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RIO ARRIBA COUNTY
CANNABIS
ORDINANCE 2022-04



**BOARD OF COUNTY COMMISSIONERS
OF RIO ARRIBA COUNTY, NEW MEXICO**

ORDINANCE NO. 2022-04

**AN ORDINANCE REGULATING COMMERCIAL CANNABIS ACTIVITIES
IN RIO ARRIBA COUNTY**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF RIO
ARRIBA COUNTY, NEW MEXICO:**

WHEREAS, the Rio Arriba Board of County Commissioners is the duly authorized governing body of Rio Arriba County, a political subdivision of the State of New Mexico; and

WHEREAS, NMSA 1978, Section 4-37-1 through Section 4-37-9 granted statutory authority to counties to regulate as necessary and proper to provide for the safety, health, and welfare of their inhabitants; and

WHEREAS, the Rio Arriba County Board of County Commissioners recognizes the potential for the cannabis industry to increase revenue for the County; and

WHEREAS, increased revenue necessitates increased traffic in areas where cannabis businesses shall be established; and

WHEREAS, cannabis remains a controlled substance under federal law and an intoxicating drug with the potential for misuse, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which retail cannabis products may be sold and consumed; and

WHEREAS, the smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates; and

WHEREAS, cannabis cultivation, production, manufacturing and consumption create strong odors, can involve the use of significant amounts of energy and water, and requires security and other measures to reduce the risk of theft or other diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and

WHEREAS, the Rio Arriba County Board of County Commissioners recognizes that these factors enhance the risk of harm to their citizens; and

WHEREAS, the Rio Arriba County Board of County Commissioners finds it to be in the best interests of the residents of Rio Arriba County to enact this ordinance permitting commercial cannabis activity within the specific parameters set forth below and in conjunction with other County land use rules, regulations and ordinances.

**ARTICLE I.
GENERAL**

1.1 SHORT TITLE

This Ordinance shall be officially cited as the “Rio Arriba County Cannabis Ordinance.”

1.2 AUTHORITY, APPLICABILITY

This Ordinance is promulgated pursuant to the authority set forth in NMSA 1978, Section 4-37-1 (1975), Sections 3-21-1 et. seq., Sections 3-19-1 et. seq., Sections 3-18-1 et. seq., and Section 26-2C-12 of the Cannabis Regulation Act. This Ordinance applies to all areas within the exterior boundaries of the County that lie outside of (1) the incorporated boundaries of a municipality; (2) any tribal and tribal trust lands owned by Santa Clara Pueblo, Ohkay Owingeh Pueblo, or the Jicarilla Apache Nation; (3) lands owned by the State of New Mexico; and (4) lands owned by the United States, including, but not limited to lands that are managed by the United States Forest Service and the Bureau of Land Management.

1.3 LEGISLATIVE PURPOSE AND INTENT

- A. It is the purpose and intent of this ordinance to provide for the orderly regulation of the recreational commercial cannabis industry within the County of Rio Arriba with the intent of encouraging economic growth and job creation while protecting the public health, safety and welfare of the residents of the County.
- B. The New Mexico Legislature enacted the Cannabis Regulation Act (NMSA 1978 Section 26-2C-1 et. seq.), which legalized the recreational use of cannabis in all counties of New Mexico. Pursuant to NMSA 1978, Section 26-2C-12 of the Cannabis Regulation Act, the Rio Arriba Board of County Commissioners may adopt rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, and may regulate the time, place and manner of cannabis production, manufacture, retail sale and commercial on-site consumption. All definitions, authority, scope, responsibilities, requirements, standards, conditions, exemptions, procedures and penalties described within the above-mentioned legislative acts are hereby adopted and incorporated into this Ordinance.
- C. Rio Arriba County recognizes commercial cannabis offers the County the benefit of increased revenue through new businesses, heightened tourist activity, and the availability of recreational cannabis to its citizens. The County simulatenously has an obligation to protect its unique historic and multi-cultural environment. Furthermore, cannabis remains a Schedule I controlled substance under federal law. Cannabis also poses a risk to the health, welfare and safety of the citizens of Rio Arriba County when mishandled or misused. As such, the production, manufacture, retail sale and consumption of cannabis and cannabis products carries a potential for abuse and adverse effects which can be harmful. These regulations, accordingly enacted, were designed to balance the health, welfare and safety of the citizens of Rio Arriba County with the establishment of ample locations for commercial cannabis activities which adhere to the parameters set forth in these and other applicable land use regulations in Rio Arriba County.
- D. The County Manager or her/his designee shall administer and enforce the provisions of this Ordinance, applicable state law, and any other rules and regulations promulgated by

the Board of County Commission or any applicable state departments with jurisdiction over the subject matter of this Ordinance.

