

**REGULAR MEETING AGENDA
CITY OF MADERA
PLANNING COMMISSION**

**COUNCIL CHAMBERS - CITY HALL
TUESDAY
SEPTEMBER 11, 2018
6:00 pm**

CALL TO ORDER

ROLL CALL

Commissioner Robert Gran, Jr. (Chairperson)
Commissioner Israel Cortes (Vice Chairperson)
Commissioner Bruce Norton
Commissioner Kenneth Hutchings
Commissioner Pamela Tyler
Commissioner Jim DaSilva
Commissioner Richard Broadhead

INTRODUCTION OF STAFF

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

The first fifteen minutes of the meeting are reserved for members of the public to address the Commission on items which are within the subject matter jurisdiction of the Commission. Speakers shall be limited to three minutes. Speakers will be asked to identify themselves and state the subject of their comment. If the subject is an item on the Agenda, the Chairperson has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Commission is prohibited by law from taking any action on matters discussed that are not on the Agenda and no adverse conclusions should be drawn if the Commission does not respond to public comment at this time.

MINUTES: August 14, 2018

CONSENT ITEMS: None

PUBLIC HEARING ITEMS:

1. CUP 2013-14 MOD – Brar Interim Agriculture

A continued public hearing to consider an amendment to Conditional Use Permit 2013-14, which allows for interim agricultural activities on approximately 137 acres located at the southwest corner of East Pecan Avenue and Golden State Drive within the Ventana Specific Plan area. The amendment request would allow for the continued farming of an almond orchard for a period not to exceed five years (APN: 012-490-002). An initial study and Negative Declaration were adopted by the Planning Commission in May of 2014.

2. VAR 2018-04 and SPR 2018-23 – United Rentals Electric Fence

A continued public hearing to consider a variance from Section 10-3.412 (fences, walls, and hedges of the Madera Municipal Code that would allow for an electric security fence ten (10') feet in height where a maximum of six (6') feet in height is allowed. The project site is located at the northwest corner of the intersection of West Almond Avenue and Madera Avenue (750 Madera Avenue) in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation. The project has been determined to be categorically exempt under California Environmental Quality Act (CEQA) guidelines, Section 15311 (Accessory Structures) (APN: 012-133-015).

3. REZ 2018-04 – Groves Neighborhood Rezone

A noticed public hearing to consider a rezone of approximately 0.69 acres of land from the R1 (Low Density Residential) Zone District to the PD 4500 (Planned Development) Zone District located at the southeast corner of the intersection of Linden Street and West Park Drive (APN: 006-360-016). An initial study and a negative declaration were adopted by the Planning Commission on October 19, 1997 in support of the Groves Neighborhood Plan. The proposed rezone was anticipated within the Neighborhood Plan and analyzed as part of the 1997 environmental document. No additional environmental review is required.

4. CUP 2018-15 and SPR 2018-25 – Walmart Storage Trailers

A noticed public hearing to consider a conditional use permit and site plan review to allow for the temporary placement of outdoor storage trailers for the 2018 holiday season on property located approximately 900 feet east of the intersection of West Cleveland Avenue and North Schnoor Avenue (1977 West Cleveland Avenue) in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation. The project has been determined to be categorically exempt under California Environmental Quality Act (CEQA) guidelines, Section 15304(e) (Minor Alterations to Land) (APN: 013-160-014).

5. CUP 2018-16 and SPR 2018-28 – El Toro Outdoor Barbeque

A noticed public hearing to consider a conditional use permit and site plan review to allow for the outdoor preparation of food at El Toro Market located at the southwest corner of the intersection of East South Street and North D Street (748 North D Street) in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation. The project has been determined to be categorically exempt under California Environmental Quality Act (CEQA) guidelines, Section 15304 (Minor Alterations to Land) (APN: 003-023-007).

6. CUP 2018-17 and SPR 2018-27 – Liu's Kitchen Alcohol Sales

A noticed public hearing to consider a conditional use permit and site plan review to allow for the sale of beer and wine for on-site consumption in conjunction with a restaurant located approximately 50 feet south of the intersection of Roberts Avenue and North Gateway Drive (620 North Gateway Drive) in the C2 (Heavy Commercial) Zone District with a C (Commercial) General Plan land use designation. The project has been determined to be categorically exempt under California Environmental Quality Act (CEQA) guidelines, Section 15301, (Existing Facilities) (APN: 006-053-002).

7. CUP 2018-19 and SPR 2018-32 – Diva Fitness (Casa De La Raza)

A noticed public hearing to consider a conditional use permit and site plan review to allow for the establishment of a group exercise studio within an existing tenant suite located north of Riverside Drive on the east side of North D Street (711 N. D Street) in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation. The project has been determined to be categorically exempt under

California Environmental Quality Act (CEQA) guidelines, Section 15301 (Existing Facilities) (APN: 004-011-007).

NON-PUBLIC HEARING ITEMS:

NP 1. Review of CUP 2008-07 – Singh / 7-11 Use Permit

A performance review of Conditional Use Permit (CUP) 2008-07 allowing for the sale of alcoholic beverages for off-site consumption as a component of the operation of a convenience store located in the C-2 (Heavy Commercial) Zone District. The project has been determined to be categorically exempt under California Environmental Quality Act (CEQA) guidelines, Section 15321 (Enforcement Actions by Regulatory Agencies) (APN: 012-053-024).

ADMINISTRATIVE REPORTS:

COMMISSIONER REPORTS:

ADJOURNMENT:

The next regular meeting will be held on October 9, 2018.

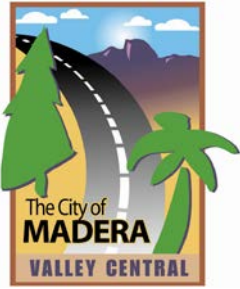
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation in the public meeting should be made at least seventy-two (72) hours before the meeting. If you need special assistance to participate in a City meeting or other services offered by this City, please contact the Planning Department office at (559) 661-5430. Those who are hearing impaired, may call 711 or 1-800-735-2929 for TTY Relay Services. Any and all persons interested in this matter may provide comments.

Any writing related to an agenda item for the open session of this meeting distributed to the Planning Commission less than 72 hours before this meeting is available for inspection at the City of Madera – Planning Department, 205 W. 4th Street, Madera, CA 93637 during normal business hours.

Pursuant to Section 65009 of the Government Code of the State of California, notice is hereby given that if any of the foregoing projects or matters is challenged in Court, such challenge may be limited to only those issues raised at the public hearing, or in written correspondence delivered to the Planning Commission at or prior to the public hearing.

All Planning Commission actions may be appealed to the City Council. The time in which an applicant may appeal a Planning Commission action varies from 10 to 30 days depending on the type of project. The appeal period begins the day after the Planning Commission public hearing. There is NO EXTENSION for an appeal period.

If you have any questions or comments regarding this hearing notice, you may call the Planning Department at (559) 661-5430. Si usted tiene preguntas, comentarios o necesita ayuda con interpretación, favor de llamar el Departamento de Planeamiento por lo menos 72 horas antes de esta junta (559) 661-5430.



CITY OF MADERA
PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

**Staff Report: Brar Interim Agriculture
CUP 2013-14 MOD and Environmental Determination
Item #1 – September 11, 2018**

PROPOSAL: An application for a conditional use permit to allow for an extension of agricultural activities on an interim basis.

APPLICANT:	Lakhwinder Brar	OWNER:	Lakhwinder Brar
ADDRESS:	SWC of Pecan Avenue and Road 28¼	APN:	012-490-002
APPLICATION:	CUP 2013-14	CEQA:	Negative Declaration

LOCATION: The property is located at the southwest corner of Pecan Avenue and Road 28¼.

STREET ACCESS: The site has access to Pecan Avenue and Road 28¼.

PARCEL SIZE: Approximately 136.92 acres

GENERAL PLAN DESIGNATION: LD (Low Density), MD (Medium Density), and P&SP (Public and Semi Public)

ZONING DISTRICT: PD (Planned Development) and PF (Public Facilities)

SITE CHARACTERISTICS: The project site is currently planted with almond trees. The State Route 99 freeway corridor is immediately east. Single family residential and an elementary school are to the west. Rural residential properties are to the north. Agricultural activity is located to the south beyond the City limits.

ENVIRONMENTAL REVIEW: An initial study and a negative declaration were adopted by the Planning Commission in May of 2014. The activities considered within this request for extension were contemplated within the approved negative declaration.

SUMMARY: The allowance for agricultural activities on an interim basis was approved for a period not to exceed five years with additional extensions of time requiring amendment of the use permit. The applicant has made application for amendment, requesting a five-year extension to the existing allowance for interim agricultural activities.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.421 Interim Agriculture
MMC § 10-3.1301 Use Permits
MMC § 10-3.406 Nonconforming Building and Uses

The General Plan designates the project site as LD (Low Density), MD (Medium Density), and P&SP (Public and Semi Public) property. The project site is located in the PD-3000 (Planned Development), PD-4500 (Planned Development), PD-6000 (Planned Development) and PF (Public Facilities) Zone Districts. All General Plan land use designations and zoning districts are consistent with the Ventana Specific Plan.

MMC § 10-3.421 allows for the establishment of “Interim Agriculture” in all residential, commercial, and industrial zone districts subject to the approval of a use permit by the Planning Commission. Interim agriculture is allowed in the PF (Public Facilities) Zone District subject to the issuance of a conditional use permit. In all cases, interim agriculture may be granted for a period not to exceed five years, with subsequent extensions allowed only by Planning Commission approval of an amendment to the original use permit.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

In anticipation of annexation into the City, the Planning Commission approved the Ventana development project on February 13, 2007. The project included a General Plan amendment, adoption of a specific plan, pre-zoning in support of the proposed annexation, approval of two tentative subdivision maps and certification of an Environmental Impact Report. On April 10, 2007, the Planning Commission approved a precise plan and a vesting tentative subdivision map. Annexation of the project area was approved by the Local Agency Formation Commission (LAFCO) on June 12, 2007.

An application to allow for interim agriculture was submitted on June 3, 2013. The Planning Commission approved the request for interim agriculture on May 13, 2014, allowing for the continued farming of an existing non-permitted almond orchard currently planted on the property until April 8, 2019.

Recently, the Planning Commission approved Tentative Subdivision Maps 2018-01 and 02, which reestablished the subdivision of the property consistent with the Ventana Specific Plan, zoning, and the General Plan.

The Planning Commission continued this item to the September 11th meeting at their August 14th meeting.

ANALYSIS

Background

In October of 2013, in response to a languishing economy, the City adopted ordinance which allows for agricultural activities on an interim basis. The ordinance states that; “In all residential, commercial, and industrial zone districts in the City, when various factors combine to make the

development of a property infeasible for a period of time anticipated to be in excess of five years, a use permit may be granted by the Planning Commission to allow for agricultural activities on an interim basis, until such time as development consistent with the underlying zone district becomes viable.”

At that time, the development of the Ventana Specific Plan area had proven difficult with the stagnant development conditions prevalent during the Great Recession. With the development of the Ventana residential project considered infeasible, and the adoption of the interim agriculture ordinance having been adopted, the Planning Commission approved CUP 2013-14, which allowed for interim agriculture on approximately 140 acres of land within the Ventana Specific Plan area for a period not to exceed five years. That use permit will expire on April 8, 2019.

In 2013, the applicant expressed that it was his intent to eventually begin construction of the Ventana project, at such time as market conditions improved. Thus, at such time that market conditions warranted, the applicant would remove the almond orchard and develop the property consistent with the Ventana Specific Plan.

Interim Agriculture Extension Request

The City’s Zoning Ordinance allows for the granting of a use permit for Interim Agriculture by the Planning Commission subject to the Planning Commission being able to make the following findings:

- (1) The establishment, maintenance or operation of the interim agricultural use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.
- (2) The interim agricultural use will not be detrimental or injurious to the infrastructure of the City. Interim agriculture shall use techniques to maximize water efficiency and minimize erosion. All grading and/or excavation shall be compatible with the City’s Storm Drain Master Plan.

Additionally, the interim agriculture ordinance requires provision of the following information:

- (1) a justification of necessity for interim agricultural use;
- (2) a total acreage calculation;
- (3) a description of what crops will be grown and what their water usage will be;
- (4) a description of irrigation technique(s) to be implemented on the subject property;
- and
- (5) a plan for eventual conversion of the property to its planned use.

Whereas the information associated with the project parcel related to acreage, crop and irrigation methodologies has not changed, the applicant has provided a new justification statement which includes a general timeline for conversion of the property to its planned use. The applicant requests an additional five years so as to either sell the project in whole or in part, or begin the development of the property privately.

Current Factors

In 2013, in the depths of the Great Recession, the viability of the Ventana project was significantly limited. The City had over one thousand fully improved residential lots that were not under construction. In most cases, those lots were not even held by a developer, instead having been purchased out of bankruptcies by investment groups. Only 58 homes had been built in the City in 2012 and residential construction would see only a slight improvement in

2013, with 72 homes constructed. Homes that were constructed were being sold at reduced prices. It was in those economic conditions that Conditional Use Permit 2013-14 was approved by the Planning Commission. The CUP provided relief during a period where a 954 home residential development was not financially feasible in a depressed housing market.

Such is not the case today. The inventory of buildable lots in the City, including the 120 lots recently recorded as part of the Varbella subdivision map, is approximately 300 lots in total. Demand for residential development is strong. Inventory is low.

The viability of residential development within the interim agriculture project area was recently further enhanced when Tentative Subdivision Maps 2018-01 and 02 were approved by the Planning Commission on June 12, 2018, reestablishing the tentative maps for the Ventana project and refreshing conditions of approval such that the ability to develop was ever more viable, especially for the northern one-third of the project and its 329 residential lots. Conditions provided greater specificity to the requirements for construction and essentially promoted development of the northern area in expectation that agricultural activities would begin to be phased out within the Ventana Specific Plan area. The Subdivision Map Act provides the applicant two years to record the tentative maps. Staff anticipated that, with the new maps in place, development consistent with the Ventana Specific Plan was in the not too distant future.

There are other potential consequences of not moving forward with conversion of the interim agricultural use to residential development and implementation of the Ventana Specific Plan. The agricultural use acts as an impediment to continued growth of the City toward and including the Avenue 12/Highway 99 interchange and beyond. The failure of the subdivision to develop results in master planned utility not being installed across the project site, further impeding the development of points beyond because of the need to extend those utilities across the interim agricultural lands.

Conclusions

The inventory of available lots in the City is limited and demand for residential lots is strong. To allow for an additional five years of agricultural activity without any initiation of development is detrimental to the logical development of the city and findings in support of a five year extension cannot be made. Because the Subdivision Map Act provides two years to record final maps for the project area, development should be able to commence in no less than two years. A precise plan is required in order to confirm that development is consistent with the zoning applicable to the property, the Ventana Specific Plan, and the goals and policies of the General Plan. The precise plan should be completed in advance of development on the site. At a minimum, mapping of the northern one-third of the Ventana subdivision maps should be recorded as a first phase of development within two years.

Staff recommends that a two year extension be provided from the current expiration date of April 8, 2019. Conditions of approval require the following performance standards:

- 1.) Recordation of a first phase of Tentative Subdivision Map 2018-02, to be Lots 1 thru 7 of Tentative Subdivision Map 2018-02. Recordation should occur before June 12, 2020.
- 2.) Recordation of a first phase of Tentative Subdivision Map 2018-01, to be the 329 lots in TSM 2018-01 located within Lots 1 thru 6 of Tentative Subdivision Map 2018-02. Recordation should occur before June 12, 2020.
- 3.) One or more precise plan(s) for development on recorded lots shall be approved by the Planning Commission prior to expiration of Conditional Use Permit 2013-14 MOD, before April 8, 2021.

It is imperative that development consistent with the Ventana Specific Plan and the prior mentioned precise plan(s) be actively occurring on the subject property within the next two years. An additional extension of interim agricultural activity for undeveloped components of the subject property will require approval of a new extension request prior to the proposed April 8, 2021 expiration.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of an allowance for an extension of interim agriculture is not specifically addressed in the vision or action plans, the overall project will further the core vision statements in the Vision Plan of “a well-planned city” by incorporating “best zoning practices.”

RECOMMENDATION

The information presented in this report supports conditional approval of an extension of the use permit.

PLANNING COMMISSION ACTION

The Planning Commission will be acting on Conditional Use Permit 2013-14 MOD.

