

REPORT TO THE CITY COUNCIL



DATE: January 17, 2017

TITLE: A Conditional Use Permit Application (CUP 23-16) and Development Agreement (DA15-16) for the construction of a 57,907 sq. ft. medical marijuana cultivation facility located on the Southwest corner of Two Bunch Palms Trail and Cabot Road in a Light Industrial (I-L) Zone, APN 665-030-058

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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) City Council discussion and questions to Staff; and
- 9) Consider a motion to approve: (1) Conditional Use Permit No. 23-16; and (2) Development Agreement No. 15-16; for a medical marijuana cultivation facility to be constructed at the Southwest corner of the intersection of Two Bunch Palms Trail and Cabot Road in the Light Industrial (I-L) Zone, subject to the attached conditions of approval.

BACKGROUND

Sections 5.50 and 17.180 of the Desert Hot Springs Municipal Code (DHSMC), allow medical marijuana cultivation facilities in Industrial Districts subject to a Conditional Use Permit (CUP) approved by the Planning Commission and a Regulatory Permit approved by the City Manager. The applicant, Bunch Palms Trail, LLC (Medi Tehranchi), has filed an application to construct a facility for the indoor cultivation of medical marijuana. The site is located at the Southwest corner of Two Bunch Palms Trail and Cabot Road. The action includes a Conditional Use Permit and a Development Agreement. The Planning Commission has authority to review and to recommend action on these items to the City Council for final determination.

The proposed project is located on a qualifying site, zoned Light Industrial (I-L). Chapter 17.16 of the Desert Hot Springs Municipal Code directs development in I-L Industrial District. The proposed project is consistent with chapter 17.16, in that the design meets all necessary design standards, including setbacks, building heights, parking, and lot coverage. The site is characterized by partially disturbed desert land with scattered vegetation on a vacant, infill site bordered on two sides by paved roads and on a third by Cannadescent Cultivation Facility. The eastern property line borders the Coachella Valley Multi-Species Habitat Conservation Plan, Morongo Wash Conservation Area, which coincides with Cabot Road.

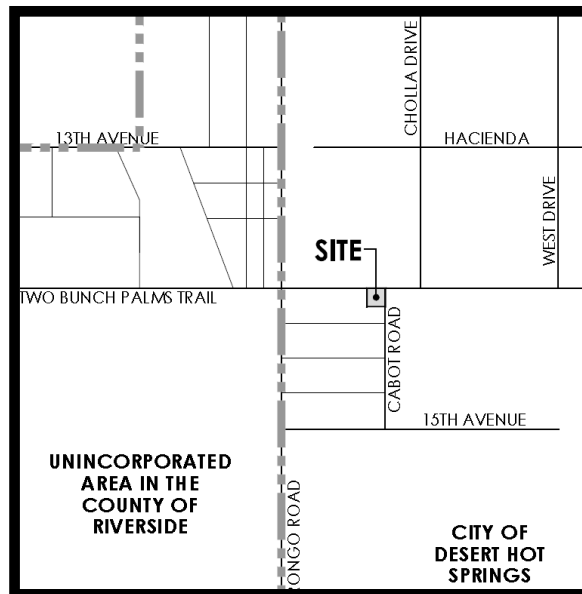
Surrounding properties consist of:

<u>Jurisdiction</u>	<u>Zoning & General Plan</u>	<u>Current Land Use</u>
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North	City	LI (Light Industrial)	Two Bunch Palms Trail / Vacant Land
West	City	LI (Light Industrial)	Canndescent Cultivation Facility
South	City	LI (Light Industrial)	Vacant Land
East	City	LI (Light Industrial)	Cabot Road/ Warehouse

PROJECT SUMMARY

The applicant, Bunch Palms Trail, LLC (Medi Tehranchi) has filed a Conditional Permit (CUP) application to construct a medical marijuana cultivation facility located on Assessor's Parcel Number (APN) 665-030-058 (2.14 acres). The proposed cultivation facility consists of a) two-story building, containing approximately 3,969 square feet of administrative office space, 34,363 square feet of cultivation area (grow and bloom rooms), and a small 891 square security guard apartment and b) four 5,914 square foot greenhouses (totaling 23,544 square feet). The entire project would be secured within a perimeter



Use
one
foot
site

fence on the south and east sides with the L-shaped building functioning as a barrier on the north and west sides. The project would be built all at one time without phasing. Construction is expected to start in 2017 and be completed the following year. In total, the project will result in the construction of approximately 57,907 square feet of cultivation space, 3,969 square feet of office space, 891 square feet of apartment space and a total of 42 parking stalls. The project site plan is shown on Exhibit No. 2, Proposed Site Plan.

