

REPORT TO THE PLANNING COMMISSION



DATE: 11 July 2017

TITLE: Conditional Use Permit No. 01-17 and Development Agreement 15-17. A recommendation to the City Council regarding a Conditional Use Permit and Development Agreement for the development of an indoor marijuana cultivation facility with a total floor area of 20,664 square feet. The 1.26 gross acre project site (APN 665-070-004) is located on the north side of 15th Avenue, approximately 1,400 feet east of Little Morongo Road in the Light Industrial (I-L) zone. Applicant: D-9 Farms / Santos.

Prepared by: Craig A. Ewing, Consulting Planner

Reviewed by: Daniel Porras, Community Development Director

RECOMMENDATION

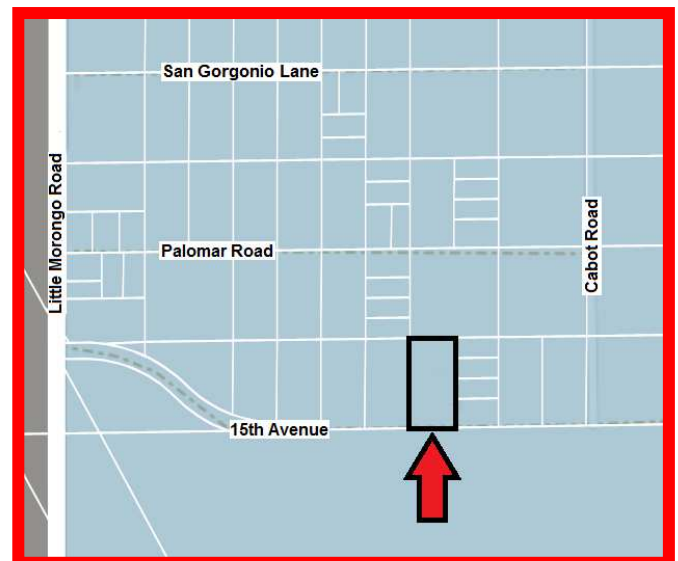
- 1) Staff Report;
- 2) Entertain Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Opportunity for Applicant Rebuttal
- 7) Close the Public Hearing;
- 8) Planning Commission discussion and questions to Staff; and
- 9) Consider a motion that the Planning Commission recommends approval of Conditional Use Permit No. 01-17 and Development Agreements 15-17; for the development of an indoor marijuana cultivation facility for a total area of 20,664 square feet on 1.26 acres located on the north side of 15th Avenue, approximately 1400 feet east of Little Morongo Road in the Light Industrial (I-L) Zone.

DISCUSSION

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, Ryan Po / DHS Diversified, has filed application to establish a facility for the indoor cultivation of medical marijuana.

The site is located on the north side of 15th



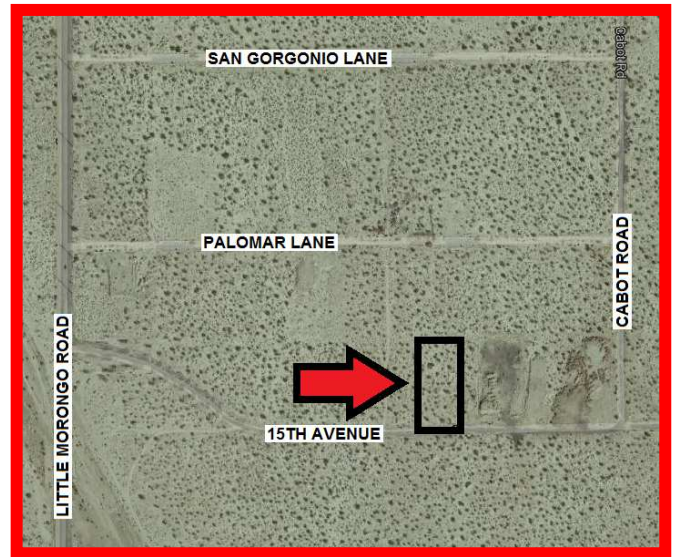
Avenue, approximately 1400 feet east of Little Morongo Road. It is a single parcel that is rectangular, generally flat, and has a gross area of approximately 1.26 acres. Its total width and street frontage along 15th Avenue (unimproved) is approximately 164 feet, and it has a depth of approximately 333 feet. Following dedication of right-of-way, the site will have a net area of approximately 1.14 acres. The site is currently vacant.

