

**Points and Authorities Upholding Appeal to Overturn Approval of CCBP #18-14R**  
**'Harvest of Merced'**

**Issue 1: Is the 'Harvest of Merced' location (863 W 15th Street) within 1,000 feet of the Wolfe Education Center located at 732 W 13th Street.**

"No Cannabis dispensary may be located within a 1,000-ft. radius from a school... The distance specified in this section shall be the horizontal distance measured in a straight line of the lot on which the commercial cannabis business shall be located without regard to intervening structures".

**(Please See Merced Municipal Code Section 20.44.170(E), subsection 3f.)**

***Conclusion: Yes.***

***Analysis:***     **Exhibit A: Joe Cardoso Survey Report, City of Merced** (981.51 ft. distance between Harvest location and Wolfe Education Center measured closest parcel line to closest parcel line)

\*(1004 ft. between Harvest location and secondary [further] parcel upon which the Wolfe Education Center also sits)

**Exhibit B: Wong Engineers Survey Report, Michael O'Leary** (981.95 ft. distance between Harvest location and Wolfe Education Center measured closest parcel line to closest parcel line)

**Issue 2: Does the Wolfe Education Center meet City and State Criteria to be qualified as a sensitive use School site?**

**"School" definition per Merced Municipal Code Section 20.44170(c), item 47.-**

"School" means any public or private school providing instruction in kindergarten or any of grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes or as otherwise provided in Health and Safety Code Section 11362.768(h).

***Conclusion: Yes.***

***Analysis:***     The above 'School' definition as the measure of determining a sensitive use for zoning purposes is affirmed by **Deputy City Attorney Flores** to the Planning Commission on September 19, 2018 during discussion of the issue.

**(See Exhibit C: Planning Commission Hearing Transcript; Pg. 21, lines 2-9)**

**Mr. Hren** had previously stated that the site "What I can say as far as the process we went through, *we did investigate this parcel specifically. It's a school that is used by - - excuse me - - it's a property that's owned by MCOE. And the property in question was - - we determined that this was not being solely used for administrative purposes and there were classes taking place at this property*".

(See Exhibit C: Pg. 20, lines 11-17)

**Ms. Espinosa** also confirms the Wolfe Education Center's Designation as a 'School' when referring to her correspondence with the MCOE about the status of the site, making clear that staff was *"told that classes are held on the parcel shown on the map"*.

(See Exhibit C: Pg. 21, lines 21-28)

Mr. Hren references *"a property to the west of it that is also owned by MCOE that to our understanding is used for administrative purposes only and does not hold classes"*.

(See Exhibit C: Pg. 23, line 28 - Pg. 24, line 5)

During this portion of the discussion it is never made clear that the Wolfe Education Center, the Property/Site in question, encompasses two (2) legal parcels, one of which sits within 1,000 ft. of the Harvest location. This lack of clarity is exacerbated by the words 'Parcel' and 'Property' being used interchangeably by Mr. Hren. This contributes to an inference that these two parcels are remote from one another, and completely ignores that they are part of a single complex, which should be and is rightfully designated as a School based on the activities taking place on site.

#### **"School" definition per California Department of Education**

The term "school" is used to refer to all educational institutions that have the following characteristics:

- One or more teachers to give instruction;
- Have an assigned administrator;
- Are based in one or more buildings; and
- Contain enrolled or prospectively enrolled students

(See Exhibit D: CDOE "School Definition")

Currently, two existing programs at the Wolfe Education Center involving teachers, administrators, and school age students qualify the site as a 'School' according to the Department of Education's criteria:

**1) The Foster Youth Services Coordinating Program; and**

## **2) The Youth Opportunity Program**

1) "The Foster Youth Services Coordinating Program (FYSCP) provides support services to foster children who suffer the traumatic effects of displacement from family and schools and multiple placements in foster care. FYSCP has the ability and authority to ensure that health and school records are obtained to establish appropriate placements and to coordinate instruction, counseling, tutoring, mentoring, vocational training, emancipation services, training for independent living, and other related services. The FYSCP increases the stability of placements for foster children and youth. These services are designed to improve children's educational performance and personal achievement, directly benefiting them as well as providing long-range cost savings to the state.

**(See Exhibit E: FYSCP Information Page, MCEO)**

The MCOE directory names the Wolfe Education Center as the designated location for the program, with Daphne Post (Coordinator), Sabrina Desalez (Support Services Assistant), and Sandra Stevens (Foster Youth Services Educational Liaison) as designated staff members.

2) The MCEO provides the **description for the Youth Opportunity Program as follows: *"Provides educational support, employment opportunities, and career educational training to youth"*.**

**It's eligibility criteria are as follows: *"Youth 16 - 18 years old, attending high school, meet income guidelines, have necessary documents to work, and attend an orientation.*** Applicants must also meet one of the following: basic skills deficient, homeless, runaway or foster youth, child of incarcerated parent, pregnant or parenting, offender, disabled, or requires additional assistance to complete an educational program or to secure and hold employment"

**(See Exhibit F: YOP Information Page)**

The MCOE website Youth Opportunity Program (YOP) Staff Page names the Wolfe Education Center as it's designated location for its Merced Office, and Daphne Post (Coordinator), Rebecca Rodriguez (Career Educator), Toula Moua Eccles (Career Educator), See Lee (Career Educator) as staff for the program.

**(See Exhibit G: YOP Staff Page, MCOE)**

**Issue 3: Should one Wolfe Education Center legal parcel site be designated as a sensitive use, with bifurcation and alternative non-sensitive use designation the other parcel?**

**Conclusion: No.**

***Analysis:*** The Wolfe Education Center is a **single complex comprised of several structures and one parking lot**. As established above, the facility houses several activities involving school age children on site, including administrative services, classes, and youth services coordinating programs, which qualify the entire site as a 'School'. That the facility happens to sit on two legal parcels does not justify separate designations for each parcel.

Notwithstanding the distinction of the legal parcels on the City's GIS system, it is clear all the structures on site are part of a single facility as illustrated by the exhibits below.

**(See Exhibit H: Google Maps Overhead Satellite View)**

**(See Exhibit I: Google Maps Street View Wolfe Education Center Frontage)**

**(See Exhibit J: MCOE FYSCP Location Landing Page)**

**(See Exhibit K: Google Maps Street View North)**

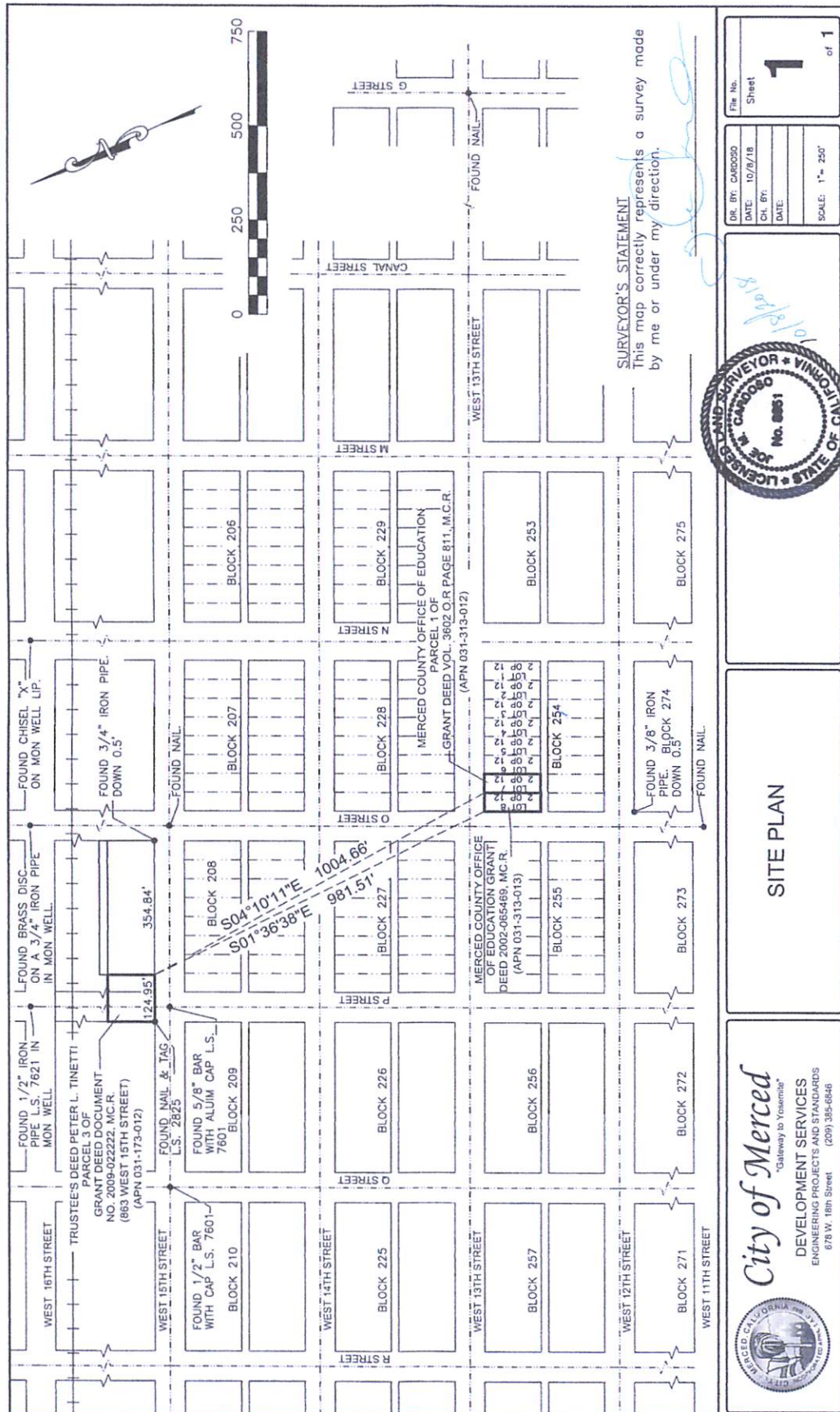
**(See Exhibit L: Google Maps Street View South)**

Furthermore, a closer review of **Exhibit G (YOP Staff Page)** shows that the specific location for the Foster Youth program within the facility is Room A1, a building which sits on the parcel not designated as a sensitive use.

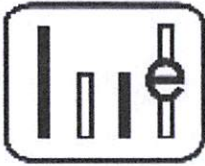
**The specific location for Room A is visible upon close examination of Exhibit L, which proves that the Youth Opportunities Program takes place in a building sitting on the Parcel which was not designated by staff as a sensitive use.** This serves as conclusive evidence that the exact activities qualifying the Wolfe Education Center as a School do in fact take place on the legal parcel that was not and should have been designated as a 'sensitive use' for zoning purposes.

In sum, it is clear the Harvest location is ineligible as a **Commercial Cannabis Business location as it is located within 1,000 ft. of the Wolfe Education Center, which includes two legal parcels, both of which house buildings within which sensitive use activities take place.**

**Exhibit A:**  
**Joe Cardoso Survey Report,**  
**City of Merced**



**Exhibit B:**  
**Wong Engineers Survey**  
**Report, Michael O'Leary**



**Wong Engineers, Inc.**  
 4578 Feather River Drive, Suite A  
 Stockton, California 95219  
 Phone (209) 476-0011

Zachary C. Wong P.E., P.L.S.

Job No.: 4014

Client: Michael O'Leary

Date of Survey: October 8, 2018

| NO. | NORTHING     | EASTING      | DESCRIPTION                                          | REFERENCE |
|-----|--------------|--------------|------------------------------------------------------|-----------|
| 1   | 1932048.6997 | 6564783.4242 | FOUND 3/4" IRON PIPE                                 | BC-786    |
| 2   | 1932197.0994 | 6564460.7635 | FOUND 3/4" IRON PIPE                                 | BC-786    |
| 3   | 1930851.9433 | 6564321.5481 | FOUND 3/8" IRON PIPE                                 | 47-RS-32  |
| 4   | 1931578.9883 | 6564655.5050 | FOUND 3/4" IRON PIPE<br>TAGGED L.S. 3733             | 47-RS-32  |
| 5   | 1931353.0037 | 6564188.9678 | FOUND 3/4" IRON PIPE<br>TAGGED L.S. 4403             | 47-RS-32  |
| 6   | 1931384.2237 | 6564120.9068 | FOUND 3/4" IRON PIPE<br>TAGGED L.S. 4403             | 47-RS-32  |
| 7   | 1931448.8774 | 6563980.0085 | FOUND 3/4" IRON PIPE                                 | 47-RS-32  |
| 8   | 1931215.5449 | 6564488.5629 | BOUNDARY<br>RETRACEMENT POINT FOR<br>PROPERTY CORNER | 2-OP-12   |

BASIS OF BEARINGS, DISTANCES AND COORDINATES ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 AND CALIFORNIA STATE PLANE, ZONE 3 IN U.S. FEET. A LINE BEARS NORTH 45°10'01" WEST IS BETWEEN TWO CITY OF MERCED GPS STATIONS #1076 AND #1082. IT WAS CALCULATED FROM THE COORDINATES SHOWN ON 'CITY OF MERCED GPS SURVEY CONTROL NETWORK MAP', FILED FOR RECORD IN BOOK 27 OF SURVEYS, AT PAGE 43, MERCED COUNTY RECORDS. ALL DISTANCES SHOWN ARE GROUND DISTANCES AND MUST BE MULTIPLIED BY 0.999950671 TO OBTAIN GRID DISTANCES.

A DISTANCE BETWEEN POINT #2 AND #8 IS 981.95 FEET.



DATE: OCTOBER 9, 2018

# WEI - BOUNDARY SURVEY

DATE OF SURVEY: 10/08/2018

## Legend

- 3/4" PIPE (47-RS-32)
- 3/4" PIPE (BC-786)
- 3/4" PIPE LS 3733 (47-RS-32)
- 3/4" PIPE LS 4403 (47-RS-32)
- 3/8" PIPE (47-RS-32)
- BOUNDARY RETRACEMENT PT.