ARTICLE II. DEFINITIONS

2.1 RULES OF INTERPRETATION

- A. This Ordinance is intended to be construed, administered and enforced in conjunction with Ordinance No. 2012-001, the Rio Arriba County Design and Development Regulation System, otherwise known as the “Yellow Book”, and any other related land use regulations of Rio Arriba County. The provisions, policies, terms, applicability, standards, permits, procedures, processes, enforcement and miscellaneous provisions of the Yellow Book and any other related land use regulations of Rio Arriba County shall apply to this Ordinance, unless otherwise stated herein. Any and all of the land use regulations of Rio Arriba County, including this Ordinance, shall be read in such a way as to harmonize their provisions with each other in the event of ambiguity.
- B. Words, phrases, and terms defined in this Ordinance shall be given the meanings set forth below. Words, phrases, and terms not defined in this Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning.
- C. The text shall control captions, titles, and maps.
- D. The word “shall” is mandatory and not permissive; the word “may” is permissive and not mandatory.
- E. Words used in the singular include the plural; words used in the plural include the singular.
- F. Words used in the present tense include the future tense; words used in the future tense include the present tense.
- G. Within this Ordinance, sections prefaced “purpose” and “findings” may be included. Each purpose statement is intended as an official statement of legislative purpose or findings. The “purpose” and “findings” statements are legislatively adopted, together with the formal text of the Ordinance. They are intended as a legal guide to the administration and interpretation of the Ordinance and shall be treated in the same manner as other aspects of legislative history. Additionally, such purposes and findings shall be considered part of the County’s Comprehensive Plan.
- H. In their interpretation and application, the provisions of this Ordinance are considered minimal in nature.
- I. In computing any period of time prescribed or allowed by this Ordinance, the day of the notice or final application, after which the designated period of time begins to run, is not to be included. Further, the last day is to be included unless it is a Saturday, Sunday or holiday recognized by the State of New Mexico or the federal government, in which event the period runs until the next day that is not a Saturday, Sunday or such holiday.

2.2 DEFINITIONS

Words with specific defined meanings are as follows:

- A. “Applicant” means a person or entity that submits an application for issuance or renewal of a commercial cannabis conditional use permit and/or cannabis business license.
- B. “Cannabis” means all parts of the plant genus Cannabis combining a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product.
- C. “Cannabis Business License” means a license issued on an annual basis by Rio Arriba County for commercial cannabis activity.
- D. “Cannabis consumption area” means an area where a valid license exists authorizing cannabis and cannabis products to be served and consumed on-site.
- E. “Cannabis courier” means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- F. “Cannabis retailer” means a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- G. “Cannabis Regulation Act” means NMSA 1978, Section 26-2C-1 et. seq. and any amendments thereto, the statutory set of laws in the State of New Mexico regulating cannabis.
- H. “Commercial Cannabis Activity” means the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriership, purchase for resale, retail sale or consignment of cannabis products, and does not include activities related only to the medical cannabis program, to cannabis training and education programs or to the personal cultivation or use of cannabis.
- I. “Conditional Use Permit”, or “CUP”, means a permit for a land use generally of a Class II size, that because of its special requirements or characteristics, is not a use permitted by right in the County Rural Agricultural District, “CRAD”, and as further defined and set forth in Ordinance 2012-001.
- J. “Growing operations” means any activity involving indoor or outdoor commercial cannabis cultivation, including but not limited to, cultivation in greenhouses, hoop structures, and by mixed light (part daylight, part artificial light).

- K. "Integrated Cannabis Microbusiness" means a person that is authorized under the Cannabis Regulation Act to conduct one or more of the following:
- i. Production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
 - ii. Manufacture of cannabis products at a single licensed premises;
 - iii. Sales and transportation of only cannabis products produced or manufactured by that person;
 - iv. Operation of only one retail establishment; and
 - v. Courierring of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers
- L. "Manufacturer" means a licensee that conducts the production, processing, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly, or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location and that packages or repackages cannabis or cannabis products, or labels or relabels its container.
- M. "Operator" means any person or entity responsible for management of a cannabis operation, any person listed on a cannabis operation's articles of incorporation or articles of organization, any person or entity owning an interest in a cannabis operation, and any person that supervises another employee of a cannabis operation.
- N. "Owner" means a person or entity in whom is vested interest and title to a commercial cannabis activity.
- O. "Personal use of cannabis" means any and all cannabis related activities authorized pursuant to the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
- P. "Processing" means any method used to prepare cannabis or its byproducts for commercial sale, including, but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis related products and concentrates.
- Q. "Producer" means an individual or entity that possesses a state and county license to grow, harvest, dry, trim, cure, and package cannabis.
- R. "Public Place" means a place to which the general public has access and includes hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; county roads; streets, schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation.
- S. "Retail sale" means any exchange of cannabis or cannabis products for compensation of any kind between a retailer and a customer.
- T. "Retail Establishment" means any licensed premises where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually

or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale, whether open to the general public or not.

