



REGULAR MEETING OF THE MADERA PLANNING COMMISSION

205 W. 4th Street, Madera, California 93637

NOTICE AND AGENDA

Tuesday, February 21, 2023
6:00 p.m.

Council Chambers
City Hall

The Council Chambers will be open to the public. This meeting will also be available for public viewing and participation through Zoom. Members of the public may comment on agenda items at the meeting or remotely through an electronic meeting via phone by dialing (669) 900-6833 enter ID: 89891644707# followed by *9 on your phone when prompted to signal you would like to speak, or by computer at <https://www.zoom.us/j/89891644707>. Comments will also be accepted via email at planningcommissionpubliccomment@madera.gov or by regular mail at 205 W. 4th Street, Madera, CA 93637.

CALL TO ORDER:

ROLL CALL:

Chairperson Robert Gran Jr.
Vice Chair Ramon Lopez-Maciel
Commissioner Rohi Zacharia
Commissioner Khubaib Sheikh
Commissioner Balwinder Singh
Commissioner Saim Mohammad
Commissioner Jose Eduardo Chavez

INTRODUCTION OF STAFF:

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES: None

PUBLIC COMMENT:

The first 15 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. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened.

PUBLIC HEARINGS:

1. ANX 2022-03, GPA 2022-03, REZ 2022-02, CUP 2022-07 & SPR 2022-12, ENV 2022-03 – The Arc/Fresno Madera Counties

Subject: A noticed public hearing to consider an Annexation, General Plan Amendment, Rezone (Prezone), Conditional Use Permit and Site Plan Review for a 242 acre area generally bounded by Martin Street to the north; North D Street to the east; south to Ellis Street and a portion further south to Adell Street; and west to the United States Bureau of Reclamation (USBR) canal west of Road 26 that would allow the construction and operation of a new 8,170 sq. ft. Arc Fresno/Madera Counties facility (Arc), an intellectual and Developmental Disability Center, at 16482 Road 26 (APN: 038-060-018).

An Initial Study/Negative Declaration has been prepared for consideration by the Planning Commission, consistent with California Environmental Quality Act (CEQA). (Report by Gary Conte)

Recommendation:

Conduct the public hearing and adopt:

- a. A Resolution of the Planning Commission of the City of Madera recommending the City Council of the City of Madera approve ENV 2022-03 (Negative Declaration), GPA 2022-03, and REZ 2022-02 (rezoning approximately 242 acres identified as the Arc Annexation Area) for the “The Arc Fresno/Madera Counties” project; and
- b. A Resolution of the Planning Commission of the City of Madera recommending the City Council of the City of Madera initiate annexation of The Arc Fresno/Madera Counties project area (ANX 2022-03); and
- c. A Resolution of the Planning Commission of the City of Madera contingently approving Conditional Use Permit (CUP) 2022-07 and Site Plan Review (SPR) 2022-12 (The Arc Fresno/Madera Counties)

2. CUP 2022-21 – Smart & Final Alcohol Sales

Subject: A noticed public hearing to consider a Conditional Use Permit to allow for the sale of alcohol for off-site consumption, Type 21 license, and on-site tasting events with a Type 86 license from the California Department of Alcohol Beverage Control, within a proposed Smart & Final located at 2237 W. Cleveland Ave. The site is zoned C1 (Light Commercial) with a C (Commercial) General Plan land use designation (APN: 013-160-021).

This project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA) Guidelines, Section 15301 (Existing Facilities). (Report by Gary Conte)

Recommendation:

Conduct the public hearing and adopt:

- a. A Resolution adopting a Findings of Categorical Exemption from CEQA pursuant to 15301 (Existing Facilities) for the project and approving Conditional Use Permit 2022-21 to allow for the sale of alcohol for off-site consumption (Type 21) and on-site tasting events (Type 86) within a Smart & Final based on, and subject to the findings and conditions of approval.

3. VAR 2022-04 & TPM 2022-07 – 1017 E. Kennedy St Parcel

Subject: A noticed public hearing to consider a variance at 1017 E. Kennedy St. allowing for one of the four proposed parcels to be less than the required depth for residential lots and a parcel map to allow for the division of the current parcel into four parcels ranging in size from 6,363 sq. ft. to 21,528 s. ft. The site is located on the northern side of E. Kennedy St., west of Merced St. and east of N. Lake St. (APN: 005-140-032).

This project has been determined to be exempt under California Environmental Quality Act (CEQA) Guidelines, Sections 15061(b)(3) of the General Rule Exception. (Report Adileni Rueda)

Recommendation:

Conduct the public hearing and adopt:

- a. A Resolution adopting a Findings of Exemption from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) Common Sense Rule for the project and approving the VAR 2022-04 to allow for the less than required depth for Parcel 1 and TPM 2022-07 to allow for the division of the current parcel into four parcels ranging in size from 6,363 sq. ft. to 21,528 sq. ft, based on, and subject to, the findings and conditions of approval.

4. CUP 2022-35 & SPR 2022-45 – Precision by Noco

Subject: A noticed public hearing to consider a Conditional Use Permit and Site Plan Review to allow for the establishment of a business, Precision by Noco (micropigmentation/tattoo cosmetic services) in Suite M of the 47th Place West Shopping Center located at 1930 Howard Road, in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation (APN: 009-361-017).

The proposed micropigmentation/tattoo cosmetic service business is categorically exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA). (Report by Robert Smith)

Recommendation:

Conduct the public hearing and adopt:

- a. A Resolution adopting a Findings of Categorical Exemption from CEQA pursuant to CEQA Guidelines Section 15301 for the project and approving Conditional Use Permit 2022-35 and Site Plan Review 2022-45 allowing the establishment of the Precision by Noco business to operate in Suite M of the 47th Place West Shopping Center located at 1930 Howard Rd, based on, and subject to, the findings and conditions of approval.

5. CUP 2022-19 & SPR 2022-28 – Pure Essence Massage

Subject: A noticed public hearing to consider a Conditional Use Permit and Site Plan Review to allow for the establishment of a business, Pure Essence Massage (massage therapy, lymphatic treatment, body sculpting, etc.) in Suite H of the 47th Place West Shopping Center located at 1930 Howard Road, in the C1 (Light Commercial) Zone District with a C (Commercial) General Plan land use designation (APN: 009-361-017).

The proposed massage business is categorically exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA). (Report by Robert Smith)

Staff is requesting this item be continued to the March 14, 2023, Planning Commission meeting.

Recommendation:

- a. Continue the item to the March 14, 2023, Planning Commission meeting.

6. OTA 2022-02 – Repeal of Madera Municipal Code Section 10-3.419 Telecommunication Ordinance

Subject: A noticed public hearing to consider repealing Section 10-3.419 of the Madera Municipal Code related to Telecommunication Towers, Antennas and Structures and consider adoption of a Resolution recommending to the City Council adoption of an ordinance repealing Section 10-3.419 of the Madera Municipal Code.

This item is determined to be categorically exempt pursuant to Section 15061(b)(3) the General Rule Exception of the California Environmental Quality Act (CEQA) Guidelines. (Report by James Troyer)

Recommendation:

Conduct the public hearing and adopt:

- a. A Resolution of the Planning Commission recommending the City Council of the City of Madera adopt an ordinance repealing Section 10-3.419 of Title X of the Madera Municipal Code relating to Telecommunication Towers, Antennas and Structures and find the ordinance is not a project subject to CEQA pursuant to CEQA Guidelines Section 15378, and alternatively, exempt from CEQA under CEQA Guidelines Section 15061(b)(3) (Common Sense).

ADMINISTRATIVE REPORTS:

1. Housing Element Update
2. League of California Cities – 2023 Planning Commissioners Academy

COMMISSIONER REPORTS:

ADJOURNMENT:

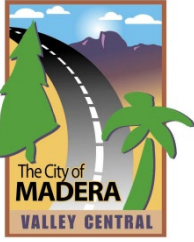
In compliance with the Americans with Disabilities Act, the meeting room is accessible to the physically disabled and the services of a translator can be made available. Requests for additional accommodations for the disabled, signers, assistive listening devices or translators needed to assist participation 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.



REPORT TO THE PLANNING COMMISSION

Prepared by: Wyatt Czesinski, Contract Staff Planner **Meeting of:** February 21, 2023

Agenda Number: 1

SUBJECT:

The Arc Fresno/Madera Counties General Plan Amendment (GPA) 2022-03, Prezone (REZ) 2022-02, Annexation (ANX) 2022-03, Conditional Use Permit (CUP) 2022-07, Site Plan Review (SPR) 2022-12 and Negative Declaration (ENV 2022-03) for a 242 acre area generally bounded by Martin Street to the north; North D Street to the east; south to Ellis Street and a portion further south to Adell Street; and west to the United States Bureau of Reclamation (USBR) canal west of Road 26.

RECOMMENDATION:

Conduct a public hearing and adopt:

1. A Resolution of the Planning Commission of the City of Madera recommending the City Council of the City of Madera approve ENV 2022-03 (Negative Declaration), GPA 2022-03, and REZ 2022-02 (prezoning approximately 242 acres identified as the Arc Annexation Area) for the “The Arc Fresno/Madera Counties” project; and
2. A Resolution of the Planning Commission of the City of Madera recommending the City Council of the City of Madera initiate annexation of The Arc Fresno/Madera Counties project area (ANX 2022-03); and
3. A Resolution of the Planning Commission of the City of Madera contingently approving Conditional Use Permit (CUP) 2022-07 and Site Plan Review (SPR) 2022-12 (The Arc Fresno/Madera Counties)

PROPOSAL:

The applicant, The Arc Fresno/Madera Counties, is requesting site plan review (SPR 2022-12) approval to construct a new 8,170 square foot (sf) The Arc Fresno/Madera Counties facility and, use permit (CUP 2022-07) approval to operate the facility as an Intellectual and Development Disability Center (IDDC) at 16482 Road 26 ((Assessor’s Parcel Number (APN) 038-060-018)) herein referenced as the “Arc development site”. The Arc development site is approximately 2.12 acres located approximately 320 feet north of the intersection of Ellis Street and Road 26 (see Attachments 1 and 2).

The Arc development site is outside and to the north of the City of Madera City limits. The Arc development site is approximately 1,800 feet (0.35 miles) north of the City limits. As part of the proposed project, the Arc development site and 51 additional parcels, representing approximately 242 acres combined, would be annexed into the City as a part of ANX 2022-03, consistent with the Madera Local Agency Formation Commission (LAFCo) request to define and establish a logical annexation territory

pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. The proposed 242-acre annexation area is generally bound Martin Street to the north, North D Street to the east, Adell and Ellis Streets to the south, and the USBR canal and Road 26 to west. Please note, where Road 26 enters the City limits, it is identified as Country Club Drive. Road 26 within the limits of the annexation area would be renamed Country Club Drive upon approval of the annexation by LAFCo. See Attachments 1 and 2 for annexation boundaries and Attachment 3 for a list of affected parcels.

GPA 2022-03 would result in the amendment of the Arc development site’s General Plan Land Use designation from MD (Medium Density Residential) to HD (High Density Residential) and the amendment of the southern portion of APN 038-010-026 (Jack G. Desmond Middle School) from OS (Open Space) to P&SP (Other Public & Semi-Public Uses) consistent with the land use designation of the northern portion of the school site. The Jack G. Desmond Middle School is part of the overall 93.13 combined Matilda Torres High School, Jack G. Desmond Middle School, and Nishimoto Elementary School campus. See Attachments 4 and 5 for the City of Madera existing and proposed General Plan land use designations, respectively for the Arc development site and the affected annexation area.

As an area currently outside the jurisdiction of the City, land use and zoning responsibilities of the proposed annexation area are with the County of Madera. Current County zoning districts for the affected annexation properties are shown in Attachment 6. REZ 2022-02 would prezone the Arc development site to R3 (One unit per each 1,800 square feet (sf)). APN 038-010-026 would be prezoned PF (Public Facilities) to be consistent with the land use amendment proposed under GPA 2022-03. The remaining properties to be annexed into the City as a part of the project would be prezoned as well, in relation to the City’s General Plan Land Use designation assigned to those individual properties. The proposed pre zoning districts for the affected annexation properties are shown in Attachment 7.

CUP 2022-07 would allow the operation of an IDDC on the Arc development site, which is conditionally allowed in an R3 zone district. The Arc development site is generally bounded by Road 26 to the east, rural residences to the south, a USBR canal – maintained by the Madera Irrigation District (MID) – and vacant land beyond the canal to the west, and Heartland Archery and Pro Shop to the north. Access is proposed to be provided by two driveways along Road 26 (Country Club Drive).

An overview of the proposed project is provided in Table 1 below.

Table 1: Project Overview	
<i>Project Number:</i>	GPA 2022-03, REZ 2022-02, ANX 2022-03, CUP 2022-07, SPR-2022-12
<i>Applicant:</i>	Arc Fresno/Madera Counties, Inc
<i>Property Owner:</i>	Arc Fresno/Madera Counties
<i>Location:</i>	<u>Annexation Area:</u> North of existing City limits; generally bounded by an existing USBR canal and Road 26 to the west, Martin Street to the north, North D Street to the east, and Adell and Ellis Streets to the south. <u>Arc Development Site:</u> 16482 Road 26 (APN 038-060-018); Approximately 320 feet north of the intersection of Road 26 and Ellis Street; Bounded by Road 26 to the east, a residence to the south, USBR canal to the west, and Heartland Archery and Pro Shop to the north.
<i>Project Area:</i>	<u>Annexation Area:</u> Approximately 242 acres <u>Arc Development Site:</u> Approximately 2.12 acres; Proposal for approximately 8,170 sf of new building
<i>Planned Land Use:</i>	<u>Annexation Area:</u> Various (see Attachment 4) (existing); Various (see Attachment 5) (proposed)

Table 1: Project Overview	
	<u>Arc Development Site:</u> MD (Medium Density Residential) (existing); HD (High Density Residential) (proposed)
<i>Zoning District:</i>	<u>Annexation Area:</u> Various (see Attachment 6) (existing); Various (see Attachment 7) (proposed) <u>Arc Development Site:</u> RRM (Residential, Rural, Multiple Family - County) (existing); R3 (One unit per each 1,800 sf) (proposed)
<i>Site Characteristics</i>	<u>Annexation Area:</u> The annexation area is a mix of undeveloped and developed parcels. A majority of the developed parcels consist of rural residential uses and existing school facilities. Non-residential uses include a County drainage ponding basin located in the central portion of the annexation area and a commercial facility located along the east side of Road 26. The largest use developed within the annexation area includes the Matilda Torres High School, Jack G. Desmond Middle School, and Nishimoto Elementary School combined campus located at the north end of the area of annexation. <u>Arc Development Site:</u> The project is located on land that is currently vacant. The Arc development site previously was occupied by a single-family residence that has since burned down. Subsequent to the fire that destroyed the home, remnants of the home and its foundation, and other ancillary improvements such as the well and septic system and debris accumulated over the years have been removed from the property. Planned land use bordering the Arc development site is Low Density Residential to the east and west, Medium Density Residential to the south, , and Commercial to the north.

SUMMARY:

The applicant, The Arc Fresno/Madera Counties, is proposing a GPA, REZ, ANX, CUP and SPR in order to develop a new facility for the Arc Fresno/Madera Counties. SPR 2022-12 is an application to construct and operate a new 8,170 sf The Arc Fresno/Madera Counties facility on 2.12 acres (see Attachment 8).

The proposed 2.12-acre Arc development site consists of vacant, previously developed land. The Arc development site previously contained a single-family residence that has since burned down. Subsequent to the fire that destroyed the single-family residence, remnants of the home and its foundation, and other ancillary improvements such as the well and septic system and debris that had accumulated over the years have been removed from the property. The Arc development site has been grubbed of all vegetation and regraded since the occurrence of the fire.

Two stormwater collection and discharge options are being pursued for the Arc development site. The preferred option is constructing approximately 1,000 linear feet of pipeline connecting underground storm drainage facilities from the Arc development site to a County owned drainage basin located on Ellis Street approximately 600 feet east of the Arc development site. The storm drain conveyance pipe would follow the alignment of Road 26 (Country Club Drive) and Ellis Street, as indicated on Attachments 1 and 2. If connection to the County basin on Ellis Street is not feasible, then the Arc development project would be required to accommodate storm drainage in an on-site basin.

The Arc development site and 51 additional properties would be annexed into the City as a part of ANX 2022-03. The total annexation area would be approximately 242 acres (see Attachments 1 and 2).

GPA 2022-03 would result in the amendment of the Arc development site’s General Plan Land Use designation from MD to HD. GPA 2022-03 would also amend the southern portion of the Jack G. Desmond Middle School site General Plan Land Use designation from OS to P&SP consistent with the school site’s remaining area (see Attachment 5).

REZ 2022-02 would prezone the Arc Development site R3. REZ 2022-02 would also prezone the other 51 properties being annexed into the City consistent with their applicable General Plan Land Use designation (see Attachment 7). CUP 2022-07 would allow the operation of an IDDC on the Arc development site, which is conditionally permitted in an R3 zone district.

SURROUNDING LAND USES:

Annexation Area

The proposed 242-acre annexation area is a mix of undeveloped and developed parcels. A majority of the developed parcels consist of rural residential uses and existing school facilities. Non-residential uses include a County drainage ponding basin located in the central portion of the annexation area and a commercial facility located along the east side of Road 26. The largest use developed within the annexation area includes the 93.13 acre combined Matilda Torres High School, Jack G. Desmond Middle School, and Nishimoto Elementary School campus located at the north end of the area of annexation (see Attachment 2).

The proposed annexation area is generally surrounded by County commercial uses and single-family residences to the west, County single family residential uses to the north and east, and City residential and commercial uses to the south, along with a portion of the Sherman Thomas school campus.

Table 2 below summarizes the existing development/uses, and the General Plan land use designations and zoning districts surrounding the proposed annexation area. The General Plan designations identified in Table 2 represent the City’s General Plan land use designations surrounding the proposed annexation area. The zoning districts identified in Table 2 include both City and County zone district based on where the annexation boundary abuts the existing City limits or unincorporated property.

Table 2: Bordering Site Information (Annexation Area)			
<i>Direction</i>	<i>Existing Use</i>	<i>General Plan Designation</i>	<i>Zone District</i>
<i>North</i>	Residential	Low Density Residential	AR-5 (County)
<i>East</i>	Residential	Low Density Residential	AR-5, RRS (County)
<i>South</i>	Residential, Commercial Businesses, Sherman Thomas Charter School	Low Density Residential, Medium Density Residential, Office, Commercial	RRM (County) PD (6000), PD (4500), R1, C1 (City)
<i>West</i>	USBR Canal, Commercial Businesses	Resource Conservation/Agriculture, Low Density Residential, Commercial	MHA, OS, CRM (County)
CRM – Commercial, Rural, Median (County) MHA – (Overlay) Manufactured Housing Architectural Review Overlay (County) RRM – Residential, Rural, Multiple Family (County) OS – Open Space (County) RRS – Residential, Rural, Single Family (County) PD (6000) – Planned Development (One Unit per each 6,000 sf of site area) PD 4500 – Planned Development (One Unit per each 4,500 sf of site area) R1 – (One Unit per each 6,000 sf) C1 – Light Commercial			

Development Site

The Arc development site is bordered to the north by commercial businesses on land that is planned for Commercial uses, to the east by Road 26 and Matilda Torres High School and commercial businesses beyond. Land to the east is planned for Other Public & Semi-Public uses and Low Density Residential uses. Land to the south contains a single-family residence on land planned for Medium Density Residential, and land to the west includes a USBR canal within a corridor of land planned for Resource Conservation/Agriculture. The land use designation aligns with the USBR canal. West, beyond the canal, the land is planned for Low Density Residential uses.

Land surrounding the Arc development site is zoned by the County. To the north of the proposed Arc facility, land is zoned CRM (Commercial, Rural, Median) and MHA (Manufactured Housing Architectural Overlay). Land to the east is zoned CRM, land to the south is zoned RRM (Residential, Rural, Multiple Family), and land to the west is zoned OS (Open Space) and RRS (Residential, Rural, Single Family) (see Attachment 6).

Table 3 below summarizes the existing development/uses, and the General Plan land use designations and zoning districts surrounding the proposed Arc Development Site. Similar to Table 2 above, the General Plan designations identified in Table 3 represent the City’s General Plan land use designations surrounding the site. Given The Arc Development Site does not abut the Madera City limits, Table 3 lists only County zone districts.

Table 3: Bordering Site Information (Arc Development Site)			
<i>Direction</i>	<i>Existing Use</i>	<i>General Plan Designation</i>	<i>Zone District (County)</i>
<i>North</i>	Commercial Business	Commercial	CRM, MHA
<i>East</i>	Commercial Business, Matilda Torres High School	Low Density Residential, Other Public & Semi-Public Uses	CRM
<i>South</i>	Residential	Medium Density Residential	RRM
<i>West</i>	USBR canal, Vacant	Resource Conservation/Agriculture, Low Density Residential	OS, RRS
CRM – Commercial, Rural, Median (County) MHA – (Overlay) Manufactured Housing Architectural Review Overlay (County) RRM – Residential, Rural, Multiple Family (County) OS – Open Space (County) RRS – Residential, Rural, Single Family (County)			

ANALYSIS:

General Plan Amendment 2022-03

The project proposes to amend the General Plan Land Use designation for the Arc development site (APN 038-060-018) from MD to HD. This amendment would facilitate the proposed use of a IDDC within the proposed R3 zone district where such uses are conditionally allowed. The GPA also proposes to amend approximately the southerly portion of APN 038-010-026, currently developed with school facilities (Jack G. Desmond Middle School), from OS to P&SP. This amendment would create consistency across the entirety of APN 038-010-026 and between the planned land use designation and the existing developed use. The Jack G. Desmond Middle School is part of the overall 93.13 acre combined Matilda Torres High

School, Jack G. Desmond Middle School, and Nishimoto Elementary School campus. See Attachment 5 for the proposed General Plan land use designations.

Rezone 2022-02

The project proposes to prezone the Arc development site. Under its current General Plan Land Use designation of MD, the compatible zone district would be R2 (One unit per each 3,000 sf). However, the use of a IDDC is conditionally allowed in the R3 zone district, resulting in the need to prezone the Arc development site for R3 zoning. As such, GPA 2022-03 would facilitate the proposed zone district through amending the General Plan Land Use designation for the Arc development site to HD. APN 038-010-026, currently developed with school facilities supporting the Jack G. Desmond Middle School, would be prezoned PF, in accordance with the proposed amendment of the parcel's General Plan designation to P&SP under GPA 2022-03. All other parcels being annexed into the City would be prezoned in relation to their General Plan Land Use designation. See Attachment 7 for the proposed pre zoning.

Annexation 2022-03

The project proposes to annex 52 parcels into the City, including the 2.12-acre site where the new Arc facility would be located. The annexation would include approximately 242 acres (see Attachments 1 and 2) and would result in the pre zoning of affected parcels, facilitated through REZ 2022-02. The City Council would authorize application to the Madera Local Agency Formation Commission to undertake proceedings for the Country Club/Martin Annexation. A listing of all affected parcels is included as Attachment 3.

The annexation would be located in an area that has already experienced some development. Within the annexation area existing City water facilities are located beneath Road 26, Martin Street, North D Street, approximately 1,000 feet of Ellis Street west of North D Street, and approximately 1,500 feet of Adell Street west of North D Street. Existing City sewer facilities within the annexation area are located beneath Ellis Street, Road 26 north of Ellis Street, North D Street, approximately 1,700 feet of Martin Street west of North D Street, and Road 26 (Country Club Drive) south of Adell Street. The City water and sewer improvements serve the 93.13 acre combined Matilda Torres High School, Jack G. Desmond Middle School, and Nishimoto Elementary School campus.

The annexation area also includes previously developed storm drainage infrastructure. Both Road 26 and Ellis Street contain storm drain inlets within the annexation area. Additionally, there is an existing County Drainage basin located approximately 600 feet east of the Road 26 and Ellis Street intersection. This basin collects storm runoff from the surrounding area. City water, sewer, and storm drainage infrastructure would be extended, consistent with City standards, as development occurred within the annexation area.

Road 26 within the limits of the annexation area would be renamed Country Club Drive upon approval of the annexation by LAFCo.

Fire, emergency, medical, and police protection services for the annexation area are presently provided by the County of Madera and augmented through contracts and agreements with other agencies and service providers, including the City of Madera. The County of Madera has a contract with CalFire to provide management and staffing of the County's fire stations and equipment. Ambulance services are provided by a private contractor. The nearest ambulance contractor site to the development site is Pistoresi Ambulance, located approximately 2.4 miles to the south. Madera City Fire Station 58 is located approximately 1.25 miles to the southwest of the Arc development site and Madera County Fire Station 1 is located approximately 3 miles to the southeast of the Arc development site. Madera Police

Department is located approximately 2.15 miles to the southeast, and the Madera County Sheriff’s Headquarters is located approximately 1.5 miles to the southwest of the Arc development site. While County services currently have jurisdiction within the annexation area, mutual aid agreements allow for the provision of City services within the area. The annexation would place the area under the jurisdiction of City services; however, the existing mutual agreement would allow for County services to respond to emergency events within the annexation area.

Site Plan Review 2022-15 and Conditional Use Permit 2022-07

The Madera Municipal Code (MMC) establishes procedures for the review and approval of site plan reviews (Section 10-3.4) and for the review and approval of use permits (Section 10-3.13). SPR 2022-15 would authorize construction of The Arc IDDC facility on the 2.12-acre development site. CUP 2022-07 would authorize the operation of the IDDC within the R3 zone district, where such uses are subject to a use permit. The proposed building would include offices, training rooms, and a cafeteria supporting day programs that The Arc would provide. See Attachments 8 through 12 for proposed plans.

Section 10-3.1001 through 10-3.1004 of the MMC also establishes standards specific to development within the R3 zoning district as well as other generally applicable development standards, such as parking requirements. The proposed development is consistent with the applicable standards (see Table 4). The proposal is also consistent with the General Plan, as amended, which includes community design, land use, circulation, and infrastructure goals.

Table 4: R3 Zone District Development Standards		
<i>Standard</i>	<i>Required</i>	<i>Proposed</i>
<i>Front setback (Road 26 (Country Club Drive) (minimum)</i>	15 ft.	69 ft.
<i>Rear setback (minimum)</i>	15 ft.	34 ft. 2 in.
<i>Interior side setbacks (minimum)</i>	5 ft.	90 ft. 8 in. and 152 ft. 5 in.
<i>Building height (maximum)</i>	50 ft.	25 ft. 2 in.
<i>Floor Area Ratio (FAR) (maximum)</i>	Not Applicable	0.09
<i>Parking Spaces (minimum)</i>	43 spaces (1 per each 300 sf of gross floor area, 1 per each 2 employees, and 1 per each fleet vehicle used)	43 total spaces (30 standard, 3 ADA, 10 private van spaces)

Compatibility with Surrounding Uses

The applicant proposes to construct an IDDC, which is allowed conditionally within an R3 zone district, on a parcel which is surrounded by residential and commercial land uses, as well as Matilda Torres High School to the northeast. The project would not place a use on-site that would be incompatible with the other uses in the surrounding area. The project is conditioned to provide a 6-foot block wall along the southern property line where abutting residential uses. A 10-foot landscaped buffer is also required along the southern property line. Further, no events are to be held at the site outside the hours of 7 am and 10 pm.

Circulation and Parking

The project proposes to include 43 total parking spaces on-site. This would include 30 standard spaces, 3 ADA accessible spaces, and 10 private van spaces that would be gated off from the rest of the parking lot. The proposed use of an IDDC does not have a parking standard designation directly related to it within the MMC. As a result, staff has determined that the appropriate standard to analyze the project against is the one established for administrative offices, excluding places of assembly. This standard requires one space for each two employees, plus one space for each vehicle used in conjunction with the establishment, and one space for each 300 square feet of gross floor area (MMC Section 10-3.1202). This standard was chosen due to its inclusion of not only employee counts and gross floor area of buildings, but also fleet vehicles, which the Arc facility would have.

The applicant proposes to construct an 8,170-sf facility for The Arc Fresno/Madera Counties. For the parking analysis, the 237-sf storage room was removed from the calculation, as this would not impact parking calculations. As a result, the parking calculations considered a floor area of 7,933 sf. This would result in a need for 26 parking spaces based on square footage. In addition, the project proposes to operate with a maximum staff count of 15 people at any given time. This would require an additional 7 spaces. The applicant also proposes the use of 10 total fleet vehicles to serve the use, requiring 10 spaces to be included. As a result, the project would be required to provide 43 total parking spaces, which is the number of parking spaces provided on the site plan.

Signage will be located to the front of the building indicating that no parking shall occur in front of the foyer area and designating that this area will be used for loading and unloading.

Site Plan and Elevations

Construction of the building proposed under SPR 2022-12 is conditioned to conform with the site plan and elevation drawings, including the color and materials schedule, as shown in Attachments 8 through 12. Construction would result in an approximately 8,170 sf building, which would be centered on the property. In addition to the proposed building, a sports court would be constructed on the northern end of the Arc development site, between the building and gated portion of the parking lot.

Landscaping

The applicant will be required to submit a landscaping plan to ensure compliance with state water efficient landscaping requirements. The interior and perimeter of the Arc development site is required to be landscaped, except where walks or accessways are proposed. Review and approval of the submitted landscape plan and related irrigation plans are required prior to building permit issuance. Per the conditions of approval, landscape improvements will be required to show a minimum of 50 percent shade coverage within the parking lot on the landscape plan submitted for approval. The project is conditioned to provide a landscape buffer where it abuts a residential use.

Public Infrastructure

The project would be required to make on-site improvements, including the construction of storm drainage facilities and the improvement of Road 26 (Country Club Drive) to City standards. Such improvements would include, but are not limited to, the potential connection of site drainage facilities to the County basin on Ellis Street to the east, the completion of the arterial cross section of the west side of Road 26 (Country Club Drive), the construction of a median within Road 26 (Country Club), the construction of the proposed driveway approaches to a street-type entrance, and the improvement of Road 26 (Country Club Drive) to ADA standards. If connection to the County basin on Ellis Street is not necessary, then the site would be required to accommodate storm drainage in an on-site basin. The conditions of approval reflect requirements to accommodate either option, as discussed below. In

addition, the developer is required to dedicate a 10-foot Public Utility Easement where the proposed Arc facility fronts Road 26 (Country Club Drive). Site grading is required to be completed in such a way that prevents runoff from entering the USBR canal abutting the Arc development site to the east. The project would be allowed to connect to existing City sewer and water lines and is required to pay their fair share cost of these previously constructed City facilities.

Storm Drainage

The project would be required to construct storm drainage facilities that would connect to the existing County basin approximately 600 feet to the east of the Arc development site, unless otherwise directed by the County. In the event that the County does not allow the Arc to direct storm flow to the existing basin, the Arc would be required to collect all storm flow on-site, and percolate one hundred percent of stormwater into the Arc development site's existing soil base. Any required construction during the installation of storm drainage facilities would be required to be approved by the City Engineer, including improvements within the public right of way. Should on-site retention be required, it would be required to be incorporated and accommodated within the grass area at the southern end of the site or in the form of landscaped bioswales. The retention improvements would be required to blend in within its surroundings. Parking and other development standards would not be impacted.

ENVIRONMENTAL REVIEW:

The proposed project has been reviewed for compliance with California Environmental Quality Act. The City prepared an initial study and, on that basis, determined that the proposed project will not have significant adverse effects on the environment and that a Negative Declaration could be prepared. See Attachment 13 for The Arc Fresno/Madera Counties Initial Study/Negative Declaration. The Initial Study/Negative Declaration (IS/ND) was published for a 30-day review and comment period commencing on November 19, 2022 and ending on December 19, 2022. Comments were received from the California Highway Patrol (CHP), Pacific Gas & Electric (PG&E), MID, Caltrans, and the San Joaquin Valley Air Pollution Control District (SJVAPCD). See Attachment 14 for comment letters received.

Comments from CHP and PG&E indicated that the project would not have an impact on their facilities. MID also indicated that the project would have no impact and that the canal abutting the Arc development site to the west was owned by the USBR and operated by MID.

Comments from Caltrans indicated that the construction and the operation of the Arc facility would not have an impact on their facilities; however, the overall annexation area may have an impact. Caltrans requested that a traffic analysis be completed analyzing the impact of development planned throughout the annexation area according to each parcel's rezoning designation. After a meeting between Caltrans and the City on January 19, 2023, Caltrans retracted their request for a traffic analysis to be completed in association with the project. The retraction was based on the mutual understanding the land use intensity within the annexation area was not going to increase beyond what is anticipated in accordance with the General Plan as a result of the project. There are two sites that would experience a change in their land use designation as a result of the project. The first site is the Arc's property, which Caltrans confirmed would not require additional traffic analysis due to the size of the project. The other site undergoing a land use change is the southern portion of APN 038-010-026 (approximately 5 acres), which is already developed with sports fields as part of the Matilda Torres High School, Jack G. Desmond, and Nishimoto Elementary School combined campus. This site is currently planned as Open Space and would be amended to be planned for Other Public and Semi-Public Uses, consistent with the rest of the combined school campus. The remaining parcels within the annexation area would be rezoned to be consistent with their General Plan designation, remaining consistent with their currently planned intensity. As they develop,

individual projects within the annexation area would be required to complete any applicable environmental and traffic analyses depending on the extent of the project being proposed.

Comments from the SJVAPCD identified that neither the annexation, nor the construction of the Arc facility, would have an impact on air quality resources; however, future development within the annexation area could result in impacts to air quality resources. Individual projects within the annexation area would be required to complete any applicable environmental analyses depending on the extent of the project being proposed, including required air quality analysis.

COMMISSION ACTION:

The Commission will be acting on CUP 2022-07, SPR 2022-12, GPA, 2022-03, REZ 2022-02 and ANX 2022-03. Staff recommends that the Commission:

1. Move to adopt a Resolution recommending the City Council of the City of Madera approve ENV 2022-03 (Negative Declaration), GPA 2022-03, and REZ 2022-02 (rezoning approximately 242 acres identified as the Arc Annexation Area) the “The Arc Fresno/Madera Counties” project; and
2. Move to adopt a Resolution recommending the City Council initiate The Arc Fresno/Madera Counties project area (ANX 2022-03); and
3. Move to adopt a Resolution contingently approving CUP 2022-07 and SPR 2022-12 (The Arc Fresno Counties).

ALTERNATIVES:

As an alternative, the Commission may elect to:

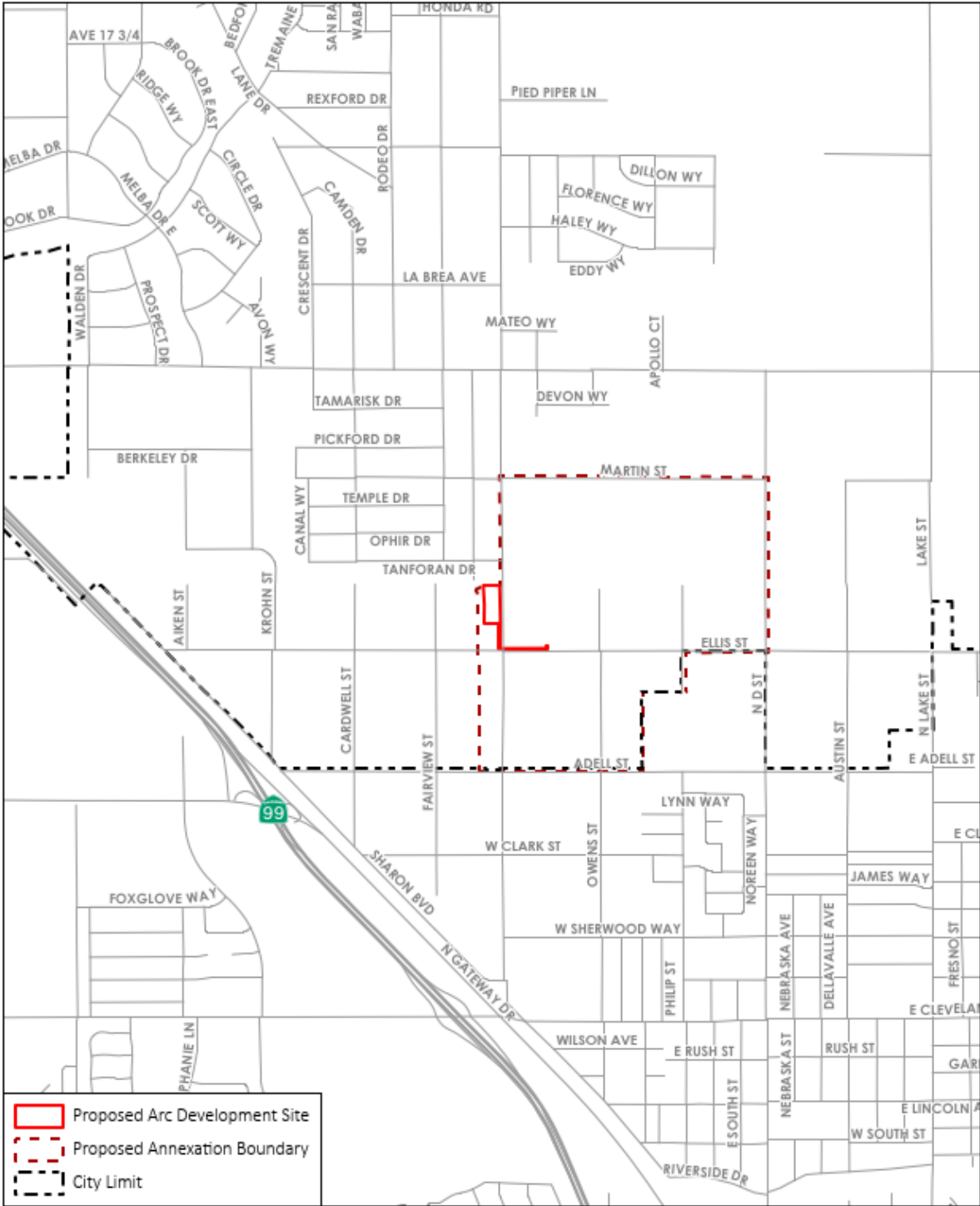
1. Move to continue the public hearing to the March 14, 2023 Planning Commission meeting.
2. Move to deny the request based on specified findings: (Planning Commission to articulate reasons for denial).

ATTACHMENTS:

1. Vicinity Map
2. Aerial Photo
3. Affected Parcels
4. City of Madera General Plan Land Use Map (Existing)
5. City of Madera General Plan Land Use Map (Amended)
6. Madera County Zoning Map (Existing)
7. Proposed Rezoning (City)
8. The Arc Fresno/Madera Counties Facility Site Plan
9. The Arc Fresno/Madera Counties Facility Floor Plan
10. The Arc Fresno/Madera Counties Facility Landscape Plan
11. The Arc Fresno/Madera Counties Facility Elevations
12. The Arc Fresno/Madera Counties Facility Color and Materials
13. Initial Study/Negative Declaration
14. Public Comment Letters Received
15. Planning Commission Resolution Recommending City Council Approve ENV 2022-03 (Negative Declaration), GPA 2022-03 and REZ 2022-02
16. Planning Commission Resolution Recommending City Council Initiate ANX 2022-03
17. Planning Commission Resolution Contingently Approving CUP 2022-07 and SPR 2022-12

ATTACHMENT 1

Vicinity Map



The Arc
Vicinity Map

© Madras City of 10/21/2021 Madras Or-Cal Planning/10/21/2000 Madras Or-Cal Planning/01/01/2000 Oregon, OR Madras, Oregon, OR

ATTACHMENT 2

Aerial Photo



© 2021 Madras City of 1821/2021 Madras City Planning/2021/2020 Madras City Planning/ABO GIS/06/09/2021/Madras_Oregon_GIS.aprx

ATTACHMENT 3

Affected Parcels

APN	Acres ¹	Existing Conditions		
		City of Madera General Plan Land Use Designation	Madera County Zoning District	Use
038-010-018	0.36	P&SP	AR-5	Matilda Torres High School
038-010-019	4.10	P&SP	AR-5	Matilda Torres High School
038-010-020	2.42	P&SP	AR-5	Matilda Torres High School
038-010-021	19.33	P&SP	CRM	Matilda Torres High School
038-010-025	16.36	P&SP	AR-5	Nishimoto Elementary School
038-010-026	20.14	P&SP	AR-5	Jack G. Desmond Middle School
038-010-029	10.10	P&SP	AR-5	Matilda Torres High School
038-010-030	9.90	P&SP	AR-5	Matilda Torres High School
038-010-031	4.61	P&SP	AR-5	Matilda Torres High School
038-010-032	4.64	P&SP	AR-5	Matilda Torres High School
038-010-033	1.82	P&SP	AR-5	Matilda Torres High School
038-060-018	2.04	MD	RRM	Vacant
038-060-019	0.46	MD	RRM	Rural Residential
038-060-020	1.04	MD	RRM	Rural Residential
038-060-030	0.95	MD	RRM	Rural Residential
038-060-031	1.30	MD	RRM	Vacant
038-070-003	0.71	LD	CRM	Tire Shop
038-070-004	6.19	LD	AR-5	Rural Residential
038-070-007	8.63	LD	AR-5	Rural Residential
038-070-008	5.63	LD	AR-5	Rural Residential
038-070-009	0.98	LD	AR-5	Rural Residential
038-070-010	1.00	LD	AR-5	Rural Residential
038-070-011	1.06	LD	AR-5	Rural Residential
038-070-013	0.84	LD	AR-5	Rural Residential
038-070-014	1.48	LD	AR-5	Vacant
038-070-015	2.35	LD	AR-5	Kingdom Hall of Jehovah's Witnesses
038-070-016	2.96	LD	AR-5	Rural Residential
038-070-017	2.01	LD	AR-5	Rural Residential
038-070-018	4.90	LD	AR-5	Rural Residential
038-070-019	5.08	LD	AR-5	Vacant
038-070-020	0.84	LD	AR-5	Vacant
038-070-021	0.89	LD	AR-5	Vacant
038-070-023	4.79	LD	CRM	Rural Residential
038-070-024	2.38	LD	CRM	Mixed Commercial
038-070-025	5.37	LD	CRM/AR-5	County Drainage Basin
038-070-026	8.93	LD	AR-5	Ezequiel Tafoya Alvarado Academy
038-081-001	7.92	LD	AR-5	Vacant
038-100-002	11.87	LD	AR-5	Vacant
038-100-003	1.43	LD	AR-5	Rural Residential
038-100-004	2.54	LD	AR-5	Rural Residential
038-100-005	2.63	LD	AR-5	Rural Residential
038-100-006	2.62	LD	AR-5	Vacant
038-100-007	2.73	LD	AR-5	Rural Residential
038-100-008	4.75	LD	AR-5	Vacant
038-100-009	3.24	LD	AR-5	Sherman Thomas Charter High School

038-100-010	2.14	LD	AR-5	Sherman Thomas Charter High School
038-110-023	0.60	MD	RRM	Rural Residential
038-110-024	0.66	MD	RRM	Rural Residential
038-110-025	0.83	MD	RRM	Vacant
038-110-026	0.89	MD	RRM	Rural Residential
038-110-027	0.36	MD	RRM	Rural Residential
038-110-028	1.00	MD	RRM	Vacant
Subtotal	212.8	-	-	-

¹Does not include public rights of way.

