

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

**CITY HALL – COUNCIL CHAMBERS
TUESDAY
May 11, 2021
6:00 pm**

This meeting will be conducted pursuant to the provisions of the Governor's Executive Order which suspends certain requirements of the Ralph M. Brown Act. Members of the public may participate in the meeting remotely through an electronic meeting in the following ways: via phone by dialing (669) 900-6833 enter ID: [92601236800#](https://www.zoom.us/j/92601236800) followed by *9 on your phone when prompted to signal you would like to speak, or by computer at <https://www.zoom.us/j/92601236800>. Public comment will also be accepted via email at planningcommissionpubliccomment@madera.gov.

CALL TO ORDER

ROLL CALL

Commissioner Robert Gran Jr. (Chairperson)
Commissioner Alex Salazar (Vice Chairperson)
Commissioner Richard Broadhead
Commissioner Ryan Cerioni
Commissioner Ramon Lopez-Maciel
Commissioner Rohi Zacharia
Commissioner Khubaib Sheikh

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, but are not required, to identify themselves and state the subject of their comments. If the subject is an item on the Agenda, the Chairperson has the option of asking the speaker to hold the comment until the hearing is opened. 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: January 12, 2021

PUBLIC HEARING ITEMS:

1. SPR 2020-08 MOD – Sealed Air Solar Farm

A noticed public hearing for a request for modification of conditions previously approved by the Planning Commission on September 8, 2020 for the Sealed Air Solar Farm project. The site is a vacant portion of the Sealed Air property located directly east of the existing Sealed Air facility at 1835 W. Almond Ave, on the southwest side of the City of Madera in the I (Industrial) Zone District with an I (Industrial) General Plan land use designation. (APN: 009-330-033 and a portion of 009-330-001)

An Initial Study and Negative Declaration were approved by the Planning Commission on September 8, 2020. No further environmental review is required for the proposed clarification of conditions.

2. SPR 2013-40 MOD & CUP 2020-16 – Cheles Tacos On-Site Sale & Consumption of Beer & Wine

A noticed public hearing to consider an application for a site plan review modification and a conditional use permit to allow for the sale of beer at an existing counter-serve restaurant (Cheles Tacos) at 521 S. A St. (APN: 011-061-006). The restaurant is located in an existing 783 sq. ft. accessory building on the property with the primary use being a neighborhood market (Mercado Las Palmas). The restaurant serves food over-counter for an outdoor dining area as well as for take away. The proprietor proposes the sale of beer for on-site consumption. No construction is proposed, except for required minor interior changes to bring the space into compliance for the proposed use.

A Categorical Exemption has been prepared consistent with Section 15301 (Existing Facilities) of California Environmental Quality Act (CEQA) guidelines.

NON-PUBLIC HEARING ITEMS: None

ADMINISTRATIVE REPORTS:

COMMISSIONER REPORTS:

ADJOURNMENT:

The next regular meeting will be held on June 8th, 2021.

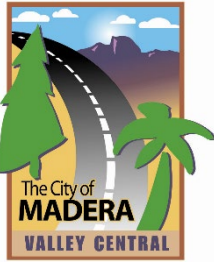
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation 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: Sealed Air Solar Farm Modification to Conditions of Approval SPR 2020-08 MOD Item # 1 – May 11, 2021

PROPOSAL: To modify conditions approval from the approved SPR 2020-08 application, specifically to locate a Public Utility Easement within existing public Right of Way rather than via dedication by the applicant, and to underground public utilities associated with the project along West Almond Avenue only.

APPLICANT:	SunPower Corporation Systems 1414 Harbour Way South Ste 1901 Richmond, CA 94804	OWNER:	Sealed Air Corporation 2415 Cascade Pointe Boulevard Charlotte, NC 28208
SITE ADDRESS:	1835 West Almond Ave	APN:	009-330-033 & 009-330-001 (portion)
APPLICATION:	SPR 2020-08 MOD	CEQA:	Initial Study/Negative Declaration

LOCATION: The project site is the vacant portion of the Sealed Air property located directly east of the existing Sealed Air facility on West Almond Avenue, on the southwest side of the City of Madera, with minor improvements proposed on the developed portion of the Sealed Air facility site.

STREET ACCESS: The project site will have limited access from West Almond Avenue.

PARCEL SIZE: Approximately 15.66 acres

GENERAL PLAN DESIGNATION: I (Industrial)

ZONING DISTRICT: I (Industrial)

SITE CHARACTERISTICS: The 15.66-acre site consists of vacant land and approximately 19,500 square feet (less than 0.5 acres) of asphalt concrete paved parking lot. A pile of broken concrete is located within the northern portion of the site. The concrete pile covers an area approximately 10 feet by 6 feet and is approximately 3 feet high. The majority of the project site is positioned within Madera County Assessor's Parcel Number (APN) 009-330-033, though some work will also be completed on the eastern portion of APN 009-330-001. The site is bordered to the north and east by a private railroad spur line serving Sealed Air. To the south, the site is bordered by West Almond Avenue and to the west by Sealed Air's existing manufacturing facility. The site is surrounded by vacant land and stockpiles of soil and concrete to the

north, and vacant and developed industrial sites to the east, south, and west. The project site and surrounding area is designated and zoned for industrial uses.

ENVIRONMENTAL REVIEW: An initial study and negative declaration have been prepared for consideration by the Planning Commission (Commission), consistent with California Environmental Quality Act (CEQA).

SUMMARY: Planning Commission previously conditionally approved SPR 2020-08, subject to conditions of approval, at the regularly scheduled hearing held on September 8, 2020.

The applicant, SunPower Corporation Systems, proposes to install a solar farm (solar array field) and battery energy storage system in an open field owned and maintained by Sealed Air adjacent to Sealed Air's existing manufacturing facility. The purpose of the project is to provide Sealed Air with a renewable alternative electrical energy source for its existing manufacturing facility.

The project will include the following components within the proposed 15.66-acre solar array field:

- 3-megawatt alternating current (MWac) output capacity / 3,539.25 kilowatts peak (kWp) ground-mounted solar photovoltaic (PV) single-axis tracker system with a central inverter.
- 739-kilowatt (kW) battery inverter / 2,958-kilowatt hour (kWh) battery mounted on a pad in the array field with the solar inverter.

The proposed site plan is consistent with the current I (Industrial) zone district and the existing Sealed Air facility. After review of the proposed project and consideration of public input, the solar project is anticipated to provide compatibility with existing industrial uses. The site plan review will guide the development of a 15.66-acre solar panel field consistent with the I zone district standards.

A Negative Declaration was adopted for this project pursuant to CEQA.

SPR 2020-08 MOD

The City received a request from the applicant's project manager, Nathan Williams, on May 3, 2021 to modify two of the conditions of approval (Condition Nos. 44 and 45) applicable to the SPR.

The first condition (No. 44) requires that the developer dedicate a 10-foot Public Utility Easement (PUE) along the parcel frontage on West Almond Ave. along with a \$466 fee to be paid to the City's engineering department. The approved condition reads as follows:

Condition No. 44 (as approved): The developer shall dedicate a 10-foot Public Utility Easement (PUE) along the parcel frontage on West Almond Avenue. A \$466 fee or the fee in effect at that time for grant easement or deed acceptance shall be paid with the Engineering Department.

This is a standard condition for development projects in the City adjacent to and/or requiring street right-of-way improvements. Applicable development projects include residential, commercial, or industrial. The applicant has proposed the condition be revised as follows:

Condition No. 44 (as proposed): The developer shall dedicate a 10-foot Public Utility Easement (PUE) along the parcel frontage on West Almond Avenue. A \$466 fee or the fee in effect at that time for grant easement or deed acceptance shall be paid with the Engineering Department.

Public Utility Easement (PUE) shall be located within the existing public Right of Way (ROW) along the parcel frontage on West Almond Ave. Easement will be located from existing south face of curb and include to 10 ft. parkway to back of sidewalk as depicted on Standard Detail St-4.

The second condition (no. 45) requires that all existing and proposed utilities be placed underground with the exception of transformers. The approved condition reads as follows:

Condition No. 45 (as approved): All existing and proposed public utilities (electric, telephone, cable, etc.) shall be undergrounded, except transformers, which may be mounted on pads.

This is a standard condition for development projects of this nature in the City, including residential, commercial, or industrial. The applicant has proposed the condition be revised as follows:

Condition No. 45 (as proposed): All existing and proposed public utilities (electric, telephone, cable, etc.) shall be underground, except transformers, which may be mounted on pads along West Almond Ave. only.

ANALYSIS

Public utility easements, in general, allow utility companies access to property for the purpose of installing, repairing, and maintaining utility lines and facilities (i.e., overhead and underground electrical and communication lines, transformers), and are recorded in the public record. Public utility easements are almost always existing along streets and at times, between parcels or along the rear of a parcel. As a general practice, the City of Madera requires development which border public ROW to deed a 10-foot wide PUE on property frontage immediately abutting the public ROW. Public utility easements are not typically granted in the public ROW as said public ROW already includes the provision to allow installation of utilities.

