



CITY OF ELOY

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING & ZONING - BUILDING & SAFETY - CODE COMPLIANCE

THE CITY OF ELOY
BOARD OF ADJUSTMENTS MEETING
Thursday, May 20, 2021 at 6:00 PM at
The Eloy City Council Chambers-City Hall
595 North C Street
Eloy, Arizona 85131

AGENDA

- I. Call to Order**
- II. Roll Call**
- III. Invocation**
- IV. Pledge of Allegiance**
- V. Motion to approve the October 18, 2018 regular meeting minutes of the City of Eloy Board of Adjustment**
 - A. Board of Adjustment Meeting Minutes 10-18-2018
- VI. New Business: possible discussion and/or action on the following:**
 - A. Public Hearing to allow comment from the public and interested parties on proposed Case No.: VA2021-010. Application by Bergin, Frakes, Smalley & Oberholtzer, PPLLC to deviate from the provisions of Section 21-3-1.24 (D) Medical Marijuana Cultivation of the City of Eloy Zoning Ordinance, to reduce the required distance of medical marijuana cultivation business from a residentially zoned property from 1,320' to 1,307'. The subject property is located at 924 N. Tweedy Road on Assessor's Parcel Numbers: 408-02-021 and 408-02-022 in the I-1 (Light Industrial) Zoning District.
 - B. Consideration, discussion, and recommendation for approval, approval with conditions or disapproval on Case No.: VA2021-010 (Project Name: New Gen Eloy)
- VII. Communications**
 - A. Ex-Officio Member Announcements
 - B. Community Development Director Announcements
- VIII. Motion to Adjourn**

POSTED BY THURSDAY, MAY 13, 2021 BY 5 PM AT ELOY CITY HALL, ELOY POST OFFICE, TROY THOMAS COMMUNITY CENTER, TOLTEC COMMUNITY/SENIOR CENTER AND CITY WEBSITE:
www.loyaz.gov

A handwritten signature in cursive script that reads "Mary Myers". The signature is written in black ink and is positioned above a solid horizontal line.

Mary Myers, CMC, CPM
City Clerk

INDIVIDUALS WITH SPECIAL ACCESSIBILITY NEEDS MAY CONTACT LORENA LaSALDE-RIOS, ADA COORDINATOR FOR THE CITY OF ELOY AT 520-466-9201 OR 520-466-7455 (TDD). IF POSSIBLE, SUCH REQUESTS SHOULD BE MADE 72 HOURS IN ADVANCE. ONE OR MORE MEMBERS OF THE BOARD AND/OR STAFF MAY PARTICIPATE BY TELEPHONIC OR VIDEO MEANS.

**MINUTES OF
THE CITY OF ELOY
BOARD OF ADJUSTMENT
Regular Meeting
Thursday, October 18, 2018 6:00 P.M.**

I. CALL TO ORDER

Chairperson Schuh called the meeting to order at approximately 6:00 p.m.

II. ROLL CALL

Members Present:

- Chairperson Marlo Schuh
- Vice Chairperson Ezequiel Cazarez
- Board Member Gavino Rojas
- Board Member Natasha Tidwell
- Board Member Felix Bermejo

- Ex-Officio J.W. Tidwell.

Staff/Others Present:

- Jon Vlaming, Community Development Director
- Belinda Cruz, Planner
- Mr. and Mrs. Roger Ball
- Jose Martinez, Chief Building Official

III. INVOCATION

Adjustment member Bermejo provided the invocation.

IV. PLEDGE OF ALLEGIANCE

Chairperson Schuh led the Pledge of Allegiance.

**V. MOTION TO APPROVE THE JANUARY 18, 2018 REGULAR MEETING
MINUTES OF THE CITY OF ELOY BOARD OF ADJUSTMENT**

Chairperson Schuh asked for a motion to approve the minutes. Vice-Chairperson Cazarez made a motion to approve the minutes as written. Board member Tidwell seconded the motion. The motion was approved 5-0.

**VI. NEW BUSINESS: POSSIBLE DISCUSSION AND/OR ACTION ON THE
FOLLOWING:**

A. PUBLIC HEARING TO ALLOW COMMENT FROM THE PUBLIC AND INTERESTED PARTIES ON THE PROPOSED CASE NO.: VA18-021: VARIANCE REQUEST BY ROGER BALL TO DEVIATE FROM THE PROVISIONS OF SECTION 3.2: GENERAL DEVELOPMENT STANDARDS FOR ACCESSORY USES, BUILDINGS AND STRUCTURES OF THE CITY OF ELOY ZONING ORDINANCE, TO CHANGE THE USE OF AN EXISTING GARAGE INTO A GUEST HOUSE/LIVABLE SPACE. THE SUBJECT PROPERTY IS LOCATED AT 3945 N. VALLEY ROAD, ON ASSESSOR'S PARCEL NUMBER: 404-18-192 IN THE R1-6, MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT.

Chairperson Schuh opened the Public Hearing.

Mr. Vlaming used a Powerpoint to provide an overview description of the request and both external and internal site conditions for the application to be considered this evening. He noted that it is a variance from Section 3.2 General Development Standards for Accessory Uses, Buildings and Structures of the City of Eloy Zoning Ordinance, to change the use of an existing garage into a guest house/livable space. The applicant is retroactively requesting to gain approval for a garage conversion to a livable space. Jon continued that in making the determination, there has to be special circumstances or conditions that are pre-existing: the variance is necessary for the preservation of substantial property rights and the authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare. At the conclusion he identified that Staff is recommending denial, but should the Board of Adjustment find, after the presentation by the applicant, and together with the hardships, testimony and evidence present at the public hearing, that the variance does not constitute a special privilege, (and thus could be approved by the Board) then the Community Development Department recommends five (7) stipulations. In his presentation, there were questions from Staff and Board Members relative to the overhang of the existing structure (24"), the close proximity of the structure on adjacent property, and how an accessory dwelling unit can be allowed within the parameters of the City's regulations. Staff was requesting an additional stipulation related to a special inspection of the property by the Chief Building Official. At the end of his presentation, Mr. Vlaming identified that he was open to any questions or comments. Member Cazarez asked about existing regulations and the difference between a garage and a residence. Mr. Vlaming responded that the original intent was for a non-inhabited structure, which is much different than an accessory dwelling unit.

Mrs. Janice Ball introduced herself as the co-owner of the property (with her husband) since 2016 and their request is to utilize the converted garage as livable space. She indicated that she had done extensive research and wanted to respond to the key issues of the case. She continued that the space was intended to be habitable as that was the way it was presented to she and her husband and one of the reasons

October 18, 2018

Board of Adjustment Meeting Minutes

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they purchased the property. She continued that they had no problem bringing the structure up to code and that their measurements from the building to the wall were four (4) feet, not two (2) feet. She noted that they had received letters of support from their neighbors for the requested use. She then reviewed the four conditions of making a finding for variance and their response to each condition. She also hosted a neighborhood open house for all of the property owners within 300 feet of their property. She also shared her research into other cities that had accessory dwelling units and noted their positive benefits. She concluded that she would be happy to answer any questions. Board Member Rojas asked if they were intending to use the structure as a guest house. Mrs. Ball said yes, as they travel a lot. Board member Rojas then asked about the sewer and how it was connected. Mr. Martinez indicated that the sewer line was not originally permitted nor inspected. Mr. Rojas followed with a question about the metering for water and was confirmed both structures are and would remain on one meter. Ex-officio member Tidwell commented that the Council supported the request. Chairperson Schuh asked if there were any other questions and identified that she appreciated the applicant's efforts, but had concerns with the request, relative to how this decision could set the precedent for other similar requests. Board member Rojas identified that the P & Z was different than the Board. Chair Schuh responded that the hardship was not on the applicant in this case. Board member Rojas indicated that staff was working with the applicant and Chair Schuh clarified her comments. Board member Tidwell identified that her thinking was that the council is interested in beautifying Eloy and may be hard to do if we are not accommodating them locating here. Chair Schuh then asked for any comments, and hearing none, then closed the public hearing.

A. CONSIDERATION, DISCUSSION AND RECOMMENDATION FOR APPROVAL, DISAPPROVAL OR OTHER ACTION ON CASE NO. VA17-006.

Chairperson Schuh asked for the Board's recommendations. Board member Tidwell made a motion to recommend approval with the stipulations on the Staff report, including the stipulation identified in the PowerPoint presented by Mr. Vlaming. Board member Rojas seconded the motion. The Motion was approved 4-1.

VII. COMMUNICATIONS:

Mr. Vlaming identified that if any member wanted an update of current events in the City, he would provide one. Board member Rojas identified the proliferation of potholes in the streets. Board member Cazarez identified that the area adjacent to the Railroad tracks needed to be cleaned up.

Board Chair Schuh inquired if Ex officio Tidwell had any comments. He noted the city hall project was on schedule and noted an upcoming work session with Council. Chair Schuh indicated her interest in knowing about these work sessions in the future.

VIII. MOTION TO ADJOURN

With no further business, Chairperson Schuh asked for a motion to adjourn. Board member Tidwell made a motion to adjourn. Board member Rojas seconded the motion. The motion was approved by a vote of 5-0. The meeting adjourned at 7:04 p.m.

**CITY OF ELOY
REQUEST FOR BOARD ACTION**

Agenda Item: **VI.A.**

Date: **5/20/2021**

Date submitted:
04/07/2021

Action: Formal

Subject: Public Hearing to allow comment from the public and interested parties on proposed Case No.: VA2021-010. Application by Bergin, Frakes, Smalley & Oberholtzer, PPLLC to deviate from the provisions of Section 21-3-1.24 (D) Medical Marijuana Cultivation of the City of Eloy Zoning Ordinance, to reduce the required distance of medical marijuana cultivation business from a residentially zoned property from 1,320' to 1,307'. The subject property is located at 924 N. Tweedy Road on Assessor's Parcel Numbers: 408-02-021 and 408-02-022 in the I-1 (Light Industrial) Zoning District.