CUP ANALYSIS

General Plan and Zoning Consistency: The project proposes to establish a Medical Marijuana Cultivation Facility in accordance with Section 5.50 and 17.180 of the DHSMC, which allows this use with approval of a CUP and Regulatory Permit.

Site Coverage: The project site consists of one 2.14 gross acre lot (93,107 square feet). Under the Industrial Zoning District standards, the maximum coverage for the site is 75%. The total first floor footprint of all proposed buildings (main building and greenhouses) is 43,161 square feet or 46% site coverage, which is below the maximum allowed.

Building Height: The proposed primary building has roofs of varying heights ranging from 30 feet tall to 37 feet tall. The greenhouses are lower at about 14.5 feet tall. Because the greenhouses are lower and located behind the main building, they are effectively screened and not visible from the public streets. All buildings are well below the maximum height of 50 feet allowed in the zone.

Building Setbacks: The required minimum setbacks from the property line for Industrial Zoning Districts are 20 feet in front, 10 feet in the rear, and 10 feet on side property lines. The nearest

structures proposed by the project are located 60 feet from the front right of way line on Two Bunch Palms Trail to the north, 20 feet from secondary front right-of-way line on Cabot Road, 22 feet from the rear property line on the south and 25 feet from the side property line on the west. Therefore, the project exceeds all minimum setback requirements.

Circulation and Parking: Ingress and egress to the site will be provided from Two Bunch Palms Trail through two driveways to a publicly accessible, central parking area in front of the main building. Access to the interior portions of the facility would be restricted by gated driveways from the main parking lot and from Cabot Road. Both gates would be monitored by onsite security personnel and also equipped with a Knox Box to allow access by emergency vehicles. Internally, a looped, connecting driveway provides vehicular and fire access to all portions of the site.

Parking Calculation

<u>Use</u>	<u>Ratio</u>	<u>Number of Spaces</u>
3,969 square foot office	1 per 250 square feet	16
57,907 square foot cultivation/processing	1 per 2,500 square feet	23
891 square foot apartment	2 per unit	2
Total Spaces Required		41
Total Spaces Provided		42

Elevations, Colors and Materials: The applicant is proposing a traditional two story, wood framed warehouse style building with associated greenhouses. Only the main building will be visible from the public streets. To create visual interest from the street, the building façades facing Two Bunch Palm Trail and Cabot Road include variable rooflines, plaster finishes, EIFS cornices, storefront spandrel glass, metal espaliers and entry eyebrows. Expansion joints and reveals are incorporated into the plaster to delineate and accent wall planes. The overall architectural character would be that of an attractive, upscale, well-maintained industrial building. Project elevations are shown in Exhibit No. 3, Architectural Floor Plan, Exhibit No. 4, Colored Elevations and Exhibit No. 5, Material Board.

Landscaping: Landscaping has been designed to balance aesthetic, water use and security objectives. Parkway landscaping is provided within and adjacent to the ROW along Two Bunch Palm Trail and Cabot Road consisting of Queen Palms, low level plantings including Bougainvillea, Yucca and Barrel Cactus and Palm Springs Gold landscape rock. Landscaping is intended to create an attractive visual presentation and soften the harder architectural elements while also promoting sufficient visibility to law enforcement vehicles from the street. Landscaping is consistent with the MSWD and the City's goals for water conservation by utilizing drought-tolerant plant materials and drip applicators to avoid overwatering and promote water efficiency. Project landscaping is shown in Exhibit No. 6, Conceptual Landscape Plan

Lighting: Exterior lighting for the site has been oriented downwards and focused within the property to limit light pollution. The photometric lighting plan demonstrates, one foot candle increments across parking surface and site circulation displaying highest intensity of illumination around building openings (doors and windows) for security and safety. This will allow all

employees or police officers to have 100 foot face recognition. Lighting levels are displayed in Exhibit No. 7, Lighting Plan.

Phasing: The applicant proposes to improve the property in one phase with completion of construction expected by the year.