The proposed modifications to Condition No. 44 would allow the developer to retain what would typically be a standard PUE on the subject property for their own use and instead would require public utilities along West Almond Ave. to be placed in existing publicly owned right-of-way (ROW) should a need ever exist to install addition facilities that do not already exist. In the applicant's letter to the City asking for the modifications and referenced above, four reasons were given for this request:

1. Originally proposed Operations and Maintenance (O&M) setback of 21 feet, 10 inches will need to be reduced to 11 feet, 10 inches.
2. Reduced setback will prevent vehicular access and thus increase O&M costs of the facility.
3. Decreasing setback will make the fence installation more costly now that the fence with vegetation is closer to the panel layout compared to industry standards.
4. Moving the City-required slatted fence will have shading impacts on the proposed solar facilities annual expected output.

Approval of the proposed modifications to Condition No. 44 would prohibit public utility companies from installing and maintaining utilities and facilities on the subject site's West Almond Ave frontage should the need ever arise. The proposed modifications to Condition No. 44 could also result in potentially logistic and/or routing challenges to routing and maintaining existing utilities should electrical or communication

lines have to be re-routed and extend within the West Almond Ave ROW as opposed to maintaining an PUE alignment within the subject site.

It is staff's opinion that compliance with Condition No. 44 as originally composed would not reduce or jeopardize the proposed O&M setbacks, reduce vehicle access setbacks, nor require the fence or vegetation required along West Almond Avenue to be relocated as stated in the four reasons given to support the proposed modifications to Condition No 44.

The proposed modifications to Condition No. 45 would limit the developer to undergrounding utilities only along the West Almond Ave frontage of the project site. The developer would not be responsible for underground the existing overhead utilities paralleling the project site's easterly boundary. The developer's letter cited above indicates that this is for one reason:

1. Undergrounding a conductor was unforeseen because it is not along West Almond Ave. Undergrounding the conductor will have significant cost impacts to the project and schedule delays which will delay Sealed Air's transition to clean renewable power.

Approval of the proposed modification to Condition No. 45 would result in the deferment of undergrounding existing above-ground utilities paralleling the project site's easterly boundary until such time future development is contemplated on the project site. conductor and the use of existing public ROW for utility installation as opposed to being located 10 feet within the property via an easement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This project has already been environmentally assessed. The modification is a mere clarification as to alignment of a public utility easement not subject to physical improvements as well as to the timing of undergrounding existing overhead utilities previously evaluated in the project's Initial Study. Neither of the proposed modifications to the previously approved conditions of approval will affect the physical environment in any way. As such, no further analysis is required under the California Environmental Quality Act (CEQA).

RECOMMENDATION

The information presented in this report provides neither supporting nor opposing evidence for the adoption of a resolution approving SPR 2020-08 MOD. The conditions that are being considered for modification as described above are standard conditions for any residential, commercial, or industrial project in the City. As a project conditionally approved by the Planning Commission, staff does not have the authority to modify conditions of approval unless specifically noted or to defer conditions of approval approved by a governing body such as the Planning Commission. Such authority lies only with the governing body that approved the conditions of approval, which in this case is the Planning Commission.

It is recommended that the Commission consider the information in this report, as well as testimony received at the public hearing, and make a determination on the clarification to SPR 2020-08 MOD, subject to the findings and conditions of approval.

PLANNING COMMISSION ACTION

The Commission will be acting on SPR 2020-08 MOD determining to either:

- Adopt a resolution approving SPR 2020-08 MOD (Motion 1);
- Continue the hearing to a later date, with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval) (Motion 2); or
- Move to continue the application for SPR 2020-08 MOD to a later Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.) (Motion 3).

Motion 1: Move to adopt a resolution of the Planning Commission of the City of Madera approving SPR 2020-08 MOD, based on and subject to the findings and conditions of approval as follows:

Findings to Approve a Site Plan Review

Finding a: The proposal is consistent with the General Plan and Zoning Ordinance.

The property is zoned I (Industrial), which is consistent with the existing General Plan land use designation of I (Industrial). The I zone district permits the development of electrical equipment and instruments, as well as accessory uses incidental to the industrial uses already developed to the west of the project site. Site Plan Review 2020-08 MOD is consistent with the purpose and intent of the I (Industrial) zone district and does not conflict with City standards or other provisions of the Code.

Finding b: The proposal is consistent with any applicable specific plans.

The project site is not subject to any applicable specific plans.

Finding c: The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Site Plan Review 2020-08 MOD has been reviewed and, subject to the conditions of approval, has been determined to be designed in such a way that the project is consistent with surrounding development and will not have a negative effect on the surrounding area. The project is located adjacent to the existing Sealed Air facility and will not generate significant amounts of noise, light, or traffic.

Finding e: The proposed project is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Site Plan Review 2020-08 MOD, as conditioned, will make all necessary street improvements, including improvements along West Almond Avenue consistent with City standards. The project will not have a significant impact on traffic or the environment, as identified in the Negative Declaration.

(OR)

Motion 2: Move to continue the public hearing on SPR 2020-08 MOD to a later date with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval.)

(OR)

Motion 3: Move to continue the applications for SPR 2020-08 MOD to a later Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)

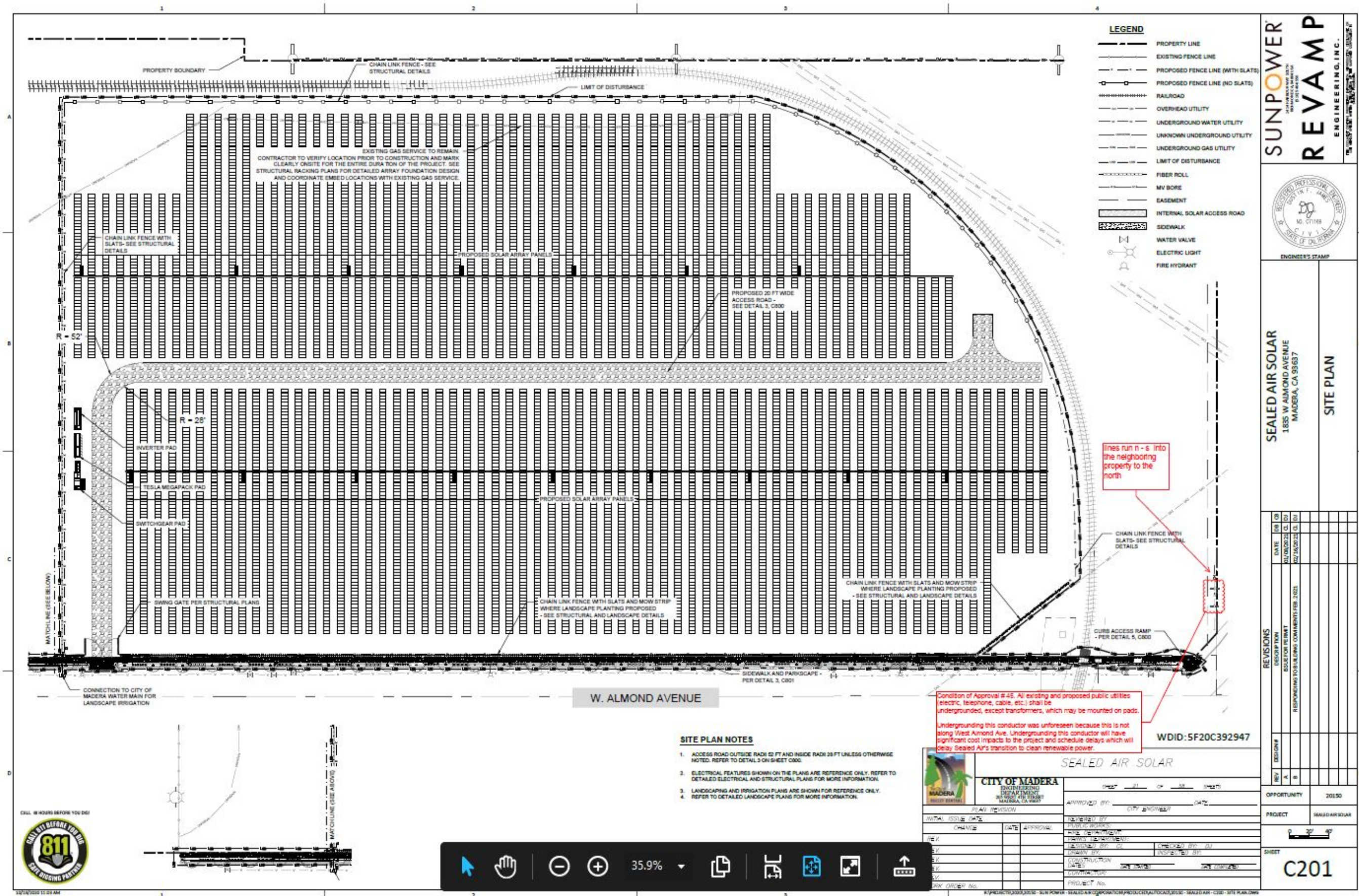
ATTACHMENTS

- Attachment 1: Aerial Photo
- Attachment 2: Site Plan
- Attachment 3: Applicant Request for Modifications Letter
- Attachment 4: Planning Commission Resolution 1882

Attachment 1: Aerial Photo



Attachment 2: Site Plan



Attachment 3: Applicant Request for Modifications



May 3, 2021

City of Madera
205 West 4th Street
Madera, CA 93637

RE: Sealed Air – 1835 West Almond Ave, Madera, CA 93637, request the amendments to the SPR 2020-08 Conditions of Approval
Attn: Gay Conte

To Whom it may concern,

Proposed modifications to the conditions are outlined below in the form of track changes. Proposed changes are to limit unforeseen scope increases that would create a hardship to the project financially and feasibility. The requested changes are shown below with additional language underlined to clarify what was planned and understood with the city of Madera, specifically to Streets #44, and #45:

Streets

44. The developer shall dedicate a 10-foot Public Utility Easement (PUE) along the parcel frontage on West Almond Ave. A \$466 fee of the fee in the effect at that time for the grant easement or deed acceptance shall be paid with the Engineering Department. Public Utility Easement (PUE) shall be located within the existing public Right of Way (ROW) along the parcel frontage on West Almond Ave. Easement will be located from existing south face of curb and include to 10 ft. parkway to back of sidewalk as depicted on Standard Detail St-4.

