

REPORT TO THE PLANNING COMMISSION



DATE: June 13, 2017

TITLE: Conditional Use Permit No. 05-17 and Development Agreement No. 03-17. A recommendation of the Planning Commission to the City Council for the approval of a Conditional Use Permit and Development Agreement proposing the development of a two-story cultivation building totaling approximately 35,300 square feet (sf) on a 1.26 acre site. The project is located on San Gorgonio Lane between Little Morongo Road and Cabot Road in the I-L (Light Industrial) zone. Applicant: MIRO, LLC. (Contact: Michael Buono)

Prepared by: Daniel McVey, Assistant Planner

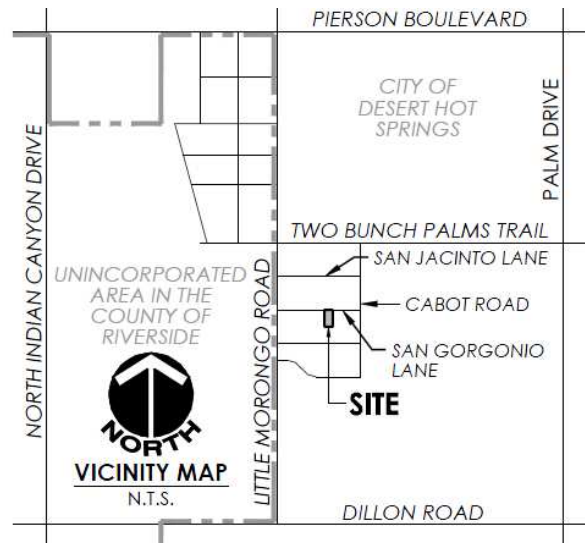
Reviewed by: Scott Taschner, Senior Planner
Daniel Porras, Community Development Director

RECOMMENDATION

- 1) Staff Report;
- 2) Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Invite Applicant to speak;
- 5) Questions for the Applicant;
- 6) Take Public Testimony;
- 7) Opportunity for Applicant Rebuttal;
- 8) Close the Public Hearing;
- 9) Planning Commission discussion and questions to Staff; and
- 10) Planning Commission recommendation to the City Council for 1) Mitigation Negative Declaration for the Desert Springs Cultivation project and, 2) Conditional use Permit 05-17 and, 3) Development Agreement 03-17 for the development of a 35,300 square foot cultivation facility on a vacant 1.26 acre site located within the I-L (light industrial) zoning district. APN 665-040-010.

EXECUTIVE SUMMARY

The applicant, *Miro LLC*, has filed a Conditional Use Permit (CUP) and Development Agreement (DA) application for the construction of a new medical marijuana cultivation facility on a 1.26 acre site located on San Gorgonio Lane between Little Morongo Road and Cabot Road. The development will consist of a two-story cultivation building totaling approximately 35,300 square feet (SF) in building area. Street improvements, on-site parking, and landscaping are also proposed. The entire project site will be secured by 6-foot-high tubular steel/wrought iron perimeter fencing. Construction is proposed in one (1) phase.



SITE CONDITIONS

Existing Zoning/General Plan Land Use:

I-L (Light Industrial)

Existing Use:

Vacant Land

Total Project Area:

1.26 gross acres

Assessor's Parcel Number:

APN: 665-040-010

The 1.26 acre project site contains slight to moderate amounts of typical desert vegetation

(scrub brush and low-lying plants). Topographically, the site drains to the south. The site has no

street improvements and via Palomar Lane, an unimproved dirt road. East of the property is the Coachella Valley Multi-Species Habitat Conservation Plan (CVMSHCP) Morongo Wash Conservation Area and the entire site is within Federal Emergency Management Agency (FEMA) flood zones AO, with a depth of 1' and velocity of 5 FPS. Southern California Edison (SCE) power poles run along Palomar lane.

Surrounding properties consist of:

	<u>Jurisdiction</u>	<u>Zoning & General Plan Designations</u>	<u>Current Land Use</u>
North	City	IL (Light Industrial) District	Vacant Land
West	City	IL (Light Industrial) District	Vacant Land
South	City	IL (Light Industrial) District	Vacant Land
East	City	IL (Light Industrial) District	Vacant Land

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. The proposed development is consistent with zoning development standards and all applicable General plan policies.

