

REPORT TO THE PLANNING COMMISSION



DATE: October 10, 2017

TITLE: Amendment to Conditional Use Permit No 15-16 to allow for distribution, transportation and manufacturing activities within the previously approved 9,864 square foot marijuana cultivation facility located at 14230-14250 Little Morongo Road in the Light Industrial (I-L) Zoning District (APN- 665-030-060). Applicant: Rx DHS Herbery

Prepared by: Scott Taschner, Senior Planner

Reviewed by: Daniel Porras, Community Development Director

RECOMMENDATION

- 1) Receive Staff Report;
- 2) Allow Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Allow Opportunity for Applicant Rebuttal;
- 7) Close the Public Hearing;
- 8) Planning Commission discussion and questions to Staff; and
- 9) Approve an Amendment to Conditional Use Permit (CUP 15-16) – allowing distribution, transportation, and manufacturing activities within the previously approved cultivation facility located at 14230-14250 Little Morongo Road, APN 665-030-060.

PRIOR ACTIONS

On November 22, 2016, the Applicant, Bert Gruber of RxDHS Herbery, received approval of the project under Conditional Use Permit 15-16 - to build and operate an indoor medical marijuana cultivation facility at 14230-14250 Little Morongo Road

PROJECT SUMMARY

The applicant, Rx DHS Herbery (Bert Gruber), has filed an application for an amendment to the Conditional Use Permit (CUP 15-16) for the RxDHS Herbery Cultivation project to include distribution, transportation, and manufacturing activities. All of these additional activities will take place in the existing buildings and a revised floor plan showing the location and extent of these activities has been provided (Exhibit No 3 – Revised Floor Plans).

DISCUSSION

Distribution and Quality Assurance Protocols

State statute (SB 94 aka MAUCRSA aka Trailer Bill) requires all cultivation and manufacturing adult use and medical marijuana license holders (A-license and M-license) to go through a robust quality assurance and independent testing lab process before selling product to dispensaries. Under SB 94, all cultivation and manufacturing license holders must go through a distributor, with a Type 11 Distributor license, to transport products to dispensaries. Cultivation and manufacturing license holders can be their own distributor, but must have a specific distribution license as well. All distributors must be bonded and insured at a level established by the licensing authority. Distributors must also meet security and transportation safety requirements established by the bureau including submitting electronic shipping manifests to track the chain of custody of all product. The role of the distributor is to collect taxes and associated testing fees, perform quality assurance tests on the products, arrange testing with a testing lab license holder, and transport the tested and approved product to dispensaries.

Additionally, the bureau will hire a quality assurance compliance monitor to randomly review and visit all distributors' licensed premises to ensure that all products meet labeling and packaging regulatory requirements. Cultivation and manufacturing license holders can also perform quality assurance testing on their premises before sending products to the distributor. This is a best practice that DHS CAN recommends to all license holders to ensure products meet packaging and labeling requirements.

Phasing: No phasing is proposed. The applicant will install all improvements and occupy the entire site in one phase.

Project Specific Condition: John Van Beek shall not be associated with this project in any fashion or form directly or indirectly.