ATTACHMENT 4

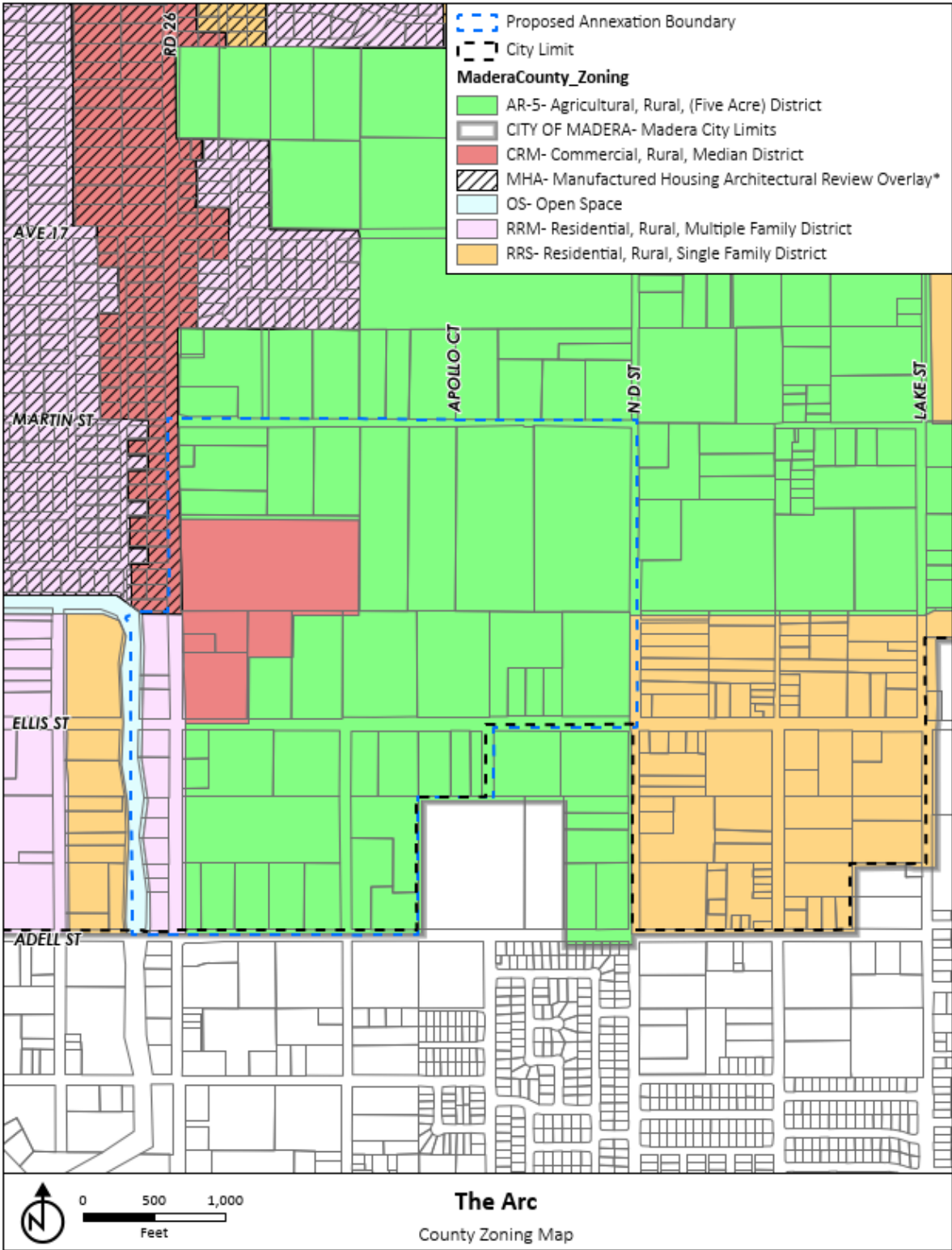
City of Madera General Plan Land Use Map (Existing)

ATTACHMENT 5

City of Madera General Plan Land Use Map (Amended)

ATTACHMENT 6

Madera County Zoning Map (Current)

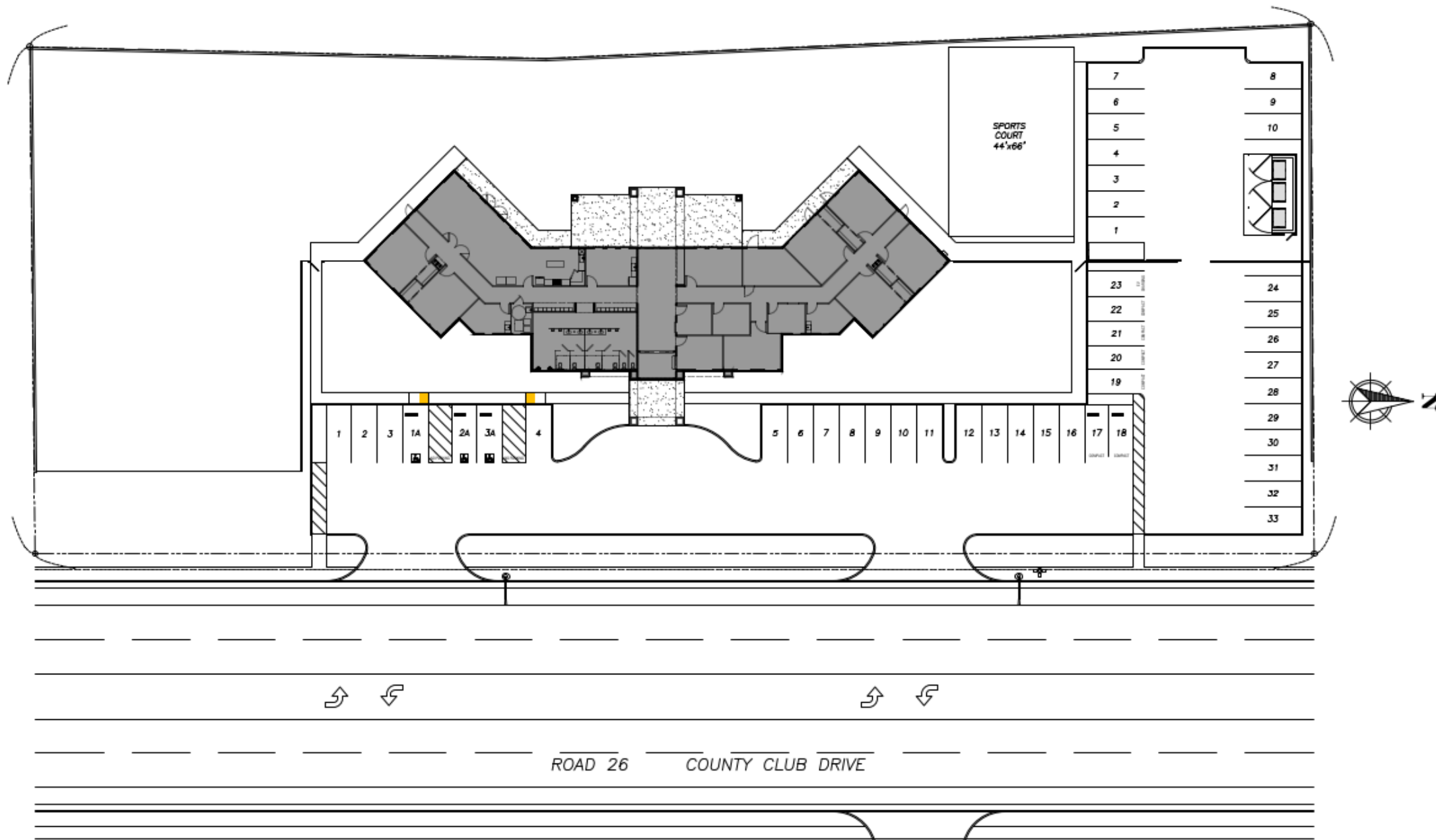


ATTACHMENT 7

Proposed Rezoning (City)

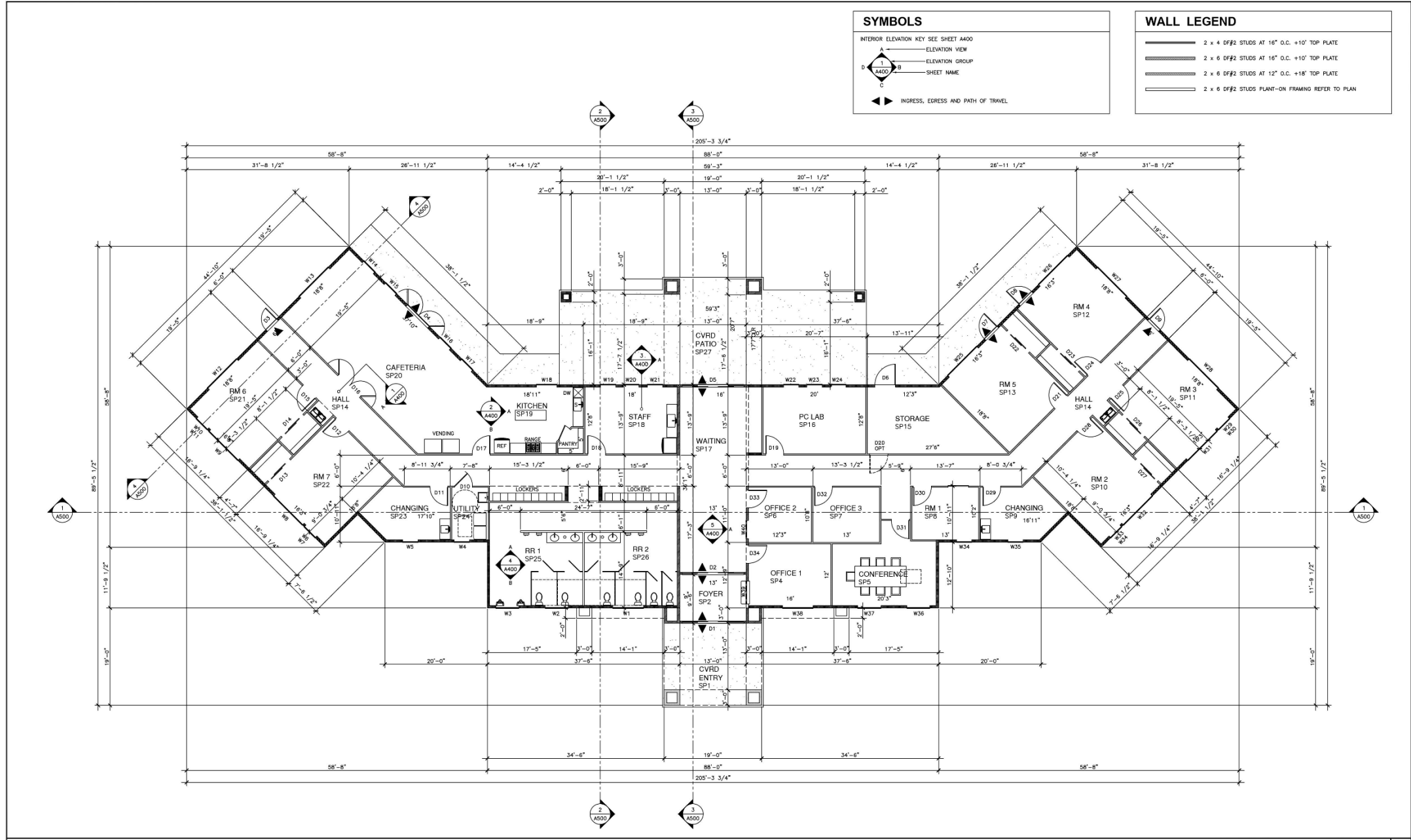
ATTACHMENT 8

The Arc Fresno/Madera Counties Facility
Site Plan



ATTACHMENT 9

The Arc Fresno/Madera Counties Facility
Floor Plan



FLOOR PLAN

8,170 SQ.FT. | 1


YANEZ CONSTRUCTION LIC. 911672
 42931 ROAD 52
 REEDLEY, CA 93654
 OFFICE: 559.638.6644
 EMAIL: info@yanezconstruction.com

THE ARC

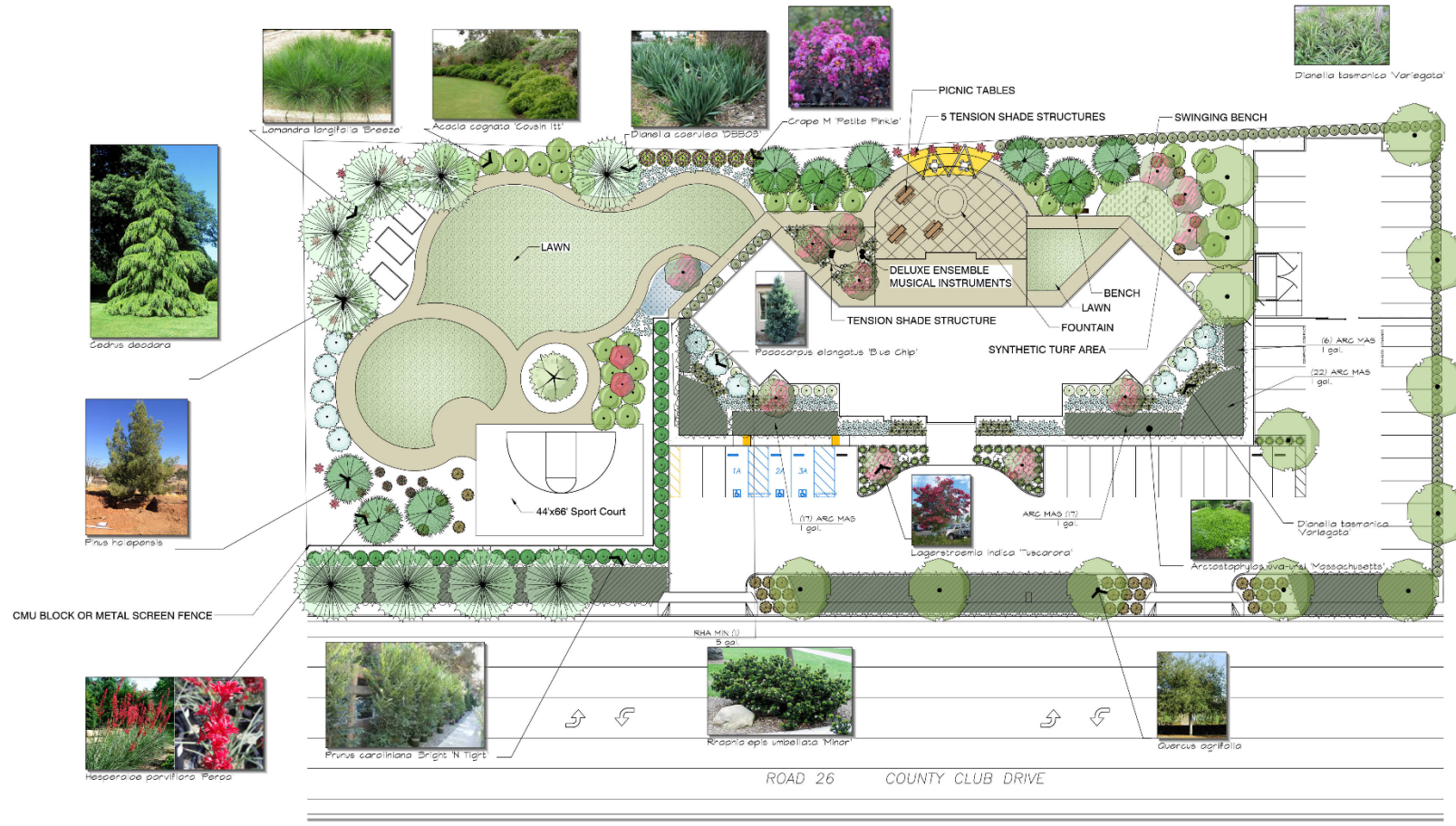
A NEW COMMERCIAL BUILDING COUNTY CLUB DR. MADERA, CALIFORNIA

PLAN STATUS	SITE PLAN REVIEW	DATE	07.16.2022
REVISIONS	DRAWN BY	DAVID LATHROP	
	FILENAME	22007	
	SCALE	1/8" = 1'-0"	
SHEET TITLE	SHEET TAG		
FLOOR PLAN	A100		

ATTACHMENT 10

The Arc Fresno/Madera Counties
Facility Landscape Plan

BRAD COLE
 Landscape Architect
 CA #4518
 371 W San Ramon Ave.
 Fresno, CA 93704
 Ph. (555) 234-4334
 bradco55@gmail.com



PLANT SCHEDULE

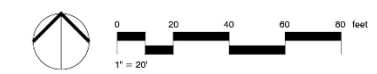
TREES	CODE	BOTANICAL NAME	COMMON NAME	SIZE	QTY	DETAIL	REMARKS
	CED DEO	<i>Cedrus deodara</i>	Deodar Cedar	15 gal.	9		Wuolok Factor 4
	LAG T31	<i>Lagerstroemia indica</i> 'Tuscara'	Crape Myrtle	15 gal.	11		Wuolok Factor 3
	PN HAL	<i>Pinus halepensis</i>	Aliso Pine	15 Gal.	9		
	POD BLU	<i>Podocarpus elongatus</i> 'Blue Chip'	Yellow Wood	15 Gal.	11		Wuolok Factor 3
	QUE AGR	<i>Quercus agrifolia</i>	Coast Live Oak	15 gal.	13		Wuolok Factor 3
	QUE AG2	<i>Quercus agrifolia</i>	Coast Live Oak	15 gal.	1		Wuolok Factor 3 Low

PLANT SCHEDULE

SHRUBS	CODE	BOTANICAL NAME	COMMON NAME	SIZE	QTY	DETAIL	REMARKS	
	ACA CO3	<i>Acacia cognata</i> 'Cousin It'	River Wattle	5 gal.	37		Wuolok Factor 3	
	ANI FLA	<i>Anigozanthos flavus</i>	Kangaroo Paw	5 gal.	5		Wuolok Factor 3 Low Water Use	
	COT RO2	<i>Cotinus coggygria</i> 'Royal Purple'	Royal Purple Smoke Tree	15 gal.	2		Wuolok Factor 3	
	DIA BRE	<i>Dianella caerulea</i> 'Breeze'	Dianella Breeze	5 gal.	10		WUOLOK FACTOR 3	
	DIA CA6	<i>Dianella caerulea</i> 'DBB03' TM	Cosmo Blue Flax Lily	1 gal.	95		Wuolok Factor 3	
	DIA VAR	<i>Dianella tasmanica</i> 'Variegata'	Variegated Flax Lily	5 gal.	97		Wuolok Factor 3	
	HES BR2	<i>Hesperaloe parviflora</i> 'Perpa' TM	Breklights Red Yucca	5 Gal.	22		Wuolok Factor 3	
	LAG PE4	<i>Lagerstroemia indica</i> 'Petite Perle' TM	Dwarf Crape Myrtle	5 Gal.	7		Wuolok Factor 3	
	LAN NEW	<i>Lantana montevidensis</i> 'New Gold'	Trailing Lantana	1 gal.	40		Central Valley Wuolok 3 Low water use	
	LDM IRA	<i>Lomandra longifolia</i> 'Breeze' TM	Breeze Mat Rush	1 gal.	67		Wuolok Factor 3	
	LOR PUR	<i>Loropetalum chinense</i> 'Purple Diamond'	Fringe Flower	5 gal.	14		Wuolok Factor 3	
	OLE LIT	<i>Olea europaea</i> 'Little Olive' TM	Little Olive Olive	5 gal.	98		Wuolok Factor 3	
	PRU BR1	<i>Prunus caroliniana</i> 'Bright 'N' Tight' TM	Bright 'N' Tight Carolina Laurel	5 gal.	39		Wuolok Factor 4	
	RHA MIN	<i>Rhapidolepis umbellata</i> 'Minor'	Dwarf Yucca Hawthorn	5 gal.	32		Wuolok Factor 3	
SHRUB AREAS	CODE	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	QTY	DETAIL	REMARKS
	ARC MAS	<i>Arctostaphylos uva-ursi</i> 'Massachusetts'	Massachusetts Keweenaw	1 gal.	60' o.c.	275		Wuolok Factor 3
GROUND COVERS	CODE	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	QTY	DETAIL	REMARKS
	CYN CEL	<i>Cynodon dactylon</i> 'Celebration'	Celebration Bermuda Grass	sod		7,500 sf		Install 6" x 6" concrete mosaic between turf and shrub areas. Wuolok Factor 6
	ROSA HUS	<i>Rosmarinus officinalis</i> 'Hurlington Carpet'	Hurlington Carpet Rosemary	1 gal.	60' o.c.	13		
	SYN ST1	Synthetic Turf	Synthetic Turf	---		455 sf		



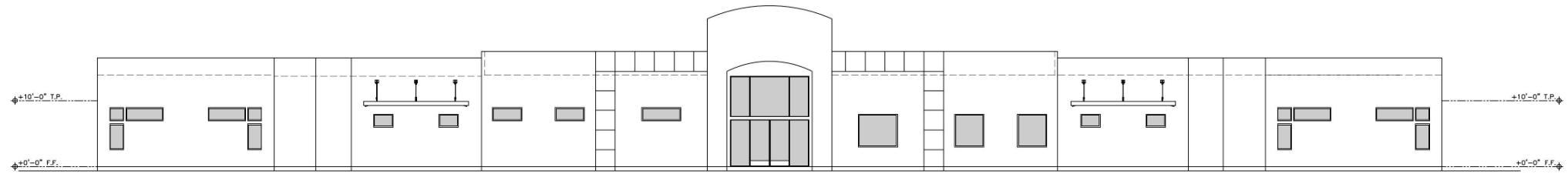
811
 Know what's below.
 Call before you dig.



Date: 9/13/2022
 Scale: as noted
 Drawn By: B. Cole
 Job Number: 18-5-20
 Sheet: L-1

ATTACHMENT 11

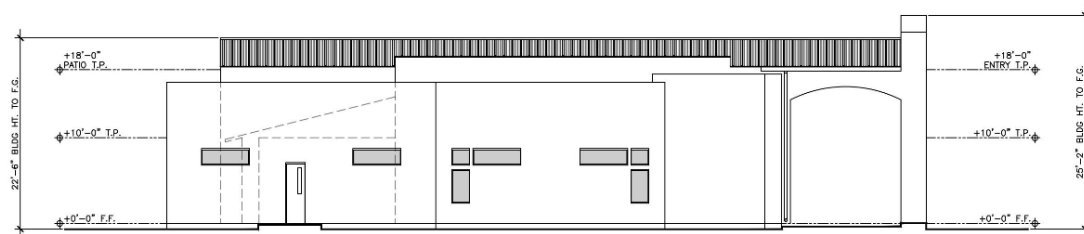
The Arc Fresno/Madera Counties Facility
Elevations



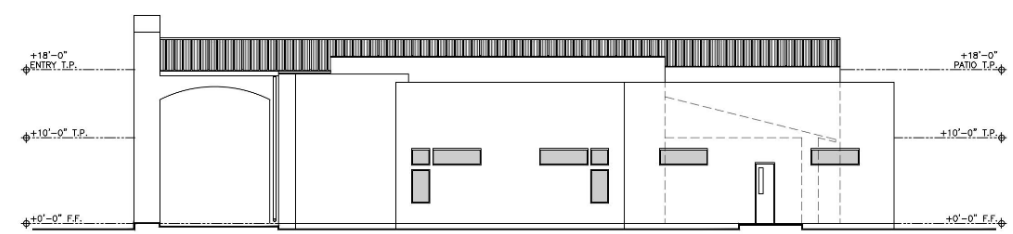
FRONT ELEVATION
EAST FACING



REAR ELEVATION
WEST FACING



LEFT ELEVATION
SOUTH FACING



RIGHT ELEVATION
NORTH FACING

ELEVATIONS

8,170 SQ.FT. | 1



YANEZ CONSTRUCTION LIC. 911672
42931 ROAD 52
REEDLEY, CA 93654
OFFICE: 559.638.6644
EMAIL: info@yanezconstruction.com

THE ARC

A NEW COMMERCIAL BUILDING COUNTY CLUB DR. MADERA, CALIFORNIA

PLAN STATUS	SITE PLAN REVIEW	DATE	07.14.2022
REVISIONS		DRAWN BY	DAVID LATHROP
		FILENAME	22007
		SCALE	1/8" = 1'-0"
SHEET TITLE	ELEVATIONS		
SHEET TAG	A300		

ATTACHMENT 12

The Arc Fresno/Madera Counties Facility
Color and Materials

COLOR & MATERIAL BOARD

COLOR	MATERIAL
TERRACOTA ALUCOBOND	ALUMINUM SHEET
WHITE BARK CLIFFSTONE	STONE
LAZY GRAY SHERWIN-WILLIAMS	STUCCO
OLD TOWN GRAY BORGA	METAL SHEET
NATURAL	WOOD



COVER SHEET

8,170 SQ.FT. | 1



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THE ARC

A NEW COMMERCIAL BUILDING COUNTY CLUB DR. MADERA, CALIFORNIA

PLAN STATUS	SITE PLAN REVIEW	DATE
REVISIONS	DRAWN BY	07.14.2022
	FILENAME	DAVID LATHROP
	SCALE	22007
SHEET TITLE	SHEET TAG	
COVER SHEET	C100	

ATTACHMENT 13

Initial Study/Negative Declaration

Initial Study/Negative Declaration distributed as a separately bound document and also posted on the City's website on the Planning Department page under Current Projects and Environmental Review at the following website address: <https://www.madera.gov/home/departments/planning/>

Please refer to the separately bound document titled "The Arc Fresno/Madera Counties (GPA 2022-03, REZ 2022-02, ANX 2022-03, CUP 2022-07, SPR 2022-12) Initial Study / Negative Declaration (ENV 2022-03)" or to the website address link provided above.

ATTACHMENT 14

Public Comment Letters Received

ATTACHMENT 14a

California Highway Patrol Comment Letter

From: Mafana, Tatanka@CHP <Tmafana@chp.ca.gov>

Sent: Wednesday, November 23, 2022 3:41 PM

To: Gary Conte <gconte@madera.gov>

Subject: General Plan Amendment 2022-03, Rezone 2022-02, Conditional Use Permit 2022-07, Site Plan Review 2022-12 and Annexation 2022-03

You don't often get email from tmafana@chp.ca.gov. [Learn why this is important](#)

Good morning/afternoon. The California Highway Patrol Madera Area has no reservations regarding the project as it will primarily impact the City. Please let me know if you need anything further.

Respectfully,

Sergeant Tatanka "Tank" Mafana, ID 19507

Madera Area

3051 Airport Drive

Madera, CA 93637

Phone: 559-507-8120



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ATTACHMENT 14b

Pacific Gas & Electric Comment Letter



December 13, 2022

Brandi Garcia
City of Madera
205 W 4th St
Madera, CA 93637

Re: The Arc Fresno/Madera Counties
GPA 2022-03 Rezone 2022-02 CUP 2022-07 SPR 2022-12 Annexation 2022-03

Dear Brandi Garcia,

Thank you for providing PG&E the opportunity to review the proposed plans for The Arc Fresno/Madera Counties dated 11/18/2022. Our review indicates the proposed improvements do not appear to directly interfere with existing PG&E facilities or impact our easement rights.

Please note this is our preliminary review and PG&E reserves the right for additional future review as needed. This letter shall not in any way alter, modify, or terminate any provision of any existing easement rights. If there are subsequent modifications made to the design, we ask that you resubmit the plans to the email address listed below.

If the project requires PG&E gas or electrical service in the future, please continue to work with PG&E's Service Planning department: <https://www.pge.com/cco/>.

As a reminder, before any digging or excavation occurs, please contact Underground Service Alert (USA) by dialing 811 a minimum of 2 working days prior to commencing any work. This free and independent service will ensure that all existing underground utilities are identified and marked on-site.

If you have any questions regarding our response, please contact the PG&E Plan Review Team at pgeplanreview@pge.com.

Sincerely,

PG&E Plan Review Team
Land Management

Public

ATTACHMENT 14c

Madera Irrigation District Comment Letter

From: Darren Garcia <DGarcia@madera-id.org>

Sent: Friday, December 2, 2022 7:18 AM

To: Brandi Garcia <bgarcia@madera.gov>

Subject: RE: Notice of Extension for The Arc

Morning Brandi,

No comments, see attached right-of-way that Madera Irrigation District maintains for the Bureau of Reclamation (USBR). This is deed property owned by USBR located on the west edge of the proposed Arc Project.

Thanks,

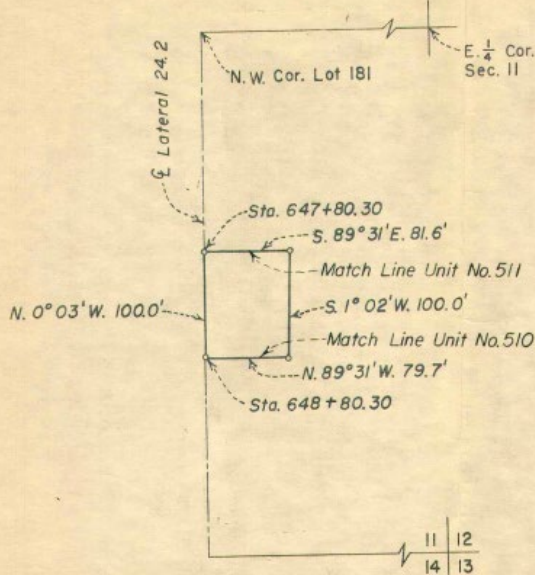
Darren Garcia
Supervising Engineering Technician
Madera Irrigation District
559-474-0452

Portion of Miller and Lux subdivision
of Lands in Madera.



T. 11 S., R. 17 E. M. D. M.
KEY MAP
SCALE 1" = 2,000'

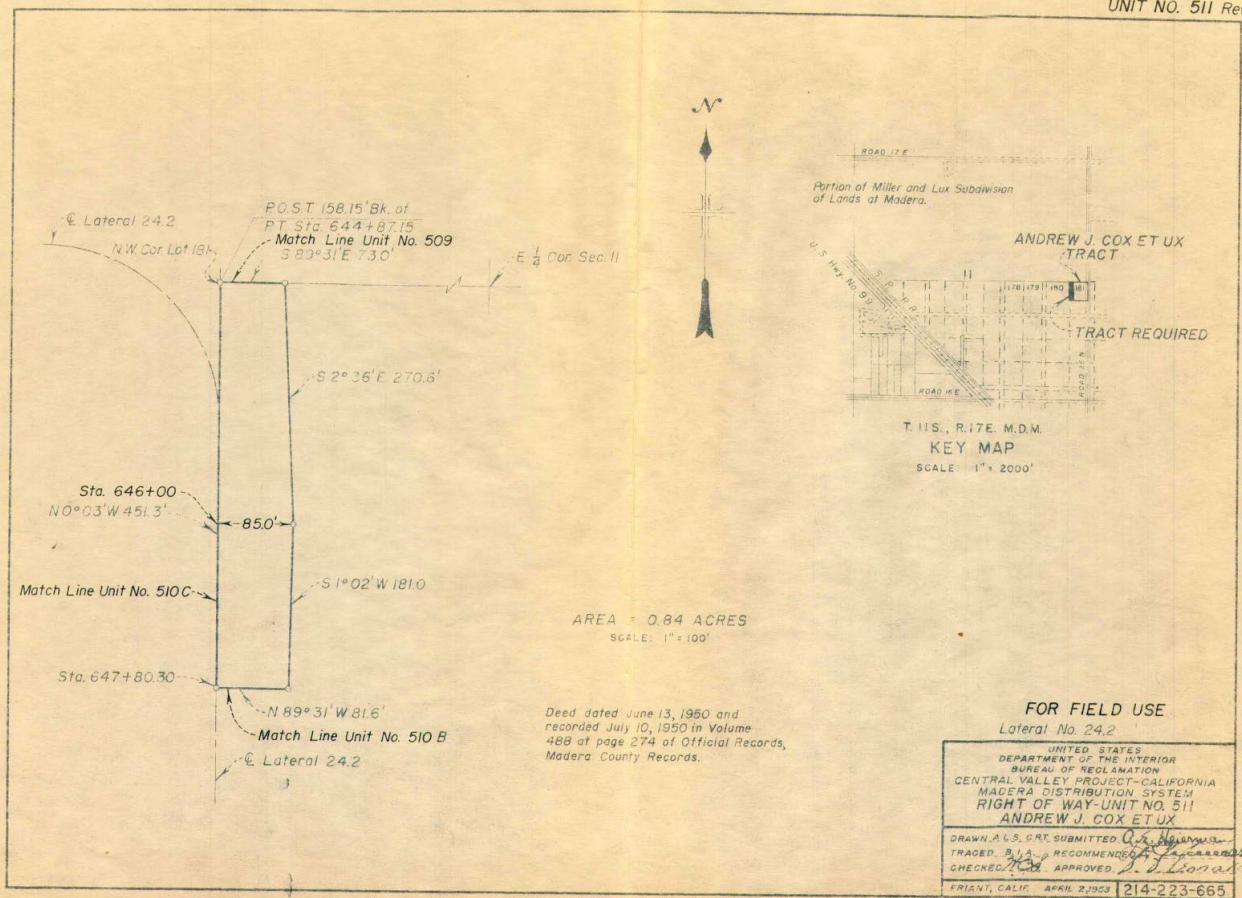
Deed dated Sept. 3, 1953 and recorded
Sept. 24, 1953 in Volume 591 at page
124 of Official Records, Madera
County Records.

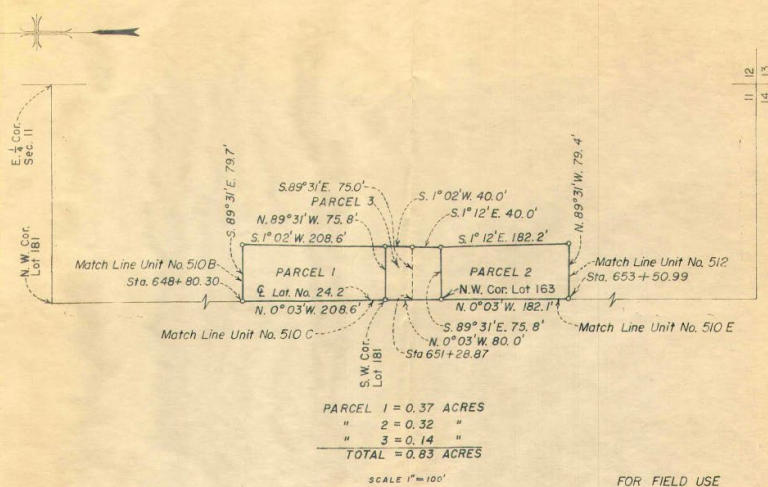
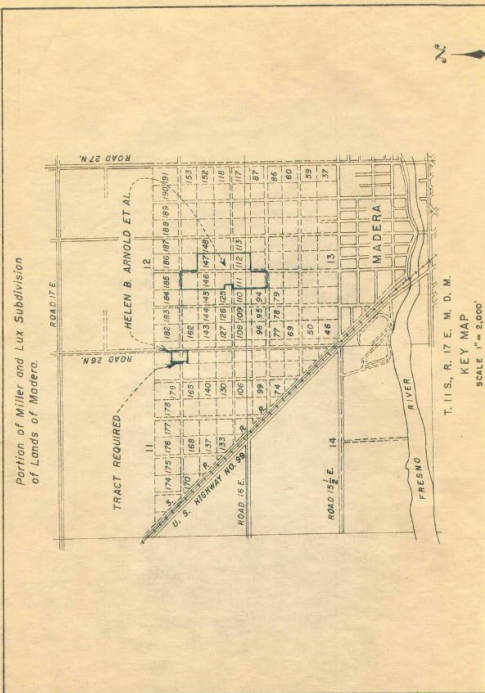


AREA = 0.19 ACRE
SCALE 1" = 100'

FOR FIELD USE
Lateral 24.2

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION CENTRAL VALLEY PROJECT-CALIFORNIA MADERA DISTRIBUTION SYSTEM RIGHT OF WAY-UNIT NO. 510B LATINO AMERICANO INC.	
DRAWN A. L. S.	SUBMITTED <i>A. L. S.</i>
TRACED M. L. E.	RECOMMENDED <i>A. L. S.</i>
CHECKED <i>K. A.</i>	APPROVED <i>A. L. S.</i>
FRIANT, CALIF. OCT. 14, 1953	214-223-714





Deed dated Dec. 28, 1943 and recorded Jan. 1, 1944 in Volume 336 at page 15 of Official Records, Madera County Records.

FOR FIELD USE

Lateral No. 24.2

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CENTRAL VALLEY PROJECT-CALIFORNIA
MADERA DISTRIBUTION SYSTEM
RIGHT OF WAY-UNIT NO. 510
HELEN B. ARNOLD ET AL

DRAWN A. L. S. SUBMITTED [Signature]
TRACED H. L. E. / RECOMMENDED [Signature] / CHECKED [Signature] / APPROVED [Signature]
PRIANT, CALIF. APRIL 8, 1953 214-223-664

11 12 13 14 15

ATTACHMENT 14d

Caltrans Comment Letter

California Department of Transportation

DISTRICT 6 OFFICE
1352 WEST OLIVE AVENUE | P.O. BOX 12616 | FRESNO, CA 93778-2616
(559) 981-1041 | FAX (559) 488-4195 | TTY 711
www.dot.ca.gov



December 6, 2022

MAD-99-12.884
Notice of Negative Declaration
General Plan Amendment, Rezone, CUP, Annexation and SPR
<https://ld-igr-gts.dot.ca.gov/district/6/report/28219#39734>

SENT VIA EMAIL

Brandi Garcia – Administrative Assistant
City of Madera | Planning Department
205 West 4th Street, Madera, CA 93637
p. (559) 661.5432
bgarcia@madera.gov

Dear Mx. Garcia,

Thank you for the opportunity to review a Notice to adopt a negative declaration for the Arc Fresno/Madera Counties Project, including a General Plan Amendment 2022-03, Rezone 2022-02, Conditional Use Permit 2022-07, Site Plan Review 2022-12 and Annexation 2022-03. The 2.12-acre Arc development site is located along the west side of Road 26, north of Ellis Street. Under annexation 2022-03, the 230-acre area is generally bounded by Martin Street to the north, North D Street to the east, existing City limits to the south, and Road 26 to the west, approximately 1 mile north of the State Route (SR) 99/Cleveland Avenue interchange.

Under SPR 2022-12, the applicant, The Arc Fresno/Madera Counties, proposes to construct a new 8,170 square foot Arc facility on a 2.12-acre site. The Arc facility would serve as an Intellectual and Developmental Disability Center, providing education and other services for individuals with disabilities. GPA 2022-03 proposes amendment of the Arc development site's City General Plan Land Use designation from MD (Medium Density Residential) to HD (High Density Residential). In addition, GPA 2022-03 would also amend the southern portion (5 acres) of the Jack G. Desmond Middle School site (APN 038-010-026) from OS (Open Space) to P&SP (Other Public & Semi-Public Uses). REZ 2022-02 would prezone the Arc development site to R3 (One unit per each 1,800 sq ft). Other properties in the annexation area would be prezoned to be consistent with the City's General Plan Land Use designation applicable to the property. CUP 2022-07 would allow the operation of the Arc facility on the Arc development site. The Arc development site and 53 additional parcels are proposed for annexation to the City as a part of ANX 2022-03. The total annexation area is approximately 230 acres.

Caltrans provides the following comments consistent with the State's smart mobility goals that support a vibrant economy and sustainable communities:

1. Caltrans does not anticipate the 8,170 square foot Arc facility (CUP 2022-07) will have a significant impact to the state highway system.
2. However, the development as a whole as part of ANX 2022-03, may generate a significant number of trips based on future development. Therefore, Caltrans request a traffic analysis and/or vehicle miles traveled (VMT) study be conducted based on the proposed zoning to determine potential impacts and what improvements may be needed to mitigate. Caltrans request future project proposal(s) be submitted to our office for review.
3. Caltrans recommends the project proponent(s) implement "smart growth" principles regarding parking solutions or providing alternative transportation choices to future employees/customers/residents. Alternative transportation choices may include but are not limited to parking for carpools/vanpools, carshare and/or ride-share programs.
4. Furthermore, Caltrans recommends the Project implement multimodal strategies, such as those that originate from Transit-oriented development (TOD). According to Office of Planning and Research (OPR) General Plan Guidelines, "TOD is a strategy may help a community achieve its general plan goals related to circulation, housing, environmental quality, and economic development. Additionally, by improving access to jobs and housing and revitalizing existing neighborhoods, TOD can be a tool for promoting environmental justice".
5. Overall, Active Transportation Plans, TOD, and/or Smart Growth efforts support the state's 2050 Climate goals. Caltrans supports reducing VMT and GHG emissions in ways that increase the likelihood people will use and benefit from a multimodal transportation network.
6. As a point of information, the SR 99/Avenue 16 interchange doesn't meet the current one-mile interchange spacing distance requirement between Avenue 16 and Cleveland Avenue interchanges (Caltrans Highway Design Manual (HDM) 501.3). The Avenue 16 interchange configuration doesn't meet the current Caltrans HDM standard. A Caltrans project study report to relocate the ramps at Avenue 16 to Ellis Street overcrossing (OC) was prepared in 2003-2004, however it was not approved. The SR 99/Avenue 16 interchange would need to be removed and the Ellis Street OC would need to be reconstructed to include ramp terminus in the future.

Brandi Garcia – Administrative Assistant General Plan Amendment, Rezone, CUP,
Annexation and SPR
12/6/2022
Page 3

If you have any other questions, please call or email Edgar Hernandez at (559) 981-7436 or edgar.hernandez@dot.ca.gov.

Sincerely,



David Padilla, Branch Chief
Transportation Planning – North

ATTACHMENT 14e

San Joaquin Air Pollution Control District Comment Letter



December 19, 2022

Gary Conte
City of Madera
Planning Department
205 W. 4th St.
Madera, CA 93637

**Project: Notice of Intent to Adopt a Negative Declaration for The Arc
Fresno/Madera Counties**

District CEQA Reference No: 20221558

Dear Mr. Conte:

The San Joaquin Valley Air Pollution Control District (District) has reviewed the Negative Declaration (ND) from the City of Madera (City) for the Arc Fresno/Madera Counties development project. Per the ND, the project consists of the development of "The Arc" Intellectual and Developmental Disability Center equating to 8,170 sq. ft. (Development) and the annexation of approximately 242 acres, a General Plan amendment, a Conditional Use Permit, and a Site Plan Review (Project). The Development is located within the proposed 242 acres to be annexed on the West side of Rd. 26 North of Ellis St. in Madera County.

The District offers the following comments regarding the Project:

1) Project Related Emissions

The Annexation will not have an impact on air quality. However, if approved, future development projects will contribute to the overall decline in air quality due to construction activities, increased traffic, and ongoing operational emissions.

Based on information provided to the District, the specific annual criteria pollutant emissions from construction and operation from the Development are not expected to exceed any of the significance thresholds as identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts (GAMAQI):
<https://www.valleyair.org/transportation/GAMAQI.pdf>.

Samir Shelkh
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1980 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061

Southern Region
34846 Flyover Court
Bakersfield, CA 93308-9725
Tel: (661) 392-5500 FAX: (661) 392-5585

www.valleyair.org www.healthyliving.com

Printed on recycled paper. ♻️

1a) Construction Emissions

The District recommends, to reduce impacts from construction-related diesel exhaust emissions, the Development should utilize the cleanest available off-road construction equipment, including the latest tier equipment.

2) Health Risk Screening/Assessment

The City should evaluate the risk associated with future development projects for sensitive receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) in the area and mitigate any potentially significant risk to help limit exposure of sensitive receptors to emissions.

To determine potential health impacts on surrounding receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) a Prioritization and/or a Health Risk Assessment (HRA) should be performed for future development projects. These health risk determinations should quantify and characterize potential Toxic Air Contaminants (TACs) identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) that pose a present or potential hazard to human health.

Health risk analyses should include all potential air emissions from the project, which include emissions from construction of the project, including multi-year construction, as well as ongoing operational activities of the project. Note, two common sources of TACs can be attributed to diesel exhaust emitted from heavy-duty off-road earth moving equipment during construction, and from ongoing operation of heavy-duty on-road trucks.

Prioritization (Screening Health Risk Assessment):

A "Prioritization" is the recommended method for a conservative screening-level health risk assessment. The Prioritization should be performed using the California Air Pollution Control Officers Association's (CAPCOA) methodology.

The District recommends that a more refined analysis, in the form of an HRA, be performed for any project resulting in a Prioritization score of 10 or greater. This is because the prioritization results are a conservative health risk representation, while the detailed HRA provides a more accurate health risk evaluation.

To assist land use agencies and project proponents with Prioritization analyses, the District has created a prioritization calculator based on the aforementioned CAPCOA guidelines, which can be found here:

http://www.valleyair.org/busind/pto/emission_factors/Criteria/Toxics/Utilities/PRIORITIZATION-CALCULATOR.xls

Health Risk Assessment:

Prior to performing an HRA, it is strongly recommended that land use agencies/

project proponents develop and submit for District review a health risk modeling protocol that outlines the sources and methodologies that will be used to perform the HRA. This step will ensure all components are addressed when performing the HRA.

A development project would be considered to have a potentially significant health risk if the HRA demonstrates that the project-related health impacts would exceed the District's significance threshold of 20 in a million for carcinogenic risk, or 1.0 for either the Acute or Chronic Hazard Indices.

