



Legislation Text

File #: 22-798, Version: 1

TITLE:

PLANNING APPLICATION 22-13 FOR A CANNABIS DISTRIBUTION FACILITY ("HERA DISTRIBUTION LLC") AT 3505 CADILLAC AVENUE, UNIT F3

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

PRESENTED BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER

**CONTACT INFORMATION: GABRIEL VILLALOBOS, 714.754.5610;
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RECOMMENDATION:

Staff recommends that the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), per CEQA Guidelines Section 15301 (Class 1), Existing Facilities; and
2. Approve Planning Application 22-13, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Michael Stewart, for the property owner, Victor Pena.

BACKGROUND:

The subject property is located on the west side of Cadillac Avenue, within a portion of the City's industrial area known as the "Green Zone" (described below). The subject property is specifically located within "Cambridge Park," a multi-tenant industrial business park center. The 14-acre property is zoned PDI (Planned Development Industrial) and is surrounded by properties zoned Industrial Park (MP) to the north and east, the 405 freeway to the south, and the Santa Ana River to the west. A variety of cannabis uses can be permitted in the "Green Zone," including manufacturing, distribution, and non-storefront retail (direct delivery to consumers).

The proposed project location, Unit F3, is a 5,772-square-foot tenant suite, located nearest to the Cambridge Park driveway entrance at the intersection of Toronto Way and Cadillac Avenue. The adjacent tenant suites, Units F1 and F5, include a cannabis manufacturing/distribution facility and a construction general contractor. The previous use of the subject tenant space was a printer repair facility and supplier ("OmniPrint International").

There are no active Code Enforcement cases on this property.

City of Costa Mesa Medical Marijuana Measure (Measure X) and Costa Mesa Retail Cannabis Tax and Regulation Measure (Measure Q)

In November 2016, Costa Mesa voters approved Measure X, allowing medical cannabis manufacturing, packaging, distribution, research and development laboratories, and testing laboratories in a specified area known as “The Green Zone.” The Green Zone includes specific Industrial Park (MP) and Planned Development Industrial (PDI) zoned properties that are located north of South Coast Drive and west of Harbor Boulevard, excluding the South Coast Collection (SOCO) property located at 3303 Hyland Avenue. Measure X is codified in Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC).

In 2018, non-medical adult use cannabis became legal in California under the State’s Medicinal and Adult-Use Cannabis Regulation and Safety Act (Proposition 64). On April 3, 2018, the City Council adopted Ordinance No. 18-04 to allow non-medical use cannabis facilities in the same manner and within the same geographic area as were previously allowed pursuant to Measure X.

On November 3, 2020, Costa Mesa voters approved Measure Q, the Costa Mesa Retail Cannabis Tax and Regulation Measure. This measure allowed the City to adopt regulations permitting storefront retail (dispensaries) and non-storefront retail (delivery) within the City subject to numerous standards and requirements. On June 15, 2021, the City Council adopted Ordinances No. 21-08 and No. 21-09 to amend Titles 9 and 13 of the CMMC to establish regulations for retail cannabis storefront and non-storefront uses.

Cannabis Business Permit (CBP) Process

Prior to establishing a cannabis business in the City, an applicant is subject to an extensive submittal and application review process and must obtain all of the following City approvals before conducting business:

- Cannabis Business Permit Notice to Proceed;
- Conditional Use Permit (or Minor Conditional Use Permit in specific circumstances);
- Building Permits (and final inspections by multiple departments and the City’s cannabis security consultant);
- Cannabis Business Permit; and
- City Business License.

The initial phase of a CBP review includes a background check of the proposed owner and an evaluation of the proposed business plan and security plan by the City’s cannabis security consultant (HdL Companies). The applicant has successfully completed these evaluations and staff issued a “Notice to Proceed,” which allows the applicant to submit a Conditional Use Permit (CUP) application.