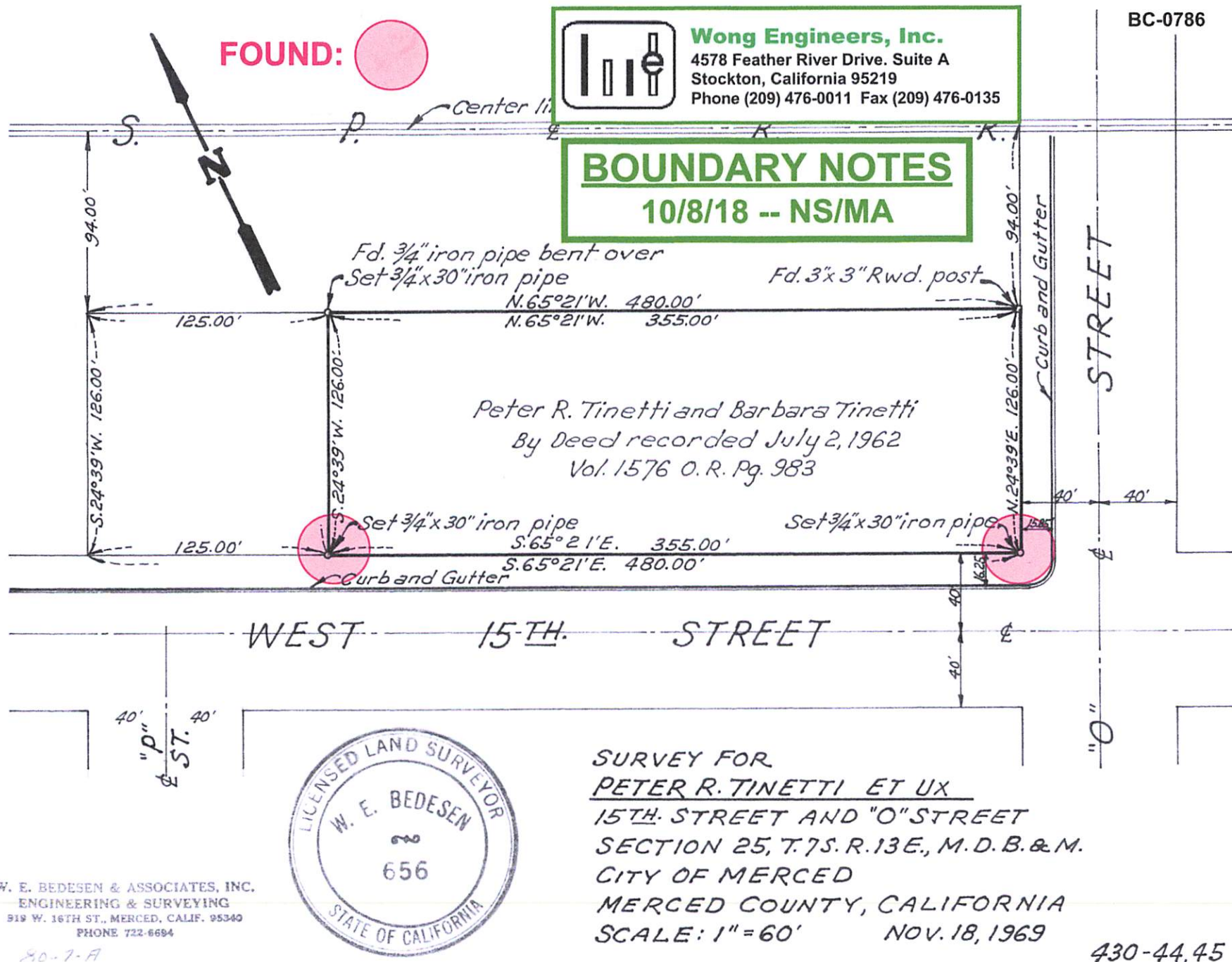
981.95'

Google Earth

© 2018 Google

600 ft





# BOUNDARY NOTES

10/8/18 -- NS/MA



**Wong Engineers, Inc.**  
4578 Feather River Drive, Suite A  
Stockton, California 95219  
Phone (209) 476-0011 Fax (209) 476-0135



= FOUND

= BOUNDARY RETRACEMENT  
POINT FOR PROPERTY CORNER

## SURVEYOR'S STATEMENT

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Land Surveyor's Act at the request of Joseph Reyes on October 30, 2008.



*Lawrence J. Bowen*  
L.S. 4403

## COUNTY SURVEYOR'S STATEMENT

This map has been examined in accordance with Section 8760 of the Land Surveyor's Act this 11th day of December, 2008.



*Paul A. Pildown*  
COUNTY SURVEYOR  
L.S. 4495  
By: *Steven Reichman*  
Deputy  
L.S. 4495  
Exp. 9-1-10

## RECORDER'S STATEMENT

No. 2008-26331  
Filed this 12th day of December, 2008, at 2:33 o'clock P.M.  
in Volume 47 of Surveys at Page(s) 32, at the request of  
Bedeen-Cardoza & Associates, Inc.

Fee \$ 9.00 per page.

M. Stephen Jones  
COUNTY RECORDER  
*M. Stephen Jones*  
Deputy

## LEGEND

Monument found and accepted as noted hereon.  
All found untagged monuments were not tagged  
unless otherwise noted.

Monument set 3/4" iron pipe with L.S. tag 4403  
attached, unless otherwise noted.

Survey boundary

( ) According to that certain reference (see reference)

C.B. Calculated from record data

M.C.B. Merced County Records

Note: All distances are ground and in feet and/or  
decimal parts thereof.  
All distances are shown from true corner.

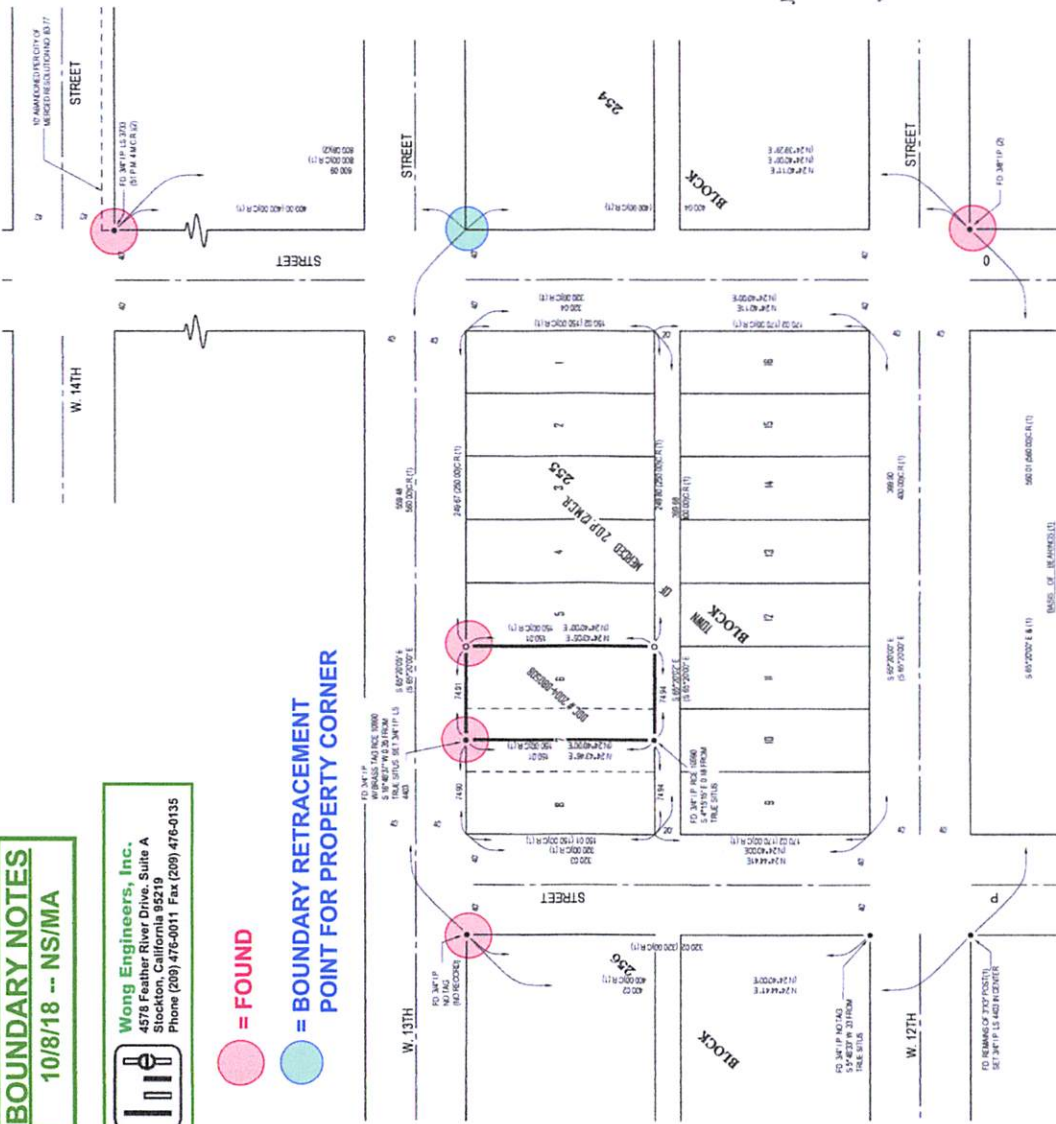
## RECORD OF SURVEY FOR JOSEPH REYES

Being a survey of Lot 6 & the E. 1/2 of Lot 7 in  
Block 259 as shown on the map "Town of  
Merced", Volume 2 Official Plats, Page 12  
Merced County Records  
Section 25, T. 7 N., R. 19 E., M.D. 8 & M.

City of Merced

Scale: 1" = 60'  
Merced County  
October, 2008  
California

VOLUME 47 PAGE 32



REFERENCES:  
(1) SUPPLEMENTAL MAP OF THE TOWN OF MERCED, 2 O.P. 12, M.C.B.  
(2) CORNER RECORD #724-80K

BASIS OF BEARINGS  
S 67°20'07" E FOR THE SOUTH LINE OF 12TH STREET AS  
SHOWN ON THE "OFFICIAL MAP OF THE TOWN OF MERCED"  
RECORDED IN VOLUME 2 OF OFFICIAL PLATS AT PAGE 12.  
MERCED COUNTY RECORDS.

**BCA**  
BEDDEEN-CARDOZA & ASSOCIATES, INC.  
2823 O Street, Suite 200  
Stockton, CA 95210 (209) 722-0042  
Phone (209) 476-0011 Fax (209) 476-0135  
www.bca-engineering.com  
Book No. 08047 Page 709

# Exhibit C:

## **Planning Commission Hearing Transcript**

## 1 CITY OF MERCED PLANNING COMMISSION

2  
3  
4 SEPTEMBER 18 AND 19, 20185  
6 ITEM: 4.5 COMMERCIAL CANNABIS BUSINESS PERMIT #18-14R,  
7 initiated by Harvest of Merced, LLC, on a property owned  
8 by Stephen G. Tinetti, trustee. This application is a  
9 request to permit the operation of a retail dispensary for  
10 both medicinal and adult-use cannabis and cannabis-related  
11 products, including delivery services, on a 0.36 acre  
12 parcel in the General Commercial (C-G) Zone at 863 W. 15th  
13 Street.14  
15  
16  
17 Audiotape/Videotape transcribed by:

18 JULIE RISHWAIN PALERMO

19 PALERMO REPORTING SERVICES

20 1301 G Street, Suite A

21 Modesto, CA 95354  
22  
23  
24  
25  
26  
27  
28

1 DAY 1 9/18/2018

2

3 VICE-CHAIRPERSON CAMPER: We will move on to our  
4 last item, 4.5, Commercial Cannabis Business Permit  
5 #18-14R.

6 SECRETARY DAVIS: Initiated by Harvest of Merced,  
7 LLC, on a property owned by a Stephen G. Tinetti, trustee.  
8 This application is a request to permit the operation of a  
9 retail dispensary for both medicinal and adult-use  
10 cannabis and cannabis-related products, including delivery  
11 services, on a 0.36 acre parcel in the General Commercial  
12 Zone at 863 W. 15th Street. This is a public hearing.

13 MICHAEL HREN: Thank you, Stephanie. Again,  
14 Madam Chairman, members of the Commission, members of the  
15 public. I'm here to introduce Harvest of Merced, which is  
16 CCBP 18-14R. This was the rank No. 4 with an average  
17 score of 95 even. The proposal here is for 863 West 15th  
18 Street of Harvest of Merced. You can see there on the  
19 context map. This is another site in a C-G, a general  
20 commercial zone. It meets all city zoning requirements.  
21 Here's an aerial image of the property showing it next to  
22 a number of warehouses with some single family residential  
23 across West 15th Street and the railroad tracks to the  
24 north of the property. This property does meet the  
25 sensitive use context. It is outside the 600-foot radius  
26 of all sensitive uses and the 1,000-foot radius of all  
27 schools. That red bubble that you can see there is the  
28 1,000-foot radius of a school that does just miss the

1 corner of the property there.

2 This is the site plan for 863 West 15th Street.  
3 17 listed parking spaces with 4 listed as ADA compliant.  
4 We have had some discussions with this applicant regarding  
5 the siting of a trash enclosure, which may modify the  
6 parking plan slightly, but the plans that they have come  
7 up with would still meet the city's parking requirements  
8 for moving forward, and the siting of the trash enclosure  
9 is listed as a condition for the approval of this project.

10 Here's a -- the floor plan of the project.  
11 Similar to some of the others, there is a lobby for the  
12 intake of customers with the security checks prior to  
13 being allowed into that retail area. The point of sale  
14 counter covering. There is also a significant area for  
15 office, the surveillance room, and delivery, loading and  
16 unloading, as well as a holding area in the back. Those  
17 areas would not be accessible to the general customers and  
18 the general public.

19 The security plan just shows the areas that are  
20 not accessible to the public there. Here are a number of  
21 the site photos. This building does share a wall, as you  
22 can see here, with the building to the east. There's a  
23 condition of this that there should be no -- there shall  
24 be no shared access amongst those, and if there is any  
25 existing, that it would be securely closed prior to any  
26 operations.

27 The site is in some disrepair at the moment, as  
28 you can see. There is fencing currently on the site with

1     barbed wire. There is -- the parking lot will require  
2     significant re-slurrying and re-striping to come into  
3     conformance with city standards. And just some general  
4     context photos of the site as it sits on the location.

