



CITY OF SURPRISE
Planning and Zoning Commission Agenda
 16000 N. Civic Center Plaza
 Surprise, AZ 85374

Tuesday, January 11, 2011 @ 6:00 PM

+ [Back](#) [Print](#)

CALL TO ORDER.

- A. Roll Call
- B. Pledge of Allegiance
- C. Current Events and Reports – Pursuant to A.R.S. §38-431.02(k) the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that 1) The summary is listed on the agenda; and 2) The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.
- D. Staff Reports

Planning and Zoning Commission Agenda:

CALL TO THE PUBLIC:

INSTRUCTIONS: In order to address the Board\Commission, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the Secretary before the meeting begins.

Note: A.R.S. 38-431.01(H) - During this time members of the public may address the Board\Commission on any item not on the agenda. At the conclusion of the open call, the Board\Commission may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

- E. Approval of items on the Consent Agenda – all items with an asterisk (*) are considered to be routine matters and will be enacted by one motion and one roll call vote to the Board\Commission. There will be no separate discussion on these items unless a board member or commissioner requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.

CONSENT AGENDA:

REGULAR AGENDA ITEM - NON-PUBLIC HEARING:

STAFF
RECOMMENDATION/

ITEM #	DISTRICT #	ITEM DESCRIPTION
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PRESENTED BY

- #1 District Internal Consideration and approval of December 7, 2010 Planning and Zoning Commission minutes. Approve
Deb Perry,
Community &
Economic
Development
- #2 District 3 Consideration and action on Case FS10-266, a site plan for Rioglass Solar. Approve
Adam Copeland,
Community &
Economic
Development
- OTHER BUSINESS:
- #3 District Citywide Discussion on a proposed Text Amendment for the Commission's consideration to address the recent passing of Proposition 203, which allows the cultivation, distribution, and use of marijuana for medicinal purposes. No Action
Chris Boyd,
Community &
Economic
Development

ADJOURNMENT:

SHERRY ANN AGUILAR, CITY CLERK,
CMC

POSTED: Jan 6, 2010 at 7:25 a.m.

SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.



CITY OF SURPRISE
Boards and Commissions

January 11, 2011 @ 6:00:00 PM

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Board Meeting Date:	January 11, 2011	Contact Person:	Deb Perry, Community & Economic Development
Submitting Department:	CD Boards and Commissions	District:	Internal
Staff Recommendations:	Approve		

Consent	Regular	x	Public Hearing	Report/Discussion
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Agenda Wording:

Consideration and approval of December 7, 2010 Planning and Zoning Commission minutes.

Motion:

I move to approve the December 7, 2010 Planning and Zoning Commission minutes.

Background:

Financial Impact Statement:

ATTACHMENTS:

Click to download

☐ [Minutes](#)

External Attachment Links:

Meeting Requirements:

Powerpoint	x	Video	White Board	Other	x
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Presentation Speaker Names (spelling and titles for TV captions):

CITY OF SURPRISE

PLANNING AND ZONING COMMISSION 16000 North Civic Center Plaza Surprise, Arizona 85374

December 7, 2010

REGULAR MEETING MINUTES

CALL TO ORDER

Chair Jan Blair called the Planning and Zoning Commission Meeting to order at 6 p.m. at the Surprise City Hall, 16000 North Civic Center Plaza, Surprise, Arizona 85374, on Tuesday, December 7, 2010.

ROLL CALL

In attendance with Chair Blair were Vice Chair Steve Somers and Commissioners Matthew Bieniek, Ken Chapman, John Hallin, and Robert Rein. Commissioner Dennis Smith was absent.

PLEDGE OF ALLEGIANCE

CURRENT EVENTS REPORT

STAFF REPORT

Director Jeff Mihelich stated that the city is requesting the Planning and Zoning Commission to have a special meeting on January 11, 2011 at 6 p.m. The Rio Glass project is moving forward with a very tight time line and this meeting is needed in order to assist in keeping them on target. The normal scheduled meeting on January 18th will also be held as we already have several projects scheduled.

CALL TO THE PUBLIC

Chair Blair called to the public to discuss any issues not noted on the agenda.

Jean Matherly, Center of Compassionate Care, stated that they are trying to open a medical marijuana dispensary in Surprise. She feels that this is needed by many people and would like to stay in the city.

Chris Boyd, Assistant Community and Economic Development Director, stated that the city has been researching and studying the Medical Marijuana Proposition in regards to zoning perspectives and spacing requirements. In early January, staff plans to take their findings to a City Council Work Session to ask for direction. It is anticipated to bring the Text Amendment forward for consideration by the Commission in early February.

In response to Commissioner Rein, Assistant Director Boyd stated that the 120-day implementation requirement given by the state will be met with the city's planned timeline.

Jesus Corella, resident, expressed his desire for the city to extend a water line ½ mile east of the Altamira project. The extension of the water line would help people and builders alike.

Hearing no further comments from the public, Chair Blair closed the call to the public.

CONSENT AGENDA

All items listed with an asterisk (*) are considered to be routine by the Planning and Zoning Commission and were approved by one motion. There was no separate discussion of these items during this meeting.

REGULAR AGENDA ITEMS NOT REQUIRING A PUBLIC HEARING

- **Item 1: Planning and Zoning Commission Minutes for October 5, 2010.**

Commissioner Hallin made a motion to approve the **Planning and Zoning Commission Minutes for October 5, 2010**. Vice Chair Somers seconded the motion. The motion passed with a vote of 5 ayes, 1 abstain (Rein) and 1 absent (Smith).

- **Item 2: PS10-135 – Consideration and Action – Altamira**

Planner Adam Copeland presented the project to the Commission. Staff recommended approval of **PS10-135, a preliminary plat for Altamira**.

Scott McCoy, representing the applicant, stated that the applicant will be developing a water facility to serve both the Verdugo and Altamira projects.

In response to Commissioner Hallin, Planner Copeland stated that the city will be the water provider for the area. At the time of final platting, the Water Master Plan will be evaluated to verify that it is up to standards and sufficient for the area.

There was discussion regarding the following topics:

- Lighting of the trail system
- Trail system crossing at Asante Boulevard
- Drainage of the project and adjacent properties
- Economic Impact Analysis for residential new builds

In response to Commissioner Rein, Planner Copeland stated that the Citizen Review Process and outreach meeting was held at the Planned Unit Development stage of the project. At the preliminary plat stage, mailings were sent to all property owners within a 200-foot radius.

Vice Chair Somers made a motion to approve **PS10-135, a preliminary plat for Altamira** and adopt staff's findings, subject to conditions 'a' through 'd.' Commissioner Chapman seconded the motion. The motion passed with a vote of 6 ayes and 1 absent (Smith).

OTHER BUSINESS

- **Item 3: LPD09-335 – Discussion Only – Streetscape Design Guidelines**

Planner Vamshee Kovuru presented the project to the Commission.

In response to Commissioner Bieniek, Planner Kovuru stated that these guidelines were not used for the improvements on Bell Road, Friendship Bridge area.

There was some discussion regarding:

- Orientation of buildings/architecture of buildings that face away from the street
- Pattern material in crosswalks causing tire noise
- Roundabouts
- Residential street width

ADJOURNMENT

Hearing no further business, Chair Blair adjourned the regular Planning and Zoning Commission meeting at 6:57 p.m.

STAFF PRESENT:

Community and Economic Development Director Jeff Mihelich, Assistant City Attorney Jim Gruber, Assistant Community and Economic Development Director Chris Boyd, Planner Adam Copeland, Planner Vamshee Kovuru, and Planning and Zoning Commission Secretary Deb Perry.

COUNCIL MEMBERS PRESENT: None

Jeffrey J. Mihelich, Director
Community and Economic Development

Jan Blair, Chair
Planning and Zoning Commission



CITY OF SURPRISE
Boards and Commissions

January 11, 2011 @ 6:00:00 PM

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Board Meeting Date:	January 11, 2011	Contact Person:	Adam Copeland, Community & Economic Development
Submitting Department:	CD Boards and Commissions	District:	3
Staff Recommendations:	Approve		

Consent	Regular	x	Public Hearing	Report/Discussion
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Agenda Wording:

Consideration and action on Case FS10-266, a site plan for Rioglass Solar.

Motion:

I move to approve FS10-266, a site plan for Rioglass Solar and to adopt staffs findings and conditions a through g.

Background:

The project will be broken up into two phases. The first phase will include the construction of a 157,573-square-foot parabolic mirror manufacturing facility, which is anticipated to be fully operational in July of 2011. Said facility will include a 148,960-square-foot ground floor manufacturing segment and two 8,613-square-foot offices. The second phase of the project is forecasted to begin construction in May of 2011 and is anticipated to include an 111,960-square-foot manufacturing facility expansion.

Financial Impact Statement:

An economic impact analysis has been conducted utilizing data provided by the applicant. Fee estimates are based on data provided by the applicant and are subject to final project specifications. The data provided assumes phase I construction of a parabolic mirror manufacturing facility located at the southwest corner of Varney Road and Milgard Avenue. The completed facility will be approximately 157,000 square feet.

Operating Impacts

Based on the operating cost information provided, the net financial impact to the city of Surprise is approximately \$96,000 annually (following the year of construction) with annual revenues of \$121,000 and expenses of \$25,000.

In the year of construction, operating fund revenues are estimated at approximately \$443,900 and expenses are estimated at approximately \$159,700. City funded infrastructure improvements and city payment of development fees amount to \$1,155,000. The net impact in

the year of construction with operating revenue, expenses, and city payments is negative at approximately \$870,800 which is recovered via the \$96,000 net annual impact in 12 years.

Utility Impacts

The costs of providing water and wastewater services to the public are recovered through user fees. Annual revenues are estimated at approximately \$99,000.

Development Fees

Development fees are one-time payments intended to recover the proportionate share of costs incurred for public facilities needed to accommodate new development. In accordance with the fee schedules established by the 2006 development fee study prepared by TischlerBise, the impact fees will be approximately \$260,000 and will pay for the development's fair share of growth.

ATTACHMENTS:

Click to download

- ☐ [STAFF REPORT](#)
- ☐ [Vicinity Map](#)
- ☐ [Site Plan](#)
- ☐ [Elevations](#)
- ☐ [Landscape](#)
- ☐ [Access Exhibit](#)
- ☐ [3D Exhibit](#)
- ☐ [Storage Building Elevations](#)
- ☐ [Materials Board](#)
- ☐ [Financial Impact Analysis](#)

External Attachment Links:

Meeting Requirements:

Powerpoint	x	Video	White Board	Other	x
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Presentation Speaker Names (spelling and titles for TV captions):

Adam Copeland, Planner, Community & Economic Development



COMMUNITY AND ECONOMIC DEVELOPMENT

Date: January 11, 2011

To: Planning and Zoning Commission

From: Jeffrey J. Mihelich, Community and Economic Development Director
Adam Copeland, Planner
623.222.3137, adam.copeland@surpriseaz.gov

Re: FS10-266, Rioglass Solar

Application Summary

The applicant is requesting a site plan approval for a 157,573-square-foot parabolic mirror manufacturing facility. Bundled with the site plan is an amended final plat, which is required in order to identify all easements and newly dedicated rights-of-way.

Location

The project is located generally on the southwest corner of Varney Road and Milgard Way within the Skyway Business Park Planned Area Development.

History

- The Skyway Business Park Planned Area Development was approved by the Mayor and City Council on July 28, 2005.
- The first Rioglass amended final plat was approved by the Mayor and City Council on August 12, 2010.

Project Summary

The project will be broken up into two phases. The first phase will include the construction of a 157,573-square-foot parabolic mirror manufacturing facility, which is anticipated to be fully operational in July of 2011. Said facility will include a 148,960-square-foot ground floor manufacturing segment and two 8,613-square-foot offices.

The second phase of the project is forecasted to begin construction in May of 2011 and is anticipated to include an 111,960-square-foot manufacturing facility expansion.

Operational Aspect of Use

The new Rioglass Solar headquarters will include the production of parabolic mirrors, which will be used in solar collectors. The mirrors will be delivered to the site and examined for quality. Following the quality check the mirrors are then shaped, coated, assembled, and packaged.

Staff Review

Manufacturing uses are allowed by right in the approved Skyway Business Park Planned Area Development. Uses that are permitted by right require a site plan approval prior to issuance of any building or civil permits. In addition, an amended final plat is necessary in order to identify all easements and newly dedicated rights-of-way.

Infrastructure

The original Skyway Business Park master developer completed roadway and infrastructure improvements within all collector and adjacent arterial street rights-of-way.

Architecture

The building consists of primarily tilt up concrete panel construction with score lines to help break up the various façades. The front elevation (east) was the primary focus in the architectural review process. This elevation represents an eclectic architectural approach with a spectrum of irregular shaped columns that consist of durable translucent material. Additionally, the front elevation includes a large shaded canopy porch area and windows cased in anodized aluminum clear finish. Other portions of the building that can be seen from Milgard Way include a variety of glass panel inserts that mimic the color of the irregular translucent columns.

Landscaping

Native low-water vegetation will be placed throughout the site. The landscaping palette mimics the pattern that exists within Skyway Business Park.

Lighting

All lighting on site will include full downcast cut-off fixtures. Additionally, the lighting plan reviewed shows that no light trespass will occur onto adjacent properties.

Access

Primary access to the site will be from Milgard Way to the east.

Department Review:

All departments involved in the subject review are recommending the project for approval subject to all conditions.

Staff Findings:

1. Staff finds that the proposed site plan complies with the Surprise Municipal Code.
2. Staff finds that the proposed site plan complies with the Skyway Business Park Planned Area Development.
3. Staff finds that the subject project complies with the General Plan.

Recommendation:

Staff recommends approval of the project, subject to the following conditions:

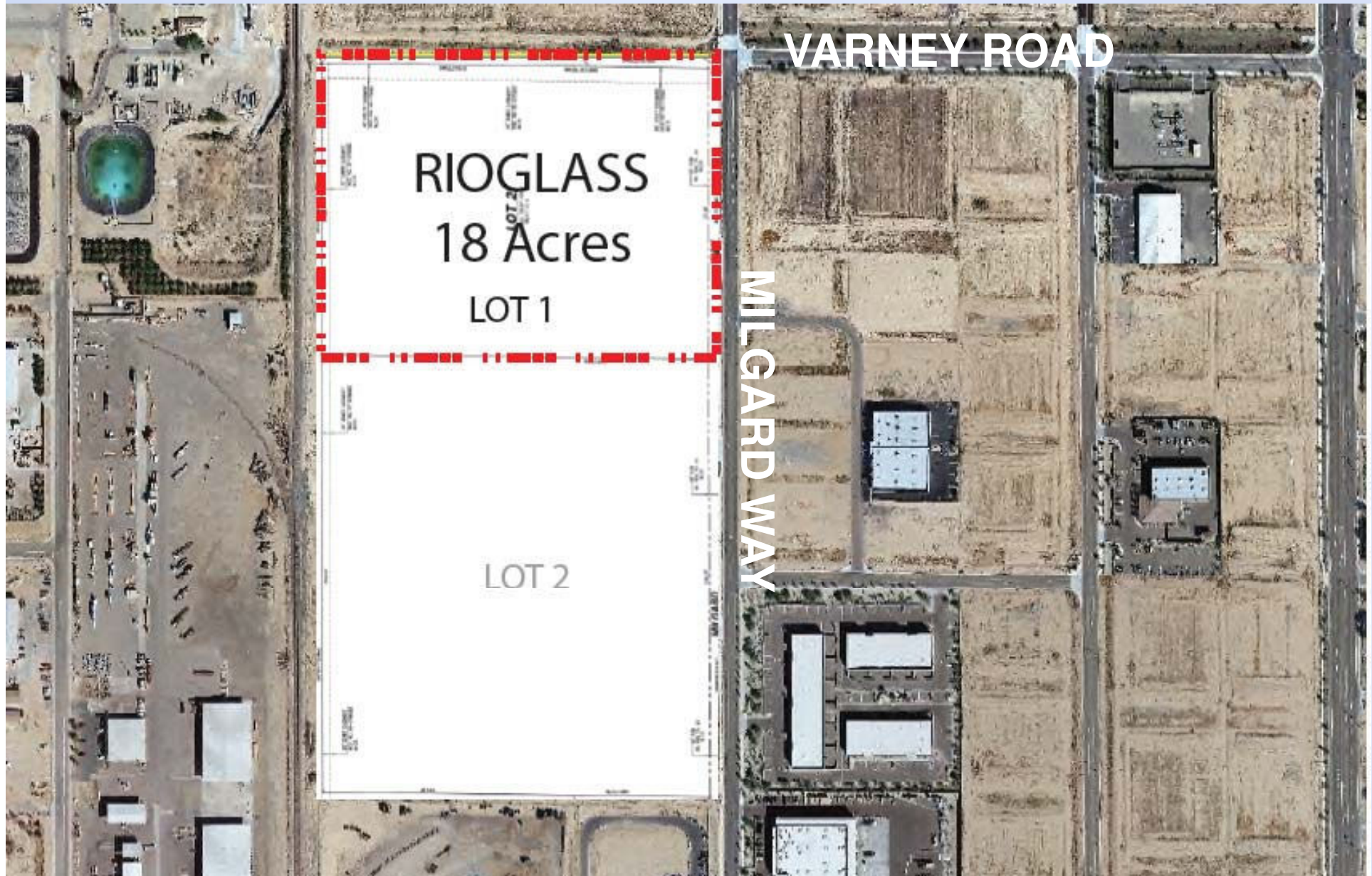
- (a) The landscape plan prepared by Deutsch Architecture Group and dated December 9, 2010 will be revised and submitted to the city for administrative review and approval to include the following modifications:
 1. The Justicia Californica shrubs will be replaced with a shrub species that can tolerate partial sun conditions.
 2. The decomposed granite ground cover will be a selection that matches the adjacent project to the southeast.
 3. Deep root barriers will be required for all trees within ten (10) feet of paved areas or walls.
 4. Ninety percent (90%) of the landscape plant material will be species found on the Arizona Department of Water Resources low-water use listing.
 5. Trees sizes will be revised to include 50 percent 24 inch box, 30 percent 36 inch box, and 20 percent 48 inch box.
- (b) The site plan prepared by Deutsch Architecture Group and dated December 9, 2010 will be revised and submitted to the city for administrative review and approval to include the following modifications:
 1. The administrative signature block will be removed.
 2. An accessible entrance will be provided to the bulk storage building.
 3. Fire-rated construction will be required at the bulk storage building.
 4. A note will be added to the site plan that states "The future tie in to the southerly adjacent roadway will be completed when the southern road is complete."
 5. The temporary all-weather access roadway adjacent and to the north of the phase I manufacturing building will be expanded to 40' along the entire north side of the building and connect to the northerly drive isle. The temporary all-

weather roadway connection portion that expands to the northern drive isle will be a minimum of 20' in width.

- (c) The building elevations prepared by Deutsch Architecture Group and dated December 9, 2010 will be revised and submitted to the city for administrative review and approval to include the following modifications:
 - 1. All roof top equipment will be painted an earth tone color.
 - 2. Additional architectural features will be included along the south side of the building.
- (d) An easterly facing monument sign will be required on the northeast portion of the property and placed within the north fifteen (15) feet of the property. The sign will clearly identify the Rioglass Solar company name and property address number. Said monument sign will be submitted for separate administrative review and permit approval prior to commencement of sign construction and will be completed prior to certificate-of-occupancy of the primary building.
- (e) The building expansion identified in Phase two (2) will mimic the architecture of the adjacent building in phase one (1). The site plan in Phase two (2) will require administrative review and approval.
- (f) Civil document approval and permit issuance will be required prior to construction beyond at-risk grading.
- (g) A letter from the Gonvarri project ownership acknowledging their responsibility for the design, construction, and financial assurance of the southern roadway will be provided to the city; or an amended final plat will be provided by Rioglass Solar to accept ownership of the southern parcel for the roadway previously dedicated to the city no later than January 3, 2012.

Attached: Vicinity map, site plan, elevations, landscape plan, and exhibits.

Vicinity Map



Revisions

SITE PLAN 12/09/10

SUBMITTAL

PROJECT NO: 09190.00

DRAWN BY: L.M.

CHK'D BY: DCALC / BS

COPYRIGHT: DEUTSCH
ARCHITECTURE GROUPOVERALL SITE
PLAN

KEYNOTES

- 3'-0" HIGH CMU SCREEN WALL.
- 3-BIN REFUSE CONCRETE PAD.
- 8'-0" HIGH CHAINLINK FENCE.
- 8'-0" HIGH CMU WALL.
- FLAGPOLE AND BASE.
- CONCRETE SIDEWALK.
- MANUAL SLIDING CHAINLINK GATE.
- INDICATES EDGE OF PORCH ROOF ABOVE.
- FUTURE EARTHEN BUMPER FOR RAIL SPUR.
- 8" THICK CONCRETE AT DRAIN AREA.
- ACCESSIBLE RAMP WITH 1:12 MAX. SLOPE.
- S.E.S LOCATION.
- ELECTRICAL TRANSFORMER AND CONC. PAD PER POWER COMPANY REQUIREMENTS.
- EXISTING CONC. IRRIGATION DITCH TO BE REMOVED.
- EXISTING BNSF SPUR TRACK.
- FUTURE SPUR TRACK.
- ASPHALT DRIVE - REFER TO CIVIL.
- CONCRETE CURB PER CIVIL.
- LANDSCAPE ISLAND.
- EXISTING CONC. SIDEWALK.
- EXISTING CONC. CURB.
- ACCESSIBLE PARKING STALL - TYP.
- LANDSCAPE AREA.
- SLIDING METAL GATE.
- PROVIDE FIRE DEPARTMENT KNOX BOX PER CITY OF SURPRISE FIRE DEPARTMENT REQUIREMENTS.
- EXISTING STREET LIGHT - TYP.
- EXISTING PROPERTY LINE.
- FIRE DEPARTMENT CONNECTION.
- FIRE HYDRANT LOCATION - TYP.
- PREFABRICATED METAL LOADING DOCKS & RAMP ON CONCRETE PAD.
- BICYCLE PARKING SPACES.
- EXISTING FIRE HYDRANT.
- DRYWELL - TYPICAL REFER TO CIVIL.
- APS METERING CABINET AND CONCRETE PAD PER UTILITY COMPANY REQUIREMENTS.
- WATER LINE EASEMENT - TYPICAL.
- RIP RAP IN CONCRETE SETTING BED - TYP. REFER TO CIVIL DRAWINGS.
- CONC. STUOP - TYPICAL.
- CONCRETE GUTTER - REFER TO CIVIL.
- CATCH BASIN - REFER TO CIVIL.
- 4'-0" WIDE METAL PICKET FENCE MAN GATE.
- 4'-0" WIDE CHAIN LINK MAN GATE. PROVIDE DEADBOLT.
- BOX WITH DOUBLE CYLINDER & SELF CLOSER.
- GLASS COLUMN - TYPICAL.
- CONCRETE PADS - TYPICAL.
- INDICATES 2'-0" WIDE DETECTABLE WARNING PAVERS.
- 4'-0" WIDE CONCRETE SWALE. - REFER TO CIVIL.
- INDICATES FIRE LANE.
- INDICATES FIRE TRUCK TURNING RADIUS COMPLYING WITH AASHTO WB-50 TURNING RADIUS.
- INDICATES ACCESSIBLE ROUTE TO R.O.W (PER IBC SECTION 1104).
- INDICATES LIGHT POLE - TYP. REFER TO ELECTRICAL.
- INDICATES WALL PACK LOCATION TYP. - REFER TO ELECTRICAL.
- INDICATES SITE VISIBILITY TRIANGLE PER CITY OF SURPRISE STANDARDS AND AASHTO STANDARDS.
- DOMESTIC AND IRRIGATION WATER METER LOCATIONS. REFER TO CIVIL AND LANDSCAPE PLANS.
- FIRE RISER LOCATION.
- INDICATES PROPOSED GAS METER LOCATION.

SITE DATA

CURRENT ZONING:

PAD

LOT AREA:

NET: 786,117 SF (18.04 ACRES)

GROSS: 810,012 SF (18.59 ACRES)

LOT COVERAGE:

171,591 SF / 786,117 SF = 22% LOT COVERAGE

LANDSCAPE COVERAGE:

196,529 / 786,117 SF = 25%

BUILDING SETBACKS:

(PER SKYWAY BUSINESS PARK DEV. STANDARDS)

MINIMUM FRONT BUILDING SETBACK = 35'-0"

MIN. SETBACK PROVIDED = 100'-0"

MINIMUM SIDE BUILDING SETBACK = 0'

MINIMUM REAR BUILDING SETBACK = 0'

PARKING CALCULATIONS: (PER CITY OF SURPRISE)

PARKING CALCULATIONS BASED ON GROSS FLOOR AREA

1/1,500 GSF

PHASE I	
GROUND FLOOR	157,573 S.F.
2ND FLOOR OFFICE AREA	8,613 S.F.
PORCH AREA	14,018 S.F.
TOTAL AREA	180,204 S.F.
180,204 S.F. / 1,500 = 121 SPACES REQ.	

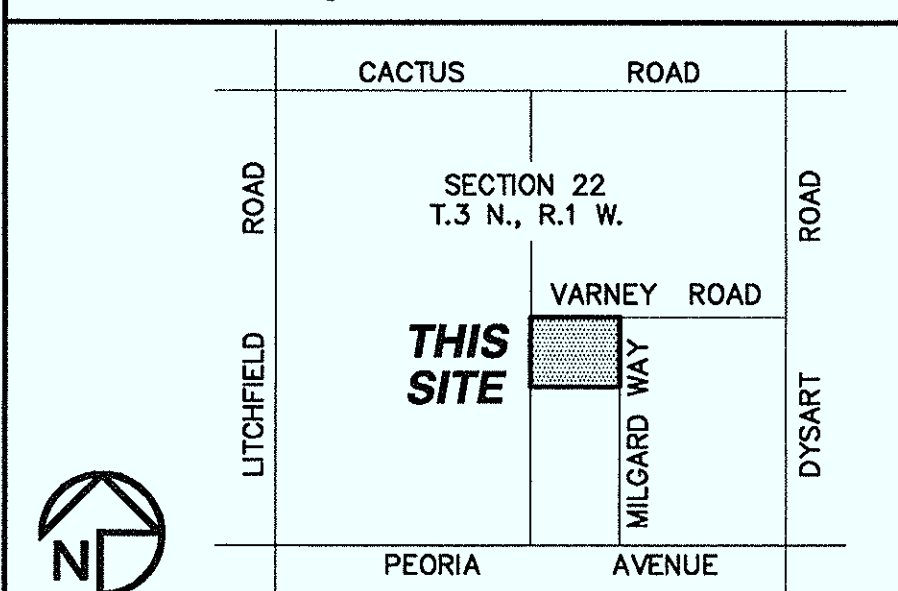
PHASE II	
FUTURE PRODUCTION AREA	111,960 S.F.
FUTURE PORCH AREA	9,960 S.F.
TOTAL PHASE II AREA	121,920 S.F.
121,920 S.F. / 1,500 = 82 SPACES REQ.	

TOTAL SPACES REQUIRED	203
ACCESSIBLE SPACES REQUIRED	7

PHASE I	
STANDARD PARKING SPACES:	117
ACCESSIBLE PARKING SPACES:	8
TOTAL SPACES PROVIDED PHASE I	125

FUTURE PHASE II PARKING SPACES	91
TOTAL PLANNED PARKING	216
BICYCLE SPACES REQUIRED = 1/20 PARKING SPACES	
216 / 20 = 11 BICYCLE SPACES REQUIRED	
12 BICYCLE SPACES PROVIDED	

VICINITY MAP



ZONING: R1-43

501-43-037
ZONING: R1-43

ZONING: I-1

1 OVERALL SITE PLAN

SCALE 1" = 50'-0"