Security: Security measures have been thoroughly incorporated into the project. The site is entirely enclosed within perimeter fencing. Gated entry/exit drives will control vehicular access onto and off the property. Security cameras are mounted on all exterior doors, perimeter fencing and entry gates. A more detailed, comprehensive security plan will be reviewed by the City Manager during the regulatory permit phase. This will include specific locations and areas of coverage by security cameras; location of audible interior and exterior alarms; location of exterior lighting; name and contact information of Security Company monitoring the site and any additional information required by the City.

Odor Control: The project will implement best practices to reduce the effects of plant odors during flowering which include the use of odor masking agents and neutralizers. Carbon filters will also be installed as a part of the evaporative cooling system.

Hours of Operation: Hours will be consistent with Chapter 5.50.100 of the DHSMC. Medical Marijuana Cultivation Facilities are open to the public between the hours of 8:00 am and 10:00 pm up to seven days per week. This facility is geared to the cultivation of marijuana and will require staff to be present on premises 24 hours per day. Only authorized staff and delivery personnel will be allowed to enter the premises during the off-hours.

FISCAL IMPACT

The proposed cultivation facility has paid all required fees for processing and will contribute \$25 per square foot for the first 3,000 square feet, and then \$10 per square foot for the remaining space once it opens.

DEVELOPMENT AGREEMENT ANALYSIS

The City is requiring all Medical Marijuana Cultivation to process a Development Agreement that establishes indemnification provisions in favor of the City. The final Development Agreement will be reviewed and approved by Staff and the City Attorney before presentation to the City Council for approval. The applicant has requested the inclusion of additional provisions that address phasing and defer of perimeter street improvements and associated power pole relocations until such time as needed. The development agreement is attached as Exhibit No. 8 – Development Agreement.

The Desert Hot Springs Municipal Code (17.84 Development Agreements) and State law provide that the City and a developer may enter into a development agreement for the purpose of providing the developer with the assurance that their development entitlements will not be subject to revocation, termination or modification because of future changes in the City's zoning, planning and land use regulations. In exchange, the City receives certain benefits in the form of revenue, improvements, etc. that the City could not otherwise legally impose on the particular project for a variety of reasons. Such reasons include, but are not limited to, (a) the lack of a nexus between a certain condition of approval and the scope of the project's impacts on the environment or surrounding neighborhood or (b) the legal exclusion of a certain use from the

imposition of certain fees or taxes. Development agreement authority is essentially one of the only exceptions to the general principle that prohibits cities from contracting away their future police powers. Moreover, development agreement authority has served as an effective means for cities to encourage economic development, which has become increasingly important to some cities in the absence of redevelopment authority.

ENVIRONMENTAL ANALYSIS

On December 15, 2015, the City Council adopted the Initial Study/Mitigated Negative Declaration prepared for the Project (CUP 05-15). In doing so, the City Council found that the Project would not have a significant impact on the environment. The adopted Environmental Initial Study/Mitigated Negative Declaration contains Mitigation Measures which remain applicable to the Project. No revisions to the adopted mitigation measures are proposed.

PLANNING COMMISSION (PC)

On December 13 2016, the Planning Commission conducted a public hearing on the proposed request. Following receipt of the staff report and public comment, the Commission recommended approval of the Conditional Use Permit and Development Agreement, subject to minor modifications to the conditions of approval. No significant concerns or comments were raised by the Commissioners prior to their action.

RECOMMENDATION

Staff recommends that the City Council approve Conditional Use Permit No. 05-16 and Development Agreement 08-16, subject to the Conditions of Approval and including the following findings:

- 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.*

The application is for a Medical marijuana cultivation facility which is identified in Section 17.180.070 of the City of Desert Hot Springs Zoning Ordinance as permitted within any industrial zone which includes the I-L (Light Industrial) zone), subject to approval of a Conditional Use Permit. The project is proposed to be located within an existing industrial building that complies with applicable provisions of the Zoning Ordinance. Conditions of approval have been prepared and are recommended to assure the proposed use will comply with applicable Zoning Ordinance provisions. Staff recommends this finding.

