CITY OF WINTERS PLANNING COMMISSION AGENDA

Tuesday, July 26, 2011 @ 6:30 PM
City of Winters Council Chambers
318 First Street
Winters, CA 95694-1923
Community Development Department
Contact Phone Number (530) 795-4910 #114
Email: tracy.jensen@cityofwinters.org

Chairman: To be determined
Vice Chairman: To be determined
Commissioners: Bill Biasi, Wade Cowan, Bruce Guelden, Phillip Meisch, Pierre Neu, Luis Reyes, Joe Tramontana
Administrative Assistant: Tracy Jensen
Community Development Director: Nelia Dyer

I CALL TO ORDER 6:30 PM

II ROLL CALL & PLEDGE OF ALLEGIANCE

III CITIZEN INPUT:

Individuals or groups may address the Planning Commission on items which are not on the Agenda and which are within the jurisdiction of the Planning Commission. NOTICE TO SPEAKERS: Speaker cards are located on the first table by the main entrance; please complete a speaker's card and give it to the Planning Secretary at the beginning of the meeting. The Commission may impose time limits.

IV CONSENT ITEM

Approval of Meeting Minutes from the June 28, 2011 regular meeting of the Planning Commission.

V. STAFF/COMMISSION REPORTS

VI DISCUSSION ITEMS:

A. *Swearing in of New and Returning Planning Commissioners and Selection of Chairman and Vice Chairman of the Planning Commission*

B. *Public Hearing and Consideration of a Planning Application for a Variance from the Winters Municipal Code, Chapter 8.20 (Noise Control) for construction-related noise resulting from the Putah Creek Realignment Project.*

PUBLIC HEARING CANCELLED – Request for Variance has been removed.

C. *Public Hearing and Consideration of a Recommendation to the City Council of the Adoption of an Ordinance to amend Title 17 of the Winters Municipal Code to Prohibit the Establishment and Operation of Businesses and Uses Prohibited by State and Federal Law*

The City's Municipal Code does not specifically recognize or regulate the establishment of businesses that may conflict with state and/or Federal laws. As a means to address the potential establishment of businesses and uses that may contravene state and/or Federal law, an ordinance has been prepared to prevent the establishment of businesses and land uses that are prohibited by either state or Federal law. The ordinance is exempt from the California Environmental Quality Act (CEQA) under Sections 15061(b)(3) and 15321 (Enforcement Actions by Regulatory Agencies) of the CEQA Guidelines. The City Council will take final action on the ordinance.

D. *Public Hearing and Consideration of a Recommendation to the City Council of the Adoption of a Resolution for the Grant Avenue Design Guidelines and an Ordinance Amending the Text of the Winters Municipal Code, Chapter 17.36 (Design Review)*

During the spring of 2011, the Economic Development Advisory Committee and City staff developed design guidelines for Grant Avenue. The study area includes properties contiguous with Grant Avenue from I-505 to East Street. The overall goal of the project was to engage the community in a discussion about potential design of buildings and land along Grant Avenue and develop a set of design guidelines for these properties. Staff is proposing to amend Chapter 17.36 (Design Review) to include both the Form Based Code (WMC Chapter 17.58) and the Grant Avenue Design Guidelines as sources to consider for design review of new construction or modification to existing buildings. The guidelines are exempt from the California Environmental Quality Act (CEQA) under Section 15060(c)(3) and 15378 of the CEQA Guidelines. The ordinance is exempt from the CEQA under Section 15061(b)(3) and 15308 of the CEQA Guidelines. The City Council will take final action on the resolution and ordinance.

E. *Public Hearing and Consideration of a Planning Application for Design Review Approval of a Site Plan and a Conditional Use Permit for the construction of a 1,500 square foot modular structure to house a field office for the American Council for Food Safety & Quality to be located on the northeast corner of Railroad Avenue and East Abbey Street, adjacent to the Mariani Nut Processing Warehouse*

The location of the business is in the Downtown Form Based Code Area, which is governed by Chapter 17.58 of the Winters Municipal Code (WMC). The project is categorically exempt from the California Environmental Quality Act (CEQA) under Sections 15303 (New Construction or Conversion of Small Structures) and 15332 (In-Fill Development Projects) of the CEQA Guidelines. The Planning Commission will take final action on the project unless appealed to City Council.

VII COMMISSION/STAFF COMMENTS

VIII ADJOURNMENT

POSTING OF AGENDA: PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT ADMINISTRATIVE ASSISTANT OF THE COMMUNITY DEVELOPMENT DEPARTMENT POSTED THE AGENDA FOR THIS MEETING ON JULY 21, 2011.

Tracy Jensen

TRACY JENSEN - ADMINISTRATIVE ASSISTANT

APPEALS: ANY PERSON DISSATISFIED WITH THE DECISION OF THE PLANNING COMMISSION MAY APPEAL THIS DECISION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CITY CLERK, NO LATER THAN TEN (10) CALENDAR DAYS AFTER THE DAY ON WHICH THE DECISION IS MADE.

PURSUANT TO SECTION 65009 (B) (2), OF THE STATE GOVERNMENT CODE "IF YOU CHALLENGE ANY OF THE ABOVE PROJECTS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING(S) DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY PLANNING COMMISSION AT, OR PRIOR TO, THIS PUBLIC HEARING".

MINUTES: THE CITY DOES NOT TRANSCRIBE ITS PROCEEDINGS. ANYONE WHO DESIRES A VERBATIM RECORD OF THIS MEETING SHOULD ARRANGE FOR ATTENDANCE BY A COURT REPORTER OR FOR OTHER ACCEPTABLE MEANS OF RECORDATION. SUCH ARRANGEMENTS WILL BE AT THE SOLE EXPENSE OF THE INDIVIDUAL REQUESTING THE RECORDATION.

PUBLIC REVIEW OF AGENDA, AGENDA REPORTS, AND MATERIALS: PRIOR TO THE PLANNING COMMISSION MEETINGS, COPIES OF THE AGENDA, AGENDA REPORTS, AND OTHER MATERIAL ARE AVAILABLE DURING NORMAL WORKING HOURS FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT. IN ADDITION, A LIMITED SUPPLY OF COPIES OF THE AGENDA WILL BE AVAILABLE FOR THE PUBLIC AT THE MEETING. COPIES OF AGENDA, REPORTS AND OTHER MATERIAL WILL BE PROVIDED UPON REQUEST SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT. A COPY FEE OF 25 CENTS PER PAGE WILL BE CHARGED.

ANY MEMBER OF THE PUBLIC MAY SUBMIT A WRITTEN REQUEST FOR A COPY OF PLANNING COMMISSION AGENDAS TO BE MAILED TO THEM. REQUESTS MUST BE ACCOMPANIED BY A CHECK IN THE AMOUNT OF $25.00 FOR A SINGLE PACKET AND $250.00 FOR A YEARLY SUBSCRIPTION.

OPPORTUNITY TO SPEAK, AGENDA ITEMS: THE PLANNING COMMISSION WILL PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMISSION ON ITEMS OF BUSINESS ON THE AGENDA; HOWEVER, TIME LIMITS MAY BE IMPOSED AS PROVIDED FOR UNDER THE ADOPTED RULES OF CONDUCT OF PLANNING COMMISSION MEETINGS.

REVIEW OF TAPE RECORDING OF MEETING: PLANNING COMMISSION MEETINGS ARE AUDIO TAPE RECORDED. TAPE RECORDINGS ARE AVAILABLE FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT FOR 30 DAYS AFTER THE MEETING.

THE COUNCIL CHAMBER IS WHEELCHAIR ACCESSIBLE

CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT
Current Projects List as of July 19, 2011
(530) 795-4910, extension 114, www.cityofwinters.org

** New information in italics*

PROJECT	DESCRIPTION & PROCESS	LAST ACTION	NEXT ACTION
(1)Winters Highlands, Meyer Crest, Bert Meyer (530) 242-2010	Application filed to develop 413 single-family and 30 multi-family residential units in northwestern part of city.	City Council approved the Second Amendment to the Development Agreement on January 6, 2009.	Applicant submittal of Final Map and Improvement Plans.
(2) Winters Village, Bob Thompson (West project) (707) 372-9355	Proposal to develop 10 attached single-family residences on the southwest corner of East Main and East Baker Streets.	Applicant in October 2007 decided to defer construction of the project.	Project not active.
(3) Callahan Estates, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 120 single-family residential lots in northwest part of city.	City Council approved the First Amendment to the Development Agreement on January 20, 2009	Applicant submittal of Final Map and Improvement Plans.
(4) Creekside Estates, Jim Wirth (916) 617-4248	Proposal to develop 40 single-family residential lots at southwest part of city.	City Council approved Tentative Subdivision Map on April 19, 2005.	Project not active.
(5) Hudson-Ogando, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 72 single-family residential lots in northwest part of city.	City Council approved the First Amendment to the Development Agreement on January 20, 2009	Applicant submittal of Final Map and Improvement Plans.
(6) Cottages at Carter Ranch Phase 2, Sacramento Pacific Development, Mark Wiese (916) 853-9800	Proposal to develop 6 single-family residential affordable lots (moderate-income households) north of Rancho Arroyo Detention Facility.	-Planning Commission approved Tentative Subdivision Map on November 23, 2004. -City Council approved the applicant's request for infrastructure funding on November 3, 2009.	Applicant submittal of Final Map and Improvement Plans.
(7) Casitas at Winters, Napa Canyon LLC, Mark Power (707) 253-1339	Proposal for 5-unit tentative subdivision map at a site on West Grant Avenue east of Tomat's restaurant. Tentative Subdivision Map, Planned Development Overlay, and PD Permit.	City Council at its January 15, 2008 meeting took final action by approving the Rezone Ordinance.	Applicant submittal of Final Map and Improvement Plans.
(8) Mary Rose Gardens, DAS Homes, Inc., Dave Snow (530) 666-0506	Proposal to develop 26 single-family homes and one duplex unit on the north side of West Grant Avenue west of Cemetery Lane. Tentative Subdivision Map, Planned Development Overlay, PD Permit, Rezone, Inclusionary Housing Agreement, and Development Agreement.	Applicant declined option to purchase project property.	Project not active.
(9) Anderson Place, Eva Brzeski (415) 887-9300	Proposal to develop up to 28 mostly attached single-family residences and 9 commercial spaces at 723 Railroad Avenue. Interim use of C2 portion of the site for boat and RV storage, sales and repair.	First Amendment to Development Agreement adopted by City Council on June 3, 2008 CUP for boat & RV storage, sale & repair approved by Planning Commission on May 27, 2008.	Applicant to demo building and establish interim boat & RV storage, sales and repair. Applicant submittal of Final Map and Improvement Plans.

CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT
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(10) Pearse Parcel Map, Thomas Pearse (530) 795-5901	Proposal for 4-unit parcel map at the south end of Third Street.	Planning Commission on October 9, 2007 approved project.	Applicant submittal of Final Map and Improvement Plans.
(11) Winters Commercial, Granite Bay Holdings, LLC, Tyler Wade (916) 580-1855	Proposal to develop 4.52 acres on south side of Grant Avenue directly west of Round Table Pizza complex for 49,500 square feet of commercial and office uses. Site Plan. Application submitted on August 17, 2007 and deemed complete on October 22, 2007.	-Per COW Municipal Code, Chapters 17.20 (Use Permits) and 17.36 (Design Review), Community Development Director approved an extension for both permits on December 5, 2008. -Community Development Agency purchased the subject site in Summer 2009. CDA issued RFP for development of site in October 2009.	Community Development Agency (CDA) approved an extension of an Exclusive Negotiating Rights Agreement By and Between the CDA and Yackzan Group, Inc, for the Development of the Grant Avenue Commercial Property.
(12) Winters Estates Annexation, Winters Estates LLC, Helmut Sommer 707-678-9000	Proposal to annex 80 acres (APNs 030-210-05 & 08) adjacent to County Road 88 and within the City's General Plan Area.	City issuance of incomplete application letter on February 1, 2008.	Project Inactive/Closed out
(13) Monticello Mixed-Use Project	Application for Site Plan Review and Design Review, and CUP for the construction of a mixed-use project (commercial/retail, office and residential) on 0.42 acre on the east side of Railroad Ave. between Abbey St. and Main St, in downtown Winters CBD.	CDA at its September 2, 2008 meeting approved the DDA for the project	Not active/DDA expired
(14) Orchard Village, CVCAH/Pacific West Communities, Shellan Miller (208) 461-0022 Ext. 3033	Proposal to construct 74 multifamily (workforce housing) units on 10.6 acres between Railroad Ave, and Dutton Street extension, north of East Grant Ave. To include 1-, 2-, 3-, and 4-bedroom units + a community center.	Planning Commission approved Site Plan (Design Review) and adopted MND and MMP on January 27, 2009. Appeal of PC's decision was filed on February 4, 2009 by Catherine Jimenez. City Council denied the appeal at the March 3, 2009 City Council Meeting. Applicant submitted improvement and building plans in October 2009.	Complete
(15) St. Anthony's Catholic Church Parish & Rectory, Roman Catholic Church of Sacramento/ McCandless & Associates (530) 662-9146	Proposal to construct a new Catholic Church and associated site work at the corner of Main & Grant Streets.	-On April 21, 2009, the City Council approved the ordinance to rezone the property, adding a PD overlay. -Applicant submitted improvement and building plans in December 2009.	Issuance of Building Permit(s)
(16) 115 E. Grant Avenue	Proposal to construct a fueling canopy and install 4 new	Planning Commission approved the	Complete

Fueling Canopy, David Lorenzo (530) 795-3214	fueling dispensers at 115 E. Grant Avenue.	Design Review (Site Plan) on February 24, 2009.	
(17) Turkovich Family Wines, 304 Railroad Avenue, (530) 795-2767	Application for a Conditional Use Permit to operate a wine tasting room at 304 Railroad Avenue	Application was filed on January 29, 2009. Planning Commission approved the Conditional Use Permit for the project on March 24, 2009.	Complete
(18) The Tree House Children's Center, 418 Haven Street, (530) 304-8248	Application for a Conditional Use Permit to operate a children's center at 418 Haven Street	Application was filed on March 19, 2009. Planning Commission approved the Conditional Use Permit for the project on April 28, 2009.	Complete
(19) Winters Community Church, 113 Main Street, (530) 795-5530	Application for a Conditional Use Permit to operate a religious institution at 113 Main Street	Application was filed on April 6, 2009. Planning Commission approved the Conditional Use Permit on May 26, 2009.	Complete
(20) Turkovich Family Winery, 22-A Main Street, (530) 795-2767	Application for a Conditional Use Permit to operate a winery at 22-A Main Street	Application was filed on June 6, 2009. Planning Commission approved the Conditional Use Permit on July 14, 2009.	Complete
(21) Winters Healthcare Foundation Administrative Offices, 310 Main Street, (530) 795-5200	Application for a Conditional Use Permit to conduct an office use in a residential zone	Application was filed on July 8, 2009. Planning Commission approved the Conditional Use Permit on August 25, 2009	Complete
(22) AT&T Cell Tower Co-location at Rd 88 & Rd 32A, (916)601-1123	Application for a Conditional Use Permit to co-locate additional antennas on an existing tower at Rd 88 & 32A. The existing cell tower is located on City property	Application was filed on July 17, 2009. Planning Commission approved the Conditional Use Permit on August 25, 2009.	Complete
(23) 111-115 Main Street Façade Improvement Project (530) 795-3506	Design Review application for the façade improvement of 111-115 Main Street.	Application was filed on October 10, 2009. Planning Commission approved the Design review Application on October 27, 2009.	Applicant submittal of improvement and building plans.
(24) Main Street Cellars Wine Café, 9 East Main Street, Suite J (209) 304-7953	Application for a Conditional Use Permit to operate a wine bar at 9 East Main Street, Suite J	-Application was filed on October 30, 2009. Public hearing scheduled for November 24, 2009 -Planning Commission approved Conditional Use Permit on November 24, 2009	Complete
(25) Burger King/Union 76 at East Grant Avenue and	Application for a Design Review/Site Plan and Sign Permit to construct a co-brand fuel station, convenience store and fast	-Application was filed on December 7, 2009. The application was	***Improvement and building plans submitted for***

County Road 90 (530) 755-4700	food restaurant at East Grant Avenue and CR 90. A sign permit is required for the proposed freeway sign.	deemed "incomplete" by staff on January 4, 2010. - Public Hearing and Informational Item scheduled for January 26, 2010. -A public hearing was scheduled for a special Planning Commission meeting on August 10, 2010. The Planning Commission approved the application. On August 20, 2010, the City received a notice of appeal of the Planning Commission's Action. -Appeal Hearing was scheduled for a special City Council meeting on Wednesday, September 29, 2010. - City Council denied the appeal and upheld the Planning Commission's decision at the special City Council meeting held on September 29, 2010.	***review.***
(26) Tentative Parcel Map for Jordan Family (530)662-1755	Application for Tentative Parcel Map for property located southwest of I-505/SR 128 to realign the proposed Gateway Drive street alignment and reconfigure the lots to match the new alignment.	-Application was filed on December 16, 2009. The application was deemed "incomplete" by staff on January 12, 2010. -The application was deemed complete on March 10, 2010. A public hearing was scheduled for the May 25, 2010 Planning Commission Meeting. The Planning Commission recommended approval of the Tentative Parcel Map to the City Council. - The City Council held a public hearing and approved the tentative parcel map on June 5, 2010.	
(27) Kristensen Drywall and Pearce Heating & Air Conditioning, 27990 CR 90,	Application for a Conditional Use Permit (CUP) to operate light general manufacturing uses in a Light Industrial (M-1) zone at 27990 CR 90.	Application was filed on February 18, 2010. A public hearing for the application was scheduled for the	Active Business

(530) 795-8800		March 23, 2010 Planning Commission Meeting. The Commission approved the CUP at the March 23, 2010 meeting.	
(28) Briggs & Co., 820 Railroad Avenue, (530) 795-9505	Application for a Conditional Use Permit (CUP) for extension of a non-conforming use at 820 Railroad Avenue.	Application was filed on March 1, 2010. A public hearing for the application was scheduled for the March 23, 2010 Planning Commission meeting. The public hearing was continued off calendar. Another public hearing was scheduled for the August 24, 2010 Planning Commission meeting. The public hearing was continued off calendar by staff.	
(29) Preserve, Inc., 200 and 202 Railroad Avenue, (530) 795-3816	Application for a Conditional Use Permit (CUP) to amend an existing conditional use permit for on-site sale and consumption of alcoholic beverages at 200 and 202 Railroad Avenue to include the space at 3 Russell Street	Application was filed on March 4, 2010. A public hearing for the application was scheduled for the March 23, 2010 Planning Commission (PC) Meeting. The public hearing was continued to a special PC meeting on April 5, 2010. PC approved the CUP at the meeting on April 5, 2010.	Complete/Active Business
(30) Main Street Plaza, 111 Main Street, (530) 795-3214	Application for a Sign Permit and Variance to modify a nonconforming sign location at 111 Main Street	Application was filed on March 4, 2010. A public hearing for the application was scheduled for the March 23, 2010 Planning Commission (PC) Meeting. PC approved the variance at the meeting on March 23, 2010.	Complete
(31) New Single Family Home, 415 First Street, (916) 600-5401	Application for a Site Plan (Design Review) application for the construction of a new single-family, single-story house at 415 First Street	Application was filed on April 2, 2010. A public hearing for the application was scheduled for the April 27, 2010 Planning Commission (PC) Meeting. PC approved the Design Review application at the meeting on April 27, 2010.	Complete
(32) Addition to Existing	Application for a Site Plan (Design Review) application for the	Application was filed on April 9,	Complete

Single-Family Residence, 455 Russell Street, (530) 867-6444	construction of a 1,500 square-foot addition to an existing single family residence at 455 Russell Street	2010. A public hearing for the application was scheduled for the April 27, 2010 Planning Commission (PC) Meeting. PC approved the Design Review application at the meeting on April 27, 2010.	
(33) Parcel Map for 101 East Grant Avenue, (530) 668-5883	Application for the dedication of right-of-way for the Walnut Lane Re-Alignment Project and splitting one lot into two new lots at 101 East Grant Avenue (APN 003-350-06)	Application was filed on June 1, 2010. A public hearing for the application was scheduled for the June 22, 2010 Planning Commission Meeting. It has been continued to a special meeting in July due to the need for additional time to process the preliminary map with Yolo County. A public hearing was scheduled for the August 24, 2010 Planning Commission. Parcel map was approved at the Planning Commission meeting on August 24, 2010.	Complete
(34) 22 Main Street, (530) 795-2060	Application for a Conditional Use Permit (CUP) to operate a wine tasting room at a proposed boutique/gift shop to be located at 22 Main Street	Application was filed on June 10, 2010. Staff could not process the project until ordinance relevant to the project was amended. A public hearing for the project was held on October 26, 2010. The Planning Commission approved the issuance of the CUP.	Active Business
(35) 113 Main Street, CUP for Anytime Fitness (650) 483-2201	Application for a Conditional Use Permit (CUP) to operate a 24-hour gym at 113 and 115 Main Street	Application was filed on September 14, 2010. A public hearing for the project was held on October 12, 2010. The Planning Commission approved the issuance of the CUP.	Construction completed/Active Business
(36) Winters Self Storage, 807 Railroad Avenue, Site Plan/Design Review, Variances and CUP	Application to expand the existing use at 807 Railroad	Application was filed in November 2011. An information item is scheduled for the April 26, 2011 Planning Commission. The public hearing for the project is tentatively scheduled for the May 24th Planning	***Applicant submittal of improvement and building plans***

		Commission meeting. The public hearing was continued to the regular meeting of the Planning Commission on June 28, 2011. ***The Planning Commission approved the variances, CUP, and Site Plan/Design Review.***	
(37) Turkovich Family Wines, 304 Railroad Avenue – CUP Mod	Application for a modification of an existing conditional use permit to expand the business into 306 Railroad Avenue, the basement beneath 304 Railroad Avenue, and the sidewalk area in front of 304 and 306 Railroad Avenue.	Application was filed in April 2011. A public hearing was scheduled for the April 26, 2011 Planning Commission Meeting. The Planning Commission approved the CUP modification on April 26, 2011.	***Improvement and building plans submitted for review.***
(38) John Neil, Access Manufacturing, 1801 Railroad Avenue, Design Review	Application to construct an approx. 1,500 square foot modular office building for temporary use at 1801 Railroad Avenue	Application was filed in April 2011. A public hearing was scheduled for the April 26, 2011 Planning Commission Meeting. The Planning Commission approved the project on April 26, 2011.	Applicant submittal of improvement and building plans
(39) Eric Doud, Northeast corner of East Abbey Street and Railroad Avenue – CUP and Design Review	***Application to construct an approx. 1500 square foot modular office building for the American Council for Food Safety & Quality at the northeast corner of Railroad Avenue and East Abbey Street, adjacent to the Mariani Nut Processing Warehouse.***	***Application was filed in June 2011. A public hearing is scheduled for the July 26, 2011 Planning Commission Meeting.***	
Ordinances/Resolutions			
Code Enforcement Ordinance	Preparation of Ordinance to adopt Title 19 (Code Enforcement) to the Winters Municipal Code.	-Presentation to Planning Commission on November 24, 2009. -Presentation to City Council on December 1, 2009. -Adopted by City Council in January 2010.	
General Plan Horizon Year Extension	Extend the General Plan Horizon Year Extension from 2010 to 2018.	CC approved the extension on September 1, 2009. Staff prepared and presented the Work Plan resulting from the extension to the PC on October 27, 2009	
Affordable Housing Ordinance	Preparation of an Ordinance to add Chapter 17.200 to the Winters Municipal Code (Zoning) pertaining to Affordable Housing Requirements	-Reviewed favorably by Affordable Housing Steering Committee on November 3, 2009.	

