

Community and Economic Development Planning Division

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PLANNING COMMISSION DATE: June 5, 2018

AGENDA ITEM: #5

CUP	#2018-012	Amend Condition of Approval for CUP 2016-016
APN	# 051-146-012	Applicant: Bob Shockley
		Owner: JHB DOABA, INC
CEQA	MND #2017-11	Previously Adopted Mitigated Negative Declaration

REQUEST:

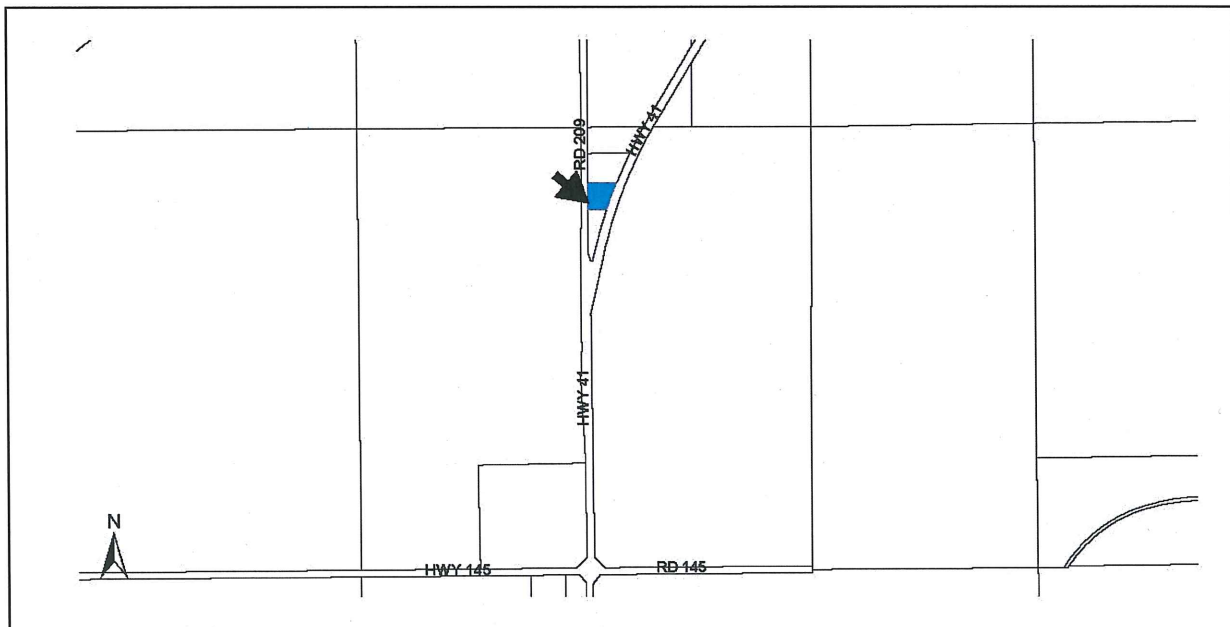
The applicant is requesting an amendment to a conditional of approval for Conditional Use Permit 2016-016.

LOCATION:

The property is located on the east side of Road 209, approximately 0.24 mile north of its intersection with Highway 41 (no situs), Madera.

ENVIRONMENTAL ASSESSMENT:

A Mitigated Negative Declaration (MND #2017-11) has been previously adopted for this project.



RECOMMENDATION:

Staff recommends approval of the Conditional Use Permit (CUP #2018-012) subject to conditions.

GENERAL PLAN DESIGNATION (Exhibit A-1):

SITE: HSC (Highway, Service, Commercial) Designation

SURROUNDING: AE (Agricultural, Exclusive) and HSC (Highway, Service, Commercial) Designations

O'NEALS PLAN DESIGNATION (Exhibit A-2):

SITE: RC (Rural, Commercial) Designation

SURROUNDING: RC (Rural, Commercial) and RCA&PL (Resource Conservation Area and Public Land) Designations

ZONING (Exhibit B):

SITE: CRM (Commercial, Rural, Median) District

SURROUNDING: CRM (Commercial, Rural, Median) and ARE-40 (Agricultural, Rural, Exclusive-40 Acre) Districts

LAND USE:

SITE: Undeveloped

SURROUNDING: There is vacant land on all sides.

SIZE OF PROPERTY: 2.23 Acres

ACCESS: Access will be provided to the property by Road 209.

BACKGROUND AND PRIOR ACTIONS:

The property was Lot #3 of Parcel Map 4113 recorded on December 2, 2008. Currently a Lot Line Adjustment is in progress.

On June 13, 2017, the Planning Commission approved a Conditional Use Permit (CUP 2016-016) to allow the construction of a 6,584 square foot mini-mart with a quick serve restaurant, auto fuel canopy with six pumps and a truck fuel canopy.

PROJECT DESCRIPTION:

The applicant is requesting to amend a condition of approval on Conditional Use Permit 2016-016 extending the timeline for the turn lane until a biological study is complete in approximately three to four years and allowing the construction of the facility prior to the completion of the right-hand turn lane.

ORDINANCES/POLICIES:

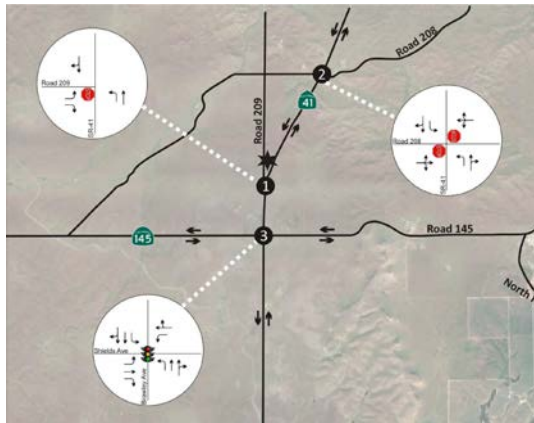
Section 18.34.010 of the Zoning Ordinance lists the permitted uses within the CRM (Commercial, Rural, Median) Zone District. Allowable uses include a service station with a conditional use permit.

Chapter 18.92 of the Madera County Zoning Ordinance outlines the procedures for the processing and approval of Conditional Use Permits.

ANALYSIS:

On June 13, 2017, the Planning Commission approved a Conditional Use Permit (CUP 2016-016) to allow the construction of a 6,584 square foot mini-mart with a quick serve restaurant, auto fuel canopy with six pumps and a truck fuel canopy. The project site consists of 2.23 acres located on the east side of Road 209, approximately 0.24 miles north of its intersection with Highway 41 (no situs), Madera.

The project was submitted to the California Department of Transportation (CalTrans) for review. CalTrans requested a traffic study and indicated that they are in the design process to establish a new SR 41 future freeway/expressway alignment between Avenue 11 and north of Road 208. The future freeway/expressway alignment would require a minimum of 300 feet right-of-way. This would require an irrevocable offer of dedication for an additional 33 feet of right-of-way.



Existing Intersection Movement

The traffic study indicated that the intersection of Highway (SR) 41 and Road 209 is forecasted to operate at unacceptable Level of Service (LOS) 'E' or LOS 'F' under 'Existing Plus Project', 'Near-Term Plus Project', and 'Cumulative Year 2038' conditions despite the proposed intersection improvement. This intersection does not meet the peak hour traffic signal warrant because the minor approach does not carry enough traffic to justify signalization. Installation of a traffic signal at this location would be sufficient in alleviating the delay experienced at the eastbound left turn movement, however, Caltrans has

previously determined that a traffic signal will not be permitted at this location due to the close proximity of the SR 145 at SR 41 intersection.

Proposed mitigation measures would require the application to:

- Widen the northbound approach to the left turn lane and 2 through lanes (adding 1 through lane)
- Lengthen the eastbound left turn lane to approximately 175 feet (Near-Term Plus Project and Cumulative Year 2038 Plus Project scenarios only)



Proposed Intersection

Caltrans further requested:

- The construction of a 12-foot southbound right-turn lane with a standard six foot bike lane and a four-foot shoulder on SR 41 to Road 209 prior to the Project opening day in addition to the recommended improvements identified in the TIS (Traffic Impact Study).
- The Project shall contribute their fair share for the intersection improvement on SR 41 and Road 208. The Project fair share calculations for the intersection of SR 41/Road 208 should include the left-turn out trips at Road 209.

