

## REPORT TO THE PLANNING COMMISSION

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**DATE:** July 28, 2015

**TITLE:** Planning Commission consideration of Conditional Use Permit No. 12-14 for Accucanna Health Center to operate a medical marijuana dispensary with limited cultivation operations of up to 99 mature plants located on APN 660-160-008 at the south west corner of the intersection of Paul Road and Rita Way, in the (CG) General Commercial District.

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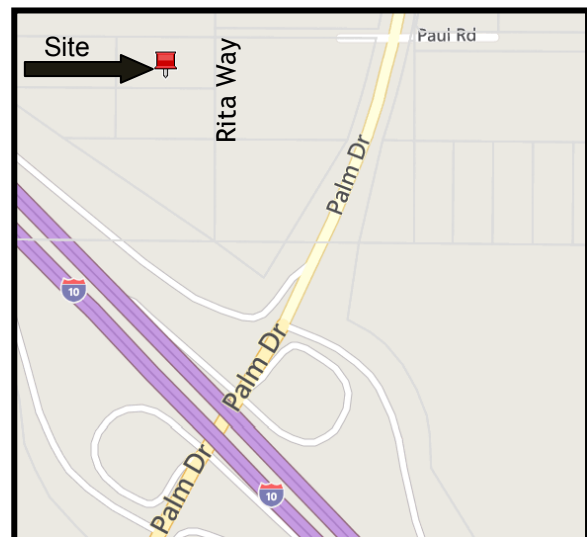
### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Close the Public Hearing;
- 7) Opportunity for Applicant Rebuttal;
- 8) Planning Commission discussion and questions to Staff; and
- 9) Consider a motion that the Planning Commission approve a Mitigated Negative Declaration and Conditional Use Permit No. 12-14 for a medical marijuana dispensary with limited cultivation operations of up to 99 mature plants on APN 660-160-008, located at the south west corner of the intersection of Paul Road and Rita Way.

### DISCUSSION

The applicant, William (Billy) Connor filed a Conditional Use Permit application on November 20, 2014, to establish a medical marijuana dispensary, with limited cultivation operations up to 99 mature plants, on this site. The project site, a single parcel, measures 166' in width and is 328' in depth, is approximately 1.2 acres (52,272 square feet) in total area.

The site is undeveloped, yet due to its proximity to I-10, is significantly disturbed. Paul Road and Rita Way are both unpaved adjacent to the site. The site is located west of Palm Drive and north of I-10. An ARCO/ AMPM is located directly to the east of the site.



Pursuant to the Desert Hot Springs Municipal Code, approval of a Conditional Use Permit application is the second step in a three step approval process to operate a medical marijuana dispensary. Should the Planning Commission take action to approve this conditional use permit application, the applicant would be required to secure approval of the Regulatory Permit through the City Manager's Office and Building Permits through the Building Division and Encroachment permits through the Engineering Division to permit construction of the dispensary and related on-site and off-site improvements.

## **BACKGROUND**

On October 21, 2014, the Desert Hot Springs City Council adopted Ordinance 552, which added Chapter 5.50, "Medical Marijuana Facilities Regulatory Permit" to Title 5, "Business Licenses and Regulations" of the Desert Hot Springs Municipal Code. Ordinance 552 permits medical marijuana dispensaries to be approved through the Conditional Use Permit process.

On October 21, 2014, the City Council also adopted Ordinance 553, which amended Title 17 "Zoning" of the Desert Hot Springs Municipal Code by adding Chapter 17.180 "Medical Marijuana Facilities - Location". Ordinance 553 allows Medical Marijuana Dispensaries to be located in any Commercial District in the City, upon issuance of a Conditional Use Permit and a Regulatory Permit, provided that the Medical Marijuana Dispensary does not cultivate more than 99 mature flowering marijuana plants on site. The Council also allowed medical marijuana cultivation operations to be permitted through the Conditional Use Permit (CUP) process in Industrial zones.