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 an amendment to a previously approved medical marijuana cultivation facility. Section 17.180.060 of the City of Desert Hot Springs Zoning Ordinance allows such use(s) as conditionally permitted within any industrial zone which includes the I-L (Light Industrial) zone, subject to approval of a Conditional Use Permit. On November 22, 2016, the Planning Commission approved the original Conditional use Permit. The proposed amendment is consistent with the original approval and with city regulations and ordinances. The project is proposed to be located within two existing commercial / industrial buildings that comply 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 amendment qualifies as "industrial uses operating entirely in enclosed buildings" and as "clean manufacturing operations, warehousing and distribution facilities", and will occupy existing commercial / industrial buildings 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 is developed with two commercial / industrial buildings and will include parking, landscaping and other features and amenities appropriate to the development. The proposed amendment is physically organized similar to other industrial establishments. The site provides sufficient parking and no expansion of the buildings is proposed. Further, the existing site is similar to industrial buildings 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 developed with two buildings and ancillary paved areas. The proposed amendment and previously approved 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 existing commercial / industrial buildings were developed to 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 existing 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 activities will be contained within the existing 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 amendment and previously approved 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 amendment to the previously approved medical marijuana cultivation facility will be located within two existing commercial / industrial buildings. The one-story buildings are of conventional metal frame and panel construction and no new construction or building expansion is proposed. Land uses immediately abutting the site are either existing commercial / industrial uses or 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 1.81 acre site is developed with two buildings that do not exceed approximately 17 feet 2 inches in height and contain a total area of about 6721 square feet; lot coverage is approximately 44.88%. 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 and religious institutions 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 fully developed with two commercial / industrial buildings and includes all public services and utilities installed and available. The amendment and previously approved 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 – seventeen (17) spaces provides, eight (8) spaces required. 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. The proposed amendment and previously approved medical marijuana cultivation facility will fully occupy the commercial buildings on-site and no new construction is proposed. 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 amendment and previously approved 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 amendment and previously approved 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 amendment and previously approved medical marijuana cultivation facility will be located within existing commercial / industrial buildings in the I-L (Light

Industrial) zone of the City and all public improvements are in place. 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 amendment to Conditional Use Permit No. 15-16 hearing was advertised in the Desert Star Weekly (on Sept. 29, 2017) and 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 amendment and previously approved 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 with the State of California and the new employees that will be hired. Other non-industrial uses in the vicinity include a auto repair facility and 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 all necessary utilities and is located on a Major Collector (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 an amendment to a previously approved 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 will be located within existing commercial / industrial buildings and no structural changes to the exterior are proposed. Exterior changes will be limited to architectural enhancements, the possible replacement of doors for additional security, outdoor security lighting, and signage, subject to the zoning code. All exterior changes 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 contains two existing commercial / industrial buildings; no expansion is proposed. Therefore, the proposed amendment and previously approved 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.

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

Economic Development:

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

The proposed amendment and previously approved 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 an amendment and previously approved Conditional Use Permit are 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 July 13, 2017, deemed complete on October 2, 2017 and since then the application has been processed expeditiously and is scheduled for the Planning Commission on October 10, 2017.

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 laws, including State, Federal, and 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 amendment and previously approved 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 amendment and previously approved medical marijuana cultivation facility will occupy two existing commercial / industrial buildings, located within an established 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 amendment and previously approved medical marijuana cultivation facility will be operated as a commercial / industrial use within two existing commercial / industrial buildings. It will be operated in accordance with all applicable regulations and conditions of approval. A review of the proposed project has identified no negative impacts; consequently, no mitigation measures are required.

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 amendment and previously approved 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 occupy and improve two existing commercial / industrial buildings; only interior and cosmetic exterior improvements are proposed and these will result in no significant environmental impacts.

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, the project is found to be Categorically Exempt from further environmental review as a Class 1 (Existing Facility) Categorical Exemption of Section 15301 of CEQA.

FISCAL IMPACT

Improvements to the existing building will generate one-time revenues to the City in the form of building permit fees to defray plan check and inspection costs. In addition, the City will receive on-going revenue from medical marijuana taxes.

RECOMMENDATION

Staff finds that the proposed amendment 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 approve the Amendment to Conditional Use Permit No. 15-16 subject to the Conditions of Approval and the adoption of the following Minute Motions:

APPROVAL OF AN EXEMPTION TO CEQA based on the finding that the project qualifies as Categorically Exempt under Section 15301 Class 1 (Existing Facility). The Desert Hot Springs Planning Department is custodian of the documents or other material which constitute the record of proceedings upon which this decision is based.

APPROVAL OF CONDITIONAL USE PERMIT NO. 15-16 (Amendment) to allow for distribution, transportation and manufacturing activities within the previously approved medical marijuana cultivation facility, and based on the findings contained within this report, and subject to the attached Conditions of Approval.

EXHIBIT(S)

1. Recommended Conditions of Approval
2. Revised Plans