Date requested:
5/20/2021

TO: Board of Adjustment

FROM: Jon Vlaming

RECOMMENDATION:

City staff recommends approval of this variance.

DISCUSSION:

This request is for a project being proposed on an existing vacant warehouse located at 924 N. Tweedy Road, Pinal County Assessor's Parcel Numbers: 408-02-021 and 408-02-022 totalling approximately 15.9 acres. The Variance request is to allow medical marijuana cultivation in a fully enclosed building zoned I-1 (Light Industrial) from 1,320 feet to 1,307 feet from a vacant R1-43 parcel of land located directly to the south of the subject property.

The City Code, Chapter 21-Zoning, Section 21-2.5.3 permits medical marijuana cultivation with a Conditional Use Permit (CUP2021-009) in the Light Industrial Zoning District with

use-specific standards per Section 21-3.1.24. (listed below)

21-3-1.24: MEDICAL MARIJUANA CULTIVATION:

A. Medical marijuana cultivation is subject to the following conditions and limitations:

1. Applicant shall provide:

a. The name(s) and location(s) of the offsite medical marijuana dispensary associated with the cultivation operation.

b. A copy of the operating procedures adopted in compliance with Arizona Revised Statutes, section 36-2804(B)(1)(c).

c. A survey sealed by a registrant of the State of Arizona showing the location of the nearest medical marijuana dispensary or cultivation location if within five thousand two hundred eighty feet (5,280').

B. Retail sales of medical marijuana is prohibited.

C. Shall not be located within one thousand three hundred twenty feet (1,320') of the same type of use or a medical marijuana dispensary. This distance shall be measured from the exterior walls of the building or portion thereof in which the businesses are conducted or proposed to be conducted.

D. Shall not be located within one thousand three hundred twenty feet (1,320') of a Residentially zoned property. This distance shall be measured from the exterior walls of the building or portion thereof in which the cultivation business is conducted or proposed to be conducted to the property boundary line of the Residentially zoned property. (Option: Measuring distance from lot line to lot line.)

E. Shall not be located within one thousand three hundred twenty feet (1,320') of a preschool, kindergarten, elementary, secondary or high school, place of worship, public park or community center. This distance shall be measured from the exterior walls of the building or portion thereof in which the cultivation business is conducted or proposed to be conducted to the property line of the protected use.

F. With regard to a medical marijuana cultivation location, applicants seeking a conditional use permit shall provide the name and location of the off-site dispensary, a copy of operating procedures adopted in compliance with Arizona Revised Statutes section 36-2804(B)(1)(c), procedures for proper disposal of marijuana remnants or by-products (not to be the facility's

exterior refuse container), a security plan, and a plan to prohibit the emission of odors from the facility into the environment.

G. The cultivation location must be a permanent building (not a habitable trailer, cargo container or motor vehicle) with a maximum area not to exceed two thousand (2,000) square feet unless otherwise shown by the applicant and approved through the conditional use permit process that additional area is needed to provide necessary medical marijuana to the identified dispensary.

H. The cultivation location shall not be open to the public.

I. Marijuana shall not be consumed on the premises, including any accessory structures, parking lot or parking areas. (Ord. 18-880, 7-23-2018)

The proposed project, which was approved with a Conditional Use Permit by the Eloy City Council on May 10, 2021, now meets all of the standards described above, except the identified distance to the residentially zoned property. The southern wall of the existing building is located 1,307' from the vacant parcel zoned R1-43 instead of the required 1,320' separation distance. The Code provides that "distance shall be measured from the exterior walls of the building or portion thereof in which the cultivation business is conducted or proposed to be conducted to the property boundary line of the residentially zoned property." See Code 21-3.1.24(D). The vacant R1-43 parcel is currently undeveloped, and is separated from the existing subject property building by a six-lane interstate freeway (Interstate 10) with a right of way of approximately three hundred (300) feet.

Therefore, to ensure the entire existing building can be used for cultivation activities (so that the Project can meet current and future product demands of its associated dispensary) a variance is now requested. If approved, the variance would reduce the existing adopted setback requirement between a medical marijuana cultivation building and a residential zoning district a total of 13 feet-the difference of the required (1,320 feet) and measured (1,307 feet) distance.

FISCAL IMPACT:

There is not a direct fiscal impact associated with this decision.

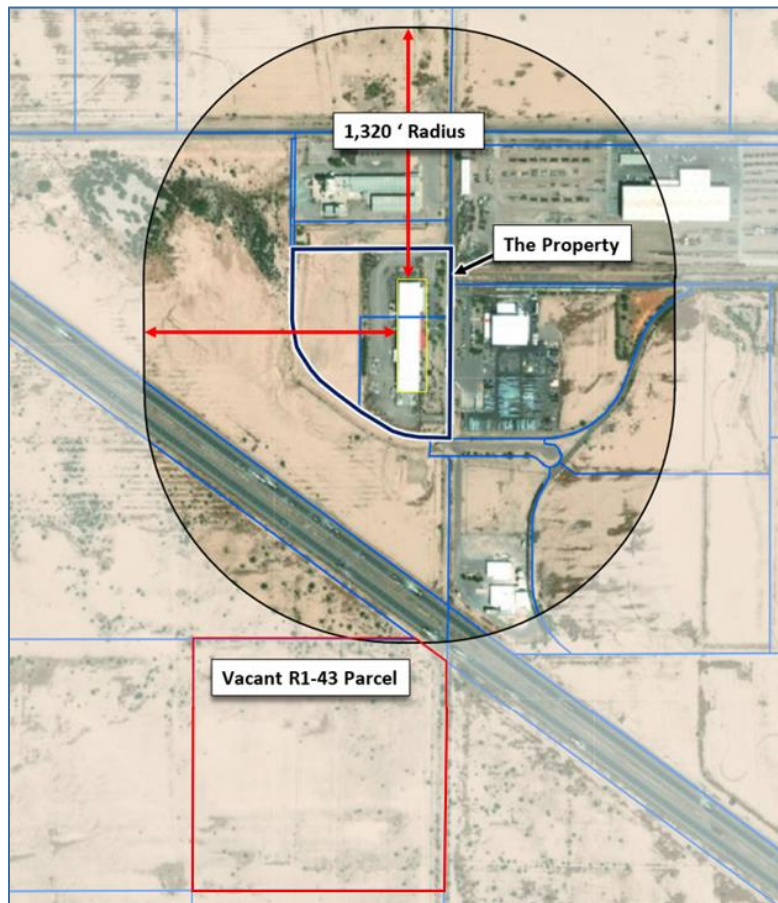
Variance Application Narrative

Submittal Date:

April 2, 2021
Revised May 7, 2021

Subject Property:

924 N. Tweedy Road
APNs 408-02-021 & 408-02-022



Variance Requested:

Reduce the required distance of a medical marijuana cultivation business from a residentially zoned property from 1,320' to 1,307' (Eloy Zoning Ordinance § 21-3.1.24(D))

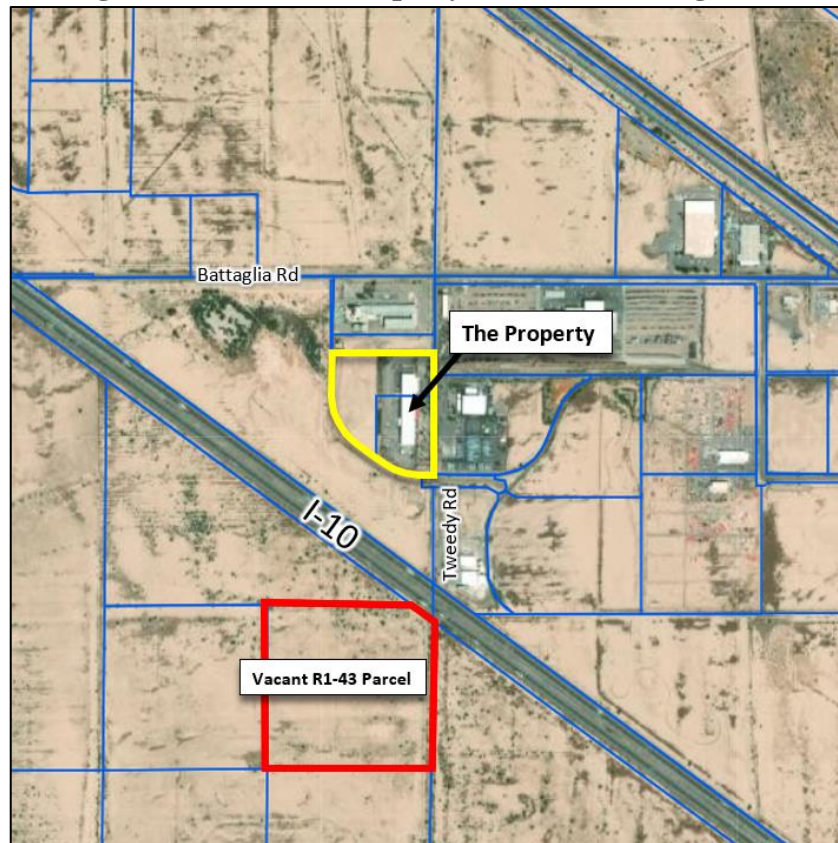
Submitted to:

City of Eloy Community Development
595 N. C Street, Suite 102
Eloy, AZ 85131

I. Introduction

New Gen Real Estate, LLC (“Applicant”), requests a variance for a project on approximately 15.19 acres located at 924 North Tweedy Road within the City of Eloy (APNs 408-02-021 & 408-02-022) (“Property”) to reduce a use-specific setback between a vacant parcel zoned R1-43 (“Vacant R1-43 Parcel”) and an existing vacant warehouse (“Existing Building”) proposed to be repurposed for a fully enclosed medical marijuana cultivation use (“Project”) from 1,320’ to 1,307’. See Figure 1 below for an aerial illustrating the location of the Property and the Vacant R1-43 Parcel.