5             Here's some example renderings of the interior of  
6     the project. This is not necessarily 100 percent  
7     indicative of what's going to go in just because they  
8     don't -- this rendering doesn't conform to the floor plan.  
9     But these are some example renderings of what the interior  
10    might look like with the screens behind the counter, the  
11    point of sale service, and the cases in the center area  
12    that customers can review the product. Just some more  
13    example renderings of that interior. And the example  
14    lobby area from the Harvest in Tempe, Arizona site just to  
15    show what that lobby area would look like.

16            Security services as we've covered in each of  
17    these are very extensive. Uniformed security officers,  
18    foot patrol, experienced field supervisors overseeing the  
19    operation of the assigned officers, police liaisons for  
20    service locations, carefully maintained incident reports,  
21    alarm systems, access control equipment, surveillance  
22    equipment as well.

23            The details of the ownership experience, Mr.  
24    White founded Harvest in 2012. He has -- holds presently  
25    26 licenses in seven states. He's engaged in a number of  
26    community activities including the (unintelligible) of  
27    over \$400,000 to local charitable organizations. Ms.  
28    Stavola is the COO and board member of MPX Bioceuticals

1 and was listed No. 3 on the CBE, 75 most important women  
2 in cannabis lists. Ms. Blazovich (phonetic) has 11 years  
3 of prior experience in the field as well with a mutual  
4 benefit nonprofit corporation. Its success, we found out,  
5 it continues to run Stone Age Pharmacy. And Mr. Edward  
6 Contreras is a native of Merced and has extensive  
7 managerial experience with local Merced retail businesses  
8 and will also serve as the dispensary's neighborhood  
9 liaison, playing an integral role in the youth drug  
10 prevention program at Harvest.

11 Harvest is committed to setting aside at least 3  
12 percent of yearly profits for monetary contributions to  
13 local charitable and community organizations with at least  
14 \$10,000 per year to each of the Merced County food bank  
15 and the United Way of Merced County, and at least 2,500  
16 per year for the Boys and Girls Club of Merced County and  
17 the Challenged Family Resource Center and Golden Valley  
18 Health Center. They've also pledged to chaperone the  
19 Challenged Family Resource Centers annual formal dance for  
20 developmentally disabled children. They have a customer  
21 volunteer discount offering a range of discounts to  
22 patients and consumers regularly volunteering at local  
23 charitable organizations and a robust program to implement  
24 that, a 20 percent discount to veterans, a 20 percent  
25 discount to medical patients who are low income, and plan  
26 to host free bicycle and wheelchair repair clinics in the  
27 spring, summer, and fall months, temporary wheelchair and  
28 bike stands for tune-ups, replacement of parts, and

1 they've also noted that customers who wish to volunteer  
2 their time at this can also qualify for that customer  
3 volunteer discount.

4 As with all of these applications, there are a  
5 number of conditions to highlight including the  
6 requirements contained in Ordinance 2480 and the special  
7 sections related to dispensary and retail sales and  
8 delivery services meeting the standards of the commercial  
9 building permit application requirements, the trash  
10 enclosure that we spoke of earlier, the parking lot,  
11 repaving and re-striping compliance with standard designs,  
12 no shared access between the building, sharing the common  
13 wall, as well as the details of the final design of the  
14 exterior elevations and any signage to be approved by  
15 planning staff prior to the issuance of a certificate of  
16 occupancy, and the standard condition regarding future  
17 modifications with the approval of city's building  
18 official fire chief and director of development services.

19 After the public hearing this evening and on  
20 tomorrow, the Planning Commission may approve, disapprove,  
21 or modify subject to the conditions in the staff report  
22 Environmental Review 18-27 and Commercial Cannabis  
23 Business Permit 18-14R. And I'm happy to take any  
24 questions that the Commission may have.

25 VICE-CHAIRPERSON CAMPER: Any questions? Okay.  
26 None. All right. This is a public hearing. At this time  
27 I will open the hearing for public comment, and I invite  
28 the applicant to speak.

1 SECRETARY DAVIS: Ben Kimbro, please state your  
2 place of residence.

3 BEN KIMBRO: Thank you. I appreciate it. Good  
4 evening, Commissioners. Ben Kimbro on behalf of the  
5 applicant, 3207 South Evanston Avenue, Tulsa, Oklahoma. I  
6 serve as the director for Harvest for public affairs. I  
7 would also say, I think something that's very important.  
8 I just was elected to my second term as a City Councilor  
9 in Tulsa, Oklahoma, and get the privilege of working very  
10 closely with my Planning Commission. So you all have my  
11 unwavering respect for answering the call and service to  
12 your community. It's not always a fun place to be, and I  
13 certainly know you don't do it for the big money. So  
14 thank you all for your commitment to Merced.

15 My own personal involvement with medical cannabis  
16 is kind of an odd path, spending most of my adult life  
17 involved in special enforcement, foreign intelligence, a  
18 lot of which was counter narcotics. Working in 51 foreign  
19 countries. How on earth did I wind up in this? And it's  
20 pretty simple. I worked for an E & R 400 construction  
21 company, and we were doing a lot of design for a lot of  
22 folks. And I stumbled across some terrific people, but  
23 folks that a lot of whom had worked for two and three  
24 decades as outlaws. And you don't suddenly wake up one  
25 day in a regulated environment having lost those types of  
26 notions. So it was through a long vetting process,  
27 looking for an operating partner on a project. In another  
28 state that I came across Harvest and found them very

1 clearly to be a best in show organization, one that is  
2 forward leaning, one that respects and develops talent in  
3 its teammates, one that understands business standards,  
4 one that understands and practices principals of  
5 accountancy, and one that is very competent in working in  
6 regulated environments. So it was -- it was no surprise  
7 through a couple of years of working with them that I  
8 eventually came on board with them full time.

9 Harvest was formed in 2012, so we do have a fair  
10 amount of experience in the cannabis industry. At present  
11 we're at 37 medical licenses in 7 states. If you include  
12 provisional licenses or licenses where we're under  
13 construction and have not gone operational yet, that total  
14 is 32 in 13 states. So we have a big footprint. We've  
15 become very capable at working in what is arguably a  
16 complex industry, but one that is essential for us to get  
17 right so that we offer a safe environment for our  
18 employees, our community members, and our teammates, and  
19 as well that we provide a safe, consistent product to our  
20 customers.

21 Our dispensaries, as you will see here in Merced,  
22 I hope, are secure, discrete, clean, and patient friendly.  
23 I categorize them under a homemade rule that I've come up  
24 with, which is would I bring my mom in here. You know, is  
25 it clean, well lit, and a safe environment for customers  
26 and team members. Our objective, as you'll see, is to be  
27 an exemplary and beneficial partner to your community. We  
28 take that very seriously and execute on that in every

1 community that we've had the privilege of working in.

2 A couple of examples that you'll see. Mr. Hren  
3 showed the lobby of the Tempe store; that will be the one  
4 on the right. The one on the left is our baseline store.  
5 So a slightly different look. But clean and discrete and  
6 completely conformal to the zoning requirements in both of  
7 those locations.

8 Interiors of the stores are a comfortable clean  
9 feeling. Safety is at the forefront of all of our design.  
10 We utilize, you know, leverage with the very best  
11 technology that we have available to us on that, but we  
12 also use a smart design and a smart approach, I think, to  
13 customer service. Without being overbearing, we're right  
14 there to be an advocate for the patient, to get to know  
15 them, and to develop a relationship, which is essential to  
16 any partnership. Again, the left photograph would be our  
17 north Scottsdale location, and on the right Tempe. So two  
18 very different types of structures, but both that we've  
19 handled in a way that we feel very satisfactory, addresses  
20 employee and customer safety and security.

21 Our application here this evening is 863 West  
22 15th. That is going to be about an 1800-square-foot  
23 building. So, you know, sort of on the small end of the  
24 scale with some of the other applicants in the top 4. At  
25 present it's been vacant for more than a year and a half.  
26 It's got some blight conditions on it. We look  
27 enthusiastically forward to jumping in there and getting  
28 to tidy it up and make it something that the neighborhood

1 would be very proud of. And in fact, everybody in Merced  
2 would much rather look at than as it appears. Now we've  
3 got about \$400,000 lined up for the renovation on this.  
4 We anticipate that if we can accept that notionally  
5 permitting is 30 days, design, completion, call it 30  
6 days, we would look at about 90 days for the construction  
7 aspects of the renovation of that building.

8           Some more of the exterior. It's pretty ugly.  
9 It's -- it's due a face lift, I think. We'll have good  
10 security focus on our entry and exit areas. And parking  
11 lot absolutely, as Mr. Hren pointed out, is -- needs  
12 re-slurry. The stalls need to be re-stripped and it needs  
13 an update as well.

14           Harvest is about partnerships, and you'll see  
15 that at every facet from our executive leadership all the  
16 way through to our most recent new team members, working a  
17 point of sale in a dispensary. We believe in communities.  
18 We've made commitments. As you pointed out in your  
19 community, we really enjoy being a part of everywhere we  
20 work. We've reached out to neighbors in the area and very  
21 pleased to say that there was no feedback, good, bad, or  
22 otherwise. There's been some communication with the  
23 landlord that folks are excited to see it cleaned up, but  
24 it has been the experience, and I will echo what other  
25 applicants have said, you know, the places that we work.  
26 Typically because of the security requirements regulated  
27 by state, we help with loitering. We impact property and  
28 violent crime in areas, and we partner very well with law

1 enforcement in all those instances.

2 Something that we hope to bring to California is  
3 Harvesting Hope. It's a nonprofit organization that we  
4 created to help young children who suffer from pediatric  
5 epilepsy. It's a program we've got going on in Arizona  
6 with some pretty make-your-eyes-leak outcomes. So it's  
7 something that we look forward to working with your  
8 community on as well. Mention is supported through  
9 financial assistance, specialized medical cannabis,  
10 patient care, and support services. It's very simply  
11 about quality of life for these kids and their families.

12 We're going to have 20 to 25 employees at this  
13 facility intended. None of those will be minimum wage  
14 jobs. We compensate our employees fairly to the high  
15 side, I would say, in the industry with the very best  
16 medical benefits that match the employee's needs. We  
17 hire, train, and retain from your community. These will  
18 -- these will be your neighbors. These will be folks that  
19 you know. They will be folks from your city. So  
20 ancillary jobs like construction and that, we're going to  
21 hire local subcontractors, roofers, pavers, all that sort  
22 of stuff as well.

23 I would say that one thing that was touched on in  
24 staff's slides was that we -- we as well -- we want to  
25 find out from our employees and our customers what  
26 philanthropic giving organizations are important to them.  
27 We want them to direct that process, and we have once a  
28 month a selection by staff and customers as to who we

1 would make a donation to. So that's a constant moving  
2 thing outside of the commitments that we've already made.

3 Another thing that I think is cool and has sort  
4 of happened organically in the organization, it's one  
5 thing to give money. It does make the world go round in  
6 the nonprofit world. It's an essential component of it.  
7 But it's pretty important to show up. And our employees  
8 take a lot of pride in the fact that they're there.  
9 They're wearing the T-shirt. They're organizing the run.  
10 They're filling water cups or whatever the event is. So  
11 you're going to see Harvest employees at community events  
12 in Merced.

13 That's all I got. I can be out of your hair.

14 VICE-CHAIRPERSON CAMPER: All right. Does the  
15 commission have any questions for the applicant? No? We  
16 don't. Thank you.

17 BEN KIMBRO: Thank you for your consideration and  
18 for the offering to come and address this body. I look  
19 forward to and would ask you to vote for approval of our  
20 permit tomorrow.

21 VICE-CHAIRPERSON CAMPER: Thank you.

22 BEN KIMBRO: Thank you all.

23 VICE-CHAIRPERSON CAMPER: Do we have any request  
24 to speak cards for this item?

25 SECRETARY DAVIS: No, we don't.

26 VICE-CHAIRPERSON CAMPER: No? Okay. All right.  
27 Then at this time we will close the public comment.

28

1       **DAY 2 9/19/2018**

2

3               CHAIR DYLINE: So we're going to go ahead and  
4 open up public comment on Item 4.5.

5               Stephanie, do we have any request to speak  
6 forms?

7               SECRETARY DAVIS: I do. I have one firm, Zach  
8 Drivon from Stockton.

9               CHAIR DYLINE: Okay, Zach. I'm going to note at  
10 this time that you and I had spoken aside, prior to the  
11 meeting, and that I had advised you at that time that I  
12 felt the appropriate measure, seeing as how public comment  
13 had been closed yesterday, was to appeal to the City  
14 Council. We're going to go ahead and reopen public  
15 comment obviously, and afford you the opportunity to speak  
16 regardless.

17               ZACH DRIVON: Thank you very much. Zach Drivon.  
18 I'm an attorney representing Medallion --

19               CHAIR DYLINE: Sorry. I apologize. We have also  
20 received a written communicate from you.

21               KIM FLORES: A written communication will be part  
22 of the record for today's proceeding.

23               ZACH DRIVON: Thank you, Counsel.

24               My name is Zach Drivon. I represent Medallion  
25 Wellness, Merced. The location is 808 West 16th Street  
26 here in town. First off, I would like to thank Council,  
27 the Chair, all the Commissioners, Staff, for the  
28 opportunity to be heard. The reason I'm before you

1        tonight is an issue completely unrelated to the  
2        merit-based scoring system that I spoke about last night.  
3        And something struck us during the presentation on this  
4        project last night, and that was the project's proximity  
5        to 732 West 13th Street, which is also known as the Wolfe  
6        Education Center. The reason why this was compelling to  
7        us is because early on in this process, staff, when they  
8        initially rolled out their GPS or their GIS mapping system  
9        that measured these subject parcels from sensitive uses,  
10       they had originally indicated to us that our project was  
11       within a thousand feet of this school site. And what was  
12       striking to us was that this project was actually closer  
13       in proximity to the school than our project.