Motion 1: Move to approve Conditional Use Permit 2013-14 MOD, based on and subject to the following findings and conditions of approval:

Findings

- The Planning Commission adopted a negative declaration, consistent with Section 15070(a) of the California Environmental Quality Act on May 13, 2014. The activities under review as part of the request for extension of Conditional Use Permit 2013-14 were anticipated and addressed within the previously approved negative declaration.
- The establishment, maintenance or operation of the interim agricultural use will not, under the circumstances of the particular case and as conditioned herein, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the city.
- The interim agricultural use will not, under the circumstances of the particular case and as conditioned herein, be detrimental or injurious to the infrastructure of the City.
- As conditioned, interim agriculture will be compatible with surrounding properties.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for this use permit.
2. The use permit may be made null and void without any additional public notice or hearing at any time upon both the possessor of the use permit and owners of the

property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.

3. The applicant's failure to utilize this use permit within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
4. Conditional Use Permit 2013-14 MOD will expire and be rendered null and void if the use is discontinued for a twelve month period unless a written request for extension has been submitted to and approved by the Planning Commission.
5. This use permit shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions of approval, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to consider revocation of the permit.
6. It shall be the responsibility of the property owner to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to establishment of the use.
7. The conditions of approval for Conditional Use Permit 2013-14 MOD replace, in their entirety, the previous approval of interim agriculture approved within Conditional Use Permit 2013-14, which will expire and be rendered null and void on April 8, 2019.

Engineering Department

General

8. Nuisance on-site lighting shall be redirected as requested by the City Engineer within 48 hours of notification.

Fire Department

9. Open agricultural burning must be done in compliance with the California Fire Code and the SJVAPCD requirements.
10. Storage of chemicals, pesticides and farm equipment fuel must be in accordance with the California Fire Code.

Planning Department

11. The allowance for interim agriculture on the 136.92 acre project site was allowed for an initial period of five years, which expires on April 8, 2019. Conditional Use Permit 2013-14 MOD provides a two-year extension, expiring on April 8, 2021, subject to the following performance standards:
 - The applicant shall record at least a first phase of Tentative Subdivision Map 2018-02. The Phase 1 shall include Lots 1 thru 7 of Tentative Subdivision Map 2018-02. Recordation shall occur before June 12, 2020.
 - The applicant shall record at least a first phase of Tentative Subdivision Map 2018-01. The Phase 1 shall include no less than the 329 lots corresponding to Lots 1 thru 6 of Tentative Subdivision Map 2018-02. Recordation shall occur before June 12, 2020.

- One or more precise plan(s) for development on recorded lots shall be approved by the Planning Commission prior to expiration of Conditional Use Permit 2013-14 MOD, before April 8, 2021.
12. Development consistent with the Ventana Specific Plan and the aforementioned precise plan(s) must be actively occurring on the subject property prior to April 8, 2021. An additional extension of interim agricultural activity for undeveloped components of the subject property will require approval of a new extension request by the Planning Commission prior to the proposed April 8, 2021 expiration.
 13. The existing agricultural well shall be abandoned as a component of recordation of the required final maps. An alternative water source, such as water deliveries from the Madera Irrigation District or from existing agricultural wells on adjoining agricultural property, may be utilized in support of interim agricultural activities on the project property.
 14. All water delivery drip systems to be utilized for orchard water delivery shall be maintained at all times in order to ensure water conservation.
 15. The applicant shall operate in a manner that does not generate significant noise, odor or vibration that adversely affects any adjacent properties.
 16. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
 17. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be promptly removed by the property owner.
 18. Construction of any structure(s) shall require the approval of an application for Site Plan Review by the Planning Department.
 19. The applicant shall comply with all federal, state and local laws. Material violation of any applicable laws concerning the use will be cause for revocation of this permit.
 20. Any signage shall be in compliance with the Madera Municipal Code at all times. No signage is approved as a part of this permit.

(OR)

Motion 2: Move to continue the application for Conditional Use Permit 2013-14 MOD to the October 9, 2018 Planning Commission hearing for the following reasons or in order for the following information to be provided: (specify)

(OR)

Motion 3: Move to deny the application for Conditional Use Permit 2013-14 MOD, based on and subject to the following findings: (specify)

ATTACHMENTS

Aerial Photo
Justification Letter (received via email – 4/23/18)

Aerial Photo

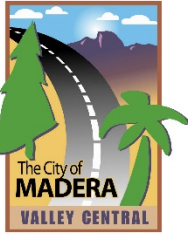


Letter of Justification – Email of 4/23/18

Chris,

As we both know the CUP for my Bratton Ranch (Ventana Development) is coming due. We have been working on plans with you and your people to get the plans to meet the density standard that Madera City has for that area of town in its master plan. We have also invested a lot of money to put in the water service to the neighboring properties for the last CUP. I feel I have went above and beyond on being a good farming neighbor as well a good steward of the land while we've been working all this out. As I mentioned to you when I came into the city last week, I have turned this ranch and the Meissner ranch which is 40% of the Ventana Development into an Organic Almond ranch. Once we get all the plans approved we will be making a decision to break ground ourselves or market the property for sell to a developer that can take on the project. But as you know this all takes time. I am requesting the city to grant me a 5 year CUP. By then we will either start a part of the development or sell off a part or whole development. Please let me know what else I can get you or any question or concerns you may have. Thank you

Lak S. Brar
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CITY OF MADERA
PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

**Staff Report: United Rentals Fence Variance
VAR 2018-04, SPR 2018-23 and Environmental Determination
Item #2 – September 11, 2018**

PROPOSAL: An application for a variance from the Section 10-3.412 (Fences, Walls, and Hedges) of the Madera Municipal Code to allow for a ten (10') foot tall electrical security fence where only a maximum of six (6') feet in height is allowed. A site plan review is required to accompany the variance to bring the site up to a current City standard.

APPLICANT:	Keith Kaneko – Electric Guard Dog	OWNER:	US Rentals Inc
ADDRESS:	750 Madera Avenue	APN:	012-133-015
APPLICATIONS:	VAR 2018-04 & SPR 2018-23	CEQA:	Categorically Exempt

LOCATION: The project site is located at the northwest corner of the intersection of Madera Avenue and West Almond Avenue.

STREET ACCESS: Access to the project site is provided from Madera Avenue and West Almond Avenue.

PARCEL SIZE: One parcel encompassing approximately 1.39 acres.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The project site is generally surrounded by commercial and office uses. The project site is adjacent to a ponding basin and an apartment complex to the north, a tractor sales store to the south, a gas station to the east and storage yards to the west.

ENVIRONMENTAL REVIEW: The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15311 (Accessory Structures).

SUMMARY: United Rentals proposes to install an electrical fence, ten (10') feet in height, to deter theft that has occurred on the property over time. The ordinance allows for a maximum of six (6') feet in height for fences. The location and surroundings of the property create an ease of theft that other properties in the vicinity with identical zoning do not suffer from. The property provides more than one access point as a corner lot and abuts a ponding basin that is secured by a six (6') foot chain link fence. Recent thefts have occurred on the site because the fence surrounding the ponding basin can be easily compromised, subsequently providing a point of entry onto the project site. Staff believes the electrical component of the fence should be limited along the northern and western property lines and not permitted along the street frontages.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.412 Fences, Walls, and Hedges

MMC § 10-3.1401 Variances

MMC § 10-3.4.0102 Site Plan Review Applicability

MMC § 10-3.1202 Parking Spaces Required

A variance may be granted by the Planning Commission where practical difficulties, unnecessary hardships, or results that are inconsistent with the general purposes of the Zoning Ordinance may result from the strict and literal application of any of the provisions of the ordinance. If the Commission cannot make the appropriate findings, the variance request should be denied. Conditions may be attached to the approval of the variance to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses.

PRIOR ACTION

United Rentals received approval of a use permit by the Planning Commission to allow for the outdoor storage of merchandise in 1988. Concurrently, a site plan review was approved to construct their primary office building. In 1998, a variance was approved to allow for the construction of a metal storage building three (3') feet from the western property line where a minimum of five (5') feet is required. Most recently, a site plan review was approved in 2000 to construct an addition to the primary office building that included storage space. This variance application was continued to this date at the August 14, 2018 Planning Commission hearing.

ANALYSIS

Background

United Rentals recently experienced two burglaries in 2018. Thieves cut through the fence adjacent to the ponding basin north of the property and subsequently cut through the rear fence of United Rentals' property and stole high value items out of the existing seatrains (storage containers) that abut the rear fence. Because the seatrains are non-permitted and are generally not allowed as a permanent structure on a commercial site, staff recommends the removal of all seatrains from the site.

Although removal of the seatrains may decrease the chance of future burglaries occurring, the existing buildings on the site are constructed of metal material similar to a seatrain. Also, all merchandise stored in the seatrains would most likely be moved into the existing metal storage buildings. This could result in the continuance of theft on the site.

In response to the recent burglaries, the applicant is proposing the installation of a ten (10') foot tall electrical security fence. Section 10-3.412 (Fences, Walls, and Hedges) of the Madera Municipal Code (MMC) allows for a maximum fence height of six (6') feet. The proposal for a fence ten (10') feet in height requires approval of a variance from the fence standards of the MMC by the Planning Commission. As a component of an application for a variance, the applicant is required to submit a letter justifying the reason(s) to allow for a variance from the provisions of the MMC. The required justification is included as an attachment to this report.

The proposed fence is made of steel material, which is allowed per Section 10-3.412 of the MMC, but there is no specific verbiage for fences with an electrical component. The variance includes the allowance for an electrical fence in addition to the excess fence height.

Electrical Fence

The electrical security fence is a low voltage, battery powered, self-contained system with a variety of functions that make it medically safe while also being an effective crime deterrent. State law requires the location of the fence be between four (4") and twelve (12") inches inside of an existing perimeter fence

surrounding the property. The fence has twenty (20) thin galvanized steel wires that are connected horizontally between each fence pole. There are three layers of deterrents for the fence, which are as follows:

1. Visual deterrent – Sign that indicates the electrical fence.
2. Audible deterrent – Sirens that sound when wires are cut or if objects are placed on wires.
3. Physical deterrent – Voltage burst that has duration of .00004 seconds.

The applicant invited staff to a field visit to a United Rentals facility in Fresno to better understand the operational characteristics of the electric fence. Upon arrival, staff drove and walked past the property to determine the significance of visibility of the electrical fence. When driving, the fence is not significantly noticeable unless someone is at complete stop and specifically looking for it. When walking, the fence is more noticeable, but trees and landscaping in front soften the visibility of the fence. There are yellow signs placed along the fence every 30 feet that indicate the voltage of the electric fence, required by the State, that is plainly visible from the public.

The maximum distance the electrical fence can be from an existing perimeter chain-link fence is twelve (12") inches. This is far enough from the existing perimeter chain-link fence that it is highly unlikely any adult would be able to reach through the perimeter fence and grab the wires. Although difficult, it could

still be possible for a small child to potentially reach out and touch the electric fence component beyond the perimeter chain-link fence. The lower half of the wires alternate in having an electrical current, whereas all of the top half of the wires, with exception of the top wire, have an electrical current. There is concern about the ability to fall in between the two fences and be continuously shocked. The electrical shock only occurs for 0.00004 seconds and the shock occurs every 1.3 seconds. Staff's inspection of the fence during the field visit observed that the wires are easily flexible. If someone were to climb the fence and fall in between both fences, they could easily



fall or push themselves out of the fence. It should be noted that the company has been installing electrical fences since 1998 and has not had one documented injury in relation to their electrical fence. In case of an emergency, a Knox switch will be installed to allow entry by first responders. The Police Department has reviewed the proposal and has no objection to the use of the electrical fence.

Justification Letter

The applicant's justification letter describes the following issues that create a special circumstance applicable to the property:

- High value of inventory.
- Size and nature of inventory cannot be protected within a building.
- Impossibility for security guards to monitor the property.
- Surrounding properties create ease of access to the project property for thefts.

The letter also describes that the electrical fence should be ten (10') feet because it needs to be considerably taller than the six (6') foot chain link fence to prevent potential thieves from climbing over both fences.

Variance Approval Necessity

There are two (2) findings that need to be made in order to be able to grant a variance. The ordinance states those findings as follows:

1. Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this chapter may result from the strict and literal application of any of the provisions of this chapter, a variance may be granted as provided in this subchapter.
2. Variances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning regulations deprives such property of privileges enjoyed by other property in the vicinity under identical zoning classifications. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

Justification for Variance

The project site suffers from a special circumstance for the ease of theft in its location and surroundings. The property is located on a corner providing more than one point of access for potential thieves and there is a ponding basin that abuts the property to the north. The ponding basin is surrounded by a six (6') foot tall chain link fence with no further security measures, allowing thieves to cut through or climb the fence with ease, which has happened on multiple occasions over time.

Businesses that have outdoor storage or display as a component of their business model typically attract burglary crimes more often than other businesses with indoor storage because the merchandise is stored outdoors providing for an ease of theft to occur. The storage yards to the west and the tractor supply business to the south both have outdoor storage and display and have each had burglary crimes on their properties, creating more influence for theft in the area.

Typical security options, such as block walls, barbed wire, new storage buildings, security guards, security cameras and/or security alarm systems, could be installed in response to the recent thefts that have occurred on the site and in the area. Installation of other security systems should not detract from implementing other security solutions, such as a ten (10') foot tall electrical fence. Security fences with an electrical component are relatively new to protecting commercial businesses and the City should review them on a case-by-case basis. In this case, the electrical fence would be ineffective if it is shorter than ten (10') feet because potential thieves can maneuver themselves over both the chain link and electrical fence. Because of its location and surroundings causing an ease of theft on the site, the property should be granted a variance to allow for an electrical fence ten (10') feet in height where a maximum of six (6') feet in height is allowed. Staff recommends the electrical fence be installed consistent with State of California standards of Civil Code Section 835 of Article 2 (Boundaries).

Staff recommends the allowance of the electrical component of the fence be allowed along the northern and western property lines. The recent thefts have only occurred at the rear of the site because of the ease of access from the ponding basin property. There have not been any recent thefts that have occurred on the site where access was gained from the street frontages. Staff does not believe the electrical component is appropriate to be installed along the street frontages of the commercial site, which include a state highway and collector street.

RECOMMENDATION

The information presented in this report supports approval of the variance. It is recommended that the Planning Commission consider the information in this report, together with testimony provided during the

public hearing, and approve Variance 2018-04 and Site Plan Review 2018-23, subject to the findings and conditions of approval outlined in this report.

PLANNING COMMISSION ACTION

The Planning Commission will be acting on the request for Variance 2018-04 and Site Plan Review 2018-23, determining to either:

- approve the applications with or without conditions
- continue the hearing, or
- deny the applications

Any action by the Commission approving or denying the application is subject to appeal to the City Council within fifteen (15) calendar days of the Commission's action:

Motion 1: Move to approve the application for Variance 2018-04 and Site Plan Review 2018-23, based on and subject to the findings and conditions of approval as listed.

Findings:

- This project is categorically exempt under Section 15311(a) (Accessory Structures) of the California Environmental Quality Act (CEQA) guidelines.
- As conditioned, an allowance for an electrical fence, ten (10') feet in height, in the C1 (Light Commercial) Zone District will be compatible with the surrounding properties because its placement will not negatively impact adjoining commercial properties.
- Because of the location of the property on the corner providing more than one point of access, abutting a ponding basin and being surrounded by other outdoor storage uses creating an ease and attractiveness of theft that other properties with an identical zone district within the vicinity do not suffer from, a variance may be granted to allow for an electrical fence ten (10') feet in height.
- As conditioned, the establishment, maintenance or operation of the electrical fence will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

CONDITIONS OF APPROVAL

Engineering Department

General

1. Nuisance onsite lighting shall be redirected as requested by the City Engineer within forty-eight (48) hours of notification.
2. The developer shall pay all required fees for completion of the project. Fees due may include, but shall not be limited to, the following: encroachment permit processing and improvement inspection fees.
3. Improvement plans shall be submitted to the Engineering Department in accordance with the submittal process.
4. Improvements within the City's right-of-way shall require an Encroachment Permit from the Engineering Department.

5. Improvements within the State of California's right-of-way require an Encroachment Permit from Caltrans.

Sewer

6. The existing sewer service connection shall be upgraded to include a cleanout per City standards.

Streets

7. The driveway along Madera Avenue shall be reconstructed to the extent necessary to provide ADA accessibility along the entire site frontage.
8. The existing access ramp located at the northwest corner of Madera Avenue and West Almond Avenue shall be reconstructed/upgraded per current ADA standards.
9. If the applicant believes that a hardship waiver is applicable based on the cost of ADA improvements in relation to overall project costs, a request for waiver may be submitted for consideration and an ultimate determination by the City.
10. The extent of improvements along Madera Avenue shall be determined by Caltrans as Madera Avenue is a State Highway.

