



Planning Commission

Staff Report

April 14, 2021

AGENDA ITEM # D

PREPARED BY:
APPROVED BY:

MARK MARSHALL, PROJECT PLANNER *mm*
MARK HENDRICKSON, DIRECTOR

CONDITIONAL USE PERMIT APPLICATION CUP21-003 – JOSE PEREZ - A request to bring into zoning compliance two (2) existing 4th and 5th residences for family members, on a property located at the southwest corner of W. Second Avenue and N. Feather Way, adjacent to the Delhi area, identified as Assessor's Parcel Numbers APN(s) 046-220-001 and 046-220-002. The property is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural) CEQA: Staff recommends that the Planning Commission determine that the project can be found exempt from environmental review pursuant to Section 15301 - "Existing Facilities" of the CEQA Guidelines. **MM.**

SUPERVISORIAL DISTRICT: 4 – LLOYD PAREIRA

RECOMMENDATION(S):

- 1) Open/close public hearing;
- 2) Determine the project can be found exempt from environmental review pursuant to Section 15301 - "Existing Facilities" of the CEQA Guidelines; and,
- 3) Approve Conditional Use Permit No. CUP21-003 and the related property line adjustment, based on the findings included in the staff report and subject to the proposed conditions of approval.

LOCATION MAP:



BACKGROUND:

Site Description

The project site is located on the north side of State Highway 99 and the southeast corner of Sycamore Street and Second Avenue. The site consists of two existing lots in commercial agricultural production—Parcel 1 and Parcel 2, as shown on Exhibit B. Parcel 1 contains two existing dwellings occupied by the owner’s immediate family, along with a pole barn. Parcel 2 contains an existing main residence and two farm support dwellings occupied by farm worker tenants, along with a storage building and a shop building. The property is surrounded by commercial agricultural operations on all sides.

Surrounding Uses

	General Plan	Zoning	Current Land Use
On-Site:	Agricultural Delhi Urban Community	A-1	Residences/Row Crops
North:	Agricultural Residential	R-R	Residences/Agriculture
East:	Agricultural	A-1	Residences/Row Crops
South:	Agricultural	A-1	Highway 99/Agricultural Ponds
West:	Agricultural	A-1	Highway 99/Residences/Row Crops

Prior Actions/Entitlements

PLA18-016 – Property Line Adjustment between two parcels to include all residences on one parcel. Map recordation expired in August 2020.
 AA03-118 – Administrative Application to qualify and legalize the 2nd and 3rd residences on property and one conventional home for the property owner.

ANALYSIS

Project Description

The project would modify the boundary line between Parcels 1 and 2 such that all five existing dwelling units and all existing accessory structures would be located on proposed Parcel 2, while proposed Parcel 1 would contain solely commercial agriculture. A Conditional Use Permit (CUP) is required to allow five dwelling units on a single lot, as proposed in this project. Approval of the CUP would allow for the requested boundary line adjustment, and would authorize with respect to zoning and land use compliance the existing five dwelling units to be located on a single lot. The CUP would apply to both Parcels 1 and 2, and would require either a new CUP or a CUP modification to construct any additional dwelling units on either Parcel 1 or Parcel 2.

Consistency with Adopted Plans and Policies

1. General Plan

The General Plan contains the principle statement concerning the County's goals and desires concerning land use and is designed to serve as the basis for development decision

making. The plan is considered the local "constitution" for physical development and, as a long-range planning document, and serves to direct the physical growth and development of the County.

Agricultural Element

This element provides the policy context for Merced County to achieve its vision for the protection, preservation, and expansion of productive agriculture. Agriculture is the prominent economic segment in the County and accounts for more than 90 percent of all land area. Merced County is ranked fifth among all counties in California and sixth in the nation in the annual market value of farm products. Rich soils, accessible irrigation water, favorable climate, a large labor force, and reliable access to local, national, and global markets make Merced County a thriving agricultural community.