A project with a significant health risk would trigger all feasible mitigation measures. The District strongly recommends that development projects that result in a significant health risk not be approved by the land use agency.

The District is available to review HRA protocols and analyses. For HRA submittals please provide the following information electronically to the District for review:

- HRA (AERMOD) modeling files
- HARP2 files
- Summary of emissions source locations, emissions rates, and emission factor calculations and methodologies.

For assistance, please contact the District's Technical Services Department by:

- E-Mailing inquiries to: hramodeler@valleyair.org
- Calling (559) 230-5900

Recommended Measure: Development projects resulting in TAC emissions should be located an adequate distance from residential areas and other sensitive receptors in accordance to CARB's Air Quality and Land Use Handbook: A Community Health Perspective located at <https://ww3.arb.ca.gov/ch/handbook.pdf>.

3) Vegetative Barriers and Urban Greening

For future development projects, the District suggests the City consider incorporating vegetative barriers and urban greening as a measure to further reduce air pollution exposure on sensitive receptors (e.g., residences, schools, healthcare facilities).

The District suggests the City consider the feasibility of incorporating vegetative barriers and urban greening as a measure to further reduce air pollution exposure on sensitive receptors (e.g.: residential units and students).

While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, vegetative barriers have been shown to be an additional measure to potentially reduce a population's exposure to air

pollution through the interception of airborne particles and the uptake of gaseous pollutants. Examples of vegetative barriers include, but are not limited to the following: trees, bushes, shrubs, or a mix of these. Generally, a higher and thicker vegetative barrier with full coverage will result in greater reductions in downwind pollutant concentrations. In the same manner, urban greening is also a way to help improve air quality and public health in addition to enhancing the overall beautification of a community with drought tolerant, low-maintenance greenery.

4) Clean Lawn and Garden Equipment in the Community

Since the Development consists of commercial development, gas-powered commercial lawn and garden equipment have the potential to result in an increase of NOx and PM2.5 emissions. Utilizing electric lawn care equipment can provide residents with immediate economic, environmental, and health benefits. The District recommends the Project proponent consider the District's Clean Green Yard Machines (CGYM) program which provides incentive funding for replacement of existing gas powered lawn and garden equipment. More information on the District CGYM program and funding can be found at: <http://www.valleyair.org/grants/cgym.htm> and <http://valleyair.org/grants/cgym-commercial.htm>.

5) On-Site Solar Deployment

It is the policy of the State of California that renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045. While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, the production of solar energy is contributing to improving air quality and public health. The District suggests that the City consider incorporating solar power systems as an emission reduction strategy for the Development and future development projects.

6) Electric Vehicle Chargers

To support and accelerate the installation of electric vehicle charging equipment and development of required infrastructure, the District offers incentives to public agencies, businesses, and property owners of multi-unit dwellings to install electric charging infrastructure (Level 2 and 3 chargers). The purpose of the District's Charge Up! Incentive program is to promote clean air alternative-fuel technologies and the use of low or zero-emission vehicles.

The District recommends that the City and project proponents install electric vehicle chargers at project sites, and at strategic locations.

Please visit www.valleyair.org/grants/chargeup.htm for more information.

7) District Rules and Regulations

The District issues permits for many types of air pollution sources, and regulates some activities that do not require permits. A project subject to District rules and regulations would reduce its impacts on air quality through compliance with the District's regulatory framework. In general, a regulation is a collection of individual rules, each of which deals with a specific topic. As an example, Regulation II (Permits) includes District Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), Rule 2520 (Federally Mandated Operating Permits), and several other rules pertaining to District permitting requirements and processes.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm. To identify other District rules or regulations that apply to future projects, or to obtain information about District permit requirements, the project proponents are strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (559) 230-5888.

7a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources

Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. District Rule 2010 (Permits Required) requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT).

This Development may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the Project proponent should submit to the District an application for an ATC. For further information or assistance, the project proponent may contact the District's SBA Office at (559) 230-5888.

7b) District Rule 9410 (Employer Based Trip Reduction)

Future development projects may be subject to District Rule 9410 (Employer Based Trip Reduction) if the project would result in employment of 100 or more "eligible" employees. District Rule 9410 requires employers with 100 or more "eligible" employees at a worksite to establish an Employer Trip Reduction Implementation Plan (eTRIP) that encourages employees to reduce single-occupancy vehicle trips, thus reducing pollutant emissions associated with work commutes.

Under an eTRIP plan, employers have the flexibility to select the options that work best for their worksites and their employees.

Information about District Rule 9410 can be found online at:
www.valleyair.org/tripreduction.htm.

For additional information, you can contact the District by phone at 559-230-6000 or by e-mail at etrip@valleyair.org

7c) District Rule 9510 - Indirect Source Review (ISR)

The District has reviewed the information provided and has determined the project size is below the District Rule 9510, section 2.1 applicability threshold of 9,000 sq. ft. for an educational development. Therefore, District Rule 9510 requirements and related fees do not apply to the project.

7d) District Rule 4601 (Architectural Coatings)

The Development may be subject to District Rule 4601 since it may utilize architectural coatings. Architectural coatings are paints, varnishes, sealers, or stains that are applied to structures, portable buildings, pavements or curbs. The purpose of this rule is to limit VOC emissions from architectural coatings. In addition, this rule specifies architectural coatings storage, cleanup and labeling requirements. Additional information on how to comply with District Rule 4601 requirements can be found online at:
<http://www.valleyair.org/rules/currnrules/r4601.pdf>

7e) District Regulation VIII (Fugitive PM10 Prohibitions)

The Development proponent may be required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – *Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities*.

Since the Development will result in at least 1-acre in size, the Development proponent shall provide written notification to the District at least 48 hours prior to the Development proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the Development result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the Development proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). For additional information

regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

The application for both the Construction Notification and Dust Control Plan can be found online at:

<https://www.valleyair.org/busind/comply/PM10/forms/DCP-Form.docx>

Information about District Regulation VIII can be found online at:

http://www.valleyair.org/busind/comply/pm10/compliance_pm10.htm

7f) Other District Rules and Regulations

The Development or future development projects may also be subject to the following District rules: Rule 4102 (Nuisance) and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).

8) Future Projects / Land Use Agency Referral Documents

Future development projects may require an environmental review and air emissions mitigation. A project's referral documents and environmental review documents provided to the District for review should include a project summary, the land use designation, project size, air emissions quantifications and impacts, and proximity to sensitive receptors and existing emission sources, and air emissions mitigation measures. For reference and guidance, more information can be found in the District's Guidance for Assessing and Mitigating Air Quality Impacts at: <https://www.valleyair.org/transportation/GAMAQI.pdf>

9) District Comment Letter

The District recommends that a copy of the District's comments be provided to the Project proponent.

If you have any questions or require further information, please contact Jacob Torrez by e-mail at Jacob.Torrez@valleyair.org or by phone at (559) 230-6558.

Sincerely,

Brian Clements
Director of Permit Services



For: Mark Montelongo
Program Manager

ATTACHMENT 15

Planning Commission Resolution Recommending City
Council Approve ENV 2022-03 (Negative Declaration), GPA
2022-03 and REZ 2022-02

RESOLUTION NO. 1941

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
RECOMMENDING THE CITY COUNCIL OF THE CITY OF MADERA APPROVE ENV
2022-03 (NEGATIVE DECLARATION), GPA 2022-03, AND REZ 2022-02
(PREZONING APPROXIMATELY 242 ACRES IDENTIFIED AS THE ARC
ANNEXATION AREA) FOR THE “THE ARC FRESNO/MADERA COUNTIES”
PROJECT**

WHEREAS, approval of The Arc Fresno/Madera Counties Project CUP 2022-07 and SPR 2022-12 requires the approval of GPA 2022-03, REZ 2022-02 and annexation of approximately 242 acres (ANX 2022-03); and

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

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

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

WHEREAS, a proposal has been made requesting amendments to the Madera General Plan, as shown in Exhibit “A”; and

WHEREAS, the requested General Plan amendment (GPA 2022-03) consists of amendments to the General Plan Land Use Plan. The amendment would amend the land use designation of Madera County Assessor’s Parcel (APN) 038-060-018 MD (Medium Density Residential) to HD (High Density Residential) and a portion of APN 038-010-026 from OS (Open Space) to P&SP (Other Public & Semi-Public Uses); and

WHEREAS, annexation requires the rezoning of all parcels subject to annexation; and

WHEREAS, the proposed REZ 2022-02 proposes to prezone the properties within the boundaries of ANX 2022-03 presently within the County of Madera in accordance to their General Plan Land Use designation pursuant to GPA 2022-03 as shown in Exhibit “B”; and

WHEREAS, the proposed General Plan amendment (GPA 2022-03) and the proposed rezoning (REZ 2022-02) will provide the required consistency between the General Plan Zoning Ordinance; and

WHEREAS, the proposed General Plan amendment and rezoning are compatible with the neighborhood and are not expected to be detrimental to the health, safety, peace, comfort or general welfare of the neighborhood or the City; and

WHEREAS, an Initial Study/Negative Declaration (IS/ND) has been prepared, circulated, and made available for public comment pursuant to the California Environmental Quality Act (CEQA), Public Resources Code, sections 21000, et seq., the Guidelines for implementation of CEQA, Title 14 California Code of Regulations, Chapter 3, Section 15000, et seq., and the Madera Municipal Code for The Arc

Fresno/Madera Counties Project, and for these related General Plan amendment and prezone requests; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code; and

WHEREAS, under the City's Municipal Code and State Planning and Zoning Law, the Planning Commission (Commission) is authorized to review and make recommendations to the City Council (Council) for General Plan amendments and prezones on behalf of the City; and

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

WHEREAS, the Commission received and independently reviewed and considered the information contained in the IS/ND and adopted the IS/ND under a separate resolution pursuant to CEQA, and reviewed GPA 2022-03 and REZ 2022-02 at a duly noticed meeting on February 21, 2023; and

WHEREAS, at the February 21, 2023, Commission hearing, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Commission; and

WHEREAS, after due consideration of all the items before it, the Commission now desires to adopt this Resolution recommending to the Council to adopt GPA 2022-03 and REZ 2022-02; and

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: The Commission finds an environmental assessment initial study was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines. This process included the distribution of requests for comment from other responsible or affected agencies and interested organizations. Preparation of the environmental analysis necessitated a thorough review of the proposed project and relevant environmental issues. Based on this review and assessment, the Commission finds there is no substantial evidence in the record that this project may have a significant direct, indirect or cumulative effect on the environment, and that a Negative Declaration is appropriate for this project. The Commission further finds the Initial Study and Negative Declaration were timely and properly published and notices as required by CEQA. As such, the Commission recommends the Council adopt a Negative Declaration for the project by approving ENV 2022-03.
3. General Plan Findings: The Commission finds that GPA 2022-03 is consistent with the General Plan goals, policies and objectives and does not adversely affect the implementation of the General Plan with respect to surrounding properties. The Commission further recommends that the Council find that GPA 2022-03 is consistent with the General Plan goals, policies and objectives, and does not adversely affect the implementation of the General Plan with respect to surrounding properties. The project is consistent with General Plan Policy SUS-13, which states that "the City shall support the location and continued operation of local businesses that supply goods and services needed in Madera". The proposed amendment essentially consists of minor updates to the General Plan Land Use Plan while providing the Arc a location to expand their operations within the City.

4. Rezoning Findings: The Commission finds that REZ 2022-02 is consistent with the General Plan goals, policies and objectives and with the General Plan Land Use Plan as amended. The Commission further recommends that the Council find that REZ 2022-02 is consistent with the General Plan goals, policies and objectives and with the General Plan Land Use Plan as amended. The project is consistent with General Plan Policy LU-32, which states “zoning shall be consistent with General Plan land use designations”. Rezoning proposed as a part of the project would be done in accordance with the existing or proposed land use designation for each parcel within the proposed annexation area.

5. Recommendation for Approval of GPA 2022-03: Based on the evidence in the record, the Commission recommends the Council approve GPA 2022-03 amending the General Plan land use designation of APN 038-060-018 from MD (Medium Density Residential) to HD (High Density Residential) and the southern portion of APN 038-010-26 from OS (Open Space) to P&SP (Other Public & Semi-Public Uses) as shown in Exhibit “A.”

6. Recommendation for Approval of REZ 2022-02: Based on evidence in the record, the Commission recommends the Council approve REZ 2022-02 with GPA 2022-03, rezoning the properties within the boundaries of ANX 2022-03 presently within the County of Madera in accordance to their General Plan Land Use designation pursuant to GPA 2022-03 as shown in Exhibit “B.”

7. Effective Date: This Resolution shall become effective immediately. The Secretary of the Commission shall certify to the adoption of the Resolution and shall transmit copies of the same to the Council of the City of Madera.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 21st day of February 2023, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Chairperson

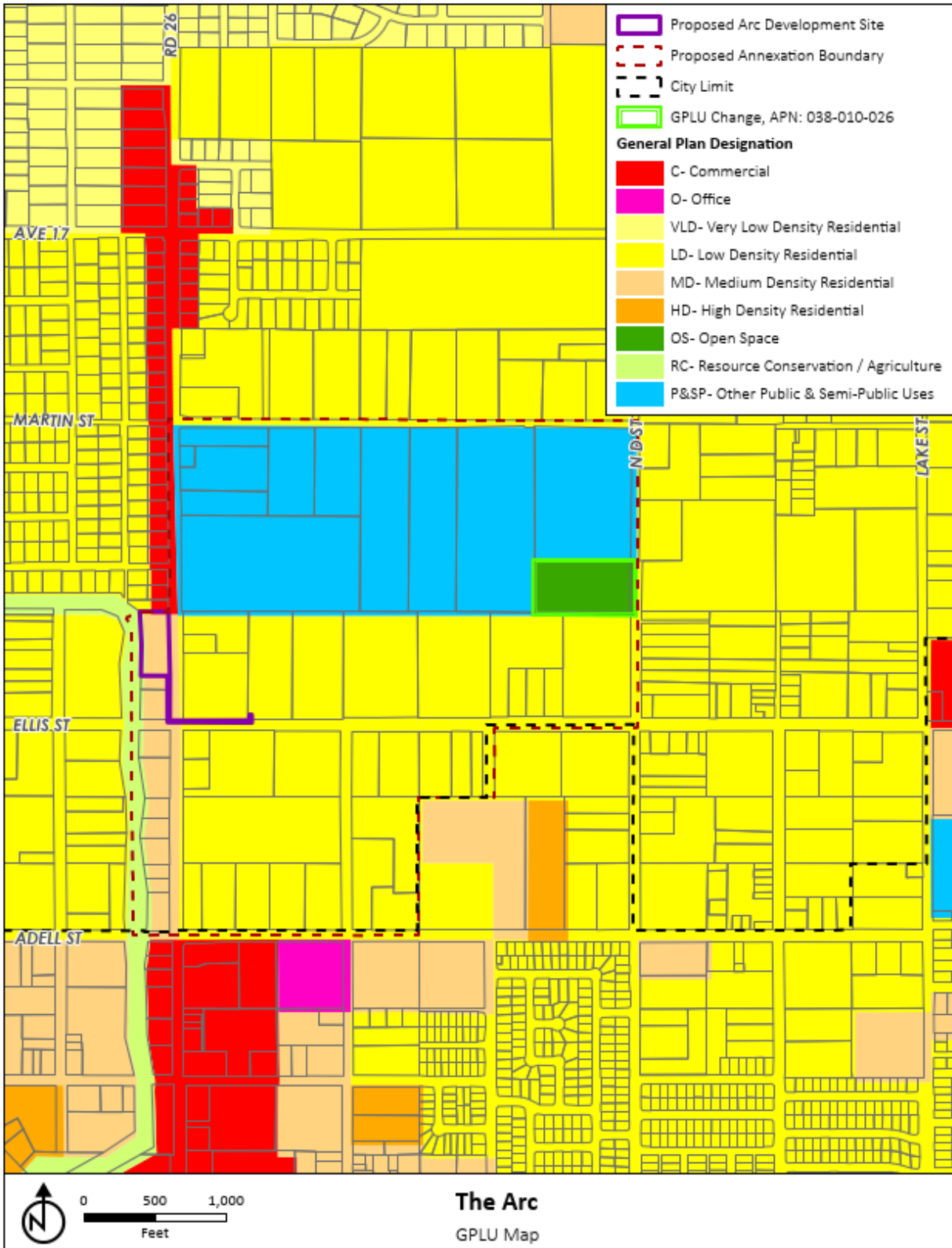
Attest:

Gary Conte, AICP
Planning Manager

Exhibit “A” – General Plan Amendment (GPA 2022-03)
Exhibit “B” – Prezone (REZ 2022-02)

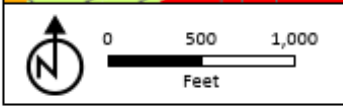
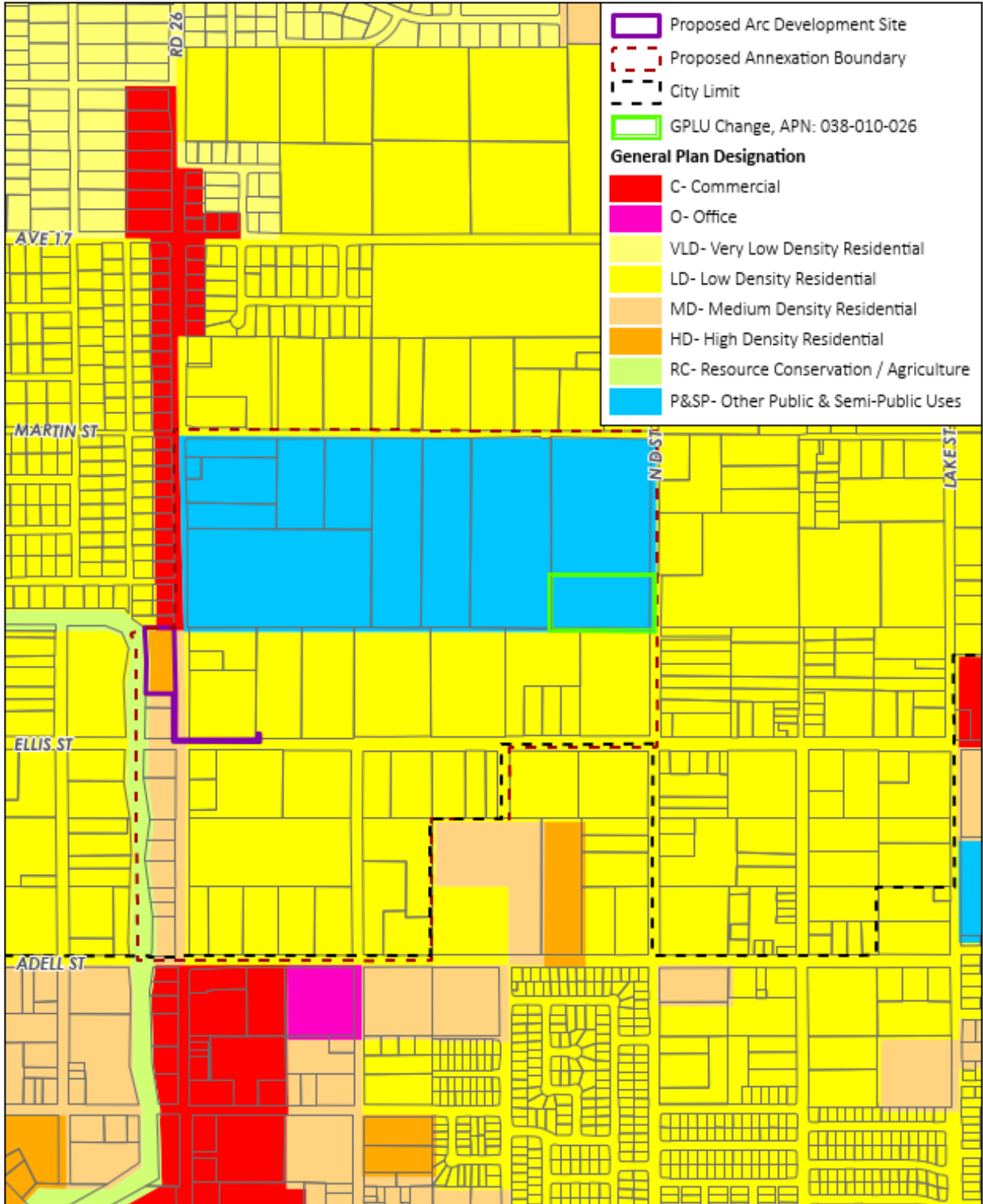
Exhibit "A" General Plan Amendment (GPA 2022-03)

Existing General Plan Land Use



© 2014 Madera City of 1021/1021 Madera Dr-Cal Planning/1021/1021 Madera Dr-Cal Planning/400 GIS/06/06/09/Madera_Orcoling_09.aprx

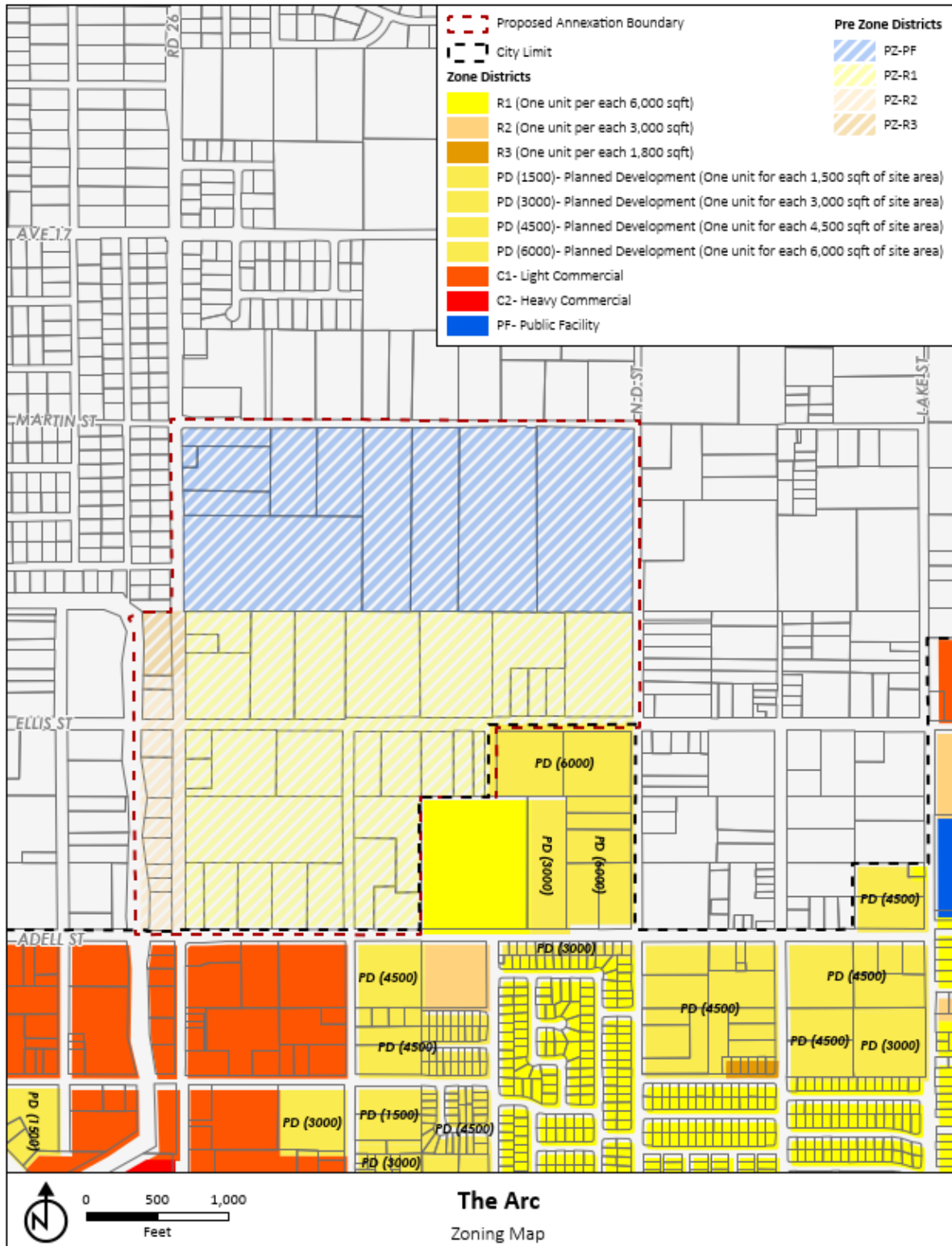
Proposed General Plan Land Use



The Arc
Proposed GPLU Map

©Madera City of 10/11/2021 Madera Div-Civil Planning\10/11/2020 Madera Div-Civil Planning\480 010\038-010-026\038-010-026.apx

Exhibit "B" Proposed Rezoning (REZ 2022-02)



ATTACHMENT 16

Planning Commission Resolution Recommending City
Council Initiate ANX 2022-03

RESOLUTION NO. 1940

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
RECOMMENDING THE CITY COUNCIL OF THE CITY OF MADERA INITIATE
ANNEXATION THE ARC FRESNO/MADERA COUNTIES PROJECT AREA
(ANX 2022-03)**

WHEREAS, the City of Madera (City) desires to initiate proceedings, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3, commencing with Section 56000 of the California Government Code; and

WHEREAS, Government Code Section 56654 provides that “[a] proposal for a change of organization or a reorganization may be made by the adoption of a resolution of application by the legislative body of an affected local agency...[;]” and

WHEREAS, the specific changes of organization requested consist of annexation to the City and detachment from the County of Madera of the area known as The ARC Fresno/Madera Counties Project Annexation (“Arc Annexation”); and

WHEREAS, a map of the boundaries of the territory is set forth in Exhibit “A” attached hereto and by this reference incorporated herein; and

WHEREAS, the Arc Annexation area is within the Sphere of Influence (SOI) and the Urban Growth Boundary of the City of Madera; and

WHEREAS, the Arc Annexation area is contains approximately 242 acres and contains approximately 52 existing parcels; and

WHEREAS, the Arc Annexation area is generally bound by Martin Street on the north, North D Street on the east, south to Ellis Street and a portion further south to Adell Street, and west by the United States Bureau of Reclamation canal and Road 26; and

WHEREAS, the City does not propose any specific term and conditions for the proposed reorganization; and

WHEREAS, the reasons for this proposed annexation is to allow for the implementation of the City of Madera 2025 General Plan (Madera General Plan) adopted October 7, 2009, which was a comprehensive update to the City’s then existing General Plan, as further implemented by The Arc Fresno/Madera Counties Project; and

WHEREAS, The Arc Fresno/Madera Counties Project requires approval of General Plan Amendment (GPA) 2022-03, Prezone (REZ) 2022-02, Use Permit (CUP) 2022-07, Site Plan Review (SPR) 2022-12, and Annexation (ANX) 2022-03; and

WHEREAS, an Initial Study/Negative Declaration (IS/ND) has been prepared, circulated, and made available for public comment pursuant to the California Environmental Quality Act (CEQA), Public Resources Code, sections 21000, et seq., the Guidelines for implementation of CEQA, Title 14 California Code of Regulations, Chapter 3, Section 15000, et seq., and the Madera Municipal Code for the Arc Fresno/Madera Counties Project and this related annexation; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code; and

WHEREAS, under the City's Municipal Code and State Planning and Zoning Law, the Planning Commission (Commission) is authorized to review and make recommendations to the City Council (Council) for annexations on behalf of the City; and

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

WHEREAS, the Commission received and independently reviewed and considered the information contained in the IS/ND and adopted the IS/ND under a separate resolution pursuant to CEQA, and reviewed ANX 2022-03 at a duly noticed meeting on February 21, 2023; and

WHEREAS, at the February 21, 2023, Commission hearing, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Commission; and

WHEREAS, after due consideration of all the items before it, the Commission now desires to adopt this Resolution recommending to the Council initiate annexation of the Arc Annexation.

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: That the IS/ND for the project is adequate and has been completed in compliance with the California Environmental Quality Act and the State CEQA Guidelines.
3. General Plan Consistency: The Commission finds that the annexation is consistent with the goals, objectives, and policies of the Madera General Plan, as amended by GPA 2022-03. The project is consistent with General Plan Policy LU-13, which states "The City shall support annexation of property to its boundaries for the purpose of new development only when it determines that the following conditions exist:
 - Sufficient public infrastructure, facilities, and services are available or will be provided in conjunction with new development; and
 - Demands on public infrastructure, facilities and services created by the new development will not result in reductions in capacity that is necessary to serve the existing city limits (including demand created by potential infill development), reductions in existing service levels within the city limits, or the creation of detrimental fiscal impacts on the city"

The appropriate findings have been made and as a result, the project would be consistent with the City's General Plan.

4. Recommendation for Approval: Based on evidence in the record, the Commission recommends to the Council to initiate annexation for the entire Arc Annexation area that is not within the City limits, by adopting a resolution of application requesting the Local Agency Formation Commission of Madera County to initiate proceedings for the change of organization of territory as described in Exhibit

“A”, in the manner provided by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

5. Effective Date: This Resolution shall become effective immediately. The Secretary of the Commission shall certify to the adoption of the Resolution and shall transmit copies of the same to the Council of the City of Madera.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 21st day of February 2023, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

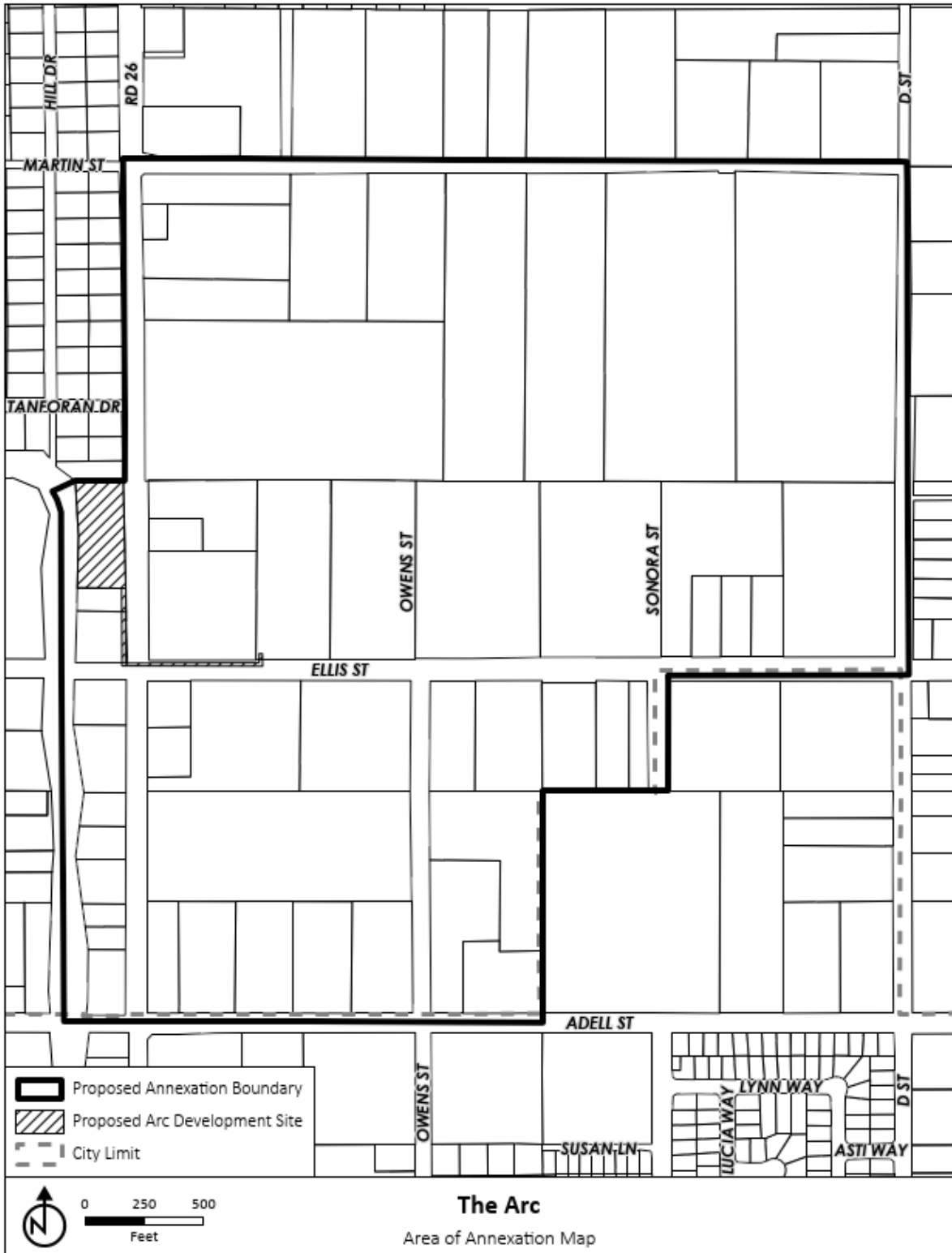
Robert Gran Jr.
Planning Commission Chairperson

Attest:

Gary Conte, AICP
Planning Manager

Exhibit “A” – Annexation Area (ANX 2022-03)

Exhibit "A" Annexation (ANX 2022-03)



ATTACHMENT 17

Planning Commission Resolution Contingently Approving CUP
2022-07 and SPR 2022-12

RESOLUTION NO. 1942

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
CONTINGENTLY APPROVING CONDITIONAL USE PERMIT (CUP) 2022-07 AND
SITE PLAN REVIEW (SPR) 2022-12 (THE ARC FRESNO/MADERA COUNTIES)**

WHEREAS, The Arc Fresno/Madera Counties, Inc. (“Owner”) owns a 2.12 acre parcel ((Assessor Parcel Number (APN) 038-060-018)) in the County of Madera, California (“site”); and

WHEREAS, the site is located on the westside of Road 26, approximately 320 feet north of the Road 26 and Ellis Street intersection and is outside the City limits of the City of Madera (City); and

WHEREAS, the site address is 16482 Road 26; and

WHEREAS, the site is a vacant, previously developed property that has been grubbed of all vegetation and regraded subsequent to the demolition and removal of a single-family residence destroyed by fire and other on-site ancillary improvements; and

WHEREAS, the site is within the Sphere of Influence (SOI) and the Urban Growth Boundary of the City of Madera; and

WHEREAS, the City General Plan land use plan identifies the site as planned MD (Medium Density Residential); and

WHEREAS, the Owner is requesting a General Plan Amendment (GPA 2022-03) to amend the General Plan land use designation of the site from MD (Medium Density Residential) to HD (High Density Residential); and

WHEREAS, the Owner is requesting to prezone the site R3 (One unit per each 1,800 square feet) (REZ 2022-02) to facilitate the development and operation of an Intellectual and Developmental Disability Center (IDDC) on-site; and

WHEREAS, the Owner is requesting to annex to the City (ANX 2022-03); and

WHEREAS, GPA 2022-03, REZ 2022-02, AND ANX 2022-03 will be considered under separate resolutions and are all subject to consideration and adoption by City Council (Council); and

WHEREAS, the Owner is requesting a Use Permit (CUP 2022-07) to allow the operation of an IDDC within the R3 zone district on the 2.12-acre site; and

WHEREAS, the Owner is requesting a Site Plan Review (SPR 2022-12) to allow for development of an 8,170 square foot Arc Fresno/Madera Counties facility on the 2.12-acre site, as proposed by SPR 2022-12; and

WHEREAS, an Initial Study/Negative Declaration (IS/ND) (ENV 2022-03) has been prepared, circulated, and made available for public comment pursuant to the California Environmental Quality Act (CEQA), Public Resources Code, sections 21000, et seq., the Guidelines for implementation of CEQA, Title 14 California Code of Regulations, Chapter 3, Section 15000, et seq., and the Madera Municipal Code; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code; and

WHEREAS, under the City's Municipal Code, the Planning Commission (Commission) is authorized to review and approve use permits, site plan reviews, and environmental assessments on behalf of the City; and

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

WHEREAS, the Commission received and reviewed CUP 2022-07, SPR 2022-12, and ENV 2022-03 at a duly noticed meeting on February 21, 2023; and

WHEREAS, at the February 21, 2023 Commission hearing, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Commission; and

WHEREAS, the Commission has independently completed its review of the staff report and documents submitted for CUP 2022-07, SPR 2022-12, and ENV 2022-03, evaluated the information contained within the report and documents submitted, and considered testimony received as part of the public hearing process ; and

WHEREAS, the Commission now desires to approve CUP 2022-07 and SPR 2022-12; and

WHEREAS, to accommodate the Applicant's request to consider CUP 2022-07 and SPR 2022-12 in conjunction with the approval of ENV 2022-03, GPA 2022-03, REZ 2022-02, and ANX 2022-03, the Commission now desires to contingently approve CUP 2022-07 and SPR 2022-12 such that no decision of approval of CUP 2022-07 or SPR 2022-12 becomes final and effective until immediately after Council approves ENV 2022-03 and adopts GPA 2022-03, REZ 2022-02, and ANX 2022-03, and if no such approval occurs within 180 days of the adoption of this Resolution, then the Commission intends that CUP 2022-07 and SPR 2022-12 be set for further consideration and a final decision by the Commission.

NOW, THEREFORE BE IT RESOLVED, by the Commission of the City of Madera as follows:

1. Recitals: The above recitals are true and correct and are incorporated herein.
2. CEQA: Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed project, including CUP 2022-07 and SPR 2022-12, and has prepared a negative declaration as described above to evaluate the environmental effects of the project, including development of the proposed area encompassed by CUP 2022-07 and SPR 2022-12. The Commission has fully considered the negative declaration set forth in ENV 2022-03, and has concurrently recommended it for approval by the Council. The Commission finds that CUP 2022-07 and SPR 2022-12 are consistent with, and has been fully assessed by, the negative declaration, and that both CUP 2022-07 and SPR 2022-12 are entitlements specifically anticipated for the proposed project in the negative declaration, and are consistent with the purpose and intent of the negative declaration. As such, CUP 2022-07 and SPR 2022-12 have been fully environmentally assessed, and no further assessment is required pursuant to CEQA.

3. Findings for CUP 2022-07 and SPR 2022-12: The Commission finds and determines that there is substantial evidence in the administrative record to support the approval of CUP 2022-07 and SPR 2022-12, as conditioned. With conditions, the project is consistent with the requirements of the Municipal Code, including Section 10-3.13 (Use Permits) and Section 10-3.4.01 (Site Plan Review). The 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:

Findings to Approve a Conditional Use Permit

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

CUP 2022-07 is subject to approval of GPA 2022-03, REZ 2022-02, and ANX 2022-03, which collectively would result in the rezoning of the 2.12-acre site R-3 (One unit per each 1,800 square feet), consistent with the General Plan land use designation of HD (High Density Residential), as proposed under GPA 2022-03. CUP 2022-07 is consistent with the purpose and intent of the R3 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 2.12-acre site is suited for residential and residentially supporting uses such as an Intellectual and Developmental Disability Center (IDDC), which is considered a community center related use, conditionally permitted in the R3 zone district. The site is located within an area that contains commercial uses to the north and east, with residential uses to the south and beyond to the west. As conditioned, the operation of an IDDC is 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 proposed use will result in the operation of an IDDC on the 2.12-acre site. As conditioned, the project is required to make public improvements to ensure adequate public facilities, including provision of services, and will not result in a detriment to the health, safety, peace, morals, comfort, or general welfare of people residing or working in the neighborhood.

Findings to Approve a Site Plan Review

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

SPR 2022-12 is subject to approval of GPA 2022-03, REZ 2022-02, and ANX 2022-03, which collectively would result in the rezoning of the 2.12-acre site to R-3 (One unit per each 1,800 square feet), consistent with the General Plan land use designation of HD (High Density Residential), as proposed under GPA 2022-03. SPR 2022-12 is consistent with the purpose and intent of the R3 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 site is not located within the boundary of an adopted specific plan.

- *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.*

SPR 2022-12 has been reviewed and is consistent with surrounding uses and with all applicable requirements for development in the R3 zone district. Public improvements will be installed to ensure that vehicular and pedestrian circulation is provided and that utilities on-site will be accommodated consistent with City standards. Review of the 2.12-acre site determined that construction of the new Arc facility would not result in a significant generation 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.*

SPR 2022-12 will be required to install street improvements in accordance with City standards. Related infrastructure improvements will also be required for curb, gutter, storm drainage, utilities and other related street infrastructure in conformance with City standards. Construction of the new Arc facility will not have a significant impact on traffic or the environment.

4. Approval of CUP 2022-07 and SPR 2022-12: Given that all findings can be made, the Commission hereby approves CUP 2022-07 and SPR 2022-12 as conditioned as set forth in the Conditions of Approval attached as Exhibit "A" which approvals are contingent upon the following:

- a. The conditional approval of CUP 2022-07 and SPR 2022-12 shall be final and effective immediately only after Council:
 - I. Approves ENV 2022-03
 - II. Adopts GPA 2022-03
 - III. Adopts REZ 2022-02
 - IV. Adopts ANX 2022-03

If the Council approval of all of the same is not made within 180 days of the adoption of this Resolution, then CUP 2022-07 and SPR 2022-12 shall be returned to the Commission for further consideration and a final decision. If Council approvals are made within 180 days of the adoption of this Resolution, but any change is made by the Council in a manner that could reasonably affect the findings of the Commission herein, or require a modification or addition of a condition of approval to be consistent with a Council approval, then CUP 2022-07 and SPR 2022-12 shall be returned to the Commission for further consideration and a final decision.

5. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 21st day of February 2023, 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 2022-07 and SPR 2022-12.

EXHIBIT "A"
CUP 2022-07 AND SPR 2022-12
(THE ARC FRESNO/MADERA COUNTIES)
CONDITIONS OF APPROVAL
FEBRUARY 21, 2023

Notice to Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to validity of conditions of approval must occur within ninety (90) calendar days after the date of decision. 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 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.

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 SPR 2022-12 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. All discretionary conditions of approval for CUP 2022-07 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. 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.

GENERAL CONDITIONS:

1. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.
2. 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 in effect at the time of filing. **Such check shall be made payable to the Madera County Clerk and submitted to the City of Madera Planning Department no later than three (3) days following all approval actions for CUP 2022-07 and SPR 2022-12.**
3. CUP 2022-07 shall expire 12 months from date of issuance, unless positive action to utilize the CUP or a written request for extension has been submitted to the Planning Commission before the expiration of the CUP (MMC Section 10-3.1311, Termination and Revocation).
4. SPR 2022-12 shall expire one year from date of issuance, 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 the expiration date (MMC Section 10-3.4.0114, Lapse of Site Plan Approval).
5. 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.
6. Development of the project shall conform to the plans designated by the City as Exhibits A through E, subject to the conditions noted herein. Minor modifications to the approved plans necessary to meet regulatory, engineering, or similar constraints may at the discretion of the Planning Manager without an amendment to CUP 2022-07 and/or SPR 2022-12. However, should the Planning Manager determine that modifications are substantive, he/she may require that an amendment to CUP 2022-07 and/or SPR 2022-12 be filed for review and approval through the applicable City process.

7. Deferrals are not permitted for any condition included herein, unless otherwise stated or unless approved by the City Council, through a separate deferral process.
8. All construction shall cease, and the Planning Manager and City Engineer shall be notified immediately if any prehistoric, archaeological, or fossil artifact or resource is uncovered during construction. All construction shall immediately 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 and/or successors-in-interest's expense, to evaluate the find(s) and recommend appropriate action according to Section 15064.5 of the California Environmental Quality Act (CEQA) Guidelines. If avoidance is infeasible, other appropriate measures would be instituted. Work may proceed on other parts of the project subject to direction of the archaeologist while assessment of historic resources or unique archaeological resources is being carried out.
9. All construction shall cease if any human remains are uncovered, and the Planning Manager, City Engineer and County of Madera Coroner shall be notified in accordance to Section 7050.5 of the California Health and Safety Code. If human remains are determined to be those of a Native American or has reason to believe that they are those of a Native American, the Native American Heritage Commission shall be contacted, and the procedures outlined in CEQA Section 15064.5(e) shall be followed.
10. Approval of CUP 2022-07 and SPR 2022-12 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.