Fire Department

11. A key box shall be provided for Fire Department access, if not already existing.

Planning Department

General

12. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
13. The applicant shall operate in a manner that does not generate significant noise, odor or vibration that adversely affects any adjacent properties.
14. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and the dumping of refuse shall be restricted to the dumpster/refuse container.

Fence Variance

15. Variance 2018-04 allows for an electrical security fence with a maximum height of ten (10') feet.
16. The location of the electrical security fence shall be twelve (12") inches inside of the existing six (6') foot chain link perimeter fence.
17. The electrical component of the security fence shall only be allowed along the northern and western property lines. There shall be no allowance of the electrical component of the security fence to be utilized along the street frontages along the eastern and southern property lines.
18. The installation of the electrical security fence shall comply with all State of California standards of Civil Code Section 835 of Article 2 (Boundaries).
19. The electrical component of the fence shall be turned off during regular business hours and/or when the business is open to the public. Only personnel trained to operate the electrical system shall be on-site when the electrical system is on at all times.

20. The existing seatrains (storage containers) located on the property line shall be removed from the site prior to installation of the electrical security fence. No future placement of seatrains will be allowed on the property.

Landscaping

21. The property owner shall maintain all landscaping in a healthy and well-manicured appearance. This includes, but shall not be limited to, ensuring irrigation equipment is properly operating at all times, the trimming and pruning of trees and shrubs, and replacing dead or unhealthy vegetation with drought tolerant plantings.

Parking

22. The United Rentals business has an existing office building that requires one (1) parking space for each three-hundred (300) square feet of gross floor area, equating to a minimum of eight (8) parking spaces on the site. The site has provided an adequate number of parking stalls with nine (9), consistent with current City parking stall design standards.
23. On-site parking shall be provided at all times in conformance with the Madera Municipal Code. Further expansion of the use or additional or accessory uses may require the provision of additional parking spaces in compliance with City standards. All required parking shall be permanently maintained with all parking spaces to be shown on plans submitted for building permits.

Signage

24. The size of the electrical fence voltage signage shall be the minimum allowed by the State at 10cm x 20cm.
25. All signage shall be in compliance with the Madera Sign Ordinance. All signage is required to have an approved Sign Permit issued by the Planning Department per MMC § 10-6.

State of California Transportation Department (Caltrans)

26. An encroachment permit shall be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State.

(OR)

Motion 2: Move to continue the public hearing for Variance 2018-04 and Site Plan Review 2018-23 to the October 9, 2018 Planning Commission hearing, to allow the following information to be provided or for the following reason(s): (specify)

(OR)

Motion 3: Move to deny the application for Variance 2018-04 and Site Plan Review 2018-23, based on the following findings: (specify)

ATTACHMENTS

- Aerial Imagery
- Applicant Justification Letter
- Field Visit Photos
- Civil Code Section 835

Aerial Photo



Applicant Justification Letter



The #1 Theft Deterrent Service in the U.S.

550 Assembly St., 5th Floor
Columbia, SC 29201

Justification of Proposed Variance – 750 S Madera Avenue – United Rentals

Electric Guard Dog, LLC on behalf of United Rentals seeks to install a low voltage, battery powered (12V, DC) ten foot tall, perimeter security fence (i.e. electric fence) per CCC835 which will be safely located inside of the existing chain link fence to secure the property during non-business hours.

The Electric Guard Dog system consists of the aforementioned security system and has proven most effective for our clients across the country. Even in cases where some clients were experiencing crime on a daily basis, following the installation of our system, their external crime problems disappear.

Below are the justifications for granting the variance.

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

United Rentals is the nation's equipment rental businesses in North America. It owns the largest rental fleet in the world where 90% of their equipment must be stored outside. This particular location is only viewable by Police from Madera Avenue and Almond Avenue; the northern portion of the parcel currently gives potential thieves easy access to the site unforeseen by anyone driving by.

Special Conditions unique to the property are:

- a. High value of inventory that can be easily fenced.
- b. Due to size and nature of items, **must** be stored in outside lot and cannot be protected inside a building.
- c. As the storage area is over 1006 linear feet in perimeter, it is not possible for security guards to effectively and constantly monitor the entire lot.
- d. Half of the perimeter is not accessible via road frontage and is surrounded by other businesses or trees. It is very easy to obtain access without being seen by patrolling Policemen or a neighborhood watch.
- e. Due to density of the area, it is easy for criminals to steal and make a quick escape.

Special circumstance and conditions of the location dictate the height of the electric security fence be permitted at ten feet.

- The perimeter security fence is 6'.
- The electric fence should be considerably higher than the perimeter fence.
- The 10' height prevents the perpetrators from simply hurdling both the perimeter fence and Electric Fence as a single barrier in one continuous motion. They would be required to navigate 2 unequal barriers to access the property for purposes of criminal intent.

Applicant Justification Letter (cont.)

- At 10', the fence is more imposing to someone thinking about scaling it. We have experimented with different heights and have found shorter fence (8') to be too tempting to breach.

The location of the property and the high value targets secured in the yard are an open invitation to the criminal class. The only system that actually PREVENTS crime and break-ins is the Electric Guard Dog security system.

2. The granting of the variance will not confer on the applicant any special privilege.

The variance authorized will not confer on the applicant any special privilege or otherwise be detrimental to public welfare. It is installed completely inside the existing perimeter fence and therefore not exposed to the public. To come in contact with the EGD, one would have to be trespassing and illegally entering the property.

3. The granting of the variance is necessary for the preservation and enjoyment of substantial property rights.

The literal interpretation of the provisions will constitute unnecessary hardship to the applicant. Presently, the fence code of Madera is silent for electrified fences. In our experience when we find this absent from the code, we interpret this as being it is NOT intended to prevent businesses from protecting themselves from crime. This is why we are seeking this variance.

Lastly, no nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts will be considered in the granting of this variance. Financial hardship is also not a factor in the issuance of the variance should it be granted.

4. The granting of the variance will not be opposed to the general spirit and intent of the ordinance from which the variance is sought.

The granting of the variance will not be opposed to the general spirit and intent of the ordinance from which the variance is sought as the general safety and welfare of the public is maintained, crime is prevented, and the city can husband police resources toward crime other than property break-ins and vandalism. The variances are the minimum necessary to relieve a practical difficulty and resulting hardship, cameras record crime and don't prevent it, guards are unreliable (don't show up for work, sleep on the job, and at times are complicit in the criminal action). The EGD is the most reliable, most economical, and safest security application available. In actuality the installation of the EGD will secure the property and increase the security of the surrounding properties and the immediate area by deterring the criminal element.

Much more effective and reliable than security guards, Electric Guard Dog will provide United Rentals with an affordable means to protect their assets and employees, allowing them to invest monies into growth, resulting in continued employment and continued or increased tax base for the community. With the recent crime they require our effective security system to remain a viable business. This security system requires the fence to be 10' high with voltage to be most effective. The variance is not being sought to relieve illegal acts or self-imposed hardships. The business is a reputable business, located in the appropriate zoning and complies with all other local ordinances.

Field Visit Photos



Perception of electrical fence that is 12" away from perimeter fence.

Field Visit Photos



Perception of the width of the wires compared to a pen.

Field Visit Photos



Flexibility of wires.

Field Visit Photos



Visibility of electrical fence behind the chain link fence with barbed wire on top.

California Civil Code Section 835

CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.)

PART 2. REAL OR IMMOVABLE PROPERTY [[755.] - 945.5] (Part 2 enacted 1872.)

TITLE 3. RIGHTS AND OBLIGATIONS OF OWNERS [818 - 855] (Title 3 enacted 1872.)

CHAPTER 1. Rights of Owners [818 - 834] (Chapter 1 enacted 1872.)

ARTICLE 2. Boundaries [829 - 835] (Article 2 enacted 1872.)

835. (a) As used in this chapter, "electrified security fence" means any fence, other than an electrified fence described in Section 17151 of the Food and Agricultural Code, that meets the following requirements:

(1) The fence is powered by an electrical energizer with both of the following output characteristics:

(A) The impulse repetition rate does not exceed 1 hertz (hz).

(B) The impulse duration does not exceed 10 milliseconds, or 10/10000 of a second.

(2) The fence is used to protect and secure commercial or industrial property.

(b) An owner of real property may install and operate an electrified security fence on his or her property subject to all of the following:

(1) The property is not located in a residential zone.

(2) The fence meets the 2006 international standards and specifications of the International Electrotechnical Commission for electric fence energizers in "International Standard IEC 60335, Part 2-76."

(3) The fence is identified by prominently placed warning signs that are legible from both sides of the fence. At a minimum, the warning signs shall meet all of the following criteria:

(A) The warning signs are placed at each gate and access point, and at intervals along the fence not exceeding 30 feet.

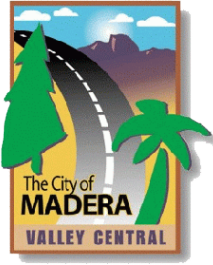
(B) The warning signs are adjacent to any other signs relating to chemical, radiological, or biological hazards.

(C) The warning signs are marked with a written warning or a commonly recognized symbol for shock, a written warning or a commonly recognized symbol to warn people with pacemakers, and a written warning or commonly recognized symbol about the danger of touching the fence in wet conditions.

(4) The height of the fence does not exceed 10 feet and is located behind a perimeter fence that is not less than 6 feet in height.

(c) An owner of real property shall not install and operate an electrified security fence where a local ordinance prohibits that installation and operation. If a local ordinance allows the installation and operation of an electrified security fence, the installation and operation of the fence shall meet the requirements of that ordinance and the requirements of subdivision (b).

(Added by Stats. 2015, Ch. 273, Sec. 1. (SB 582) Effective January 1, 2016.)



CITY OF MADERA
PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

**Staff Report: Groves Neighborhood Rezone
REZ 2018-04 & Environmental Determination
Item #3 – September 11, 2018**

PROPOSAL: An application to rezone a property from the R1 (Low Density Residential) Zone District to the PD-4500 (Planned Development) Zone District.

APPLICANT:	Michael Sutherland	OWNER:	Ivan Cloeters
ADDRESS:	779 Linden Street	APN:	006-360-016
APPLICATIONS:	REZ 2018-04	CEQA:	Negative Declaration

LOCATION: The project site is located on the southeast corner of Linden Street and West Park Drive.

STREET ACCESS: The site is accessed from Linden Street.

PARCEL SIZE: A parcels encompassing approximately 29,960 square feet

GENERAL PLAN DESIGNATION: MD (Medium Density)

ZONING DISTRICT: R1 (Low Density Residential)

SITE CHARACTERISTICS: The project parcel is currently developed with a single family residential home. The site is surrounding by single family residences to the south, east and west and vacant land to the north.

ENVIRONMENTAL REVIEW: An initial study and a negative declaration were adopted by the Planning Commission on October 19, 1997 in support of the Groves Neighborhood Plan. The proposed rezone was anticipated within the Neighborhood Plan and analyzed as part of the 1997 environmental document. No additional environmental review is required.

SUMMARY: The proposed rezone provides consistency with the General Plan and the Groves Neighborhood Plan. Approval would provide for the subdivision of the property into five single family parcels, consistent with the General Plan, the Groves Neighborhood Plan and the PD-4500 (Planned Development) Zone District.

APPLICABLE CODES AND PROCEDURES

MMC §10-3-4.101, Planned Development Zones
MMC §10-3.1501, Amendments

PRIOR ACTION: The project site is located within the Groves Neighborhood Plan, which was approved by the Planning Commission on October 14, 1997 and adopted by the City Council on November 19, 1997.

ANALYSIS

Rezone

The project parcel is proposed to be rezoned from the R1 (Low Density) Zone District to the PD-4500 (Planned Development) Zone District. The parcel in question is part of the Grove's Neighborhood Plan. The neighborhood plan anticipated the rezoning of the parcel into the PD-4500 (Planned Development) Zone District. The proposed rezone would remedy the inconsistency between the current low density residential zoning, the Groves Neighborhood Plan and the General Plan's MD (Medium Density) land use designation.

Although the property is currently developed with a single family residential home, it is the property owner's intent to subdivide the property into five (5) parcels. The creation of the five parcels would be consistent with the Groves Neighborhood Plan. Approval of the proposed rezone would provide the required zoning necessary to implement the vision of the Neighborhood Plan and the General Plan.

General Plan Conformity

The proposed rezone from the R1 (Low Density) Zone District to the PD-4500 (Planned Development) Zone District provided consistency with the project site's MD (Medium Density) General Plan land use designation.

General Plan Goal CD-1 calls for "the City of Madera [to] require that all new development is well-planned and of the highest possible quality. The City will seek to build an image of Madera as a contemporary small city with vibrant, livable neighborhoods and walkable pedestrian -and bicycle- oriented development." Goals CD-2 expands that vision by requiring that "all new development shall adhere to the basic principles of high-quality urban design, architecture and landscape architecture." Although subsequent residential development is not currently proposed, the proposed rezoning will provide the foundation for future development consistent with the goals and policies of the General Plan.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The first of the four core vision statements in the Vision Plan is "a well-planned city". The Commission, by considering how this development connects to other developments and how the neighborhood and infrastructure can be maintained, is actively implementing this key concept of the Vision Plan.

RECOMMENDATIONS

The information presented in this report supports approval of the rezone. It is recommended that the Commission consider this information, together with testimony provided at the public hearing, and adopt a Resolution recommending to the City Council approval of an ordinance rezoning the subject property.

PLANNING COMMISSION ACTION

The Commission will be acting on Rezone 2018-04, determining to either;

- adopt a Resolution recommending to the City Council adoption of an ordinance rezoning the property;
- continue the hearing; or
- deny the application

Any action by the Commission approving or denying the application is subject to appeal to the City Council within 15 calendar days of the Commission’s action.

Motion 1: Move to adopt a Resolution recommending to the City Council adoption of an ordinance rezoning the property to the PD-4500 (Planned Development) Zone District, with the findings and conditions as listed.

Findings

- An initial study and negative declaration were prepared in conjunction with the Groves Neighborhood Plan pursuant to the California Environmental Quality Act. The environmental document anticipated the rezone of the property. No additional environmental documentation is necessary.
- The proposed rezone will provide the required consistency between the Groves Neighborhood Plan and zoning.
- The proposed rezone will provide the required consistency between the General Plan and zoning.
- The rezone is not expected to be detrimental to the health, safety, peace, comfort or general welfare of the neighborhood or the City.

(OR)

Motion 2: Move to continue the public hearing on the adoption of an ordinance rezoning the property to the PD-4500 (Planned Development) Zone District to the October 9, 2018 Planning Commission meeting.