The project site and surrounding areas are designated Agricultural Residential in the General Plan. Support of agricultural areas and projects are addressed by the following Land Use goal and policies:

Goal AG-2

Ensure the long-term preservation and conservation of land used for productive agriculture, potentially-productive agricultural land, and agricultural-support facilities.

Policy AG-2.13: Minimum Agricultural Parcel Size Requirement

Require a 20 acre minimum permitted parcel size in areas designated Agricultural to discourage land divisions for rural residential purposes and maintain parcels large enough for efficient commercial agriculture production. Require 160 acre minimum permitted parcel size in areas designated Foothill Pasture and in grassland areas.

Policy AG-2.14: Viability of Smaller Parcels

Require applicants seeking to divide agriculturally-zoned parcels to demonstrate the continued viability of lots less than 40 acres for commercial agriculture, using specific standards (i.e., access to agricultural water, joint farm management, and access for aerial spraying, size viability for specific commodities) and farm management plans.

A property line adjustment recordation will be processed concurrently with this Conditional Use Permit to situate all dwellings on the new proposed parcel. The specific parameters for the property line adjustment are included within this report. The two proposed parcels will be over 20 acres (net) and maintain their current and primary agricultural use for row crops. The two existing permitted farm worker dwellings will continue supporting the agricultural use on the property. This project therefore conforms to Goal AG-2, and Policies AG-2.13 and AG-2.14 of the General Plan.

Goal AG-3

Minimize conflicts between productive agricultural areas and urban land uses, and discourage the parcelization and conversion of large agricultural holdings into rural residential parcels or urban uses.

Policy AG-3.4: Residential Buffers from Agriculture

Require a minimum 200-foot buffer between new residential development within designated urban areas and existing agricultural operations, and establish design/maintenance guidelines for developers and property owners.

The proposed Parcel 2 will have include the mandatory 200-foot setback buffer from all structures to the west and south from the exclusively agricultural row crops of Parcel 1. This project therefore conforms to Goal AG-3 and Policy AG-3.4 of the General Plan.

2. Merced County Zoning Code (MCZC)

The project site is zoned General Agricultural (A-1). The purpose of the A-1 zone is to provide for areas for more intensive farming operations dependent on higher quality soils, water availability and relatively flat topography, and agricultural commercial and/or industrial uses dependent on proximity to urban areas or location in sparsely populated low traffic areas. Single Family Dwellings are an allowed use subject to specific criteria and development standards, identified below:

Per Section 18.10.020: Table 2 -1, a Conditional Use Permit is required to have five or more single-family dwellings on a parcel.

Section 18.10.030 Development Standards:

1. Lot Development Standards, Section 18.10.030

The following table shows the required lot development standards applicable to this project:

<u>Lot Development Standards</u>	<u>Required</u>
Minimum Parcel Size	20 acres
Minimum Front Yard Setback	20 feet
Minimum Side Setback	15 feet
Minimum Rear Yard Setback	25 feet

According to the proposed site plan, the project meets all minimum setbacks. Therefore, the proposed project complies with the lot development standards in Section 18.10.030 of the Zoning Code.

California Environmental Quality Act (CEQA)

Based on the information presented by the applicant, the application may be found to be exempt from CEQA review under Section 15301 – “Existing Facilities” of the CEQA Guidelines. This exemption states:

“Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

The supporting factors for this CEQA exemption are as follows:

- The 4th and 5th residences on this property are currently existing and are proposing to be brought into zoning compliance through this Conditional Use Permit.
- Residential uses are currently supported and existing on this property, no new construction is being proposed, and the existing structures are for residential use by the property owner’s immediate family.

Property Line Adjustment Concurrent Processing

Per the Merced County Zoning Code Section 18.112.030 (A) and (B):

A. Concurrent Filing. An applicant for a development project that requires the filing of more than one application (e.g., Conditional Use Permit, Tentative Map), shall file all related applications concurrently, together with all application fees required by Section 18.112.050 (Application and Other Related Fees).

B. Concurrent Processing. Multiple applications for the same project shall be processed concurrently, and shall be reviewed, and approved or denied by the highest Review Authority designated by this Zoning Code for any of the applications.

