the name of the staff person conducting the odor assessment. If cannabis odor is detected, then all unpackaged cannabis or cannabis in packaging that is not odor tight will be immediately placed into odor tight containers until such time as the cause of the odor is corrected (e.g., changing the activated charcoal filter, adjusting the airflow rate through the air activated charcoal filter, increasing the negative air pressure in the room etc.). The written daily logs shall be kept on site for a minimum of 5 years.

6.) Maintenance. Prepare a maintenance schedule for the exhaust fans, activated charcoal filters, and automatic door closers. All maintenance activities, shall be documented in logs identifying the maintenance activity, the date of the maintenance activity, and the person carrying out the activity.

7.) Training. Prepare a training schedule for staff. The staff training program shall include, but not be limited to, the following:

- The terms of the facility's Good Neighbor Policy
- How different odor control tools, equipment and products work
- Safety concerns related to odor control
- Mastering effective odor control strategies
- Odor system maintenance
- Maintaining records for the odor management system
- Strategies to actively reduce odor
- Reporting issues to management

A log of all training events shall be maintained including but not limited to the date of the training activity, name of trainer, names of persons attending, and training topic.

References

Rice, S, and Koziel J. 2015. Characterizing the Smell of Marijuana by Odor Impact of Volatile Compounds: An Application of Simultaneous Chemical and Sensory Analysis

Francis (Bud) J. Offermann III PE, CIH

Indoor Environmental Engineering

1448 Pine Street, Suite 103, San Francisco, CA 94109

Phone: 415-567-7700

Email: Offermann@iee-sf.com

<http://www.iee-sf.com>

Education

M.S. Mechanical Engineering (1985)
Stanford University, Stanford, CA.

Graduate Studies in Air Pollution Monitoring and Control (1980)
University of California, Berkeley, CA.

B.S. in Mechanical Engineering (1976)
Rensselaer Polytechnic Institute, Troy, N.Y.

Professional Experience

President: Indoor Environmental Engineering, San Francisco, CA. December, 1981 - present.

Direct team of environmental scientists, chemists, and mechanical engineers in conducting State and Federal research regarding indoor air quality instrumentation development, building air quality field studies, ventilation and air cleaning performance measurements, and chemical emission rate testing.

Provide design side input to architects regarding selection of building materials and ventilation system components to ensure a high quality indoor environment.

Direct Indoor Air Quality Consulting Team for the winning design proposal for the new State of Washington Ecology Department building.

Develop a full-scale ventilation test facility for measuring the performance of air diffusers; ASHRAE 129, Air Change Effectiveness, and ASHRAE 113, Air Diffusion Performance Index.

Develop a chemical emission rate testing laboratory for measuring the chemical emissions from building materials, furnishings, and equipment.

Principle Investigator of the California New Homes Study (2005-2007). Measured ventilation and indoor air quality in 108 new single family detached homes in northern and southern California.

Develop and teach IAQ professional development workshops to building owners, managers, hygienists, and engineers.

Air Pollution Engineer: Earth Metrics Inc., Burlingame, CA, October, 1985 to March, 1987.

Responsible for development of an air pollution laboratory including installation a forced choice olfactometer, tracer gas electron capture chromatograph, and associated calibration facilities. Field team leader for studies of fugitive odor emissions from sewage treatment plants, entrainment of fume hood exhausts into computer chip fabrication rooms, and indoor air quality investigations.

Staff Scientist: Building Ventilation and Indoor Air Quality Program, Energy and Environment Division, Lawrence Berkeley Laboratory, Berkeley, CA. January, 1980 to August, 1984.

Deputy project leader for the Control Techniques group; responsible for laboratory and field studies aimed at evaluating the performance of indoor air pollutant control strategies (i.e. ventilation, filtration, precipitation, absorption, adsorption, and source control).

Coordinated field and laboratory studies of air-to-air heat exchangers including evaluation of thermal performance, ventilation efficiency, cross-stream contaminant transfer, and the effects of freezing/defrosting.

Developed an *in situ* test protocol for evaluating the performance of air cleaning systems and introduced the concept of effective cleaning rate (ECR) also known as the Clean Air Delivery Rate (CADR).

Coordinated laboratory studies of portable and ducted air cleaning systems and their effect on indoor concentrations of respirable particles and radon progeny.

Co-designed an automated instrument system for measuring residential ventilation rates and radon concentrations.

Designed hardware and software for a multi-channel automated data acquisition system used to evaluate the performance of air-to-air heat transfer equipment.

