

## REPORT TO THE CITY COUNCIL



**DATE:** May 2, 2017

**TITLE:** Conditional Use Permit No. 06-17 and Development Agreement DA 04-17 for the Development of Two (2) Attached Two-Story Cultivation Buildings Totaling Approximately 86,700 Square Feet on a 2.53 Acre Site (APN 665-030-018 and 665-030-019) Located on San Jacinto Lane between Little Morongo Road and Cabot Road in the I-L (Light Industrial) Zone (Applicant: Canndescent (Contact: Tom DiGiovanni)

**Prepared by:** Scott Taschner Associate Planner

**Reviewed by:** Daniel Porras P.E. Acting Community Development Director

### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from the City Council;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Opportunity for Applicant Rebuttal;
- 7) Close the Public Hearing;
- 8) City Council discussion and questions to Staff; and
- 9) Approve (1) adoption of Mitigated Negative Declaration for the Canndescent II Cultivation project; (2) approval of Conditional Use Permit No. 06-17; and (3) Development Agreement No. 04-17 for the construction of two (2) attached two-story cultivation buildings located on San Jacinto Lane between Little Morongo Road and Cabot Road in the I-L (Light Industrial) District. (APNs 665-030-018 and 665-030-019)

### DISCUSSION

#### EXECUTIVE SUMMARY

The applicant (*Canndescent*) has filed a Conditional Use Permit (CUP) and Development Agreement (DA) application for the construction of a new medical marijuana cultivation facility, located north of San Jacinto Lane between Little Morongo Road and Cabot Road. The facility will consist of two (2) two-story attached buildings over two lots that are approximately 2.53 acres in total size.

#### SITE CONDITIONS

*Existing Zoning/General Plan Land Use:* I-L  
(Light Industrial) & L-I

*Existing Use:*

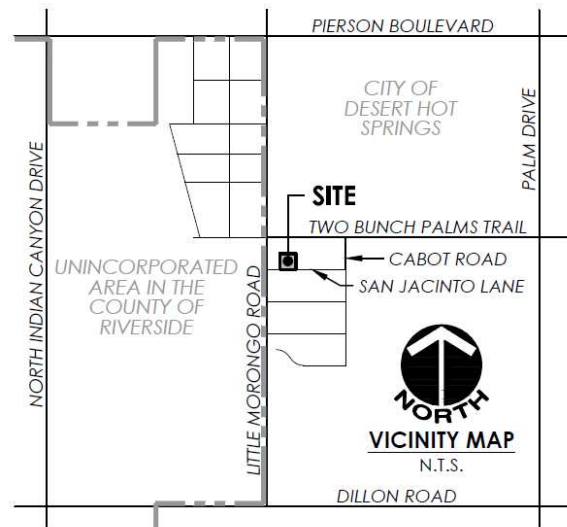
Vacant Land

*Total Project Area:*

2.53 gross acres

*Assessor's Parcel Number:*

APN: 665-030-018 & 665-030-019



## **CUP ANALYSIS**

The proposed development is consistent with zoning development standards and all applicable General Plan policies (Section 17.180 of the DHSMC).

### ***Site Coverage***

Both lots are approximately 2.53 acres in total size, the proposed facility total footprint is 43,358 square feet, or 43% of the entire site, which is under the 75% maximum allowable coverage.

### ***Floor Space***

The facility will consist of two (2) two-story buildings attached at the center shared property line of two separate lots. Since the facility is a two-story building, and the footprint of the facility is 43,358 square feet, the indoor area is doubled with a total of 86,715 square feet

### ***Building Height***

The highest point on the proposed building will be 50 feet, which meets the maximum height of 50 feet allowed in the IL District.

### ***Building Setbacks***

Proposed setbacks are 50 feet in the front (San Gorgonio Lane), 64 feet on the sides, and 58 feet in the rear. There is a zero lot line setback along the shared property line of each lot, which is allowed. Therefore, the proposed building meets minimum setback requirements.

### ***Circulation and Parking***

Ingress and egress to the site will be provided from two driveways, both accessing San Jacinto Lane from south of the property. Both entries will have controlled gates and will be monitored by onsite security personal.