Equitable Fair-Share Responsibility

INTERSECTION	EXISTING 2016	PROJECT TRIPS	CUMULATIVE YEAR 2038 PLUS PROJECT	FAIR-SHARE PERCENTAGE
Road 209 at SR 41 (AM Peak Hour)	1,083	198	1,855	25.6%
Road 209 at SR 41 (PM Peak Hour)	1,350	263	2,276	28.4%

There is another previously approved project, Madera Quarry, that will use the same intersection. They are responsible for some of these mitigations. However, it is still proposed that this project be responsible for the construction of a 12' southbound right-turn lane with a standard six (6) foot bike lane and a four (4) foot shoulder on SR 41 to Road 209 prior to opening day. They will also be required to lengthen the eastbound left turn lane to a minimum of 175 feet and pay their fair-share of the intersection improvements.

At the request of the Department of Fish and Wildlife, a Biological Study was completed. The results indicated that:

This Project will not:

- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish (CDFW) and Wildlife or United States Fish and Wildlife Service(USFWS) (i.e., no such regulated habitat exists in the survey area); (2) have a substantial adverse effect on Federally protected wetlands as defined by Section 404 of the Clean Water Act through direct removal, filling, hydrological interruption, or other means (i.e., no federally protected wetland exists in the survey area);
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance (i.e., no such policies exist, and no trees will be removed); or
- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Communities Conservation Plan, or other approved local, regional, or state habitat conservation plan (i.e., no such plan exists). Therefore, these significance criteria are not analyzed further.

However, the project could:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

However, when the applicant applied to CalTrans for an encroachment permit, CalTrans biological expert stated that the State and Federally threatened California tiger salamander

was identified in the area where the 12-foot southbound right-turn lane was to be located that was not included in the original biological study. A new biological study of this area and a special permit from the California Department of Fish and Wildlife and from the United States Department of Fish and Wildlife would be required and this will take approximately three to four years to complete. Therefore, the applicant is requesting an amendment to the condition of approval that required the turn lane to be constructed prior to opening day. They would like to construct and open the facility prior to the completion of the construction of the turn lane.

FINDINGS OF FACT:

The following findings of fact must be made by the Planning Commission to approve this Conditional Use Permit application. Should the Planning Commission vote to approve the project, Staff recommends that the Planning Commission concur with the following in light of the proposed conditions of approval.

1. *The proposed project does not violate the spirit or intent of the Zoning Ordinance in that the CRM (Commercial, Rural, Median) Zone District allows service stations subject to an approved Conditional Use Permit.*
2. *The proposed project is not contrary to the public health, safety, or general welfare in that the proposed road mitigation measures will help insure the safety of the intersection and provide a service to the public.*
3. *The proposed project is not hazardous, harmful, noxious, offensive, or a nuisance because of noise, dust, smoke, odor, glare, or similar factors in that the applicant must operate according to the operational statement and plans. The facility will be regulated under the Hazardous Material Business Plan (Article I, Chapter 6.95, of the California Health & Safety Code)*
4. *The proposed project will not, for any reason, cause a substantial, adverse effect upon the property values and general desirability. The project site is currently undeveloped. The proposed facility will be a service to the public.*

WILLIAMSON ACT:

The property is not subject to a Williamson Act contract.

GENERAL PLAN CONSISTENCY:

The HSC General Plan Designation would allow for restaurants, service stations, truck stops, hotels and motels, and retail and amusement uses that are oriented principally to highway and through traffic, public and quasi-public uses, and similar and compatible uses. The FAR (Floor Area Ratio) shall not exceed 0.40. This project consists of a Conditional Use Permit to allow for an automobile and truck fuel station with a mini-mart. The CRM Zone District allows a service station with an approved Conditional Use Permit. Therefore, the proposal is consistent with the Plan.

RECOMMENDATION:

Staff recommends approval of the Amendment of Conditional Use Permit (CUP #2016-016) subject to conditions.

CONDITIONS:

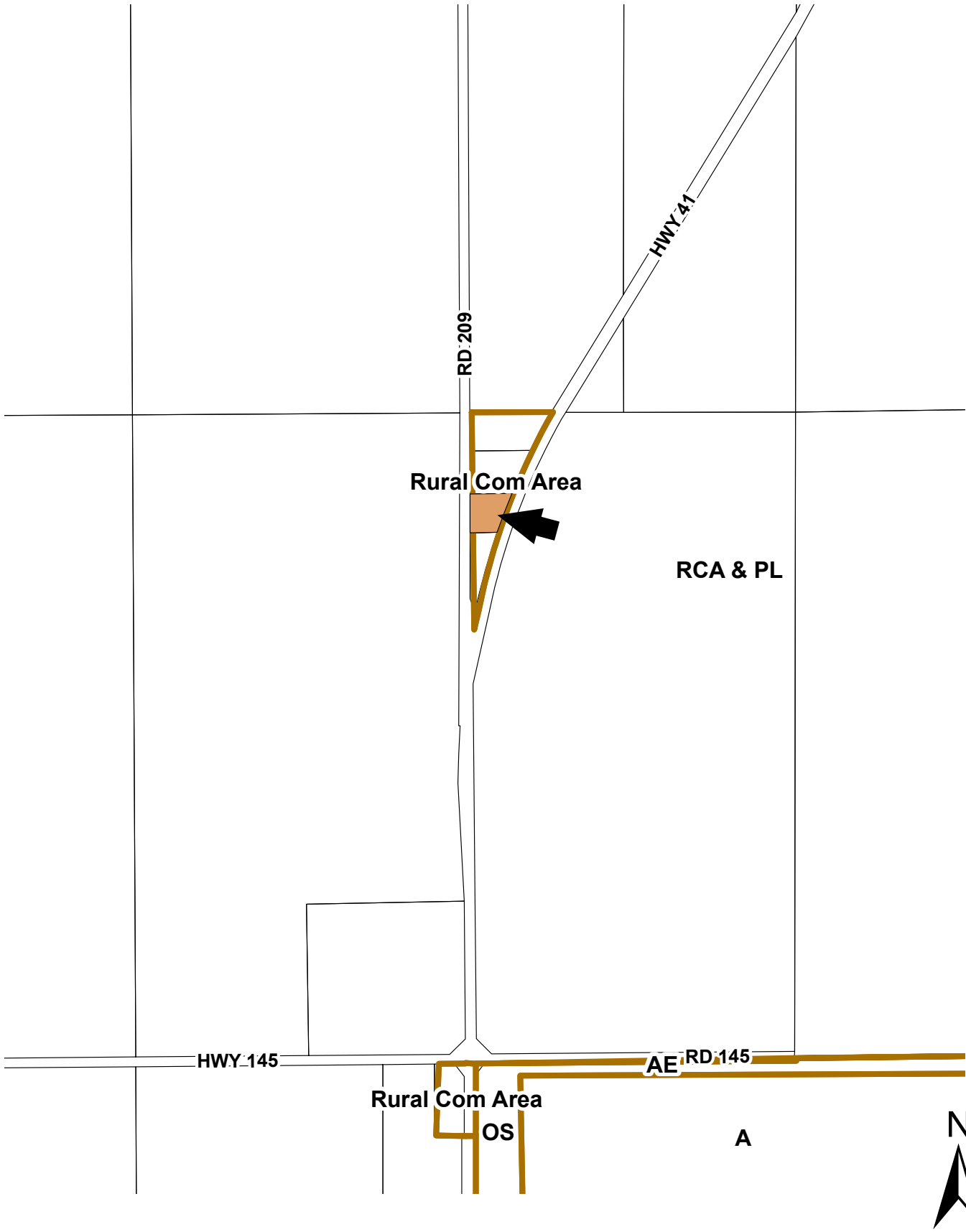
1. Project is subject to all conditions and the Mitigation Monitoring Program that was approved for Conditional Use Permit 2016-016.
2. The applicant must complete the biological study, obtain an Encroachment Permit from CalTrans and complete the required southbound right-turn lane to CalTran' standards, on SR 41 to Road 209 within four years from Building Permit final.
3. If the turn lane is not completed within the specified timeline, the project will be subject to Code Enforcement action and fined \$1,000 per day.