14                So when we received this original indication that  
15       we may be ineligible early on, that prompted us to hire a  
16       surveyor and actually go and measure our property from the  
17       school site. And that would be 808 West 16th to 732 West  
18       13th. And the results of that survey indicated that our  
19       site measured the closest parcel line, the closest parcel  
20       line was 1163 feet in distance. And that was in line with  
21       our original due diligence that we conducted for our  
22       subject site when determining whether or not there were  
23       any other sensitive uses in the vicinity and allowing us  
24       the confidence to move forward and enter into a lease and  
25       enter into this process.

26                Having this issue called to our attention last  
27       night has prompted us to conduct some additional due  
28       diligence, and I went ahead and measured, using Google

1 Maps, the 863 West 15th Street parcel to the 732 West 13th  
2 parcel, and I discovered that the distance between the two  
3 sites is actually 981 feet. And this would indicate that  
4 this project is within a thousand feet of a school, which  
5 under the ordinance would make it ineligible to be a  
6 commercial cannabis business location.

7 Before you tonight are three documents that I  
8 provided. One is the original surveyor's map that we  
9 commissioned to measure our own property. I'd call your  
10 attention to the white box in the top left-hand corner  
11 with red text. Just below that box, you'll notice a red  
12 X. That X marks the 863 West 15th Street parcel as you  
13 can see is much closer than 808 West 16th, which is right  
14 above that box and where the top arrow is pointed to.

15 The next two documents are screen shots of Google  
16 Maps that I used to measure the 863 West 15th Street  
17 parcel to the Wolfe Education Center. And as you can see  
18 in the text box on the bottom center, the distance as  
19 measured by Google is 981.16 feet. Now when we provided  
20 the survey map to the city early on to confirm that our  
21 site was outside of a thousand feet, the city was  
22 extremely forthright in acknowledging that their mapping  
23 system was flawed, that it had a glitch. And to us that  
24 indicates that this system has some issues.

25 And it's our position tonight, it is within your  
26 sound discretion to ensure that the integrity of this  
27 process is protected. From the beginning the city  
28 officials stated that they wanted the City of Merced to

1 set the standard as it relates to this merit-based  
2 selection process and the fitness and eligibility of these  
3 parcels. For us tonight, it's extremely important that  
4 you take this information into consideration in  
5 determining whether or not you feel it's appropriate to  
6 award this permit to this project based on the experience  
7 we've had in flagging the issues with the mapping system  
8 that the city had early on, and this objective information  
9 that I've provided to you tonight that would indicate that  
10 the subject parcel, 863 West 15th Street, under the  
11 ordinance is in fact within a thousand feet of a school  
12 site and thus ineligible as a commercial cannabis business  
13 location according to Merced law. I very much appreciate  
14 your thoughtful consideration on this, and again, the  
15 opportunity to be heard.

16 CHAIR DYLINEA: Okay. We need to set the clock at  
17 4 --

18 KIM ESPINOSA: The gentleman that's up here is --  
19 came to the microphone is the applicant. The applicant  
20 has 15 minutes to make their case. He only used -- well,  
21 he had -- I made note last night that he had 4 minutes and  
22 16 seconds remaining in his testimony.

23 So you have 4 minutes and 16 seconds.

24 SECRETARY DAVIS: Hold on one second. Sorry.  
25 This is a new system.

26 BEN KIMBRO: May I ask what was the time limit on  
27 counsel for the fifth place finishing applicant in post --  
28 post closed public hearing, public hearing.

1 KIM DAVIS: It should have been five.

2 SECRETARY DAVIS: Okay. We're good to go.

3 BEN KIMBRO: Thank you. Ben Kimbro on behalf of  
4 the applicant, Harvest of Merced. I think 4 minutes and  
5 10 seconds is perfectly adequate to address what I believe  
6 to just be a simple sour grapes ambush. Last night  
7 counsel for the fifth place finishing applicant came in  
8 and the complaint that we all heard lodged was bad  
9 program, bad discretionary scoring, flawed judgment on  
10 behalf of the scoring participants. Tonight the story is  
11 that there's a spacing problem that didn't exist last  
12 night. He's further stated to this body that upon hearing  
13 the presentation last night, this is what tickled his  
14 question of this. He left last night after his  
15 presentation. He did not hear from any of the top four  
16 applicants as we addressed the Planning Commission.

17 It is poor form at least to come in outside of  
18 the bounds of normal approved lawful communication with  
19 the Commission and to try to do what I've sat and observed  
20 to be a biased campaign directly prior to a vote. Our due  
21 diligence is good. I believe that it is in agreement  
22 completely with Staff. That's the first I've heard that  
23 City of Merced operates with flawed GIS software. I have  
24 not been presented a copy of these documents, and it would  
25 be my request, respectfully, that you disregard this as it  
26 is an 11th hour, inappropriate complaint and that the  
27 fifth place finishing applicant take their normal course  
28 of appeals with the City Council. Thank you. Questions?

1 CHAIRMAN DYLINEA: Does the Commission have any  
2 questions for the applicant? It doesn't look like it.  
3 Thank you. Oh, Commissioner Padilla.  
4 COMMISSIONER PADILLA: Then you were saying that  
5 you feel that you comply with the thousand foot  
6 regulation?  
7 BEN KIMBRO: Absolutely, sir.  
8 COMMISSIONER PADILLA: Everything that you have  
9 done has verified that?  
10 BEN KIMBRO: That is correct.  
11 COMMISSIONER PADILLA: Thank you.  
12 CHAIRMAN DYLINEA: Okay. Stephanie, do we have  
13 any additional request to speak forms?  
14 SPEAKER: Yes, you do.  
15 MICHAEL O'LEARY: My name is Michael O'Leary.  
16 CHAIRMAN DYLINEA: Can you speak into the mic for  
17 the rest of us, please?  
18 MICHAEL O'LEARY: I'm sorry. My name is Michael  
19 O'Leary, and I am the fifth place applicant. I would just  
20 like to say I'm the one that told him that I saw last  
21 night that there was a problem with the measurement. He  
22 didn't go home and make this up. I stayed until the end  
23 of the meeting. Thank you.  
24 CHAIRMAN DYLINEA: Did Michael go to grab him a  
25 form?  
26 FEMALE: Yes.  
27 CHAIRMAN DYLINEA: Okay. Additional public  
28 comment?

1 SECRETARY DAVIS: Yeah. Hold on one second.

2 DWIGHT LARKS: Hello. Dwight Larks here from  
3 Merced. I would just-- this is all new to me, listening  
4 to this. And I would say if there's any reservations that  
5 you might have about it, you know, you can postpone a vote  
6 on that if it -- you know, I would encourage you to -- you  
7 know, if there's any -- any concern whatsoever for -- for  
8 the distance, to make sure that the process -- everyone is  
9 covered, city staff, you guys, the applicants, everybody,  
10 before you have make a vote. That's -- that's -- that's  
11 all I have to say. Thanks.

12 SUSAN BOUSCAREN: Good evening. Susan Bouscaren.  
13 I would like to thank you guys. You guys have done a  
14 wonderful job. I'm sorry I wasn't in the running, but you  
15 guys got a little expensive for me and that's okay. But I  
16 did want to say as I'm listening to this is that, you  
17 know, when we're looking at -- at like all these places  
18 and we were doing our own work, because we had an  
19 application, we were -- we're looking at, you know, 20, 30  
20 feet? I mean we were disqualified in places that were 20  
21 and 30 feet less than the thousand or just a corner of the  
22 property in the thousand. So, you know, I think that at  
23 this point in time that maybe some due diligence needs to  
24 be done and that measured out completely because I would  
25 hate to see that that's within the boundaries and that  
26 that gets disqualified later. But, you know, I just feel  
27 that very strongly about that thousand feet because we all  
28 had to work with that. Thank you.

1 CHAIRMAN DYLINEA: Thank you.

2 Okay. Do we have anybody else?

3 Mr. Hren, do you have any additional request to  
4 speak forms?

5 MICHAEL HREN: I have no additional request to  
6 speak forms at this time.

7 CHAIRMAN DYLINEA: Okay. In that case we're going  
8 to go ahead and close public comments on Item 4.5. I'd  
9 like to afford staff the opportunity to speak on any of  
10 the public comments.

11 MICHAEL HREN: What I can say as far as the staff  
12 process we went through, we did investigate this parcel  
13 specifically. It's a school that is used by -- excuse me  
14 -- it's a property that's owned by MCOE. And the property  
15 in question was -- we determined that this was not being  
16 solely used for administrative purposes and there were  
17 classes that were taking place at this property. The  
18 parcel number we entered from the address that was given  
19 according to our GIS software, this property that we are  
20 looking at for this public hearing is outside of a  
21 thousand feet of the property. It is very close to the  
22 thousand foot border as I showed in my presentation  
23 yesterday. If it please the Chair, I can bring up the  
24 PowerPoint slide that shows that as well as another slide  
25 that I've prepared for this conversation.

26 CHAIRMAN DYLINEA: If you don't mind, that would  
27 be great. Yeah. Do you need a slide or --

28 (Unintelligible) any school how do we

1 (unintelligible)?

2 KIM FLORES: So there's two areas in the  
3 ordinance where this definition could come in play. A  
4 school under our ordinance is defined as any public or  
5 private school providing instruction in kindergarten or  
6 any grades 1 to 12 inclusive, but does not include any  
7 private school in which education is primarily conducted  
8 in private homes or as otherwise provided in the Health  
9 and Safety Code Section 11362.768, Subsection H. Another  
10 potential section would be as a youth center. A youth  
11 center is defined under our ordinance as any public or  
12 private facility that's primarily used to host  
13 recreational or social activities for minors, et cetera.  
14 There's more to the definition than that. The school  
15 definition I think is what we're concerned with.

16 COMMISSIONER PADILLA: K through 12 --

17 KIM FLORES: Yes.

18 COMMISSIONER PADILLA: -- is what we're looking  
19 at.

20 KIM ESPINOSA: Yes. Public --

21 COMMISSIONER PADILLA: I'm not familiar with the  
22 Wolfe Center. Do you know what it?

23 KIM ESPINOSA: I would defer to staff on that  
24 because they are the ones that did the work.

25 MICHAEL HREN: I don't recall the specifics of  
26 the Wolfe Center.

27 Kim, do you --

28 KIM ESPINOSA: Primarily the area down on West

1 13th Street is the MCOE's administrative offices.  
2 However, when we were starting to work on the tool, it  
3 comes up -- it had come up in the city database as a  
4 school because it was owned by the school district. We  
5 had a number of things that came up like that. And so we  
6 took the time to actually confirm: Are these schools or  
7 not? Were there classes taking place? Staff reached out  
8 to the staff at MCOE, and we were told that they did  
9 occasionally or regularly hold classes on the parcel  
10 that's shown on the map. They also own other parcels down  
11 there, but that was not one in which they indicated they  
12 were -- they were regularly conducting classes.

13 CHAIR DYLINEA: Kim, quick question. This map, if  
14 I'm not mistaken, was somewhat evolving over time;  
15 correct? I mean the usual version we kept identifying  
16 additional sensitive uses?

17 KIM ESPINOSA: Right. We --

18 CHAIR DYLINEA: Is it also the case that things  
19 were eliminated that were later investigated and found not  
20 to be a sensitive use?

21 KIM ESPINOSA: Yes. We -- we went through, and  
22 we were very diligently, when we put the -- the tool up on  
23 the city's website, we did our best to make -- to confirm  
24 everything and to make sure it was okay. When we  
25 identified that there was an issue, when something would  
26 come to our attention, we made a point of sending it out  
27 to all the people who had been -- who were on our mailing  
28 list who had asked to be informed about cannabis-related

1 permits so that every time we had to make a change, we  
2 made sure that we notified people. Because we wanted to  
3 make sure that if there was a change where a piece of  
4 property might have been eligible before and was not  
5 eligible or a piece of property, more importantly, that we  
6 thought wasn't eligible was actually available for  
7 commercial cannabis permits, we wanted to make sure the  
8 people knew that.

9           So we -- like I said, we're very confident in the  
10 tool that we put together. We investigated it. We made  
11 sure that we went through and double-check and triple  
12 checked -- sorry -- Michael and our GIS coordinator spent  
13 a lot of time on it as did another member of city staff.  
14 So we're very confident that, you know, we put together  
15 the best tool that we could.

16           MICHAEL HREN: So what you can see on the map in  
17 front of you is the highlighted in blue parcel is the  
18 parcel that we're drawing the buffer from, the thousand  
19 foot buffer, up at the top left of that, and I'm going to  
20 switch slides here just to show -- that's what the parcel  
21 that we're referring to here, that square parcel on West  
22 15th Street, is the subject property for Harvest.

23           Based on our system, the thousand-foot buffer  
24 does not impact that parcel in any way. It does not cross  
25 the parcel lines. It is outside that thousand-foot  
26 buffer. And what Kim has said is all correct. We did go  
27 through this very thoroughly with respect to this specific  
28 property. There is a property to the west of it that is

1 also owned by MCOE that to our understanding is used for  
2 administrative purposes and does not hold classes. So  
3 that parcel is not within the buffer. That is not being  
4 buffered from, which may or may not be related to the  
5 current claim. I'm not certain if the line that's being  
6 drawn on the Google Map is to this parcel or to the  
7 adjacent one. So as Kim said, we're very confident in our  
8 tool, and we have done a lot of research with respect to  
9 this property specifically.

10 KIM ESPINOSA: I would also like to point out  
11 that with all due respect, Google Maps is not a survey.  
12 So that's the only way to do, you know, to actually  
13 determine the actual distance from parcel line to parcel  
14 line would be through a survey. A stamped survey by a  
15 licensed surveyor.

16 CHAIRMAN DYLINE: Okay. Is that the completion  
17 of your presentation, Mr. Hren?

18 MICHAEL HREN: Yes, sir.

19 CHAIRMAN DYLINE: Okay. Thank you.

20 Does the Commission have any questions for staff  
21 on this topic? Commissioner Martinez?

22 COMMISSIONER MARTINEZ: So as far as staff  
23 measuring the distance and such, this was done using a  
24 program and it wasn't physically surveyed?

25 MICHAEL HREN: We used our GIS software in order  
26 to do these measurements. We've not physically surveyed  
27 every possible property that could have been done in the  
28 city for this, no.

