

## REPORT TO THE PLANNING COMMISSION



**DATE:** December 12, 2017

**TITLE:** Amendment to Conditional Use Permit (CUP 03-17) for development of an interim phase plan for a temporary 640 square foot medical marijuana cultivation facility on a 1.26 - acre site located on the north side of Palomar Lane in between Little Morongo Road and Cabot Road. APN: 665-040-017. Applicant: Desert Grow LLC.

**Prepared by:** Fernando Herrera, Assistant Planner

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

### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from Planning Commission;
- 3) Open the Public Hearing;
- 4) Take Testimony from Applicant;
- 5) Take Public Testimony;
- 6) Opportunity for Applicant Rebuttal;
- 7) Close the Public Hearing;
- 8) Planning Commission discussion and questions to Staff; and
- 9) A recommendation from staff for approval of the Amendment to Conditional Use Permit (CUP 03-17) for the implementation of an interim site plan consisting of two (2) ecopods and one (1) administration/security trailer for the project located on the north side of Palomar Lane in between Little Morongo Road and Cabot Road in the I-L (Light Industrial) District. APN: 665-040-017.

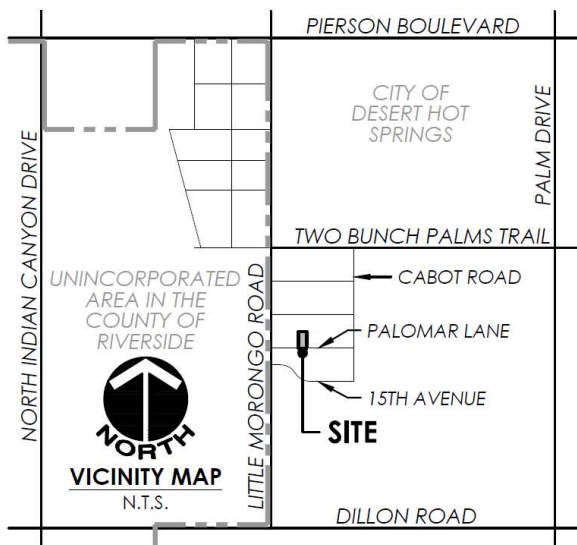
### DISCUSSION

#### PRIOR ACTIONS

On July 5, 2017 the City Council of Desert Hot Springs approved the original project, CUP 03-17, Development Agreement 01-17, and Tentative Tract Map No. 37286.

#### BACKGROUND

Sections 5.50 and 17.180 of the Desert Hot Springs Municipal Code (DHSMC), allow medical marijuana cultivation facilities in Industrial Districts subject to a Conditional Use Permit (CUP) approved by the City Council and a Regulatory Permit approved by the City Manager. The applicant, Desert Grow LLC has filed an application to amend CUP 03-17 to allow an interim site plan for the indoor cultivation of medical marijuana.



The site is located on the north side of Palomar Lane in between Little Morongo Road and Cabot Road. Its gross size is 1.26 acres; an easement dedication along Palomar Lane of 0.11 acres yields a net area of 1.15 acres. Topographically, the site is relatively flat. The project site is currently undeveloped, natural open space and is primarily undisturbed. The site is zoned Light Industrial (I-L) District where the proposed use may be developed, subject to approval of a conditional use permit. Draft conditions of approval and a draft Negative Declaration with Mitigation Measures for the Permanent Development were adopted by the City Council on July 5, 2017.

Surrounding properties consist of:

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

## **PROJECT SUMMARY**

The applicant, Desert Grow LLC has filed for an amendment to CUP 03-17 to allow an interim site plan for the indoor cultivation of medical marijuana on approximately 1.26 acres located on the north side of Palomar Lane in between Little Morongo Road and Cabot Road in the City of Desert Hot Springs, California (Assessor's Parcel No. 665-040-017). The site is currently vacant. The proposed interim site plan is to allow temporary cultivation facilities consisting of two (2) ecopods and one (1) administrative/security trailer for six (6) months.

Access to the site will be provided from Palomar Lane. Parking areas will be provided on the western portion of the site with a total of four (4) parking spaces. An interior driveway will provide access to the site.

## **CUP AMENDMENT ANALYSIS**

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

**Site Coverage:** The project site consists of one lot totaling 1.26 gross acres in size, which will be reduced by curb and gutter dedications to 1.15 net acres. Under the Industrial Zoning District standards, the maximum allowable coverage is 75%. The total of the proposed building lot coverage (Ground Floor Area) for the TUP facilities is 640 square feet or approximately .01% of the 1.15-net acre project site, placing the project within the maximum allowed coverage.