Assistant Chief Engineer: Alta Bates Hospital, Berkeley, CA, October, 1979 to January, 1980.

Responsible for energy management projects involving installation of power factor correction capacitors on large inductive electrical devices and installation of steam meters on physical plant steam lines. Member of Local 39, International Union of Operating Engineers.

Manufacturing Engineer: American Precision Industries, Buffalo, NY, October, 1977 to October, 1979.

Responsible for reorganizing the manufacturing procedures regarding production of shell and tube heat exchangers. Designed customized automatic assembly, welding, and testing equipment. Designed a large paint spray booth. Prepared economic studies justifying new equipment purchases. Safety Director.

Project Engineer: Arcata Graphics, Buffalo, N.Y. June, 1976 to October, 1977.

Responsible for the design and installation of a bulk ink storage and distribution system and high speed automatic counting and marking equipment. Also coordinated material handling studies which led to the purchase and installation of new equipment.

PROFESSIONAL ORGANIZATION MEMBERSHIP

American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)

- Chairman of SPC-145P, Standards Project Committee - Test Method for Assessing the Performance of Gas Phase Air Cleaning Equipment (1991-1992)
- Member SPC-129P, Standards Project Committee - Test Method for Ventilation Effectiveness (1986-97)
 - Member of Drafting Committee
- Member Environmental Health Committee (1992-1994, 1997-2001, 2007-2010)
 - Chairman of EHC Research Subcommittee
 - Member of Man Made Mineral Fiber Position Paper Subcommittee
 - Member of the IAQ Position Paper Committee
 - Member of the Legionella Position Paper Committee
 - Member of the Limiting Indoor Mold and Dampness in Buildings Position Paper Committee
- Member SSPC-62, Standing Standards Project Committee - Ventilation for Acceptable Indoor Air Quality (1992 to 2000)
 - Chairman of Source Control and Air Cleaning Subcommittee
- Chairman of TC-4.10, Indoor Environmental Modeling (1988-92)
 - Member of Research Subcommittee
- Chairman of TC-2.3, Gaseous Air Contaminants and Control Equipment (1989-92)
 - Member of Research Subcommittee

American Society for Testing and Materials (ASTM)

- D-22 Sampling and Analysis of Atmospheres
 - Member of Indoor Air Quality Subcommittee
- E-06 Performance of Building Constructions

American Board of Industrial Hygiene (ABIH)

American Conference of Governmental Industrial Hygienists (ACGIH)

- Bioaerosols Committee (2007-2013)

American Industrial Hygiene Association (AIHA)

Cal-OSHA Indoor Air Quality Advisory Committee

International Society of Indoor Air Quality and Climate (ISIAQ)

- Co-Chairman of Task Force on HVAC Hygiene

U. S. Green Building Council (USGBC)

- Member of the IEQ Technical Advisory Group (2007-2009)
- Member of the IAQ Performance Testing Work Group (2010-2012)

Western Construction Consultants (WESTCON)

PROFESSIONAL CREDENTIALS

Licensed Professional Engineer - Mechanical Engineering

Certified Industrial Hygienist - American Board of Industrial Hygienists

SCIENTIFIC MEETINGS AND SYMPOSIA

Biological Contamination, Diagnosis, and Mitigation, Indoor Air'90, Toronto, Canada, August, 1990.

Models for Predicting Air Quality, Indoor Air'90, Toronto, Canada, August, 1990.

Microbes in Building Materials and Systems, Indoor Air '93, Helsinki, Finland, July, 1993.

Microorganisms in Indoor Air Assessment and Evaluation of Health Effects and Probable Causes, Walnut Creek, CA, February 27, 1997.

Controlling Microbial Moisture Problems in Buildings, Walnut Creek, CA, February 27, 1997.

Scientific Advisory Committee, Roomvent 98, 6th International Conference on Air Distribution in Rooms, KTH, Stockholm, Sweden, June 14-17, 1998.

Moisture and Mould, Indoor Air '99, Edinburgh, Scotland, August, 1999.

Ventilation Modeling and Simulation, Indoor Air '99, Edinburgh, Scotland, August, 1999.

Microbial Growth in Materials, Healthy Buildings 2000, Espoo, Finland, August, 2000.

Co-Chair, Bioaerosols X- Exposures in Residences, Indoor Air 2002, Monterey, CA, July 2002.

Healthy Indoor Environments, Anaheim, CA, April 2003.