Site Coverage

The project site consists of 1.26 gross acres (54,925 square feet) in size, which will be reduced by right-of-way dedications to 1.15 net acres (49,983 square feet). Under the Industrial Zoning District standards, the maximum allowable coverage is 75%. The total of the proposed building lot coverage (Ground Floor Area) is 14,116 square feet, or 26% of the project site, placing the project, within the maximum allowed coverage.

Building Height

The highest point on the proposed building will be 44 feet above adjacent grade. This is below the maximum height of 50 feet allowed in the IL District.

Building Setbacks

The minimum setbacks in the City's Industrial Zoning Districts are 20 feet in front and 10 feet in the rear. A minimum setback of 10 feet is required for side yard unless if attached buildings are proposed in which case no side yard setback would be required for the attached side as per section 17.16.030 of the DHSMC. Proposed setbacks are 23 feet in the front to right-of way, 35 feet on the sides, and 39 feet in the rear. 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 Gorgonio Lane from the northern end of the property. Both entries will have controlled gates and will be monitored by onsite security personnel.

Off-Street parking standards for Medical Marijuana Cultivation uses are not specifically defined in the City Zoning Code. Therefore, Staff has applied parking ratios for similar uses including Office (1 space per 250 square feet), Industrial (1 space per 750 square feet) and plant nurseries (1 space per 2,500 square feet), resulting in a requirement of 24 total parking spaces. The proposed site improvements will provide 28 parking stalls which is 4 more than the required amount.

Parking Calculation

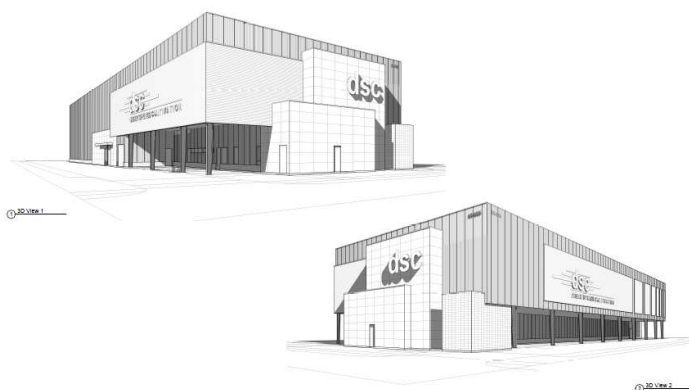
<u>Use</u>	<u>Area (Sq. Ft.)</u>	<u>Ratio</u>	<u>Number of Spaces</u>
Office	1,768	1 per 250 square feet	8
Cultivation Activities	31,639	1 per 2,500 square feet	<u>13</u>
Processing	1,913	1 per 7,50 square feet	<u>3</u>
Total Spaces Required			24
Total Spaces Provided			28

Truck Parking and Accessibility:

Drive aisles have been designed to accommodate access for semi-truck and emergency vehicles. In addition, the project will provide for temporary truck parking, loading and unloading of semi-trucks/tractor trailers along the easterly portion of the building (**Exhibit No 4**) and will provide roll-up doors large enough for box-sized trucks to enter the building. (**Exhibit No 6**)

Architecture

Similar to previously approved cultivation facilities in the area, the building façade fronting San Gorgonio Lane would consist of three dimensional forms and architectural elements in the style of desert contemporary. Contrasting hues will bring out and visually enhance the architectural features and elements. The overall architectural character will be that of an attractive, well-maintained industrial building. In addition, the project proposes a mezzanine for office and processing uses. The site perimeter will be enclosed with wrought-iron/tubular steel fencing to enhance visuals and secure the entire proposed project.





Landscaping

Landscaping is proposed around the entire perimeter of the site

which includes substantial plantings along the street frontage and the parking area. Landscaping has been designed to balance aesthetics, water use, and security objectives. Along San Gorgonio Lane, landscaping will consist of a Blue Palo Verde and Hybrid Fan Palms along with low level plantings and tubular steel/wrought iron fencing to visually enhance, protect, and blend the cultivation facility into its surroundings while also promoting visibility by law enforcement vehicles from the street.