In order to bring the 4th and 5th dwellings on this site into zoning compliance, the property lines must be adjusted to conform to the 200-foot agricultural buffer setback for the abutting agricultural parcel. The previous property line adjustment, PLA18-016, expired prior to recordation. The Deputy Director has authorized this Conditional Use Permit to incorporate the new property line adjustment and process them concurrently. The fees for the property line adjustment have also been waived.

Community Engagement

The application was forwarded to County staff representatives from the Merced County Public Works/Road Division, Merced County Fire Department, Merced County Environmental Health Division, Merced County Assessor's Office, and the Merced County Public Works/Building & Safety Division for review and comment. No comments were received.

Notice of the public hearing was mailed to all owners of property located within 300 feet of the project site and published in the Merced Sun-Star on **April 2, 2021**. No written or verbal comments were received by staff prior to the completion of this staff report.

CONCLUSION:

The existing single family dwellings are located in an agricultural area of the County and are consistent with the General Plan and Zoning Code. Staff has found the project may be exempt from CEQA review under Section 15301 of the CEQA Guidelines – “Existing Facilities” and recommends approval of this project based on the project findings and subject to the recommended conditions of approval.

RECOMMENDED PLANNING COMMISSION ACTION:

A. CEQA Determination

MOTION: Determine that the project is exempt from California Environmental Quality Act (CEQA) review under Section 15301 – “Existing Facilities” of the CEQA Guidelines based on the CEQA findings below:

CEQA Findings

1. The project site is located adjacent to the Delhi area.
2. The project site is designated A (Agricultural) in the General Plan and zoned A-1 (General Agricultural).
3. The proposed project involves the legalization of two existing dwellings.

4. The proposed project is consistent with the General Plan and Zoning Code.
5. No variances or exceptions are required to implement the proposed project.
6. No new construction is being proposed.
7. All services and access to the proposed parcels are available.

B. Project Determination

MOTION: Approve Conditional Use Permit No. CUP21-003 and the related property line adjustment, based on the Project Findings and subject to the proposed Conditions of Approval.

Project Findings:

1. Conditional Use Permit No. CUP21-003 proposes to bring into compliance a 4th and 5th existing residence on an agriculturally zoned property. The project site is located at the southwest corner of W. Second Avenue South & N. Feather Way adjacent to the Delhi area.
2. The property is designated A (Agricultural) in the General Plan and is zoned A-1 (General Agricultural).
3. The proposed project is consistent with the applicable provisions of the 2030 Merced County General Plan.
4. The proposed project is consistent with the Merced County Zoning Code.
5. This project was reviewed by the County Environmental Health Division, County Fire, County Public Works Road Division and County Public Works Building & Safety Division. The proposed use, as conditioned, will not have an impact on County Facilities.
6. The project, as conditioned, will not be a nuisance or detrimental to the public health, safety and general welfare.
7. The public hearing has been adequately noticed and advertised.
8. The project is subject to all applicable County, State and Federal regulations.

Property Line Adjustment

The information regarding the approval of the new property line adjustment is as follows:

The following are the designations for General Plan, Zoning, and Current Land Use of the adjacent parcels:

	GENERAL PLAN	ZONING	CURRENT LAND USE
ON SITE	Agricultural	A-1	General Agricultural
NORTH	Agricultural/Residential	R-R	Rural Residential
EAST	Agricultural	A-1	General Agricultural

SOUTH	Agricultural	A-1	General Agricultural
WEST	Agricultural	A-1	General Agricultural

I. **COMPLIANCE WITH G.C. SECTION 66412 (d):** The number of existing parcels in the property line adjustment is four or fewer and the number of proposed or adjusted parcels is no greater than the number of existing parcels.

Yes No

II. **COMPLIANCE WITH MERCED COUNTY GENERAL PLAN:**

(Note: if either 'A' or 'B' is 'No', cannot approve application.)

