

## REPORT TO THE CITY COUNCIL



**DATE:** September 5, 2017

**TITLE:** Conditional Use Permit No. 11-17 and Development Agreement 09-17 for the Development of a 35,435 Square Foot Two-Story Building for Medical Marijuana Cultivation and Associated Parking and Other Improvements on a Vacant Parcel Totaling 1.26 Gross Acres Located on the North Side of San Gorgonio Lane, Approximately 500 Feet East of Little Morongo Road and Within the General Plan Light Industrial (I-L) Zone (Applicant: NR Trading / Feliks Akopyan)

**Prepared by:** Craig A. Ewing, Consulting Planner

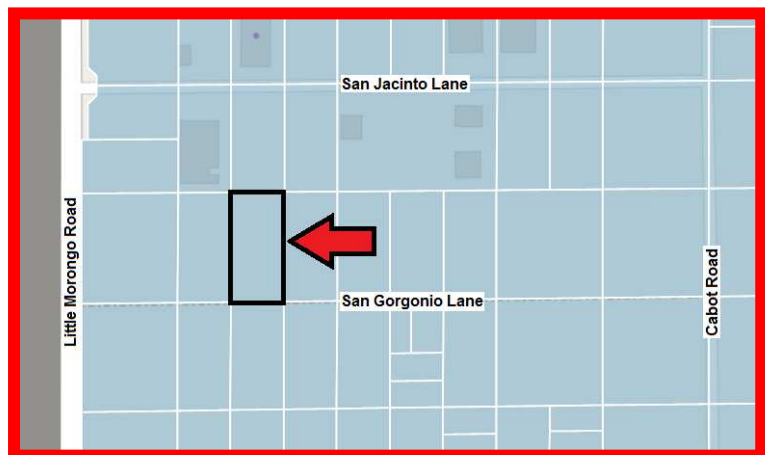
**Reviewed by:** Daniel Porras, Community Development Director

### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from 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 Conditional Use Permit No. 11-17 and Development Agreements 09-17; for the development of a 35,435 square foot two-story building for medical marijuana cultivation as well as associated parking and other improvements on a vacant parcel totaling 1.26 gross acres located on the north side of San Gorgonio Lane, approximately 500 feet east of Little Morongo Road and within the General Plan Light Industrial (I-L) Zone (APN: 665-040-022).

### EXECUTIVE SUMMARY

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 City Council and a Regulatory Permit approved by the City Manager. The applicant, Yang Guang, has filed an application to establish a facility for the indoor cultivation of medical marijuana.



The site is located on the north side of San Gorgonio Lane, approximately 500 feet east of Little Morongo Road. The property is a single parcel, rectangular in shape, and has a gross area of approximately 1.26 acres. It is generally flat, with a total width and street frontage along San Gorgonio Lane (unimproved) of approximately 165 feet, and a depth of 334 feet. Following dedication of a 30-foot wide right-of-way for San Gorgonio Lane along the entire south side of the property, the site will have a net area of approximately 1.15 acres. The site is currently vacant.

The proposed project includes one free-standing two-story building totaling 35,435 square feet of floor area; the building is of steel frame and panel construction and the overall building height does not exceed approximately 44 feet. Accessory improvements include parking for thirty vehicles.

The project meets all applicable zoning standards, including height, setbacks and parking.

### **PRIOR ACTIONS**

On 11 July 2017, the Planning Commission conducted a public hearing and adopted a motion to recommend to the City Council approval of the Conditional Use Permit and associated Development Agreement.

### **PROJECT PHASING**

The applicant proposes to construct the project in a single phase. Should the project be constructed in phases, 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.

### **TRUCK CIRCULATION AND ACCESS**

The site plan indicates adequate internal access for truck deliveries, including temporary parking areas on both sides of the building. A loading door is provided on the east side of the building.

### **EMPLOYMENT**

The proposed project is anticipated to have approximately 13 employees.

### **FISCAL IMPACT**

The plans show an estimated total cultivation / processing area of 33,272 square feet, which would yield \$377,720 annually (\$75,000 + \$302,720).

### **ENVIRONMENTAL ANALYSIS**

In accordance with the provisions of the California Environmental Quality Act ("CEQA"), an Initial Study has been prepared and 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 mitigation measures for Cultural and Biological Resources. The draft Mitigated Negative Declaration has been circulated for comments (comment period ending 20 July 2017) and no comments have been received as of 7 August 2017. 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.

### **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.

## **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 City Council 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 two-story 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 an existing 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 one 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 based on the proposed uses and is subject to conditions to avoid excess parking demand. 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 buildings may accommodate a wide 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 zoned for light industrial use, so future land uses in the vicinity can be expected to be commercial / industrial uses similar to the proposed cultivation facility. All surrounding lands to the east, south and west are presently vacant. To the north are both vacant and developed lands; the developed parcels include industrial and institutional (religious facilities) uses. In addition, some of the surrounding parcels are either proposed or under development for industrial use. The applicant proposes to occupy the entire 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 one-story building will be of conventional construction with appropriate and necessary accessory features (parking, landscaping, etc.) Land uses immediately abutting the site are vacant or developed at a similar scale. 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 44 feet in height and contain a total area of about 35,435 square feet; second story lot coverage is approximately 41% of the net lot area (after street dedications). 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 industrial and institutional 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; thirty spaces are provided and twenty-three are required, as currently proposed. 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 lands of surrounding mountains. At build-out the proposed medical marijuana cultivation facility will fully occupy the site within buildings at approximately 44 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 City Council review of the project application, notice of the proposed medical marijuana cultivation facility conditional use permit hearing was provided to property owners within 300 feet of the proposed site. In addition, a public hearing before the City Council has in fact been held where persons were provided a meaningful opportunity to be heard.

## Industrial Land Use

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

The proposed medical marijuana cultivation facility 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 and a religious institution. The industrial uses 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 industrial and non-industrial 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 near 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 commercial / industrial building with attractive and appropriate colors, materials, architectural features and landscaping, subject to recommended conditions. 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 metal frame and panel building at a height not to exceed approximately 44 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 30 March 2017, deemed complete 5 April 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 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 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 two-story commercial / industrial building within the Light Industrial (I-L) zone and be 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 two-story 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 City Council can make these findings.

### **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 City Council approve Conditional Use Permit No. 11-17 and Development Agreement 09-17, subject to the attached Conditions of Approval.

### **EXHIBIT(S):**

- 1) Recommended Conditions of Approval
- 2) Planning Commission Staff Report – July 11, 2017
- 3) Site Plan
- 3a) Loading and Delivery Details
- 4a) Floor Plans – 1<sup>st</sup> Floor
- 4b) Floor Plans – 2<sup>nd</sup> Floor
- 5a) Building Elevations
- 5b) Building Elevations (showing roll-up doors)
- 5c) Material Board
- 6a) Landscape Plan
- 6b) Plant Palette
- 7) Lighting Plan
- 8) Site Photographs
- 9) Draft Initial Study and Mitigated Negative Declaration
- 10) Draft Ordinance
- 11) Draft Development Agreement
- 12) Legal / Vicinity Map