

COCHISE COUNTY

Docket SUA-15-18 (Sonoran Care) Appeal

An Appeal of the
Planning and Zoning Commission
Denial of Special Use SU-15-18

Board of Supervisors January 5, 2016



Public Programs...Personal Service

COCHISE COUNTY

Docket SUA-15-18 (Sonoran Care) Appeal

- On November 18, 2015 the Planning and Zoning Commission denied a Special Use request for a facility for personal services and the cultivation and dispensing of medical marijuana.
- The use for this parcel, APN 404-26-001, is considered a Special Use in RU-4 districts under Sections 607.26 and 607.55 of the Zoning Regulations.
- On December 1, 2015 Sonoran Care LLC submitted an Application for Appeal of the Planning and Zoning Commission decision.



Public Programs...Personal Service

Location
Aerial

Site is a vacant parcel
approximately 2.8
miles north of Davis
Road on Central
Highway

Elfrida Area Plan
Boundary

Highway 191

Whitewater School Road

W HEDGES RD

WHITE FAWN RD

Latimer Road

W LATIMER RD

Central Highway

W HOPKINS RD

Closest
Residence

W JORDAN TRI

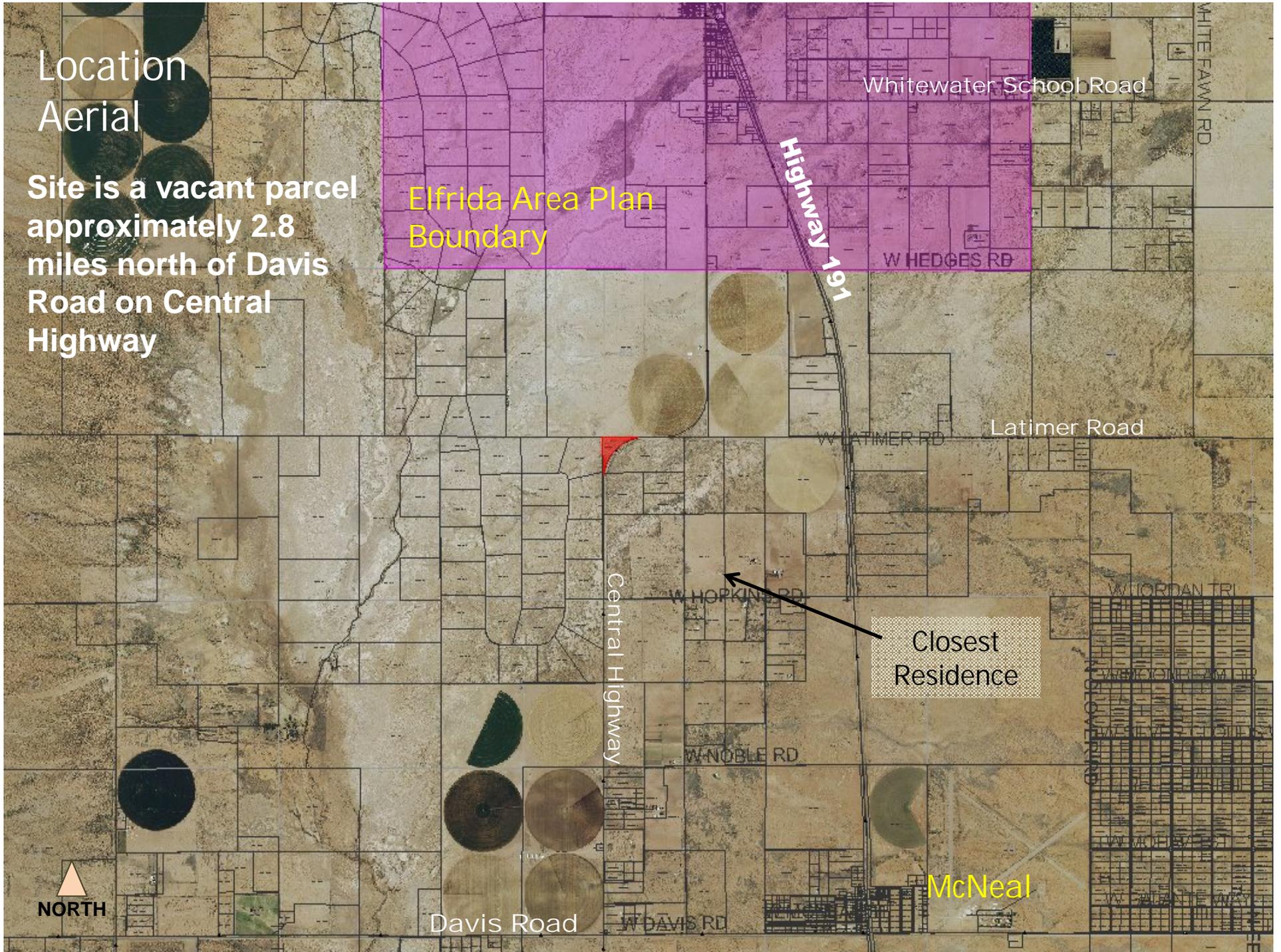
W NOBLE RD

McNeal

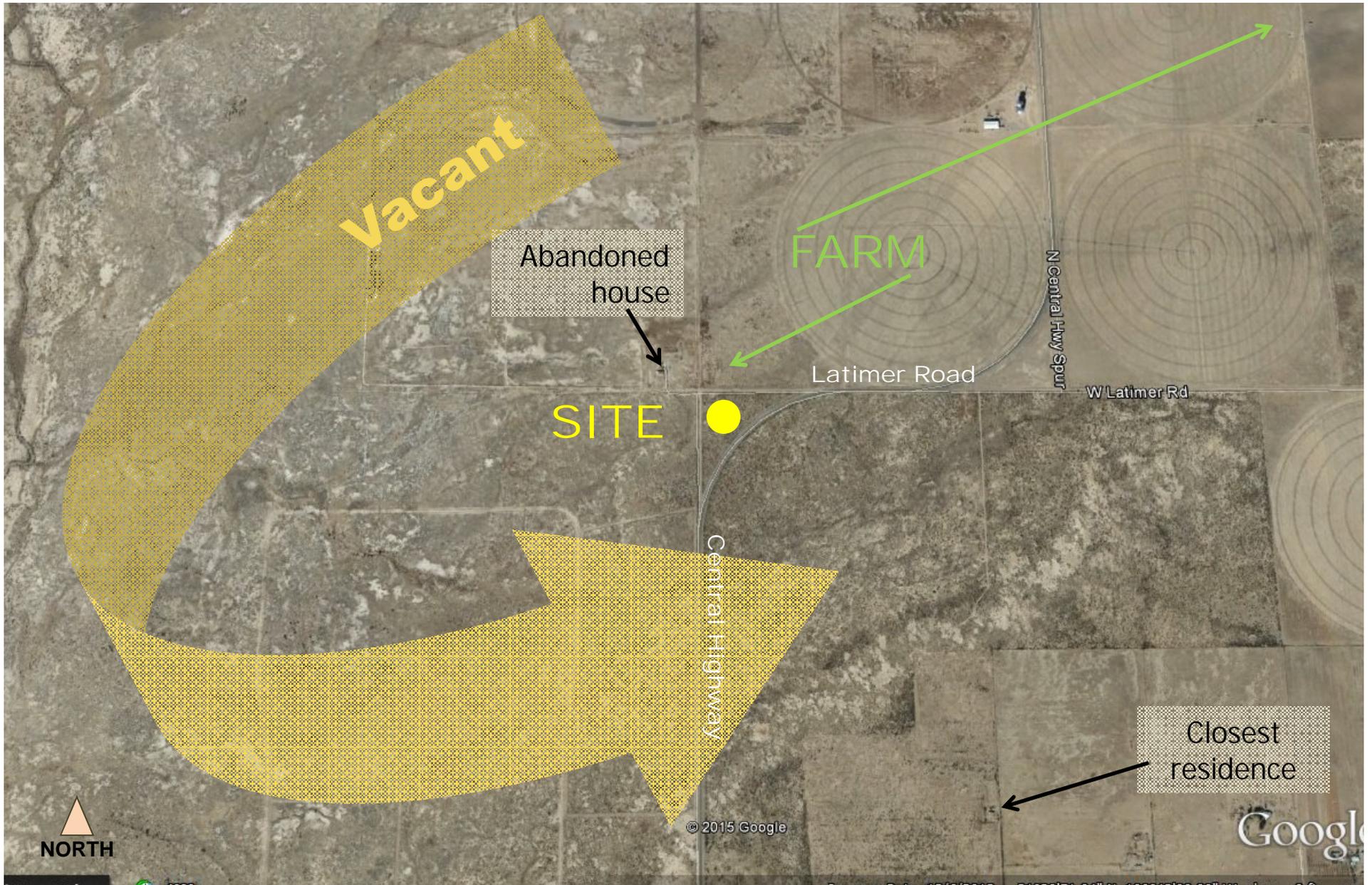
NORTH

Davis Road

W DAVIS RD

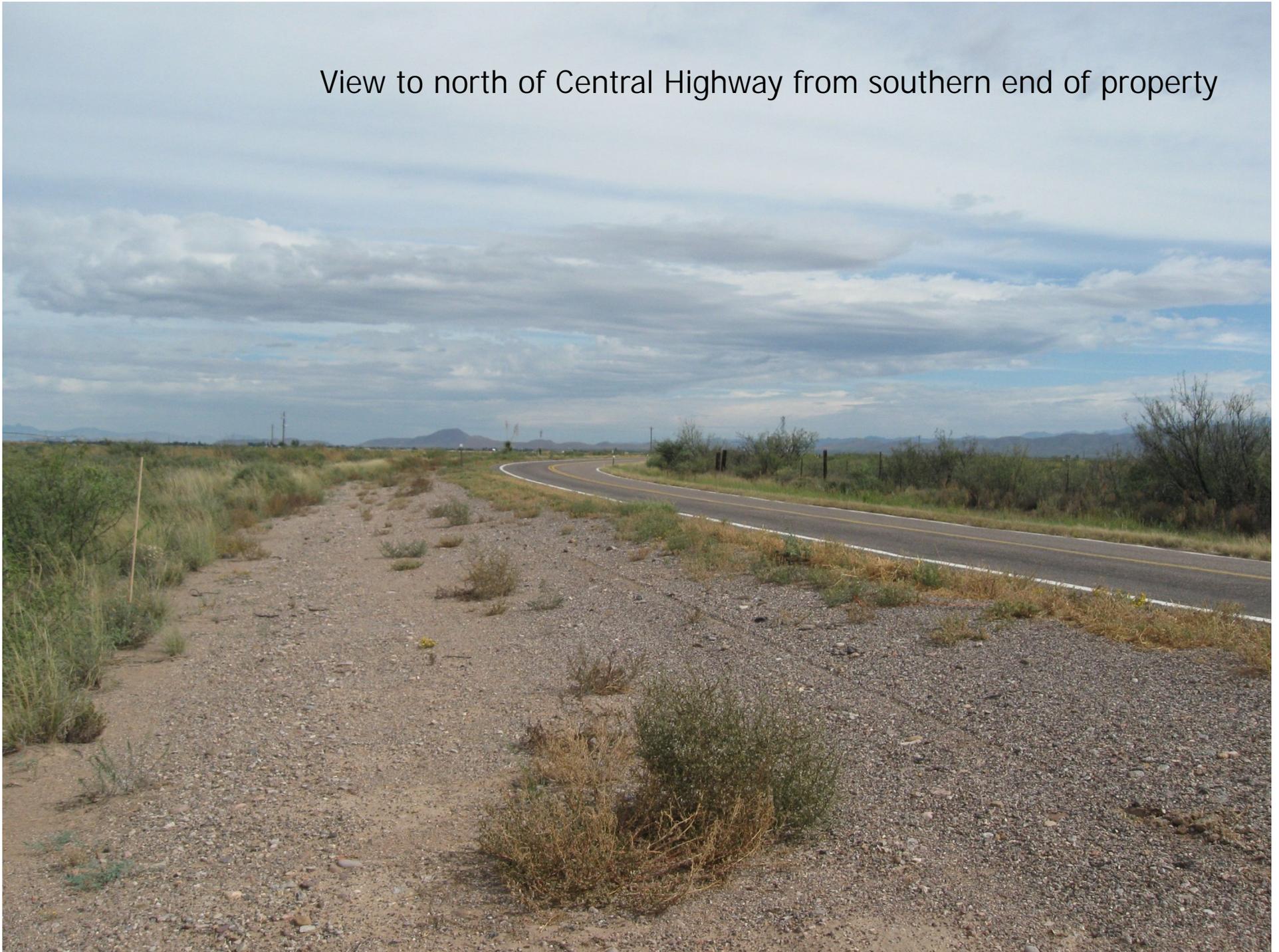


Surrounding properties are very low density residential, agriculture or vacant





View to north of Central Highway from southern end of property



View to east from southern tip of property



View to west from southern tip of property



**NOTICE
OF
PUBLIC HEARING**

LEGAL NOTICE
NOTICE OF PUBLIC HEARING

The Cochise County Planning and Zoning Commission hereby gives notice a public hearing will be held at or after 4:00 p.m., on Wednesday, September 16, 2015, at the Cochise County Board of Supervisors Hearing Room, at 1413 Melody Lane, Building G, in Bisbee, Arizona, to consider the following:

Docket 15-18: Isenoran Care: The Applicant is requesting a Special Use authorization to approve a facility for personal services and the collection and dispensing of medical marijuana at or on a Rural Rural property. The proposed uses are consistent a Special Use in Rural Rural zoning districts under Sections 607.26 and 607.35 of the Zoning Regulations. The subject parcel, APN: 404-26-001 is located at 2.8 mile north of Davis Road on Central Highway south of Effrida, AZ. The Applicant is Isenoran Care LLC.

Details of the above docket are on file in the Cochise County Planning Department and may be examined during office hours. Inquiries may be directed to Julie Drake, Planning Manager, by calling 520-521-5250, or by email to jdrake@cochiseaz.gov. All persons interested in said matters may appear at the public hearing.

View to farm north of property



Six residents spoke in opposition at the Commission hearing, they voiced concerns about:

1. Water usage.
2. Pesticide contamination.
3. Broad accessibility of marijuana.
4. Distance from the site to schools.
5. A general desire to avoid having marijuana in Cochise County.

Applicants rebuttal:

1. Water would be hauled and stored, no well.
2. No pesticides used.
3. The State has stringent regulations for the industry.
4. It is more difficult for students to obtain marijuana at a dispensary than on the black market.
5. There is no evidence that dispensaries attract crime or increase drug use.

Commission Discussion

In the Commission discussion following the public hearing Commissioner Edie raised concerns about traffic safety at the proposed location,

Commissioner Gregan stated that the Commission should not be considering water and security issues since those items are regulated by the State.

Commissioner Miller spoke about the agricultural nature of the County and her concerns about water issues and private property rights.

Commissioner Martzke readdressed that water issues were not an issue for the Commission and that the Commission was considering only the land use.

The motion for approval failed 2-3 with Commissioners Miller, Brauchla and Edie in opposition.

Sonoran Care LLC believes that the Cochise County Planning and Zoning Commission acted in error, arbitrarily, capriciously and contrary to law in denying its request for a Special Use authorization for SU-15-18.

The basis for this claim is the 10/29/15 staff report that stated that the applicant's request complied with eight of the ten factors used to analyze Special Use requests.

The ninth factor, concerning Hazardous Materials was not applicable.

The tenth and last factor, **Traffic Circulation Patterns**, could comply with conditions.

The Transportation analysis in the staff Memo indicated that the **growing operation is unlikely to alter the type or volume of traffic.**

And that adding the clinic would increase the traffic, but **“the traffic pattern in the area is unlikely to change or negatively impact Central Highway or surrounding property owners.”**