General Plan Designation of Parcels: Agricultural

A. Yes No Do the proposed Adjusted Parcels conform to the Merced County General Plan?

B. Yes No Are the proposed/adjusted parcels of adequate size and shape to reasonably accommodate development and land uses as allowed by the General Plan designation and zoning?

III. **ZONING ORDINANCE REQUIREMENTS:**

The subject site is zoned: A-1 (General Agricultural)

Minimum parcel size required: 20

A. Do the **existing parcels** conform to the required minimum parcel size of the Zone District?

Yes No Existing Lot Sizes: 21.1 Acres and 20 Acres

B. Do the proposed Adjusted Parcels conform to the required minimum parcel size of the Zone District?

(Note: If 'No', See Item 'C')

Yes No Proposed Adjusted Parcel Sizes: 20.16 Acres and 20.23 Acres

C. Compliance with 18.10.030. F. (2.) b & c: At least one of the parcels does not meet the minimum parcel size requirement; and, the adjustment does not result in an increase in the number of such nonconforming parcels which existed prior to the adjustment:

Yes No N/A

D. If one or more of the proposed Adjusted Parcels does not conform to the required minimum parcel size, does the project work to reducing the degree of nonconformity of the Existing Parcels?

Yes No N/A Describe:

E. Do the proposed property lines provide for the necessary yard areas and building separations required by the Zone District?

Yes: No:

IV. **COMPLIANCE WITH SECTION 18.02.03.C.3.b - Antiquated Subdivisions**

Is the PLA within an Antiquated Subdivision as defined in Chapter 2.52 of the Merced County Code?

Yes: No:

V. WILLIAMSON ACT COMPLIANCE (G.C. 51257)

A. Are the parcels in the Agricultural Preserve?

Yes: No:

B. Are existing parcels subject to Williamson Act? Yes No

VI. OTHER CONSIDERATIONS

A. Yes No Are there any existing or proposed septic systems, replacement areas, or wells within 200 feet of a proposed adjusted property line? If yes, application shall be referred to Environmental Health. Discussion:

B. Yes No Do the proposed Adjusted Parcels front onto or have access to a public road? Describe: **The parcels will have access on Second Ave.**

C. Yes No Are the original parcels subject to any plot plan review, administrative permit, conditional use permit, variance, or other entitlement? Does the proposal affect any conditions of approval?

D. Yes No Are there any active code compliance actions on the existing parcels?

E. Yes No Transfer Deeds: Will transfer deeds be required prior to recordation? If "Yes", the deeds shall be recorded concurrently with the Certificate of Compliance.

VII. RESPONSES TO REFERRAL LETTERS.

Yes No Was the project referred to any County agencies? List: Building and Safety, Environmental Health, Fire, and Public Works Roads Division.

Yes No Was the project referred to any special referral areas? Examples include Grassland Water District, Army Corps of Engineers, Fish & Wildlife Service, San Luis Water District, etc.

No response(s) received or no objections.

VIII. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

A. Project is Categorically Exempt under CEQA Class 15305.

B. Qualifies for General Rule exemption.

Discussion: **The property line adjustment portion of this project is categorically exempt from the provisions of CEQA according to CEQA Guidelines Section 15305 Class 5 (a), Minor**

Alterations in Land Use Limitations, minor lot line adjustments not resulting in the creation of any new parcel.

CONDITIONS OF APPROVAL

1. As required by the Merced County Subdivision Code, and the State Subdivision Map Act, the following shall be provided to the Community and Economic Development Department before this Property Line Adjustment can be finalized by the recording of a Certificate of Compliance by the County:
 - a. The following documents prepared and “wet stamped” by a licensed land surveyor, or a registered civil engineer authorized to perform land surveying: 1) a Final Property Line Adjustment Map, as per Section 17.16.060 of the Subdivision Code; and 2) complete legal descriptions of all newly adjusted parcels;
 - b. A letter from the County Tax Department stating that taxes on all property involved have been paid;
 - c. If more than one property owner is involved, written notice from a title company stating that all necessary deeds are ready for recording and requesting that the County record the Certificate of Compliance.
2. An application to amend the Agricultural Preserve shall be required prior to recording the Certificate of Compliance (if applicable). As both of these parcels will maintain the minimum acreage to remain in the Agricultural Preserve, this is not applicable.