PLANNING DEPARTMENT

General

11. Approval of this application shall be considered null and void in the event of failure by the applicant and/or the authorized representative to disclose and delineate all facts and information relating to the subject property and proposed uses.
12. CUP 2022-07 and SPR 2022-12 are subject to approval of GPA 2022-03, which would redesignate the subject property to the HD (High Density Residential designation, and approval of REZ 2022-02, which would pre-zone the subject property to the R3 (One unit per 1,800 square feet of site area). CUP 2022-07 and SPR 2022-12 shall not proceed until GPA 2022-03 and REZ 2022-02 are approved and become effective. CUP 2022-07 and SPR 2022-12 shall not become effective and issued unless and until the Madera County Local Agency Formation Commission approves the 242 acre Annexation (ANX 2022-03) and all actions associated with such annexation are satisfied.
13. CUP 2022-07 and SPR 2022-12 approval is not an authorization to commence construction. On- and off-site improvements, building construction, sign erection or occupancy shall not be permitted without prior approval of the City through issuance of any required grading or building permits.
14. The applicant shall comply with all federal, state and local laws. Material violations of any of those laws concerning the use(s) may be cause for revocation of CUP 2022-07. Such conditions that constitute such violation include, but are not limited to:
 - 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 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.
15. The proposed Arc site shall be subject to periodic review and inspection by the City to determine compliance with the conditions of approval. If, at any time, the use is determined by staff to be in violation of the conditions, the property owner and/or operator may be subject to corrective action.
16. All on- and off-site improvements shall be completed prior to final building inspection and shall be completed in conformance with CUP 2022-07 and SPR 2022-12 Conditions of Approval to the satisfaction of the City of Madera prior to issuance of a certificate of completion, occupancy permit and/or issuance of a business license.

17. Vandalism and graffiti shall be corrected in accordance with the provisions of the Madera Municipal Code.
18. The property owner, operator and/or manager shall operate in a manner that does not generate excessive noise, odor, blight or vibration that is demonstrated to adversely affect-adjacent properties.
19. The property owner, operator and/or manager shall keep the property clear of all trash, rubbish and debris at all times, and disposal of refuse shall be restricted to the dumpster on the site.
20. Prior to the issuance of issuance of building permits, the applicant shall identify on the site plan and/or elevations the following information for Planning Department review and approval. All equipment shall be screened from view.
 - a) The location of all-natural gas and electrical utility meter locations
 - b) The location of all HVAC (heating, ventilation or air conditioning) equipment
 - c) The location of all compressor equipment, and mechanical and electrical equipment

Lighting

21. The specifications and types of exterior lighting fixtures to be installed on the site shall be submitted to and approved by the Planning Department prior to issuance of building permits. All exterior lighting shall be directed away from adjoining properties and not interfere with the driving safety of vehicular traffic. Exposed bulbs will not be permitted.
22. All parking lot lights/lighting shall be incorporated into landscaped areas.
23. Concrete lighting bases/pillars shall not exceed three (3) feet above pavement grade and shall include a finished surface material capable of withstanding weathering.
24. The aggregate height of the pole and base shall not exceed 20 feet above pavement grade.
25. The project proponent shall contact the City Engineer when all site lighting is operational. Additional light screening may be required to ensure compliance with City standards and conditions of approval.

Landscaping

26. Trees shall be required to achieve 50 percent shading of all parking areas, inclusive of parking stalls and drive aisles, within 10 years. Carports may be used to account for shading of paved areas. Landscape plan shall illustrate achievement of the 50 percent shade coverage requirement.
27. A minimum 10-foot landscape buffer shall be provided along the south property line abutting residential uses.
28. A 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 landscape plan shall be in general conformance with Exhibit C, Landscape Plan. The plans shall:
 - a) Demonstrate compliance with the State of California's Model Water Efficient Landscape Ordinance (MWELO);
 - b) Provide 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.
 - f) Integrate, to the extent feasible, low impact development practices to reduce, treat, infiltrate, and manage runoff flows caused by storms, urban runoff, and impervious surfaces.
 - g) Shrub planting shall be a minimum one (1) gallon size and include a mix of one (1) gallon and five (5) gallon shrubs.
 - h) Street and accent tree planting shall be a minimum a 15 gallon size.
 - i) Where landscaping is intended to provide a visual screen, the species, quantity, maturity (size), and spacing of the initial planting shall be sufficient to provide functional screening with a single growing season.
 - j) Perimeter landscaping along Road 26 (Country Club Drive) shall have a minimum depth of eight (8) feet excluding required street frontage parkway strip and sidewalk.
 - k) Street trees along Road 26 (Country Club Drive) shall be planted at an on-center spacing of one (1) tree per 30 linear feet. Street trees planted along Road 26 (Country Club Drive) shall be Water oak (*Quercus nigra*).
29. 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 CUP 2022-07 and SPR 2022-12.
 30. The property owner shall maintain all landscaping in a healthy and well-manicured appearance to achieve and maintain the landscaping design that was approved by the City. This includes, but is not limited to, ensuring properly operating irrigation equipment at all times, trimming and pruning of trees and shrubs, and replacing dead or unhealthy vegetation with drought-tolerant plantings.
 31. Street trees shall be provided in accordance with City standards along the Road 26 (Country Club Drive) frontage.
 32. Landscaping shall be provided along and against all building facades viewable from the Road 26 (Country Club Drive) public right-of-way and other public spaces to soften building facades.
 33. Landscape plan shall include a no-less-than three (3) foot high hedge whenever parking spaces face and/or are visible from the public right-of-way to reduce headlight glare onto public streets and to shield vehicle parking from public view.
 34. Trees located in front of “pull in” parking spaces shall be planted in line with painted lines that designate parking spaces to minimize potential damage from vehicle overhang.
 35. Landscape islands shall be a minimum six (6) feet width and span the entire length of the parking block and shall be provided at the ends of the parking rows. Islands shall provide a minimum

18-inch-wide concrete curb along the inside of the island, parallel to the adjacent parking space to avoid patrons treading over landscape.

36. 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.

Parking

37. As approved under CUP 2022-07 and SPR 2022-12 and shown on the Exhibit A, Site Plan, a minimum of 43 total parking spaces shall be required. The required number of ADA compliant parking spaces shall be provided in accordance with the Building Code.
38. A No Parking, Loading Area sign shall be placed in the front of the building, east of the foyer. Location of signage shall be confirmed by the Planning Manager.
39. Off-street parking areas shall be paved and maintained so as to eliminate dust or mud and shall be so graded and drained as to dispose of all surface water. In no case shall such drainage be allowed to cross sidewalks, unless approved by the City Engineer.
40. Each off-street parking space shall have a width of not less than nine feet and a length of not less than 19 feet except that up to 25 percent of the required parking spaces may be designated for compact car use.
41. Parking spaces shall be easily accessible by standard-size automobiles, shall be so designed as to be accessible from a public street or alley, and shall be located so that sufficient area is available for maneuvering purposes.
42. Plans of the proposed parking area shall be submitted to the Building Department at the time of an application for a building permit for any building to which the parking area is accessory. The plans shall clearly indicate the proposed development, including the location, size, shape, design, curb cuts, lighting, landscaping, and other features and appurtenances of the proposed parking lot.

Trash Enclosures

43. A trash enclosure shall be constructed in accordance with City standards and applicable requirements of the waste provider. Enclosures shall provide a minimum interior length of 29 feet. The location of the trash enclosure shall be subject to approval by the Planning Manager prior to the issuance of building permits.
44. Driveways or travel aisles shall provide unobstructed access for collection vehicles to directly access trash enclosure(s) without the need for the waste hauler to rollout or re-orient waste bins for loading / dumping operations and provide a minimum of 15 feet vertical clearance. In loading areas, the minimum overhead vertical clearance shall be 22 feet.
45. All exterior trash facilities should be fully enclosed on three (3) sides by a concrete masonry unit (CMU) wall. Access gates and man doors are to be opaque structures constructed of metal and shall be hinged on the outside with cane bolts to hold gates open. The walls and gates shall be congruent with the massing and design of the principle building.
46. All enclosures must be at least six (6) feet in height and rise a minimum of six (6) inches above the height of any collector placed within structure.
47. Trash containers/enclosures shall not be placed within the public right of way or driveways in such a way that they may potentially cause traffic hazards.

48. Trash containers/enclosures shall not be constructed within an easement or an offer of dedication.
49. Trash containers/enclosures must be screened by landscaping when located near a property line that abuts residential uses and shall not be visible from Road 26 (Country Club Drive) public viewshed.
50. Plans for trash enclosures should be drawn to scale and submitted for review.
51. Trash containers shall be provided for trash, recycling, and organics. Containers for each shall be shown on the site plan.

Outdoor Storage

52. Outdoor storage of material and / or equipment is prohibited.

Signage

53. All signage shall be in compliance with the Sign Ordinance of the Madera Municipal Code Section 10-6. All permanent signage, with the exception of required signs in accordance with City standards, is required to have an approved Sign Permit issued by the Planning Department per Madera Municipal Code Section 10-6.
54. All proposed construction announcement signs used shall conform to the Municipal Sign Ordinance.
55. Building shall incorporate decorative form and material for building address. No plastic, vinyl or similar type of building materials shall be used for building address signage.

Building and Site Aesthetics

56. Building Permits are required for the construction of all improvements. Separate permits are required for fire sprinklers, fire alarm, the underground fire main systems, as applicable.
57. The construction of all buildings approved as part of SPR 2022-12 shall be in close conformance with the site plan and elevation drawings, as reviewed and approved by the Planning Commission. Any substantial alterations, as determined by the Director, shall require Planning Commission approval.
58. The construction of buildings approved as part of SPR 2022-12 shall be consistent with an approved color and materials board and representative color section rendering of the proposed buildings to be reviewed and approved by the Planning Commission. Any substantial alteration, as determined by the Director, shall require Planning Commission approval.
59. All electrical/mechanical equipment shall be located within an electrical/mechanical room in the interior of the structure, with exception to transformers.
60. Roof access ladders shall be located within the interior of the building.
61. Roof-mounted equipment placements should be completely screened from view and architecturally integrated into the roof using roof wells, continuous building perimeter fascia screening, etc.
62. All rooftop ducts and vents should be directed away from the public street/sidewalk to minimize their appearance, visibility, and noise pollution.
63. All entry doors shall provide covered entrance (awning or roof overhang) of adequate form and size to protect persons entering building from inclement weather conditions.

Walls and Fencing

64. Chain link fencing is prohibited where fencing is visible along Road 26 (Country Club Drive).
65. Fencing visible along Road 26 (Country Club Drive) shall be of wrought iron or higher quality.
66. A six (6) foot high concrete block wall measured from pavement surface shall be required along the southern property line where the property abuts a residential use.

CUP 2022-07 (Community Center Use)

67. Events shall not be held at the site outside of the hours 7am to 10pm.

BUILDING DEPARTMENT

68. At time of submittal for building permit plan check, a minimum of three (3) sets of the following plans to the Building Department is required. Plans shall be prepared by an individual licensed to practice architecture and include the following required drawings drawn to an appropriate scale:
 - a) Site plan bearing City approval or a plan incorporating all site related conditions
 - b) Grading plan prepared by an individual licensed to practice land surveying, civil engineering or architecture
 - c) Floor plan - The uses of all rooms and activity areas shall be identified on the plans
 - d) All exterior elevations
 - e) Site utilities plan showing on-site sanitary sewer, water, storm sewer, water meters, backflow prevention devices, roof drains, etc., and the connections to off-site utilities
69. Current State of California and federal accessibility requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at permit stage, shall be confirmed at final inspection, and shall apply to proposed and future development.

ENGINEERING

General

70. Nuisance onsite lighting shall be redirected as requested by City Engineer within 48 hours of notification.
71. Development Impact fees shall be paid at time of building permit issuance.
72. Developer shall pay all required fees for completion of project. Fees due may include but shall not be limited to the following: plan review, easement acceptance, encroachment permit processing and improvement inspection fees.
73. Improvement plans signed and sealed by an engineer shall be submitted to the Engineering Department in accordance with the Civil Improvements Submittal Checklist.
74. The improvement plans for the project shall include the most recent version of the City's General Notes.

75. Improvements within the City right-of-way require an Encroachment Permit from the Engineering Division.
76. All off-site improvements shall be completed prior to issuance of final occupancy.
77. The applicant shall coordinate with the United States Post Office relative to the proposed location of the postal boxes for the project.

Water

78. New or existing water service connection(s), including landscape areas, shall be constructed or upgraded to current City standards including Automatic Meter Reading (AMR) water meter installed within City right-of-way and backflow prevention device installed within private property.
79. A separate water meter and backflow prevention device will be required for landscape area.
80. Existing water service connections that will not be used for the project shall be abandoned at the mains per City of Madera standards.
81. Existing wells, if any, shall be abandoned as directed and permitted by City of Madera for compliance with State standards, prior to issuance of building permits or any activities in which the well to be abandoned may be further damaged resulting in potential contamination to the aquifer below.
82. The developer shall reimburse its fair share cost to the City for the previously constructed water main along the entire project frontage on Road 26 (Country Club Drive).

Sewer

83. New or existing sewer service connection(s) shall be constructed or upgraded to current City standards.
84. Existing sewer service connections that will not be used for the project shall be abandoned at the mains per current City of Madera standards.
85. Sewer main connections six (6) inches and larger in diameter shall require manhole installation.
86. Existing septic tanks, if found, shall be removed, permitted and inspected by City of Madera Building Department.
87. The developer shall reimburse its fair share cost to the City for the previously constructed sewer main along the entire project frontage on Road 26 (Country Club Drive).

Storm Drain

88. Storm runoff from the proposed Arc site is planned to go to the County owned basin on Ellis Street located east of the proposed Arc site. Runoff volume calculations shall be provided, and the Developer shall excavate the basin to an amount equivalent to this project's impact on the basin. Subject to approval of the County of Madera, through a separate action initiated by the

developer, drainage from this development may be directed to said basin. At present, the County is not accepting additional runoff from development into said basin.

In the event approval is not obtained from the County, the project shall retain 100% of the increase in runoff from pre-development levels. A geotechnical evaluation will be required to evaluate and design on-site retention facilities to ensure storm water will percolate into the ground.

89. In the event an on-site retention of runoff must be retained onsite, containment shall be incorporated and accommodated within the grass area at the southern end of the project site or in the form of bioswales within the landscape areas of the site and be required to blend in within its surroundings.
90. Support calculations shall be provided that prove the existing storm drainage facilities are capable of intercepting runoff in accordance with the provisions of the Storm Drainage System Master Plan.
91. The site shall be graded in such a way as to not allow any additional storm runoff into the United States Bureau of Reclamation Canal to the west of the project parcel.
92. This project shall, as applicable, comply with the design criteria as listed on the National Pollutant Elimination Systems (NPDES) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer System (MS4's) as mandated by Water Quality Order No. 2013-0001-DWQ, NPDES General Permit No. CAS000004. For the purpose of this proposed development, post development runoff shall match or be less than pre-development runoff. The development shall be subject to future inspections by City or other designated agencies relative to the improvements installed as a result of this condition to ensure they remain in compliance with the conditions imposed under this condition.

Streets

93. The developer shall repair or replace all broken or damaged concrete improvements including curb, gutter and sidewalk to current City and ADA standards. Limits of repairs shall be established by the City Engineering Inspector.
94. The developer shall complete the arterial cross section on the west side of Road 26 (Country Club Drive) through the installation of a five-foot sidewalk, park strip, streetlights, and fire hydrants along the project frontage in accordance with City and ADA standards. Streetlights shall be LED using Beta Lighting standards or equal in accordance with City of Madera standards.
95. The proposed driveway approaches on Road 26 (Country Club Drive) shall be constructed to a street-type entrance with a minimum face curb radius of 15 feet and be constructed to current City and ADA standards. The existing drive approach, if unused, shall be removed and replaced with concrete sidewalk per City standards.

For proposed driveway locations on Road 26 (Country Club Drive), the potential for driveway conflicts must be addressed. These include storage conflicts between the project driveway(s) and driveways on the east side of Road 26 (Country Club Drive). These also include left turn

conflicts between project driveway(s) and driveways on the east side of the street. To that end, driveways located on opposite sides of the street shall either be aligned, or separated a minimum of:

- 100 feet (edge to edge) when the offset results in potential left turn egress conflicts
 - The combined required storage for each driveway when the driveways on opposite sides of the street share left turn storage space.
96. The developer shall install a 16-foot landscaped median island in Road 26 (Country Club Drive) along the entire project frontage to complete the arterial cross-section per City standards. The median island is eligible for reimbursement through the City's Development Impact Fee Program, subject to the availability of funds.
 97. The driveway approaches shall have a minimum throat length of thirty (30) feet from face of curb to eliminate the possibility of vehicles queuing into the City right-of-way.
 98. "No Parking" signs shall be installed along Road 26 (Country Club Drive) project frontage per City standards.
 99. The developer shall dedicate a Public Utility Easement 10-feet wide along the entire project parcel frontage on Road 26 (Country Club Drive). A \$466 fee or the fee in effect at that time for grant easement or deed acceptance shall be paid with the Engineering Department.
 100. The developer shall annex into and execute such required documents that may be required to participate in Landscape Maintenance District Zone 51 for the purpose of participating in the cost of maintaining landscape improvements within said zone.

Dry Utilities

101. All existing and proposed public utilities (electric, telephone, cable, etc.) shall be undergrounded, except transformers, which may be mounted on pads. Public utility easements shall be dedicated outside and adjacent to all streets rights-of-way. All public utilities within the project property and adjacent to the project property frontage on peripheral streets (on the development side of the street centerline) shall be placed underground except those facilities exempted by the Public Utilities Commission Regulations or operating at 70,000 volts or greater. Undergrounding of utilities shall not result in the addition of new poles being installed on other properties or street frontages.

FIRE DEPARTMENT

102. Fire extinguishers are required. A minimum of one, 2A10BC rated fire extinguisher is required for each 3,000 square feet.
103. A Knox box is required for access by emergency services personnel. The location of the Knox box shall be shown on the site plan.
104. Fire sprinklers may be required based upon the occupancy classification.
105. A fire alarm system may be required based upon the occupancy classification. The Fire Department shall be counteracted prior to construction to confirm applicability.

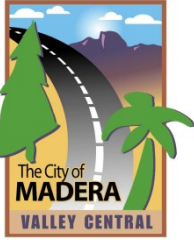
106. At least one (1) new street hydrant on Road 26 (Country Club Drive) shall be required. The location of any new hydrants required by the Fire Department shall be approved prior to construction.

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

107. The applicant, property owner and/or successors-in-interest shall comply with the rules and regulations of the San Joaquin Valley Air Pollution Control District (SJVAPCD).
108. Applicant, property owner and/or successors-in-interest shall submit to, and have approved by, the SJVAPCD an Authority to Construct (ATC) application prior to issuance of a grading or building permit. Copy of an approved ATC shall be submitted to the Planning and Building Departments prior to issuance of a grading or building permit.
109. Applicant, property owner and/or successors-in-interest shall submit to, and have approved by, the SJVAPCD an Air Impact Assessment (AIA) application prior to issuance of a grading or building permit. Copy of an approved AIA shall be submitted to the Planning and Building Departments prior to issuance of a grading or building permit.
110. Applicant, property owner and/or successors-in-interest shall submit to, and have approved by, the SJVAPCD A "Dust Control Plan" prior to issuance of a grading or building permit. Copy of an approved Dust Control Plan shall be submitted to the Planning and Building Departments prior to issuance of a grading or building permit.

MADERA IRRIGATION DISTRICT

111. Storm drainage will be directed to the east, away from the United States Bureau of Reclamation canal abutting the property to the west.



REPORT TO THE PLANNING COMMISSION

Prepared by: Rafael Sanchez, Contract Staff Planner

Council Meeting of: February 21, 2023

Agenda Number: 2

SUBJECT:

Smart & Final Alcohol Sales Conditional Use Permit 2022-21

RECOMMENDATION:

Conduct a public hearing and:

1. Adopt a Resolution adopting a Finding of Categorical Exemption from CEQA pursuant to CEQA Guidelines Section 15301 (existing facilities) for the project and approving Conditional Use Permit 2022-21, subject to the findings and conditions of approval.

PROPOSAL:

A Conditional Use Permit (CUP 2022-21) application for the sale of alcohol at the Smart & Final site located in the northwest corner of the Madera Marketplace at 2237, Suite 101, West Cleveland Avenue on Assessor's Parcel Number (APN) 013-160-021. The Madera Marketplace is located at the northeast corner of North Schnoor Avenue and West Cleveland Avenue (refer to Attachments 1 and 2). The site is currently allowed for the operation of a warehouse-style food and supply store (Smart & Final). Smart & Final is not presently allowed to sell alcohol.

The applicant is requesting to establish Type 21 (Off-Sale General) and Type 86 (Instructional On-Site Tasting) California Department of Alcoholic Beverage Control (ABC) licenses to sell beer, wine, and spirits, and provide on-site tasting within a grocery store. The use will be located within the approved 30,161 square foot commercial building space occupied by Smart & Final located within the Madera Marketplace commercial development at the northeast corner of West Cleveland Avenue and North Schnoor Avenue. The proposed alcohol use does not include any expansion or modification to the approved building or parking area.

Table 1 below provides an overview of the project site location, ownership, site characteristics, and the General Plan and zoning designations.

SUMMARY:

The applicant, Le Architecture, is requesting a use permit (CUP 2022-21) to allow for the sale of alcohol under a Type 21 California Department of Alcoholic Beverage Control (ABC) license by Smart & Final, within their tenant space. Type 21 licenses include the sale of beer, wine, and distilled spirits. The sale of alcohol for off-site consumption is conditionally allowed within the C-1 zone district. The proposed use permit request would not result in any physical changes occurring to the subject property. Any future modifications would be subject to approval to either the Planning Manager or the Planning Commission, depending on the extent of the requested modifications.

Table 1: Project Overview	
<i>Project Number:</i>	Conditional Use Permit 2022-21
<i>Applicant:</i>	Le Architecture, Kevin Le
<i>Property Owner:</i>	Rhino Investments, Sanjiv Chopra
<i>Location:</i>	2237, Suite 101, West Cleveland Avenue. Project site is located in the northwest corner of the Madera Marketplace commercial development located at the northeast corner of West Cleveland Avenue and North Schnoor Avenue. (APN: 013-160-021); Madera Marketplace is bounded by commercial uses to the east and south, residential uses to the west across Schnoor Avenue, and vacant land to the north. A planned shopping center (Foxglove Retail Center) has been approved for development on the vacant parcel to the north.
<i>Project Area:</i>	Approximately 1.59 acres
<i>Planned Land Use:</i>	C (Commercial)
<i>Zoning District:</i>	C-1 (Light Commercial)
<i>Site Characteristics</i>	The site is one of several buildings within a developed commercial center. The 58,475 square foot (sf) building, which formally occupied by Pak 'n Save, is currently under renovations, including splitting the building into two retail spaces – one to house Smart & Final (30,161 ft) and one to house a future retail business tenant (28,314 sf). The site is directly bound by commercial uses to the east, south, and west, and vacant land to the north.

Additionally, CUP 2022-21 would also allow for the approval of a Type 86 (Instructional On-Site Tasting) ABC license. A Type 86 license can only be issued to holders of qualified off-sale retail licensed businesses, as such the Type 86 license would be issued in conjunction with an approved Type 21 license. The Type 86 license facilitates certain, authorized suppliers or vendors to locate on-site and provide tasting events under specific conditions. Smart & Final has no immediate events that would be programmed as part of their store operations; however, the approval of CUP 2022-21 would also allow for such on-site tasting events to take place. Any tasting events would be required to abide by the provisions set forth in Business and Professions Code sections 23396.6 and 25503.56, which are conditions of the Type 86 license. These provisions include the following restrictions and requirements:

- A person under 21 years of age shall not serve, or be served, wine, beer, or distilled spirits at the instructional tasting event.
- Unless otherwise restricted, an instructional tasting event may only take place between the hours of 10 a.m. and 9 p.m.
- The Type 86 license shall not authorize any on-sale retail sales to consumers attending the instructional tasting event.
- The Type 86 license holder shall not permit any consumer to leave the instructional tasting area with an open container of alcohol.
- At all times during an instructional tasting event, the instructional tasting event area shall be separated from the remainder of the off-sale licensed premises by a wall, rope, cable, cord, chain, fence, or other permanent or temporary barrier. The Type 86 license holder shall prominently display signage prohibiting persons under 21 years of age from entering the instructional tasting event area.
- An instructional tasting event shall be limited to a single type of alcoholic beverage. "Type of alcoholic beverage" means distilled spirits, wine, or beer.
- A single tasting of distilled spirits shall not exceed one-fourth of one ounce and a single tasting of wine shall not exceed one ounce. No more than three tastings of distilled spirits or wine shall be provided to any person on any day. The tasting of beer is limited to eight ounces of beer per

person per day. The wine, beer, or distilled spirits tasted shall be limited to the products that are authorized to be sold by the holder of the Type 86 license under its requisite off-sale license.

Compliance with all Type 86 license provisions, including those listed above, have been included in the conditions of approval.

SURROUNDING LAND USES:

The site is surrounded by vacant land to the north, commercial uses to the east and south, and a residential development to the west. A planned shopping center (Foxglove Retail Center) has been approved for development on the vacant parcel to the north. No tenants have been identified for the planning shopping center at this time. The project site, shopping center as well as the land to the north, east and south beyond the limits of the shopping center are designated C (Commercial). To the west, across North Schnoor Avenue, the land is either designated C (Commercial) or O (Office) (refer to Attachment 3). Land to the north is zoned C-2 (Heavy Commercial), land to the east and south within the unified shopping center is zoned C-1 (Light Commercial), and land to the west across Schnoor Avenue is zoned PD 4500 (Planned Development, one unit for each 4,500 sf of site area) or R1 (One unit for each 6,000 sf of site area) (refer to Attachment 4).

Table 2 below provides an overview of the surround properties existing uses, General Plan designation and zoning districts bordering the project site.

Table 2: Bordering Site Information			
<i>Direction</i>	<i>Existing Use</i>	<i>General Plan Designation</i>	<i>Zone District</i>
<i>North</i>	Vacant	C - Commercial	C-2 - Heavy Commercial
<i>East</i>	Retail Stores	C - Commercial	C-1 - Light Commercial
<i>South</i>	Retail Stores	C - Commercial	C-1 - Light Commercial
<i>West</i>	Residential Development	MD - Medium Density Residential	PD (4500) - (Planned Development, one unit for each 4,500 sqft of site area)

ANALYSIS:

Background

The project site was previously occupied by the Pak ‘n Save, a warehouse-style food and supply store, which closed in 2022. The Pak ‘n Save grocery store had held Type 21 alcohol license and sold alcohol on the premises, despite never being approved for a CUP to be allowed for such activity. Smart & Final, also a warehouse-style food and supply store, entered into an agreement to occupy a portion of the former Pak n’ Save tenant space, beginning in 2023. As a part of this agreement, Site Plan Review (SPR) 2022-32 was approved, resulting in the splitting of the existing tenant space into two smaller tenant spaces, along with other minor site modifications. SPR 2022-32 did not allow for the sale of alcohol. Subsequent to the approval of SPR 2022-32, the operators of the Smart & Final tenant space wish to sell alcohol as a part of their daily operations. In order to allow for the sale of alcohol on-site, staff determined that a use permit would be required to be approved for such activities, given that the previous tenant never acquired one.

Alcohol Sales

CUP 2022-21 would result in the sale of beer, wine, and distilled spirits, permitted under Type 21 license for off-site consumption. CUP 2022-21 would also approve the use of a Type 86 ABC license for the instructional tasting of alcohol as an accessory use to the Type 21 ABC license under which the store would be allowed to sell alcoholic beverages. The location of alcohol products for off-site consumption is

indicated by highlighted areas on Attachment 5. The proposed instructional tasting would occur in areas pursuant to the provisions set forth in California Business and Professions Code Sections 23396.6 and 25503.56 as outlined in the summary section of this report above. Any tasting events would occur in instructional tasting event areas that shall be separated from the remainder of the off-sale licensed premises by a wall, rope, cable, cord, chain, fence, or other permanent or temporary barrier. Access to these areas and alcoholic beverage tasting would only be offered to customers of legal drinking age 21 years or older with valid identification. Also noted above, all provisions of the Type 86 license, including the requirements listed in the summary section, have been included in the conditions of approval.

Subject to approval of CUP 2022-21, Smart & Final intends to transfer the existing Type 21 license that has historically been utilized on the site by Pak 'n Save and apply for the Type 86 license in conjunction with the approved transfer of the Type 21 license. The transfer of the existing license to Smart & Final would not affect the status of license concentration in Census Tract 5.13 in which the property is located. Additionally, because the project would not result in a new license within the census tract, a finding of public convenience and necessity is not required to be made.

Compatibility with Surrounding Uses

The project site is located within the Madera Marketplace shopping center. This shopping center includes a variety of tenant occupied uses. One such use is the Learn4life – Crescent View South II school, located to the east of the project site. Absent special conditions, ABC will refuse to issue any retail license for premises located within at least 600 feet of schools (See Business & Prof. Code, §23789.). The Learn4life location within the commercial center has a walking distance of approximately 700 feet from the Smart & Final location and is within 1,000 feet of the project site. However, several other uses within the commercial development, some of which are within 600 feet of the Learn4life location, currently sell alcohol as a part of their operations, including Walmart and Sal's Mexican Restaurant. As a result, the addition of alcohol sales at the Smart & Final location is not expected to be incompatible with the existing Learn4life located within the same commercial development. No other sensitive uses which would be negatively affected by the sale of alcohol on-site have been identified within the immediate vicinity of the site.

ENVIRONMENTAL REVIEW:

Staff performed a preliminary environmental assessment and determined that the project is exempt under Section 15301 (Existing Facilities) of the State CEQA Guidelines because the project would result in the licensing of a use within an existing structure and would not result in any potential environmental impacts under CEQA. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

PLANNING COMMISSION ACTION:

The Planning Commission (Commission) will be acting on CUP 2022-21. Staff recommends that the Commission:

1. Move to adopt a Resolution of the Planning Commission adopting a Finding of Categorical Exemption from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities) for the project, and approving Conditional Use Permit 2022-21, based on and subject to the findings and conditions of approval.

ALTERNATIVES:

As an alternative, the Commission may elect to:

1. Move to continue the public hearing to the March 14, 2023, Planning Commission meeting: (Commission to specify and articulate reasons for continuance).
2. Move to deny the request based on specified findings: (Commission to specify and articulate reasons for denial).

ATTACHMENTS:

1. Vicinity Map
2. Aerial Photo
3. General Plan Land Use Map
4. Zoning Map
5. Exhibit A – Floor Plan
6. Planning Commission Resolution

ATTACHMENT 1

Vicinity Map

ATTACHMENT 2

Aerial Map



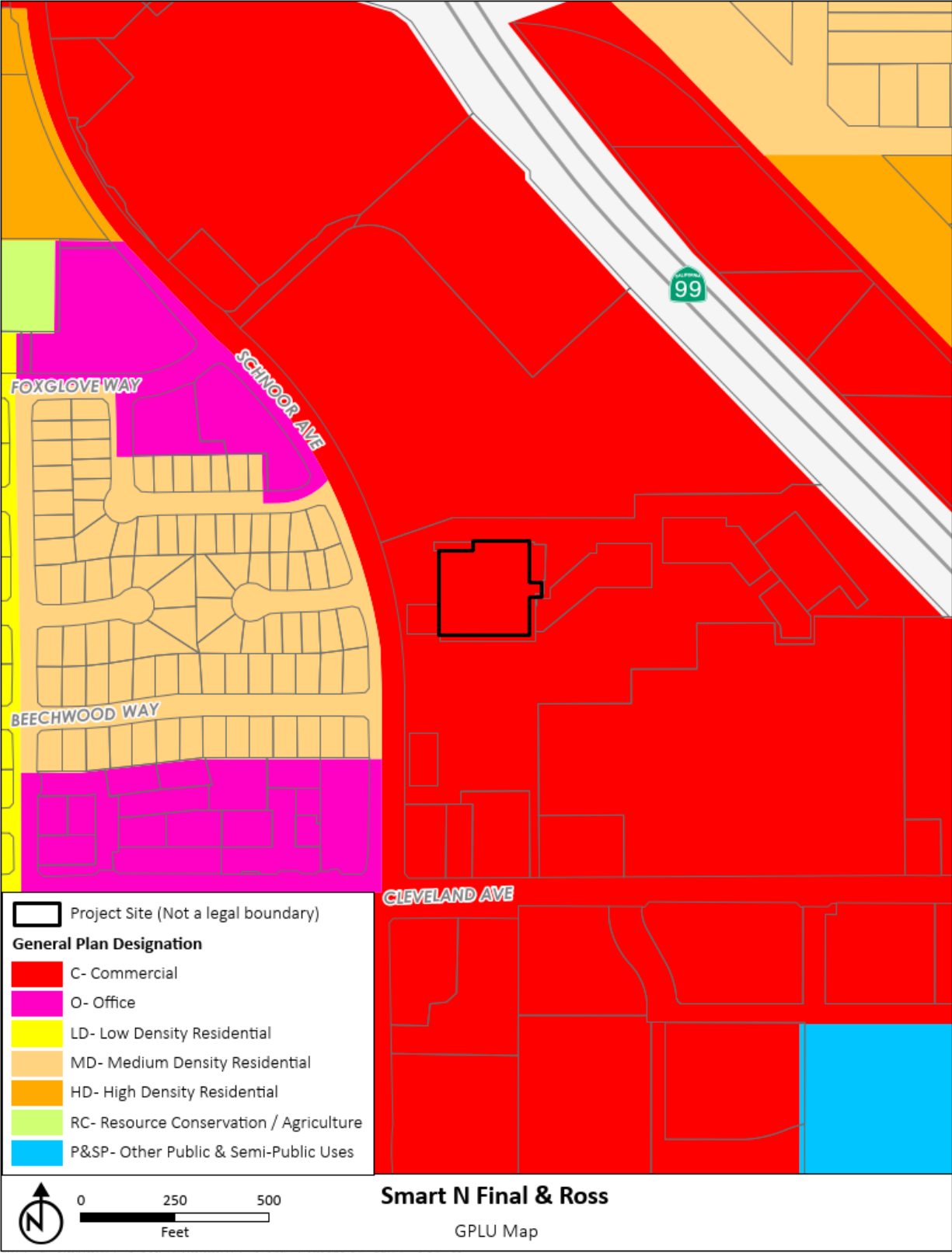
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Feet

Smart N Final & Ross

Aerial Map

ATTACHMENT 3

General Plan Land Use Map

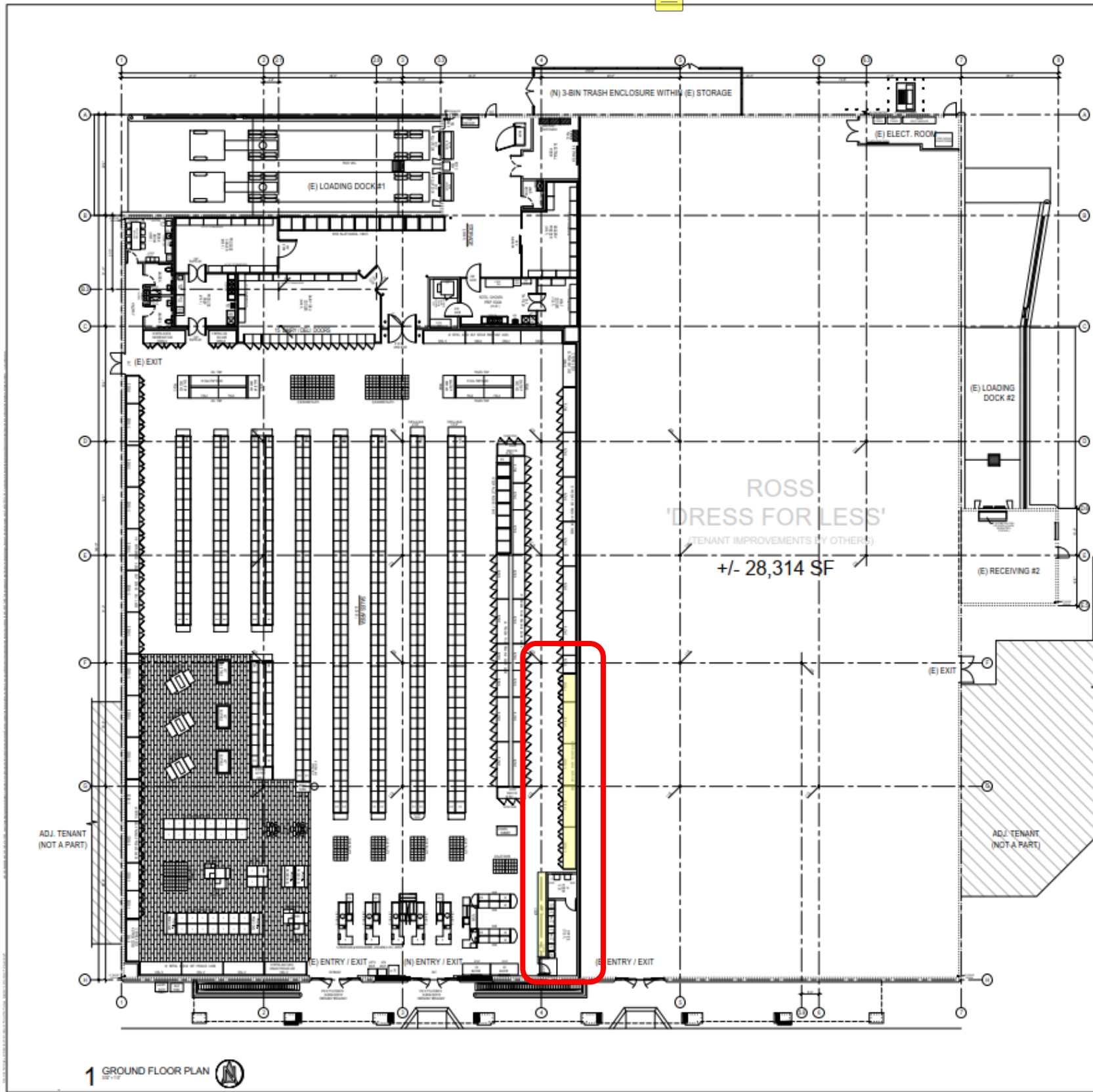


ATTACHMENT 4

Zoning Map

ATTACHMENT 5

Floor Plan



A VICINITY MAP



B SCOPE OF WORK

SMART & FINAL EXTRAS FOR ROSS DRESS FOR LESS TENANT IMPROVEMENTS IN THE BUILDING AND PAVING TRUCK SPACE FOR SMART & FINAL AND ROSS DRESS FOR LESS. SMART & FINAL AND ROSS DRESS FOR LESS TO BE PROVIDED BY ROSS DRESS FOR LESS. SMART & FINAL AND ROSS DRESS FOR LESS TO BE PROVIDED BY ROSS DRESS FOR LESS. SMART & FINAL AND ROSS DRESS FOR LESS TO BE PROVIDED BY ROSS DRESS FOR LESS.

C PROJECT INFORMATION

BUILDING CODES		
2019 CALIFORNIA BUILDING CODE		
2019 CALIFORNIA MECHANICAL CODE		
2019 CALIFORNIA PLUMBING CODE		
2019 CALIFORNIA ELECTRICAL CODE		
2019 CALIFORNIA CODE OF REGULATIONS TITLE 24, PART 6		
2019 CALIFORNIA GREEN BUILDING CODE		
2019 CALIFORNIA ENERGY CODE		
2019 CALIFORNIA FIRE CODE		
CITY OF MADERA MUNICIPAL CODE, ORDINANCES & AMENDMENTS		
SITE		
Truck 1 - Lot 2	GROCERY / Retail Store	
APN:	015-180-019 to 022, 25, & 26	
SITE AREA:	2.27 AC OR +/- 111,848 SF	
ZONING:	LIGHT COMMERCIAL (LC1)	
PARKING		
EXISTING PARKING		
	169	STANDARD
	22	ACCESSIBLE
	28	PARTIAL
TOTAL EXISTING PARKING	219	
BUILDING		
# BUILDING FLOOR AREA	58,833 SF	
Smart & Final Retail	32,181 SF	
Retail, Groceries for Lease	26,652 SF	
NUMBER OF STORES	1 STORY	
CONSTRUCTION TYPE	TYPE V-B	REQUALIFIED
GROUP	M	MERCANTILE
FIRE SPRINKLER SYSTEM	AUTOMATIC FULLY OPEN	ALERTED

ENTITLEMENT PACKAGE

 SMART & FINAL EXTRAS FOR ROSS DRESS FOR LESS MADERA

 CONCEPTUAL FLOOR PLAN

 FP

ATTACHMENT 6

Planning Commission Resolution

RESOLUTION NO. 1943

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA APPROVING CONDITIONAL USE PERMIT 2022-21 (SMART & FINAL ALCOHOL SALES; OFF-SITE ALCOHOL SALES FOR BEER, WINE AND DISTILLED SPIRITS AND INSTRUCTIONAL ON-SITE TASTING) AND ADOPTING A FINDING OF A CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES SECTION 15301 (EXISTING FACILITIES) (SMART & FINAL - 2237 WEST CLEVELAND AVE. STE. 101)

WHEREAS, Rhino Investments, Sanjiv Chopra (“Owner”) owns APN 013-160-021 in Madera, California (“site”) and has authorized Kevin Le, Le Architecture (“Applicant”) to submit an application for alcohol sales and on-site instructional alcohol tastings on the site; and

WHEREAS, the 1.59-acre site contains an existing commercial building that has been used for food retail sales such as groceries to be occupied by Smart & Final; and

WHEREAS, the Applicant is seeking a Conditional Use Permit (CUP) to allow for off-site beer, wine, and spirits sales (Type 21 ABC license) and instructional on-site tasting on the premises (Type 86 ABC license) as proposed by CUP 2022-21; 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 of the California Environmental Quality Act (CEQA) Guidelines as the project involves negligible or no expansion of existing facilities; and

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

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

WHEREAS, the Commission received and reviewed CUP 2022-21 at a duly noticed meeting on February 21, 2023; 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 Commission; and

WHEREAS, the Commission now desires to approve CUP 2022-21, with conditions, and adopt a finding of a categorical exemption for the project.

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 Commission finds and determines that the project falls within the Class 1 Categorical Exemption set forth in CEQA

Guidelines Section 15301 as the project involves an existing building previously used for the sale of commercial goods, and the inclusion of additional types of goods (such as beer, wine, and certain tobacco products) would result in negligible or no expansion of the existing building. Furthermore, none of the exceptions to Categorical Exemptions set forth in CEQA Guidelines section 15300.2 apply to this project. As such, the Commission adopts a finding of a Categorical Exemption under CEQA Guidelines section 15301 (Existing Facilities) for this project.

3. Findings for CUP 2022-21 (Smart & Final Alcohol Sales): The Commission finds and determines that there is substantial evidence in the administrative record to support the adoption of CUP 2022-21, as conditioned, as it is consistent with the requirements of the Municipal Code including Section 10-3.13 (Use Permits). The 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:

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

Basis for Finding: The property is zoned C-1 (Light Commercial), which is consistent with the existing General Plan land use designation of C (Commercial). The C-1 district permits the use of commercial facilities selling alcohol subject to the issuance of a use permit. The proposed sale of alcohol is consistent with the intent of the C-1 zone district and the planned land use designation of C (Commercial).

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

Basis for Finding: The project site is suited for commercial sales, including those associated with beer, wine, and distilled spirits (off-sale) as proposed for the Smart & Final and instructional on-site tasting. The subject site is located within a unified commercial shopping center with commercial uses to the east, south, and west. Vacant commercial property is located to the north and residential uses are located to the west across Schoor Avenue. The use is compatible with other existing business that already sell alcoholic beverages in the area, including Walmart (off-site), as well as nearby on-site restaurants. The project is in compliance with CEQA, and would not have any substantial, adverse impacts on the surrounding environment as it is subject to a Categorical Exemption as discussed above.

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.

Basis for Finding: The property site has been previously developed with commercial retail space and includes adequate pedestrian and vehicular facilities to serve the site. As discussed above, the proposed sale of alcohol for off-site consumption and instructional on-site tasting is compatible with surrounding properties and will not have a significant, adverse environmental impact. The Madera Police Department has not provided any comment in opposition to this CUP. The request will not result in a detriment to the health, safety, peace, morals, comfort, or general welfare of people residing or working in the neighborhood.

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

Basis for finding: As noted above, the property site has been previously developed with commercial retail space and includes adequate pedestrian and vehicular facilities to serve the site. No additional public improvements are required to serve the site.