ATTACHMENTS:

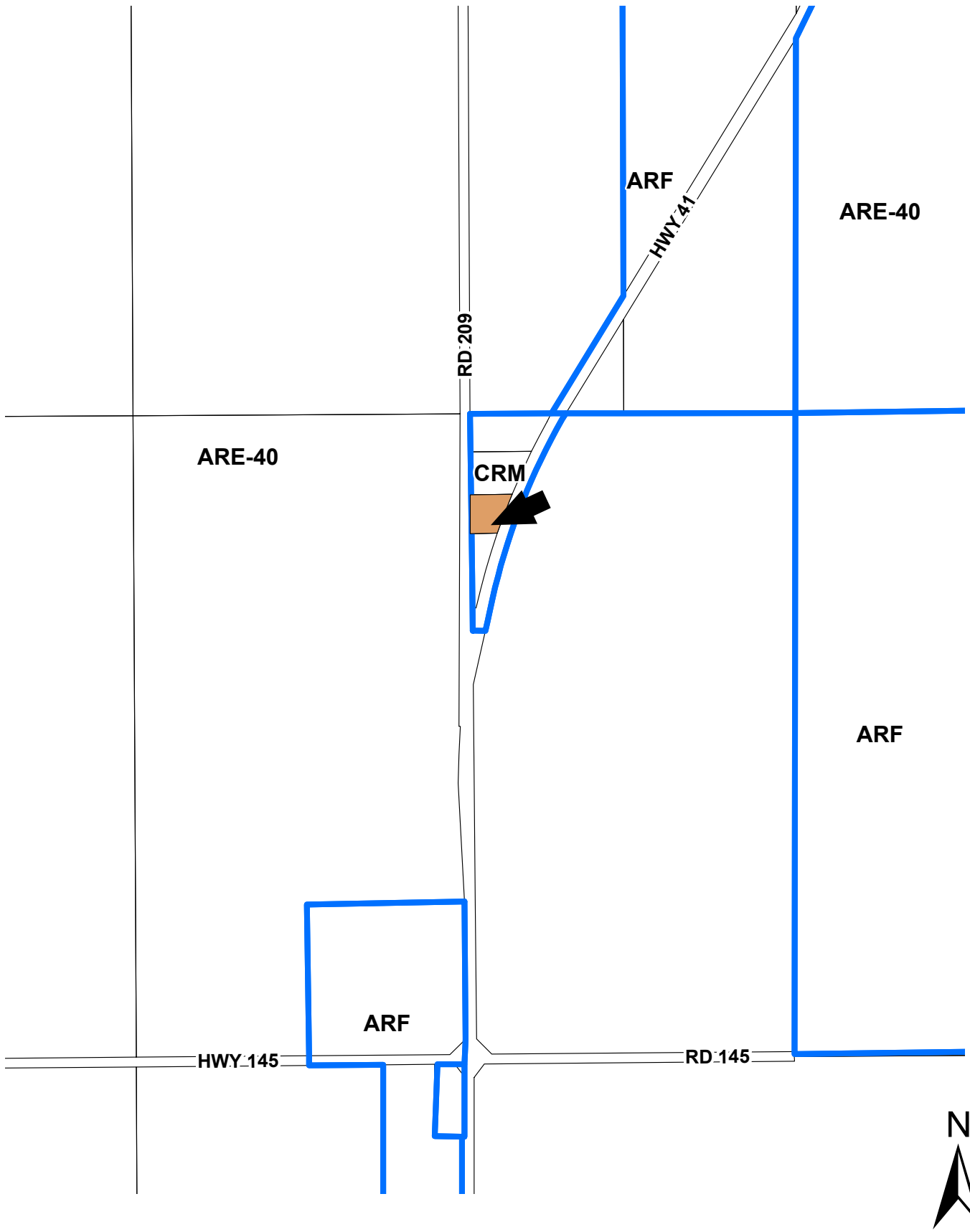
1. Exhibit A-1, General Plan Map
2. Exhibit A-2, O'Neals Area Plan Map
3. Exhibit B, Zoning Map
4. Exhibit C, Assessor's Map
5. Exhibit D-1, Site Plan
6. Exhibit D-2, Floor Plan
7. Exhibit D-3, Elevation
8. Exhibit D-4, Fuel Island
9. Exhibit D-5, Landscape Plan
10. Exhibit E, Aerial Map
11. Exhibit F, Topographical Map
12. Exhibit G, Operational Statement
13. Exhibit H, Previously Approved Conditions
14. Exhibit I, Previously Approved Mitigated Negative Declaration
15. Exhibit J, Scope of work to be completed by Colibri Ecological Consulting
16. Exhibit K, Email from Michael Navarro, CalTrans



GENERAL PLAN MAP



O'NEALS AREA PLAN

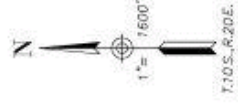


ZONING MAP

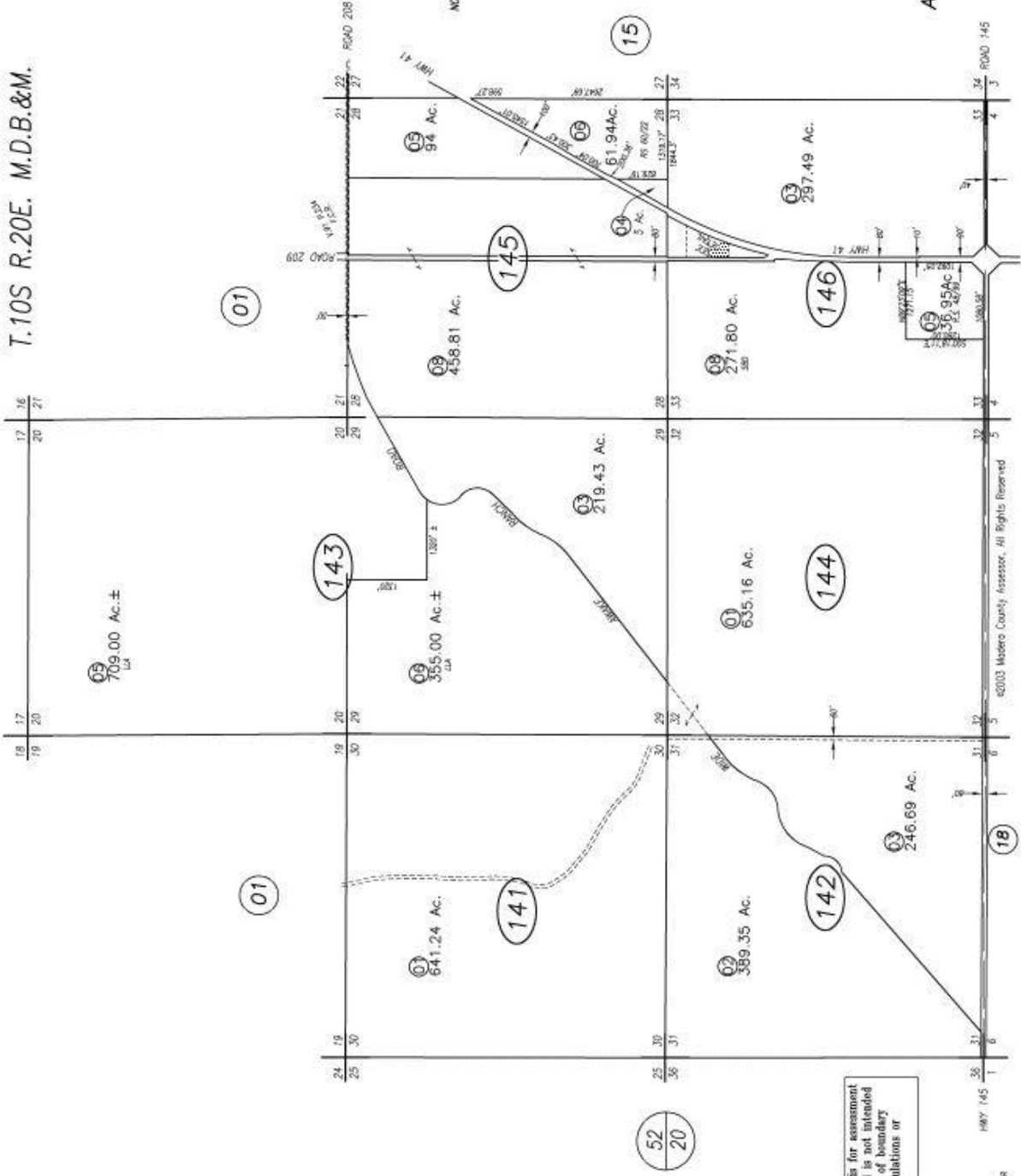
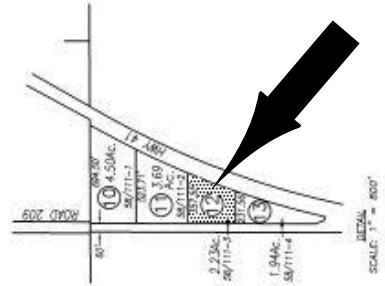
Tax Area Code
 83-010
 83-011