- B. *That the proposed use would not impair the integrity and character of the land use district in which it is to be located.*

Section 17.16.010.B.1 of the Desert Hot Springs Zoning Ordinance identifies the underlying I-L (Light Industrial) zoning district as, “...*intended to retain, enhance, and intensify existing and provide for the new development of lighter industrial uses along major transportation routes serving the City.*” The proposed medical marijuana cultivation facility qualifies as a “lighter industrial operation” in that no heavy manufacturing operations will be conducted on the site. Further, the use will occupy a site with access to Two Bunch Palms Trail, which is designated a Minor Arterial in the Circulation Element of the 2000 Desert Hot Springs General Plan.

- C. *That the subject site is physically suitable for the type and intensity of land use being proposed.*

The site is proposed to be developed as a light industrial site with parking, landscape and other features and amenities appropriate to the development. The proposed medical marijuana cultivation facility is physically organized to provide adequate parking, loading and pedestrian circulation for the proposed use. Consequently, the site is physically suitable for the type and intensity of the proposed dispensary. Staff recommends this finding.

- D. That the proposed use is compatible with the land uses presently on the subject property.*

The proposed medical marijuana cultivation facility is a light industrial use with ancillary processing and administration activities, and can be considered similar to other industrial establishments allowed in the I-L (Light Industrial) zone, such as plant nurseries without on-site sales and light manufacturing operations. The proposed building is developed to accommodate the proposed use and appears to be able to accommodate a wide variety of industrial uses, if needed. The proposed cultivation facility does not appear to be outside the range of activities typical for a light industrial site and appears compatible with surrounding light industrial uses. Staff recommends this finding.

- 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.*

Existing and future land uses within the general area of the proposed medical marijuana cultivation facility are light industrial land uses. Lands to the north, east, south and west are zoned for, and partially developed with light industrial uses. The site will be a self-contained development with all vehicle circulation needs accommodated on site. The proposed building is located in the general center of the subject property and the proposed use is not directly accessed from surrounding land uses. The height and general configuration of the proposed structure is similar to other industrial buildings in the area. Any signage will comply with the Desert Hot Springs Zoning Code. All activities will be contained within the existing building and the operation will appear as a light industrial use consistent with the intent of the zone. Consequently, the proposed cultivation facility is expected to be compatible with existing and future industrial development in the surrounding area. Staff recommends this finding.

- F. That the proposed use is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses.*

The proposed medical marijuana cultivation facility will be located within a new 22,680 square foot building and, with supporting parking, landscaping and other amenities, will occupy the entire site. The site is presently vacant. Adjacent land uses are light industrial, subject to a maximum building height limit of two stories or 50 feet and lot coverage of 75%. The subject 1.06 acre (net area) site will be developed with a single one-story building that would not exceed about 24 feet in height and contain a total of 22,680 square feet of floor area (lot coverage of 49% of net lot area). The scale, mass, coverage, density and intensity of the proposed use will be consistent with light industrial activities; its location within an existing light industrial setting will allow it to be compatible with adjacent industrial uses. Staff recommends this finding.

- 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.*

The subject site will be developed as a light industrial use with all public services and utilities installed prior to occupancy. The proposed medical marijuana cultivation facility cultivation will not create an extraordinary demand for water, sanitation or other public

utilities and services that would result in any detriment to public health and safety. Staff recommends this finding.

H. That there will be adequate provisions for public access to serve the site.

The subject site will be fully developed with vehicular and pedestrian access, both from public rights-of-way as well as within and throughout the site. The proposed medical marijuana cultivation facility will not create any additional demand for access than will be provided by the associated parking and drive aisle. Staff recommends this finding.

I. That there will not be an adverse effect upon desirable neighborhood characteristics.

Desirable neighborhood characteristics include long-range views from existing properties and business of surrounding mountains, and the future development of light industry on the site and surrounding area. The proposed building's low height (less than 24 feet) will not impede long-range views. While the proposed medical marijuana cultivation facility will fully occupy the subject site, surrounding lands available for other businesses will not be limited in their future development by the proposed use. Staff recommends this finding.

J. That the proposed use is necessary and essential to the community.

The proposed medical marijuana cultivation facility can be considered necessary and essential to the community to the extent that it is supported by wholesale customers that cause it to succeed as a local light industrial business. Further, the proposed use must also operate under City regulations and conditions of approval so that only the necessary and essential elements of the business – as determined by the City – are expressed over the life of the business. Staff recommends this finding.

K. That the proposed use is consistent with applicable goals and policies of the General Plan.

Staff has identified the following General Plan goals and policies applicable to the application and provides responses to each.