(OR)

Motion 3: Move to deny the application for Rezone 2018-04, based on the following findings: (specify)

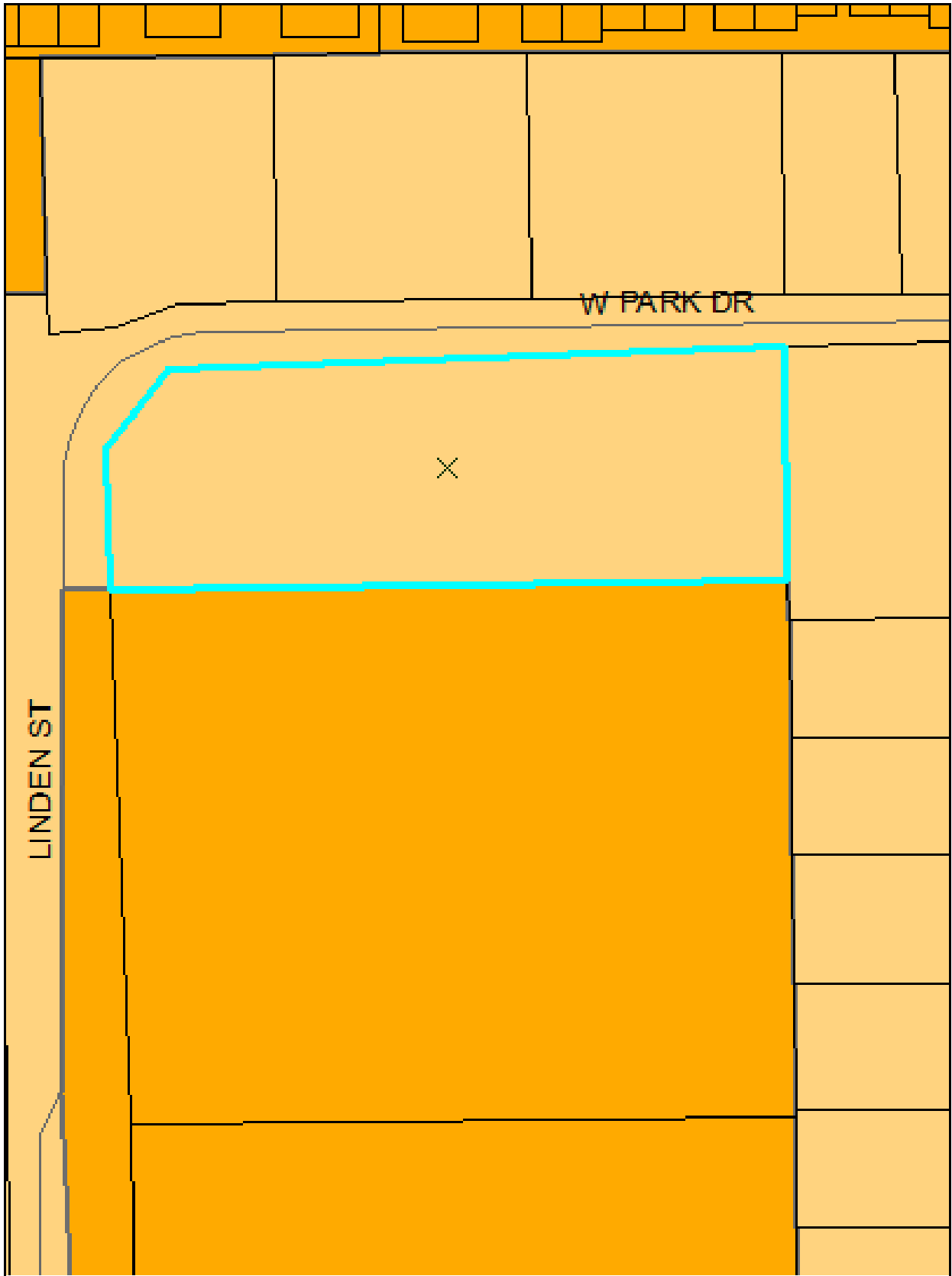
ATTACHMENTS

- Aerial Map
- General Plan Map
- Zoning Map
- Resolution of Recommendation to the City Council
 - Exhibit A - Zoning Map
- Draft Ordinance
 - Exhibit A - Zoning Map

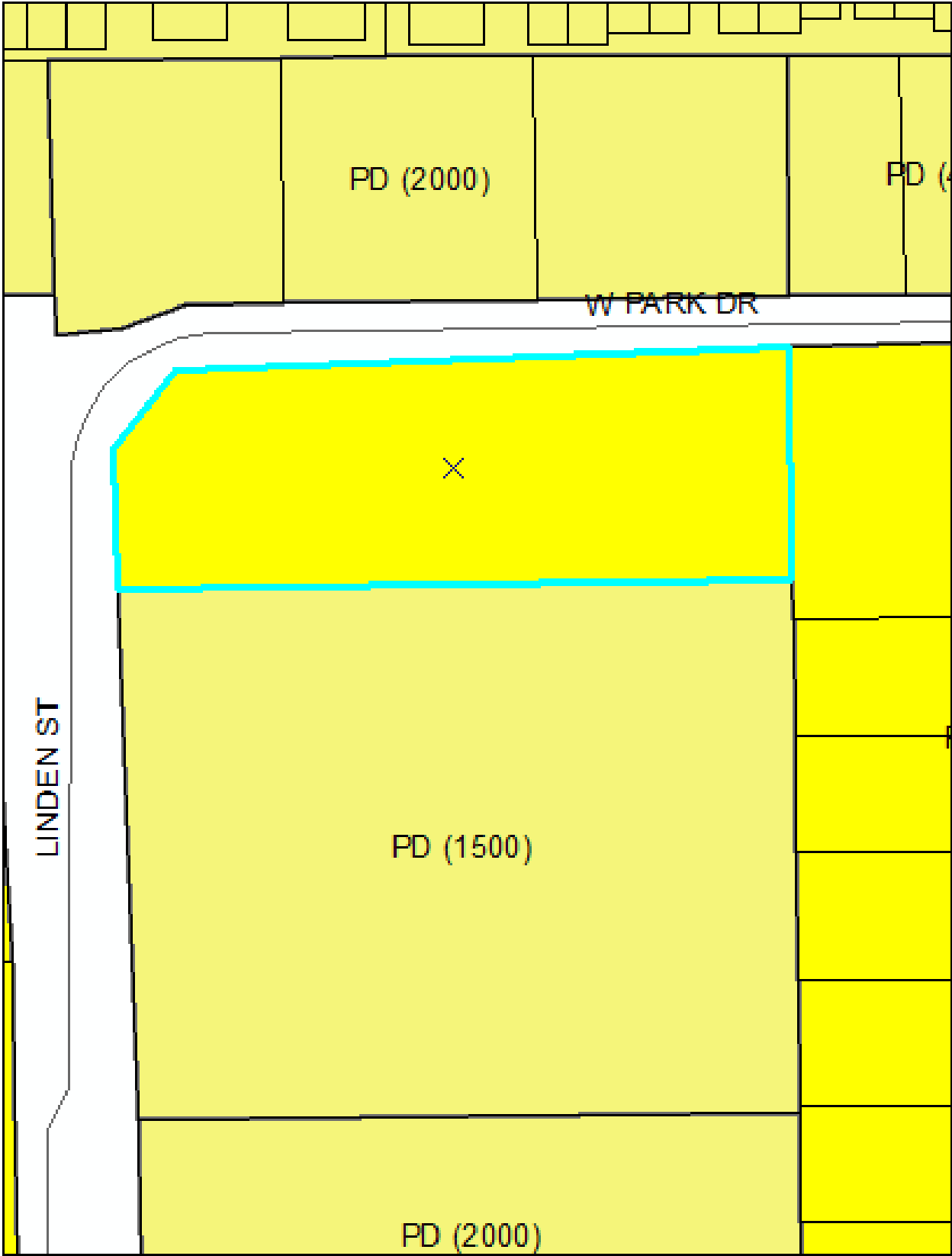
Aerial Photo



General Plan Map



Zoning Map



RESOLUTION NO. 1832

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF MADERA ADOPTION OF AN ORDINANCE REZONING PROPERTY LOCATED AT 779 LINDEN STREET FROM THE R1 (LOW DENSITY RESIDENTIAL) ZONE DISTRICT TO THE PD-4500 (PLANNED DEVELOPMENT) ZONE DISTRICT.

WHEREAS, State Law requires that local agencies adopt General Plans containing specific mandatory elements; and

WHEREAS, The City of Madera has adopted a Comprehensive General Plan Update and Environmental Impact Report, and the City of Madera is currently in compliance with State mandates relative to Elements of the General Plan; and

WHEREAS, State law also provides for periodic review, updates, and amendments of its various Plans; and

WHEREAS, a proposal has been made to rezone one parcel encompassing 29,959 square feet located at 779 Linden Street in the proximity of the intersection of Linden Street and West Park Drive, resulting in a change from the R1 (Low Density Residential) Zone District to the PD-4500 (Planned Development) Zone District, as shown in the attached Exhibit A; and

WHEREAS, the proposed rezone will provide the required consistency between the Groves Neighborhood Plan, the General Plan and Zoning Ordinance; and

WHEREAS, the Rezone is compatible with the neighborhood and is not expected to be detrimental to the health, safety, peace, comfort or general welfare of the neighborhood or the City; and

WHEREAS, an initial study and a negative declaration were adopted by the Planning Commission on October 19, 1997 in support of the Groves Neighborhood Plan, and the proposed rezone was anticipated within the Neighborhood Plan and analyzed as part of the 1997 environmental document; and

WHEREAS, the rezoning proposal was distributed for public review and comment to various local agencies and groups, and public notice of this public hearing was given by mailed

and published notice, in accordance with the applicable State and Municipal Codes and standard practices; and

WHEREAS, the Planning Commission has completed its review of the Staff Report and documents submitted for the proposed project, evaluated the information contained therein, and considered testimony received as a part of the public hearing process.

NOW THEREFORE BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MADERA AS FOLLOWS:

1. The above recitals are true and correct.
2. The Planning Commission hereby recommends that proposed rezoning, as shown in Exhibit A, is consistent with the General Plan and is compatible with adjacent zoning and uses.
3. The Planning Commission hereby recommends the City Council adopt the ordinance rezoning property show on the attached Exhibit A.
4. This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 11th day of September 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

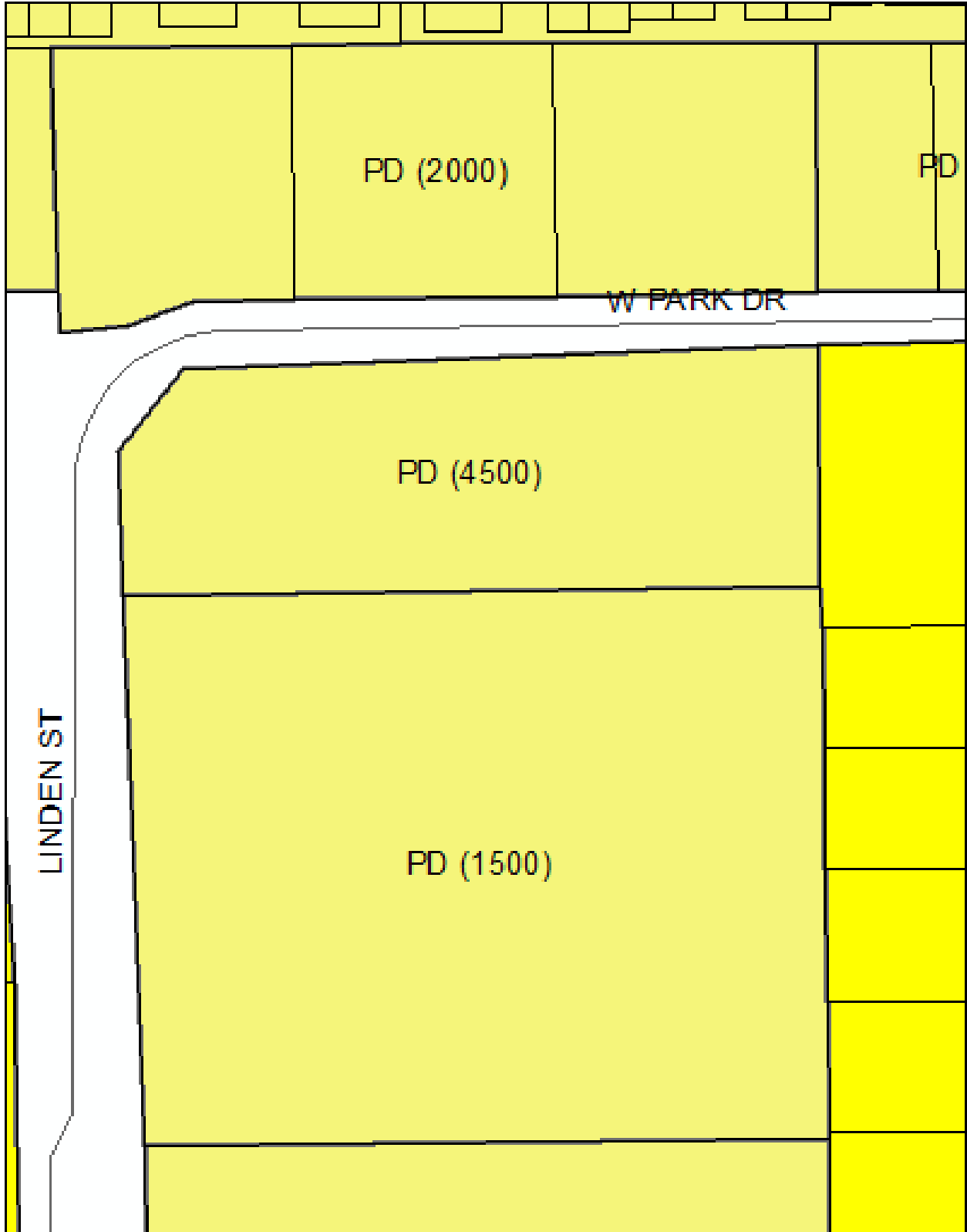
ABSENT:

Robert Gran, Jr.
City Planning Commission

Attest:

Christopher F. Boyle
Planning Manager

PLANNING COMMISSION RESOLUTION NO. 1832
EXHIBIT 'A'



DRAFT ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING MAP TO REZONE APPROXIMATELY 29,959 SQUARE FEET OF PROPERTY LOCATED AT 779 LINDEN STREET IN PROXIMITY TO THE INTERSECTION OF LINDEN STREET AND WEST PARK DRIVE FROM THE R1 (LOW DENSITY RESIDENTIAL) ZONE DISTRICT TO THE PD-4500 (PLANNED DEVELOPMENT) ZONE DISTRICT.

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Madera and this Council have held public hearings upon the rezoning of this property and have determined that the proposed rezoning is consistent with the General Plan as amended and subsequent development will be in conformance with all standards and regulations of the Municipal Code.

SECTION 2. The City of Madera Zoning Map as provided for in Chapter 3 of Title 10 of the Madera Municipal Code is hereby amended as illustrated in the hereto attached Exhibit "A" which indicates the segment of the City of Madera Zoning Map to be amended. Unless the adoption of this amendment to the Zoning Map is lawfully stayed, thirty-one (31) days after adoption of this amendment, the Planning Director and City Clerk shall cause these revisions to be made to the City of Madera Zoning Map which shall also indicate the date of adoption of this revision and be signed by the Planning Director and City Clerk.

SECTION 3. Based upon the testimony and information presented at the hearing, the adoption of the proposed rezoning is in the best interest of the City of Madera, and the Council hereby approves the rezoning based on the following findings:

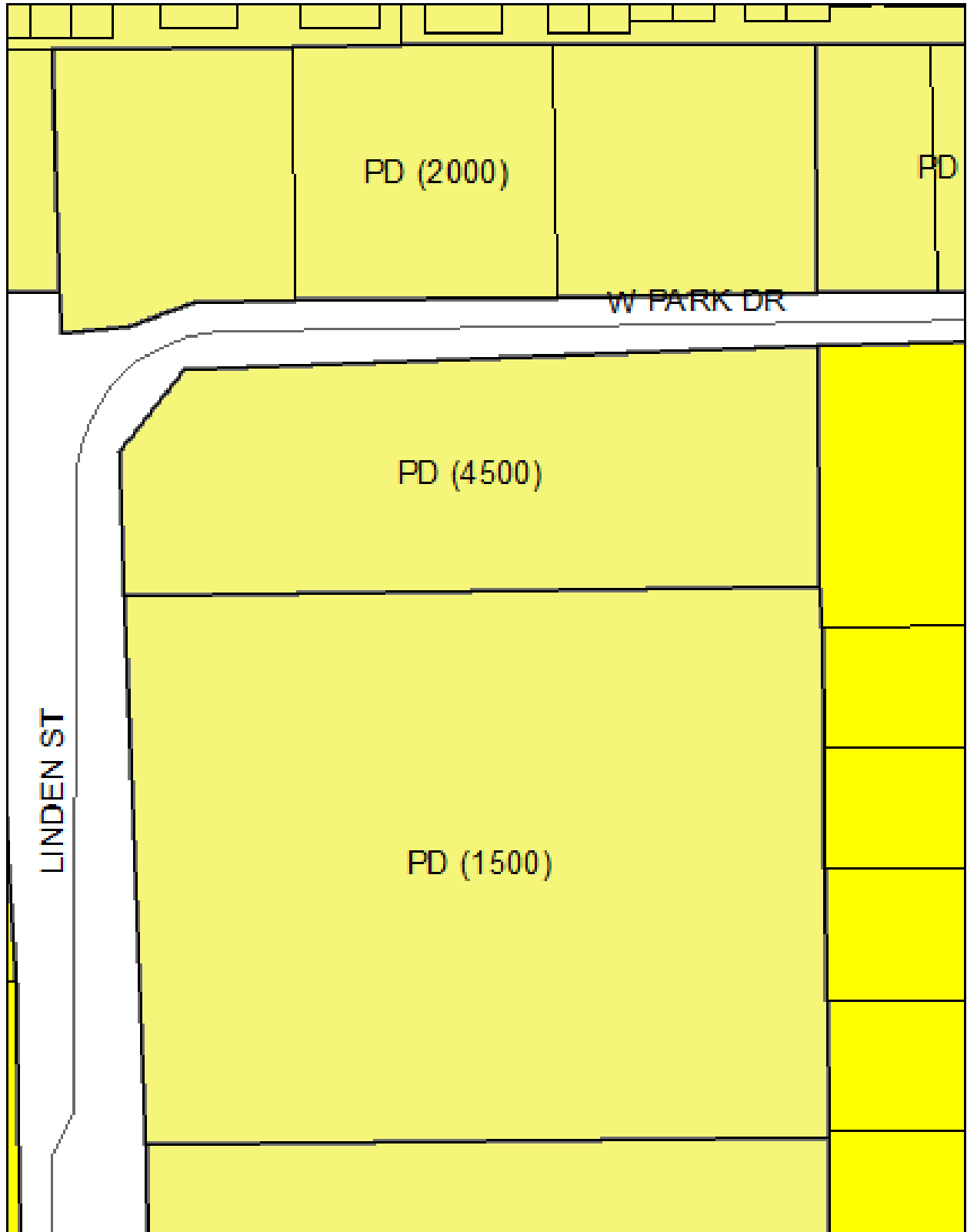
FINDINGS:

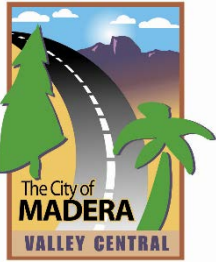
1. THE PROPOSED REZONE WILL PROVIDE THE REQUIRED CONSISTENCY BETWEEN THE GENERAL PLAN AMENDMENT AND ZONING.
2. THE REZONE IS NOT EXPECTED TO BE DETRIMENTAL TO THE HEALTH, SAFETY, PEACE, COMFORT OR GENERAL WELFARE OF THE NEIGHBORHOOD OR THE CITY.
3. CITY SERVICES AND UTILITIES ARE AVAILABLE OR CAN BE EXTENDED TO SERVE THE AREA.