Chair, Environmental Tobacco Smoke in Multi-Family Homes, Indoor Air 2008, Copenhagen, Denmark, July 2008.

Co-Chair, ISIAQ Task Force Workshop; HVAC Hygiene, Indoor Air 2002, Monterey, CA, July 2002.

Chair, ETS in Multi-Family Housing: Exposures, Controls, and Legalities Forum, Healthy Buildings 2009, Syracuse, CA, September 14, 2009.

Chair, Energy Conservation and IAQ in Residences Workshop, Indoor Air 2011, Austin, TX, June 6, 2011.

Chair, Electronic Cigarettes: Chemical Emissions and Exposures Colloquium, Indoor Air 2016, Ghent, Belgium, July 4, 2016.

SPECIAL CONSULTATION

Provide consultation to the American Home Appliance Manufacturers on the development of a standard for testing portable air cleaners, AHAM Standard AC-1.

Served as an expert witness and special consultant for the U.S. Federal Trade Commission regarding the performance claims found in advertisements of portable air cleaners and residential furnace filters.

Conducted a forensic investigation for a San Mateo, CA pro se defendant, regarding an alleged homicide where the victim was kidnapped in a steamer trunk. Determined the air exchange rate in the steamer trunk and how long the person could survive.

Conducted *in situ* measurement of human exposure to toluene fumes released during nailpolish application for a plaintiffs attorney pursuing a California Proposition 65 product labeling case. June, 1993.

Conducted a forensic *in situ* investigation for the Butte County, CA Sheriff's Department of the emissions of a portable heater used in the bedroom of two twin one year old girls who suffered simultaneous crib death.

Consult with OSHA on the 1995 proposed new regulation regarding indoor air quality and environmental tobacco smoke.

Consult with EPA on the proposed Building Alliance program and with OSHA on the proposed new OSHA IAQ regulation.

Johnson Controls Audit/Certification Expert Review; Milwaukee, WI. May 28-29, 1997.

Winner of the nationally published 1999 Request for Proposals by the State of Washington to conduct a comprehensive indoor air quality investigation of the Washington State Department of Ecology building in Lacey, WA.

Selected by the State of California Attorney General's Office in August, 2000 to conduct a comprehensive indoor air quality investigation of the Tulare County Court House.

Lawrence Berkeley Laboratory IAQ Experts Workshop: "Cause and Prevention of Sick Building Problems in Offices: The Experience of Indoor Environmental Quality Investigators", Berkeley, California, May 26-27, 2004.

Provide consultation and chemical emission rate testing to the State of California Attorney General's Office in 2013-2015 regarding the chemical emissions from e-cigarettes.

PEER-REVIEWED PUBLICATIONS :

F.J.Offermann, C.D.Hollowell, and G.D.Roseme, "Low-Infiltration Housing in Rochester, New York: A Study of Air Exchange Rates and Indoor Air Quality," *Environment International*, 8, pp. 435-445, 1982.

W.W.Nazaroff, F.J.Offermann, and A.W.Robb, "Automated System for Measuring Air Exchange Rate and Radon Concentration in Houses," *Health Physics*, 45, pp. 525-537, 1983.

F.J.Offermann, W.J.Fisk, D.T.Grimrud, B.Pedersen, and K.L.Revzan, "Ventilation Efficiencies of Wall- or Window-Mounted Residential Air-to-Air Heat Exchangers," *ASHRAE Annual Transactions*, 89-2B, pp 507-527, 1983.

W.J.Fisk, K.M.Archer, R.E Chant, D. Hekmat, F.J.Offermann, and B.Pedersen, "Onset of Freezing in Residential Air-to-Air Heat Exchangers," *ASHRAE Annual Transactions*, 91-1B, 1984.

W.J.Fisk, K.M.Archer, R.E Chant, D. Hekmat, F.J.Offermann, and B.Pedersen, "Performance of Residential Air-to-Air Heat Exchangers During Operation with Freezing and Periodic Defrosts," *ASHRAE Annual Transactions*, 91-1B, 1984.

F.J.Offermann, R.G.Sextro, W.J.Fisk, D.T.Grimrud, W.W.Nazaroff, A.V.Nero, and K.L.Revzan, "Control of Respirable Particles with Portable Air Cleaners," *Atmospheric Environment*, Vol. 19, pp.1761-1771, 1985.

R.G.Sextro, F.J.Offermann, W.W.Nazaroff, A.V.Nero, K.L.Revzan, and J.Yater, "Evaluation of Indoor Control Devices and Their Effects on Radon Progeny Concentrations," *Atmospheric Environment*, *12*, pp. 429-438, 1986.