If the CUP is approved, the applicant would begin the remaining steps of the CBP process. The applicant must obtain building permits, complete building improvements, demonstrate that all

conditions of approval have been satisfied, and that all other requirements of the CMMC have been satisfied. After passing the final City inspection, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed prior to expiration. During the two-year CBP permit periods, the Community Improvement Division (CID), along with other City staff, will conduct site visits to verify the operation complies with all CUP and CBP requirements. Violations identified during these two-year site visits may be grounds for the revocation of the CBP or for non-renewal of a CBP.

After obtaining the CBP, the applicant may apply for and obtain a City Business License. In addition to the CUP, CBP, and City Business License, the applicant must obtain the appropriate licenses from the State Department of Cannabis Control (DCC) prior to operating.

Continued Item

The proposed project was previously scheduled for the Planning Commission hearing on June 27, 2022 and staff requested a continuance of the item in order to provide staff additional time to clarify with the applicant certain application aspects. At the originally scheduled hearing, the Planning Commission voted to continue the item to a date certain of July 11, 2022 and approved the motion by a 5-0 vote (Commissioners Rojas and Zich absent).

Additional information in regards to the June 27, 2022 Planning Commission hearing can be found at the following link.

Staff Report:

<https://costamesa.legistar.com/View.ashx?M=F&ID=11011926&GUID=B5A0EEFE-157E-43B6-A6F0-7175D97BB20B>

DESCRIPTION:

Planning Application 22-13 is a request for a CUP to operate a cannabis distribution facility within a 5,772-square-foot tenant space in a multi-tenant industrial building located at 3505 Cadillac Avenue, Unit F3. Four other tenant spaces are located in the subject industrial building, three of which are currently operating as cannabis non-retail uses and the other currently occupied as a construction general contractor. The proposed distribution use involves intake, storing, and distribution of both pre-packaged bulk flower and finished cannabis products. The use will also include two distribution vehicles that will be parked indoors, within the warehouse/distribution area of the proposed facility overnight.

The required State license type for the proposed business establishment is a Type 11 “distributor” license. Retail non-storefront (delivery) is not proposed with this CUP request.

The proposed 5,772-square-foot distribution facility will include an approximate 2,400-square-foot warehouse/distribution area to provide for product storage and shipping/receiving areas. In addition, there will also be an approximate 405-square-foot showroom located at the center of the facility that will display product available for distribution to other State licensed distributors and retailers. The

remaining areas include a reception area, offices, a break room, and restrooms.

The distribution facility is proposed to function as a wholesale only business that provides bulk cannabis flower for distribution to other licensed distributors and manufacturers. The bulk cannabis flower is obtained from a licensed cultivator and arrives pre-packaged, sealed and tested for further distribution purposes. In addition, the proposed wholesale distribution will also include a personal line of cannabis vape products that are prepackaged prior to entering the facility. Similar to many “pure” distribution/wholesale businesses, the applicant indicates that the primary business model for the proposed business is to serve as a product hub, and is economically viable based specifically on product price mark-up. In addition, the applicant indicates that the location of the distribution facility will enhance his current Statewide business operations to efficiently provide product to the local industry and with shorter delivery times.

ANALYSIS:

Conditional Use Permit

Pursuant to Costa Mesa Municipal Code (CMMC) Section 13-200.92(b), and subject to the approval of the Planning Commission, a Conditional Use Permit (CUP) is required for the establishment of a cannabis distribution facility in either the MP or PDI zones. The subject site is located within the PDI zone in an area designated as the “Green Zone” where cannabis distribution is specifically allowed. The CMMC requires further that a conditional use permit shall be required subject to the following conditions:

1. The requirements of Title 13, Chapter III (Planning Applications) are found in compliance;
2. The findings for granting a conditional use permit (CUP) in accordance with CMMC Section 13-29(g) are met;
3. The cannabis business license (CBP) pursuant to Chapter VI of Title 9 of the CMMC is obtained; and
4. The use is conducted in compliance with all applicable State and local laws.

Exterior and Interior Improvements

The applicant is not proposing any exterior modifications and the interior changes are limited to non-structural changes in upgrades to finishes, such as new flooring and interior painting. The proposal will also include various product shelving and storage racks.