SECTION 4. This Ordinance shall be effective and of full force and effect at 12:01 a.m. on the thirty-first day after its passage.

* * * * *

EXHIBIT A





CITY OF MADERA PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

Staff Report: Walmart Temporary Outdoor Storage Trailers CUP 2018-15, SPR 2018-25 & Categorical Exemption Item #4 – September 11, 2018

PROPOSAL: An application for a conditional use permit and site plan review to allow for the temporary placement of up to ten (10) storage containers during the 2018 holiday sales season.

APPLICANT:	Julio Segura/Walmart	OWNER:	Walmart #1583
ADDRESS:	1977 West Cleveland Avenue	APN:	013-160-014
APPLICATION:	CUP 2018-25 & SPR 2018-25	CEQA:	Categorical Exemption

LOCATION: The site is located adjacent to the Madera Marketplace shopping center, situated on the northeast corner of the intersection of North Schnoor Avenue and West Cleveland Avenue.

STREET ACCESS: Access to the project site is provided via North Schnoor Avenue and West Cleveland Avenue.

PARCEL SIZE: The project parcel is approximately 12.30 acres.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The Madera Marketplace shopping center is substantially surrounded by developed commercial/retail properties, with the Commons at Madera Fairgrounds shopping center to the south and the John Deere equipment dealer to the east.

ENVIRONMENTAL REVIEW: This project is categorically exempt under §15304(e) (Minor Alterations to Land) of the California Environmental Quality Act (CEQA) Guidelines.

SUMMARY: The placement of ten (10) storage containers for use during the holiday sales season has occurred in the past. Because of the design of the shopping center site, the temporary use can be made compatible with surrounding commercial development. Although the storage containers would be placed over thirty-one (31) parking stalls, there would still be sufficient parking stalls to serve the site.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.802 Light Commercial Zones – Uses Permitted

MMC § 10-3.4.0102 Site Plan Review Applicability

MMC § 10-3.1202 Parking Spaces Required

MMC § 10-3.1301 Use Permits

The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission subject to the Planning Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

Since development of the Madera Marketplace site, numerous use permits and zoning administrator permits have been approved on behalf of Walmart to allow outdoor display and sale of merchandise, and/or outdoor storage of merchandise. Temporary placement of storage containers for merchandise storage for Walmart has been considered by the Planning Commission via the conditional use permit process annually since 2013.

ANALYSIS

Nature of Request

The applicant is requesting an allowance for the placement of up to ten (10) storage containers for the primary purpose of storing miscellaneous layaway merchandise during the holiday season sales period. Other seasonal merchandise could also be stored within up to four (4) of the storage containers as needed. The applicant would like to place the storage containers along the eastern fringe of the Walmart commercial campus in existing parking stalls. The containers would be placed no earlier than September 14, 2018 and would be entirely removed by January 18, 2019.

In conjunction with outdoor activities in any commercial zone, issues such as traffic congestion and pedestrian safety, loitering, noise, trash, litter, vector control, visual blight, and site maintenance are concerns that generally need to be considered. While conditions of approval may be imposed to address these concerns, implementation and monitoring of compliance with those conditions would be a necessity on the part of the applicant and Staff. The primary concerns within this application relate to public safety, visual blight and land use compatibility.

Storage Containers

The placement of ten storage units behind the store would reduce visibility while simultaneously increasing the amount of pedestrian activities in the area. An increase in the potential for traffic accidents is possible. It is recommended that traffic signage be installed and pedestrian controls implemented per the direction of the City Engineer so as to adequately provide for public safety of motorists, pedestrians and employees in the vicinity of the temporary storage containers. It is also recommended that the area in and around the storage containers be kept free of trash, debris, fixtures and other associated materials that could cause distraction for motorists maneuvering through the areas in proximity to the temporary storage containers.

The placement of up to ten storage containers would temporarily remove up to thirty-one (31) parking stalls from availability for use by customers to the site. The loss of these stalls should not present a significant problem, because the Walmart store was developed with excess parking to allow for expansion of the store at a later date.

Site Improvements

Normally there are not many site improvements necessary to be completed because a site plan review has been completed on the site annually since 2013. Upon observation of the site, there are two (2) truncated domes that have been damaged at the front driveway entrance to Walmart. Also, there are two (2) missing light poles behind the Walmart building closest to the eastern-most driveway approach. Staff recommends the truncated domes and the light poles be replaced prior to the final issuance of the building permit for Walmart's remodel project.

This proposed conditional use permit was reviewed by various City Departments and outside agencies. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of the temporary placement of storage containers is not specifically addressed in the vision or action plans, the overall project does indirectly support **Action 115.2** – *As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...;*

RECOMMENDATION

The information presented in this report supports conditional approval of the conditional use permit and site plan review request. It is recommended that the Planning Commission consider the information in this report, as well as testimony in the public hearing, and approve Conditional Use Permit 2018-15 and Site Plan Review 2018-25, subject to the findings and conditions of approval outlined in this report.

PLANNING COMMISSION ACTION

The Planning Commission will be acting on Conditional Use Permit 2018-15 and Site Plan Review 2018-25, determining to either:

- approve the applications,
- continue the hearing; or
- deny the applications

Any action by the Commission denying or approving the application is subject to appeal to the City Council within fifteen (15) calendar days of the Commission's action.

Motion 1: Move to approve Conditional Use Permit 2018-15 and Site Plan Review 2018-25, based on and subject to the following findings and conditions of approval:

Findings

- This project is categorically exempt under Section 15304 (e), Minor Alterations to Land, of the California Environmental Quality Act (CEQA) guidelines.
- The temporary placement of storage containers for seasonal storage is consistent with the purposes of the C (Commercial) General Plan land use designation and the C1 (Light Commercial) Zone District which provides for the use, subject to the issuance of a conditional use permit.

- There is adequate parking and site features to allow for the temporary placement of storage containers.
- As conditioned, the temporary placement of storage containers will be compatible with surrounding properties.
- As conditioned, the establishment, maintenance or operation of the use will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for this use permit.
2. The applicant's failure to utilize this use permit within the specifically allowed timeframe shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
3. Conditional Use Permit 2018-15 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permit and owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
4. Conditional Use Permit 2018-15 and Site Plan Review 2018-25 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions of approval, Staff may schedule an item before the Planning Commission so that it may determine whether to consider setting a hearing regarding revocation of the permit.
5. The project shall be developed in accordance with the conditions of approval, as reviewed and approved with Conditional Use Permit 2018-15 and Site Plan Review 2018-25.
6. It shall be the responsibility of the property owner and management to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to placement of the storage containers.
7. All site improvements shall be completed in advance of any request for a building permit final inspection.

Engineering Department

General

8. The developer shall pay all required fees for completion of the project. Fees due may include, but shall not be limited to, the following: encroachment permit processing and improvement inspection fees.

9. Improvements within the City's right-of-way require an Encroachment Permit from the Engineering Department.

Streets

10. The damaged truncated domes on the two (2) ADA handicap ramps at the entrance of the Walmart adjacent to the front lawn area along West Cleveland Avenue shall be repaired per current City and ADA standards.

Fire Department

11. The placement of the temporary storage containers shall not obstruct fire lanes or access to fire hydrants.

Planning Department

General

12. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
13. The applicant shall operate in a manner that does not generate significant noise, odor or vibration that adversely affects any adjacent properties.
14. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster/refuse container.
15. The applicant shall comply with all federal, state and local laws. Material violation of any applicable laws concerning the use will be cause for revocation of CUP 2018-15.

Temporary Storage of Trailers

16. The placement of up to ten (10) storage containers shall be allowed as follows:
 - Six (6) storage containers for layaway merchandise.
 - Four (4) shipping containers for miscellaneous high volume merchandise.
17. The placement of the outdoor storage containers shall be consistent with the approved site plan filed with the Conditional Use Permit application and as reviewed by the Planning Department, and attached hereto as an exhibit.
18. The outdoor storage containers shall be placed on-site no earlier than September 14, 2018 and shall be entirely removed from the site by January 18, 2019.
19. The number of containers on-site shall not exceed ten (10) 8' wide x 8' height x 40' depth containers at any time.
20. The area in and around the storage containers shall be kept free of trash, debris, fixtures, and other associated materials that could cause distraction for motorists maneuvering through the areas in proximity to the temporary storage containers.
21. The use of the storage containers shall be specifically limited to only those items approved for storage in the containers. No electronics, chemicals, flammables, foods or fixtures shall be stored in the storage containers.
22. The use of the storage containers shall be specifically limited to only those items approved for storage in the containers. No electronics, chemicals, flammables, foods or fixtures shall be stored in the storage containers.

23. All containers shall be a minimum of ten (10') feet from all fire hydrants and twenty (20') feet from the building. A ten (10') foot clearance shall be maintained from any combustible storage (trash containers or trash compactor).
24. The property owner, operator and manager shall be responsible for ensuring that security is provided for the business at all times, and that customers and persons other than the employees do no loiter on or near the storage containers, on the property or near the business on public or private property at any time.
25. Vehicle driveways and pedestrian access shall remain open at all times. Egress or ingress to the parking lot or store entrances shall not be blocked at any time.

Landscaping

26. The property owner shall maintain all landscaping in a healthy and well-manicured appearance. This includes, but is not limited to, ensuring irrigation equipment is properly operating at all times, the trimming and pruning of trees and shrubs, and replacing dead or unhealthy vegetation with drought tolerant plantings.

On-Site Lighting

27. The two missing light poles closest to the eastern-most driveway approach providing access to the rear of the Walmart building, shall be replaced and operational prior to the issuance of a final building permit for the Walmart remodel.

Signage

28. Traffic signage shall be installed and pedestrian controls implemented per the direction of the City Engineer so as to adequately provide for public safety of motorists, pedestrians and employees in the vicinity of the temporary storage containers at all times.
29. Loitering shall be prohibited in proximity of the trailers and in adjacent, and nearby areas both public and private. A prominent, permanent sign or signs stating "No loitering" shall be posted in a place that is clearly visible to customers.
30. No advertising copy shall be posted on or about the temporary storage containers.
31. All signage shall be in compliance with the Madera Sign Ordinance. All signage is required to have an approved Sign Permit issued by the Planning Department per MMC §10-6.

(OR)

Motion 2: Move to continue the application for Conditional Use Permit 2018-15 and Site Plan Review 2018-25 to the October 9, 2018 Planning Commission hearing for the following reasons or in order for the following information to be provided: (specify)

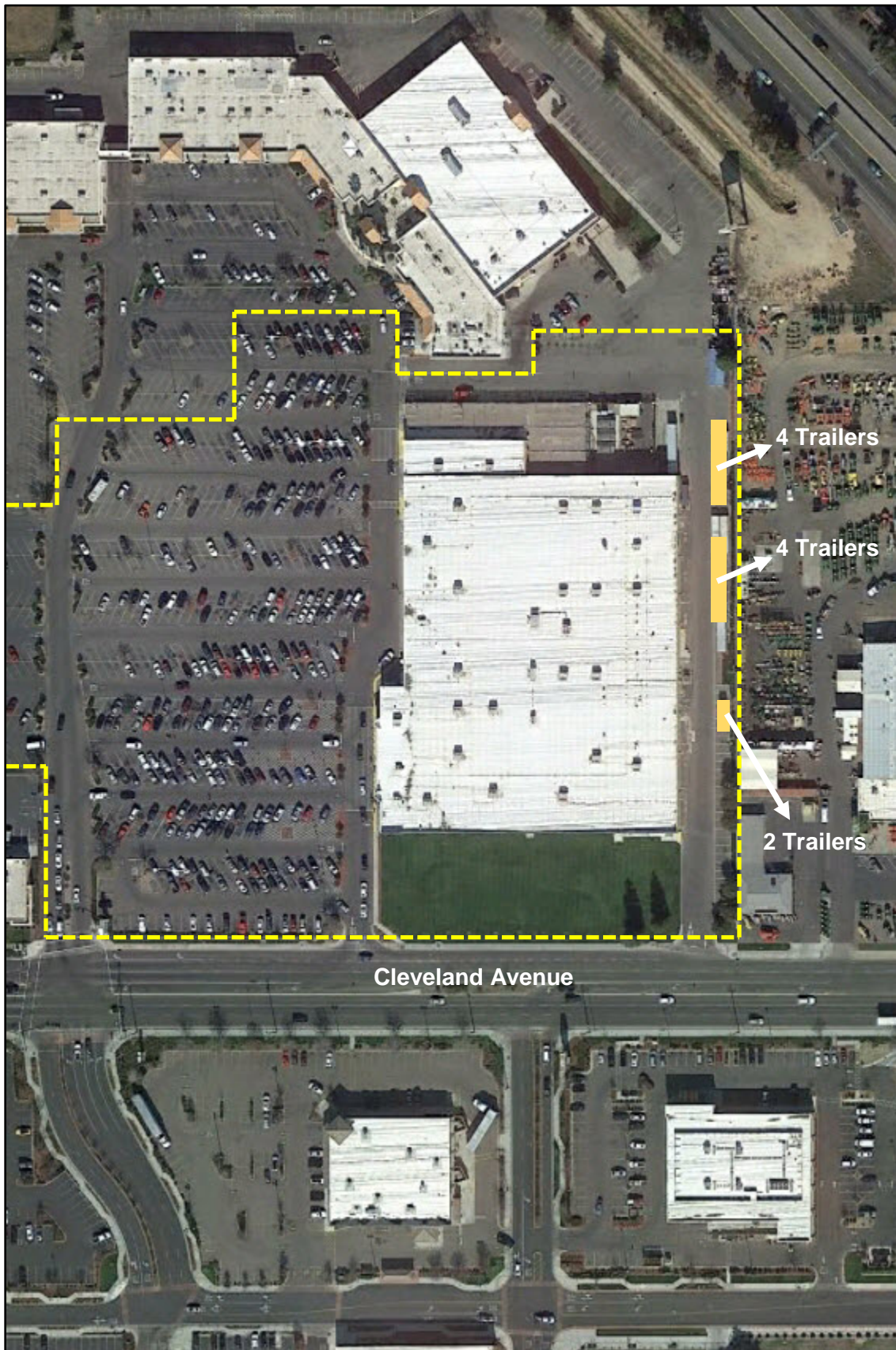
(OR)

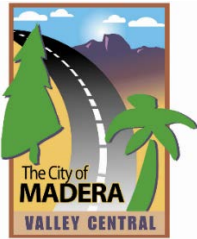
Motion 3: Move to deny the application for Conditional Use Permit 2018-15 and Site Plan Review 2018-25, based on and subject to the following findings: (specify)

ATTACHMENTS

Aerial Photo

Aerial Photo





CITY OF MADERA
PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

**Staff Report: El Toro Outdoor BBQ
CUP 2018-16, SPR 2018-28 & Categorical Exemption
Item #5 – September 11, 2018**

PROPOSAL: An application for consideration of a conditional use permit and site plan review to allow for outdoor cooking activities in conjunction with the existing El Toro Market.

APPLICANT:	Gary A. Rogers	OWNER:	Nishimoto Company Inc.
ADDRESS:	748 North D Street	APN:	003-023-007
APPLICATION:	CUP 2018-16 and SPR 2018-28	CEQA:	Categorical Exemption

LOCATION: The property is located at the southwest corner of East Lincoln Avenue and North D Street.