		-PC recommended approval to City Council on November 24, 2009. -City Council adopted the Affordable Housing Ordinance on January 5, 2010	
Housing Element	Preparation and Adoption of Housing Element Update for the 2008-2013 Planning Period	City Council adopted the Housing Element Update on September 1, 2009.	Development of a work/implementation plan for the Housing Element
Grant Avenue Design Guidelines	***Preparation and Adoption of the Grant Avenue Design Guidelines***	***Public Hearing and Consideration of a Recommendation to the City Council of the Adoption of the Grant Avenue Design Guidelines is scheduled for the July 26, 2011 Planning Commission Meeting.***	
Ordinance to Prohibit the Establishment of Businesses or Uses Prohibited by State and/or Federal Law	***Preparation and Adoption of an Ordinance to Prohibit the Establishment of Businesses or Uses Prohibited by State and/or Federal Law.***	***Public Hearing and Consideration of Recommendation to the City Council of the subject Ordinance is scheduled for the July 26, 2011 Planning Commission Meeting.***	
CDA Projects			
Abbey Street Partial Abandonment	Partial abandonment of East Abbey St to allow for Monticello development	PC accepted GP consistency report and recommended to Council 4/22/08. CDA at its September 2, 2008 meeting approved the DDA for the project.	Applicant submittal of improvement and building plans for the Monticello Project
Public Safety Facility	Application for Site Plan Review and Design Review, CUP and Variance for the construction of the City's public safety facility on 2.78 acres of the Ogando-Hudson Subdivision (Grant Ave @West Main Street)	PC hearing on 7/22/08 – PC approved project subject to COAs presented in staff report.	Under Construction
City Parking Lot at Abbey and First Streets, (530) 795-4910	Design Review Application for the temporary renovation of the City's parking lot at First and Abbey Streets	Planning Commission approved the Site Plan on October 27, 2009	Under Construction

MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD JUNE 28, 2011

DISCLAIMER: *These minutes represent the interpretation of statements made and questions raised by participants in the meeting. They are not presented as verbatim transcriptions of the statements and questions, but as summaries of the point of the statement or question as understood by the note taker.*

Chairman Neu called the meeting to order at 6:30PM.

PRESENT: Commissioners Cowan, Guelden, Martinez, Meisch, Tramontana, and Chairman Neu.

ABSENT: Commissioner DeVries

STAFF: Community Development Director Nelia Dyer, Interim Contract Assistant City Attorney Kara Ueda, Contract City Engineer Nick Ponticello, and Administrative Assistant Tracy Jensen

Nick Ponticello led the Pledge of Allegiance.

CITIZEN INPUT: None

COMMUNICATIONS: None

STAFF REPORTS: Community Development Director Dyer indicated the following items are tentatively scheduled for the Planning Commission at the July 26th Planning Commission meeting: a noise variance for construction work in the Putah Creek, a new building on E. Abbey St. adjacent to Mariani's Nut Processing Plant, medical marijuana ordinance to be presented by City Attorney Wallace, and the Grant Avenue Design Guidelines.

COMMISSION REPORTS: None

CONSENT ITEM: Approve minutes of the April 26, 2011 Meeting of the Planning Commission.

Motion by Commissioner Guelden, Second by Commissioner Tramontana to approve minutes of the April 26, 2011 Meeting of the Planning Commission.

AYES: Commissioners Cowan, Guelden, Martinez, Meisch, Tramontana, and Chairman Neu.

NOES: None

ABSTAIN: None

ABSENT: Commissioner DeVries

DISCUSSION ITEM:

A. **Public Hearing and Consideration of a Planning Application Submitted by John Simmons for a Conditional Use Permit, Parking Variance, Floor Area Ratio Variance, Setback Variance, and Design/Site Plan Review to Construct One (1) Storage Building and Two (2) Carports for**

MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD JUNE 28, 2011

Recreational Vehicles at Winters Self Storage, 807 Railroad Avenue (APN 003-330-016, 017, 018)

Community Development Director Dyer provided an overview of the staff report, exhibits, and provided a PowerPoint presentation. She noted that the zoning for this property was light industrial as was the General Plan Land Use Designation when the original permit was issued for the construction of the existing business, but with the last General Plan update in 1992 and Zoning overhaul in 1997, the General Plan Land Use Designation and zoning were changed to office. This is the only property in Winters zoned office.

Commissioner Tramontana noted that the applicant's property is the only one in Winters zoned office, and asked if approving the variance might create a conflict for other properties may be rezoned to office in the future. Community Development Director Dyer replied that if the land that is zoned office is vacant or there is no existing use, there would not be a conflict. As Winters Self Storage is a currently operating business, no problems are anticipated now or in the future as the land available for office use is not being decreased with the approval of the project.

Commissioner Meisch confirmed the new building materials will match those of the existing buildings and requested this be specifically stated in the conditions. Ms. Dyer confirmed it would be added as Condition #29.

Chairman Neu opened the Public Hearing at 6:54PM. John Simmons, the project applicant, said this project would upgrade and re-furbish the property and provide the City with additional tax income. The proposed carports would protect the recreational vehicles and the proposed wall along Dutton Street would eliminate a possible eyesore for neighboring residents and provide more privacy for the property.

Commissioner Tramontana asked Mr. Simmons how the City might collect tax money from his business. Mr. Simmons responded that it is included in the rent for the storage spaces.

Hearing no other comments, Chairman Neu closed the Public Hearing at 6:58PM.

Community Development Director Dyer confirmed the addition of Condition #29 for matching materials, which reads as follows:

Condition #29 – The colors and materials of the building shall match the existing buildings on the subject property to the satisfaction of the Community Development Director.

Commissioner Cowan inquired if there will be a separate sidewalk on the Dutton Street side. City Engineer Nick Ponticello confirmed a separate sidewalk on Dutton Street, and a fence will sit on the back side of the sidewalk. Commissioner Cowan inquired whether landscaping will be part of the project and Community Development Director Dyer identified Condition #7, which states that the applicant shall submit a landscaping plan for review and approval by the Public Works Department and Community Development Department.

Commissioner Guelden commented that little else could be done with Parcels 2 and 3 on the North and East sides than what is being proposed and added this is good use of the property.

Motion by Commissioner Martinez, Second by Commissioner Guelden to approve the Conditional Use Permit , Parking Variance, Floor Area Ratio Variance, Setback Variance, and Design Review/Site Plan for the Construction of One (1) Storage Building and Two (2) Carports for Recreational Vehicles at 807 Railroad Avenue based on the identified findings of fact and by taking the following actions:

- Confirmation of exemption from the provisions of CEQA
- Confirmation of consistency findings with the General Plan and Zoning Ordinance
- Approval of the Conditional Use Permit, Parking Variance, Floor Area Ratio Variance, Setback Variance, and Design Review/Site Plan subject to the conditions of approval attached hereto, as amended.

AYES: Commissioners Cowan, Martinez, Meisch, Guelden, Tramontana, and Chairman Neu.

NOES: None

ABSTAIN: None

ABSENT: Commissioner DeVries

COMMISSIONER/STAFF COMMENTS:

Community Development Director Dyer has sad and happy news. The terms of three Commissioners are expiring on June 30th: Commissioners DeVries, Guelden and Martinez. Community Development Director Dyer stated Commissioners Guelden and DeVries applied to interview for the vacant positions, and wished both of them luck. She further commented that Commissioner Martinez would not be returning to the Planning Commission. Ms. Dyer said that Commissioner Martinez was a great asset to the Commission and represented the community well, thanked her for her service, and wished her luck. Community Development Director Dyer then introduced Miss Britta Teagan Moser, born on June 18th to Richard and Jen Moser. Jen is currently on maternity leave from her duty as Community Development Department Administrative Assistant.

The meeting was adjourned by Chairman Neu at 7:06PM.

ATTEST:

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Tracy Jensen, Administrative Assistant

_____

Pierre Neu, Chairman

CITY OF
WINTERS
california
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WINTERS PLANNING COMMISSION
STAFF REPORT

TO: Honorable Chair and member of the Planning Commission

DATE: July 26, 2011

THROUGH: John W. Donlevy, Jr., City Manager

FROM: John C. Wallace, City Attorney

SUBJECT: Agenda Item – Medical Marijuana Dispensaries

RECOMMENDATION: That the Planning Commission recommend to the City Council adoption of an ordinance Amending the Winters Municipal Code to Prohibit The Establishment and Operation of Businesses and Uses Prohibited by State or Federal Law.

BACKGROUND:

The City of Winters has received inquiries from individuals and organizations wanting to operate a Medical Marijuana Dispensary as allowed under California law. The City of Winters City Council has adopted interim ordinances temporarily prohibiting the operation or use of such dispensaries pending study by the Planning Commission and staff, and further action by the Winters City Council. Staff has studied the issue thoroughly. Staff has met with those interested in operating dispensaries in Winters, with law enforcement personnel both inside and outside the City, and has discussed the issue with other cities. Information and conclusions of staff are as follows:

Between 80% and 90% of City and County jurisdictions have decided, by ordinance, to prohibit such operations. The decision is based on two grounds:

1. Difficulty in regulation. Please refer to the Legal Background which follows for specifics. Dispensaries are required to comply with a host of state laws to operate, the result of both Proposition 215 and the following state law (MMP). These include non-profit status, proximity to schools, restrictions on personal amounts, and medical clearance. Because of the burden of constant monitoring and auditing, and because of the increase in criminal activity associated with dispensaries, most jurisdictions have opted out. This includes all of Yolo County.
2. Criminal use of Prop. 215. Marijuana dealers have used Prop 215 and state laws exempting personal use from criminal enforcement to use dispensaries as fronts for sales of marijuana to people other than the seriously ill. Even is this area, massive amounts of income and sales, including diversion of funds to offshore accounts in excess of one

million dollars, have been found. Since dispensaries are known to have large amounts of cash, armed robberies have occurred.

3. Citizen abuse of Prop. 215. Both Prop. 215 and the MMP make it clear that the compassionate use act (CUA) is for the seriously ill. Medical Marijuana Cards are now a cottage industry, and cards can be obtained cheaply using almost any complaint. I think writer's cramp was included in one list. The State original intention was much different:

The state of California requires that an individual looking to use marijuana for medical purposes have a serious medical condition and a physician's recommendation for treatment. Qualifying medical conditions include AIDS, anorexia, arthritis, cachexia, cancer, glaucoma, migraine headaches, muscle spasms, multiple sclerosis, seizures, epilepsy and severe nausea. Individuals with chronic pain may also qualify for treatment.

In short, anyone who wants to use marijuana in California may now do so.

4. Dispensaries are not required. Citizens who have the serious illness or condition listed by state law can have 6-12 plants growing on their own residential property, without the fear of law enforcement action. No expensive purchases required, no traveling. That is the compassionate solution, and that is available.

Attached is documentation on which staff conclusions are based, including the ordinance adopted by the City of Woodland. Recommendation by the Planning Commission that Winters follow suit is requested by staff.

FISCAL IMPACT: If the ordinance is not adopted, the City of Winters may incur costs of thousands of dollars in either monitoring or regulating such dispensaries.

Attachments

A. Legal Aspects of Marijuana Use
B. Ruling Summary for Denial of Petition to initiate Proceedings to Reschedule Marijuana (DOJ)
C. Attorney General's *Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use*.
D. White Paper on Marijuana Dispensaries by California Police Chiefs Association's Task Force on Marijuana Dispensaries (Available in the scanned version of the agenda packet only)

LEGAL ASPECTS OF MARIJUANA USE

Federal law pre-empts state laws governing the use of marijuana. Marijuana is a prohibited "Schedule 1" substance, in the same class as opiates, methamphatemines, cocaine, and other substances. The last United States Supreme Court ruling, over ten years old, specifically found marijuana has no known medical benefits. During the last ten years formal efforts have been made to have the Department of Justice and the DEA (Drug Enforcement Administration), lower marijuana's scheduling from Schedule 1 to those less restricted. As recently as this year, the DOJ and the DEA have reiterated the appropriate inclusion of marijuana as a Schedule 1 drug. The findings in that conclusion are attached. The distribution or possession with intent to distribute marijuana remains a federal crime (12USC 841).

In 1996, Proposition 215, the California Compassionate Use Act (CUA), was passed by the electorate. Proposition 215, codified at California Health and Safety Code section 1136:2.5, et seq., allows the use of **marijuana** for medical purposes when recommended by a physician, and excludes from criminal prosecution the patient and the primary caregiver,

In 2003, the State of California enacted Senate Bill 4:20, the Medical **Marijuana** Program Act [MMP], setting forth requirements for the issuance of voluntary identification (ID) cards; allowing the cultivation, possession. sale, or storage of **marijuana**; prohibiting the distribution of **marijuana** for profit; exempting from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate **marijuana** for medical purposes; requiring the Attorney General to issue guidelines for the security and nondiversion of medical **marijuana**; and allowing cities to adopt and enforce laws consistent with the MMP. The MMP is codified at California Health and Safety Code sections 11362.7- 11362.83.1 The Attorney General issued "Guidelines for the Security and Non-Diversion of **Marijuana** Grown for Medical Use" (AG Guidelines) in August of 2008.

The AG Guidelines state that neither the CUA nor the MMP conflict with federal law because the state did not legalize **marijuana**.' Additionally, the voluntary identification card program contained in the MMP does not conflict with federal law, **County of San Diego v. San Diego NORM**, 165 Cal. App. 4th 798 (2008), nor does a court order ordering law enforcement to return **marijuana** upon the dismissal of criminal charges against a qualified patient. **City of Garden Grove v Superior Court (Orange County)** 157 Cal. App. 4th 355 (2007). However, there is ongoing litigation related to the relationship between local, state, and federal law, e.g., **Qualified Patients Ass 'n, el. al. v. City of Anaheim**, currently pending.

The MMP also established a voluntary identification card system to he maintained by the State Department of Health Services. Cal Health & Safety Code S 11362.71. The intent of the Medical **Marijuana** Program is, in part, to insure a uniform, statewide identification program for patients and primary caregivers. As part of the Medical **Marijuana** Program, each county health department. or the county's designee, provides applications, receives and processes completed applications, and issues identification cards. Cal. Health & Safety Code Section11362.71(b); 11362.72-11362.74. Participation is voluntary and possession of an Identification card is not required to qualify for the protections of Proposition 215 and the MMP.

The MMP allows patients and caregivers to associate collectively and cooperatively to cultivate **marijuana** for medical] purposes. Cal. Health & Safety profit, Cal. Health & Safety Code Section 11362.765(a). Primary caregivers may receive compensation for actual expenses, including reasonable compensation for services provided: enabling a patient to use **marijuana**, out-of-pocket expenses incurred in providing those services, or both. Section 362.77 sets forth possession amounts which protect patients, caregivers. and those with slate ID cards from arrest, and allows counties and cities to enact guidelines allowing greater limits. Generally, personal use is defined as 6 mature plants, or 12 immature plants. A City can reasonably establish other limits.

The California Supreme Court, interpreting this personal use issue, recently determined in a criminal case that a Defendant with more than this amount can argue with the help of medical advice for a greater amount, **People v. Kelly**, 47 Cal. 4th 1008 (2010).

City of Winters Legal Authority:

1. GENERAL PRINCIPLES

Generally. the City has broad discretion pursuant to its police powers to enact ordinances to protect the public health, safety, and welfare, so long as the ordinance does not conflict with state or federal law". California Constitution, Cal. Gov't. Code Section 37100. A conflict exists if the ordinance duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. **Sherwin-Williams Co. v. City of Los Angeles**, 4 Cal. 4th, 893, 897 (1993). The California Uniform Controlled Substances Act (CSA), found at California Health and Safety Code section 11000, ct. seq., occupies the field of defining drug crimes and specifying penalties for those crimes. The MMP is contained within the CSA. The MMP expressly allows local regulation consistent with the MMP. Cal. Health & Safety Code Section 11362.3.

2. SPECIFIC City of Winters REGULATION OF MEDICAL MARIJUANA.

The City of Winters has established a moratorium on the issuance of business licenses for medical marijuana dispensaries. The City's zoning matrix and ordinance does not include medical marijuana dispensaries specifically, and does not address the smoking prohibition within 1,000 feet of a school.

There is little case law addressing the specifics of bow a city can regulate non land use matters related to medical **marijuana**. Two recent cases held that medical **marijuana** dispensaries not in compliance with local zoning ordinances were public nuisances (City of Corona, City of Claremont). In Claremont, the court specifically said that neither the CVA nor the MMP preempts a city's enactment or enforcement of land use, zoning or business licenses as they apply to medical **marijuana** dispensaries. The Court examined the history and case law surrounding the CVA and the MMP, noting that the nature of the right to use **marijuana** is in the form of a limited defense to criminal! prosecution, not a constitutional right to obtain **marijuana**.

Both Claremont and Corona involved situations where the regulations at issue were land use regulations and where the local government was seeking closure of the dispensary. They did not involve a challenge to a non land use regulatory scheme of regulation of the actions of such dispensaries. It is possible that a local government could be challenged for imposing regulations that conflict with the CUA and MMP. Conversely, local government could be challenged for enacting code or zoning regulations allowing the use, sale, or distribution of marijuana (in violation of California Gov't Code Section 37100).

The City of Winters, by enacting regulations, cannot guarantee that those regulations will provide a "safe harbor" from **criminal liability** for violations of the CSA and federal law because the imposition of criminal liability and the "affirmative" defenses to those charges are matters of statewide concern. Arguably, the City can act for the general health, safety, and welfare of its citizens so long as it docs not conflict with the CSA, CUA or MMP. Cal. Health & Safety Code Section 11362.83.

In other words, if the City of Winters regulation of medical **marijuana** dispensaries is insufficient and illegal marijuana sales are taking place, City officials may be held criminally liable under state and federal law.

3. CITY OF WINTERS REGULATORY RESOURCES

According to the Winters Police Department, local law enforcement is 4 positions understaffed, and has no resources to properly monitor the operation of such dispensaries. Further, a report by the state association of police chiefs concluded that dispensaries cause an increase in criminal incidents. Thus, dispensaries cause the need for additional law enforcement resources.

According to the Community Services Department (regulation of zoning and use permits), there are insufficient resources to monitor the operation of such dispensaries. To avoid possible violation of criminal law, this monitoring would encompass, at minimum, the following:

Verification and monitoring of non-profit status, including auditing.
Verification and monitoring of amounts cultivated and sold, including auditing.
Criminal background checks.
Verification and validity of ID cards.
Verification and monitoring of sales to other than ID holders.

Having a dispensary separately fund such regulation does not appear to be feasible either, because of (1) raising further the risk of criminal liability; and (2) making any new employees dependent on the continuing operation of the dispensary for their employment.

CONCLUSION

The City of Winters lacks sufficient resources to properly regulate medical marijuana dispensaries, at a level where the risk of criminal liability is not present. Adoption of an ordinance banning any use permit or business license in violation of state or federal law is appropriate, and recommended.

Ruling Summary for Denial of Petition to Initiate Proceedings to Reschedule Marijuana

Department of Justice

21 CFR Chapter II

Docket No. DEA-352N

BACKGROUND:

On October 9, 2002, the Coalition for Rescheduling Cannabis submitted a petition to the Drug Enforcement Administration (DEA) requesting that proceedings be initiated to repeal the rules and regulations that place marijuana in Schedule I of the Controlled Substances Act (CSA) and that marijuana be rescheduled as " cannabis" in either Schedule III, IV, or V of the CSA. The petitioner claims that:

1) Cannabis has an accepted medical use in the United States;
2) Cannabis is safe for use under medical supervision;
3) Cannabis has an abuse potential lower than Schedule I or II drugs; and
4) Cannabis has a dependence liability that is lower than Schedule I or II drugs.

In July 2004, the DEA Administrator requested that the Department of Health and Human Services (DHHS) provide a scientific and medical evaluation of the available information and a scheduling recommendation for marijuana, in accordance with the provisions of 21 U.S.C. 811 (b). On December 6, 2006, DHHS concluded that marijuana has a high potential for abuse, has no accepted medical use in the United States, and lacks an acceptable level of safety for use even under medical supervision. Therefore, DHHS recommended that marijuana continue to be controlled in Schedule I of the CSA.

SUMMARY OF RULING:

Based on the DHHS evaluation and all other relevant data, the DEA has concluded that marijuana continues to meet the three criteria for placing a substance in Schedule I of the CSA under 21 U.S.C 812(b)(1) because:

1) **Marijuana has a high potential for abuse:**
   - The large number of individuals using marijuana on a regular basis, its widespread use, and the vast amount of marijuana that is available for illicit use are indicative of the high abuse potential for marijuana.

- Abuse of marijuana is widespread and significant.
- In 2008, an estimated 3.9 million people aged 12 or older used marijuana on a daily or almost daily basis over a 12-month period.
- A significant proportion of all admissions for treatment for substance abuse are for primary marijuana abuse: in 2007, 16 percent of all admissions were for primary marijuana abuse, representing 287,933 individuals.
- Of individuals under the age of 19 admitted to substance abuse treatment, more than half were treated for primary marijuana abuse.

6) **Risk, if any, to public health:**

- Together with the health risks outlined in the terms of pharmacological effects above, public health risks from acute use of marijuana include impaired psychomotor performance, including impaired driving, and impaired performance on tests of learning and associative processes.
- Public health risks from chronic use of marijuana include respiratory effects, physical dependence, and psychological problems.

7) **Psychic or physiological dependence liability:**

- Long-term, regular use of marijuana can lead to physical dependence and withdrawal following discontinuation, as well as psychic addiction or dependence.