Distribution Use

The proposed facility is comprised of five different zones (as shown below in Exhibit 1), each of which serve to support a specific function of the distribution process. If approved, the proposed distribution facility would supply State licensed cannabis businesses with cannabis products that include bulk flower and finished cannabis products including packaged cannabis and vape cartridges. The term

“bulk flower” is in reference to the raw cannabis biomaterial obtained from the cultivator and transferred between licensees for the purpose of further processing and/or packaging the product for retail sales. For this project specifically, the pre-packaged bulk flower product is to be transported to the facility and stored for distribution to other licensed non-retail facilities for brand fulfillment purposes.

None of the bulk cannabis flower that enters the facility will be removed from the original pre-tested packaging for any purpose other than viewing/inspecting the quality of the product. Any finished products such as packaged cannabis and vape cartridges that are brought into the facility for storage have been tested offsite and must maintain a chain of custody for their Certificate of Analysis (COA) showing the results of the sample testing. Pursuant to State Law, any finished product or bulk product that has been tampered with must be retested, and therefore the applicant has indicated that their business model requires extremely limited product handling to avoid the added costs of secondary product testing.

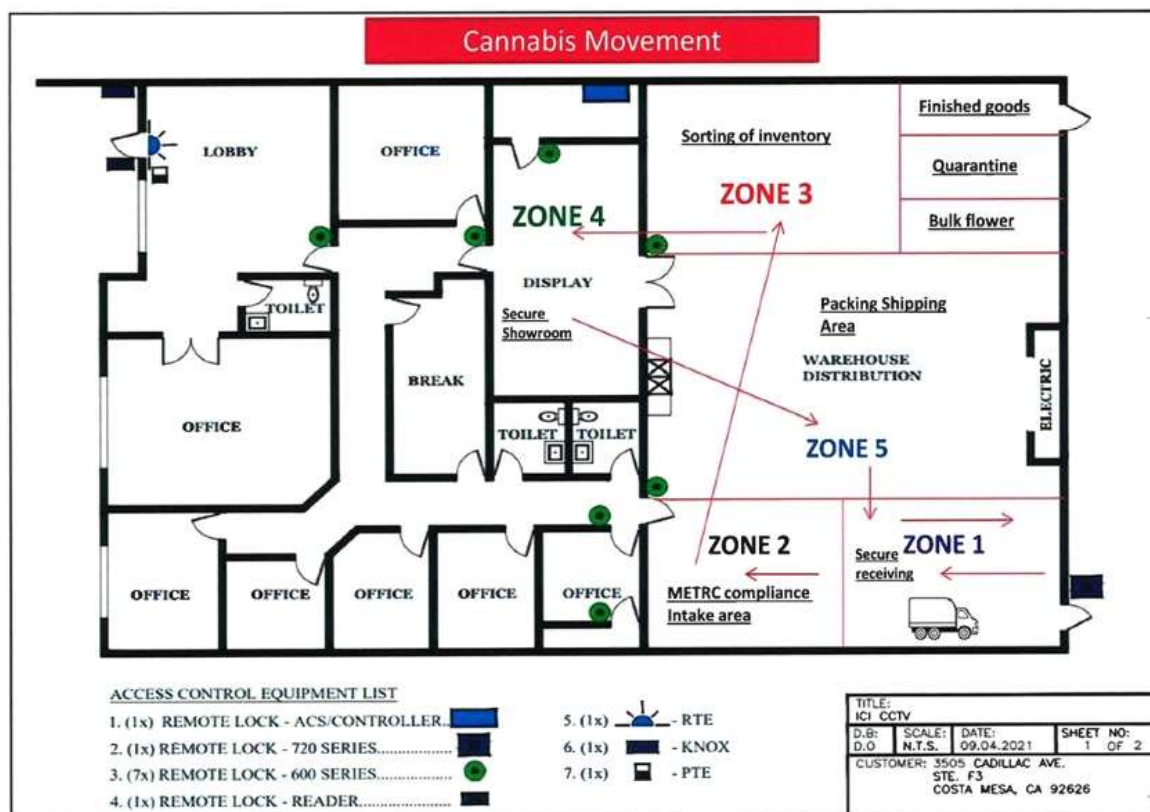


Exhibit 1

The majority of the distribution functions take place in the rear of the facility, with the front of the facility primarily used as administrative business operations. Exhibit 1 shows proposed product movement within the facility and general business operations. As previously mentioned, the applicant is not proposing any changes to the existing floor plan. The arrows show product movement between separately labeled areas ("zones") beginning with Zone 1 ("Secure receiving") and ending in Zone 5 ("Packing shipping area"). The process is described further below:

Zone 1

Zone 1 is located within the rear warehouse area and includes interior building access and exterior access via a roll-up door located from the rear of the building (not shown on Exhibit 1). Zone 1 provides a distribution area for secure product receiving. This is the facility's loading/unloading area and is also where the two distribution vehicles will be parked overnight or when not in use.

Zone 2

Zone 2 is located adjacent to the shipping/receiving area and is designated for managing inventory and labeling products. The distributor would use the track and trace software (METRC), and products would be labeled for tracking purposes and managing inventory. Specifically, the bulk flower product will be brought into Zone 2 and then be tagged to track the supply batch received and corresponding storage location.

Zone 3

Zone 3 will be the designated product storage area of the warehouse. The storage area will be secured with an eight-foot-tall, metal mesh fence used to enclose the storage area within the warehouse, and only accessed by authorized personnel. In addition to the enclosure, the products will be contained within rigid containers which will be bolted into the ground to store product. The product will be organized based upon the tag it received when initially brought into the facility.

Zone 4

