

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT
NOTICE OF FIELD TRIP
THURSDAY, DECEMBER 17, 2009 – 8:50 AM
1010 TENTH STREET
LOBBY (MAIN LEVEL/NEAR STAIRS)**

I. ROLL CALL

II. FIELD TRIP

There will be a field trip to allow the Board to view property to be discussed at the regular meeting later in the day. Interested parties may join the Board at any of the properties at the approximate times shown below. Statements on the merits of an application are inappropriate on a field trip and should be made at the regular meeting. The regular meeting is on December 17, 2009, 10:00 am, in Chambers. The agenda for the regular meeting is attached.

9:00 am	Leave Tenth Street Place to View Property	
9:10 am	Property Located at 415 Kansas Avenue (Foster Farms)	Item A
9:30 am	Property Located at 2430 Yosemite Blvd. (Mohamed Rahimi)	Item B

III. ADJOURNMENT

Posted pursuant to Government Code Section 54956 on _____

by _____ on the bulletin board at Tenth Street Place.

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT AGENDA
THURSDAY, DECEMBER 17, 2009
BASEMENT CHAMBERS
1010 TENTH STREET – MODESTO, CA**

I. ROLL CALL

II. APPROVAL OF MINUTES

Minutes of the regular meeting of October 22, 2009.

III. CONFLICT OF INTEREST DECLARATION

Board members and staff may now declare conflicts of interest for the purpose of determining if a quorum will be present to act on each item in the order shown on the agenda.

IV. CONSENT AND JOINT PUBLIC HEARING ITEMS

None.

V. PUBLIC HEARINGS

Item A CUP-09-005 – Conditional use permit to allow a 48-foot-high, 570-square-foot wall identification sign for Foster Dairy Farms located at 415 Kansas Avenue; submitted by Foster Dairy Farms, Inc.

Contact Info: 577-5267 rdoscher@modestogov.com

Item B CUP-09-006 – Application for a Conditional Use Permit to allow a large recycling collection facility, property located at the northeast corner of Yosemite Boulevard and Trask Lane, 2430 Yosemite Boulevard; submitted by Mohamed Rahimi

Contact Info: 577-5267 dwage@modestogov.com

VI. OTHER BUSINESS

Item C Appointments – Chair, Vice-Chair

VII. ORAL COMMUNICATIONS

These matters may be presented by interested persons in the audience, staff or Commissioners (see Notice at end of agenda cover). Under State law, the Board may respond to matters being presented under this item only as follows:

- (a) Briefly respond to statements made or questions raised.
- (b) Ask a question for clarification.
- (c) Provide a reference to staff or other resources for factual information.
- (d) Request staff to report back at a subsequent meeting.
- (e) Finally, a Board member, or the Board itself, may take action to direct staff to place a matter of business on a future agenda.

VIII. MATTERS TOO LATE FOR THE AGENDA

These may be presented by members of the Board of Zoning Adjustment and staff, upon determination by a majority vote that an emergency exists, as defined by State law, or by a 2/3 vote that: 1) there is a need to take immediate action, and 2) that the need for action came to the City's attention after the agenda was posted.

IX. ADJOURNMENT

Copies of the agenda are on file at the Stanislaus Library Reference Room, 1500 I Street, Modesto, and in the Office of the Planning Division, third floor, 1010 Tenth Street, Modesto, CA. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board of Zoning Adjustment Secretary (209) 577-5267. Assistive listening devices are available upon request to the BZA Secretary. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Notice: Persons who wish to speak to the BZA regarding any item on the printed agenda, including oral communications, are encouraged to sign in on a form provided at the meeting. The purpose of this list is to have your name and address should we need to provide additional information to you. Signing this form is optional to speakers.

Posted pursuant to Government Code Section 54954.2 on _____

by _____ on the bulletin board at Tenth Street Place.