8) **Immediate precursor:**

- Marijuana is not an immediate precursor of any controlled substance.

The review shows, in particular, that the evidence is insufficient with respect to the specific issue of whether marijuana has a currently accepted medical use under the five-part test, established by the DEA. The evidence was insufficient in this regard on the prior two occasions when DEA considered petitions to reschedule marijuana in 1992 (57 FR 10499) and in 2011 (66 FR 20038). Little has changed since then with respect to the lack of clinical evidence necessary to establish that marijuana has a currently accepted medical use: only a limited number of FDA-approved Phase 1 clinical investigations have been carried out, and there have been no studies that have scientifically assessed the efficacy and full safety profile of marijuana for any medical condition. The limited existing clinical evidence is not adequate to warrant rescheduling of marijuana under the CSA.

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
EDMUND G. BROWN JR.
ATTORNEY GENERAL

September 26, 2008

To: Law Enforcement Agencies and District Attorneys

Enclosed is a courtesy copy of the *Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use*. These guidelines clarify California's laws governing medical marijuana and will help patients understand their rights and obligations regarding medical marijuana use, aid law enforcement agencies in performing their duties, and assist in ensuring medical marijuana is not diverted for illicit purposes.

The guidelines are also available on the Attorney General's website at http://ag.ca.gov.

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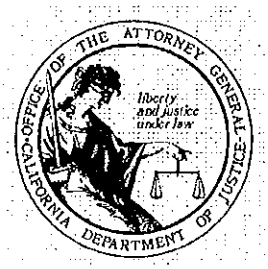

DEPARTMENT OF JUSTICE
State of California

GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use." (Health & Saf. Code, § 11362.81(d).[1]) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for

[1] Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5(b)(1)(A)-(B).)

The Act further states that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician." (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the "quantity transported and the method, timing and distance of the transportation are reasonably related to the patient's current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(c), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder's status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit. (http://www.boe.ca.gov/news/pdf/medseller2007.pdf.) According to the Notice, having a Seller's Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (http://www.boe.ca.gov/news/pdf/173.pdf.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. **Possession Guidelines:**

a) **MMP:**[2] Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

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[2] On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215**: Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. **Enforcement Guidelines.**

1. **Location of Use**: Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (http://www.calmmp.ca.gov); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person's medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician's name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person's medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person's claim of having a verbal physician's recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes." (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. **Business Forms:** Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "co-op") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities "since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as "a business, farm, etc., jointly owned and operated by the members of a group." (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. **Guidelines for the Lawful Operation of a Cooperative or Collective:** Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation**: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].

2. **Business Licenses, Sales Tax, and Seller's Permits**: The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification**: When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual's status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician's identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient's recommendation. Copies should be made of the physician's recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members' medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana**: Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited**: State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
b) Provided in exchange for services rendered to the entity;
c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
d) Any combination of the above.

7. **Possession and Cultivation Guidelines**: If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

a) Operating a location for cultivation;
b) Transporting the group's medical marijuana; and
c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash "donations" – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES

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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.

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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.

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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.

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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.

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

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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

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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.

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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.

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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

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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 SIMILIARLY 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 Lowery 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

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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]

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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.

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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]

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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 (CO_2, 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 my 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.

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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.

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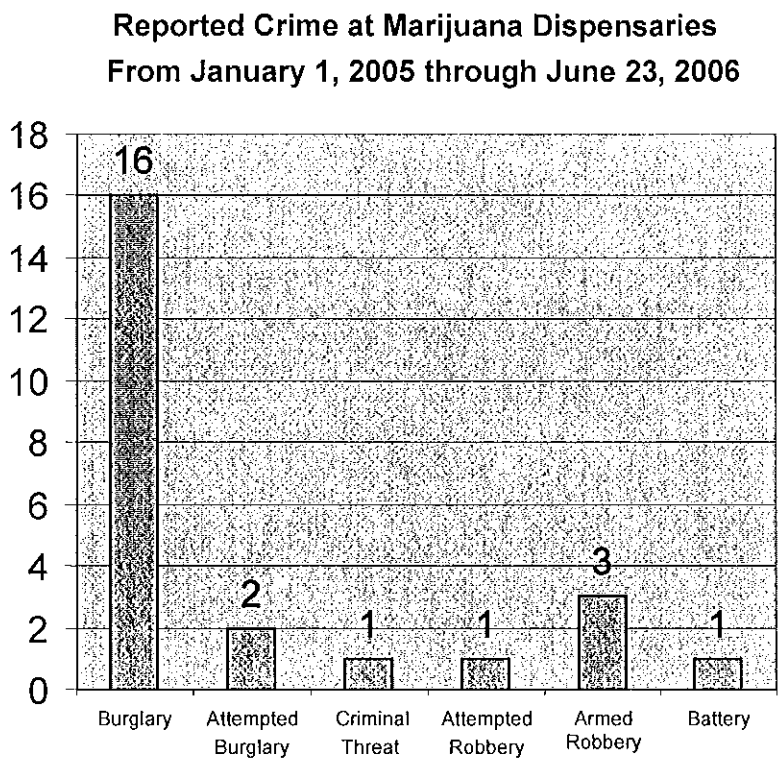
The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

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

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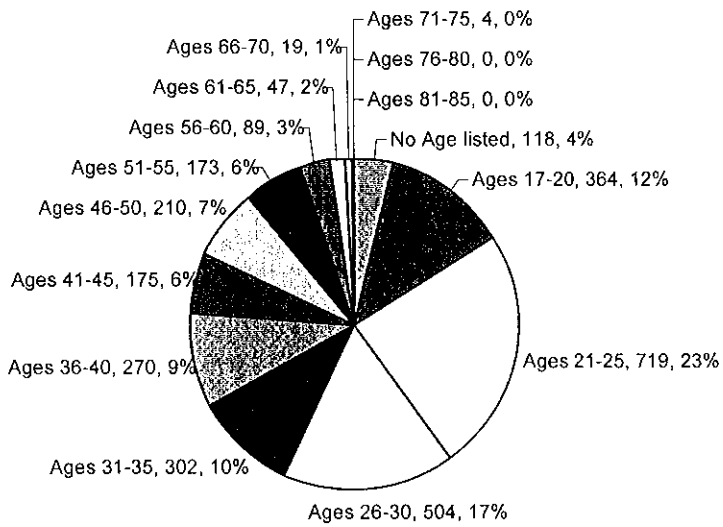
- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

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

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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

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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).)

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[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."

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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

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[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

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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.

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[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

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[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

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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.

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[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].

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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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ENDNOTES

[1] U.S. Const.. art. VI, cl. 2.
[2] U.S. Const., art. I, sec. 8, cl. 3.
[3] *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
[4] *Gonzales v. Raich.* See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
[5] *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
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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.
[15] H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
[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.
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[19] *Id.* Emphasis added.
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[25] *Gonzales v. Raich, supra,* 125 S.Ct. at page 2195.
[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).
[29] See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
[30] H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.
[31] *People v. Mower,* 28 Cal.4th at 476. Emphasis added.
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CITY OF
WINTERS
California
Est. 1875

PLANNING COMMISSION
STAFF REPORT

TO: Chairman and Planning Commissioners

DATE: July 26, 2011

FROM: Nelia C. Dyer, Community Development Director

SUBJECT: Public Hearing and Consideration of a Recommendation to the Winters City Council the Approval of a Resolution to Adopt the City of Winters Grant Avenue Design Guidelines and an Ordinance Amending the text of the Winters Municipal Code (WMC), Chapter 17.36 (Design Review)

RECOMMENDATION: Staff recommends that the Planning Commission take the following actions: 1) Receive the staff report; 2) Conduct the Public Hearing to solicit public comment; 3) Recommend to the Winters City Council the approval of a Resolution to adopt the City of Winters Grant Avenue Design Guidelines; and 4) Recommend the adoption of an Ordinance to amend the text of the Winters Municipal Code (WMC), Chapter 17.36 (Design Review).

BACKGROUND: In the winter of 2011, City Manager John Donlevy requested that the City Council appoint a committee of eight members to develop an economic development strategy for Winters and prepare a set of design guidelines for properties in the vicinity of the Grant Avenue and the I-505 interchange. The committee was named the Economic Development Advisory Committee (EDAC), and the following community members were appointed to the committee:

- Lisa Baker
- Bill Biasi
- Joe Castro
- Wade Cowan
- Debra DeAngelo
- Bill Hailey
- Sandy Vickrey
- Chris Turkovich

The design guidelines and economic development strategy were developed through input from the EDAC and the community. During the spring of 2011, the EDAC and City staff held a total of 13 meetings to discuss economic development ideas for Winters as well as design concepts for Grant Avenue, all of which were advertised in the Winters Express and open to the public. Of the 13 meetings, two public workshops were held at the Winters Community Center to specifically solicit public input on the guidelines and economic development strategy. The first community workshop was held on March 7, 2011, and the second workshop was held on June 16, 2011. The EDAC

concluded their work on June 27, 2011.

OVERVIEW OF THE GUIDELINES: *Grant Avenue Corridor Design Guidelines for the City of Winters* is Attachment A of this report. The report is organized into six main sections:

- Site Planning
- Architecture/Building Design
- Connectivity
- Signs
- Lighting
- Landscaping

The main sections list the required design priorities, include photos exemplifying specific guidelines, and are further divided into subareas of the main section. For example, "Site Planning" is further divided into the following sections:

- Community Spaces and Special Features
- Outdoor Service and Storage Areas
- Building Siting and Orientation
- Drainage and Water Quality
- Compatibility and Coordination with Surrounding Properties

The study area of the design guidelines is shown on Page 5 of the guidelines. The study area includes properties contiguous with Grant Avenue from I-505 to East Street. The area does not overlap the Form Based Code Area for Downtown Winters.

The goals of the design guide are included on page 6 of the guidelines and are listed as follows:

- Provide clear guidance to property owners and design professionals in planning and designing new buildings and remodeling existing structures.
- Provide a greater degree of project review and approval predictability.
- Ensure that new development reinforces and supports the special qualities of the community of Winters.
- Maintain a building scale that is consistent with the community's historical image and character.
- Provide information to facilitate the adaptation of corporate and franchise designs to comply with Winters design expectations.
- Reinforce the special qualities of the community's visual character.
- Protect property owner investments by discouraging inappropriate adjacent development.
- Streamline the development review process by more clearly communicating community expectations to property owners and developers.

The Appendices include information referenced in the guidelines as well as a project review checklist intended to assist developers, staff, policy boards, and the public in determining project consistency with the Grant Avenue Design Guidelines.

PROPOSED AMENDMENTS TO WINTERS MUNICIPAL CODE: To ensure that the Grant Avenue Design Guidelines will be followed by developers and design professionals, staff is of the opinion that the Winters Municipal Code, Chapter 17.36 (Design Guidelines) should be amended to

specifically mention the Grant Avenue Design Guidelines. In addition, staff recommends that Form Based Code also be listed in the same section.

Staff also recommends that consideration of site plan applications by the economic development commission be removed from WMC Section 17.36.030 (Design review procedures – Site plan submittal) since this commission is not active at this time and will not be until the City Council reestablishes this commission.

The proposed amendments are as follows:

17.36.030 Design review procedures—Site plan submittal.
Design review shall be accomplished pursuant to site plan review.

~~*A. Site plan applications for design review involving commercial development shall first be considered by the economic development commission, who may make a recommendation on the project and any conditions of approval to the planning commission.*~~

~~*B.*~~ *A. The planning commission shall ~~also~~ review the site plan application where site improvements involving landscaping or parking lots are proposed.*

~~*C.*~~ *B. ~~The planning commission shall consider any recommendations of the economic development commission prior to taking action on a site plan for design review.~~ The planning commission may consider a site plan for design review concurrently with other applications for a project (such as a use permit) which requires planning commission action. A public hearing shall be held to consider the site plan, noticed pursuant to the requirements contained in Section 17.16.040. (Ord. 2001-04 (part): prior code § 8-1.4211 (C))*

17.36.040 Criteria for review.

F. Achieve conformity with the Winters design guidelines, ***Form Based Code for Downtown Winters (Chapter 17,58), and the Grant Avenue Design Guidelines,*** *as applicable.*

PROJECT NOTIFICATION:
Public notice for the public hearing on this project was prepared by the Community Development Department's Administrative Assistant in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. A legal notice was published in the Winters Express on Thursday, July 14, 2011. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Thursday, July 21, 2011.

ENVIRONMENTAL ASSESSMENT:
The proposed guidelines are exempt from the California Environmental Quality Act (CEQA) under Section 15060(c)(3) and 15378 of the CEQA Guidelines. The proposed ordinance is exempt from the CEQA under Section 15061(b)(3) and 15308 of the CEQA Guidelines.

RECOMMENDATION:
Staff recommends that the Planning Commission recommend approval of the proposed Resolution and Ordinance to the City Council by making the affirmative motions as follows:

I MOVE THAT THE WINTERS PLANNING COMMISSION RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE CITY OF WINTERS OF A RESOLUTION ADOPTING THE CITY OF WINTERS GRANT AVENUE DESIGN GUIDELINES AND AN ORDINANCE AMENDING CHAPTER 17.36 OF THE WINTERS MUNICIPAL CODE PERTAINING TO DESIGN REVIEW.

ALTERNATIVES:

The Planning Commission may recommend modifications or recommend denial of the Resolution and/or Ordinance to the City Council.

ATTACHMENTS:

A. *City of Winters Grant Avenue Design Guidelines* (Available in the scanned version only)
B. A Resolution of the Winters City Council to Adopt the *City of Winters Grant Avenue Design Guidelines*
C. An Ordinance amending Chapter 17.36 of the Winters Municipal Code pertaining to Design Review

DRAFT

City of Winters

Grant Avenue Design Guidelines

Adopted Month Day, 2011

CITY OF WINTERS
california
Est. 1875

ACKNOWLEDGEMENTS

City Council
Woody Fridae--Mayor
Cecilia Aguiar-Curry --Mayor Pro Tem
Harold Anderson
Michael Martin
Tom Stone

Planning Commission
Pierre Neu --Chair
Glen DeVries --Vice Chair
Wade Cowan
Bruce Guelden
Corinne Martinez
Philip Meisch
Joe Tramontana

Economic Development Advisory Committee
Wade Cowan --Chair
Lisa Baker
Bill Biasi
Joe Castro
Debra DeAngelo
Bill Hailey
Chris Turkovich
Sandy Vickrey

City Staff
John W. Donlevy, Jr. --City Manager
Nelia C. Dyer --Community Development Director
Dawn Van Dyke --Management Analyst
Mary Jo Rodolfa-- Executive Assistant to the City Manager

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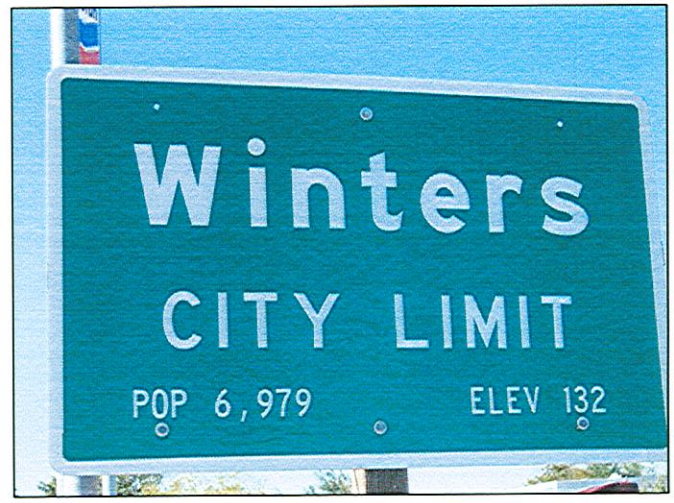


Appendices

A. Approval Process
B. Pre-Approval Considerations
C. Project Review Checklist
D. Model Efficient Landscape Ordinance **(Not included in the DRAFT)**
E. City of Winters Master Tree List **(Not included in the DRAFT)**

Introduction

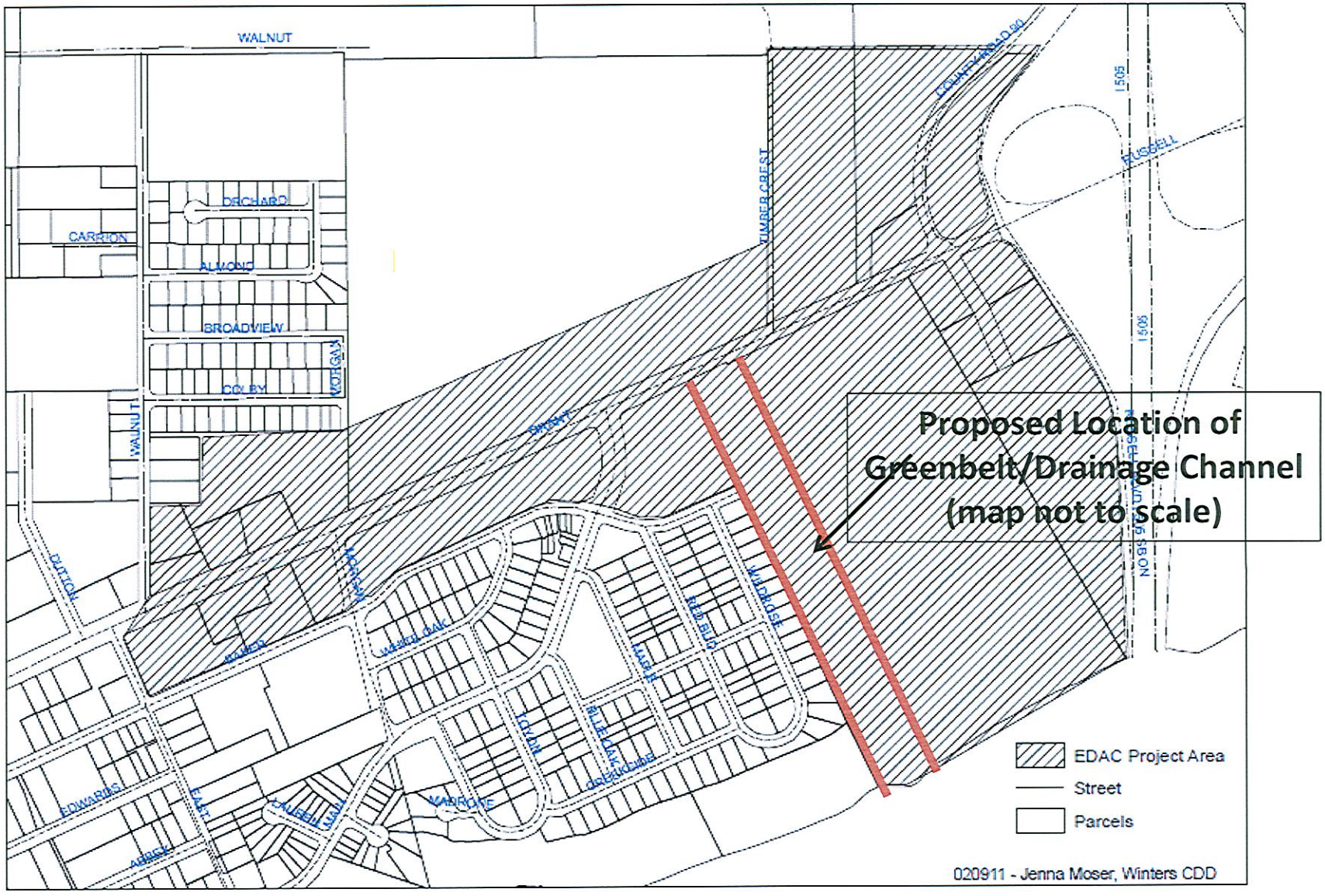
Adopted on MONTH DAY, 2011, this Design Guide is the result of our efforts to assist you in developing and improving your property. We hope it helps you plan your exterior work within the Grant Avenue Business and Commercial District.

This Guide is dedicated to meeting our community expectations and assisting those involved with the development process of the Grant Avenue Business and Commercial District. The District is illustrated on the map on the following page and encompasses the Grant Avenue "gateway" into Winters.

The community expectations include the following:

- Maintenance of the existing small town feel
- Highest quality architectural, landscape and site development design
- High quality materials and craftsmanship
- Variety and diversity of architectural character that support the current interesting mixture of styles
- Small scale buildings with a strong architectural orientation
- The sensitive interface of commercial development with adjacent residential neighborhoods
- Strong encouragement of a unique Winters scale and character
- "Smart", environmentally sensitive development which takes into consideration the proper use of materials, designs and techniques to advance sustainable development principles.
- Chain or franchise projects tailored to the unique qualities of Winters
- Maintenance of a sense of place with view of surrounding hills preserved
- Avoidance of architecturally trendy buildings in favor of more timeless qualities
- Thoughtful architectural design – not boxes with cosmetic attachments
- Unity of design treatment with all sides of the structure related to the design of the primary facades.
- Energy design in consideration of the CPUC's goal of all commercial building achieving zero net energy use by 2030, and AB 32's 2020 carbon emissions reduction goals.