1           COMMISSIONER MARTINEZ: Well, my point is, we're  
2           comparing two census software against each other. I'm  
3           just curious. I -- considering the closeness of this  
4           property, it is -- it is somewhat concerning, you know, to  
5           ensure that whether or not it is entirely accurate or not.  
6           That's just my opinion on it. I think it's too close to  
7           call to leave it up to software.

8           CHAIRMAN DYLINEA: Commissioner Padilla.

9           COMMISSIONER PADILLA: Yes. The only thing I  
10          want to clarify with staff is is that every applicant had  
11          access to the same software.

12          KIM ESPINOSA: Correct. The tool was up on the  
13          city's website and was available for all the applicants to  
14          use, yes.

15          COMMISSIONER PADILLA: And they had months to  
16          verify all these measurements?

17          KIM ESPINOSA: Yes.

18          COMMISSIONER PADILLA: Thank you.

19          CHAIRMAN DYLINEA: All right. Commissioner Rashe.

20          COMMISSIONER RASHE: I am somewhat familiar with  
21          our GIS, so I trust the measurements. The only thing I  
22          was going to ask is was there any -- I know the gentleman  
23          said that there was some glitches in the GIS software  
24          itself that was being used. Are you aware of any?

25          MICHAEL HREN: No, I don't believe there are any  
26          glitches in the software. What I believe the gentleman  
27          was referring to was the -- the facilities that were not  
28          actually educational facilities that were showing up in

1 our database as such and any facilities that may not have  
2 been represented in the database. From that standpoint,  
3 there were some initial technical issues that we needed to  
4 resolve, but none of it was related to software that I  
5 feel was compromised or working improperly in any way. It  
6 was simply due to clarifying what locations, you know, the  
7 data that you give into the system is all that the data  
8 can read -- the system can read, so I don't believe  
9 there's any problem with the software itself.

10 COMMISSIONER RASHE: So just pretty much updating  
11 the information was all that the --

12 MICHAEL HREN: Correct. Thank you.

13 CHAIRMAN DYLINE: Commissioner Drexel.

14 COMMISSIONER DREXEL: My -- that was my question,  
15 so withdraw.

16 CHAIRMAN DYLINE: Okay.

17 Commissioner Harris.

18 COMMISSIONER HARRIS: Asked and answered.

19 MICHAEL HREN: Mr. Chairman, was public comment  
20 closed? We had someone attempt to submit a request to  
21 speak form at this time.

22 CHAIRMAN DYLINE: Public comment was closed.

23 Yes.

24 MICHAEL HREN: Just wanted to alert you to that.

25 CHAIRMAN DYLINE: Mr. Hren, I do have a question.

26 MICHAEL HREN: Yes, sir.

27 CHAIRMAN DYLINE: Now Google Maps and GIS  
28 software exists, in, for lack of a better word, two

1 different leagues; correct? GIS software is considered to  
2 be accurate and true?

3 MICHAEL HREN: It is the precision software that  
4 we use in order to do our day-to-day zoning work, and it's  
5 -- we rely on it for measurements and such, yes.

6 CHAIRMAN DYLINEA: Okay. And all the data that's  
7 entered in there is based off of historical surveys  
8 presumably; correct? Like each of the -- each of the  
9 points that are measured out, at some point in time is  
10 based around actual measurements.

11 MICHAEL HREN: As far as I understand it.

12 CHAIRMAN DYLINEA: (Unintelligible)? You know,  
13 Google Maps would let you -- a car driving around.

14 KIM ESPINOSA: Yes. The GIS is based on the  
15 parcel information that comes from -- that's in the  
16 database in Merced County, and those parcel books are  
17 based on survey information and information provided by  
18 engineers. When any kind of map is recorded, it has been  
19 surveyed and confirmed, so yes.

20 CHAIRMAN DYLINEA: Okay. Does the Commission have  
21 any additional questions for staff? Okay. Seeing none,  
22 then we're going to go ahead and return to discussion  
23 amongst the Commission on this item. If anybody would  
24 like to make a motion, now would be the time.

25 Commissioner Martinez?

26 COMMISSIONER MARTINEZ: Yeah. I want to recuse  
27 myself from this vote for a conflict of interest, and that  
28 I'm just really not comfortable with the closeness of this

1 measurement right now in determining accuracy between  
2 Google and the GIS system. So I want to recuse myself.

3 CHAIRMAN DYLINEA: Okay.

4 Commissioner Padilla.

5 COMMISSIONER PADILLA: Well, first off, I wish  
6 that mister -- the Commissioner Martinez had not given us  
7 any more information that that was prejudiced.

8 CHAIRMAN DYLINEA: Yeah.

9 COMMISSIONER PADILLA: But I deal with kind of  
10 with Google in a different way on a regular basis. I have  
11 a second home in the mountains, and I'm constantly turning  
12 people around who have followed Google Maps. And if I  
13 don't, they're going to go off a cliff. So the accuracy  
14 of Google Maps is a big question in my mind. So, you  
15 know, if Google says it's 20 feet short, I got a lot of  
16 problems believing Google because I just see too much of  
17 this going on with Google Maps being inadequate and  
18 inaccurate, so... but I would like to go ahead and make a  
19 motion that we approve the Environmental Review 18-27 and  
20 Commercial Cannabis Business Permit 18-14R.

21 CHAIRMAN DYLINEA: Okay. We have a motion. Do we  
22 have a second?

23 COMMISSIONER: I second.

24 CHAIRMAN DYLINEA: Okay. We have a motion and a  
25 second. Is there any additional discussion on this item?  
26 Okay. Seeing -- yes, Commissioner.

27 COMMISSIONER: I'll speak to the other  
28 commissioners. I was fortunate enough to put myself

1 through a misery of having to learn some art GIS, and I  
2 know to people who aren't familiar with it, getting this  
3 information could be a little uneasy as one of the  
4 commissioners recused himself from. But if you do take  
5 the time to educate yourself on GIS, it's very -- it's  
6 precision. They like to go off the science of where. So  
7 if that's what they're using and if the staff is saying  
8 that there was no glitches outside his measurements, I  
9 feel very confident in our staff and in the software of  
10 the GIS. Just want everybody to know that.

11 MICHAEL HREN: Thank you.

12 CHAIRMAN DYLINEA: Okay. During this period of  
13 discussion, I'm just going to go ahead and echo the  
14 comments. For now, I see no reason to doubt staff nor  
15 precision tool that we have been using for how long now to  
16 determine things and haven't had an issue. So given that  
17 last bit of discussion, unless anybody has anything else  
18 that they would like to discuss or state, do you want to  
19 go ahead and -- Commissioner Padilla?

20 COMMISSIONER PADILLA: Yeah. I am under the  
21 impression that this is the standard tool used by many  
22 agencies for measurements including the National Park  
23 Service and the Forest Service and other government  
24 agencies. So this has been a tool relied on by many  
25 government agencies for its accuracy. So I would like  
26 that to be going, that this is not just a Merced tool.

27 CHAIRMAN DYLINEA: Okay. Any additional  
28 discussion? Seeing none, I'm going to go ahead and call

1 for a vote. That is somehow 7-4, but it should actually  
2 be 6 and an abstention.

3 SPEAKER: Can we clear the vote?

4 CHAIRMAN DYLINEA: Yeah, let's go ahead and rerun  
5 that vote. Everybody cast your votes. There we go. 6  
6 yes; 1 abstention. And so it passes.

7 And Kim, would you, just for the education of the  
8 audience at large, would you address the appeal process.

9 KIM FLORES: Yes. So in the ordinance, there is  
10 a process to appeal the denial of a commercial cannabis  
11 permit. It is found in a section of our municipal code.  
12 It's in section 20.44.170, subsection L. And under No. 3.  
13 The process is that you have five business days from the  
14 date you received notification that your application has  
15 been denied to file a written appeal, and then the matter  
16 shall be scheduled for a public hearing before the City  
17 Council within 30 calendar days of receipt of the appeal  
18 by the city. So I just want to point that out for  
19 everyone and make sure that the process is transparent.  
20 This is all set forth in the ordinance.

21 KIM ESPINOSA: And I would like to add that if  
22 anybody did want to file an appeal, you can come to the  
23 planning department and we will give you the proper forms.  
24 And there is a fee as part of that. I don't have it in  
25 front of me. So please contact us and we will get you  
26 that information.

27 MICHAEL HREN: Is the denial technically when the  
28 ratings were released?

1 KIM FLORES: No. It's when the decision is made.  
2 And tomorrow we'll be meeting with staff -- sorry --  
3 tomorrow we'll be meeting with staff. Written notices  
4 will be going out to the successful and unsuccessful  
5 applicants.

6 CHAIRMAN DYLINEA: Okay. Thank you very much.

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1 STATE OF CALIFORNIA,. )  
2 )  
3 COUNTY OF STANISLAUS. )  
4

5 I, JULIE RISHWAIN PALERMO, a Certified Shorthand  
6 Reporter in and for the County of Stanislaus, State of  
7 California, do hereby certify:

8 That I have transcribed the electronic/audiotaped  
9 recording of the proceedings; that the foregoing  
10 transcript constitutes a full, true, and correct  
11 transcription of all proceedings had and given.

12 IN WITNESS HEREOF, I have hereunto set my hand  
13 and affixed my Official Seal on October 11, 2018.

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---

JULIE RISHWAIN PALERMO, CSR #4220  
Certified Shorthand Reporter

# Exhibit D:

## **CDOE "School Definition"**



search this site

Search

Curriculum &amp; Instruction ▾

Testing &amp; Accountability ▾

Finance &amp; Grants ▾

Data &amp; Statistics ▾

Specialized Programs ▾

Learning Support ▾

Professional Learning ▾

Home / Data &amp; Statistics / School Identification / Schools &amp; Districts

## Definition of a School

Provides definitional information to California Department of Education staff for purposes of managing school and program information.

The purpose of providing this information is to ensure consistency among divisions of the California Department of Education (CDE) regarding department identification and management of school and program information.

In providing this information, the CDE hopes to accomplish the following:

1. List the essential attributes that define a school such that it is possible to distinguish schools from non-school entities.
2. Assist in resolving difficulties associated with reporting information on schools.
3. Provide definitions that anticipate future changes in institutions for education and learning.

### Definition of a School

The term "school" is used to refer to all educational institutions that have the following characteristics:

- Have one or more teachers to give instruction
- Have an assigned administrator
- Are based in one or more buildings
- Contain enrolled or prospectively enrolled students

#### Share this Page



#### Trending in School Identification

[Schools & Districts](#)
[Private School Data](#)
[Public Schools and Districts Data Files](#)
[Charter School Locator](#)
[School Identification](#)

# Exhibit E:

## **FYSCP Information Page, MCOE**



Steve M. Tietjen, Ed.D | County Superintendent of Schools

[Educational Services](#) > [College & Career](#) > Foster Youth Services

## Foster Youth Services Coordinating Program

The Foster Youth Services Coordinating Program (FYSCP) provides support services to foster children who suffer the traumatic effects of displacement from family and schools and multiple placements in foster care. FYSCP has the ability and authority to ensure that health and school records are obtained to establish appropriate placements and to coordinate instruction, counseling, tutoring, mentoring, vocational training, emancipation services, training for independent living, and other related services. The FYSCP increases the stability of placements for foster children and youth. These services are designed to improve the children's educational performance and personal achievement, directly benefiting them as well as providing long-range cost savings to the state.

**The following services are provided in cooperation with Merced County collaborative partners:**

- Provide AB 490 advocacy and advocacy trainings

- **Ensure appropriate school placement and minimize changes of school placements**
- **Facilitate prompt transfer of educational records**
- **Provide educational case management**
- **Assist school districts to establish foster youth protocols**
- **Provide trainings on educational laws pertaining to foster youth**

[Quick Links](#)

[Educational Services Home](#)

## **FYSCP**

### **About FYSCP**

[Our History](#)

[Our Staff](#)

[Location](#)

[Community Partners](#)

[Executive Council](#)

[FYSCP Form](#)

### **General Information**

[Foster Youth Education Toolkit](#)

[Educational Laws](#)

[Helpful Resources](#)

# Foster Youth Resources

California Youth Connection

Merced County HSA ILP

THP-Plus Merced County

Merced CASA



MERCED COUNTY OFFICE OF EDUCATION

632 West 13th Street

Merced, CA 95341

(209) 381-6600

[Contact Us](#) | [Directions](#) | [Find People](#) | [Accessibility](#) |



# Exhibit F:

## **YOP Information Page**

(Please close this window or tab to return to your search results.)

Select Language

Select Language

Powered by Google Translate

Powered by Google Translate

## Program: Youth Opportunity Program

Agency: [MERCED COUNTY OFFICE OF EDUCATION](#)

**Alternate name:** YOP

### Description

Provides educational support, employment opportunities, and career educational training to youth.

### Program Phones:

**209-381-6607**

**Business Line  
Administration**

[Website: www.yop.mercedlearn.org](http://www.yop.mercedlearn.org)

[Email: dpost@mcoe.org](mailto:dpost@mcoe.org)

### Location information

---

#### Sites offering this program

[+ Wolfe Education Center ->](#)

Wolfe Education Center

#### Location:

732 West 13th Street, Building D

Merced, CA 95341 [\(Map\)](#)

#### Program Hours:

Monday - Friday from 8:00am - 5:00pm

#### Mailing Address:

732 West 13th Street, Building D, Merced, CA  
95341

### Program Delivery

---

#### Eligibility:

Youth 16 - 18 years old, attending high school, meet income guidelines, have necessary documents to work, and attend an orientation. Applicants must also meet one of the following; basic skills deficient, homeless, runaway or foster youth, child of incarcerated parent, pregnant or parenting, offender, disabled, or requires additional assistance to complete an educational program or to secure and hold employment.

**Application Process:** Call for more information.

**Program Fees:** Free  
**Documents Required:** No information has been provided by agency.

**Service Area:**  
**Defined coverage area:**  
CA -Merced County

**Categorized as:**  
Youth Enrichment Programs

**Agency Background**

---

Programs at MERCED COUNTY OFFICE OF EDUCATION

[ACCESS Child Care Resource and Referral](#)  
[ACCESS Child Care Subsidy Program](#)  
[ASSETS](#)  
[Caring Kids](#)  
[EMPOWER](#)  
[Family Resource Council](#)  
[Head Start/Early Head Start](#)  
[McKinney-Vento Act](#)  
[Merced County Interagency Children's Roundtable](#)  
[ROP for Adults](#)  
[Work Permit](#)

**Print to PDF**  
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Do you see something wrong that needs to be corrected? If so, please enter your comment below.