The following off-street parking standards have been applied for Medical Marijuana Cultivation uses, Office (1 space per 250 square feet), Ancillary Industrial uses (1 per 750 square feet), and plant nurseries (1 space per 2,500 square feet), resulting in a requirement of 74 total parking spaces. The proposed site improvements will provide 74 spaces, making the project consistent with the City parking requirements

The project will also provide adequate parking for the proposed uses, as outlined below:

#### **Projects Parking Calculations**

<b><u>Use</u></b>	<b><u>Area (Sq. Ft.)</u></b>	<b><u>Ratio</u></b>	<b><u>Number of Spaces</u></b>
Office	11,164	1 per 250 square feet	37.22
Cultivation Activities	68,379	1 per 2,500 square feet	27.35
Cultivation Ancillary Industrial	7,172	1 per 750 square feet	9.6
<b>Total Spaces Required</b>			<b>74 (74.4)</b>
<b>Total Spaces Provided</b>			<b>74</b>

### ***Truck Parking and Accessibility***

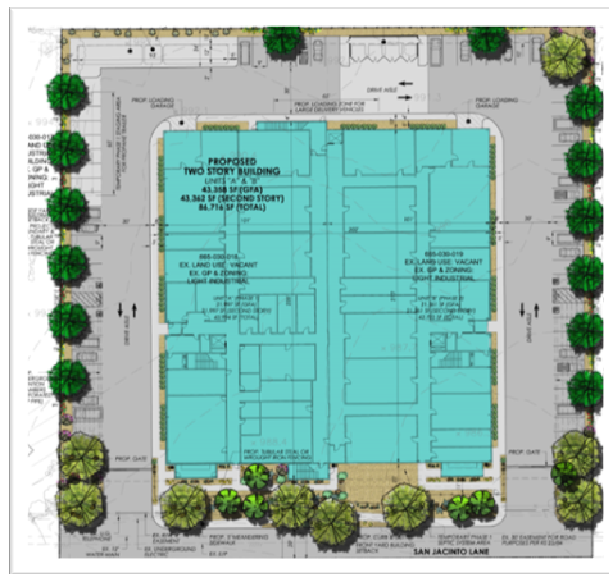
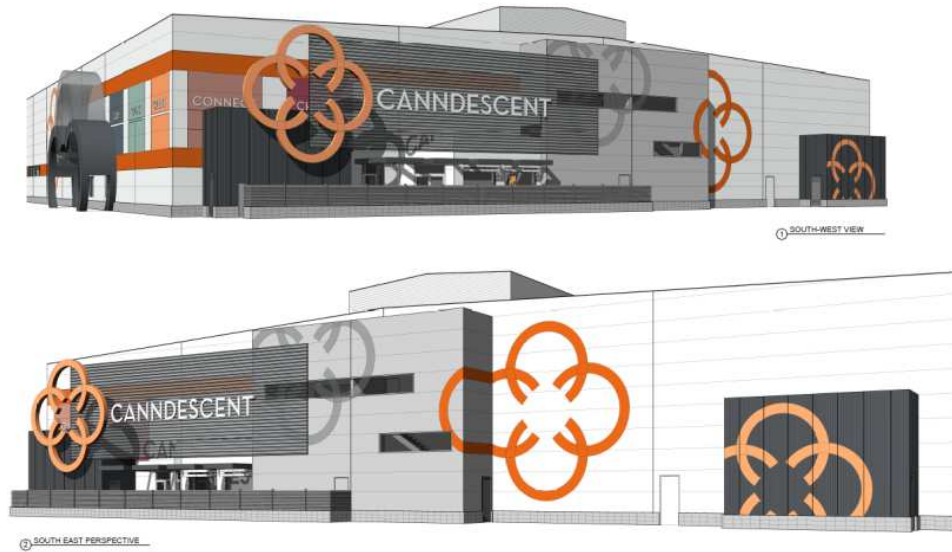
Each project will provide for temporary parking of semi-trucks/tractor trailers and will provide roll-up doors large enough for box-sized trucks to enter the building (**Exhibit No. 4a**).

## Co-Generation HVAC System:

Project proposes a Co-Generation (Co-Gen) HVAC system for energy, heating, and cooling needs. Co-Gen system will be located on the northwesterly corner of the project site.

## Architecture

The building façade fronting San Jacinto Lane would consist of 3 dimensional forms and architectural elements in the style of desert contemporary. Site perimeter will be enclosed with wrought-iron fencing to enhance visuals and secure the perimeter.



## Landscaping

Landscaping is proposed around the entire perimeter of the site, street frontage and the parking area. Along San Jacinto Lane landscaping will consist of Blue Palo Verdes and Hybrid Fan Palms along with low level plantings and tubular steel/wrought iron fencing.

### ***Lighting***

Exterior lighting will be provided at all exterior doors and for the parking area, subject to review by the Police Department (Exhibit No. 8). Lighting will be oriented downwards and shielded within the property to contain illumination within the project boundary.

### ***Phasing***

The applicant proposes to construct the project in two phases.

### ***Security***

Security measures have been considered and incorporated into the project. The site will be enclosed within perimeter fencing. Gated entry/exit drives will control vehicular access to and from the property. A detailed, comprehensive security plan will be reviewed by the City Manager during the Regulatory Permit phase.