- U. "Retail Cannabis Storefront" means any commercial building or other commercial retail space in a traditional "brick and mortar" or "street-side" business that offers cannabis, cannabis products, or devices for the use of cannabis or devices for the use of cannabis, either in individually or in any combination, for retail sale on its premises and is open to the general public.
- V. "State license" means a valid license from the New Mexico Regulation and Licensing Department issued pursuant to the Cannabis Regulation Act.
- W. "Vertically integrated cannabis establishment" means a licensee that is authorized to act as any of the following:
 - i. A cannabis courier;
 - ii. A cannabis manufacturer;
 - iii. A cannabis producer; and
 - iv. A cannabis retailer
- X. "Yellow Book" means Ordinance No. 2012-001, the Rio Arriba County Design and Development Regulation System.

ARTICLE III. GENERAL REQUIREMENTS

3.1 CONDITIONAL USE PERMITS FOR COMMERCIAL CANNABIS ACTIVITY

- A. Any and all commercial cannabis activity shall require a valid Conditional Use Permit (CUP) and a Development Permit issued pursuant to and subject to all requirements set forth in the Yellow Book and below.
 - i. Commercial cannabis activity shall be considered a Class II land use pursuant to the provisions of the Yellow Book.
- B. Applicants shall strictly adhere to all submittal and procedural requirements in the Yellow Book.
- C. Additional Submittal Requirements, Conditions of Approval and Restrictions.

In addition to the submittal and procedural requirements in the Yellow Book, the following submittal requirements and conditions of approval shall be required for all commercial cannabis activity applications:

- i. Growing Operations. Applicants for growing operations shall additionally provide:

- a. A survey plat and/or vicinity map drawn to scale depicting the proposed location for the growth of cannabis, including outdoor and indoor growing, that identifies the total area to be covered and establishing that any and all required setbacks are met.
 - 1. Outdoor growing operations must ensure that all cannabis plants are located no less than fifty (50) feet from property boundaries on all sides.
 - 2. Indoor growing operations must ensure that all cannabis plants are located no less than twenty (20) feet from property boundaries on all sides.
 - b. Applicants for outdoor growing operations shall be required to submit proof that the proposed growing location is behind a solid wall or fence no less than six (6) feet in height sufficient to obscure the view of the site.
 - c. Applicants for indoor growing operations, producers and manufacturers shall be required to submit documentation that the structure in which commercial cannabis activities are taking place is permitted and approved by the Construction Industries Division of the State of New Mexico.
 - 1. Cannabis producers, manufacturers and indoor growing operations must use industry standard techniques to minimize odorous, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.
 - 2. Activated carbon filters shall be changed regularly such that odor abatement remains effective.
 - 3. Cannabis producers, manufacturers and indoor growing operations shall keep written maintenance records for their filtration system(s) which shall include at a minimum; the specific filter(s) changed, the date the new filter(s) was installed, location of the filter(s) changed, and the estimated date of next service to the filtration system.
 - d. Proof of water availability and/or sufficiency from the New Mexico Office of State Engineer, to include all sources of water for the proposed growing operations, including wells, mutual domestic water consumers association, acequias or community ditches, water-catchment systems or any alternative methods used for irrigating plants.
- ii. Location Restrictions.
- a. Retail Cannabis Storefront Overlay District. The Rio Arriba County Board of County Commissioners finds that retail cannabis storefronts are incompatible with all but the most high-traffic corridors in Rio Arriba County, and hereby creates the Retail Cannabis Storefront Overlay District to provide for the safety, preserve the health, promote the prosperity and improve the morals,

order, comfort and convenience of the County's inhabitants.