W.J. Fisk, R.K.Spencer, F.J.Offermann, R.K.Spencer, B.Pedersen, R.Sextro, "Indoor Air Quality Control Techniques," *Noyes Data Corporation*, Park Ridge, New Jersey, (1987).

F.J.Offermann, "Ventilation Effectiveness and ADPI Measurements of a Forced Air Heating System," *ASHRAE Transactions* , Volume 94, Part 1, pp 694-704, 1988.

F.J.Offermann and D. Int-Hout "Ventilation Effectiveness Measurements of Three Supply/Return Air Configurations," *Environment International* , Volume 15, pp 585-592 1989.

F.J. Offermann, S.A. Loiselle, M.C. Quinlan, and M.S. Rogers, "A Study of Diesel Fume Entrainment in an Office Building," *IAQ '89*, The Human Equation: Health and Comfort, pp 179-183, ASHRAE, Atlanta, GA, 1989.

R.G.Sextro and F.J.Offermann, "Reduction of Residential Indoor Particle and Radon Progeny Concentrations with Ducted Air Cleaning Systems," submitted to *Indoor Air*, 1990.

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“Designing for Healthy and Comfortable Indoor Environments”, Construction Specification Institute, Santa Rosa, CA, November 6, 1997.

“Ventilation System Design for Good IAQ”, University of Tulsa 10th Annual Conference, San Francisco, CA, February 25, 1998.

“The Building Shell”, Tools For Building Green Conference and Trade Show, Alameda County Waste Management Authority and Recycling Board, Oakland, CA, February 28, 1998.

“Identifying Fungal Contamination Problems In Buildings”, The City of Oakland Municipal Employees, Oakland, CA, March 26, 1998.

“Managing Indoor Air Quality in Schools: Staying Out of Trouble”, CASBO, Sacramento, CA, April 20, 1998.

“Indoor Air Quality”, CSOOC Spring Conference, Visalia, CA, April 30, 1998.

“Particulate and Gas Phase Air Filtration”, ACGIH/OSHA, Ft. Mitchell, KY, June 1998.

“Building Air Quality Facts and Myths”, The City of Oakland / Alameda County Safety Seminar, Oakland, CA, June 12, 1998.

“Building Engineering and Moisture”, Building Contamination Workshop, University of California Berkeley, Continuing Education in Engineering and Environmental Management, San Francisco, CA, October 21-22, 1999.

“Identifying and Mitigating Mold Contamination in Buildings”, Western Construction Consultants Association, Oakland, CA, March 15, 2000; AIG Construction Defect Seminar, Walnut Creek, CA, May 2, 2001; City of Oakland Public Works Agency, Oakland, CA, July 24, 2001; Executive Council of Homeowners, Alamo, CA, August 3, 2001.

“Using the EPA BASE Study for IAQ Investigation / Communication”, Joint Professional Symposium 2000, American Industrial Hygiene Association, Orange County & Southern California Sections, Long Beach, October 19, 2000.

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“Closing Session Summary: ‘Building Investigations’ and ‘Building Design & Construction’”, Healthy Buildings 2000, Espoo, Finland, August 2000.

“Managing Building Air Quality and Energy Efficiency, Meeting the Standard of Care”, BOMA, MidAtlantic Environmental Hygiene Resource Center, Seattle, WA, May 23rd, 2000; San Antonio, TX, September 26-27, 2000.

“Diagnostics & Mitigation in Sick Buildings: When Good Buildings Go Bad,” University of California Berkeley, September 18, 2001.

“Mold Contamination: Recognition and What To Do and Not Do”, Redwood Empire Remodelers Association; Santa Rosa, CA, April 16, 2002.

“Investigative Tools of the IAQ Trade”, Healthy Indoor Environments 2002; Austin, TX; April 22, 2002.

“Finding Hidden Mold: Case Studies in IAQ Investigations”, AIHA Northern California Professionals Symposium; Oakland, CA, May 8, 2002.

“Assessing and Mitigating Fungal Contamination in Buildings”, Cal/OSHA Training; Oakland, CA, February 14, 2003 and West Covina, CA, February 20-21, 2003.

“Use of External Containments During Fungal Mitigation”, Invited Speaker, ACGIH Mold Remediation Symposium, Orlando, FL, November 3-5, 2003.