T. 10S R. 20E. M.D.B.&M.

51-14



NOTE- Assessor's Block Numbers Shown in Ellipses
 Assessor's Parcel Numbers Shown in Circles



IN BLUE ORIGINAL

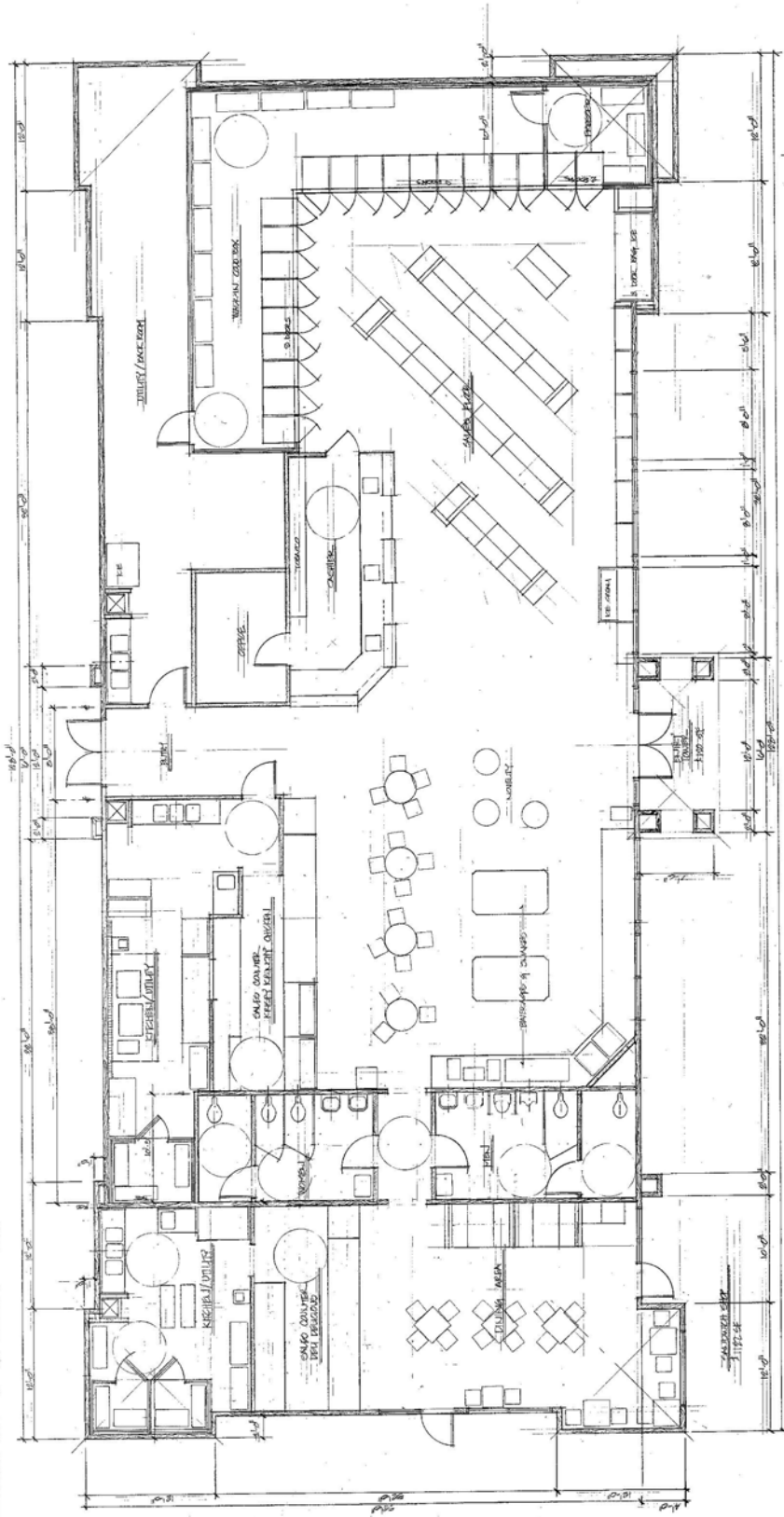
NOTE: This map is for assessment purposes only and is not intended for interpretation of boundary rights, zoning regulations or land division.

11/26-10-01
 -02-00
 -04-00
 -05-00
 -08-00

Assessor's Map No. 51-14
 Chawanahee
 County of Madera, Calif.
 1960

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EXHIBIT D-2



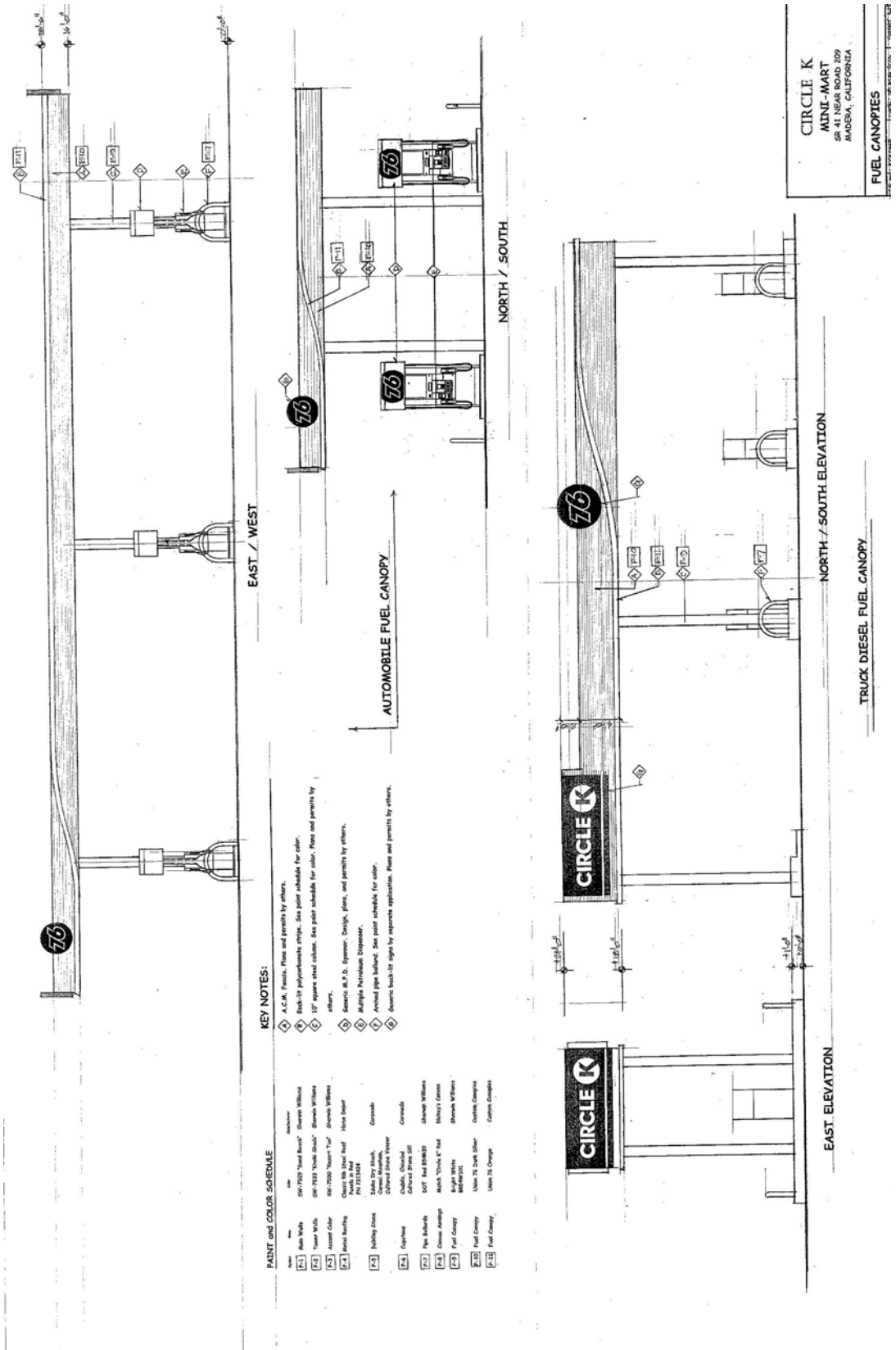
CIRCLE K
MINI-MART
5841 NEAR ROAD 209
MADISON, CALIFORNIA
FLOOR PLAN