Economic Development Advisory Project Area

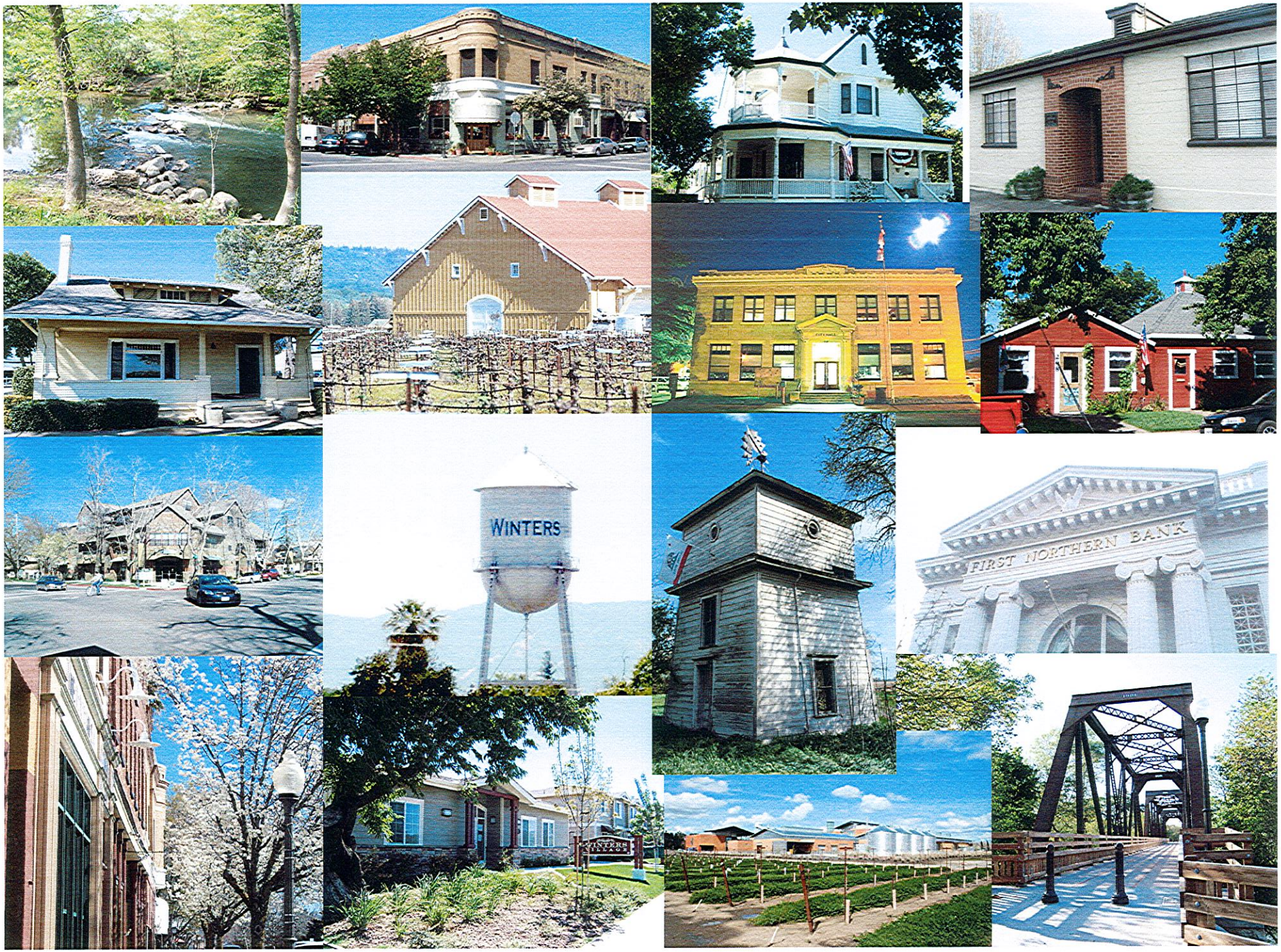


All contributors to our community own part of our heritage – its past charm, present vitality, and future direction. With the guidelines contained in this document, our goal is to establish a balance that preserves and enhances the city's livability while supporting the economic vitality that make Winters a complete community.

In addition, the guidelines are intended to accomplish the following:

- Provide clear guidance to property owners and design professionals in planning and designing new buildings and remodeling existing structures.
- Provide a greater degree of project review and approval predictability.
- Ensure that new development reinforces and supports the special qualities of the community of Winters.
- Maintain a building scale that is consistent with the community's historical image and character.
- Provide information to facilitate the adaptation of corporate and franchise designs to comply with Winters design expectations.
- Reinforce the special qualities of the community's visual character.
- Protect property owner investments by discouraging inappropriate adjacent development.
- Streamline the development review process by more clearly communicating community expectations to property owners and developers.

Please note that the mandatory development standards contain the words "shall, " must," or "will." Standards that contain the word "should" mean that an action is required unless a determination is made that the intent of the standard is satisfied by other means.


WINTERS
FIRST NORTHERN BANK

Site Planning

The City of Winters desires development in the corridor that is planned with strong consideration and thought given to building placement in relation to surrounding developments and the overall environment, allowing for safe ingress and egress, and including design that promotes an appearance that is unique to Winters. Developments should include, where appropriate, outdoor and public spaces. In addition, developments shall include screening enclosures for elements such as utilities, fire protection backflow preventers, service areas, trash enclosures and rooftop equipment. Overall, project sites shall be carefully planned to create and maintain a safe environment for pedestrians and bicyclists. Where stormwater drainage is a concern, developments shall include Low Impact Design features such as bioretention facilities, drainage swales and permeable pavements.

As a priority, developments shall, where feasible, include:

- Where appropriate, public, open or gathering spaces
- Limited conflicts between pedestrians, bicyclists, vehicles and utility/delivery vehicles
- Screening to cover trash enclosures, service areas, secure bike storage, and roof-top equipment
- Buildings sited in a manner that considers the surrounding environment
- On-site planning that encourages connectivity to off-site bicycle and pedestrian pathways
- Low Impact Design features, including bioretention facilities and permeable pavements
- Developments will be proactive and include transit in planning consideration

Community Spaces and Special Features

- All developed areas shall emphasize pedestrian orientation by creating attractive pedestrian spaces which utilize such features as plazas, ornamental gates, trellises, lighting, plant materials, seating, fountains and passageways through buildings via exterior and interior walkways.

- Pedestrian amenities, such as plazas, courtyards and other open spaces should be provided for spaces between buildings.

- Publicly-accessible plazas and open spaces are encouraged, where appropriate

- Plazas and open spaces shall be landscaped and incorporate high quality paving materials, such as bricks, stone, textured concrete block or tile.
- Outdoor pedestrian spaces shall include appropriate outdoor furniture, such as seating, walls, trash receptacles, bike racks and other elements.

- Paving, planting and other landscape materials should be coordinated with the design of the building, lighting and site.

- Owners of adjoining properties are encouraged to develop shared facilities, where possible.

- Certain projects may be required to install bike lockers per the CalGreen Building Code.

Example of public open space shared by multiple businesses

Community Spaces and Special (Continued)

- When adjacent to street, outdoor areas shall be buffered with architectural features such as fountains and planting.

- Where practical, outdoor areas should be visible from public streets or trail networks and accessible from the building as well as the street or potential network.

- Outdoor furniture shall be coordinated with the theme of the building.

- Plant materials shall be of a drought-tolerant species as deemed by the CalGreen Code and provide variety, while being consistent with the architectural design of the building.

- All screening shall be designed as an integral part of the overall building design.

- Wall expanses should be protected from graffiti by adjacent plantings of shrubs or vines.

Example of an outdoor area buffered from the street by plantings

Outdoor Service and Storage Areas

- Lighting of outdoor service, loading and storage areas shall be the minimum necessary for security purposes and shall be designed and directed so as to meet night sky requirements in the Winters General Plan or lighting impacts at the street or on surrounding properties.

- Screening of these areas should be integrated into the overall building and landscape design. Screening may integrate lattice work, dense flowering vines, and additional architectural elements.

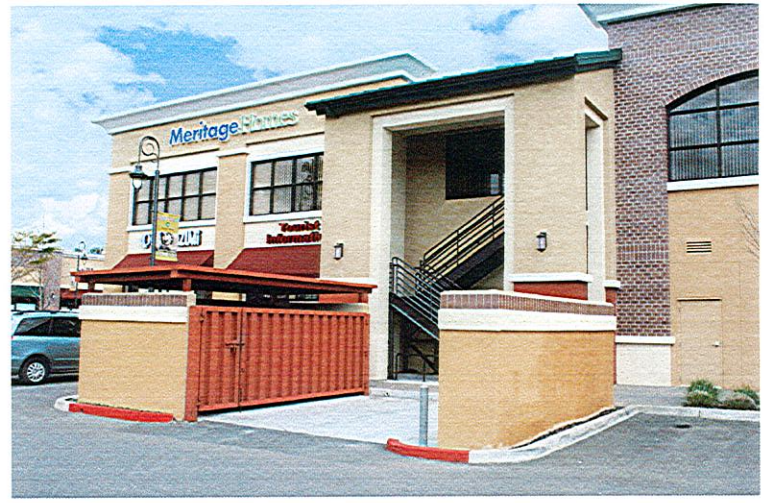
Outdoor Service and Storage Areas (Continued)

- Trash enclosures shall be of sufficient size to house the number and size of trash bins and containers needed to accommodate the waste generated by the building user(s), as required by the City's Solid Waste Ordinance and Planning and Zoning Code requirements. Trash bins shall be located within a trash enclosure at all times.

- All roof-mounted mechanical, electrical and external communication equipment, shall be screened from public view and architecturally integrated into the building design. Plans submitted for design review shall indicate how rooftop equipment will be screened.

- Service areas, garbage receptacles, utility meters and mechanical and electrical equipment shall to the maximum extent possible, be screened from public view and located for convenient access by service vehicles and public safety vehicles.

Example (above) of mechanical equipment not screened from public view



Example (above) of mechanical equipment appropriately screened from public view, with colors and materials matching adjacent buildings.

Building Siting and Orientation

- Buildings shall be sited to reinforce the public street network by incorporating active façades, with windows, doors and other architectural elements giving interest to the building from the corridor.

- Loading and service entrances shall not intrude upon the public view, nor interfere with pedestrian and vehicular flows within the project.

- In the Grant Avenue corridor, which is considered the city's gateway, care must be taken to create attractive public spaces and visual elements that represent Winters' heritage and character. Building masses shall be parallel to Grant Avenue and have a predominant east/west orientation.

- The street corners of corner sites are encouraged to be developed with buildings, public plazas or landscaped areas.

- Near corners, buildings should either be sited on the property lines or set back to provide a public open space, which provides direct access to the building or frames an open space between buildings.

Example of development where primary surface parking is located in front of building, an approach to avoid along Grant Avenue.

- Attractively landscaped areas may also be permitted where siting of a building's public open space at a corner is not feasible.

- Primary surface parking shall not be provided at the corners of corner sites or on the frontage, limited parking should be in the front or sides, with primary surface parking provided behind the building.

Building Siting and Orientation (Continued)

- Buildings located on corners shall include special design features and architectural features, which help to anchor the intersection.

- Significant site features, such as trees, agricultural vistas and views of surrounding mountains, shall be considered as design determinants in planning new developments.

- Where possible, outdoor parking areas should be divided into smaller units to decrease visual impacts associated with large expanses of pavement and vehicles, and to facilitate safe and efficient pedestrian movement between parking and buildings.

- Surface parking areas facing a public street shall be buffered through the use of berms or landscaping.

Surface parking area facing public street is not buffered in the photo above while photo below depicts parking area buffered by landscaping and attractive fence.

Drainage and Water Quality

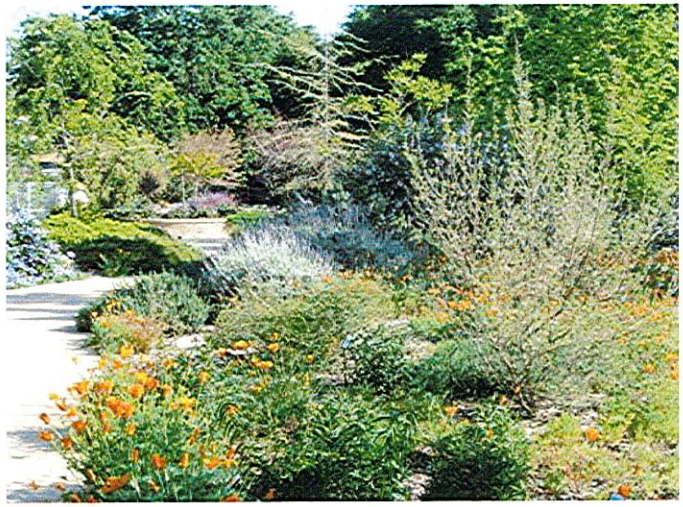
When drainage on a site is a concern, Low Impact Design elements shall be considered including:

- Structure the development of a site so that the pre-development conditions are not altered excessively.

- Conservation and use of on-site natural features to protect water quality is required unless this condition can be met in another way.

- Swales are strongly recommended to reduce water quality impacts associated with site runoff. Drainage swales incorporated into landscape designs shall conform to the appropriate standards and guidelines for swales.

Example of a drainage swale in a parking lot (above)



Example of water efficient landscapes (left and right)

Compatibility/Coordination with Surrounding Properties

- While each development should be considered unique, compatibility with surrounding properties is encouraged to provide a visually pleasing corridor.

- Consider complementary pedestrian, bicycle and vehicle circulation to enable consistency and connectivity to offsite pathways.

- Applicants shall familiarize themselves with the City of Winters' Complete Streets Corridor Design document.

- Consider the natural environment and surrounding vistas when planning for building orientation.

- Development in the corridor should be reflective of the city's overall heritage.

- Consider transit accessibility (bus stops/routes) when developing site plan.

Proposed development should consider the characteristics of the surrounding area.

- Consider the characteristics of the surrounding area, including construction types, building heights, building orientation, driveways, service areas and public spaces.

- Significant site features, such as trees, agricultural vistas and views of surrounding mountains, shall be considered as design determinants in planning new developments.

Architecture and Building Design

The City desires development in the corridor that includes architecture and architectural details that reflect the overall character of Winters. Buildings need not adhere to one particular style or design. However, they should integrate features and/or materials that harmonize with the surroundings and the agricultural heritage that residents prize.

As a priority, include:

- Natural material including, but not limited to: brick, stone, wood, metal, and/or other materials that reflect Winters and its surroundings;
- Use of sustainable materials and practices is encouraged;
- Design to maintain and reinforce the unique scale and character of Winters;
- Dimensional relief to building facades and attention to detail on all sides of buildings;
- Buildings and design features scaled to human proportion.

General Building Design

- Building form and the type of construction materials used are significant factors in creating a development that is attractive and that fits in with the Winters community. While the City does not advocate or prescribe specific architectural styles or forms (e.g. contemporary vs. historical), it is appropriate for industrial or commercial building development to draw from local or regional design influences. As an example, predominant historical roof slopes do not exceed 8 in 12 pitch, nor are they less than 6 in 12 pitch.

- In multi-building complexes, a comprehensive architectural concept should be developed and maintained. Various site components should be unified through the use of similar design, materials, roof slopes and colors.

- Finish wall tops with overhangs, projecting cornices, and column caps that provide a strong visual terminus to the structure. Use applied and integrated design elements (e.g., exposed rafter tails on sloped roofs, cornice moldings, applied medallions, etc.)

Example of building that consists largely of boxes with design elements, an approach to avoid along Grant Avenue

- Avoid design which consists largely of boxes with applied design elements.

- Apply dimensional relief to building façade. Provide a number of facade layers (e.g., front of columns or pilasters, wall plane, window frame, and window glass).

- Maintain continuity of design, materials, color, form and architectural detail for all elevations of a building that are visible from public areas or adjacent residences.

Entries

- Building entries should be oriented toward the predominant public view, usually the street frontage. This allows the public to easily determine where the front entrance is located, and provides for a more attractive street frontage.

- Where possible, provide entries from Grant Avenue sidewalks as well as from the parking lot.

- Entries shall be designed to be consistent with the overall design, including colors and materials.

- Use transomes for natural lighting above ground floor doors and windows.

Example of attractive building entrance

Massing

- The height, width, and depth of a structure create the overall "massing" of a building. Achieving attractive massing for large structures is challenging, and requires creativity in architectural design. Appropriate building massing is achieved when it does not dominate building elevations with large blank walls. Large expanses of blank wall of any material are strongly discouraged. Use "Golden Mean" to determine building proportions and establish a base, middle, and top for building massing.

- Landscaping enhances architecture; however, building design should not rely on landscaping to soften, buffer or otherwise provide relief for massive building form.

Massing (Continued)

- Massing can be reduced through several methods including, but not limited to:

  - Recessing floors above the first story;

  - Providing vertical or horizontal offsets in the wall surfaces at regular intervals, including columns, projections, and recesses;

  - Reducing the overall size of buildings;

  - Incorporating other structures on the site with varying sizes;

  - Articulating details around doors, windows, balconies, exposed expansion joints, reveals, change in texture, or other methods of visual relief;

  - Avoiding long, repetitive, monotonous facades, including those that repeat the same design element several times along the same elevation;

  - Reducing overly large and tall roof designs;

Massing is reduced on the building in the photo above through recessing floors above and providing horizontal and vertical offsets.

  - Vary facades at least every 50 feet;

  - Use arcade and gallery frontage where applicable at public area;

  - Ground floor heights shall be 14 to 20 feet.

Building Materials and Colors

- The use of high quality, natural materials including wood, stucco, stone or brick, is encouraged.

- Utilize colors that are appropriate to the use and the surrounding area.

- Muted tones are generally preferred with stronger accent colors limited to smaller areas of trim.

- Thoughtful consideration shall be given to the selection of color hues. Muted tones of blues, yellows, tans, grays, and other hues shall be considered.

- A range of analogous or complementary colors is preferred over painting all wall surfaces with the same paint, color and shade.

- Vinyl and aluminum are not acceptable finish materials.

The building in the photo above was constructed in a Sacramento foothill community. A variety of materials and colors were used that are appropriate for the area.

- The use of "green" or "low maintenance" materials for siding and trim such as fiber cement sidings and PVC/fiber cement/composite trims are encouraged.

Energy Efficient and Sustainable Design

The City of Winters supports sustainable design in the construction of new facilities and the remodeling of existing buildings. Applicants are expected to utilize creativity in adapting sustainable and energy efficient design elements. City staff will work closely with applicants to achieve this goal.

Energy efficient and sustainable design may be demonstrated in the following areas:

- Use of energy efficient HVAC systems
- Use of cool roofs and building orientation
- Use of solar energy
- Smart building orientation
- Reduction of energy demands through simple techniques such as efficient windows and sun control methods
- Use of recycled materials
- Increase insulation and energy efficient lighting
- Use of passive solar design
- Use of operable windows

Example of commercial building with roof-mounted photovoltaic energy system

General Consideration of Surrounding Area

- Views to the surrounding hills should be maintained.

- Building scale shall be set back along the street, in order to retain the views of the corridor, especially the Vaca Mountains. Structures over one story shall be designed to minimize their visual bulk and relate to the human scale of pedestrians on the street.

- Projects shall be designed to meet their functional needs, but will be expected to reflect Winters unique qualities of small scale, pedestrian friendliness, and attention to architectural detail.

- Chain or franchise uses shall adapt their exterior standard designs and materials to the unique qualities of Winters.

Example of buildings (above and below) that reflect the qualities of the locale

Connectivity

The City of Winters desires development that provides for the inter-connectivity of, pedestrian, bicycle and vehicles within the Grant Avenue Corridor, including, but not limited to: pedestrian/bike facilities, connection to designated walkway and bikeway systems, and transitions between developments and roadways that eliminate conflicts between these uses and maximize utilization of these facilities.

In proposing a project, applicants shall consider and demonstrate how the development will connect with:

- Grant Avenue Complete Streets Concept Plan
- Class I and II Bicycle Lanes
- Pedestrian/bicycle facilities within the project and with bordering facilities
- Putah Creek Park Master Plan and Trail System

As a priority, developments should:

- Provide direct connection with bicycle/pedestrian facilities that border the project site
- Minimize bicycle/pedestrian and vehicular conflicts within and external to the project
- Reduce vehicular ingress/egress from the project
- Create effective circulation/flow within the project

Vehicular Circulation

- Provide separate vehicular and pedestrian circulation systems with a strong emphasis on pedestrian linkages between uses.

- Use design elements that are visually interesting and consistent with other streetscape materials used in the overall development and those planned for Grant Avenue/SR 128.

- The City of Winters wishes to minimize conflicts for excessive ingress/egress locations along Grant Avenue. Projects shall consider alternatives to Grant Avenue such as arterials (East Main Street, Timbercrest Road, Morgan Street or Walnut Avenue).

Example of intersection with visually interesting design elements

Example of streetscape concept plan for Grant Avenue/SR 128

- Locate additional site access points as far as possible from street intersections to minimize conflicts. More than one access to a site from a public street may be permitted when the additional access will not be hazardous to the safety and operation of the street or pedestrians and when it facilitates the integration of the commercial development into the community.

- When the opportunity exists, provide common or shared entries.

Passenger Drop Off Areas

- Design drop-off lanes so as not to obstruct traffic flow when motorists are stopped to deliver passengers.
- Provide a clear separation of vehicular traffic between drop-off zones and access to a parking lot.
- Use colors and textures in the parking area that are distinguishable from the travel lane at the drop off area.
- Use signs to indicate “drop-off zone” or “passenger loading only”.

Example of passenger drop-off area with adequate ADA accessible parking spaces

Bicycle Circulation and Parking

- Bicycle paths and routes shall be designed to provide continuous circulation through the site separated from vehicle travel ways, wherever feasible.

- Per CalGreen Code, certain projects shall furnish off-street bicycle parking/kiosks to encourage the use of alternative transportation modes. These facilities shall be designed to accommodate the trip purpose of the different bicycle users.

Bicycle parking furnished on a street corner

Bicycle/Pedestrian connection along a creek

- The maintenance roadways of the proposed combination greenbelt and drainage channel identified in the Moody Slough Subbasin Drainage Report shall be designed to share bicycle and pedestrian connection from Grant Avenue/SR 128 to the multi-use trail within the Putah Creek Nature Park.

Pedestrian Circulation

- Continuous pedestrian walkways shall be provided to connect the public sidewalk to the principal customer entrances at each tenant space. Drive aisles should not be used as pedestrian walkways.

- Sidewalks and pedestrian ways shall be scaled to the use and expectations of pedestrian volumes in any given location with the minimum width of the sidewalk and pedestrian ways no less than 5 feet, and no less than 8 feet where multi-use is proposed.

- Walkways should be shaded and landscaped.

- Paths with durable, all-weather surfaces shall be located across medians and other landscaped areas, as necessary to provide convenient pedestrian routes and reduce wear on landscaped areas. The use of hard surface decomposed granite and/or permeable concrete is strongly encouraged.

Example of a bicycle /pedestrian facility

Pedestrian Circulation (Continued)

- Pedestrian connections should be provided between buildings and adjoining commercial sites.

- Sidewalks shall connect areas of pedestrian activity such as street crossings, building and store entrances, bicycle racks and secure storage, and adjoining landscaped areas that include trees, shrubs, lighting, signage, benches, flowerbeds, or other similar amenities.

- Primary circulation paths must meet all accessibility requirements and avoid excessive steps or level changes in order to reduce potential tripping hazards and facilitate circulation for all potential users.

- Where walkways cross on-site driveways, special design features should be used to increase safety for the pedestrian. Potential design features include elevated crosswalks (raised to the level of the sidewalk) and curb extension to narrow the travel lane or low-level lighting, such as a bollard light.

Two examples (above and below) of pedestrian walkways separate from the drive aisles

Signs

Signs in the Grant Avenue Corridor area are regulated by Chapter 17.80 (Signs) of the Winters Municipal Code. The following design standards are intended to guide the design of signs in the Grant Avenue Corridor area and will be used as a basis of consideration for review of sign permits and management of signs in the area.

As a priority, developments shall include signs that are designed in harmony with the style and character of the development and as an integral component of the building architecture, building materials, landscaping, and overall site development. Signs that are compatible with the surroundings and effectively communicate a message will promote a quality visual environment.