1. Retail Cannabis Storefronts as defined by this Ordinance shall only be located along the designated U.S. and N.M. highways depicted in Appendix A to this Ordinance.
 2. Nothing in this section shall be construed to completely prohibit non-storefront cannabis retailers, retail establishments, integrated cannabis microbusinesses or vertically integrated cannabis establishments from retail sales or cannabis consumption areas in duly-licensed locations upon the issuance of a CUP permit.
- b. No commercial cannabis activity may be located within 300 feet of a school or daycare center in existence at the time an application is filed for the CUP. For the purposes of this section, all measurements for the purpose of determining the location of a cannabis retailer, manufacturer or other entity shall be the shortest direct line measurement between the actual boundaries of the real property of the proposed location.
 - c. Cannabis consumption areas shall occupy standalone buildings from which smoke does not infiltrate other indoor workplaces or other indoor public spaces where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.
- iii. Hours of Operation. No cannabis retailers, retail establishments, retail cannabis storefronts, cannabis consumption areas or any other entity engaging in the retail sale of cannabis products for off-site consumption or serving cannabis or cannabis products for on-site consumption shall be allowed to operate between the hours of 12:00a.m. and 6:00a.m.
 - iv. Valid, actual or provisional State license required. Applicants for all commercial cannabis activity shall be required to submit a copy of a valid, actual or provisional State license authorizing them to engage in the commercial cannabis activity that they are applying for.
 1. Operators shall maintain a valid State license at all times and shall comply with all State of New Mexico licensing requirements. Failure to do so shall be considered a violation of the CUP conditions of approval.
 - v. Revocation of a CUP for commercial cannabis activity. In addition to any of the provisions for revocation of a CUP in the Yellow Book, a CUP for commercial cannabis activity may be revoked if:
 1. The commercial cannabis activity has violated any of the requirements of this Ordinance or any condition of approval.
 2. The commercial cannabis activity is being operated in a manner which is determined by the Planning and Zoning Department to constitute a nuisance.

3. The commercial cannabis activity is being operated in a manner which conflicts with or violates the Cannabis Regulation Act or any other state law.
4. A code violation is present on the premises.

3.2 CANNABIS BUSINESS LICENSES FOR COMMERCIAL CANNABIS ACTIVITY

- A. It shall be unlawful for any commercial cannabis activity to take place within the County of Rio Arriba until a cannabis business license has been issued by the Rio Arriba County Planning and Zoning Department, hereinafter the “Planning and Zoning Department”, to the specific person or persons listed on a valid State license.
- B. Any and all applicable provisions of Section 9.05 of the Yellow Book are hereby incorporated into this section.
- C. Upon approval of a CUP to operate a commercial cannabis activity, the specific person or persons listed on a valid State license shall apply for a cannabis business license from the Planning and Zoning Department.
- D. A cannabis business license issued by the Planning and Zoning Department shall be valid for the calendar year in which it is issued and for each year thereafter that the commercial cannabis activity is operational. Applications received after January 1 shall not be prorated. A cannabis business license shall be renewed annually by filing a cannabis business license renewal form along with payment of the annual business license fee. Failure to renew the cannabis business license shall result in the cancellation of the approved CUP permit.
- E. A copy of the cannabis business license shall be prominently displayed at all times on the premises and in a place and manner that is visible to guests; in regards to retailers, the cannabis business license shall be visible to patrons and members of the general public.
- F. Cannabis business licenses are non-transferable and do not run with the land. Any change to the commercial cannabis activity, including but not limited to location, organizational structure or ownership of the commercial cannabis activity shall require a new application and fees.

3.3 PERSONAL USE OF CANNABIS AND CANNABIS CONSUMPTION AREAS.

- A. Personal Use of Cannabis. The personal use of cannabis, including consumption, cultivation and production and any other authorized activities in quantities permitted by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act is a permitted use in the County subject to the following conditions and any and all other legal requirements.
- B. Cannabis Consumption Areas. The smoking of cannabis or cannabis products in public outdoor spaces or in public places is prohibited, and shall only be allowed within a licensed cannabis consumption area that occupies a standalone building from which smoke does not

infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.

- i. Age Restrictions. Unless licensed pursuant to the Lynn and Erin Compassionate Use Act, access to any cannabis consumption area shall be restricted to anyone under the age of twenty-one (21) years old.
- C. Nothing in this Section shall be interpreted to restrict the rights of an individual to smoke or otherwise consume cannabis or cannabis products on their own private property or within their own home or residence.

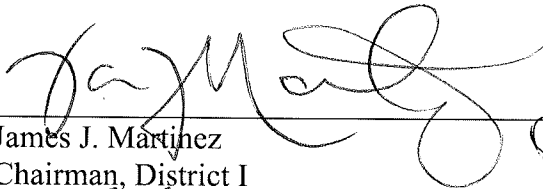
3.4 SEVERABILITY.