Your name

# Exhibit G:

## **YOP Staff Page, MCOE**



Steve M. Tietjen, Ed.D | County Superintendent of Schools

[College & Career](#) > [Phoenix Project](#) > [About Us](#)

## YOP Staff

### Merced Office

*Merced County Office of Education*  
*Wolfe Educational Center, Room A1*  
*732 West 13th Street*  
*Merced, CA 95341*  
*(209) 381-5918*  
[dpost@mcoe.org](mailto:dpost@mcoe.org)

### Daphne Post Coordinator - WIA Programs/Cal-SOAP

Daphne Post has lived in Merced for over thirty-five years. She graduated from Merced High School (Go Bears!), received an AS from Merced Community College, a MS in Business from CSU, Fresno, a Single Subject Teaching Credential from Chapman University, and an Administrative Services Credential from CSU, Stanislaus. Ms. Post has worked for Merced County Office of Education for eighteen years. She worked just shy of sixteen years at Valley Community School – eight years as an English teacher and eight years as a Vice Principal. Ms. Post is currently the Coordinator for WIA Programs (EMPOWER and the Youth Opportunity Program) and Cal-SOAP (California Student Opportunity and Access Program).

She loves to travel, socialize with her family and friends, and play with her Chihuahuas.

#### Mission Statement

My mission is to empower our youth to become successful citizens, learners, workers, and leaders in a global economy.

Merced County Office of Education  
000056  
Wolfe Educational Center, Room A1  
732 West 13th Street  
Merced, CA 95341  
(209) 381-5916  
[rlincoln@mcoe.org](mailto:rlincoln@mcoe.org)



## Rebecca Rodriguez Lincoln Career Educator

Ms. Lincoln is a long time resident of the Merced community, arriving in the mid-fifties when her father was stationed with the Strategic Air Command at Castle Air Force Base. Ms. Lincoln graduated from Merced High School and earned a Bachelor's Degree in Social Sciences from Chapman University. She holds the Preliminary Administrative Services Credential and is currently enrolled in a Master's program earning a degree in Education from CSU, Stanislaus.

Ms. Lincoln is married and has two children. Her son Andrew, graduated with a Bachelor's of Arts degree in *Animation & Visual Effects* from the San Francisco Academy of Arts, and her daughter Morgan, is sophomore at Merced College.

### Mission Statement

To be a positive and empowering role model for students and to encourage them to aspire to reach their highest potential.

Merced County Office of Education  
Wolfe Educational Center, Room A1  
732 West 13th Street  
Merced, CA 95341  
(209) 381-5923  
[tmoua@mcoe.org](mailto:tmoua@mcoe.org)



## Toula Moua Eccles Career Educator

Toula was raised in Merced County and graduated from Merced High School. She attended Merced Junior College where she earned her Associates of Arts in Human Services. She currently holds a California Designated Vocational Credential in Office Occupations, a SDAIE Certificate, and a National Workforce Professional Tier I Certificate.

Toula has been a Career Educator for the Youth Opportunity Program and EMPOWER Program since 2005. She

implemented the California Green Job Corps and the Bridges to Success programs in 2010-2011. Additionally, <sup>000057</sup> Toula taught Computers and Office Technology at the Merced Scholars Charter School for two years.

Toula is married and has one daughter. Toula and her family love to travel, enjoy the outdoors, scuba dive, and explore new places together.

#### Mission Statement

To provide students with the tools and resources needed to make informed decisions, promote personal growth, and provide opportunities to follow their dreams and goals in life so that they will follow a career path that is fulfilling and meaningful.

*Merced County Office of Education  
Wolfe Educational Center, Room A1  
732 West 13th Street  
Merced, CA 95341  
(209) 381-5918  
[dpost@mcoe.org](mailto:dpost@mcoe.org)*



**See Lee** Career Educator

See Lee was raised in Merced and is a proud wife and mother of two children. Ms. Lee has many years of working with disenfranchised youth and families in Merced County in various capacities. For ten years, she implemented a variety of grant-funded programs at Valley Community School. Ms. Lee served as a board member for many organizations including Southeast Asian-American Professional Association (SEAAPA), United Way, and Multicultural Promises. She is a member of Leadership Merced Class 27, Merced Golden Lions, and a founding member of Hmong Movement Organizing for the Next Generation (HMONG). Ms. Lee earned an Associate of Arts Degree in University Studies from Merced College and a Bachelor of Arts Degree in Political Science from California State University, Stanislaus.

#### Mission Statement

To ensure that our students and future workforce is highly prepared to compete in the job market by providing the utmost professional and advance educational training and to uphold MCOE's motto of, "Every Student a Success".

## Los Banos Office

*Valley Community School, Los Banos, Room A3  
715 "H" Street  
Los Banos, CA 93635  
(209) 827-5613*



## Debra Perez Career Educator

Debbie Perez has lived and raised a family in Los Banos for over forty years. She graduated from Los Banos High School in 1975. She has an AA Degree from Merced Community College, a Designated Subjects Vocational Educational Credential from CSU, Sacramento, and a Business Occupations & Marketing Vocational Teaching Credential. Ms. Perez was a Marketing Instructor in Merced Adult R.O.P. and a Business Occupations Instructor for Los Banos High School and Los Banos Adult R.O.P. for MCOE from 2003-2006. Ms. Perez is currently a Career Educator for the EMPOWER and Youth Opportunity Programs in Los Banos and Dos Palos. She partners with many businesses to assist youth in career education and work experience opportunities in the community.

Ms. Perez is very active in the Police Activities League. She coaches girls softball for ages nine to sixteen, which provides life skills training to foster youth in the community. Her hobbies include cake decorating for family and friends, going to the gym, watching her grandchildren participate in softball/football, traveling, and spending time with family.

### Mission Statement

My goal is to provide employment opportunities and training for youth while inspiring them to become productive young adults and give back to their communities. Also, to encourage our young adults and future leaders to work to their full potential in whatever their career interests are. To ensure, "Every Student a Success".

### Quick Links

- [YOP Home](#)
- [Services We Offer](#)
- [Sucess Stories](#)
- [CAE Home](#)

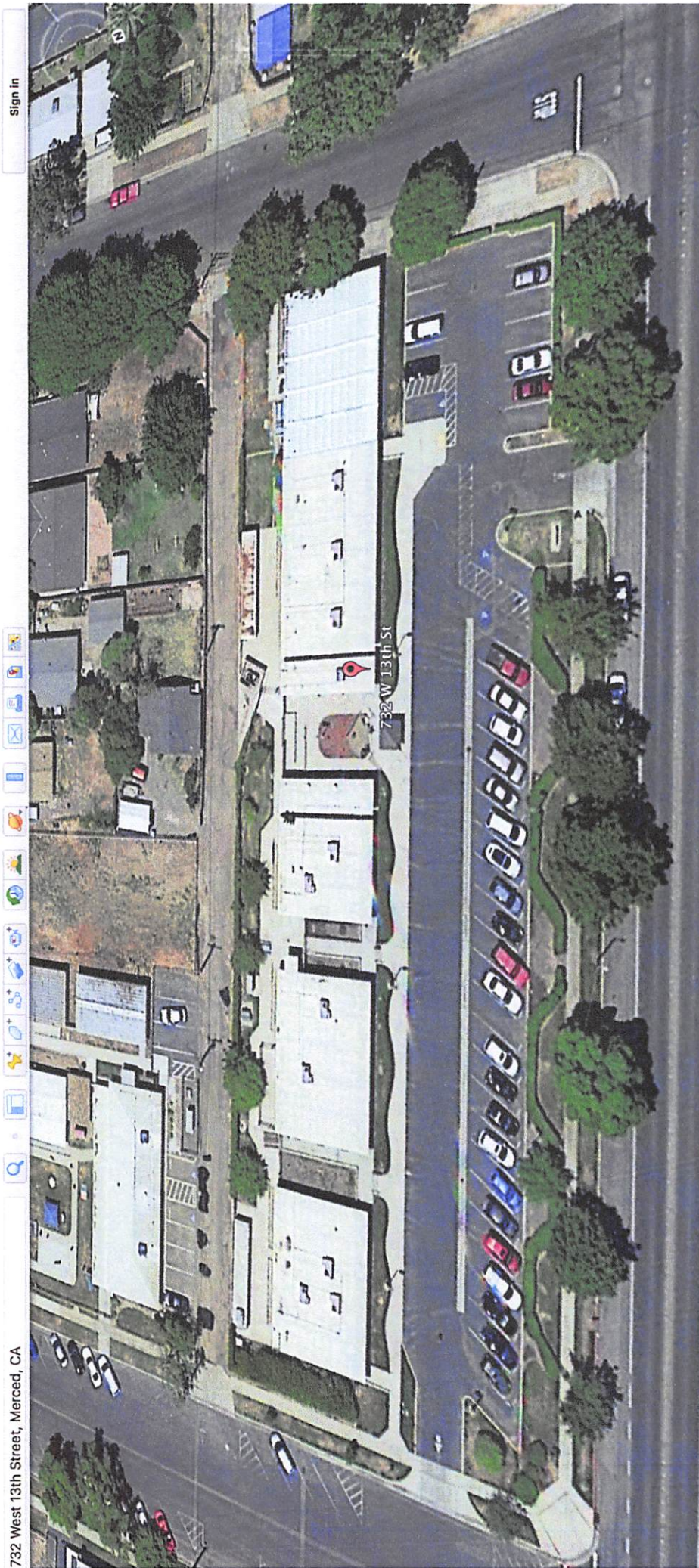


MERCED COUNTY OFFICE OF EDUCATION  
632 West 13th Street  
Merced, CA 95341  
(209) 381-6600

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# Exhibit H:

## **Google Maps Overhead Satellite View**



732 West 13th Street, Merced, CA

Exhibit I:

**Google Maps Wolfe  
Education Center Frontage**



# Exhibit J:

## **MCOE FYSCP Location Landing Page**



# Location

## Foster Youth Services Coordinating Program location:

Wolfe Educational Center  
732 W. 13th Street  
Merced, CA 95341  
Room W12



# Exhibit K:

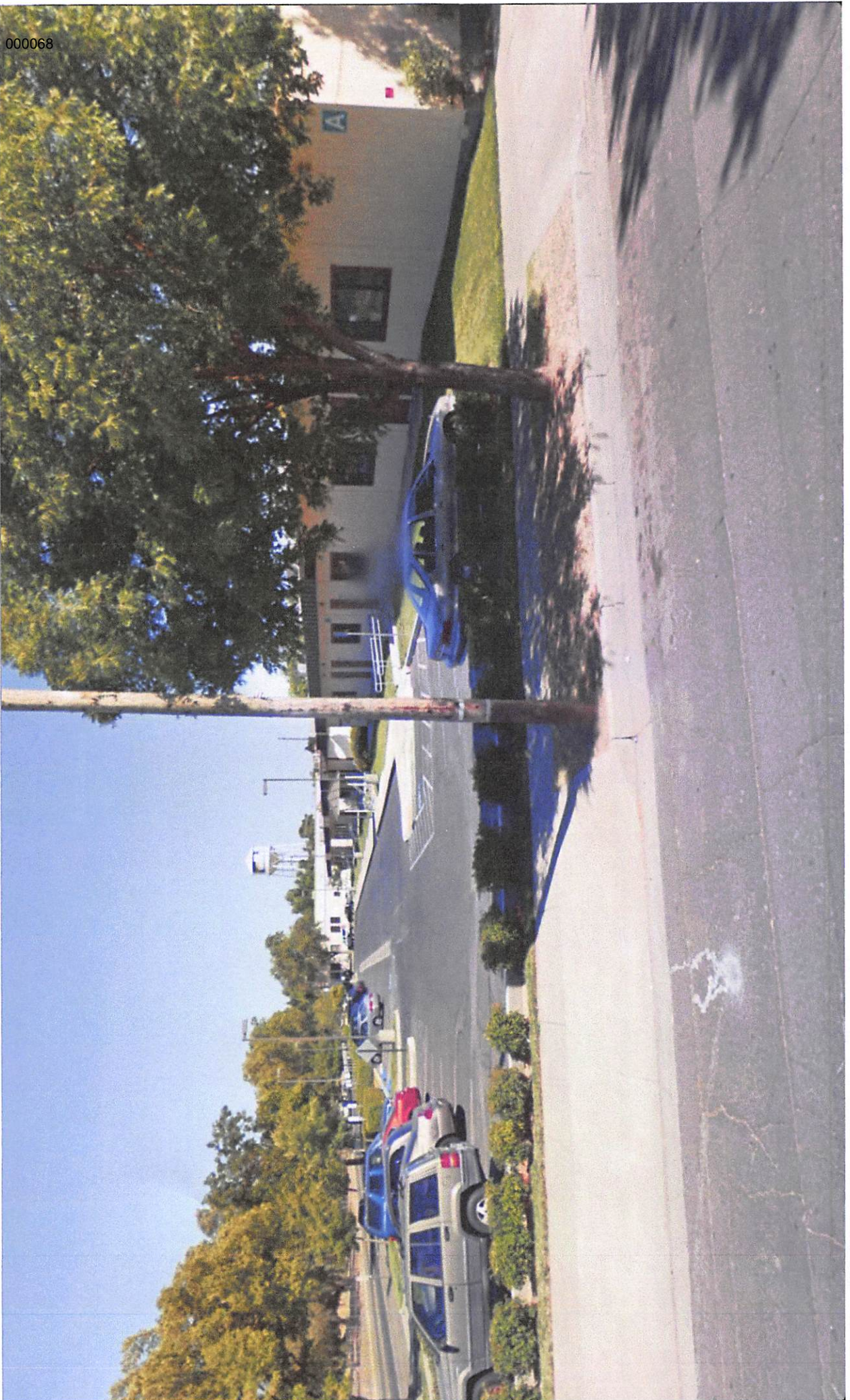
## **Google Maps Street View North**



# Exhibit L:

## **Google Maps Street View South**

000068



**Subject:** RE: Function of the Wolfe Educational Center  
**Date:** Friday, October 19, 2018 at 8:05:59 AM Pacific Daylight Time  
**From:** Holly Newlon  
**To:** Steve Tietjen

Hi Steve,

Please see the responses below each question. Please let me know if you need any further information.

