

City of Apache Junction





MEMORANDUM

DATE:

May 3, 2016

MEMO TO:

Board of Adjustment and Appeals

THROUGH:

Larry Kirch, Development Services Director

FROM:

Rudy Esquivias, Senior Planner/Zoning Admin.

SUBJECT:

May 9, 2016, Board of Adjustment and Appeals Public Hearing Item: Case BA-1-16, an Appeal by CODCO LLC,

Represented by Ralph Pew of Pew and Lake

Background

According to aerial map imagery, the B-5 (Industrial)-zoned property at 1306 E. 18th Avenue (northeast corner of E. 18th Avenue and S. Mariposa Road) in the Palm Springs industrial subdivision area, first started being developed and/or put to a use sometime between 2007 and 2010. Around this time, a block wall was constructed enclosing what are basically three long narrow subdivision lots (see BA-1-16 zoning map attached). The city's zoning ordinance at that time did not require a permit to construct a six foot wall or fence. It is common for owners of undeveloped property to sometimes fence their properties off to keep trespassers out and to keep people from dumping on the vacant lots, although the fences are often inexpensive and quickly installed (such as chain link). In the case of the subject property, an attractive masonry wall was constructed.

Building permit records show that the property owners were required to get a permit to extend the height of the wall to 8 feet. Walls over 6 feet in height need to be engineered and require permits. The extension was accomplished with the addition of a wrought iron security feature on top of the wall. We cannot find any indication that a business use for the property was being proposed at the time. Such a proposal would have led to a discussion with the owners about the city's other development requirements for commercial or industrial-zoned properties, including proper placement of walls and fences and landscaping.

Although there is indication that perhaps since 2010 the property has been used on and off as a storage lot, it was not

until fairly recently that a complaint about the property's use was received by the city's Code Compliance Division. The complaint was that a towing company (not CODCO) was using the lot to store towed vehicles and inoperable vehicles without a city business license. CODCO has a city business license to offer a commercial/industrial rental property, but the towing company in question did not have a city business license to be operating on the CODCO lot, nor had the site been reviewed for compliance with the city's development requirements.

The complaint was investigated and confirmed by the Code Compliance Officer and the owners were sent a letter informing them of the zoning violations on the property. Please see the copy of the Code Compliance letter sent on March 15, 2016.

Proposal Description

After meeting with the property owner, Mr. Pace, and his counsel, Mr. Pew, and reviewing options on how to resolve the zoning issues, the owners have decided to appeal the matter to the Board of Adjustment. This is an application by CODCO LLC (Lonnie Pace, managing member), represented by Ralph Pew, requesting that the Board of Adjustment and Appeals grant them an appeal of the city's Zoning Ordinance regulations pertaining to fences and landscaping. The owners request to leave the wall where it is (on the property line) and offer to install landscaping inside and outside of the wall which exceeds the city's normal landscape requirements for tree sizes.

Planning Division Analysis

The city's zoning ordinance contains the following definition of "Development":

Development: Any manmade change to improved or unimproved real estate, including but not limited to the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; and any physical use of land with or without accompanying buildings or structures.

The intent of the definition was to try and preclude people from using vacant properties as personal storage lots, especially commercial and industrial properties. In other words, under the new code, if someone wants to use a vacant commercial or industrial property for any purpose, they must develop it in

compliance with applicable codes, including screening and landscaping. A towing company storing or parking towed vehicles at 1306 E. 18th, is using it for a business purpose.

The zoning compliance letter also refers to Section 1-16-9 <u>Site Plan Review and Approval Process</u>. The intent of this section is to review development or property use proposals for compliance with the city's site development regulations, including landscaping, screening, design standards, engineering, on-site and off-site improvements, etc. In the case of the CODCO property, which is being proposed for a tow company storage lot only, with no buildings at this time, it was determined that landscape and screening improvements were required.

Section 1-8-6(A.3) <u>Planting Strip</u>, normally requires that street frontage landscaping be planted within a minimum 10-foot deep strip, inside the property line and adjacent and parallel to the right-of-way. Landscaping in the right-of-way itself is not normally allowed unless approved by Public Works.

Section 1-8-6(B.4) <u>Screening of Outdoor Storage</u>, also refers to other sections in the zoning ordinance which require screen walls along the street to be constructed at a setback distance, not right on the property line, which appears to be the case with the CODCO property wall (see aerial image attached). If the wall on the CODCO property had been properly located, it would be setback 20 feet from the edge of the right-of-way along 18th Avenue, and 10 feet from the right-of-way on Mariposa Road. The required landscape strip would have been located between the edge of the right-of-way and the screen wall.

