

REPORT TO THE CITY COUNCIL



DATE: December 15, 2015

TITLE: Consideration of a Conditional Use Permit (03-15) and Development Agreement (04-15) for a Proposed Medical Marijuana Cultivation Center Totaling 1,001,000 Square Feet in Multiple Buildings and Multiple Phases, on 35.1 Acres at the Northeast Corner of Little Morongo Road and Dillon Road in the I-L (Light Industrial) District

Applicant: Oxford Properties, Bernard Steinman

Prepared by: Rich Malacoff, AICP, Acting Community Development Director

RECOMMENDATION

- 1) Staff Report;
- 2) Questions to Staff from City Council;
- 3) Invite Applicant to speak;
- 4) Questions for the Applicant;
- 5) Open the Public Hearing;
- 6) Take Public Testimony;
- 7) Close the Public Hearing;
- 8) Opportunity for Applicant rebuttal;
- 8) City Council discussion and questions to Staff; and
- 9) Adopt (1) Mitigated Negative Declaration for Conditional Use Permit No. 03-15; (2) Conditional Use Permit No. 03-15; (3) Development Agreement No. 04-15; for a medical marijuana cultivation facility to be constructed of a phased medical marijuana cultivation center totaling 1,001,000 square feet in multiple buildings and multiple phases, on 35.1 acres at the northeast corner of Little Morongo Road and Dillon Road.

BACKGROUND

Oxford Properties, LLC, 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 47,850 square feet of interior floor space. The future phases would include 16 buildings each with 50,600 square feet of interior floor space. The timing of future phases, beyond the first four buildings, is not currently known, but is expected to take five years.

The project has been designed consistent with the provisions of the Zoning Ordinance for the Light Industrial zone, and the requirements of Municipal Code Sections 5.50 and 17.180, which both regulate the sale and cultivation of medical marijuana in the City.

Lands surrounding the site consist of the following:

Zoning & General Plan Designations

North = Light Industrial
West = Medium Industrial

South = Retail Commercial

East = Light Industrial

Current Land Use

Vacant
Little Morongo Road, existing
industrial development
Dillon Road, existing
commercial development and
vacant lands
Vacant

SUMMARY

The applicant proposes a Conditional Use Permit for the construction of a 1,001,000 square foot multi-building medical marijuana cultivation center. The project is proposed on a single 35.1 acre parcel, identified as Assessor's Parcel Number 665-110-004-3. The project is proposed in phases, with the first phase consisting of four buildings, each 47,850 square feet. The project has been designed as would a business park, insofar as the buildings, parking and ancillary facilities are "stand alone" for each phase. 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. The project has been designed consistent with the requirements of Section 17.16 of the Municipal Code, pertaining to development in the Light Industrial Zone, and Section 17.180, pertaining to the cultivation of medical marijuana.

ANALYSIS

Site Plan

As shown in Exhibit 3, Project Site Plan, the site is proposed for development as a cohesive project. Each phase will be built in groups of four buildings, which will appear as one building from the exterior. Parking is proposed on the west and south sides of the project, abutting Little Morongo Road and Dillon Road, respectively. A total of 400 parking spaces are required (1 space per 2,500 square feet of building area), and 438 are provided.

A loop drive will provide access to all sides of the project, with the easterly portion of the drive being primarily for deliveries and fire department access. An underground storm water retention system is proposed for each phase, and would be constructed between each four-building unit. Access is proposed on Little Morongo Road, at five project driveways which would access each phase.

The project meets the development standards of the Light Industrial zone. The lot area exceeds 20,000 square feet. The buildings are set back 69 feet from Dillon Road and 98 feet from Little Morongo Road (the minimum front setback is 20 feet). Side and rear yard setbacks exceed 30 feet, while the minimum is 10 feet. Between each phase, the side yards range from 42 feet between phase 1 and phase 2, to 30 feet between the other phases. The project proposes 65% building coverage, while the Zone allows up to 75% building coverage.