MINI-MART - 5841 NEAR RD
ARCHITECT - 11/27/08
DATE - 11/27/08
SCALE - 1/8" = 1'-0"

FLOOR PLAN

FLOOR PLAN

EXHIBIT D-4



FUEL ISLANDS

CIRCLE K
MINI-MART
 SR 41 NEAR ROAD 209
 MADISA, CALIFORNIA

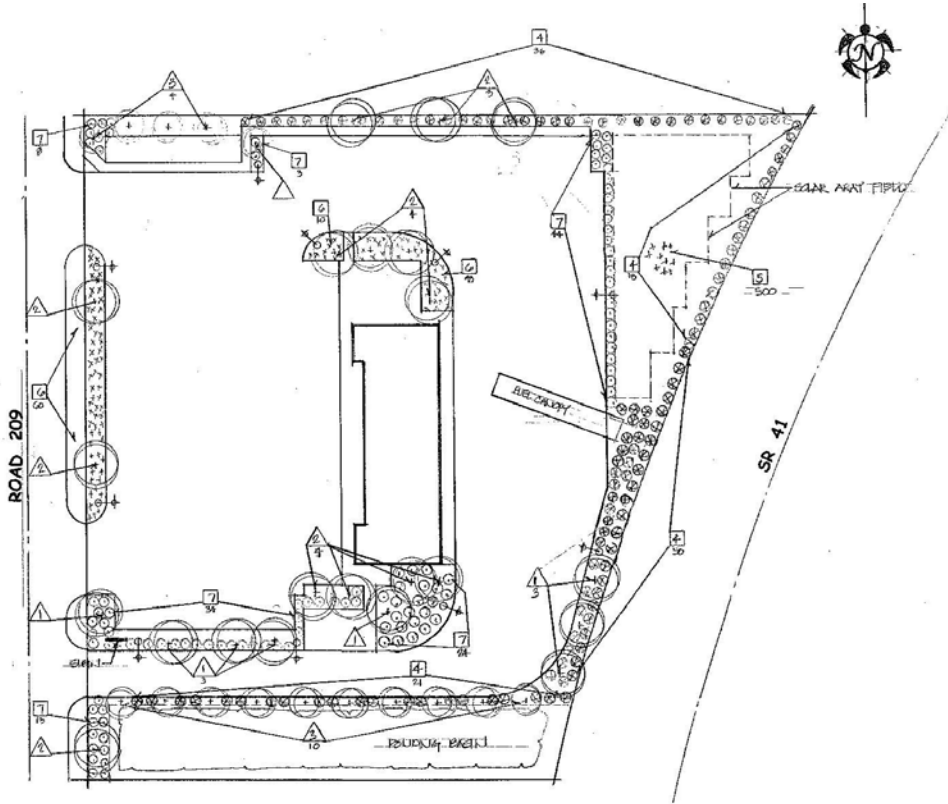
FUEL CANOPIES

EAST ELEVATION

NORTH / SOUTH ELEVATION

TRUCK DIESEL FUEL CANOPY

EXHIBIT D-5



LANDSCAPE SCHEMATIC

PLANTING SCHEDULE

1	Fraxinus O. Rowwood "Raywood Ash"	5 gal	8 Trees
2	Pistacia Chinese "Chinese Pistache"	5 gal	14 Trees
3	Cedar Tree "Cedrus Deodera"	5 gal	14 Trees
4	Pyracantha "Firestern"	1 gal	125 Plants
5	Violet/Pony "Viola Cornuta"	flats	500 Plants
6	Small Plants	per contract	118 Plants
7	Juniper "Bar Harbor"	1 gal	126 Plants

All planters shall have a 3" minimum layer of wood chips for moisture and weed control.

SHADING CALCULATION:

Proposed parking lot area for this site	40,714 s.f.
22 trees at 962 s.f. each	21,164 s.f.
14 trees at 312 s.f. each	4,368 s.f.
Total	25,532 s.f.
80% shading value	20,357 s.f.
Shading provided	62.7 %
1 Tree per 1.11 parking spaces	

**CIRCLE K
MINI-MART**
SR 41 NEAR ROAD 209
MADERA, CALIFORNIA

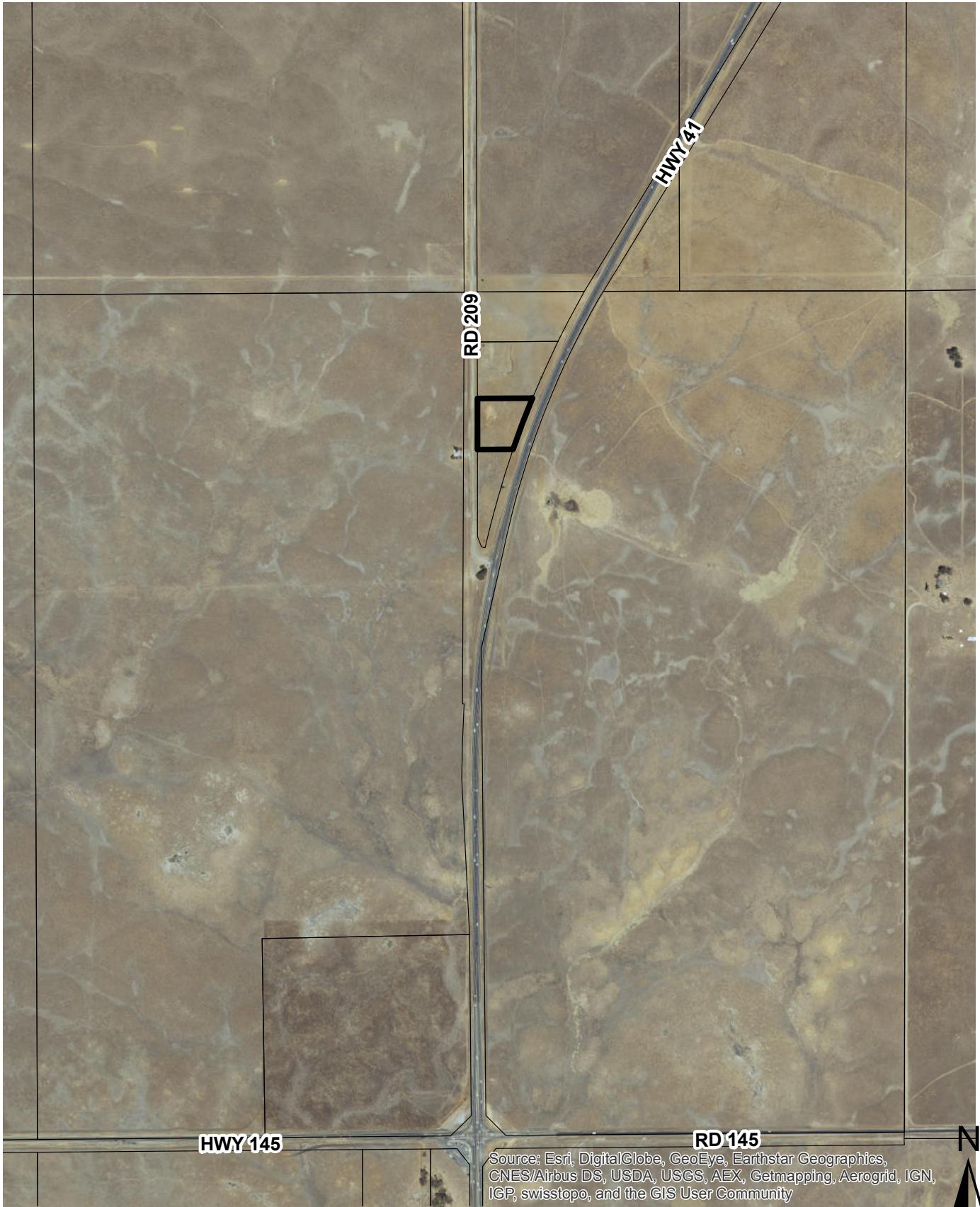
Richard Herzog Construction, Inc.