Figure 1 – Aerial of Property and Surrounding Area



Because the Property is within the I-1 zoning district, the Eloy Zoning Ordinance (“Code”) permits medical marijuana cultivation with a conditional use permit (“CUP”), subject to certain use-specific standards that were developed after Arizona legalized medical marijuana in 2010. These standards require a 1,320’ setback from the residentially zoned property, which would preclude use of part of the Existing Building for medical marijuana cultivation even though the use is entirely within an enclosed building, the two properties are separated by a vacant I-1 zoned parcel and Interstate 10 (“I-10”), and the portion of Vacant R1-43 Parcel within the 1,320’ radius is encumbered by roadway easements and potentially subject to acquisition by the Arizona Department of Transportation (“ADOT”). Although the Project meets all other standards, as will be demonstrated in a separate CUP application (CUP 2021-009), a variance to reduce the setback from a residentially zoned property by less than 1% is necessary to utilize the entire Existing Building.

II. The Property and Relationship to the Surrounding Area

The Property is located within an industrial corridor north of the I-10 and is designated “General Industrial” in the City of Eloy General Plan (“General Plan”). It is zoned “Light Industrial” (I-1) and surrounded in all directions by developed and undeveloped industrial zoned land. To the east of the Property in the I-2 district is an active steel fabrication business, a fiberglass manufacturing business, and an industrial equipment supplier. Immediately north of the Property in the I-1 district is a commercial insulation manufacturing plant. Immediately south of the Property is vacant industrially zoned property and the I-10 freeway. See Figure 2 for a surrounding area zoning map and Table 1 on the next page for a summary of adjacent zoning.

Figure 2 – Surrounding Area Zoning Map

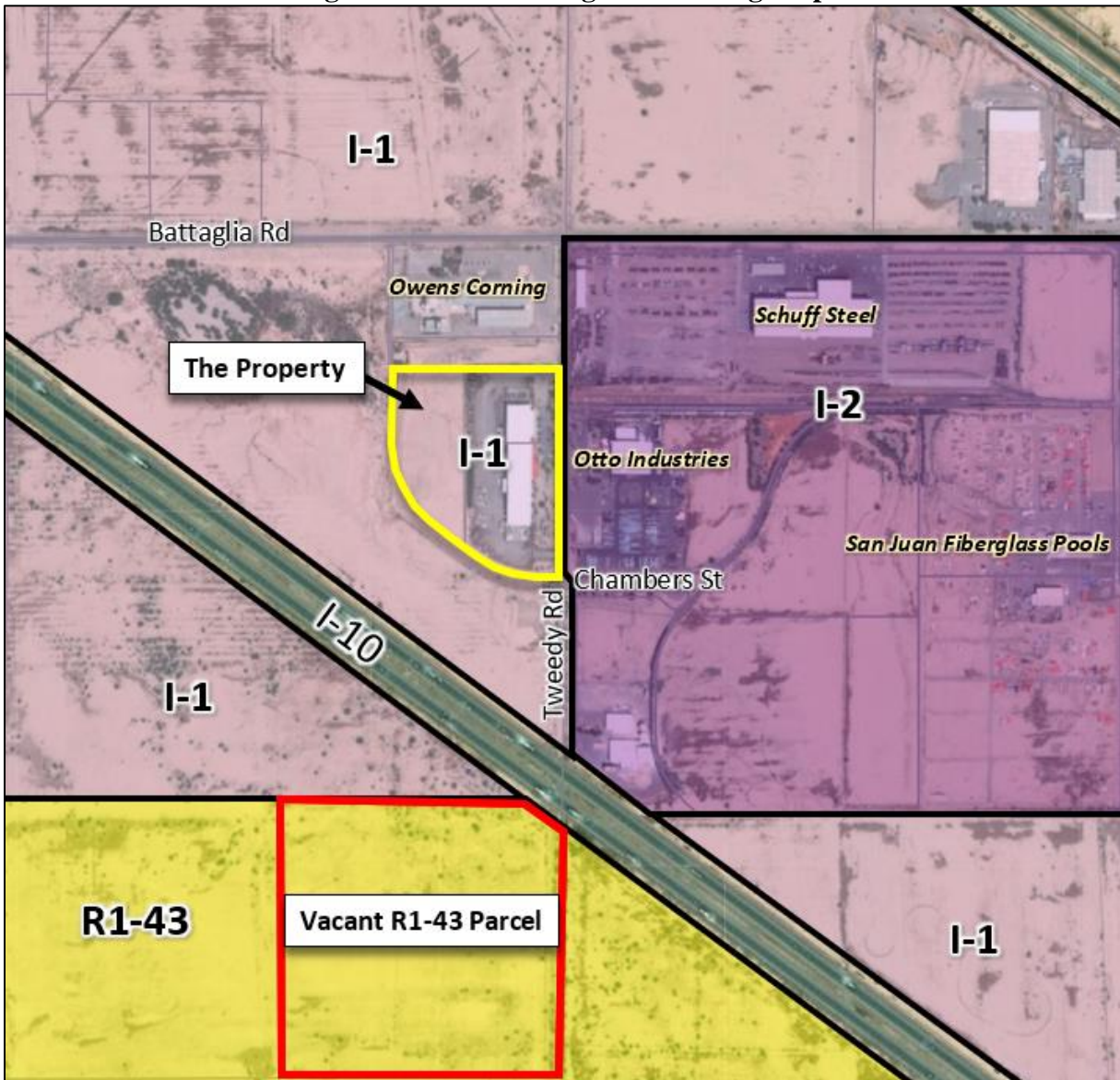
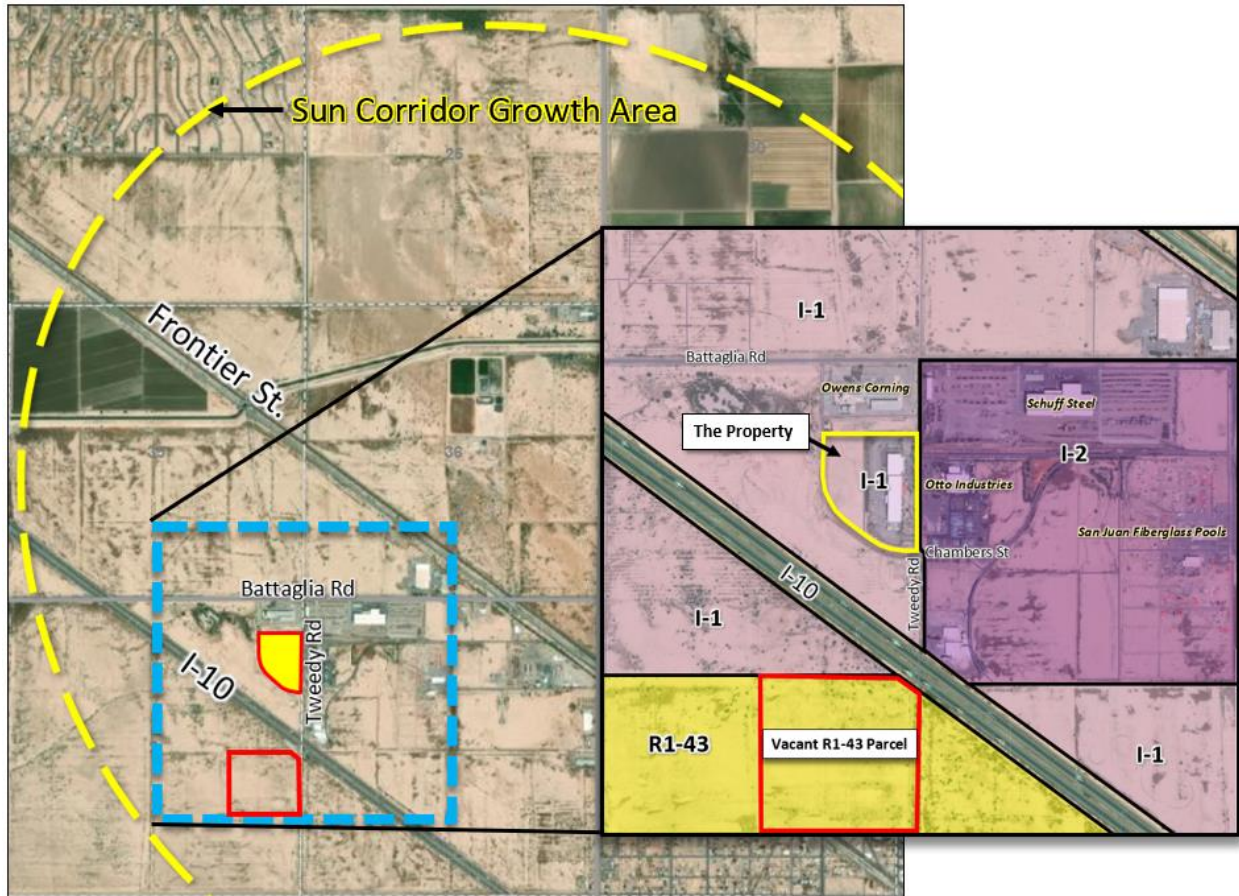