0 50 100 150 200

ADMINISTRATIVE SITE PLAN APPROVAL

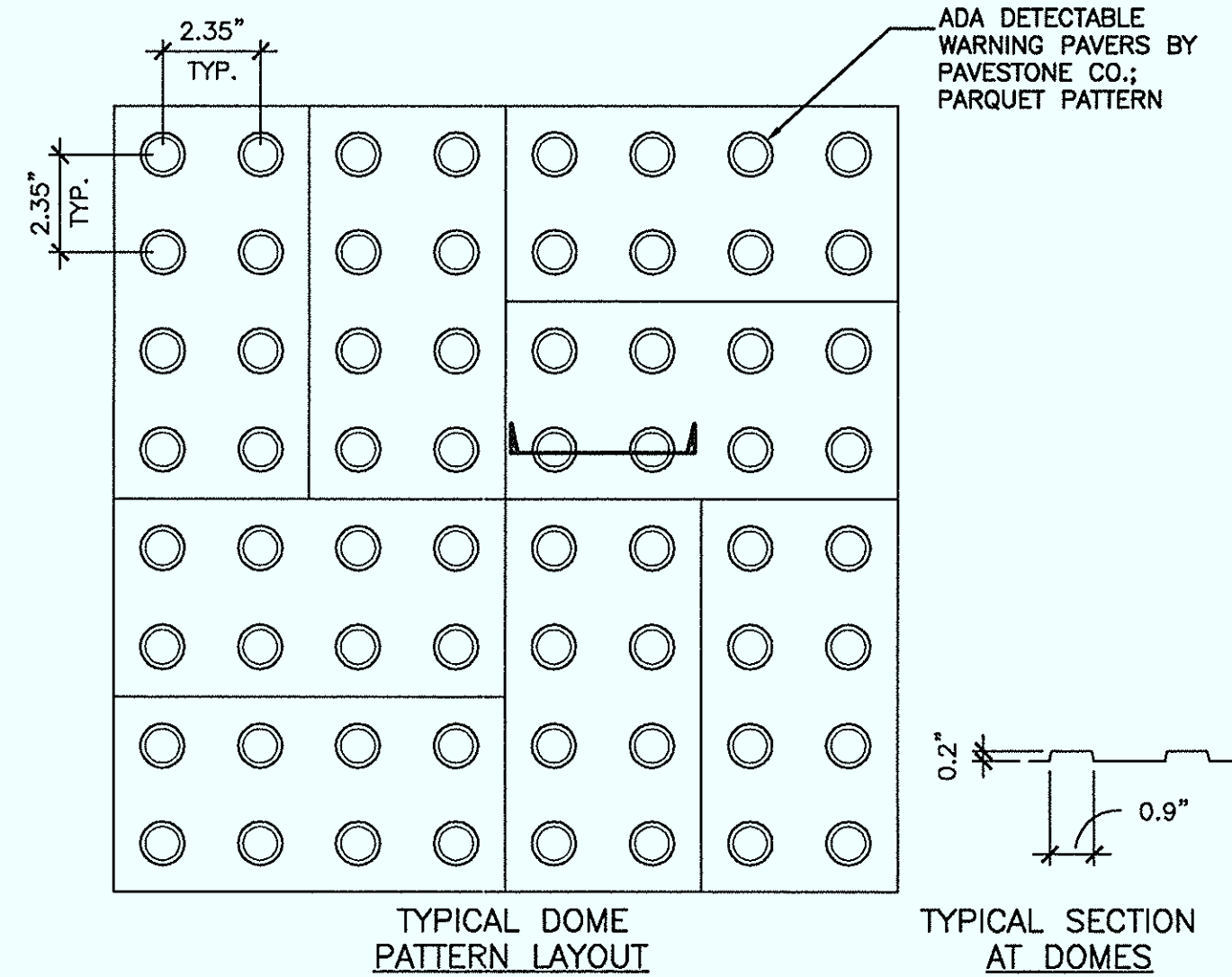
FIRE MARSHALL
CITY ENGINEER
COMMUNITY DEVELOPMENT DIRECTOR

PROJECT TEAM

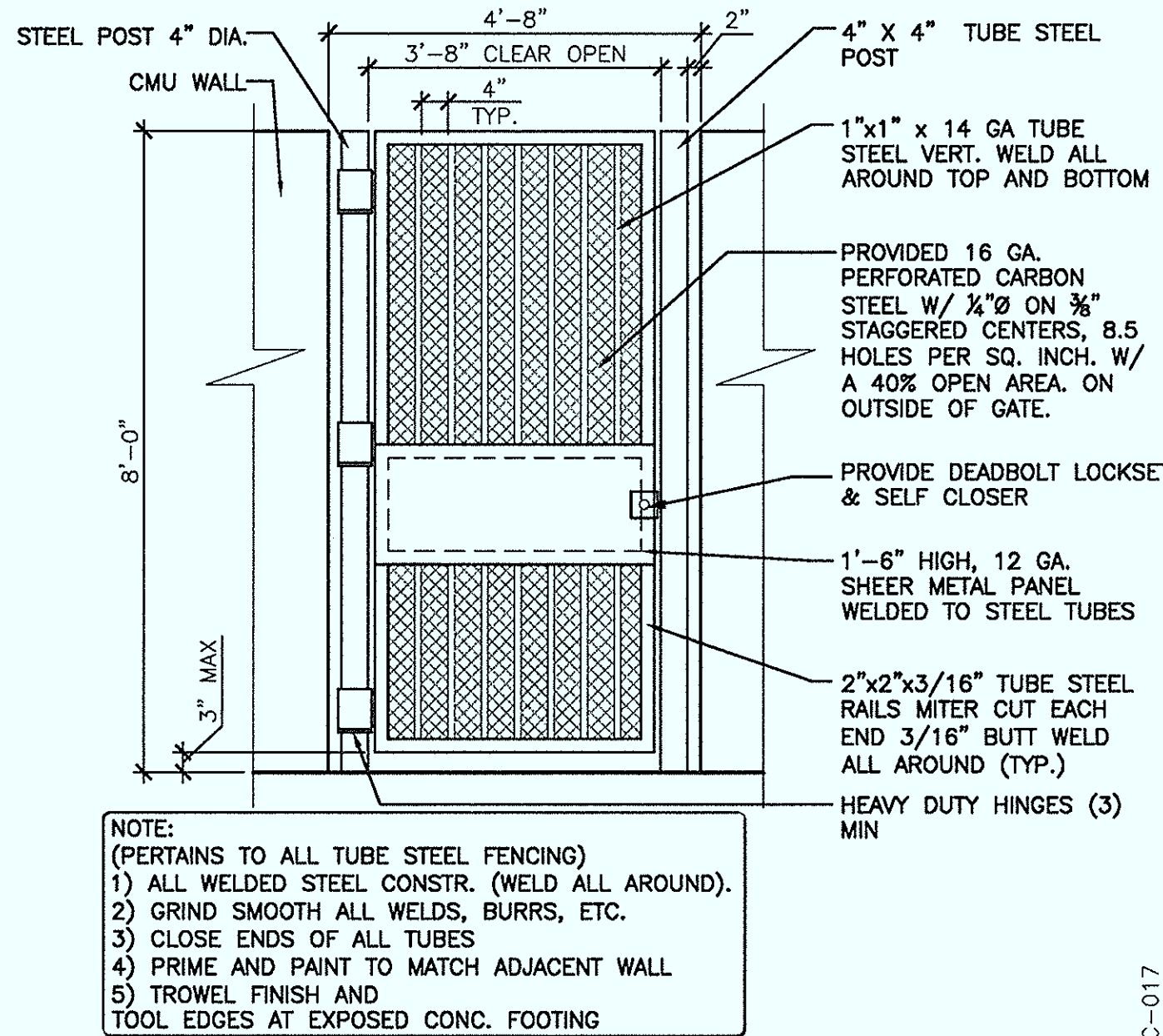
OWNER: RIOGLASS SOLAR 12425 N. BELL RD, SUITE 132 SURPRISE, ARIZONA 85378 PHONE: (623) 398-6455 FAX: (623) 398-6755 E-MAIL: G.ARMSTRONG@RIOGLASS.COM CONTACT: GREG ARMSTRONG	ARCHITECT: DEUTSCH ARCHITECTURE GROUP 4800 E. INDIAN SCHOOL RD. PHOENIX, AZ 85016 PHONE: 602-840-2929 FAX: 602-840-6646 E-MAIL: bsmith@2929.com CONTACT: BOB SMITH NAVEEN CHOPRA	GENERAL CONTRACTOR: HOWARD S. WRIGHT CONSTRUCTORS, LP 455 N 3RD ST, SUITE 280-A PHOENIX, AZ 85016 PHONE: (602) 253-6112 FAX: (602) 253-6374 E-MAIL: HULSTON@HSCWC.COM CONTACT: STEPHEN HULSTON
CIVIL ENGINEER: HUNTER ENGINEERING 10450 N. 74TH STREET, SUITE #200 SCOTTSDALE, AZ 85258 PHONE: 480-991-3985 FAX: 480-991-3988 E-MAIL: jearley@hunterengineeringpc.com CONTACT: JAKE EARLEY	STRUCTURAL CONSULTANT: PK ASSOCIATES LLS 7434 EAST McDOWELL ROAD SCOTTSDALE, AZ 85250 PHONE: (480) 922-8854 FAX: (480) 922-3739 E-MAIL: CCHAU@PKSTRUCTURAL.COM CONTACT: CHRISTA CHAU CLIFF PAUL	ELECTRICAL CONSULTANT: AIR-ZONA SYSTEMS ENGINEERING 4527N. 16TH STREET, SUITE #200 PHOENIX, AZ 85018 PHONE: 602-287-0300 X 216 FAX: 602-287-0800 E-MAIL: dholoway@air-zona.com CONTACT: DENISE HOLLOWAY
LANDSCAPE ARCHITECT: GILMORE PARSONS LAND DESIGN 2211 N. 7TH STREET PHOENIX, AZ 85006 PHONE: 602-266-6888 FAX: 602-266-5707 E-MAIL: spars@gilmoreparsons.com CONTACT: STEVE PARSONS		

PROJECT CODE DATA

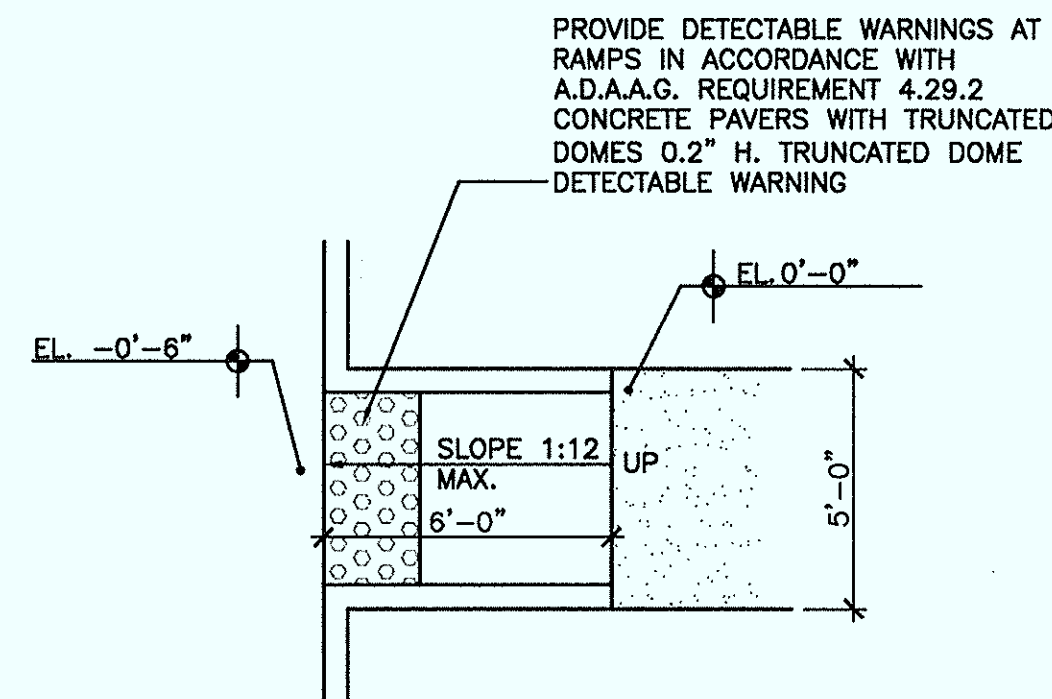
PROJECT: RIOGLASS SOLAR FACILITY	OCCUPANCY SEPARATION WALLS: NOT REQUIRED. BUILDING CLASSIFIED AS NONSEPARATED (PER SECT. 508.3.2)
ADDRESS: RIOGLASS SOLAR S.W.O. OF MILGARD WAY & VARNEY ROAD SURPRISE, ARIZONA	GROSS BUILDING AREA: 1ST FLOOR MANUFACTURING AREA 148,960 S.F. 1ST FLOOR OFFICE AREA 8,613 S.F. 1ST FLOOR PORCH AREA 14,018 S.F. TOTAL 1ST FLOOR AREA 171,591 S.F. 2ND FLOOR OFFICE AREA 8,613 S.F. TOTAL AREA (MFR. BLDG.): 180,204 S.F. TOTAL AREA (BULK STORAGE BLDG.): 3,600 S.F.
GOVERNING MUNICIPALITY: CITY OF SURPRISE	HEIGHT AND AREA ANALYSIS: (MFR. BLDG.) UNLIMITED AREA BUILDING (PER SECT. 507.4) 60'-0" YARDS PROVIDED AT ALL SIDES (BULK STORAGE BLDG.) 6,500 S.F. PER TABLE 503 (MFR. BLDG.) # OF STORIES ALLOWED 3 STORIES (PER SECT. 504.2) 40' (PER TABLE 503 W/ 20' INCREASE (PER SECT. 504.2) 85'-0" (PER SKYWAY BUSINESS PARK DEV. STANDARDS) (BULK STORAGE BLDG.) # OF STORIES ALLOWED 2 STORIES (PER TABLE 503) 2-STORY PROPOSED (MFR. BLDG.) 37'-4" 1-STORY PROPOSED (BULK STORAGE BLDG.) 24'-0"
APPLICABLE CODES: 2006 INTERNATIONAL BUILDING CODES 2006 INTERNATIONAL MECHANICAL CODE 2006 INTERNATIONAL PLUMBING CODE 2006 INTERNATIONAL ELECTRICAL CODE 2005 NATIONAL ELECTRICAL CODE 2006 INTERNATIONAL FIRE CODE 2006 INTERNATIONAL ENERGY CONSERVATION CODE A.D.A.G., IBC CHAPTER 11, ANSI CABO A117.1992	PROJECT DESCRIPTION: NEW MANUFACTURING FACILITY FOR PARABOLIC MIRRORS TO BE USED IN SOLAR COLLECTORS WHICH INCLUDES A SINGLE STORY MANUFACTURING AREA, 2-STORY OFFICE SUPPORT AREA, AND A DETACHED SINGLE STORY BULK STORAGE BUILDING.
OCCUPANCY(IES): F-2 / S-2 MANUFACTURING AREA 149,129 S.F. B OFFICE AREA 16,888 S.F. B PORCH AREA 14,018 S.F. H-4 BULK STORAGE BLDG. 3,600 S.F.	CONSTRUCTION TYPE: V-B



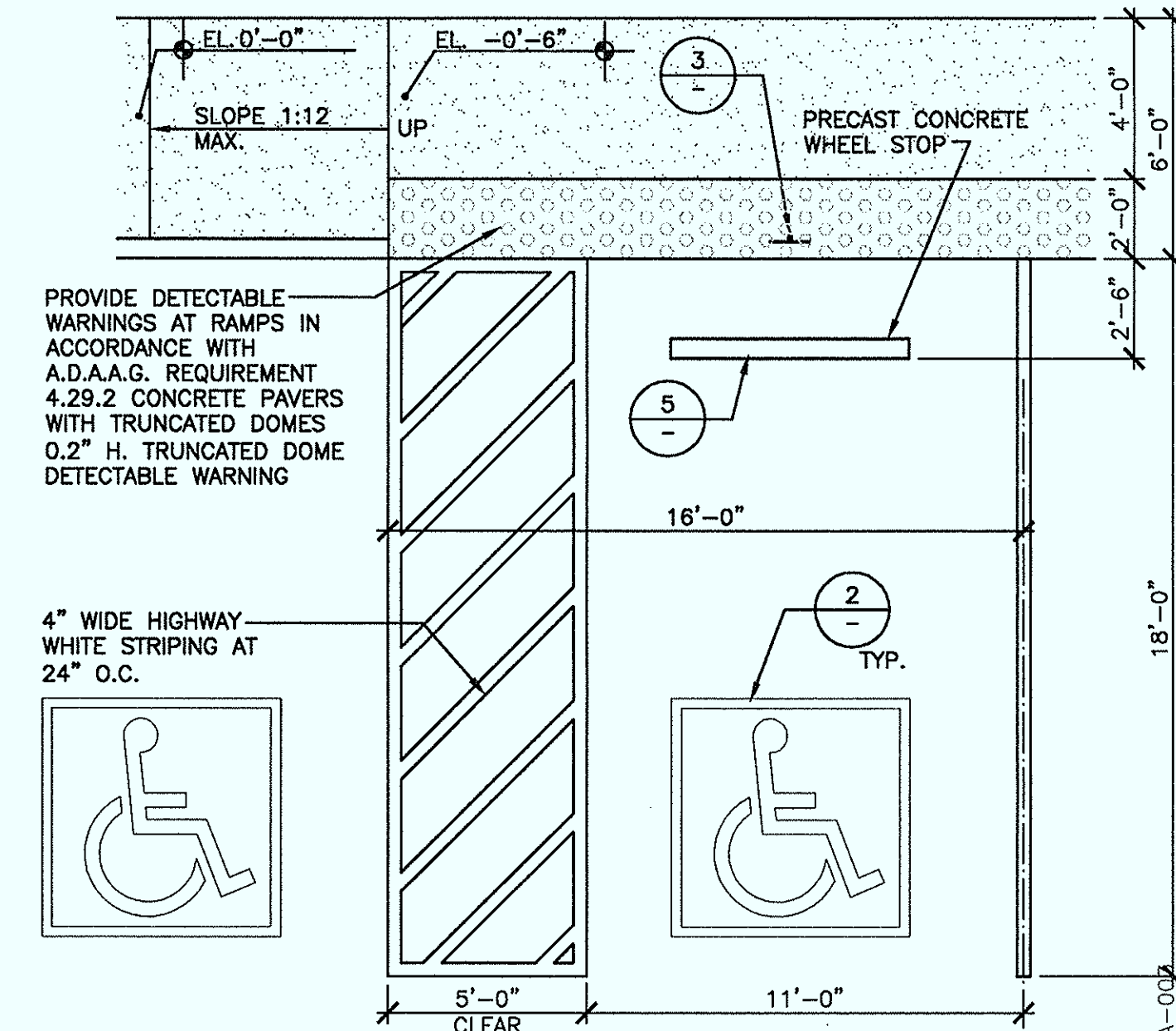
10 TRUNCATED DOME DETECTABLE WARNINGS
SCALE: N.T.S.



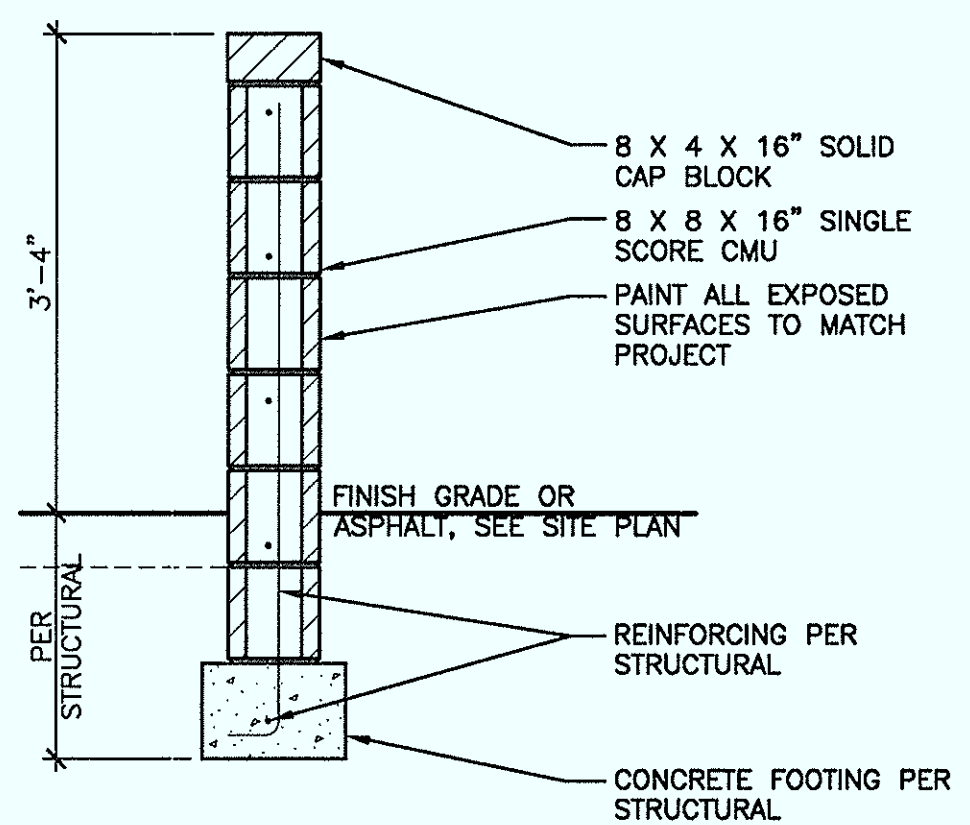
7 PICKET ESTATE GATE AT CMU WALL - 8'-0" HIGH
SCALE: 1/2" = 1'-0"



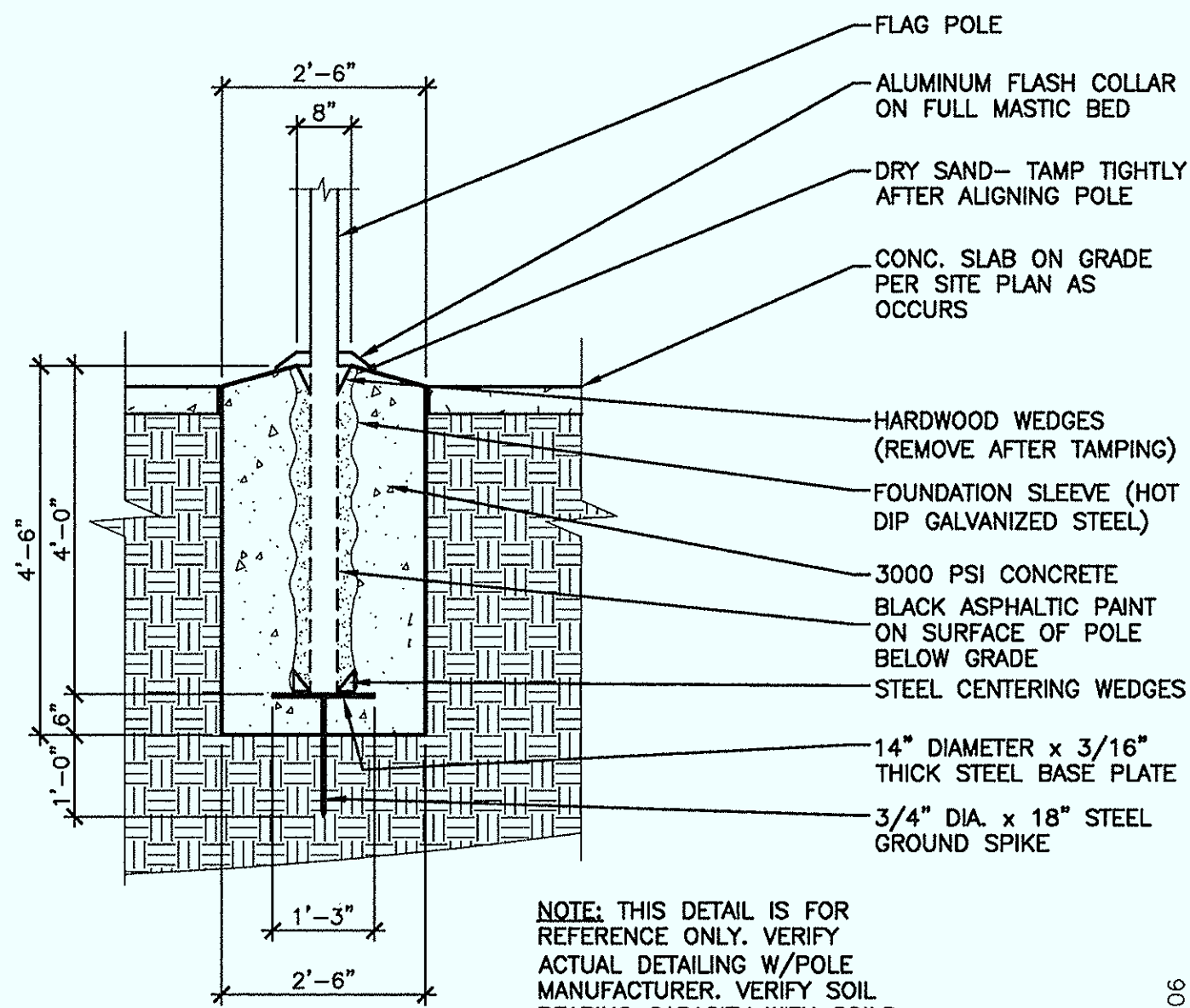
4 ACCESSIBLE CURB RAMP
SCALE: 1/8" = 1'-0"



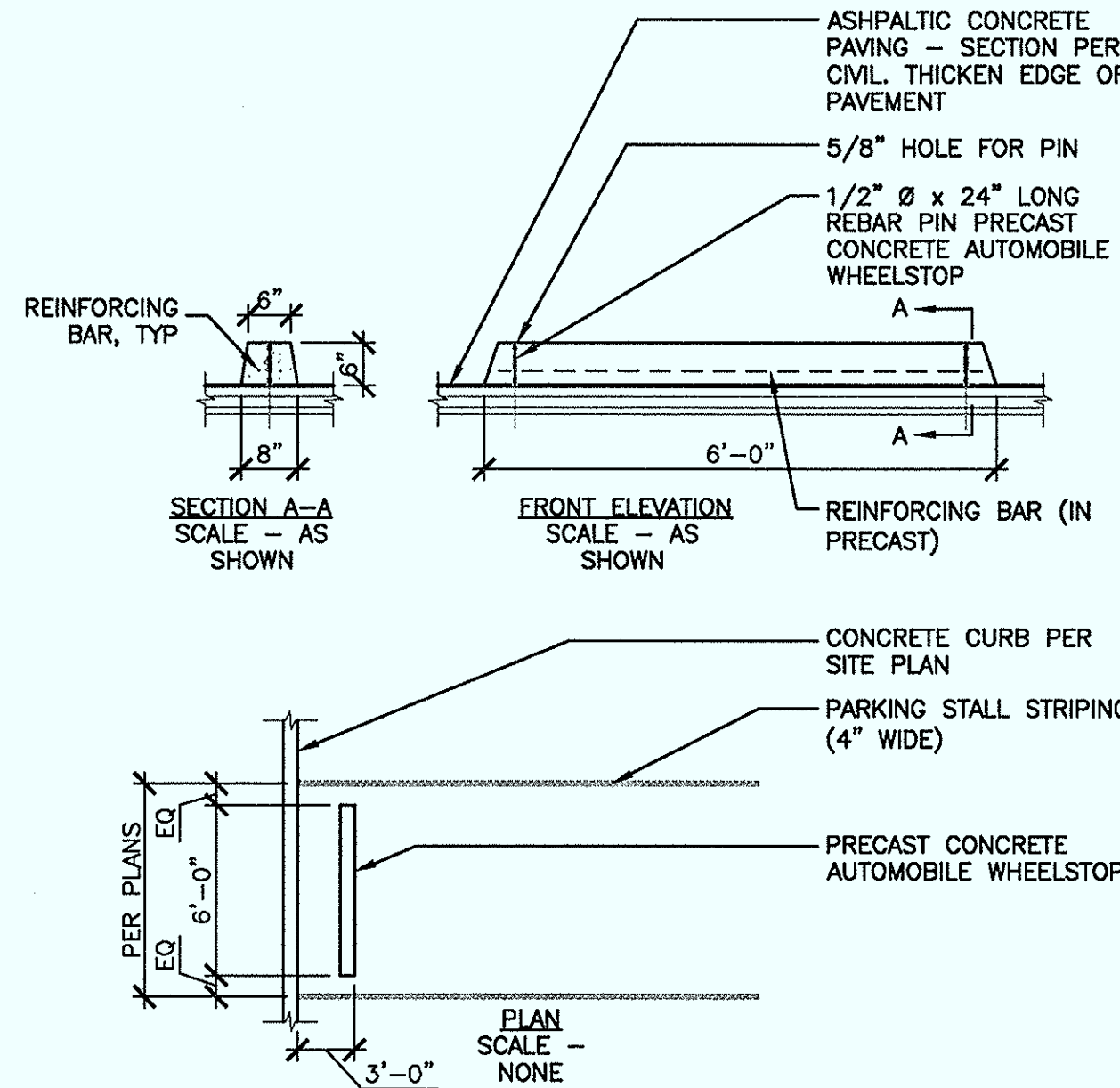
1 UNIVERSAL ACCESSIBLE PARKING SPACE
SCALE: 1/4" = 1'-0"



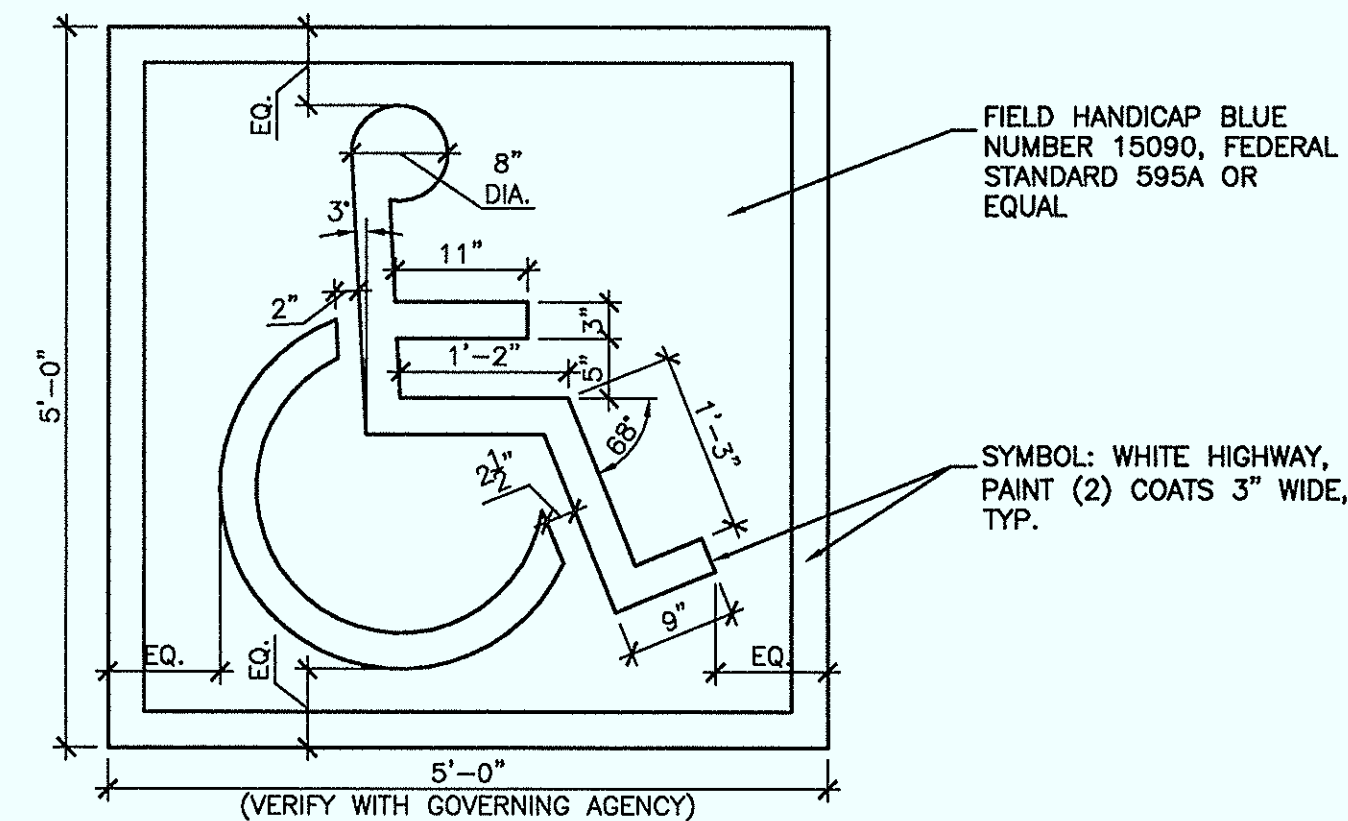
11 SECTION AT PARKING SCREEN WALL SINGLE SCORE CMU
SCALE: 3/4" = 1'-0"



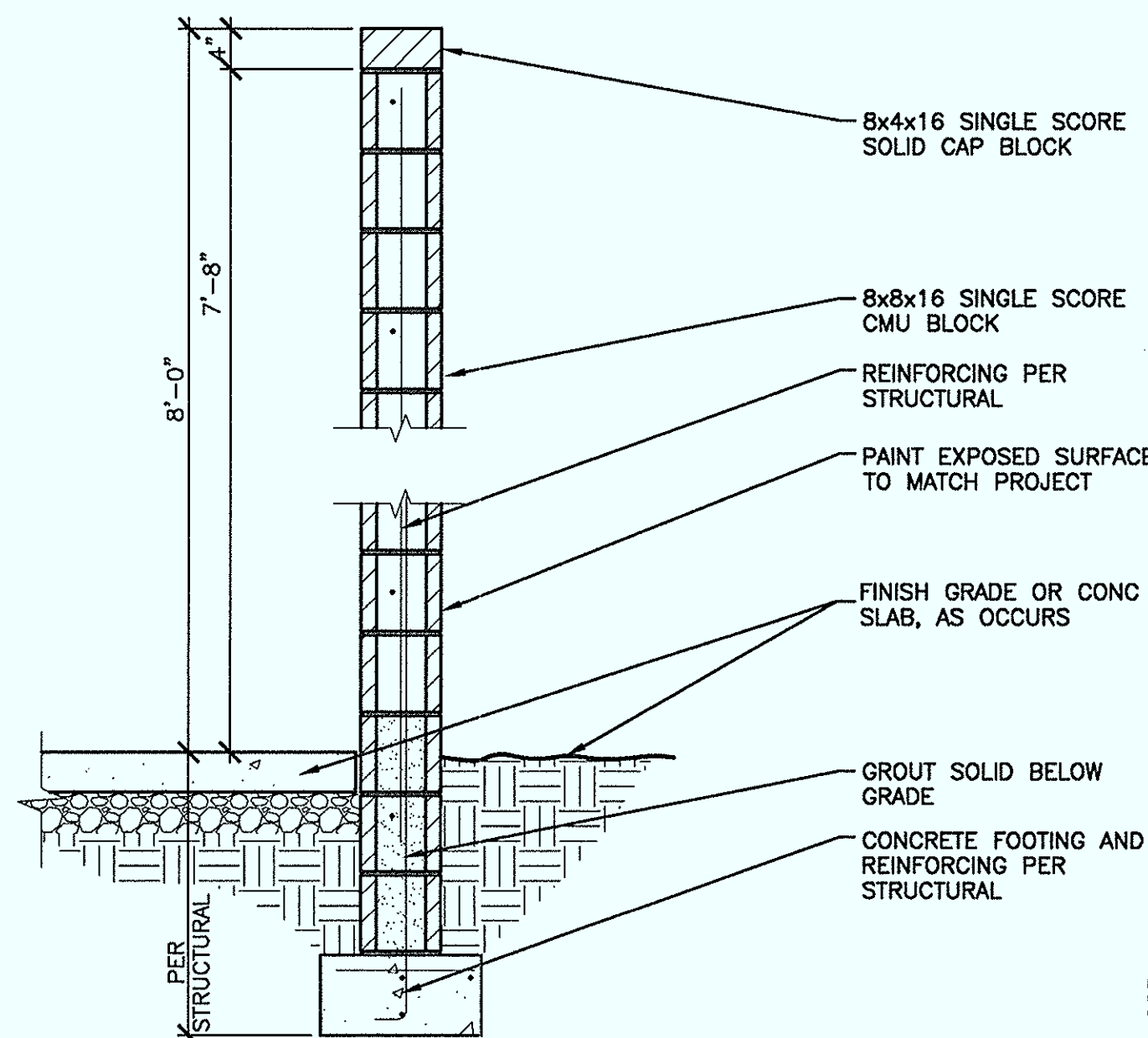
8 DETAIL AT FLAGPOLE
SCALE: 1/2" = 1'-0"