STREET ACCESS: The site has access to North D Street and East Lincoln Avenue.

PARCEL SIZE: Approximately 0.91 acres.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The site is generally surrounded by commercial development to the north, east and south and single family residences to the west of the project site.

ENVIRONMENTAL REVIEW: The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15304 (Minor Alterations to Land).

SUMMARY: El Toro Market is requesting approval to establish a mobile outdoor barbecue use as a component of the market's business model. The mobile outdoor barbecue cooker will utilize approximately 72 square feet of the northeast corner of the project parcel. The cooking activities are proposed to occur between 6:00 a.m. and 3:00 p.m., Friday through Sunday. All cooked products will be relocated within the market for sale. There will no allowance for direct sale of prepared foods or outdoor dining as a component of the outdoor barbecue use. As conditioned, the mobile outdoor barbecue cooker will not utilize or impede any required parking, or adversely impact sounding uses.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.802 Light Commercial Uses Permitted

MMC § 10-3.1301 Use Permits

MMC § 10-3.4.0102 Site Plan Review Applicability

The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission subject to the Planning Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

El Toro Market, formerly known as the Bridge Store, has held various entitlements on the site dating back to as early as 1965. The entitlements varied from building relocations, conditional use permits, parking variances and site plan reviews. Relevant entitlements on the property include a conditional use permit and variance approved by the Planning Commission in July 8, 1986. The use permit allowed for a market parking area on an abutting residentially zoned parcel. The variance granted for fewer parking spaces than required on the site.

ANALYSIS

Background

After many years in operations the Bridge Store closed its doors in 2017. The neighborhood store reopened as EL Toro Market in March of 2018. The new ownership on the site is requesting the allowance to set up a mobile outdoor barbecue cooker and sell barbecue food to its clientele.

Approval of the use permit and site plan review would facilitate on- and off-site improvements that would bring the site to minimum current standards as a component of establishing the outdoor activity. The site has not seen any meaningful site improvements since the approval of Conditional Use Permit 1986-17 and Variance 1986-04, which included the expansion the store's building and demolition of accessory structures on the site. The variance allowed for the expansion on the site to occur while not satisfying the parking space requirements on the site.

Operations

The outdoor cooking activities are proposed to occur Friday through Sunday between the hours of 6:00AM and 3:00PM. The 6-foot by 12-foot mobile outdoor barbecue will be at a fixed location of the parking lot, positioned at the northeast corner of the grocery store property, at the intersection of North D Street and South Street. Once the food is prepared, it will be moved to inside the grocery store where customers will be able to purchase the food to take home. No outdoor sale of the barbecued products or outdoor dining are permitted as a component of the allowance for an outdoor barbeque.

With the market being in close proximity to residences, staffs analysis suggest that the proposed early hour of operation would not align with the surrounding neighborhood. It is recommended that the hours of operation be as early as 8:00AM to as late as 6:00PM, seven days a week.

Madera County Environmental Health

The Madera County Environmental Health Department requires that no food preparation may take place out-of-doors except the barbecuing of foods on an open-air barbecue and the application of condiments to the foods barbecued. This includes, but isn't limited to, forming, trimming, grinding or slicing the barbecued food. Outdoor cooking is allowed with an open-air barbecue, which specifies the cooking of food directly over hot coals, heated lava, hot stones or gas flame on equipment suitably designed and maintained for use out of doors.

On-Site Parking

As previously noted, a parking variance granted a reduction in parking stall count for the former Bridge Store. An off-street parking covenant was recorded in conjunction with the variance, which allowed for the utilization of extra parking spaces on other commonly owned parcels surrounding the intersection of North D Street and South Street. Approval of the variance and the recordation of the parking covenant ultimately allowed for 84 on-site parking spaces when 94 spaces are required for the food market. As conditioned, the addition of the mobile outdoor barbecue cooker will not impede the utilization of any of the required parking stalls.

The proposed conditional use permit was reviewed by various City departments. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of the establishment of outdoor cooking activities is not specifically addressed in the vision or action plans, the overall project does indirectly support **Action 115.2** – *As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...*

RECOMMENDATION

The information presented in this report supports conditional approval of the conditional use permit and site plan review request. It is recommended that the Planning Commission consider the information in this report, as well as testimony in the public hearing, and approve Conditional Use Permit 2018-16 and Site Plan Review 2018-28 subject to the findings and conditions of approval outlined in this report.

PLANNING COMMISSION ACTION

The Planning Commission will be acting on the request for Conditional Use Permit 2018-16 and Site Plan Review 2018-28, determining to either:

- approve the application with or without conditions
- continue the hearing, or
- deny the application

Any action by the Commission approving or denying the application is subject to appeal to the City Council within 15 calendar days of the Commission's action.

Motion 1: Move to approve Conditional Use Permit 2018-16 and Site Plan Review 2018-28, based on and subject to the findings and conditions of approval:

Findings

- This project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15304 (Minor Alterations to Land).
- The establishment of outdoor cooking activities is consistent with the purposes of the C (Commercial) General Plan designation and the C1 (Light Commercial) Zone District which provide for the use, subject to the issuance of a conditional use permit.
- As conditioned, the development will be compatible with the surrounding neighborhood.
- As conditioned, the establishment, maintenance or operation of the use will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for these use permits.
2. The applicant's failure to utilize the use permit within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
3. Conditional Use Permit 2018-16 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permits and owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
4. Conditional Use Permit 2018-16 and Site Plan Review 2018-28 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to revoke the permits or modify the conditions of approval.
5. Site Plan Review 2018-28 will expire one year from date of issuance, unless positive action is taken on the project as provided in the Municipal Code and a request to extend the approval is received before the expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval).
6. Any proposed future modifications to the site, including but not limited to, building exteriors, parking/loading areas, fence/walls, new buildings or landscaping shall require, at a minimum, amendment of Site Plan Review 2018-28.
7. It shall be the responsibility of the property owner and management to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to establishment of the use.
8. All on-site and off-site requirements listed herein shall be completed in advance of any outdoor sales activities commencing on the El Toro Market project site.

Engineering Department

General

9. Nuisance onsite lighting shall be redirected as requested by the City Engineer within 48 hours of notification.
10. The developer shall pay all required fees for completion of the project. Fees due may include but shall not be limited to the following: encroachment permit processing and improvement inspection fees.
11. Improvements within the City right-of-way require an encroachment permit from the Engineering Division.

Sewer

12. Existing sewer service connection shall be upgraded to include a cleanout per current City standards, if not already in place.

Streets

13. Damaged sidewalk and curb and gutter shall be removed and replaced per current City standards. Limit of repairs shall be established by the City Engineering Department Inspector.
14. If, in the future, a street widening project is initiated on North D Street along the project frontage wherein a dedication of right-of-way is required, an amendment to this conditional use permit shall be required in order to permit the relocation of the mobile outdoor barbecue cooker to a different location on the project site.

Fire Department

15. One 2A10BC-rated fire extinguisher shall be required within fifty (50') feet of the barbecue and plainly visible.
16. A building permit is required for all interior construction.
17. Noting that if the sales of barbecued goods are made at the barbecue area, there will be other requirements regarding accessibility and public egress.
18. Nuisance calls from smoke generation may incur fines and are the responsibility of the owner.

Planning Department

General

19. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
20. The applicant shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
21. The property owner, operator, and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster and refuse containers owned by the property owner.

22. The applicant and/or developer shall comply with all federal, state and local laws. Material violations of any of those laws concerning the use will be cause for revocation of Conditional Use Permit 2018-16.

Outdoor Cooking Activities

23. Conditional Use Permit 2018-16 allows for outdoor cooking activities on the El Toro Market, in proximity to the southwest corner of North D Street and South Street, consistent with the site plan. The outdoor cooking activities shall be allowed to operate between the hours of 8:00AM and 8:00PM, seven days a week.
24. The barbeque cooker shall only be placed in the designated area on the approved site plan during the outdoor cooking activities. The barbeque cooker shall be stored in a storage area not visible to the public during non-operative hours of the outdoor cooking activities.
25. The barbeque cooker shall be roped off with safety tape and/or cones and non-accessible to customers.
26. There shall be no allowance for the outdoor sale of barbecued products or outdoor dining as a component of the allowance for an outdoor barbeque.

Landscaping

27. The property owner shall maintain all landscaping in a healthy and well-manicured appearance. This includes, but is not limited to, ensuring properly operating irrigation equipment at all times, trimming and pruning of trees and shrubs, and replacing dead or unhealthy vegetation with drought-tolerant plantings.

Parking

28. On-site parking shall be provided at all times in conformance with the Madera Municipal Code and recorded Parking Covenant. Further expansion of the use or addition of accessory uses may require additional parking be provided in accordance with City standards prior to the expansion of the use. All required parking shall be permanently maintained with all parking spaces to be shown on plans submitted for building permits. Any modifications in the approved parking layout shall require an amendment to Site Plan Review 2018-28 and/or Variance 1986-04.

Signage

29. All signage shall be in compliance with the Madera Sign Ordinance. All signage is required to have an approved Sign Permit issued by the Planning Department per MMC § 10-6.

Madera County Environmental Health Department

30. The applicant shall submit a plan review application with specification sheet(s) and the plan review fee to the Madera County Environmental Health Department prior to further operation of the outdoor cooking activities.
31. All food being cooked outdoors shall be cooked by an open-air barbeque, which requires that food be cooked using hot coals, heated lava, hot stones, gas flame, or other method approved by the department. The open-air barbeque shall be temporary or mobile that remains fixed during the hours of operation of the outdoor cooking activities.
32. No food preparation shall take place out-of-doors except the barbecuing of foods on the open-air barbeque and the application of condiments to the foods barbecued. No other form of preparation including, but not limited to, forming, trimming, grinding or slicing may take place out-of-doors.

(OR)

Motion 2: Move to continue the application for Conditional Use Permit 2018-16 and Site Plan Review 2018-28 to the October 9, 2018 Planning Commission hearing, based on and subject to the following (specify):

(OR)

Motion 3: Move to deny the application for Conditional Use Permit 2018-16 and Site Plan Review 2018-28 based on and subject to the following findings (specify):

ATTACHMENTS

Aerial Photo
Madera County Environmental Health Department Letter
Site Plan
Site Photos

Aerial Photo



Madera County Environmental Health Department Letter



Community and Economic Development Environmental Health Division

Dexter Marr
Deputy Director

- 200 W. 4TH Street, Suite 3100
- Madera, CA 93637
- (559) 675-7823
- FAX (559) 675-7919
- envhealth@madera-county.com

July 30, 2018

Madera County Environmental Health Comments: FOOD FACILITY (PERMANENT OR REMODEL):

Re: El Toro Market located at 748 North D Street-Madera

Owner shall submit plan review application, specification sheet(s), and pay plan review fee for approval prior to operation. In addition, the owner shall meet the requirements of an Open-air barbecue at a permanent food facility a specification sheet(s).

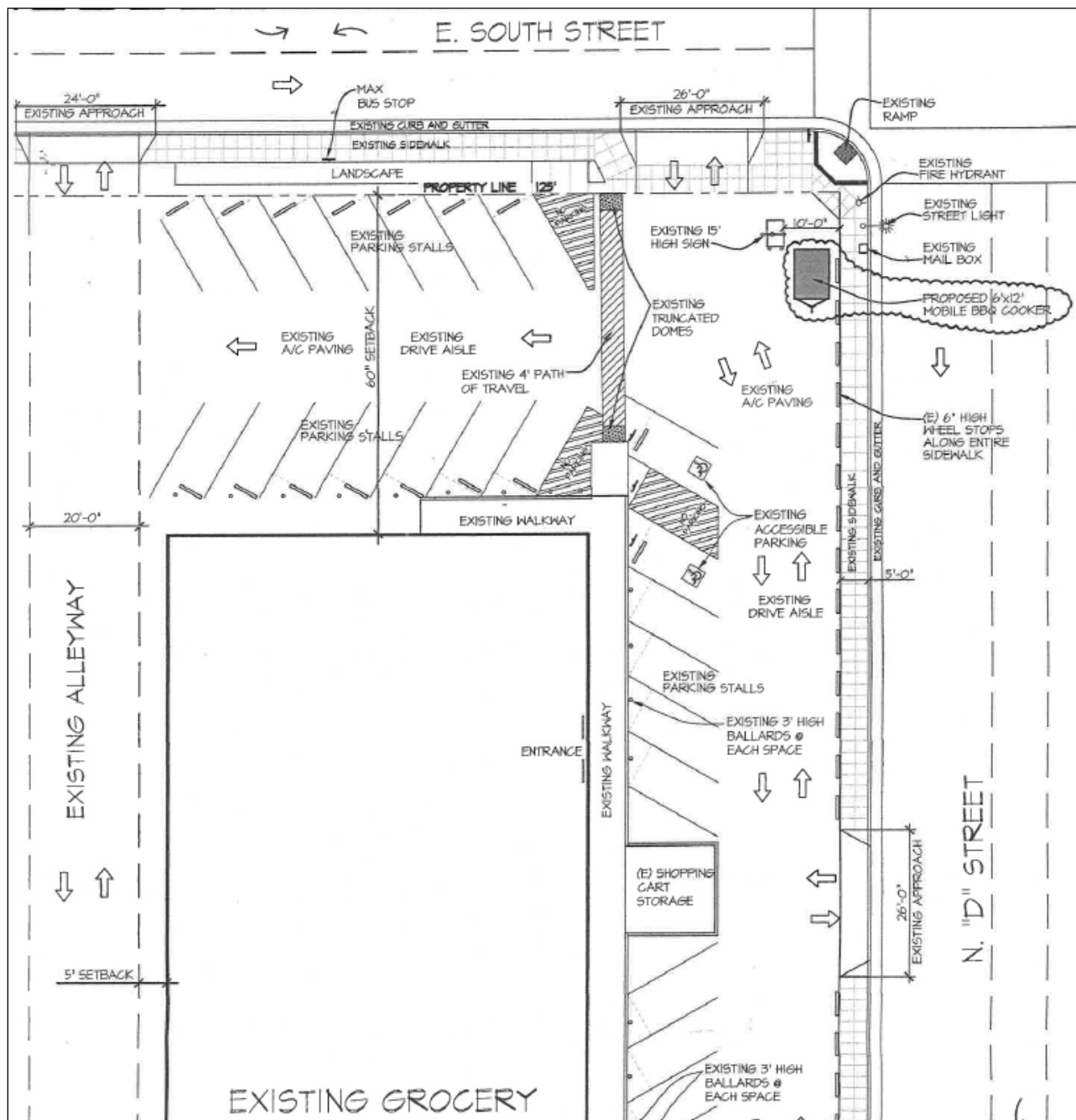
Open-air Barbecue means a piece of equipment designed for barbecuing food, where the food is prepared out of doors by cooking directly over hot coals, heated lava, hot stones, gas flame, or other method approved by the department, on equipment suitably designed and maintained for use out of doors, that is operated by a temporary food facility, or a mobile food facility that remains fixed during hours of operations at a community event or a permanent food facility (Section 113843).

Note: Barbecuing means that cooking is achieved by radiant heat and not via conduction or convection. The food being barbecued must be heated *directly over* the heat source and not through an intermediate medium or vessel. Wrapping the food in foil or placing the food in cooking utensils, i.e., pots and pans, and then placing the wrapped food or utensil over the heat source, does not constitute barbecuing. Examples of equipment that are not considered to be open-air barbecues include but are not limited to, griddles, ranges, ovens, and some underground vaults and pits.

No food preparation may take place out-of-doors except the barbecuing of foods on the open-air barbecue and the application of condiments to the foods barbecued. No other form of preparation including, but not limited to, forming, trimming, grinding, or slicing, may take place out-of-doors.

Along with the plans, the plan review application will need to be completed and a plan review fee paid at the time of submission to Madera County Environmental Health Division. Contact a Food Program specialist within this Division for “Open Air BBQ Guidelines” and any questions that you may have regarding this process (559) 675-7823. Contact all other agencies for their requirements.

Site Plan

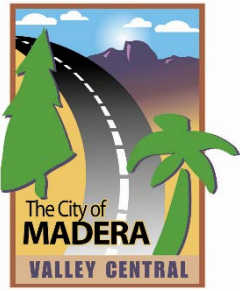


Site Photos



Proposed location of barbecue cooker





CITY OF MADERA
PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

**Staff Report: Liu’s Village Alcohol Sales
CUP 2018-17, SPR 2018-27 & Categorical Exemption
Item #6 – September 11, 2018**

PROPOSAL: An application for a conditional use permit and site plan review to allow for the sale of beer and wine for on-site consumption in conjunction with an existing restaurant.