Should any provision of this Ordinance be found to be invalid or unenforceable by any court, such determination shall have no effect upon the validity or enforceability of any other portion of this Ordinance, and all such other portions shall continue in full force and effect.

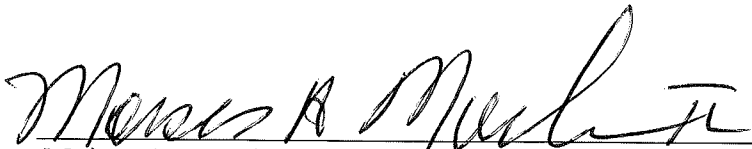
SIGNED, ADOPTED AND APPROVED THIS 29th DAY OF MARCH, 2022.


**BOARD OF COUNTY COMMISSIONERS
FOR RIO ARRIBA COUNTY, NEW MEXICO**



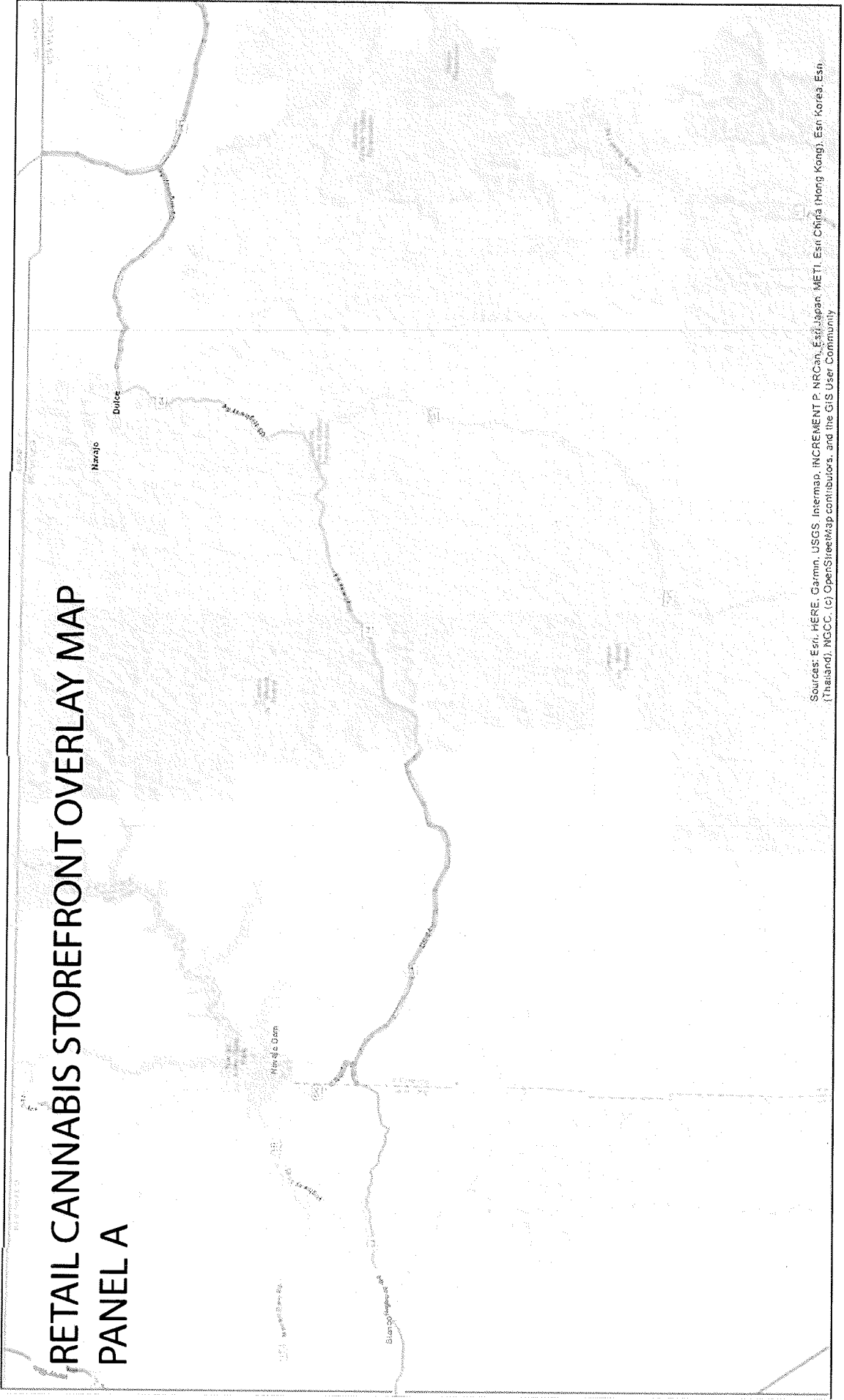

James J. Martinez
Chairman, District I For Against


Christine A. Bustos
Commissioner, District II For Against


Moises A. Morales, Jr.
Commissioner, District III For Against

ATTEST: 
Linda J. Padilla, Rio Arriba County Clerk

RETAIL CANNABIS STOREFRONT OVERLAY MAP PANEL A

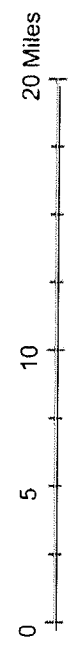


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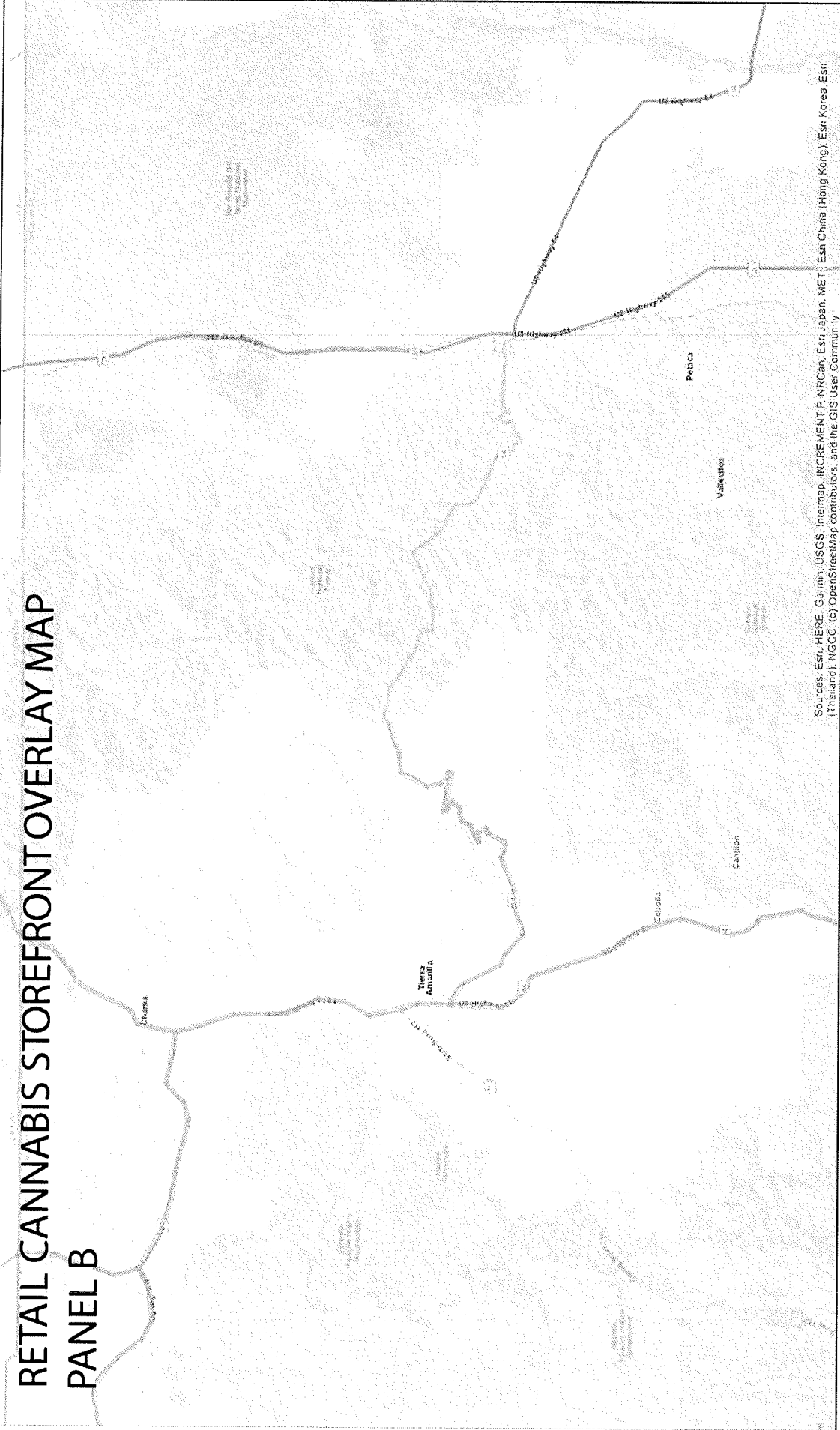