On October 28, 2014, the City Council adopted Resolution 2014-46, which established the number of medical marijuana dispensaries to be permitted, scheduled the first open application period and adopted an application processing priority point system. Resolution 2014-46 limited the number of medical marijuana dispensaries to be permitted to a total of three (3). In this Resolution, the City Council established criteria for scoring and ranking medical marijuana dispensaries with limited cultivation operations of up to 99 mature plants. On a related note, Resolution 2014-46 did not limit the number of cultivation operations.

The City Council directed staff to immediately open the application period for medical marijuana dispensary applications. The application period closed on Monday, November 24, 2014. During the initial application period, the City of Desert Hot Springs received 19 applications. The applications were immediately reviewed by the City Manager, Police Chief, Community Development Director and City Attorney. The applications were then scored by the City Attorney. The City Attorney also conducted fact checking, back ground investigations and reviewed the checklists and applications for consistency with the Medical Marijuana Dispensary guidelines established by the City Council.

Pursuant to Resolution 2014-46, the top three scoring applications were selected for processing as Conditional Use Permits. Following duly noticed public hearings on January 10, 2015, two Conditional Use Permit applications (CUP 05-14, Brown Dog Dispensary located at 66595 Pierson Blvd. and CUP 06-14, Sungrow Dispensary, located at 17001 Palm Drive) to operate Medical Marijuana Dispensaries were approved by the Planning Commission. Both dispensaries are now in operation.

### **General Plan and Zoning Consistency**

The project site was incorporated into the City limits as part of the I-10 Annexation. As designated on the Preferred Land Use Plan (I-10 Annexation Pre-Zoning), the subject site is designated as General Commercial.

The Zoning, General Plan Land Use designations, and current land uses for surrounding properties are as follows:

#### **Zoning & General Plan Designations**

North = CG – General Commercial  
West = CG – General Commercial  
South = CG – General Commercial  
East = CG – General Commercial

#### **Current Land Use**

Vacant  
Vacant  
Vacant  
ARCO/ AMPM

Thus, the proposed land use, a service-commercial retail establishment, is consistent with the General Plan and Zoning designation of General Commercial (CG). Therefore, the proposed use is an allowed use in the zone.

### **Site Analysis**

The site is unimproved. Paul Road and Rita Way are also unimproved adjacent to the site. Paul Road is paved from Palm Drive to a point approximately 200' to the east of the subject site.

Access to the site will be from Rita Way and Paul Road. Paul Road connects to Palm Drive.

Proposed improvements include a proposed 3,360 square foot modular office building, Occupancy Type B. Additional site improvements include a 21 space parking lot with two ADA accessible parking spaces. Site improvements include a well building, water tank, retention basin, trash enclosure, landscaping and on site waste water treatment system. The site will be secured by a 6'-0" wrought iron fence. All three driveways, two access driveways and one service driveway, will be gated and secured. The site is relatively flat and ranges in elevation from 584 to 588 ASL. The site drains from north east to south west. The site is unimproved.

<b><i>Standard</i></b>	<b><i>Proposed</i></b>	<b><i>Allowed/Required</i></b>	<b><i>Consistent</i></b>
<i>Maximum Building Coverage</i>	6.4%	35%	Yes
<i>Distance between Buildings</i>	100'	20'	Yes
<i>Maximum Building Height</i>	15'	35'	Yes
<i>Front Setbacks</i>	73'	25'	Yes
<i>Rear Setbacks</i>	93'	0'	Yes
<i>Side Setbacks</i>	17' and 17'	0'	Yes

### **Lot Coverage and Building Height**

The proposed lot coverage is 6.4%, which is less than the maximum of 35% allowed by the zoning ordinance. Therefore, the lot coverage is allowable under the zone and will not cause any detrimental impacts to the surrounding area.