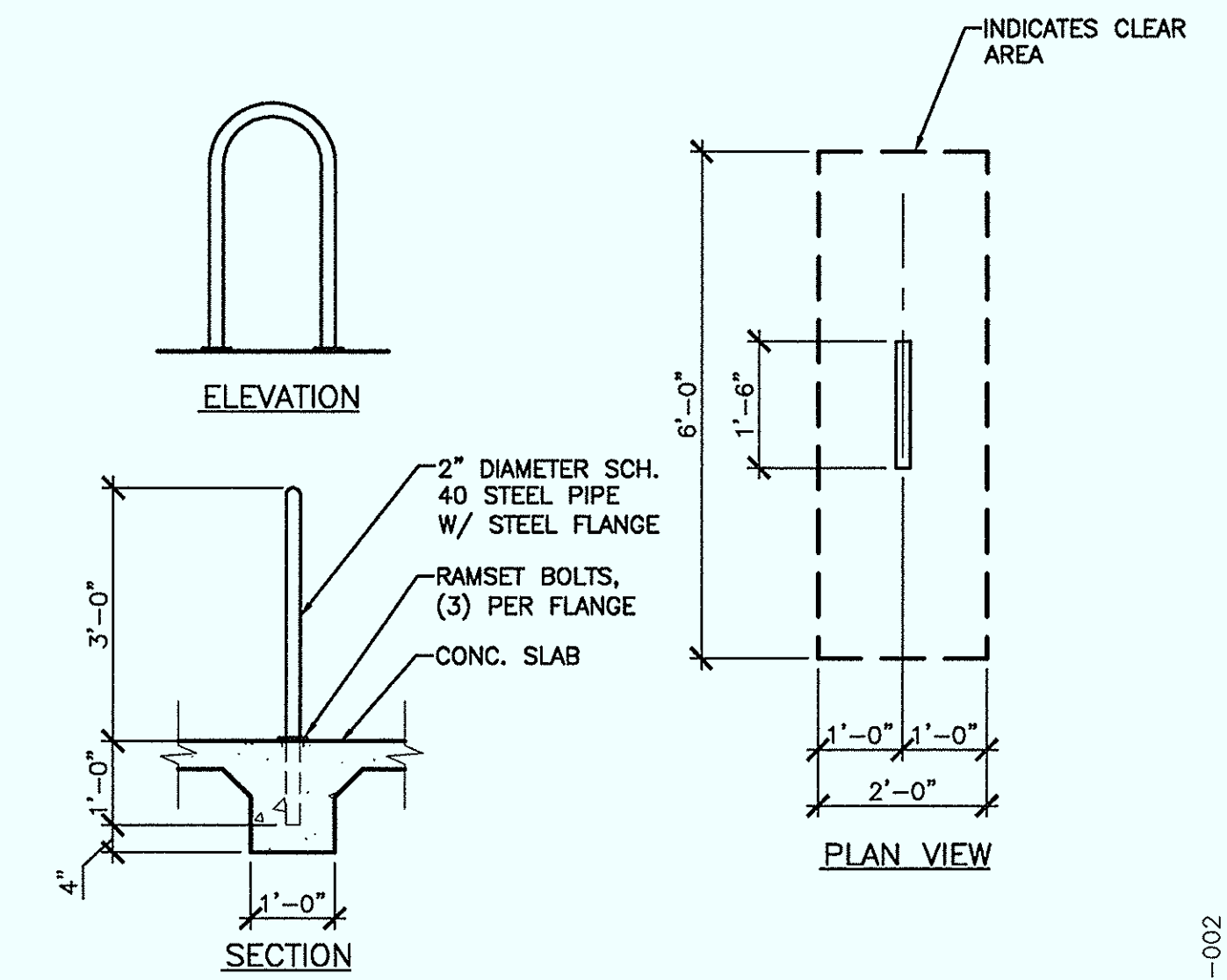
5 PRECAST CONCRETE AUTOMOBILE STOP
SCALE: 1/2" = 1'-0"



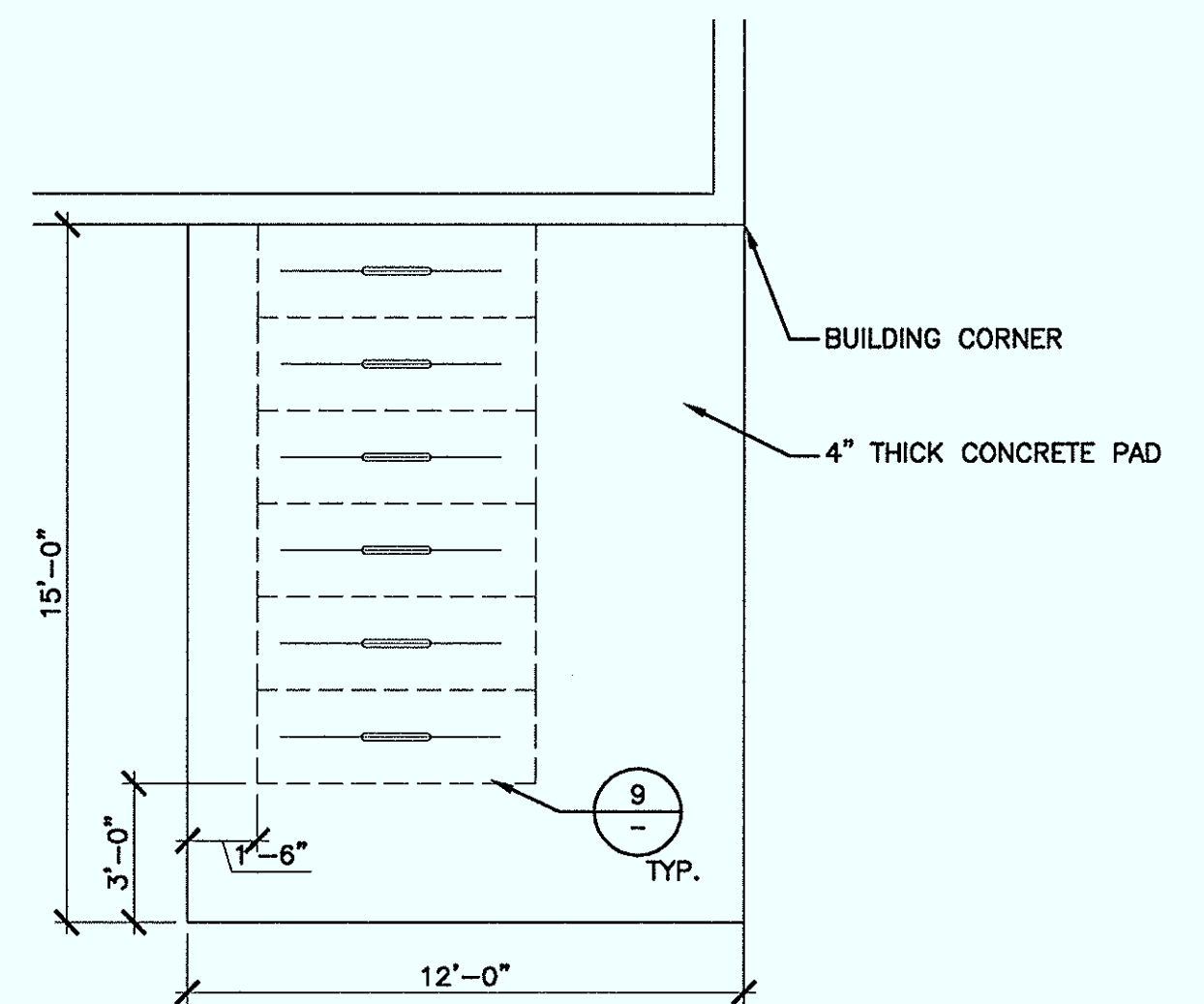
2 ACCESSIBLE PARKING SYMBOL
SCALE: 3/4" = 1'-0"



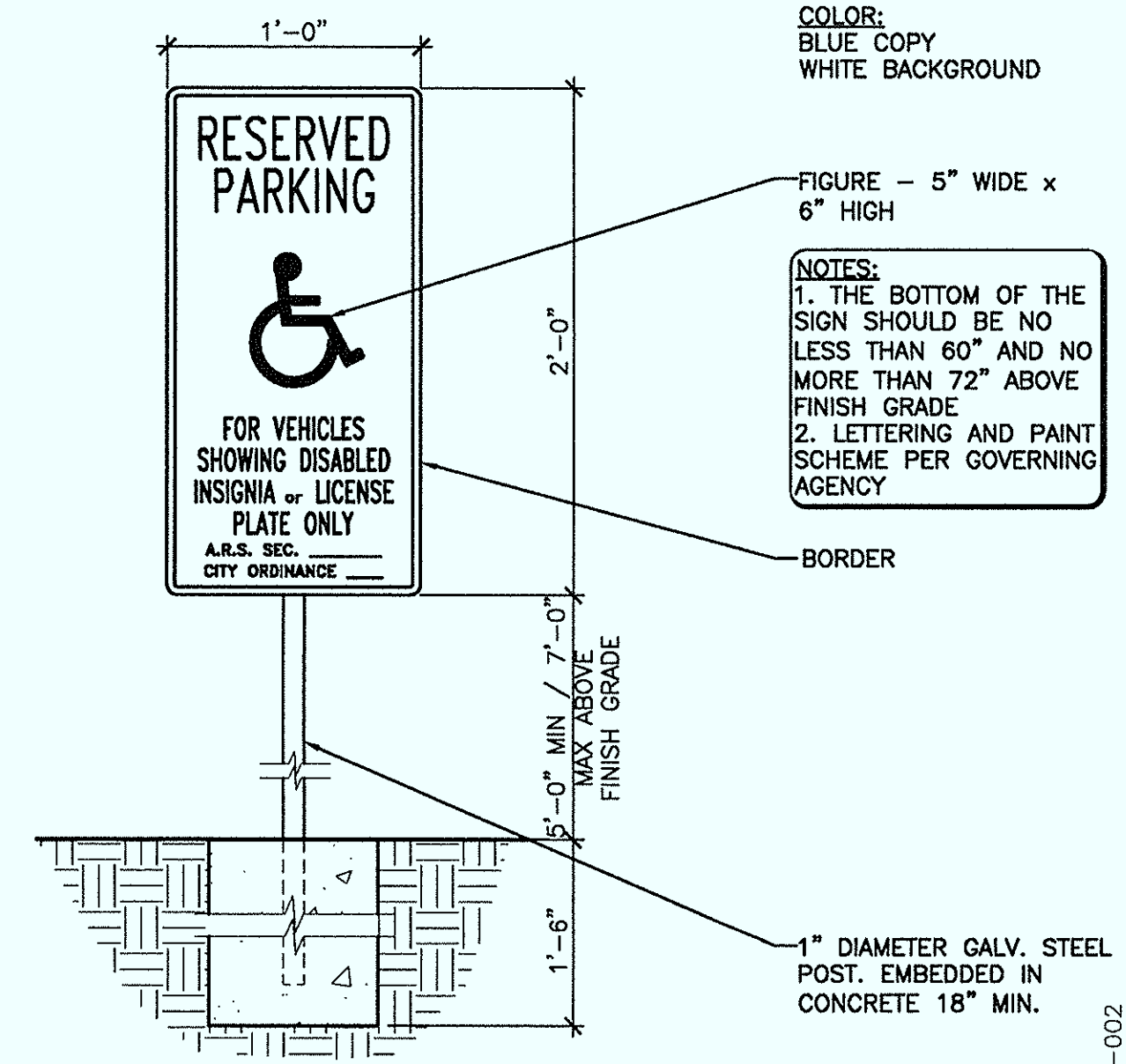
12 SECTION AT SINGLE SCORE CMU WALL
SCALE: 3/4" = 1'-0"



9 BICYCLE RACK DETAIL
SCALE: 1/2" = 1'-0"

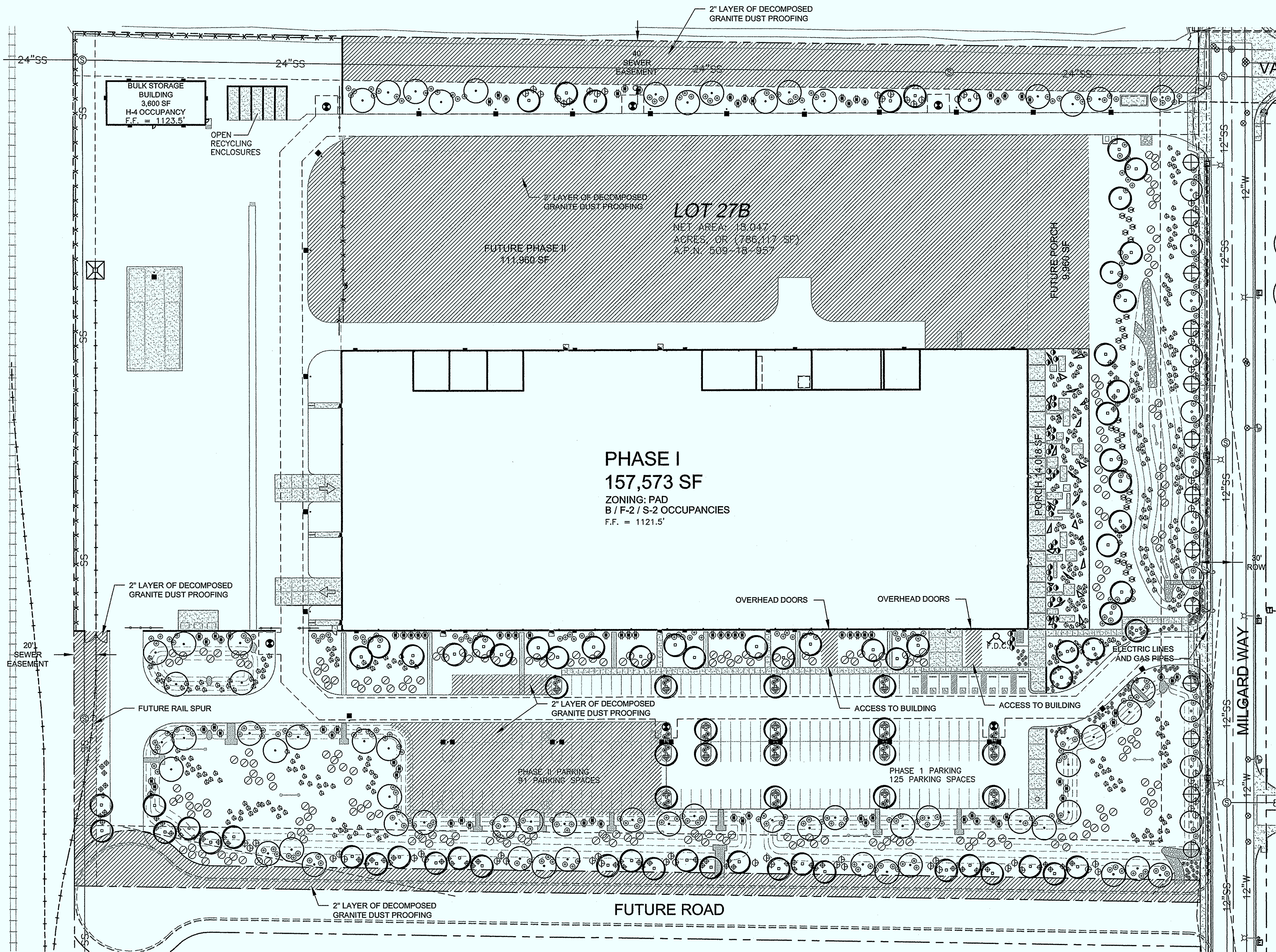


6 UNIVERSAL ACCESSIBLE PARKING SPACE
SCALE: 1/4" = 1'-0"



3 ACCESSIBLE PARKING SIGN
SCALE: 1 1/2" = 1'-0"



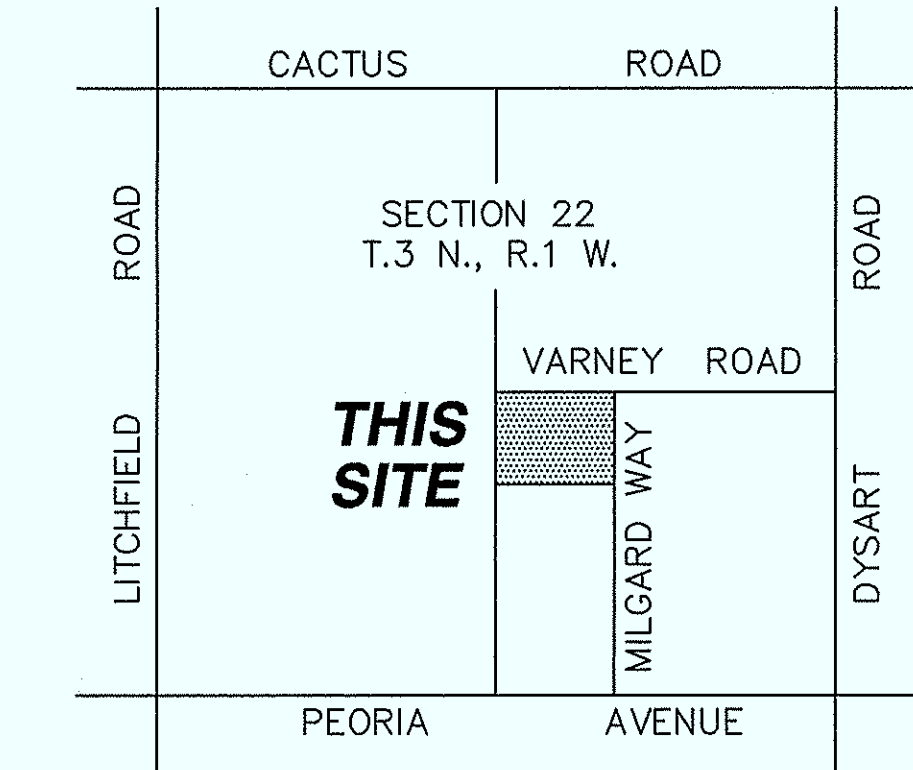


PLANT SCHEDULE

SYMBOL	BOTANICAL/COMMON NAME	SIZE/CLPR	QTY.	REMARKS
TREES				
⊕	ACACIA ANEURA	24" box	-	STAKE AS REQUIRED
⊕	MULGA	36" box	-	STAKE AS REQUIRED
⊕	ACACIA SALICINA	24" box	-	STAKE AS REQUIRED
⊕	WILLOWLEAF ACACIA	36" box	-	STAKE AS REQUIRED
⊕	PARKINSONIA HYBRID 'DESERT MUSEUM'	24" box	-	STAKE AS REQUIRED
⊕	DESERT MUSEUM PALO VERDE	36" box	-	STAKE AS REQUIRED
⊕	PROSOPIS CHILENSIS 'THORNLESS'	24" box	-	STAKE AS REQUIRED
⊕	THORNLESS CHILEAN MESQUITE	36" box	-	STAKE AS REQUIRED
SHRUBS				
⊕	BOUGAINVILLEA S. 'BARBARA KARST'	5 GAL.	-	1 GPH EMITTER
⊕	BARBARA KARST BOUGAINVILLEA	5 GAL.	-	1 GPH EMITTER
⊕	CAESALPINIA PULCHERRIMA	5 GAL.	-	1 GPH EMITTER
⊕	RED BIRD OF PARADISE	5 GAL.	-	1 GPH EMITTER
⊕	CALLIANDRA CALIFORNICA	5 GAL.	-	1 GPH EMITTER
⊕	RED FAIRY DUSTER	5 GAL.	-	1 GPH EMITTER
⊕	CASSIA NEMOPHILA	5 GAL.	-	1 GPH EMITTER
⊕	DESERT CASSIA	5 GAL.	-	1 GPH EMITTER
⊕	JUSTICIA CALIFORNICA	5 GAL.	-	1 GPH EMITTER
⊕	CHUPAROSA	5 GAL.	-	1 GPH EMITTER
⊕	JUSTICIA SPICIGERA	5 GAL.	-	1 GPH EMITTER
⊕	MEXICAN HONEYSUCKLE	5 GAL.	-	1 GPH EMITTER
⊕	LEUCOPHYLLUM LANGMANIAE 'RIO BRAVO'™	5 GAL.	-	1 GPH EMITTER
⊕	RIO BRAVO SAGE	5 GAL.	-	1 GPH EMITTER
⊕	LEUCOPHYLLUM ZYGOPHYLLUM 'CIMARRON'™	5 GAL.	-	1 GPH EMITTER
⊕	CIMARRON SAGE	5 GAL.	-	1 GPH EMITTER
⊕	RUELIA PENINSULARIS	5 GAL.	-	1 GPH EMITTER
⊕	BAJA RUELIA	5 GAL.	-	1 GPH EMITTER
⊕	TECOMA SPP.	5 GAL.	-	1 GPH EMITTER
⊕	'ORANGE JUBILEE'	5 GAL.	-	1 GPH EMITTER
ACCENTS				
⊕	AGAVE DESMETTIANA	5 GAL.	-	.5 GPH EMITTER
⊕	N.C.N.	5 GAL.	-	.5 GPH EMITTER
⊕	AGAVE GEMINIFLORA	5 GAL.	-	.5 GPH EMITTER
⊕	TWIN-FLOWERED AGAVE	5 GAL.	-	1 GPH EMITTER
⊕	ASCLEPIAS SUBULATA	5 GAL.	-	1 GPH EMITTER
⊕	DESERT MILKWEED	5 GAL.	-	1 GPH EMITTER
⊕	DASYLIRON WHEELERI	5 GAL.	-	1 GPH EMITTER
⊕	DESERT SPOON	5 GAL.	-	1 GPH EMITTER
⊕	HESPERALOE PARVIFLORA	5 GAL.	-	1 GPH EMITTER
⊕	RED YUCCA	5 GAL.	-	1 GPH EMITTER
⊕	MUHLENBERGIA CAPILARIS 'REGAL MIST'	5 GAL.	-	1 GPH EMITTER
⊕	REGAL MIST DEER GRASS	5 GAL.	-	1 GPH EMITTER
GROUND COVER				
⊕	ACACIA REDOLENS 'LOW BOY'	1 GAL.	-	1 GPH EMITTER
⊕	N.C.N.	1 GAL.	-	1 GPH EMITTER
⊕	CONVOLVULUS CNEORUM	1 GAL.	-	1 GPH EMITTER
⊕	BUSH MORNING GLORY	1 GAL.	-	1 GPH EMITTER
⊕	LANTANA SPP.	1 GAL.	-	1 GPH EMITTER
⊕	'NEW GOLD' LANTANA	1 GAL.	-	1 GPH EMITTER
⊕	LANTANA MONTEVIDENSIS	1 GAL.	-	1 GPH EMITTER
⊕	PURPLE TRAILING LANTANA	1 GAL.	-	1 GPH EMITTER
MATERIAL				
⊕	DECOMPOSED GRANITE	1/2" SCREENED	-	2" DEPTH ALL LANDSCAPE AREAS
⊕	'COLOR'	1/2" SCREENED	-	2" DEPTH ALL LANDSCAPE AREAS

NOTES:
1) TREE HEIGHTS AND CALIPERS WILL COMPLY WITH "ARIZONA NURSERY ASSOCIATION SPECIFICATIONS" FOR THAT TYPE AND SIZE OF TREE.
2) LANDSCAPE TO BE WATERED BY AN UNDERGROUND AUTOMATIC IRRIGATION SYSTEM.

LANDSCAPE CALCULATIONS
25% LANDSCAPE COVERAGE PROVIDED FOR THIS PROJECT



VICINITY MAP

NTS



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LAND DESIGN GROUP
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T 602.266.5023 F 602.266.5707
www.gilmoreparsons.com

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ARCHITECTURE GROUP

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REGISTERED LANDSCAPE ARCHITECT
STEPHEN C. PARSONS
3418E
12/1/10
AZ 00000000

Expires 9/30/11
4600
EAST INDIAN SCHOOL RD
PHOENIX, ARIZONA 85018
602-840-2929 P
602-840-6646 F

RIOGLASS SOLAR FACILITY
SURPRISE, ARIZONA

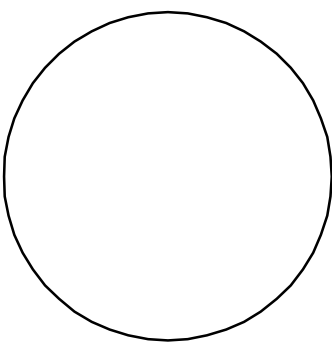
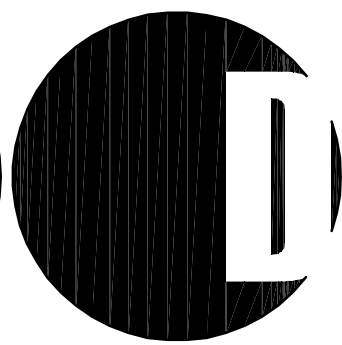
Revisions
SITE PLAN 12/09/10
SUBMITTAL

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PRELIMINARY
LANDSCAPE
PLAN

L1.0

52. INDICATES WALL PACK LOCATION TYP. - REFER TO
101. ELECTROCL PANEL
102. CONCRETE TILE PANEL - PAINTED.
103. CONCRETE PANEL JOINT - TYP.
104. PAINTED SECTIONAL OVERHEAD DOOR - TYP.
105. PAINTED SECTIONAL OVERHEAD DOOR AND FRAME - TYP.
106. PAINTED SECTIONAL OVERHEAD DOOR AND FRAME - TYP.
107. GLASS COLUMNS - TYP.
108. LINE OF ROOF.
109. ALUMINUM STOREFRONT SYSTEM AND GLAZING.
110. ALUMINUM STOREFRONT SYSTEM AND GLAZING.
111. PORCH FASCIA.
112. DOCK SHELTER.
113. GLASS PANEL INSERTS AT TILE PANEL WALL - TYP.
114. GLASS PANEL INSERTS AT TILE PANEL WALL - TYP.
115. ALUMINUM STOREFRONT DOOR.
116. 8 X 8 SINGLE SCORE OWL.
117. CONTINUOUS METAL FASCIA.
118. METAL HANDRAIL/CLIMBDRAIL, PAINTED TO
MATCH BUILDING.
119. DAYLIGHT ROOF AND OVERFLOW DRAIN AT WALL.
120.