The intent of these codes is for business properties in the city to be developed with curb appeal, attractive street frontages and a uniformity with regard to landscape materials, types and numbers of plants. The issue with the CODCO property is that the wall was constructed on the property line, instead of being setback from the property line; and no landscaping was ever installed.

Mr. Pace wishes to comply with the intent of the city's ordinance. Please see the application materials, narrative and other information and graphics submitted. He has constructed a very attractive wall, albeit on the property line; and he proposes to install landscaping that will still be effective, meet the intent of the city's code and provide for an attractive buffer to the storage lot. He has also agreed to upsize the

trees to 36" box to provide a fuller more effective screen early on. Public Works has indicated that they are agreeable to landscaping in the right-of-way as long as the owner maintains it and that it does not block visibility at the corner. Other on-site and off-site development requirements will be applicable if the site should further be developed, such as with a permanent building.

Planning Division Recommendation

Planning Staff does not advocate or encourage the construction of walls in inappropriate locations. However, there appears to be a disconnect between the city not requiring a permit or review process for walls or fences less than 6 feet high (to secure properties, for example) and its expectation that walls be properly located. The city has adopted some new codes and staff is working hard to inform property owners and developers about the new codes whenever and wherever possible. With regard to this request and with due consideration to the quality of the improvements which have been made and the improvements which are proposed, staff supports the applicant's appeal request

The Board is respectfully reminded that they must cite findings of fact to support their decision of approval or denial. If the Board desires to approve the applicant's request, they may do so with conditions and Staff does suggest some conditions as listed below. Below are recommended motions for approval or denial.

RECOMMENDED MOTION FOR APPROVAL

I move that case BA-1-16, a request by CODCO LLC, represented by Ralph Pew, for the Board of Adjustment and Appeals to grant an appeal to Section 1-16-9 Site Plan Review and Approval Process, requesting that existing improvements, some of which did not require permits, remain in place and that the intent of the city's landscape and screening requirements be otherwise complied with, be APPROVED subject to the following conditions and findings of fact:

Conditions of Approval:

- The landscape improvements shall be installed on the property in accordance with the submitted narrative and graphics received with case BA-1-16, including plant types, sizes, numbers, locations and an irrigation system.
- 2. The property owners shall be responsible for maintaining all screening and landscape improvements inside and outside

- the property line adjacent to the property, including trimming, cleaning, replacement of dead or dying plants and maintaining visibility corners and safe pedestrian access around the property.
- 3. Future improvements on the property, such as a permanent shop, office or storage building, shall require property owners and/or site developers to proceed through the city's site plan review and approval process, which may require additional improvements on the property, including not necessarily limited to: sidewalk along frontages with an ADA curb ramp at the corner of E. 18th Avenue and S. Mariposa Road; concrete or pavement to be installed at the two rolling gates, between the gates and the back of the sidewalk; the possible replacement of rolled curb with driveways per MAG Standard Detail 250-2; the installation of streetlights and fire hydrants as may be required by the City Engineer or the Fire Marshall; all other on-site and off-site improvements as may be required by the Development Services Engineer or the Public Works Engineers at the time of site plan review and in accordance with city codes.

Findings of Fact:

- 1. There were circumstances which inadvertently caused confusion or miscommunication about when the wall placement issue should have been addressed.
- The existing and proposed property improvements offer reasonable trade-offs in the form of an attractive masonry wall, more mature trees being installed, and meet the spirit and intent of the landscape code with regard to the screening of storage lots.
- 3. The proposed landscape improvements will improve not only the property, but the neighborhood.

RECOMMENDED MOTION FOR DENIAL

I move that case BA-1-16, a request by CODCO LLC, represented by Ralph Pew, for the Board of Adjustment and Appeals to grant an appeal to Section 1-16-9 Site Plan Review and Approval Process, requesting that existing improvements, some of which did not require permits, remain in place and that the intent of the city's landscape and screening requirements be otherwise complied with, be DENIED subject to the following findings of fact:

BA-1-16 (CODCO/Pew)
Page 6 of 6

Findings of Fact:

- 1. There are not special circumstances or conditions applicable to the property referred to in the application which merit an appeal of the city's codes.
- 2. (other findings determined by the Board?)

