

RESOLUTION NO. 2022-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, APPROVING A MODIFICATION TO CONDITIONAL USE PERMIT NO. 2014-03, AND ZONE TEXT AMENDMENT NO. 2022-02 TO CONDITIONALLY ALLOW A SPECIAL EVENT PARKING LOT/SOD FARM GENERALLY LOCATED SOUTH OF MILES AVENUE DIRECTLY ACROSS FROM INDIAN WELLS TENNIS GARDEN (APN: 604-640-015), AND ADOPTION OF AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION IN ACCORDANCE WITH CEQA

WHEREAS, Garden of Champions, LLC (the "Applicant"), has filed applications with the City of Indian Wells (the "City") for modification to Conditional Use Permit ("CUP") No. 2014-03, and Zone Text Amendment ("ZTA") 2022-02, and Environmental Assessment ("EA") No. 2022-02 to allow special event parking lot/sod farm generally located south of Miles Avenue directly across from the Indian Wells Tennis Garden (the "Project"); and

WHEREAS, in accordance with the California Environmental Quality Act ("CEQA") and the City rules to implement CEQA, an Initial Study and Mitigated Negative Declaration ("IS/MND") was prepared for the Project; and

WHEREAS, the IS/MND determined that the Project will result in less than significant impacts on the environment with the implementation of mitigation measures set forth in the IS/MND; and

WHEREAS, a Notice of Intent to adopt a Mitigated Negative Declaration was published on November 1, 2022 and a copy of the draft IS/MND was made available for public review; and

WHEREAS, no comments were received during the public review period for the draft IS/MND; and

WHEREAS, on November 16, 2022, the Planning Commission held a duly noticed public hearing on the Project and recommended approval to City Council; and

WHEREAS, notice of a public hearing of the City Council of the City of Indian Wells to consider the Applicant's request was given in accordance with applicable law; and

WHEREAS, on November 28, 2022, a duly noticed public hearing on the Project was held by the City Council at which the Council considered the potential effects of the Project on public and private facilities, and accepted oral and written testimony from interested persons; and

WHEREAS, pursuant to the Indian Wells Municipal Code Section 21.06.020(d) for applications considering a zoning text amendment or Section 21.06.040(d) considering applications for conditional use permits, findings shall be made by the City Council to ensure conformance with the City's Zoning Code, the public health, safety, or welfare, and the General Plan; and

WHEREAS, after careful consideration of the staff report, public testimony and all of the information presented at the hearing, including the Project IS/MND and associated documentation and exhibits, the City Council finds as follows:

Zoning Text Amendment:

1. The proposed Zoning Text Amendment is consistent with the City of Indian Wells General Plan or any amendment approved concurrently with the Zone Change.

FACT: The proposed Zoning Text Amendment is consistent with the General Plan in that it would allow temporary parking areas/sod farms in the Resort Commercial Zone, uses that support recreational facilities such as the Indian Wells Tennis Garden; and

2. The proposed Zoning Text Amendment is consistent with the intent and objectives of this Zoning Code.

FACT: The proposed Zoning Text Amendment is consistent with the intent and objectives of Municipal Code Title 21 and Chapter 21.34, as this amendment is deemed consistent with compatibility of use and intensity with adjacent and surrounding uses and promotes the quality image and character of the City. The City retains locational discretion over such uses, which require approval of a CUP; The proposed zoning text amendment will be consistent with the "resort experience" as described in City code.

3. The proposed Zoning Text Amendment is consistent with any applicable area Master Development Plan.

FACT: The proposed Zoning Text Amendment would allow temporary parking lots/sod farms, supporting uses, in the Resort Commercial Zone. As a conditionally permitted use, approval of any particular temporary parking lot or sod farm would be at the City's discretion and would not be granted unless it were consistent with any applicable area Master Development Plan or Specific Plan; and

4. The proposed Zoning Text Amendment is in the best interests of the health, safety and welfare of the community.

FACT: The proposed Zoning Text Amendment is in the best interests of the health, safety and welfare of the community as it will designate, regulate and restrict the such uses of land; promote the Indian Wells Tennis Garden as a world-class tennis facility providing economic benefit to the City and surrounding communities; and promote the orderly growth and development of the community which is consistent with the intent and objectives of Title 21 of the Indian Wells Municipal Zoning Code;

5. Adequate sewer and water lines, utilities, sewage treatment capacity, drainage facilities, police protection/emergency medical care, vehicular circulation and school facilities will be available to serve the area affected by the proposed Zone Change when development occurs.