Table 1 – Zoning of Surrounding Area

Direction	Surrounding Use	Zoning	General Plan Category
North	Adjacent: Owens Corning Insulating Systems, LLC (APN#408-26-027D & #408-26-027B & #408-26-026)	I-1	General Industrial
	Sky Cast Properties, LLC (APN #408-02-021)	I-1	General Industrial
East	Across N. Tweedy Road: Schuff Steel Co. (APN #408-02-008L)	I-2	General Industrial
	OTTO Real Estate Arizona, LLC (APN #408-02-008K)	I-2	General Industrial
	San Juan Fiberglass Pools (APN # 40802008G)	I-2	General Industrial
South	Adjacent: Vacant Lot/Ivy Jerry Separate Property Rev. Trust (APN #408-26-027C)	I-1	General Industrial
West	Adjacent: Vacant Lot / Ivy Jerry Separate Property Rev. Trust (APN #408-26-027C)	I-1	General Industrial
	Sky Cast Properties, LLC (APN #408-02-021)	I-1	

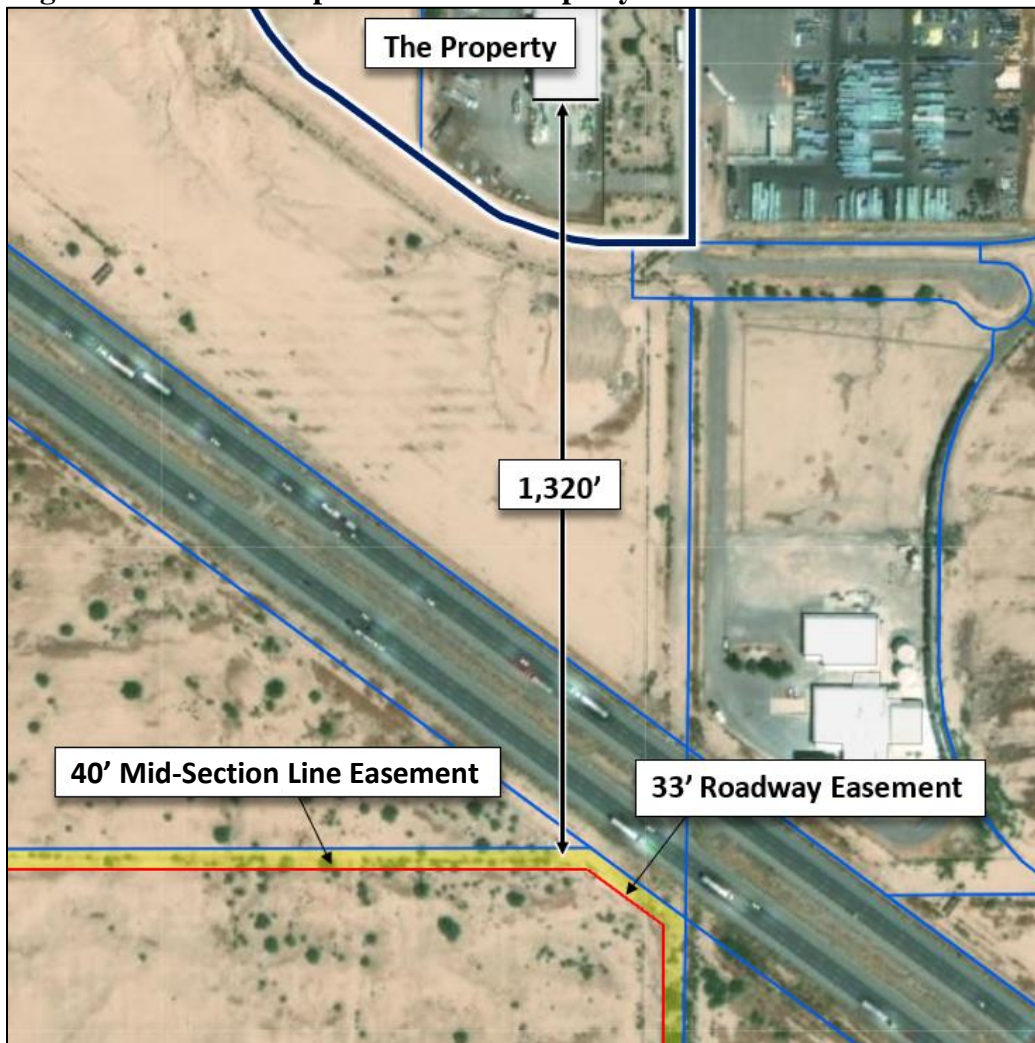
Both the Property and Vacant R1-43 Parcel are within the General Plan’s Sun Corridor Growth Area (“Growth Area”). See Figure 3. The focus of this Growth Area is on redevelopment and rehabilitation of existing structures that will enhance economic viability along major transportation corridors, including I-10. See General Plan § 3.3.5. Proposed reuse of the Existing Building for medical marijuana cultivation is consistent with the Growth Area. The current use and zoning of the Vacant R1-43 Parcel, however, are inconsistent with this Growth Area. Instead of maintaining its current rural residential designation, the Vacant R1-43 Parcel is more likely to develop after rezoning to a commercial or industrial zoning district that would not trigger the 1,320’ use-specific setback for the Project’s medical marijuana cultivation use.

Figure 3 – Project Location in Sun Corridor Growth Area



The Property is separated from the Vacant R1-43 Parcel by the six-lane I-10 freeway and vacant land serving as a significant buffer between the two properties. In addition, the northeastern portion of the Vacant R1-43 Parcel, nearest the Project, is encumbered by a 33' roadway easement along the northeast corner and a 40' mid-section line easement along the northern boundary, as depicted on the final plat for the Vacant R1-43 Parcel, attached as Exhibit A. See also Figure 4 below illustrating the relationship of the two properties and the encumbrances on the R1-43 Parcel. Further, the portion of the Vacant R1-43 Parcel along the freeway is subject to an Arizona Department of Transportation ("ADOT") "Area of Establishment," which serves as a precursor for acquisition for the purpose of improving the I-10, as set forth in ADOT's Resolution of Establishment, dated November 14, 2008, and attached as Exhibit B. Based on these encumbrances, it is highly unlikely any residence will ever be built near that property boundary, and the northeastern portion of the Vacant R1-43 Parcel may not remain zoned R1-43, because roadways typically are not zoned. As such, this variance request would correct a technicality and is not inconsistent with the intent of the 1,320' separation provision to protect residential property.

Figure 4 – Relationship Between the Property and the Vacant R1-43 Parcel



III. The Project

The proposed Project will facilitate the renewal of an industrial use for this Property consistent with the I-1 zoning district and General Industrial land use designation. Code Section 21-2.5.3 requires approval of a CUP for the medical marijuana cultivation use, and the Applicant has applied for that separately. The Applicant proposes to grow, harvest, cure, trim, and package medical marijuana within the Existing Building in accordance with State regulations. There will not be any cannabis extraction activities taking place anywhere on the Property. The Project will supply all product produced on site to its associated dispensary, Herbal Wellness Center, Inc. (“Herbal Wellness”), located at 4126 West Indian School Road in the City of Phoenix, Arizona (“Phoenix Dispensary”).

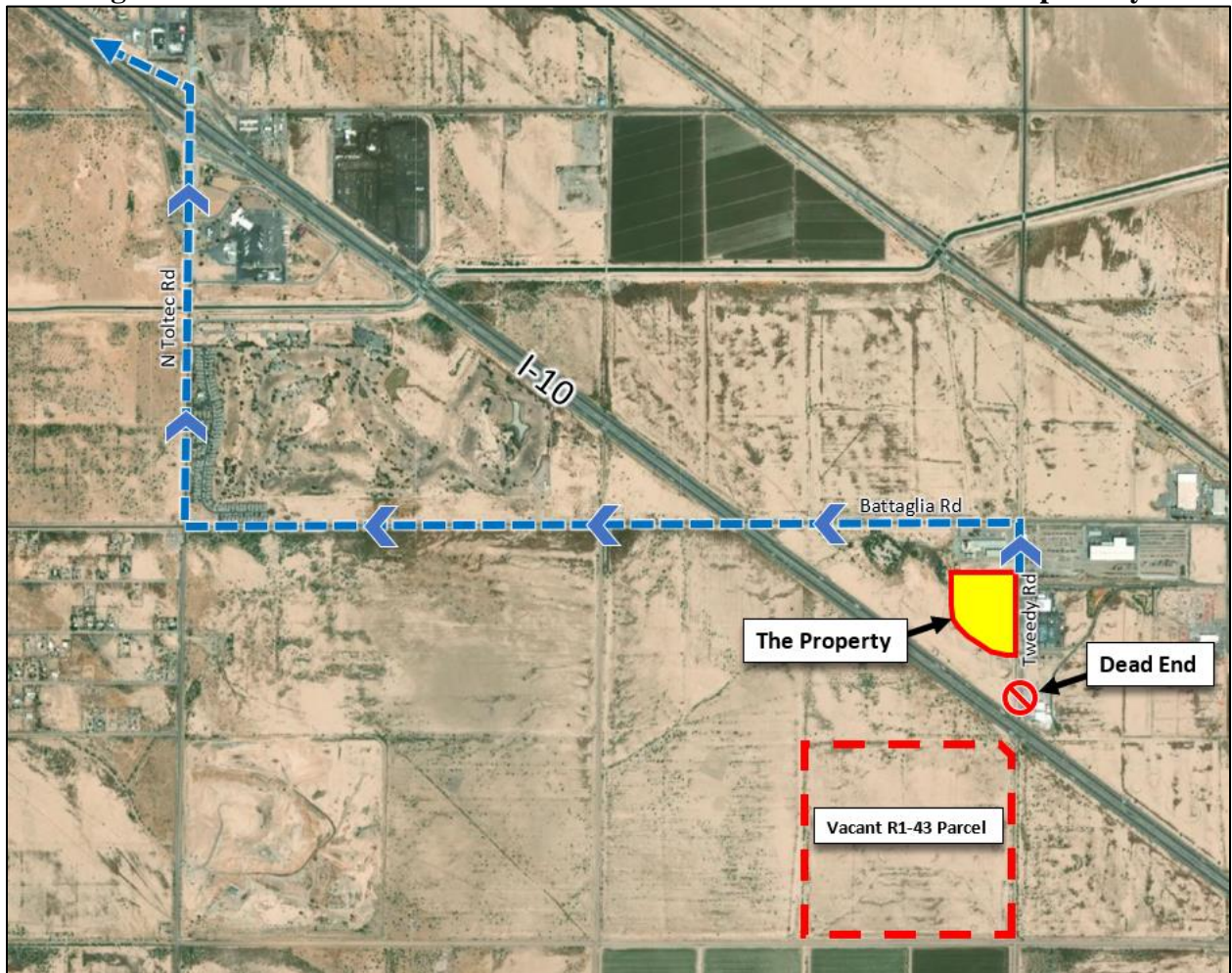
The Existing Building is approximately 71,000 sf of enclosed area that the Applicant intends to reuse and re-program to maximize the indoor area for growing product to serve the Phoenix Dispensary. The Existing Building was completed around 2008 and is well maintained, has a deep front setback of over 145’, deep side setbacks in excess of 200’, and a 1,950’ masonry exterior wall, which combine to provide a high level of security and screening. A conceptual site plan of the proposed Project is attached as Exhibit C. The Existing Building was historically utilized for large equipment painting, and no alterations are proposed to the exterior or grounds. The Project will reuse and redevelop the interior of the Existing Building to maximize available grow areas and will also include hallways, mechanical equipment, trimming, drying, security, and other support rooms for the facility.