General Design Standards

- Sign letters and materials shall be professionally designed and fabricated.

- Exposed conduit and tubing (raceway) are prohibited. All transformers and other equipment shall be concealed.

- All signs shall be maintained in good repair, including the display surface, which shall be kept neatly painted or posted.

- The exposed backs of all signs visible to the public shall be suitably detailed, finished and maintained.

- The use of retractable or fixed awnings as a signage tool is acceptable.
- The light source for externally illuminated signs must be positioned so that light does not shine directly on adjoining properties or cause glare or shine in the eyes of motorists, bicyclists or pedestrians.

Example of wall sign that is proportionate with the building

Placement

- Signs should be generally free of obstructions when viewed from different angles. However, trees, shrubs or other landscaping that grow to a point that they obstruct the view of a sign or make it illegible shall not be grounds for removal of the plant(s).

- Utilize a consistent proportion of signage to building scale, such as one-third text to two-thirds wall area or one-quarter text to three-quarters wall area.

Materials and Colors

- Paper and cloth signs are appropriate for interior temporary use only and are not permitted on the exterior of a building.

- The use of neon is permitted if it fits with the style of the architecture (e.g., art deco) and is not a nuisance (e.g., produces glare) to the surrounding properties.

- Signs shall be constructed using exterior materials, finishes, and colors in harmony with, or an upgrade to, those of the buildings or structures on site.

- The selected materials need to contribute to the legibility of the sign. For example, glossy finishes are often difficult to read because of glare and reflections.

- Contrast is an important influence on the legibility of signs. Light letters on a dark background or dark letters on a light background are most legible.

Example of a pole sign, which is not permitted along Grant Avenue

Prohibited Signs

- Beyond those already permitted by the City of Winters sign ordinance, no individual pole signs or A-frame signs shall be permitted in the Grant Avenue Corridor area.

Sign Illumination

- The light from an illuminated sign shall not be of an intensity or brightness that will create glare or other negative impact on residential properties in direct line of sight to the sign.

- Whenever indirect lighting fixtures are used (fluorescent or incandescent), care shall be taken to properly shield the light source to prevent glare from spilling over into residential areas and any public right-of-way.

- Internally illuminated plastic box "canned" signs are prohibited. Individually illuminated channel letters are acceptable.

- Signs shall not have blinking, flashing, or fluttering lights, or other illumination devices that have a changing light intensity, brightness, or color.

- Light sources shall utilize energy-efficient fixtures to the greatest extent possible and shall comply with Title 24 of the California Code of Regulations (California Building Standards Code).

- Backlit, cut-out signage is encouraged.

Example of a streetscape cluttered with signs, an approach unacceptable along Grant Avenue

Sign Legibility

- Avoid spacing letters and words too close together. Crowding of letters, words or lines will make any sign more difficult to read. Conversely, over-spacing these elements causes the viewer to read each item individually, again obscuring the message. As a general rule, letters should not occupy more than seventy-five (75) percent of the sign panel area.

WELCOME TO
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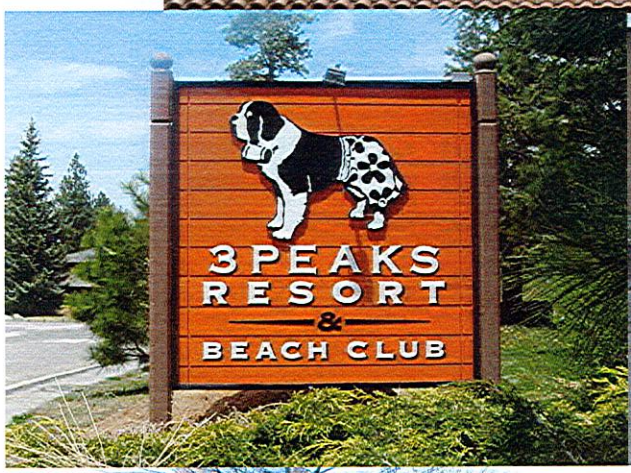
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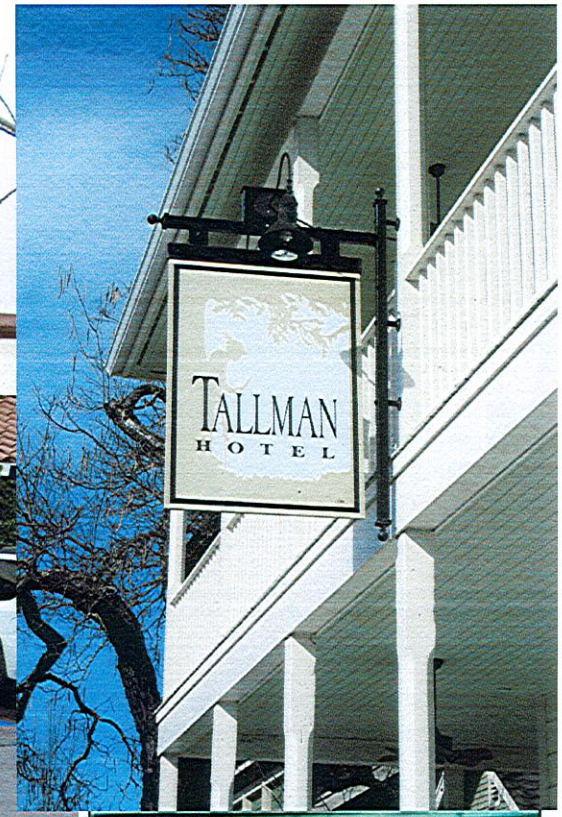
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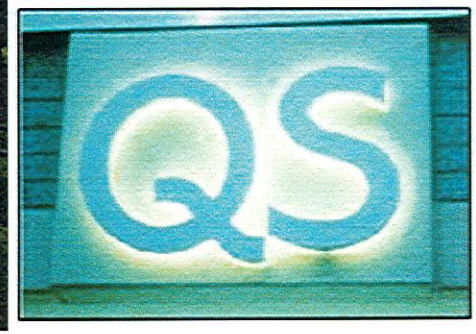
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Landscaping

Landscaping in the Grant Avenue Corridor area is regulated by Chapter 17.76 (Landscaping and Irrigation) of the Winters Municipal Code, the State's Model Water Efficient Landscape Ordinance, and the California Green Building Standards Code. The following design standards are intended to guide the design of landscaping on properties in the Grant Avenue Corridor area and will be used as a basis of consideration for review of landscape plans in the area.

The City of Winters desires development in the corridor that includes landscaping that enhances sites within the Grant Avenue Corridor, minimizes adverse visual and environmental impacts of large structures and paved areas, promote the conservation of water, and to provide microclimate control for energy conservation where possible.

As a priority, developments shall:

- Follow/comply with the State's Model Water Efficient Landscape Ordinance and the California Green Building Standards Code (CalGreen Code);

- Enhance the overall appearance of the project, unify outdoor spaces and preserve view corridors while taking into consideration climatic conditions and the natural environment of Winters.

Design

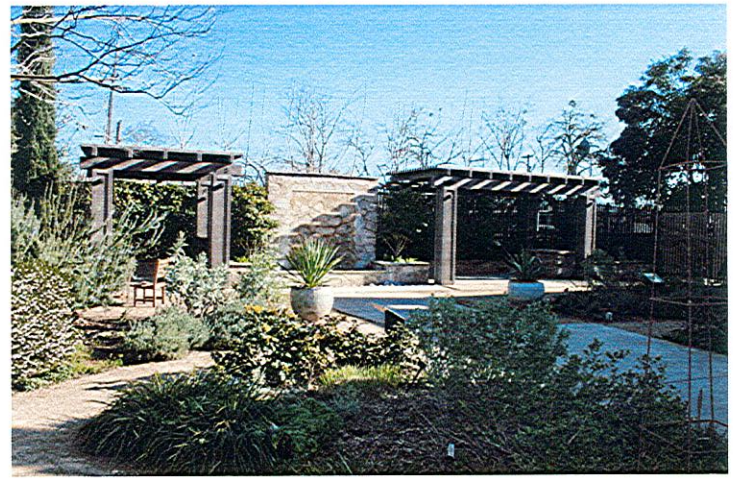
- Landscape plans shall exhibit an overall design concept.

- Plant materials should be used in a logical, orderly manner, helping to define spaces and complement adjacent architecture.

- Landscape designs should be coordinated between the areas of a development. However, all areas within a project need not be identical.

- Different landscape themes may be utilized in larger developments to distinguish spaces from one another; however, these themes should be consistent with a unifying concept that establishes a cohesive design throughout the project.

Example of buildings with landscaping and site furnishings



Site Furnishings and Features

- Landscape plans should incorporate various site furnishings and features.

- Lighting, seating, paving, fountains and other features shall be considered integral components of the landscape plan and included in the overall landscape concept.

Scale

- The scale and character of the landscape materials to be selected should be appropriate to the site and/or architecture. Large-scale structures or projects require large-scale landscaping treatments.

Trees

- Mature, existing trees should be incorporated into landscape plans, wherever possible and accordance with City's Tree Ordinance. Specimen trees or groupings of existing trees can provide a new development with immediate character. They should be considered as design elements.

- In the absence of existing trees, those used should be no less than 24X24 boxed specimen trees.

- Utilize the City of Winters tree palette.

Mature trees were incorporated into the renovation of the building shown above.

Arbor, planters, and trellises

- Landscaping incorporated into a buildings' architectural design (e.g., arbors, planters, trellises, atriums, etc.) is encouraged.

Entrances and walkways

- Site landscaping should be used to define entrances and walkways, to screen parking and loading areas, for micro-climate control, and to enhance views of the site from inside a structure.

- Landscape should be professionally designed and meet CalGreen Code standards. The use of water conserving plantings, such as California natives and drought tolerant trees, shrubs, and turfs, is encouraged.

Examples of water conserving plantings

Lighting

The City of Winters desires development in the corridor that includes lighting and the design of fixtures that contribute to the character of the development while not impacting adjacent development. Site lighting shall also enhance architecture and landscape design, and address dark sky concerns.

As a priority, developments shall include:

- Attractively designed lighting fixtures that complement the architecture of the project and surrounding development;
- Lighting that improves the visual identification and safety of businesses;
- Street lighting that is scaled for the pedestrian while still meeting vehicular needs;

- Consideration to the effects of light pollution on the environment, as well as utilization of energy conservation technologies, such as LED lighting.

Design

- Exterior lighting shall be designed as an integral part of the building and landscape design. Decorative lighting fixtures, such as gooseneck lighting or antique style, are strongly encouraged.

- Site plans and architectural plans shall include the location of fixtures, their design and the nature and level of the illumination they will provide. Lighting shall be designed to include cut-offs to eliminate the negative effects of lighting the night sky.

- Illumination levels shall be provided to address security concerns, especially for parking lots, service areas, pedestrian paths, outdoor gathering spaces, at building entries and any other pedestrian accessible areas.

Example of decorative street lighting directed downward to avoid lighting of the night sky.

Area of Illumination

- Lighting shall be located so as to minimize the impact of lighting upon adjacent buildings and properties, especially residential uses.

- In general, the location of lighting should respond to the anticipated use and not exceed the amount of illumination required by users.

- Illumination over an entire area or use of overly bright lighting is strongly discouraged.

- The placement of light standards, whether for street lights or landscape lights, shall not interfere with pedestrian movement.

- Lighting for pedestrian safety shall illuminate changes in grade, path intersections and other areas along paths which, if left unlit, would cause the user to feel insecure. Recommended minimum levels of illumination along pedestrian paths between destinations is 0.5 foot-candles. At pedestrian destination points such as entryways, plazas and courtyards, lighting levels should typically achieve illumination of 1 foot-candle, per current code.

Examples (above and below) of bollard lighting along a path, which provide for safe pedestrian movement

Parking Area Illumination

- Illumination should be concentrated along the pedestrian paths leading to parking areas and in the specific areas where cars are parked.

- Illumination should achieve a lighting level of 1 foot-candle on the parking lot surface.

Lighting Height

- The height of luminaries shall be to scale with the building and site design and in no case shall they exceed 16 feet in height from grade.

- Lighting sources should be kept as low to the ground as possible while ensuring safe and functional levels of illumination.

- Area lighting shall be directed downward or employ control features so as to avoid light being directed offsite as well as to avoid lighting of the night sky.

Example of a parking lot with illumination that appears to exceed lighting levels, an approach to avoid along Grant Avenue.

Prohibited Lighting

- No outdoor lights shall be permitted that blink, flash or increase lighting intensity.

APPENDIX A

Approval Process

APPROVAL PROCESS

An important objective of the design review procedure is to better coordinate the processing of your development plans prior to obtaining your building permit. This includes streamlining the process to minimize the steps and hurdles in the path to completion of your project. The process outlined here is provided to inform you of how our design review system works from start to finish. We hope it will assist you in understanding what will occur when your project is proposed in the Grant Avenue Business and Commercial District.

In Appendix B, you will find a checklist of general considerations. You will want to review the checklist once you have reviewed the Guide to determine the compatibility of your project with the District's design goals.

Steps of the Approval Process

Step 1: Schedule a meeting with the Community Development Department staff and request information to answer the following questions:

a. What do I need to apply for development?
b. Is my project consistent with the General Plan Policies and Zoning Ordinance Standards?
c. What is the approval process? How much time is involved?
d. Is my project in the Grant Avenue Business and Commercial District? Are the Design Guidelines applicable to my project? What types of requirements are likely to be imposed?
e. Do I need encroachment permits for outdoor activities in the public right-of-way?

Step 2: Submit a completed planning application along with the necessary plans, materials, and application fee(s) to the Community Development Department. Staff will determine whether the application for your project is complete.

Step 3: Upon receipt of a complete application, staff will route the project plans and materials to multiple City departments for their review and comment. In some cases, due to environmental regulations, the project may also be routed to State and Federal agencies such as the Army Corps of Engineers, U.S. Fish & Wildlife, and the California Department of Transportation (Caltrans) or others for review and comment.

Step 4: Within 30 days of submitting your application, staff will hold a project evaluation meeting with multiple City departments to discuss the project's site/design issues. You, your engineer, and your architect may attend this meeting as well. After the meeting, city staff will compile written comments from each department (engineering, building, etc.) on the project as well as a draft set of recommended conditions of approval and provide it to you. In some cases, the written comments require modifications to the project plans.

Step 5: If following the meeting the project is modified, you are responsible for responding to each department's comments and making sure that each department's comments are adequately addressed before submitting revised plans.

Step 6: Submit the revised plans to the Community Development Department for redistribution to the applicable Departments for their review and finalization of the project Conditions of Approval.

Step 7: Once all departments have reviewed the revised project plans, staff prepares the final Conditions of Approval. These Conditions of Approval will be included within the staff report that is forwarded to the approving authority for their review and consideration. At this step, staff also prepares the necessary environmental documentation schedules the public hearing for the project.

Step 8: Staff will prepare a Public Hearing notice for the project. The public hearing notice will be sent to property owners within a 300 foot radius of the project and to the Winters Express for publication. At the same time, staff will prepare and finalize your project's staff report. Please note, your staff report may include recommendations related to any outstanding design and/or site issues not fully addressed on the project plans. This staff report is then forwarded to the approving authority for their review and consideration.

Step 9: At the public hearing, testimony is heard on the project and the approving authority will take a final action on the project. When the approving authority approves your application, the discretionary review process is complete and you may apply for a building permit following the ten (10) day appeal period. You must comply with all conditions of approval. Should the approving authority disapprove your application, you may resubmit a modified application or appeal the decision to the Winters City Council within 10 days of the decision.

PLEASE NOTE: Permits for new development that include land use and/or zoning issues such as General Plan amendments and rezones require three public hearings (one Planning Commission meeting and two City Council meetings). In these cases, the City Council is the final approving authority.

APPENDIX B

Pre-Approval Considerations

PRE-APPROVAL CONSIDERATIONS

Now that you have reviewed the guide, apply these questions to your proposed plans before you submit your application. If you can answer yes to all of these questions, your plans have a very good chance for approval. If you have to answer no to any of these questions, you may want to reevaluate your plans in light of the goals and criteria of the Design Guidelines. We encourage your design creativity and look forward to working with you.

1. Do your plans relate favorably to the surrounding area?

2. Do your plans contribute to the improvement of the overall character of the City?

3. Do your plans fit as much as is reasonable with the building's original design?

4. Are the changes or new construction proposed in your plans, visible to the public and architecturally interesting?

5. Does your project proposed a use consistent with the surrounding uses and businesses?

6. Are all materials proposed in your plans appropriate to the neighborhood?

7. Do your plans include landscaping and design to enhance the pedestrian environment?

8. Have your plans been designed in accordance with the guidelines set forth in this booklet?

APPENDIX C

Project Review Checklist

City of Winters – Grant Avenue Business and Commercial District Design Guidelines Project Review Checklist

The City Council on Month X, 2011 adopted the following Checklist which is intended to assist developers, staff, policy boards, and the public in determining project consistency with the Grant Avenue Business and Commercial District Design Guidelines. Please refer to the Guidelines for the full text and illustrations, as the Checklist does not supersede or substitute for the Guidelines. The information in parentheses provides examples of ways to achieve the desired effects, recognizing that it is impossible to reduce the art and practice of design into a checklist of individual elements.

Discussion of Design Elements: Applicants are requested to discuss the following issues in their project application submittal.

1. How does the project design contribute to the improvement of the City's physical image? How does the project exhibit creativity?
2. What architectural style(s)/period is represented by the project design, if any?
3. After completing the checklist below, explain how the project complies with the various factors below.
4. Are any of the criteria below not met? If so, why not?

Yes	No	N/A	Yes – consistent; No- Not consistent or more info needed; N/A – not applicable
			Site Planning
			The proposed buildings are sited in a manner that considers the surrounding environment.
			The development includes limited conflicts between pedestrians, bicyclists, vehicles and utility/delivery vehicles.
			Public, open or gathering spaces are included, where appropriate.
			Low impact design features, such as biodetention facility, rain gardens, and permeable pavements are included in the proposed development.
			Consideration for transit facilities is included in the proposed development.
			On-site Planning encourages connectivity to off-site bicycle and pedestrian pathways.
			Architecture
			Design of proposed buildings reflect Winters and its surroundings *(compatible materials, colors, quality, coordinated but not the same as properties in Winters, avoid strong or vivid colors unless they fit within local context, concrete block/exposed concrete on visible walls finished in aesthetic manner).*
			Buildings and design features are scaled to human proportion.
			Buildings exhibit variety and distinctiveness *(but avoid overly obtrusive or overly monotonous designs, or strong contrast with adjacent buildings, creative use of natural or recycled materials).*
			Variety of architectural features encouraged tied to comprehensive design theme *(arches, raised parapets, cornices, eaves, windows, balconies, entry insets, roof angles and pitches, wall relief features).*
			Site and buildings are visually attractive from neighboring properties, traffic and corridors, and public spaces *(service areas and devices screened, integrated and compatible with site features; above criteria is applied to areas visible to public view; rear and side views are visually interesting, coordinated, and well-maintained).*
			Connectivity
			The proposed development connects with:
			- Grant Avenue Complete Streets Concept Plan
			- Class I and II Bicycle Lanes
			- Pedestrian/bicycle facilities within the project and with bordering facilities
			- Putah Creek Park Master Plan and Trail System
			Pedestrian elements are attractive and functional *(walkways link parking to building entrances and other walkways; planters, street furniture, outdoor seating, pedestrian oriented signs, low level lighting provided).*
			Parking areas include a defined sidewalk or marked pedestrian facilities in landscaped areas or separated from traffic lanes required.
			The project provides connections for walkers and bicyclists to the surrounding community *(provides walking/biking facilities on the site, connects to walking/biking facilities in town, provides shortcuts for walkers/bikers).*
			Sidewalks provide are convenient and safe access *(sidewalks sufficiently wide, without obstruction; curbs, shade, lighting provided; buffers between walkers and traffic provided; safe and direct street crossings for walkers).*
			Entrances provide convenient access *(entrances adjacent to street, minimal setback, routes are well marked, sidewalks provide uninterrupted access to entrances, safe*

Yes	No	N/A	Yes – consistent; No- Not consistent or more info needed; N/A – not applicable
			bike parking is located to entrances).
			Landscaping
			The proposed landscaping complies with the State's Model Water Efficient Landscape Ordinance and the California Green Building Standards Code (CalGreen).
			Scale and nature of landscape materials is appropriate to site and structure *(Plants are of type, spacing, and sizing to reach maturity within reasonable time. Hardy, drought tolerant, low maintenance species adapted to Winters climate are emphasized, parking lot trees also withstand hear, pollutants).*
			Signs
			Signs are compatible with architectural character of buildings *(signage does not dominate site, uses compatible colors and material, lighting is restrained and harmonious)*
			Lighting
			Lighting harmonizes with site, building design, architecture, and landscaping *(lighting form, function, character, fixture styles, design and placement; lighting does not interfere with pedestrian movement).*
			The proposed development includes consideration to the effects of light pollution on the environment, as well as utilization of energy conservation technologies.
			Energy Conservation
			Active and passive solar and other renewable energy design and devices are used *(building orientation, landscaping, lighting, heating and cooling, photovoltaic system-ready or installed).*
			Devices are unobtrusive and complement design *(solar panels flush with roof).*
			Green Building (incorporating green building elements)
			Water efficiency
			Energy
			Materials and Resources
			Indoor environmental quality

RESOLUTION NO. 2011-XX

A RESOLUTION OF THE WINTERS CITY COUNCIL TO ADOPT THE CITY OF WINTERS GRANT AVENUE DESIGN GUIDELINES

WHEREAS, in the winter of 2011, the City Manager requested that the City Council appoint a committee of eight members to prepare a set of design guidelines for properties in the vicinity of the Grant Avenue and the I-505 interchange.