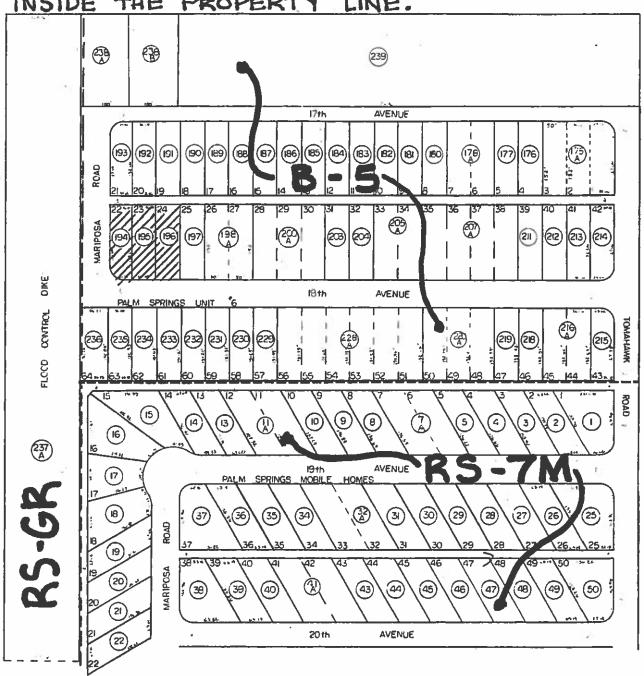
[Any person aggrieved by any decision of the Board of Adjustment may at any time within thirty days of said decision file a compliant for special action in Superior Court to review any Board decision pursuant to ARS §9-462.06.]

Attachments:

- BA-1-16 zoning and vicinity map
- Code Compliance letter to property owner dated 3-15-16
- Aerial map of property showing approximate property lines
- BA-1-16 application submittal, narrative, graphics and site plan

BA -1-16

AN APPEAL OF APACHE JUNCTION'S SITE PLAN REVIEW PROCESS, WHICH REQUIRES SCREEN WALLS TO COMPLY WITH SETBACKS AND LANDSCAPING TO BE INSIDE THE PROPERTY LINE.



SUBJECT SITE

ZONING BOUNDARY
(REMAINDER IS GENERAL RURAL)

B-5: INDUSTRIAL ZONE RS-GR, RS-7M: RESIDENTIAL ZONES



City of Apache Junction

Development Services Department

March 15, 2016

COD2015-02672

CODCO, LLC 5501 E. Solana Paradise Valley, AZ 85253

RE: 1306 E. 18th Ave

FINAL NOTICE

Parcel No.: 102-07-194; Property Description: Palm Springs Unit 6 Lot 22

Owner of Record: CODCO, LLC

Tax Bill Mailing Address: P. O. Box 6163, Apache Junction, AZ 85178

Dear CODCO, LLC:

Following a re-inspection on **February 18, 2016** for the property listed above, the following item(s) were observed:

VIOLATION(S)

• Property is still being used as a storage lot for Apache Sands Towing Company, but no site plan approval has been received from the City.

§ 1-16-9 SITE PLAN REVIEW AND APPROVAL PROCESS.

 (A) Purpose. The Site Plan review and approval provisions are intended to promote safe, functional

and aesthetic development of property and to ensure that new structures, utilities, streets, parking, circulation systems, yards and open spaces are developed in conformance with the standards of the Zoning Code, Engineering Design Guidelines, General Plan and any adopted specific plans.

The subject property has not been reviewed in accordance with the section above and it has not been improved in accordance with the City's Landscape Regulations, Section 1-8 and

Section 1-8-6(A.3) Planting strip. Required trees and shrubs shall be planted within a 10 foot wide planting strip adjacent to and parallel with the street right-of-way. No trees or shrubs shall be planted within the public road right-of-way without approval from the Public Works Department

Section 1-8-6(B.4) Screening of outdoor storage. Outdoor storage on business zoned properties shall be screened in accordance with Vol. II, § 1-6-9(B)(2) and Vol. II, § 1-6-3, Table 6-2.

The City of Apache Junction seeks your voluntary compliance with the City Code and asks that you or your representative to perform the following actions:

300 E. Superstition Blvd • Apache Junction AZ 85119 • Ph: (480) 474-5156 • Fax (480) 982-7010

Submit a site plan of the property for staff review. Even if the property is being used for personal storage, it must be improved to City standards for an industrial-zoned property. Landscape and screening improvements at a minimum, will be required.