Use of the entire Existing Building is necessary to meet the Phoenix Dispensary’s current and increasing future demand. The Phoenix Dispensary has been open since 2013 and serves more than 6,000 patients monthly. The Phoenix Dispensary’s product is currently being provided by 12,000 sf of grow space within its existing cultivation facility. This only meets the demand of approximately 75% of its existing patients. Product for the remaining demand is purchased from other licensed cultivators, if available. To accommodate the full demand of current Herbal Wellness patients, they would need at least 16,000 sf of grow space, which does not include non-growing space that is consumed by hallways, mechanical equipment (fertigation systems), trimming, drying, security and other support rooms for the facility.

In the coming months, Herbal Wellness will be applying for expansion to increase the size of the Phoenix Dispensary by a factor of 2.5, as the City of Phoenix has recently increased the area permitted for dispensaries from a maximum square footage of 2,000 sf to 5,000 sf. With the upcoming expansion and given historical supply rates, there is now a projected need for a total of 40,000 sf of grow space ($2.5 \times 16,000 \text{ sf} = 40,000 \text{ sf}$). An analysis of the Existing Building shows that its 70,000 sf facility area will provide the needed 40,000 sf of grow space. The requested variance will allow full use of the Existing Building so that the Phoenix Dispensary is able to meet 100% of its current and future patient needs.

Ultimately, the finished product will be transported to the Phoenix Dispensary via westbound I-10. Ingress and egress to the Project is oriented to the north on Tweedy Road, with convenient access to the westbound freeway via West Battaglia Road and North Toltec Road. Vehicles leaving the Property will not cross the I-10 to head toward the Vacant R1-43 Parcel because North Tweedy Road dead ends north of the freeway. See Figure 5. In addition, any access to I-10 eastbound would occur via Sunshine Boulevard and also would not impact the Vacant R1-43 Parcel. Access to the Property is also restricted to employees, related consultants, and service providers, with the primary traffic being approximately 25-30 employee vehicles, including delivery vehicles. There will be no retail traffic associated with the Project. The Project will also be secured and monitored 24 hours a day, seven days a week and never open to the public.

Figure 5 – Traffic Circulation: Route to I-10 West Toward Phoenix Dispensary



IV. Variance Requested

Eloy's Code Section 21-3.1.24 provides use-specific standards for medical marijuana cultivation. As will be demonstrated in the separate CUP application to be considered by City Council, the Project meets all applicable standards except that the southern wall of the Existing Building is located 1,307' from the Vacant R1-43 Parcel instead of the required 1,320' separation from residentially zoned property. The Code provides that "distance shall be measured from the exterior walls of the building or portion thereof in which the cultivation business is conducted or proposed to be conducted to the property boundary line of the residentially zoned property." See Code §21-3.1.24(D). Although the Vacant R1-43 Parcel is undeveloped, separated from the Existing Building by a six-lane interstate freeway, encumbered on the northeastern portion by roadway easements, and subject to an ADOT Area of Establishment, strict application of the Code would prohibit use of the entire Existing Building for medical marijuana cultivation. Therefore, to ensure the entire Existing Building can be used for cultivation so that the Project can meet current and future product demands of its associated dispensary, a variance to reduce the use-specific setback requirement from a residential district from 1,320' to 1,307' is necessary for the Project.

V. The Requested Variance Meets the Legal Test Under Arizona Revised Statutes § 9-462.06.G.2 and Eloy Zoning Ordinance § 21-5.4.1

Arizona Revised Statutes Section 9-462.06.G.2 authorizes a city's Board of Adjustment to hear appeals of variances and sets forth standards for granting variances: "[A] board of adjustment shall hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district." Similarly, Eloy Code Section 21-5.4.1(B) provides that the Board of Adjustment may approve a variance if "because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of this Chapter will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district." Medical marijuana cultivation is permitted in the I-1 zoning district with a CUP, and as will be demonstrated in the separate CUP application, the Project meets all required use-specific standards, except that this variance is necessary to reduce the required setback to a residential zoning district from 1,320' to 1,307', a difference of less than 1%, in order to permit the use within the entirety of the Existing Building notwithstanding the location of a vacant rural residential parcel on the other side of the I-10 freeway.

Code Section 21-5.4.1(C) sets forth a four-part test for justification of a variance. The requested variance meets and exceeds these tests as described below.

1. *There exist special circumstances or conditions regarding the land or building for which the variance or adjustment is sought, which do not apply generally to other land or buildings in the same zoning district.*

The Project is re-vitalizing the Existing Building that was constructed around 2008 and used for equipment painting to now accommodate the medical marijuana cultivation use that was not in existence when the building location was determined. In 2008, medical marijuana had not yet been legalized in Arizona, and it would not have been possible to account for the Code's use-specific standards. In addition, the limited portion of the Vacant R1-43 Parcel within 1,320' of the Existing Building is primarily encumbered by roadway easements and an ADOT Area of Establishment. With the prospects for unzoned roadway construction on that portion of the parcel or future development consistent with the Growth Area requiring rezoning of the entire parcel, the 1,320 setback may become moot in the future. At this time, however, while that property remains vacant under rural residential zoning, the variance is necessary.

2. *The above special circumstances or conditions are preexisting and are not created or self-imposed.*

The special circumstances are pre-existing as the Existing Building was constructed by a previous owner in its current location and prior to enactment of the use-specific standards. In addition, the location of the I-10 freeway and roadway encumbrances on the Vacant R1-43 Parcel are not self-imposed by the Applicant.

3. *The variance is necessary for the preservation of substantial property rights. Without a variance, the property cannot be used for purposes otherwise allowed in the same zoning district and the variance or adjustment, as granted, is the minimum adjustment that will accomplish this purpose.*

The variance is necessary for the Project to utilize the entire Existing Building for the proposed use, which is permitted in the I-1 district with a CUP. With approximately 71,000 sf of enclosed area, the Existing Building is appropriate for the use and large enough to meet the Applicant's demand. Without the variance, however, the southern portion of the Existing Building could not be used for medical marijuana cultivation, which could cause the anticipated production to fall short of the required demand and would frustrate the purpose of implementing the cultivation use at this location.

Also, the Existing Building is vacant and is now proposed to be returned to a viable economic purpose in an area surrounded by industrial uses. This Project meets all of the use-specific standards but is requesting a variance of less than 1% because of the distance to the Vacant R1-43 Parcel. The variance request for a 1,307' setback is the minimum necessary to utilize the entire Existing Building because that is the distance from the exterior wall of the Existing Building to the property boundary of the Vacant R1-43 Parcel, as provided in a sealed survey from Helix engineering, dated April 9, 2021, attached as Exhibit D.

4. *The granting of the adjustment will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.*

The variance would not be detrimental to the Vacant R1-43 Parcel because impacts of the Project operating within an enclosed building surrounded by a masonry wall and separated by the I-10 freeway would not be perceptible on the Vacant R1-43 Parcel. Further, the only portion of the Vacant R1-43 Parcel within 1,320' of the Existing Building is encumbered by roadway easements and may be subject to ADOT acquisition. Vehicular traffic from the Project would be oriented to the freeway and would not impact the area surrounding the Vacant R1-43 Parcel. See Figure 5 above. Also, because of its location within the Growth Area and adjacent to the freeway, any eventual development is likely to require rezoning to an industrial or commercial district, which would not require the 1,320' separation.

VI. The Board of Adjustment May Make the Required Findings Under Code Section 21-6-9.3 to Approve the Variance

Code Section 21-6.9.3 requires the Board of Adjustment to make certain findings in approving a variance. As described below, these findings are appropriate for this request.

- A. *Special conditions and circumstances exist which are unique to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district.*

As described in more detail in Section V.(1) above, the special circumstances applicable to this request are reusing the Existing Building for a use with use-specific standards that did not exist at the time the building was constructed and the encumbrances upon the limited portion of the Vacant R1-43 Parcel within 1,320' of the Existing Building.