The proposed project includes one free-standing building totaling 20,664 square feet of floor area. The building is composed of two elements:

- Two-story 'head house' constructed of concrete masonry block located nearest the street (south portion of site) and
- One-story steel frame and panel greenhouse with a glass roof behind the head house. Accessory improvements parking for 11 vehicles and approximately 4,500 square feet of landscaping.

The overall height of the building is approximately 34 feet.

The proposed project is zoned Light Industrial (I-L) District. Public street dedications and improvements on 15th Avenue will be required.



Immediately surrounding properties are developed as follows:

| | <u>Zoning & General Plan Designations</u> | <u>Current Land Use</u> |
|--|--|--------------------------------|
| North, East, South and West | IL (Light Industrial) District | Vacant Lands |

PROJECT SUMMARY

The applicant, D-9 Farms / Timothy Santos, has filed a Conditional Use Permit (CUP) application to develop the site for indoor cultivation of medical marijuana on a 1.26 gross acre property (APN 665-070-004). New construction of a combination concrete block and metal frame building (total gross floor area of 20,664 square feet) and ancillary facilities is proposed on the vacant site.

| Building Use | Area (Sq. Ft.) |
|--------------|----------------|
| Office | 1,125 |
| Cultivation | 19,539 |
| Total Sq Ft. | 20,664 |

No manufacturing is proposed.

Vehicular circulation is provided by two new driveways at the southwest and southeast corners of the site accessing 15th Avenue (future). The interior vehicle circulation plan includes a loop drive, with parking for thirteen vehicles and a loading door provided in the front of the building (south side)

The two-story buildings' exterior colors are dark grey concrete block with black trim, various greens in metal doors and awnings, and a median brown wood accent feature around the front doors (south elevation). The green house is composed of grey and green metal siding (grey on the lower wainscot) and a glass pitch roof. Landscaping and fencing are provided around the perimeter of the site, as described below. A single phase is proposed.

CUP ANALYSIS

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

Site Coverage: The project site consists of a single lot have an area of 1.26 gross acres. After dedication of public rights-of-way, the net lot size will be approximately 1.14 acres. Under the Industrial Zoning District standards, the maximum allowable coverage is 75%. The area of the proposed building's footprint is approximately 16,300 square feet which represent 32.8% site coverage. The project conforms to this standard.

Building Height: The highest point on all proposed buildings will be about 34 feet from adjacent grade. This is below the maximum height of 50 feet allowed in the I-L District.

Building Setbacks: The minimum setbacks in the City's Light Industrial (I-L) Zone are 20 feet in front, 10 feet in the rear, and 10 feet on the side. The existing building is approximately 81 feet from the front property line, 42 feet from the rear property line and at least 35 feet to side property lines. Therefore, the project meets minimum setback standards.

Circulation and Parking: Ingress and egress to the site will be provided from two driveways at the southwest and southeast corners of the site on 15th Avenue. As noted above, parking for 13 vehicles is provided (one space for the disabled). Based on the proposed floor plan and a parking standard of 1 space for every 2500 square feet of cultivation / storage areas, and 1 space for 250 feet of office and administrative uses, staff provides the following parking calculation:

| Parking Calculation | | | |
|---|---------------------|-------------------------------------|---|
| Proposed Uses | Zoning Requirements | Number of Spaces Required | Number of Spaces Provided |
| Total Administration 1,214 sf | 1 spaces/ 250 sf | 4.86 | 13 (including one for the disabled) |
| Total Cultivation: 596,920 sf | 1 spaces/ 2500 sf | 7.78 | |
| Total: 621,920 sf | | <u>12.64</u> or 13 spaces | |

Based on the above analysis, the project provides sufficient parking for the proposed use. Staff notes that any revision of the interior or introduction of uses different than those presently proposed would require an amendment to this Permit, including re-evaluation of required parking.

Elevations, Colors and Materials: The proposed structure is similar to other concrete block and metal frame and panel industrial buildings in the area. The front two-story concrete block building screens the green house from street views, enhancing security of the site. The grey and green colors suit the desert environment. The main design treatment is a large wood

surround of the front doors on the south (street facing) elevation. Typically, wood is a poor material for building exteriors in the desert; however, the applicant indicates that the wood proposed for this project is similar to teak and will tolerate high temperatures and sun exposure with no extraordinary maintenance. The overall design scheme simple and modern, and the colors and materials are appropriate to the design.