The Zoning District permits a maximum height of up to 35 feet in this Planning Area. The existing building has one (1) story above ground and the roofline is ±15 feet in height and satisfies the code requirement. The building height is less than the maximum height allowed in the zone and therefore, will not cause any detrimental impacts to the surrounding area.

### **Setbacks**

The project is in compliance with all of the Site Development Standards contained Section 17.12.030.B.3 (General Commercial) of the Desert Hot Springs Municipal Code. Therefore, construction of the proposed project which is in conformance with the City's development standards will not cause any detrimental impacts to the surrounding area.

### **Site Circulation/Off-Street Parking**

Existing ingress and egress to the site is provided from Paul Road and Rita Way. Three driveways, two with access to Paul Road and one with access to Rita Way, are proposed. Full off-site improvements, including half streets, curb, gutter, landscaping and sidewalks are required along both street frontages and must be constructed by the applicant if the permit is approved as a condition of approval prior to issuance of a Certificate of Occupancy by the Building Division.

Staff has reviewed the proposed project and finds that, both the site design and proposed circulation pattern are consistent with the proposed use.

<b>Parking Calculation</b>		
Use	Ratio	Number of Spaces
2400 square feet of habitable retail space	4 spaces/ 1,000 square feet	12
960 square feet of habitable indoor nursery	1 space per 500 square feet	2
Parking Required		14
Parking Required		21
Excess Parking		7

This proposed parking lot design includes a parking surplus of seven (7) spaces. As designed the project exceeds the City standards for on-site parking in the zone and therefore, will not cause detrimental impacts to the supply of available parking in the surrounding area. This does not include additional, on-street public parking which will be available and will serve the site following construction of roadways to serve the project. Therefore, the proposed parking is consistent with the City's parking standards as codified in the Zoning Ordinance within the Municipal Code.

### **Transit Service**

Sunline Transit provides service at the adjacent ARCO/AMPM site. A covered shelter with bench seating are available for transit riders. Sunline Route #14 is served at the stop on Palm Drive.

### ***Elevations, Colors and Materials***

The proposed modular architecture features windows on the north, west and east elevations. The applicant has provided a series of architectural renderings which depict a tan stucco building, with Red moldings, canvas awnings and deep wine doors and windows. Additional enhancements include architectural quality lighting fixtures, landscaping and a modest sign. The City has not received plans for the proposed signage. Closed circuit cameras will be mounted on each building elevation. The proposed elevations include wainscot, awnings and a cornice.

### ***Landscaping***

The proposed landscape plan includes a detailed plant palate, with seven types of trees, and twelve types of shrubs, ground cover, decomposed granite, cobble and boulders.

The project includes enhanced landscaping enhanced to compliment the building Landscaping will include the following material.

<b>Botanical Name</b>	<b>Common Name</b>	<b>Size</b>	<b>Count</b>
<i>Trees</i>			
Cercidium Desert Museum	No common name	24" box	3
Chilopsis Linearis	Desert Willow	24" box	3
Dracena Draco	Dragon Tree	24" box	2
Fraxinus Veluta (Rio Grande)	Fan Tex Ash	24" box	1
Phoenix Dactylifera	Date Palm	24" box	3
Prosopsis chilensis	Chilean Mesquite	24" box	5
Washintonia hybrids	California Fan Palm	24" box	2
<i>Shrubs</i>			
Agave Americana	Century Plant	5 gal	3
Agave A. 'Mediopicta Alba'	Varigated Century Plant	5 gal	3

Agave Blue Glow	No common name	5 gal	3
Aloe Strata	Coral Aloe	1 gal	17
Caselpinia Pulcherrima	Red Bird of Paradise	5 gal	7
Dasyliroion Wheeleri	Desert Spoon	5 gal	43
Hesperaloe Parveflora	Red Yucca	5 gal	54
Leucophyllum Frutescens	Texas Ranger	5 gal	4
Muhlenbergia Capillaris	Pink Muhly	5 gal	6
Muhlenbergia Rigens	Deer Grass	5 gal	45
Pennisetum, S. (Red Dwarf)	Dwarf Red Fountain Grass	5 gal	45
Ruellia Peninsularis	No common name	5 gal	45
<i>Ground Cover</i>			
Smooth Granite Boulders	2"x 2" to 3"x 4"		
Desert Gold Decomposed Granite		3/8" minus	Depth 2"
Lantana H. "Gold Rush"	Yellow Trailing Lantana	1 gal	4' o.c.
Myoporum Parvifolium	Prostrate myoporum	1 gal	4' o.c.