45. All existing and proposed public utilities (electric, telephone, cable, etc.) shall be underground, except transformers, which may be on pad mounts along West Almond Avenue only.

The reason for the requested changes to #44 include:

- 1.) Originally proposed Operations and Maintenance (O&M) setback of 21'-10" will need to be reduced to 11'-10.
- 2.) Reduced setback will prevent vehicular access and thus increasing O&M costs of the facility.
- 3.) Decreasing setback will make the fence installation more costly now that the fence with vegetation is closer to the panel layout compared to industry standards.
- 4.) Moving the City required slatted fence will have shading impacts on the proposed solar facilities annual expected output.

The reason for the requested changes to #45 include:

- 1.) Undergrounding this conductor was unforeseen because this is not along West Almond Ave. Undergrounding this conductor will have significant cost impacts to the project and schedule delays which will delay Sealed Air's transition to clean renewable power.

Respectfully,

Nathan Williams

Nathan Williams
Project Manager
(510)-332-9803
Nathan.Williams@sunpowercorp.com

CC: Armando Gomez, Jake Hascal, Jon Kress, Nick Theisen, Armando Gomez, Charles Lee, Gunit Toor, Michael O'Rourke, Ozgur Tan

Attachment 4: Planning Commission Resolution 1882

RESOLUTION NO. 1882

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
APPROVING SITE PLAN REVIEW 2020-08 MOD (SEALED AIR CORPORATION
FACILITY, 1835 WEST ALMOND AVENUE)**

WHEREAS, Sealed Air Corporation (“Owner”) currently operates at 1835 West Almond Avenue in Madera, California (“site”); and

WHEREAS, SunPower Corporation Systems (“Applicant”) is acting on behalf of the Owner (“site”); and

WHEREAS, the site contains vacant land that is planned for and surrounded by industrial uses; and

WHEREAS, the Planning Commission of the City of Madera on September 8, 2020 adopted a Negative Declaration in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et. Seq. and approved the Sealed Air Solar Farm Site Plan Review 2020-08 (SPR 2020-08); and

WHEREAS, Applicant is seeking a site plan review (SPR) modification to allow for the construction of a solar farm and related improvements for the supply of electrical power to the existing Sealed Air facility on APN 009-330-033 and the eastern portion of APN 009-330-001, as proposed by SPR 2020-08; and

WHEREAS, based on the preliminary environmental assessment, the SPR 2020-08 MOD was determined to be consistent with the Negative Declaration prepared and adopted for SPR 2020-08 and no further analysis is required; and

WHEREAS, under the City’s Municipal Code, the Planning Commission is authorized to review and approve site plan review modifications on behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed SPR 2020-08 MOD at a duly noticed meeting on May 11, 2021; and

WHEREAS, a public hearing was held, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, the Planning Commission now desires to approve SPR 2020-08 MOD with two new modified conditions. All conditions of approval for SPR 2020-08 remain in effect with modifications to clarify project requirements; and

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

Recitals: The above recitals are true and correct and are incorporated herein.

CEQA: The project has been previously assessed. The Planning Commission finds pursuant to CEQA Guidelines Section 15165, subsequent environmental review is not required for SPR 2020-08 MOD based on the following:

- a. No substantial changes are proposed in the project which will require major revisions of the previous negative declaration ("ND") due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, SPR 2020-08 MOD maintains the same density, intensity and is otherwise consistent with the development originally proposed for the subject site as contemplated by the ND. As such, no further environmental review is necessary or required.
- b. No substantial changes occur with respect to the circumstances under which the project is undertaken which would require major revisions to the previous ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, SPR 2020-08 is consistent with the originally approved site plan review that was assessed by the ND and there are no new substantial changes in the physical environment that was not anticipated in the ND, including its analysis in light of development contemplated in the General Plan.
- c. There is no new information, which was not known and could have not been known at the time of the previous ND that the project will have significant effects not discussed in the ND. The project will not have any more significant effects than that already discussed and assessed in the ND. As a negative declaration was previously adopted for the consideration set forth in the CEQA Guidelines Section 15162(a)(3)(C) and (D), related to the adequacy and feasibility of previously adopted mitigation measures, are not applicable.

Based upon these findings, it has been determined that no further environmental documents are required for SPR 2020-08 MOD.

Findings for SPR 2020-08 MOD: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of SPR 2020-08 MOD, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.4.0106. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

The proposal is consistent with the General Plan and Municipal Code.

Basis for Finding: The property is zoned I (Industrial), which is consistent with the existing General Plan land use designation of I (Industrial). The I district permits the development of electrical equipment and instruments, as well as accessory uses incidental to the industrial uses already developed to the west of the project site. Site Plan Review 2020-08 MOD is consistent with the purpose and intent of the I (Industrial) zone district and does not conflict with City standards or other provisions of the Code.

The proposal is consistent with any applicable specific plans.

Basis for Finding: The project site is not subject to any applicable specific plans.

The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Basis for Finding: Site Plan Review 2020-08 MOD has been reviewed and, subject to the conditions of approval, has been determined to be designed in such a way that the project is consistent with surrounding development and will not have a negative effect on the surrounding area. The project is located adjacent to the existing Sealed Air facility and will not generate significant amounts of noise, light, or traffic.

The proposal is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Basis for Finding: Site Plan Review 2020-08 MOD, as conditioned, will make all necessary street improvements, including improvements along West Almond Avenue consistent with City standards. The project will not have a significant impact on traffic or the environment, as identified in the Negative Declaration.

With the conditions imposed, the project will not be detrimental or injurious to property and improvements in the neighborhood or general welfare of the City.

Approval of SPR 2020-08 MOD: Given that all findings can be made, the Planning Commission hereby approves SPR 2020-08 MOD as conditioned as set forth in the Conditions of Approval attached as Exhibit "A."

Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 11th day of May 2021, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Chairperson

Attest:

Gary Conte, AICP
Planning Manager

Exhibit "A" – Sealed Air Solar Farm, SPR 2020-08, Conditions of Approval as Modified by SPR 2020-08 MOD, May 11, 2021

EXHIBIT "A"

SEALED AIR SOLAR FARM SPR 2020-08 CONDITIONS OF APPROVAL AS MODIFIED BY SPR 2020-08 MOD MAY 11, 2021

Notice to Applicant

In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within ninety (90) calendar days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development project. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through site plan review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

Appeals

All discretionary conditions of approval will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed and specific reasons why you believe the decision or action appealed should not be upheld.

General Conditions

1. Approval of this site plan review shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.
2. Approval of this site plan review may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this site plan review, the zoning ordinance, and all City standards and specifications. This site plan review is granted, and the conditions imposed, based upon the application submittal provided by the

applicant, including any operational statement. The application is material to the issuance of this site plan review. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised site plan review is required if the operation is found to be out of conformance with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the permit or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the site plan review process or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this site plan review or subsequent amendments or revisions. These conditions are conditions imposed solely upon the site plan and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

3. These conditions are applicable to any person or entity making use of this site plan, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this site plan. Furthermore, “project frontage” refers to that frontage along West Almond Avenue located within the limits of the full width of APN 009-330-033 and the limits of the eastern portion of APN 009-330-001 that is currently vacant. The following conditions apply only to these portions of the subject site, unless specifically noted otherwise.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specifically noted in the conditions or mandated by statutes.
5. The applicant shall submit to the City of Madera Planning Department a check in the amount necessary to file a Notice of Determination at the Madera County Clerk. This amount shall equal the Madera County filing fee and the Department of Fish and Game de minimis filing fee in effect at the time of filing. Such check shall be made payable to the Madera County Clerk and submitted no later than three (3) days following action on SPR 2020-08.
6. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the applicant’s signature on the Acknowledgement and Acceptance of Conditions of Approval. Please note this site plan review approval (SPR 2020-08 MOD) will expire one (1) year from the effective date, unless a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion of the site or structures which were the subject of the site plan or the required action is taken to extend the approval before expiration date (Municipal Code Section 10-3.4.0114, Lapse of Site Plan Approval).
7. It shall be the responsibility of the property owner, operator, and/or management to ensure that any required permits, inspections, and approvals from any regulatory agency be obtained from the applicable agency prior to issuance of a building permit and/or the issuance of a certificate of completion, as determined appropriate by the City of Madera Planning Department.
8. The project site shall be developed in conformance with the site plan as reviewed and approved under SPR 2020-08 MOD. Minor modifications to the site plan, which are necessary to meet regulatory, engineering, or similar constraints or requirements may be made at the discretion of the Planning Manager without an amendment to SPR 2020-08 MOD. However, should the Planning Manager determine that modifications are substantive, he/she may require that an amendment to SPR 2020-08 MOD be filed for review and approval through the applicable City process.