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

TO: Chairperson Neumann and Members of the Board of Zoning Adjustment

PREPARED BY: Rita Doscher, Associate Planner
Contact info: 577-5267 rdoscher@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Division Manager

DATE: November 19, 2009

SUBJECT: CUP-09-005 – Conditional use permit to allow a 48-foot-high, 570-square-foot multi-story wall identification sign for Foster Dairy Farms located at 415 Kansas Avenue; submitted by Foster Dairy Farms, Inc.

RECOMMENDATION

Staff recommends approval of the proposed 48-foot-high, 570-square-foot wall identification sign, subject to the findings and conditions contained in the draft resolution (Attachment No. 1).

BACKGROUND

The project site was annexed to the City in 1978 as part of the Kansas Avenue Addition and was zoned M-2, Heavy Industrial at the time of annexation. The plant was built prior to being annexed into the City and was previously owned by other dairy companies until purchased by Foster Farms around 1988. Previous signage approved for this site consists of one 12 square foot double-faced illuminated directional sign located on the Kansas Avenue frontage.

PROJECT DESCRIPTION

The applicant seeks a Conditional Use Permit for a 570-square-foot wall identification sign to be located at a height of 48 feet on the west side of the existing building. A CUP is required to locate a wall sign higher than 35 feet. The applicant is requesting the sign to be located higher on the building in order for the delivery trucks to identify Foster Farms on Kansas Avenue after exiting off of Freeway 99.

APPLICABLE CODE PROVISIONS

Section 10-2.2110(c) of the Modesto Municipal Code, specifies height limitations and the findings needed to allow signs higher than 35 feet. A wall sign with a height in excess of the 35 foot limitation may be authorized by the BZA through a conditional use permit approval provided that the building exceeds four (4) stories or forty-eight (48) feet in height, and the BZA determines that:

- (a) The applicant has satisfactorily demonstrated that wall signs at thirty-five (35) feet cannot properly identify the building; and

- (b) The applicant has explored all feasible options to reach a satisfactory solution with a sign at thirty-five (35) feet or less; and
- (c) The design of the sign will be compatible with the architectural design of the building.

ISSUES

Sign Height

Staff conducted a site inspection and is in support of the applicant's request for a higher sign, due to the height of an existing neighboring building to the west, which would limit views of a sign at 35 feet high.

The Code allows for wall signs on multi-story buildings that are higher than 48 feet in height. The building height is 51 feet high and the applicant has requested that the sign be approved at the height of 48 feet.

GENERAL PLAN CONSISTENCY

Not Applicable.