In reviewing the proposed landscape plan, staff is concerned that the western portion of the site which is adjacent to the I-10 corridor is un-landscaped. Lack of landscaping along this corridor would provide a poor image of the community to commuters and travelers along the Interstate Highway.

To enhance the image of the City, staff recommends that additional street trees be located along the all four sides of the perimeter of the parcel, including Paul Road, Rita Road and along the rear of the building. This will enhance the City's image and provide additional landscape screening of the non-descript and unarticulated portions of the dispensary building.

### ***Lighting Plan***

The applicant has submitted a parking lot lighting plan and photometric study that have a range of values from 1.0 foot-candle to 8.1 foot-candles in the parking area. The average lighting in the parking lot will not exceed 2.8 foot-candles. Seven (7) 17.5 foot tall light poles with Lithonia LED (183 watt) light fixtures will provide illumination in accordance with City standards.

### ***Phasing Plan***

None. The applicant proposes to develop the project and construct all on-site and off-site improvements in a single phase.

### **Consistency Finding**

Staff has reviewed the plans for the proposed project and has determined that, based upon this analysis, the proposed project conforms to the development standards of General Commercial Zoning District.

### **Operational Issues**

Staff has reviewed and summarized a number of operational issues below.

### ***Security***

The operator has entered into a contract with a security company to provide on-site security. Guards will be provided during all hours of operation. During the evening hours, guards will make night rounds, patrolling the outside perimeter of the building to ensure that there is no loitering or other inappropriate activity.

A closed circuit television system (CCTV) will be installed both inside and outside of the building. They will be hard wired, feature hi-definition night vision, 1080 pixel resolution with both color and infrared for nighttime vision. The CCTV will record to DVR.

The secured parking area is fenced in, with a wall measuring between 6' in height.

Security will be addressed during the Regulatory Permit, which would be issued by the City Manager, if the Planning Commission chooses to approve this conditional use permit.

***Odor Control***

The operator will provide a complete odor control and ventilation system for both dispensary and cultivation areas. A dual stage odor control system, with carbon filters, negative pressurized intakes and ventilation will be installed. The first stage of the air filtration system intakes exterior fresh air through a carbon filter, and the second stage of the air filtration system would provide the interior return air through a second carbon filter which is then vented outside as a fresh air return.

***Outdoor Sales***

Outdoor sales are not proposed. Outdoor sales are not permitted under the ordinance.

***Age Restrictions***

All patients must have a valid recommendation from a California doctor that states the need for medical marijuana. Although they are not presently serving this clientele, the applicant will take a very specialized interest should such clientele develop. All patients will be reviewed on a case by case basis.

***Hours of Operations***

Operations will be seven days per week from 8:00am to 10:00pm.

***Delivery Hours***

Delivery hours will be offered for small group of homebound patients.

Staff has reviewed the operational plan and determined that the establishment of this business is appropriate for the location in the Zoning District. Staff recommends that, following the public hearing on this matter, that the Planning Commission adopt the findings below.