**Building Height:** The highest point on the proposed temporary structures will be no more than 9.5 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, 10 feet in the rear, and 10 feet on the sides. Proposed setbacks for the temporary pods are 105.5 feet in the front (off Palomar Lane), 10 feet and 134.7 feet on the sides, and 142.5 feet in the rear (north). Therefore, the proposed building meets minimum setback requirements.

**Circulation and Parking:** Access to the site will be provided from Palomar Lane. A total of one driveway is proposed, for site access. Parking areas will be provided along the southwestern portion of the property. An interior driveway will provide access to all sides of the site.

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) and plant nurseries (1 space per 2,500 square feet), resulting in a requirement of 2 total parking spaces. The proposed site improvements will provide eight (8) parking stalls, one (1) of which will be ADA accessible six (6) more than the required amount.

#### **Parking Calculation**

<b>Use</b>	<b>Area (Sq. Ft.)</b>	<b>Ratio</b>	<b>Number of Spaces</b>
Office	160	1 per 250 square feet	1 (.64)
Industrial	0	1 per 750 square feet	
Cultivation Activities	480	1 per 2,500 square feet	1 (.13)
<b>Total Spaces Required</b>			<b>2</b>
<b>Total Spaces Provided</b>			<b>8</b>

**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 system. Should odors emanate from the property in the future, staff will be provided an opportunity to re-evaluate and require additional mitigation measures

**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.

#### **ENVIRONMENTAL DETERMINATION**

On July 5, 2017, The City Council approved the permanent project / development (formerly known as Desert Grow, LLC) cultivation project and in doing so certified the Mitigated Negative Declaration for the Project. Pursuant to Section 15162(a) of the CEQA regulations, once an MND has been certified for a project, no subsequent environmental review needs to be completed unless there are substantial changes in the project that warrant additional review. The planning commission only needs to make a finding that the request for an amendment is consistent with the original MND, and no further analysis is required. No significant changes are proposed as a part of the proposed interim site plan.

#### **FISCAL IMPACT**

The current proposal has paid all application fees and the permanent development / cultivation facility will contribute \$25 per square foot for the first 3,000 square feet. The applicant will also have to pay for a performance bond to allow the City to clean up the site, if the facility is abandoned.

#### **RECOMMENDATION**

Staff recommends that the Planning Commission recommend to the City Council approval of the amendment to Conditional Use Permit 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 temporary 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) zone), subject to approval of a Conditional Use Permit. The project will 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 temporary medical marijuana cultivation facility qualifies as a “lighter industrial operation” in that no heavy manufacturing operations will be conducted on the site. The City has approved permanent well-designed cultivation facilities in the immediate vicinity, but none have completed construction. The proposed temporary ecopods and administration trailer are currently not incompatible with surrounding development, and will not be incompatible for a few years, or until the well-designed permanent projects in the area near completion of construction. City staff has conditioned the proposed temporary ecopod and administration trailer to expire in 6 months and although there is the possibility for a 6 month extensions of time, with demonstration of good cause (e.g. in the process of completing construction/improvements of the permanent facility on other portions of the site) the City will not extend permit for the temporary facilities indefinitely. Once permanent construction takes place in the immediate area (or sooner, at the discretion of the Director) the applicant will be required to remove the ecopods, administration trailer and other temporary structures and begin construction of the permanent facilities. It is the intent of this temporary permit to increase the short-term success of the project, not to be a permanent solution. Consequently, the proposed temporary ecopods and administration trailer is expected to be compatible with existing and future industrial development in the surrounding area.

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 temporary 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 temporary 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 temporary medical marijuana cultivation facility are light industrial land uses. Lands to the north, east, south and west are either vacant or proposed to be developed with light industrial uses. 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 facility is located on the southwest portion of the subject property and the proposed use is not directly accessed from surrounding land uses. The City has approved permanent well-designed cultivation facilities in the immediate vicinity, but none have completed construction. The proposed temporary ecopods and administration trailer are currently not incompatible with surrounding development, and will not be incompatible for a few years, or until the well-designed permanent projects in the area near completion of construction. City staff has conditioned the proposed temporary ecopod and administration trailer to expire in 6 months and although there is the possibility for a 6 month extensions of time, with demonstration of good cause (e.g. in the process of completing construction/improvements of the permanent facility on other portions of the site) the City will not extend permit for the temporary facilities indefinitely. Once permanent construction takes place in the immediate area (or sooner, at the discretion of the Director) the applicant will be required to remove the ecopods, administration trailer and other temporary structures and begin construction of the permanent facilities. It is the intent of this temporary permit to increase the short-term success of the project, not to be a permanent solution. Consequently, the proposed temporary ecopods and administration trailer is expected to be compatible with existing and future industrial development in the surrounding area. 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 temporary cultivation facility is expected to be compatible with existing and future industrial development in the surrounding 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 temporary medical marijuana cultivation facility will be located within two (2) ecopods and one (1) administrative/security trailer totaling 640 square feet and, with supporting parking, landscaping and other amenities, will occupy 8,052 square feet of the site. The site is presently vacant. Adjacent land uses are light industrial, subject to a maximum building height limit of two stories or 50 feet and lot coverage of 75%. The temporary facility will not exceed 9.5 feet in height. The project site consists of one lot totaling 1.26 gross acres in size, which will be reduced by curb and gutter dedications to 1.15 net acres. Under the Industrial Zoning District standards, the maximum allowable coverage is 75%. The total of the proposed building lot coverage (Ground Floor Area) is