APPLICANT:	Zhi Huan Liu	OWNER:	Zhi Huan Liu
ADDRESS:	620 North Gateway Drive	APN:	006-053-002
APPLICATION:	CUP 2018-17 & SPR 2018-27	CEQA:	Categorical Exemption

LOCATION: The property is located approximately 50 feet south of the intersection of Roberts Avenue and North Gateway Drive.

STREET ACCESS: The site has access to North Gateway Drive and an alley that provides access to Roberts Avenue and West 1st Street.

PARCEL SIZE: Approximately 0.34 acres

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C2 (Heavy Commercial)

SITE CHARACTERISTICS: The project site is located along the Gateway Drive commercial corridor. Immediate businesses adjacent to the property are Schoettler Tire to the south, an auto repair shop to the north, a recycling center to the east and a mix of residential density to the west.

ENVIRONMENTAL REVIEW: The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) guidelines, Section 15301, (Existing Facilities).

SUMMARY: The owner of Liu’s Village opened their restaurant in 2017, after the closure of the Tea House restaurant in 2016. Prior to opening, the owner refreshed the site with a new paint scheme, slurry seal and restripe of parking stalls. The Tea House had a use permit that allowed for the sale of beer and wine for on-site consumption, but after their closure it was not utilized within a one-year period resulting in the expiration of the use permit. Liu’s Village is now proposing to re-establish the sale of beer and wine for on-site consumption as a component of their restaurant operations, which requires approval of a conditional use permit by the Planning Commission. Conditions of approval guide the sale and consumption of beer and wine while requiring improvements necessary to bring the site to a current City standard.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.902 Heavy Commercial Zones – Uses Permitted

MMC § 10-3.4.0101 Site Plan Review

MMC § 10-3.1202 Parking Regulations

MMC § 10-3.1301 Use Permits

The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission subject to the Planning Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

The restaurant was originally constructed in 1981. The restaurant was previously known as "Tea House" and had the allowance to sell beer and wine with the approval of a use permit in 1982. The owners of the Tea House closed their business in 2016.

ANALYSIS

Background

Liu's Village opened their business in October of 2017. Prior to opening, they refreshed the site with a new paint scheme on the building and a slurry seal and restripe of the parking lot. There was no change in occupancy or proposed interior improvements.

The original use permit that allowed for the sale of beer and wine for on-site consumption expired in August of 2017. Any proposal to re-establish the allowance for the sale of beer and wine requires the approval of a new conditional use permit and site plan review.

Operations

Although not originally proposed when Liu's Village opened at their 620 North Gateway Drive address, the restaurant would now like to serve beer and wine as a component of their operations. It is typical for a restaurant to sell beer and wine as a component of its operations.

A Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) license from the California Department of Alcoholic Beverage Control (ABC) is required. The project site is located in Census Tract 8, which generally encompasses the downtown region of the City. Census Tract 8 is an over-concentrated area for ABC licenses for both the on and off-site sale and consumption of alcoholic beverages. Currently, there are 19 on-sale and 16 off-sale ABC licenses in Census Tract 8. Ideally, there should be only six (6) on-sale and six (6) off-sale ABC licenses issued in Census Tract 8. Over-concentration of ABC licenses is primarily due to the high concentration of commercial activity in relation to the low numbers of residences within Census Tract 8.

It has been the City's policy to review requests for alcohol sales on a case-by-case basis, considering the individual merit of each request. For restaurants, it has been standard practice to restrict sales to on-site consumption only. Attention to signage is also addressed in conditions of approval of the conditional use permit. In that it is common for dine-in restaurants to offer

alcoholic beverages in conjunction with a meal, staff is in support of the issuance of a conditional use permit.

Site Improvements

The site needs on-site improvements to comply with current City standards. The improvements include a rehabilitation of existing landscaping, the construction of a trash enclosure and corrections to their ADA parking. These improvements are included within the recommended conditions of approval.

Parking

The parking requirement for a restaurant is one space for each three (3) seats. The restaurant has seating for 77 customers, equating to a minimum parking requirement of 26 parking stalls. 30 parking stalls will be provided to serve the restaurant after required on-site improvements have been incorporated into the site. There is adequate parking to provide for the restaurant use.

The proposed conditional use permit was reviewed by various City Departments. The responses and recommendations have been incorporated into the recommended conditions of approval included in this report.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of sales of alcoholic beverages is not specifically addressed in the vision or action plans, the overall project does indirectly support **Action 115.2** – *As a component of the General Plan Update, increase retail outlets and promote Shop Madera ...*”

RECOMMENDATION

The information presented in this report supports conditional approval of the conditional use permit request. It is recommended that the Planning Commission consider the information in this report, as well as testimony in the public hearing, to determine an appropriate decision on Conditional Use Permit 2018-17 and Site Plan Review 2018-27, subject to the findings and conditions of approval outlined in this report.

PLANNING COMMISSION ACTION

The Commission would be taking action regarding Conditional Use Permit 2018-17 and Site Plan Review 2018-27, determine to either:

- approve the applications with or without conditions
- continue the hearing, or
- deny the applications

Any action by the Commission approving or denying the application is subject to appeal to the City Council within 15 calendar days of the Commission’s action.

Motion 1: Move to approve the requested Conditional Use Permit 2018-17 and Site Plan Review 2018-27, based on and subject to the findings and conditions of approval as listed below.

Findings

- This project is categorically exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) guidelines.
- The sale of alcoholic beverages is consistent with the purposes of the C (Commercial) General Plan designation and the C2 (Heavy Commercial) Zone District which provides for the use, subject to the issuance of a conditional use permit.

- There is adequate parking to serve the restaurant business.
- As conditioned, the development will be compatible with surrounding properties.
- As conditioned, the establishment, maintenance or operation of the use will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or, be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for this use permit.
2. All on-site and off-site improvement shall be completed prior to issuance of a Type 41 ABC license.
3. The applicant's failure to utilize Conditional Use Permit 2018-17 within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
4. Conditional Use Permit 2018-17 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permit and owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
5. Site Plan Review 2018-27 will expire one year from date of issuance unless positive action is taken on the project as provided in the Municipal Code or a request to extend the approval is received before the expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval).
6. Conditional Use Permit 2018-17 and Site Plan Review 2018-27 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to revoke the permit or modify the conditions of approval.
7. Any proposed future modifications to the site, including but not limited to, building exteriors, parking/loading areas, fence/walls, new buildings or landscaping shall require an amendment to Site Plan Review 2018-27.
8. It shall be the responsibility of the property owner and management to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to the establishment of the use.

Building Department

9. Current State of California and federal handicap requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at permit stage and shall be confirmed at final inspection. The requirements shall also apply to proposed future development.
10. There shall be an ADA accessible path of travel from the structure to the City's right-of-way and to the ADA parking stall loading zone. This shall include the construction of an ADA ramp where a "step" exists on the concrete sidewalk adjacent to the northern parking stall closes to the North Gateway Drive driveway approach.
11. The existing ADA parking stalls on the site do not comply with current ADA code. Two (2) ADA parking stalls will be required to be striped where the northern parking stalls, between the entrance of the building and the North Gateway Drive driveway approach, are located. There shall be a striped loading zone between the two (2) ADA parking stalls.
12. Plans submitted for Building Permit and Plan Check shall address all ADA requirements to be approved by the City Building Official.

Engineering Department

General

13. Improvements within the City right-of-way shall require an Encroachment Permit from the Engineering Department.
14. The developer shall pay all required fees for completion of the project. Fees may include but shall not be limited to the following: easement acceptance, encroachment permit processing and improvement inspection fees.

Sewer

15. The existing sewer service connection shall be upgraded to include a cleanout per City standards.

Streets

16. An Irrevocable Offer of Dedication shall be made to dedicate ten (10') feet of right-of-way along the entire project parcel frontage on North Gateway Drive to provide a half-street width of fifty (50') feet, west of the center line.

Planning Department

General

17. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
18. The applicant shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
19. The applicant shall comply with all federal, state and local laws. Material violations of any of those laws concerning the use will be cause for revocation of this permit.
20. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster and refuse containers owned by the property owner.

Allowance for the Sale of Beer and Wine

21. Conditional Use Permit 2018-17 allows for the sale of beer and wine in association with the operation of a bona fide eating establishment. This entitlement requires a Type 41 Alcohol Beverage Control license to be obtained. Modification of the license type requires amendment of this use permit.
22. The sale of alcoholic beverages shall be restricted to on-site consumption only. No sale of alcoholic beverages for off-site consumption shall be allowed or shall occur as a component of the use.
23. The sale of on-site alcohol shall be limited to occur as early as 9:00 am and as late as midnight, seven days a week.
24. No outdoor consumption of alcoholic beverages shall be allowed at any time.
25. No outdoor dining shall occur without first securing a use permit to provide for such activity as approved by the Planning Commission.
26. There shall be no allowance for the outdoor display and/or storage of goods, merchandise and/or materials without first amending the conditional use permit, approved by the Planning Commission.
27. Utilization of the restaurant as a commissary for a mobile food vendor will require the approval of an amendment of this use permit prior to the commencement of any commissary use on the site. No commissary activities shall occur without first amending the conditional use permit.

Fences and Walls

28. A new trash enclosure shall be constructed consistent with City standards. The color of the trash enclosure shall be painted to match the existing structure. The location of the trash enclosure shall be shown on the site plan submittal for building plan check and shall be approved by the Public Works Director.

Landscaping

29. The landscape area along the building frontage shall be rehabilitated to include the installation of a three (3") inch layer of mulch.
30. The property owner shall maintain all landscaping in a healthy and well-manicured appearance. This includes, but shall not be limited to, the following: ensuring irrigation equipment is properly operating at all times, trimming and pruning of trees and shrubs, and replacing dead or unhealthy vegetation with drought-tolerant plantings.

Parking

31. The restaurant has seating for 77 customers, which equates to a minimum number of 26 parking stalls for the site. On-site parking shall be provided at all times in conformance with the Municipal Code. Further expansion of the use or additional or accessory uses may require the provision of additional parking spaces in compliance with City standards prior to establishment of the use. All required parking shall be permanently maintained with all parking spaces to be shown on plans submitted for building permits. Any modifications in the approved parking layout shall require an amendment to Site Plan Review 2018-27.

Signage

32. The maximum amount of allowable on-building signage shall be 88 square feet.
33. All signage shall have an approved sign permit issued by the Planning Department per Madera Municipal Code Chapter 10-6.
34. No signage specific to alcohol being available for sale and consumption on the site shall be visible from the exterior of the structure.

(OR)

Motion 2: Move to continue the application for Conditional Use Permit 2018-17 and Site Plan Review 2018-27 to the October 9, 2018, Planning Commission meeting.

(OR)

Motion 3: Move to deny the request for Conditional Use Permit 2018-17 and Site Plan Review 2018-27 based on the following findings: (specify)

ATTACHMENTS

Aerial Photo
Photos

Aerial Photo



Photos



Tea House after it closed.



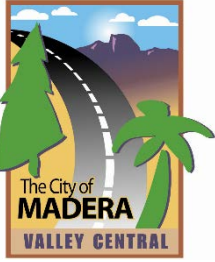
Liu's Village with repaint and slurry seal/restripe.



Landscaping needs refresh with mulch ground cover.



This raised lip will need to be reconstructed into a ramp for the ADA path of travel.



CITY OF MADERA
PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

**Staff Report: Diva Fitness
CUP 2018-19 & Environmental Determination
Item #7 - September 11, 2018**

PROPOSAL: An application for a conditional use permit and site plan review to allow for the establishment of a group exercise studio within the former Casa de la Raza store.

APPLICANT:	Sivano Garcia Jarquin	OWNER:	Daud A Abu Ziadih
ADDRESS:	711 N. D Street	APN:	004-011-007
APPLICATION:	CUP 2018-19	CEQA:	Categorical Exemption

LOCATION: The property is located along the eastern side of North D Street, approximately 215 feet north of the intersection at North D Street and Riverside Drive.

STREET ACCESS: The site has access to North D Street.

PARCEL SIZE: 0.14 acres

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The site is a fully developed light commercial property. The property includes a 1,800 square foot office building with two tenant suites. Residential uses surround the property to the east and west, commercial uses are located along the North D Street commercial corridor to the north, and the Fresno River is south of the site.

ENVIRONMENTAL REVIEW: This project is categorically exempt under §15301 (Existing Facilities) of CEQA Guidelines.

SUMMARY: Diva Fitness proposes to open a group fitness facility in the approximately 460 square foot suite formerly occupied by the Casa de la Raza Oaxacan crafts store. The group fitness facility will offer Zumba classes held during the morning and evening. Conditions of approval provide for compatibility with surrounding uses.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.802 Light Commercial Zones
MMC § 10-3.1202, Parking Regulations
MMC § 10-3.1301, et seq., Use Permit Procedures

The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission subject to the Planning Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

Site Plan Review (SPR) 2016-01 allowed for the memorialization of the Herbalife café/lounge use. Conditional Use Permit (CUP) 2016-08 allowed for a group fitness activity in association with the Herbalife business. CUP 2016-08 was revoked on August 8, 2017 for failure to comply with the agreed upon conditions of approval.

ANALYSIS

Operations

The group exercise studio is proposed to occupy the former Casa de la Raza Oaxacan crafts store that recently closed at the 711 North D Street commercial center. The proposed Diva Fitness group exercise business wished to "promote healthy living . . . thru dance classes." Hours of operation will be in the morning and evenings, with classes proposed from 6:30AM until 7:30AM and from 6:30PM until 7:30PM, Monday through Friday. A Saturday session is proposed from 8:00AM until 9:00AM. Between six and ten clients are expected for each session. It is recommended that group exercise only occur during the hours of 6:30AM to 8:00AM, and 6:30PM to 8:00PM daily, seven days per week. It is also recommended that all amplified music and/or voice be kept below a volume that would represent a nuisance to the surrounding businesses, residents and neighborhood as a whole. Amplified music and/or voice should also only be used within an entirely enclosed structure. Additionally, no outdoor activities should be a component of the business. All Diva Fitness activities should occur only within the business' fully enclosed commercial suite.

Parking

The project site includes seven parking stalls that serve a total of approximately 1,560 square feet of lease space. Currently, an Herbalife business is located in 780 square feet, an Alcoholics Anonymous group is meeting in approximately 320 square feet, and the proposed Diva Fitness business would occupy the remaining 460 square feet. Per Resolution No. 1725, adopted by the Planning Commission on December 11, 2007, Dance Schools, Gymnastics, Martial Arts Centers and similar uses are required to provide parking spaces at a ratio of one space per 200 square feet of gross floor area; or at a rate of one space per 3 students, and one space for every two employees whichever is greater. Assuming a maximum of ten clients and one employee at any one group session, the group fitness studio would be required to provide four parking stalls.

Business Name	Parking Ratio	Square Footage	Parking Stall Reqs.
Herbalife	1 stall per 250 sq. ft.	Approx. 780	3 stalls required
Diva Fitness	1 stall per 300 sq. ft.	Approx. 460	4 stalls required
Alcoholics Anonymous	Unknown Attendance	Approx. 320	3 stall required

Although there is an overall shortage of parking, the Municipal Code provides that up to fifty percent of required parking can be shared as “joint use” whenever predominantly nighttime uses share parking with uses that are predominantly daytime uses. The Alcoholics Anonymous use is predominantly a night use, with meetings occurring only from 7:00PM until 9:00PM, and the Diva Fitness proposes only early morning and evening classes. With the “joint use” allowance incorporated into the parking analysis, the project site satisfies the parking regulations.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The proposed business will offer residents a place to exercise. Madera 2025 **Goal HS-2** encourages “A healthy and fit population with access to healthcare, healthful food, and places to be active and exercise.”

RECOMMENDATION

The information presented in this report supports conditional approval of the use permit and site plan review request.

PLANNING COMMISSION ACTION

The Planning Commission will be acting on the Use Permit to allow for the establishment of a fitness component to the existing use, determining to either:

- approve the applications with or without conditions
- continue the hearing, or
- deny the applications

Any action by the Commission approving or denying the application is subject to appeal to the City Council within 15 calendar days of the Commission’s action.

Motion 1: Move to approve Conditional Use Permit 2016-08, based on and subject to the findings and conditions of approval:

Findings

- This project is categorically exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) since there will be no expansion of the existing structure.
- The establishment of a fitness facility is consistent with the purposes of the C (Commercial) General Plan designation and the C1 (Light Commercial) Zone District which provide for the use, subject to the issuance of a conditional use permit.
- As conditioned, there is adequate parking and site features to allow for the proposed use.
- As conditioned, the development will be compatible with surrounding properties.