ZONING CONFORMANCE

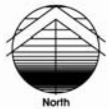
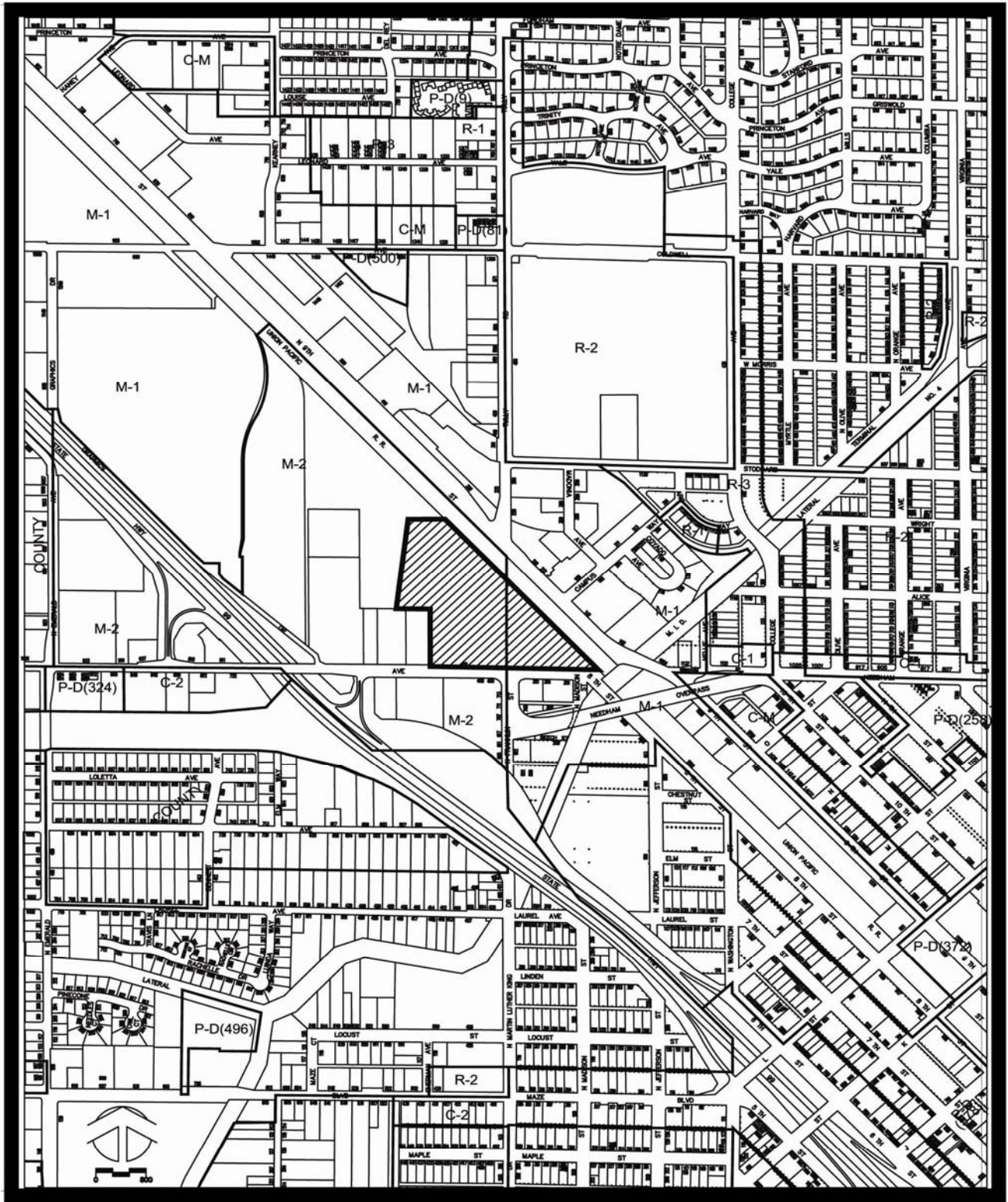
As noted above, the sign size, height, and location conforms to the requirements in the Zoning Code, and staff believes that the required findings to approve the additional sign height can be made.