FACT: Adequate utilities (sewer, water, etc), drainage facilities, police and fire protection and vehicular circulation are available to serve the Resort Commercial areas of the City. Because the inclusion of temporary parking lots as a conditional use involves no occupied permanent structures, impacts on City services and public facilities will be minor.

Conditional Use Permit:

1. The proposed location of the conditional use is in accord with the objectives of the City's Zoning Code and the purpose of the General Plan and zoning land use category in which the site is located.

FACT: The proposed Project is an expansion of existing Indian Wells Tennis Garden ("Tennis Garden") turf parking lot facilities. The Project site is located directly adjacent to existing seasonal parking facilities and across from the Tennis Garden. The modification of the conditional use permit will comply with City zoning code standards, applicable development regulations, and be consistent with the "resort experience" purpose for this zone as described in Section 17.34.040 Uses Permitted and the General Plan. The proposed conditional use is consistent with the General Plan in that it would allow a temporary parking area and possible sod farm in support of the Tennis Garden, a world-class tennis facility providing economic benefit to the City; and

2. The proposed conditional use will not be detrimental to the public health, safety, welfare, or be materially injurious to properties or improvements in the vicinity.

FACT: The proposed conditional use would not adversely affect the public health, safety or welfare, or materially injure surrounding properties or improvements since the site is bounded by streets, a flood control channel and an existing turfed area used for special event parking by the Tennis Garden. Creation of a turfed parking area would expand adjacent uses and cause no adverse impacts in the area. Circulation has been designed to provide safe and secure access to the site and walk paths / sidewalks will provide safe, pedestrian access to the Tennis Garden, and;

3. The proposed modification to the conditional use will comply with each of the applicable provisions of this Zoning Code except for approved variances.

FACT: The Project does not require a variance. With approval of the associated ZTA and CUP, the Project will remain in compliance with the applicable provisions of the Zoning Code. Permitted land use is governed by Section 21.34.040 of the Zoning Code. The associated ZTA would amend the allowable uses to clarify temporary event parking and agricultural uses, including sod-farms, shall be allowed within the Resort Commercial zoning through the issuance of a CUP.

Environmental Assessment:

1. This Project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the State and local CEQA Guidelines, and the environmental regulations of the City.

FACT: The City, as lead agency, prepared an Initial Study ("IS") to analyze the Project's potential environmental impacts in accordance with CEQA. The Draft IS analyzed potential environmental impacts of the Project and identified potentially significant impacts in the categories of Cultural Resources, Geology/Soils, Tribal Cultural Resources. However, such impacts would be mitigated to less-than-significant levels through implementation of required mitigation measures, and therefore a Mitigated Negative Declaration was prepared.

On the basis of the whole record in this matter, including the Staff Report and Initial Study, the City Council finds and determines there is no substantial evidence from which it can be

fairly argued that the Project as mitigated will have a significant adverse impact on the environment and that a Mitigated Negative Declaration reflects the City's independent judgment and analysis.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council **ADOPTS** Resolution No. 2022-45 approving modification of Conditional Use Permit No. 2014-03, Zoning Text Amendment 2022-02, and adoption of the associated Mitigated Negative Declaration subject to the Conditions of Approval listed on Exhibit "A" attached hereto and by this reference incorporated herein.

SECTION 2. This Resolution shall take effect upon adoption.

SECTION 3. This Zoning Text Amendment shall take effect 30-days after second reading by the City Council on December 15th.

SECTION 4. The modification to Conditional Use Permit No. 2014-03 shall take effect after Zoning Text Amendment 2022-02 has taken effect.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution and shall mail by first class, prepaid, United States mail, a certified copy of this Resolution to Applicant class, prepaid, United States mail, a certified copy of this Resolution to the Applicant.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Indian Wells, California, at a special meeting held on this 28th day of November 2022.