- As conditioned, the establishment, maintenance or operation of the use will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

CONDITIONS OF APPROVAL

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty (30) days of the date of approval for this use permit.
2. The use permit may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permit and owners of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
3. The applicant's failure to utilize this use permit within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.
4. Conditional Use Permit 2018-19 will expire and be rendered null and void if the use is discontinued for a twelve month period unless a written request for extension has been submitted to and approved by the Planning Commission.
5. This use permit shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions of approval, Staff may schedule a public hearing before the Planning Commission within 45 days of the violation to consider revocation of the permit.
6. Any proposed future modifications to the site, including but not limited to building exteriors, parking/loading areas, fence/walls, new buildings or landscaping shall require an amendment to this site plan review.
7. It shall be the responsibility of the property owner to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to establishment of the use.

Building Department

8. Current State of California and federal handicap requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at permit stage, shall be confirmed at final inspection and shall apply to proposed and future development.
9. Additional items identified as not complying with current codes and ordinances which require correction or attention may be identified. Any item not in conformance with current codes and ordinances must be corrected.

Fire Department

10. 2A10BC-rated portable fire extinguishers are required. A minimum of one is required, which must be mounted between three (3') and five (5') feet above the floor in a visible and accessible location.
11. Door hardware must open from the inside without the use of a key or any special knowledge or effort.

Planning Department

12. This use permit allows for the establishment of a group exercise fitness studio within an approximately 460 square foot tenant suite at 711 North D Street.
13. The maximum number of group exercise fitness participants is ten (10), plus one employee, or as determined by the Fire Marshall, whichever is less. At no time shall the occupancy of the space exceed the occupancy load as determined by the Fire Official.
14. The group exercise fitness studio use shall be contained within the tenant suite at all times. No outdoor activities are permitted as a component of the business. Outdoor storage of goods and/or materials shall not be allowed.
15. The group exercise fitness studio use shall only be permitted to operate from between the hours of 6:30AM to 8:00AM, and 6:30PM to 8:00PM daily, seven days per week.
16. Vandalism and graffiti shall be corrected per the Madera Municipal Code.
17. The applicant shall operate in a manner that does not generate significant noise, odor or vibration that adversely affects any adjacent properties. All amplified music and/or voice shall be kept below a volume that would represent a nuisance to the surrounding businesses, residents and neighborhood as a whole. Amplified music and/or voice shall also only be used within an entirely enclosed structure.
18. The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster/refuse containers owned by the property owner.
19. The applicant shall comply with all federal, state and local laws. Material violation of any applicable laws concerning the use will be cause for revocation of this permit.
20. On-site parking shall be provided at all times in conformance with the Municipal Code. All required parking shall be permanently maintained.
21. The property owner shall maintain all landscaping in a healthy and well-manicured appearance to achieve and maintain the landscaping design that was approved by the City. This includes, but is not limited to, ensuring properly operating irrigation equipment at all times, trimming and pruning of trees and shrubs, and replacing dead or unhealthy vegetation.
22. All signage shall be in compliance with the Madera Sign Ordinance. All signage is required to have an approved Sign Permit issued by the Planning Department per MMC §10-6.

(OR)

Motion 2: Move to continue the application for Conditional Use Permit 2018-19 to the October 9, 2018 Planning Commission meeting.

(OR)

Motion 3: Move to deny the application for Conditional Use Permit 2018-19, based on the following findings: (specify)

ATTACHMENTS

Aerial Photo
Site Photos

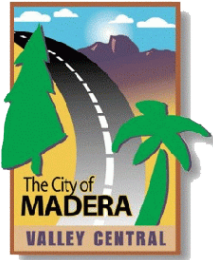
Aerial



Site Photos







CITY OF MADERA
PLANNING COMMISSION

205 W. Fourth Street
Madera CA 93637
(559) 661-5430

**Staff Report: Singh Use Permit Performance Review
CUP 2008-07
Item #NP1 – September 11, 2018**

PROPOSAL: A performance review of Conditional Use Permit 2008-07 allowing for the sale of alcoholic beverages for off-site consumption as a component of the operation of a convenience store located in the C-2 (Heavy Commercial) Zone District.

APPLICANT:	Amarjit Singh	OWNER:	Khalid Chaudhry
ADDRESS:	300 Madera Avenue	APN:	012-053-007
APPLICATION:	CUP 2008-07	CEQA:	Categorical Exemption

LOCATION: The property is located on the northwest corner of the intersection of Madera Avenue and Lewis Street. There is commercial development to the north, east, and south, with residential property to the west.

STREET ACCESS: The site has access to Lewis Street.

PARCEL SIZE: 11,875 sq. ft.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C2 (Heavy Commercial)

SITE CHARACTERISTICS: The 11,875 sq. ft. commercially zoned site is currently developed with an existing 2,880 sq. ft. building.

ENVIRONMENTAL REVIEW: The project is categorically exempt under 15321 (Enforcement Actions by Regulatory Agencies) of CEQA Guidelines.

SUMMARY: The allowance to sell beer and wine in association with the operation of the Super 7 convenience store was approved via two planning entitlements. Conditional Use Permit 2008-07, allowing for the beer and wine sales, was approved on August 12, 2008. A condition of approval required that a site plan review be completed within ninety days. Site Plan Review 2008-15 was subsequently approved on October 2, 2008. The refurbishment of the site via Site Plan Review 2008-15 was never initiated or completed. The site is now closed. The conditions of approval which provided for the allowance to sell beer and wine were largely never satisfied.

APPLICABLE CODES AND PROCEDURES

MMC § 10-3.405 Uses
MMC § 10-3.1301 Use Permits
MMC § 10-3.1311 Termination and Revocation

The City's Zoning Ordinance allows for the granting of a use permit by the Planning Commission subject to the Planning Commission being able to make findings that the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

If the Commission cannot make the appropriate findings, the use should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered and on or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

PRIOR ACTION

Prior to the site being converted to the Super 7 convenience store, it had developed as a 7-11 convenience store. The sale of beer and wine had been an existing non-conforming use before the 7-11 shut its doors in approximately 2006.

The allowance to sell beer and wine in association with the operation of the Super 7 convenience store was approved via two planning entitlements. Conditional Use Permit 2008-07, allowing for the sale of beer, was approved on August 12, 2008. A condition of approval required that a site plan review be completed within ninety days. Site Plan Review 2008-15 was subsequently approved on October 2, 2008.

ANALYSIS

Background

The Super 7 originally opened in 2009 after interior renovations had been completed. Although a site plan review (SPR 2008-15) had been completed that required renovation of the remainder of the property, the completion of those improvements was purposefully delayed, to coincide with the Caltrans widening of Madera Avenue. As noted in the 2008 staff report, "Given the impending expansion of Madera Avenue and the subsequent reconfiguration of the site, aesthetic issues such as landscaping, building elevations, signage, color and materials should be addressed within an application for site plan review. Improvement of the aesthetics of the site via site plan review will ensure compatibility with the surrounding land uses and would translate into an overall improvement to the vitality of the area. Aesthetic issues are not addressed within this conditional use permit request, but instead will be resolved within the site plan review process." Thus, a condition of approval requiring the completion of a site plan review was added to the use permits conditions of approval.

Ultimately, a new property owner, Khalid Chaudhry, contested those improvements and the improvements were never completed. Mr. Chaudhry did attempt to amend the site plan in an effort to gain direct access to Madera Avenue, but site constraints made it infeasible if not impossible. In staff's last conversation with the property owner concerning the conditions of noncompliance on the site, Mr. Chaudhry advised that the use permit was not a concern of his but rather his tenant and, therefore, the City should shut the business down if compliance could not be attained via the tenant.

Current Conditions

The tenant has now shuttered the business. Their business license had fallen into arrears prior to closure and is now in collections. It is clearly evident that improvements will not be completed and a hearing for revocation is appropriate.

Findings of Review

Attached please find a matrix of the conditions of approval for Conditional Use Permit 2013-11 MOD. These conditions were evaluated by staff for compliance. Shaded conditions of approval are currently not in compliance. Of the seventeen (17) total conditions of approval, eight (8) are in violation and need attention in order to be in compliance with the conditions of approval. Compliance with nine (9) of the seventeen (17) conditions of approval equates to a fifty-three (53%) percent compliance rate. Most of the conditions in compliance are procedural in nature.

RECOMMENDATION

It is recommended that Conditional Use Permit 2008-07 be scheduled for a public hearing at the October 9, 2018, Planning Commission meeting to determine whether revocation is appropriate.

PLANNING COMMISSION ACTION

The Commission would be taking action regarding Conditional Use Permit 2008-07, determining to either:

- schedule a public hearing to consider revocation of the use permit, or
- find that the review of the use permit is not warranted at this time

Motion 1: Based on the following findings, move to schedule a public hearing to consider whether revocation of Conditional Use Permit 2008-07 is warranted at the October 9, 2018, regularly scheduled Planning Commission meeting.

Findings

- Staff has observed extended non-compliance with the conditions of approval, warranting a review of Conditional Use Permit 2008-07, as approved by the Planning Commission on August 12, 2008.

(OR)

Motion 2: Move to find that the review of Conditional Use Permit 2008-07 is not warranted at this time for the following reasons: (specify)

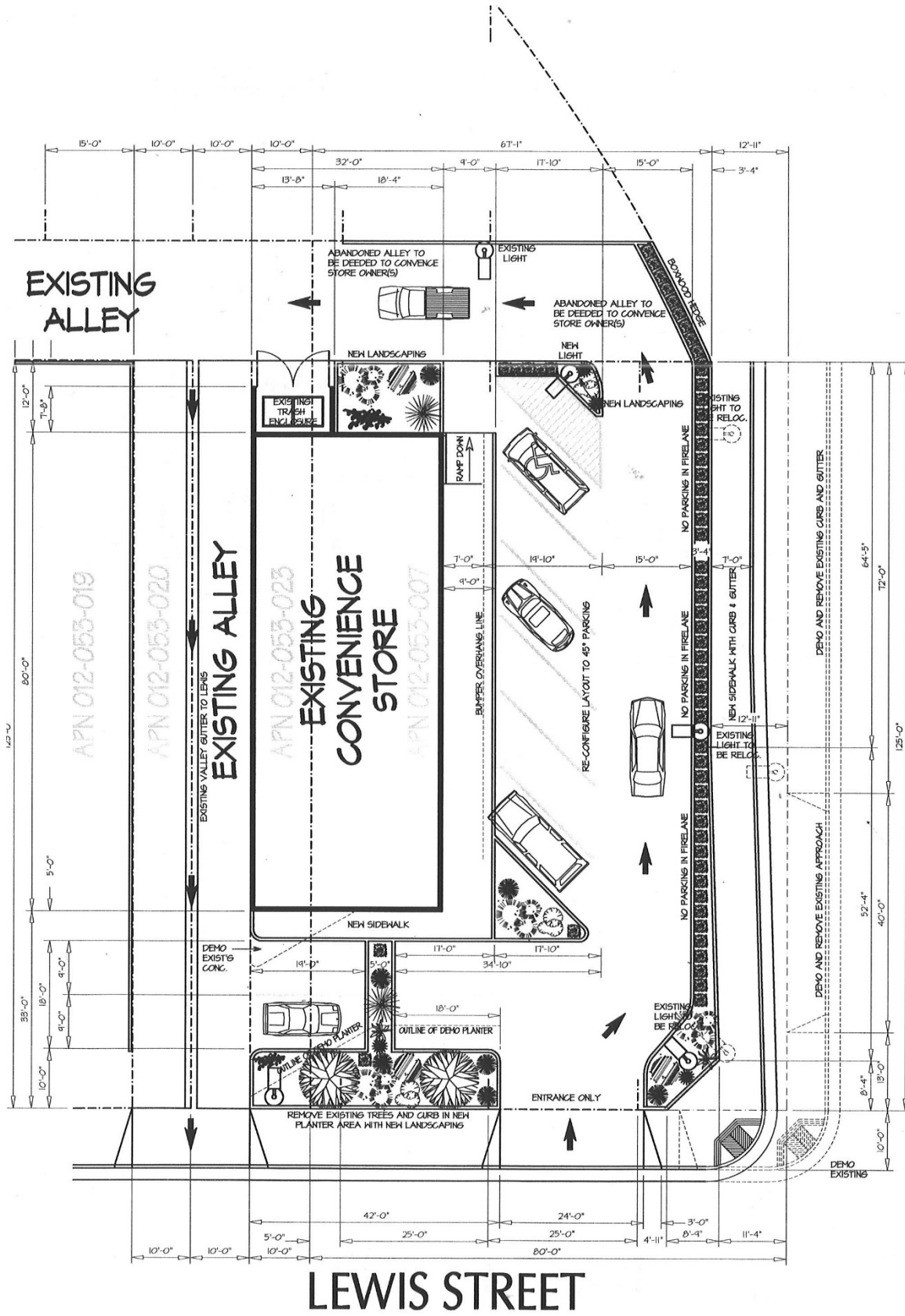
ATTACHMENTS

Aerial Photo
Site Photos
Conditions of Approval Compliance Matrix

Aerial Photo



Approved Site Plan



MADERA AVENUE - HWY 145

Site Photos



Shuttered business frontage with a disheveled interior within.



Abandoned outdoor amusement with graffiti.



Unsafe parking field, outdoor clutter, and illegal signage when the store was open.



Dead landscaping along the store's right-of-way frontage.

Conditions of Approval Compliance Matrix

Con. No.	Condition Statement	Condition Status
1.	Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by receipt in the Planning Department of the applicant's signature upon an Acknowledgement and Acceptance of Conditions within thirty days of the date of approval for this use permit.	CUP 2008-07 acknowledgement signed. SPR 2008-15 not signed.
2.	The site or building plans submitted for any building permit applications shall reflect changes required by the herein listed conditions of approval and as amended within the site plan review process.	Never completed.
3.	The applicant's failure to utilize this use permit within one year following the date of this approval shall render the conditional use permit null and void unless a written request for extension has been submitted to and approved by the Planning Commission.	Procedural
4.	This conditional use permit will expire if the use is discontinued for a six-month period.	Procedural
5.	It shall be the responsibility of the property owner and management to ensure that any required permits, inspections and approvals from any regulatory agency shall be obtained from the concerned agency prior to establishment of the use.	Business license unpaid and sent to collections.
6.	Site development shall be consistent with an approved site plan and floor plan as approved through a required site plan review. The uses of all rooms and activity areas shall be identified on plans submitted for issuance of building permits.	Site plan review improvements were never completed.
7.	Outdoor lighting fixtures shall be directed and shielded away from adjacent properties and from street traffic. All outdoor lighting shall be reviewed and approved by the Planning Department before issuance of a building permit. Any lighting conditions that create a nuisance shall be corrected at the Owner's expense within (30) calendar days of notification from the City.	Light standards were relocated as a component of the Caltrans highway widening project.
8.	Vandalism and graffiti shall be corrected within 72 hours of notification. The City shall assess and set a daily penalty amount that will be imposed until the project owner or manager takes corrective action.	Procedural
9.	No outdoor displays shall be allowed.	Numerous outdoor displays when business was open.

10.	The property owner, operator and manager shall keep the property clear of all trash, rubbish and debris at all times; and dumping of refuse shall be restricted to the dumpster and refuse containers owned by the property owner.	Landscaping not maintained and site improvements never completed.
11.	The applicant shall operate in a manner that does not generate noise, odor or vibration that adversely affects any adjacent properties.	Procedural.
12.	The applicant shall comply with all federal, state and local laws. Material violation of any of those laws concerning the use will be cause for revocation of this permit.	Business license not maintained.
13.	The use is conditioned upon obtaining an appropriate permit from the Department of Alcoholic Beverage Control. The applicants, its operators, and successors shall comply with all applicable city, state and federal requirements and standards.	Procedural.
14.	The use shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by Staff to be in violation of the conditions, Staff shall schedule a public hearing before the Planning Commission within 45 days of the violation to revoke the permit or modify the conditions of approval.	Procedural.
15.	Hours of operation shall be limited to between 6:00 a.m. and 12:00 Midnight daily.	Procedural.
16.	The applicant shall secure and record a cross access easement agreement with the adjacent Kings Equipment Company business site or an alternative circulation plan shall be submitted to the Planning Department and approved by the Planning Director. A copy of the recorded cross access agreement or of the approved alternative circulation plan shall be provided to the City and kept on file with Conditional Use Permit, CUP 2008-07.	Completed in 2009.
17.	The applicant shall submit a complete application for site plan review within sixty (60) days of conditional use permit, CUP 2008-07, approval. Approval of Conditional Use Permit, CUP 2008-07, is conditioned upon completion of the site plan review process. Failure to complete site plan review will render this conditional use permit null and void.	Not in compliance. No improvements ever completed as approved in SPR 2008-15.