RHC
7947 North Highland Ave
Chico, California, 95929
530-322-2011 Office
530-322-2018 FAX
530-394-7777 Cell
richard@rhc-cto.net
Contractor's License 555750

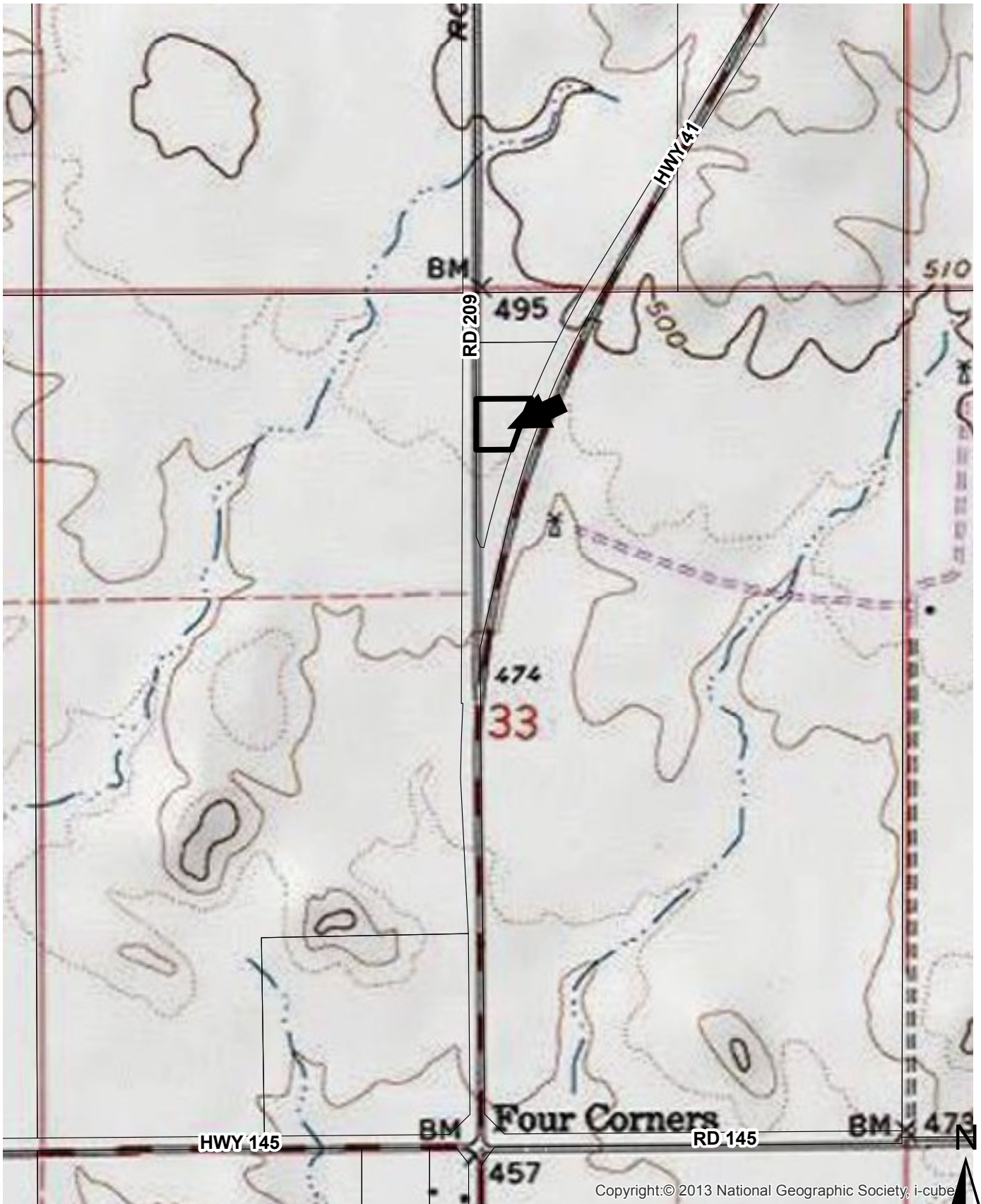
LANDSCAPE SCHEMATIC

DATE: 08/20/16
SCALE: 1" = 20'-0"
SHEET: L-1

LANDSCAPE PLAN



AERIAL MAP



Copyright: © 2013 National Geographic Society, i-cube

TOPOGRAPHICAL MAP

ADDENDUM TO CUP 2016-16

MINI-MART SERVICE STATION

18667 ROAD 209

MADERA, CA 93636

CUP 2016-16 was approved in April of 2017.

One of the conditions was to install a southbound right turn lane from Hwy 41 onto Road 209 prior to opening day.

We have no problem complying with this condition except for the following:

During the permitting process for an encroachment permit to construct the turn lane, Caltrans officials discovered that the biological species study did not include Hwy 41 right of way needed to construct the improvements.

Caltrans has required a new and more intensive study to be done with emphasis on possible habitats for the California Tiger Salamander before an encroachment permit can be issued.

We have already contracted with a biological firm and preliminary work has started.

The study and approvals could take up to 3 years to complete and be accepted by the California Department of Fish and Wildlife, the United States Fish and Wildlife Service County of Madera and Caltrans. (resource agencies?)

We would like to defer the implementation and installation of the right turn lane for the amount of time that it takes to do the study, update and re-circulate the Mitigated Negative Declaration (and supporting Initial Study), finish the plans and permits, and do the actual construction. Caltrans concurs that preparation and acceptance of the biological studies could take up to 3 years.

We anticipate installation of the right turn pocket would occur within approximately 3 to 4 years.

Michael Navarro who is the Chief Transportation Planner for District 6 at Caltrans is satisfied with this solution.

CONDITIONS OF APPROVAL

PROJECT NAME:

Shockley, Bob - Conditional Use Permit - Madera (051-146-012-000)
 The project is located on the east side of Road 209, approximately 0.24 miles
 north of its intersection with Highway 41 (no situs), Madera

PROJECT LOCATION:

PROJECT DESCRIPTION:

Automobile and truck fuel station with a mini-mart

APPLICANT:

Shockley, Bob
 (559) 822-6246

CONTACT PERSON/TELEPHONE NUMBER:

No.	Condition	Department/Agency	Verification of Compliance	
			Initials	Date
Environmental Health				
1	The project shall be served by a community sewer system. Sewer service for all structure(s) within the parcel map must be connected to an approved community sewer system that is approved by Madera County Environmental Health Division and/or Regional Water Quality Control Board (RWQCB).			
2	Applicant must comply with Madera County Code(s) Title 13, 14 and 17 throughout the property development as it pertains to the Sewage Disposal System(s) and Water System(s).			
3	Solid waste collection with sorting for green, recycle, and garbage is required.			
4	Environmental Health Division food plan check will be required for review and approval for food facilities.			
5	Environmental Health Division Underground Storage Tank plan check will be required for review and approval.			
6	The construction and then ongoing operation must be done in a manner that shall not allow any type of public nuisance(s) to occur including but not limited to the following nuisance(s): Dust, Odor(s), Noise(s), Lighting, Vector(s) or Litter. This must be accomplished under accepted and approved Best Management Practices (BMP) and as required by the County General Plan, County Ordinances and any other related State and/or Federal jurisdiction.			
FIRE DEPARTMENT				
7	At the time of application for a Building Permit, a more in-depth plan review of the proposed project's compliance with all current fire and life safety codes will be conducted by the Madera County Fire Marshal. (CFC, Section 105)			