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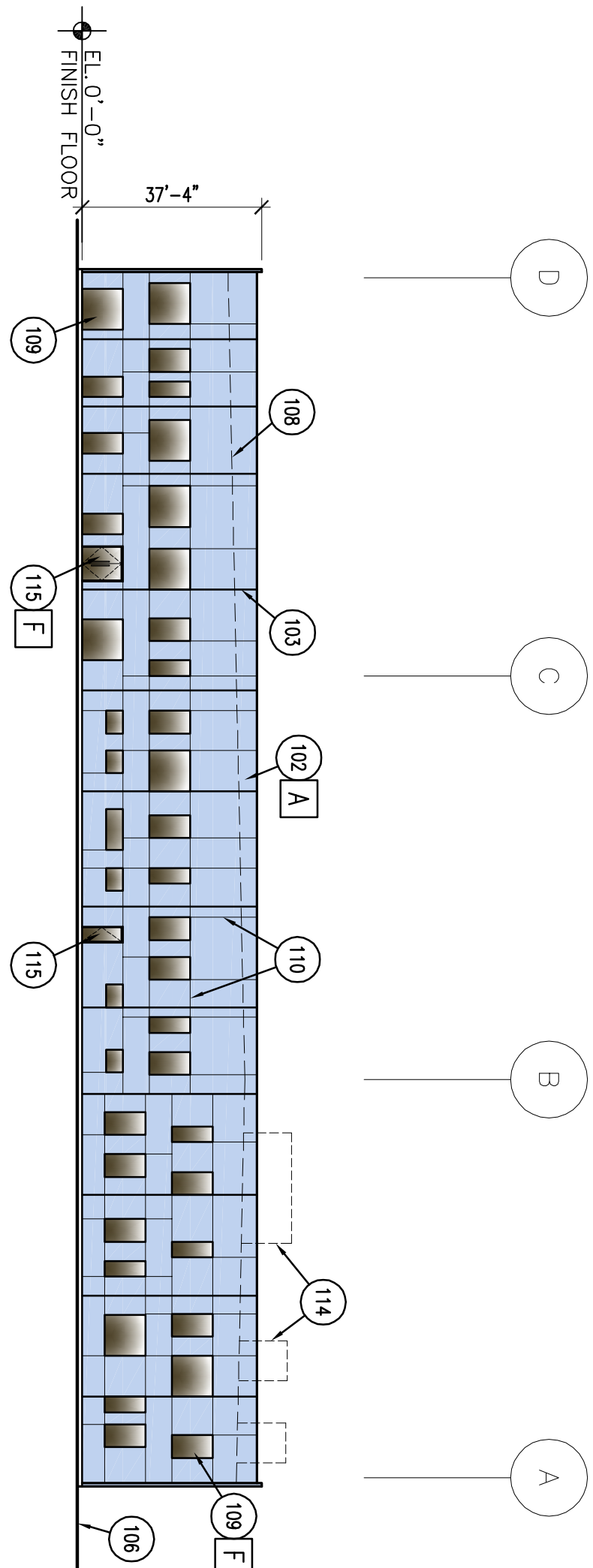
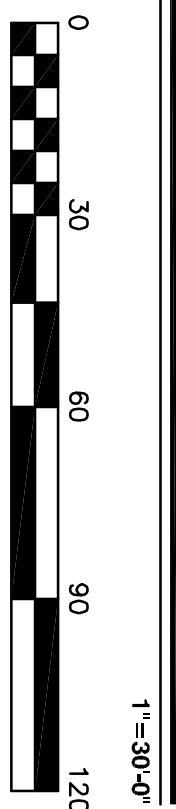
Howard S. Wright
Constructors
RIOGLASS SOLAR FACILITY
SURPRISE, ARIZONA

Revisions
SITE PLAN
SUBMITTAL
12/09/10

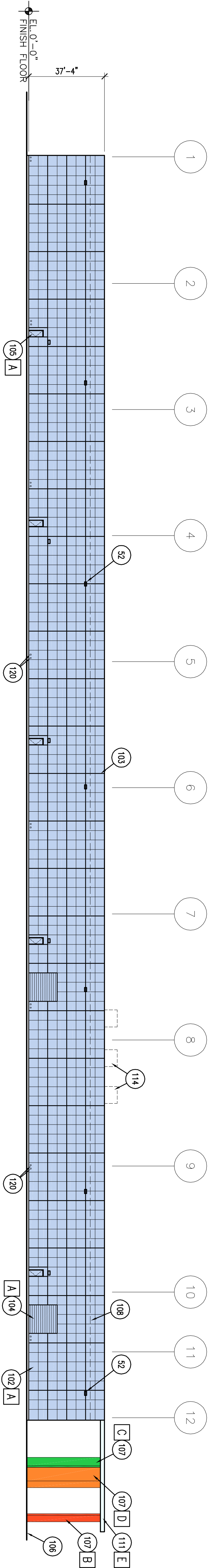
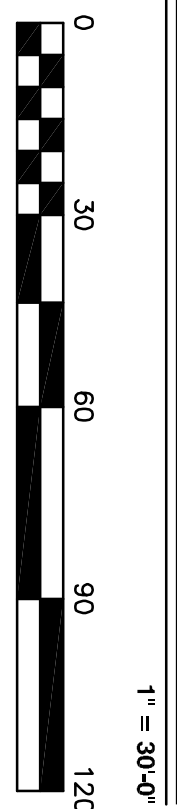
EXTERIOR FINISH SCHEDULE

- A TILE PANEL AND DOORS
DUNN EDWARDS - DE6376 LOOKING GLASS
B RED (FOR COLOR ONLY)
C GREEN (FOR COLOR ONLY)
D RED-2 (FOR COLOR ONLY)
E ROOF FASCIA
DUNN EDWARDS - DEW341 - SWISS WHITE
F WINDOW FRAMES
ANODIZED ALUMINUM, CLEAR FINISH

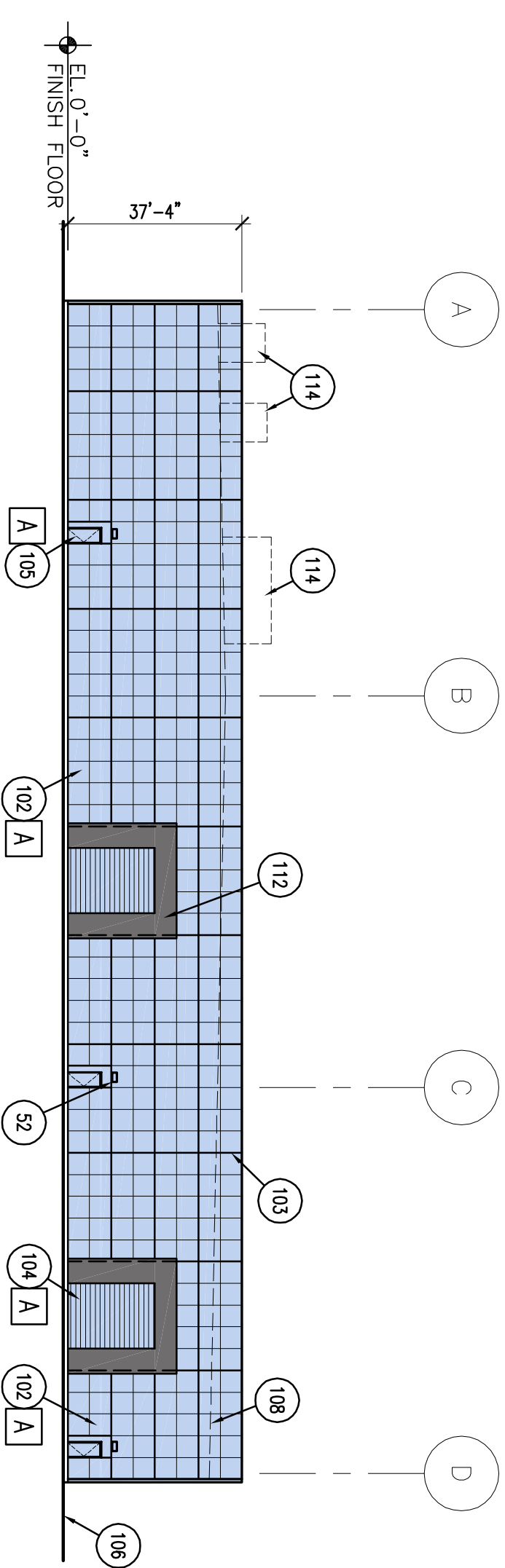
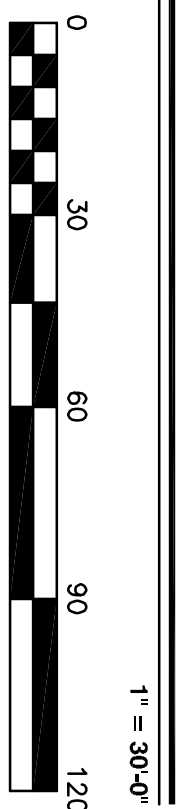
1 NORTH ELEVATION



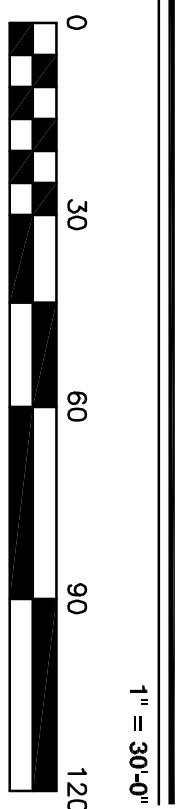
2 EAST ELEVATION



3 SOUTH ELEVATION



4 WEST ELEVATION

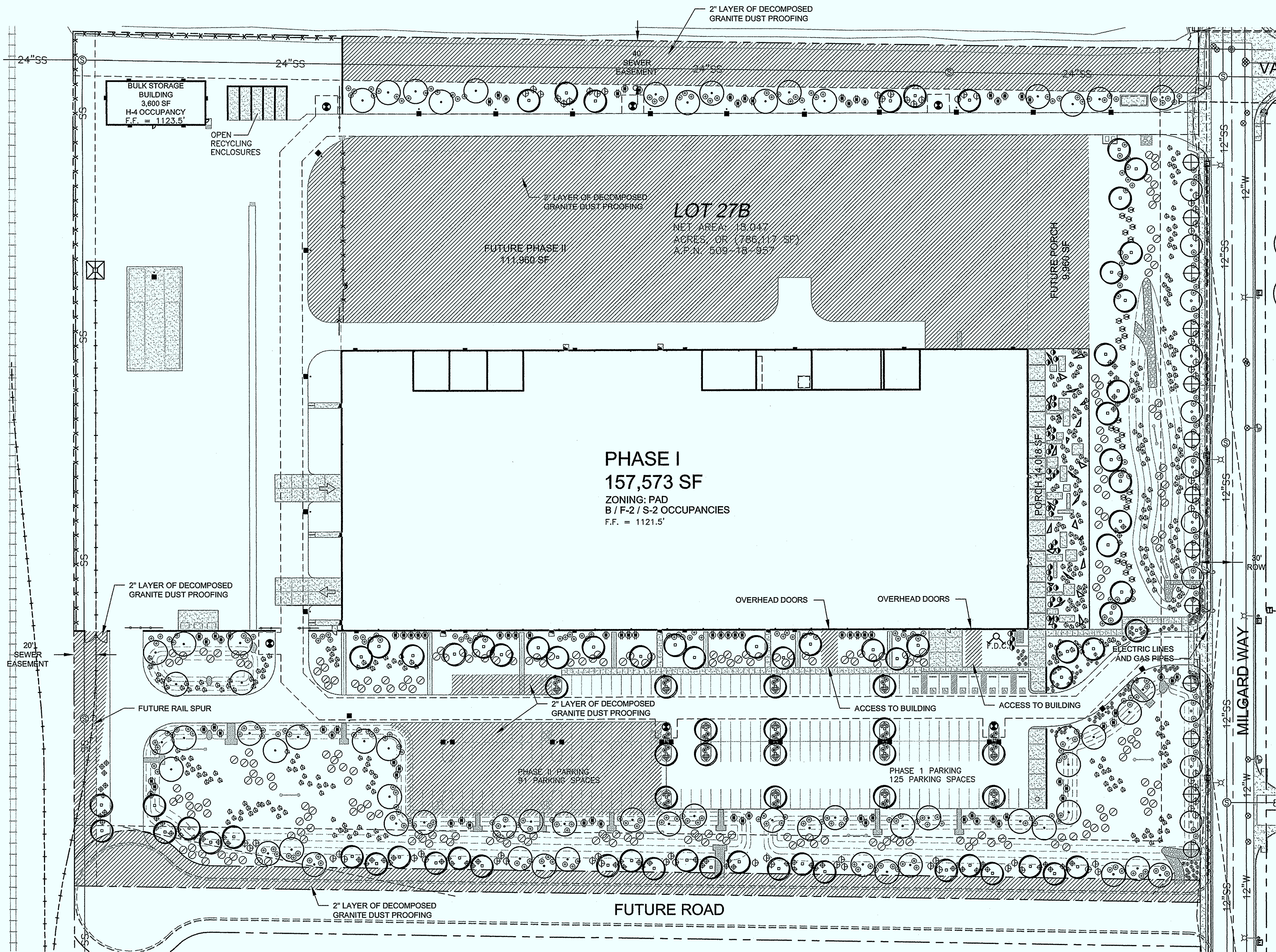


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MANUFACTURING
BUILDING EXTERIOR
ELEVATIONS

A-210

NOTICE OF EXTENDED CERTIFICATION AND APPROVAL PERIOD PROVISION: THIS CONTRACT ALLOWS THE OWNER TO CERTIFY AND APPROVE BILLINGS AND ESTIMATES WITHIN 30 DAYS AFTER THE BILLINGS AND ESTIMATES ARE RECEIVED FROM THE CONTRACTOR

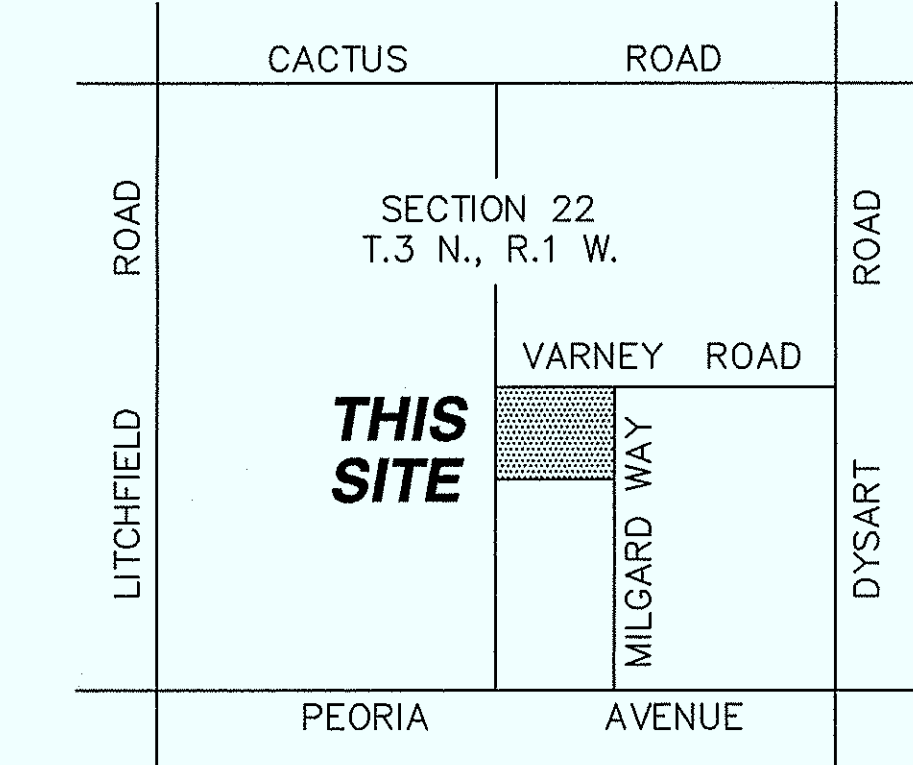


PLANT SCHEDULE

SYMBOL	BOTANICAL/COMMON NAME	SIZE/CLPR	QTY.	REMARKS
TREES				
	ACACIA ANEURA	24" box	-	STAKE AS REQUIRED
	MULGA	36" box	-	STAKE AS REQUIRED
	ACACIA SALICINA	24" box	-	STAKE AS REQUIRED
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	PROSOPIS CHILENSIS 'THORNLESS'	24" box	-	STAKE AS REQUIRED
	THORNLESS CHILEAN MESQUITE	36" box	-	STAKE AS REQUIRED
SHRUBS				
	BOUGAINVILLEA S. "BARBARA KARST"	5 GAL.	-	1 GPH EMITTER
	BARBARA KARST BOUGAINVILLEA	5 GAL.	-	1 GPH EMITTER
	CAESALPINIA PULCHERRIMA	5 GAL.	-	1 GPH EMITTER
	RED BIRD OF PARADISE	5 GAL.	-	1 GPH EMITTER
	CALLIANDRA CALIFORNICA	5 GAL.	-	1 GPH EMITTER
	RED FAIRY DUSTER	5 GAL.	-	1 GPH EMITTER
	CASSIA NEMOPHILA	5 GAL.	-	1 GPH EMITTER
	DESERT CASSIA	5 GAL.	-	1 GPH EMITTER
	JUSTICIA CALIFORNICA	5 GAL.	-	1 GPH EMITTER
	CHUPAROSA	5 GAL.	-	1 GPH EMITTER
	JUSTICIA SPICIGERA	5 GAL.	-	1 GPH EMITTER
	MEXICAN HONEYSUCKLE	5 GAL.	-	1 GPH EMITTER
	LEUCOPHYLLUM LANGMANIAE 'RIO BRAVO'™	5 GAL.	-	1 GPH EMITTER
	RIO BRAVO SAGE	5 GAL.	-	1 GPH EMITTER
	LEUCOPHYLLUM ZYGOPHYLLUM 'CIMARRON'™	5 GAL.	-	1 GPH EMITTER
	CIMARRON SAGE	5 GAL.	-	1 GPH EMITTER
	RUELLIA PENINSULARIS	5 GAL.	-	1 GPH EMITTER
	BAJA RUELLIA	5 GAL.	-	1 GPH EMITTER
	TECOMA SPP.	5 GAL.	-	1 GPH EMITTER
	"ORANGE JUBILEE"	5 GAL.	-	1 GPH EMITTER
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	N.C.N.	5 GAL.	-	.5 GPH EMITTER
	AGAVE GEMINIFLORA	5 GAL.	-	.5 GPH EMITTER
	TWIN-FLOWERED AGAVE	5 GAL.	-	1 GPH EMITTER
	ASCLEPIAS SUBULATA	5 GAL.	-	1 GPH EMITTER
	DESERT MILKWEED	5 GAL.	-	1 GPH EMITTER
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	MUHLENBERGIA CAPILARIS 'REGAL MIST'	5 GAL.	-	1 GPH EMITTER
	REGAL MIST DEER GRASS	5 GAL.	-	1 GPH EMITTER
GROUND COVER				
	ACACIA REDOLENS 'LOW BOY'	1 GAL.	-	1 GPH EMITTER
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	LANTANA SPP.	1 GAL.	-	1 GPH EMITTER
	"NEW GOLD" LANTANA	1 GAL.	-	1 GPH EMITTER
	LANTANA MONTEVIDENSIS	1 GAL.	-	1 GPH EMITTER
	PURPLE TRAILING LANTANA	1 GAL.	-	1 GPH EMITTER
MATERIAL				
	DECOMPOSED GRANITE	1/2" SCREENED	-	2" DEPTH ALL LANDSCAPE AREAS
	"COLOR"		-	

NOTES:
1) TREE HEIGHTS AND CALIPERS WILL COMPLY WITH "ARIZONA NURSERY ASSOCIATION SPECIFICATIONS" FOR THAT TYPE AND SIZE OF TREE.
2) LANDSCAPE TO BE WATERED BY AN UNDERGROUND AUTOMATIC IRRIGATION SYSTEM.

LANDSCAPE CALCULATIONS
25% LANDSCAPE COVERAGE PROVIDED FOR THIS PROJECT



VICINITY MAP

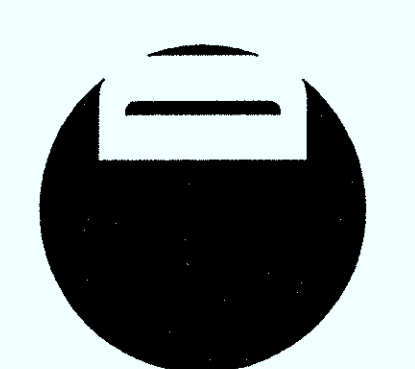
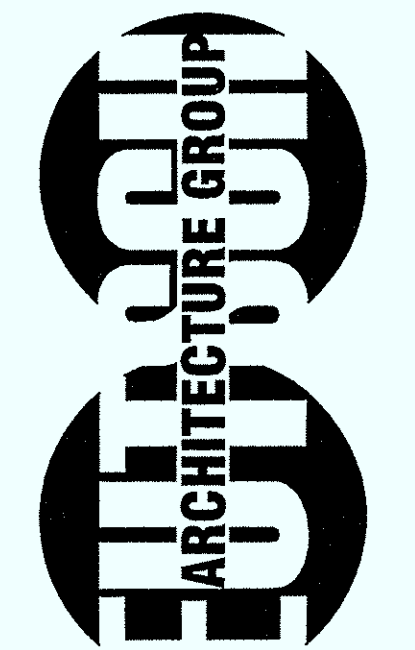
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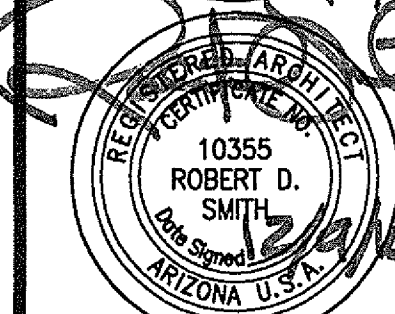
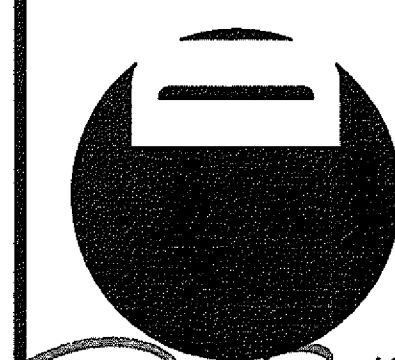
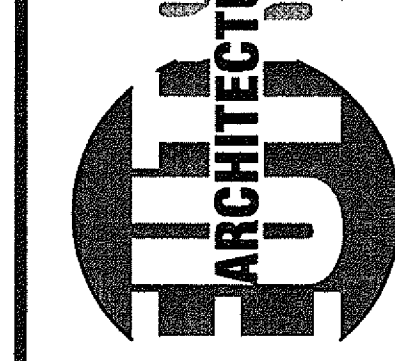
RIOGLASS SOLAR FACILITY
SURPRISE, ARIZONA

Revisions	
SITE PLAN	12/09/10
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EXPIRES ON 6/30/13

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602-840-2929 F
602-840-6646 FHoward S. Wright
Constructors
R/O RIOGLASS SOLAR FACILITY
SURPRISE, ARIZONA

NOTES: ALL CONSTRUCTION AND APPROVALS ARE THE OWNER'S RESPONSIBILITY. ALL APPROVED BUILDINGS AND ESTIMATES WITHIN 30 DAYS AFTER THE BUILDING AND ESTIMATES ARE REQUIRED FROM THE CONTRACTOR.

Revisions

SITE PLAN 12/09/10
SUBMITTAL

PROJECT NO: 09190.00

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OVERALL SITE PLAN

AS-110

KEYNOTES

- 3'-0" HIGH CMU SCREEN WALL.
- 3-BIN REFUSE CONCRETE PAD.
- 8'-0" HIGH CHAINLINK FENCE.
- 8'-0" HIGH CMU WALL.
- FLAGPOLE AND BASE.
- CONCRETE SIDEWALK.
- MANUAL SLIDING CHAINLINK GATE.
- INDICATES EDGE OF PORCH ROOF ABOVE.
- FUTURE EARTHEN BUMPER FOR RAIL SPUR.
- 8" THICK CONCRETE AT DOCK AREA.
- ACCESSIBLE RAMP WITH 1:12 MAX. SLOPE.
- S.E.S LOCATION.
- ELECTRICAL TRANSFORMER AND CONC. PAD PER POWER COMPANY REQUIREMENTS.
- EXISTING CONC. IRRIGATION DITCH TO BE REMOVED.
- EXISTING BNSF SPUR TRACK.
- FUTURE SPUR TRACK.
- ASPHALT DRIVE - REFER TO CIVIL.
- CONCRETE CURB PER CIVIL.
- LANDSCAPE ISLAND.
- EXISTING CONC. SIDEWALK.
- EXISTING CONC. CURB.
- ACCESSIBLE PARKING STALL - TYP.
- LANDSCAPE AREA.
- SLIDING METAL GATE.
- PROVIDE FIRE DEPARTMENT KNOX BOX PER CITY OF SURPRISE FIRE DEPARTMENT REQUIREMENTS.
- EXISTING STREET LIGHT - TYP.
- EXISTING PROPERTY LINE.
- FIRE DEPARTMENT CONNECTION.
- FIRE HYDRANT LOCATION - TYP.
- PREFABRICATED METAL LOADING DOCKS & RAMP ON CONCRETE PAD.
- BICYCLE PARKING SPACES.
- EXISTING FIRE HYDRANT.
- DRYWELL - TYPICAL REFER TO CIVIL.
- APS METERING CABINET AND CONCRETE PAD PER UTILITY COMPANY REQUIREMENTS.
- WATER LINE EASEMENT - TYPICAL.
- RIP RAP IN CONCRETE SETTING BED - TYP. REFER TO CIVIL DRAWINGS.
- CONC. STUOP - TYPICAL.
- CONCRETE GUTTER - REFER TO CIVIL.
- CATCH BASIN - REFER TO CIVIL.
- 4'-0" WIDE METAL PICKET FENCE MAN GATE.
- 4'-0" WIDE CHAIN LINK MAN GATE. PROVIDE DEADBOLT.
- BOX WITH DOUBLE CYLINDER & SELF CLOSER.
- GLASS COLUMN - TYPICAL.
- CONCRETE PADS - TYPICAL.
- INDICATES 2'-0" WIDE DETECTABLE WARNING PAVERS.
- 4'-0" WIDE CONCRETE SWALE. - REFER TO CIVIL.
- INDICATES FIRE LANE.
- INDICATES FIRE TRUCK TURNING RADIUS COMPLYING WITH AASHTO WB-50 TURNING RADIUS.
- INDICATES ACCESSIBLE ROUTE TO R.O.W (PER IBC SECTION 1104).
- INDICATES LIGHT POLE - TYP. REFER TO ELECTRICAL.
- INDICATES WALL PACK LOCATION TYP. - REFER TO ELECTRICAL.
- INDICATES SITE VISIBILITY TRIANGLE PER CITY OF SURPRISE STANDARDS AND AASHTO STANDARDS.
- DOMESTIC AND IRRIGATION WATER METER LOCATIONS. REFER TO CIVIL AND LANDSCAPE PLANS.
- FIRE RISER LOCATION.
- INDICATES PROPOSED GAS METER LOCATION.

SITE DATA

CURRENT ZONING:

PAD

LOT AREA:

NET: 786,117 SF (18.04 ACRES)

GROSS: 810,012 SF (18.59 ACRES)

LOT COVERAGE:

171,591 SF / 786,117 SF = 22% LOT COVERAGE

LANDSCAPE COVERAGE:

196,529 / 786,117 SF = 25%

BUILDING SETBACKS:

(PER SKYWAY BUSINESS PARK DEV. STANDARDS)

MINIMUM FRONT BUILDING SETBACK = 35'-0"

MIN. SETBACK PROVIDED = 100'-0"

MINIMUM SIDE BUILDING SETBACK = 0'

MINIMUM REAR BUILDING SETBACK = 0'

PARKING CALCULATIONS: (PER CITY OF SURPRISE)

PARKING CALCULATIONS BASED ON GROSS FLOOR AREA

1/1,500 GSF

PHASE I

GROUND FLOOR 157,573 S.F.

2ND FLOOR OFFICE AREA 8,613 S.F.

PORCH AREA 14,018 S.F.

TOTAL AREA 180,204 S.F.

180,204 S.F. / 1,500 = 121 SPACES REQ.

PHASE II

FUTURE PRODUCTION AREA 111,960 S.F.

FUTURE PORCH AREA 9,960 S.F.

TOTAL PHASE II AREA 121,920 S.F.

121,920 S.F. / 1,500 = 82 SPACES REQ.

TOTAL SPACES REQUIRED 203

ACCESSIBLE SPACES REQUIRED 7

PHASE I

STANDARD PARKING SPACES: 117

ACCESSIBLE PARKING SPACES: 8

TOTAL SPACES PROVIDED PHASE I 125

FUTURE PHASE II PARKING SPACES

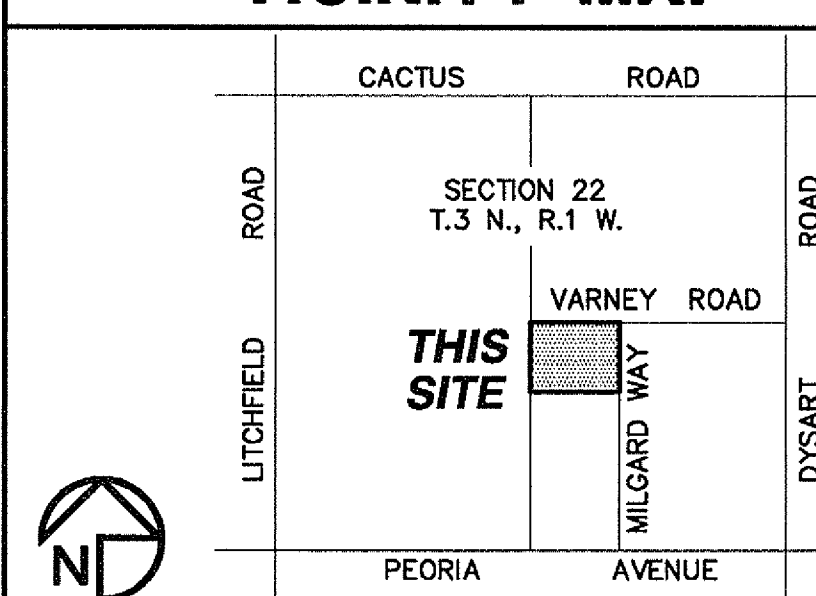
TOTAL PLANNED PARKING 216

BICYCLE SPACES REQUIRED = 1/20 PARKING SPACES

216 / 20 = 11 BICYCLE SPACES REQUIRED

12 BICYCLE SPACES PROVIDED

VICINITY MAP



ZONING: R1-43

501-43-037
ZONING: R1-43

ZONING: I-1

ZONING: I-2

ZONING: I-1

VARNEY ROAD

ZONING: PAD

ZONING: PAD

ZONING: PAD

ZONING: PAD

ZONING: PAD

ZONING: PAD

ZONING: PAD

ZONING: PAD

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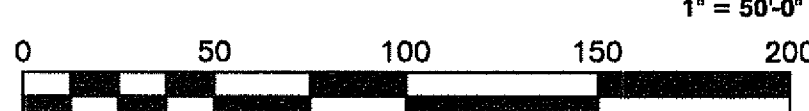
ZONING: PAD

ZONING: PAD

LOT 27B
NET AREA: 18,047
ACRES, OR (786,117 SF)
A.P.N. 509-18-957PHASE I - MFR. BLDG.
157,573 SFZONING: PAD
B / F-2 / S-2 OCCUPANCIES
F.F. = 1121.5'

OVERALL SITE PLAN

SCALE 1" = 50'-0"



ADMINISTRATIVE SITE PLAN APPROVAL

FIRE MARSHALL
CITY ENGINEER
COMMUNITY DEVELOPMENT DIRECTOR

PROJECT TEAM

OWNER:

RIOGLASS SOLAR
12425 N. BELL RD, SUITE 132
SURPRISE, ARIZONA 85378
PHONE: (623) 398-6455
FAX: (623) 398-6755
E-MAIL: G.ARMSTRONG@RIOGLASS.COM
CONTACT: GREG ARMSTRONG

CIVIL ENGINEER:

HUNTER ENGINEERING
10450 N. 74TH STREET, SUITE #200
SCOTTSDALE, AZ 85258
PHONE: 480-991-3985
FAX: 480-991-3986
E-MAIL: jearley@hunterengineeringpc.com
CONTACT: JAKE EARLEY

LANDSCAPE ARCHITECT

GILMORE PARSONS LAND DESIGN
2211 N. 7TH STREET
PHOENIX, AZ 85006
PHONE: 602-268-6888
FAX: 602-268-5107
E-MAIL: sparsong@gilmore.com
CONTACT: STEVE PARSONS

ARCHITECT

DEUTSCH ARCHITECTURE GROUP
4800 E. INDIAN SCHOOL RD.
PHOENIX, AZ 85016
PHONE: (602) 253-6112
FAX: (602) 253-6112
E-MAIL: bsmith@2929.com
CONTACT: BOB SMITH

STRUCTURAL CONSULTANT

PK ASSOCIATES LLS
7434 EAST McDOWELL ROAD
SCOTTSDALE, AZ 85250
PHONE: (480) 922-8854
FAX: (480) 922-3739
E-MAIL: CCHAU@PKSTRUCTURAL.COM
CONTACT: CHRISTA CHAU

ELECTRICAL CONSULTANT

AIR-ZONA SYSTEMS ENGINEERING
4527N. 16TH STREET, SUITE #200
PHOENIX, AZ 85018
PHONE: 602-287-0300 X 216
FAX: 602-287-0800
E-MAIL: cholloway@air-zona.com
CONTACT: DENISE HOLLOWAY

GENERAL CONTRACTOR:

HOWARD S. WRIGHT CONSTRUCTORS, LP
455 N 3RD ST, SUITE 280-A
PHOENIX, AZ 85016
PHONE: (602) 253-6112
FAX: (602) 253-6374
E-MAIL: HULSTON@HSCWC.COM
CONTACT: STEPHEN HULSTON

PROJECT CODE DATA

PROJECT:

RIOGLASS SOLAR FACILITY
SWO OF MILGARD WAY & VARNEY ROAD
SURPRISE, ARIZONA

GOVERNING MUNICIPALITY:

CITY OF SURPRISE

APPLICABLE CODES:

2006 INTERNATIONAL BUILDING CODES
2006 INTERNATIONAL MECHANICAL CODE
2006 INTERNATIONAL PLUMBING CODE
2006 INTERNATIONAL ELECTRICAL CODE
2005 NATIONAL ELECTRICAL CODE
2006 INTERNATIONAL FIRE CODE
2006 INTERNATIONAL ENERGY CONSERVATION CODE
A.D.A.G., IBC CHAPTER 11, ANSI
CABO A117.1992

PROJECT DESCRIPTION:

NEW MANUFACTURING FACILITY FOR PARABOLIC MIRRORS
TO BE USED IN SOLAR COLLECTORS WHICH INCLUDES A
SINGLE STORY MANUFACTURING AREA, 2-STORY OFFICE
SUPPORT AREA, AND A DETACHED SINGLE STORY BULK
STORAGE BUILDING.

OCCUPANCY(IES):

F-2 / S-2 MANUFACTURING AREA 149,129 S.F.
B OFFICE AREA 16,886 S.F.
H-4 BULK STORAGE BLDG. 3,600 S.F.