Lighting

Exterior lighting will be provided at all exterior doors and for the parking area, subject to review by the Police Department (Exhibit No. 7). Lighting will be oriented downwards and shielded within the property to contain illumination within the project boundary. Lighting will also be reviewed as part of the City's required Regulatory Permit.

Phasing

The applicant proposes to construct the project in a single phase.

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 and 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.

Odor Control

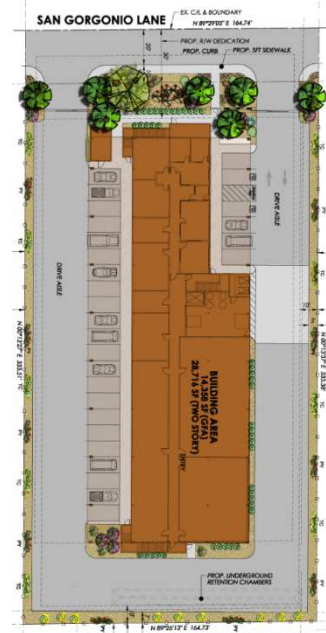
The project will implement best management practices to reduce the effects of plant odors during flowering which include the use of odor masking agents and neutralizers. Carbon filters will also be installed as part of the air conditioning and cooling systems.

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. Only authorized staff and delivery personnel will be allowed to enter the premises during the off-hours.

Staffing / Projected Employment

When fully staffed, the facility will staff approximately 20 employees at any given time during peak seasons. Operational hours will run in compliance with City ordinances and regulations.



These roles will be responsible for oversight, compliance reporting, general cultivation, and processing. All staff will be subject to thorough background checks as per City regulations.

AGENCY & PUBLIC REVIEW

Public Agency Review

The proposed project was routed to all relevant public agencies and departments for review.

AB 52 Review

The General Plan Amendment is subject to review by local Native American Tribal organizations, under Assembly Bill 52 (AB 52) requirements. Per AB 52 requirements, the Community Development Department sent notice to the potentially affected Native American Tribes, requesting their response within 30-days for formal consultation. The request for consultation period began on February 22, 2017. The Soboba Band of Luiseno Indians has requested formal consultation but has not responded to emails to meet with City staff. The Agua Caliente Band of Cahuilla Indians has requested a copy of any cultural resource documentation and the presence of an approved Agua Caliente Native American Cultural Resource Monitor for any ground disturbing activities.

Public Hearing Notice

A public hearing notice was advertised in the Desert Sun and was mailed to all property owners within a 300 foot radius of the subject property. As of this report, staff has not received any comments.

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 has been circulated and no comments have been received as of the date of this report. 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.

RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council approval of Conditional Use Permit No. 05-17 and Development Agreement No. 03-17 subject to the Conditions of Approval 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), 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 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.

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 all vacant. All surrounding lands are zoned for light industrial development. The site will be a self-contained development with all vehicle circulation needs accommodated on site. The proposed building is 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 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.

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 from both 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 businesses of the surrounding mountains and the future development of light industry on the site and surrounding area. The proposed building's low height 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: The City shall provide opportunities for review and comment on development proposals through public hearing notices sent to owners of properties located at least within 300 feet of development proposal sites.

Prior to Planning Commission review of the project application, notice of the conditional use permit hearing was provided to property owners within 300 feet of the proposed site.

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 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 aesthetically 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 purposes. 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 and 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; 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.

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.03-17

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 1.26 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, specify the permitted uses of the property, specify 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 – Draft Conditions of Approval

Exhibit No. 2 – Draft Negative Declaration with Mitigation Monitoring Program

Exhibit No. 3 – Proposed Colored Site Plan

Exhibit No. 4 - Site Plan Showing Temporary Parking and Turning Radius

Exhibit No. 5 – Floor Plans, Perspectives and Elevations, Site Photos, Etc.
Exhibit No. 6 - Building Elevation Showing Roll-Up Doors
Exhibit No. 7 – Landscape Plan
Exhibit No. 8 – Lighting Plan
Exhibit No. 9 - Site Photographs
Exhibit No. 10 – Draft Development Agreement