**Holly Newlon**  
Director, Educational Services

---

**From:** Steve Tietjen  
**Sent:** Thursday, October 18, 2018 8:23 PM  
**To:** Holly Newlon  
**Subject:** Fwd: Function of the Wolfe Educational Center

Hi Holly,

I keep trying to explain to these people that students attend class at Wolfe Center, but they just keep pressing. Can you respond to these questions and send this back to me.

Thanks.

Sent from my iPhone

Begin forwarded message:

**From:** Douglas Smurr <[dsmurr@grsm.com](mailto:dsmurr@grsm.com)>  
**Date:** October 18, 2018 at 5:19:32 PM PDT  
**To:** "'[stietjen@mcoe.org](mailto:stietjen@mcoe.org)'" <[stietjen@mcoe.org](mailto:stietjen@mcoe.org)>  
**Subject:** Function of the Wolfe Educational Center

Dear Mr. Tietjen:

I have some questions concerning the Wolfe Educational Center located at 732 W. 13<sup>th</sup> Street, Merced, CA 95341. I am representing a client with a permit matter currently pending before the Planning Commission of the City of Merced. The function of the Wolfe Educational Center may impact the permitting process. If you could answer the following nine questions regarding the Wolfe Educational Center it would greatly help the Planning Commission reach a proper decision. Just a yes or no response would suffice, though you may give more information if you wish.

1. Are any kindergarten through grade twelve classes taught at the Wolfe Educational Center?

Not at this time, however the Wolfe Educational Center (WEC) has been utilized in the past for grades 9-12 and could be utilized for those grade levels again in the future.

2. Does the Wolfe Educational Center have an assigned administrator?  
Yes. Daphne Post is the principal/coordinator.
3. Is administrative business the primary purpose of the Wolfe Educational Center?  
No, the primary purpose of the WEC is educational instruction.
4. Is educational instruction the primary purpose of the Wolfe Educational Center?  
Yes.
5. If there is an educational component to the Wolfe Educational Center, is the educational component secondary to the Wolfe Educational Center's administrative business or other business?  
No.
6. Do students who are enrolled at the Wolfe Educational Center remain members of the school that referred them?  
No.
7. Are all students of the Wolfe Educational Center enrolled on a part-time basis?  
No.
8. If the Wolfe Educational Center accommodates grade twelve students, does the Wolfe Educational Center grant a diploma to its graduates?  
Currently there are no grade twelve students.
9. Do the students have full access to all of the facilities and amenities of the Wolfe Educational Center?  
Yes.

Please do not hesitate to call me should you have any questions.

Many thanks,

**DOUGLAS SMURR** | Of Counsel

**GORDON & REES**

**SCULLY MANSUKHANI**

3 Parkcenter Drive, Suite 200

Sacramento, CA 95825

D: 916-830-6532

[dsmurr@grsm.com](mailto:dsmurr@grsm.com)

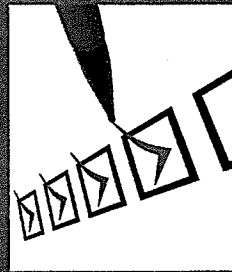
[www.gordonrees.com](http://www.gordonrees.com)

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[www.grsm.com](http://www.grsm.com)

# TECALs Eligibility

- Referral Required
- 2.0 GPA or above
- Good Attendance
- Ages 16-18yrs.
- CA ID / School ID
- Social Security Card



# TECALs Program



## Merced

Sabrina Desalez

Youth Services Assistant

Phone: 381-5110

Fax: 381-4511

E-mail: [sdesalez@mcoe.org](mailto:sdesalez@mcoe.org)

## Los Banos

Edna Esiegbue

Educational Liaison

Phone: 381-4527

Fax: 381-4511

E-mail: [eesiegbue@mcoe.org](mailto:eesiegbue@mcoe.org)

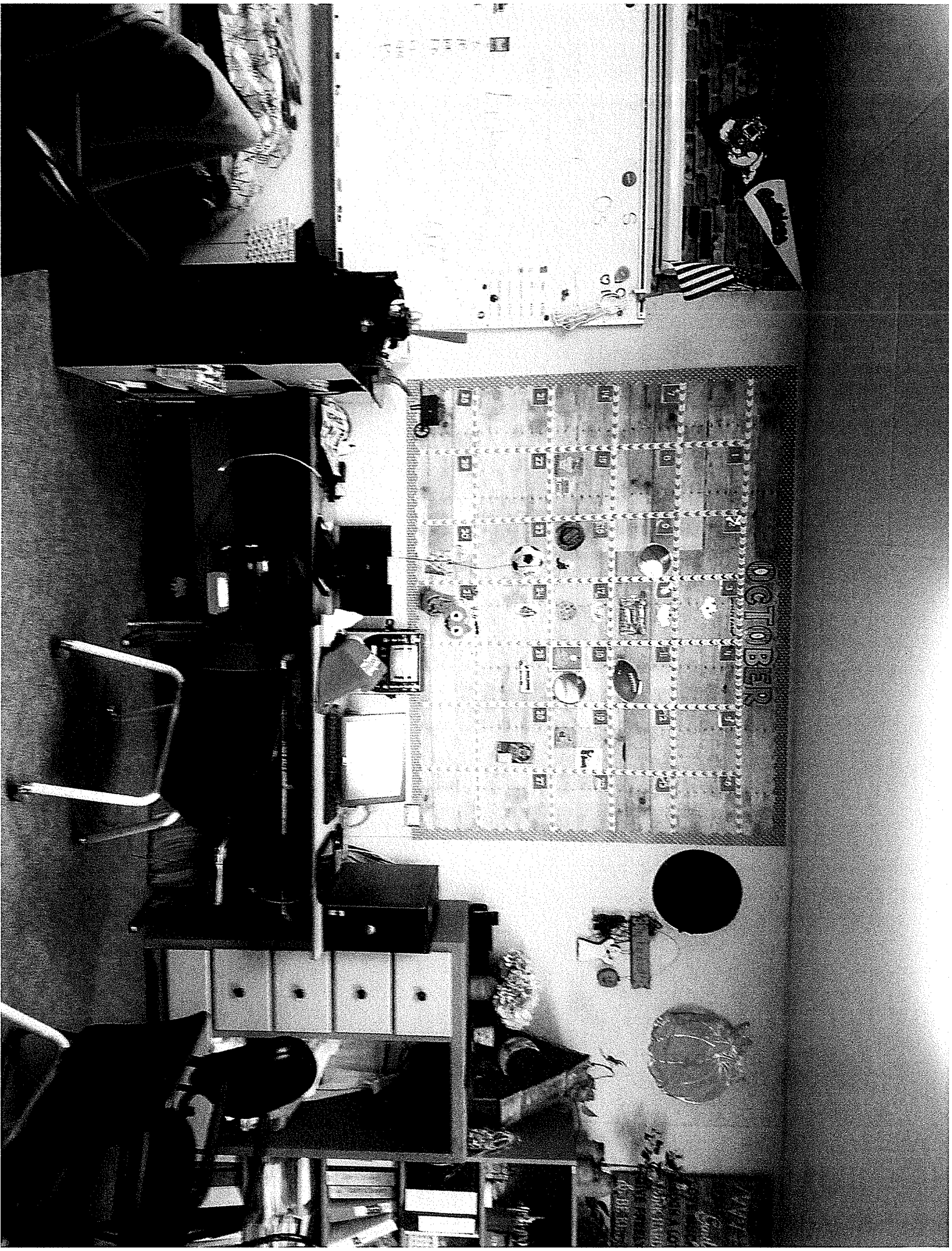
## Foster Youth Services Coordinating Program

632 W. 13th St.

Merced, CA 95341



Operated Through the  
Merced County Office  
of Education  
Foster Youth Services  
Coordinating Program



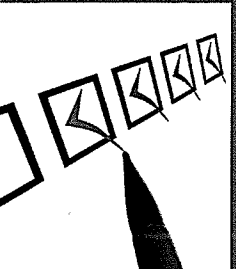






# TECALs Eligibility

- Referral Required
- 2.0 GPA or above
- Good Attendance
- Ages 16-18yrs.
- CA ID / School ID
- Social Security Card



## Merced

Sabrina Desalez

Youth Services Assistant

Phone: 381-5110

Fax: 381-4511

E-mail: [sdesalez@mcoe.org](mailto:sdesalez@mcoe.org)

## Los Banos

Edna Esiegbue

Educational Liaison

Phone: 381-4527

Fax: 381-4511

E-mail: [eesiegbue@mcoe.org](mailto:eesiegbue@mcoe.org)

**Foster Youth Services**

**Coordinating Program**

632 W. 13th St.

Merced, CA 95341



Steve M. Tiejen, Ed.D. | County Superintendent of Schools

# TECALs Program



Operated Through the  
Merced County Office  
of Education  
Foster Youth Services  
Coordinating Program



DOUGLAS SMURR  
DSMURR@GRSM.COM  
DIRECT DIAL: (916) 830-6532

**GORDON & REES**  
**SCULLY MANSUKHANI**

ATTORNEYS AT LAW  
3 PARKCENTER DRIVE  
SUITE 200  
SACRAMENTO, CA 95825  
WWW.GRSM.COM

October 23, 2018

**VIA E-MAIL**

Michael Hren  
Principal Planner, Planning Division  
City of Merced  
hrenm@cityofmerced.org

Re: Public Hearing and Appeal of Planning Commission Approval of Commercial Cannabis Business Permit #18-14R

Legal Response of Harvest of Merced, LLC

Dear Mr. Hren:

Please allow this correspondence to serve as Harvest of Merced, LLC's legal response to the appeal filed by Medallion Wellness in regard to the above-referenced Cannabis Business Permit.

**I**

**THE APPEAL IS NOT DE NOVO AND IS LIMITED TO THE SOLE ISSUE CONCERNING MERCED MUNICIPAL CODE SECTION 20.44.170(E)(3)(f)**

Harvest of Merced, LLC was the fourth and last applicant to be recommended for approval for a Commercial Cannabis Business Permit at the September 18 and 19, 2018 meetings of the Merced Planning Commission. An appeal was filed by Medallion Wellness, the applicant that ended up in fifth place - a full 5.333 points behind Harvest, of Merced, LLC (when only 3.33 points separated the top four applicants).

Medallion Wellness' appeal was based on the sole issue of a supposed violation of Merced Municipal Code Section 20.44.170(E)(3)(f), that argued Harvest of Merced, LLC's location was within 1,000 feet of a school. Merced Municipal Code Section 20.44.170(E)(3)(f) states:

No cannabis dispensary may be located within a one thousand-foot radius from a school or within a six hundred-foot radius from a day care center, youth center, library or public park that is in existence at the time the commercial cannabis

business permit is issued, as required by Section 11362.768 of the Health and Safety Code. No cultivation facility, manufacturing facility, testing facility or any other commercial cannabis business facility may be located within a six hundred-foot radius from a school, day care center, youth center, library, or public park that is in existence at the time the commercial cannabis business permit is issued, as required by Section 11362.768 of the Health and Safety Code. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the sensitive use noted above to the closest property line of the lot on which the commercial cannabis business shall be located without regard to intervening structures.

Merced Municipal Code Section 20.44.170(E)(3)(f) refers to California Health and Safety Code Section 11362.768 to define the term “school.” The California Health and Safety Code Section 11362.768(h) defines “school” as follows:

For purposes of this section, “school” means any public or private school providing instruction in kindergarten or any of grades 1 to 12 inclusive, but does not include any private school in which education is primarily conducted in private homes.

The definition of “school” as set forth above lacks clarity. Simply put, it is a circular definition that merely defines the term “school” by using the term school limited to mean any public or private school providing K through 12 instruction. As a result, it is necessary to look elsewhere in order to find a proper and useful definition of the term “school.”

## II

### **THE WOLFE EDUCATIONAL CENTER IS ONLY AN EDUCATIONAL CENTER OFFERING PROGRAMS AND IS NOT A SCHOOL**

So what is a school? According to the California Department of Education (“CDE”) it provides the following definition of the term “school” for purposes of managing school and program information. As stated on its website, the CDE provides this information with the hope to . . . “List the essential attributes that define a school such that it is possible to distinguish schools from non-school entities.” (a true and correct printout of the pertinent portions of the CDE website is attached hereto marked as Exhibit 1). The CDE definition of “school” is as follows:

The term "school" is used to refer to all educational institutions that have the following characteristics: (1) Have one or more teachers to give instruction; (2) Have an assigned administrator; (3) Are based in one or more buildings; and (4) Contain enrolled or prospectively enrolled students.

(see, <https://www.cde.ca.gov/ds/si/ds/dos.asp>)

On October 18, 2018 I sent an E-mail to Steve M. Tietjen, Merced County Superintendent of Schools and asked him if any K through 12 classes were taught at the Wolfe Educational Center. In his reply E-mail, Mr. Tietjen stated: **“Not at this time, however the Wolfe Educational Center (WEC) has been utilized in the past for grades 9-12 and could be utilized for those grade levels again in the future.”** (a condensed true and correct copy of the October 18, 2018 E-mail chain is attached hereto marked as Exhibit 2, emphasis added).

Given Mr. Tietjen’s reply, the Wolfe Educational Center fails to meet the fourth required characteristic of the CDE definition of the term school because it does not currently contain any enrolled or prospectively enrolled K-12 students.