Administration

Goal: Comprehensive and integrated administration and implementation of all elements of the Desert Hot Springs General Plan through consistent and effective policies and programs.

The City has adopted a zoning ordinance to implement the General Plan and provide for review and approval of individual development projects. The proposed medical marijuana cultivation facility will be subject to all requirements of this Conditional Use Permit, as prescribed by the Zoning ordinance and the adopted conditions of approval.

Policy 7: The City shall encourage in-fill development within already urbanized areas of the corporate boundaries of the City, and expansion of new development shall be logically phased and, as appropriate, guided by the development of existing and new Specific Plans.

The proposed medical marijuana cultivation facility will be located on a vacant property within a partially-developed industrial area, located in the I-L (Light Industrial) zone. All public improvements are either in place or will be constructed prior to occupancy. No specific plan has been adopted for the subject property.

Policy 8: City shall provide opportunities for review and comment on development proposals through public hearing notices sent to owners of property located at least within 300 feet of development proposal sites.

Prior to City Council review of the project application, notice of the proposed medical marijuana cultivation facility conditional use permit hearing was provided to property owners within 300 feet of the proposed site. In addition, a public hearing before the City Council has in fact been held where persons were provided a meaningful opportunity to be heard.

Industrial Land Use

Goal: Lands that provide for the development of non-polluting, energy-related and other clean industrial development that broadens the economic and employment base of the City, and assures compatible integration with other, non-industrial land uses.

The proposed medical marijuana cultivation facility is anticipated to be a non-polluting and clean industrial use that will generate jobs and revenue for the community, thereby broadening the economic and employment base of the city. The operation will be located on a vacant property within a partially-developed industrial area, located in the I-L (Light Industrial) zone, and be developed with all support amenities (parking, trash enclosures, landscaping, etc.) to assure compatible integration with all industrial and non-industrial land uses.

Policy 6: The City shall require adherence to applicable development standards and guidelines to assure aesthetically acceptable industrial developments for all new industrial sites.

The proposed use will be located in a new building with new associated site improvements, including parking, vehicle circulation, landscaping and trash enclosures. These improvements have been reviewed for adherence to applicable development standards and guidelines. The proposed architecture and landscape architecture, as conditioned, will result in esthetically acceptable development.

Community Design

Goal 2: Variety of community design, architecture and landscaping compatible with the City's desert setting and surrounding development.

The proposed use will be located in a new building with new associated site improvements, including parking, vehicle circulation, landscaping and trash enclosures. These improvements have been reviewed for adherence to applicable development standards and guidelines. The building exterior, site landscaping, fencing and other improvements are designed with appropriate materials, colors, plant types and other design elements to assure compatibility with the City's desert setting and surrounding development.

Policy 1: Private and public sector development projects shall equally apply City community design standards, thereby protecting the community's scenic viewsheds, providing community cohesion and enhancing the image of Desert Hot Springs as a resort residential community.

The site is presently vacant, but will be developed and used for light industrial use. The proposed building exterior (including height), site landscaping, fencing and other

improvements are designed with appropriate materials, colors, plant types and other design elements that protect scenic viewsheds, provide community cohesion and enhance the image of the City.

Policy 9: Signs shall be limited to the minimum size, scale and number needed to provide functional identification and exposure necessary to convey messages, while minimizing impacts on traffic safety, streetscape and scenic viewsheds.

All exterior signs shall be subject to approval under the Desert Hot Springs Zoning Code. The city sign regulations do not permit signs to exceed the height of building eave lines which will result in no impacts on scenic viewsheds.

Policy 10: Lighting shall be limited to the minimum height, number and intensity of fixtures needed to provide security and identification in residential, commercial and industrial development, taking every reasonable measure to preserve the community's night skies.

Any exterior lighting shall comply with Section 17.40.170 (Outdoor Lighting) to assure that only the minimum level of lighting necessary to provide the needed security is installed. All proposed exterior lighting shall be reviewed by staff for conformance to the applicable standards. Therefore, the proposed medical marijuana cultivation facility is taking reasonable steps to preserve the night skies.

Economic Development:

Goal 1: A broadly based, healthy and balanced economy that provides a full range of economic and employment opportunities.

The proposed medical marijuana cultivation facility will provide opportunities for new employment and business support services.

Goal 2: Continued growth, which assures the maintenance of revenue, base adequate to support present and future public services and facilities needs.