Building Operator Certification (BOC), 106-IAQ Training Workshops, Northwest Energy Efficiency Council; Stockton, CA, December 3, 2003; San Francisco, CA, December 9, 2003; Irvine, CA, January 13, 2004; San Diego, January 14, 2004; Irwindale, CA, January 27, 2004; Downey, CA, January 28, 2004; Santa Monica, CA, March 16, 2004; Ontario, CA, March 17, 2004; Ontario, CA, November 9, 2004, San Diego, CA, November 10, 2004; San Francisco, CA, November 17, 2004; San Jose, CA, November 18, 2004; Sacramento, CA, March 15, 2005.

“Mold Remediation: The National QUEST for Uniformity Symposium”, Invited Speaker, Orlando, Florida, November 3-5, 2003.

“Mold and Moisture Control”, Indoor Air Quality workshop for The Collaborative for High Performance Schools (CHPS), San Francisco, December 11, 2003.

“Advanced Perspectives In Mold Prevention & Control Symposium”, Invited Speaker, Las Vegas, Nevada, November 7-9, 2004.

“Building Sciences: Understanding and Controlling Moisture in Buildings”, American Industrial Hygiene Association, San Francisco, CA, February 14-16, 2005.

“Indoor Air Quality Diagnostics and Healthy Building Design”, University of California Berkeley, Berkeley, CA, March 2, 2005.

“Improving IAQ = Reduced Tenant Complaints”, Northern California Facilities Exposition, Santa Clara, CA, September 27, 2007.

“Defining Safe Building Air”, Criteria for Safe Air and Water in Buildings, ASHRAE Winter Meeting, Chicago, IL, January 27, 2008.

“Update on USGBC LEED and Air Filtration”, Invited Speaker, NAFA 2008 Convention, San Francisco, CA, September 19, 2008.

“Ventilation and Indoor air Quality in New California Homes”, National Center of Healthy Housing, October 20, 2008.

“Indoor Air Quality in New Homes”, California Energy and Air Quality Conference, October 29, 2008.

“Mechanical Outdoor air Ventilation Systems and IAQ in New Homes”, ACI Home Performance Conference, Kansas City, MO, April 29, 2009.

“Ventilation and IAQ in New Homes with and without Mechanical Outdoor Air Systems”, Healthy Buildings 2009, Syracuse, CA, September 14, 2009.

“Ten Ways to Improve Your Air Quality”, Northern California Facilities Exposition, Santa Clara, CA, September 30, 2009.

“New Developments in Ventilation and Indoor Air Quality in Residential Buildings”, Westcon meeting, Alameda, CA, March 17, 2010.

“Intermittent Residential Mechanical Outdoor Air Ventilation Systems and IAQ”, ASHRAE SSPC 62.2 Meeting, Austin, TX, April 19, 2010.

“Measured IAQ in Homes”, ACI Home Performance Conference, Austin, TX, April 21, 2010.

“Respiration: IEQ and Ventilation”, AIHce 2010, How IH Can LEED in Green buildings, Denver, CO, May 23, 2010.

“IAQ Considerations for Net Zero Energy Buildings (NZEB)”, Northern California Facilities Exposition, Santa Clara, CA, September 22, 2010.

“Energy Conservation and Health in Buildings”, Berkeley High School Green Career Week, Berkeley, CA, April 12, 2011.

“What Pollutants are Really There ?”, ACI Home Performance Conference, San Francisco, CA, March 30, 2011.

“Energy Conservation and Health in Residences Workshop”, Indoor Air 2011, Austin, TX, June 6, 2011.

“Assessing IAQ and Improving Health in Residences”, US EPA Weatherization Plus Health, September 7, 2011.

“Ventilation: What a Long Strange Trip It’s Been”, Westcon, May 21, 2014.

“Chemical Emissions from E-Cigarettes: Direct and Indirect Passive Exposures”, Indoor Air 2014, Hong Kong, July, 2014.

“Infectious Disease Aerosol Exposures With and Without Surge Control Ventilation System Modifications”, Indoor Air 2014, Hong Kong, July, 2014.

“Chemical Emissions from E-Cigarettes”, IMF Health and Welfare Fair, Washington, DC, February 18, 2015.

“Chemical Emissions and Health Hazards Associated with E-Cigarettes”, Roswell Park Cancer Institute, Buffalo, NY, August 15, 2014.

“Formaldehyde Indoor Concentrations, Material Emission Rates, and the CARB ATCM”, Harris Martin’s Lumber Liquidators Flooring Litigation Conference, WQ Minneapolis Hotel, May 27, 2015.