### ***Odor Control***

The project will implement best management practices to reduce the effects of odors. Carbon filters will be installed as part of the air conditioning and cooling system. **Staff is adding conditions of approval Nos. 4 & 5 to help mitigate any issues with future odor control.**

### ***Hours of Operation***

Hours will be consistent with chapter 5.50.100 of the DHSMC. Medical Marijuana Cultivation Facilities may operate 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 may require staff to be present on premises 24 hours per day.

### **PRIOR ACTIONS**

On March 14, 2017 the Planning Commission made a recommendation to the City Council for Approval of the project. The Commission made no revisions to the proposed project.

### **DEVELOPMENT AGREEMENT ANALYSIS**

The City is requiring all Medical Marijuana Cultivation to process a Development Agreement that incorporates indemnification provisions in favor of the City. The Development Agreement format was prepared by the City Attorney and will be reviewed and approved in final form prior to its presentation to the City Council for approval.

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 assurances 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**

In accordance with the provisions of the California Environmental Quality Act ("CEQA"), an Initial Study has been prepared and which has determined that development of the proposed

medical marijuana cultivation facility would not have a significant impact on the environment, with the implementation of mitigation measures. A draft Mitigated Negative Declaration (MND) is proposed and contains certain measures for Cultural Resources and Biological Resources. The draft Mitigated Negative Declaration is being circulated for comments (comment period ending March 29, 2017) and no comments have been as of (Insert Date Report Publicized). The MND is attached for consideration by the Commission, and the City Council will consider certification of a Mitigated Negative Declaration prior to final action on the project.

### **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. **(\$75,000 + \$725,510= \$800,510 total for the facility)**

Total Area = 86,715 square feet

Office = 11,164 square feet

Cultivation and Ancillary Cultivation Area = 75,551 square feet

3,000 sf. at \$25/sf. = \$75,000

72,551 sf. at \$10/sf. = \$725,510

**Total = \$800,510**

### **RECOMMENDATION**

A recommendation from Planning Commission to the City Council for 1) adoption of the Mitigated Negative Declaration (MND), and 2) approval of Conditional Use Permit No. 06-17 and, 3) approval of Development Agreement 04-17, subject to the attached Conditions of Approval, the mitigation measures outlined in the Draft MND, and including the following findings:

- 1. 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 compliant 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.

- 2. 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.

- 3. 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.

*4. 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 buildings are developed to accommodate the proposed uses and they appear 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.

*5. 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 either vacant or developed with light industrial uses (with the exception of properties to the north, which area zoned low density residential (R-L) but are undeveloped and are requesting a change of zone to light industrial (I-L). The site will be a self-contained development with all vehicle circulation needs accommodated on site. The proposed buildings are located in the 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 structures are 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.

The project site consists of one lot totaling 2.53 gross acres (109,995 square feet) in size, Under the Industrial Zoning District standards; the maximum allowable coverage is 75%. The total of the proposed building lot coverage (Ground Floor Area) is 43,358 square feet (39.4%). The proposed project is consistent with the code in building to lot coverage.

*6. 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 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.

*7. 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 project will not create any additional demand for access than will be provided by the associated parking and drive aisle. Staff recommends this finding.

*8. 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 height of the buildings are consistent with the development standards of the zoning district and are designed and placed on the site in such a manner that they will not impede long-range views. While the proposed project 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.

*9. That the proposed use is necessary and essential to the community.*

The proposed use 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.

*10. 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 project 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 project 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.*

The project was noticed to neighboring owners within 300 feet of the project (on March 2, 2017), and in the Desert Sun on Saturday March 4, 2017 per state noticing requirements. No comments have been received and the Planning Commission will open the public hearing and take public comments and/or testimony on the dais and prior to any action or recommendation to the City Council.

### 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 uses will be located in two new buildings 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 uses will be located in two new buildings 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 exteriors (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.*

All 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 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.

*11. 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.

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

The proposed project 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.

*13. 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 project 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. 04-17**

*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 2.53 acres

*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:**

- 1) Draft Conditions of Approval
- 2) Draft Negative Declaration with Mitigation Monitoring Program
- 3) Site Photos
- 4) Proposed Site Plan
- 4a) Site plan showing location of temporary semi-truck parking and roll up doors
- 5) Floor Plans, Building Elevations, Roof Plan
- 6) Landscape Plan
- 7) Plant Palette
- 8) Lighting Plan / Photometric / Fixtures
- 9) Additional Parking – Site Plan
- 10) Ordinance for Development Agreement
- 11) Draft Development Agreement
- 12) Legal Description (Exhibit A to Development Agreement)
- 13) Vicinity Map (Exhibit B to Development Agreement)