**DANA REED
MAYOR**

CERTIFICATION FOR RESOLUTION NO. 2022-45

I, Angelica Avila, City Clerk of the City of Indian Wells, California, **DO HEREBY CERTIFY** that the whole number of the members of the City Council is five (5); that the above and foregoing Resolution was duly and regularly passed and adopted at a special meeting of the City Council of the City of Indian Wells on the 28th day of November, 2022, by the following vote:

AYES:
NOES:

ATTEST:

APPROVED AS TO FORM:

**ANGELICA AVILA
CITY CLERK**

**TODD LEISHMAN
CITY ATTORNEY**

Exhibit "A"

Conditions of Approval for

Modification Conditional Use Permit No. 2014-03
Zone Text Amendment 2022-02

November 28, 2022

GENERAL:

1. The Applicant shall defend, indemnify, and hold harmless the City of Indian Wells and its officials, officers, employees, and agents from and against any claim, action, or proceeding against the City of Indian Wells, its officers, employees, or agents to attack (including any judicial proceedings or an referendum), set aside, void, or annul any approval or condition of approval of the City of Indian Wells concerning this project, including but not limited to, any alleged act or failure to act related to the California Environmental Quality Act ("CEQA"), any approval or condition of approval by the Planning Commission or City Council. The City shall promptly notify the Applicant of any such claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. Applicant shall defend, with counsel mutually chosen by City and Applicant Applicant's own cost, expense and risk, any and all such aforesaid suits, actions or other proceedings of every kind that may be brought or instituted against City, its officials, officers, employees and agents. Applicant shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, employees or agents in any such suits, actions or other proceedings. Applicant shall also reimburse City for the cost of any settlement paid by City arising out of any such claims, demands, causes of action, costs, expenses, liabilities, loses, damages, injuries, suits, actions, or other proceedings. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Applicant shall reimburse City, its officials, officers, employees and agents for any and all legal expenses and costs, including expert witness fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Applicant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees or agents. In all cases, the City reserves the right, at its own option and cost, to choose its own attorney to represent the City, its officials, officers, employees, and agents in the defense of the matter.
2. In the event that any condition contained herein is determined to be invalid or legally unenforceable, then all remaining conditions shall remain in force.
3. The Project shall be developed in accordance with the approved plans, and failure to comply with any conditions of approval shall be deemed just cause for revocation of project approval by the City Council. However, the Community Development Director or designee shall have the authority to approve minor deviations in the conditions of

approval, and all plans including the construction drawings, if deemed necessary by both the Applicant and the City to implement the Project as approved.

4. All plans shall be coordinated for consistency.
5. The Applicant shall pay all applicable development impact fees at the established rates. Such fees may include, but not be limited to, new construction fee, park or open space fees, school fees, drainage fees, sewer fees, TUMF fee, local CVMSHP development impact fee, building permit and plan check fees.
6. Approval of this request shall not waive compliance with all applicable sections of the Indian Wells Municipal Code, all other applicable City ordinances, and applicable specific plans.
7. Construction shall occur between the hours of 7:00 am and 5:00 pm, Monday through Friday, 8:00 am and 5:00 pm, Saturday and no construction on Sunday or national holidays per Municipal Code Section 9.06.047. The Community Development Director may grant a temporary waiver from these hours in limited circumstances where special need is demonstrated.
8. Upon submittal of construction drawings to the Building Division for plan check review, all departmental conditions of approval for the project shall be included on the sheet following the title sheet, or the first sheet of the plans. A site plan shall also be attached to all sets of construction drawings. This condition shall be a minimum requirement for acceptance of construction drawings for the Building Division plan check review.
9. Within fifteen (15) days of final approval by the City Council, the Applicant shall submit in writing a statement indicating that the Applicant has read and agrees to the conditions imposed herein. Approvals of land use and related applications hereunder shall become void, and any privilege, permit, or other authorization granted shall be deemed to have terminated, if compliance with this condition has not been completed within the specified time limits.

LANDSCAPING:

10. The irrigation system shall include provisions for design features that conserve water, such as controlled irrigation systems, which employ drip irrigation, soil moisture sensors, and automatic systems that minimize runoff and evaporation, supplemental hand watering, and the use of mulch on top of soil to improve water-holding capacity as approved by the Community Development Director.
11. If the parking area is stabilized with turf, the method of irrigation shall be reviewed and approved by the Coachella Valley Water District including recommended water conservation practices.
12. Any ground-mounted utility appurtenances shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berming and/or landscaping to the satisfaction of the Community Development Director.