ENVIRONMENTAL ASSESSMENT

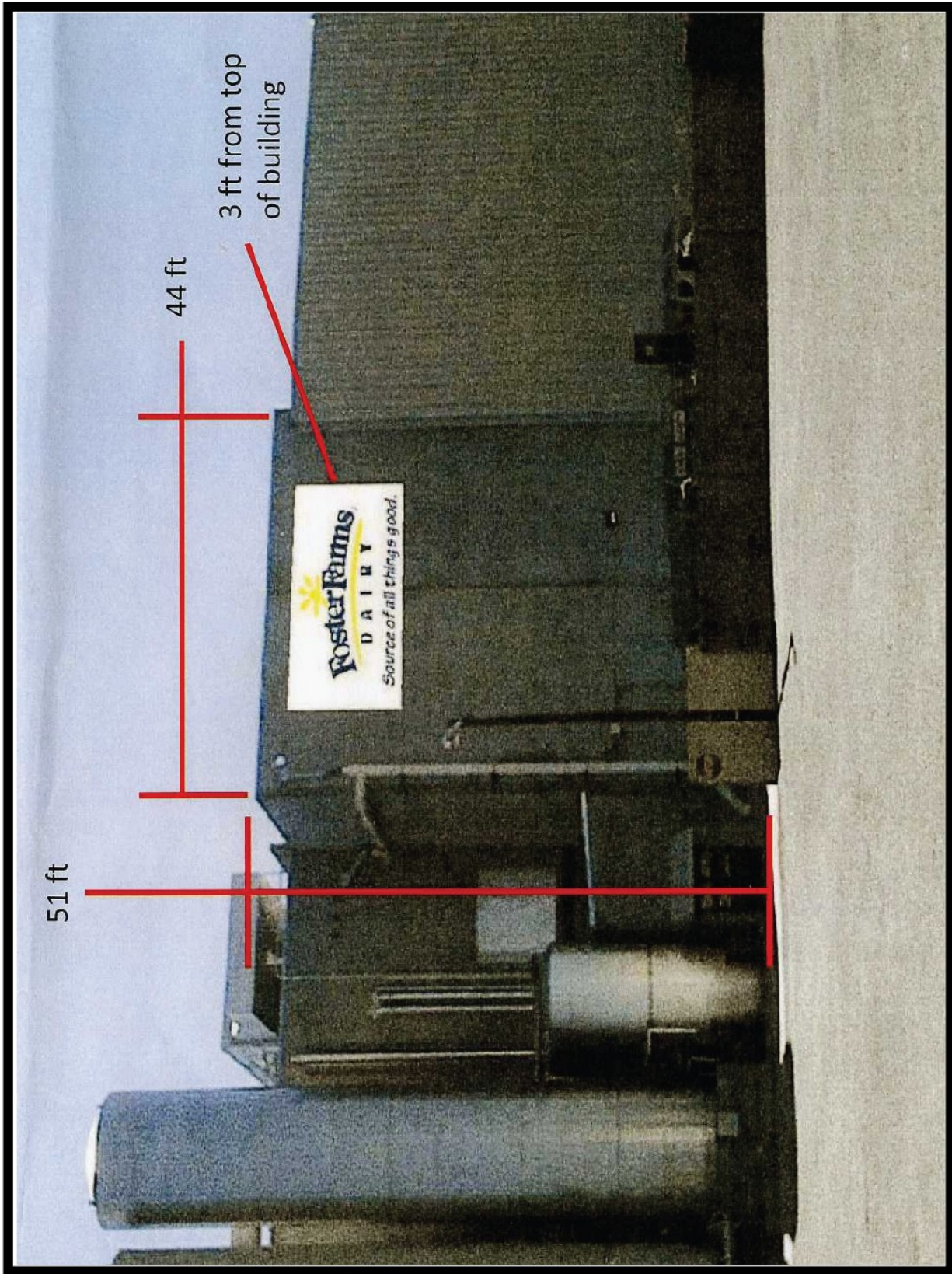
This Conditional Use Permit involves signage. Signage is exempt under Section 15311(a) of the CEQA Guidelines which states: Class 11 consists of construction, or replacement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including by not limited to on-premise signs.

ATTACHMENTS (included with Commissioner's packets only)

1. Draft Board of Zoning Adjustment Resolution – December 17, 2009
2. Financial Interest Disclosure Form



AREA MAP OF PROPOSED
 CONDITIONAL USE PERMIT
 CUP-09-005
 415 KANSAS AVENUE



PROPOSED LOCATION OF SIGN WITH
DIMENSIONS
CUP-09-005
415 KANSAS AVE.



PROPOSED WALL SIGN
CUP-09-005
415 KANSAS AVE.

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2009-XX

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR A 48-FOOT-HIGH IDENTIFICATION WALL SIGN FOR FOSTER DAIRY FARMS, INC. LOCATED AT 415 KANSAS AVENUE (FOSTER DAIRY FARMS, INC.)