- B. *A literal interpretation of this Ordinance would deprive the appellant of rights commonly enjoyed by other properties in the same zoning district.*

A literal interpretation of the Code would not permit use of the entirety of the Existing Building for medical marijuana cultivation because a portion of it is within 1,320 of the Vacant R1-43 Parcel. The medical marijuana cultivation use is permitted in the I-1 district with a CUP, and it is only the location of the Existing Building slightly within 1,320' of the Vacant R1-43 Parcel that would limit use of a portion of the building, even though the building location was determined prior to the existence of the use-specific standards.

- C. *The alleged hardship caused by literal interpretation of the provisions of this Ordinance includes more than personal inconvenience and financial hardship, and is not the result of actions by the appellant.*

Literal interpretation of the 1,320' building setback from the Vacant R1-43 Parcel would prohibit the medical marijuana cultivation use in a portion of the Existing Building and would impact overall interior programming and could limit the product yield needed to meet demand. Use of this site for cultivation is intended to fulfill a specific demand at a specific dispensary that

will be licensed by the State to procure product from this cultivation site. Inability to adequately meet demand would impact selection of this site for the use.

D. Granting the Variance will not confer upon the appellant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same zoning district.

The requested variance will not confer a special privilege because it is specific to the special circumstances of the Existing Building's location in relation to the Vacant R1-43 Parcel and the proposed medical marijuana cultivation use that is subject to use-specific standards developed in the Code subsequent to construction of the Existing Building.

E. Granting the Variance will not interfere with or substantially injure the appropriate use of adjacent conforming properties in the same zoning district.

The variance would not be detrimental to the Vacant R1-43 Parcel, as discussed in more detail in Section V.(4) above, due to the freeway buffer, on-site screening, the lack of connectivity on Tweedy Road to south of the freeway, and the roadway encumbrances on the limited portion of the Vacant R1-43 Parcel within the 1,320' radius.

F. The reasons set forth in the appeal justify the granting of the Variance, and that the Variance is the minimum Variance that will make possible the reasonable use of the land, building or structure.

This variance request meets the four tests of Code Section 21-5.4.1 and justifies the findings under Code Section 21-6-9.3 as described herein. The variance request for a 1,307' setback is the minimum necessary to utilize the entire Existing Building because that is the distance from the southern exterior wall of the Existing Building to the property boundary of the Vacant R1-43 Parcel.

G. Granting the Variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

This variance is consistent with the intent of the Code's use-specific setback to protect residences from potential impacts of the medical marijuana cultivation use. Because the use is screened and within an entirely enclosed building and separated from the Vacant R1-43 Parcel by an interstate freeway, that parcel will not be impacted. In addition, the limited portion of the Vacant R1-43 Parcel within the 1,320' radius is highly unlikely to be sensitive to any potential impacts because its development potential is limited by roadway easements and the potential for acquisition by ADOT. The medical marijuana cultivation use is also heavily regulated by the State to ensure the safety, health, and welfare of the public.

In addition, the variance would be in harmony with the general purpose and intent of the Code because it supports the purpose of the I-1 zoning district "to provide areas that promote employment opportunities for existing and future residents of the City." See Code § 25.2.5.1. It also adheres to the intent of the General Plan for the development of designated industrial areas to "capitalize on the economic opportunities of the transportation network...to designate lands that

will maximize the future employment potential.” See General Plan § 3.1.4. The requested variance also applies to the Property designated within the Sun Corridor Growth Area. This variance squarely meets the focus of this Growth Area for industrial and commercial development and the “rehabilitation of existing structures.” See General Plan § 3.3.5.

H. No Variance shall be granted from any written conditions attached by another decision-maker to the approval of a rezoning, Conditional Use Permit, subdivision plat, or site plan.

This variance is requested from Code Section 21-3.1.24(D)’s 1,320’ building setback to a residential district for a medical marijuana cultivation use. No request for a variance from a condition of another approval is included.

I. No Variance shall be granted if the conditions or circumstances affecting the applicant’s property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.

The variance requested is specific to circumstances of the Existing Building and the Vacant R1-43 Parcel, including the intervening freeway.

J. No non-conforming use or violations of this Ordinance with respect to neighboring lands, structures or buildings, in the same Zoning District, and no permitted use of lands, structures or buildings in other Zoning Districts, shall be considered grounds for granting a Variance.

There are no non-conforming uses or violations of this ordinance used as grounds considered for granting this variance. The Existing Building conforms to I-1 district development standards.

VII. Conclusion

Approval of this variance request will permit the Project to repurpose the entirety of an existing vacant building for medical marijuana cultivation and to meet the demand of the Phoenix Dispensary. The variance is specific to the special circumstances of the Existing Building’s location in relation to the Vacant R1-43 Parcel and the proposed medical marijuana cultivation use that is subject to use-specific standards developed in the Code subsequent to construction of the Existing Building.

EXHIBIT A

EXHIBIT B

10



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLÉ

ARIZONA DEPARTMENT OF TRANSPORTATION
205 SOUTH 17TH AVENUE
R/W Operations, MD 612E
PHOENIX, AZ 85007-3213

DATE/TIME: 12/01/08 1429
FEE: \$14.50
PAGES: 10
FEE NUMBER: 2008-114574

November 14, 2008

RES. NO. 2008-11-A-054
PROJECT: 010PN200H710401R
HIGHWAY: CASA GRANDE - TUCSON
SECTION: Sunland Gin Rd. - Jct. SR 87
ROUTE NO.: Interstate 10
ENG. DIST.: Tucson
COUNTY: Pinal

RESOLUTION OF ESTABLISHMENT

VICTOR M. MENDEZ, Director, Arizona Department of Transportation, on November 14, 2008 presented and filed with this Transportation Board his written report under Arizona Revised Statutes Section 28-7046, recommending the establishment and acquisition of additional right of way for the improvement of a portion of Interstate 10 as set forth in the above referenced project.

The new right of way to be established and acquired for this improvement is depicted in Appendix "A" and delineated on maps and plans on file in the office of the State Engineer, Intermodal Transportation Division, Phoenix, Arizona, entitled "30% Design Plans dated December 27, 2007, CASA GRANDE - TUCSON Highway, Project 010PN200H710401R"

WHEREAS establishment and acquisition of the new right of way is necessary for this improvement; and

WHEREAS because of these premises, this Board finds public safety, necessity and convenience require the recommended establishment and acquisition of the additional land needed for this improvement and that access to the highway shall be controlled as delineated on the maps and plans; therefore, be it

RESOLVED that the recommendation of the Director is adopted and made part of this resolution; be it further

November 14, 2008

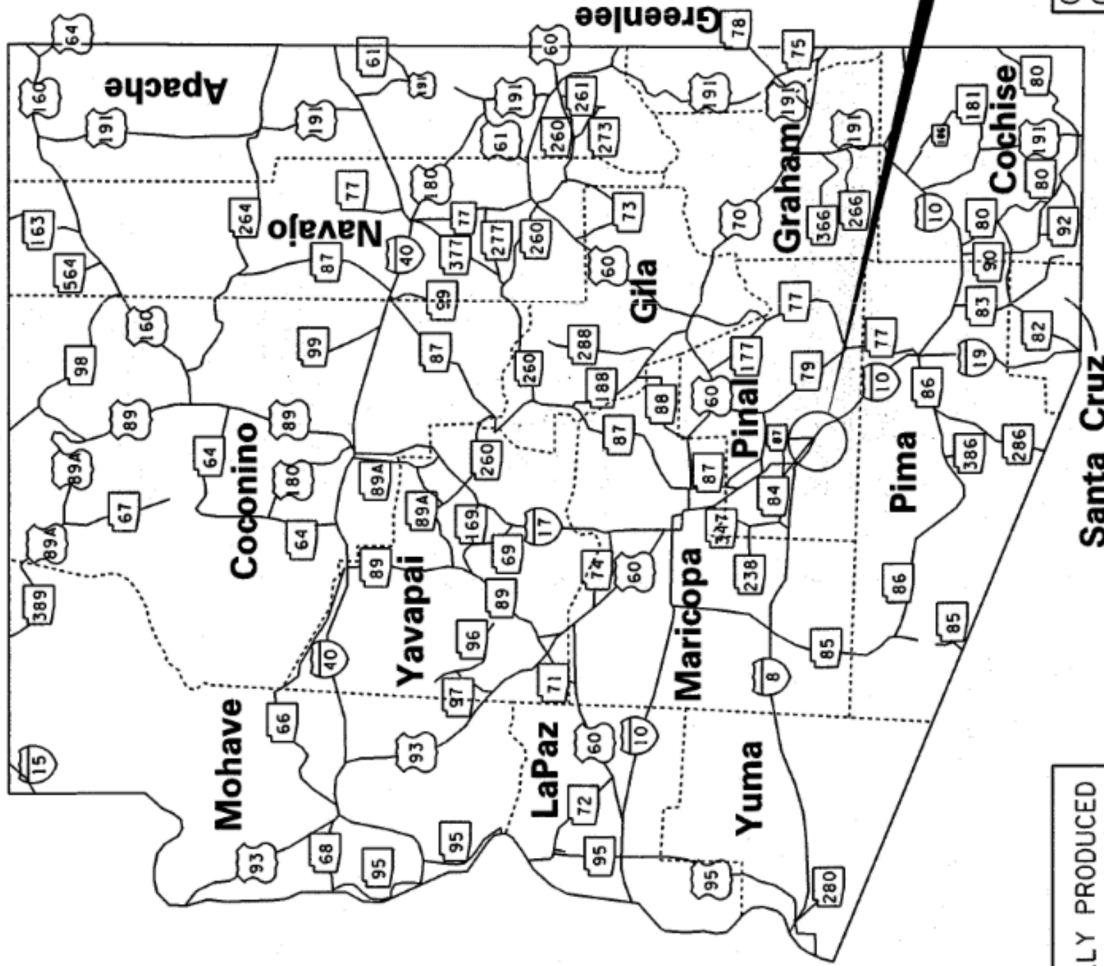
RES. NO. 2008-11-A-054
PROJECT: 010PN200H710401R
HIGHWAY: CASA GRANDE - TUCSON
SECTION: Sunland Gin Rd. - Jct. S.R. 87
ROUTE NO.: Interstate 10
ENG. DIST.: Tucson
COUNTY: Pinal

RESOLVED that the new areas of right of way as set forth in Appendix "A" are designated a controlled access state route, and ingress and egress to and from the highway and to and from abutting, adjacent, or other lands be denied, controlled, or regulated as indicated by the maps and plans. Where no access is shown, none will be allowed to exist; be it further

RESOLVED that prior to construction, the acquired right of way be established as an access controlled state highway; be it further

RESOLVED that the Director is hereby authorized to acquire by lawful means, including exchanges, in accordance with Arizona Revised Statutes Section 28-7092, an estate in fee, or such other interest as is required, including material for construction, haul roads, and various easements in any property necessary for or incidental to the improvements as delineated on said maps and plans; be it further

RESOLVED that the Director secure an appraisal of the property to be acquired and that necessary parties be compensated. Upon failure to acquire said lands by other lawful means, the Director is authorized to initiate condemnation proceedings.