9. The project site 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, the property owner, operator, and/or manager may be subject to corrective action.
10. All on-site improvements shall be completed prior to final building inspection and shall be completed in conformance with SPR 2020-08 MOD to the satisfaction of the City of Madera prior to issuance of a certificate of completion.
11. The Planning Department shall be notified immediately if any prehistoric, archaeologic, or fossil artifact or resource is uncovered during construction. All construction within 50 feet of the discovery must stop and an archaeologist that meets the Secretary of the Interior's Professional Qualifications Standards in prehistoric or historical archaeology shall be retained, at the applicant's or developer's expense, to evaluate the finds and recommend appropriate action according to CEQA Guidelines Section 15064.5. If avoidance is infeasible, other appropriate measures would be instituted. Work may proceed on other parts of the project site while assessment of historic resources or unique archaeological resources is being carried out.
12. All construction must stop if any human remains are uncovered, and the County Coroner must be notified according to Section 7050.5 of California's Health and Safety Code. If the remains are determined to be Native American, the procedures outlined in CEQA Section 15064.5 (d) and (e) shall be followed.
13. Vandalism and graffiti shall be corrected in accordance with the provisions of the Madera Municipal Code.
14. The property owner, operator, and/or manager shall operate the site in a manner that does not generate noise, odor, blight, or vibration that adversely affects adjacent properties.
15. The property owner, operator, and/or manager shall keep the property clear of all trash, rubbish, and debris at all times.
16. Approval of this project is for the benefit of the applicant. The submittal of applications by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Madera and its agents, officers, consultants, independent contractors, and employees ("City") from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively "claim").

The City shall promptly notify the applicant of any claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any claim, the applicant shall not be required to

pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Landscaping

17. Landscape and irrigation plan shall be prepared by a licensed Landscape Architect and submitted as part of the submittals for a building permit. Landscape and irrigation plans shall be approved by the Planning Department prior to issuance of building permits. The plans shall:
 - a) Demonstrate compliance with the State of California's Model Water Efficient Landscape Ordinance (MWELO);
 - b) Permanent automatic irrigation systems for all landscaped areas;
 - c) Provide vegetative matter coverage of a minimum of 75 percent of all landscaped areas;
 - d) Locate landscape material in such a way that it does not interfere with utilities above or below ground; and
 - e) Provide detailed planting lists for all landscaping, with the number, size, spacing (where applicable) and species of all plant life and groundcover, as well as soil preparation techniques for all landscaped areas.
18. The property owner, operator, and/or manager shall develop and submit to the Planning Department for review and approval, prior to issuance of a building permit, a landscape maintenance and irrigation program for the first three years to ensure that streetscapes and landscaped areas are installed and maintained as approved under SPR 2020-08 MOD.
19. Street trees shall be installed within the park strip along the West Almond Avenue property frontage. The trees shall be of a type and spacing consistent with those trees that exist along West Almond Avenue directly to the west of the project site (along the Sealed Air Facility parcel frontage) and shall not infringe upon, or interfere with, vehicle, truck or rail traffic. Trees shall be planted in accordance with City standards prior to issuance of a certificate of completion. Trees shall be selected from the adopted City of Madera Master Street Tree List.
20. 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.
21. A maintenance agreement is required for all landscaping located within the public right-of-way. Such agreement shall be entered into prior to issuance of a certificate of completion.

Fencing

22. In compliance with Article 110.31 of the National Fire Protection Association (NFPA) National Electrical Code (NEC), a seven (7) foot high chain link fence and gate shall be constructed around the entire perimeter of the solar array field. Fence shall not infringe upon, or interfere with, rail traffic. Fence and gate shall include privacy slats to screen the solar arrays and equipment from public view. Use of barbed wire is prohibited. Fence and gate shall be constructed in accordance with City standards.
23. Fencing shall be setback a minimum of two (2) feet from back edge of sidewalk. No less than 30-inch-tall vegetative hedge or climbing vegetation to adhere to fence shall be planted between the back of sidewalk and fence along West Almond Avenue property frontage for purpose of

screening fence from public view. Hedge or climbing vegetation shall not at maturity infringe upon, or interfere with, pedestrian or rail traffic.

Signage

24. All signage, with the exception of “No Parking” signs along the West Almond Avenue property frontage, shall be in compliance with the Sign Ordinance of the Madera Municipal Code Section 10-6. All permanent signage, with the exception of No Parking signs, is required to have an approved Sign Permit issued by the Planning Department per Madera Municipal Code Section § 10-6.
25. No Parking signs shall be installed along the West Almond Avenue property frontage per City standards.

Access

26. A drive access type, to be reviewed and approved by the Engineering Department as part of the improvement plans, shall be provided at the location indicated for fire and maintenance vehicle access along West Almond Avenue.
27. A gate shall be provided at the drive access location. The gate shall not encroach or swing into the public right-of-way or block on-site traffic patterns.
28. Signs shall be posted at the gate along West Almond Avenue that shall state that access is for fire and maintenance vehicles only and that the drive shall not be blocked. Sign design, content, and location is to be reviewed and approved by the Engineering and Planning Departments prior to installation.

Engineering Department

General

29. Nuisance lighting from on-site sources shall be redirected as requested by the City Engineer within 48 hours of notification.
30. The developer shall pay all required fees for completion of the project. Fees due may include, but shall not be limited to, encroachment permit processing, improvement inspection fees, plan review, and easement acceptance fees.
31. Improvement plans shall be signed and sealed by a licensed engineer and submitted to the Engineering Division prior to issuance of a building permit, in accordance with the submittal process.
32. Improvement plans shall include the most recent version of the City’s General Notes. A copy of the most recent General Notes may be obtained from the City Engineering Division.
33. Improvements within the City’s right-of-way require an encroachment permit from the Engineering Department.
34. All off-site improvements shall be completed and accepted prior to issuance of a certificate of completion.

Water

35. Existing or new water service connection(s) shall be upgraded or constructed by the applicant or developer to current City standards, including an Automatic Meter Reading (AMR) water meter installed within the City's right-of-way and a backflow prevention device installed within private property.
36. A separate water meter and backflow prevention device shall be constructed by the applicant or developer for the landscape area.
37. Existing wells, if any, shall be abandoned and inspected by City of Madera for compliance with all applicable standards.
38. Fire hydrants shall be installed along the property frontage in accordance with City standards as determined by the City of Madera Fire Marshal.
39. Existing water service connections that will not be used for the project shall be abandoned at the mains per City standards.

Sewer

40. Existing septic tanks, if found, shall be removed and inspected by City of Madera Building Department for compliance with all applicable standards.
41. Existing sewer service connections that will not be used for the project shall be abandoned at the mains per current City of Madera standards.

Streets

42. The developer shall install improvements along the West Almond Avenue project frontage in accordance with current City Standard Drawing ST-4 and ADA standards, including installation of a separated 5-foot-wide sidewalk. An acceptable alternative may be installed, as approved by the City Engineer and Planning Manager during review of the required improvement plans.
43. The developer shall repair or replace all broken or damaged concrete improvements including curb, gutter, and sidewalk, as necessary, to current City and ADA standards.
44. The developer shall dedicate a 10-foot Public Utility Easement (PUE) along the parcel frontage on West Almond Avenue. A \$466 fee or the fee in effect at that time for grant easement or deed acceptance shall be paid with the Engineering Department. [Public Utility Easement \(PUE\) shall be located within the existing public Right of Way \(ROW\) along the parcel frontage on West Almond Ave. Easement will be located from existing south face of curb and include to 10 ft. parkway to back of sidewalk as depicted on Standard Detail St-4.](#)
45. All existing and proposed public utilities (electric, telephone, cable, etc.) shall be undergrounded, except transformers, which may be mounted on pads [along West Almond Ave. only.](#)
46. Driveway access from West Almond Avenue shall be provided in accordance with City standards.

Fire Department

47. A Knox Box or Knox Padlock must be provided to access the array field.

48. Fire extinguishers shall be provided by the property owner, applicant, or manager in accordance with the CFC. A minimum of one 2A10BC rated fire extinguisher is required within a travel distance of 75 feet from any disconnecting means or inverter.
49. Fire access is required around or within the array. Fire access drives shall be constructed in accordance with City standards.
50. The property owner, operator, or manager shall provide year-round vegetation management for the site. No vegetation is permitted within 10 feet of the array, inverters, or disconnecting means.

Building Department

51. A building permit is required for all construction on the site.
52. All plans submitted for on-site construction or building permits shall incorporate and reflect all requirements outlined herein.
53. Current State of California and Federal handicap requirements shall apply to the entire site and all structure(s) and parking thereon. Compliance shall be checked when the building permit is reviewed and confirmed at final inspection.

Madera County Community and Economic Development Planning Division

54. Comply with Federal Aviation Administration (FAA) guidelines regarding solar arrays in proximity to airports and airport property.
55. No component of operations of the facility shall create, or cause to be created, electrical interference with aircraft communications or navigation.
56. No component of operations of the facility shall create, or cause to be created, any form of visual or other sensory distractions to those aircraft landing or taking off from the Madera Municipal Airport.