WHEREAS, an application for a Conditional Use Permit for a 48-foot-high, 570-square-foot, identification wall sign to identify Foster Dairy Farms, Inc. at 415 Kansas Avenue, in the M-2 Zone, was filed by Mr. Tom Vander Weide on behalf of Foster Dairy Farms, Inc., on November 17, 2009; and

WHEREAS, Section 10-2.2114(g)(4) of the Modesto Municipal Code (MMC) authorizes the BZA to grant conditional use permits for multi-story signs higher than 35-feet based on certain criteria; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on December 17, 2009, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this matter is exempt under Section 15311(a) of the CEQA Guidelines, which exempts on-premise signs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines as follows:

1. The Foster Dairy Farms building is a 51-foot-high building, and wall signs above thirty-five (35) feet in height may be authorized through a conditional use permit approval provided that the building exceeds four (4) stories or forty-eight (48) feet in height; and
2. The Board of Zoning Adjustment has determined that the applicant has satisfactorily demonstrated that wall signs at thirty-five (35) feet cannot properly identify the building; and
3. The applicant has explored all feasible options to reach a satisfactory solution with a sign at thirty-five (35) feet or less; and
4. The design of the sign is compatible with the architectural design of the building, as it is not out of scale with the mass of the building.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a Conditional Use Permit for a 48-foot-high, 570-square-foot identification wall sign for the Foster Dairy Farms, Inc. be granted subject to the following conditions:

1. The sign shall be constructed in accordance with the plans labeled 'Foster Farms Dairy' on its face, stamped approved by the BZA on December 17, 2009.
2. All other signs shall comply with the sign requirements of the M-2 Zone.
3. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited

to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on December 17, 2009, by _____, who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:

Noes:

Absent:

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MODESTO.

Patrick Kelly, Secretary

**CITY OF MODESTO
BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

TO: Chairperson Neumann and Members of the Board of Zoning Adjustment

PREPARED BY: David Wage, Associate Planner
Contact Info: 577-5267 dwage@modestogov.com

REVIEWED BY: Steve Mitchell, Principal Planner

APPROVED BY: Patrick Kelly, Planning Manager

DATE: November 24, 2009

SUBJECT: CUP-09-006 – Application for a Conditional Use Permit to allow a large recycling collection facility, property located at the northeast corner of Yosemite Boulevard and Trask Lane, 2430 Yosemite Boulevard; submitted by Mohamed Rahimi

RECOMMENDATION

That the Board of Zoning Adjustment adopt the attached resolution granting a conditional use permit to Mohamed Rahimi for a large recycling collection facility, building located at 2430 Yosemite Boulevard.

BACKGROUND

The project site at 2430 Yosemite Boulevard is located on a 2.18 acre parcel zoned C-2, General Commercial. There are existing commercial developments to the north and west and industrial uses to the south. The vacant area to the east is zoned C-2. The area to the northeast is zoned R-3 and there is an existing multi-family development on the property. The vacant 1,920 square-foot building on the site was formerly occupied by a used car dealership. On November 24, 2009, Mohamed Rahimi, LLC submitted a conditional use permit application to allow a large recycling collection facility on the subject property. The Municipal Code characterizes a "large recycling collection facility" as a recycling collection business that occupies more than 500 square-feet and includes permanent structures.

PROJECT DESCRIPTION

The applicant is proposing to operate a large recycling collection facility within the existing building located at 2430 Yosemite Blvd. The operation of the business will include the collection of California Refund Value (CRV) containers. All of the recyclables will be stored indoors and no materials will be processed onsite. The recyclables will be picked up one or two times per week by a truck from Modesto Junk Co. on 9th Street where they will be processed. The applicant is not proposing any interior or exterior changes to the existing building.

REASONS FOR RECOMMENDATION

The proposed recycling collection facility is an appropriate reuse of the existing building and provides a needed service following the discontinuation of the City's recycling program. Therefore, staff recommends that the Board approve the CUP, subject to the findings and conditions in the attached resolution.