Zone 4 of the proposed facility is a secured showroom that is located adjacent to the warehouse portion of the building. The secured showroom, which is only accessed via keycard by authorized personnel, is intended to display samples of products to State licensed distributors. The licensed vendors would have the ability to physically view and inspect products that they can then sell with their own branding. Product showings would be facilitated on an appointment-only basis, and there will be no retail sales, sampling or consumption of any product on site. As conditioned, all transactions will be processed through work orders and tracked and traced per State law.

Zone 5

Zone 5 is the final stage of the distribution process to be used for staging orders that are being prepared and packaged for distribution. Products are carted out of the storage area into the warehouse area and packaged for transportation. Once the distribution vehicle is in the loading area

and the roll up door has been closed and secured, the products are then loaded, and the shipping manifest is updated for product tracking. The entirety of the warehouse area is under camera and is accessed only by authorized personnel or licensed 3rd party distributors.

Parking

The existing surface parking lot includes 648 shared parking stalls to serve the Cambridge Park property. The existing parking requirement, as established through Table 13-89 of the CMMC, is the Industrial use parking ratio which requires three spaces per 1,000 square feet of gross floor area for the first 25,000 square feet of building. The gross floor area of Unit F3 is 5,772 square feet, and as such, the parking allocated to this unit is 17 parking spaces.

Because the proposed project does include a change of use from the current industrial parking standards, the project will not require any additional parking stalls and is considered in compliance with the CMMC parking requirements. In addition, the applicant has indicated that the facility will be open on an appointment only basis and no more than two employees will be onsite at any time. As operations expand, additional staff may be employed to support distribution operations; however, future employment and customer demand is not anticipated to exceed existing parking conditions.

Odor

Cannabis products would arrive and leave the facility in State compliant packaging that is tested and sealed, and therefore the applicant anticipates only minimal odor from the stored and packaged products. In addition, the applicant's business plan generally entails that cannabis products moving through the proposed distribution facility will remain packaged to prevent added cost for product re-testing, as required by the State. However, as indicated above, a minimal amount of cannabis product would be removed from packaging for client display purposes. Client displays are anticipated to be infrequent (less than once each week) and are only conducted within the "Display" room that is located within the center of the facility. To prevent odor from being released from the facility, the applicant has indicated that a minimum of seven charcoal filters will be placed within the rear warehouse area of the facility, and one charcoal filter will also be placed within the "Display" room. In addition, the facility HVAC system is self-contained within Unit F3 and does not circulate into the adjacent building suites. Lastly, and as conditioned in the attached Resolution, if cannabis odor is detected outside of the building or off-site specifically, the business owner/operator will be required to institute further operational measures necessary to eliminate off-site odors in a manner deemed appropriate by the Director of Economic and Development Services.

