From:	Dustin Owens
To:	Sharp, Ryan
Cc:	COB; coach fasho
Subject:	Re: Emerald Triangle Group
Date:	Monday, May 18, 2020 4:06:13 PM
Attachments:	image001.png

Thank you.

Is it possible to submit the following comment, in case I am unavailable on Zoom when the hearing is called?

Emerald Triangle Group, LLC Co. Special Permits

Agenda Item I.1.

Comments from Dustin E. Owens

I am the Attorney for Emerald Triangle Group, LLC. This is a summary of my comments to be presented in the event that I am unable to attend the zoom meeting because I was scheduled for a Court hearing at 11:00 a.m.

First, I wanted to say, generally, that the staff report has it exactly right with regard to the analysis and recommendations. This special permit meets all of the requirements of the ordinance and should be issued, as recommended by the Staff Report. The objections presented by Ms. Jackson are based upon misstatement of the law, misleading factual assertions, and a clear misunderstanding of the County's ordinances.

Ms. Jackson characterizes the project as a "Heavy Industrial Use." Simply put, that is not true. The proposed use is a commercial use that would plainly lessen the impact on the neighbors when compared to previous uses of this property. The proposed use is mechanical and non-volatile manufacturing and distribution. With regard to manufacturing, what actually is occurring is effectively like extracting coffee from coffee beans. Beyond that, the manufacturing is no different than making food or simple packaging of artisan items. In terms of distribution, the business plan provides for an average of two delivery vans per day.

The appellant argues that the provisions of the County's 2.0 ordinance applies to this project. However, that simply isn't the case. The application was submitted December 28, 2016. The 2.0 Ordinance specifically states that the rules from the 1.0 ordinance apply to this project, except for Section 55.4.6.7, which only applies to cultivation projects. This is not a cultivation project.

The appellant also argues that the Fire District disapproved this project. Again, that is simply untrue. The fire district approved the project with the condition that there is no ethanol-based extraction occurring within the wooden building.

With regard to parking impacts, the evidence at hand shows that parking impacts will actually

be significantly lower for this business than those impacts were from the previous retail-type uses. Unlike those retail-type uses, there will be only employees at this business, and no retail customers.

This project is in an appropriate C-2 Zone. The CMMLUO specifically allows this type of project in such a Zone (55.4.8.5, 55.4.8.6). The staff report even includes a list of other similar projects that have been approved in C-2 Zones.

The Appellant's CEQA arguments are not well-founded. The County is entitled to great deference in determining whether CEQA a categorical exemption is applicable. Under the law, this means that the Planning Commisions determination must be upheld as long as there is any evidence supporting it. It is well-established in the law that the agency, and not the Court, is the fact-finder in this regard. Categorical exemptions indisputably apply to this project as follows:

- CEQA Exemption – § 15301 Existing Facility. With regard to the existing wooden building, the project would only change the specific interior use, with minor exterior changes. The change from one commercial use to another, like this, plainly falls within the existing facility categorical exemption. There are no ground disturbances or physical changes to the environment proposed and no expansion of use.

- CEQA Exemption – § 15303 New construction / Conversion of a Small Structure. The project proposes to demolish a tiny, old building and install a 180 square foot metal building for ethanol extraction. Again, this type of project is categorically exempt from CEQA under § 15303.

The Appellant spends a significant amount to of time addressing the "Fair Argument Standard." However, the law is entirely clear that the "Fair Argument Standard" is not applicable to projects that are categorically exempt. This is set forth in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, which was actually cited by the Appellant. The *Berkeley* case states quite specifically that categorical exemptions are projects that have already been determined *not* to have significant effects within the meaning of CEQA, even though the argument may be made that they do. Here is a direct quote from that case: "In listing a class of projects as exempt, the Secretary has determined that the environmental changes typically associated with projects in that class are not significant effects within the meaning of CEQA, even though an argument might be made that they are potentially significant." (*Id.* at 1104-1105) The fair argument standard only applies to non-exempt classes of projects.

Where, as with this project, there is a categorical exemption the party opposing the project has the burden proving that an exception applies. (*Id.*). In doing this, the objecting party has to actually provide evidence proving the effect on the environment, "it is not enough for a challenger merely to provide substantial evidence that the project *may* have a significant effect on the environment..." (*Id.*). The Appellant has failed to come even close to meeting this burden and, in fact, has directly misstated the applicable law. The very case cited by Appellant supports approval of this project.

Finally, the appellant argues that the conditions of approval for this project show an effect on the environment. However, those conditions of approval are standard conditions, not

environmental mitigation as explained in the staff report.

For these reasons, the Board should adopt the Staff Recommendation and approve this project.

Sincerely,
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