**RETAIL CANNABIS STOREFRONT
OVERLAY**

300 FT FROM END OF ROADWAY RIGHT OF WAY



RETAIL CANNABIS STOREFRONT OVERLAY MAP PANEL B

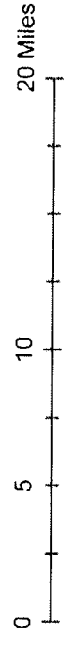


Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Ireland), Esri (The Netherlands), Esri (UK), Swisstopo, Mapbox, OpenStreetMap contributors, and the GIS User Community

**RETAIL CANNABIS STOREFRONT
OVERLAY**

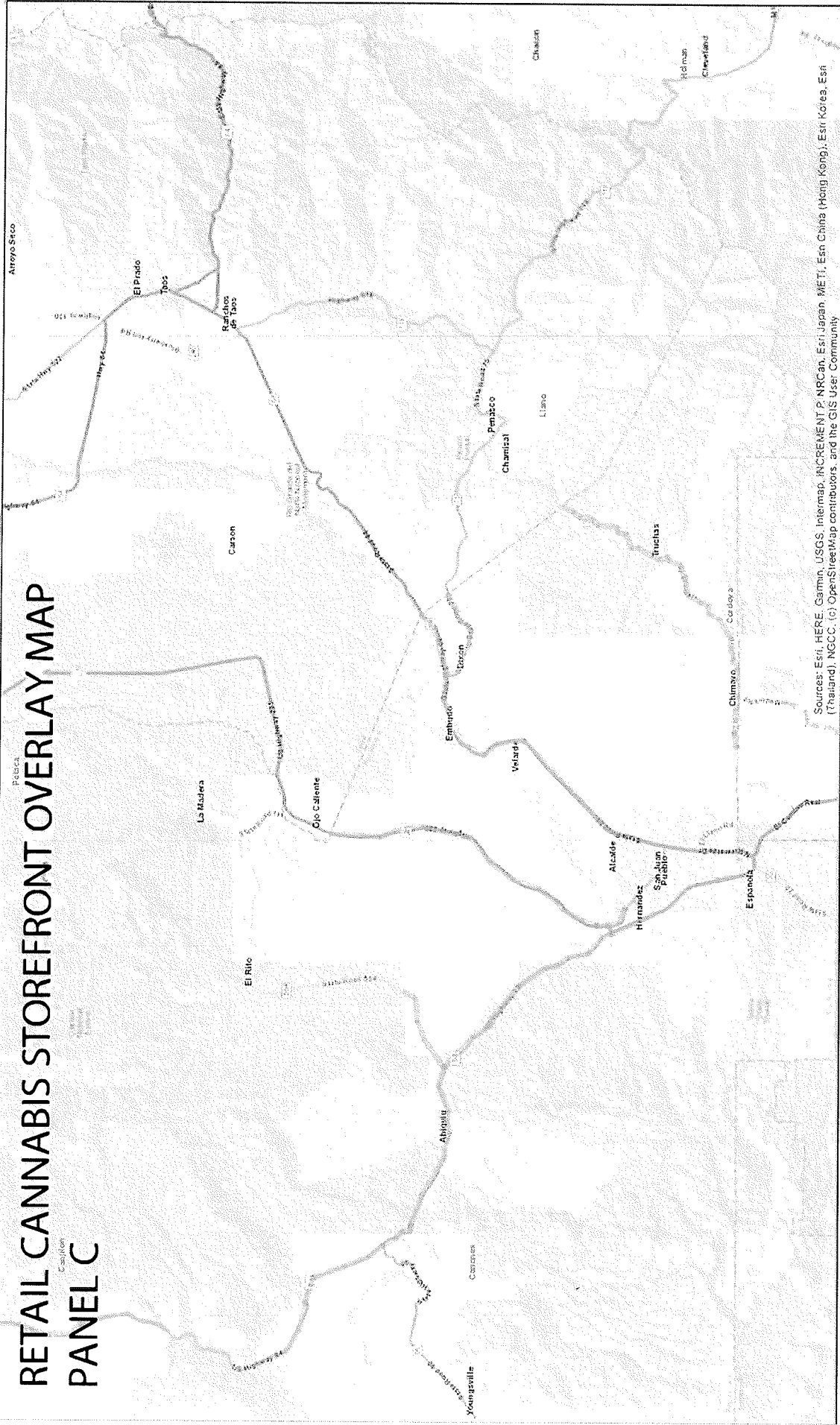


300 FT FROM END OF ROADWAY RIGHT OF WAY