13. The detector check/backflow devices shall be painted a neutral/earth tone color and any pipes extending above ground shall be finished and painted to match the device.
14. All plant materials within landscaped areas, including areas within the Public Right-of-Way shall be maintained in a viable growth condition throughout the life of this project.
15. Landscaping shall be located so as not to interfere with sight distance from driveways and public right of ways.
16. All landscaping and irrigation shall be installed in accordance with plans on file with the Community Development Department, and irrigation systems fully operational. Furthermore, all landscaped areas shall be free of trash and debris.

LIGHTING:

17. Prior to the issuance of building permits, the Applicant shall submit to the Community Development Director for approval, a detailed on-site lighting plan indicating the style, illumination, height and method of shielding for all permanent light fixtures proposed for the Project. The plan shall include a photometric diagram depicting illumination levels.
18. Project lighting shall, in general, be as subdued as possible, avoiding excessive light spillage outside the property boundary. Outdoor lighting shall be shielded sufficiently to not adversely impact surrounding uses, but shall provide sufficient illumination for access and security purposes. Such lighting shall not blink, flash or oscillate.
19. Landscape lighting shall be indirect; non-glare lights, positioned to light tree canopies, paths and walkways, or walls, as appropriate, and avoid light spillage outside of the Project area. Up-lights in turf areas shall be in light wells only. Up lights in planters must have j-boxes below grade (or screened as approved by the Community Development Department), light fixtures must be screened with landscaping, etc.
20. All exterior lighting fixtures shall be installed in accordance with plans on file with the Community Development Department, and shall be fully operational prior to occupancy.

OPERATIONAL CONTROLS:

21. Use of temporary, special event parking areas will be subject to an approved traffic control and parking layout plan for each event (including the need for any handicapped spaces) to be approved by the Community Development Director.
22. Lighting of temporary, special event parking areas will be subject to an outdoor lighting plan approved by the Community Development Director.
23. The applicant shall comply with the Conservation Easement shown on the Site Plan and abide by the agreement with the Agua Caliente Tribe of Cahuilla Indians in perpetuity.

SITE IMPROVEMENTS

24. Prior to issuance of an additional Grading Permit (if needed), the Applicant shall prepare the following:
 - A. A Grading Plan prepared by a qualified Engineer that conforms to the recommendations contained in a Preliminary Geotechnical Report(s) as required.
 - B. A Fugitive Dust Control Plan.
 - C. The applicant shall make arrangements to have a Cultural Monitor from the Agua Caliente Tribe of Cahuilla Indians on site during any grading.
 - D. The applicant shall have a pre-construction survey completed 30-days prior to any new grading permits are issued.
25. A precise wall and fencing plan indicating the design, location and construction details of all new walls and fences shall be submitted to the Community Development Department for review and building permit prior to construction. All perimeter and street-facing walls, including retaining walls, shall be decorative in nature and in substantial conformance to the plans attached to the Project Staff Report.
26. In accordance with the requirements of the Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit (MS4 Permit) No. CAS617002 (Order No. R7-2008-0001) adopted on May 25, 2008 by the State Regional Water Quality Control Board, a final, project-specific Water Quality Management Plan (WQMP) shall be prepared prior to issuance of any grading permit. The WQMP shall substantially conform to the requirements of the latest edition of the "Whitewater River Region Water Quality Management Plan for Urban Runoff". The property owner shall record a "Covenant and Agreement" with the County-Clerk Recorder or other instrument acceptable to the City on a standardized form to inform future property owners of the requirement to implement the approved project-specific WQMP.
27. A Storm Water Pollution Prevention Plan (SWPPP) in compliance with the National Pollution Discharge Elimination System (NPDES) regulations shall be prepared. Said SWPPP shall be submitted to the Regional Water Quality Control Board (RWQCB) along with submittal of a Notice of Intent (NOI). Copies of said SWPPP and NOI (including WDID number assigned by RWQCB) shall be submitted to the City prior to issuance of a Grading Permit.
28. All driveways shall be constructed or reconstructed to be a commercial-type approach with 12-foot radius curb returns. Minimum driveway width (W) shall be 48-feet, unless determined otherwise by the Public Works Director.
29. The applicant shall ensure that the turf is maintained appropriately and that a soil binder be used during any fallow period to prevent the generation of dust.