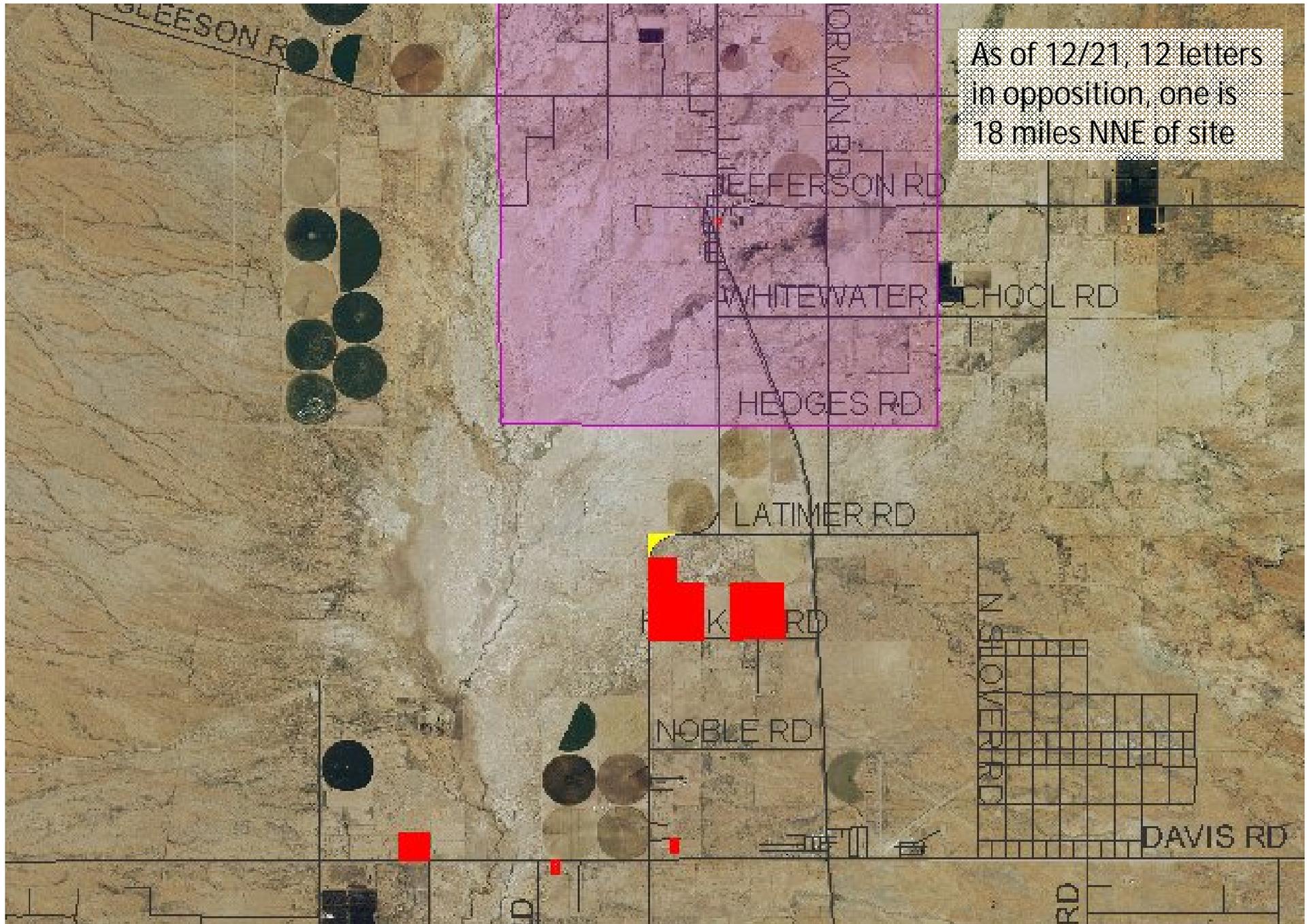
The applicant agreed to work with a traffic engineer regarding the design, placement and construction of the proposed driveway.

In their Appeal application the appellant, Sonoran Care LLC, state that they believe that in making their decision the Commission took into consideration criteria other than the Cochise County Zoning Regulations and that the Commission based their denial on three basic factors:

1. Opinions about Arizona's marijuana laws;
2. Speculative and personal opinions raised as objections made by persons residing more than a mile from the proposed site; and
3. Bias against the applicants raised by persons in the audience during the public hearing who objected to the applicants because they reside outside Cochise County.

Sonoran Care LLC believes that basing their consideration of the application on these factors rendered the Commission's decision erroneous, arbitrary, capricious, and an abuse of discretion.

Opposition Map



Four Factors In Favor of Approving the Appeal to overturn the Commission decision.

1. Medical marijuana cultivation and dispensary facilities are authorized by the State of Arizona;
2. Personal services and medical marijuana land uses are allowed in Cochise County as Special Uses in the Rural Districts;
3. The proposal meets minimum site development standards for Special Uses in the Rural Zoning District, as well as those standards specific to medical marijuana uses; and
4. Sonoran Care LLC submitted an application that was in major conformance with the criteria used by the County to evaluate these requests.

One Factor In Favor of Denying the Appeal to overturn the Commission decision.

1. Staff has received twelve letters in support of the denial.

Staff recommends Approval of the Appeal with the conditions as follows:

1. Within 30-days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12-months of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 18-months of the Special Use approval, otherwise the Special Use may be deemed void upon 30-day notification to the Applicant;
2. It is the Applicant's responsibility to obtain any additional permits, or meet any additional Conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations;
3. Prior to or concurrent with the first Commercial Permit application the applicant will provide a Basic Traffic Report to the County Transportation Department that will include an assessment of the most suitable location for the driveway location and the design criteria of the driveway;
4. Prior to or concurrent with the first Commercial Permit application the applicant shall obtain a Cochise County Right-of-Way/Encroachment Permit;
5. The applicant shall design and construct any access from Central Highway to a commercial driveway standard per the Cochise County Roadway Design Standards or as approved by the County Engineer.