640 square feet or approximately 0.01% of the 1.15-acre project site, placing the project within the maximum allowed coverage. Staff recommends this finding.

The scale, mass, coverage, density and intensity of the proposed use will be consistent with light industrial activities; its location within an existing light industrial setting will allow it to be compatible with adjacent industrial uses. 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 as a light industrial use with all public services and utilities installed prior to occupancy. The proposed temporary 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 temporary site will be conditioned to provide the necessary access and improvement to support the temporary cultivation facility. The permanent project /site will be fully developed with vehicular and pedestrian access, from the public right-of-way as well as within and throughout the site. The proposed temporary medical marijuana cultivation facility will not create any additional demand for access than will be provided by the associated parking and drive aisle. 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 properties and business of surrounding mountains, and the future development of light industry on the site and surrounding area. The proposed building's low height (approximately 9.5 feet) will not impede long-range views. While the proposed temporary medical marijuana cultivation facility will fully occupy the subject site, surrounding lands available for other businesses will not be limited in their future development by the proposed use. The City has approved permanent well-designed cultivation facilities in the immediate vicinity, but none have completed construction. The proposed temporary ecopods and administration trailer are currently not incompatible with surrounding development, and will not be incompatible for a few years, or until the well-designed permanent projects in the area near completion of construction. City staff has conditioned the proposed temporary ecopod and administration trailer to expire in 6 months and although there is the possibility for a 6 month extensions of time, with demonstration of good cause (e.g. in the process of completing construction/improvements of the permanent facility on other portions of the site) the City will not extend permit for the temporary facilities indefinitely. Once permanent construction takes place in the immediate area (or sooner, at the discretion of the Director) the applicant will be required to remove the ecopods, administration trailer and other temporary structures and begin construction of the permanent facilities. It is the intent of this temporary permit to increase the short-term success of the project, not to be a permanent solution. Consequently, the proposed temporary ecopods and administration trailer is expected to be compatible with existing and future industrial development in the surrounding area. Staff recommends this finding.

10. *That the proposed use is necessary and essential to the community.*

The proposed temporary medical marijuana cultivation facility 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.

*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 temporary medical marijuana cultivation facility will be subject to all requirements of the Amendment and 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 temporary medical marijuana cultivation facility 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: 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 temporary medical marijuana cultivation facility conditional use permit hearing was provided to property owners within 300 feet of the proposed site. No persons have submitted written comments or expressed concerns for the proposed project.

*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 temporary medical marijuana cultivation facility is anticipated to be a non-polluting and 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.

### Community Design

*Goal 2: Variety of community design, architecture and landscaping compatible 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 use. 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, 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 temporary 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 temporary 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 as 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 was approved. The application was received in January 17, 2017 and the Planning Commission recommended approval on June 13, 2017 and City Council approved the project on July 5, 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 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 temporary 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.

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

The proposed temporary 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.

13. *That the negative impacts of the proposed use are mitigated and/or a mitigated negative declaration may be filed.*

The proposed temporary medical marijuana cultivation facility will be operated as a light industrial use in a new building within the Light Industrial zone. 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, 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 temporary 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.

### **RECOMMENDATION**

Recommendation from staff for approval of the Amendment to CUP No. 03-17, for an interim site plan for the project located on the northside of Palomar Lane in between Little Morongo Road and Cabot Road in the I-L (Light Industrial) District. APN: 665-040-017, subject to the attached conditions and the findings contained herein.

### **EXHIBITS:**

- 1) Draft Conditions of Approval
- 2) Proposed Interim Site Plan
- 3) Proposed Pods / Elevations, Specs
- 4) Proposed Pods / Elevations, Specs
- 5) Site Photographs