4. Approval of CUP 2022-21: Given that all findings can be made, the Commission hereby approves CUP 2022-21 as conditioned as set forth in the Conditions of Approval attached as Exhibit "A."

5. Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 21st of February 2023, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Chairperson

Attest:

Gary Conte, AICP
Planning Manager

EXHIBIT "A"
CUP 2022-21 (SMART & FINAL ALCOHOL SALES)
CONDITIONS OF APPROVAL
FEBRUARY 21, 2023

Notice to Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to validity of conditions of approval must occur within ninety (90) calendar days after the date of decision. 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 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.

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 CUP 2022-21 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. 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.

GENERAL CONDITIONS

1. All conditions of approval in effect as a result of previous approvals, including SPR 2022-32 for the Smart & Final site will remain in full force and effect, except as specifically altered by the Conditions of Approval contained herein. In the event that a previous condition conflicts with a condition listed herein, the later condition shall apply, as confirmed by the Planning Manager.
2. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.
3. The applicant 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 CUP 2022-21.**
4. CUP 2022-21 shall expire 12 months from date of issuance, unless action is taken to perfect the use as authorized under this permit or the required action is taken to extend the approval before the expiration date (MMC Section 10-3.1311, Termination and Revocation).
5. 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 the sale of alcohol.
6. Approval of CUP 2022-21 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.

Planning Department

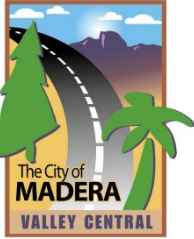
7. The property owner and/or benefactor of the use permit(s) shall comply with all federal, state and local laws. Material violations of any of those laws concerning the use(s) may be cause for revocation of said use permit(s).
8. The use shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by City Staff to be in violation of the conditions, City Staff may schedule a public hearing before the Planning Commission to determine whether revocation of the permit or modification of the conditions of approval is appropriate.

Alcohol Sales

9. Conditional Use Permit 2022-21 allows for the sale of beer, wine, and spirits for off-site consumption in conjunction with a food store (Type 21 ABC license) and instructional on-site tasting in accordance with California Business and Professions Code sections 23396.6 and 25503.56 (Type 86 ABC license).
10. This entitlement requires that a Type 21 ABC license and Type 86 ABC license be obtained and maintained at all times, including compliance with all requirements of such licenses.
11. The sale of alcoholic beverages in conjunction with the store shall be restricted to off-site consumption only. No sale of alcoholic beverages for on-site consumption shall be allowed in or occur as a component of the store, except as specifically provided for under a Type 86 ABC license.
12. There shall be no exterior advertisement or signs of any kind or type placed on the exterior windows of 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.
13. The business owner and/or manager shall regularly monitor the area under its control to prevent loitering of persons about the premises.
14. The business owner/manager shall post signs in the area under its control prohibiting open containers and loitering at the location and stating that no loitering will be tolerated.
15. Digital security cameras shall be installed to monitor the interior and exterior of the premises. The footage shall be maintained in a digital format for no less than thirty days. Footage will be shared with law enforcement upon request.
16. All beer products are to be sold in the manufacturers original packaging, including single containers as packaged by manufacturer.
17. The sale of wine coolers shall be sold in manufacturer multi-pack units.

18. No fortified wine products shall be sold.
19. No display of alcohol shall be made from an ice tub, barrel or similar container.
20. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.

-END OF CONDITIONS-



REPORT TO THE PLANNING COMMISSION

Prepared by:

Adileni Rueda, Assistant Planner

Meeting of: February 21, 2022

Agenda Number: 3

SUBJECT:

1017 East Kennedy Street Variance (VAR 2022-04) and Tentative Parcel Map (TPM 2022-07)

RECOMMENDATION:

Conduct a public hearing and:

1. Adopt a Resolution adopting a Finding of Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) Common Sense approving Variance (VAR 2022-04) and Tentative Parcel Map (TPM 2022-07), subject to the findings and conditions of approval.

PROPOSAL:

An application to subdivide an irregular-shaped unimproved 1.09-acre parcel (APN 005-140-032) located at 1017 East Kennedy Street into four (4) parcels ranging from 6,363 to 21,528 square feet (TPM 2022-07). Application also includes a request for a variance from Madera Municipal Code (MMC), Section 10-3.507 Residential Minimum Site Area Dimensions (VAR 2022-04).

SITE CHARACTERISTICS:

The subject site is an irregular shaped 1.09-acre (47,297 square feet) parcel located north of East Kennedy Street between North Lake Street and Merced Street. The site is an interior lot. East Adell Street, an east-west trending street, crosses the northern section of the subject site (refer to Attachment 1). A single driveway approach is provided on East Kennedy Street. Multiple driveway approaches leading into the subject are present on East Adell Street. There are two driveway approaches on the southside of East Adell Street as well on the northside of East Adell Street. East Adell Street is a complete street in that it provides pavement, curb, gutter, drainage catchments, parkway strip and sidewalks. The East Adell Street improvements extend the length of the project site frontage.

The subject site north of East Adell Street is vacant and fenced. Seasonal grasses are present on the site. The subject site south of East Adell Street is also fenced and is generally vacant with the exception of concrete and fireplace remnants of a former single-family home and its driveway and walkway leading to the former home that once faced East Kennedy Street. The rear portion of the property facing East Adell

Street, south of East Adell Street has and continues to be used as a construction staging and storage site for construction activities associated with single-family homes currently underway to the east of the property along both sides of East Adell Street. Trees and shrubs are present along the properties west and east boundaries, south of East Adell Street. Debris, which appears to have been accumulated over the years, is also present on the property.

The City General Plan Land Use Map designates the subject site LD (Low Density Residential) (refer to Attachment 2). The subject site is zoned R1 (One unit per each 6,000 square feet) (refer to Attachment 3).

Table 1 below provides an overview of the project site location, ownership, site characteristics, and its General Plan and zoning designations.

Table 1: Project Overview	
<i>Project Number:</i>	Variance 2022-04, Tentative Parcel Map 2022-07
<i>Applicant:</i>	Dale G. Mell & Associates
<i>Property Owner:</i>	Sergio Nunez
<i>Location:</i>	1017 East Kennedy Street
<i>Project Area:</i>	1.09 ac (47,297 square feet (sf))
<i>Plan Land Use:</i>	LD (Low Density Residential)
<i>Zoning District:</i>	R1 (One unit per each 6,000 square feet)
<i>Site Characteristics</i>	Property is north of East Kennedy Street, between North Lake Street and Merced Street with part of the lot separated by East Adell Street.

SURROUNDING LAND USES:

The project site is bordered to the north by James Monroe Elementary School, to the east, south and west by single-family homes. Land to the north of the site is planned P&SP (Other Public & Semi-Public Uses) and zoned PF (Public Facilities). Land to the east and west of the project site, north of East Adell Street is planned P&SP and zoned R1 to the west and zoned PD (4500) – Planned Development (One unit per each 4,500 sf of site area). Land to the east and west of the project site south of East Adell Street is planned LD and zoned R1 to the west. East of the project site, parcels abutting East Adell Street are zoned PD 4500 and the parcels abutting East Kennedy Street are zoned R1 (refer to Attachments 2 and 3).

Table 2 below summarizes the existing development/uses, and the General Plan land use designations and zoning districts surrounding the project site.

Table 2: Bordering Site Information			
<i>Direction</i>	<i>Existing Use</i>	<i>General Plan Designation</i>	<i>Zone District</i>
<i>North</i>	James Monroe Elementary School	P&SP – Other Public & Semi-Public Uses	PF – Public Facility
<i>East</i>	Single Family Homes	North of E. Adell St: P&SP South of E. Adell St: LD – Low Density Residential	North of E. Adell St: PD (4500) – Planned Development South of E. Adell St: PD (4500) – Planned Development & R1 – Residential
<i>South</i>	Single Family Homes	LD – Low Density	R1 – Residential
<i>West</i>	Single Family Homes	LD – Low Density	R1 – Residential

SUMMARY:

The applicant, Dale G. Mell & Associates, is requesting a variance and tentative parcel map to subdivide an irregular-shaped unimproved 1.09-acre parcel into four (4) parcels ranging from 6,363 to 21,528 square feet (refer to Attachment 4). The subject property is north of East Kennedy Street between North Lake Street and Merced Street. East Adell Street, an east-west trending street, crosses the northern section of the Parcel.

The applicant is proposing to subdivide Due to the present alignment and right-of-way requirements of East Kennedy as it crosses the existing parcel, the applicant is also requesting a variance from Madera Municipal Code (MMC) residential minimum site area dimensions.

ANALYSIS:

Site History

An east-west 60-foot-wide easement for a public street and public utilities was granted to the City of Madera and recorded on May 29, 2009. The public street is known as East Adell Street. East Adell Street as well as City water, sewer and drainage improvements have been constructed along the entire project site frontage; however, East Adell Street has yet to be accepted by the City. The Street physically separates the northern portion of project site from the larger portion of the site, south of Adell Street. As an easement for the public street purpose, the grant of an easement for East Adell Street did not subdivide the property.

Tentative Parcel Map Review

The MMC establishes procedures for the review and approval of tentative parcel maps (Section 10-2.501). The division of property is also regulated by the California’s Subdivision Map Act (Section 66413 of the California Government Code). MMC Section 10-3.507 establishes standards specific to minimum site area and dimensions.

Pursuant to MMC 10-3.507, interior residential lots shall not be less than 80 ft in depth and have a minimum width of 50 ft. The minimum site area for the creation of new lots in a residential zone is 6,000 square feet.

For the division of four or less parcels, a Tentative Parcel Map is required. The 1.09 acre is proposed to be divided into four (4) parcels at 6,974 sf (Parcel 1), 6,363 sf (Parcel 2), 6,363 sf (Parcel 3), and 21,538 sf (Parcel 4). As proposed, Parcels 2, 3, and 4 all meet the minimum residential site area and dimension requirements pursuant to MMC 10-3.507. Parcel 1, however, does not meet the minimum residential dimension requirements. As proposed, Parcel 1 would have a minimum depth of 69.64 ft. Thus, the approval of TMP 2022-07 is subject to, and only be made with, an approval of a variance.

It is Staff's recommendation the Commission approve TPM 2022-07 subject to the approval of VAR 2022-04 and conditions of approval.

Variance

MMC Sections 10-3.1401 through 10-3.1411 establishes the procedures for the review, approval and termination of variances. In accordance with the MMC, a variance may be issued when practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of the MMC may result from the strict and literal application of any of the provisions of the ordinance. Variances may be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning regulations deprives such property of privileges enjoyed by other property in the vicinity under identical zoning classifications.

Variance Justification

Under MMC 10-3.501, residential lots shall meet the required eighty (80) foot depth and fifty (50) foot width dimension and shall have a minimum 6,000 square feet site area. Of the four proposed parcels, only Parcel 1 does not meet the required 80 ft depth lot requirement.

The granting of the 60 foot wide easement for public street and utilities across the northern section of the existing parcel, which has led to the construction of East Adell Street and public infrastructure and utilities within the easement, coupled with the existing school site (James Monroe Elementary School abutting the parcel to the north, has made impractical for any parcel north of East Adell Street to be afforded the ability to provide a minimum residential lot depth of 80 ft as so prescribed under MMC 10-3.501. Enforcement of said minimum residential lot depth would deprive the property of the privileges enjoyed by other properties now developed in the vicinity with similar lot depth conditions. Approval of VAR 2022-04 would allow for the vacant lot an opportunity to provide for future housing and provide consistency within its surrounding environment.

It is Staff's recommendation the Commission approve VAR 2022-04 subject to the conditions of approval.

ENVIRONMENTAL REVIEW:

Staff performed a preliminary environmental assessment and determined that the project is except under California Environmental Quality Act (CEQA) Guidelines 15061(b)(3) of the Common Sense. The project can be exempt because the project proposes no physical development. The project site is served by all required utilities and public utilities. The approval of this project will not result in any significant effects relating to traffic, noise, air, air quality, or water quality as it is only for a subdivision of parcels and no actual construction.

RECOMMENDATION:

It is recommended that the Planning Commission consider the information presented in this report, and other information presented or made available, in its determination as to whether approval of the variance and tentative parcel map is appropriate given the required findings of approval. The information presented in this report supports conditional approval of VAR 2022-04 and TPM 2022-07. If the Commissioners feel the appropriate findings cannot be made, they should direct staff to return at a later meeting with findings in support of denial.

PLANNING COMMISSION ACTION:

The Commission will be acting on VAR 2022-04 and TPM 2022-07. Staff recommends that the Commission:

1. Adopt a Resolution of the Planning Commission adopting a Finding of Exemption from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) Common Sense Rule for the project and approving VAR 2022-04 and TPM 2022-07, based on, and subject to, the findings and conditions of approval.

ALTERNATIVES:

As an alternative, the Commission may elect to:

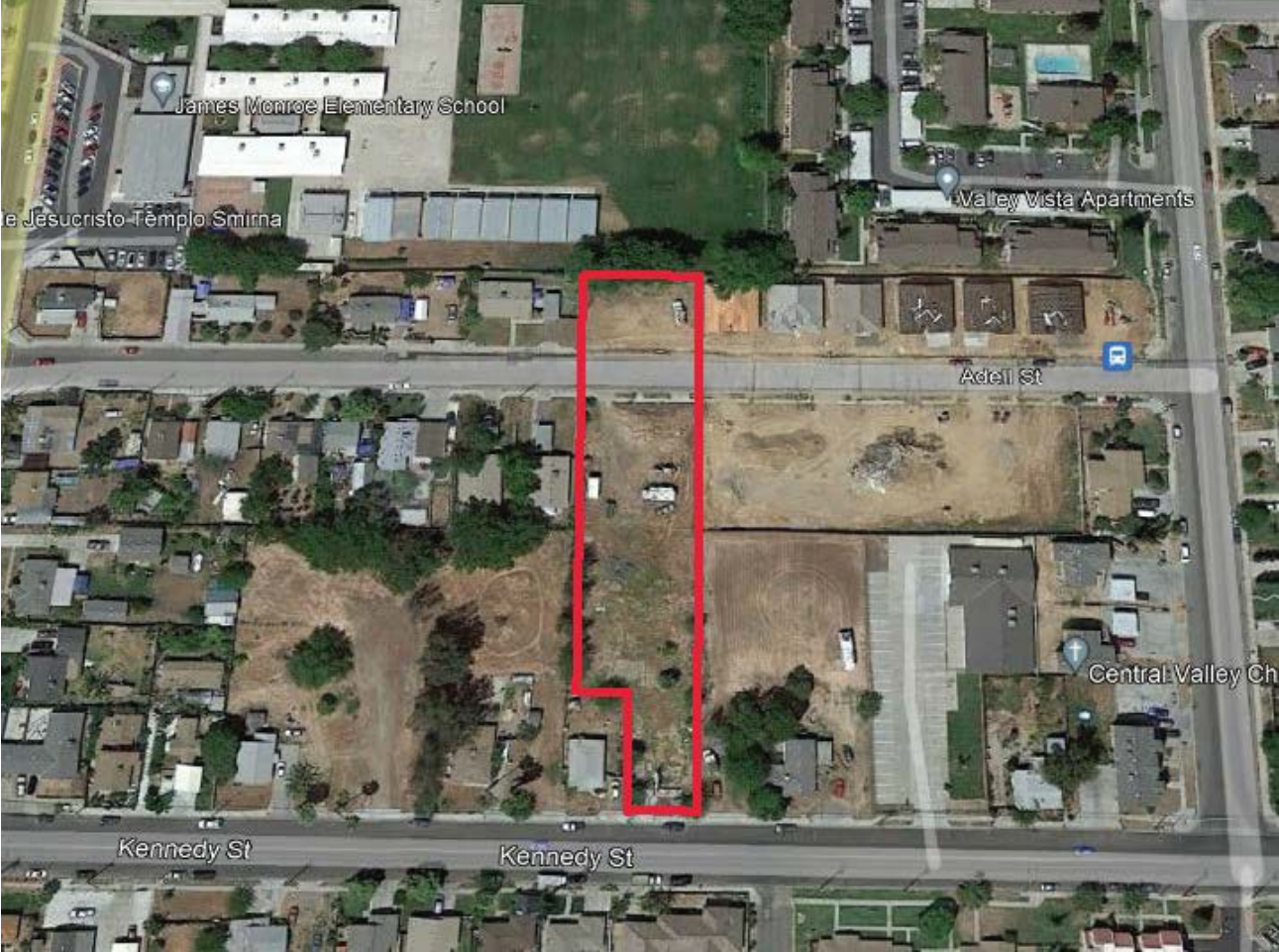
1. Move to continue the public hearing to the March 14, 2023, Planning Commission meeting (Commission to specify and articulate reasons for continuance).
2. Move to deny the request based on specified findings: (Commission to specify and articulate reasons for denial).

ATTACHMENTS:

1. Aerial Map
2. General Plan Land Use Map
3. Zoning Map
4. Tentative Parcel Map
5. Planning Commission Resolution

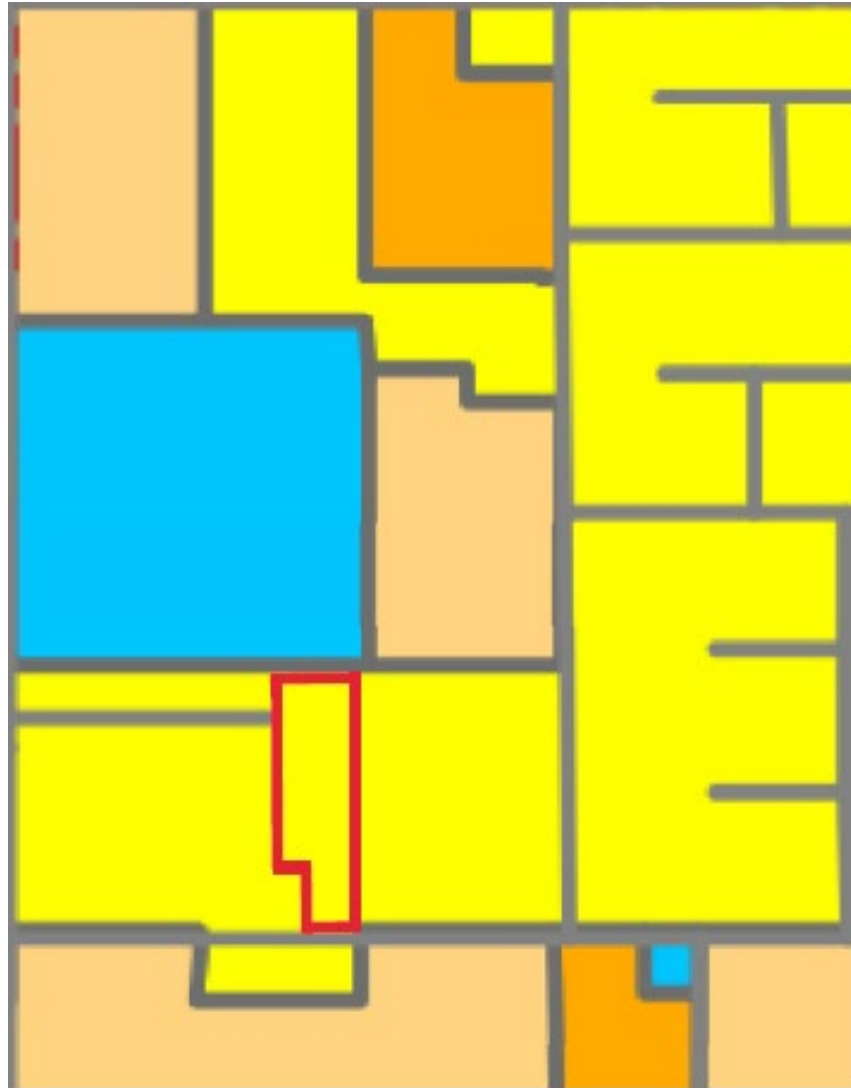
ATTACHMENT 1






Aerial Map



ATTACHMENT 2

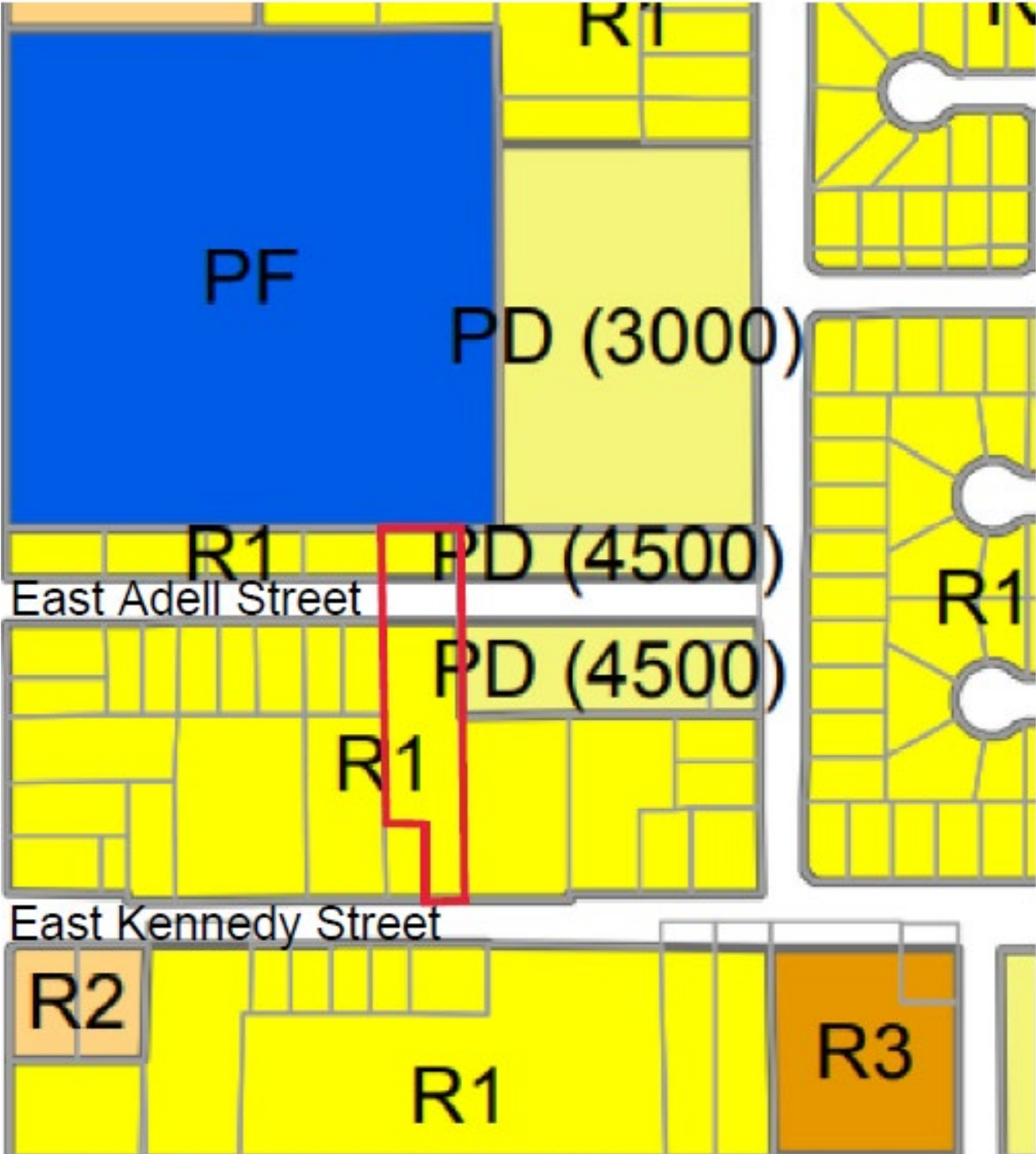
General Plan Land Use Map



-  P&SP - Other Public and Semi-Public Uses
-  VLD - Very Low Density Residential
-  LD - Low Density Residential
-  MD - Medium Density Residential
-  HD - High Density Residential

ATTACHMENT 3

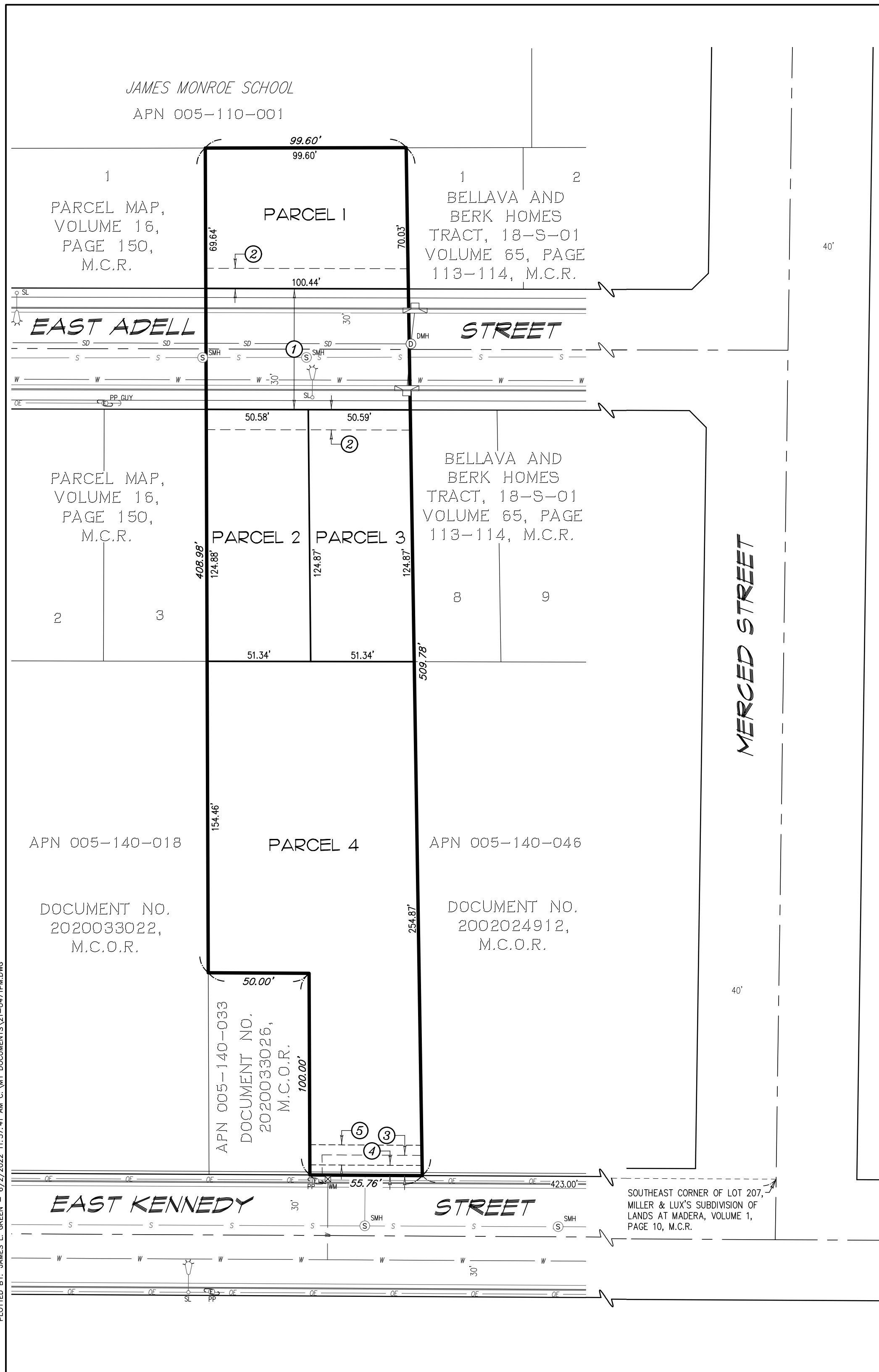
Zoning Map



ATTACHMENT 4

Tentative Parcel Map

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AREA

ORIGINAL PARCEL AREA (GROSS) : 47,297 S.F./1.09 AC
(NET) : 41,248 S.F./0.95 AC

- PROPOSED PARCEL 1 (NET) : 6,974 S.F.
- PROPOSED PARCEL 2 (NET) : 6,363 S.F.
- PROPOSED PARCEL 3 (NET) : 6,363 S.F.
- PROPOSED PARCEL 4 (NET) : 21,538 S.F.

NOTES

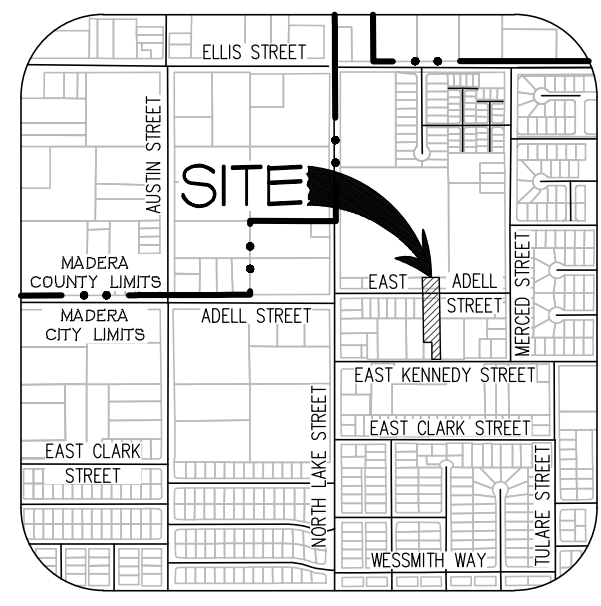
- SITE ADDRESS: 1017 EAST KENNEDY STREET, MADERA, CA 93638
- ASSESSOR'S PARCEL NO.: 005-140-032
- EXISTING ZONING: R1 (RESIDENTIAL-ONE UNIT PER EACH 6,000 S.F.)
- EXISTING GENERAL PLAN: LD (LOW DENSITY RESIDENTIAL)
- EXISTING LAND USE: VACANT
- PROPOSED ZONING: R1 (RESIDENTIAL-ONE UNIT PER EACH 6,000 S.F.)
- PROPOSED GENERAL PLAN: LD (LOW DENSITY RESIDENTIAL)
- PROPOSED LAND USE: SINGLE FAMILY RESIDENTIAL
- NO EXISTING STRUCTURES ON SITE
- PROPOSED IMPROVEMENTS/STRUCTURES WILL BE SIMILAR TO THE EASTERLY ADJOINING SUBDIVISION (BELLAVA AND BERK HOMES TRACT)

EASEMENTS

- EASEMENT FOR PUBLIC STREET AND PUBLIC UTILITY PURPOSES GRANTED TO THE CITY OF MADERA, RECORDED MAY 29, 2009, AS DOCUMENT NO. 2009017738, MADERA COUNTY OFFICIAL RECORDS AND AN EASEMENT FOR DRAINAGE PURPOSES GRANTED TO THE CITY OF MADERA, RECORDED FEBRUARY 10, 1971 IN BOOK 1080 AT PAGE 603, MADERA COUNTY OFFICIAL RECORDS
- 10' EASEMENT FOR PUBLIC UTILITY PURPOSES GRANTED TO THE CITY OF MADERA, RECORDED JULY 29, 2021 AS DOCUMENT NO. 2021023881, MADERA COUNTY OFFICIAL RECORDS
- 10' EASEMENT GRANTED TO THE CITY OF MADERA, RECORDED MAY 3, 1990 AS DOCUMENT NO. 9011019, MADERA COUNTY OFFICIAL RECORDS
- PROPOSED 5' EASEMENT FOR PUBLIC STREET PURPOSES
- PROPOSED 10' EASEMENT FOR PUBLIC UTILITY PURPOSES

LEGEND

- SUBJECT PROPERTY BOUNDARY
- PROPOSED PARCEL LINE BY THIS MAP
- EXISTING EASEMENTS
- PROPOSED EASEMENTS
- CITY-COUNTY LIMITS
- EXISTING WATER MAIN
- EXISTING SEWER MAIN
- EXISTING STORMDRAIN LINE
- EXISTING OVERHEAD ELECTRICAL LINE
- EXISTING STREET LIGHT
- EXISTING POWER POLE
- EXISTING GUY WIRE
- EXISTING WATER METER
- EXISTING SANITARY SEWER MANHOLE
- EXISTING STORMDRAIN MANHOLE
- EXISTING STORMDRAIN CURB INLET



LOCATION MAP

NOT TO SCALE

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE EAST HALF OF THE FOLLOWING DESCRIBED PROPERTY:
ALL THAT PORTION OF LOT 207 IN SECTION 7, TOWNSHIP 11 SOUTH, RANGE 18 EAST, MOUNT DIABLO BASE AND MERIDIAN, OF MILLER & LUX'S SUBDIVISION OF LAND AT MADERA, ACCORDING TO MAP ENTITLED "MAP OF MILLER & LUX'S SUBDIVISION OF LANDS AT MADERA, FRESNO COUNTY, CALIFORNIA", FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF FRESNO, STATE OF CALIFORNIA, IN BOOK 1, PAGES 10 AND 11 OF MAPS, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTH LINE OF SAID LOT 207 WHICH BEARS WEST 423 FEET FROM THE SOUTHEAST CORNER THEREOF, SAID POINT BEING THE SOUTHWEST CORNER OF THE PROPERTY HERETOFORE CONVEYED TO EUFEMIO RODRIGUEZ, ET AL, BY DEED RECORDED IN BOOK 534, PAGE 363, OFFICIAL RECORDS; THENCE WEST ALONG SAID SOUTH LINE 211.5 FEET; THENCE NORTH 508.5 FEET, MORE OR LESS TO A POINT ON THE SOUTH LINE OF THE PROPERTY HERETOFORE CONVEYED TO THE CITY OF MADERA ELEMENTARY SCHOOL DISTRICT; THENCE EAST ALONG SAID LINE 199.2 FEET, MORE OR LESS TO THE NORTHWEST CORNER OF THE PROPERTY HERETOFORE CONVEYED TO SATURNINO MELINDEZ, ET UX, BY DEED RECORDED IN BOOK 532, PAGE 209, OFFICIAL RECORDS; THENCE SOUTH ALONG THE WEST LINES OF THE PROPERTY SO CONVEYED TO SATURNINO MELINDEZ, ET UX, AND EUFEMIO RODRIGUEZ, ET AL, 510 FEET, MORE OR LESS TO THE POINT OF COMMENCEMENT.

EXCEPTING FROM SAID EAST HALF THE WEST 50 FEET OF THE SOUTH 100 FEET THEREOF.

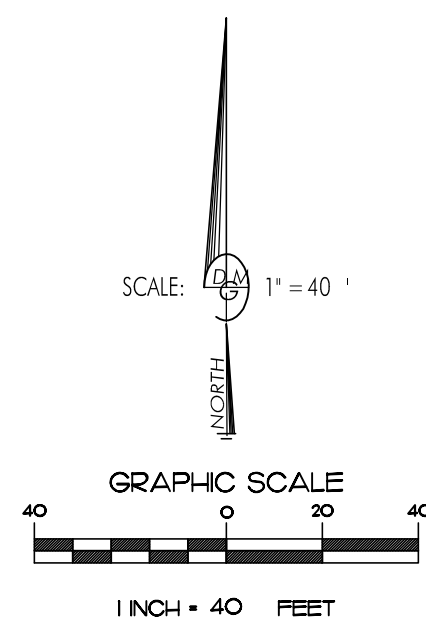
FLOOD ZONE NOTE

ACCORDING TO THE NATIONAL FLOOD INSURANCE RATE MAP FOR THE CITY OF MADERA, MADERA COUNTY, CALIFORNIA, COMMUNITY PANEL NO. 060172 1160 E, MAP NUMBER 06039C1160E, DATED SEPTEMBER 26, 2008, THIS PROPERTY LIES WITHIN THE LIMITS OF FLOOD ZONE X AN AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

OWNER'S CERTIFICATE

WE HEREBY APPLY FOR APPROVAL OF THE DIVISION OF REAL PROPERTY SHOWN ON THIS TENTATIVE PARCEL MAP AND CERTIFY THAT WE ARE THE LEGAL OWNERS OF SAID PROPERTY AND THAT THE INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

DATE: _____
 SERGIO NUNEZ, CEO
 LEGAL OWNER/SUBDIVIDER: SN & DAUGHTERS HOLDINGS, LLC
 26705 AVENUE 18 1/2
 MADERA, CA 93638
 (818) 930-6360



TENTATIVE PARCEL MAP NO. _____

BEING A PORTION OF SECTION 7, TOWNSHIP 11 SOUTH, RANGE 18 EAST, MOUNT DIABLO BASE & MERIDIAN

SITE LOCATION: 1017 EAST KENNEDY STREET, MADERA, CA 93638
ASSESSOR'S PARCEL NO(S): 005-140-032

PREPARED FOR:
BELLAVA CONSTRUCTION LLC
 27019 EDGEWATER LANE
 VALENCIA, CA 91355

PREPARED BY:
DALE G. MELL & ASSOCIATES
 ENGINEERING & SURVEYING SERVICES
 2090 NORTH WINERY AVENUE, FRESNO, CALIFORNIA 93203
 (509) 292-6646 FAX 251-1920 EMAIL: DGM@DALEMELL.COM



JOB # 21-047
 DRAWN BY: M. ESLIMI
 CHECKED BY: DGM
 SCALE: 1" = 40'
 DATE: 11/17/21
 DWG # 21-047TTPM
 FIELD BOOK:
 DATE OF SURVEY:
 LAST REVISED: 06/01/22 • dgm
SHEET 1 OF 1

ATTACHMENT 5

Planning Commission Resolution

RESOLUTION NO. 1944

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA ADOPTING AN EXEMPTION PURSUANT TO CEQA GUIDELINES SECTION 15061(b)(3) (COMMON SENSE) AND APPROVING VARIANCE (VAR 2022-04) AND TENTATIVE PARCEL MAP (TPM 2022-07) (1017 EAST KENNEDY STREET)

WHEREAS, Sergio Nunez (“Owner”) owns APN 005-140-032 located at 1017 East Kennedy Street, Madera, California (“site”); and

WHEREAS, Dale G. Mell and Associates is the “Applicant” of the project (Variance 2022-04 (VAR 2022-04) and Tentative Parcel Map 2022-07 (TPM 2022-07) (“project”); and

WHEREAS, APN 005-140-032 is an irregular-shaped vacant site composed of approximately 1.09 acres zoned R1 (one unit for every 6,000 square feet) with a LD Low Density Residential land use designation; and

WHEREAS, the Applicant is seeking a Tentative Parcel Map (TPM 2022-07) to divide the approximate 1.09 acre (47,297 square foot (sf)) parcel into four (4) separate parcels; and

WHEREAS, the resulting parcels are 6,974 sf (Parcel 1), 6,363 sf (Parcel 2), 6,363 sf (Parcel 3) and 21,538 sf (Parcel 4); and

WHEREAS, the resulting parcels will be interior residential lots; and

WHEREAS, access to the resulting parcels will be provided by the existing driveway approaches on East Adell Street and East Kennedy Street; and

WHEREAS, on May 29, 2009, an easement for a public street and public utilities were granted to the City of Madera and recorded; and

WHEREAS, that public street, East Adell Street, runs through the lot and has altered the northern section of the approximate 1.09 acre parcel; and

WHEREAS, under Madera Municipal Code (MMC) 10-3.507, the creation of each new interior residential lot shall be no less than 80 feet in depth, a minimum width of 50, and shall be a minimum 6,000 sf; and

WHEREAS, the resulting Parcels 2, 3, and 4 meet MMC 10-3.507; and

WHEREAS, the resulting Parcel 4 does not meet the minimum lot depth of 80 ft; and

WHEREAS, the Applicant is seeking a Variance (VAR 2022-04) for resulting Parcel 1 due to the special circumstances that prevent Parcel 1 from meeting the 80 foot depth requirement; and

WHEREAS, the City performed a preliminary environmental assessment and determined the project to meet Exemption Section 15061 (b)(3) (Common Sense) under the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, under the City's Municipal Code, the Planning Commission (Commission) is authorized to review and approve variances and tentative parcel maps and environmental assessments for associated projects on behalf of the City; and

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

WHEREAS, the Commission received and reviewed VAR 2022-04 and TPM 2022-07 at a duly noticed meeting on February 21, 2023; and

WHEREAS, at the February 21, 2023 Commission hearing, the public was provided an opportunity to comment, and evidence, both written and oral, was considered by the Commission; and

WHEREAS, the Commission now desires to adopt a Section 15061(b)(3) Exemption pursuant to CEQA for the project and conditionally approve VAR 2022-04 and TPM 2022-07.

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 in accordance with the California Environmental Quality Act. The Planning Commission adopts findings of Exemption under CEQA Guidelines, Section 15061(b)(3) (Common Sense) for this project because the project proposes no physical development. The project site is served by all required utilities and public utilities. The approval of this project will not result in any significant effects relating to traffic, noise, air, air quality, or water quality as it is only for a subdivision of parcels and no construction. There are no formal plans for development to occur as of now.

3. Findings for VAR 2022-04: The Commission finds and determines that there is substantial evidence in the administrative record to support the approval of VAR 2022-04. 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. *Variances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning regulations deprives such property of privileges enjoyed by other property in the vicinity under identical zoning classifications.*

The site finds itself between a public street, East Adell Street and a public facility, James Monroe Elementary School. The granting and construction of a public street through the property has hindered Parcel 1 from the ability to meet the required depth dimension of 80 ft as so prescribed under MMC 10-3.501. Enforcement of said minimum residential lot depth would deprive the property of the privileges enjoyed by other properties now developed in the vicinity with similar lot depth conditions.

4. Findings for TPM 2022-07: The Commission finds and determines that there is substantial evidence in the administrative record to support the approval of TPM 2022-07. The 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.*

The site has a General Plan land use designation of LD (Low Density Residential and is consistent with its zoning district of R1 (One unit for every 6,000 square feet).

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

The surrounding properties are zoned single-family residential (R1) or zoned in a similar use, such as Planned Development (PD-4500). The site is currently vacant and any future residential development to be built will continue to be consistent with its surroundings.

- 5. Approval of VAR 2022-04 and TPM 2022-07: Given that all the findings can be made, the Commission hereby approves VAR 2022-04 and TPM 2022-07 as conditioned as set forth in the Conditions of Approval attached as Exhibit "A."
- 6. Effective Date: the resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 21st day of February 2023, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Chairperson

Attest:

Gary Conte, AICP Planning Manager

Exhibit "A"
VAR 2022-04 & TPM 2022-07
(1017 East Kennedy Street Parcel Map)
Conditions of Approval
February 21, 2023

NOTICE TO APPLICANT

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project, or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to validity of conditions of approval must occur within ninety (90) calendar days after the date of decision. 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 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.

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 VAR 2022-04 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. Approval for TPM 2022-07 will ultimately be deemed final unless appealed by the applicant to the City Council within fifteen (15) 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.

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.

CONDITIONS OF APPROVAL

1. Approval of this VAR 2022-04 and TPM 2022-07 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 uses.
2. Approval of this tentative parcel map may become null and void in the event that the parcel map or conditions of the site is not completed in accordance with all the conditions and requirements imposed on this tentative parcel map, the zoning ordinance, and all City standards and specifications. This tentative parcel map 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 parcel map. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the parcel map 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 tentative parcel map or subsequent amendments or revisions. These conditions are conditions imposed solely upon the tentative parcel map 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 tentative parcel map, 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 tentative parcel map.
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. This tentative parcel map approval (TPM 2021-07) shall expire twenty-four (24) months from the effective date, unless a final map is recorded in accordance with the Subdivision Map Act and filed with the County Recorder or the required action is taken to extend the approval before expiration date.

6. The applicant 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) business days following approval action on VAR 2022-04 and TPM 2022-07.**
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 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.
9. The property owner, operator, and / or manager shall keep the property clear of all trash, rubbish, and debris at all times.
10. All construction shall cease if any human remains are uncovered, and the Planning Manager, City Engineer and County of Madera Coroner shall be notified in accordance to Section 7050.5 of the California Health and Safety Code. If human remains are determined to be those of a Native American or has reason to believe that they are those of a Native American, the Native American Heritage Commission shall be contacted, and the procedures outlined in CEQA Section 15064.5(e) shall be followed.
11. Approval of VAR 2022-04 and TPM 2022-07 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.