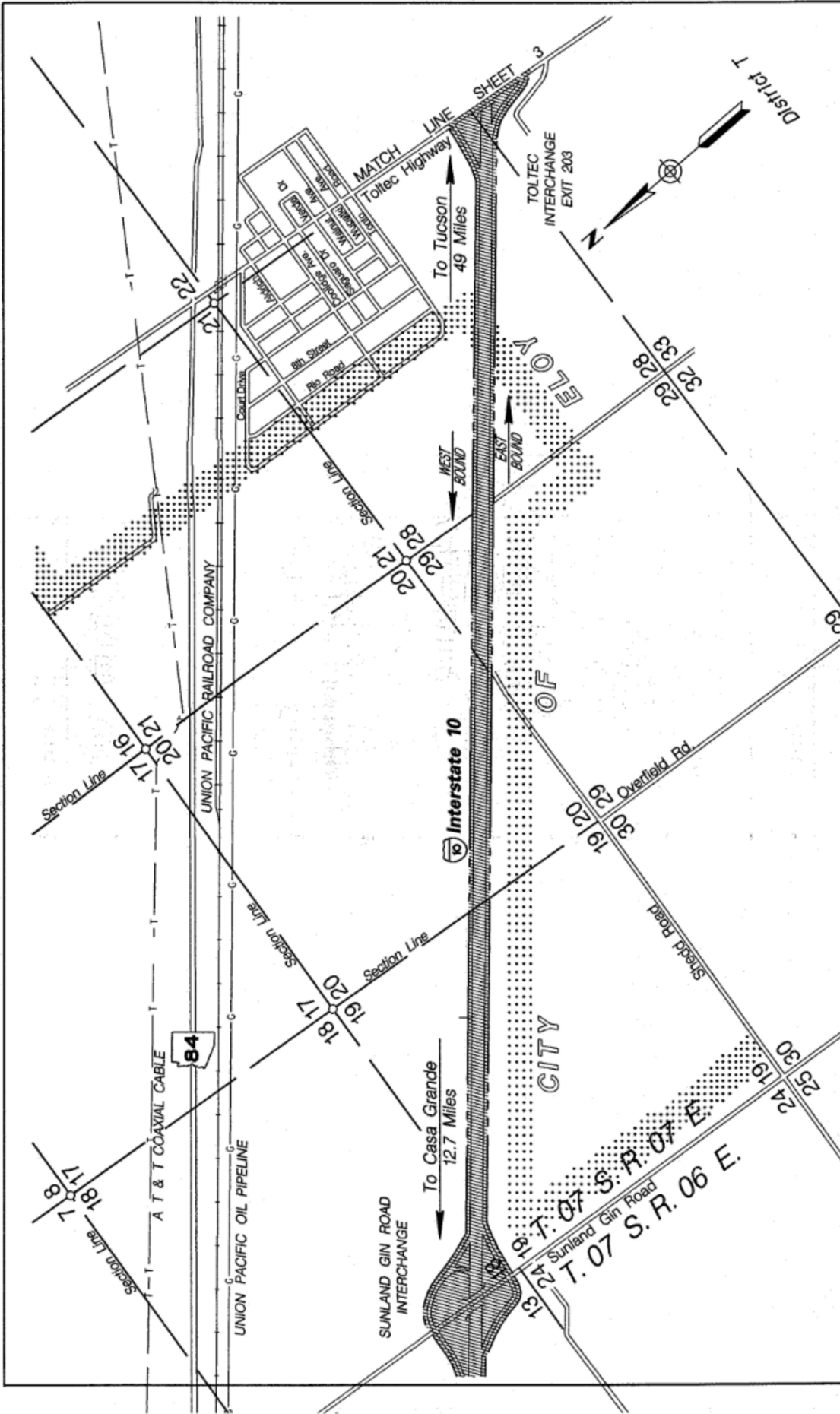
AREA OF ESTABLISHMENT
SEE SHEET'S 2 THRU 4
FOR DETAILS

010 PN 200 H7104 OIR
CASA GRANDE - TUCSON
Sunland Gin Rd - Jct. SR 87
Pinal County

APPENDIX "A"

THIS PLAT WAS DIGITALLY PRODUCED
FROM ARIZONA DEPARTMENT OF
TRANSPORTATION
GENERAL HIGHWAY MAP
RIGHT OF WAY PLANS SECTION
REVISED MAY 17, 2000

DATE: NOV 14, 2008 SHEET 1 OF 4



010 PN 200 H7104 OIR
 CASA GRANDE - TUCSON
 Sunland Gin Rd - Jct. SR 87
 Pinal County

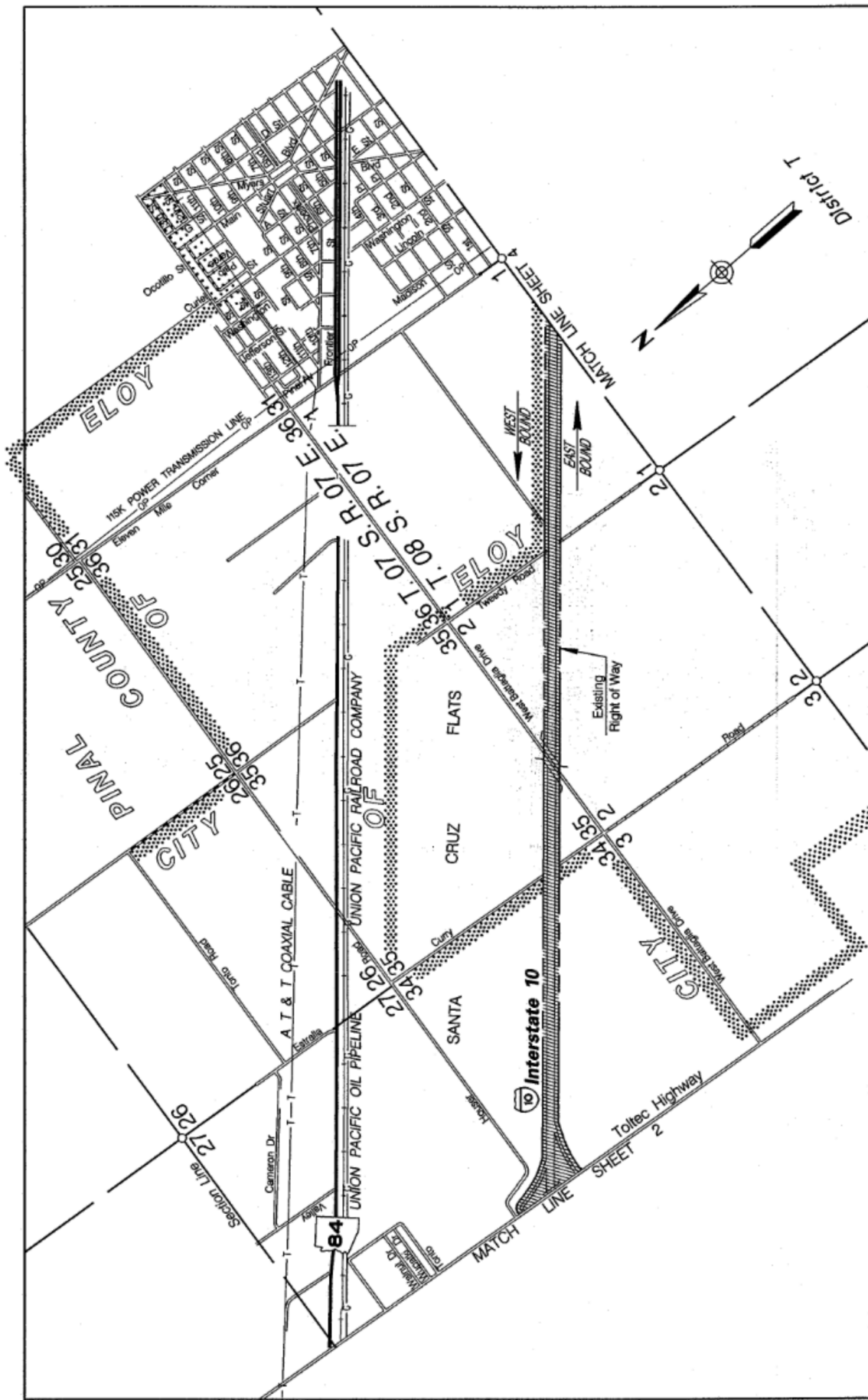
DATE: NOV 14, 2008 SHEET 2 OF 4

AREA OF ESTABLISHMENT

APPENDIX "A"