Furthermore, on October 23, 2018, I received a clarification E-mail from Daphne Post, the Coordinator of the Merced County Office of Education located at 632 W. 13<sup>th</sup> Street, Merced, CA 95341 – The Wolfe Educational Center (a true and correct copy of Ms. Post’s clarifying email is attached hereto marked as Exhibit 3). In this E-mail, Ms. Post stated: **“The Wolfe Educational Center is a location and not an actual entity.”** (Exhibit 3, emphasis added). Additionally, in her E-mail Ms. Post stated:

“The Wolfe Educational Center houses several different programs operated by MCOE:

1. Several MCOE Adult Regional Occupational Programs (ROP) to include Medial Assisting, Foundations in Early Education, Computerized Office Technology, Accounting Occupations, Office Administration, and soon, Marketing Customer Services (serves adults only)
2. The Workforce Innovation and Opportunity Act (WIOA) MCOE Youth EMPOWER Program (serves adults ages 18-24)
3. The California Student Opportunity and Access Program (Cal-SOAP) for Merced County, operated by MCOE (work with high school aged youth throughout the school year and provide a summer program for high school youth)
4. The Foster Youth Services Coordinating Program (FYSCP) for Merced County, operated by MCOE (works with foster youth of all ages and operates several different student centered programs and events)
5. One Special Education Classroom for young adults.

**The ROP, WIOA, Cal-SOAP and FYSCP Programs do not grant high school students a diploma.** As indicated, both the Cal-SOAP and the FYSCP work with high school aged youth throughout the year.” (see, Exhibit 3, emphasis added).

Since the Wolfe Educational Center is merely a location and not an entity, and since it does not grant high school students a diploma, the center is just a host of educational programs and is not a school.

The October 23, 2018 clarification E-mail from Ms. Post is important because the CDE differentiates between whether a given entity is a school or a program. Once again according to its website (<https://www.cde.ca.gov/ds/si/ds/dos.asp>), the CDE states the following:

“Is it a Program, or is it a School?”

In determining whether a given entity is a school or a program, consider the following questions:

Is the educational component of the entity secondary to its primary purpose, which is other than education?

Do students, who are enrolled in the entity, remain members of the school that referred them?

Do all students enroll on a part-time basis?

If the answer to any of those three questions is yes: This entity is not a school, and it may be a program.

Next, consider these questions:

Except for State Special Schools, can the entity, if it accommodates grade twelve students, grant a diploma to its graduates?

Do the students have full access to all of the facilities and amenities of the entity?

If the answer to either of those two questions is no: This entity is not a school, and it may be a program.” (<https://www.cde.ca.gov/ds/si/ds/dos.asp>).

Lastly, on October 23, 2018 at 6:17 PM, I received an E-mail from Susan Coston, the Assistant Superintendent of the Special Education program. In her E-mail, Ms. Coston stated: **“The special education students attending Wolfe Center will receive a certificate of completion upon their 22<sup>nd</sup> birthday, not a diploma.”** (a true and correct copy of Ms. Coston’s E-mail is attached hereto marked as Exhibit 4, emphasis added).

Since the Wolfe Educational Center is not even an entity, and since it does not grant high school diplomas, the center is simply a host for programs and does not meet the definition of a school. Consistent with this finding, it will be shown below, that the Wolfe Educational Center only hosts five programs.

### III THE WOLFE EDUCATIONAL CENTER IS CURRENTLY OFFERING ONLY FIVE PROGRAMS

As indicated by Ms. Post in her October 23, 2018 E-mail, the Wolfe Educational Center currently offers five programs: (1) the EMPOWER Program; (2) the Break the Code Website Development Program; (3) the Foster Youth Services Program; (4) the Cal-SOAP, California Student Opportunity and Access Program; and (5) the Merced County Regional Occupational

Program (detailed information pertaining to these five programs is attached hereto marked as Exhibit 5). Note that in Exhibit 5, each project is labeled and marketed as a program - they are not labeled as belonging to a school or an entity, or being part of a school or entity, but are being promoted simply as programs.

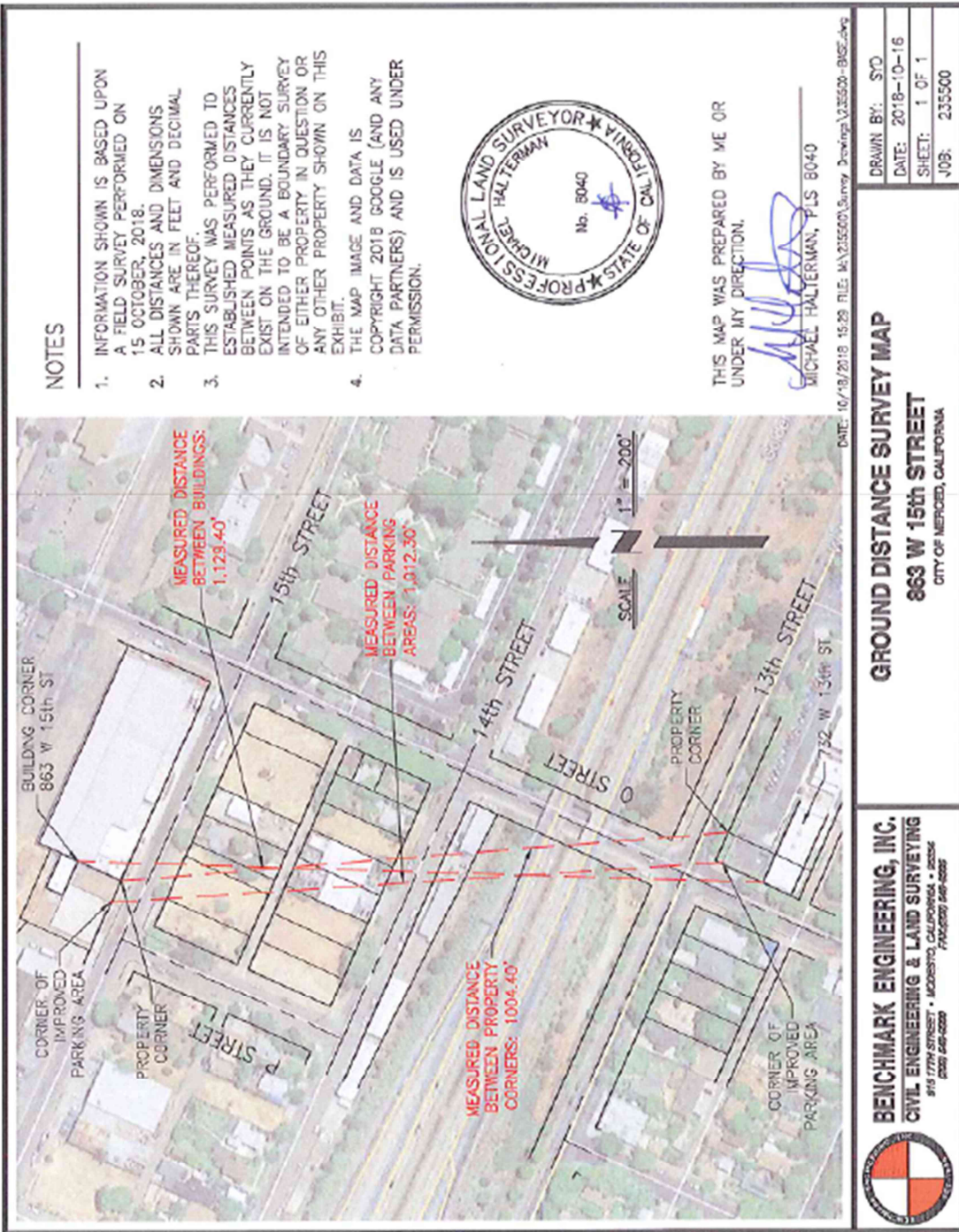
#### IV THE CALIFORNIA BUREAU OF CANNABIS CONTROL IS UNCERTAIN THAT THE WOLFE EDUCATIONAL CENTER IS A SCHOOL

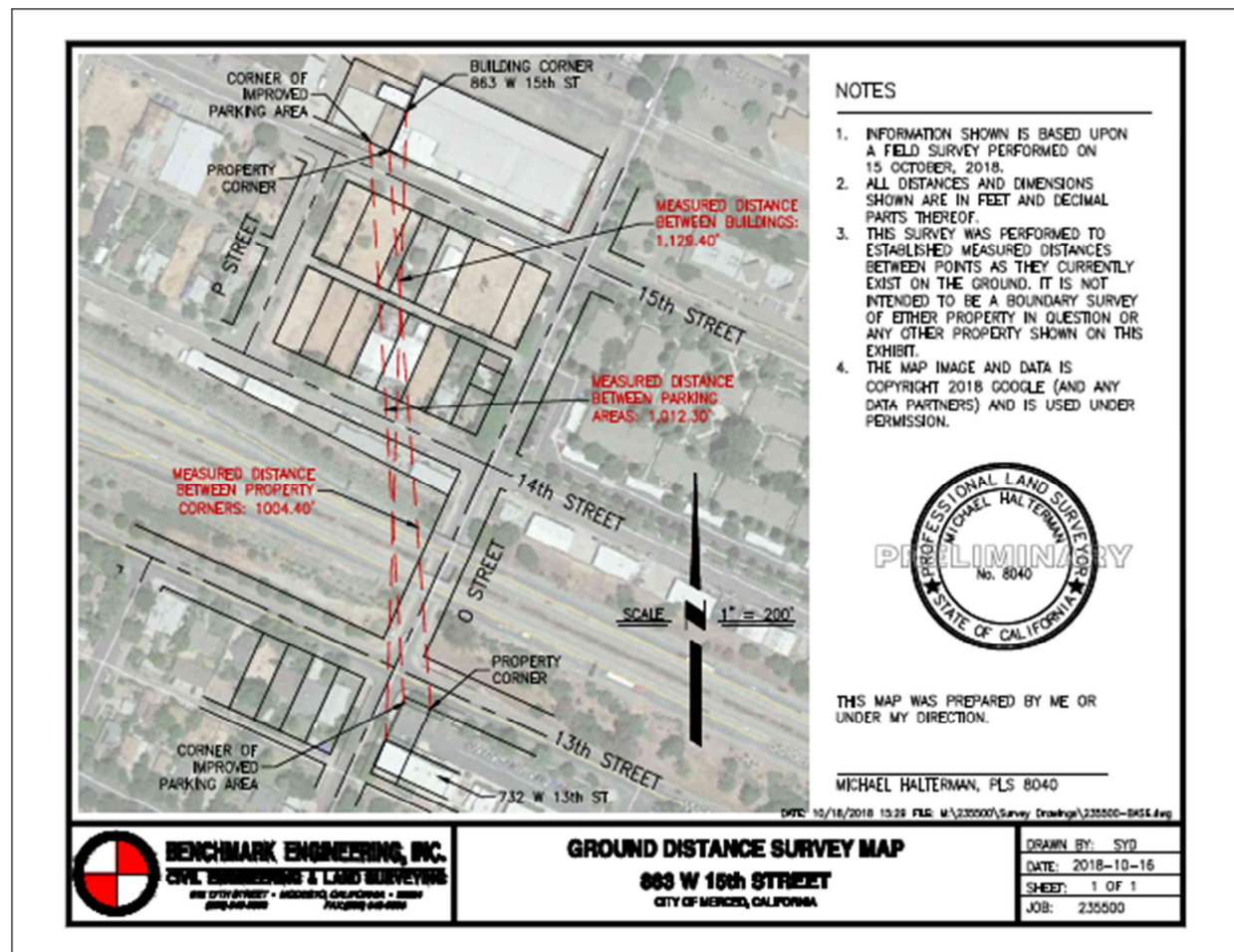
On October 15, 2018, I instructed Michael Hawkins of Hawkins Strategic Advocacy to send an E-mail to California Bureau of Cannabis Control Attorney Paul Atienza asking him to comment upon the standard used by the State of California regarding the term “school.” Specifically, the E-mail asked if students enrolled in something similar to the EMPOWER Program would meet the definition of “school” by asking if “Current statutory language . . . would include a non-high school instruction center for 18-22 year old students who are too old to enter high school yet want to obtain the high school equivalency and obtain a GED?”

In his reply, California Bureau of Cannabis Control Attorney Paul Atienza stated: “**At this point, I am not certain whether the facility described in your email would fall under this definition** [the definition set forth in the California Health and Safety Code Section 11362.768(h)].” (a true and correct copy of this E-mail chain is attached hereto, marked as Exhibit 6, emphasis added).

#### V THE DISTANCE BETWEEN 732 W. 13<sup>TH</sup> STREET AND THE HARVEST OF MERCED LOCATION IS GREATER THAN 1,000 FEET

Both the City of Merced’s GIS-based mapping tool and the Ground Distance Survey conducted by Michael Halterman of Benchmark Engineering, Inc., show that the distance between the Wolfe Educational Center located at 732 W. 13<sup>th</sup> Street and the Harvest of Merced, LLC location of 863 W. 15<sup>th</sup> Street is more than 1,000 feet. Since the distance is greater than 1,000 feet it is outside of the 1,000 foot buffer zone required by Merced Municipal Code Section 20.44.170(E)(3)(f) and therefore does not violate the Merced Municipal Code. True and correct copies of Mr. Halterman’s surveys are embedded into and made a part of this response.





**VI**  
**EVEN IF THE DISTANCE BETWEEN 732 W. 13<sup>TH</sup> STREET IS LESS THAN 1,000 FEET THE CITY OF MERCED HAS THE DISCRETION TO APPROVE THE PERMIT**

Even if the City of Merced determines that the distance between the two properties in question is less than 1,000 feet, the City may still authorize the Harvest of Merced, LLC permit pursuant to California Code of Regulations Section 5026(b).

California Code of Regulations Section 5026(b) states:

Notwithstanding subsection (a), if a local jurisdiction has issued a license or permit to conduct commercial cannabis activity at a premises that is located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center, the Bureau may approve the premises for licensure if the following conditions are met:

(1) The applicant submits a copy of a valid license or permit from the local jurisdiction with the application for licensure; and

(2) The local jurisdiction notifies the Bureau that the applicant is in compliance with all applicable local ordinances and regulations pursuant to Business and Professions Code section 26055(g)(2)(C). (a true and correct copy of California Code of Regulations Section 5026 is attached hereto marked as Exhibit 7).

As a result of the above cited California Regulation section, the City of Merced may issue a permit to conduct a commercial cannabis activity even at distances of less than 600 feet pursuant to State law.

## **VII CONCLUSION**

Since the Wolfe Educational Center is not a school, and because there is no violation of Merced Municipal Code Section 20.44.170(E)(3)(f), the City of Merced should deny the appeal of Medallion Wellness and approve Commercial Cannabis Business Permit #18-14R on behalf of Harvest of Merced, LLC.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP

Douglas Smurr