ENGINEERING

Parcel Map

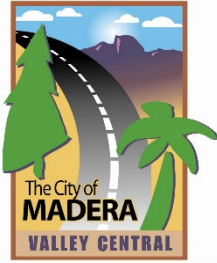
12. The developer shall pay all required fees for processing the parcel map and completion of project. Fees due may include but shall not be limited to the following: parcel map review and processing fee, plan review, map recording, easement acceptance, encroachment permit processing and improvement inspection fees.
13. A final parcel map shall be required in accordance with Section 10-2.502 of the municipal code and the Subdivision Map Act.
14. Future subdivision of parcels created shall comply with the Subdivision Map Act.
15. Monuments shall be placed at all parcel corners and shown on the parcel map in accordance with the California Subdivision Map Act, the California Land Surveyors Act and City Standards prior to development of property.
16. Parcel map preliminary submittal shall include three sets of prints; and two sets of the following: title report, soils report, traverse data, signed tentative parcel map conditions and all referenced deeds, map and documents.
17. Any and all public or private easements on the property identified on the title report shall be shown on the parcel map with recording data.
18. Property lines shall not cross into existing or planned public right of way.
19. Prior to recording of the parcel map, any current, delinquent, or estimated Madera County or Madera Irrigation District taxes for the upcoming assessment year shall be paid in accordance with Subdivision Map Act Section 66492-66494.1.
20. Prior to the construction of improvements within the City right-of-way, an Encroachment Permit shall be required from the Engineering Division.
21. If applicable, all construction of off-site improvements or utility services shall be completed prior to issuance of final occupancy; or, the Subdivider shall either construct or install the required improvements or enter into a bonded secured agreement with the City of Madera providing for the construction of the required improvements and sufficient security prior to the recordation of the final Parcel Map.
22. Further development of any parcel of parcel map shall meet fire, building, and municipal code requirements for the zone and the approved use.
23. Structures or any facility encroaching onto adjacent new parcel shall be removed prior to recording of the parcel map. Structure modification shall comply with building codes and setbacks.
24. A title report dated no more than 30 days prior to recording date of parcel map shall be submitted to the City Engineer for review prior to parcel map recordation.

25. Each newly created parcel shall have a separate water service. Any new or existing connection(s) shall be constructed or upgraded to current City standards including Automatic Meter Reading (AMR) water meter installed within City right-of-way and backflow prevention device installed within private property for non-residential uses. Existing cross lot connections shall be severed.
26. Each newly created parcel shall have a separate sewer service. Any new or existing connection(s) shall be constructed or upgraded to current City standards. Existing cross lot connections shall be severed.
27. The developer shall dedicate sufficient right-of-way to provide 30 feet of right-of-way north and south of road centerline on East Adell Street along project frontage.
28. The developer shall repair or replace all broken or damaged concrete improvements including curb, gutter, drive approaches and sidewalk to current City and ADA standards. Parcels will be limited to one drive approach and shall remove second drive approach and replace with concrete sidewalk. Limits of repairs shall be established by the City Engineering Inspector.

PLANNING

29. Variance 2022-04 (VAR 2022-04) shall allow for a variance to MMC 10-3.507 Residential Minimum Site Area and Dimensions for newly created Parcel 1. Said variance shall only apply to Parcel 1 and only to its compliance with MMC 10-3.507 minimum lot depth. As per VAR 2022-04, the minimum lot depth for Parcel 1 the minimum depth shall not be less than 69 feet. If any major modifications to the original parcel map are to be made, an amendment to TPM 2022-07 will be required.

-END OF CONDITIONS-



REPORT TO PLANNING COMMISSION

Prepared by:

Robert Smith, Senior Planner

Meeting of: February 21, 2023

Agenda Item: 4

SUBJECT:

Precision by Noco Use Permit 2022-35 and Site Plan Review Permit 2022-45.

RECOMMENDATION:

Conduct a public hearing and:

1. Adopt a Resolution adopting a finding of Categorical Exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (existing facilities) and approving Use Permit (CUP) 2022-35 and Site Plan Review Permit (SPR) 2022-45 subject to the findings and conditions of approval.

PROPOSAL:

An application for Use Permit (CUP 2022-35) and Site Plan Review (SPR 2022-45) for consideration to allow for the establishment of a permanent cosmetics beauty use focused on a hair loss solution by way of micro-pigmentation (Precision by Noco) in Suite M of 47th Place West, an existing shopping center located at 1930 Howard Road. The 47th Place West is located on the southeast corner of South Schnoor Avenue and Howard Road. The use will occupy a vacant 970 square foot (ft) tenant unit in an existing commercial building composed of multiple tenants.

Table 1 below provides an overview of the project site location, ownership, site characteristics, and the General Plan and zoning designations.

SUMMARY:

The applicant, Creyonna Packard, is proposing to establish a permanent cosmetics beauty business focused on a hair loss solution by way of micro-pigmentation (micro-blading) (Precision by Noco) in the vacant suite M, within the 47th West Shopping Center. The tenant space faces the shopping center parking area. The rear of the tenant space abuts Modoc Street. The tenant space can be accessed from a covered walkway entrance paralleling the front of the building facing the shopping center's centralized parking area as well as from a covered entrance leading to Modoc Street. On street parking is permitted on Modoc Street. The applicant proposes to provide the following services: permanent cosmetics - micro pigmentation; and associated sales. The range of services is similar to and consistent with a tattoo business operations allowed within the C-1 Light Commercial zoning district subject to a use permit.

Table 1: Project Overview	
<i>Project Number:</i>	CUP 2022-35 and SPR 2022-45
<i>Owner:</i>	Berry & Berry, inc.
<i>Applicant:</i>	Creyonna Packard
<i>Location:</i>	1930 Howard Road, Suite M southeast corner of Howard Road and South Schnoor Avenue (APN 009-361-048 and 053).
<i>Project Area:</i>	Shopping Center is 0.716 acre or 94,213 sf; developed as a commercial shopping center, subdivided into multiple tenants. Suite M is 970 sf.
<i>Plan Land Use:</i>	C (Commercial)
<i>Zoning District:</i>	C-1 (Light Commercial).
<i>Site Characteristics</i>	Commercial shopping center with multiple suites operating as various uses (e.g., bank, restaurants, office, retail). The proposed Suite is M. The parcel is accessed through an approach on South Schnoor Avenue and two approaches on Howard Road.

SURROUNDING LAND USES:

The tenant space immediately adjacent to east of the proposed site (Suite L) is occupied by a sandwich shop (Full-O-Bull) and the tenant space immediately adjacent to the west of the proposed site (Suite O) is occupied by a karate studio. No tenants abut to the rear (west) of the proposed site. The rear of Suite M abuts Modoc Street.

The 47th Place shopping center surrounding land uses include predominantly commercial land uses to the north, east and south on developed parcels containing a variety of existing commercial uses including coffee shops, restaurants, fast food, and retail stores amongst other uses. To the west is the Lions Town and County Park.

Property to the north, across Howard Avenue and west of the shopping center along Howard Avenue are designated C (Commercial) and zoned for commercial uses (C1 Light Commercial). Property immediately to the south, across Modoc Street are also designated C (Commercial) and is zoned C2 Heavy Commercial. Property immediately to the west, across South Schnoor Avenue is designated OS (Open Space) and zoned RCO (Resource Conservation) and is occupied by the City’s Lions Town and Country Park. Table 2 below lists all the immediate uses adjacent to the 47th Place West shopping center.

Table 2. Existing Uses, General Plan Designations, Zone Districts of Surrounding Properties			
Direction from Project site	Existing Use	General Plan Designation	Zone District
North	Commercial	C – Commercial	C-1 – Light Commercial
East	Commercial	C – Commercial	C-1 – Light Commercial
South	Commercial	C – Commercial	C-1 – Light Commercial
West	Open Space	OS – Open Space	RCO – Resource Conservation Area

ANALYSIS:

Site Plan Review

MMC §§ 10-3.4.0101 – 10-3.4.0117 Site Plan Review

Pursuant to the Madera Municipal Code (MMC), 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.

Conditional Use Permit

MMC §§ 10-3.1301 – 10.3.1311 Use Permits

The City's Zoning Ordinance allows for the granting of a use permit by the Commission subject to the Commission being able to make findings that "the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City." If the Commission cannot make the appropriate findings, the development should be denied. Conditions may be attached to the approval of the site plan to ensure compatibility and the provisions are contained within Section 10-3.4.0102 of the MMC. Project design may be altered and on- or off-site improvements required in order to make the project compatible with nearby uses. In addition, the application may be subject to further review, modification or revocation by the Commission as necessary.

Compatibility/Determination of Use

MMC § 10-3.802 C-1 Zones, Uses Permitted, Other Retail Business

Under consideration is a request to allow a permanent cosmetics beauty business focused on a hair loss solution by way of micro-pigmentation - a form of microblading. Microblading is a tattooing technique in which a small handheld tool made of several tiny needles is used to add pigment to the skin. Microblading differs from standard tattooing because each hairstroke is created by hand using a blade which creates fine slices in the skin. This method is typically used on eyebrows to create, enhance, or reshape their appearance in terms of both shape and color.

In the C1 (Light Commercial) Zone District, the Zoning Ordinance allows the Commission to permit "other uses which, in the opinion of the Commission, are of a similar nature," subject to the approval of a conditional use permit. Such uses shall not, under the circumstances of a 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.

A determination of use is necessary whenever the use schedule of the Zoning Ordinance does not provide either an exact identification within the schedule of a proposed use as permitted or a similar identification sufficient to allow for a proposed use based on close similarities and/or compatibility with uses that are specifically identified within the schedule.

The Planning Commission (Commission) in July 2022, approved a determination of use (DOU 2022-01) allowing body art shops, facilities, and similar uses to operate in any C1 (Light Commercial), C2 (Heavy Commercial) or I (Industrial) Zone District based on the following findings:

1. Body art shops and facilities and similar businesses possess operational characteristics that merit the review on a case-by-case basis.

2. Currently, body art shops and facilities have generally been considered a permitted use in commercial zone districts as medical clinics might perform very similar procedures, then body art shops, etc., should also be considered a similar and permitted use.
3. Body art shops and facilities and similar uses within the C1 – Light Commercial, C2 – Heavy Commercial, and I – Industrial zoned districts, subject to the approval of a conditional use permit, are consistent with the Madera General Plan principles, goals, and policies.
4. The allowance for body art shops and facilities and similar uses in the C1 – Light Commercial, C2 – Heavy Commercial, and I – Industrial zoned districts, subject to the approval of a conditional use permit, provides consistency with the Zoning Ordinance.

Precision by Noco services focused on a hair loss solution by way of micro-pigmentation (micro-blading), as proposed, would be categorized as a “similar use” under the provisions established by DOU 2022-01. The provisions are set out within the City of Madera Municipal Code Section 10-3.802, and 10-3.1301.

Operations

The applicant is proposing to establish Precision by Noco, a micro-pigmentation (micro-blading), use within Suite M in the 47th Place West shopping center. The shopping center includes a mix of business types including food, services, professional office uses and other permitted uses.

The business specializes in cosmetic interventions for hair follicle loss. Hours of operation are listed from Monday to Friday from 9:00 AM to 6:00 PM, with an anticipated maximum of 4 customers per day. The suite includes an enclosed storage room and restroom. The arrangement within includes a sales counter and wall to the right of the entry and waiting area capable of accommodating up to four persons to the left of the entry. The micro-pigmentation will be performed in an open common area similar to a beauty salon. Three treatment stations will be provided. Disposal needles, colored pigment and other material will all be stored in locked storage cabinets to located in the breakroom.

In reviewing the use compatibility within 47th Place West shopping center, the proposed Precision by Noco services fits with the various existing light retail and food establishments. As proposed and as conditioned, operations for this proposal are expected to produce very minimal impacts. Staff has determined that the use is compatible with the surroundings businesses.

Parking and Circulation

There are 10 standard parking stalls and one (1) ADA parking stall directly in front of the existing building that serves Suite M and the adjacent units. There are additional parking stalls throughout 47th Place West shopping center that can also be used by Precision by Noco. Off-site parking is also available along Modoc Street. Parking on South Schnoor Avenue and Howard Road are prohibited.

Signage

MMC §§ 10-6.01 – 10-6.21 Sign Regulations

The proposal is subject to Section 10-6.09 of the City’s Sign Regulations. No signs are approved with this site plan review and a separate sign permit must be applied for. Permanent window signage is prohibited, and temporary window signage is subject to the City’s Sign Regulations. Temporary signage, such as for a grand opening, is subject to a separate sign permit independent from any on building or freestanding sign permit issued.

Based on site visits to the property, the applicant has adhered signage onto the Suite windows absent submittal and approval of sign permit. Window signs are subject to an approved sign permit. As such, the present window signs are in violation of the City Sign Regulations. Only the address (street and/or name signs), not exceeding four square ft for commercial uses, is exempt from requiring a sign permit, so long as the sign satisfy all other applicable permitting requirements.

Windows signage is restricted to street and/or name signs, and temporary signs not exceeding 30 days. Temporary window signs, whether painted on, or affixed to, the window surface may not cover more than 60 percent of any single window or series of windows, nor more than 30 percent of the entire surface area of available windows. The total area of window signage shall not be greater than the permanent on-building sign area allowed for the business/use pursuant to MMC 10-6.04.

The applicant has submitted a sign permit request for an on-building sign. The sign permit request is subject to CUP 2022-35 and SPR 2022-45. Project conditions of approval include removal of existing window signage in violation of City Sign Ordinance.

Potential Impacts

Should the conditional use permit and site plan review be approved, the impact of this use on surrounding properties will be minimal. The only continuous impact is the minor increase in traffic and parked vehicles from the additional customers that the proposed use is anticipated to attract but not beyond what was anticipated for the shopping center or uses that have previously occupied this space. As noted above, there are 10 standard parking stalls and one (1) ADA parking stall directly in front of the existing building that serves Suite M and the adjacent units. There are additional parking stalls throughout 47th Place West shopping center. Staff has determined that 47th Place West provides sufficient parking space to accommodate this use.

Other Department and Agency Comments

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

ENVIRONMENTAL REVIEW:

Staff conducted a preliminary environmental assessment and has determined that the project is categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines because the project will occupy an existing building on an existing parcel with existing services and utilities, and no major modifications or expansion to the structure are to occur. Moreover, no expansion of commercial uses will occur. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

COMMISSION ACTION:

The Commission will be acting on the CUP 2022-35 and SPR 2022-45, and the CEQA Categorical Exemption. Staff recommends that the Commission:

1. Adopt a Resolution of the Planning Commission adopting a Finding of Categorical Exemption from CEQA pursuant to CEQA Guidelines Section 15301 for the project and approving Use Permit 2022-35 and Site Plan Review Permit 2022-45, based on and subject to the findings and conditions of approval.

ALTERNATIVES:

As an alternative, the Commission may elect to:

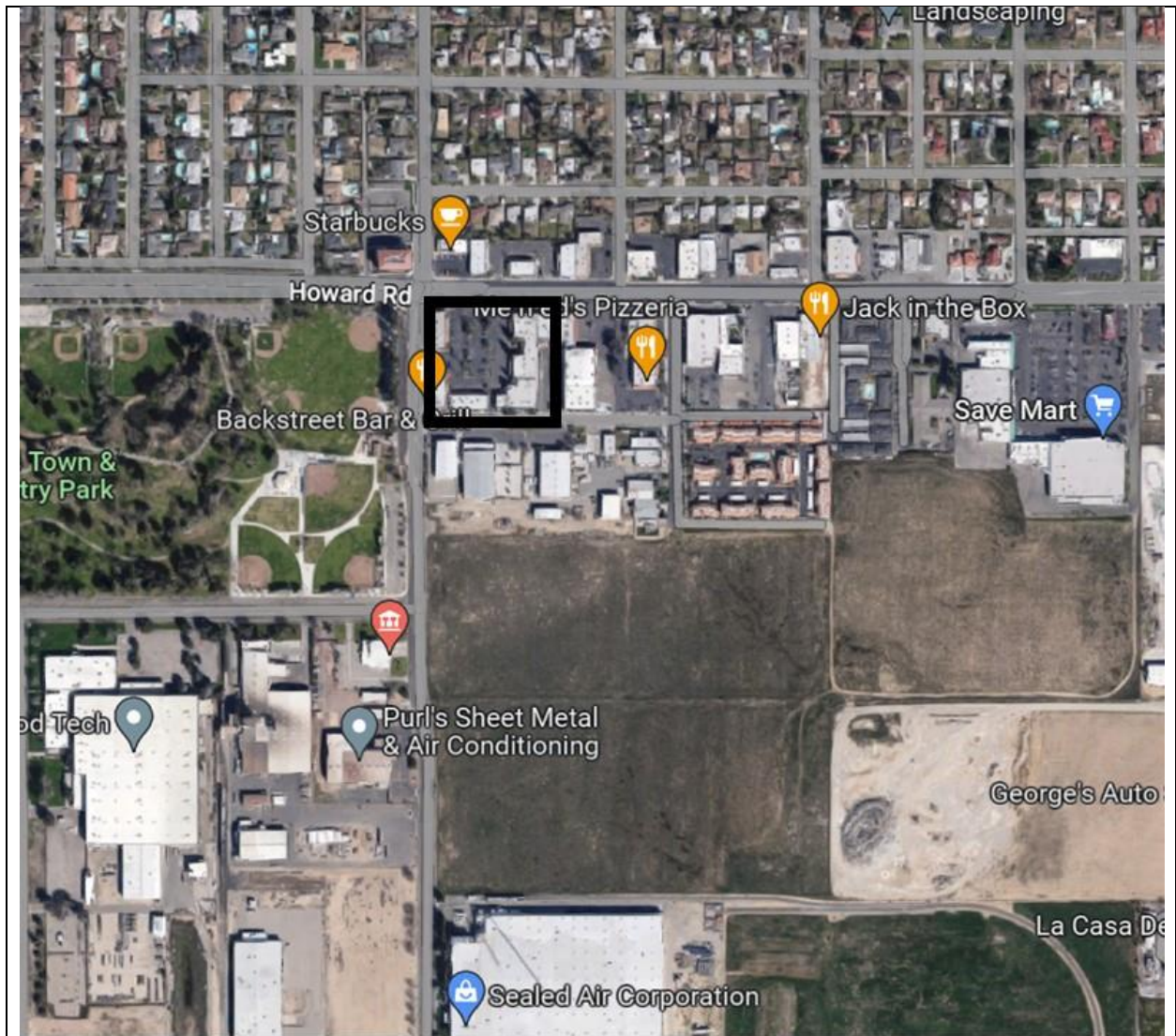
1. Move to continue the public hearing to the March 14, 2023 Planning Commission meeting (Commission to specify and articulate reasons for continuance).
2. Move to deny the request based on specified findings: (Commission to specify and articulate reasons for denial).

ATTACHMENTS:

1. Vicinity Map
2. General Plan Land Use Map
3. Zoning Map
4. Proposed Site Plan
5. Planning Commission Resolution

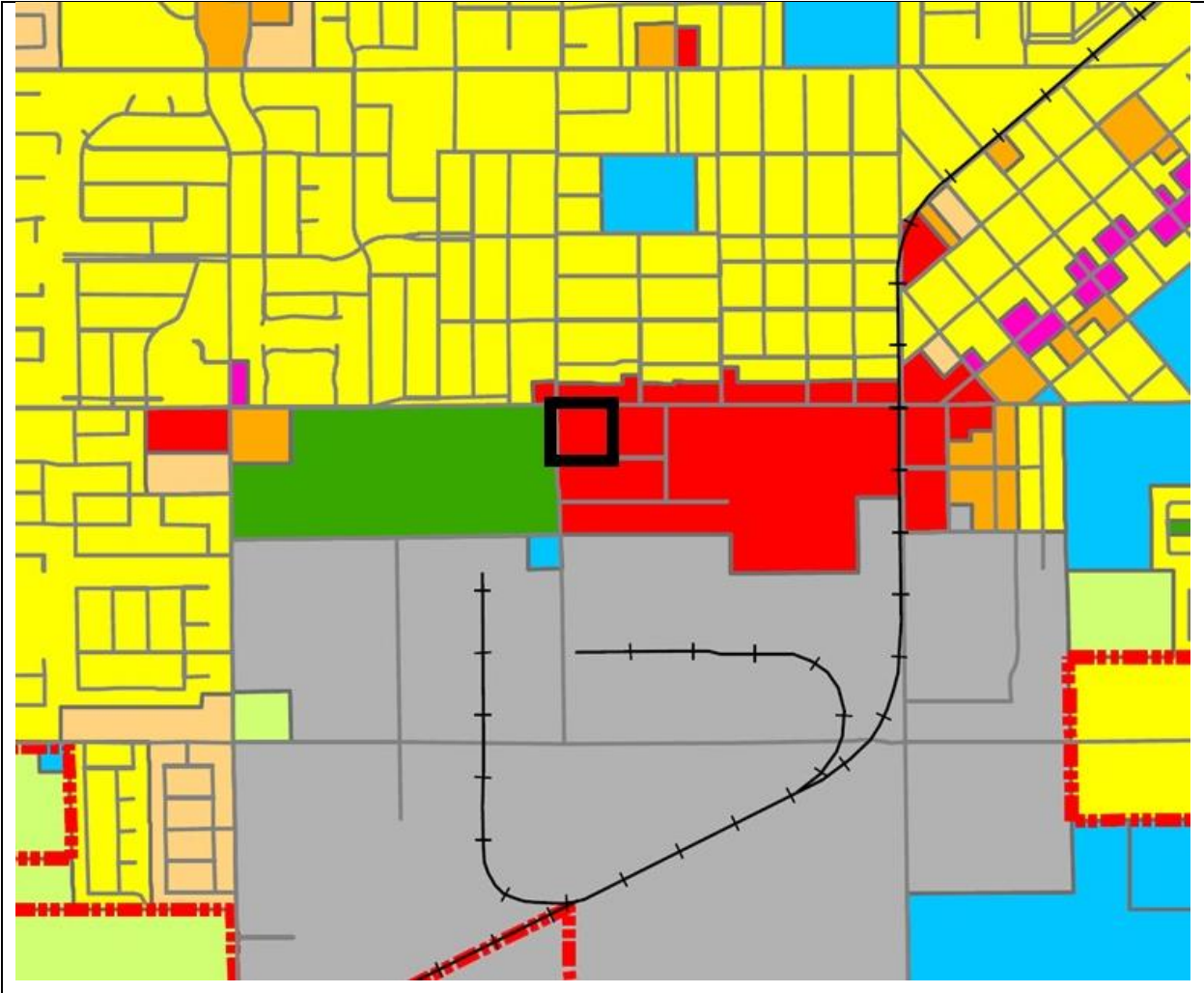
ATTACHMENT 1

Vicinity Map



ATTACHMENT 2

General Plan Land Use Map



ATTACHMENT 3

Zoning Map



ATTACHMENT 4

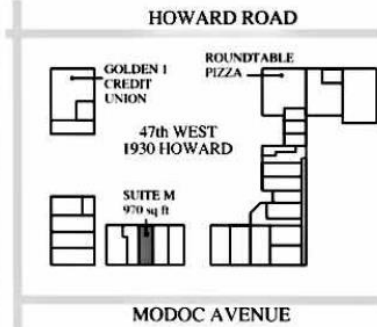
Proposed Site Plan

LEASE RATES

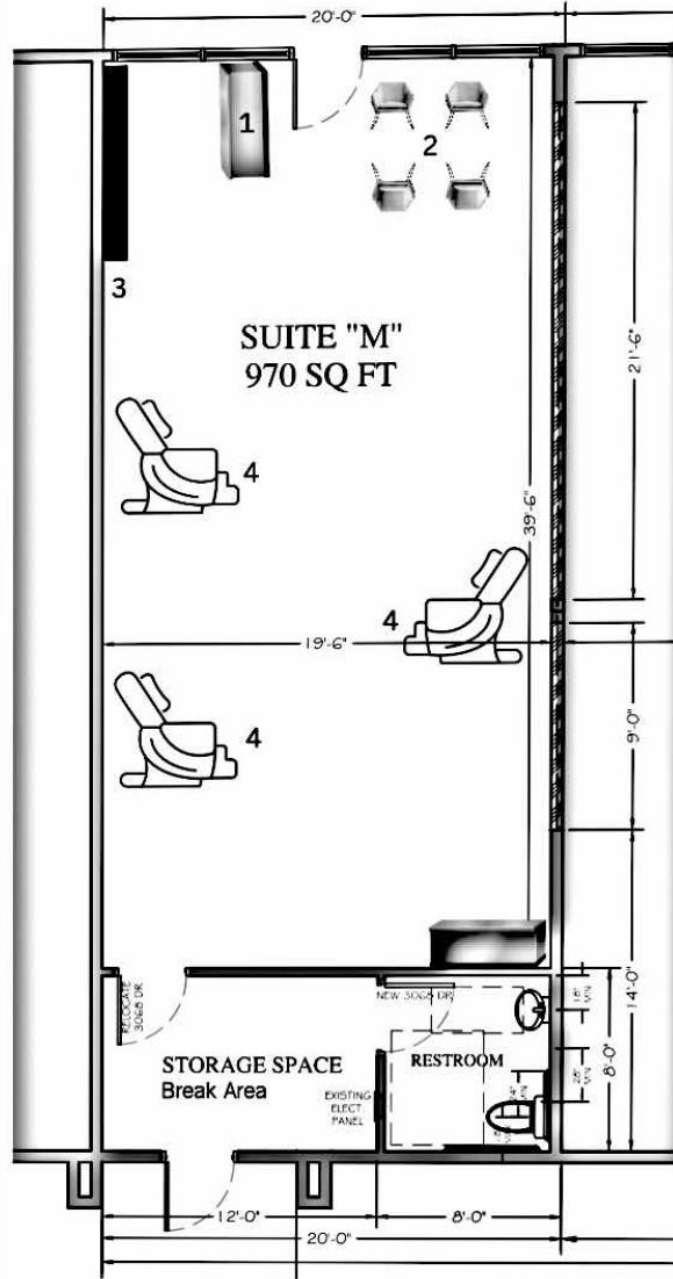
ADDRESS: 1930 Howard Rd, Suite "M"
ZONING: "C1" (Commercial / Retail)
SUITE SIZE: 970 SQ FT total

- 1- Sales Counter
- 2- Waiting Area
- 3- Sales Wall
- 4- Treatment Center

SUITE MAP



1930 HOWARD ROAD
47th WEST SHOPPING CENTER
SUITES "M" (970 SQ FT)



COMMERCIAL SPACE - 970 SQ FT
1930 HOWARD RD, Ste "M"
MADERA, CALIFORNIA 93637

Berry
BUILDER • DEVELOPER
413 W. VOSEMITTE AVE - MADERA, CA - 93637
PH: 559-674-2491 FAX: 559-674-1154
Visit: berrydevelopment.com contact: rudy@berrydevelopment.com

ATTACHMENT 5

Planning Commission Resolution

RESOLUTION NO. 1945

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA
ADOPTING CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES
SECTION 15301 (EXISTING FACILITIES) APPROVING USE PERMIT (CUP 2022-35)
AND SITE PLAN REVIEW (SPR 2022-45), (PRECISION BY NOCO – 1930 HOWARD
ROAD, SUITE M)**

WHEREAS, Berry and Berry, INC (“Owner”) owns 47th Place West Shopping Center located at 1930 Howard Road in Madera, California (“site”); and

WHEREAS, the site is an existing commercial shopping center planned for an surrounded by Commercial land uses; and

WHEREAS, the applicant, Creyonna Packard, is seeking a Use Permit and Site Plan Review to allow for the use of a permanent cosmetics beauty business focused on a hair loss solution by way of micro-pigmentation (micro-blading), as proposed by CUP 2022-35 and SPR 2022-45 at 1930 Howard Road, Suite M; and

WHEREAS, the applicant’s micro-pigmentation (micro-blading) services is categorized as a similar use to that of a body art shop, in accordance with Determination of Use (DOU) 2022-01; and

WHEREAS, body art shop and facilities are allowable uses in C1 – Light Commercial zone districts subject to a use permit, in accordance with DOU 2022-01; and

WHEREAS, the use, as conditioned, is compatible with all the surrounding uses in 47th Place West Shopping Center; and

WHEREAS, a Categorical Exemption under the California Environmental Quality Act (CEQA) guidelines, Section 15301 (Existing Facilities) has been prepared for the proposed project in accordance with CEQA, Public Resources Code Section 21000 et. Seq.; and

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

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

WHEREAS, the Commission received and reviewed CUP 2022-35 and SPR 2022-45 at a duly noticed meeting on February 21, 2023; 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 Commission; and

WHEREAS, the Commission now desires to adopt a Categorical Exemption for the project pursuant to CEQA and approve CUP 2022-35 and SPR 2022-45

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

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

2. CEQA Recommendation: 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 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 and exterior changes involving negligible or no relative expansion of use. 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 2022-35: The Commission finds and determines that there is substantial evidence in the administrative record to support the approval of CUP 2022-35, as conditioned. The 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:

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

The General Plan designates the subject site for commercial uses and is consistent with its zoning district of C1 – Light Commercial. CUP 2022-35 is found to be consistent with all regulations set forth by MMC § 10-3.405 (Uses).

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

The project site is suited for commercial uses. The proposal is for an existing building zoned commercial and is surrounded by like uses to the north, east, and south of the property. As conditioned, the use 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.*

The proposed use will not result in a detriment to the health, safety, peace, morals, comfort, or general welfare of persons or property in the surrounding area. The operations of this proposal have been conditioned by staff to mitigate any potential concerns related to the use operations. These conditions ensure that the general welfare and safety of the surrounding uses and the City at large are not negatively impacted. The surrounding uses are also similar in nature and therefore a micro pigmentation (microblading) use at this location will not be detrimental or injurious to property and improvements in the neighborhood.

4. Approval of SPR 2022-45: The Commission finds and determines that there is substantial evidence in the administrative record to support the approval of SPR 2022-45, as conditioned. The

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:

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

The site is zoned C1 – Light Commercial which is consistent with the General Plan designation of Commercial. The project consists of the renovation of the existing Suite M for micro-pigmentation (micro-blading) services. The intended use is consistent with the intent and purpose of the C-1 zone, and the conditions of approval ensure the project does not conflict with any City standards or Municipal Code requirements.

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

The property is not located within the boundary of a specific plan.

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.*

The proposed project has been found to be consistent with surrounding uses. Conditions of approval will ensure improvements are made and adequate parking spaces are provided such that traffic and pedestrian safety are maintained. The proposed plan and associated activities will not generate an excessive amount of light, noise, or traffic.

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

The proposed project will install on-site improvements consistent with City standards. As conditioned, adequate parking is provided, and vehicular access is arranged such that traffic and pedestrian safety are maintained. The proposed uses will not have a significant impact on traffic or cause significant degradation to the surrounding environment.

5. Approval of CUP 2022-35 and SPR 2022-45: Given that all findings can be made, the Planning Commission hereby approves CUP 2022-35 and SPR 2022-45 as conditioned and set forth in the Conditions of Approval attached as Attachment A.

Effective Date: This resolution is effective immediately.

* * * * *

Passed and adopted by the Planning Commission of the City of Madera this 21st day of February 2023, 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 2022-35 and SPR 2022-45

EXHIBIT "A"
CUP 2022-35 & SPR 2022-45 (PRECISION BY NICO)
CONDITIONS OF APPROVAL
FEBRUARY 21, 2023

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 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.

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 CUP 2022-35 will ultimately be deemed mandatory unless appealed by the applicant to City Council within fifteen (15) days after the decision of the Planning Commission, and all discretionary conditions of approval for SPR 2022-45 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.

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, successors-in interest, lessee, operator, or any other person or entity making use of this permit. Furthermore, "project site" refers to the portions of 1930 Howard Road that are being developed under CUP 2022-35 and SPR 2022-45. The following conditions apply only to these portions of the subject site, unless specifically noted otherwise.

CONDITIONS OF APPROVAL

General Conditions

1. The applicant's failure to utilize CUP 2022-35 and SPR 2022-45 within one year following the date of this approval shall render the conditional use permit null and void unless a written request for an extension has been submitted to and approved by the (Commission).
2. CUP 2022-35 and SPR 2022-45 may be made null and void without any additional public notice or hearing at any time upon both the benefactors of the use permit and the owner(s) of the property voluntarily submitting to the City a written request to permanently extinguish the conditional use permit.
3. CUP 2022-35 and SPR 2022-45 shall be subject to periodic reviews and inspection by the City to determine compliance with the conditions of approval and applicable codes. If at any time, the use is determined by staff to be in violation of the conditions of approval, staff may schedule a public hearing before the Commission within 45 days of the violation to consider revocation of the permit.
4. The applicant 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 to the City of Madera Planning Department no later than three (3) days following action.**
5. CUP 2022-35 shall expire 12 months from date of issuance, unless positive action to utilize the CUP or a written request for extension has been submitted to the Planning Commission before the expiration of the CUP (MMC Section 10-3.1311, Termination and Revocation).
6. SPR 2022-45 shall expire one year from date of issuance unless positive action is taken on the project as provided in the Madera Municipal Code (MMC) or required action is taken to extend the approval prior to the expiration date (MMC Section 10-3.4.0114, Lapse of Site Plan Approval).
7. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.
8. 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 or business license, as determined appropriate by the City of Madera Planning Department.

9. Minor modifications to the approved plans necessary to meet regulatory, engineering, or similar constraints may at the discretion of the Planning Manager without an amendment to CUP 2022-35 and/or SPR 2022-45. However, should the Planning Manager determine that modifications are substantive, he/she may require that an amendment to CUP 2022-35 and/or SPR 2022-45 be filed for review and approval through the applicable City process.
10. Deferrals are not permitted for any condition included herein, unless otherwise stated or unless approved by the City Council, through a separate deferral process.
11. Approval of CUP 2022-35 and SPR 2022-45 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.

12. The property owner, operator, and/or manager shall operate in a manner that does not generate noise, odor, blight, or vibration that adversely affects any surrounding properties.

Building Department

13. A building permit is required for all improvements. The tenant space must meet the requirements of the California Building Code, California Fire Code, and Americans with Disabilities Act prior to occupancy.
14. Current State of California and federal handicap requirements shall apply to the entire site and all structures and parking thereon. Compliance shall be checked at the permit stage and shall be confirmed at final inspection.
15. Interior work must comply with California Building Code Chapter 11 accessibility.

Engineering Department

General

16. Nuisance onsite lighting shall be redirected as requested by City Engineer within 48 hours of notification.
17. Developer shall pay all required fees for completion of project. Fees due may include but shall not be limited to the following: plan review, easement acceptance, encroachment permit processing and improvement inspection fees.
18. Improvements within the City right-of-way require an Encroachment Permit from the Engineering Division.

Water

19. New or existing water service connection(s) shall be constructed or upgraded to current City standards including Automatic Meter Reading (AMR) water meter installed within City right-of-way and backflow prevention device installed within private property. Each parcel shall have a separate domestic water service.
20. Existing water service connections that will not be used for the project shall be abandoned at the mains per City of Madera standards.

Sewer

21. New or existing sewer service connection(s) shall be constructed or upgraded to current City standards. Each parcel shall have a separate sewer service.
22. 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

23. The developer shall repair or replace all broken or damaged concrete improvements including curb, gutter and sidewalk to current City and ADA standards. Limits of repairs shall be established by the City Engineering Inspector.
24. The developer shall construct ADA accessible sidewalk along the project frontage on Modoc Street per City standards to maintain an unimpeded path of travel at all times.
25. If the applicant believes that a hardship waiver is applicable based on the cost of ADA improvements in relation to overall project costs, a request for waiver may be submitted for consideration and an ultimate determination by the City.

Fire Department

26. One, 2A10BC rated fire extinguisher is required for every 3,000 square feet of floor area.
27. A new key is required for the existing key box if the locks are re-keyed.
28. Egress door hardware shall comply with the California Building Code, Chapter 10.

Planning Department

General

29. The project site shall be developed in conformance with the site plan as reviewed and approved under CUP 2022-35 and SPR 2022-45. 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 CUP 2022-35 and SPR 2022-45. However, should the Planning Manager determine that modifications are substantive, he/she may require that an amendment to CUP 2022-35 and SPR 2022-45 be filed for review and approval through the applicable City process.

30. Any proposed future modifications to the site, including, but not limited to, the building structural exteriors, parking/loading areas, shall require an amendment to CUP 2022-35 and SPR 2022-45.
31. All on-site improvements shall be completed prior to final building inspection and shall be completed in conformance with CUP 2022-35 and SPR 2022-45 to the satisfaction of the City of Madera prior to issuance of a certificate of completion.
32. 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.
33. The applicant shall operate in a manner that does not generate significant noise, odor or vibration that adversely affects any adjacent properties.
34. On-site vandalism and graffiti shall be corrected per the Madera Municipal Code.
35. The property owner, manager and the applicant shall keep the property clear of all trash, rubbish and debris at all times; dumping of refuse shall be restricted to the dumpster/refuse containers belonging to the subject property.
36. The applicant shall comply with all federal, state and local laws. Material violations of any applicable laws concerning the use will be cause for revocation of this permit.

Conditional Use Permit 2022-35

37. CUP 2022-35 allows for the establishment of a micro-pigmentation (micro-blading) within Suite H of the 47th Place West shopping center located at 1930 Howard Road.
38. The applicant and/or successors-in-interest of Precision by Noco business shall operate consistent with the approved operational statement. Any significant alterations and/or expansions of the use is subject to an amendment of CUP 2022-35 and SPR 2022-45.
39. The business hours are from 9:00 a.m. to 6:00 p.m., Monday through Friday.
40. No one under the age of 18 years old shall be permitted to enter the premise without a parent or legal guardian.
41. No one under the age of 18 years old shall permitted to be an employee.
42. Business owner/operator shall be responsible for the conduct of persons employed or retained by the business while on the business premises or while otherwise providing service on behalf of the business.
43. All services shall be confined entirely within the building and all service areas shall not be visible from public view.
44. All equipment used for micro-pigmentation (micro-blading) and related services shall be kept clean and sanitized at all times.

45. All equipment used for micro-pigmentation (micro-blading) and related services shall only be accessible to employees of the establishment.
46. Business shall comply with all federal, state and local laws and regulations, including without limitation to provisions of the California Health and Safety Code.
47. Criminal acts occurring on the premise and/or related to the business, whether or not committed by the business owner, operator and/or employees of the business, shall be reviewed by the Police Department and shall be grounds for revocation of the use permit by the Commission
48. It shall be a violation of CUP 2022-35 to promote and/or affiliate with any member of a criminal organization. Members of a criminal organization shall not be permitted to loiter near or upon the business.

Landscaping

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

Signage

50. All signage shall be in compliance with the Sign Regulations of the City of Madera.
51. Applicant shall remove existing window signage not in conformance with the City Sign Regulations including, but not limited to, temporary or permanent signs painted on, and/or affixed to, the window surface greater than 60 percent of any single window or series of windows or greater than 30 percent of the entire surface area of available windows prior to issuance of a business license.
52. Total area of window signage (temporary and permanent combined) in conjunction with any on-building sign(s) shall not exceed the allowable on-building sign area permitted for Suite M (one (1) square foot per linear foot of occupancy frontage, not to exceed a maximum of 75 square feet).

Madera County Environmental Health Department

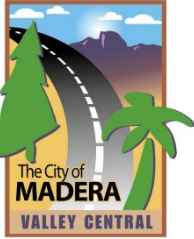
53. The applicant, operator and/or successor-in-interest shall obtain an Operating Permit for a body art facility and register as a small quantity medical waste generator. Said Operating Permit shall be secured prior to issuance of a City of Madera Business License.

END OF CONDITIONS

RETURN TO AGENDA

CUP 2022-19 & SPR 2022-28 – Pure Essence Massage

Staff is requesting this item be continued to the March 14, 2023 Planning Commission meeting.



REPORT TO THE PLANNING COMMISSION

Prepared by: James Troyer, Contract Senior Planner

Meeting of: February 21, 2023

Agenda Item: 6

SUBJECT:

Repeal of Section 10-3.419 of the Madera Municipal Code, Telecommunications, Towers, Antennas and Structures (OTA 2022-02)

RECOMMENDATION:

Conduct a public hearing and:

1. Adopt a Resolution recommending the City Council adopt an ordinance repealing Section 10-3.419 of Title X of the Madera Municipal Code relating to Telecommunication Towers, Antennas and Structures and find the ordinance is not a project subject to CEQA pursuant to CEQA Guidelines Section 15378, and alternatively, exempt from CEQA under CEQA Guidelines Section 15061(b)(3) (Common Sense).

SUMMARY:

On October 19, 2022, the Madera City Council adopted Ordinance No. 995 C.S. adding Chapter 9 of Title X to the Madera Municipal Code (MMC) allowing for new regulations for wireless facilities on private property and Resolution No. 22-174 adopting a policy (Administrative Policy No. AP-69) for small wireless facilities in the public rights-of-way (refer to Attachments 1 and 2). The purpose of the new regulations and policies were to bring the MMC in line with recent Federal and State case law pertinent to wireless facilities and to replace MMC Section 10-3.419 (refer to Attachment 3) which had become out of step with Federal and State law. Chapter 9 lists preferred and discouraged locations to prioritize locations where wireless projects can be approved. Complementing Chapter 9, Administrative Policy No. AP-69 established location standards for wireless in the public rights-of-way. When Chapter 9 of Title X was recommended for adoption to the City Council, the Planning Commission during its public hearing for the ordinance text amendment (OTA 2022-01) was informed that the text amendment was necessitated by changes in State and Federal Law regarding the regulation of Wireless Facilities. Specifically, a new ordinance regulating new Wireless Facilities on private property was needed to make the City code consistent with State and Federal Law and a new policy regulating Wireless projects in the Public Rights-of-way was also legally necessary and was drafted. The addition of Chapter 9 to the MMC and adoption of Administrative Policy No. AP-69 necessitates the repeal of Section 10-3.419 of the MMC to avoid duplicative and obsolete regulations.

ENVIRONMENTAL REVIEW:

The City performed a preliminary environmental assessment in accordance with the California Environmental Quality Act (CEQA) and determined that an ordinance repealing Section 10-3.419 is not a

“project” subject to CEQA per CEQA Guidelines Section 15378 because repealing Section 10-3.419 is a ministerial action that has no potential for resulting in either a direct or physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Alternatively, if the ordinance was a “project” subject to CEQA, it would be exempt from CEQA under CEQA Guidelines Section 15061(b)(3) (Common Sense) because there is no possibility that the project will have a significant impact on the physical environment. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

PLANNING COMMISSION ACTION:

The Commission will be acting on OTA 2022-02. Staff recommends that the Commission:

1. Adopt a Resolution of the Planning Commission recommending the City Council of the City of Madera adopt an ordinance repealing Section 10-3.419 of Title X of the Madera Municipal Code relating to Telecommunication Towers, Antennas and Structures and find the ordinance is not a project subject to CEQA pursuant to CEQA Guidelines Section 15378, and alternatively, exempt from CEQA under CEQA Guidelines Section 15061(b)(3) (Common Sense).

ALTERNATIVES:

As an alternative, the Commission may elect to:

1. Move to continue the public hearing to the March 14, 2023, Planning Commission meeting: (Commission to specify and articulate reasons for continuance).
2. Move to deny the request based on specified findings: (Commission to specify and articulate reasons for denial).

ATTACHMENTS:

1. Ordinance No. 995 C.S., Chapter 9: Wireless Facilities
2. Administrative Policy No. AP-69: Small Wireless Facilities in the Public Rights-of-Way
3. Madera Municipal Code, Title X Section 10-3.419, Telecommunication Towers, Antennas and Structures
4. Planning Commission Resolution

ATTACHMENT 1

Ordinance No. 995 C.S.
Chapter 9: Wireless Facilities

ORDINANCE NO. 995 C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA ADDING CHAPTER 9
TO TITLE X OF THE MADERA MUNICIPAL CODE RELATING TO WIRELESS FACILITIES**

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera (“City Council”) may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

WHEREAS, the federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(B), preserves local government zoning authority as it relates to location and siting of wireless communication facilities, but limits local regulations in three key ways: (1) a local ordinance may not unreasonably discriminate among providers of functionally equivalent services; (2) a local ordinance may not prohibit or effectively prohibit service; and (3) a local ordinance may not regulate based on environmental impacts from radio frequency emissions; and

WHEREAS, the federal Telecommunications Act of 1996, 47 U.S.C. § 253 prohibits state and local requirements that prohibit or effectively prohibit any entity’s ability to provide any telecommunication service but preserves the authority of state and local governments to manage the public right-of-way on a nondiscriminatory basis; and

WHEREAS, Section 7901 of the California Public Utilities Code grants telephone corporations the limited right to use the public right-of-way to the extent necessary to provide services to their customers in a manner that does not incommode the public’s use of the public right-of-way; and

WHEREAS, Section 7901.1 of the California Public Utilities Code bolsters the rights reserved to California local governments under Section 7901 and affirms local authority to manage, on a nondiscriminatory basis, the time, place and manner in which telephone corporations access the public right-of-way and deploy their facilities; and

WHEREAS, the City Council finds this ordinance will, to the extent permitted by federal and California state law, protect and promote public health, safety, and welfare, and also balance the benefits that flow from robust, advanced wireless services within the City’s local values, which includes without limitation the aesthetic character of the City, its neighborhoods, and community; and

WHEREAS, the Planning Commission held a duly noticed public hearing to consider this ordinance on July 26, 2022, at which time all interested parties had the opportunity to be heard, and after said public hearing, the Planning Commission adopted Resolution No. 1930, recommending that the City Council adopt this ordinance; and

WHEREAS, on August 17, 2022, the City Council held a duly noticed public hearing to consider the adoption of this ordinance.