THIS PLAT WAS DIGITALLY PRODUCED FROM ARIZONA DEPARTMENT OF TRANSPORTATION GENERAL HIGHWAY MAP

RIGHT OF WAY PLANS SECTION
 REVISED JULY 17, 2000



THIS PLAT WAS DIGITALLY PRODUCED FROM ARIZONA DEPARTMENT OF TRANSPORTATION GENERAL HIGHWAY MAP

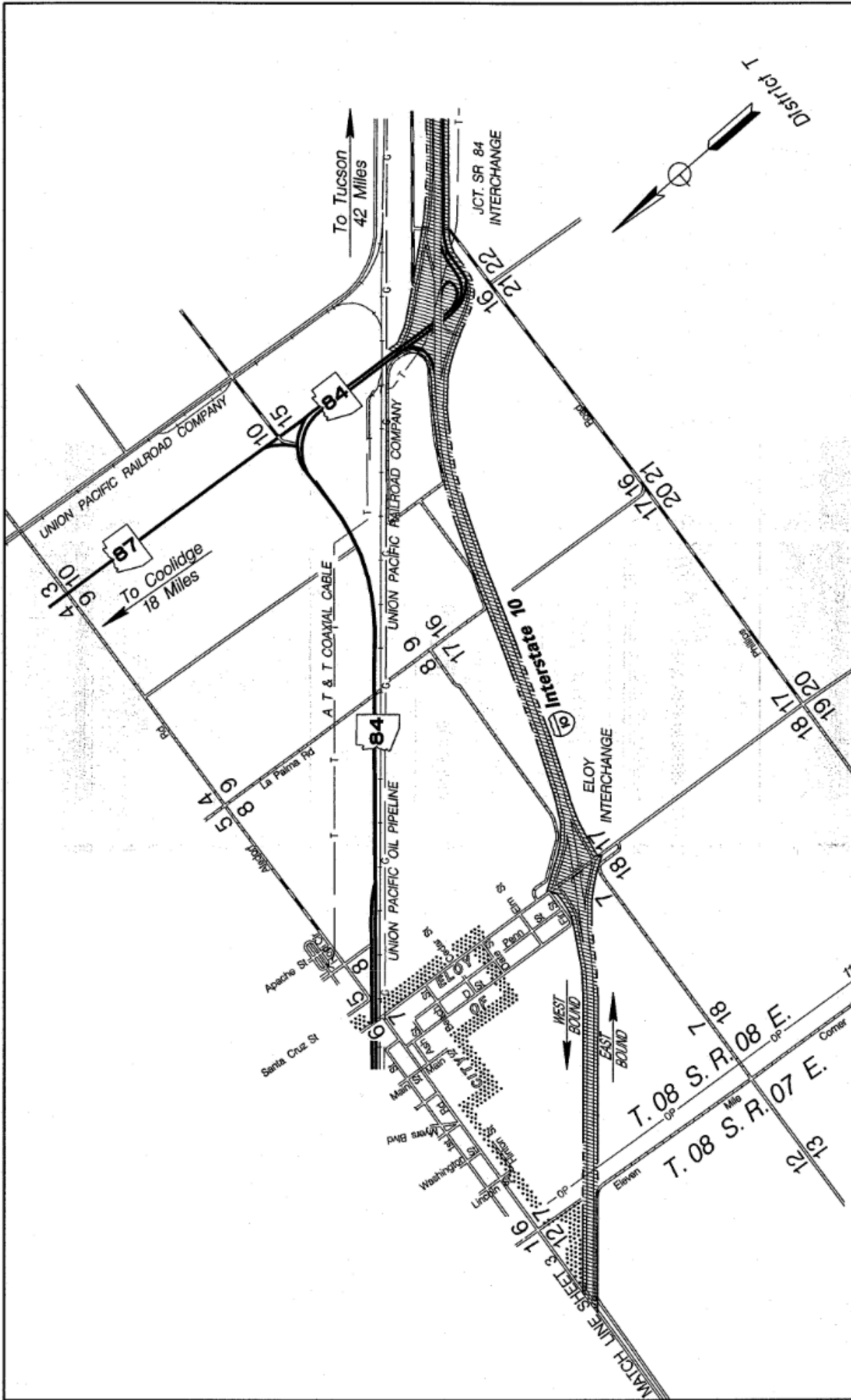
RIGHT OF WAY PLANS SECTION REVISED JULY 17, 2000

AREA OF ESTABLISHMENT

APPENDIX "A"

010 PN 200 H7104 OIR
 CASA GRANDE - TUCSON
 Sunland Gin Rd - Jct. SR 87
 Pinal County

DATE: NOV 14, 2008 SHEET 3 OF 4



010 PN 200 H7104 OIR
 CASA GRANDE - TUCSON
 Sunland Gin Rd - Jct. SR 87
 Pinal County

DATE: NOV 14, 2008 SHEET 4 OF 4


 AREA OF
 ESTABLISHMENT

APPENDIX "A"

THIS PLAT WAS DIGITALLY PRODUCED
 FROM ARIZONA DEPARTMENT OF
 TRANSPORTATION
 GENERAL HIGHWAY MAP

RIGHT OF WAY PLANS SECTION
 REVISED JULY 17, 2000

November 14, 2008

RES. NO. 2008-11-A-054
PROJECT: 010PN200H710401R
HIGHWAY: CASA GRANDE - TUCSON
SECTION: Sunland Gin Rd. - Jct. S.R. 87
ROUTE NO.: Interstate 10
ENG. DIST.: Tucson
COUNTY: Pinal

REPORT AND RECOMMENDATION

TO THE HONORABLE ARIZONA TRANSPORTATION BOARD:

The Intermodal Transportation Division has made a thorough investigation concerning the establishment and improvement of a portion of Interstate 10 within the above referenced project.

This portion was previously established as a state route by the Arizona State Highway Commission Resolution dated September 9, 1927 of page 26 of the Official Minutes; Resolution 63-20 dated February 26, 1963, designated this portion as a state highway; thereafter, various Resolutions established additional right of way for improvements thereof.

New right of way is now needed for restoration of existing pavement, widen lanes and to construct new drainage facilities to enhance the safety of the traveling public. Accordingly, it is necessary to establish and acquire the new right of way for this improvement.

The new right of way to be established and acquired for this improvement is depicted in Appendix "A" and delineated on maps and plans on file in the office of the State Engineer, Intermodal Transportation Division, Phoenix, Arizona, entitled "30% Design Plans dated December 27, 2007, CASA GRANDE - TUCSON Highway, Project 010PN200H710401R."

November 14, 2008


RES. NO. 2008-11-A-054
PROJECT: 010PN200H710401R
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In the interest of public safety, necessity and convenience, I recommend that the area depicted in Appendix "A" be established and improved as a state route and that access be controlled, and that the area be established as a state highway prior to construction.

I further recommend the acquisition of the new right of way, material for construction, haul roads and various easements necessary for or incidental to the improvement.

Pursuant to Arizona Revised Statutes Section 28-7046, I recommend the adoption of a resolution making this recommendation effective.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard Lopez for".

VICTOR M. MENDEZ, Director
Arizona Department of Transportation

November 14, 2008

RES. NO. 2008-11-A-054
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CERTIFICATION

I, VICTOR M. MENDEZ, Director of the Arizona Department of Transportation, do hereby certify that the foregoing is a true and correct copy from the minutes of the Transportation Board made in official session on November 14, 2008.

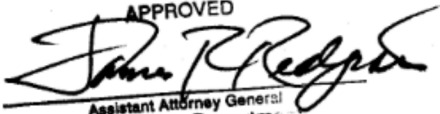
IN WITNESS WHEREOF I have hereunto set my hand and the official seal of the Transportation Board on November 14, 2008.



VICTOR M. MENDEZ, Director
Arizona Department of Transportation



APPROVED



Assistant Attorney General
Attorney for Department
of Transportation

Date

11/4/08

EXHIBIT C

EXHIBIT D



Helix Engineering, LLC
Engineering / Surveying / Consulting

April 9, 2021

SUBJECT: APN 408-02-022 & 408-26-009

RE: Distance measurements for zoning

To whom it may concern,

I Michael Thompson, a land surveyor registered in the State of Arizona, do hereby certify to the following:

The distance from the Southerly most property line of parcel 408-02-022 to the Northerly most property line of parcel 408-26-009 is 848.5 feet.

The distance from the Southerly most face of building of parcel 408-02-022 to the Northerly most property line of parcel 408-26-009 is 1307.2 feet.

Reference: "SADDLEBACK RANCHES" CAB B SL 145
"ELOY INDUSTRIAL PARK UNIT TWO PHASE I" CAB E SL 054



Michael J. Thompson, RLS 25090

**CITY OF ELOY
REQUEST FOR BOARD ACTION**

Agenda Item: **VI.B.**

Date: **5/20/2021**

Date submitted:
04/07/2021

Action: Formal

**Subject: Consideration, discussion,
and recommendation for approval,
approval with conditions or
disapproval on Case No.: VA2021-010
(Project Name: New Gen Eloy)**

Date requested:
5/20/2021

TO: Board of Adjustment

FROM: Jon Vlaming

RECOMMENDATION:

Consideration, discussion, and recommendation to the Eloy City Council for approval, approval with conditions or disapproval on Case No.: VA2021-011 (Project Name: New Gen Eloy)

City staff recommends approval of this variance.

DISCUSSION:

FISCAL IMPACT:

There is not a direct fiscal impact associated with this request.