EXHIBITS:

- A. Proposed Conditions of Approval
- B. Site Plan
- C. Public Agency Comments

cc.

Property Owner – Jose Perez
Engineer – Golden Valley Engineering & Surveying, Inc.



**COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT**

Mark J. Hendrickson
Director

Steve Maxey
Deputy Director

2222 "M" Street
Merced, CA 95340
(209) 385-7654
(209) 726-1710 Fax
www.co.merced.ca.us

Equal Opportunity Employer

CUP21-003 CONDITIONS OF APPROVAL

Merced County Community and Economic Development Department

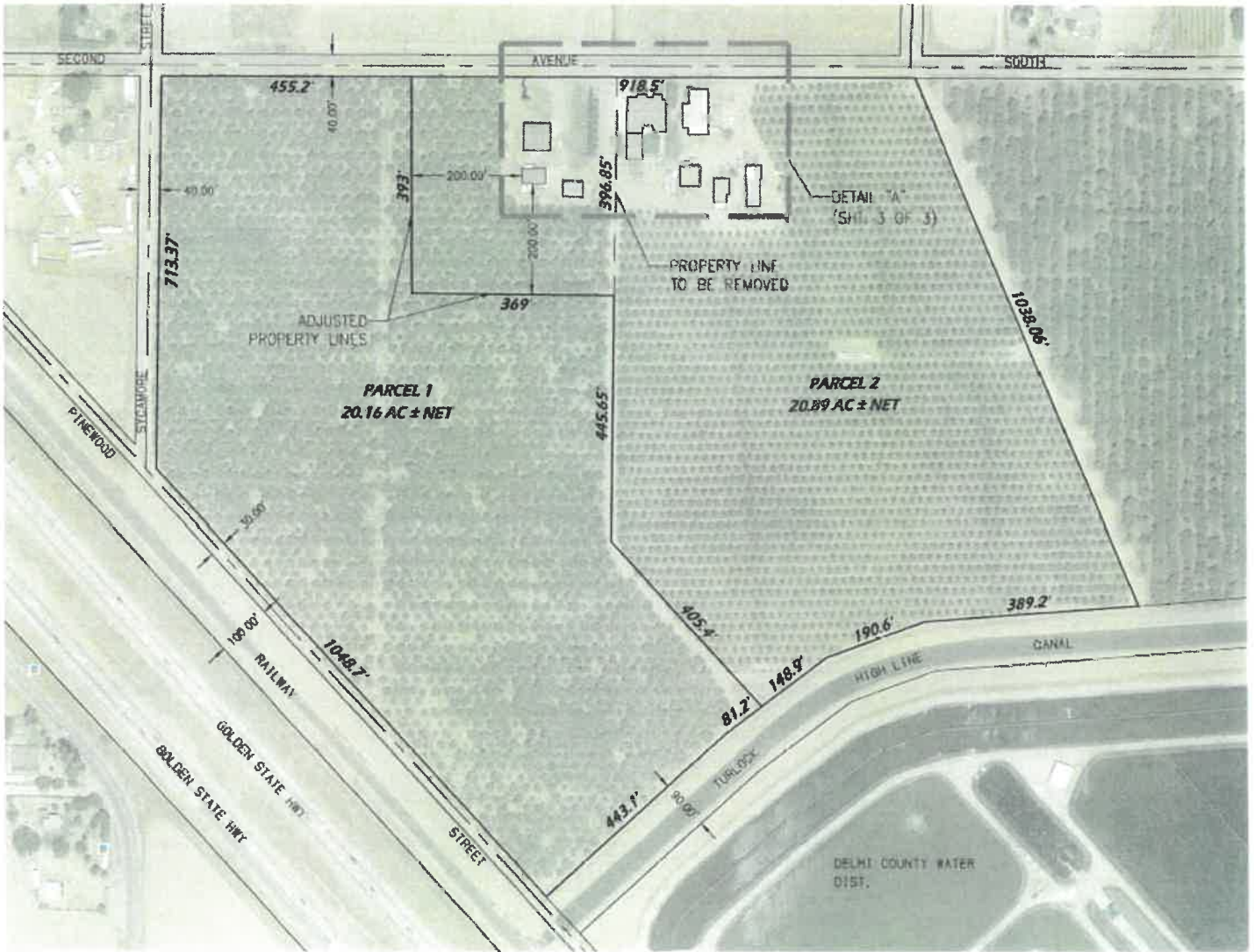
1. Conditional Use Permit CUP21-003 authorizes a boundary line adjustment that shifts the two existing residences located on Parcel 1 to Parcel 2, resulting in five existing residences total on modified Parcel 2.
2. A final property line adjustment map shall be recorded within two (2) years of the approval date, as required by the Merced County Subdivision Code.
3. The applicant shall comply with all applicable Local, State and Federal regulations.
4. A Conditional Use Permit or CUP modification shall be required for any new residence on either parcel, unless otherwise permitted by the County subject to the current policies in place at the time of the request.
5. Any new non-habitable or habitable structure must be ancillary to the existing agricultural use of either parcel and is subject to the applicable design and permit requirements.
6. Right-of-Way dedication is required to fulfill the 60' ultimate right-of-way for Pinewood Street, Sycamore Street and Second Avenue fronting the property. Sycamore Street and Second Avenue have an existing 40' right-of-way, the owners shall dedicate an additional 10' of right-of-way along the Sycamore Street and Second Avenue frontages of the property. An additional 30 feet of right of way will need to be dedicated fronting Pinewood Street.