CONSTRUCTION TYPE:

V-B

OCCUPANCY SEPARATION WALLS:

NOT REQUIRED. BUILDING CLASSIFIED AS NONSEPARATED
(PER SECT. 508.3.2)

GROSS BUILDING AREA:

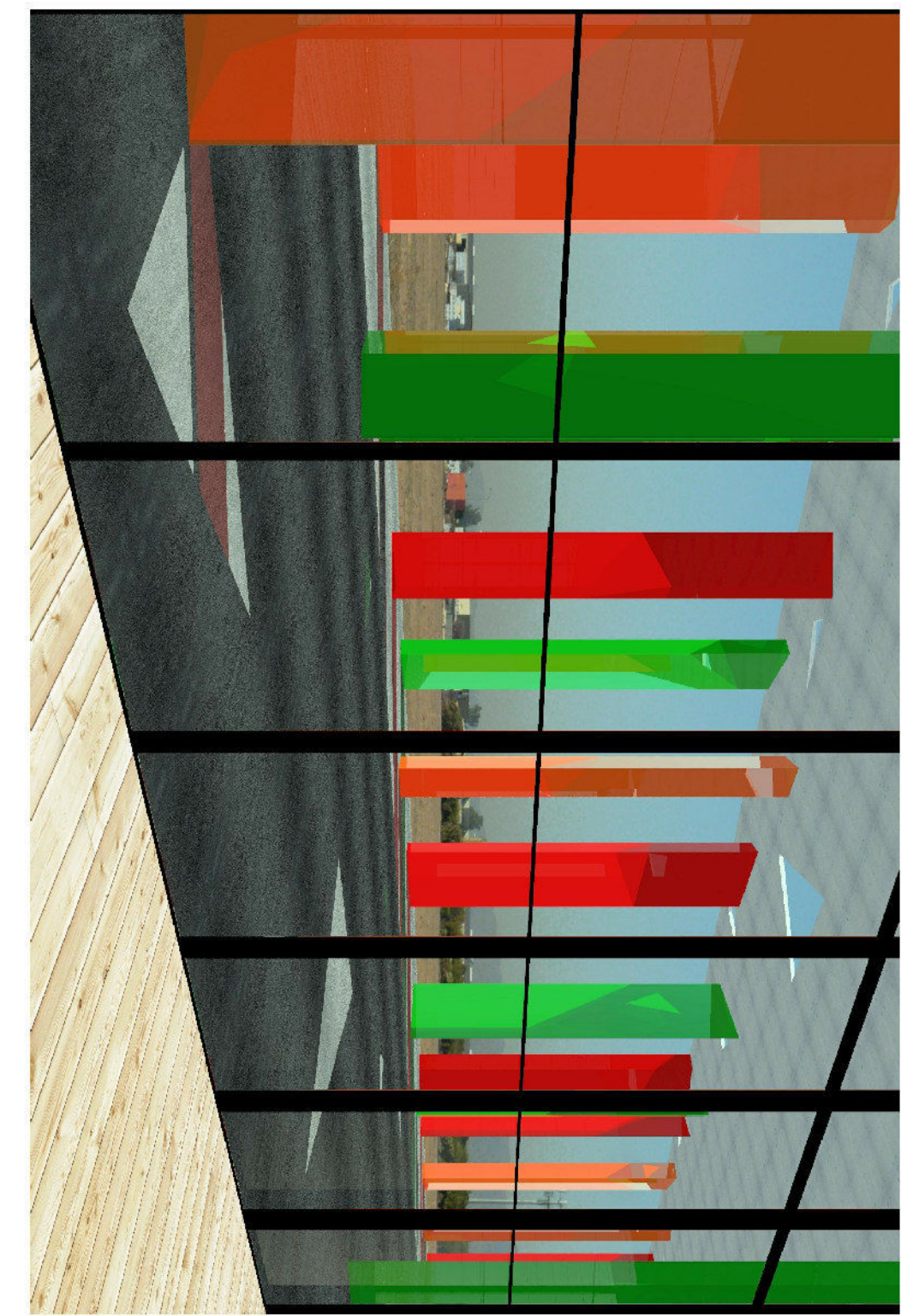
1ST FLOOR MANUFACTURING AREA 148,960 S.F.
1ST FLOOR OFFICE AREA 8,613 S.F.
1ST FLOOR PORCH AREA 14,018 S.F.
TOTAL 1ST FLOOR AREA 171,591 S.F.
2ND FLOOR OFFICE AREA 8,613 S.F.
TOTAL AREA (MFR. BLDG.): 180,204 S.F.
TOTAL AREA (BULK STORAGE BLDG.): 3,600 S.F.

HEIGHT AND AREA ANALYSIS:

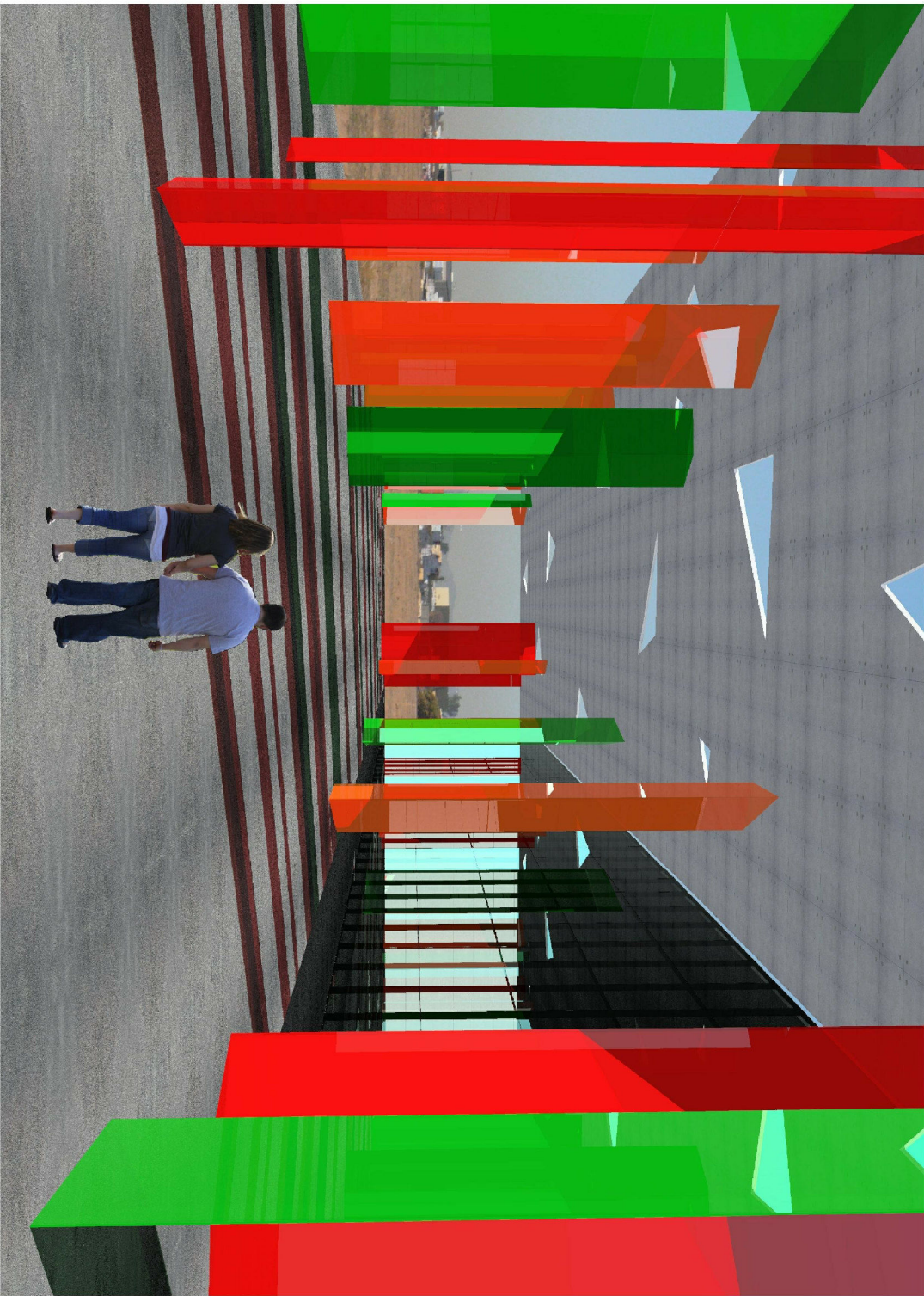
(MFR. BLDG.) UNLIMITED AREA BUILDING (PER SECT.
507.4) 60'-0" YARDS PROVIDED AT ALL SIDES
(BULK STORAGE BLDG.) 6,500 S.F. PER TABLE 503(MFR. BLDG.) # OF STORIES ALLOWED
3 STORIES (PER SECT. 504.2)
40' (PER TABLE 503 W/ 20' INCREASE (PER SECT.
504.2)85'-0" (PER SKYWAY BUSINESS PARK DEV.
STANDARDS)(BULK STORAGE BLDG.) # OF STORIES ALLOWED
2 STORIES (PER TABLE 503)2-STORY PROPOSED (MFR. BLDG.) 37'-4"
1-STORY PROPOSED (BULK STORAGE BLDG.) 24'-0"



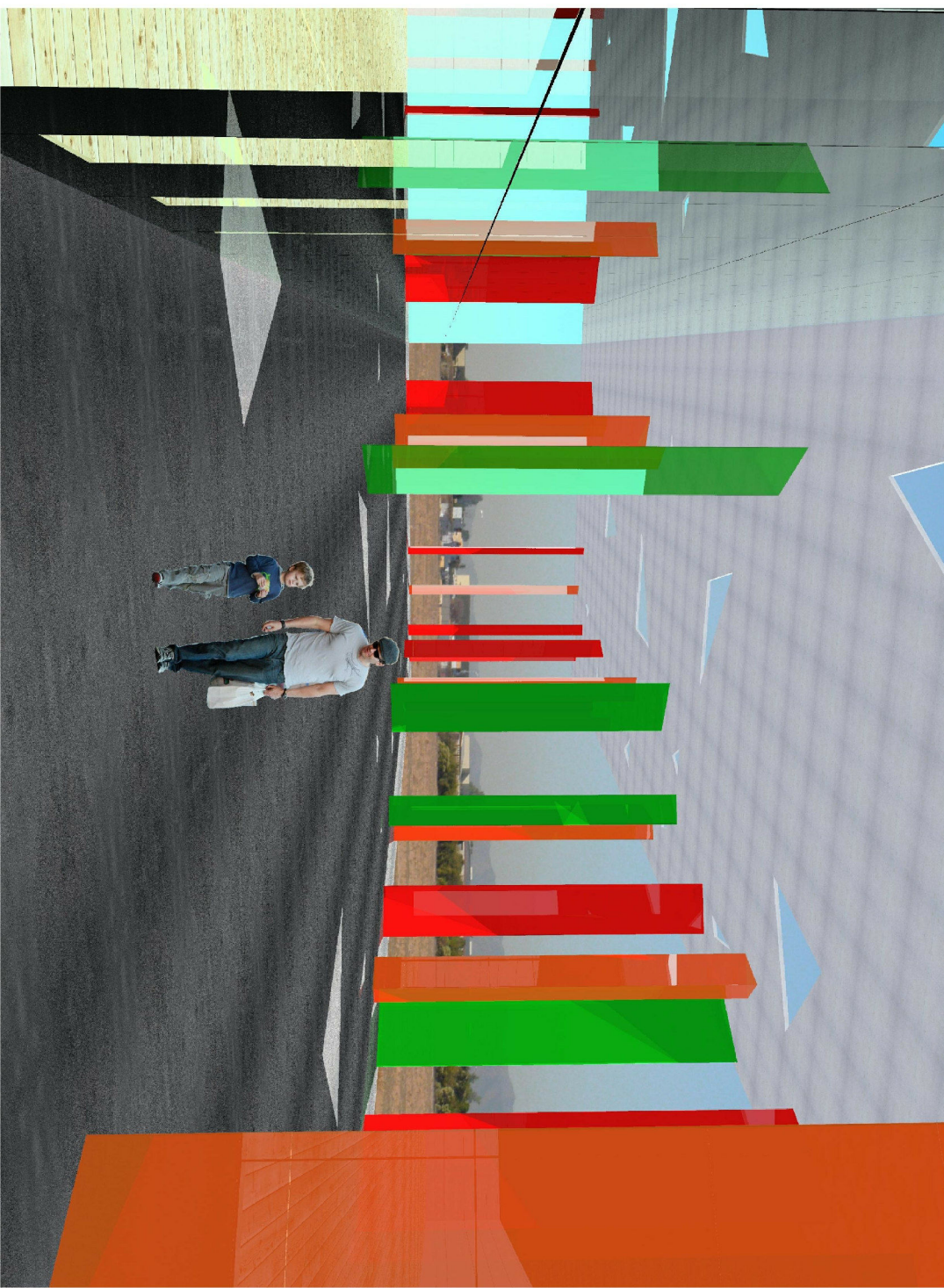
1
SCALE
PERSPECTIVE LOOKING SOUTHWEST
N.T.S.



4
SCALE
PERSPECTIVE LOOKING SOUTHEAST FROM INSIDE
N.T.S.



3
SCALE
PERSPECTIVE LOOKING SOUTH
N.T.S.



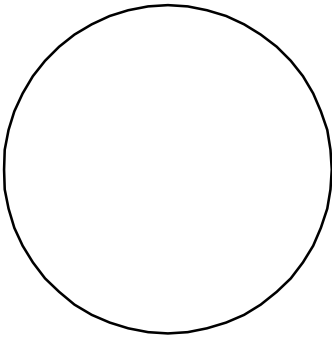
2
SCALE
PERSPECTIVE LOOKING NORTH
N.T.S.

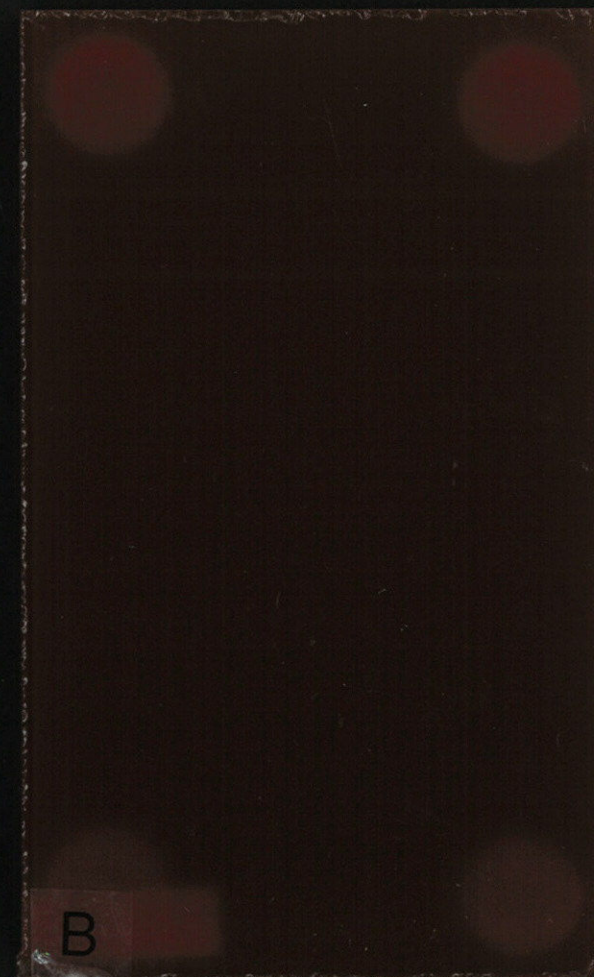
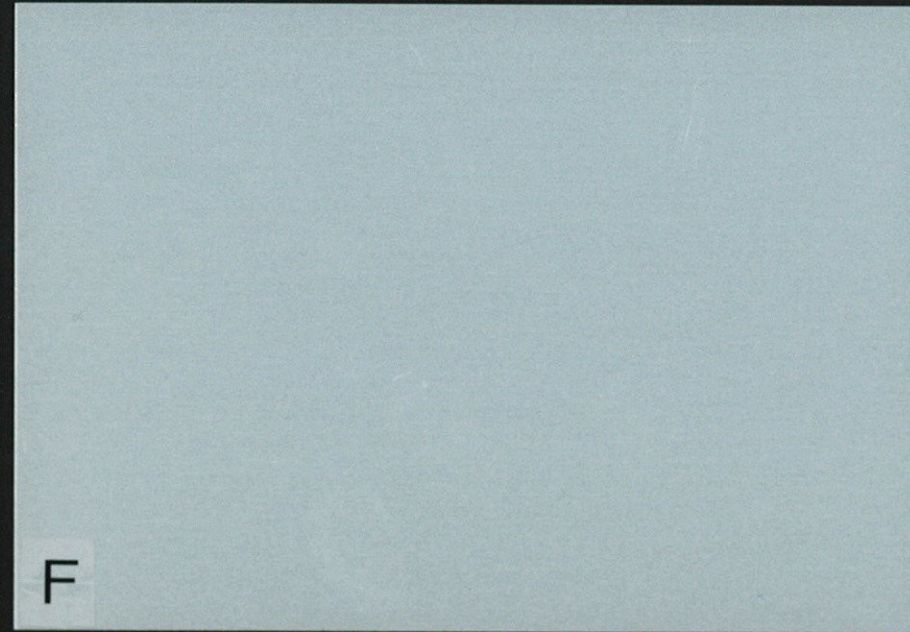
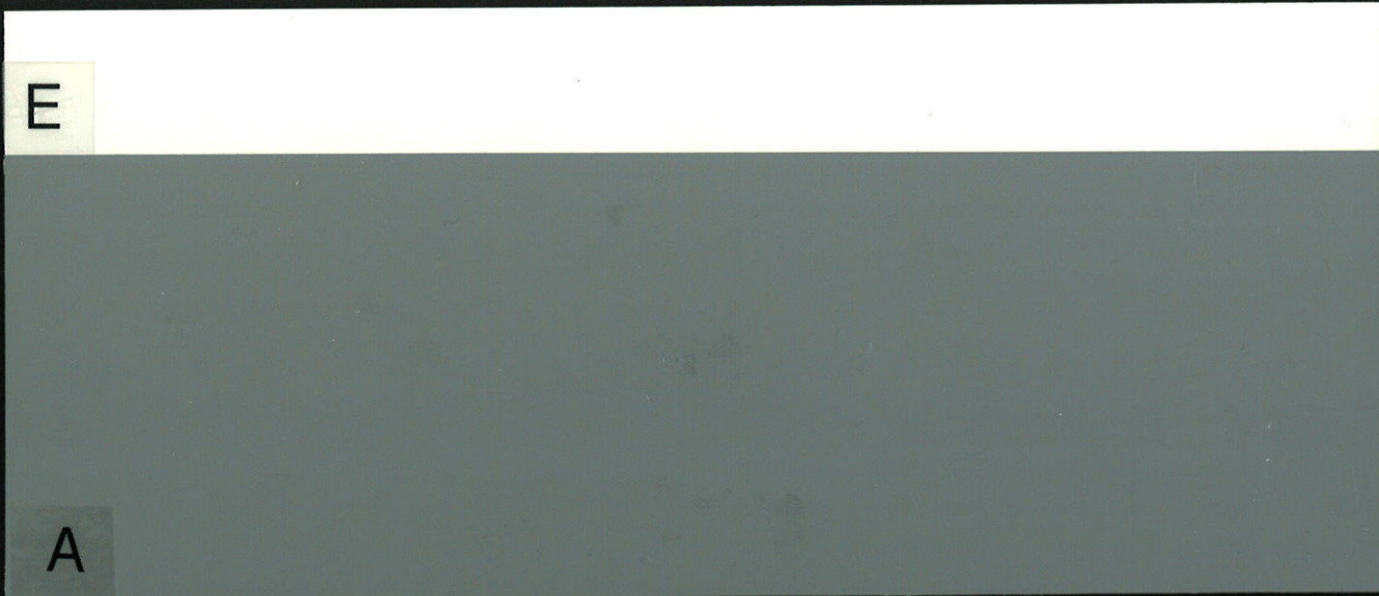
KEYNOTES

- 52. INDICATES WALL PACK LOCATION TYP. – REFER TO ELECTRICAL.
- 105. PAINTED HOLLOW METAL DOOR AND FRAME – TYP.
- 108. LINE OF ROOF-SCOE CMU.
- 116. CONTINUOUS METAL FASCIA.
- 117. STAR AND LANDING.
- 118. METAL HANDRAIL/GUARDRAIL. PAINTED TO MATCH BUILDING.
- 119. DARTLIGHT ROOF AND OVERFLOW DRAIN AT WALL.
- 120.

EXTERIOR FINISH SCHEDULE

- A. TILT PANEL AND DOORS
DUNN EDWARDS – DE6376 LOOKING GLASS
- B. RED (FOR COLOR ONLY)
- C. GREEN (FOR COLOR ONLY)
- D. RED-2 (FOR COLOR ONLY)
- E. ROOF FASCIA
DUNN EDWARDS – DEW341 – SWISS WHITE
- F. WINDOW FRAMES
ANODIZED ALUMINUM, CLEAR FINISH





EXTERIOR FINISH SCHEDULE	
A	TILT PANEL AND DOORS DUNN EDWARDS -- DE6376 LOOKING GLASS
B	RED (FOR COLOR ONLY)
C	GREEN (FOR COLOR ONLY)
D	RED-2 (FOR COLOR ONLY)
E	ROOF FASCIA DUNN EDWARDS -- DEW341 -- SWISS WHITE
F	WINDOW FRAMES ANODIZED ALUMINUM, CLEAR FINISH

RIOGLASS SOLAR FACILITY

SITE PLAN DESIGN REVIEW
PROJECT #: 09190.00

EXTERIOR FINISH SELECTION
DECEMBER 2010



2929.COM

Memorandum

To: Adam Copeland, Planner II
Through: Scott McCarty, Chief Financial Officer
From: Lindsey Duncan, Senior Financial Analyst
Date: December 28, 2010
Re: FS10-266 Rio Glass Solar
Economic Impact Analysis

An economic impact analysis has been conducted utilizing data provided by the applicant. Fee estimates are based on data provided by the applicant and are subject to final project specifications. The data provided assumes phase I construction of a parabolic mirror manufacturing facility located at the southwest corner of Varney Road and Milgard Avenue. The completed facility will be approximately 157,000 square feet.

Operating Impacts

Based on the operating cost information provided, the net financial impact to the city of Surprise is approximately \$96,000 annually (following the year of construction) with annual revenues of \$121,000 and expenses of \$25,000.

In the year of construction, operating fund revenues are estimated at approximately \$443,900 and expenses are estimated at approximately \$159,700. City funded infrastructure improvements and city payment of development fees amount to \$1,155,000. The net impact in the year of construction with operating revenue, expenses, and city payments is negative at approximately \$870,800 which is recovered via the \$96,000 net annual impact in 12 years.

Utility Impacts

The costs of providing water and wastewater services to the public are recovered through user fees. Annual revenues are estimated at approximately \$99,000.

Development Fees

Development fees are one-time payments intended to recover the proportionate share of costs incurred for public facilities needed to accommodate new development. In accordance with the fee schedules established by the 2006 development fee study prepared by TischlerBise, the impact fees will be approximately \$260,000 and will pay for the development's fair share of growth.



CITY OF SURPRISE
Boards and Commissions

January 11, 2011 @ 6:00:00 PM

[Back](#) [Print](#)

Board Meeting Date:	January 11, 2011	Contact Person:	Chris Boyd, Community & Economic Development
Submitting Department:	CD Boards and Commissions	District:	Citywide
Staff Recommendations:	No Action		

Consent	Regular	Public Hearing	Report/Discussion
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Agenda Wording:

Discussion on a proposed Text Amendment for the Commission's consideration to address the recent passing of Proposition 203, which allows the cultivation, distribution, and use of marijuana for medicinal purposes.

Motion:

Discussion Only

Background:

On November 2, 2010 Arizona voters were asked to consider Proposition 203. Although the initiative does allow for medical marijuana, it also provides local jurisdictions the opportunity to enact reasonable zoning regulations.

Financial Impact Statement:

N/A

ATTACHMENTS:

Click to download

- ☐ [Staff Report](#)
 - ☐ [ARS Amended Title 36](#)
 - ☐ [CAPCA White Paper](#)
 - ☐ [DRAFT Text Amendment](#)
-

External Attachment Links:

Meeting Requirements:

Powerpoint x Video White Board Other x

Presentation Speaker Names (spelling and titles for TV captions):

Chris Boyd, Assistant Director, Community & Economic Development



COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

Date: January 11, 2011

To: Planning and Zoning Commission

From: Jeffrey J. Mihelich, Community & Economic Development Director
Chris Boyd, Community & Economic Development Assistant Director

Re: **FS10-274, SUDC Text Amendment for Medical Marijuana**

Introduction

Attached is a proposed Text Amendment for the Commission's consideration to address the recent passing of Proposition 203, which allows the cultivation, distribution, and use of marijuana for medicinal purposes. Also attached are Proposition 203 and a White Paper on Marijuana Dispensaries by the California Police Chiefs Association's Task Force on Marijuana Dispensaries.

Background

On November 2, 2010 Arizona voters were asked to consider Proposition 203, which would allow the cultivation, distribution, and use of marijuana for medicinal purposes. This measure was closely contested and the outcome was not decided until nearly two weeks after the election. The final margin of votes was 4,340 from a total of 1.6 million. Although the initiative does allow for medical marijuana, it also provides local jurisdictions the opportunity to enact reasonable zoning regulations.

Staff Comments

The proposition creates five components to be addressed by the proposed Text Amendment:

- Dispensary – A facility that acquires, possesses, cultivates, manufactures, delivers, sells, or dispenses medical marijuana or related supplies.
- Dispensary Off-Site Cultivation Center – A facility that cultivates marijuana for a dispensary.
- Infusion Facility – A facility which incorporates medical marijuana by the means of cooking, blending, or other means into consumable goods.
- Designated Caregiver Cultivation Location – A facility to cultivate marijuana not to exceed 50 square feet where a designated caregiver cultivates marijuana.

- Qualifying Patient Cultivation Location – A facility to cultivate marijuana not to exceed 50 square feet where a qualifying patient cultivates marijuana.

With each of these components the proposed Text Amendment addresses three factors:

- Zoning Designations – Which districts would these uses be allowed.
- Separation Requirements – What uses are either incompatible or need protection and what should those distances be.
- Facility and Operation Requirements – Size of facilities, security, operational hours, signage.

Recommendation

This item has been submitted for discussion and no action is necessary.

Attachment

1. Proposition 203 Amending Title 36, Arizona Revised Statutes.
2. White Paper on Marijuana Dispensaries by the California Police Chiefs Association's Task Force on Marijuana Dispensaries.
3. SUDC Text Amendment for Medical Marijuana.

**AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER
28.1; AMENDING SECTION 43-1201, ARIZONA**

REVISED STATUTES; RELATING TO THE MEDICAL USE OF MARIJUANA

Section 1 - Title

This act may be cited as the "Arizona Medical Marijuana Act."

Section 2 - Findings

The People of the State of Arizona find and declare the following:

- A. Marijuana's recorded use as a medicine goes back nearly 5,000 years, and modern medical research has confirmed beneficial uses for marijuana in treating or alleviating the pain, nausea and other symptoms associated with a variety of debilitating medical conditions, including cancer, multiple sclerosis and HIV/AIDS, as found by the National Academy of Sciences' Institute of Medicine in March 1999.
- B. Studies published since the 1999 Institute of Medicine report have continued to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions. These include relief of neuropathic pain caused by multiple sclerosis, HIV/AIDS and other illnesses that often fail to respond to conventional treatments and relief of nausea, vomiting and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens.
- C. Marijuana has many currently accepted medical uses in the United States, having been recommended by thousands of licensed physicians to at least 260,000 patients in the states with medical marijuana laws. Marijuana's medical utility has been recognized by a wide range of medical and public health organizations, including the American Academy of HIV Medicine, American College of Physicians, American Nurses Association, American Public Health Association, Leukemia & Lymphoma Society and many others.
- D. Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marijuana arrests in the U.S. are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use marijuana.
- E. Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island and Washington have removed state-level criminal penalties for the medical use and cultivation of marijuana. Arizona joins in this effort for the health and welfare of its citizens.
- F. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state of Arizona in violation of federal law.

- G. State law should make a distinction between the medical and nonmedical uses of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana.

Section 3 - Title 36, Arizona Revised Statutes, is amended by adding Chapter 28.1 to read:

CHAPTER 28.1

ARIZONA MEDICAL MARIJUANA ACT

36-2801 - Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ALLOWABLE AMOUNT OF MARIJUANA"
 - (a) WITH RESPECT TO A QUALIFYING PATIENT, THE "ALLOWABLE AMOUNT OF MARIJUANA" MEANS:
 - i. TWO-AND-ONE-HALF OUNCES OF USABLE MARIJUANA; AND
 - ii. IF THE QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD STATES THAT THE QUALIFYING PATIENT IS AUTHORIZED TO CULTIVATE MARIJUANA, TWELVE MARIJUANA PLANTS CONTAINED IN AN ENCLOSED, LOCKED FACILITY EXCEPT THAT THE PLANTS ARE NOT REQUIRED TO BE IN AN ENCLOSED, LOCKED FACILITY IF THE PLANTS ARE BEING TRANSPORTED BECAUSE THE QUALIFYING PATIENT IS MOVING.
 - (b) WITH RESPECT TO A DESIGNATED CAREGIVER, THE "ALLOWABLE AMOUNT OF MARIJUANA" FOR EACH PATIENT ASSISTED BY THE DESIGNATED CAREGIVER UNDER THIS CHAPTER MEANS:
 - i. TWO-AND-ONE-HALF OUNCES OF USABLE MARIJUANA; AND
 - ii. IF THE DESIGNATED CAREGIVER'S REGISTRY IDENTIFICATION CARD PROVIDES THAT THE DESIGNATED CAREGIVER IS AUTHORIZED TO CULTIVATE MARIJUANA, TWELVE MARIJUANA PLANTS CONTAINED IN AN ENCLOSED, LOCKED FACILITY EXCEPT THAT THE PLANTS ARE NOT REQUIRED TO BE IN AN ENCLOSED, LOCKED FACILITY IF THE PLANTS ARE BEING TRANSPORTED BECAUSE THE DESIGNATED CAREGIVER IS MOVING.
 - (c) MARIJUANA THAT IS INCIDENTAL TO MEDICAL USE, BUT IS NOT USABLE MARIJUANA AS DEFINED IN THIS CHAPTER, SHALL NOT BE COUNTED TOWARD A QUALIFYING PATIENT'S OR DESIGNATED CAREGIVER'S ALLOWABLE AMOUNT OF MARIJUANA.
2. "CARDHOLDER" MEANS A QUALIFYING PATIENT, A DESIGNATED CAREGIVER OR A NONPROFIT MEDICAL MARIJUANA DISPENSARY

AGENT WHO HAS BEEN ISSUED AND POSSESSES A VALID REGISTRY IDENTIFICATION CARD.