**Conditional Use Permit Analysis**

Conditional Use Permits are regulated under Section 17.76 of the Desert Hot Springs Municipal Code and require the following findings and two additional findings that staff has added that are specific to the project:

- A. That the proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Zoning Ordinance;
- B. That the proposed use would not impair the integrity and character of the land use district in which it is to be located;
- C. That the subject site is physically suitable for the type and intensity of land use being proposed;
- D. That the proposed use is compatible with the land uses presently on the subject property;
- E. That the proposed use would be compatible with existing and future land uses within the general area in which the proposed use is to be located;
- F. That the proposed use is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses;

- G. That there are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;
- H. That with the construction of the extension of Paul Road and Rita Way, including the provision of curbs, gutters and sidewalks and connecting pavement, there will be adequate provisions for public access to serve the site;
- I. That there will not be an adverse effect upon desirable neighborhood and community characteristics;
- J. That the proposed use is needed in the community, and appropriate at the prescribed location;
- K. That the proposed use is consistent with applicable goals and policies of the General Plan;
- L. That there will not be significant harmful effects upon environmental quality and natural resources;
- M. That the negative impacts of the proposed use are mitigated through a combination of conditions of approval and the implementation of mitigation measures and that a mitigated negative declaration may be filed;
- N. That the proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interests, health, safety, convenience, or welfare of the City; and
- O. That the proposed use is necessary and essential to the City and region.

In reviewing this application, plans, documents and other supporting information, staff has determined that the Planning Commission can make these findings and has added additional findings specific to the project.

## **ENVIRONMENTAL ANALYSIS**

Staff has reviewed the project in accordance with the California Environmental Quality Act. Pursuant to Section 15070 through 15077 of the California Environmental Quality Act (CEQA) Guidelines, an Initial Study and a Mitigated Negative Declaration (MND) has been prepared for the project. In this case staff has determined that, although the project has the potential to impact the environment, through the specific design of the project, the proposed mitigation measures and through regulation imposed by the State of California, the project can be mitigated to a level of “no significant impact” as required by the California Environmental Quality Act (CEQA). The measures include eight mitigation measures which are designed to reduce potential environmental impacts associated with the project in the resource areas of Cultural Resources, Hydrology and Water Quality, and Geology and Soils. The complete text of the Mitigated Negative Declaration and Mitigation measures can be found in Attachment Two.

Pursuant to the California Environmental Quality Act, on June 25, 2014, a Draft Mitigated Negative Declaration was circulated to seventeen (17) Responsible Agencies including: Southern California Edison, Southern California Gas, Time Warner Cable, Verizon (Engineering Department), Verizon (Planning Department) Coachella Valley Water District, Agua Caliente Band of Cahuilla Indians, Desert Valley Disposal, Coachella Association of Governments, Riverside County Environmental Health, Riverside County Clerk, Riverside County Planning Department, Riverside County Transportation Department, Caltrans, Palm Springs Unified School District, United States Post Office, and Sunline Transit Agency. To date, the City has received comments from the Coachella Valley Water District. CVWD's comments were incorporated into the Mitigated Negative Declaration.

### **ARCHITECTURAL AND LANDSCAPE REVIEW COMMITTEE (ALRC)**

The ALRC reviewed the project on June 22, 2015 and recommended the following be incorporated into the Conditions of Approval:

1. Removal of the Myoporum Parvifolium.
2. The Palo Verde are located too close to the building and should be further away to allow for adequate growth of root structure.
3. Provide more ground cover at the rear of the building, such as Texas Ranger, Xylomsa, or Bougainvillia.
4. Prior to the issuance of a Building Permit the following details shall be approved by Chair Lopez:
  - a. All gates and fences; and
  - b. Color and Material of the Canopies.

By consensus, the ALRC recommends that the Planning Commission approve the project.

### **FISCAL IMPACT**

Project construction and site improvements will generate one-time revenues to the City in the form of Building Permits. In addition, the City will also receive annual property tax payments and monthly revenue from the medical marijuana dispensary taxes. Because this is a relatively new revenue stream for the City, staff is unable to project future revenues from the project.