ISSUES

Compatibility with Surrounded Development

The existing building in which the proposed recycling collection facility will operate, is surrounded by commercially zoned property with the exception of an existing multi-family residential development to the northeast. The subject building is set-back 50 feet from the property line to the east. As described above, the facility will be limited to the collection and storage of recyclables within the building. The outdoor storage of recyclables and the use of power driven processing equipment is prohibited onsite. These requirements are Conditions of Approval Nos. 1 and 2 in the attached resolution. With the incorporation of these conditions, staff is satisfied that the proposed recycling collection facility is compatible with the surrounding development.

GENERAL PLAN CONSISTENCY

The General Plan Land Use Designation for the subject property is C "Commercial", which allows for recycling collection facilities. The proposed conditional use permit is thus in conformance with the General Plan.

ZONING CONFORMANCE

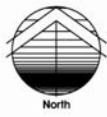
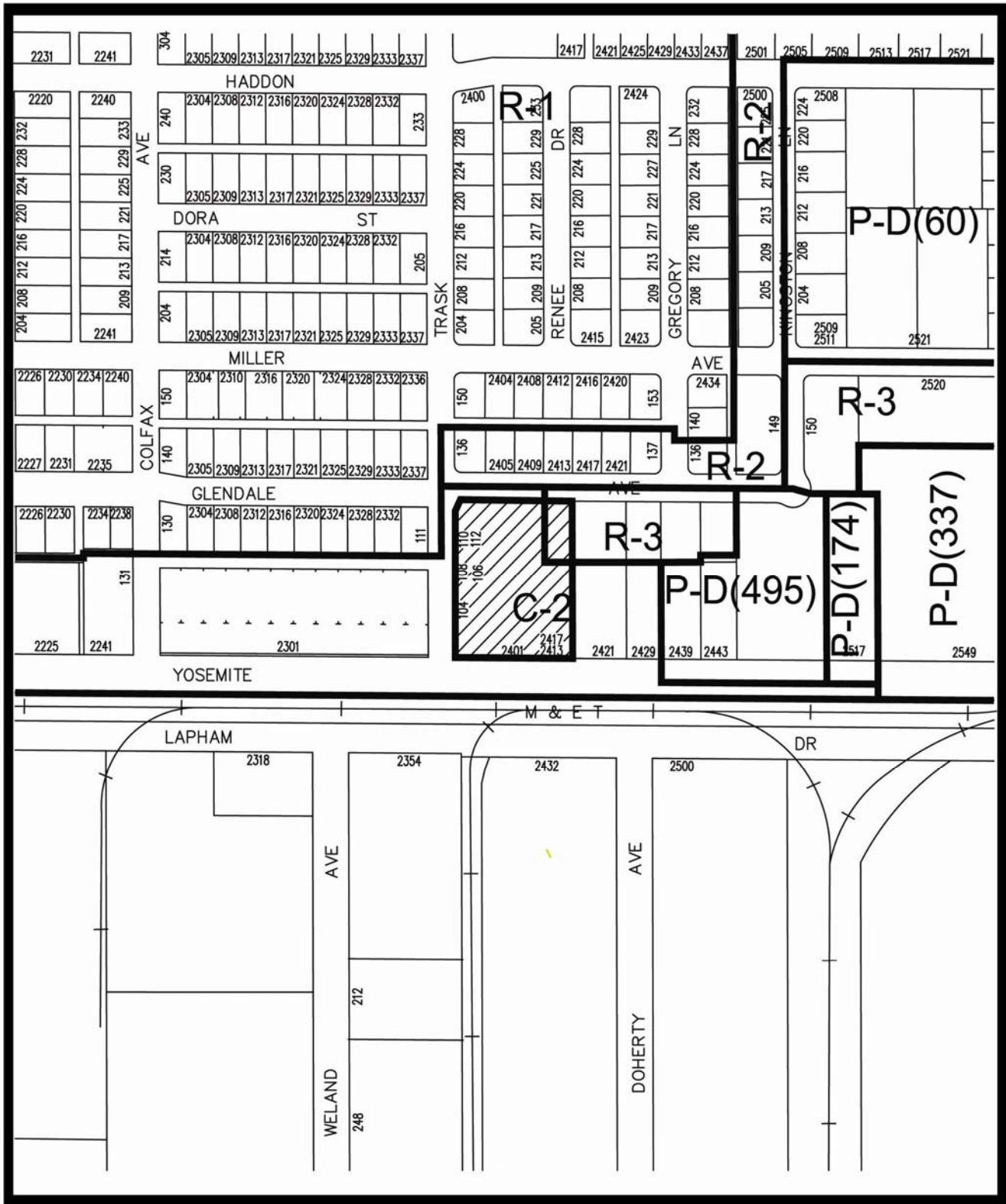
The property is zoned C-2, General Commercial, which provides for a variety of commercial uses, including a large recycling collection facility. The proposed large recycling collection facility is in conformance with the C-2 zone, upon securing a Conditional Use Permit from the Board.