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

SECTION 1. CHAPTER 9 is added to Title X of the Madera Municipal Code to read as follows:

CHAPTER 9: WIRELESS FACILITIES

10-9.01 Purpose and Intent.

10-9.02 Definitions.

10-9.03 Applicability.

10-9.04 Required Permits and Approvals.

10-9.05 Administrative Orders and Regulations.

10-9.06 Permit Applications.

10-9.07 Public Notice.

10-9.08 Approvals, Denials, and Appeals.

10-9.09 Location Standards.

10-9.10 Design Standards.

10-9.11 Standard Conditions of Approval.

10-9.12 Amortization.

10-9.13 Exceptions.

10-9.14 Peer and Independent Consultant Review.

10-9.15 Violations.

Section 10-9.01 PURPOSE AND INTENT.

- (A) The city of Madera (the "city") intends this chapter to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this chapter are intended to, and should be applied to, consistent with federal and state law, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the city's local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This chapter is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the city's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the city's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the city's residents, businesses and visitors.
- (B) This chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the city may not deny under federal or California state law; (6) impose any

unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the city to preempt any applicable federal or California law.

Section 10-9.02 DEFINITIONS.

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (A) **"AMATEUR STATION"** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as "a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications." This term includes amateur radio antennas and related facilities used for amateur radio services.
- (B) **"APPROVAL AUTHORITY"** means the city official or body responsible for application review and vested with authority to approve or deny such applications. The approval authority for a conditional use permit shall be the Planning Commission. The approval authority for a site plan review shall be the Director.
- (C) **"CPUC"** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (D) **"DIRECTOR"** means the Community Development Director of the city of Madera or the Director's designee.
- (E) **"ELIGIBLE FACILITIES REQUEST"** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (F) **"FCC"** means the Federal Communications Commission, as constituted by the Communications Act of 1934, Pub. L. 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (G) **"HISTORIC RESOURCE"** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any "historic resource" as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (H) **"OTARD"** means any "over-the-air reception device" subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (I) **"PERSONAL WIRELESS SERVICE FACILITIES"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), which defines the term as facilities that provide personal wireless services.
- (J) **"PERSONAL WIRELESS SERVICES"** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), which

defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

- (K) **“PLANNING COMMISSION”** means the Planning Commission of the city of Madera as established by the Madera Municipal Code.
- (L) **“RF”** means radio frequency.
- (M) **“SECTION 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (N) **“SHOT CLOCK”** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (O) **“SNALL WIRELESS FACILITY”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(l).
- (P) **“STEALTH”** means concealment techniques that make a wireless facility look like something other than a wireless facility. Stealth concealment techniques include, without limitation: (1) transmission equipment placed completely within existing or replacement architectural features such that the installation causes no visible change in the underlying support structure and (2) new architectural features that mimic or blend with the underlying or surrounding structures in style, proportion and construction quality.
- (Q) **“WIRELESS FACILITY”** means a personal wireless service facility.

Section 10-9.03 APPLICABILITY.

- (A) *General.* This chapter applies to all requests for the city’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities on private property (whether owned by a private party or public entity) within the city’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section.
- (B) *Wireless Facilities on City Property.* This chapter applies to permit applications for wireless facilities on property or structures owned or controlled by the city; provided, however, that this chapter does not govern whether or under what terms and conditions the city would lease, license or otherwise allow a wireless facility on such property or structures.
- (C) *Small Wireless Facilities.* Notwithstanding anything in this chapter to the contrary, all small wireless facilities are subject to a permit as specified in a City Council policy, which may be adopted, amended and/or repealed by a resolution of the City Council. All small wireless facilities shall comply with the City Council’s policy. If the City Council policy is repealed and not replaced, an application for a small wireless facility shall be processed pursuant to this chapter.
- (D) *Eligible Facilities Requests.* Notwithstanding anything in this chapter to the contrary, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 are subject to a City Council policy, which may be adopted, amended and/or repealed by a resolution

of the City Council. All eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall comply with the City Council's policy. If the City Council policy is repealed and not replaced, all eligible facilities requests and other applications submitted for approval pursuant to Section 6409 shall be processed pursuant to this chapter.

- (E) *Other Exemptions.* Notwithstanding anything in this chapter to the contrary, this chapter shall not be applicable to the following:
- (1) Wireless facilities operated by the city for public purposes;
 - (2) Wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or the subscriber's private residence, such as a femto cell or indoor distributed antenna system;
 - (3) OTARD antennas;
 - (4) Antennas and related transmission equipment used in connection with a duly authorized amateur station; or
 - (5) Wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

Section 10-9.04 REQUIRED PERMITS AND APPROVALS.

- (A) *Site Plan Review.* A site plan review, subject to the Director's prior review and approval, is required for all wireless facilities that are located in preferred locations as described in § 10-9.09 and compliant with all applicable design standards in § 10-9.10.
- (B) *Conditional Use Permit.* A conditional use permit, subject to the Planning Commission's prior review and approval, is required for all wireless facilities on private property that are located in discouraged locations as described in § 10-9.09, and do not qualify for site plan review, or require an exception under § 10-9.13.
- (C) *Other Permits and Regulatory Approvals.* In addition to any permit or approval required under this chapter, the applicant must obtain all other permits and regulatory approvals (such as compliance with the California Environmental Quality Act or Madera County Airport Land Use Commission requirements) as may be required by any other federal, state or local government agencies, which includes without limitation any other permits and/or approvals issued by other city departments or divisions. Any permit or approval granted under this chapter or deemed granted or deemed approved by law shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the permit requirement under § 10-9.03(E) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

Section 10-9.05 ADMINISTRATIVE ORDERS AND REGULATIONS.

In addition to the requirements in this chapter, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and/or convenience. All wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

Section 10-9.06 PERMIT APPLICATIONS.

- (A) *Application Required.* The approval authority shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly stated format.
- (B) *Application Fee.* The applicant shall submit the applicable permit application fee adopted by City Council resolution. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the City for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (C) *Application Content.* All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this chapter. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this chapter to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.
- (D) *Application Submittal.* Unless the Director establishes an alternative submittal procedure pursuant to § 10-9.05, all applications must be submitted to the city at a pre-scheduled appointment with the department. Applicants may generally submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The department shall use reasonable efforts to provide the applicant with an appointment within five working days after the department receives a written request and, if applicable, confirms that the applicant complied with the pre-submittal conference requirement. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.

- (E) *Optional Pre-Submittal Conference.* The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all proposed projects that require a conditional use permit. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.

- (F) *Optional Community Meetings.* The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public for applications that require a conditional use permit. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The City seeks to encourage dialogue that may allow applicants to address areas of concern. Community meetings may be conducted before or after submittal.

- (G) *Applications Deemed Withdrawn.* To promote efficient review and timely decisions, any application governed under this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the department within 90 calendar days after the department deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

Section 10-9.07 PUBLIC NOTICE.

- (A) *Public Hearing Notice.* Notice of public hearing shall be given in accordance with § 10-3.1306 of this chapter for any conditional use permit application.

- (B) *Decision Notices.* Within five calendar days after the approval authority acts on an application governed under this chapter or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant. If the approval authority denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial.

All decision notices shall include instructions for how and when to file an appeal.

Section 10-9.08 APPROVALS, DENIALS AND APPEALS.

- (A) *Required Findings.* The approval authority may approve wireless facility applications only when the approval authority makes all the following findings:
- (1) the proposed wireless facility is in a preferred location; or the proposed wireless facility is in a discouraged location and the applicant has demonstrated through a meaningful comparative analysis that no more preferred location or support structure would be technically feasible and potentially available;
 - (2) the proposed wireless facility complies with all applicable development standards in this chapter and any other applicable findings required for the approval, such as § 10-3.1307(B) of this chapter (conditional use permits) or § 10-3.4.0106 of this chapter (site plan review);
 - (3) the applicant has provided a signed statement that indicates its willingness to allow other carriers and site operators to collocate transmission equipment with the proposed wireless facility whenever technically feasible and aesthetically desirable in accordance with applicable provisions in this chapter; and
 - (4) the applicant has demonstrated that the proposed wireless facility will comply with all applicable FCC regulations and guidelines for human exposure to RF emissions and will not, either individually or cumulatively with other transmitters in the vicinity, result in RF exposures that exceed the FCC's maximum permissible exposure level for the general population.
- (B) *Conditional Approvals; Denials without Prejudice.* Subject to any applicable federal or state laws, nothing in this chapter is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any application governed under this chapter as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code, or this chapter.
- (C) *Appeals.* Within 10 days after the approval authority approves or denies any application under this chapter, any interested person may file an appeal in accordance with the provisions in § 10-3.1309 of this chapter for use permits or §§ 10-3.4.0116 and 10-3.4.0117 of this chapter for site plan review; provided, however, that (1) the notice provisions in this chapter shall control over those in § 10-3.1309 of this chapter and (2) appeals from an approval shall not be permitted when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines.

Section 10-9.09 LOCATION STANDARDS.

- (A) *Locations.* To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this subsection describes preferred and discouraged locations for wireless facilities.

(1) *Preferred Locations.* All applicants must, to the extent technically feasible and potentially available, propose new facilities in a preferred location. No alternative sites analysis is required for new stealth facilities proposed in any preferred location. For all other new facilities, the approval authority shall consider whether any more preferred location would be technically feasible or potentially available. The following locations are all “preferred” and ordered from most preferred to least preferred:

- (a) industrial zones;
- (b) commercial zones;
- (c) other non-residential zones;
- (d) Public Facilities zone when not directly adjacent to residentially zoned parcels.

(2) *Discouraged Locations.* Applicants shall not propose to install wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:

- (a) historic resource zones and properties;
- (b) Public Facilities zone when directly adjacent to residentially zoned parcels;
- (c) residential zones.

(B) *Support Structures.* To assist applicants, staff and the approval authority understand and respond to the community’s aesthetic preferences and values, and to mitigate the impact of wireless infrastructure deployment, the city requires wireless facilities to be installed on support structures, ordered from most preferred to least preferred, as follows:

- (1) existing structures with existing wireless facilities;
- (2) existing rooftops;
- (3) existing building façades, signs, water tank/towers, field lights, or other non-tower structures;
- (4) new freestanding structures outside the public rights-of-way.

To the extent that a proposed support structure is not included in this list, the Director may, in the Director’s discretion, determine the level of preference for such structure consistent with the goals and purpose of this subsection.

Section 10-9.10 DESIGN STANDARDS.

(A) *Concealment.* All wireless facilities must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.

- (B) *Overall Height.* All wireless facilities must be compliant with maximum overall height limits applicable to structures on the underlying parcel; provided, however, that a stealth wireless facility may exceed the applicable height limit by not more than 10 feet.
- (C) *Setbacks.* All wireless facilities must be compliant with all setback requirements applicable to structures on the underlying parcel.
- (D) *Fall Zone.* All freestanding towers outside the public rights-of-way must be setback from habitable structures approved for residential occupancy by a distance equal to the tower height. The approval authority may waive the setback requirement for freestanding towers that meet Class 3 structural standards for critical infrastructure as defined in the most current revision of the ANSI/TIA-222 Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures.
- (E) *Noise.* All wireless facilities must be compliant with all applicable noise regulations, which includes, without limitation, any noise regulations in the Madera Municipal Code. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
- (F) *Landscaping.* All wireless facilities proposed to be placed in a landscaped area must include landscape features (which may include, without limitation, trees, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this section. All plants proposed or required must be native and/or drought resistant.
- (G) *Security Measures.* To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
- (H) *Secondary Power Sources.* The approval authority may approve secondary or backup power sources and/or generators on a case-by-case basis. The approval authority shall not approve any permanent diesel generators or other similarly noisy or noxious generators in or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (I) *Lights.* Wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC, other applicable federal or state governmental regulations. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that mitigates illumination impacts on other properties to the maximum extent feasible. Any lights associated with the electronic equipment shall be appropriately shielded from

public view. Any light beacons or lightning arresters shall be included in the overall height calculation.

- (J) *Signage; Decals; Advertisements.* All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (K) *Future Expansion.* To the extent feasible and aesthetically desirable, all new wireless facilities should be designed and sited in a manner that accommodates potential future collocations and other expansions that can be integrated into the proposed wireless facility or its associated structures with no or negligible visual changes to the outward appearance. The approval authority may waive the requirements in this subsection when the approval authority determines future expansions at a proposed wireless facility would be aesthetically undesirable.
- (L) *Utilities.* All cables and connectors for telephone, primary electric and other similar utilities must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. To the extent feasible, undergrounded cables and wires must transition directly into the pole base without any external doghouse. Meters, panels, disconnect switches and other associated improvements must be placed in inconspicuous locations to the extent possible. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost. Microwave or other wireless backhaul is discouraged when it would involve a separate and unconcealed antenna.
- (M) *Parking; Access.* Any equipment or improvements constructed or installed in connection with any wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, wireless facilities should use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements should be the minimum size necessary to reasonably accommodate the proposed use.
- (N) *Compliance with Laws.* All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, City of Madera General Plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- (O) *Towers and Freestanding Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a tower or other freestanding wireless facility:
 - (1) *Tower-Mounted Equipment.* All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its overall visual profile. Applicants must

mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat/neutral colors subject to the approval authority's prior approval.

- (2) *Ground-Mounted Equipment.* All ground-mounted equipment must either be concealed underground, or concealed within an existing or new structure, or other enclosure(s) subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary or appropriate to blend the ground-mounted equipment, enclosure and/or other improvements into the natural and/or built environment.
- (3) *Monopines.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a monopine:
 - (a) *Shape and Branching.* Monopines shall be gradually tapered from bottom to top to resemble the natural conical pine-tree shape, with shorter branches at the top and wider branches at the bottom. All monopines shall include a "crown" or "topper" installed above the monopole to create a natural point at the top. Branches shall begin at no greater than 15 feet above ground level and maintain at least 3.5 branches per vertical foot when averaged between the bottom-most branch and the highest point on the monopole (excluding any "crown" or "topper" installed above the monopole).
 - (b) *Overall Height.* To maintain a natural appearance, a monopine may not exceed more than 10 feet above the average height of mature natural trees within the vicinity. If the applicant plants new natural trees around the proposed monopine, the approval authority shall consider the future mature height of such trees when evaluating compliance with this standard.
 - (c) *Bark Cladding.* The entire tower above any fence line shall be fitted with faux-pine bark cladding, painted or colored with browns or other appropriate earth tones to mimic natural pine bark.
 - (d) *Equipment Concealment.* All antennas, accessory equipment, cross arms, hardware, cables and other attachments to the monopine must be painted or colored with flat greens, browns or other appropriate earth tones to blend into the faux pine branches. All antennas, remote radio units, tower-mounted amplifiers and other similar equipment larger than one cubic foot shall be fitted with a faux-pine "sock" with faux-pine needles. No tower-mounted equipment shall be permitted to protrude beyond the branch canopy such that it would materially alter the tapered pine shape.
 - (e) *Material Selection and Approval.* All materials and finishes used to conceal the monopine shall be subject to prior approval by the department. Applicants shall use only high-quality materials to conceal the wireless facility. The applicant shall use color-extruded plastics for elements such as the faux-pine needles and faux-bark cladding to prolong the like-new appearance and reduce fading caused by exposure to the sun and other weather conditions.

- (P) *Building-Mounted Wireless Facilities.* In addition to all other design requirements in this section, the following provisions shall be applied to an application for a wireless facility installed on a building rooftop or facade:
- (1) *Architectural Integration.* All applicants should, to the extent feasible, propose new non-tower wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and water tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
 - (2) *Rooftop Wireless Facilities.* All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality, architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
 - (3) *Facade-Mounted Wireless Facilities.* When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this subsection. All facade-mounted equipment must be concealed behind screen walls and mounted as flush to the facade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial districts, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade. To the extent feasible, facade-mounted equipment must be installed on the facade(s) along the building frontage that is the least prominent or publicly visible.
- (Q) *Administrative Design Guidelines.* The Director may develop, and from time to time amend, design guidelines consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for city staff, applicants and the public. The design guidelines shall provide more detailed standards to implement the general principals articulated in this chapter and may include specific standards for particular wireless facilities or site locations but shall not unreasonably discriminate between functionally equivalent service providers. The design guidelines, and any subsequent amendments, shall not be effective unless approved by a resolution adopted by the City Council. If a conflict arises between the development standards specified in this chapter and the design guidelines, the development standards shall control.

Section 10-9.11 STANDARD CONDITIONS OF APPROVAL.

- (A) *Standard Conditions.* Except as may be authorized in subsection (B), all wireless facilities approved under this chapter or deemed approved by the operation of law shall be automatically subject to the conditions in this subsection (A) and these conditions shall be deemed to be incorporated by reference to any permit approved or deemed approved by law.

- (1) *Permit Term; Approval Applies to Land.* This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. This permit shall run with the land and shall be valid for the term specified in these conditions of approval. No change in ownership of the wireless facility, the site, or the subject property shall affect the permit term. This permit may not be transferred to another site or property.
- (2) *Permit Renewal.* The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject wireless facility complies with all the conditions of approval associated with this permit and all applicable provisions in this chapter that exist at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this chapter or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.
- (3) *Approved Plans.* Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the “Approved Plans”). The permittee must construct, install and operate the wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, shall be subject to the Director’s prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) *CPUC GO-159A Certification.* Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) *Build-Out Period.* This permit will automatically expire 12 months from the approval date (the “Build-Out Period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (6) *Post-Installation Certification.* Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility approved under this chapter or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (7) *Site Maintenance.* The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) *Compliance with Laws.* The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to a building permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this chapter, any permit, any permit condition or any applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.
- (9) *Adverse Impacts on Other Properties.* The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittees or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise

study by a qualified professional to evaluate the wireless facility's compliance.

- (10) *Inspections; Emergencies.* The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) *Contact Information.* At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator, equipment owner and site manager; and (C) a toll-free telephone number to the wireless facility's network operations center where a live person with power-down control over the wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.
- (12) *Indemnification.* The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.

- (13) *Removal Bond.* Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.
- (14) *Permit Revocation.* Notwithstanding any revocation procedures in Title X, any permit granted under this chapter or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). A permit granted under this chapter or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this chapter or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (15) *Record Retention.* Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may

keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (16) *Abandoned Facilities.* The wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) *Landscaping.* The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (18) *Cost Reimbursement.* The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.

- (19) *Successors and Assigns.* The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
 - (20) *Truthful and Accurate Statements.* The permittee acknowledges that the city’s approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee’s behalf. In any matter before the city in connection with the permit or the wireless facility, neither the permittee nor any person authorized to act on permittee’s behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
 - (21) *City’s Standing Reserved.* The city’s grant or grant by operation of law of a permit pursuant to this chapter does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this chapter.
 - (22) *Severable Conditions.* If any provision in these conditions or such provision’s application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (B) *Modified Conditions.* The City Council authorizes the Director to modify, add or remove conditions to any permit as the Director deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in subsection (A) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with this chapter, generally applicable health and safety requirements and/or any other applicable laws.

Section 10-9.12 AMORITIZATION.

Any nonconforming wireless facilities in existence at the time this chapter becomes effective must be brought into conformance with this chapter in accordance with the amortization schedule in this chapter. As used in this section, the “fair market value” will be the construction costs listed on the building permit or application for the subject wireless facility and the “minimum years” allowed will be measured from the date on which this chapter becomes effective.

Fair Market Value on Effective Date	Minimum Years Allowed
less than \$50,000.....	5
\$50,000 to \$500,000.....	10

The Director may grant a written extension to a date certain when the wireless facility owner shows (1) a good faith effort to cure non-conformance; (2) the application of this section would violate applicable laws; or (3) extreme economic hardship would result from strict compliance with the amortization schedule. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The Director may not grant any permanent exemption from this section.

Nothing in this section is intended to limit any permit term to less than 10 years for any permit granted on or after January 1, 2007. In the event that the amortization required in this section would reduce the permit term to less than 10 years for any permit granted on or after January 1, 2007, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since the city granted such permit. Nothing in this section is intended or may be applied to prohibit any collocation or modification covered under 47 U.S.C. § 1455(a) on the basis that the subject wireless facility is a legal nonconforming wireless facility.

Section 10-9.13 EXCEPTIONS.

- (A) *Preface.* The provisions in this section establish a procedure by which the city may grant an exception to the standards in this chapter but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in subsection (B) in addition to the findings required under § 10-9.08. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- (B) *Findings for an Exception.* The approval authority may grant an exception to any provision or requirement in this chapter only if the approval authority finds that:
 - (1) a denial based on the application’s noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - (2) a provision in this chapter, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (C) *Scope of Exception.* If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this chapter to least extent necessary for compliance with federal or state law.
- (D) *Burden of Proof.* The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant’s request for an exception.

Section 10-9.14 PEER AND INDIVIDUAL CONSULTANT REVIEW.

- (A) *Authorization.* The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written reports, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.
- (B) *Cost Reimbursement.* Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or other construction permit to any applicant with any unpaid invoices.

Section 10-9.15 VIOLATIONS.

Any use or condition caused or permitted to exist in violation of any provision of this chapter shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Title I, Chapter 9 of the Municipal Code, abatement pursuant to §§ 10-3.1601 *et seq.* of this chapter, California Code of Civil Procedure § 731, or any other remedy available to the city.

Section 10-9.16 CONFLICTING PROVISIONS.

To the extent, that any provisions in the Madera Municipal Code Section 10.3.419 are inconsistent with this chapter, this chapter shall prevail.

SECTION 2. *Severability.* If any section, subsection, paragraph, sentence, clause, phrase or term (each a "Provision") in this ordinance or Madera Municipal Code Title X, Chapter 9, or any Provision's application to any person or circumstance, is held illegal, invalid or unconstitutional by a court of competent jurisdiction, all other Provisions not held illegal, invalid or unconstitutional, or such Provision's application to other persons or circumstances, shall not be affected. The City Council declares that it would have

passed this ordinance and Madera Municipal Code Title X, Chapter 9, and each Provision therein, whether any one or more Provisions be declared illegal, invalid or unconstitutional.

SECTION 3. *CEQA.* If this ordinance qualifies as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065, the City Council finds that, pursuant to CEQA Guidelines § 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This ordinance adds regulations related to wireless facilities in a manner that complies with federal regulations. This ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new wireless facility or change to an existing wireless facility would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this ordinance is exempt from CEQA under the general rule.

SECTION 4. *Effective Date.* This ordinance shall become effective thirty days after its adoption.

SECTION 5. *Publication.* The City Clerk is authorized to cause this ordinance or a summary of this ordinance to be published in a newspaper of general circulation in the City of Madera, within fifteen days after its adoption. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted. The ordinance shall become effective thirty days after its adoption.

* * * * *

The foregoing Ordinance No. 995 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 21st day of September 2022 and adopted after a second reading at a regular meeting of the City Council held on 19th day of October 2022 by the following vote:

AYES: Mayor Garcia, Councilmembers Gallegos, Montes, Evans, Mejia and Villegas.

NOES: None.

ABSTENTIONS: None.

ABSENT: Councilmember Rodriguez.

APPROVED:



SANTOS GARCIA, Mayor

ATTEST:



ALICIA GONZALES, City Clerk



ATTACHMENT 2

Administrative Policy No. AP-69
Small Wireless Facilities in the Public Rights-of-Way

CITY OF MADERA Administrative Policy	POLICY NUMBER: AP-69
	ADOPTED: 10/19/22
	REVISED:
	RESOLUTION: Res. 22-174
Subject: Small Wireless Facilities in the Public Rights-of-Way	

CONTENTS

1. PURPOSE AND INTENT.....	3
2. DEFINITIONS.....	4
3. APPLICABILITY.....	6
4. REQUIRED PERMITS AND APPROVALS.....	7
5. ADMINISTRATIVE ORDERS AND REGULATIONS.....	8
6. PERMIT APPLICATIONS.....	8
7. PUBLIC NOTICE.....	10
8. APPROVALS; DENIALS; APPEALS.....	10
9. LOCATION STANDARDS.....	11
10. DESIGN STANDARDS.....	14
11. PRE-APPROVED DESIGNS.....	21
12. STANDARD CONDITIONS OF APPROVAL.....	21
13. EXCEPTIONS.....	30
14. PEER REVIEW AND INDEPENDENT CONSULTANTS.....	30
15. VIOLATIONS.....	31
APPENDIX A – FEDERAL STATUTES.....	32
APPENDIX B – FCC REGULATIONS.....	35
APPENDIX C – STATE STATUTES.....	46

1. PURPOSE AND INTENT

- (a) The City of Madera (the “City”) intends this policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the city’s territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the city’s local values, which include without limitation the aesthetic character of the city, its neighborhoods and community. This policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the city’s visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the city’s environmental resources; (4) protecting and preserving the city’s public rights-of-way and municipal infrastructure located within the city’s public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the city’s residents, businesses and visitors.
- (b) This policy is intended to establish clear procedures for application intake and completeness review. The City Council finds that chronically incomplete applications significantly contribute to unreasonable delay and create barriers to infrastructure deployment. Chronically incomplete applications unfairly prejudice other applicants who may be prepared to submit complete applications for infrastructure in the same or substantially the same location. Chronically incomplete applications also unfairly prejudice the city’s ability to act on such applications within the “presumptively reasonable” timeframes established by the FCC. The provisions in this policy afford applicants and city staff opportunities for direct, real-time communication about completeness issues to mitigate incomplete applications prior to submittal. The provisions in this policy also encourage applicants to timely respond to incomplete notices.
- (c) This policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity’s ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC’s regulations concerning such emissions; (5) prohibit any collocation or modification that the city may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or

anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the city to preempt any applicable federal or California law.

2. DEFINITIONS

All references to codified statutes, regulations or other rules shall be deemed to refer to such statutes, regulations or other rules as they may be amended or superseded.

- (a) **“Accessory Equipment”** means equipment other than antennas used in connection with a small wireless facility. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8).
- (b) **“Amateur Station”** means the same as defined by the FCC in 47 C.F.R. § 97.3, which defines the term as “a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.” This term includes amateur radio antennas and related facilities used for amateur radio services.
- (c) **“Antenna”** means same as defined by the FCC in 47 C.F.R. § 1.6002(b).
- (d) **“Approval Authority”** means the city official or body responsible for application review and vested with authority to approve or deny such applications.
- (e) **“Arterial”** means a street which provides the principle network for traffic flow in the community, connecting areas of major activity to each other and to state highways and important County roads. Arterials will generally include up to four lanes (two in each direction), although total widths of six lanes may be appropriate in some locations. To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “arterial” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3. For purposes of this policy, the streets in the Madera Loop and state highways over which the city exercises jurisdiction qualify as arterials.
- (f) **“City Engineer”** means the city of Madera City Engineer or the City Engineer’s designee.
- (g) **“Collector”** means a street which provides access and movement between residential, commercial, and industrial areas. The primary function of collector streets is to collect and distribute traffic between local streets and the arterial roadway system. Collectors will generally include up to four lanes (two in each direction). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “collector” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (h) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g).

- (i) **“CPUC”** means the California Public Utilities Commission established in the California Constitution, Article XII, § 5, or its duly appointed successor agency.
- (j) **“Decorative Pole”** means any pole that includes decorative or ornamental features, design elements and/or materials for aesthetic purposes.
- (k) **“Director”** means the Community Development Director of the city of Madera or the Director’s designee.
- (l) **“Eligible Facilities Request”** means the same as defined in 47 U.S.C. § 1455(a)(2), and as interpreted by the FCC in 47 C.F.R. § 1.6100(b)(3).
- (m) **“FCC”** means the “Federal Communications Commission”, as constituted by the Communications Act of 1934, Pub. L: 73-416, 48 Stat. 1064, codified as 47 U.S.C. §§ 151 *et seq.* or its duly appointed successor agency.
- (n) **“Historic Resource”** means any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places, the California Register of Historical Resources or any “historic resource” as listed in Table HC-A of the General Plan. The term includes artifacts, records and remains related to or located within such properties. The term also includes properties with traditional religious and/or cultural importance to any Native American tribe.
- (o) **“Local/Branch Collector”** means a single lane street which collects traffic from local streets and feed into the collector and arterial system. Design speeds are lower than for Collector roadways (potentially through the use of meanders, roundabouts, narrower road sections, etc.). To reduce traffic interruptions and improve safety, direct access via driveways is generally not permitted. The term “local/branch collector” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (p) **“Local Street”** means a roadway which provides access to individual homes and businesses. Local streets have one lane in each direction. Local streets are shown on the Circulation Map for informational purposes only; the General Plan does not define the desired alignments of local streets. The term “local street” as used in this policy is defined in the Circulation and Infrastructure Element of the General Plan at Policy CI-3.
- (q) **“Non-Pole Concealment Structure”** means a structure within the public rights-of-way, other than a pole, that can be adapted (either in its current form or through a replacement) to conceal antennas and/or accessory equipment for small wireless facilities. Examples may include, without limitation, monuments, kiosks, bus shelters and other street furniture.

- (r) **“OTARD”** means any “over-the-air reception device” subject to 47 C.F.R. §§ 1.4000 *et seq.*, which generally includes satellite television dishes and certain fixed wireless antennas not greater than one meter in diameter.
- (s) **“Personal Wireless Service Facilities”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii).
- (t) **“Personal Wireless Services”** mean the same as defined in 47 U.S.C. § 332(c)(7)(C)(i).
- (u) **“Prohibited Support Structure”** means any support structure on which the city prohibits the deployment of wireless facilities, except when authorized as a pre-approved design pursuant to this policy. Prohibited support structures include decorative poles; traffic signal poles, cabinets or related structures; new, nonreplacement wood poles; and any utility pole scheduled for removal within 18 months from the time the Director acts on the application for such pole.
- (v) **“Public Right-of-Way”** or **“Public Rights-of-Way”** means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes. The term does not include private or public utility easements unless such easement is reserved for or dedicated to or open to the use by the general public for road or highway purposes.
- (w) **“RF”** means radio frequency.
- (x) **“Section 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a).
- (y) **“Shot Clock”** means the presumptively reasonable time defined by the FCC in which a state or local government must act on an application or request for authorization to place, construct or modify personal wireless service facilities.
- (z) **“Small Wireless Facility”** means same as defined by the FCC in 47 C.F.R. § 1.6002(l).

3. APPLICABILITY

- (a) **General.** This policy applies to all requests for the city’s regulatory authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way within the city’s territorial and jurisdictional boundaries, unless expressly exempted pursuant to this section 3.

- (b) **Small Wireless Facilities on City Property.** This policy applies to permit applications, submitted to the city in its regulatory capacity, for small wireless facilities on property or structures owned or controlled by the city; provided, however, that this policy does not govern whether or under what terms and conditions the city, in its proprietary capacity as the property or structure owner, would lease, license or otherwise allow a small wireless facility on such property or structures.
- (c) **Eligible Facilities Requests.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to eligible facilities requests and/or other applications submitted for approval pursuant to Section 6409.
- (d) **Other Exemptions.** Notwithstanding anything in this policy to the contrary, this policy shall not be applicable to the following:
 - (1) wireless facilities operated by the city for public purposes;
 - (2) small wireless facilities installed completely indoors or within venues and used to extend personal wireless services into a business or subscriber's private residence, such as a femto cell or indoor DAS;
 - (3) OTARD antennas;
 - (4) antennas and related transmission equipment used in connection with a duly authorized amateur station; or
 - (5) wireless facilities or other transmission equipment owned and operated by CPUC-regulated electric companies for use in connection with electrical power, generation, transmission and distribution facilities subject to CPUC General Order 131-D.

4. REQUIRED PERMITS AND APPROVALS

- (a) **Site Plan Review.** All small wireless facilities shall require a site plan review subject to the Director's prior review and approval.
- (b) **Other Permits and Regulatory Approvals.** In addition to a site plan review, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other city departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid site plan approval issued by the city for the proposed small wireless facility. Any application for any ministerial permit(s) submitted without such site plan approval may be denied without prejudice. Any site plan approval granted under this policy shall remain subject to all lawful conditions and/or legal requirements associated with

such other permits or approvals. Furthermore, and to avoid potential confusion, an exemption from the site plan review requirement under section 3(d) does not exempt the same wireless facilities from any other permits or approvals required, which includes without limitation any ministerial permits from the city.

5. ADMINISTRATIVE ORDERS AND REGULATIONS

In addition to the requirements in this policy, the Director may adopt such orders or regulations as the Director deems necessary or appropriate to protect and maintain public health, safety, welfare and convenience. All small wireless facilities must conform to all applicable orders and regulations issued by the Director, unless the Director, in the Director's discretion, grants a prior written waiver to deviate, in whole or in part, any such order or regulation. Waivers by the Director shall be considered and approved or denied on a competitively neutral and nondiscriminatory basis. The Director shall develop and publish guidelines to implement the waivers authorized by this section.

6. PERMIT APPLICATIONS

- (a) **Application Required.** The Director shall not approve any requests for authorization to construct, install, operate, collocate, modify, relocate, remove or otherwise deploy small wireless facilities except upon a complete and duly filed application consistent with this section and any other written rules or requirements the city or the Director may establish from time to time in any publicly-stated format.
- (b) **Application Fee.** The applicant shall submit the applicable permit application fee adopted by City Council resolution. Batched applications must include the permit application fee for each small wireless facility in the batch. If no permit application fee has been adopted, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to submit a deposit estimated by the Director to reimburse the city for its reasonable costs incurred in connection with the application. Should the deposit be inadequate an additional deposit shall be required. If the deposit exceeds the actual costs, the difference will be returned to the applicant.
- (c) **Application Content.** All applications for a permit must include all the information and materials required by the Director for the application. The City Council authorizes the Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Director finds necessary, appropriate or useful for processing any application governed under this policy. All such requirements must be in written form and publicly stated to provide applicants with prior notice. Notwithstanding anything in this policy to the contrary, all applications shall, at a minimum, require the applicant to demonstrate that the proposed project will be in planned compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes and all FCC rules for human exposure to RF emissions.

- (d) **Application Submittal.** Unless the Director establishes an alternative submittal procedure pursuant to section 5, all applications must be submitted to the city during a pre-scheduled appointment. Applicants may submit one application per small wireless facility up to a maximum of five separate applications for small wireless facilities together as a batched application per appointment but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after the city receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
- (e) **Optional Pre-Submittal Conference.** The city shall provide prospective applicants with the opportunity to schedule and attend a pre-submittal conference with city staff. The city encourages pre-submittal conferences for all applications. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process, any latent issues in connection with the proposed or existing small wireless facility, such as compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments and/or divisions responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The city shall use reasonable efforts to provide the applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the city for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (f) **Optional Community Meetings.** The city encourages, but does not require, applicants to schedule, notice, arrange, and attend a voluntary pre-submittal community meeting with all interested members of the public. This voluntary community meeting does not cause the shot clock to begin and is intended to give applicants the opportunity to hear from members of the public regarding the proposed deployment. Applicants should schedule any voluntary community meetings at times and in locations that are conducive to maximizing public participation. Applicants are encouraged (but not required) to bring any draft applications, plans, maps, presentations or other materials to facilitate the public's understanding of the applicant's proposal. Applicants are also encouraged (but not required) to maintain minutes or a comment log of the community meeting. The city seeks to encourage dialogue that may allow applicants to address areas of concern and may lessen the likelihood of appeals of the Director's decision to the City Manager by any interested person or entity. Community meetings may be conducted before or after submittal.

- (g) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed under this policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the city within 90 calendar days after the city deems the application incomplete in a written notice to the applicant. The Director, in the Director's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control.

7. PUBLIC NOTICE

Within five calendar days after the Director acts on an application governed under this policy or before the shot clock expires (whichever occurs first), the Director shall send a written notice to the applicant and any interested person that requests notice of the decision. If the Director denies the application (with or without prejudice), the written notice to the applicant must contain the reasons for the denial. All decision notices shall include instructions for how and when to file an appeal.

8. APPROVALS; DENIALS; APPEALS

- (a) **Initial Administrative Decision.** The Director shall approve, conditionally approve or deny a complete and duly filed permit application without a public hearing. To allow interested persons with a meaningful opportunity to appeal the Director's decision, the Director shall act within 29 shot clock days from a duly filed application.
- (b) **Required Findings for Approval.** The Director (or the City Manager on appeal) may approve or conditionally approve an application for a site plan review only when it makes all the following findings:
 - (1) the proposed project qualifies as a "small wireless facility" as defined by the FCC;
 - (2) the proposed project complies with the location standards in section 9;
 - (3) the proposed project complies with the design standards in section 10;
 - (4) the proposed project meets the required findings for site plan review under Madera Municipal Code § 10-3.4.0106;
 - (5) the applicant has shown that it can obtain any wireline communications and electrical service connections necessary to operate the small wireless facility and the project plans show the proposed route for all such connections between their source and the small wireless facility;

- (6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
- (7) all public notices required for the application have been given.
- (c) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or state laws, nothing in this policy is intended to limit the Director's ability to conditionally approve or deny without prejudice any application governed under this policy as may be necessary or appropriate to protect and promote the public health, safety and welfare, and to advance the goals or policies in the general plan and any applicable specific plan, the Madera Municipal Code and/or this policy.
- (d) **Appeals.** Any interested person may appeal the Director's decision to the City Manager. The appeal must be filed with the City Clerk within seven calendar days from the date of the Director's decision. The appeal must contain a short and plain statement about the basis for the appeal, which may be supplemented after the notice period has expired but before the appeal hearing. Appeals from an approval shall not be permitted when based on reasons otherwise compliant under this policy, including appeals based on duly adopted preapproved designs or the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines. The City Manager shall hear appeals *de novo* and issue the applicant and any person entitled to notice a written decision within five calendar days after the appeal hearing. If the City Manager denies the application on appeal (whether by affirmation or reversal), the written notice shall contain the reasons for the decision. The City Manager's decision shall be final and not subject to any further appeals.

9. LOCATION STANDARDS

- (a) **Locations.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, this section describes preferred and discouraged locations for small wireless facilities in the public rights-of-way.
 - (1) **Preferred Locations.** The city requires small wireless facilities in the public rights-of-way to be installed at locations, ordered from most preferred to least preferred, as follows:
 - (A) industrial zones along any road classification (arterial, collector, local/branch collector, local street);
 - (B) commercial zones along any road classification (arterial, collector, local/branch collector, local street);
 - (C) other non-residential zones along arterials or collectors;

- (D) other non-residential zones along local/branch collector or local streets;
 - (E) Public Facilities zone not directly adjacent to any residential zones.
- (2) **Discouraged Locations.** Applicants shall not propose to install small wireless facilities in a discouraged location unless no alternative site in a preferred location would be technically feasible. If all preferred locations are technically infeasible, the applicant shall use the least-discouraged location. The following locations are discouraged, and ordered from most discouraged to least discouraged:
- (A) any location within 100 feet of a historically designated property or resource.
 - (B) any location within 100 feet of a residential zone or within 100 feet of a residence;
 - (C) residential zones along local streets;
 - (D) residential zones along local/branch collectors;
 - (E) residential zones along collectors;
 - (F) residential zones along arterials;
 - (G) Public Facilities zone located directly adjacent to residential zones.
- (3) **Additional Location Standards.** In addition to all other standards in this section 9, small wireless facilities and all associated antennas, accessory equipment or improvements shall:
- (A) be placed as close as possible to alignment with the property line that divides two parcels abutting the public rights-of-way;
 - (B) not be placed directly in front of any ground-level door;
 - (C) not be placed directly in front of any first- or multi -story window;
 - (D) not be placed within any clear zone at any intersections;
 - (E) not be placed in any location that obstructs view lines for traveling vehicles, bicycles and pedestrian;
 - (F) not be placed in any location that obstructs views of any traffic signs or signals;

- (G) not be placed in any location that obstructs illumination patterns for existing streetlights;
 - (H) for new, non-replacement support structures, be placed at least 50 feet from any streetlight, utility pole or other similar support structure.
- (b) **Support Structures.** To assist applicants, staff and the approval authority understand and respond to the community's aesthetic preferences and values, and to mitigate unnecessary obstructions in the public rights-of-way, this section 9(b) describes preferred and prohibited support structures.
- (1) **Support Structure Preferences.** The city requires small wireless facilities in the public rights-of-way to be installed on support structures, ordered from most preferred to least preferred, as follows:
- (A) existing or replacement non-pole concealment structures, such as monuments, kiosks, bus shelters and other street furniture;
 - (B) existing or replacement streetlights;
 - (C) existing or replacement utility poles;
 - (D) new, non-replacement streetlights;
 - (E) new, non-replacement non-pole concealment structures.
- (2) **Prohibited Support Structures.** Small wireless facilities shall not be installed on the following support structures:
- (A) traffic signals;
 - (B) decorative poles;
 - (C) temporary or non-replacement wood poles.
- (c) **Replacement Pole Locations.** All replacement poles must be: (1) located as close to the removed pole's location as possible; (2) aligned with the other existing poles along the public rights-of-way; and (3) compliant with all applicable standards and specifications issued by the Director, which may include, without limitation, requirements related to aesthetics, materials and safety.
- (d) **Encroachments Over Private Property.** No small wireless facility, or any antenna, accessory equipment or other improvements associated with a small wireless facility, may extend onto or over any private or public property outside the public rights-of-way without the property owner's prior written consent.

10. DESIGN STANDARDS

- (a) **General Design Standards.** The standards in this section 10(a) shall be applicable to all small wireless facilities in the public rights-of-way:
- (1) **Concealment.** All small wireless facilities must be stealth to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
 - (2) **Overall Height.** No small wireless facility may extend more than six feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
 - (3) **Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in flat, nonreflective hues that match the underlying support structure or blend with the surrounding environment. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the approval authority's prior approval.
 - (4) **Noise.** All small wireless facilities must be compliant with all applicable noise regulations. Equipment likely to create noise, such as cooling fans, are strongly discouraged except when placed in an underground vault. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or noise-mitigation strategies to avoid any ambient noise from equipment reasonably likely to exceed the applicable noise regulations.
 - (5) **Trees and Landscaped Plants.** Small wireless facilities shall not cause ground disturbance within any tree drip line. Small wireless facilities may not displace any existing tree or landscape features. All small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way must include landscape features (which may include, without limitation, shrubs and ground cover) and a landscape maintenance plan. The approval authority may require additional landscape features for small wireless facilities proposed to be placed in a landscaped area in the public rights-of-way to screen the small wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this policy. All plants proposed or required must be native and/or drought-resistant and be consistent with any landscaping requirements for the underlying zone.
 - (6) **Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as locks, removable climbing pegs and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation,

additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures. Cabinets and equipment shrouds must be kept secured to prevent unauthorized access. Alarm systems shall not include any audible sirens or other sounds.

- (7) **Secondary Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any permanent diesel generators within the public rights-of-way or at any other location or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (8) **Lights.** All new or replacement street lights and street light fixtures must be aimed and shielded so that their illumination effects are directed downwards and confined within the public rights-of-way in a manner consistent with any other standards and specifications as identified or required by the approval authority. Small wireless facilities may not include exterior lights other than as may be required under Federal Aviation Administration, FCC or other applicable federal or state governmental regulations. All antennas, accessory equipment and other improvements with indicator, status or other lights must be installed in locations and within enclosures that eliminate illumination impacts visible from publicly accessible areas. Any light beacons or lightning arresters shall be included in the overall height calculation.
- (9) **Signage; Decals; Advertisements.** All small wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage, decals or advertisements unless expressly approved by the approval authority, required by law or recommended under FCC or other federal governmental agencies for compliance with RF emissions regulations.
- (10) **Parking.** Small wireless facilities and any associated accessory equipment or other improvements shall not reduce any street parking spaces within the public rights-of-way.
- (11) **Fire Safety.** All small wireless facilities shall include (1) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system approved by the fire safety authority, upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (2) surge protection devices capable of mitigating a direct or partial direct lightning discharge; (3) surge protection devices capable of mitigating significant electrical disturbances that may enter the small wireless facility via conductive cables; (4) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (5) monitored automatic fire

notification and suppression systems for all small wireless facilities as approved by the applicable fire safety authority.