“Chemical Emissions from E-Cigarettes: Direct and Indirect Passive Exposure”, FDA Public Workshop: Electronic Cigarettes and the Public Health, Hyattsville, MD June 2, 2015.

“Creating Healthy Homes, Schools, and Workplaces”, Chautauqua Institution, Athenaeum Hotel, August 24, 2015.

“Diagnosing IAQ Problems and Designing Healthy Buildings”, University of California Berkeley, Berkeley, CA, October 6, 2015.

“Diagnosing Ventilation and IAQ Problems in Commercial Buildings”, BEST Center Annual Institute, Lawrence Berkeley National Laboratory, January 6, 2016.

“A Review of Studies of Ventilation and Indoor Air Quality in New Homes and Impacts of Environmental Factors on Formaldehyde Emission Rates From Composite Wood Products”, AIHce2016, May, 21-26, 2016.

“Admissibility of Scientific Testimony”, Science in the Court, Proposition 65 Clearinghouse Annual Conference, Oakland, CA, September 15, 2016.

“Indoor Air Quality and Ventilation”, ASHRAE Redwood Empire, Napa, CA, December 1, 2016.

EXHIBIT B

Breeze

DISTRO

Facilities

Odor Mitigation Plan

LL PRODUCTS
CH11-0000801-LIC
CDPH-10004644
2969 E. 7th Street
Oakland, CA
(510) 421-1835

1. ROLES AND RESPONSIBILITIES

1.1. Execution

1.1.1. MANUFACTURING TECHNICIANS

1.1.2. PRODUCTION MANAGER

1.2. Accountability

1.2.1. COMPLIANCE OFFICER

1.2.1.1. LAUREN LAVIGNE

1.2.1.1.1. LAUREN@BREEZEDISTRO.COM

1.2.1.1.2. 510-646-5719

1.2.2. BUSINESS OWNER(S)

1.2.2.1. CESAR ANGOBALDO

1.2.2.1.1. CESAR.ANGOBALDO@GMAIL.COM

1.2.2.1.2. 510-435-1632

1.2.2.2. AMBER E. SENTER

1.2.2.2.1. AMBER@BREEZEDISTRO.COM

1.2.2.2.2. 404-630-7942

2. EQUIPMENT

2.1. HEPA AND CARBON AIR SCRUBBERS

2.1.1. MAKE

2.1.1.1. AIRGANICS FILTRATION

2.1.2. MODEL

2.1.2.1. 700

2.1.3. MAXIMUM AIR CHANGE OVER RATE

2.1.3.1. 3X PER HOUR EACH @ 2800 CUBIC FEET

2.1.4. SCRUBBING STYLE

2.1.4.1. RECIRCULATION

3. MANUFACTURING AREA SPECIFICATIONS

- 3.1. VOLUME
 - 3.1.1. 5617 CUBIC FEET
- 3.2. VENTILATION TO EXTERIOR
 - 3.2.1. NONE
- 3.3. OPEN CANNABIS PRODUCT
 - 3.3.1. YES
- 3.4. AIR PRESSURE
 - 3.4.1. NEUTRAL
- 3.5. ODOR MITIGATION
 - 3.5.1. 2X AIRGANICS 700

4. DISTRIBUTION AREA SPECIFICATION

- 4.1. VOLUME
 - 4.1.1. 2X 1000 CUBIC FEET
- 4.2. VENTILATION TO EXTERIOR
 - 4.2.1. NONE
- 4.3. OPEN CANNABIS PRODUCT
 - 4.3.1. NO
- 4.4. AIR PRESSURE
 - 4.4.1. NEUTRAL
- 4.5. ODOR MITIGATION
 - 4.5.1. 1X - 2X AIRGANICS 700 (AS NEEDED)

5. PROCEDURES

- 5.1. At the start of each production shift, manufacturing technicians will turn on both Airganics air scrubbers present in the manufacturing area prior to introducing any open cannabis products or components to the manufacturing area.

- 5.1.1. IF the “replace filter” light is active, the manufacturing technician will request a replacement Hepa filter and carbon cartridge from the production manager.
 - 5.1.1.1. Production manager will install the replacement filters and, if appropriate, order additional backstock.
- 5.2. Production manager or the compliance officer will inspect the distribution storage area for any noticeable cannabis odor. Odors should not be present as cannabis packages are sealed in this area.
 - 5.2.1. IF odors are detected, relocate 1x Airganics Air Scrubber to the distribution area and set it to the LOW setting.
 - 5.2.1.1. Set the remaining Airganics Air Scrubber in the manufacturing area to the HIGH setting.
 - 5.2.1.2. IF odor does not dissipate after 1 hour of filtration, notify the compliance officer. The compliance officer will schedule or complete a product inventory to verify there are no broken or damaged containers in the distribution area.