Business Plan

The applicant provided a detailed business plan that was evaluated by the City's cannabis security consultant, HdL Companies. The business plan described the owner's background, proof of capitalization, start-up budget, a three-year pro forma, target customers, and day-to-day operations. Generally, the approved business plan contains the distribution & operating procedures which detail the process in which the products are obtained from their sources as well as the methods in which they are tracked when passing through the facility to their ultimate destination which must be documented during each step for track and trace purposes and for reporting to the State.

Security Plan

The applicant provided a professionally prepared security plan for the proposed project. The City's cannabis security consultant (HdL Companies), reviewed the proposed security plan. HdL Companies determined that appropriate security measures were included to address the City's security requirements pursuant to Chapter VI of CMMC Title 9 as well as State law.

Since the security plan contains sensitive operational measures that require limited exposure to remain effective, the plan is not included as an attachment. However, the following is generally a list of measures that are provided in the plan and required by the CMMC:

- Live scan background check for every employee including drivers;
- City-issued identification badge for each employee;
- Professionally installed and monitored exterior and interior surveillance cameras;
- Professionally installed, maintained, and monitored alarm system including panic buttons and window and door alarms;
- Surveillance footage must be maintained for a minimum of 90 days;
- Secured storage of cash, cannabis and cannabis products;
- Security lighting;
- Sensors that detect entry and exit from all secured areas;
- Emergency power supply;
- Emergency equipment and training;
- Driver and vehicle safety protocol;
- Cash and product transportation; and
- Limited access areas and visitor check-in.

As proposed and conditioned, all facility entry and exit points and all locations where cash or cannabis products are handled or stored shall be under camera surveillance and are also all underroof.

GENERAL PLAN CONFORMANCE:

Conformance with the City of Costa Mesa General Plan

The Costa Mesa General Plan establishes the long range planning and policy direction that guides change and preserves the qualities that define the community. The 2015-2035 General Plan sets forth the vision for Costa Mesa for the next two decades. This vision focuses on protecting and enhancing Costa Mesa's diverse residential neighborhoods, accommodating an array of businesses that serve both local needs and attract regional and international spending, and providing cultural, educational, social, and recreational amenities that contribute to the quality of life in the community. Over the long term, General Plan implementation will ensure that development decisions and improvements to public and private infrastructure are consistent with the goals, objectives, and policies contained in this Plan.

The following analysis evaluates the proposed project's consistency with applicable policies and objectives of the 2015-2035 General Plan.

1. **Policy LU-1.1:** *Provide for the development of a mix and balance of housing opportunities, commercial goods and services and employment opportunities in consideration of the need of the business and residential segments of the community.*

Consistency: The proposed cannabis use would provide a new entrepreneurial business in Costa Mesa as allowed under Measure X, new goods and services, and provide new employment opportunities in the community.

1. **Policy LU-6.3:** *Continue to prioritize commercial and industrial park use of properties located north of I-405 and within the Airport Industrial District.*

Consistency: The proposed use would continue and supplement permitted industrial and commercial uses located within an existing industrially-zoned property located north of I-405.

2. **Policy LU-6.15:** *Promote unique and specialized commercial and industrial districts within the City which allow for incubation of new or growing businesses and industries.*

Consistency: The proposed use is part of a growing industry and would be based in a location specifically identified for such uses by the City's electorate through Measure X. Therefore, approval would encourage new businesses and entrepreneurial opportunities in an area of the City identified for such by local voters.

Conformance with the Zoning Code

The proposed cannabis distribution use is conditionally permitted in the PDI (Planned Development Industrial) Zone ("Green Zone") and is in compliance with the applicable Costa Mesa Zoning Code requirements, including, but not limited to, Articles 20 and 21.