The site will be fenced, with a 2 foot high masonry block base topped with 6 foot high tubular steel pickets, for a total height of 8 feet. Rolling gates will be provided at each driveway entrance, in the same design as the fencing, and connected to the fence for a uniform appearance.

Off-Site Improvements

The project site occurs on two major City roadways. The project will be conditioned to dedicate and improve Dillon Road along the entire site frontage with construction of Phase 1. On Little Morongo Road, however, high tension power lines occur in the area that is ultimately required for build out of that street. The cost of moving these lines is prohibitive, and needs to occur on a

regional basis, not for one property at a time. The applicant and the City are required to enter into a Development Agreement as part of this CUP application (please see separate discussion of Development Agreement below). The Development Agreement will include provisions for participation in a regional effort to construct Little Morongo to its ultimate width as part of the final review by the City Council.

The Initial Study included a requirement for the construction of Little Morongo Road concurrent with project development phases. The City ultimately requires this improvement to meet the General Plan roadway designation, but the project will not generate traffic necessary for these improvements in and of itself. The traffic engineer concurred with this finding, and provided a supplement to the traffic study, indicating that the roadway improvements on Little Morongo were not required for the project (Exhibit 9).

Building Design

The applicant proposes concrete tilt-up construction for the proposed project. The buildings are proposed to a height of 50 feet, which is the maximum height permitted in the Zone. The buildings will have flat roofs, and will be in neutral earth tones. Accent colors and reveals have been used to break up the building plane, which could otherwise be monotonous, particularly on the long sides of the buildings, which extend to 460 feet. The frontage on both streets will also be treated with accent colors and reveals, and will include a corner window treatment as an accent (Exhibit 5). Store front windows are provided for each building on the front elevation, while roll-up doors and metal security doors are provided at the rear of each building.

The floor plans for each building are provided in Exhibit 4. The floor plan layout consists primarily of cultivation area, with ancillary supportive storage to the rear of each building, and office space at the front. Each building will be provided with a double lock entry area for security. A central corridor will connect the interior rooms.

Landscaping

A uniform landscaping plan has been prepared for the entire project, to assure that the site has a unified appearance. A drought tolerant and desert friendly palette is proposed, including Palo Verde, Olive and Acacia trees, and shrubs that provide color, including bougainvillea and lantana. Boulders will be placed throughout the project to enhance the landscaping. The site will be irrigated, to assure healthy plant maintenance.

The Architecture and Landscaping Review Committee discussed with the applicant the need to provide shading in the parking lot. The Municipal Code, Section 17.48.060.N. requires that 25% of parking spaces be shaded. The requirement can be met with a combination of parkway landscaping and the addition of landscaped "fingers," particularly since the applicant is providing more parking than that required for the site. A condition of approval has been added to address this issue.

Lighting

The project's photometric plan is provided in Exhibit 7. Lighting is proposed to be wall mounted, and will be oriented downward to limit exposure and focus illumination on the ground surrounding the buildings. The lighting is designed to support the security of the site, and is provided on all sides of each phase's buildings. There will be sufficient illumination to allow the City's police department clear view of persons on the site within 100 feet.

Phasing

As previously stated, the project is planned in phases. Phase 1 is expected to be constructed immediately if the CUP is approved. Subsequent phases would occur over a period of five years, but no definitive construction schedule is known at this time. It is important to note that the Municipal Code requires that each subsequent phase be constructed within 2 years of completion of the previous phase, in order for the CUP to remain active. Therefore, if

construction were not to occur as quickly as the applicant predicts, the total build out period would be required to occur within 10 years, or the CUP would become void.

Operational Characteristics

The proposed project will be designed to incorporate all the security measures required by Section 17.180, including security, odor control and operation. Cultivation, by its nature, will require a 24 hour operation. The public will not be admitted outside of business hours. Access will be limited to employees only.