EXHIBIT C

From: [Bihl, Lauren \(CPC\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Jain, Devyani \(CPC\)](#); [Gibson, Lisa \(CPC\)](#); [Cooper, Rick \(CPC\)](#); [Christensen, Michael \(CPC\)](#)
Subject: Planning Department Appeal Response: Appeal of CEQA Exemption Determination for 2000 Oakdale Avenue
Date: Monday, February 7, 2022 10:52:13 AM
Attachments: [Final Planning Appeal Response Memo - 2000 Oakdale - BOS File No. 220031.pdf](#)

Good morning,

Attached is the planning department's response to the appeal of the CEQA exemption determination for the proposed 2000 Oakdale Avenue project (Board of Supervisors File No. 220031).

Kind regards,

Lauren Bihl, Planner (she/her)
Environmental Planning Division
San Francisco Planning
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628.652.7498 | www.sfplanning.org
[San Francisco Property Information Map](#)



COMMON SENSE EXEMPTION APPEAL

2000 Oakdale Avenue

Date: February 7, 2022
To: Angela Calvillo, Clerk of the Board of Supervisors
From: Lisa Gibson, Environmental Review Officer – (628) 652-7571
Lauren Bihl, lauren.bihl@sfgov.org or (628) 652-7498

RE: **Planning Record No. 2021-004141PRJ**
Appeal of Common Sense Exemption for 2000 Oakdale Avenue

Hearing Date: February 15, 2022

Project Sponsor: Cesar Angobaldo, Bayview Ventures, Inc., (510) 435-1632
Appellant(s): Michael Lozeau on behalf of Libkra Investments Corp.

Introduction

This memorandum and the attached documents are a response to the letter of appeal to the board of supervisors (the board) regarding the planning department's (the department) issuance of a common sense exemption under the California Environmental Quality Act (CEQA determination) for the proposed 2000 Oakdale Avenue project.

The department, pursuant to Article 5 of the CEQA Guidelines, issued a common sense exemption for the project on September 8, 2021 finding that the proposed project is exempt from CEQA per CEQA Section 15061(b)(3).

The decision before the board is whether to uphold the department's decision to issue a common sense exemption and deny the appeal, or to overturn the department's decision to issue a common sense exemption and return the project to the department's staff for additional environmental review.

Site Description and Existing Use

The approximately 42,500-square-foot project site is located in the Bayview neighborhood on assessor's block 5315, lot 051 which is bound by Selby Street to the west, Newcomb Avenue to the north, Rankin Street to the east, and Oakdale Avenue to the south. Oakdale Avenue is a two-way road with one general travel lane each in both the east and west directions. This segment of Oakdale Avenue also has parking on both sides of

the street and a standard bike lane in both directions. Selby Street runs under the elevated I-280 right-of-way and is a two-way road with one general travel lane each in both the north and south directions. The portions of Newcomb Avenue and Rankin Street surrounding the project block do not have street markings and are primarily used for parking and commercial vehicle storage for the surrounding businesses. The surrounding area is characterized by a mix of industrial, commercial, and residential land uses with buildings that are typically one to two stories tall.

The project site is currently occupied by a one-story, 42,500-square-foot industrial building containing light industrial and office space. The topography is generally flat. The site is located within a liquefaction hazard zone and the Air Pollutant Exposure Zone (APEZ). The site is subject to provisions in Government Code section 65962.5 (Cortese List – State Database of Hazardous Sites) as well as Health Code Article 22A (Maher Ordinance).

Project Description

The proposed project consists of interior tenant improvement work to an existing 3,130-square-foot light industrial/office suite within the subject building and a change of use from office to retail/commercial/office space to be occupied by a cannabis retail establishment. The project would not include any structural work to the existing building. Improvements would result in approximately 628 square feet of retail space, 1,123 square feet of commercial space, and 1,379 square feet of office space at the project site.

Background

On March 19, 2021, Cesar Angobaldo (hereinafter project sponsor) filed an application with the planning department (hereinafter department) for CEQA evaluation of the proposed project.