These regulations were designed to ensure property is maintained and kept safe within the City. The item(s) shown above need immediate attention and required remedial action on your part.

This letter is provided to you as a reminder that the City of Apache Junction is dedicated to maintaining its neighborhood's appearance and safety. Your prompt attention to this City Code violation is appreciated.

Re-inspection of the property will be scheduled within 21 days of the date of this letter, at which time

Referral to Municipal Court will occur if the infractions are still apparent.

Thank you for meeting with us on March 3, 2016. We understand that you may file an appeal of these matters to the Board of Adjustment and Appeals (see below). Please do so within the 21-day time frame.

If the violation(s) are not corrected before the compliance date shown, city enforcement action may occur which could include civil penalties. According to our records this is your 1st within 24 months. If found responsible by a judge, a civil penalty with a minimum fine of 250.00, will be assessed for each count listed. The progression of offense penalties is described below:

1st offense during 24 consecutive month period: Civil Penalty of \$250.00
2nd offense during 24 consecutive month period: Civil Penalty of \$500.00
3rd offense during 24 consecutive month period: Civil Penalty of \$750.00
4th offense and subsequent offenses within 24 months of 1st offense: Criminal Fine of \$1,000.00, and other criminal penalties as a result of a class one misdemeanor conviction.

Failure to comply also may result in an administrative or court abatement action by the City, which the owner or responsible person will be financially liable for both costs through an administrative lien process which may include foreclosure of the property.

Right of Appeal

You have the right to appeal this decision to the Board of Adjustment and Appeals within 20 calendar days of this letter. To exercise this right, you must file a written appeal specifying the grounds of the appeal with the Zoning Administrator at the Development Services Department, 300 E. Superstition Blvd., Apache Junction, Arizona, 85119. In most circumstances, an appeal to the Board stays all proceedings in the matter appealed. However, the applicant is encouraged to review A.R.S. Section 9-462.06 for more information regarding the circumstances of any stay request.

The Board shall affix a reasonable time for hearing the appeal, and shall give notice of the hearing by publication in a newspaper of general circulation and by posting such notice pursuant to state law.

The Board has the power to administer oaths and take evidence. The hearing is a quasi-judicial hearing, wherein the members act in the capacity as judges as well as fact-finders. The appellant may: 1) present evidence including any and all relevant documentation; 2) call upon witnesses to provide testimony on his or her behalf; 3) cross-examine all City witnesses; and 4) hire an attorney to

represent his or her interests at the hearing. The Board may reverse, affirm, wholly or partly, or modify the Zoning Administrator's decision, and make such requirement, decision, or determination as necessary.

To preserve his or her appellate rights, a person aggrieved by a decision of the Board must file within thirty (30) calendar days after the Board's decision, a complaint for special action in the Pinal County Superior Court challenging the Board's decision. This hearing will not be a new trial; rather it will consist of a written decision made by a superior court judge based on the evidence and testimony submitted at the Board of Adjustment.

If you do retain an attorney, it is highly recommended that such person be licensed in the State of Arizona and be competent in the area of real property law.

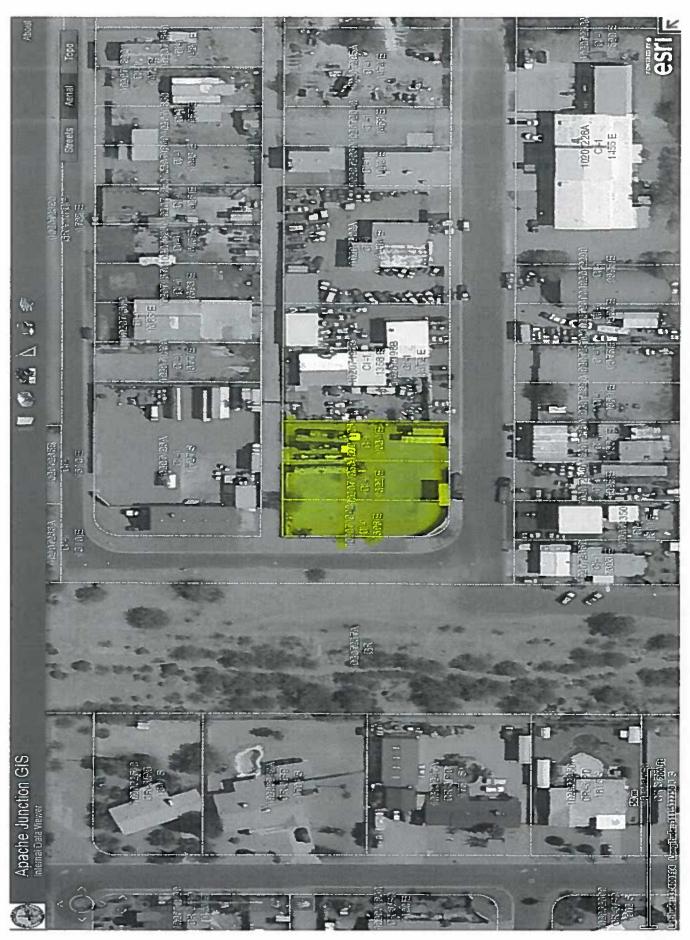
If you have questions regarding the property or our process, or if I may be of further assistance in resolving this issue, please contact me at (480) 474-5109. If I am not available, please leave a voice mail.