Development Agreement Analysis

The City is requiring all Medical Marijuana Cultivation that are building new facilities to process a Development Agreement that establishes indemnification provisions in favor of the City. At the time of the writing of this Staff Report the Public Safety Mitigation fee had not been included and/or negotiated by the City Attorney. If that information is not available staff recommends that the Development Agreement be continued to the January 20, 2015 Meeting of the City Council at which time the negotiation will have been completed..

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 the assurance 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.

The Development Agreement will also include provisions that defer improvements to Little Morongo Road until such time an Improvement District or similar vehicle is established that assures all projects in the area share the costs on a fair share basis. It is likely that the power poles will not be relocated for a period of five to ten years.

FISCAL IMPACT

The proposed project is subject to the fees enacted by the City for medical marijuana facilities. Specifically, each building will be subject to a fee of \$25 per square foot for the first 3,000 square feet, and \$10 per square foot for all building square footage above 3,000 square feet.

ENVIRONMENTAL ANALYSIS

In accordance with the provisions of the California Environmental Quality Act ("CEQA"), the initial study 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 Mitigated Negative Declaration is proposed and includes Mitigation Measures for Cultural Resources, Biological Resources and Traffic.

Modification of Mitigation Measure

The Initial Study included a requirement for the construction of Little Morongo Road concurrent with project development phases. The City ultimately requires this improvement to meet the General Plan roadway designation, but the project will not generate traffic necessary for these improvements in and of itself. The traffic engineer concurred with this finding, and provided a

supplement to the traffic study, indicating that the roadway improvements on Little Morongo were not required for the project (Exhibit 9).

The Planning Commission recommended that the mitigation measure be modified, on the basis that construction of Little Morongo is not necessary for the adequate function of Little Morongo as a result of project build out. The change does not represent a significant change in circumstance, nor will it result in impacts that are different from those impacts studied in the Initial Study. This will allow the improvements to Little Morongo Drive to be deferred until such time there is an Assessment District or an area wide plan for the relocation of the power poles.

ARCHITECTURAL AND LANDSCAPE REVIEW COMMITTEE (ALRC) COMMITTEE

The Architecture and Landscaping Review Committee met on October 29th, 2015, to review the project. The Committee unanimously recommended approval to the Planning Commission, with the following conditions.

1. The Acacia Salicina shall be replaced with Shoestring Acacia.
2. The Opuntia Bivelogii (Cholla) cactus shall be removed from the landscaping plan.
3. The 38 parking spaces in excess of Municipal Code requirements shall be converted to landscaping fingers that include trees to provide shade consistent with Zoning Ordinance requirements.
4. Steps or similar features shall be added to the parapet to provide visual relief.
5. The retaining wall proposed between each phase of the project shall be constructed prior to completion of the previous phase of development (i.e. the retaining wall on the north boundary of Phase 1 shall be constructed with Phase.

PLANNING COMMISSION (PC)

The Planning Commission (PC) reviewed the project at its November 10, 2015 meeting with favorable comments on the project design and recommended 4-1 that the Planning Commission approve the project with the following conditions:

1. Add a Condition of Approval (Condition No. 25): Permanent fencing on all sides of the site shall be constructed of tubular steel above a concrete base, as shown in the plan set. Temporary fencing between each phase may consist of chain link, but must be removed with the construction of the subsequent phase.
2. Add a Condition of Approval (after Condition No. 26) that the retaining wall for each phase shall be constructed with the previous phase's improvements (i.e., the retaining wall for phase 2 shall be constructed prior to the occupancy of phase 1 buildings).
3. Add a Condition of Approval (after Condition No. 97) requiring that the applicant/developer pay his fair share of signalization of Little Morongo Road and Dillon Road.