No.	Condition	Department/Agency	Verification of Compliance		
			Initials	Date	Remarks
Planning					
8	The project shall be developed and operate in accordance with the operational statement and site plan submitted, except as modified by the mitigation measures and other conditions of approval required for the project.				
9	A landscaping and irrigation plan shall be submitted to the Planning Department for review and approval. The plan shall show the type of species to be planted, along with their size, location, spacing, etc. Sizing of plants and or trees shall be adequate so as to provide, where required, a fully functional screen within three years of normal growth. The landscaping shall be kept viable and free of weeds and debris.				
10	All landscaping must comply with the County's Water Efficient Landscape Ordinance.				
11	Parking lot must comply with Madera County Code Section 18.102.120				
12	All mitigation measures outlined in the Mitigated Negative Declaration #2017-11 shall be implemented in development of this project unless added to, deleted from, and/or otherwise modified by the Planning Commission or Board of Supervisors.				
13	The project must comply with the O'Neals Area Plan that states "The architecture of a development should have a rustic theme and utilize earth tone colors that reflect the natural environment and rural atmosphere of the study area. Unpainted metal shall not be used for any exterior surfaces of a building."				
14	No free-standing signs with the exception of the monument size for pricing. All signs must comply with the O'Neals Area Plan.				
	1. Project is subject to all conditions and the Mitigation Monitoring Program that was approved for Conditional Use Permit 2016-016.				CUP 2018-012
	2. The applicant must complete the biological study, obtain an Encroachment Permit from CalTrans and complete the required southbound right-turn lane to CalTran' standards, on SR 41 to Road 209 within four years from Building Permit final.				CUP 2018-012
	3. If the turn lane is not completed within the specified timeline, the project will be subject to Code Enforcement action and fined \$1,000 per day.				CUP 2018-012
Public Works					
15	The preliminary proposed site will require a Grading, Drainage, and Erosion Control Permit. Plan for said permit must be prepared by a California Licensed Civil Engineer. Plans must show the active Waste Discharge Identification (WDID) number on the cover.				
16	Prior to any construction where such construction is proposed within an existing County right-of-way, the applicant is required to apply for an Encroachment Permit from the Public Works Department. Said permit must be approved prior to commencing the work.				
17	At the time of applying for the building permits, if any grading is to occur, the applicant is required to submit a grading, drainage, and erosion control plans to the Public Works Department for review. Such improvement plans shall be prepared by a licensed professional.				
18	At the time of applying for the building permits, for any access approaches or road improvements are to be constructed for the proposed development, the applicant is required to provide such improvement plans to the Public Works Department for review and approval.				

No.	Condition	Department/Agency	Verification of Compliance		
			Initials	Date	Remarks
19	On frontage roads, including the onsite, and in areas where the delivery or customer vehicles must be accommodated, appropriate vehicle templates should be used to determine if adequate turning radii have been achieved and configured.				
20	If there are drainage facilities and on site storage pond existed on site, the applicant is required to verify that the existing drainage system and storage capacity are still adequate and fully functional for the proposed development.				
21	All National Pollution Discharge Elimination System (NPDES) storm water regulations and standards shall be met. It is possible that the quality of storm water may be affected by pollutants. The applicant shall mitigate any impacts associated with storm water contamination caused by this project. A Storm Water Pollution Prevention Plan (SWPPP) is required for all projects 1-acre or more of site disturbance.				
22	All stabilized construction on and off site access locations shall be constructed per the latest edition of the California Stormwater Quality Association (CASQA) details to effectively prevent tracking of sediment onto paved areas. If applicable, all BMPs to be inspected weekly and before and after each rain event. Repair or replace as necessary. The contractor shall abide all of the laws, ordinances, and regulations associated with the NPDES and the Clean Water Act.				
23	Contractor shall be responsible for locating all underground utilities prior to the start of any work by contacting Underground Service Alert (USA) 48 hours prior to any excavation. Contractor shall be responsible for contacting the appropriate party in advance of any work for necessary inspections in compliance to these plans, standard plans and standard specifications.				
24	Provide appropriate road guide and/or warning signs within the vicinity of the project limit.				
25	Turning templates must be utilized to demonstrate the entrance corner radii are adequately designed for vehicles & trucks to safely maneuver around them when they're existing or entering the site.				
26	The developer is to provide any road improvement plans to the Public Works Department for review and approval.				

MITIGATED NEGATIVE DECLARATION

MND 2017-11

RE: Shockley, Bob - Conditional Use Permit (CUP #2016-016) - Madera (051-146-012-000)

Location and Description of Project:

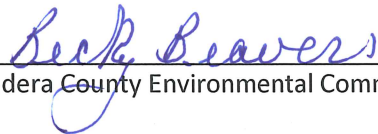
The applicant is requesting a Conditional Use Permit to allow an automobile and truck fuel station with a mini-mart. The project is located on the west side of Highway 41, approximately 0.24 miles north of its intersection with Road 209 (no situs), Madera.

Environmental Impact:

No adverse environmental impact is anticipated from this project. The following mitigation measures are included to avoid any potential impacts.

Basis for Negative Declaration:

SEE ATTACHED



Madera County Environmental Committee

A copy of the negative declaration and all supporting documentation is available for review at the Madera County Planning Department, 200 West 4th Street, Madera, California.

DATED: April 5, 2017

FILED:

PROJECT APPROVED:

MITIGATION MONITORING REPORT

MND #

No.	Mitigation Measure	Monitoring Phase	Enforcement Agency	Monitoring Agency	Action Indicating Compliance	Verification of Compliance	
						Initials	Date
Aesthetics							
1	Any proposed lighting shall be hooded and directed away from surrounding properties and roadways						
Agricultural Resources							
Air Quality							
2	Comply San Joaquin Valley Air Pollution Control District conditions						
Biological Resources							
3	If work will occur during the Swainson's hawk nesting season (March 15 - June 30), a qualified biologist shall conduct a survey for active Swainson's hawk nests within 0.50 miles of the Project site no more than 14 days prior to the start of construction. If an active nest is found within 0.50 miles and the activity would disrupt nesting, a construction-free buffer or limited operating period shall be implemented in consultation with the CDFW.						
4	If construction activities occur during bird nesting season (February through August), a qualified biologist shall conduct a survey for active bird nests within 250 feet of all work locations no more than 14 days prior to the start of construction. If an active nest is found close enough to the construction area to be disturbed by the construction activities, the qualified biologist shall determine the extent of a construction-free buffer to be established around the nest. If work cannot proceed without disturbing the nesting birds, work may need to be halted or redirected to other areas until nesting and fledging are completed or the nest has otherwise failed for non-construction related reasons.						
Cultural Resources							
5	A Native American Monitor must be onsite during ground disturbance.						
Geology and Soils							
Hazards and Hazardous Materials							

No.	Mitigation Measure	Monitoring Phase	Enforcement Agency	Monitoring Agency	Action Indicating Compliance	Verification of Compliance		
						Initials	Date	Remarks
6	The facility will be regulated under the Hazardous Material Business Plan (Article I, Chapter 6.95, of the California Health & Safety Code)							
Hydrology and Water Quality								
7	The project shall be served by a community water system. Water services for any structure(s), within this parcel map must be connected to an approved community water system and approved by Madera County Environmental Health Division and/or State Division of Drinking Water (DDW).							
Land Use and Planning								
Mineral Resources								
Noise								
Population and Housing								
Public Services								
Recreation								
Transportation and Traffic								
8	The Project shall lengthen the eastbound left turn lane to a minimum of 175 feet.							
9	The Project must construct a 12-foot southbound right-turn lane with a standard six foot bike lane and a four-foot shoulder on SR 41 to Road 209 prior to the Project opening day.							
10	The Project shall contribute their fair share for the intersection improvement on SR 41 and Road 208. The Project fair share calculations for the intersection of SR 41/Road 208 should include the left-turn out trips at Road 209.							
11	The applicant shall complete the irrevocable offer of dedication for 33 feet of right-of-way prior to issuance of a building permit.							
Utilities and Service Systems								

April 5, 2018

Hardeep Gahunia
JBH DOABA, Inc.
6271 N Milburn Avenue
Fresno, CA 93722

Subject: Incidental Take Permitting Scope and Timelines for the Highway 41 Right-Turn Lane near Road 209 in Madera County, California

Dear Hardeep:

We propose to assist JBH DOABA, Inc. by conferring with the biological resource agencies and obtaining incidental take permits, if necessary, for the construction of a right-turn lane (the Project) near the intersection of California State Route 41 (Highway 41) and Road 209, about 5 miles northwest of Friant in Madera County, California (the Project Site). The purpose of the Project is to provide safe highway access to an approved mini-mart and service station that will be constructed on a 2.5-acre parcel (APN 051-146-012) at this location.

In support of the Project, the County of Madera (County) applied for an encroachment permit from the California Department of Transportation (Caltrans). As part of the review process for the encroachment permit application, Caltrans biologists conducted a field reconnaissance survey of the Project Site in September 2017. During that survey, they found several rodent burrows that could serve as upland aestivation habitat for the federally and state-listed as threatened California tiger salamander (*Ambystoma californiense*, CTS). CTS is known to occur within the documented dispersal distance of this species based on records in the California Natural Diversity Data Base (CNDDDB, CDFW 2018). Therefore, because these burrows could be occupied by CTS, and Project construction will destroy these burrows, the Project could incidentally “take” CTS in violation of the take prohibitions of the federal and state endangered species acts. As such, the Project proponents will need to obtain incidental take permits from the United States Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) or concurrence from these agencies that no such permits are required.