San Joaquin Valley Air Pollution Control District

57. Applicant shall comply with all applicable rules, regulations and fees of the San Joaquin Valley Air Pollution Control District (SJVAPCD).
58. Applicant shall submit to, and have approved by, the SJVAPCD an Authority to Construct (ATC) application prior to issuance of a grading or building permit.
59. Applicant shall submit to, and have approved by, the SJVAPCD an Air Impact Assessment (AIA) application prior to issuance of a grading or building permit.
60. Applicant shall submit to, and have approved by, the SJVAPCD a "Dust Control Plan" prior to issuance of a grading or building permit.

-END OF CONDITIONS-

APPLICANT'S ACKNOWLEDGMENT

I have read, understand, and accept the conditions of approval set forth herein above in this resolution of approval for Site Plan Review 2020-08 MOD Sealed Air Solar Farm.

Date

Signature of Applicant

Print Name

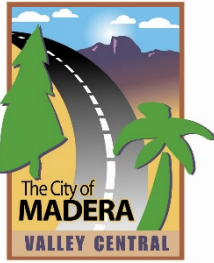
Title

Date

Signature of Property Owner

Print Name

Title



CITY OF MADERA PLANNING COMMISSION

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

Staff Report: Cheles Tacos On-Site Sale and Consumption of Beer and Wine CUP 2020-16 & SPR 2013-40 MOD Item # 2 – May 11, 2021

PROPOSAL: An application for a conditional use permit (CUP 2020-16) and a site plan review modification (SPR 2013-40 MOD) to allow for the sale of beer at an existing counter-serve restaurant (Cheles Tacos). The restaurant is located in an existing 783 square foot (sq.ft.) accessory building on the property with the primary use being a neighborhood market (Mercado Las Palmas). The restaurant serves food over-counter for an outdoor dining area as well as for take away. The proprietor proposes the sale of beer for on-site consumption. No construction is proposed, except for required minor interior changes to bring the space into compliance for the proposed use.

APPLICANT:	Rudy Hernandez 521 South "A" Street Madera, CA 93638	OWNER:	Rudy Hernandez 521 South "A" Street Madera, CA 93638
SITE ADDRESS:	521 South "A" Street	APN:	011-061-006
APPLICATIONS:	SPR 2013-40 MOD CUP 2020-16	CEQA:	Categorical Exemption 15301 Existing Facilities

LOCATION: The project site is an existing mall restaurant and outdoor dining space (521 South "A" Street) located at the north corner of S. "A" St., Sunrise Ave., and Moore St. within an existing commercial building.

STREET ACCESS: The project site has street access from S. "A" St. and Moore St.

PROJECT SIZE: The restaurant space is 783 sq.ft.

GENERAL PLAN DESIGNATION: C (Commercial)

ZONING DISTRICT: C1 (Light Commercial)

SITE CHARACTERISTICS: The subject site (521 S. "A" St.) is located on a commercial parcel at the confluence of multiple thoroughfares and in the center of a mostly residential area. The site has bi-directional vehicle access from both "A" St and Moore St. The roughly 20,000 sf parcel contains a roughly 3,500 sf building dedicated to a neighborhood market (Mercado Las Palmas), a Windmill water distribution kiosk, and the 783 sq. ft. restaurant in question.

The Parcel is zoned Light Commercial (C1) and is designated Commercial (C) in the General Plan. Adjacent properties are mostly zoned Light Commercial (C1) with two exceptions: the Madera Rehabilitation and Nursing Center to the northwest zoned R3 (Residential-One Unit for Each 1,800 Square Feet of Site Area) and the parcel directly across "A" Street which zoned R2 (Residential-One Unit for Each 3,000 Square Feet of Site Area). Other nearby uses are mostly R2 and R3 permitted residential uses.

The existing restaurant is a purpose-built, counter-serve restaurant with an outdoor eating area enclosed on three sides plus a low wall on the fourth side. The neighborhood market with which the restaurant shares the parcel, has an existing off-sale alcohol permit for beer and wine and is owned/operated by the same owner as the restaurant.

ENVIRONMENTAL REVIEW: An exemption has been prepared consistent with California Code of Regulations, Title 14, Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines.

SUMMARY: Conditional Use Permit 2020-16 and Site Plan Review 2013-40 MOD enable the subject site to sell beer for on-site consumption in association with the existing restaurant.

APPLICABLE CITY CODES AND PROCEDURES

Site Plan Review

MMC § 10-3.4.0102 Site Plan Review Applicability

A site plan review is required for all projects which require a use permit, including a change of use where no on-site construction is proposed. If the Commission cannot make the appropriate findings, the development should be denied. Conditions may be attached to the approval of the site plan 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.

Conditional Use Permit

MMC § 10-3.1301 – MMC § 10.3.1311 Use Permits

The Municipal Code states that the sale of alcohol requires a conditional use permit. 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 even after imposing appropriate conditions, the use permit should be denied. Conditions may be attached to the approval of the use permit to ensure compatibility. In addition, the application may be subject to further review, modification, or revocation by the Commission as necessary.

Development and Operational Standards

MMC § 10-3.801 - MMC § 10-3.805 Light Commercial Zones

The project site is subject to the development standards of the C1 zone district. The proposed use will be occupying an existing restaurant space and there are only minor improvements required on-site for the establishment of the proposed use.

PRIOR ACTION

SPR 2003-12 Original Site Plan for the Market

CUP 2013-34 Permit for the construction and operation of the Restaurant

SPR 2013-40 Original site plan for the Restaurant and Market

SPR 2014-11 New Site Plan allowing for New Parking Scheme and New Trash Enclosure

CUP 2014-11 Permit for Off-Sale Beer + Wine from the Market

SPR 2014-18 Site Plan Associated with the ABC Permit

The site was originally developed as a neighborhood market and grocery in 2003. In 2013 and 2014, the owner/proprietor, Rudy Hernandez, received permission from the City to construct a separate 783 sf building to house a counter-serve/takeaway restaurant with a small, partially enclosed dining area. Later in 2014, Mr. Hernandez received a permit and license for off-sale alcohol from the market.

ANALYSIS

Operations

The applicant proposes the sale of beer for on-site consumption within an existing restaurant and commercial structure in the C1 (Light Commercial) Zone district. The existing structure was previously constructed specifically for restaurant use in 2014.

The average anticipated number of daily patrons for the restaurant is 110 with a maximum capacity for serving 130 customers in a day. One (1) additional employee would be hired in addition to existing six (6) employees already working for a total of seven (7) employees. The hours of operation for the business would be:

- Monday – Thursday: 8:30 a.m. – 9:00 p.m.
- Friday – Sunday: 8:30 a.m. – 10:00 p.m.

The primary impacts of concern are of noise and light from the semi-enclosed dining area. These potential impacts are anticipated to be insignificant. Suggested conditions of approval contain measures to reduce and limit any potential negative impacts on nearby uses and properties. Under the conditions as written, no amplified music will be allowed, and lighting will need to be shielded and directed away from nearby residential uses.

ABC License

The applicant has applied with the California Department of Alcoholic Beverage Control (ABC) for a new Type 41 On-Sale Beer and Wine – Eating Place license. The ABC application was filed on March 24, 2021 (Application #625026). The project site is in Census Tract 8.00. It should be noted that the County of Madera has been under a State of California moratorium for the issuance of new Type 20 Off-Sale Beer and Wine licenses. As this is a Type 41 license, this moratorium does not apply to this situation.

The property on which the restaurant sits also contains a neighborhood market and grocery. The parcel has an existing alcohol use permit for the Market as well as a type 20 Off-Sale Beer and Wine license. The license is in good standing with no current or past disciplinary actions. The License number is 554594 and the license was issued 27 March 2015.

There are no sensitive uses (schools, parks, etc.) within 1,000 ft of the restaurant. To ensure compliance with state and municipal requirements, a condition of approval will be the addition of gates to the existing semi-enclosed dining area.

Under the Municipal Code, special rules and regulations apply to use permits issued authorizing the sale of alcoholic beverages. If approved, use permits for the sale of alcoholic beverage are subject to an annual review for a determination of compliance with all terms and conditions of the issuance of the permit. A condition requiring annual review has been added to the conditions of approval. Additionally, the annual review determines the existence of conditions or occurrences that are or may contribute to the detriment of the health, safety, peace, morals, comfort and general welfare of the persons residing or working in the neighborhood, or which are detrimental or injurious to property and improvements in the neighborhood or general welfare of the City. These include:

- 1) The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
- 2) The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.
- 3) The sustaining by the subject premises of an administrative suspension or revocation or other such sanctions as may be imposed by ABC, including payment in lieu of such suspension or revocation or other sanction.
- 4) The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking, or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.

(See Mun. Code, § 10-3.1311). In such cases, the use permit may be revoked. The use permit may also be revoked for a violation of a condition of approval. The Municipal Code also has existing restrictions on use of intoxicants in public places, violation of which is a misdemeanor. (Id., § 4-2.02.)

Pedestrian, alternative transportation, and ADA Access

The parcel has good pedestrian infrastructure with dedicated or marked pedestrian paths connecting both entrances directly to the City sidewalk along Moore St. All ramps and markings are up to the current standards of the Americans with Disabilities Act (ADA). The restaurant is a comfortable 5-minute walk (approximately 1,100 ft) from more than 100 neighborhood residences. The restaurant entrance is 850 to 980 feet away from the nearest bus stop (Sunrise and Lake) depending on whether you are going to or from the north or south bus stop location, respectively.