County Counsel

7. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:

JOSE PEREZ ("Applicant") has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This duty shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. This duty shall arise at the first claim, action, or proceeding against COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify Applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

EXHIBIT B





**DEPARTMENT OF PUBLIC WORKS
Road Division**

Dana S. Hertfelder
Director

345 West 7th Street
Merced, CA 95340
(209) 385-7601
(209) 722-7690
www.co.merced.ca.us

Equal Opportunity Employer

Date: March 25, 2021

To: Mark Marshall, Planner I
Community and Economic Development Department

From: Gerardo Elias, Engineering Associate
Department of Public Works

Subject: CUP No. 21-003
Jose Perez

MEMORANDUM

We have reviewed this **CONDITIONAL USE PERMIT NO. CUP21-003 - Jose Perez - To qualify an existing 4th and 5th residences (conventional homes) for family members on property located at the southwest corner of W. Second Ave South & N. Petaluma Ave in the Delhi area, Identified as APNs 046-220-001 & 046-220-001.**

The Road Division has the following comments.

1. Right-of-Way dedication is required to fulfill the 60' ultimate right-of-way for Pinewood Street, Sycamore Street and Second Avenue fronting the property. Sycamore Street and Second Avenue have an existing 40' right-of-way, the owners shall dedicate an additional 10' of right-of-way along the Sycamore Street and Second Avenue frontages of the property. An additional 30 feet of right of way will need to be dedicated fronting Pinewood Street.