WHEREAS, the committee was named the Economic Development Advisory Committee (EDAC), and the eight community members were appointed to the committee;

WHEREAS, the study area for the Grant Avenue Design Guidelines (Design Guidelines) includes properties contiguous with Grant Avenue from I-505 to East Street;

WHEREAS, during the spring of 2011, the EDAC and City staff held a total of 13 meetings to discuss design concepts for study area, all of which were advertised in the *Winters Express* and open to the public;

WHEREAS, of the 13 meetings, two community workshops were held at the Winters Community Center to specifically solicit public input on the Design Guidelines; the workshops were held on March 7, 2011 and June 16, 2011;

WHEREAS, the overall goal of the process was to engage the community in a discussion about potential design of buildings and land along Grant Avenue and develop a set of design guidelines for these properties;

WHEREAS, the approved Design Guidelines shall provide clear guidance to property owners and design professionals in planning and designing new buildings and remodeling existing structures in the study area;

WHEREAS, the City of Winters Community Development Department has evaluated the Design Guidelines and has prepared a CEQA Notice of Exemption per Sections 15060(c)(3) and 15378 of the CEQA Guidelines;

WHEREAS, the Planning Commission conducted a duly Noticed Public Hearing on the Design Guidelines on July 26, 2011, at which time, all those desiring to be heard were heard;

WHEREAS, following the receipt of all oral and written testimony, the Planning Commission closed the public hearing and recommended to the Winters City Council the adoption of Resolution No. 2011-XX, adopting the Design Guidelines;

WHEREAS, the City Council conducted a duly Noticed Public Hearing on the Design Guidelines on August 16, 2011, at which time all those desiring to be heard were heard;

WHEREAS, following the receipt of all oral and written testimony, the City Council closed the public hearing on the Design Guidelines on August 16, 2011;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winters, California, as follows:

1. That the City Council finds the above recitations are true and correct.
2. The City Council incorporates by reference all exhibits and attachments cited in this Resolution.
3. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the City Council finds the Design Guidelines to be exempt from the provisions of CEQA under Sections 15060(c)(3) and 15378 and approves the filing of the CEQA Exemption with the Yolo County Recorder's Office.

PASSED AND ADOPTED by the City Council of the City of Winters, California, this 16th day of August 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Woody Fridae, Mayor

ATTEST:

_____
Nanci G. Mills, City Clerk

ORDINANCE No. 2011-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS
AMENDING CHAPTER 17.36 OF THE WINTERS MUNICIPAL CODE
PERTAINING TO DESIGN REVIEW

WHEREAS, Chapter 17.36 of the Winters Municipal Code governs design review of residential and commercial site development plans in the City of Winters; and

WHEREAS, the Winters Municipal Code Section 17.36.030 (A) states that site plan application for design review involving commercial development shall first be considered by the economic development commission, who may make a recommendation on the project and any conditions of approval to the planning commission;

WHEREAS, the Winters Municipal Code Section 17.36.030 (C) states that the planning commission shall consider any recommendations of the economic development commission prior to taking action on a site plan for design review;

WHEREAS, City staff is of the opinion that this section should be amended to omit these requirements since the economic development commission is not active at this time and will not be until the City Council reestablishes this commission;

WHEREAS, the Winters Municipal Code Section 17.36.040 (F) states that a site plan shall achieve conformity with the Winters design guidelines, as applicable;

WHEREAS, City staff is of the opinion that the Winters Municipal Code should be amended to include the Form Based Code for Downtown Winters (Chapter 17.58) and the City of Winters Grant Avenue Design Guidelines to ensure that the code and guidelines are followed;

WHEREAS, in accordance with the above, Chapter 17.36 of the Winters Municipal Code was revised by City staff and is hereby submitted to City Council for adoption as Ordinance No. 2011-XX;

WHEREAS, the amendments to the Chapter 17.36 are exempt from the California Environmental Quality Act pursuant to Sections 15061 (b)(3) and 15308; and

WHEREAS, on July 26, 2011, the Planning Commission of the City of Winters held a noticed public hearing and recommended approval of Ordinance 2011-XX to the City Council; and

WHEREAS, the City Council of the City of Winters conducted a duly noticed public hearing on August 16, 2011 at City Hall, 318 1st Street, Winters, CA 95694. Notice of the time, place, and purpose of the aforementioned meeting was duly noticed in accordance with Government Code 65090.

THE CITY COUNCIL OF THE CITY OF WINTERS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT.

A. Chapter 17.36, Section 17.36.030 (Design review procedures—Site plan submittal) is amended to read as follows:

Design review shall be accomplished pursuant to site plan review.

~~A. Site plan applications for design review involving commercial development shall first be considered by the economic development commission, who may make a recommendation on the project and any conditions of approval to the planning commission.~~

~~B.~~ A. The planning commission shall ~~also~~ review the site plan application where site improvements involving landscaping or parking lots are proposed.

~~C.~~ B. ~~The planning commission shall consider any recommendations of the economic development commission prior to taking action on a site plan for design review.~~ The planning commission may consider a site plan for design review concurrently with other applications for a project (such as a use permit) which requires planning commission action. A public hearing shall be held to consider the site plan, noticed pursuant to the requirements contained in Section 17.16.040. (Ord. 2001-04 (part): prior code § 8-1.4211 (C))

B. Chapter 17.36, Section 17.36.040 (F) is amended to read as follows:

F. Achieve conformity with the Winters design guidelines, *Form Based Code for Downtown Winters (Chapter 17.58), and the Grant Avenue Design Guidelines,* as applicable.

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption it shall be posted in two (2) public places within the City of Winters and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Winters prior to the effective date.

INTRODUCED on the 16th day of August, 2011.

PASSED AND ADOPTED as an ordinance of the City of Winters at a regular meeting of said Council on the 6th day of September, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Woody Fridae, MAYOR

ATTEST:

_____
Nanci G. Mills, CITY CLERK

CITY OF
WINTERS
California
Est. 1875

PLANNING COMMISSION
STAFF REPORT

TO: Chairman and Planning Commissioners

DATE: July 26, 2011

FROM: Nelia C. Dyer, Community Development Director

SUBJECT: Public Hearing and Consideration of an Application for Design Review for Site Plan Approval and Conditional Use Permit for the construction/installation of a modular office building to be located on the northeast corner of Railroad Avenue and East Abbey Street, adjacent to the Mariani Nut Processing Warehouse (APN 003-160-64)

RECOMMENDATION: Staff recommends that the Planning Commission take the following actions: 1) Receive the staff report; 2) Conduct the Public Hearing to solicit public comment; and 3) Approve the planning application for Design Review for Site Plan Approval and Conditional Use Permit submitted by Eric Doud for the construction/installation of a modular office structure to be located on the northeast corner of Railroad Avenue and East Abbey Street, adjacent to the Mariani Nut Processing Warehouse (APN 003-160-64).

PROJECT DESCRIPTION: The project applicant, Eric Doud, is seeking approval of a planning application for design review of a site plan and conditional use permit to allow the installation/construction of a modular office structure to be located on the northeast corner of Railroad Avenue and East Abbey Street, adjacent to the Mariani Nut Processing Warehouse in Winters. The proposed structure will house the field office for the American Council for Food Safety & Quality.

The proposed modular structure is 1,056 square feet (interior) and approximately 1,500 square feet with the porch and ramp. The height of the proposed structure is 16 feet. The roof of the proposed structure will be Galvalum Metal that is dull pewter in color. T-111 siding is proposed for the structure, and will be painted Hepplewhite Ivory while the trim color will be Wilmington Tan. The porch will be comprised of finished solid timber, and the handrails will be black metal tubing.

The site plan depicts four (4) standard off-street parking stalls and one (1) ADA van accessible stall. The paving plan shows that the parking lot for the proposed building will be paved with asphalt per

City of Winters Specification Standards. To access the parking lot, a twenty (20) foot, 2-way driveway is proposed using an existing curb cut.

The landscape plans for the project depict trees to shade the parking lot and surround the proposed building. California Sycamore and Trident Maple are listed in the Landscape Notes. Ground treatment will include walnut shell mulch. In addition, the landscape plan shows bicycle parking and a new concrete walkway from the ADA accessible space.

No signs are proposed with this development at this time.

BACKGROUND:

Property Description: The subject site is approximately .882 acres in size and is presently used as a parking lot for the Mariani Nut Processing Plant. The property is located at the northeast corner of East Abbey Street and Railroad Avenue in Winters. Empty lots are located to the north and south of the subject property. The lots are used for parking by the Mariani Nut Company. The property to the west is a vehicle repair business. The Mariani Nut Processing Plant is located to the east of the subject property.

General Plan Land Use and Zoning: The subject property is designated Central Business District (CBD) in the City's current General Plan. According to the General Plan, this designation provides for restaurants, retail, service, professional and administrative offices, hotels, multi-family residential units, public and quasi-public uses, and similar and compatible uses. The floor area ratio (FAR) for offices and commercial uses shall not exceed 2.0.

The property is regulated by the Form Based Code (Winters Municipal Code (WMC), Chapter 17.58), and the zoning of the property is Secondary Streets, DB. According to WMC, Section 17.58.040 (Regulating plan and street typologies and standards), the "secondary streets of downtown Winters display a mix of local retail and residential development. They have a more intimate nature than the other areas and this is reflected in the narrower sidewalks and streets, and abundance of street trees and landscaping."

STATEMENT OF ISSUES: According to the Winters Municipal Code (WMC) Section 17.36.020 (Requirements for Design Review), design review shall be required before the Planning Commission for the construction of non-residential buildings or structures of five hundred (500) square feet or more. Since the proposed structure is approximately 1,500 square feet, design review approval by the Planning Commission is required for this project prior to construction/installation. In addition, WMC Table 17.58-2 (Permitted Uses) requires Planning Commission approval of a conditional use permit for office use located within the Secondary Street DB zone.

ANALYSIS: As mentioned above, the applicant is requesting design review approval of a site plan and conditional use permit to construct/install a modular office structure at the northeast corner of Railroad Avenue and East Abbey Street. The analysis of each entitlement is provided below.

Conditional Use Permit: According to Chapter 17.20 (Use Permits) of the WMC, when reviewing applications for use permits, the Planning Commission shall find all of the following conditions to be fulfilled. Staff's analysis of each condition is provided under each condition:

1. *The requested use will be in conformity with the General Plan.*
   The subject property is designated Central Business District (CBD) in the City's current General Plan. According to the General Plan, this designation provides for restaurants, retail, service, professional and administrative offices, hotels, multi-family residential units, public and quasi-public uses, and similar and compatible uses. The proposed structure will house a field office for the American Council for Food Safety & Quality. According to the project description provided by the applicant, the business is to provide direct services consisting of agricultural and food product testing with the cliental being the Mariani Nut Company as well as local growers. The office is to be staffed with two to three full time employees who are engaged in the reception of clients, processing and preparing reports, food analysis, data storage and internal office paperwork. Based on this description, staff has determined that the proposed use falls under the definition of "office" and is, therefore, in conformity with the General Plan.

2. *The requested use is listed as a conditional use in the zone regulations or elsewhere in this section, or, where an interpretation was necessary, a determination was made by the community development director or planning commission that the proposed use would require a use permit.*
   The property is regulated by the Form Based Code (WMC, Chapter 17.58), and the zoning of the property is Secondary Streets, DB. WMC Table 17.58-2 (Permitted Uses) requires Planning Commission approval of a conditional use permit for office use located within the Secondary Street DB zone.

3. *The requested use is consistent with the intent and purposes of the zone in which it is located, and will not detrimentally impact the character of the neighborhood.*
   According to WMC, Section 17.58.040 (Regulating plan and street typologies and standards), the "secondary streets of downtown Winters display a mix of local retail and residential development. They have a more intimate nature than the other areas and this is reflected in the narrower sidewalks and streets, and abundance of street trees and landscaping." Presently, this section of the Form Based Code area does not reflect the intent or characteristics of a typical secondary street in Downtown Winters, with the vacant lots and the tall metal buildings.

   As mentioned previously, the proposed structure will house a field office for the American Council for Food Safety & Quality, which provides direct services consisting of agricultural and food product testing with the cliental being the Mariani Nut Company as well as local growers. Since it is adjacent to the Mariani Nut Processing Plant and accessible from the city's main roads, the use will be compatible with and valuable to the neighboring business as well as other clients in the region. Based on the aforementioned facts, staff has determined that the requested use is consistent with the intent and purposes of the zone at the subject location, and will not detrimentally impact the character of the neighborhood.

4. *The requested use will not be detrimental to the public health, safety, or general welfare;*
   According to the project description provided by the applicant, two to three full-time employees will be working in the proposed structure. Therefore, the operation of the office will generate little noise, if any. Potential noise generated from the site will come from the

HVAC unit for the structure. It is proposed to be placed between the new building and the existing warehouse to minimize its impact to the neighboring properties. In addition, since it is an office use, there will be no dust, ash, smoke, fumes, odor, or hazardous chemicals released from the site. Based on the aforementioned facts, staff has determined that the proposed use will not be detrimental to the public health, safety, or general welfare.

5. *Adequate facilities, access roads, drainage, sanitation and/or other necessary facilities or services will be provided.*
According to the information provided by the applicant, the following services will be provided to the proposed development:
   - Power and Natural Gas: Pacific Gas & Electric (underground)
   - Water and Sewer: City of Winters (underground)
   - Storm Drainage: Surface to existing underground
   - Solid Waste: Trash and recycling bins will be provided on site.

   The proposed waste and recycling bins do not appear to be enclosed. According to Winters Municipal Code, Section 17.58.070 (A)(3)(a), trash storage must be fully enclosed and incorporated within the main structures or separate freestanding enclosures. Condition of Approval #37 has been added to ensure that the code is followed.

   The applicant is proposing to use the existing curb cut as an access to the parking lot for the proposed building. The City's Engineering staff has reviewed the proposed plans and determined that design for access to and from the site is insufficient and unclear. Condition of Approval #34 has been added to address the access to and from the site. In addition, the proposed project falls within the area of the Downtown Streetscape Improvement Project, which includes the Monticello Redevelopment phase that abandons a portion of Abbey Street east of Railroad. Condition of Approval #3 has been added to ensure that the project improvement plans incorporate the abandonment into the site and traffic control plan.

   As mentioned previously, the site plan depicts four (4) standard off-street parking stalls and one (1) ADA van accessible stall. The paving plan shows that the parking lot for the proposed building will be paved with asphalt per City of Winters Specification Standards. According to the WMC Table 17.58-15 (Parking), surface parking is allowed behind buildings in the Secondary Streets D-B area, and 1 parking space per 500 square feet of office space is required. The proposed site plan appears to comply with the parking requirements of the Form Based Code. Condition of Approval #35 has been included to ensure that the code is followed.

6. *The requested use will not create a nuisance or enforcement problem within the neighborhood.*
The Winters Police Department and City's Code Enforcement Division have reviewed the plans for the proposed use and have determined that it will not create a nuisance or enforcement problem within the neighborhood.

7. *The requested use will not result in a negative fiscal impact upon the City.*
The requested use will not result in a negative fiscal impact upon the City.

Design/Site Plan Review: According to Chapter 17.36.040 (Criteria for review) of the WMC, when reviewing applications for site plan approval, the Planning Commission shall consider the following aspects for design review of a site plan, as applicable. Staff's analysis of each condition is provided under each condition:

A. *The overall visible mass of the structure(s). This analysis may include review of visible building mass as it relates to property line setbacks, building height, roofline profiles, lot coverage and the overall size and scale of a building, and the orientation of the proposed building(s) to the street and adjoining properties*

   The mass of the proposed structure is not compatible with the adjoining property to the east. The proposed structure is 16 feet in height while the height of the nut processing warehouse is nearly 40 feet. However, it is compatible with other buildings in the area in terms of setback and height, including the vehicle repair shop to the west and the residential structures east of the subject location.

   According to WMC, Section 17.58.040 (Regulating plan and street typologies and standards), the "secondary streets of downtown Winters display a mix of local retail and residential development. They have a more intimate nature than the other areas..." Based on this description of the plan subarea, staff has determined that the overall mass of the proposed structure satisfies the design intent of the neighborhood.

B. *The proposed use and quality of exterior construction materials striving for long-term compatibility with the general setting of the subject property and visual character of the general neighborhood. Exterior building colors, on new construction only, may also be considered, but only to the extent that they may detract from the desired design theme for a neighborhood;*

   As mentioned previously, the roof of the proposed structure will be Galvialum Metal that is dull pewter in color. T-111 siding is proposed for the structure, and will be painted Hepplewhite Ivory while the trim color will be Wilmington Tan. The porch will be comprised of finished solid timber, and the handrails will be black metal tubing.

   With vacant lots to the north and south as well as a nut processing warehouse and car repair business to the east and west, the proposed building is not necessarily compatible with the general neighborhood in terms of exterior construction materials. However, similar to the visible mass of the structure, staff has determined that the proposed materials and colors satisfy the design intent of the neighborhood, according to the Form Based Code.

C. *Avoidance of buildings which are characterized by large, blank or unbroken wall planes, as well as buildings which exhibit a general lack of architectural detailing, shadow lines, etc., which collectively lack general visual interest. Uniform treatment of all building elevations shall be required unless such treatment is found unnecessary, on a case-by-case basis;*

   The building elevations that are visible from the adjacent streets (south and west elevations) have visual interest. All windows are framed, and the vertical siding provides articulation to

the building. The porch also provides depth to the building as well as a welcoming appearance to the proposed building.

D. *Effective screening of ground- and roof-mounted mechanical equipment*

The ground-mounted equipment is located between the proposed building and the nut processing warehouse. According to the information submitted by the applicant, this equipment has been placed in that location so as to effectively screen it from view. Staff has determined that the proposed plan meets this condition of the code.

E. *The use of landscaping, decorative site paving, etc. which provides effective visual screening or softening of the development, as necessary. The planning commission shall consider the appropriate mix of plant materials, plant sizes, etc. pursuant to landscaping criteria contained in Chapter 17.76.*

The landscaping plan show a total of nine (9) trees to be planted – two California Sycamores in front and seven (7) Trident maples for the side and rear of the development. The ground will be treated with walnut shell mulch. The proposed landscape will be irrigated, and an irrigation plan has been submitted to demonstrate how irrigation will be accomplished.

Staff has determined that the proposed trees will provide sufficient shade to the parking lot (see shading plan) and front sidewalk as well as screening and/or softening of the proposed development.

F. *Achieve conformity with the Winters design guidelines, as applicable.*

The Form Based Code now governs the subject area in terms of design. Therefore, the Winters Design Guidelines are no longer applicable.

METHODOLOGY: Two actions are required to process the proposed project:

1) Confirmation of CEQA exemption finding - Section 15303 (New Construction or Conversion of Small Structures) and 15332 (In-fill Development Projects)
2) Approval of the Conditional Use Permit and Design Review Application and the attached conditions

APPLICABLE REGULATIONS: This project is subject to several regulations:

- The California Environmental Quality Act (CEQA)
- State Planning and Zoning Law
- City of Winters General Plan
- City of Winters Zoning Ordinance

PROJECT NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Director in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. Two methods of public notice were used: a legal notice was published in the Winters Express on Thursday, July 14, 2011 and notices were mailed to all property owners who own real property within three hundred feet of the project boundaries at least ten days prior to tonight's hearing. Copies of the staff report and all attachments

for the proposed project have been on file, available for public review at City Hall since Thursday, July 21, 2011.

ENVIRONMENTAL ASSESSMENT: The proposed project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15303 (New Construction or Conversion of Small Structures) and 15332 (In-fill Development Projects).

RECOMMENDED FINDINGS FOR THE 1,500-SQUARE FOOT MODULAR OFFICE STRUCTURE AT THE NORTHEAST CORNER OF RAILROAD AVENUE AND EAST ABBEY STREET (CONDITIONAL USE PERMIT AND DESIGN REVIEW APPLICATION)

CEQA Findings:

1. The proposed project is exempt from CEQA review under §15303 (New Construction or Conversion of Small Structures) and 15332 (In-fill Development Projects)

2. The Planning Commission has considered the comments received on the project during the public review process.

3. The exemption finding reflects the independent judgment and analysis of the City of Winters.

4. The Planning Commission hereby confirms a Class 3 New Construction or Conversion of Small Structures exemption and a Class 32 In-fill Development Exemption for the 1,500 -square foot modular office structure at the northeast corner of Railroad Avenue and East Abbey Street.

Conditional Use Permit Findings:

1. The subject property is designated Central Business District (CBD) in the City's current General Plan. According to the General Plan, this designation provides for restaurants, retail, service, professional and administrative offices, hotels, multi-family residential units, public and quasi-public uses, and similar and compatible uses. The proposed structure will house a field office for the American Council for Food Safety & Quality. Therefore, the proposed use is consistent with the Winters General Plan.

2. The property is regulated by the Form Based Code (WMC, Chapter 17.58), and the zoning of the property is Secondary Streets, DB. WMC Table 17.58-2 (Permitted Uses) requires Planning Commission approval of a conditional use permit for office use located within the Secondary Street DB zone.

3. As mentioned previously, the proposed structure will house a field office for the American Council for Food Safety & Quality, which provides direct services consisting of agricultural and food product testing with the cliental being the Mariani Nut Company as well as local growers. Since it is adjacent to the Mariani Nut Processing Plant and accessible from the city's main roads, the use will be compatible with and valuable to the neighboring business as well as other clients in the region. Based on the aforementioned facts, staff has determined that the requested use is consistent with the intent and purposes of the zone at the subject location, and will not detrimentally impact the character of the neighborhood.

4. Potential noise generated from the site will come from the HVAC unit for the structure. It is proposed to be placed between the new building and the existing warehouse to minimize its impact to the neighboring properties. In addition, since it is an office use, there will be no dust, ash, smoke, fumes, odor, or hazardous chemicals released from the site. Based on the aforementioned facts, staff has determined that the proposed use will not be detrimental to the public health, safety, or general welfare.

5. According to the site plan submitted by the applicant, the proposed expanded use will be connected to water and sewer, will have adequate storm drainage, and have sufficient power and natural gas. Additionally, the conditions of approval require the completion of infrastructure improvement plans and a complete storm water system plan to the City. As such, the proposed use will have adequate utilities, access roads, drainage, sanitation, and/or other necessary facilities or services.

6. The Winters Police Department and City's Code Enforcement Division have reviewed the plans for the proposed use and have determined that it will not create a nuisance or enforcement problem within the neighborhood.

7. The use would not result in a negative fiscal impact on the City.

8. The applicant shall comply with all conditions of approval required by the use permit.

RECOMMENDATION

Staff recommends approval of the project by making an affirmative motion as follows:

I MOVE THAT THE WINTERS PLANNING COMMISSION APPROVE THE CONDITIONAL USE PERMIT AND DESIGN REVIEW APPLICATION FOR THE 1,500-SQUARE FOOT MODULAR OFFICE STRUCTURE AT THE NORTHEAST CORNER OF RAILROAD AVENUE AND EAST ABBEY STREET BASED ON THE IDENTIFIED FINDINGS OF FACT AND BY TAKING THE FOLLOWING ACTIONS:

- Confirmation of exemption from the provisions of CEQA.
- Confirmation of consistency findings with the General Plan and Zoning Ordinance
- Approval of the Conditional Use Permit and Design Review Application subject to the conditions of approval attached hereto.

ALTERNATIVES: The Commission can elect to modify any aspect of the approval or to deny the application. If the Commission chooses to deny the application, the Commission would need to submit findings for the official record that would illustrate the reasoning behind the decision to deny the project.

CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT AND DESIGN REVIEW APPLICATION FOR THE 1,500-SQUARE FOOT MODULAR OFFICE STRUCTURE AT THE NORTHEAST CORNER OF RAILROAD AVENUE AND EAST ABBEY STREET, WINTERS, CA 95694.

1. This Conditional Use Permit and Design Review approval is based upon and limited to

compliance with the project description, attachments, and conditions of approval set forth below. Any deviations from the project description, attachments or conditions must be brought to the attention of, reviewed and approved by the Planning Commission for conformity with this approval. Deviations may require modification to the permit and/or environmental review. Deviations without the above-described approval will constitute a violation of permit approval.

2. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project applicant shall defend, indemnify, and hold harmless the City or its agents, officers, and employees, from liability, damages, penalties, costs, or expenses in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense, which include court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the applicant in good faith approves the settlement, and the settlement imposes no direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning Commission, any advisory agency to the City, local district, and the City Council.

3. The building and site improvements are located on the southeast corner of the parcel. The Downtown Streetscape Improvement Project approved by the Planning Commission and City Council includes a Monticello Redevelopment phase that abandons a portion of Abbey Street east of Railroad. These improvement plans shall incorporate the abandonment into the site and traffic control plan.

4. The applicant shall submit complete infrastructure improvement plans prepared by a registered civil engineer to the City for review and approval by the City Engineer. No building permits will be issued prior to the City's review and approval of the improvement plans. The plans shall be in compliance with the City of Winters' Engineering Design and Construction Standards.

5. The applicant shall contact the City Engineer and Fire Chief prior to beginning construction for a pre-construction meeting.

6. Grading shall be done in accordance with a grading plan prepared by the applicant's civil engineer and approved by the City Engineer. The amount of earth removed shall not exceed that specified in the approved grading plan. All grading work shall be performed in one continuous operation. The grading plans shall be included in the improvement plans. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any.

7. The applicants shall pay an annual assessment under the City-Wide Maintenance Assessment District in order to maintain and provide for the future needs of parks, open spaces, street lighting, landscaping and other related aspects and impacts from new development.

8. The applicants shall obtain all required City permits (building, encroachment for work within the public right-of-way, etc.) and pay all applicable fees (building, impact, encroachment, etc.).

9. Final inspection for the buildings shall not be scheduled nor occupancy authorized until the public improvements (sewer laterals, sewer cleanouts, water laterals, water meters, driveway, etc.) have been have been installed, inspected, and accepted by the City. Other infrastructure necessary for the project such as paving, striping of parking spaces outside of the buildings, landscaping, etc. shall be completed prior to final inspection of the buildings.

10. The payment of City of Winters' monthly utility billing charges shall commence after the buildings have passed final inspection. The applicant shall pay the City of Winters monthly utility charges at the metered rate for water and sewer.

11. Existing public and private facilities damaged during the course of construction shall be repaired by the applicant, at the applicant's sole expense, to the satisfaction of the City Engineer.

12. The Site Plan approval shall expire in one year from its date of approval unless the applicant begins construction of the infrastructure improvements necessary for the project or requests and receives an extension from the Winters Planning Commission. The applicant shall bear all expenses for any extension request submitted to the Planning Commission.

13. The Use Permit approval shall expire in one year from its date of approval unless the applicant begins construction of the infrastructure improvements necessary for the project or requests and receives an extension from the Winters Planning Commission. The applicant shall bear all expenses for any extension request submitted to the Planning Commission.

14. The building, as shown on these plans, shall connect to City sewer through the 10-inch gravity sewer main in Abbey Street. Applicant shall install two-way sewer cleanouts at the property line and at the interface to the building. All cleanout shall comply with City improvement standards.

15. The building, as show on these plans, shall connect to municipal water through the 6-inch water main on Abbey Street.

16. The specification for the make and model of water meter has change and is not reflected in the City's improvement standards. The owner shall contact Public Work for the City approved meter to install.

17. Water service shall comply with City improvement standards except as stated above.

18. A hydrant use permit shall be obtained from the Public Works Department for water used in the course of construction.

19. The storm water system plan for the project has not been reviewed or approved by the City at this time. The applicant shall show the complete storm water system improvements on the improvement plans for review and approval by the City Engineer.

20. The development shall include implementation of post-construction best management practices (BMP). Post construction BMP's shall be identified on improvement plans and approved by the City Engineer.

21. Construction of the project disturbing less than one acre of soil shall implement BMP's to prevent and minimize erosion. The improvement plans for construction of less that 1 acre shall include a BMP to be approved by the City Engineer.

22. The applicants shall report to the City building materials diverted from land filling during the course of their project, pursuant to the provisions of City of Winters Ordinance No. 2002-03.

23. The applicant shall minimize the dust generated by construction of the project. Dust generated from construction shall not exceed standards established by the Yolo-Solano Air Quality Management District and the Community Development Department.

24. Tarpaulins or other effective covers should be used for haul trucks.

25. All inactive portions of the construction site, which have been graded will be seeded and watered until vegetation is grown.

26. Grading shall not occur when wind speeds exceeds 15 MPH over a one hour period.

27. Construction vehicle speed on unpaved roads shall not exceed 15 MPH.

28. Construction equipment and engines shall be properly maintained.

29. If air quality standards are exceeded in May through October, the construction schedule will be arranged to minimize the number of vehicles and equipment operating at the same time.

30. Construction practices should be augmented to minimize vehicle idling.

31. Potentially windblown materials will be watered or covered.

32. Construction areas and streets will be wet swept on a daily basis.

33. All utilities within 100 feet of the project boundary shall be installed underground per the Ordinance No. 95-03, "An Ordinance Amending Article 6, Chapter 3, Title VII, Underground Utility Lines, of the Winters Municipal Code", and shall meet the policies, ordinances, and programs of the City of Winters and the utility providers. All utility services extended into the project site shall be underground.

34. Design for access to and from the site is insufficient and unclear.

    a. All curb and gutter shall be vertical curb in front of building and landscaping.

b. Driveway shall begin and end at vehicle access points only.

c. Driveway shall be ADA accessible for sidewalk crossings per City standards.

d. Provide ADA access from public right-of-way to building.

35. The applicant shall provide five (5) off-street parking spaces for the project including 1 ADA accessible space.

36. The applicant shall submit a landscaping plan for review and approval by the Public Works Department and Community Development Department.

37. A trash enclosure shall be provided onsite to enclose the waste and recycling bins. The trash enclosure shall be designed to be architecturally compatible with the project.

38. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers.

39. There shall be no storage of materials under the modular building.

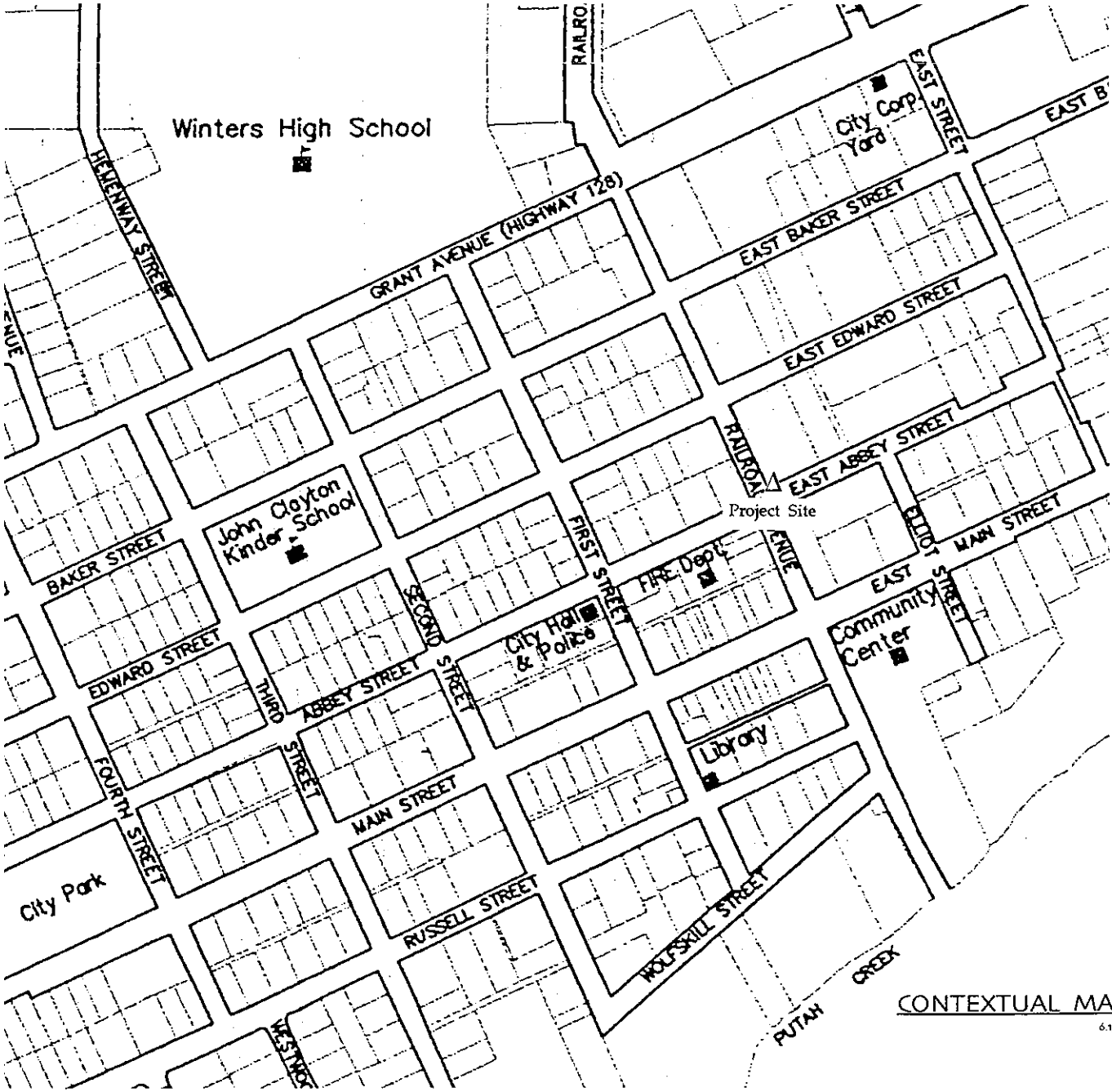
40. Accessibility standards as required by the Uniform Building Code, Chapter 11, shall be addressed.

41. No sign shall be erected without issuance of a sign permit. For a sign permit, the applicant shall submit a completed application form, processing fee, and plan as required by the Community Development Director.

42. Failure to comply with the above conditions may result in the immediate revocation of the design review and conditional use permit approval.

ATTACHMENTS:

A. Contextual Map
B. Site Plan
C. Food Safety Field Office – Plan
D. Field Office – South Elevation
E. Field Office – West Elevation
F. Conceptual Landscape Plan
G. Conceptual Grading Plan & Parking Lot Shading Plan
H. Lighting Plan & Irrigation Plan
I. Paving Plan



CONTEXTUAL MAP

6.15.11

DESIGNWORKS

A FOOD SAFETY FIELD OFFICE

29 EAST ABBEY STREET
WINTERS,
CALIFORNIA

FOR
THE AMERICAN COUNCIL
FOR FOOD SAFETY & QUALITY

APPLICANT:
MARIANI NUT COMPANY
709 DUTTON STREET,
WINTERS, CA
530-662-3311

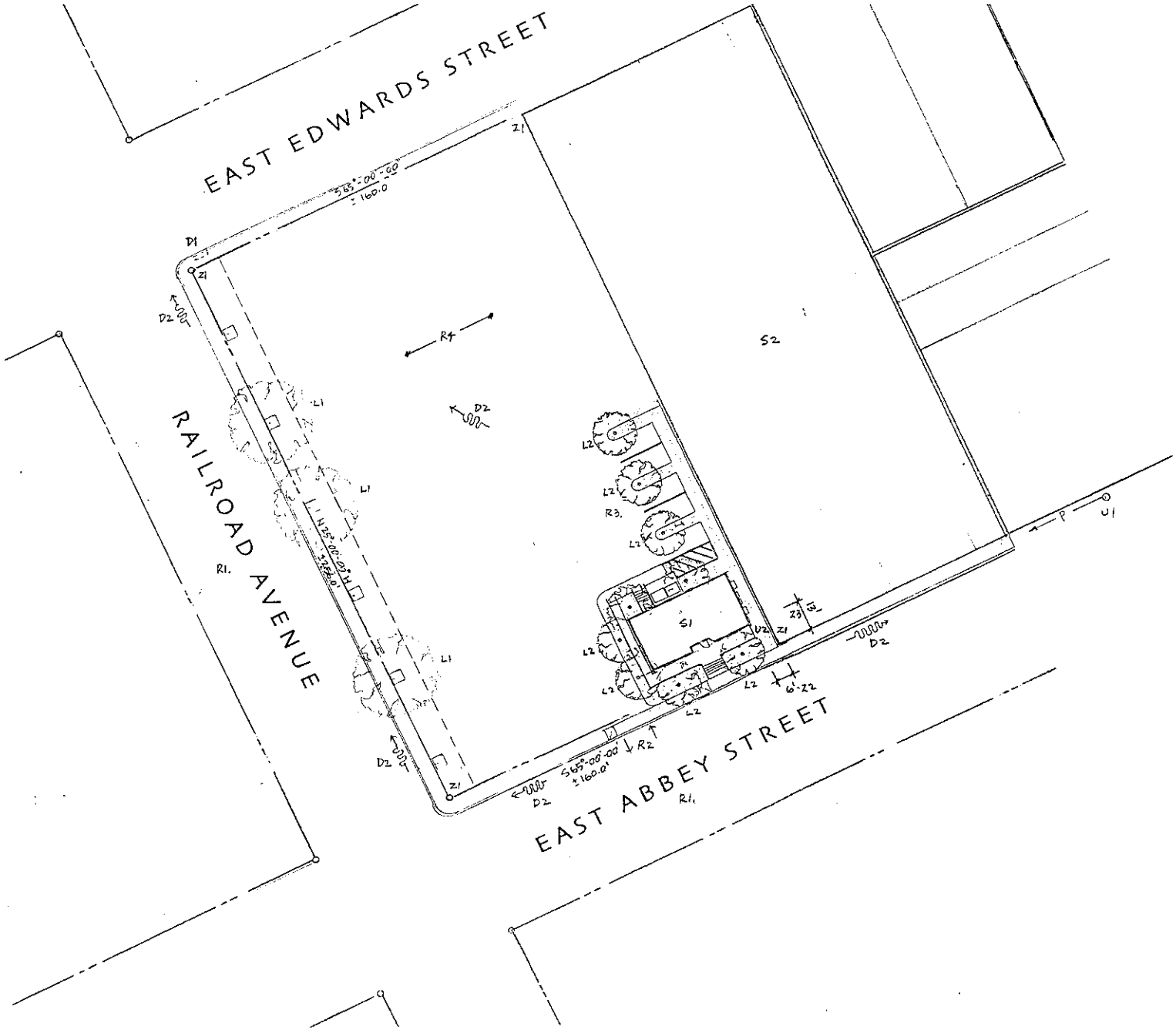
PROJECT APN: 003-160-64

DESIGN
REVIEW
DOCUMENTS

11.03

6.28.2011

Eric Doud
Architecture + Planning
15 Main Street, Winters, CA 95694
Tele: 530.795.3506 Fax: 530.795.1119
eldoud@dcn.org
www.ericdoudarchitect.com



LEGAL & ZONING NOTES
40,960 sq. ft. lots size
Z1. Property corner.
Z2. 13' Front Yard Setback.
Z3. 6' Side Yard Setback.

ROADWAY NOTES
R1. Public Street, (e) existing.
R2. 20' wide 2 way Driveway, existing curb cut.
R3. All weather gravel off street parking, (4) Standard Stalls 9' x 19', (1) ADA Van Accessible Stall.
R4. Existing gravel parking lot to remain.

STRUCTURES
S1. New (N) Office Bldg. 24' - 0" x 44' - 0" x 16' - 0" high, 1,056 Interior sq. ft. 1,500 sq. ft. w/ porch & ramp
S2. Adjacent Nut Processing Warehouse.

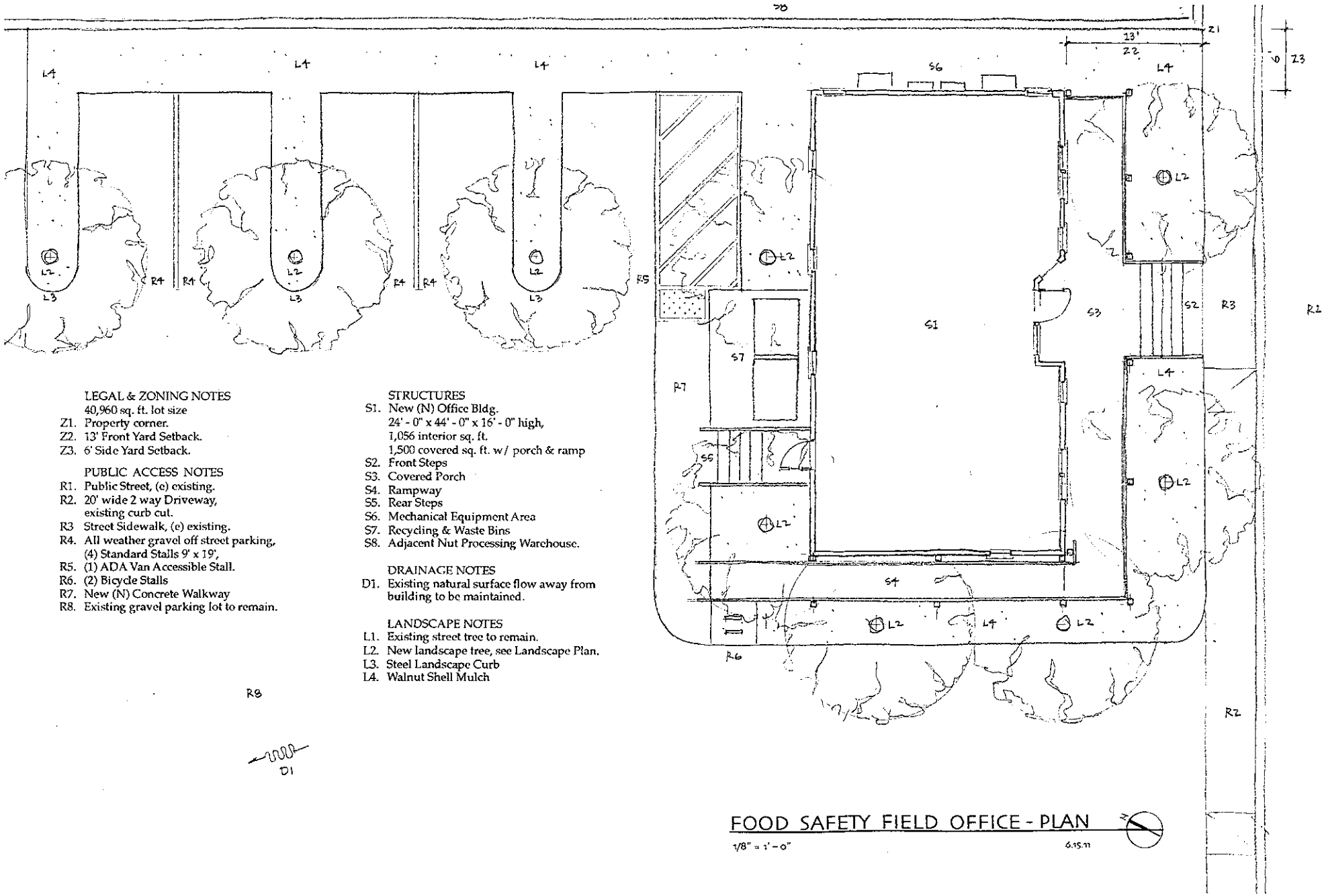
UTILITY NOTES
U1. Existing Power Pole.
U2. Underground electrical supply from warehouse to new Office Bldg.

DRAINAGE NOTES
D1. Existing Storm Drain Inlet.
D2. Existing natural surface flow away from building to be maintained.

LANDSCAPE NOTES
L1. Existing street tree to remain.
L2. New landscape tree, see Landscape Plan.

LOT SITE PLAN

1" = 40.0' 6.15.11



LEGAL & ZONING NOTES
40,960 sq. ft. lot size
Z1. Property corner.
Z2. 13' Front Yard Setback.
Z3. 6' Side Yard Setback.

PUBLIC ACCESS NOTES
R1. Public Street, (e) existing.
R2. 20' wide 2 way Driveway, existing curb cut.
R3 Street Sidewalk, (e) existing.
R4. All weather gravel off street parking, (4) Standard Stalls 9' x 19',
R5. (1) ADA Van Accessible Stall.
R6. (2) Bicycle Stalls
R7. New (N) Concrete Walkway
R8. Existing gravel parking lot to remain.

STRUCTURES
S1. New (N) Office Bldg.
24' - 0" x 44' - 0" x 16' - 0" high,
1,056 interior sq. ft.
1,500 covered sq. ft. w/ porch & ramp
S2. Front Steps
S3. Covered Porch
S4. Rampway
S5. Rear Steps
S6. Mechanical Equipment Area
S7. Recycling & Waste Bins
S8. Adjacent Nut Processing Warehouse.

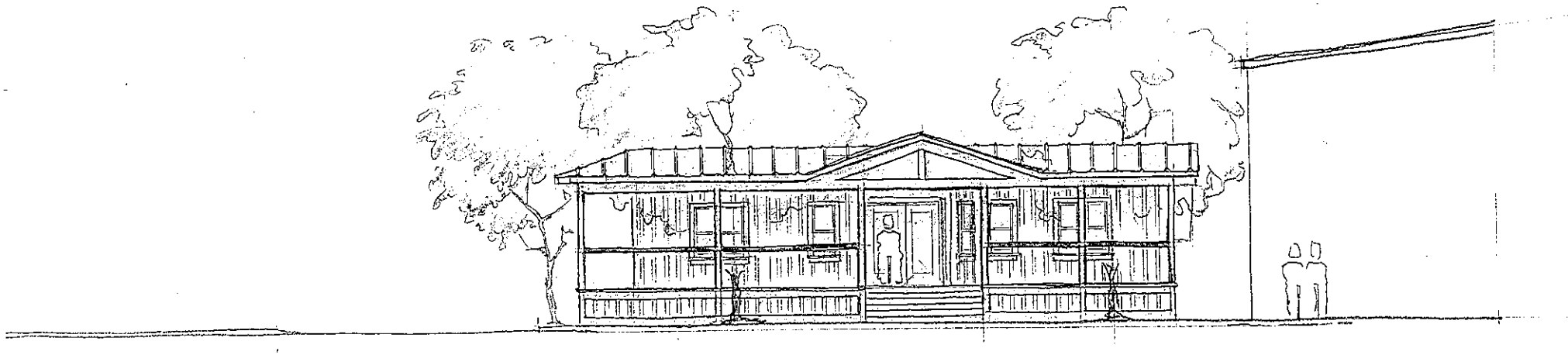
DRAINAGE NOTES
D1. Existing natural surface flow away from building to be maintained.