RETAIL CANNABIS STOREFRONT OVERLAY MAP

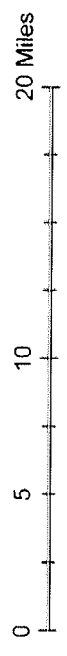
PANEL C



RETAIL CANNABIS STOREFRONT OVERLAY

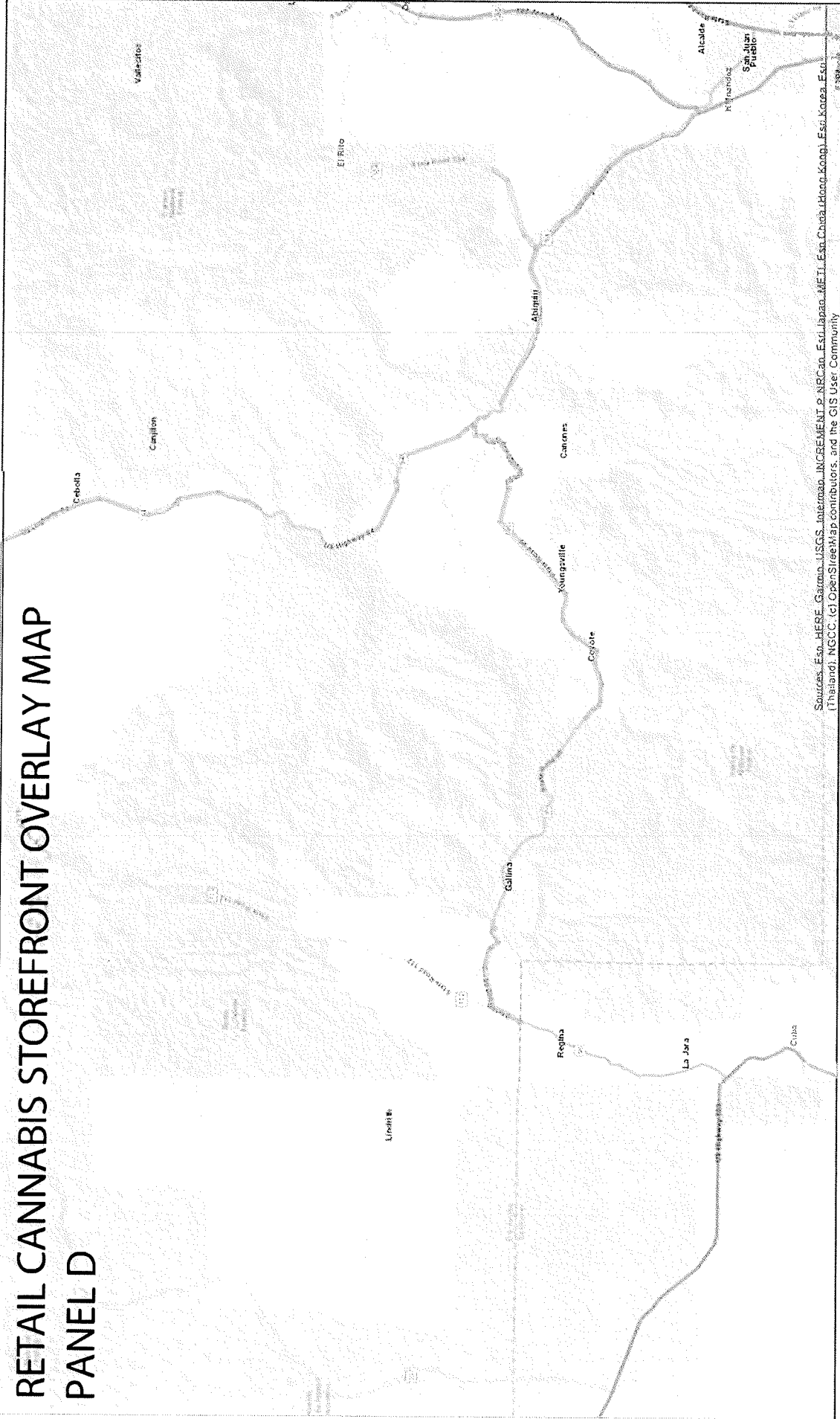


300 FT FROM END OF ROADWAY RIGHT OF WAY



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

RETAIL CANNABIS STOREFRONT OVERLAY MAP PANEL D



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RETAIL CANNABIS STOREFRONT OVERLAY



300 FT FROM END OF ROADWAY RIGHT OF WAY