3. "DEBILITATING MEDICAL CONDITION" MEANS ONE OR MORE OF THE FOLLOWING:
 - (a) CANCER, GLAUCOMA, POSITIVE STATUS FOR HUMAN IMMUNODEFICIENCY VIRUS, ACQUIRED IMMUNE DEFICIENCY SYNDROME, HEPATITIS C, AMYOTROPHIC LATERAL SCLEROSIS, CROHN'S DISEASE, AGITATION OF ALZHEIMER'S DISEASE OR THE TREATMENT OF THESE CONDITIONS.
 - (b) A CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION OR ITS TREATMENT THAT PRODUCES ONE OR MORE OF THE FOLLOWING: CACHEXIA OR WASTING SYNDROME; SEVERE AND CHRONIC PAIN; SEVERE NAUSEA; SEIZURES, INCLUDING THOSE CHARACTERISTIC OF EPILEPSY; OR SEVERE AND PERSISTENT MUSCLE SPASMS, INCLUDING THOSE CHARACTERISTIC OF MULTIPLE SCLEROSIS.
 - (c) ANY OTHER MEDICAL CONDITION OR ITS TREATMENT ADDED BY THE DEPARTMENT PURSUANT TO SECTION 36-2801.01.
4. "DEPARTMENT" MEANS THE ARIZONA DEPARTMENT OF HEALTH SERVICES OR ITS SUCCESSOR AGENCY.
5. "DESIGNATED CAREGIVER" MEANS A PERSON WHO:
 - (a) IS AT LEAST TWENTY-ONE YEARS OF AGE.
 - (b) HAS AGREED TO ASSIST WITH A PATIENT'S MEDICAL USE OF MARIJUANA.
 - (c) HAS NOT BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE.
 - (d) ASSISTS NO MORE THAN FIVE QUALIFYING PATIENTS WITH THE MEDICAL USE OF MARIJUANA.
 - (e) MAY RECEIVE REIMBURSEMENT FOR ACTUAL COSTS INCURRED IN ASSISTING A REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA IF THE REGISTERED DESIGNATED CAREGIVER IS CONNECTED TO THE REGISTERED QUALIFYING PATIENT THROUGH THE DEPARTMENT'S REGISTRATION PROCESS. THE DESIGNATED CAREGIVER MAY NOT BE PAID ANY FEE OR COMPENSATION FOR HIS SERVICE AS A CAREGIVER. PAYMENT FOR COSTS UNDER THIS SUBDIVISION SHALL NOT CONSTITUTE AN OFFENSE UNDER TITLE 13, CHAPTER 34 OR UNDER TITLE 36, CHAPTER 27, ARTICLE 4.
6. "ENCLOSED, LOCKED FACILITY" MEANS A CLOSET, ROOM, GREENHOUSE OR OTHER ENCLOSED AREA EQUIPPED WITH LOCKS OR OTHER SECURITY DEVICES THAT PERMIT ACCESS ONLY BY A CARDHOLDER.
7. "EXCLUDED FELONY OFFENSE" MEANS:

- (a) A VIOLENT CRIME AS DEFINED IN SECTION 13-901.03, SUBSECTION B, THAT WAS CLASSIFIED AS A FELONY IN THE JURISDICTION WHERE THE PERSON WAS CONVICTED.
- (b) A VIOLATION OF A STATE OR FEDERAL CONTROLLED SUBSTANCE LAW THAT WAS CLASSIFIED AS A FELONY IN THE JURISDICTION WHERE THE PERSON WAS CONVICTED BUT DOES NOT INCLUDE:
 - i. AN OFFENSE FOR WHICH THE SENTENCE, INCLUDING ANY TERM OF PROBATION, INCARCERATION OR SUPERVISED RELEASE, WAS COMPLETED TEN OR MORE YEARS EARLIER.
 - ii. AN OFFENSE INVOLVING CONDUCT THAT WOULD BE IMMUNE FROM ARREST, PROSECUTION OR PENALTY UNDER SECTION 36-2811 EXCEPT THAT THE CONDUCT OCCURRED BEFORE THE EFFECTIVE DATE OF THIS CHAPTER OR WAS PROSECUTED BY AN AUTHORITY OTHER THAN THE STATE OF ARIZONA.
- 8. "MARIJUANA" MEANS ALL PARTS OF ANY PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, AND THE SEEDS OF SUCH PLANT.
- 9. "MEDICAL USE" MEANS THE ACQUISITION, POSSESSION, CULTIVATION, MANUFACTURE, USE, ADMINISTRATION, DELIVERY, TRANSFER OR TRANSPORTATION OF MARIJUANA OR PARAPHERNALIA RELATING TO THE ADMINISTRATION OF MARIJUANA TO TREAT OR ALLEVIATE A REGISTERED QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE PATIENT'S DEBILITATING MEDICAL CONDITION.
- 10. "NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT" MEANS A PRINCIPAL OFFICER, BOARD MEMBER, EMPLOYEE OR VOLUNTEER OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY WHO IS AT LEAST TWENTY-ONE YEARS OF AGE AND HAS NOT BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE.
- 11. "NONPROFIT MEDICAL MARIJUANA DISPENSARY" MEANS A NOT-FOR-PROFIT ENTITY THAT ACQUIRES, POSSESSES, CULTIVATES, MANUFACTURES, DELIVERS, TRANSFERS, TRANSPORTS, SUPPLIES, SELLS OR DISPENSES MARIJUANA OR RELATED SUPPLIES AND EDUCATIONAL MATERIALS TO CARDHOLDERS. A NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY RECEIVE PAYMENT FOR ALL EXPENSES INCURRED IN ITS OPERATION.
- 12. "PHYSICIAN" MEANS A DOCTOR OF MEDICINE WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE MEDICINE PURSUANT TO TITLE 32, CHAPTER 13 OR ITS SUCCESSOR, A DOCTOR OF OSTEOPATHIC MEDICINE WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE OSTEOPATHIC MEDICINE PURSUANT TO TITLE 32, CHAPTER 17 OR ITS SUCCESSOR, A NATUROPATHIC PHYSICIAN WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE NATUROPATHIC MEDICINE PURSUANT

TO TITLE 32, CHAPTER 14 OR ITS SUCCESSOR OR A HOMEOPATHIC PHYSICIAN WHO HOLDS A VALID AND EXISTING LICENSE TO PRACTICE HOMEOPATHIC MEDICINE PURSUANT TO TITLE 32, CHAPTER 29 OR ITS SUCCESSOR.

13. "QUALIFYING PATIENT" MEANS A PERSON WHO HAS BEEN DIAGNOSED BY A PHYSICIAN AS HAVING A DEBILITATING MEDICAL CONDITION.
14. "REGISTRY IDENTIFICATION CARD" MEANS A DOCUMENT ISSUED BY THE DEPARTMENT THAT IDENTIFIES A PERSON AS A REGISTERED QUALIFYING PATIENT, REGISTERED DESIGNATED CAREGIVER OR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
15. "USABLE MARIJUANA" MEANS THE DRIED FLOWERS OF THE MARIJUANA PLANT, AND ANY MIXTURE OR PREPARATION THEREOF, BUT DOES NOT INCLUDE THE SEEDS, STALKS AND ROOTS OF THE PLANT AND DOES NOT INCLUDE THE WEIGHT OF ANY NON-MARIJUANA INGREDIENTS COMBINED WITH MARIJUANA AND PREPARED FOR CONSUMPTION AS FOOD OR DRINK.
16. "VERIFICATION SYSTEM" MEANS A SECURE, PASSWORD-PROTECTED, WEB-BASED SYSTEM ESTABLISHED AND MAINTAINED BY THE DEPARTMENT THAT IS AVAILABLE TO LAW ENFORCEMENT PERSONNEL AND NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS ON A TWENTY-FOUR HOUR BASIS FOR VERIFICATION OF REGISTRY IDENTIFICATION CARDS.
17. "VISITING QUALIFYING PATIENT" MEANS A PERSON:
 - (a) WHO IS NOT A RESIDENT OF ARIZONA OR WHO HAS BEEN A RESIDENT OF ARIZONA LESS THAN THIRTY DAYS.
 - (b) WHO HAS BEEN DIAGNOSED WITH A DEBILITATING MEDICAL CONDITION BY A PERSON WHO IS LICENSED WITH AUTHORITY TO PRESCRIBE DRUGS TO HUMANS IN THE STATE OF THE PERSON'S RESIDENCE OR, IN THE CASE OF A PERSON WHO HAS BEEN A RESIDENT OF ARIZONA LESS THAN THIRTY DAYS, THE STATE OF THE PERSON'S FORMER RESIDENCE.
18. "WRITTEN CERTIFICATION" MEANS A DOCUMENT DATED AND SIGNED BY A PHYSICIAN, STATING THAT IN THE PHYSICIAN'S PROFESSIONAL OPINION THE PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA TO TREAT OR ALLEVIATE THE PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE DEBILITATING MEDICAL CONDITION. THE PHYSICIAN MUST:
 - (a) SPECIFY THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION IN THE WRITTEN CERTIFICATION.
 - (b) SIGN AND DATE THE WRITTEN CERTIFICATION ONLY IN THE COURSE OF A PHYSICIAN-PATIENT RELATIONSHIP AFTER THE PHYSICIAN HAS

COMPLETED A FULL ASSESSMENT OF THE QUALIFYING PATIENT'S MEDICAL HISTORY.

36-2801.01 - Addition of debilitating medical conditions

THE PUBLIC MAY PETITION THE DEPARTMENT TO ADD DEBILITATING MEDICAL CONDITIONS OR TREATMENTS TO THE LIST OF DEBILITATING MEDICAL CONDITIONS SET FORTH IN SECTION 36-2801, PARAGRAPH -3-. THE DEPARTMENT SHALL CONSIDER PETITIONS IN THE MANNER REQUIRED BY DEPARTMENT RULE, INCLUDING PUBLIC NOTICE AND HEARING. THE DEPARTMENT SHALL APPROVE OR DENY A PETITION WITHIN ONE-HUNDRED-EIGHTY DAYS OF ITS SUBMISSION. THE APPROVAL OR DENIAL OF A PETITION IS A FINAL DECISION OF THE DEPARTMENT SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. JURISDICTION AND VENUE ARE VESTED IN THE SUPERIOR COURT. THIS CHAPTER DOES NOT AUTHORIZE ANY PERSON TO ENGAGE IN, AND DOES NOT PREVENT THE IMPOSITION OF ANY CIVIL, CRIMINAL OR OTHER PENALTIES FOR ENGAGING IN, THE FOLLOWING CONDUCT:

- A. UNDERTAKING ANY TASK UNDER THE INFLUENCE OF MARIJUANA THAT WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL MALPRACTICE.
- B. POSSESSING OR ENGAGING IN THE MEDICAL USE OF MARIJUANA:
 - 1. ON A SCHOOL BUS.
 - 2. ON THE GROUNDS OF ANY PRESCHOOL OR PRIMARY OR SECONDARY SCHOOL.
 - 3. IN ANY CORRECTIONAL FACILITY.
- C. SMOKING MARIJUANA:
 - 1. ON ANY FORM OF PUBLIC TRANSPORTATION.
 - 2. IN ANY PUBLIC PLACE.
- D. OPERATING, NAVIGATING OR BEING IN ACTUAL PHYSICAL CONTROL OF ANY MOTOR VEHICLE, AIRCRAFT OR MOTORBOAT WHILE UNDER THE INFLUENCE OF MARIJUANA, EXCEPT THAT A REGISTERED QUALIFYING PATIENT SHALL NOT BE CONSIDERED TO BE UNDER THE INFLUENCE OF MARIJUANA SOLELY BECAUSE OF THE PRESENCE OF METABOLITES OR COMPONENTS OF MARIJUANA THAT APPEAR IN INSUFFICIENT CONCENTRATION TO CAUSE IMPAIRMENT.
- E. USING MARIJUANA EXCEPT AS AUTHORIZED UNDER THIS CHAPTER.

36-2803 - Rulemaking

- A. NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS CHAPTER, THE DEPARTMENT SHALL ADOPT RULES:
 - 1. GOVERNING THE MANNER IN WHICH THE DEPARTMENT SHALL CONSIDER PETITIONS FROM THE PUBLIC TO ADD DEBILITATING MEDICAL CONDITIONS OR TREATMENTS TO THE LIST OF DEBILITATING

MEDICAL CONDITIONS SET FORTH IN SECTION 36-2801, PARAGRAPH 3, INCLUDING PUBLIC NOTICE OF, AND AN OPPORTUNITY TO COMMENT IN A PUBLIC HEARING UPON, PETITIONS.

2. ESTABLISHING THE FORM AND CONTENT OF REGISTRATION AND RENEWAL APPLICATIONS SUBMITTED UNDER THIS CHAPTER.
3. GOVERNING THE MANNER IN WHICH IT SHALL CONSIDER APPLICATIONS FOR AND RENEWALS OF REGISTRY IDENTIFICATION CARDS.
4. GOVERNING NONPROFIT MEDICAL MARIJUANA DISPENSARIES, FOR THE PURPOSE OF PROTECTING AGAINST DIVERSION AND THEFT WITHOUT IMPOSING AN UNDUE BURDEN ON NONPROFIT MEDICAL MARIJUANA DISPENSARIES OR COMPROMISING THE CONFIDENTIALITY OF CARDHOLDERS, INCLUDING:
 - (a) THE MANNER IN WHICH THE DEPARTMENT SHALL CONSIDER APPLICATIONS FOR AND RENEWALS OF REGISTRATION CERTIFICATES.
 - (b) MINIMUM OVERSIGHT REQUIREMENTS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
 - (c) MINIMUM RECORDKEEPING REQUIREMENTS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
 - (d) MINIMUM SECURITY REQUIREMENTS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARIES, INCLUDING REQUIREMENTS FOR PROTECTION OF EACH REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY LOCATION BY A FULLY OPERATIONAL SECURITY ALARM SYSTEM.
 - (e) PROCEDURES FOR SUSPENDING OR REVOKING THE REGISTRATION CERTIFICATE OF NONPROFIT MEDICAL MARIJUANA DISPENSARIES THAT VIOLATE THE PROVISIONS OF THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS SECTION.
5. ESTABLISHING APPLICATION AND RENEWAL FEES FOR REGISTRY IDENTIFICATION CARDS AND NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATES, ACCORDING TO THE FOLLOWING:
 - (a) THE TOTAL AMOUNT OF ALL FEES SHALL GENERATE REVENUES SUFFICIENT TO IMPLEMENT AND ADMINISTER THIS CHAPTER EXCEPT THAT FEE REVENUE MAY BE OFFSET OR SUPPLEMENTED BY PRIVATE DONATIONS.
 - (b) NONPROFIT MEDICAL MARIJUANA DISPENSARY APPLICATION FEES MAY NOT EXCEED \$5,000.
 - (c) NONPROFIT MEDICAL MARIJUANA DISPENSARY RENEWAL FEES MAY NOT EXCEED \$1,000.

- (d) THE TOTAL AMOUNT OF REVENUE FROM NONPROFIT MEDICAL MARIJUANA DISPENSARY APPLICATION AND RENEWAL FEES AND REGISTRY IDENTIFICATION CARD FEES FOR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS SHALL BE SUFFICIENT TO IMPLEMENT AND ADMINISTER THE NONPROFIT MEDICAL MARIJUANA DISPENSARY PROVISIONS OF THIS CHAPTER, INCLUDING THE VERIFICATION SYSTEM, EXCEPT THAT THE FEE REVENUE MAY BE OFFSET OR SUPPLEMENTED BY PRIVATE DONATIONS.
 - (e) THE DEPARTMENT MAY ESTABLISH A SLIDING SCALE OF PATIENT APPLICATION AND RENEWAL FEES BASED UPON A QUALIFYING PATIENT'S HOUSEHOLD INCOME.
 - (f) THE DEPARTMENT MAY CONSIDER PRIVATE DONATIONS UNDER SECTION 36-2817 TO REDUCE APPLICATION AND RENEWAL FEES.
- B. THE DEPARTMENT IS AUTHORIZED TO ADOPT THE RULES SET FORTH IN SUBSECTION A AND SHALL ADOPT THOSE RULES PURSUANT TO TITLE 41, CHAPTER 6.

36-2804 - Registration and certification of nonprofit medical marijuana dispensaries

- A. NONPROFIT MEDICAL MARIJUANA DISPENSARIES SHALL REGISTER WITH THE DEPARTMENT.
- B. NOT LATER THAN NINETY DAYS AFTER RECEIVING AN APPLICATION FOR A NONPROFIT MEDICAL MARIJUANA DISPENSARY, THE DEPARTMENT SHALL REGISTER THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND ISSUE A REGISTRATION CERTIFICATE AND A RANDOM 20-DIGIT ALPHANUMERIC IDENTIFICATION NUMBER IF:
- 1. THE PROSPECTIVE NONPROFIT MEDICAL MARIJUANA DISPENSARY HAS SUBMITTED THE FOLLOWING:
 - (a) THE APPLICATION FEE.
 - (b) AN APPLICATION, INCLUDING:
 - i. THE LEGAL NAME OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY.
 - ii. THE PHYSICAL ADDRESS OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND THE PHYSICAL ADDRESS OF ONE ADDITIONAL LOCATION, IF ANY, WHERE MARIJUANA WILL BE CULTIVATED, NEITHER OF WHICH MAY BE WITHIN FIVE HUNDRED FEET OF A PUBLIC OR PRIVATE SCHOOL EXISTING BEFORE THE DATE OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY APPLICATION.
 - iii. THE NAME, ADDRESS AND DATE OF BIRTH OF EACH PRINCIPAL OFFICER AND BOARD MEMBER OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY.

- iv. THE NAME, ADDRESS AND DATE OF BIRTH OF EACH NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
- (c) OPERATING PROCEDURES CONSISTENT WITH DEPARTMENT RULES FOR OVERSIGHT OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY, INCLUDING PROCEDURES TO ENSURE ACCURATE RECORD-KEEPING AND ADEQUATE SECURITY MEASURES.
- (d) IF THE CITY, TOWN OR COUNTY IN WHICH THE NONPROFIT MEDICAL MARIJUANA DISPENSARY WOULD BE LOCATED HAS ENACTED ZONING RESTRICTIONS, A SWORN STATEMENT CERTIFYING THAT THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS IN COMPLIANCE WITH THE RESTRICTIONS.
- 2. NONE OF THE PRINCIPAL OFFICERS OR BOARD MEMBERS HAS BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE.
- 3. NONE OF THE PRINCIPAL OFFICERS OR BOARD MEMBERS HAS SERVED AS A PRINCIPAL OFFICER OR BOARD MEMBER FOR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT HAS HAD ITS REGISTRATION CERTIFICATE REVOKED.
- 4. NONE OF THE PRINCIPAL OFFICERS OR BOARD MEMBERS IS UNDER TWENTY-ONE YEARS OF AGE.
- C. THE DEPARTMENT MAY NOT ISSUE MORE THAN ONE NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATE FOR EVERY TEN PHARMACIES THAT HAVE REGISTERED UNDER SECTION 32-1929, HAVE OBTAINED A PHARMACY PERMIT FROM THE ARIZONA BOARD OF PHARMACY AND OPERATE WITHIN THE STATE EXCEPT THAT THE DEPARTMENT MAY ISSUE NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATES IN EXCESS OF THIS LIMIT IF NECESSARY TO ENSURE THAT THE DEPARTMENT ISSUES AT LEAST ONE NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATE IN EACH COUNTY IN WHICH AN APPLICATION HAS BEEN APPROVED.
- D. THE DEPARTMENT MAY CONDUCT A CRIMINAL RECORDS CHECK IN ORDER TO CARRY OUT THIS SECTION.

36-2804.01 - Registration of nonprofit medical marijuana dispensary agents; notices; civil penalty; classification

- A. A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT SHALL BE REGISTERED WITH THE DEPARTMENT BEFORE VOLUNTEERING OR WORKING AT A MEDICAL MARIJUANA DISPENSARY.
- B. A NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY APPLY TO THE DEPARTMENT FOR A REGISTRY IDENTIFICATION CARD FOR A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT BY SUBMITTING:
 - 1. THE NAME, ADDRESS AND DATE OF BIRTH OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.

2. A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT APPLICATION.
 3. A STATEMENT SIGNED BY THE PROSPECTIVE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT PLEDGING NOT TO DIVERT MARIJUANA TO ANYONE WHO IS NOT ALLOWED TO POSSESS MARIJUANA PURSUANT TO THIS CHAPTER.
 4. THE APPLICATION FEE.
- C. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL NOTIFY THE DEPARTMENT WITHIN TEN DAYS AFTER A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT CEASES TO BE EMPLOYED BY OR VOLUNTEER AT THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY.
- D. NO PERSON WHO HAS BEEN CONVICTED OF AN EXCLUDED FELONY OFFENSE MAY BE A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
- E. THE DEPARTMENT MAY CONDUCT A CRIMINAL RECORDS CHECK IN ORDER TO CARRY OUT THIS SECTION.

36-2804.02 - Registration of qualifying patients and designated caregivers

- A. A QUALIFYING PATIENT MAY APPLY TO THE DEPARTMENT FOR A REGISTRY IDENTIFICATION CARD BY SUBMITTING:
1. WRITTEN CERTIFICATION ISSUED BY A PHYSICIAN WITHIN THE NINETY DAYS IMMEDIATELY PRECEDING THE DATE OF APPLICATION.
 2. THE APPLICATION FEE.
 3. AN APPLICATION, INCLUDING:
 - (a) NAME, MAILING ADDRESS, RESIDENCE ADDRESS AND DATE OF BIRTH OF THE QUALIFYING PATIENT EXCEPT THAT IF THE APPLICANT IS HOMELESS NO ADDRESS IS REQUIRED.
 - (b) NAME, ADDRESS AND TELEPHONE NUMBER OF THE QUALIFYING PATIENT'S PHYSICIAN.
 - (c) NAME, ADDRESS AND DATE OF BIRTH OF THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY.
 - (d) A STATEMENT SIGNED BY THE QUALIFYING PATIENT PLEDGING NOT TO DIVERT MARIJUANA TO ANYONE WHO IS NOT ALLOWED TO POSSESS MARIJUANA PURSUANT TO THIS CHAPTER.
 - (e) A SIGNED STATEMENT FROM THE DESIGNATED CAREGIVER, IF ANY, AGREEING TO BE THE PATIENT'S DESIGNATED CAREGIVER AND PLEDGING NOT TO DIVERT MARIJUANA TO ANYONE WHO IS NOT ALLOWED TO POSSESS MARIJUANA PURSUANT TO THIS CHAPTER.
 - (f) A DESIGNATION AS TO WHO WILL BE ALLOWED TO CULTIVATE MARIJUANA PLANTS FOR THE QUALIFYING PATIENT'S MEDICAL USE IF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS

NOT OPERATING WITHIN TWENTY-FIVE MILES OF THE QUALIFYING PATIENT'S HOME.

- B. THE APPLICATION FOR A QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD SHALL ASK WHETHER THE PATIENT WOULD LIKE THE DEPARTMENT TO NOTIFY HIM OF ANY CLINICAL STUDIES NEEDING HUMAN SUBJECTS FOR RESEARCH ON THE MEDICAL USE OF MARIJUANA. THE DEPARTMENT SHALL NOTIFY INTERESTED PATIENTS IF IT IS NOTIFIED OF STUDIES THAT WILL BE CONDUCTED IN THE UNITED STATES.

36-2804.03- Issuance of registry identification cards

- A. EXCEPT AS PROVIDED IN SUBSECTION B AND IN SECTION 36-2804.05, THE DEPARTMENT SHALL:
1. VERIFY THE INFORMATION CONTAINED IN AN APPLICATION OR RENEWAL SUBMITTED PURSUANT TO THIS CHAPTER AND APPROVE OR DENY AN APPLICATION OR RENEWAL WITHIN TEN DAYS OF RECEIVING A COMPLETED APPLICATION OR RENEWAL.
 2. ISSUE A REGISTRY IDENTIFICATION CARD TO A QUALIFYING PATIENT AND HIS DESIGNATED CAREGIVER, IF ANY, WITHIN FIVE DAYS OF APPROVING THE APPLICATION OR RENEWAL. A DESIGNATED CAREGIVER MUST HAVE A REGISTRY IDENTIFICATION CARD FOR EACH OF HIS QUALIFYING PATIENTS.
 3. ISSUE EACH NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT A REGISTRY IDENTIFICATION CARD AND LOG-IN INFORMATION FOR THE VERIFICATION SYSTEM WITHIN FIVE DAYS OF APPROVING THE APPLICATION OR RENEWAL.
- B. THE DEPARTMENT MAY NOT ISSUE A REGISTRY IDENTIFICATION CARD TO A QUALIFYING PATIENT WHO IS UNDER THE AGE OF EIGHTEEN UNLESS:
1. THE QUALIFYING PATIENT'S PHYSICIAN HAS EXPLAINED THE POTENTIAL RISKS AND BENEFITS OF THE MEDICAL USE OF MARIJUANA TO THE CUSTODIAL PARENT OR LEGAL GUARDIAN RESPONSIBLE FOR HEALTH CARE DECISIONS FOR THE QUALIFYING PATIENT.
 2. A CUSTODIAL PARENT OR LEGAL GUARDIAN RESPONSIBLE FOR HEALTH CARE DECISIONS FOR THE QUALIFYING PATIENT SUBMITS A WRITTEN CERTIFICATION FROM TWO PHYSICIANS.
 3. THE CUSTODIAL PARENT OR LEGAL GUARDIAN WITH RESPONSIBILITY FOR HEALTH CARE DECISIONS FOR THE QUALIFYING PATIENT CONSENTS IN WRITING TO:
 - (a) ALLOW THE QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA.
 - (b) SERVE AS THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER.
 - (c) CONTROL THE ACQUISITION OF THE MARIJUANA, THE DOSAGE AND THE FREQUENCY OF THE MEDICAL USE OF MARIJUANA BY THE QUALIFYING PATIENT.

- C. A REGISTRY IDENTIFICATION CARD, OR ITS EQUIVALENT, THAT IS ISSUED UNDER THE LAWS OF ANOTHER STATE, DISTRICT, TERRITORY, COMMONWEALTH OR INSULAR POSSESSION OF THE UNITED STATES THAT ALLOWS A VISITING QUALIFYING PATIENT TO POSSESS OR USE MARIJUANA FOR MEDICAL PURPOSES IN THE JURISDICTION OF ISSUANCE HAS THE SAME FORCE AND EFFECT WHEN HELD BY A VISITING QUALIFYING PATIENT AS A REGISTRY IDENTIFICATION CARD ISSUED BY THE DEPARTMENT, EXCEPT THAT A VISITING QUALIFYING PATIENT IS NOT AUTHORIZED TO OBTAIN MARIJUANA FROM A NONPROFIT MEDICAL MARIJUANA DISPENSARY.

36-2804.04 - Registry identification cards

- A. REGISTRY IDENTIFICATION CARDS FOR QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS SHALL CONTAIN ALL OF THE FOLLOWING:
1. NAME, ADDRESS AND DATE OF BIRTH OF THE CARDHOLDER.
 2. A STATEMENT OF WHETHER THE CARDHOLDER IS A QUALIFYING PATIENT OR A DESIGNATED CAREGIVER.
 3. THE DATE OF ISSUANCE AND EXPIRATION DATE OF THE REGISTRY IDENTIFICATION CARD.
 4. A RANDOM 20-DIGIT ALPHANUMERIC IDENTIFICATION NUMBER, CONTAINING AT LEAST FOUR NUMBERS AND AT LEAST FOUR LETTERS, THAT IS UNIQUE TO THE CARDHOLDER.
 5. IF THE CARDHOLDER IS A DESIGNATED CAREGIVER, THE RANDOM IDENTIFICATION NUMBER OF THE REGISTERED QUALIFYING PATIENT THE DESIGNATED CAREGIVER IS ASSISTING.
 6. A PHOTOGRAPH OF THE CARDHOLDER.
 7. A CLEAR INDICATION OF WHETHER THE CARDHOLDER HAS BEEN AUTHORIZED BY THIS CHAPTER TO CULTIVATE MARIJUANA PLANTS FOR THE QUALIFYING PATIENT'S MEDICAL USE.
- B. REGISTRY IDENTIFICATION CARDS FOR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS SHALL CONTAIN THE FOLLOWING:
1. THE NAME, ADDRESS AND DATE OF BIRTH OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
 2. A STATEMENT THAT THE CARDHOLDER IS A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
 3. THE LEGAL NAME OF THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY WITH WHICH THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IS AFFILIATED.
 4. A RANDOM 20-DIGIT ALPHANUMERIC IDENTIFICATION NUMBER THAT IS UNIQUE TO THE CARDHOLDER.

5. THE DATE OF ISSUANCE AND EXPIRATION DATE OF THE REGISTRY IDENTIFICATION CARD.
 6. A PHOTOGRAPH, IF THE DEPARTMENT DECIDES TO REQUIRE ONE.
- C. IF THE REGISTRY IDENTIFICATION CARD OF EITHER A QUALIFYING PATIENT OR THE PATIENT'S DESIGNATED CAREGIVER DOES NOT STATE THAT THE CARDHOLDER IS AUTHORIZED TO CULTIVATE MARIJUANA PLANTS, THEN THE DEPARTMENT MUST GIVE WRITTEN NOTICE TO THE REGISTERED QUALIFYING PATIENT, WHEN THE QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD IS ISSUED, OF THE NAME AND ADDRESS OF ALL REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.

36-2804.04- Denial of registry identification card

- A. THE DEPARTMENT MAY DENY AN APPLICATION OR RENEWAL OF A QUALIFYING PATIENT'S REGISTRY IDENTIFICATION CARD ONLY IF THE APPLICANT:
1. DOES NOT MEET THE REQUIREMENTS OF SECTION 36-2801, PARAGRAPH 13.
 2. DOES NOT PROVIDE THE INFORMATION REQUIRED.
 3. PREVIOUSLY HAD A REGISTRY IDENTIFICATION CARD REVOKED FOR VIOLATING THIS CHAPTER.
 4. PROVIDES FALSE INFORMATION.
- B. THE DEPARTMENT MAY DENY AN APPLICATION OR RENEWAL OF A DESIGNATED CAREGIVER'S REGISTRY IDENTIFICATION CARD IF THE APPLICANT:
1. DOES NOT MEET THE REQUIREMENTS OF SECTION 36-2801, PARAGRAPH 5.
 2. DOES NOT PROVIDE THE INFORMATION REQUIRED.
 3. PREVIOUSLY HAD A REGISTRY IDENTIFICATION CARD REVOKED FOR VIOLATING THIS CHAPTER.
 4. PROVIDES FALSE INFORMATION.
- C. THE DEPARTMENT MAY DENY A REGISTRY IDENTIFICATION CARD TO A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IF:
1. THE AGENT APPLICANT DOES NOT MEET THE REQUIREMENTS OF SECTION 36-2801(10).
 2. THE APPLICANT OR DISPENSARY DID NOT PROVIDE THE REQUIRED INFORMATION.
 3. PREVIOUSLY HAD A REGISTRY IDENTIFICATION CARD REVOKED FOR VIOLATING THIS CHAPTER.
 4. THE APPLICANT OR DISPENSARY PROVIDES FALSE INFORMATION.

- D. THE DEPARTMENT MAY CONDUCT A CRIMINAL RECORDS CHECK OF EACH DESIGNATED CAREGIVER OR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT APPLICANT TO CARRY OUT THIS SECTION.
- E. THE DEPARTMENT SHALL GIVE WRITTEN NOTICE TO THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY OF THE REASON FOR DENYING A REGISTRY IDENTIFICATION CARD TO A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.
- F. THE DEPARTMENT SHALL GIVE WRITTEN NOTICE TO THE QUALIFYING PATIENT OF THE REASON FOR DENYING A REGISTRY IDENTIFICATION CARD TO THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER.
- G. DENIAL OF AN APPLICATION OR RENEWAL IS CONSIDERED A FINAL DECISION OF THE DEPARTMENT SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. JURISDICTION AND VENUE FOR JUDICIAL REVIEW ARE VESTED IN THE SUPERIOR COURT.

36-2804.06 - Expiration and renewal of registry identification cards and registration certificates; replacement

- A. ALL REGISTRY IDENTIFICATION CARDS AND REGISTRATION CERTIFICATES EXPIRE ONE YEAR AFTER DATE OF ISSUE.
- B. A REGISTRY IDENTIFICATION CARD OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT SHALL BE CANCELLED AND HIS ACCESS TO THE VERIFICATION SYSTEM SHALL BE DEACTIVATED UPON NOTIFICATION TO THE DEPARTMENT BY A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IS NO LONGER EMPLOYED BY OR NO LONGER VOLUNTEERS AT THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY.
- C. A RENEWAL NONPROFIT MEDICAL MARIJUANA DISPENSARY REGISTRATION CERTIFICATE SHALL BE ISSUED WITHIN TEN DAYS OF RECEIPT OF THE PRESCRIBED RENEWAL APPLICATION AND RENEWAL FEE FROM A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IF ITS REGISTRATION CERTIFICATE IS NOT UNDER SUSPENSION AND HAS NOT BEEN REVOKED.
- D. IF A CARDHOLDER LOSES HIS REGISTRY IDENTIFICATION CARD, HE SHALL PROMPTLY NOTIFY THE DEPARTMENT. WITHIN FIVE DAYS OF THE NOTIFICATION, AND UPON PAYMENT OF A TEN DOLLAR FEE, THE DEPARTMENT SHALL ISSUE A NEW REGISTRY IDENTIFICATION CARD WITH A NEW RANDOM IDENTIFICATION NUMBER TO THE CARDHOLDER AND, IF THE CARDHOLDER IS A REGISTERED QUALIFYING PATIENT, TO THE REGISTERED QUALIFYING PATIENT'S REGISTERED DESIGNATED CAREGIVER, IF ANY.