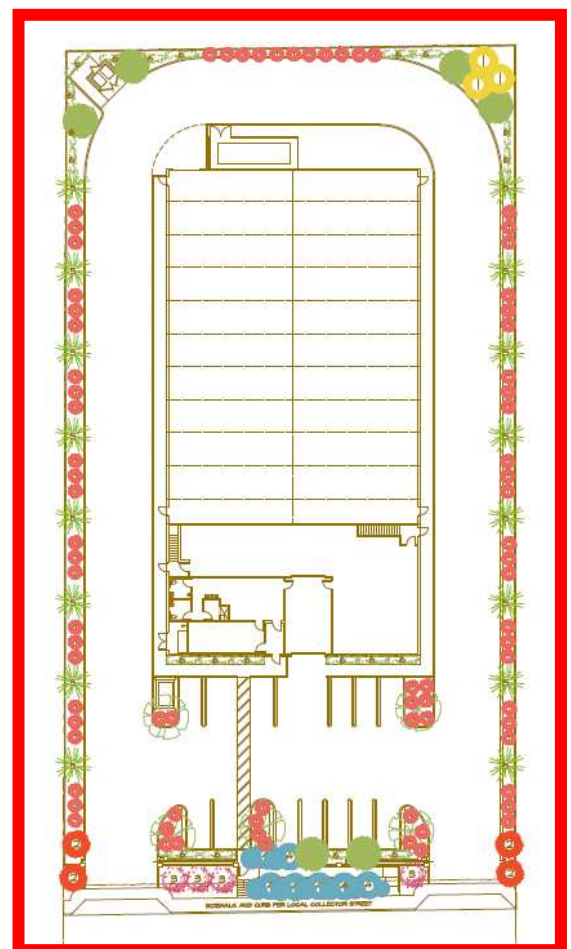
Landscaping: The landscape plan shows planted areas around the perimeter of the site, as well as along the 'front' elevation of the building. Low-water use trees and plants are listed on the plan, including Palo Verde, Willow Acacia, Lantana, Bird of Paradise, Bougainvillea and Agave. The overall planting plan is appropriate in scale and plant selection.

A six-foot tube-steel fence is proposed around the entire property, and controlled access gates are found near the entry driveways.

Lighting: Existing exterior lighting is provided, including a photometric study that indicates one foot-candle minimum lighting is provided throughout the vehicle circulation and parking area, with an average two foot-candles provided at entrances and loading doors. The plan appears to meet the requirements of Section 17.16.260.e for lighting in the industrial zone:

One foot-candle evenly distributed across a parking lot is the required minimum. At entrances, loading docks and other limited areas, up to 2 foot-candles may be appropriate.

In the event that any changes to the lighting plan is proposed, a revised plans shall be submitted to the city for review of design, placement, and configuration of any changed lighting fixtures.



Phasing: The applicant proposes to construct the project in a single phase; however, there may be a portion of the building which is delayed if sewers are not immediately available. Staff has included conditions to assure the construction of necessary public improvements in the event of any phasing. If the project is phased, any changes to the site plan, elevations or other approved plans will be reviewed by staff; substantial changes may require an amendment to this permit in accordance with the requirements of the municipal code.

Security: No specific security plan has been submitted; however, the site is will be enclosed with new tube-steel perimeter fencing, including gated entry/exit drives as indicated. 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; fencing; background checks; name and contact information of Security Company monitoring the site and any additional information required by the City. The Police Department has provided a recommended set of conditions to address on-site security.

Odor Control: No specific odor control is indicated. At such time as tenant improvements are submitted, odor control will be required, subject to review and approval by the Fire Department.

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 developed for the cultivation of marijuana and may require staff and security services to be present on premises 24 hours per day.

CONDITIONAL USE PERMIT FINDINGS

Conditional Use Permits are regulated under Section 17.76 of the Desert Hot Springs Municipal Code and require that certain findings be made by the Planning Commission before granting a CUP request. Staff has developed recommendations for each finding, as follows:

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 17.180.060 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 a new commercial / 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.