LANDSCAPE NOTES
L1. Existing street tree to remain.
L2. New landscape tree, see Landscape Plan.
L3. Steel Landscape Curb
L4. Walnut Shell Mulch

FOOD SAFETY FIELD OFFICE - PLAN

1/8" = 1' - 0"

6.15.11



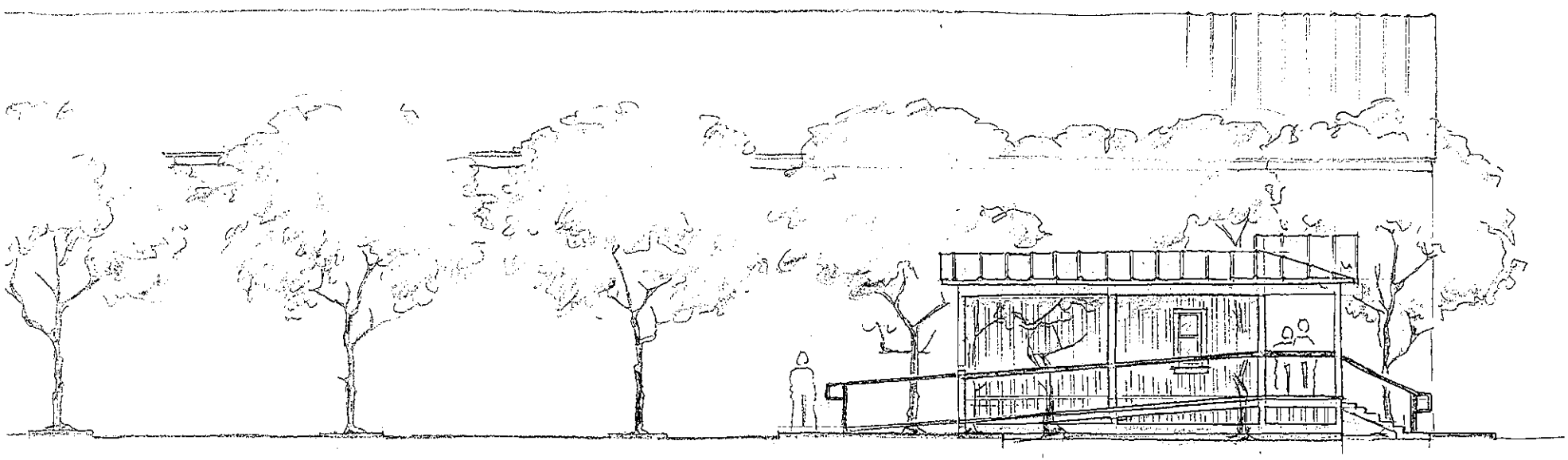
MATERIAL NOTES

- Roofing; Galvialum Metal
  Color, Dull Pewter Color
- Siding; T - 111 Siding
  Field Color, Hepplewhite Ivory (Benjamin Moore)
  Trim Color; Wilmington Tan (Benjamin Moore)
- Porch; Solid Sawn Timber
  Finish; Natural Oil
- Handrails; Metal Tube
  Color, Black

FIELD OFFICE - SOUTH ELEVATION

1/8" = 1' - 0"

6.15.11



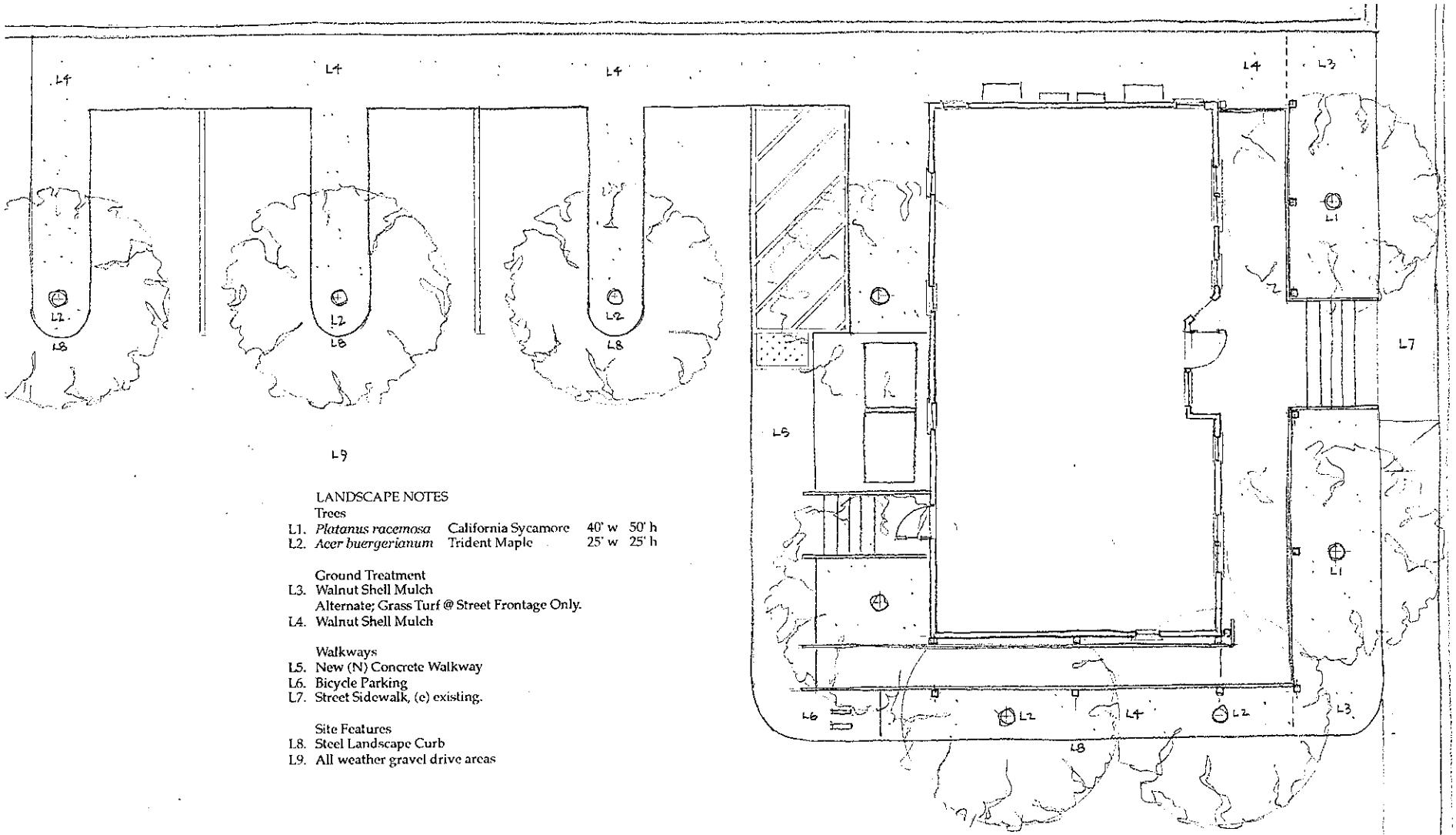
MATERIAL NOTES

- Roofing; Galvialum Metal
  Color, Dull Pewter Color
- Siding; T - 111 Siding
  Field Color, Hepplewhite Ivory (Benjamin Moore)
  Trim Color; Wilmington Tan (Benjamin Moore)
- Porch; Solid Sawn Timber
  Finish; Natural Oil
- Handrails; Metal Tube
  Color, Black

FIELD OFFICE - WEST ELEVATION

1/8" = 1' - 0"

6.15.11



LANDSCAPE NOTES

Trees

L1.	*Platanus racemosa*	California Sycamore	40' w	50' h
L2.	*Acer buergerianum*	Trident Maple	25' w	25' h

Ground Treatment

L3. Walnut Shell Mulch
Alternate; Grass Turf @ Street Frontage Only.
L4. Walnut Shell Mulch

Walkways

L5. New (N) Concrete Walkway
L6. Bicycle Parking
L7. Street Sidewalk, (e) existing.

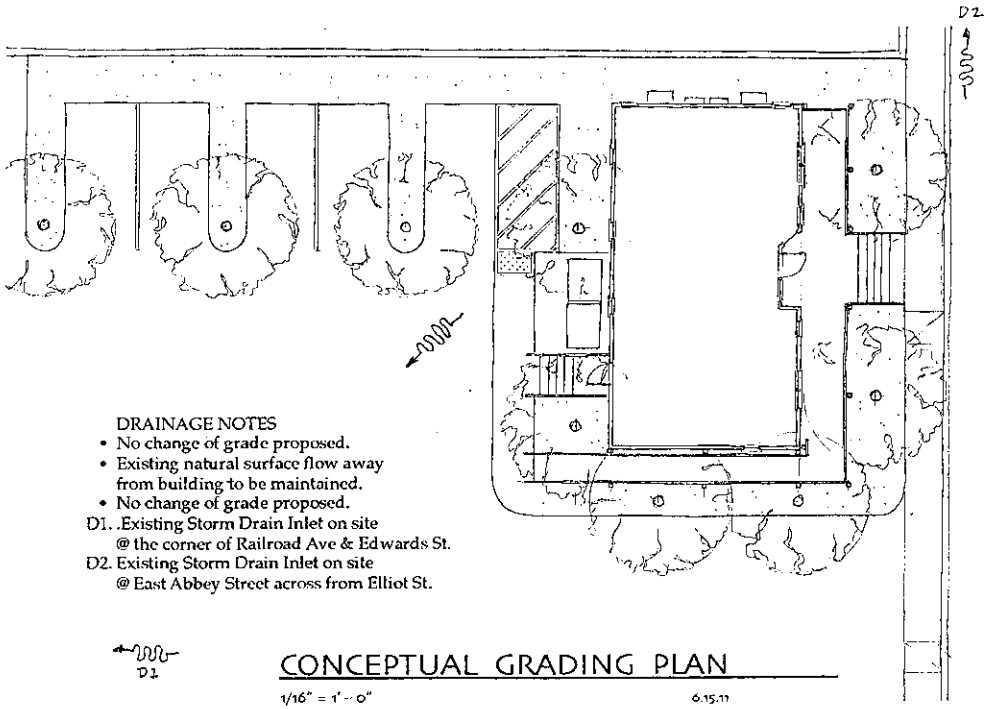
Site Features

L8. Steel Landscape Curb
L9. All weather gravel drive areas

CONCEPTUAL LANDSCAPE PLAN

1/8" = 1' – 0"

6.15.11

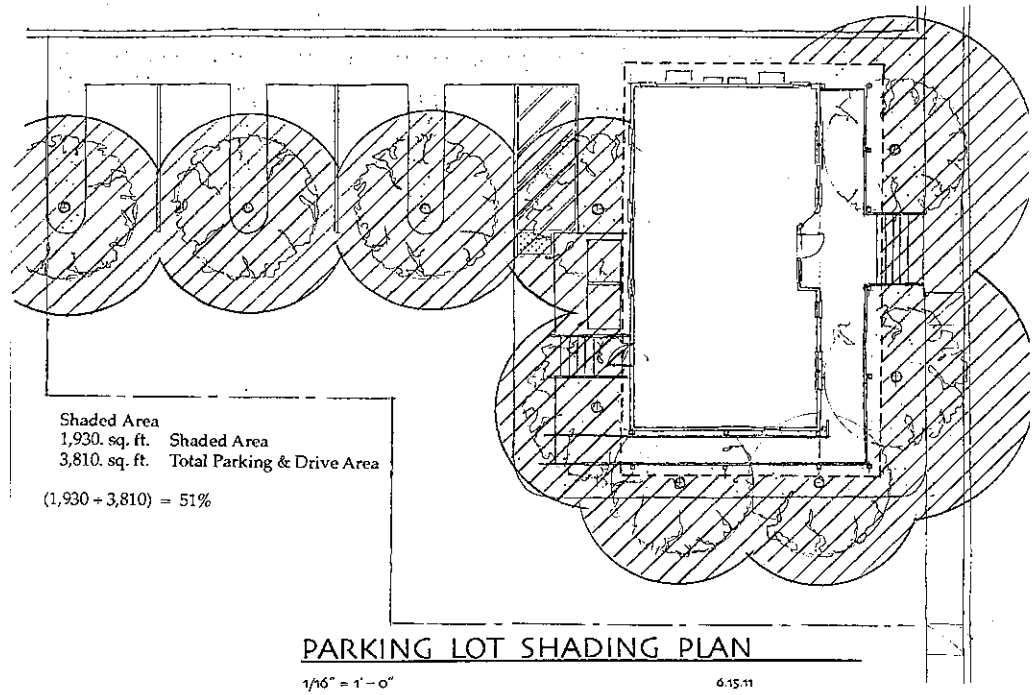


DRAINAGE NOTES
- No change of grade proposed.
- Existing natural surface flow away from building to be maintained.
- No change of grade proposed.

D1. .Existing Storm Drain Inlet on site @ the corner of Railroad Ave & Edwards St.
D2. Existing Storm Drain Inlet on site @ East Abbey Street across from Elliot St.

CONCEPTUAL GRADING PLAN

1/16" = 1' - 0" 6.15.11

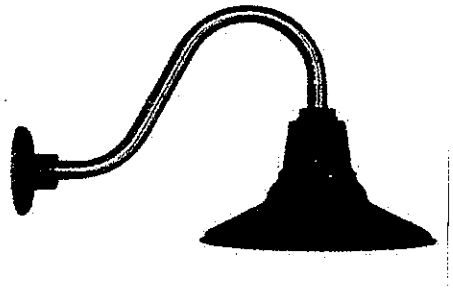


Shaded Area
1,930. sq. ft. Shaded Area
3,810. sq. ft. Total Parking & Drive Area

(1,930 ÷ 3,810) = 51%

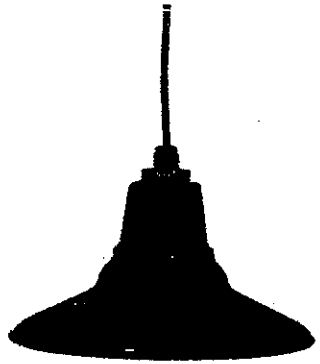
PARKING LOT SHADING PLAN

1/16" = 1' - 0" 6.15.11



Goodrich™ Aero 12" Shallow Bowl Porcelain Gooseneck Light, G15 Gooseneck

GOOSENECK LAMP



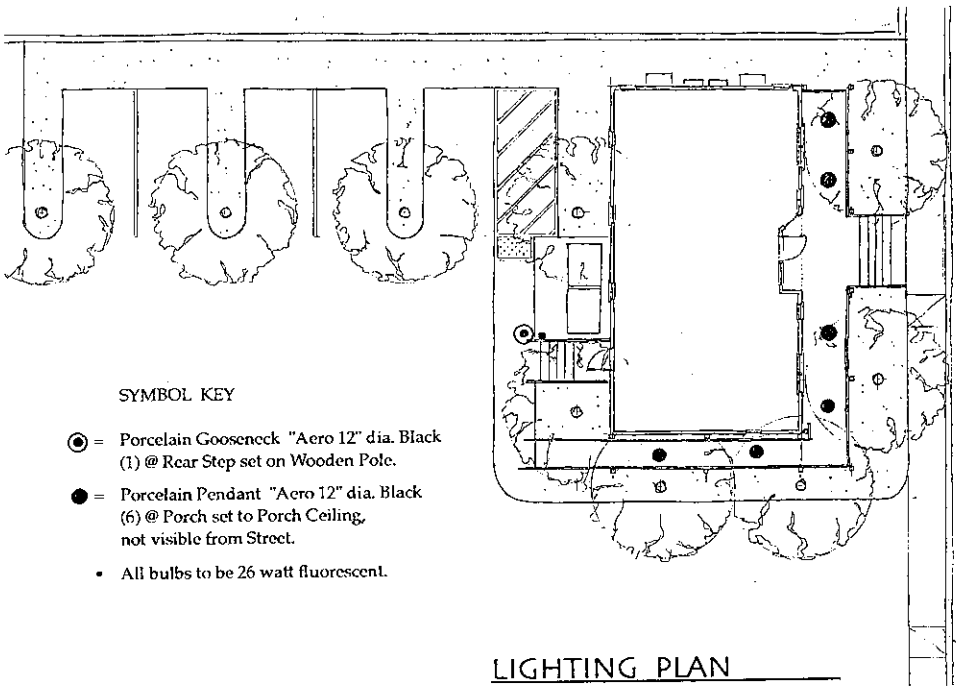
Ivanhoe™ Aero 12" Shallow Bowl Porcelain Pendant,

PENDANT LAMP

SYMBOL KEY

- = Water Meter Location
- = Gate Valve
- = Backflow Preventer Assembly
- = Programable Valve Controller
- = Automatic Control Valve
- = Main Line
- = Lateral Line
- = Sprinkler, Quarter
- = Adjustable Bubbler

- Automatic irrigation systems controllers installed at the time of final inspection shall be weather-based. CalGreen 4.304.



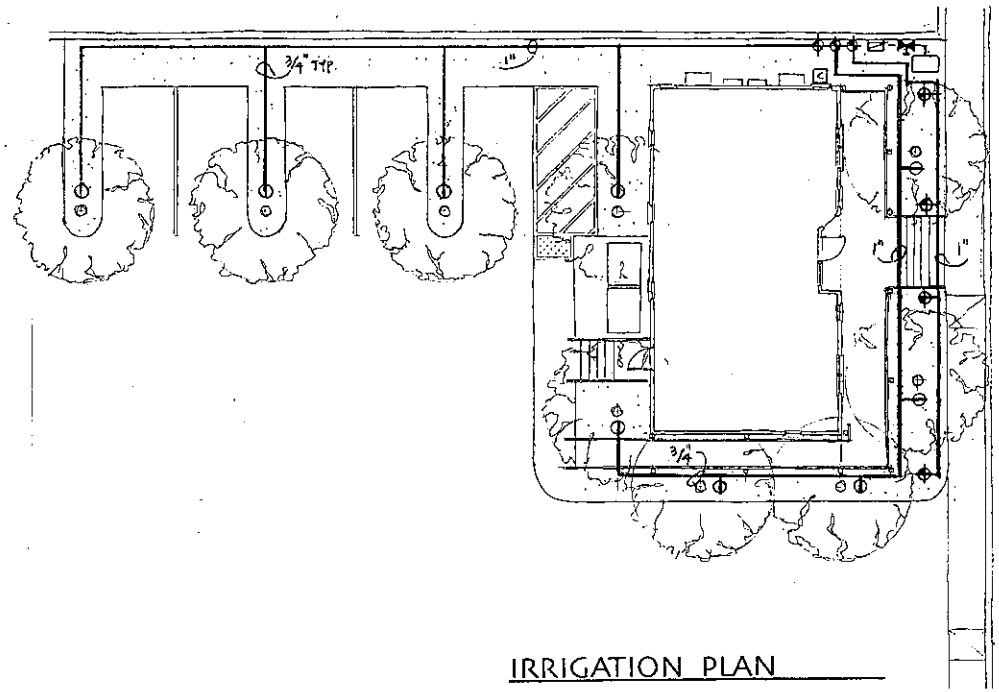
SYMBOL KEY

- = Porcelain Gooseneck "Aero 12" dia. Black (1) @ Rear Step set on Wooden Pole.
- = Porcelain Pendant "Aero 12" dia. Black (6) @ Porch set to Porch Ceiling, not visible from Street.

- All bulbs to be 26 watt fluorescent.

LIGHTING PLAN

1/16" = 1' – 0" 6.28.11



IRRIGATION PLAN

1/16" = 1' – 0" 6.28.11

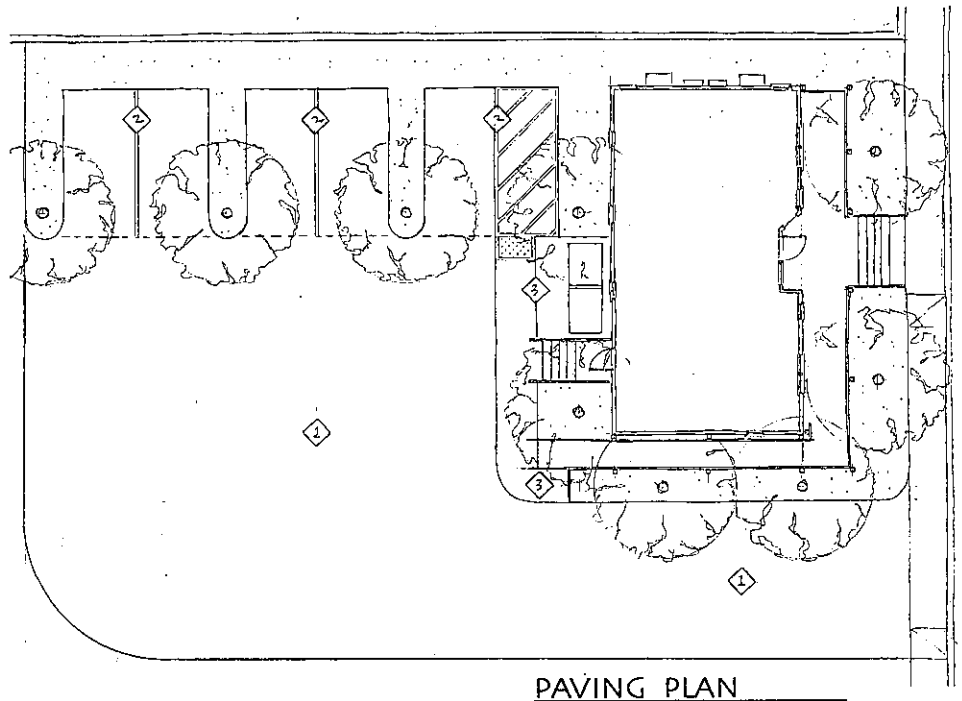
SYMBOL KEY

1 = 2 Coat Application of Chip Seal per City of Winters Specification Standards.

2 = Asphalt Paving per City of Winters Specification Standards for stripping & ADA Parking Identification can have permanent surface.

3 = Concrete walkways, dumpster location & bike parking per City of Winters Specification Standards.

- Chip seal is recommended in driving area so that there is not a major visual and elevation transition between the developed site and the existing gravel parking area.



PAVING PLAN

1/16" = 1' - 0" 6.28.11