REQUIRED FINDINGS:

Pursuant to Title 13, Section 13-29(g), Findings, of the Costa Mesa Municipal Code, in order to approve the project, the Planning Commission must find that, based on the evidence presented in the administrative record, the proposed use substantially meets the following specified findings:

- *The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.* The subject site is located within the City's "Green Zone," an industrial area of the community where specific types of cannabis uses are conditionally permitted, such as distribution manufacturing and non-storefront retail (delivery only). The proposed use is a cannabis distribution facility and other site tenants include several City approved and State licensed cannabis distribution, manufacturing facilities. Similar to other industrial uses, the proposed cannabis business would generate limited customer traffic to the site and, as proposed and conditioned, the cannabis use would be compatible with adjacent industrial and commercial uses. Compliance with conditions of approval, local regulations, and State requirements would allow this use to operate with minimal impact on surrounding properties and uses.
- *Granting the conditional use permit will not be materially detrimental to the health, safety and*

general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood. The proposed cannabis distribution facility would follow safety measures detailed in a professionally-prepared security plan. The security plan was evaluated for compliance by the City's cannabis security consultant (HdL Companies). Measures designed to maintain safety at the facility include, but are not limited to, window and door alarms, panic buttons, motion-detectors, limited access areas, a video surveillance system that monitors all exterior entrances, exits, and all interior limited access spaces, and lighting. As proposed and conditioned, video recordings shall be maintained for a minimum of three months. As required by the CMMC and affirmed in the security plan, the business shall designate a security representative to be available to meet with the City Manager, Chief of Police, or their designees, regarding any security or operational concerns. All business employees shall pass a live scan background check and obtain identification badges from the City. The recommended conditions of approval and local and State laws are intended to ensure that the use would not be materially detrimental to the health, safety and general welfare of the public, and would not be otherwise injurious to property or improvements within the immediate neighborhood.

- Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property. The use is consistent with the General Plan goals and policies as discussed earlier in this report. The proposed use would occupy an existing industrial/office tenant space and there are no proposed additions to the building; therefore, there is no change to intensity. As stated in the General Plan Land Use Element, the City's industrial designations "accommodate a variety of industrial and compatible office uses, as well as limited and supportive commercial uses." The use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; prioritizing commercial and industrial uses at properties north of I-405; and promoting the incubation of unique and specialized commercial and industrial businesses. In addition, the proposed use is a conditionally permitted use in the industrial zones.

ENVIRONMENTAL DETERMINATION:

The project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing use. This proposal includes a permitted use in an existing industrial building with no increase in floor area. The project is consistent with the applicable General Plan land use designation and General Plan policies as well as with the applicable zoning designation and regulations.

ALTERNATIVES:

The Planning Commission has the following alternatives:

1. Approve the project. The Planning Commission may approve the project as proposed, subject to the conditions outlined in the attached Resolution.
2. Approve the project with modifications. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any of the additional requested changes are

substantial, the item should be continued to a future meeting to allow a redesign and/or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.

3. **Deny the project.** If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings for denial into a Resolution. If the project is denied, the applicant could not submit substantially the same type of application for at least six months.

LEGAL REVIEW:

The draft resolution has been approved as to form by the City Attorney's Office.

PUBLIC NOTICE:

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property. (See attached Notification Radius Map.)
2. **On-site posting.** A public notice was posted on each street frontage of the project site.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper.

As of the date this report was circulated, no written public comments have been received. Any public comments received prior to the Planning Commission meeting will be forwarded separately to the Planning Commission.

CONCLUSION:

The proposed project is a cannabis distribution facility to be located in the City's Green Zone. As proposed and conditioned, the distribution use would be consistent with other industrial uses in the Green Zone. The use is consistent with the Zoning Code and the City's General Plan. In addition, the required findings for the Conditional Use Permit can be met as described above. Therefore, staff recommends approval of Planning Application 22-13, subject to conditions of approval.