- (12) **Compliance with Laws.** All small wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the California Building Standards Code, Americans with Disabilities Act, general plan and any applicable specific plan, the Madera Municipal Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- (b) **Antennas.** In addition to all generally applicable design standards in section 10(a), this Section 10(b) sets out specific preferences and standards for antennas.
 - (1) **Placement.** Antennas should be placed above the pole, unless the approval authority finds that an alternative placement results in an aesthetically superior design based on site-specific circumstances.
 - (2) **Stealth/Concealment.** All antennas and associated cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware must be installed within a unified shroud or “radome” to the extent technically feasible. Antenna shrouds must be visually consistent with the underlying pole’s design, color and scale. Antenna shrouds placed above a pole must taper down to the point where the shroud and pole connect to conceal the cables below the antennas and create a smooth transition into the pole. All antenna mounting posts shall be trimmed so that the post does not extend above the antenna. For antennas approved to be affixed to the side of the pole within a shroud, all cables must be concealed within the shroud and extension arm to create a smooth transition into the pole, to the maximum extent feasible, or back into the external conduit on the pole, if any.
 - (3) **Volume.** Any individual antenna (including its concealment) shall not exceed three cubic feet in volume. The cumulative limit for all antenna (including their concealment) on a single small wireless facility shall not exceed: (A) three cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) six cubic feet for small wireless facilities in all other locations.
 - (c) **Accessory Equipment.** In addition to all generally applicable design standards in Section 10(a), this Section 10(c) sets out specific preferences and standards for accessory equipment.
 - (1) **Placement Preferences.** This subsection describes the city’s general preferences for accessory equipment placement and configuration on or around the pole. Applicants shall propose small wireless facilities in compliance with these preferences to the maximum extent feasible. The approval authority may approve a lesser-preferred configuration for the accessory equipment

when the applicant demonstrates that more-preferred configurations are technically infeasible, or the approval authority finds that a lesser-preferred configuration is more consistent with existing poles and the surrounding environment. The city generally prefers accessory equipment to be placed, ordered from most preferred to least preferred, as follows:

- (A) within an environmentally controlled underground equipment vault;
 - (B) within an architecturally integrated enclosure at the base of the pole;
 - (C) within a shroud mounted above ground level on the pole;
 - (D) within a separate surface-mounted equipment cabinet.
- (2) **Volume.** The cumulative limit for all accessory equipment (including their concealment) on a single small wireless facility shall not exceed: (A) 10 cubic feet for small wireless facilities within 250 feet from a residential dwelling; or (B) 17 cubic feet for small wireless facilities in all other locations. These limits shall not be applicable to undergrounded accessory equipment.
- (3) **Undergrounded Equipment.** Consistent with CPUC and local policies, the city strongly prefers undergrounded accessory equipment whenever possible because it mitigates unnecessary physical obstructions and aesthetic harm caused by unsightly infrastructure in the public rights-of-way. This section 10(c)(3) sets out specific preferences and standards for undergrounded accessory equipment.
- (A) **When Required.** Accessory equipment (other than any electric meter (where permitted) and an emergency disconnect switch) shall be placed underground when proposed in any (i) underground utility district; (ii) any area where all existing utilities are substantially undergrounded; or (iii) any location where the approval authority finds substantial evidence that the additional above-ground accessory equipment would incommode the public's uses in the public rights-of-way.
 - (B) **Equipment Vaults.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the city's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover and properly secured to prevent unauthorized access. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Vault lids may contain manufacturer and site operator information but shall not exhibit commercial advertisements.

- (4) **Base-Mounted Accessory Equipment.** This section 10(c)(4) sets out specific preferences and standards for base-mounted accessory equipment.
- (A) **Concealment.** Base-mounted accessory equipment enclosures must be architecturally integrated with the pole and surrounding environment. For poles that already include a larger or decorative base, the base-mounted accessory equipment enclosure should mimic the existing design and/or decorative features. Base-mounted accessory equipment enclosures should include a tapered or decorative transition between the enclosure and the pole, unless (i) the proposed facility is a pre-approved design that does not include such a transition or (ii) the approval authority finds that such a transition would be less aesthetically desirable considering the pole and surrounding environment.
 - (B) **Maximum Dimensions.** Any base-mounted accessory equipment enclosure integrated into the pole shall not exceed the following dimensions: (i) 48 inches in height, measured from grade level to the highest point on the enclosure, but excluding any decorative design elements that transition the wider base into the narrower pole; and (ii) 26 inches in length or width on any rectangular enclosure or 28 inches in diameter for any round, hexagonal, octagonal or similarly shaped enclosure.
 - (C) **Graffiti and Litter Prevention.** Base-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, base-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (5) **Pole-Mounted Accessory Equipment.** This section 10(c)(5) sets out specific preferences and standards for pole-mounted accessory equipment.
- (A) **Concealment.** Applicants should propose to place any pole-mounted accessory equipment in the least conspicuous position under the circumstances presented by the proposed pole and location. Pole-mounted accessory equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. Unless placed behind a street sign or some other concealment that dictates the equipment orientation on the pole, all pole-mounted accessory equipment should be oriented away from prominent views. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting properties. If orientation toward the street is not feasible, then the proper orientation will most likely be away from oncoming traffic. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

- (B) **Minimum Ground Clearance.** The lowest point on any pole-mounted accessory equipment shall be at least 8 feet above ground level adjacent to the pole. If applicable laws require any pole-mounted accessory equipment component to be placed less than 8 feet above ground level, the clearance from ground level shall be no less than required for compliance with such laws.
 - (C) **Horizontal Extensions.** Pole-mounted accessory equipment should be as close to flush with the pole as technically feasible and shall not extend over any roadway for vehicular travel or any abutting private property. If applicable laws preclude flush-mounted accessory equipment, the separation gap between the pole and the accessory equipment shall be no greater than required for compliance with such laws and concealed by opaque material (such as cabinet “flaps” or “wings”).
- (6) **Surface-Mounted Equipment Cabinets.** This section 10(c)(6) sets out specific preferences and standards for surface-mounted accessory equipment.
- (A) **Concealment.** Concealment for surface-mounted equipment cabinets will be assessed on a site-specific basis and consider the location and existing uses and aesthetic elements in the vicinity. In general, the city prefers surface-mounted accessory equipment to be concealed as follows: (i) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks; and (iii) if neither landscaping concealment or street furniture is available, accessory equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing surface-mounted accessory equipment cabinets in the vicinity.
 - (B) **Public Safety.** To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, individual surface-mounted accessory equipment cabinet may not exceed four feet in height or four feet in width. Surface-mounted accessory equipment enclosures must be coated with anti-graffiti finishes. To prevent litter and other objects placed on such equipment, surface-mounted accessory equipment enclosures should not have any flat horizontal surfaces greater than 1.5 square inches.
- (d) **Utilities.** The provisions in this section 10(d) are applicable to all utilities and other related improvements that serve small wireless facilities.

- (1) **Overhead Lines.** The approval authority shall not approve any new overhead utility lines in underground utility districts. In areas with existing overhead lines, new communication lines shall be “overlashed” with existing communication lines to the extent feasible, but service conduits shall be placed underground. No new overhead utility service drops shall be permitted to traverse any roadway used for vehicular transit.
 - (2) **Vertical Cable Risers.** All cables, wires and other connectors must be routed through conduits within the pole or other support structure, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, such as with wood utility poles, applicants shall route them through external conduits or shrouds that have been finished to match the underlying pole. The applicant shall minimize the number and size of external conduits to the extent technically feasible.
 - (3) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds
 - (4) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a separate meter pedestal per city standards. If the proposed project involves a surface-mounted equipment cabinet, an electric meter may be integrated with the cabinet, but the approval authority shall not approve a separate surface-mounted electric meter pedestal. In no case shall permittee be permitted to use electricity/power provided by a city-owned streetlight or city-owned circuit without separate written authorization from the city.
 - (5) **Existing Underground Conduits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants are encouraged to use existing conduits whenever available and technically feasible. Access to any conduit owned by the city shall be subject to a separate written agreement and the Director’s prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city’s infrastructure, prevent interference with the city’s municipal functions and public health and safety.
- (e) **Historic Resources.** This policy shall not be construed or applied to limit the city’s authority to enforce other laws or regulations intended to protect or preserve historic resources. Any small wireless facility that adversely impacts any historic resource shall not be approved without an exception pursuant to section 13.

11. PRE-APPROVED DESIGNS

- (a) **Preface.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more pre-approved designs for small wireless facilities. This section sets out the process to establish or repeal a pre-approved design and the expedited review procedures and findings applicable to these applications.
- (b) **Adoption.** The Director, in the Director's discretion, may establish a pre-approved design when the Director finds that a proposed pre-approved design would be (i) in substantial conformance with the applicable design requirements in section 10 and (ii) architecturally compatible with the areas in which the pre-approved design would be available. The Director shall post a public notice at City Hall and on the city's website. The notice must generally describe the pre-approved design, include a photograph or photo simulation, specify whether the pre-approved design would be limited or restricted in any areas. The pre-approved design shall become effective 15 days from the notice required in this section. A decision by the Director not to adopt a proposed pre-approved design or the Director's failure to act on a request for a proposed pre-approved design is not appealable.
- (c) **Repeal.** The Director may repeal any pre-approved design by notice posted at City Hall and on the city's website. The repeal shall be immediately effective. The Director's repeal, refusal to repeal or failure to act on a request to repeal a pre-approved design is not appealable.
- (d) **Nondiscrimination.** An established pre-approved design may be used by any applicant, whether the applicant originally initiated the pre-approval process or not. The Director's decision to adopt a pre-approved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the pre-approved plans. Any other vendor or manufacturer that fabricates a small wireless facility to the standards and specifications in the pre-approved design with like materials, finishes and overall quality shall be acceptable as a pre-approved design.
- (e) **Modified Findings for Approval.** For any complete site plan review application using a pre-approved design, the approval authority shall presume that the proposed project complies with the findings required under sections 8(b)(1) and 8(b)(3). No such presumption shall be applicable to the required findings under sections 8(b)(2), 8(b)(4) and 8(b)(5).

12. STANDARD CONDITIONS OF APPROVAL

- (a) **Standard Conditions.** Except as may be modified in section 12(b), all small wireless facilities approved under this policy shall be automatically subject to the conditions in this section 12(a) and these conditions shall be deemed to be

incorporated by reference to any site plan approval, whether approved by the city or deemed approved by law.

- (1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the city to establish a shorter term for public safety reasons or substantial land use reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
- (2) **Permit Renewal.** The permittee may apply for permit renewal not more than one year before this permit expires. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this permit and all applicable provisions in the Madera Municipal Code and this policy that exists at the time the decision to renew or not renew is rendered. The Director may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with the Madera Municipal Code, this policy or other applicable law. Upon renewal, this permit will automatically expire 10 years and one day from its issuance.
- (3) **Approved Plans.** Any final construction plans shall incorporate the permit, together with all conditions of approval and the photo simulations associated with the permit (collectively, the “Approved Plans”). The permittee must construct, install and operate the small wireless facility in substantial compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the small wireless facility, shall be subject to the Director’s prior review and approval. After the Director receives a written request to approve an alteration, modification or other change to the Approved Plans, the Director may refer the request to the approval authority if the Director finds that it substantially deviates from the Approved Plans or implicates a significant or substantial land-use concern.
- (4) **CPUC GO-159A Certification.** Within 15 business days after the city issues this permit, the permittee shall serve copies of California Public Utility Commission notification letters required by CPUC General Order No. 159A to the City Clerk, Director and City Manager.
- (5) **Build-Out Period.** This permit will automatically expire 12 months from the approval date (the “Build-Out Period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the

approved small wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, support structure or the small wireless facility and/or its use. The permittee may request in writing, and the city may grant in writing, one six-month extension if the permittee submits substantial and reliable written evidence demonstrating justifiable cause for such extension. If the Build-Out Period and any extension finally expire, this permit shall be automatically void but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.

- (6) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved under this policy or deemed-approved by law, the permittee shall provide the Director with documentation reasonably acceptable to the Director that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- (7) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this permit. At all times, the permittee shall keep the site area free from all litter and debris. The permittee shall regularly inspect the small wireless facility to determine whether any maintenance is needed. The permittee, at no cost to the city, shall remove and remediate any graffiti or other vandalism on the small wireless facility within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- (8) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this permit, which includes without limitation any Laws applicable to human exposure to RF emissions and any standards, specifications or other requirements identified by the Director (such as, without limitation, those requirements affixed to an encroachment permit). The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable provision in the Madera Municipal Code, this policy any permit, any permit condition or any

applicable Laws, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with same.

- (9) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site and/or small wireless facility. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Madera Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the city or other state or federal government agency or official with authority to declare an emergency within the city. The Director may issue a stop work order for any activities that violates this condition in whole or in part. If the Director finds good cause to believe that ambient noise from the small wireless facility or related equipment violates applicable provisions in the Madera Municipal Code, the Director, in addition to any other actions or remedies authorized by the permit, the Madera Municipal Code or other applicable laws, may require the permittee to commission a noise study by a qualified professional to evaluate the small wireless facility's compliance.
- (10) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that, upon reasonable prior notice to the permittee, the city's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the small wireless facility and related equipment and/or improvements to ensure compliance with this permit and all associated conditions. Notwithstanding the prior sentence, the city's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the city's officers, officials, staff or other designees while any such inspection or emergency access occurs.
- (11) **Contact Information.** At all times relevant to this permit, the permittee shall keep on file with the Director basic contact and site information. This information shall include, but is not limited to, the following: (A) the name, physical address, notice address (if different), direct telephone number and email address for (i) the permittee and, if different from the permittee, the (ii) site operator, (ii) equipment owner, (iii) site manager and (iv) agent for service of process; (B) the small wireless facility's site identification number and/or name used by the permittee and, to the extent applicable, site operator,

equipment owner and site manager; and (C) a toll-free telephone number to the small wireless facility's network operations center where a live person with power-down control over the small wireless facility is available 24 hours-per-day, seven days-per-week. Within 10 business days after a written request by the city, the permittee shall furnish the Director with an updated form that includes all the most-current information described in this condition.

(12) **Indemnification.** The permittee and, if applicable, the property owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the city, City Council and the city's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (A) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the city's approval of this permit, and (B) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this permit or the small wireless facility. In the event the city becomes aware of any claims, the city will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the city shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the city's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse the city for any costs and expenses directly and necessarily incurred by the city in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the city to approve this permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this permit.

(13) **Removal Bond.** Before the city issues any permits required to commence construction in connection with this permit, the permittee shall post a bond issued by a surety and in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or similar infrastructure removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the small wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing

or adjusting the bond amount required under this condition, the Director shall take into consideration any information provided by the permittee regarding the cost to remove the small wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject small wireless facility in accordance with this condition.

- (14) **Permit Revocation.** Any permit granted under this policy or deemed approved by the operation of law may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the small wireless facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). A permit granted under this policy or deemed approved by the operation of law may be revoked only by the City Council after a duly notice public hearing. Before any public hearing to revoke a permit granted under this policy or deemed approved by the operation of law, the Director must issue a written notice to the permittee that specifies (A) the small wireless facility; (B) the violation(s) to be corrected; (C) the timeframe in which the permittee must correct such violation(s); and (D) that, in addition to all other rights and remedies the city may pursue, the city may initiate revocation proceedings for failure to correct such violation(s). The City Council may revoke a permit when it finds substantial evidence in the written record to show that the small wireless facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the small wireless facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.
- (15) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the permit application, this permit, the Approved Plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the permit (collectively, "Records"). If the permittee does not maintain such Records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing Records will be construed against the permittee. The permittee shall protect all Records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep Records in an electronic format; provided, however, that hard copies or electronic Records kept in the city's regular files will control over any conflicts between such city-controlled copies or Records and the permittee's electronic

copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any Records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (16) **Abandoned Facilities.** The small wireless facility authorized under this permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Madera Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligations under this condition within said 90-day period, the city shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and property owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities and shall reimburse the city for all such costs 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.
- (17) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city. The permittee shall be responsible to maintain any replacement landscape features for a three-year period after such landscaping has been installed. Notwithstanding anything in this condition to the contrary, the Director may agree in a written agreement signed by the permittee to accept an annual in-lieu fee to perform the maintenance work on the permittee's behalf.
- (18) **Cost Reimbursement.** The permittee acknowledges and agrees that (A) the permittee's request for authorization to construct, install and/or operate the small wireless facility will cause the city to incur costs and expenses; (B) the permittee shall be responsible to reimburse the city for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the small wireless facility; (C) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse the city for all such costs

30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs; and (D) the city shall have the right to withhold any permits or other approvals in connection with the small wireless facility until and unless any outstanding costs have been reimbursed to the city by the permittee.

- (19) **Future Undergrounding Programs.** Notwithstanding any term remaining on this permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter or related electric-service equipment required by the electric service provider to remain above ground, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition; provided, however, that the Director may approve an alternative concealment plan for such equipment that complies with the city's then current design regulations. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the city's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (20) **Electric Meter Upgrades.** If the small wireless facility includes a separate or ground-mounted electric meter pedestal and the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (21) **Rearrangement and Relocation.** The permittee acknowledges that the city, in its sole discretion and at any time, may: (A) change any street grade, width or location; (B) add, remove or otherwise change any improvements in, on, under or along any street owned by the city or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (C) perform any other work deemed necessary, useful or desirable by the city (collectively, "City Work"). The city reserves the rights to do any and all City Work without any admission on its part that the city would not have such rights without the express reservation in this permit. If the City Engineer determines that any City Work will require the permittee's small

wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the City Engineer's notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The city may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the City Engineer determines that City Work is immediately necessary to protect public health or safety. The permittee shall reimburse the city for all costs and expenses in connection with such work within 30 calendar days after a written demand for reimbursement and reasonable documentation to support such costs.

- (22) **Successors and Assigns.** The conditions, covenants, promises and terms contained in this permit will bind and inure to the benefit of the city and permittee and their respective successors and assigns.
 - (23) **Truthful and Accurate Statements.** The permittee acknowledges that the city's approval relies on the written and/or oral statements by permittee and/or persons authorized to act on permittee's behalf. In any matter before the city in connection with this permit or the small wireless facility approved under the this permit, neither the permittee nor any person authorized to act on permittee's behalf shall, in any written or oral statement, intentionally provide material factual information that is incorrect or misleading or intentionally omit any material information necessary to prevent any material factual statement from being incorrect or misleading.
 - (24) **City's Standing Reserved.** The city's grant or grant by operation of law of a permit pursuant to this policy does not waive, and shall not be construed to waive, any standing by the city to challenge any (A) FCC rules or regulations that interpret the Telecommunications Act and/or Section 6409 of the Spectrum Act or (B) any permit issued pursuant to this policy.
 - (25) **Severable Conditions.** If any provision in these conditions or such provision's application to any person, entity or circumstances is or held by any court with competent jurisdiction to be invalid or unenforceable: (A) such provision or its application to such person, entity or circumstance will be deemed severed from this permit; (B) all other provisions in this permit or their application to any person, entity or circumstance will not be affected; and (C) all other provisions in this permit or their application to any person, entity or circumstance will be valid and enforceable to the fullest extent permitted by law.
- (b) **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any site plan approval as the Director deems necessary or

appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions in section 12(a) to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with the Madera Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws.

13. EXCEPTIONS

- (a) **Preface.** The provisions in this section establish a procedure by which the city may grant an exception to the standards in this policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an exception, the approval authority shall consider the findings in section 13(b) in addition to the findings required under section 8(b). Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance does not create a presumption or expectation that an exception will be granted in any other instance.
- (b) **Findings for an Exception.** The approval authority may grant an exception to any provision or requirement in this policy only if the approval authority finds that:
 - (1) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or
 - (2) a provision in this policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law.
- (c) **Scope of Exception.** If the approval authority finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this policy to least extent necessary for compliance with federal or state law.
- (d) **Burden of Proof.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this section. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.

14. PEER REVIEW AND INDEPENDENT CONSULTANTS

- (a) **Authorization.** The City Council authorizes the Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Director in connection any permit application. The Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit applications for wireless facilities, which include, without limitation: (1) permit application completeness and/or accuracy; (2) pre-construction planned compliance with

applicable regulations for human exposure to RF emissions; (3) post-construction actual compliance with applicable regulations for human exposure to RF emissions; (4) whether and to what extent a proposed project will comply with applicable laws; (5) the applicability, reliability and/or sufficiency of any information, analyses or methodologies used by the applicant to reach any conclusions about any issue with the city's discretion to review; and (6) any other issue identified by the Director that requires expert or specialized knowledge. The Director may request that the independent consultant prepare written report, testify at public meetings, hearings and/or appeals and attend meetings with city staff and/or the applicant.

- (b) **Cost Reimbursement.** Subject to applicable laws, the applicant shall be responsible for the reasonable costs actually incurred by the city in connection with a consultant's review, which may include, without limitation, costs incurred by the consultant to attend and participate in any meetings or hearings related to the application. Within a reasonable time after notice from the Director, the applicant shall deposit funds in an amount equal to the estimated costs for the consultant's services, as determined by the Director. The funds shall be applied to the consultant's invoices as such invoices are approved by the Director. If the deposit exceeds the total costs for the consultant's services, the Director shall promptly return any unused funds to the applicant after the small wireless facility has been installed and passes a final inspection. If the reasonable costs for the consultant's services exceed the deposit, the Director shall invoice the applicant for the balance. The city shall not issue any building permit or encroachment permit to any applicant with any unpaid invoices.

15. VIOLATIONS

Any use or condition caused or permitted to exist in violation of any provision of this policy shall be and hereby is declared a public nuisance and may be subject to administrative citations as set forth in Madera Municipal Code Title I, Chapter 9, abatement pursuant to Madera Municipal Code §§ 10-3.1601 *et seq.*, California Code of Civil Procedure section 731, or any other remedy available to the city.

APPENDIX A – FEDERAL STATUTES

This Appendix contains relevant federal statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

47 U.S.C. § 253 — Removal of barriers to entry.

(A) In General

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(B) State Regulatory Authority

Nothing in this section shall affect the ability of a State to impose on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(C) State and Local Government Authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(D) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

47 U.S.C. § 332(c)(7) — Preservation of local zoning authority.

(A) General Authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--
 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

- (i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
- (ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and
- (iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

47 U.S.C. § 1455(a) — Wireless facilities deployment.

(A) Facility modifications

(1) In general

Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible facilities request

For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves--

- (A) collocation of new transmission equipment.
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) Applicability of environmental laws

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

APPENDIX B – FCC REGULATIONS

This Appendix contains relevant FCC regulations cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

Some additional background on how the FCC organizes its regulations may help the reader check for subsequent changes to these rules. The FCC's codified regulations appear in the Code of Federal Regulations (abbreviated as "C.F.R."). The C.F.R. is organized in titles. The FCC's codified regulations appear in Title 47—Telecommunication, and are further organized in chapters, subchapters, parts and subparts. All the provisions reproduced below appear in Part 1, and most appear in Subpart U to Part 1.

47 C.F.R. § 97.3 — Definitions.

(A) The definitions of terms used in part 97 are:

- (1) Amateur operator. A person named in an amateur operator/primary license station grant on the [Universal Licensing System] consolidated licensee database to be the control operator of an amateur station.
- (2) Amateur radio services. The amateur service, the amateur-satellite service and the radio amateur civil emergency service.
- (3) Amateur-satellite service. A radiocommunication service using stations on Earth satellites for the same purpose as those of the amateur service.
- (4) Amateur service. A radiocommunication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.
- (5) Amateur station. A station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications.

47 C.F.R. § 1.4000 — Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(A)(1) [This FCC regulation defines an “OTARD” antenna as follows]:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and

(B) One meter or less in diameter or is located in Alaska.

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and

(B) That is one meter or less in diameter or diagonal measurement.

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section;

47 C.F.R. § 1.6002 — Definitions.

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq.* Terms used in this subpart have the following meanings:

(A) Action or to act on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(B) Antenna, consistent with § 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the

term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

- (C) Antenna equipment, consistent with § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (D) Antenna facility means an antenna and associated antenna equipment.
- (E) Applicant means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.
- (F) Authorization means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.
- (G) Collocation, consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—
 - (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
 - (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
 - (3) The definition of “collocation” in § 1.6100(b)(2) applies to the term as used in that section.
- (H) Deployment means placement, construction, or modification of a personal wireless service facility.
- (I) Facility or personal wireless service facility means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.
- (J) Siting application or application means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.
- (K) Siting authority means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(L) Small wireless facilities are facilities that meet each of the following conditions:

(1) The facilities—

- (i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or
- (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or
- (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(M) Structure means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

47 C.F.R. § 1.6003 — Reasonable periods of time to act on siting applications.

(A) Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(B) Shot clock period. The shot clock period for a siting application is the sum of—

- (1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

(2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(C) Presumptively reasonable periods of time—

(1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(2) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) Batching.

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(D) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the

missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

- (i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until
- (ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;
- (iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

- (i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until
- (ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;
- (iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(E) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; provided, that if the date calculated in this manner is a "holiday" as defined in § 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The

term “business day” means any day as defined in § 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

47 C.F.R. § 1.6100 — Wireless Facility Modifications.¹

(A) [Reserved by 83 FR 51886]

(B) Definitions. Terms used in this section have the following meanings.

- (1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.
 - (i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
 - (ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
 - (iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
 - (iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

¹ In 2018, the FCC reorganized its regulations and recodified Section 1.40001 as Section 1.6100. See *In re Accelerating Wireless Broadband*, Erratum, 33 FCC Rcd. 9088 at ¶ 2 (Nov. 29, 2018). However, the FCC did not correct all internal cross references and so some provisions in Section 1.6100 still refer to the old subsections within Section 1.40001. This reproduction corrects those typographical errors with the correct cross references, denoted by bracketed text. All other provisions remain consistent with the published FCC regulation.

- (2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:
 - (i) Collocation of new transmission equipment;
 - (ii) Removal of transmission equipment; or
 - (iii) Replacement of transmission equipment.
- (4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.
- (5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- (6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.
- (7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:
 - (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater.

- (A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) It entails any excavation or deployment outside the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- (v) It would defeat the concealment elements of the eligible support structure; or
- (vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.6100(b)(7)(i) through (iv).
- (8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- (9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(C) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

- (1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.
- (2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.
- (3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.
 - (i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.
 - (ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.
 - (iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing

information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

- (4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
 - (5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.
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APPENDIX C – STATE STATUTES

This Appendix contains relevant California statutes cited or referred to in the city's policy for informational and reference purposes only. These authorities are current as of the date on which the city adopted the policy. However, the reader should be cautioned that these authorities may be amended or superseded from time-to-time and those amended or superseded versions will control over the reproduced text in this Appendix.

California Public Utilities Code § 7901

Telegraph or telephone corporations may construct lines of telegraph or telephone lines² along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

California Public Utilities Code § 7901.1

(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

(b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.

(c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.

² "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires. CAL. PUB. UTILS. CODE § 233.

ATTACHMENT 3

City of Madera Municipal Code, Title X, Section 10-3.419
Telecommunication Towers, Antennas and Structures

§ 10-3.419 TELECOMMUNICATION TOWERS, ANTENNAS AND STRUCTURES.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AIRPORT LAND USE COMMISSION. The Madera County Airport Land Use Commission required to review any structure in excess of 150 feet in height for conformance with the Airport Land Use Compatibility Plan.

ALTERNATIVE TOWER STRUCTURE. Man-made trees, clock towers, bell steeples, light poles, slim-line monopole, stealth and similar alternative antenna mounting structures that camouflage or conceal the presence of antennas or towers.

ANTENNA. Any exterior apparatus designed for telephonic, radio, or television communications through the sending and/or receiving of electromagnetic waves. This includes antennas relating to personal wireless services. Antennas include microwave dishes, satellite dishes, whips, and panels.

ARRAY. A set of antennas for one carrier or service that are placed on a mount at a given height and spaced so as to avoid internal interference. An array is usually sectorized into three directions and separated vertically from another carrier's array co-located on the same mount.

CO-LOCATION. The use of a single mount on the ground by more than one carrier, or by several mounts on an existing building or structure by more than one carrier.

FAA. The Federal Aviation Administration.

FCC. The Federal Communications Commission.

GUYED TOWER. A tower that is tied to the ground or other surface by diagonal cables.

HEIGHT. When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

LATTICE TOWER. A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

MONOPOLE. A type of mount that is self-supporting with a single shaft of wood, steel, or concrete and a platform (or racks) for panel antennas arrayed at the top. Vertical co-locations often have arrays at intermediate positions on the monopole.

MOUNTS. The structure or surface upon which antennas are mounted, and include monopoles, lattice towers, guyed towers, and buildings.

OMNIDIRECTIONAL (WHIP) ANTENNA. A thin rod that beams and receives a signal in all directions.

PANEL ANTENNA. A flat surface antenna usually developed in multiples covering three sectors of 120 degrees each.

PERSONAL WIRELESS SERVICES. Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services. Commercial mobile radios services include cellular services, personal communication services, enhanced specialized mobile radio services, and paging services.

PERSONAL WIRELESS SERVICE FACILITY. A facility for the provision of personal wireless services, as defined by the Telecommunications Act. A personal wireless service facility is the appropriate term for "cel site".

PLANNING COMMISSION. The Planning Commission of the city of Madera as established by the Municipal Code.

PRE-EXISTING TOWERS AND ANTENNAS. Any existing tower or antenna for which a permit has been properly issued prior to the effective date of this section. Any such towers or antennas shall be referred to in this section as "pre-existing towers" or "pre-existing antennas" and shall not be required to meet the requirements of this section, other than those of subsection (E) of this section.

SLIMLINE MONOPOLE ANTENNA. A structure not exceeding 70 feet in height, 18 inches in diameter at the base, and ten inches in diameter at the top, upon which are mounted not more than three vertical panel antennas not exceeding one foot in width or seven inches in depth.

TELECOMMUNICATION FACILITY. A facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment building, parking area, or other accessory development.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like.

VERTICAL ANTENNA. A flat panel or vertical pole or whip type antenna.

(B) *Applicability.*

(1) *District height limitations.* The requirements set forth in this section shall govern all antennas and towers proposed for installation in the city of Madera. Special provisions are created to regulate the location of towers that exceed, and antennas that are installed at a height in excess of the height limitations specified for each zoning district. The height

limitations applicable to buildings and structures shall apply to towers and support structures but shall not apply to antennas attached to existing towers.

(2) *Public property.* Towers located on property owned, leased or otherwise controlled by the city shall be allowed as provided herein, subject to the provisions of this section.

(3) *Amateur radio receive-only antennas.* This section shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

(4) This section shall also be inapplicable to a satellite dish antenna with a height not exceeding 15 feet, or a ground or building mounted residential receive-only radio or television antenna less than 35 feet high, or a citizens band radio antenna if the height does not exceed 20 feet above the building on which it is mounted or 60 feet above the ground.

(5) This section also does not apply to the installation of a ground or building mounted receive only radio or television satellite dish antenna which does not exceed 36 inches in diameter for the sole use of the resident occupying a residential parcel on which the satellite dish is located.

(C) *General guidelines and requirements.*

(1) *Purpose and goal.* The purpose of this section is to establish general guidelines for the siting of towers and antennas. The goals of this section are to:

(a) Encourage the location of towers in non-residential areas and minimize the total number of towers required throughout the city;

(b) Encourage strongly the co-location at new and existing tower sites consistent with an aesthetically pleasing appearance;

(c) Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(d) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas; and

(e) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.

(2) *Principal or accessory uses.* Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with zoning district standards and regulations, the evaluation shall include, but not be limited to, set-back, lot-coverage, and other such requirements. The dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this section shall not be deemed to constitute the expansion of a non-conforming use or structure.

(3) *Submittal requirements.* Each applicant requesting a land use approval under this section shall submit a scaled site plan and a scaled elevation view, a series of computer generated simulated photographs portraying the appearance of the proposed tower from critical points of view, and other supporting drawings, calculations, and other documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses, as required by § 10-3.4.0104 of this chapter and other information deemed by the Community Development Director/City Engineer or Planning Commission to be necessary to assess compliance with this section. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.

(4) *Inventory of existing sites.* Each applicant for an antenna and or tower shall provide to the Community Development Department a grid map depicting an inventory of all existing towers, as well as all of its planned towers, that are either within the jurisdiction of the city or within one mile of the border thereof, including specific information about the (proposed) location, height, and design of each tower. The Community Development Department may share such information with other applicants applying for administrative approvals or special use permits under this section or other organizations seeking to locate antennas within the jurisdiction of the city for purposes of encouraging co-location where such policy is found consistent with a pleasing appearance in the community, provided, however, that the Community Development Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(5) *Co-location.* It is the purpose of this section, except where inconsistent with the goal of maintaining an aesthetically pleasing community, to encourage strongly the co-location of antennas and antenna arrays at new and existing tower sites in order to limit or reduce the number of towers within the community. Based on the required inventory of sites, and inventories previously filed with the Community Development Department, the applicant is required to justify why other existing sites are not suitable for co-location, or provide documentation that a tower which might serve as an alternative site is either not available for co-location or not structurally capable of sustaining any co-location. The intention of this analysis is to present alternative strategies which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the city and surrounding areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It

shall explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. The encouragement of co-location shall not extend to towers or other structures which would present a clearly unattractive appearance in the judgment of the Community Development Director if such co-location were carried out.

(6) *Aesthetics and lighting.* The guidelines set forth in this subsection shall govern the aesthetics and lighting of all tower antennas governed by this section; provided, however, that the Planning Commission may waive or modify these requirements if it determines that the goals of this subsection are better served thereby.

(a) Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.

(b) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.

(c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(d) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Commission may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

(7) *Federal and state requirements.* All towers must meet or exceed current standards and regulations of the FAA, the FCC, the California Public Utilities Commission and any other agency of the federal or state government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this section bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal or state agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(D) *Required approvals.*

(1) *Administrative approvals.* The addition of a tower or antenna may be permitted through the building permit process in accordance with this section provided the project is considered to be a minor expansion or an accessory use allowed in the zone in which the project is located, and further provided that the total height of the antenna and the structure to which it is attached does not exceed the height or setback restrictions for the zone in which it is located. All such structures shall comply with subsection (C)(6) of this section, unless a modification is granted, and subsection (E) of this section and all other application provisions of the Municipal Code.

(a) Installing an antenna on an existing structure other than a tower (such as a building, sign, light pole, water tower, or other free standing nonresidential structure) that is less than 50 feet in height, so long as such addition does not add more than 20 feet to the height of the existing structure;

(b) Installing an antenna on any existing tower of any height, so long as the addition of said antenna adds no more than 20 feet to the height of said existing tower and said tower is not a pre-existing tower; provided, however, that such specific permitted use shall not include the placement of additional buildings or other supporting equipment used in connection with said antenna.

(2) *Site plan approvals.* The Community Development Director/City Engineer may approve the uses listed in subsections (a), (b) and (c) below. Each application shall be processed in accordance with the provisions of § 10-3.4.0101 et seq. of this chapter. In connection with any such site plan review approval, the Community Development Director/City Engineer may, in order to encourage shared use or use of alternative tower structures, administratively waive any zoning district setback requirements by up to fifty percent and may administratively waive any zoning district height restriction by an amount not to exceed 20 feet. The following uses may be approved by the Community Development Director/City Engineer after conducting a site plan review:

(a) Locating a tower, including the placement of additional buildings or other supporting equipment used in connection with said tower, in any industrial or commercial zoning district; provided, however, that such tower shall be subject to the height limitations for the zoning district in which the project is proposed, except as waived in subsection (D) (2), immediately above.

(b) Installing an antenna on an existing structure other than a tower (such as a building, sign, light pole, water tower or other free-standing nonresidential structure) that is 50 feet in height or greater, so long as said additional antenna adds no more than 20 feet to the height of said existing structure.

(c) Installing an antenna on an existing tower of any height, including a pre-existing tower and further including the placement of additional buildings or other supporting equipment used in connection with said antenna, so long as the addition of said antenna adds no more than 20 feet to the height of said existing tower.

(d) Locating any alternative tower structure in any zoning district that in the judgment of the Community Development Department is in conformity with the goals set forth in subsection (C)(6) of this section; provided, however, that such tower shall be subject to the height limits of the zoning district in which the tower is proposed.

(e) Installing a ground or building mounted receive only radio or television satellite dish, with a diameter exceeding 36

inches but less than eight feet in diameter, and a height in excess of 15 feet, subject to the following restrictions:

1. In a residential zone, the antenna must be for the sole use of the resident occupying a residential parcel on which the satellite dish is located.

2. In a residential zone, no more than one antenna or satellite dish may be permitted, which must conform to residential height restrictions and setbacks, and must have a rear yard or rear- of-house orientation unless these options preclude a usable satellite signal.

3. In a commercial or industrial zone, no more than three antennas or satellite dishes may be permitted where adequate screening is provided and which are solely for the use of the project site tenants.

4. The antenna or satellite dish cannot be located in any required yard setback area of the zoning district in which it is located with the exception of possible encroachment of the antenna array into airspace over said setback.

5. Satellite dishes and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.

(3) *Use permits.* Towers or antennas not permitted pursuant to subsections (1) and (2) shall be subject to approval of a use permit in accordance with § 10-3.1301 et seq. of this title.

(a) In granting a use permit, the Planning Commission may impose conditions to the extent it concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties. The Planning Commission shall consider the following factors in determining whether to issue a use permit, although the Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria if the Planning Commission concludes that the goals of this section are better served thereby.

1. Height of the proposed tower;
2. Exact location of the tower in relation to the Madera Municipal Airport and the distance of the tower from residential structures and residential district boundaries;
3. Nature of uses on adjacent and nearby properties;
4. Surrounding topography;
5. Surrounding tree coverage and foliage;
6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
7. Proposed ingress and egress; and
8. Availability of suitable existing towers and other structures as discussed in the following subsection.

(b) No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission that no existing tower or structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:

1. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antennae.
5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(c) The following setbacks and separation requirements shall apply to all towers and antennas for which a use permit is required; provided, however, that the Planning Commission may reduce the standard setbacks and separation requirements if the goals of this section would be better served thereby.

1. Towers must be set back a distance equal to the height of the tower, including antennas, plus 20 feet from any off-site residential structure.
2. Towers, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.

3. In zoning districts other than industrial or heavy commercial zoning districts, towers over 90 feet in height shall not be located within one-quarter of a mile from any existing tower that is over 90 feet in height

(d) All towers and telecommunication facilities, with the exception of slimline monopole structures, shall be designed to promote facility and site sharing. To this end, towers and necessary appurtenances, including but not limited to parking areas, access roads, utilities, and equipment buildings shall be designed to allow for potential shared use by other telecommunication services. The facility shall make available unutilized space for co-location of telecommunication facilities, including space for those entities providing similar, competing services. A good faith effort in achieving co-location shall be required. Request for utilization of facility space and responses to such requests shall be made in a timely manner and in writing with copies provided to the city.

(e) Towers, equipment shelters, and any guy wires, either completely or individually, shall be enclosed by security fencing not less than eight feet in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the Planning Commission may waive or modify such requirements, as it deems appropriate. "No Trespassing" signs shall be posted around the facility with a telephone number of who to contact in the event of an emergency on a twenty-four hour basis.

(f) The following requirements shall govern the landscaping surrounding towers for which a use permit is required; provided, however, that the Planning Commission may waive such requirements if the goals of this section would be better served thereby.

1. The applicant shall enter into an indemnification agreement with the city to defend, indemnify, and hold harmless the city and its officers or employees from any claim, action, or proceeding against the city as a result of the action or inaction of the city and its officers or employees in approving an application pursuant to this section.

2. Tower facilities shall be landscaped with a buffer of plant materials which effectively screen the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least four feet wide outside the perimeter of the compound.

3. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.

4. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

(E) *Removal of abandoned antennas and towers.* Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove same within 90 days of receipt of notice from the Community Development Director/City Engineer notifying the owner of such abandonment. If such antenna or tower is not removed within said 90 days, the Community Development Director/City Engineer may remove such antenna or tower at the owner's expense. The City Council declares that such abandoned towers are a public nuisance and may be summarily abated as provided in this Code and as may be provided under the applicable laws of the state, and the expenses of such abatement shall constitute a lien against the underlying property upon which the tower is located and a personal obligation against the owner of such underlying property. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

(Ord. 698 C.S., passed 3-17-99)

ATTACHMENT 4

Planning Commission Resolution
Recommending City Council Adopt an Ordinance Repealing
Section 10-3.419 of Title X of the Madera Municipal Code Related
to Telecommunication Towers, Antennas and Structures and Find
the Ordinance is Not a Project Subject to CEQA Pursuant to CEQA
Guidelines Section 15378 and Alternatively, Exempt From CEQA
Under CEQA Guidelines Section 15061(B)(3) (Common Sense)

RESOLUTION NO. 1946

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MADERA RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE REPEALING SECTION 10-3.419 OF TITLE X OF THE MADERA MUNICIPAL CODE RELATING TO TELECOMMUNICATION TOWERS, ANTENNAS AND STRUCTURES AND FIND THE ORDINANCE IS NOT A PROJECT SUBJECT TO CEQA PURSUANT TO CEQA GUIDELINES SECTION 15378, AND ALTERNATIVELY, EXEMPT FROM CEQA UNDER CEQA GUIDELINES SECTION 15061(B)(3) (COMMON SENSE)

WHEREAS, pursuant to the California Constitution, Article XI, section 7; California Government Code Section 37100 and other applicable law, the City Council of the City of Madera (“City Council”) may make and enforce within its limits all local, police, sanitary and other ordinances, resolutions and other regulations not in conflict with general laws; and

WHEREAS, On October 19, 2022, the City Council adopted Ordinance No. 995 C.S., which added Chapter 9 to Title X of the Madera Municipal Code, and brought the Madera Municipal Code in line with recent Federal and State law pertinent to wireless facilities; and

WHEREAS, the adoption of Ordinance No. 995 C.S. necessitates the repeal of Section 10-3.419 of the Madera Municipal Code to avoid duplicative and obsolete regulations; and

WHEREAS, the City performed a preliminary environmental assessment in accordance with the California Environmental Quality Act (CEQA) and determined that an ordinance repealing Section 10-3.419 is not a “project” subject to CEQA per CEQA Guidelines Section 15378, and alternatively, if the ordinance was a “project” subject to CEQA, it would be exempt from CEQA under CEQA Guidelines Section 15061(b)(3); and

WHEREAS, on February 21, 2023, the Planning Commission held a duly noticed public hearing, and evaluated the information in the record, and considered testimony at the public hearing; and

WHEREAS, the Planning Commission now desires to recommend that the City Council adopt an ordinance repealing Section 10-3.419 of the Madera Municipal Code related to telecommunication towers, antennas, and structures.

NOW, THEREFORE BE IT RESOLVED, by the Planning Commission of the City of Madera as follows:

1. Recitals. The Planning Commission finds that: (a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; and (b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution.

2. CEQA Recommendation. The Planning Commission recommends that the City Council find that the ordinance does not qualify as a “project” subject to California Environmental Quality Act (“CEQA”) Guidelines § 15378 and California Public Resources Code § 21065 because repealing Section 10-3.419 is a ministerial action that has no potential for resulting in either a direct or physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Alternatively, if this action qualified as a “project”, it would be exempt pursuant to CEQA Guidelines § 15061(b)(3) (Common Sense) because there is no possibility that the project will have a significant impact on the

physical environment. Further, none of the exceptions under Section 15300.2 of the CEQA Guidelines are applicable to this project.

3. Recommendation to Adopt the Ordinance. The Planning Commission recommends that the City Council adopt an ordinance repealing Section 10-3.419.

4. Effective Date. This Resolution shall become effective immediately.

Passed and adopted by the Planning Commission of the City of Madera this 21st day of February 2023, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Robert Gran Jr.
Planning Commission Chairperson
Attest:

Gary Conte, AICP
Planning Manager