Parking

The City's parking standards for food service require a ratio of one (1) parking space for each three (3) fixed seats and one (1) parking space for every fifty (50) sf of non-fixed seating space. The restaurant has no fixed seating and 471 sf of non-fixed seating area. That amount of seating space requires nine (9) parking spaces. The 3,536 sq. ft. building within the subject site parcel is used as food retail and requires

one (1) parking space per two hundred and fifty (250) sq. ft. of total floorspace. The required number of parking spaces for the market building is fourteen (14). Combined, the total number of parking spaces required for the subject site is twenty-three (23) spaces.

The current twenty (20) parking spaces are insufficient to meet the standards as laid out in the Madera Municipal Code. However, the 20 spaces are in agreement with the approved site plan, SPR 2014-11. While site plan reviews are normally an opportunity for the City to bring properties into line with the code, there is insufficient impact caused by the updated uses to warrant a change in the parking scheme at this time.

ADA requires a set number of accessible parking spaces based on the total number of parking spaces required. With less than 26 required spaces, the project requires one (1) ADA compliant parking stall. The current accessible stall meets this requirement and no additional ADA spaces would be required.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Staff have performed a preliminary environmental assessment and have determined that the project is exempt under Section 15301 of the State CEQA Guidelines because the project will occupy an existing building on an existing lot with existing services and utilities, and any modifications to the structure will only be minor interior changes involving no expansion of existing or former commercial use. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Though approval of alcohol sales is not specifically addressed in the vision or action plans, the overall project does indirectly support one of the four visions for the City: Good Jobs and Economic Opportunities. This principle recognizes the need to provide commercial opportunities within the City.

RECOMMENDATION

The information presented in this report provides support for the adoption of a resolution conditionally approving Site Plan Review 2013-40 MOD and a resolution conditionally approving Conditional Use Permit 2020-16. It is recommended that the Commission consider the information in this report, as well as testimony received at the public hearing, and make a determination on Site Plan Review 2013-40 MOD and Conditional Use Permit 2020-16, subject to the findings and conditions of approval.

PLANNING COMMISSION ACTION

The Commission will be acting on the Categorical Exemption, Site Plan Review 2013-40 MOD and Conditional Use Permit 2020-16 and determining to either:

- Adopt a resolution adopting a Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 for the project, and approving Site Plan Review 2013-40 MOD as conditioned and Conditional Use Permit 2020-16 as conditioned (Motion 1); or
- Continue the hearing to June 8, 2021, with direction to staff to return with an updated resolution with appropriate findings modifying the conditions of approval for the following

reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval) (Motion 2); or

- Move to continue the application for Site Plan Review 2013-40 MOD and Conditional Use Permit 2020-16 to the June 8, 2021 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.) (Motion 3).

Motion 1: Move to adopt a resolution of the Planning Commission of the City of Madera adopting a Finding of a Categorical Exemption pursuant to CEQA Guidelines Section 15301 (Existing Facilities), approving Conditional Use Permit 2020-16 and Site Plan Review 2013-40 MOD, based on and subject to the findings and conditions of approval as follows:

Findings to Approve a Site Plan Review

Finding a: The proposal is consistent with the General Plan and Zoning Ordinance.

The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The use is located within an existing commercial building. While minor changes will be required to improve the space prior to expanded use, no on-site construction is proposed or required. Site Plan Review 2013-40 MOD is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

Finding b: The proposal is consistent with any applicable specific plans.

The project site is not subject to any applicable specific plans.

Finding c: The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Site Plan Review 2013-40 MOD has been reviewed and is consistent with surrounding uses. The project includes the use of an existing building with adequate improvements and parking already installed. The project will not generate significant amounts of noise, light, or traffic.

Finding d: The proposed project is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Site Plan Review 2013-40 MOD requires no street improvements as it is located within an existing commercial development with adequate improvements and parking already installed. The project will not have a significant impact on traffic or the environment.

Findings to Approve a Conditional Use Permit

Finding a: The proposal is consistent with the General Plan and Zoning Ordinance.

The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The proposed use (on-site alcohol sales) is conditionally permitted. Conditional Use Permit 2020-16, subject to the conditions of approval, is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

Finding b: The proposed use will be compatible with the surrounding properties.

The project site is suited for commercial sales. The project site is located at the intersection of several neighborhood thoroughfares and is surrounded by other commercial uses to the east and south, with residential uses to the north and west. As conditioned, the sale of certain alcohol products for on-site consumption will be compatible with surrounding properties and is consistent with applicable requirements regulating such use.

Finding c: The establishment, maintenance, or operation of the use or building applied for 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.

As discussed above, the proposed use is compatible with surrounding properties and will not have a significant, adverse environmental impact. The Madera Police Department has reviewed the project and did not oppose the proposed use, and there is no evidence in the administrative record of the following:

- The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
- The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.
- The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.
- The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.

(OR)

Motion 2: Move to continue the public hearing on SPR 2013-40 MOD and CUP 2020-16 to the June 8, 2021 with direction to staff to return with an updated resolution with appropriate findings modifying

the conditions of approval for the following reasons: (Specify – Planning Commission should articulate reasons for modifications to findings and conditions of approval)

(OR)

Motion 3: Move to continue the application for Site Plan Review 2013-40 MOD and Conditional Use Permit 2020-16 to the June 8, 2021 Planning Commission hearing with direction to staff to return with an updated resolution with appropriate findings for denial for the following reasons: (Specify – Planning Commission should articulate reasons for denial.)

ATTACHMENTS

Attachment 1: Vicinity Map

Attachment 2: Aerial Photo

Attachment 3: Site Plan






Attachment 4: Planning Commission Resolution for Categorical Exemption, CUP 2020-16 & SPR 2013-40 MOD

Attachment 1: Vicinity Map

Vicinity Map

CUP 2020-16 & SPR 2013-40 MOD
Cheles Tacos

Legend

- | | | |
|--|---|--|
|  Project Location |  Parcel Boundaries |  School |
|  City Roads |  Park | |



Attachment 2: Aerial Photo

Aerial Photo

CUP 2017-11 MOD & SPR 2020-14
TapHouse Outdoor Patio



Project Location

0 0.0075 0.015 0.03 0.045 0.06 Miles

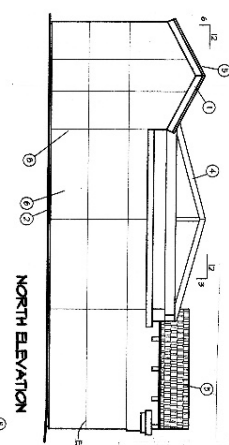


Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

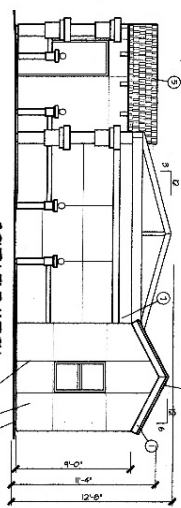
Attachment 3: Site Plan

ELEVATION NOTES

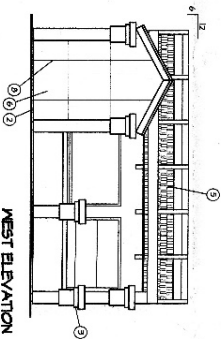
1. Elevation drawings shall be prepared in accordance with the following:
2. Provide a north arrow pointing towards the upper right corner of the sheet.
3. Use the following abbreviations:
4. All dimensions shall be in feet and inches.
5. All dimensions shall be to the center of the member unless otherwise noted.
6. All dimensions shall be to the finished surface unless otherwise noted.
7. All dimensions shall be to the center of the member unless otherwise noted.
8. All dimensions shall be to the finished surface unless otherwise noted.
9. All dimensions shall be to the center of the member unless otherwise noted.
10. All dimensions shall be to the finished surface unless otherwise noted.



