

## REPORT TO THE PLANNING COMMISSION

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**DATE:** October 10, 2017

**TITLE:**

- 1) An Amendment to Conditional Use Permit No 03-15 for the addition of testing, manufacturing, distribution, transportation and research & development activities within the previously approved medical marijuana cultivation building complex; and
- 2) A Revised Tentative Tract Map 37151 to amend the project phasing plan and conditions of approval for the Oxford Properties Development at the northeast corner of Little Morongo Road and Dillon Road in the I-L (Light Industrial) District.

**Prepared by:** Scott Taschner, Senior Planner

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

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### **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) Close the Public Hearing;
- 7) Opportunity for Applicant Rebuttal;
- 8) Planning Commission discussion and questions to Staff; and
- 9) Approve: 1) the Amendment to Conditional Use Permit No 03-15 for the addition of testing, manufacturing, distribution, transportation and research & development uses to the approved marijuana cultivation project; and 2) the revised Tentative Parcel Map (TPM 37151) to amend the project phasing plan and associated conditions of approval for the Oxford Properties Development located at the northeast corner of Little Morongo Road and Dillon Road. APN 665-110-004

### **PRIOR ACTIONS**

On December 15, 2015, the Applicant, Bernard Steinman of Oxford Properties, received approval of the project under Conditional Use Permit 03-15 - to build and operate a 1,001,000 square foot indoor medical marijuana cultivation building complex / facility at the northeast corner of Dillon Road and Little Morongo Road.

On December 13, 2016 the Planning Commission approved Tentative Parcel Map 37151, a Parcel Map (for condominium purposes) for the Oxford Properties Development Project

### **CURRENT REQUEST**

The applicant, Marc Lebanoff of Oxford Properties), has filed an application for an amendment to the Conditional Use Permit (CUP 03-15) to include distribution, transportation, manufacturing, testing and research & development activities. The proposal also includes a revised tentative Parcel Map (TPM 37151) to amend the project's phasing plan and revise conditions for bonding of future improvements for each phase (see Exhibit No 1 – Conditions of Approval, & Exhibit No 3 – TTM Revised Phasing Plan).

The additional proposed uses / activities will take place completely within the new buildings. A revised floor plan showing the location and extent of these activities has been provided (Exhibit No 2 – Revised Building Plans).

## **PROJECT BACKGROUND**

The overall project proposes the construction of a cultivation center that would consist of a total of 20 buildings, in a business park like setting. The buildings will be constructed in phases. The first phase consists of four buildings each with 50,050 square feet of interior floor space. The future phases (4) would include 16 buildings total each with 50,600 square feet of interior floor space. Future phases would proceed in groups of buildings over an approximate five-year period (per the Development Agreement), but no definitive building schedule has been proposed.

## **DISCUSSION ON DISTRIBUTION**

### **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.

The proposed amendment to Conditional Use Permit 03-15 will add distribution, testing, manufacturing, transportation and research & development to the permitted uses by reallocating interior space originally designated as warehouse space use, to use as product packaging and office space for distribution. This reallocation of square footage to allow for packaging and distribution does not increase in square footage, change the building footprint, or public improvements or any other previously approved condition of approval. Manufacturing & Testing is a specific allowable category of use detailed in the Applicant's Development Agreement, DA 04-15. Revised floor plans indicate the area within the building that will be used for testing, manufacturing, research & development, etc.

## **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 December 15, 2015, 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 twenty industrial buildings totaling 1,001,000 square feet that will comply with all 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 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 will be developed with 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 will be developed with twenty industrial 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 proposed cultivation facility does not appear to be outside the range of activities typical for industrial buildings, 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 buildings, and the operation will appear as an 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 twenty industrial buildings. Land uses immediately abutting the site are either existing 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 is 35.1 acres and will be developed with 20 buildings totaling 1,001,00 square feet putting the proposed lot coverage at 65.4 percent. 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 will be developed with industrial buildings and will be conditioned to includes all public services and utilities. 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 previously approved project has been conditioned to provide for public acces to serve the site.

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 industrial buildings. 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 20 new industrial buildings in the I-L (Light Industrial) zone of the City and all public improvements will be installed as part of the projects conditions of approval. 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. 03-15 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 project and site will be conditioned to install all necessary street improvements and infrastructure to support the business. The project 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 20 new industrial buildings. The project has been reviewed for architecture and design as well as a review of the project for conformance to the City's Zoning Code and General Plan. The proposed amendment does not change the already approved design except for some minor changes to the interior uses.

*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 proposed amendment is for changes to the interior use only. These changes 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 August 9, 2017, deemed complete on September 9, 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 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 amendment and previously approved medical marijuana cultivation facility will occupy twenty new 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 twenty new 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 amendment to CUP 03-15 & TPM 37151 does not proposed any significant changes to the approved Conditional Use Permit & Tentative Parcel Map, and does not create any significant environmental impacts. Pursuant to CEQA guidelines once a Mitigated Negative Declaration has been adopt/certified for the project no further environmental analysis is required if there are not any significant changes to the project and/or there are not any new significant environmental impacts. The amendment proposes only interior improvementsand these will result in no significant environmental impacts.

## **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 approves 1) the Amendment to Conditional Use Permit No. 03-15 and; 2) Tentative Parcel Map 37151, subject to the Conditions of Approval and the adoption of the following Minute Motions:

**APPROVAL OF CONDITIONAL USE PERMIT NO. 03-15 (Amendment)** to revise the phasing plan for the project and for the addition of distribution, transportation, testing, manufacturing and research & development activities within the previously approved medical marijuana cultivation facility, based on the findings contained within this report, and subject to the attached Conditions of Approval.

**APPROVAL OF TPM 37151** to revise the project phasing plan for the project and to amend the conditions of approval for the project 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 Building Plans
- 3) Floor Plan for Extraction
- 4) TTM 37151 – Revised Tentative Tract Map & Phasing Plan