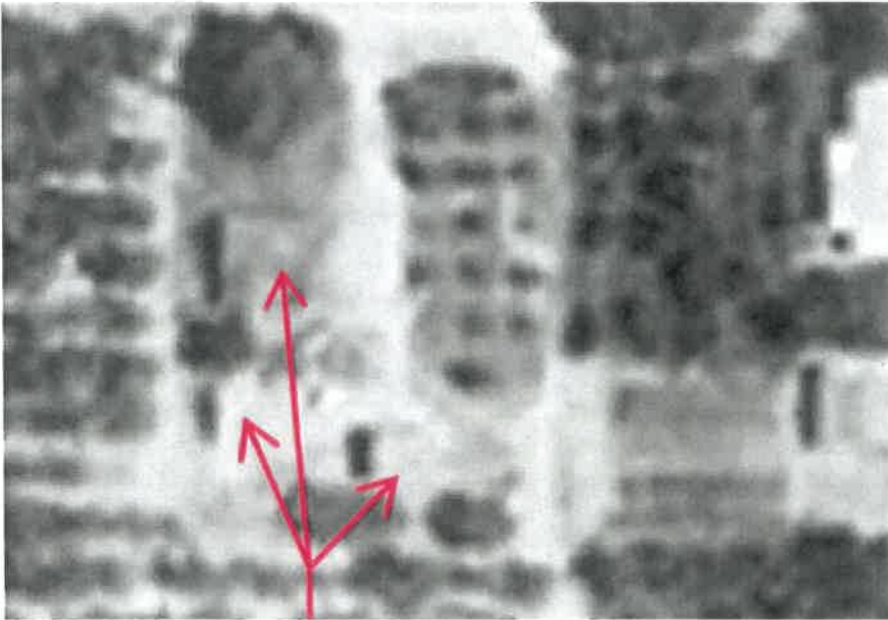
U:\DEVELOPMENT\2. CUP\CUP21-003\CUP21-003.docx

From: [Marshall, Mark](#)
To: [Mendenhall, Charles](#)
Subject: RE: Issues with Conditional Use Permit
Date: Tuesday, February 23, 2021 3:01:19 PM
Attachments: [image001.png](#)

Perfect, thanks Charlie, appreciate it.

From: Mendenhall, Charles <Charles.Mendenhall@countyofmerced.com>
Sent: Tuesday, February 23, 2021 3:00 PM
To: Marshall, Mark <Mark.Marshall@countyofmerced.com>
Subject: RE: Issues with Conditional Use Permit

I looked all the way back to 1998 in images:



All 3 buildings are visible. We have no reason to assume they were new at that time or they were built without permits. They could even be old enough to be constructed before this Division existed. Based on that and them not being in the system, I would guess they are fairly old. Unless any information is available that would verify they were put in illegally, you can move forward.

Charlie Mendenhall
Merced County Building & Safety Division
2222 M St
Merced, CA 95340
209-385-7477

From: Marshall, Mark
Sent: Tuesday, February 23, 2021 2:37 PM
To: Mendenhall, Charles
Subject: RE: Issues with Conditional Use Permit

Just to be certain, Building does have records of permits for the structures below? We did not see any in the

system, but if you say it is fine then I'll proceed.



From: Mendenhall, Charles <Charles.Mendenhall@countyofmerced.com>
Sent: Tuesday, February 23, 2021 2:07 PM
To: Marshall, Mark <Mark.Marshall@countyofmerced.com>
Subject: RE: Issues with Conditional Use Permit

I do not see anything we will need to comment on. The structures have been there for years and we do show some permits for the more recent structures.

Charlie Mendenhall
Merced County Building & Safety Division
2222 M St
Merced, CA 95340
209-385-7477

From: Marshall, Mark
Sent: Wednesday, February 17, 2021 9:43 AM
To: May, Matthew; Cronk, Brent; Mendenhall, Charles; Bernard, Chris; Flores, Jose; Elias, Gerardo; Chan, Ashlee
Cc: Guerrero, Brian
Subject: Issues with Conditional Use Permit
Importance: High

Hello everyone,

The attached project has some major issues regarding, well/ septic, property tax assessment, legality of structures (permits) etc. Here's the project description:

Conditional Use Permit No. CUP21-003 - Jose Perez - To qualify an existing 4th and 5th residences (conventional homes) for family members on property located at the southwest corner of W. Second Ave South & N. Petaluma Ave in the Delhi area, Identified as APNs 046-220-001 & 046-220-001.

Project contractor is Golden Valley Engineering (Duane Andrews) and I think that this will be faster than going to PAR, if the project can even be approved with any conditions. Please let me know what you think.

Sincerely,

Mark Marshall
Planner I