On September 8, 2021, the department determined that the project is exempt from CEQA and issued a common sense exemption under CEQA Guidelines section 15061(b)(3).

On January 5, 2022, Michael Lozeau on behalf of Libkra Investments Corp. (hereinafter appellant) filed an appeal of the common sense exemption determination.

CEQA Guidelines

Review for Exemption

In accordance with CEQA Guidelines section 15061(a), once a lead agency has determined that an activity is a project subject to CEQA, the lead agency shall determine whether the project is exempt from CEQA. Guidelines section 15061(b)(3) (common sense exemption) states that a project is exempt from CEQA if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In determining the significance of environmental effects caused by a project, CEQA Guidelines section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be

based on substantial evidence in the record of the lead agency. CEQA Guidelines section 15064(f)(5) offers the following guidance: “Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

Planning Department Responses

The concerns raised in the appeal letter are addressed in the responses below.

Response 1: The proposed project’s compliance with the planning code does not impact the CEQA determination.

The appellant states that the proposed project would not conform to existing planning code requirements regarding the type and amount of retail proposed on site. The project’s compliance with the Planning Code does not affect the review of the project pursuant to CEQA. For informational purposes only, the department notes that the project conforms to the requirements of the Planning Code. Cannabis Retail is a principally permitted land use within the PDR-1-B Zoning District. The Industrial Protection Zone Special Use District applies the controls of the M-1 Zoning District, which principally permits Cannabis Retail with no size limitation.

Response 2: The proposed project would be required to comply with the City’s Office of Cannabis permitting process, which requires an approved odor mitigation plan.

The appellant states that the proposed project would have significant cannabis-related odor impacts and states that currently no odor control plan has been submitted for the business. Odors typically do not rise to the level of being a significant impact unless they affect a substantial number of people. The multi-phased permitting process for the City’s Office of Cannabis would ensure that no adverse odors escape the premises. The first phase of the process requires the business owners to undergo background checks, submit information about the business structure, provide proof that they can operate, and obtain any other applicable permits. In the second step of the process the applicants are required to demonstrate, through the responses to the relevant application forms, how they will prevent any noxious or offensive cannabis-related odors from escaping the premises.

Applicants are required to include a clear description of the cannabis business activities in the permit application form, the total square footage of the area(s) in which the cannabis business activity will take place, and any and all measures that will be used to prevent any noxious or offensive odors from escaping the premises. If odor control equipment is planned to be used, a thorough description is required to be provided in the permit application form as to how that equipment will eliminate or mitigate odors originating from the cannabis facility. All manufacturers’ specifications sheets for odor control equipment shall be required to be submitted as part of the applicant’s permit documentation. An operation and maintenance plan for the odor control equipment and methods for recordkeeping to ensure that the operation and maintenance plan is followed is also required. Once approved, the final odor mitigation plan would become a condition of the cannabis business permit.

The city's regulatory process requires an odor mitigation plan for cannabis businesses. As a result, the cannabis odor control report that has been submitted by the appellant as part of this appeal is not substantial evidence of odor impacts of the project, because that report simply recommends the imposition of odor control measures. Such measures will be included as part of the normal city permitting process for a cannabis business permit.

The appellant also references a nearby cannabis facility (at 75 Industrial Street) and claims that the city's odor control requirements fail to effectively mitigate odor at that location. This issue would be considered an existing condition and does not relate to the CEQA determination for the proposed project. Furthermore, the 75 Industrial Street facility is a preexisting, unauthorized cannabis operation that is going through a legalization process. Because of this, 75 Industrial Street has not yet submitted the required odor mitigation plan for its facility to the city. Any existing odor issues at 75 Industrial Street, which has yet to be legalized and where no odor mitigation plan has been implemented to date, are therefore not indicative that the odor mitigation plan requirement is ineffective.

There is no substantial evidence to support the conclusion that the proposed project, which will be subject to the city's requirement of an odor mitigation plan, would have a significant environmental impact. Therefore, the project is appropriately exempt from CEQA review under the common sense exemption.

Conclusion

The department has determined that the proposed project is exempt from environmental review under CEQA on the basis that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The appellant has not demonstrated that the department's determination is not supported by substantial evidence in the record.

For the reasons stated above and, in the September 8, 2021 CEQA, common sense exemption determination, the CEQA determination complies with the requirements of CEQA, and the department properly found that the project is exempt from environmental review pursuant to the cited exemption. The department therefore respectfully recommends that the board uphold the CEQA common sense exemption determination and deny the appeal of the CEQA determination.