### **RECOMMENDATION**

The Architectural and Landscape Review Commission recommends that the Planning Commission approve Conditional Use Permit No. 12-14 subject to the Conditions of Approval and the adoption of the following Minute Motions:

### **APPROVAL OF THE MITIGATED NEGATIVE DECLARATION** based on the following findings:

1. The record as a whole, including the initial study and any comments received, demonstrates that no substantial evidence exists that the project will not have a significant effect on the environment;
2. The Mitigated Negative Declaration reflects the City of Desert Hot Spring's independent judgment and analysis;
3. In accordance with Section 15074, Chapter 3, Title 14, of the California Code, of Regulations, the Mitigation Monitoring Program contained in Chapter 4 of the Draft Initial Study and Mitigated Negative Declaration, dated July 2015 shall serve as the City's reporting program for monitoring the mitigation measures specified in the Mitigated Negative Declaration; and
4. The Desert Hot Springs Planning Department is the custodian of the documents or other material that constitute the record of proceedings upon which this decision is based.

**APPROVAL OF CONDITIONAL USE PERMIT NO. 12-14** to allow a Medical Marijuana Dispensary subject to the following findings and the attached Conditions of Approval:



1. That the proposed use is conditionally permitted CG Zone and complies with all of the applicable provisions of this Zoning Ordinance;
2. That the proposed use would not impair the integrity and character of the CG Zone in which it is to be located.
3. That the project site, located at the south west corner of the intersection Paul Road and Rita Way, with the construction of the required on-site and off-site improvements including, curb, gutters, sidewalk, water and connecting pavement, and waste water infrastructure, is physically suitable for the type and intensity of Medical Marijuana Dispensary being proposed.
4. That the proposed Medical Marijuana Dispensary is compatible with the land uses presently on the subject property and/or immediately adjacent.
5. That the proposed Medical Marijuana Dispensary would be compatible with existing and future land uses within the General Commercial area in which the proposed use is to be located.
6. That the proposed Medical Marijuana Dispensary is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses.
7. That there are adequate provisions for water, on-site waste water treatment, sanitation, and public utilities and services to ensure that the proposed Medical Marijuana Dispensary would not be detrimental to public health and safety.
8. That the project site will have adequate provisions for public access to serve the site located at the south west corner of the intersection Paul Road and Rita Way,.
9. The proposed Medical Marijuana Dispensary will not be an adverse effect upon desirable characteristics of the freeway oriented commercial district in which it is proposed to be located.
10. That the proposed Medical Marijuana Dispensary is necessary and essential to the City, medical community and region.
11. That the proposed Medical Marijuana Dispensary is consistent with applicable goals and policies of the Commercial Retail designation of the Desert Hot Springs General Plan.
12. The architecture of the proposed Medical Marijuana Dispensary will make a positive contribution to the immediate area of the project and the City, medical community and region as a whole.
13. The landscape palette has a variety of materials and will accent the architecture of the site and provide a positive contribution to the immediate area of the project, City and region as a whole.
14. That there will not be measurably significant harmful effects upon environmental quality and natural resources from the proposed Medical Marijuana Dispensary
15. That the proposed location, size, design, and operating characteristics of the proposed Medical Marijuana Dispensary would not be detrimental to the public interests, health, safety, convenience, welfare of the City of Desert Hot Springs, medical community and/or region as a whole.

## **EXHIBITS**

1. Plan Set (A)
  - a. Cover Sheet
  - b. Site Plan
  - c. Floor Plan
  - d. Roof Plan
  - e. Exterior Elevations
  - f. Landscape Planting Plan
  - g. Photometric Plan
  - h. Precise Grading Plan Cover Sheet
2. Plan Set (B)
  - a. Precise Grading Plan
  - b. Street Improvement Plans Cover Sheet
  - c. Street Improvement Plans Paul Road
  - d. Street Improvement Plans Rita Way
  - e. SWPPP Erosion Control Plan
  - f. Dust Control Plan
3. Landscape plans (Color)
4. Elevations (Color)
5. Mitigated Negative Declaration
6. Agency Comments From CVWD
7. Transmittal and Public Hearing Notice