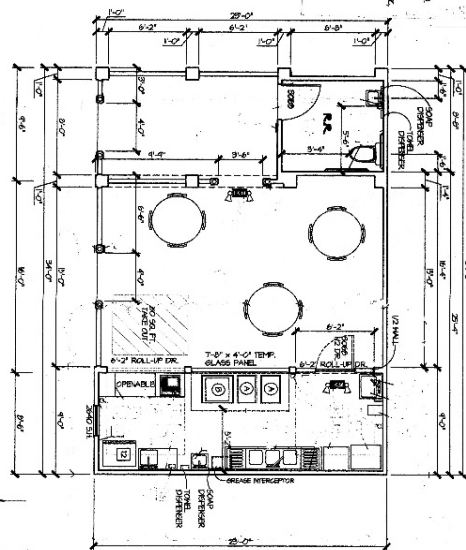
NORTH ELEVATION



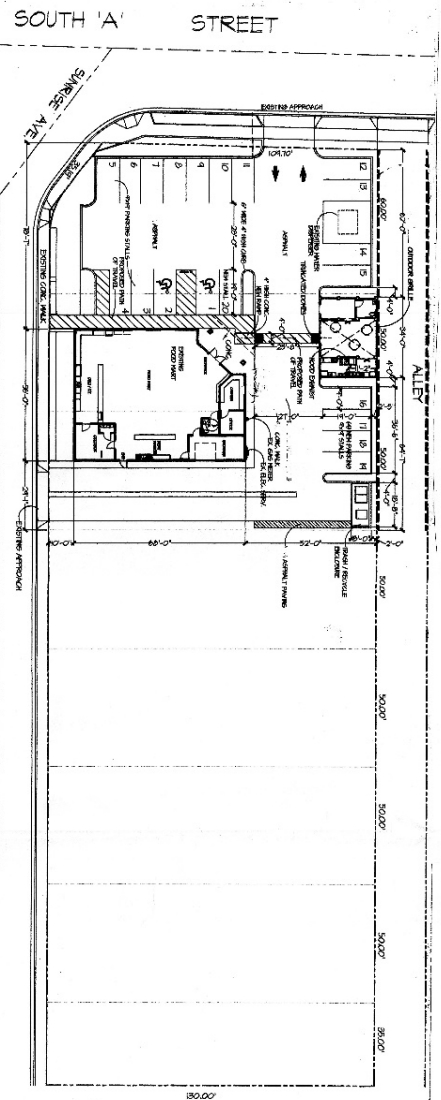
SOUTH ELEVATION



WEST ELEVATION



FLOOR PLAN



Site Plan

Site Data

SITE ADDRESS: 223 SOUTH 'A' STREET
PROPERTY NO.: 00000000
PROPERTY ZONE: C-1
LOT AREA: 5,000 SQ. FT.
LOT AREA: 5,000 SQ. FT.
SOIL SITE CLASS: D
SEISMIC HAZARD FACTOR: 1
CLIMATE ZONE: 1
WIND SPEED RESPONSE COEFF: 0.5
SPECTRAL RESPONSE COEFF: 0.5
SPECTRAL RESPONSE COEFF: 0.5

Building Data

BUILDING USE: OUTDOOR DRILL
OCCUPANCY CATEGORY: B
TYPE OF CONSTRUCTION: V-B
BUILDING HEIGHT: 12'-0"
BUILDING AREA: 2,071 SQ. FT.
KITCHEN AREA: 471 SQ. FT.
DINING AREA: 571 SQ. FT.
R.R. AREA: 103 SQ. FT.

Parking required per Occ.

OCCUPANCY TYPE - B: 200 SQ. FT. / 100 - 1.4
OCCUPANCY TYPE - B: 200 SQ. FT. / 100 - 1.4
TOTAL PARKING SPACES REQUIRED: 20 SPACES

JOSEPH PEREYRA
 DESIGNER

Pro Cad L.L.C.

RUDY HERNANDEZ
 521 SOUTH 'A' ST.
 MADERA, CA. 93638
 559-460-4651

A.1

Attachment 4: Planning Commission Resolution 1881

RESOLUTION NO. 1881

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
ADOPTING A CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES
SECTIONS 15301 (EXISTING FACILITIES), AND APPROVING CONDITIONAL USE
PERMIT 2020-16 AND SITE PLAN REVIEW 2013-40 MOD (CHELES TACOS, 521
SOUTH A STREET)**

WHEREAS, Rudy Hernandez (“Owner”) owns an existing professional commercial structure at 521 South A Street in Madera, California (“site”); and

WHEREAS, the site contains existing and planned commercial development; and

WHEREAS, the Applicant previously obtained approval of Conditional Use Permit 2013-34 and Site Plan Review 2013-40, for use of the property as a restaurant; and

WHEREAS, the Applicant is seeking a site plan review (SPR) modification to allow for the expansion of use to include sale and consumption of beer and wine associated with an existing commercial structure (and restaurant) at 521 South A Street, Madera (APN 011-061-006), as proposed by SPR 2013-40 MOD; and

WHEREAS, the Applicants are seeking a conditional use permit to allow the sale of beer and wine for on-site consumption in an existing area of outdoor dining at the commercial structure on APN 011-061-006, as proposed by CUP 2020-16; and

WHEREAS, said proposed modifications would not affect or otherwise modify the conditions of CUP 2014-11 regarding off-sale of alcohol associated with the collocated neighborhood market (Mercado Las Palmas); and

WHEREAS, the City performed a preliminary environmental assessment of this project and has determined that it falls within the Categorical Exemption set forth in Section 15301 (Existing Facility) of the California Environmental Quality Act (CEQA) Guidelines as the project represents an expansion of use in pre-existing facilities; and

WHEREAS, a Categorical Exemption has been prepared in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et. seq.*; and

WHEREAS, under the City’s Municipal Code, the Planning Commission is authorized to review and approve site plans, conditional use permits and environmental assessments for associated projects on behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed CUP 2020-16 and SPR 2013-40 MOD at a duly noticed meeting on May 11, 2021; and

WHEREAS, a public hearing was held, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, the Planning Commission now desires to adopt a finding of Categorical Exemption for the project, and approve CUP 2020-16 and SPR 2013-40 MOD, with conditions.

NOW THEREFORE, be it resolved by the Planning Commission of the City of Madera as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein.

2. CEQA: A preliminary environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The Planning Commission finds and determines that the project is exempt under Section 15301 (Existing Facilities) of the State CEQA Guidelines as the project involves the minor alteration of an existing private structure involving no expansion of an existing service area. The proposed project is consistent with applicable general plan designations and policies and is served by all required services and utilities. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

3. Findings for CUP 2020-16: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of CUP 2020-16, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.1307. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

a. The proposal is consistent with the General Plan and Zoning Ordinance.

Basis for Finding: The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The proposed use (on-site alcohol sales) is conditionally permitted. Conditional Use Permit 2020-16, subject to the conditions of approval, is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

b. The proposed use will be compatible with the surrounding properties.

Basis for Finding: The project site is suited for commercial sales. The project site is located at the intersection of several neighborhood thoroughfares and is surrounded by other commercial uses to the east and south, with residential uses to the north and west. As conditioned, the sale of certain alcohol products for on-site consumption will be compatible with surrounding properties and is consistent with applicable requirements regulating such use.

c. The establishment, maintenance, or operation of the use or building applied for 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.

Basis for Finding: As discussed above, the proposed use is compatible with surrounding properties and will not have a significant, adverse environmental impact. The Madera Police Department has reviewed the project and did not oppose the proposed use, and there is no evidence in the administrative record of the following:

- The commission of three or more violent felonies (crimes against the person) and/or narcotic or dangerous drug sales within the subject premises or in the area immediately adjacent thereto.
- The arrest of the owner and/or an employee for violations occurring within the subject premises, or in the area immediately adjacent thereto, which violations can be found to be reasonably related to the operation of the business.

- The sustaining by the subject premises of an administrative suspension or revocation or other such sanction as may be imposed by the California State Department of Alcoholic Beverage Control, including payment in lieu of such suspension or revocation.
- The failure by the owner or other person responsible for the operation of the premises to take reasonable steps to correct objectionable conditions after having been placed on notice by the official of the City that such conditions exist. Such official may include, but not be limited to the: Code Enforcement Officer, Police Chief, Fire Marshall or City Attorney. Objectionable conditions may include, but not be limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise. Such conduct shall be attributable to the subject premises whether occurring within the subject premises or in the area immediately adjacent thereto.

4. Findings for SPR 2013-40 MOD: The Planning Commission finds and determines that there is substantial evidence in the administrative record to support the approval of SPR 2013-40 MOD, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.4.0106. The Planning Commission further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

- a. The proposal is consistent with the General Plan and Municipal Code.

Basis for Finding: The property is zoned C1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The use is located within an existing commercial site. While minor changes will be required to improve the space prior to expanded use, no on-site construction is proposed or required. Site Plan Review 2013-40 MOD is consistent with the purpose and intent of the C1 (Light Commercial) zone district and does not conflict with City standards or other provisions of the Code.

- b. The proposal is consistent with any applicable specific plans.

Basis for Finding: The project site is not subject to any applicable specific plans.

- c. The proposed project includes facilities and improvements; vehicular and pedestrian ingress, egress, and internal circulation; and location of structures, services, walls, landscaping, and drainage that are so arranged that traffic congestion is avoided, pedestrian and vehicular safety and welfare are protected, there will be no adverse effects on surrounding property, light is deflected away from adjoining properties and public streets, and environmental impacts are reduced to acceptable levels.

Basis for Finding: Site Plan Review 2013-40 MOD has been reviewed and is consistent with surrounding uses. The project includes the use of an existing building with adequate improvements and parking already installed. The project will not generate significant amounts of noise, light, or traffic.

- d. The proposal is consistent with established legislative policies relating to traffic safety, street dedications, street improvements, and environmental quality.

Basis for Finding: Site Plan Review 2013-40 MOD requires no street improvements as it is located within an existing commercial development with adequate improvements and

parking already installed. The project will not have a significant impact on traffic or the environment.

5. Approval of CUP 2020-16 and SPR 2013-40 MOD: Given that all findings can be made, the Planning Commission hereby approves CUP 2020-16 and SPR 2013-40 MOD as conditioned as set forth in the Conditions of Approval attached as Exhibit "A."

6. No Modification to CUP 2013-34: Nothing in this Resolution modifies the conditions of approval for CUP 2013-34, which remains in full force and effect.

7. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 11th day of May 2021, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Chairperson

Attest:

Gary Conte, AICP
Planning Manager

Exhibit "A" – Conditions of Approval for CUP 2020-16 and SPR 2013-40 MOD

EXHIBIT A
CUP 2020-16 AND SPR 2013-40 MOD
CHELES TACOS ON-SITE SALE AND CONSUMPTION OF BEER AND WINE
CONDITIONS OF APPROVAL
MAY 11, 2021

Notice to Applicant

In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within ninety (90) calendar days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development project. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

IMPORTANT: PLEASE READ CAREFULLY

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through conditional use permit and site plan review (collectively "permit"), and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would on the whole enhance the project and its relationship to the neighborhood and environment.