RECOMMENDATION

Staff recommends that the City Council: (1) adopt the Mitigated Negative Declaration for Conditional Use Permit No. 03-15; (2) approve Conditional Use Permit No. 03-15; (3) approve Development Agreement No. 04-15 subject to the Conditions of Approval and the adoption of the following Minute Motions:

MITIGATED NEGATIVE DECLARATION

1. The record as a whole, including the initial study and any comments received, demonstrates that no substantial evidence exists that the project will not have a significant effect on the environment;

2. The Mitigated Negative Declaration reflects the City of Desert Hot Spring's independent judgment and analysis;
3. In accordance with Section 15074, Chapter 3, Title 14, of the California Code, of Regulations, the Mitigation Monitoring Program contained in Chapter 4 of the Draft Initial Study and Mitigated Negative Declaration, dated October 2015 shall serve as the City's reporting program for monitoring the mitigation measures specified in the Mitigated Negative Declaration; and
4. The Desert Hot Springs Planning Department is the custodian of the documents or other material that constitute the record of proceedings upon which this decision is based.

CONDITIONAL USE PERMIT

1. That the proposed Marijuana Cultivation Facility is conditionally permitted in the IL (Light Industrial) District and complies with all of the applicable provisions of this Zoning Ordinance;
2. That the proposed Marijuana Cultivation Facility would not impair the integrity and character of the I-L (Light Industrial) District in which it is to be located.
3. That the proposed Marijuana Cultivation Facility, located on the northeast corner of Little Morongo Road and Dillon Road is physically suitable for the type and intensity of facility being proposed, at the intersection of Kranshire Boulevard, with the construction of the required on-site and off-site improvements including access, water, sewer and drainage infrastructure,.
4. That the proposed Medical Marijuana Cultivation Facility is compatible with the land uses presently adjacent to the project site.
5. That the proposed Medical Marijuana Cultivation Facility would be compatible with existing and future land uses within the Light Industrial area in which the proposed use is to be located.
6. That the proposed Medical Marijuana Cultivation Facility is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses.
7. That there are adequate provisions for water, sewer, sanitation, drainage and public utilities and services to ensure that the proposed Medical Marijuana Cultivation Facility would not be detrimental to public health and safety.
8. That the project site will have adequate provisions for public access to serve the site.
9. The proposed Medical Marijuana Cultivation will not have an adverse effect upon desirable characteristics of the I-L (Light Industrial) District in which it is proposed to be located.
10. That the proposed Medical Marijuana Cultivation Facility is necessary and essential to the City, medical community and region.
11. That the proposed Medical Marijuana Cultivation is consistent with applicable goals and policies of the Light Industrial designation of the Desert Hot Springs General Plan.
12. The architecture of the proposed Medical Marijuana Cultivation Facility will make a positive contribution to the immediate area of the project and the City, medical community and region as a whole.
13. The landscape palette has a variety of materials and will accent the architecture of the site and provide a positive contribution to the immediate area of the project, City and region as a whole.
14. That there will not be measurably significant harmful effects upon environmental quality and natural resources from the proposed Medical Marijuana Cultivation Facility.
15. That the proposed location, size, design, and operating characteristics of the proposed Medical Marijuana Cultivation Facility would not be detrimental to the public interests, health, safety, convenience, welfare of the City of Desert Hot Springs, medical community and/or region as a whole

DEVELOPMENT AGREEMENT

1. The property proposed to be subject to the agreement is 35 acres in size;
2. The application is made on forms approved, and contains all information required, by the Director;

3. The Development Agreement contains provisions that specify the duration of the agreement; the permitted uses of the property; set forth the maximum height and size of the proposed structures; set forth provision for reservation or dedication of land for streets; and establish a plan for the regional development of Little Morongo Road;
4. The attached ordinance satisfies all state and local requirements for Development Agreements.

EXHIBITS:

- 1) Conditions of Approval
- 2) Development Agreement
- 3) Site Plan
- 4) Floor Plan
- 5) Elevations
- 6A-C) Landscaping Plan, Landscaping Detail and Plant Palette
- 7) Lighting Plan
- 8) Mitigated Negative Declaration
- 9) Little Morongo Widening letter