The establishment of a medical marijuana cultivation facility will provide additional revenues to the City to support present and future public needs.

Policy 11: Make every effort to expedite the processing of development proposals, which address the economic development goals of the community and take the initiative to incubate new programs and projects.

The application for a Conditional Use Permit is required by the Desert Hot Springs zoning code to assure compatibility with surrounding land uses and to develop project-specific conditions to assure successful operation in concert with the City's development goals. The application was received in 8 February 2016 and the City Council hearing is held in September 2016. The application has been processed expeditiously.

Hazardous and Toxic Materials

Goal: The assured safety of City of Desert Hot Springs residents and visitors through the regulation of the manufacture, transport, use and disposal of toxic and hazardous materials.

Any hazardous or toxic materials associated with the proposed operation shall be regulated by the provisions of all applicable law, including the Desert Hot Springs

Municipal Code, including Section 5.50 (Medical Marijuana Facilities Regulatory Permit), Section 17.40 (Property Development Standards) and Section 17.180 (Medical Marijuana Facilities Location).

Fire and Police Protection

Goal: A high level of police and fire protection and service.

The proposed medical marijuana cultivation facility will include security measures, including door locking systems, exterior lighting, camera monitoring and other systems to minimize the impact on police protection services. Fire suppression systems will also be incorporated into the operation to minimize the impact on fire protection service. Consequently, the proposed medical marijuana cultivation facility is not expected to demand a high level of police and fire protection services.

Policy 1: All new and improved developments shall be reviewed for their impact on safety and the provision of police and fire protection services.

The proposed application and associated regulatory permit will include requirements for review of the proposed operation by City police and fire services. Any identified impacts on safety will be addressed by conditions of approval or regulatory requirements.

Policy 2

Enforce fire standards and regulations in the course of reviewing building plans and conducting building inspections.

All plans and improvements for interior or exterior building improvements will be subject to review and enforcement under fire codes and regulations.

Staff recommends this finding.

- L. That there will not be significant harmful effects upon environmental quality and natural resources.*

The proposed medical marijuana cultivation facility will be sited on vacant property currently zoned for light industry. Further, the cultivation facility will operate in accordance with the City's regulations and conditions of approval. Based on the draft environmental document, no significant adverse or harmful effects on the environment or on any natural resources are anticipated, subject to the implementation of specific mitigation measures and conditions of approval. Staff recommends this finding.

- M. That the negative impacts of the proposed use are mitigated and/or a mitigated negative declaration may be filed.*

The proposed medical marijuana cultivation facility will be operated as a light industrial use in a new building within the Light Industrial zone. It will be operated in accordance with all applicable regulations and conditions of approval. A review of the proposed project has identified no negative impacts, subject to the implementation of specific mitigation measures and conditions of approval. Staff recommends this finding.

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.

The proposed medical marijuana cultivation facility has been reviewed by City departments and other public agencies for any potential detrimental effects on public interests, health, safety, convenience or welfare of the City. Any potential concerns have been addressed by recommended conditions of approval, and no unresolved concerns remain. Staff recommends this finding.

DEVELOPMENT AGREEMENT NO. 15-16

1. *That the property proposed to be subject to the agreement is not less than 1 acre in size*

The site has a total gross area of 1.07 acres (approximately 46,796 square feet).

2. *That the application is made on forms approved, and contains all information required, by the Director;*

The applicant has submitted a draft development agreement on the City's template for review.

3. *That the Development Agreement contains provisions that: specify the duration of the agreement; specified the permitted uses of the property; specified the density or intensity of use(s); set forth the maximum height and size of the proposed structure; set forth provision, if any for reservation or dedication of land for public purpose; provision not permitting protection from a future increase in development fees; provisions for a tiered amendment review procedure; and provisions for a health and safety exception such as "compelling public necessity"*

All required provisions are incorporated into the draft agreement.

EXHIBITS:

- Exhibit No. 1 - Conditions of Approval
- Exhibit No. 2 - Proposed Site Plan
- Exhibit No. 3 - Architectural Floor Plan
- Exhibit No. 4 - Colored Elevations
- Exhibit No. 5 - Material Board
- Exhibit No. 6 - Conceptual Landscape Plan
- Exhibit No. 7 - Lighting Plan
- Exhibit No. 8 - Development Agreement
- Exhibit No. 9 - Mitigated Negative Declaration