30. Curb return radii, driveway width and site distance for new driveways shall be reviewed and approved by the Public Works Director.
31. Prior to the issuance of any permits the applicant shall provide a fencing plan that details height, location, type of fencing, type of gate, Knox Box or equivalent, and type of post to comply with the Fencing Plan submitted. The Fencing Plan shall be approved by the Community Development Director and Fire Chief.
32. Construction activities shall also incorporate all mitigation measures included in the Project's Mitigated Negative Declaration.

PUBLIC WORKS/ENGINEERING:

33. A Precise Grading Permit shall be obtained prior to commencement of any improvement work. All work shall be inspected by the City. All appropriate fees for review of plans, issuance of a Precise Grading Permit, and inspection shall be submitted to the City. A Record (as-built) Precise Grading Plan shall be submitted to the City for review and approval prior to final acceptance of improvements.
34. Prior to issuance of a Precise Grading Permit, the Applicant shall submit and obtain approval of all the following:
 - A. Precise Grading Plan that shall be prepared by a qualified Engineer,
 - B. Fugitive Dust Control Application and Plan,
 - C. Refundable dust deposit in the amount of \$2,000 per acre.
35. Prior to grading permit issuance, the Applicant shall file for a National Pollutant Discharge Elimination System (NPDES) permit with the California State Water Resources Control Board and abide by the conditions of the permit as issued. A copy of the NOI, Storm Water Pollution Prevention Plan (SWPPP), and Monitoring Plan shall be submitted to the Public Works Department a minimum of thirty (30) days prior to commencing grading operations.
36. Prior to construction on the site, a six foot (6') temporary chain-link fence shall be erected on any portion of the property that is exposed to public access and connected to any block walls surrounding the property. This will deter theft of and vandalism to construction materials and equipment on the property during construction. All construction fencing shall have a screen mesh so as to conceal construction activity from public view.
37. Landscaping plans for trees, shrubs, walls, fences or other structures at or near intersections must conform to Indian Wells Municipal Code sight distance standards and Public Works public street standards for areas accessing public rights-of-way. Plans for improvements that may impact sight distance must be submitted to and approved by the City Engineer prior to the issuance of building permits or implementation of landscape improvements.

38. Where proposed, off-site improvements, including but not limited to streets, slopes, improvements, public utilities and drainage facilities, are to be constructed by the Applicant at his own expense.
39. All existing public improvements intended to be protected in place, including but not limited to monumentation, curb, sidewalk, and traffic signs, shall be shown and labeled on the improvement plans as "protect in place". Any said existing improvements damaged or destroyed as a result of this Project shall be repaired or replaced as directed by the City's representative.
40. All existing regulatory, warning, and guide signs disturbed by this Project shall be replaced with new signs as directed by the City's representative.

FIRE DEPARTMENT:

41. With respect to the conditions of approval regarding the above referenced project, the fire department recommends the following fire protection measures be provided in accordance with City Municipal Code, NFPA, CFC, and CBC or any recognized Fire Protection Standards: The Fire Department is required to set a minimum fire flow for the remodel or construction of all buildings per UFC article 87.
42. A fire flow of 1500 gpm for a 1-hour duration at 20 psi residual pressure must be available before any combustible material is placed on the job site.
43. Water Plans must be approved by the Fire Marshal and include verification that the water system will produce the required fire flow.
44. Whenever access into private property is controlled through use of gates, barriers or other means provisions shall be made to install a "Knox Box" day override system to allow for emergency vehicle access. Minimum gate width shall be 16" with a minimum vertical clearance of 13'-6".

ENVIRONMENTAL:

45. Pursuant to Section 15075 of CEQA Guidelines, the lead agency shall file a notice of determination within five working days after deciding to approve the project.
46. Pursuant to Public Resources Code Section 21089 and Fish and Game Code Section 711.4, payment of the fees marked [X] below shall be made to the *Riverside County Clerk* within 5 days of City Council approval.

[X] \$ 50 - "Administrative Fee" to file the Notice of Determination

[X] \$ 2,548 - "Fish & Game Filing Fee"

END OF CONDITIONS