Sincerely,

Kimberly Wilson Code Compliance Officer (480) 474-5109

AJ Internal Viewer

4/14/2016







APR 0 4 2016



Planning and Zoning Application Form City of Apache Junction DEVELOPMENT SERVICES Office Use Only: Staff

Fees Received

	FLV 2016-00013	Cese	_
TYPE OF APPLICATION			
Annexation Cargo Container Permit Development Agreement Lot Spirts, Joins & Adjustments Preliminary/Final Plat Special Use Permit Administrative Use Permit	Abandonment (Plat/Easement/ROW)Certificate of Legal NonconformityDevelopment Plan ReviewOrdinance Text AmendmentPreliminary Development ReviewTemporary Use Permit OtherAppeal of Code Compliance	X Board of Adjustment Conditional Use Permit General Plan Amendment Planned Development Rezoning Sign Permit Zoning Map Amendment et Violation	
SITE INFORMATION			-
SITE ADDRESS/LOCATION 1306	E. 18th Avenue AS	SESSORS PARCEL NUMBER 102-07-19	940, 102-07-1950
GROSS AREA: .17 acres		EXISTING ZONING	
Appeal of Code Code Comp	liance violation regarding landscap	ing in the public right-of-way.	-
APPLICANT INFORMATION			
Property Owner(s) <u>CODCO, L</u> Address <u>PO Box 6163 Apacl</u> Phone Number <u>602 - 541 - 0</u>	LC. ne Junction, AZ 85178 /5501 750 Fax Number	E Salona Dr. P.V. A2 Email juliepace1313@gmail.com	95253 ·
Applicant Contact Person/Project Address 1744 Shouth Val Vi	Manager W. Ralph Pew, Pew & L sta Drive, Suite 217 Mesa, AZ 852	ake, PLC 204	-
Phone Number 480-461-4670	Fax Number 480-461-4676	Email ralph.pew@pewandlake.co	<u>m</u>
Ambibast/Engineer			
Address			-
Phone Number	Fax Number	Email	_
OWNERS SIGNATURE:	-flo	DATE: 3/16/2016	é
Updated 10/27/2014			

I/We certify that:

I/We are the owner(s) of the property described in this application have submitted copies of deeds or title reports as proof of ownership.

I/We have read the application instructions and have truthfully completed this application and that the City has the option of either approval or denial of this request following conduct of a Public Hearing.

I/We, being the owner(s) of the property in this application, have appointed W. Ralph Pew

authorized him/her to do whatever is necessary to have this request considered favorably

as my/our representative agent. I/We have

by the City of Apache Junction and agree that all correspondence relating to this matter should be delivered to him/her.

PLEASE PRINT

Longie Page Codo LLC

Property Owner Name

Signature

Signature

Signature

Signature

Codo LC

Property Owner Name

Signature

Signature

Codo LC

Street Address

City, State, Zip

City, State, Zip

Street Address

City, State, Zip

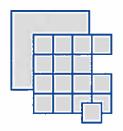
The foregoing instrument was acknowledged before me this 17 day of Marico 2016.

Notary Public

My Commission Expires: 2282017

GHERYL LONG Notary Public - Arizona

Maricopa County



Pew & Lake, P.L.C.