To obtain incidental take permits, if necessary, for this Project, we propose the following tasks and timelines:

Task 1. Conduct a Biological Study for the Project.

We will conduct a biological reconnaissance survey of the Project Site to characterize its land use, habitat, and plant and wildlife resources. We will identify the presence of any habitats such as wetlands or waterways potentially regulated by the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, or the California Department of Fish and Wildlife. The survey will also identify habitats that could support special-status plants or animals, including federally or state-listed species such as CTS, as well as nesting birds, which are protected by the

Migratory Bird Treaty Act and the California Fish and Game Code.

We will prepare a biological study report based on the findings of our reconnaissance survey that (1) describes the existing biological conditions of the Project Site, (2) addresses the potential occurrence of species-status species and regulated habitats, (3) discusses potential impacts of the proposed Project on biological resources, and (4) identifies appropriate measures to mitigate such impacts. Our impact analysis will be guided by and will comply with all provisions of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) related to biological resources. The report will include lists obtained from the United States Fish and Wildlife Service, California Department of Fish and Wildlife, and California Native Plant Society of special-status species known from the vicinity of the Project Site. This report will serve as the basis for initiating Tasks 2 and 3.

Timeline: We will conduct the survey and prepare the report within four weeks of receiving the notice to proceed.

Task 2. Obtain an Incidental Take Permit from the USFWS.

We will seek technical assistance from the USFWS to determine whether take can be avoided. Assuming take cannot be avoided, we will work on behalf of JBH DOABA, Inc. to obtain an incidental take permit (ITP) under Section 10(a)(2)(A) of the federal Endangered Species Act (FESA). To obtain the ITP, we will prepare a habitat conservation plan (HCP) that specifies, among other things, the impacts that are likely to result from the taking and the measures the applicant will undertake to minimize and mitigate such impacts. The HCP will be prepared in accordance with the guidelines outlined in the Habitat Conservation Planning and Incidental Take Permit Processing Handbook (USFWS 2016).

The ITP application process consists of three phases: (1) the HCP development phase, (2) the formal permit processing phase, and (3) the post-issuance phase. The HCP development phase is the period during which the Project is integrated with species protection needs through development of the HCP. We will conduct this phase with technical assistance from the USFWS Sacramento Field Office.

The permit application processing phase involves review by the USFWS of the application package, which consists of the completed HCP, a permit application form, an application fee of about \$100 (to be provided by JBH DOABA, Inc.), and a draft NEPA document (to be provided by the County, if required). The USFWS will then announce receipt of the permit application and availability of the NEPA document in the Federal Register for public review and comment. During this phase, the USFWS will perform an internal consultation under section 7 of the FESA and determine whether the HCP meets FESA statutory issuance criteria. If the USFWS determines, after considering public comment, that the HCP is statutorily complete and that permit issuance criteria have been satisfied, it will issue the permit.

The post-issuance phase is the period during which the applicant implements the HCP and its monitoring and funding programs. In this case, the applicant may be required to implement

avoidance and minimization measures during Project construction and mitigate for impacts by purchasing mitigation credits from a USFWS-approved conservation bank. Avoidance and minimization measures may include installing wildlife exclusion fencing around the Project Site, avoiding work during periods when the California tiger salamander could be active above ground (mainly during rain events), hand excavating all burrows, and relocating any California tiger salamanders found in those burrows.

Timeline: There is no statutorily defined timeline within which the USFWS is required to process ITP applications. Because the process is complicated and includes many opportunities for delays, planning for a three-year timeline is prudent. Note, however, that if the USFWS recommends preparing a “low-effect” HCP, the Project will be categorically excluded from NEPA and the timeline for obtaining the ITP will be reduced. Low-effect HCPs are prepared for projects that have minimal impacts on species listed under FESA, and this Project may qualify.

Task 3. Obtain an Incidental Take Permit from the CDFW.

We will confer with the CDFW to determine whether take can be avoided. Assuming take cannot be avoided, we will work on behalf of JBH DOABA, Inc. to obtain an ITP under Section 2081(b) of the California Endangered Species Act (CESA). To obtain the ITP, we will prepare an application containing the statutorily required information as defined under Title 14 § 783.2 of the California Code of Regulations. The complete application package would include the application, a filing fee (~\$30,000, to be provided by JBH DOABA, Inc.), and an approved CEQA document (to be provided by the County).

The ITP will contain all the conditions that JBH DOABA, Inc. must implement to be exempt from the CESA take prohibition. As with the FESA ITP, under the CESA ITP, JBH DOABA, Inc. may be required to implement avoidance and minimization measures during Project construction and mitigate for impacts by purchasing mitigation credits from a conservation bank. We will coordinate with both resource agencies to ensure to the extent possible that the measures and mitigation required by the agencies are the same.

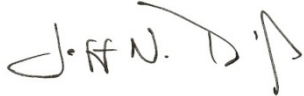
Timeline: CDFW will have 30 days to respond to the ITP application to indicate whether it is complete or incomplete. If CDFW does not respond, the application will be deemed complete. When it has been deemed complete through either means, CDFW will then have 90 days to process the ITP. Note that this timeline is from the date of acceptance of a complete application or from the approval of the CEQA document, whichever is later. Note also that if CDFW misses this deadline, the Project is not automatically approved. Due to the time needed to prepare what CDFW considers a complete application, planning for a 6-month timeline is warranted.

We will also confer with CDFW and USFWS as to whether a consistency determination under Section 2080.1 of the CESA would be appropriate for this Project instead of a CESA ITP. If it is, the HCP and FESA ITP would be submitted to CDFW along with a filing fee of ~\$7,000 (to be provided by JBH DOABA, Inc.). CDFW would then have 30 days to determine whether the included measures and mitigation are consistent with CESA statutory issuance criteria. If CDFW

does determine consistency, or if CDFW misses this deadline, the Project would be deemed approved. If CDFW determines the HCP and FESA ITP are inconsistent, however, JBH DOABA, Inc. would need to apply for a CESA ITP. The upside of using a consistency determination is that it provides a streamlined process for CESA compliance and would result in a cost savings of ~\$40,000 for JBH DOABA, Inc. The downside is that if CDFW determines the HCP and FESA ITP are not consistent with the CESA statutory issuance criteria, JBH DOABA, Inc. would be faced with applying for a CESA ITP at a time when it is otherwise ready to begin construction, thus resulting in additional costs and delays.

Please call or email me with any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "J. N. Davis". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jeff N. Davis
Principal Scientist
(559) 721-6810
jdavis@colibri-ecology.com

From: Navarro, Michael@DOT <michael.navarro@dot.ca.gov>
Sent: Tuesday, May 22, 2018 9:20 PM
To: Becky Beavers
Subject: Fwd: Road 209 Project Amendment

Good evening Becky. We have reviewed the proposed condition for the construction of the SB right turn lane on SR 41 to Road 209 and find it acceptable.

Michael Navarro
Chief, Transportation Planning - North
California Department of Transportation
District 6 – Division of Planning, Local Programs & Environmental Analysis
1352 W. Olive Avenue
P.O. Box 12616
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Email michael.navarro@dot.ca.gov

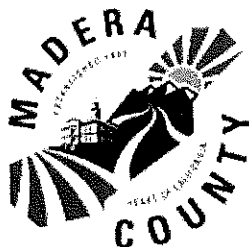
From: Navarro, Michael@DOT <michael.navarro@dot.ca.gov>
Sent: Friday, May 18, 2018 10:18 AM
Subject: RE: Road 209 Project Amendment
To: Becky Beavers <bbeavers@maderacounty.com>
Cc: Padilla, Dave@DOT <dave.padilla@dot.ca.gov>

That works for me.

From: Becky Beavers [mailto:BBeavers@maderacounty.com]
Sent: Friday, May 18, 2018 10:00 AM
To: Navarro, Michael@DOT <michael.navarro@dot.ca.gov>
Subject: RE: Road 209 Project Amendment

How about this:

1. The applicant must complete biological study, obtain an Encroachment Permit from CalTrans and complete the required southbound right-turn lane to CalTrans Standards, on SR 41 to Road 209 within three years from Building Permit final.



Becky Beavers | Deputy Director
Community & Economic Development
Department Planning Division
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