36-2805 - Facility restrictions

- A. ANY NURSING CARE INSTITUTION, HOSPICE, ASSISTED LIVING CENTER, ASSISTED LIVING FACILITY, ASSISTED LIVING HOME, RESIDENTIAL CARE

INSTITUTION, ADULT DAY HEALTH CARE FACILITY OR ADULT FOSTER CARE HOME LICENSED UNDER TITLE 36, CHAPTER 4, MAY ADOPT REASONABLE RESTRICTIONS ON THE USE OF MARIJUANA BY THEIR RESIDENTS OR PERSONS RECEIVING INPATIENT SERVICES, INCLUDING:

1. THAT THE FACILITY WILL NOT STORE OR MAINTAIN THE PATIENT'S SUPPLY OF MARIJUANA.
 2. THAT THE FACILITY, CAREGIVERS OR HOSPICE AGENCIES SERVING THE FACILITY'S RESIDENTS ARE NOT RESPONSIBLE FOR PROVIDING THE MARIJUANA FOR QUALIFYING PATIENTS.
 3. THAT MARIJUANA BE CONSUMED BY A METHOD OTHER THAN SMOKING.
 4. THAT MARIJUANA BE CONSUMED ONLY IN A PLACE SPECIFIED BY THE FACILITY.
- B. NOTHING IN THIS SECTION REQUIRES A FACILITY LISTED IN SUBSECTION A TO ADOPT RESTRICTIONS ON THE MEDICAL USE OF MARIJUANA.
- C. A FACILITY LISTED IN SUBSECTION A MAY NOT UNREASONABLY LIMIT A REGISTERED QUALIFYING PATIENT'S ACCESS TO OR USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER UNLESS FAILING TO DO SO WOULD CAUSE FACILITY TO LOSE A MONETARY OR LICENSING-RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS.

36-2806 - Registered nonprofit medical marijuana dispensaries; requirements

- A. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL BE OPERATED ON A NOT-FOR-PROFIT BASIS. THE BYLAWS OF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL CONTAIN SUCH PROVISIONS RELATIVE TO THE DISPOSITION OF REVENUES AND RECEIPTS TO ESTABLISH AND MAINTAIN ITS NONPROFIT CHARACTER. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY NEED NOT BE RECOGNIZED AS TAX-EXEMPT BY THE INTERNAL REVENUE SERVICE AND IS NOT REQUIRED TO INCORPORATE PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 1.
- B. THE OPERATING DOCUMENTS OF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL INCLUDE PROCEDURES FOR THE OVERSIGHT OF THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AND PROCEDURES TO ENSURE ACCURATE RECORDKEEPING.
- C. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL HAVE A SINGLE SECURE ENTRANCE AND SHALL IMPLEMENT APPROPRIATE SECURITY MEASURES TO DETER AND PREVENT THE THEFT OF MARIJUANA AND UNAUTHORIZED ENTRANCE INTO AREAS CONTAINING MARIJUANA.
- D. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS PROHIBITED FROM ACQUIRING, POSSESSING, CULTIVATING, MANUFACTURING, DELIVERING, TRANSFERRING, TRANSPORTING, SUPPLYING OR DISPENSING MARIJUANA FOR ANY PURPOSE EXCEPT TO ASSIST REGISTERED QUALIFYING PATIENTS WITH THE MEDICAL USE OF

MARIJUANA DIRECTLY OR THROUGH THE REGISTERED QUALIFYING PATIENTS' DESIGNATED CAREGIVERS.

- E. ALL CULTIVATION OF MARIJUANA MUST TAKE PLACE IN AN ENCLOSED, LOCKED FACILITY AT A PHYSICAL ADDRESS PROVIDED TO THE DEPARTMENT DURING THE REGISTRATION PROCESS, WHICH CAN ONLY BE ACCESSED BY REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS ASSOCIATED IN THE REGISTRY WITH THE NONPROFIT MEDICAL MARIJUANA DISPENSARY.
- F. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY ACQUIRE USABLE MARIJUANA OR MARIJUANA PLANTS FROM A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER ONLY IF THE REGISTERED QUALIFYING PATIENT OR REGISTERED DESIGNATED CAREGIVER RECEIVES NO COMPENSATION FOR THE MARIJUANA.
- G. A NONPROFIT MEDICAL MARIJUANA DISPENSARY SHALL NOT PERMIT ANY PERSON TO CONSUME MARIJUANA ON THE PROPERTY OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY.
- H. REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES ARE SUBJECT TO REASONABLE INSPECTION BY THE DEPARTMENT. THE DEPARTMENT SHALL GIVE REASONABLE NOTICE OF AN INSPECTION UNDER THIS SUBSECTION.

36-2806.01 - Dispensary locations

CITIES, TOWNS AND COUNTIES MAY ENACT REASONABLE ZONING REGULATIONS THAT LIMIT THE USE OF LAND FOR REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES TO SPECIFIED AREAS IN THE MANNER PROVIDED IN TITLE 9, CHAPTER 4, ARTICLE 6.1, AND TITLE 11, CHAPTER 6, ARTICLE 2.

36-2806.02 - Dispensing marijuana for medical use

- A. BEFORE MARIJUANA MAY BE DISPENSED TO A REGISTERED DESIGNATED CAREGIVER OR A REGISTERED QUALIFYING PATIENT, A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT MUST ACCESS THE VERIFICATION SYSTEM AND DETERMINE FOR THE REGISTERED QUALIFYING PATIENT FOR WHOM THE MARIJUANA IS INTENDED AND ANY REGISTERED DESIGNATED CAREGIVER TRANSPORTING THE MARIJUANA TO THE PATIENT, THAT:
 - 1. THE REGISTRY IDENTIFICATION CARD PRESENTED TO THE REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS VALID.
 - 2. EACH PERSON PRESENTING A REGISTRY IDENTIFICATION CARD IS THE PERSON IDENTIFIED ON THE REGISTRY IDENTIFICATION CARD PRESENTED TO THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT.

3. THE AMOUNT TO BE DISPENSED WOULD NOT CAUSE THE REGISTERED QUALIFYING PATIENT TO EXCEED THE LIMIT ON OBTAINING NO MORE THAN TWO-AND-ONE-HALF OUNCES OF MARIJUANA DURING ANY FOURTEEN-DAY PERIOD.
- B. AFTER MAKING THE DETERMINATIONS REQUIRED IN SUBSECTION A, BUT BEFORE DISPENSING MARIJUANA TO A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER ON A REGISTERED QUALIFYING PATIENT'S BEHALF, A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT MUST ENTER THE FOLLOWING INFORMATION IN THE VERIFICATION SYSTEM:
1. HOW MUCH MARIJUANA IS BEING DISPENSED TO THE REGISTERED QUALIFYING PATIENT.
 2. WHETHER IT WAS DISPENSED DIRECTLY TO THE REGISTERED QUALIFYING PATIENT OR TO THE REGISTERED QUALIFYING PATIENT'S REGISTERED DESIGNATED CAREGIVER.
 3. THE DATE AND TIME THE MARIJUANA WAS DISPENSED.
 4. THE REGISTRY IDENTIFICATION CARD NUMBER OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AND OF THE NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT WHO DISPENSED THE MARIJUANA.

36-2807- Verification system

- A. WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS CHAPTER, THE DEPARTMENT SHALL ESTABLISH A SECURE, PASSWORD-PROTECTED, WEB-BASED VERIFICATION SYSTEM FOR USE ON A TWENTY-FOUR HOUR BASIS BY LAW ENFORCEMENT PERSONNEL AND NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS TO VERIFY REGISTRY IDENTIFICATION CARDS.
- B. THE VERIFICATION SYSTEM MUST ALLOW LAW ENFORCEMENT PERSONNEL AND NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS TO ENTER A REGISTRY IDENTIFICATION NUMBER AND VERIFY WHETHER THE NUMBER CORRESPONDS WITH A CURRENT, VALID IDENTIFICATION CARD.
- C. THE SYSTEM SHALL DISCLOSE:
1. THE NAME OF THE CARDHOLDER, BUT MUST NOT DISCLOSE THE CARDHOLDER'S ADDRESS.
 2. THE AMOUNT OF MARIJUANA THAT EACH REGISTERED QUALIFYING PATIENT RECEIVED FROM NONPROFIT MEDICAL MARIJUANA DISPENSARIES DURING THE PAST SIXTY DAYS.
- D. THE VERIFICATION SYSTEM MUST INCLUDE THE FOLLOWING DATA SECURITY FEATURES:
1. ANY TIME AN AUTHORIZED USER ENTERS FIVE INVALID REGISTRY IDENTIFICATION NUMBERS WITHIN FIVE MINUTES, THAT USER CANNOT LOG IN TO THE SYSTEM AGAIN FOR TEN MINUTES.

2. A USER'S LOG-IN INFORMATION SHALL BE DEACTIVATED AFTER 5 INCORRECT LOGIN ATTEMPTS UNTIL THE AUTHORIZED USER CONTACTS THE DEPARTMENT AND VERIFIES HIS IDENTITY.
3. THE SERVER MUST REJECT ANY LOG-IN REQUEST THAT IS NOT OVER AN ENCRYPTED CONNECTION.

36-2808- Notifications to department; civil penalty

- A. A REGISTERED QUALIFYING PATIENT SHALL NOTIFY THE DEPARTMENT WITHIN TEN DAYS OF ANY CHANGE IN THE REGISTERED QUALIFYING PATIENT'S NAME, ADDRESS, DESIGNATED CAREGIVER OR PREFERENCE REGARDING WHO MAY CULTIVATE MARIJUANA FOR THE REGISTERED QUALIFYING PATIENT OR IF THE REGISTERED QUALIFYING PATIENT CEASES TO HAVE HIS DEBILITATING MEDICAL CONDITION.
- B. A REGISTERED DESIGNATED CAREGIVER OR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT SHALL NOTIFY THE DEPARTMENT WITHIN TEN DAYS OF ANY CHANGE IN HIS NAME OR ADDRESS.
- C. WHEN A CARDHOLDER NOTIFIES THE DEPARTMENT OF ANY CHANGES LISTED IN SUBSECTION A BUT REMAINS ELIGIBLE UNDER THIS CHAPTER, THE DEPARTMENT SHALL ISSUE THE CARDHOLDER A NEW REGISTRY IDENTIFICATION CARD WITH NEW RANDOM 20- DIGIT ALPHANUMERIC IDENTIFICATION NUMBERS WITHIN TEN DAYS OF RECEIVING THE UPDATED INFORMATION AND A TEN-DOLLAR FEE. IF THE PERSON NOTIFYING THE DEPARTMENT IS A REGISTERED QUALIFYING PATIENT, THE DEPARTMENT SHALL ALSO ISSUE HIS REGISTERED DESIGNATED CAREGIVER, IF ANY, A NEW REGISTRY IDENTIFICATION CARD WITHIN TEN DAYS OF RECEIVING THE UPDATED INFORMATION.
- D. IF THE REGISTERED QUALIFYING PATIENT'S CERTIFYING PHYSICIAN NOTIFIES THE DEPARTMENT IN WRITING THAT EITHER THE REGISTERED QUALIFYING PATIENT HAS CEASED TO SUFFER FROM A DEBILITATING MEDICAL CONDITION OR THAT THE PHYSICIAN NO LONGER BELIEVES THE PATIENT WOULD RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA, THE CARD IS VOID UPON NOTIFICATION BY THE DEPARTMENT TO THE QUALIFYING PATIENT.
- E. WHEN A REGISTERED QUALIFYING PATIENT CEASES TO BE A REGISTERED QUALIFYING PATIENT OR CHANGES REGISTERED DESIGNATED CAREGIVER, THE DEPARTMENT SHALL PROMPTLY NOTIFY THE FORMER DESIGNATED CAREGIVER THAT HIS DUTIES AND RIGHTS UNDER THIS CHAPTER AS TO THAT QUALIFYING PATIENT EXPIRE FIFTEEN DAYS AFTER NOTIFICATION BY THE DEPARTMENT IS SENT.
- F. A REGISTERED QUALIFYING PATIENT, DESIGNATED CAREGIVER OR NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT WHO FAILS TO COMPLY WITH SUBSECTION A OR B IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED FIFTY DOLLARS.

36-2809 - Annual report

- A. THE DEPARTMENT SHALL SUBMIT TO THE LEGISLATURE AN ANNUAL REPORT THAT DOES NOT DISCLOSE ANY IDENTIFYING INFORMATION ABOUT CARDHOLDERS, NONPROFIT MEDICAL MARIJUANA DISPENSARIES OR PHYSICIANS BUT CONTAINS AT LEAST ALL OF THE FOLLOWING INFORMATION:
1. THE NUMBER OF REGISTRY IDENTIFICATION CARD APPLICATIONS AND RENEWALS.
 2. THE NUMBER OF QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS APPROVED IN EACH COUNTY.
 3. THE NATURE OF THE DEBILITATING MEDICAL CONDITIONS OF THE QUALIFYING PATIENTS.
 4. THE NUMBER OF REGISTRY IDENTIFICATION CARDS REVOKED.
 5. THE NUMBER OF PHYSICIANS PROVIDING WRITTEN CERTIFICATIONS FOR QUALIFYING PATIENTS.
 6. THE NUMBER OF REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
 7. THE NUMBER OF NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS IN EACH COUNTY.

36-2809- Confidentiality

- A. THE FOLLOWING INFORMATION RECEIVED AND RECORDS KEPT BY THE DEPARTMENT FOR PURPOSES OF ADMINISTERING THIS CHAPTER ARE CONFIDENTIAL, EXEMPT FROM TITLE 39, CHAPTER 1, ARTICLE 2, EXEMPT FROM SECTION 36-105 AND NOT SUBJECT TO DISCLOSURE TO ANY INDIVIDUAL OR PUBLIC OR PRIVATE ENTITY, EXCEPT AS NECESSARY FOR AUTHORIZED EMPLOYEES OF THE DEPARTMENT TO PERFORM OFFICIAL DUTIES OF THE DEPARTMENT PURSUANT TO THIS CHAPTER.
1. APPLICATIONS OR RENEWALS, THEIR CONTENTS AND SUPPORTING INFORMATION SUBMITTED BY QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS, INCLUDING INFORMATION REGARDING THEIR DESIGNATED CAREGIVERS AND PHYSICIANS.
 2. APPLICATIONS OR RENEWALS, THEIR CONTENTS AND SUPPORTING INFORMATION SUBMITTED BY OR ON BEHALF OF NONPROFIT MEDICAL MARIJUANA DISPENSARIES IN COMPLIANCE WITH THIS CHAPTER, INCLUDING THE PHYSICAL ADDRESSES OF NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
 3. THE INDIVIDUAL NAMES AND OTHER INFORMATION IDENTIFYING PERSONS TO WHOM THE DEPARTMENT HAS ISSUED REGISTRY IDENTIFICATION CARDS.
- B. ANY DISPENSING INFORMATION REQUIRED TO BE KEPT UNDER SECTION 36-2806.02, SUBSECTION B, OR DEPARTMENT REGULATION SHALL IDENTIFY

CARDHOLDERS BY THEIR REGISTRY IDENTIFICATION NUMBERS AND NOT CONTAIN NAMES OR OTHER PERSONALLY IDENTIFYING INFORMATION.

- C. ANY DEPARTMENT HARD DRIVES OR OTHER DATA RECORDING MEDIA THAT ARE NO LONGER IN USE AND THAT CONTAIN CARDHOLDER INFORMATION MUST BE DESTROYED. THE DEPARTMENT SHALL RETAIN A SIGNED STATEMENT FROM A DEPARTMENT EMPLOYEE CONFIRMING THE DESTRUCTION.
- D. DATA SUBJECT TO THIS SECTION SHALL NOT BE COMBINED OR LINKED IN ANY MANNER WITH ANY OTHER LIST OR DATABASE AND IT SHALL NOT BE USED FOR ANY PURPOSE NOT PROVIDED FOR IN THIS CHAPTER.
- E. NOTHING IN THIS SECTION PRECLUDES THE FOLLOWING NOTIFICATIONS:
 - 1. DEPARTMENT EMPLOYEES MAY NOTIFY LAW ENFORCEMENT ABOUT FALSIFIED OR FRAUDULENT INFORMATION SUBMITTED TO THE DEPARTMENT IF THE EMPLOYEE WHO SUSPECTS THAT FALSIFIED OR FRAUDULENT INFORMATION HAS BEEN SUBMITTED HAS CONFERRED WITH HIS SUPERVISOR AND BOTH AGREE THAT THE CIRCUMSTANCES WARRANT REPORTING.
 - 2. THE DEPARTMENT MAY NOTIFY STATE OR LOCAL LAW ENFORCEMENT ABOUT APPARENT CRIMINAL VIOLATIONS OF THIS CHAPTER IF THE EMPLOYEE WHO SUSPECTS THE OFFENSE HAS CONFERRED WITH HIS SUPERVISOR AND BOTH AGREE THAT THE CIRCUMSTANCES WARRANT REPORTING.
 - 3. NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENTS MAY NOTIFY THE DEPARTMENT OF A SUSPECTED VIOLATION OR ATTEMPTED VIOLATION OF THIS CHAPTER OR DEPARTMENT RULES.
- F. NOTHING IN THIS SECTION PRECLUDES SUBMISSION OF THE SECTION 36-2809 REPORT TO THE LEGISLATURE. THE ANNUAL REPORT SUBMITTED TO THE LEGISLATURE IS SUBJECT TO TITLE 39, CHAPTER 1, ARTICLE 2.

36-2810- Presumption of medical use of marijuana; protections; civil penalty

- A. THERE IS A PRESUMPTION THAT A QUALIFYING PATIENT OR DESIGNATED CAREGIVER IS ENGAGED IN THE MEDICAL USE OF MARIJUANA PURSUANT TO THIS CHAPTER.
 - 1. THE PRESUMPTION EXISTS IF THE QUALIFYING PATIENT OR DESIGNATED CAREGIVER:
 - (a) IS IN POSSESSION OF A REGISTRY IDENTIFICATION CARD.
 - (b) IS IN POSSESSION OF AN AMOUNT OF MARIJUANA THAT DOES NOT EXCEED THE ALLOWABLE AMOUNT OF MARIJUANA.
 - 2. THE PRESUMPTION MAY BE REBUTTED BY EVIDENCE THAT CONDUCT RELATED TO MARIJUANA WAS NOT FOR THE PURPOSE OF TREATING OR ALLEVIATING THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE QUALIFYING

PATIENT'S DEBILITATING MEDICAL CONDITION PURSUANT TO THIS CHAPTER.

- B. A REGISTERED QUALIFYING PATIENT OR REGISTERED DESIGNATED CAREGIVER IS NOT SUBJECT TO ARREST, PROSECUTION OR PENALTY IN ANY MANNER, OR DENIAL OF ANY RIGHT OR PRIVILEGE, INCLUDING ANY CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU:
 - 1. FOR THE REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA PURSUANT TO THIS CHAPTER, IF THE REGISTERED QUALIFYING PATIENT DOES NOT POSSESS MORE THAN THE ALLOWABLE AMOUNT OF MARIJUANA.
 - 2. FOR THE REGISTERED DESIGNATED CAREGIVER ASSISTING A REGISTERED QUALIFYING PATIENT TO WHOM HE IS CONNECTED THROUGH THE DEPARTMENT'S REGISTRATION PROCESS WITH THE REGISTERED QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA PURSUANT TO THIS CHAPTER IF THE REGISTERED DESIGNATED CAREGIVER DOES NOT POSSESS MORE THAN THE ALLOWABLE AMOUNT OF MARIJUANA.
 - 3. FOR OFFERING OR PROVIDING MARIJUANA TO A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER FOR THE REGISTERED QUALIFYING PATIENT'S MEDICAL USE OR TO A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IF NOTHING OF VALUE IS TRANSFERRED IN RETURN AND THE PERSON GIVING THE MARIJUANA DOES NOT KNOWINGLY CAUSE THE RECIPIENT TO POSSESS MORE THAN THE ALLOWABLE AMOUNT OF MARIJUANA.
- C. A PHYSICIAN SHALL NOT BE SUBJECT TO ARREST, PROSECUTION OR PENALTY IN ANY MANNER OR DENIED ANY RIGHT OR PRIVILEGE, INCLUDING BUT NOT LIMITED TO CIVIL PENALTY OR DISCIPLINARY ACTION BY THE ARIZONA BOARD OF MEDICAL EXAMINERS OR BY ANY OTHER BUSINESS, OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU, BASED SOLELY ON PROVIDING WRITTEN CERTIFICATIONS OR FOR OTHERWISE STATING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, A PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA TO TREAT OR ALLEVIATE THE PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE DEBILITATING MEDICAL CONDITION, BUT NOTHING IN THIS CHAPTER PREVENTS A PROFESSIONAL LICENSING BOARD FROM SANCTIONING A PHYSICIAN FOR FAILING TO PROPERLY EVALUATE A PATIENT'S MEDICAL CONDITION OR OTHERWISE VIOLATING THE STANDARD OF CARE FOR EVALUATING MEDICAL CONDITIONS.
- D. NO PERSON MAY BE SUBJECT TO ARREST, PROSECUTION OR PENALTY IN ANY MANNER, OR DENIED ANY RIGHT OR PRIVILEGE, INCLUDING ANY CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU, FOR:

1. PROVIDING A REGISTERED QUALIFYING PATIENT, A REGISTERED DESIGNATED CAREGIVER OR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY WITH MARIJUANA PARAPHERNALIA FOR PURPOSES OF A QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA.
 2. BEING IN THE PRESENCE OR VICINITY OF THE MEDICAL USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER.
 3. ASSISTING A REGISTERED QUALIFYING PATIENT WITH ADMINISTERING MARIJUANA AS AUTHORIZED BY THIS CHAPTER.
- E. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY IS NOT SUBJECT TO PROSECUTION; SEARCH OR INSPECTION, EXCEPT BY THE DEPARTMENT PURSUANT TO SECTION 36-2806, SUBSECTION H; SEIZURE OR PENALTY IN ANY MANNER AND MAY NOT BE DENIED ANY RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR BUSINESS LICENSING BOARD OR ENTITY, FOR ACTING PURSUANT TO THIS CHAPTER AND DEPARTMENT REGULATIONS TO ACQUIRE, POSSESS, CULTIVATE, MANUFACTURE, DELIVER, TRANSFER, TRANSPORT, SUPPLY, SELL OR DISPENSE MARIJUANA OR RELATED SUPPLIES AND EDUCATIONAL MATERIALS TO REGISTERED QUALIFYING PATIENTS, TO REGISTERED DESIGNATED CAREGIVERS ON BEHALF OF REGISTERED QUALIFYING PATIENTS OR TO OTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
- F. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT IS NOT SUBJECT TO ARREST, PROSECUTION, SEARCH, SEIZURE OR PENALTY IN ANY MANNER AND MAY NOT BE DENIED ANY RIGHT OR PRIVILEGE, INCLUDING CIVIL PENALTY OR DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR ENTITY, FOR WORKING OR VOLUNTEERING FOR A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY PURSUANT TO THIS CHAPTER AND DEPARTMENT REGULATIONS TO ACQUIRE, POSSESS, CULTIVATE, MANUFACTURE, DELIVER, TRANSFER, TRANSPORT, SUPPLY, SELL OR DISPENSE MARIJUANA OR RELATED SUPPLIES AND EDUCATIONAL MATERIALS TO REGISTERED QUALIFYING PATIENTS, TO REGISTERED DESIGNATED CAREGIVERS ON BEHALF OF REGISTERED QUALIFYING PATIENTS OR TO OTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES.
- G. PROPERTY, INCLUDING ALL INTERESTS IN THE PROPERTY, OTHERWISE SUBJECT TO FORFEITURE UNDER TITLE 13, CHAPTER 39, THAT IS POSSESSED, OWNED OR USED IN CONNECTION WITH THE MEDICAL USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER OR ACTS INCIDENTAL TO THE MEDICAL USE OF MARIJUANA AUTHORIZED UNDER THIS CHAPTER, IS NOT SUBJECT TO SEIZURE OR FORFEITURE. THIS SUBSECTION DOES NOT PREVENT CIVIL FORFEITURE IF THE BASIS FOR THE FORFEITURE IS UNRELATED TO THE MEDICAL USE OF MARIJUANA.
- H. MERE POSSESSION OF, OR APPLICATION FOR, A REGISTRY IDENTIFICATION CARD MAY NOT CONSTITUTE PROBABLE CAUSE OR

REASONABLE SUSPICION, NOR MAY IT BE USED TO SUPPORT THE SEARCH OF THE PERSON OR PROPERTY OF THE PERSON POSSESSING OR APPLYING FOR THE REGISTRY IDENTIFICATION CARD. THE POSSESSION OF, OR APPLICATION FOR, A REGISTRY IDENTIFICATION CARD DOES NOT PRECLUDE THE EXISTENCE OF PROBABLE CAUSE IF PROBABLE CAUSE EXISTS ON OTHER GROUNDS.

- I. NO SCHOOL, LANDLORD OR EMPLOYER MAY BE PENALIZED OR DENIED ANY BENEFIT UNDER STATE LAW FOR ENROLLING, LEASING TO OR EMPLOYING A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER.

36-2812 - Affirmative defense

- A. EXCEPT AS PROVIDED IN SECTION 36-2802, A QUALIFYING PATIENT AND A QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY, MAY ASSERT THE MEDICAL PURPOSE FOR USING MARIJUANA AS A DEFENSE TO ANY PROSECUTION OF AN OFFENSE INVOLVING MARIJUANA INTENDED FOR A QUALIFYING PATIENT'S MEDICAL USE, AND THIS DEFENSE SHALL BE PRESUMED VALID WHERE THE EVIDENCE SHOWS THAT:
 1. A PHYSICIAN STATES THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, AFTER HAVING COMPLETED A FULL ASSESSMENT OF THE QUALIFYING PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION MADE IN THE COURSE OF A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, THE QUALIFYING PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA TO TREAT OR ALLEVIATE THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION.
 2. THE QUALIFYING PATIENT AND THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY, WERE COLLECTIVELY IN POSSESSION OF A QUANTITY OF MARIJUANA THAT WAS NOT MORE THAN WAS REASONABLY NECESSARY TO ENSURE THE UNINTERRUPTED AVAILABILITY OF MARIJUANA FOR THE PURPOSE OF TREATING OR ALLEVIATING THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR SYMPTOMS ASSOCIATED WITH THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION.
 3. ALL MARIJUANA PLANTS WERE CONTAINED IN AN ENCLOSED LOCKED FACILITY.
 4. THE QUALIFYING PATIENT AND THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER, IF ANY, WERE ENGAGED IN THE ACQUISITION, POSSESSION, CULTIVATION, MANUFACTURE, USE OR TRANSPORTATION OF MARIJUANA, PARAPHERNALIA OR BOTH, RELATING TO THE ADMINISTRATION OF MARIJUANA SOLELY TO TREAT OR ALLEVIATE THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION OR

SYMPTOMS ASSOCIATED WITH THE QUALIFYING PATIENT'S DEBILITATING MEDICAL CONDITION.

- B. A PERSON MAY ASSERT THE MEDICAL PURPOSE FOR USING MARIJUANA IN A MOTION TO DISMISS, AND THE CHARGES SHALL BE DISMISSED FOLLOWING AN EVIDENTIARY HEARING WHERE THE PERSON SHOWS THE ELEMENTS LISTED IN SUBSECTION (A).
- C. IF A QUALIFYING PATIENT OR A QUALIFYING PATIENT'S DESIGNATED CAREGIVER DEMONSTRATE THE QUALIFYING PATIENT'S MEDICAL PURPOSE FOR USING MARIJUANA PURSUANT TO THIS SECTION, THE QUALIFYING PATIENT AND THE QUALIFYING PATIENT'S DESIGNATED CAREGIVER SHALL NOT BE SUBJECT TO THE FOLLOWING FOR THE QUALIFYING PATIENT'S MEDICAL USE OF MARIJUANA:
 - 1. DISCIPLINARY ACTION BY A COURT OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU.
 - 2. FORFEITURE OF ANY INTEREST IN OR RIGHT TO NON-MARIJUANA, LICIT PROPERTY.

36-2813 - Discrimination prohibited

- A. NO SCHOOL OR LANDLORD MAY REFUSE TO ENROLL OR LEASE TO AND MAY NOT OTHERWISE PENALIZE A PERSON SOLELY FOR HIS STATUS AS A CARDHOLDER, UNLESS FAILING TO DO SO WOULD CAUSE THE SCHOOL OR LANDLORD TO LOSE A MONETARY OR LICENSING RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS.
- B. UNLESS A FAILURE TO DO SO WOULD CAUSE AN EMPLOYER TO LOSE A MONETARY OR LICENSING RELATED BENEFIT UNDER FEDERAL LAW OR REGULATIONS, AN EMPLOYER MAY NOT DISCRIMINATE AGAINST A PERSON IN HIRING, TERMINATION OR IMPOSING ANY TERM OR CONDITION OF EMPLOYMENT OR OTHERWISE PENALIZE A PERSON BASED UPON EITHER:
 - 1. THE PERSON'S STATUS AS A CARDHOLDER.
 - 2. A REGISTERED QUALIFYING PATIENT'S POSITIVE DRUG TEST FOR MARIJUANA COMPONENTS OR METABOLITES, UNLESS THE PATIENT USED, POSSESSED OR WAS IMPAIRED BY MARIJUANA ON THE PREMISES OF THE PLACE OF EMPLOYMENT OR DURING THE HOURS OF EMPLOYMENT.
- C. FOR THE PURPOSES OF MEDICAL CARE, INCLUDING ORGAN TRANSPLANTS, A REGISTERED QUALIFYING PATIENT'S AUTHORIZED USE OF MARIJUANA MUST BE CONSIDERED THE EQUIVALENT OF THE USE OF ANY OTHER MEDICATION UNDER THE DIRECTION OF A PHYSICIAN AND DOES NOT CONSTITUTE THE USE OF AN ILLICIT SUBSTANCE OR OTHERWISE DISQUALIFY A REGISTERED QUALIFYING PATIENT FROM MEDICAL CARE.
- D. NO PERSON MAY BE DENIED CUSTODY OF OR VISITATION OR PARENTING TIME WITH A MINOR, AND THERE IS NO PRESUMPTION OF NEGLECT OR

CHILD ENDANGERMENT FOR CONDUCT ALLOWED UNDER THIS CHAPTER, UNLESS THE PERSON'S BEHAVIOR CREATES AN UNREASONABLE DANGER TO THE SAFETY OF THE MINOR AS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.

36-2814 - Acts not required; acts not prohibited

A. NOTHING IN THIS CHAPTER REQUIRES:

1. A GOVERNMENT MEDICAL ASSISTANCE PROGRAM OR PRIVATE HEALTH INSURER TO REIMBURSE A PERSON FOR COSTS ASSOCIATED WITH THE MEDICAL USE OF MARIJUANA.
2. ANY PERSON OR ESTABLISHMENT IN LAWFUL POSSESSION OF PROPERTY TO ALLOW A GUEST, CLIENT, CUSTOMER OR OTHER VISITOR TO USE MARIJUANA ON OR IN THAT PROPERTY.
3. AN EMPLOYER TO ALLOW THE INGESTION OF MARIJUANA IN ANY WORKPLACE OR ANY EMPLOYEE TO WORK WHILE UNDER THE INFLUENCE OF MARIJUANA, EXCEPT THAT A REGISTERED QUALIFYING PATIENT SHALL NOT BE CONSIDERED TO BE UNDER THE INFLUENCE OF MARIJUANA SOLELY BECAUSE OF THE PRESENCE OF METABOLITES OR COMPONENTS OF MARIJUANA THAT APPEAR IN INSUFFICIENT CONCENTRATION TO CAUSE IMPAIRMENT.