Real Estate and Land Use Attorneys

W. Raiph Pew
Certified Real Estate Specialist
Sean B. Lake
Reese L. Anderson

April 4, 2016

Mr. Rudy Esquivias Senior Planner City of Apache Junction 300 East Superstition Boulevard Apache, Junction, AZ 85219

RE: COD2015-02672

Parcel No. 102-07-194; Property Description: Palm Springs Unit 6 Lot 22

Owner of Record: CODCO, LLC

Dear Rudy:

Pew & Lake, PLC, on behalf of our client, CODCO, LLC ("Property Owner"), and pursuant to A.R.S. 9-462.06(C-E), hereby provides this Notice of Appeal of the code violations contained in the above-referenced case. The basis for appeal is to allow us to present to the Board of Adjustment ("Board") the attached site plan and site photographs which will demonstrate to the City that the property has been developed thus far in a safe, functional and aesthetically pleasing manner. Additionally, we are seeking approval from the Board for the site plan and proposed landscaping improvements to the property which will comply with the City's Landscape Regulations.

Site Photographs

The attached site photographs provide a clear understanding of the site development thus far. The site is enclosed on all four sides by a wall which is 8' tall, and is constructed of smooth and split-face CMU, with a 2' tall wrought-iron accent atop the CMU. The wall was designed to provide security for the site by creating an impenetrable and un-climbable wall, while being aesthetically pleasing. There are rolling gates on the north, west and south sides of the wall, each of which is approximately 30' wide. A semi-opaque mesh screening has been applied to the back side of the gates to provide additional screening into the site. Presently, the site is vacant.

Also included in this appeal request are photographs of other surrounding properties. These photographs are meant to provide the appropriate context in which to evaluate our proposed site plan. Numerous properties in the area show vehicle parking within the public right-of way, unscreened outdoor storage, inoperable vehicle storage, chain link fences which are in disrepair, razor wire atop chain link fences, and virtually no landscaping. The Property Owner believes that the current condition of its property is one of the more aesthetically appealing properties in the immediate area.

Mr. Rudy Esquivias March 4, 2016 Page 2 of 2

Site Plan

The attached site plan indicates the intention of the property owner to install 36" boxed-trees inside the existing CMU and wrought iron wall. The owner wishes to place the trees inside the wall for security reasons—there have been many thefts of landscape materials in the area when they have been placed in an unsecured area. The proposed size of the tree will ensure that the trees will have a canopy sufficient enough to reach over the wall at full maturity. This effect will soften the edges of the wall and provide visual enhancement to the site. The site plan also shows that the owner will provide a variety of smaller, 5-gallon shrubs on the outside of the wall. Due to their size, these shrubs will be less likely to be stolen from the property. At maturity, they will also provide contrast and soften the edges of the wall. The proposed species and sizes are provided with the site plan and include species which are droughttolerant and selected for their low water-use potential. It is our understanding that the Public Works/Civil Engineering Department has agreed that these shrubs can be planted in what is technically the right-ofway. Additionally, the owner will dustproof the landscape area with stabilized decomposed granite. This landscaping, in combination with the existing wall, will: be compliant with the landscape standards outlined in the Apache Junction Land Development Code; improve the aesthetics of this area; and will be a better overall design for this property than would have been achieved through approval of the wall itself.

The Property Owner is anxious to resolve this situation on its property. When the Owner originally built the wall, they did so with the mistaken belief that the location of the wall was permitted in Apache Junction. Since the City's code compliance representatives brought the non-compliance issue to their attention, the Owner has been eager to bring the property into compliance. It is our understanding that by filing this appeal, further code compliance efforts will be stayed pending the outcome of this appeal. The Property Owner hopes that this item can be placed on a May agenda of the Board so that this matter can be considered as quickly as possible. Please let me know if you have any questions regarding this notice and related exhibits or if you need further information.

\$incerely/

Pew & Lake, PLC

Attachments

CODCO, LLC. **Proposed Landscape Materials** April 4, 2016



Sweet Acacia





Leucophyllum frutescens "Green Cloud"

Plant Schedule					
Plant Type	Species	Quantity	Symbol	Size	
Tree	Vachellia Farnesiana "Sweet Acacia"	9	0	36" Box	
Shrub	Red Lantana*	23	\oplus	5 gallon	
Shrub	Leucophyllum frutescens "Green Cloud"*	23	*	5 gallon	

^{*-} May be substituted with Tecoma stans "sparklette" or Agave Angustifolia. (shown below)



Sparklette



Agave

CODCO, LLC

Site Photographs April 4, 2016 1306 East 18th Avenue, Apache Junction, AZ