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 17.12.010.B.2 of the Desert Hot Springs Zoning Ordinance identifies the underlying I-L (Light Industrial) zone as intended for, "...business parks and the development of any and all industrial uses operating entirely in enclosed buildings, and those requiring limited and screenable outdoor storage. Examples include clean manufacturing operations, warehousing and distribution facilities, mini-warehouse storage, and a variety of light manufacturing businesses." The proposed medical marijuana cultivation facility qualifies as "industrial uses operating entirely in enclosed buildings" and as "clean manufacturing operations, warehousing and

distribution facilities”, and will occupy a new commercial / industrial building similar to other industrial buildings in the area. The proposed use will produce goods and products in a manner similar to other industrial uses and will not introduce any activities that would impair the integrity or character of the land use district in which it is to be located. Staff recommends this finding.

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

The site will be developed with a new commercial / industrial building and will include parking, landscaping and other features and amenities appropriate to the development. The proposed medical marijuana cultivation facility is physically organized in a manner similar to other industrial establishments. The site provides sufficient parking and any future use of the building will be subject to limits based on available parking. Further, the proposed site plan is similar to industrial development in the vicinity. On this basis, 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 site is presently vacant. The proposed medical marijuana cultivation facility is an industrial use and can be considered similar to other industrial establishments allowed in the I-L (Light Industrial) zone, such as plant nurseries, food products, distribution, light manufacturing and wholesaling. The proposed commercial / industrial building is designed to accommodate a variety of commercial / industrial uses. The proposed cultivation facility does not appear to be outside the range of activities typical for a commercial / industrial building, and is proposed to entirely occupy the proposed buildings. 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.*

All surrounding lands within 1000 feet of the subject property are vacant, but zoned for light industrial use or open space. It is expected that future land uses in the vicinity will be commercial / industrial uses similar to the proposed cultivation facility. The applicant proposes to entirely occupy the site, and the proposed use is not directly accessed from surrounding land uses. All activities will be contained within the proposed buildings, and the operation will appear as a commercial / industrial use consistent with the permitted uses of the I-L (Light Industrial) zone. Consequently, the proposed cultivation facility is expected to be compatible with existing and future land uses in the surrounding general area. Staff recommends this finding.

6. *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 two-story commercial / industrial building. The proposed building and green house will be of conventional concrete masonry block and metal frame and panel construction with appropriate and necessary accessory features (parking, landscaping, etc.) Land uses immediately abutting the site are vacant land. Future commercial / industrial development is currently prohibited by the Municipal Code from exceeding 50 feet in height and 75% lot coverage. The subject 1.26 gross acre site is presently vacant,

but would be occupied by a building that does not exceed about 34 feet in height and contain a total area of about 20,644 square feet; lot coverage is approximately 32.8%. The scale, mass, coverage, density and intensity of the proposed use will be consistent with general commercial / industrial activities, and the site's location and development plan are compatible with adjacent commercial / industrial uses in the vicinity. Staff recommends this finding.

7. *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 is proposed to be developed with a commercial / industrial building and includes all public services and utilities installed and available. 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.

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

The subject site has sufficient on-site parking with 13 spaces provided and 13 required. Any future use of the building will be subject to limits based on available parking. The Public Works Department is recommending conditions to assure that street driveway access meets current design standards. Staff recommends this finding.

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

Desirable neighborhood characteristics include long-range views from existing businesses of surrounding mountains. At build-out the proposed medical marijuana cultivation facility will fully occupy the site within buildings at approximately 34 feet in overall height. The proposal is expected to result in no adverse affect on long-range views from surrounding areas. Staff recommends this finding.

10. *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 customers that cause it to succeed as a local commercial / 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.

11. *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 within a proposed commercial / industrial building in an area presently designated as I-L (Light Industrial) on the adopted zoning map of the City and all public improvements are in place or will be constructed. 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 Planning Commission 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 Planning Commission 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 will be a clean industrial development and will expand the economic and employment base of the community by the products it will offer dispensaries within the State of California and the new employees that will be hired. The only non-industrial uses in the vicinity are heavy commercial businesses which are similar in character to light industrial activities. The proposed cultivation facility will operate with security and environmental measures that will assure its compatibility with all surrounding uses.

Policy 2: Industrial lands shall be located in areas that maximize all available and planned infrastructures, including but not limited to water and sewer service, electric and natural gas service, and major transportation corridors, and should minimize the impact on public health and safety.