B. NOTHING IN THIS CHAPTER PROHIBITS AN EMPLOYER FROM DISCIPLINING AN EMPLOYEE FOR INGESTING MARIJUANA IN THE WORKPLACE OR WORKING WHILE UNDER THE INFLUENCE OF MARIJUANA.

36-2814- Revocation

- A. THE DEPARTMENT SHALL IMMEDIATELY REVOKE THE REGISTRY IDENTIFICATION CARD OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT WHO VIOLATES SECTION 36-2804.01, SUBSECTION D, OR SECTION 36-2816, SUBSECTION B. THE DEPARTMENT SHALL SUSPEND OR REVOKE THE REGISTRY IDENTIFICATION CARD OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY AGENT FOR OTHER VIOLATIONS OF THIS CHAPTER.
- B. THE DEPARTMENT SHALL IMMEDIATELY REVOKE THE REGISTRATION CERTIFICATE OF A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT VIOLATES SECTION 2816, SUBSECTIONS B OR C, AND ITS BOARD MEMBERS AND PRINCIPAL OFFICERS MAY NOT SERVE AS THE BOARD MEMBERS OR PRINCIPAL OFFICERS FOR ANY OTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY.
- C. ANY CARDHOLDER WHO SELLS MARIJUANA TO A PERSON WHO IS NOT ALLOWED TO POSSESS MARIJUANA FOR MEDICAL PURPOSES UNDER THIS CHAPTER SHALL HAVE HIS REGISTRY IDENTIFICATION CARD REVOKED, AND SHALL BE SUBJECT TO OTHER PENALTIES FOR THE UNAUTHORIZED SALE OF MARIJUANA AND OTHER APPLICABLE OFFENSES.

- D. THE DEPARTMENT MAY REVOKE THE REGISTRY IDENTIFICATION CARD OF ANY CARDHOLDER WHO KNOWINGLY VIOLATES THIS CHAPTER, AND THE CARDHOLDER SHALL BE SUBJECT TO OTHER PENALTIES FOR THE APPLICABLE OFFENSE.
- E. REVOCATION IS A FINAL DECISION OF THE DEPARTMENT SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. JURISDICTION AND VENUE ARE VESTED IN THE SUPERIOR COURT.

36-2816 - Violations; civil penalty; classification

- A. A REGISTERED QUALIFYING PATIENT MAY NOT DIRECTLY, OR THROUGH HIS DESIGNATED CAREGIVER, OBTAIN MORE THAN TWO AND ONE-HALF OUNCES OF MARIJUANA FROM REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARIES IN ANY FOURTEEN-DAY PERIOD.
- B. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY OR AGENT MAY NOT DISPENSE, DELIVER OR OTHERWISE TRANSFER MARIJUANA TO A PERSON OTHER THAN ANOTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY, A REGISTERED QUALIFYING PATIENT OR A REGISTERED QUALIFYING PATIENT'S REGISTERED DESIGNATED CAREGIVER.
- C. A REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY MAY NOT ACQUIRE USABLE MARIJUANA OR MATURE MARIJUANA PLANTS FROM ANY PERSON OTHER THAN ANOTHER REGISTERED NONPROFIT MEDICAL MARIJUANA DISPENSARY, A REGISTERED QUALIFYING PATIENT OR A REGISTERED DESIGNATED CAREGIVER. A KNOWING VIOLATION OF THIS SUBSECTION IS A CLASS 2 FELONY.
- D. IT IS A CLASS 1 MISDEMEANOR FOR ANY PERSON, INCLUDING AN EMPLOYEE OR OFFICIAL OF THE DEPARTMENT OR ANOTHER STATE AGENCY OR LOCAL GOVERNMENT, TO BREACH THE CONFIDENTIALITY OF INFORMATION OBTAINED PURSUANT TO THIS CHAPTER.
- E. MAKING FALSE STATEMENTS TO A LAW ENFORCEMENT OFFICIAL ABOUT ANY FACT OR CIRCUMSTANCE RELATING TO THE MEDICAL USE OF MARIJUANA TO AVOID ARREST OR PROSECUTION IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS, WHICH SHALL BE IN ADDITION TO ANY OTHER PENALTIES THAT MAY APPLY FOR MAKING A FALSE STATEMENT OR FOR THE USE OF MARIJUANA OTHER THAN USE UNDERTAKEN PURSUANT TO THIS CHAPTER.

36-2817 - Medical marijuana fund; private donations

- A. THE MEDICAL MARIJUANA FUND IS ESTABLISHED CONSISTING OF FEES COLLECTED, CIVIL PENALTIES IMPOSED AND PRIVATE DONATIONS RECEIVED UNDER THIS CHAPTER. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED.

- B. THE DIRECTOR OF THE DEPARTMENT MAY ACCEPT AND SPEND PRIVATE GRANTS, GIFTS, DONATIONS, CONTRIBUTIONS AND DEVICES TO ASSIST IN CARRYING OUT THE PROVISIONS OF THIS CHAPTER.
- C. MONIES IN THE MEDICAL MARIJUANA FUND DO NOT REVERT TO THE STATE GENERAL FUND AT THE END OF A FISCAL YEAR.

36-2818 - Enforcement of this act; mandamus

- A. IF THE DEPARTMENT FAILS TO ADOPT REGULATIONS TO IMPLEMENT THIS CHAPTER WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THIS CHAPTER, ANY CITIZEN MAY COMMENCE A MANDAMUS ACTION IN SUPERIOR COURT TO COMPEL THE DEPARTMENT TO PERFORM THE ACTIONS MANDATED UNDER THIS CHAPTER.
- B. IF THE DEPARTMENT FAILS TO ISSUE A REGISTRY IDENTIFICATION CARD WITHIN FORTY-FIVE DAYS OF THE SUBMISSION OF A VALID APPLICATION OR RENEWAL, THE REGISTRY IDENTIFICATION CARD SHALL BE DEEMED ISSUED, AND A COPY OF THE REGISTRY IDENTIFICATION CARD APPLICATION OR RENEWAL IS DEEMED A VALID REGISTRY IDENTIFICATION CARD.
- C. IF AT ANY TIME AFTER THE ONE HUNDRED FORTY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS CHAPTER THE DEPARTMENT IS NOT ACCEPTING APPLICATIONS OR HAS NOT PROMULGATED RULES ALLOWING QUALIFYING PATIENTS TO SUBMIT APPLICATIONS, A NOTARIZED STATEMENT BY A QUALIFYING PATIENT CONTAINING THE INFORMATION REQUIRED IN AN APPLICATION PURSUANT TO SECTION 36-2804.02, SUBSECTION A, PARAGRAPH 3, TOGETHER WITH A WRITTEN CERTIFICATION ISSUED BY A PHYSICIAN WITHIN THE NINETY DAYS IMMEDIATELY PRECEDING THE NOTARIZED STATEMENT, SHALL BE DEEMED A VALID REGISTRY IDENTIFICATION CARD.

36-2819 - Fingerprinting requirements

EACH PERSON APPLYING AS A DESIGNATED CAREGIVER, A PRINCIPAL OFFICER, AGENT OR EMPLOYEE OF A NONPROFIT MEDICAL MARIJUANA DISPENSARY OR A MEDICAL MARIJUANA DISPENSARY AGENT SHALL SUBMIT A FULL SET OF FINGERPRINTS TO THE DEPARTMENT FOR THE PURPOSE OF OBTAINING A STATE AND FEDERAL CRIMINAL RECORDS CHECK PURSUANT TO SECTION 41-1750 AND PUBLIC LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY MAY EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION WITHOUT DISCLOSING THAT THE RECORDS CHECK IS RELATED TO THE MEDICAL MARIJUANA ACT AND ACTS PERMITTED BY IT. THE DEPARTMENT SHALL DESTROY EACH SET OF FINGERPRINTS AFTER THE CRIMINAL RECORDS CHECK IS COMPLETED.

Sec. 4. Section 43-1201, Arizona Revised Statutes, is amended to read:

43-1201. Organizations exempt from tax

- A. Organizations that are exempt from federal income tax under section 501 of the internal revenue code are exempt from the tax imposed under this title. In addition, the following organizations are exempt from the taxes imposed under this title, except as otherwise provided in this chapter:
1. Labor, agricultural or horticultural organizations, other than cooperative organizations.
 2. Fraternal beneficiary societies, orders or organizations both:
 - (a) Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system.
 - (b) Providing for the payment of life, sick, accident or other benefits to the members of such society, order or organization or their dependents.
 3. Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit or any corporation chartered for burial purposes and not permitted by its charter to engage in any business not necessarily related to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual member thereof.
 4. Corporations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.
 5. Business leagues, chambers of commerce, real estate boards or boards of trade, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.
 6. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare or local organizations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.
 7. Clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.
 8. Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount of such income, less expenses, to an organization which itself is exempt from the tax imposed by this title.
 9. Voluntary employees' beneficiary organizations providing for the payment of life, sick, accident or other benefits to the members of such organizations or their dependents, if both of the following apply:
 - (a) No part of their net earnings inures, other than through such payments, to the benefit of any private shareholder or individual.

- (b) Eighty-five per cent or more of the income consists of amounts collected from members and amounts contributed to the organization by the employer of the members for the sole purpose of making such payments and meeting expenses.
 - 10. Teachers' or public employees' retirement fund organizations of a purely local character, if both of the following apply:
 - (a) No part of their net earnings inures to the benefit of any private shareholder or individual, other than through payment of retirement benefits.
 - (b) The income consists solely of amounts received from public taxation, amounts received from assessments upon the salaries of members and income in respect of investments. For the purposes of this paragraph, "public employees" means employees of the state and its political subdivisions.
 - 11. Religious or apostolic organizations or corporations, if such organizations or corporations have a common treasury or community treasury, even if such corporations or organizations engage in business for the common benefit of the members, but only if the members thereof include, at the time of filing their returns, in their Arizona gross income their pro rata shares, whether distributed or not, of the net income of the organizations or corporations for such year. Any amount so included in the Arizona gross income of a member shall be treated as a dividend received.
 - 12. Voluntary employees' beneficiary organizations providing for the payment of life, sick, accident or other benefits to the members of such organization, their dependents or their designated beneficiaries, if both of the following apply:
 - (a) Admission to membership in such organization is limited to individuals who are officers or employees of the United States government.
 - (b) No part of the net earnings of such organization inures, other than through such payments, to the benefit of any private shareholder or individual.
 - 13. Corporations classified as diversified management companies under section 5 of the federal investment company act of 1940 and registered as provided in that act.
 - 14. Insurance companies paying to the state tax upon premium income derived from sources within this state.
 - 15. Mutual ditch, irrigation or water companies or similar nonprofit organizations if eighty-five per cent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.
 - 16. Workers' compensation pools established pursuant to section 23-961.01.
- B. NONPROFIT MEDICAL MARIJUANA DISPENSARIES UNDER TITLE 36, CHAPTER 28.1, ARE EXEMPT FROM THE TAXES IMPOSED UNDER THIS TITLE.

Sec. 5 - Conditional repeal; notice

- A. Section 36-2812, Arizona Revised Statutes, as added by this act, is repealed as of the date the Arizona department of health services begins to issue registry identification cards to qualifying patients and designated caregivers.
- B. The Arizona department of health services shall notify, in writing, the director of the Arizona legislative council of this date.

Sec. 6 - Exemption from rule making

For the purposes of this act, the Department is exempt from the rule making requirements of Title 41, Chapter 6, Arizona Revised Statutes, for one year after the effective date of this act except that the Department shall provide the public with an opportunity to comment on proposed rules and shall publish otherwise exempted rules.

Sec. 7 - Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

ANALYSIS BY LEGISLATIVE COUNCIL

Proposition 203 would allow a "qualifying patient" who has a "debilitating medical condition" to obtain an "allowable amount of marijuana" from a "nonprofit medical marijuana dispensary" and to possess and use the marijuana to treat or alleviate the debilitating medical condition or symptoms associated with the condition. The Arizona Department of Health Services (DHS) would be required to adopt and enforce a regulatory system for the distribution of marijuana for medical use, including a system for approving, renewing and revoking the registration of qualifying patients, designated caregivers, nonprofit dispensaries and dispensary agents. The costs of the regulatory system would be paid from application and renewal fees collected, civil penalties imposed and private donations received pursuant to this proposition.

A "qualifying patient" is defined as a person who has been diagnosed by a physician (a doctor of medicine, osteopathy, naturopathic medicine or homeopathy) as having one of the following debilitating medical conditions:

1. Cancer.
2. Glaucoma.
3. Positive status for human immunodeficiency virus.
4. Acquired immune deficiency syndrome.
5. Hepatitis C.
6. Amyotrophic lateral sclerosis.
7. Crohn's disease.
8. Agitation of Alzheimer's disease.
9. A chronic or debilitating disease or medical condition that produces any of the following:

- a. Cachexia or wasting syndrome.
- b. Severe and chronic pain.
- c. Severe nausea.
- d. Seizures (including those characteristic of epilepsy).
- e. Severe and persistent muscle spasms (including those characteristic of multiple sclerosis).

10. Any other medical condition added by DHS through a public petition process.

In order to register with DHS, a qualifying patient must submit a signed written certification issued by the physician that states the physician's professional opinion that the patient is likely to receive therapeutic or symptom-relieving benefits from the medical use of marijuana to treat or alleviate a debilitating medical condition. The certification must specify the debilitating medical condition and must be made in the course of a physician-patient relationship after the physician has completed a full assessment of the patient's medical history. If the qualifying patient is under 18 years of age, the patient's custodial parent or legal guardian must submit written certifications from two physicians and the custodial parent or legal guardian must consent in writing to control the patient's medical use of the marijuana.

A qualifying patient who is registered with DHS (or a registered designated caregiver on behalf of the qualifying patient) may obtain up to 2.5 ounces of marijuana in a 14-day period from a registered nonprofit medical marijuana dispensary. If the qualifying patient's home is located more than 25 miles from the nearest nonprofit medical marijuana dispensary, the patient or designated caregiver may cultivate up to 12 marijuana plants in an enclosed, locked facility.

A registered nonprofit medical marijuana dispensary must be operated on a not-for-profit basis, but may receive payment for all expenses incurred in its operation. DHS may not issue more than one nonprofit medical marijuana dispensary registration certificate for every ten pharmacy permits issued by the Arizona State Board of Pharmacy under current law. The dispensary may cultivate marijuana only in an enclosed, locked facility and may acquire marijuana from a registered qualifying patient or designated caregiver if the patient or caregiver is not compensated for the marijuana. This proposition specifies various security, record-keeping and verification requirements relating to the operation of dispensaries.

Proposition 203 would generally provide that any person who acts in conformity with the requirements of the proposition is not subject to any governmentally imposed sanction relating to the medical use of marijuana. This proposition would prohibit certain discriminatory practices, including the following:

1. A school or landlord may not refuse to enroll or lease to a person registered pursuant to this proposition unless failing to do so would cause the school or landlord to lose a monetary or licensing benefit under federal law.
2. An employer may not discriminate against a person registered pursuant to this proposition in hiring, terminating or imposing employment conditions unless failing to do so would cause the employer to lose a monetary or licensing benefit

under federal law. Further, an employer may not penalize a qualifying patient registered pursuant to this proposition for a positive drug test for marijuana, unless the patient used, possessed or was impaired by marijuana on the employment premises or during hours of employment.

By its terms, Proposition 203 would not:

1. Authorize a person to undertake any task under the influence of marijuana that constitutes negligence or professional malpractice.
2. Authorize possessing or using medical marijuana on a school bus, on the grounds of a preschool, primary school or high school or in a correctional facility.
3. Authorize smoking marijuana on public transportation or in a public place.
4. Authorize operating, navigating or being in actual physical control of a motor vehicle, aircraft or motorboat while under the influence of marijuana. A registered qualifying patient would not be considered to be under the influence of marijuana solely because of the presence of marijuana in the person's system that appears in a concentration insufficient to cause impairment. Spelling, grammar and punctuation were reproduced as submitted in the "for" and "against" arguments.
5. Require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana.
6. Require an owner of private property to allow the use of marijuana on that property.
7. Require an employer to allow the ingestion of marijuana in the workplace.
8. Prevent a nursing care or other residential or inpatient healthcare facility from adopting reasonable restrictions on the provision, storage and use of marijuana by residents or patients.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice
Jacob Appelsmith, Office of the California Attorney General
John Avila, California Narcotics Officers Association
Phebe Chu, Office of San Bernardino County Counsel
Scott Collins, Los Angeles County District Attorney's Office
Cathy Coyne, California State Sheriffs' Association
Lorrac Craig, Trinity County Sheriff's Department
Jim Denney, California State Sheriffs' Association
Thomas Dewey, California State University—Humboldt Police Department
Dana Filkowski, Contra Costa County District Attorney's Office
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement
Craig Gundlach, Modesto Police Department
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police
Mike Kanalakakis, Monterey County Sheriff's Office
Bob Kochly, Contra Costa County Office of District Attorney
Tommy LaNier, The National Marijuana Initiative, HIDTA
Carol Leveroni, California Peace Officers Association
Kevin McCarthy, Los Angeles Police Department
Randy Mendoza, Arcata Police Department
Mike Nivens, California Highway Patrol
Rick Oules, Office of the United States Attorney
Mark Pazin, Merced County Sheriff's Department
Michael Regan, El Cerrito Police Department
Melissa Reisinger, California Police Chiefs Association
Kimberly Rios, California Department of Justice, Conference Planning Unit
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement
Crystal Spencer, California Department of Justice, Conference Planning Unit
Sam Spiegel, Folsom Police Department
Valerie Taylor, ONDCP
Thomas Toller, California District Attorneys Association
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthful mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (See *Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).)

“Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal **or** state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety**.”³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to “high priced McMansions”⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the “THC-rich ‘B.C. bud’ strain” of marijuana originally produced in British Columbia “can be grown only in controlled indoor environments,” and the Canadian market is now reportedly saturated with the product of “competing Canadian gangs,” often Asian in composition or outlaw motorcycle gangs like the Hells Angels.⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.⁷⁷ With a street value of \$3,000 to \$5,000 per pound” for high-potency marijuana, and such multiple harvests, “a successful grow house can bring in between \$4.5 million and \$10 million a year”⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift “no code” electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, “Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord.” Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, “We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints.” House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
- 7. Source of medical marijuana.
 - a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
- 8. Operations Manual at a minimum include the following information:
 - a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
- 9. Operating Standards.
 - a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
- 10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a “sin no more” view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

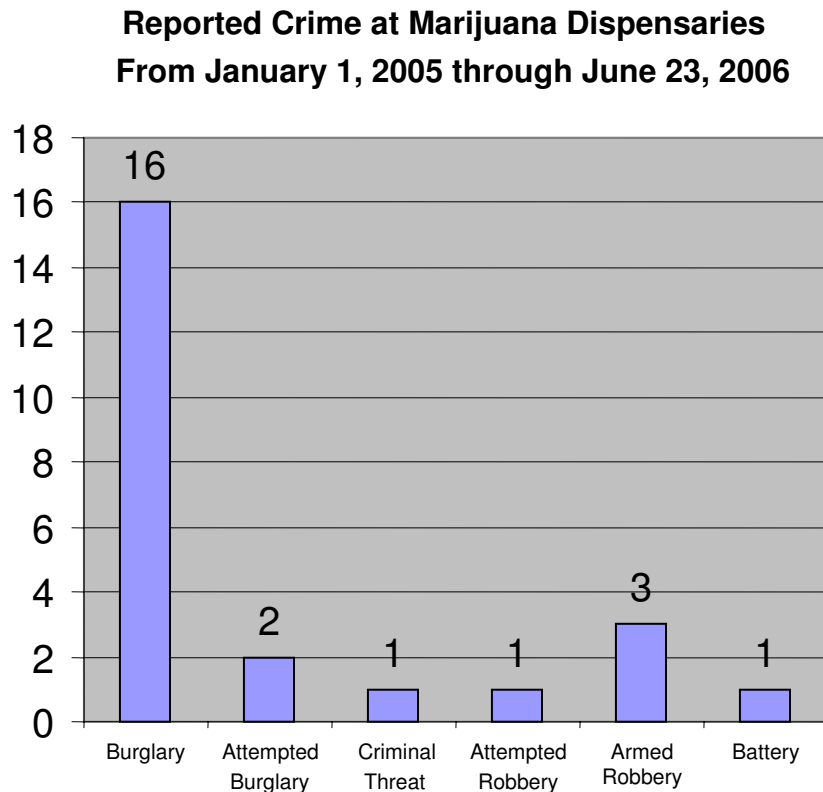
As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

Press Materials:



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

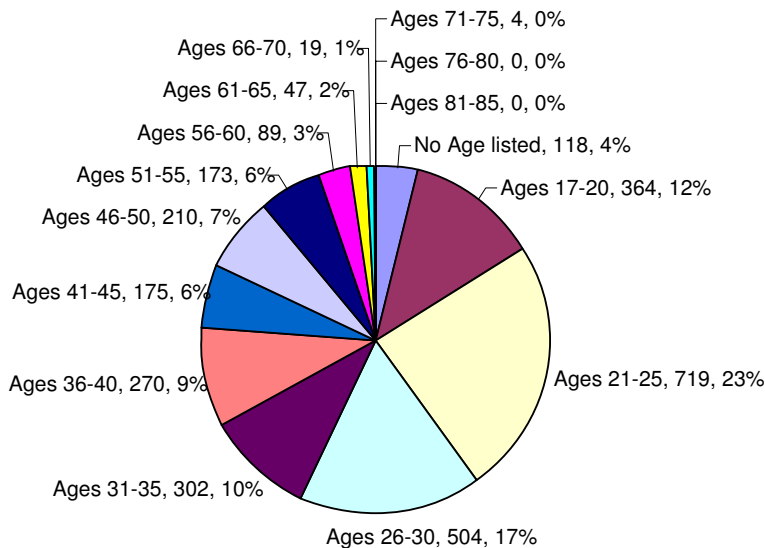
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation **exploded** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

- 1. Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

- 1. Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.).

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. State Law

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra*.)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

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³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.

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⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.

⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.

⁹ H&S Code sec. 11362.5(a).

¹⁰ H&S Code sec. 11362.7 *et. seq.*

¹¹ H&S Code sec. 11362.7.

¹² H&S Code secs. 11362.71–11362.76.

¹³ H&S Code sec. 11362.77.

¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.

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¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.

¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.

¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.

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²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.

²⁷ Israel Packel, 4-5. Italics added.

²⁸ H&S Code sec. 11362.7(d)(1).

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Article XV, Section 122-178 – Definitions

Medical Marijuana - All parts of the genus cannabis whether growing or not, and the seed of such plants that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

Medical Marijuana Cultivation - The process by which a person grows a marijuana plant.

Medical Marijuana Designated Caregiver Cultivation Location - An enclosed, locked facility, such as a closet, room, greenhouse, or other enclosed area equipped with locks, that does not exceed fifty (50) square feet of cultivation space where a designated caregiver, as defined by ARS 36-2801(5), cultivates marijuana.

Medical Marijuana Dispensary - A not-for-profit entity defined in ARS 36-2801(11), that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells, dispenses, or otherwise provides medical marijuana or related supplies and educational materials to cardholders as defined in ARS 36-2801(2).

Medical Marijuana Dispensary Offsite Cultivation Facility - An enclosed, locked facility where marijuana is cultivated by a Medical Marijuana Dispensary as referenced in ARS 36-2804(B)(1)(b)(ii).

Medical Marijuana Infusion Facility - A facility that incorporates medical marijuana by the means of cooking, blending, or incorporation into consumable/edible goods.

Medical Marijuana Qualifying Patient Cultivation Location - An enclosed, locked facility, such as a closet, room, greenhouse, or other enclosed area equipped with locks, that does not exceed fifty (50) square feet of cultivation space where a qualifying patient, as defined by ARS 36-2801(13), cultivates marijuana.

Medical Marijuana Qualifying Patient - A person who has been diagnosed by a physician as having a debilitating medical condition as defined in ARS 36-2801(13).

Article VI - Zoning Districts

Division 1 - General Provisions

Section 122-43(b) – Zoning Use Matrix

Conditionally permit medical marijuana dispensary in CR (Regional Commercial) Zoning Designation.

Conditionally permit medical marijuana dispensary in IP (Industrial Performance) Zoning Designation.

Conditionally permit medical marijuana dispensary in IG (Industrial General) Zoning Designation.

Conditionally permit medical marijuana dispensary in ILM (Industrial Land and Mineral Extraction) Zoning Designation.

Division 2 - Residential Zoning Districts

Section 122-48(d)(11) – Residential Ranch (RR) Medical marijuana designated caregiver cultivation location.

Section 122-48(d)(12) – Residential Ranch (RR) Medical marijuana patient cultivation location.

Section 122-49(d)(9) – Residential Estate (RE) Medical marijuana designated caregiver cultivation location.

Section 122-49(d)(10) – Residential Estate (RE) Medical marijuana patient cultivation location.

Section 122-50(d)(9) – Residential Low Density (RL-2, RL-3, RL-4, RL-5) Medical marijuana designated caregiver cultivation location.

Section 122-50(d)(10) – Residential Low Density (RL-2, RL-3, RL-4, RL-5) Medical marijuana patient cultivation location.

Section 122-51(d)(7) – Residential Medium Density (RM-6, RM-9, RM-12) Medical marijuana designated caregiver cultivation location.

Section 122-51(d)(8) – Residential Medium Density (RM-6, RM-9, RM-12) Medical marijuana patient cultivation location.

Section 122-52(d)(7) – Residential High Density (RH-15, RH-18, RH-21, RH-X) Medical marijuana designated caregiver cultivation location.

Section 122-53(e)(9) – Residential High Density (RH-15, RH-18, RH-21, RH-X) Medical marijuana patient cultivation location.

Section 122-52(d)(8) – Residential Cluster (RC) Medical marijuana patient cultivation location.

Section 122-53(e)(8) – Residential Cluster (RC) Medical marijuana designated caregiver cultivation location.

Division 10 - Use Specific Standards

Section 122-120 Medical Marijuana Dispensary

When conditionally permitted, medical marijuana dispensaries, as defined in Article XV of this chapter, are subject to all rules adopted by the Arizona Department of Health Services and the following requirements:

(a) Medical marijuana dispensaries will not be located within five hundred (500) feet of:

(1) Any residentially zoned property.

- (2) Any church or worship facility.
- (b) Medical marijuana dispensaries will not be located within fifteen hundred (1,500) feet of:
 - (1) Any public or private charter, primary, or secondary school.
 - (2) Any public or private day care, preschool, nursery, or kindergarten facility.
 - (3) Any park or playground.
- (c) Medical marijuana dispensaries will not be located within three thousand (3,000) feet of:
 - (1) Any other medical marijuana dispensary.
 - (2) Any sexually oriented business or similar use.
- (d) A medical marijuana dispensary facility will be a maximum size of two thousand (2,000) gross square feet.
- (e) A medical marijuana dispensary will be located in a permanent building and may not locate in a trailer, cargo container, storage unit, or motor vehicle.
- (f) Drive-through medical marijuana dispensary services are prohibited.
- (g) Marijuana remnants or by-products will not be placed within the facility's exterior refuse containers.
- (h) For purposes of measuring separation distances required in this section, the measurements will be taken in a straight line from the closest property line of any affected property without regard to intervening structures or objects or political boundaries.
- (i) A medical marijuana dispensary lawfully operating is not rendered in violation of these provisions by the subsequent location of a church or worship facility, public or private primary or secondary school, public or private day care, preschool, nursery, kindergarten facility, public park, or playground within the buffer zones outlined in Section 122-120(a)-(c) for a Medical Marijuana Dispensary.
- (j) This provision will not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.

Section 122-121 Medical Marijuana Dispensary Offsite Cultivation Facility

When conditionally permitted, medical marijuana offsite cultivation facilities, as defined in Article XV of this chapter, are subject to all rules adopted by the Arizona Department of Health Services and the following requirements:

- (a) Medical marijuana dispensaries will not be located within five hundred (500) feet of:
 - (1) Any residentially zoned property.
 - (2) Any church or worship facility.

- (b) Medical marijuana dispensaries will not be located within fifteen hundred (1,500) feet of:
 - (1) Any public or private charter, primary, or secondary school.
 - (2) Any public or private day care, preschool, nursery, or kindergarten facility.
 - (3) Any public park or playground.
- (c) Medical marijuana dispensaries will not be located within three thousand (3,000) feet of:
 - (1) Any other medical marijuana dispensary.
 - (2) Any sexually oriented business or similar use.
- (d) A medical marijuana cultivation facility will be a maximum size of two thousand (2,000) gross square feet.
- (e) Marijuana remnants or by-products will not be placed within the facility's exterior refuse containers.
- (f) For purposes of measuring separation distances as it relates to Section 122-121(a)(1), the measurements will be taken in a straight line from the closest structure designed for residential occupancy without regard to intervening structures or objects or political boundaries.
- (g) For purposes of measuring separation distances as it relates to Section 122-121(a)(2)-(c)(2), the measurements will be taken in a straight line from the closest property line of any affected property without regard to intervening structures or objects or political boundaries.
- (h) A medical marijuana dispensary lawfully operating is not rendered in violation of these provisions by the subsequent location of a church or worship facility, public or private primary or secondary school, public or private day care, preschool, nursery, kindergarten facility, public park, or playground within the buffer zones outlined in Section 122-121(a)-(c) for a Medical Marijuana Dispensary Offsite Cultivation Facility.
- (i) This provision will not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.

Section 122-122 Medical Marijuana Designated Caregiver Cultivation Location

When permitted, medical marijuana designated caregiver cultivation location, as defined in Article XV of this chapter, are subject to all rules adopted by the Arizona Department of Health Services and the following requirements:

- (a) Cultivation locations will be an enclosed, locked facility such as a closet, room, greenhouse or other building that does not exceed fifty (50) square feet of cultivation space.
- (b) Cultivation locations will not be visible from beyond the bounds of the property.

- (c) Medical Marijuana cultivation as an accessory use to the qualifying caregiver's primary residence will only be permitted if the residence is located at least twenty-five (25) miles from a Medical Marijuana Dispensary.

Section 122-123 Medical Marijuana Qualifying Patient Cultivation Location

When permitted, medical marijuana qualifying patient cultivation location, as defined in Article XV of this chapter, are subject to all rules adopted by the Arizona Department of Health Services and the following requirements:

- (a) Cultivation locations will be an enclosed, locked facility such as a closet, room, greenhouse or other building that does not exceed fifty (50) square feet of cultivation space.
- (b) Cultivation locations will not be visible from beyond the bounds of the property.
- (c) Medical Marijuana cultivation as an accessory use to the qualifying patient primary residence will only be permitted if the residence is located at least twenty-five (25) miles from a Medical Marijuana Dispensary.

Section 122-124 Medical Marijuana Infusion Facility

- (a) Facilities, not affiliated with a Medical Marijuana Dispensaries, which incorporates medical marijuana by the means of cooking, blending, or incorporation into consumable/edible goods are prohibited.

Section 122-125 Medical Marijuana Dispensary and/or Medical Marijuana Dispensary Offsite Cultivation Facility within an Existing Non-Residential PAD (Planned Area Development) Zoning District

Medical Marijuana Dispensary and/or Medical Marijuana Dispensary Offsite Cultivation Facilities can only locate within existing PAD zoning districts that have no residential component. The facility will be required to apply for a zoning amendment to allow said uses within the PAD zoning district. Buffer distances as outlined in this chapter will be maintained.