ENVIRONMENTAL ASSESSMENT

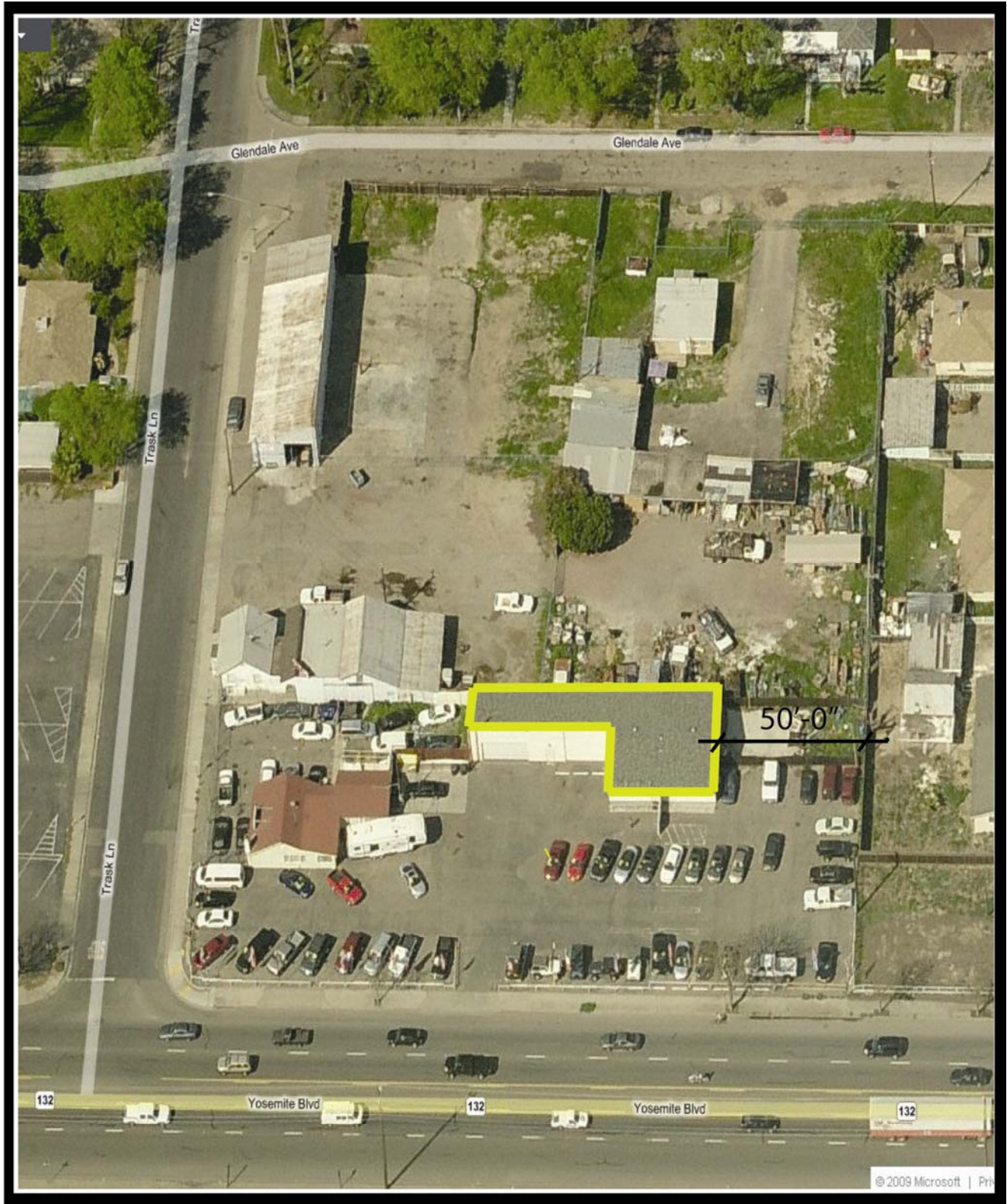
Staff has prepared a Statement of Exemption, No. EA/C&ED 2009-31, which concludes the project is exempt pursuant to Section 15301 of the CEQA Guidelines which pertains to existing facilities.