The proposed site is presently served with necessary utilities and is located adjacent to a Major Arterial (Little Morongo Road). A review of the project indicates that no significant impact on public health and safety will occur.

Policy 4: The City of Desert Hot Springs shall seek to attract appropriate industrial users for which the area is particularly suited and encourage those industries to take

advantage of the local labor force and markets with which the City has a comparative advantage.

The City has adopted policies and standards to encourage the development of a medical marijuana cultivation industry. The applicant has proposed a cultivation facility in conformance with these policies and standards, and is expected to take advantage of the local labor force and markets.

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 project has been reviewed against applicable local development standards and guidelines. The proposal has been determined to meet these standards and guidelines or conditions have been imposed to assure that the project conforms.

Community Design

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

The project proposes to construct a new two-story commercial / industrial building including green house with attractive and appropriate colors, materials, architectural features and landscaping. Any changes to the exterior elevations, color / material board, landscape plan or lighting plan will be reviewed by staff 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, and the applicant proposes to construct a new concrete masonry block and metal frame and panel building at a height not to exceed approximately 34 feet. Therefore, the proposed medical marijuana cultivation facility will not affect the community's scenic viewsheds.

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.

No signs are approved as part of this Conditional Use Permit. All exterior signs shall reviewed under a separate application and be subject to approval under the Desert Hot Springs Zoning Code, including limitations on size, scale and number. The code does not permit signs to exceed the height of existing construction which will result in no impacts on scenic viewsheds. No exposed neon shall be used for signs or window graphics.

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.

The proposed lighting plan appears to comply with the City's lighting standards for industrial development, and appears designed 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 dispensary 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 expand the type of commercial / industrial services available in the community and provide opportunities for new employment and business support services.

Goal 2: Continued growth, which assures the maintenance of a 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 on 3 January 2017, deemed complete 2 February 2017 and since then 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 protections services. Fire suppression systems will also be incorporated into the operation to minimize the impact on fire

protection service. Consequently, the proposed medical marijuana dispensary 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 permits 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.

The project appears to be consistent with the applicable goals and policies of the General Plan. Staff recommends this finding.

12. That there will not be significant harmful effects upon environmental quality and natural resources.

The proposed medical marijuana cultivation facility will occupy a new commercial / industrial building, located within a designated commercial / industrial area, and operated in accordance with the City's regulations and conditions of approval. Consequently, no significant adverse or harmful effects on the environment or on any natural resources are anticipated. Staff recommends this finding.

13. 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 commercial / industrial use within a new commercial / industrial building. It will be operated in accordance with all applicable regulations and conditions of approval. A review of the proposed project has identified the potential for certain environmental impacts; however, mitigation measures have been developed which will reduce all identified potential impacts to less-than-significant levels. A draft Negative Declaration with Mitigation Measures has been prepared for the project.

14. 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.

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

ENVIRONMENTAL ANALYSIS

The Applicant proposes to develop on vacant land a commercial / industrial building with green house and ancillary development. In accordance with the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq*, and the CEQA Guidelines, Title 14, Chapter 3 of California Code of Regulations, a draft Initial Study was prepared which identified potential impacts and sufficient mitigation measures. All potential environment impacts have been reduced to less-than-significant levels and a draft Negative Declaration with Mitigation Measures has been prepared for this project.

FISCAL IMPACT

Development of this project will generate revenues to the City in the form of building permit fees to defray plan check and inspection costs, for each project phase. In addition, the City will receive on-going revenue from marijuana taxes, which are estimated to be \$251,640.

RECOMMENDATION

Staff finds that the proposed project is substantially consistent with the General Plan and meets the development standards of the I-L (Light Industrial) zoning district. Staff recommends that the Planning Commission recommend to the City Council approval of Conditional Use Permit No. 01-17 and Development Agreement No. 15-17, subject to the Conditions of Approval.

EXHIBIT(S)

- No. 1 – Recommended Conditions of Approval
- No. 2 – Draft Initial Study and Mitigated Negative Declaration
- No. 3 – Site Plan (showing temp. parking)
- No. 4 – Floor Plans
- No. 5a – Building Elevations (showing roll-up doors)
- No. 5b – Building Elevations
- No. 5c – Colors & Materials
- No. 6 – Landscape Plan
- No. 7 – Lighting Plan
- No. 8 – Draft Development Agreement