Approval of this permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this permit, the zoning ordinance, and all City standards and specifications. This permit is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this permit. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the permit or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the review process or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the permit as delineated herein and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for conditional use permit Conditional Use Permit 2020-16 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within fifteen (15) days after the decision by the Planning Commission pursuant to Madera Municipal Code (“MMC”) Section 10-3.1309, and all discretionary conditions of approval for Site Plan Review 2013-40 MOD will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) days after the decision by the Planning Commission pursuant to MMC Section 10-3.4.0117. In the event you wish to appeal the Planning Commission’s decision or discretionary conditions of approval, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed and specific reasons why you believe the decision or action appealed should not be upheld.

These conditions are applicable to any person or entity making use of this permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this permit. Furthermore, “project site” refers to 521 S. A St. whose use is being expanded under Conditional Use Permit 2020-16 and Site Plan Review 2013-40 MOD by the applicant. The following conditions apply only to these portions of the subject site and fully replace the conditions for CUP 2013-34, SPR 2013-40, SPR 2014-11, and SPR 2014-18, unless specifically noted otherwise. Nothing herein modifies Conditional Use Permit 2014-11, which remains subject to its own conditions of approval as originally approved.

Conditions of Approval

- Site Plan Review 2013-40 MOD is subject to Conditions of Approval 1-14, 16-23, and 32-42
- Conditional Use Permit 2020-16 is subject to Conditions of Approval 1-9 and 24-31

General Conditions

1. Approval of this conditional use permit or site plan review shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.
2. Approval of this conditional use permit or site plan review may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on either this conditional use permit or site plan review, the zoning ordinance, and all City standards and specifications. This conditional use permit and site plan review is granted, and the conditions imposed, based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this conditional use permit and site plan review. Unless the conditions of approval specifically require operation inconsistent with the application, a new or revised site plan review is required if the operation is found to be out of conformance with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the permit or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the site plan review process or for additions or alterations

to any construction or building plans not specifically submitted and reviewed and approved pursuant to this site plan review or subsequent amendments or revisions. These conditions are conditions imposed solely upon the site plan and are not conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

3. These conditions are applicable to any person or entity making use of this site plan and of this conditional use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, lessee, operator, or any other person or entity making use of this site plan and conditional use permit.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specifically noted in the conditions or mandated by statutes.
5. The applicant/owner shall submit to the City of Madera Planning Department a check in the amount necessary to file a Notice of Exemption at the Madera County Clerk. This amount shall equal the Madera County filing fee in effect at the time of filing. Such check shall be made payable to the Madera County Clerk and submitted no later than three (3) days following action on SPR 2013-40 MOD and CUP 2020-16.
6. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the applicant’s signature on the Acknowledgement and Acceptance of Conditions of Approval. Please note this site plan review modification approval (SPR 2013-40 MOD) will expire one (1) year from the effective date, unless a building permit is issued by the Building Official and construction is commenced and diligently pursued toward completion of the site or structures which were the subject of the site plan or the required action is taken to extend the approval before expiration date (MMC Section 10-3.4.0114, Lapse of Site Plan Approval). Please also note that conditional use permit approval (CUP 2020-16) is conditioned upon the privileges granted being utilized within 12 months after the effective date thereof. Failure to utilize such permit within such 12-month period shall render the permit null and void unless a timely written request for extension is submitted to the Planning Commission prior to the expiration of this permit.
7. It shall be the responsibility of the property owner, operator, and/or management to ensure that any required permits, inspections, and approvals from any regulatory agency be obtained from the applicable agency prior to issuance of a building permit and/or the issuance of a certificate of completion, as determined appropriate by the City of Madera Planning Department.
8. Approval of this project is for the benefit of the applicant. The submittal of applications by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Madera and its agents, officers, consultants, independent contractors, and employees (“City”) from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively “claim”).

The City shall promptly notify the applicant of any claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for City's attorneys' fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record.

Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

9. All on-site and off-site requirements listed herein shall be completed in advance of any request for building permit final inspection, occupancy of the building or issuance of a business license unless otherwise noted.

Planning Department

10. Vandalism and graffiti shall be corrected per the Madera Municipal Code (MMC).
11. The applicant shall operate in a manner that does not generate noise, odor, blight or vibration that adversely affects any adjacent properties.
12. 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.
13. 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 Conditional Use Permits 2013-35 and/or 2020-16, and/or Site Plan Review 2013-40 MOD.
14. The operation, use and layout shall reflect those reflected in the approved site plan to which these conditions are attached. Any deviation or change from the approved site plan shall require an update to SPR 2013-40 MOD or the submission of a new site plan in addition to any other permits or entitlement processing the change/expansion will require.
15. All conditions applicable to the approval of Conditional Use Permit 2013-34 shall remain in effect and are not revised in any way by this approval except as modified herein.

Operations

16. Site Plan Review (SPR) 2013-40 MOD allows for the project site to be utilized for the following purposes: the 3,536 square foot (sf) building located in the south-west corner of the project site to be used as a food retail market with package alcohol sales of beer and wine for off-site consumption, the 783 sf building located on the north edge of the property to be used for the operation of a restaurant and outdoor dining establishment with beer and wine sales for on-site consumption restricted to the 471 sf dining area associated with the restaurant.
17. Hours of operation for the restaurant and outdoor dining patio shall be restricted to the following:
 - Monday – Thursday: 8:30 a.m. – 9:00 p.m.

- Friday – Sunday: 8:30 a.m. – 10:00 p.m.
18. Hours of operation for the market shall be limited to between 6:00 am and 10:00 pm daily.
 19. No outdoor display of merchandise shall be allowed.
 20. No amplified or live performance music shall be allowed in the outdoor dining patio area or in the parking area.
 21. Smoking shall be prohibited in the outdoor dining patio, except as provided by law.
 22. No loitering signs shall be posted at the front and rear exteriors of the market business. The business operator shall monitor the exterior of the business site and dissuade any vagrancy issues which might negatively impact public health and/or safety.
 23. The parking area located at the rear of the business shall be illuminated with security lighting to the satisfaction of the Police Department while not unduly impacting surrounding uses.

On-site Alcohol Use Permit

24. Conditional Use Permit (CUP) 2020-16 allows for the sale of beer and wine for on-site consumption at the 783 sf restaurant building. All such alcohol sales are in association with a California Alcoholic Beverage Control (ABC) Type 41 permit.
25. The on-site and outdoor consumption of beer and wine shall only be allowed in the designated dining and patio areas consistent with the applicable laws of the State of California Department of Alcoholic Beverage Control.
26. There shall be no allowance for off-sale products to be stored or displayed in areas accessible to the patrons of the restaurant. All such products shall be sold exclusively inside the market on the property and subject to the conditions of CUP 2014-11.
27. Changes or expansions in the type, sale and/or consumption of alcohol associated with the on-site consumption shall require an amendment to Conditional Use Permit 2020-16.
28. The sale of beer and wine for on-site consumption is conditioned upon obtaining a Type 41 ABC license 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.
29. Before the service of on-site alcohol is permitted within the outdoor dining patio, the applicant shall add gates to restrict access to the area in which alcohol will be sold and consumed. Access gates for the service area shall swing in the direction of egress, latch when closed, and be installed with panic hardware in case of emergency.
30. New gates shall match the aesthetic of the existing structure in form, material, and color. A design proposal for the gates shall be submitted for Planning Manager review and approval within 60 days of the approval of this site plan and use permit.
31. The business owner/manager shall post signs in the area under its control prohibiting open containers outside the designated and access-restricted service area.

Signage

32. 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.
33. There shall be no exterior advertisement or signs of any kind or type placed on the exterior windows or door of the premises promoting or indicating the availability of alcoholic beverages.

Signs promoting alcoholic beverages shall be located at least five (5) feet away from the store entrance.

- 34. No promotional signage and/or displays promoting alcohol products shall be utilized in any way on the exterior of the convenience store.
- 35. No on-building or free-standing signs are approved as part of SPR 2013-40 MOD or CUP 2020-16.

Landscaping

- 36. 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, mowing lawns consistent with industry standards, and replacing dead or unhealthy vegetation with drought tolerant plantings.

Accessibility and Parking

- 37. The applicant/owner shall repaint the parking area to clearly define the boundaries of the spaces. The spaces shall be marked in accordance with the approved site plan.
- 38. The site shall provide the twenty (20) parking spaces as agreed upon in the previous site plan, SPR 2014-11, despite the parking requirements of MMC §10-3.1201 mandating 24 spaces. In the case that the applicant and/or successors-in-interest expand the uses of the project site, necessitating the modification of SPR 2013-40 MOD, the parking shall be required to meet the standards according to the proposed uses at that time.

Fire Department

- 39. Fire lanes must be posted in accordance with California Fire Code and City of Madera standards. The restaurant building is located at the alley property line and therefore the alley side must be posted in addition to all on-site locations.
- 40. A "Maximum Occupant Load" sign must be provided and posted near the main entry in a visible location.
- 41. A key box is required for fire access.
- 42. Portable fire extinguishers must be provided both for general use and for the cooking application.