ATTACHMENTS (included with Commissioners' packets only)

1. Draft Board of Zoning Adjustment Resolution – December 17, 2009
2. Statement of Exemption, EA/C&ED No. 2009-31
3. Financial Interest Disclosure Form



**AREA MAP OF PORPOSED LOCATION FOR
 RECYCLING COLLECTION FACILITY
 CUP-09-006
 2430 YOSEMITE BLVD.**



**SITE PLAN FOR RECYCLING COLLECTION FACILITY
CUP-09-006
2430 YOSEMITE BLVD.**

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2009-XX

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO MOHAMED RAHIMI FOR A LARGE RECYCLING COLLECTION FACILITY, BUILDING LOCATED AT THE NORTHEAST CORNER OF YOSEMITE BOULEVARD AND TRASK LANE, 2430 YOSEMITE BOULEVARD

WHEREAS, an application for a Conditional Use Permit for a large recycling collection facility, building located at 2430 Yosemite Boulevard, was filed by Mohamed Rahimi on November 24, 2009; and

WHEREAS, Sections 10-1.202(a) and 10-2.2503 of the Municipal Code authorize the Board of Zoning Adjustment to grant Conditional Use Permits; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on December 17, 2009, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this project is Categorically Exempt under Section 15301 of the CEQA Guidelines which pertains to existing buildings that involves negligible or no expansion of an existing use.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines as follows:

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
2. The proposed project is exempt from CEQA under Section 15301 of the CEQA Guidelines, because the project involves the leasing of an existing private structure with negligible or no expansion of a commercial use.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 2430 Yosemite Boulevard be granted subject to the following conditions:

1. The outdoor storage of recyclables shall be prohibited.
2. The use of power driven processing equipment onsite shall be prohibited.
3. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
4. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly

notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense. The Capital Facilities Fees payable at the time of the issuance of a building permit for any construction in this development shall be based on the rates in effect at time of issuance of the building permit.

BE IT FURTHER RESOLVED that the conditions of project approval set forth herein include certain fees, dedication requirements, reservations requirements, and other exactions, and that pursuant to Government Code Section 66020(d)(1), these conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions.

BE IT FURTHER RESOLVED that the applicant is hereby further notified that the ninety (90) days approval period in which a protest of these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a) can be filed, begins on September 24, and that if a protest is not filed within this ninety (90)-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the conditional use permit granted on December 17, 2009 becomes null and void if not exercised on or before December 17, 2011.

Failure to comply with any of the above conditions is unlawful and will constitute grounds for revocation of the conditional use permit.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on December 17, 2009, by _____, who moved its adoption, which motion was seconded by _____ and carried by the following vote:

Ayes:
Noes:
Absent:
Recused:

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MODESTO.

Patrick Kelly, Secretary