



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
STEVEN E. WHITE, DIRECTOR

Planning Commission Staff Report Consent Agenda Item No. 1 June 24, 2021

SUBJECT: Classified Conditional Use Permit No. 3478 – Fourth One-Year Time Extension

Grant a fourth and final one-year time extension to exercise Classified Conditional Use Permit No. 3478, which authorizes an approximately 3,939 square-foot religious facility with related improvements on a 2.50-acre parcel in the R-R(nb) (Rural Residential, two-acre minimum parcel size, Neighborhood Beautification Overlay) Zone District.

LOCATION: The subject parcel is located on the northeast corner of McKinley Avenue and Blythe Avenue, approximately 40 feet east of the nearest city limits of the City of Fresno (4354 W. McKinley Avenue) (Sup. Dist. 1) (APN 312-082-14).

**OWNER/
APPLICANT:** Sy N. Le

STAFF CONTACT: Jeremy Shaw, Planner
(559) 600-4207

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Approve a fourth and final one-year Time Extension for Classified Conditional Use Permit No. 3478; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

EXHIBITS:

1. Location Map
2. Zoning Map
3. Land Use Map
4. Planning Commission Resolution and Staff Report dated March 24, 2016
5. Time Extension Application letter dated March 1, 2021

ENVIRONMENTAL DETERMINATION:

A Mitigated Negative Declaration (MND) prepared for Initial Study No. 6888 was adopted by the Planning Commission in accordance with the California Environmental Quality Act (CEQA) with approval of Classified Conditional Use Permit (CUP) No. 3478 on March 24, 2016.

According to Section 15162(a) of the CEQA Guidelines, when an MND is adopted for a project, no subsequent MND shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- 1) substantial changes are proposed in the project which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- 3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was adopted, shows either of the following: (A) the project will have one or more significant effects not discussed in the previous MND; or (B) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.

This Time Extension request does not propose changes to the approved project, nor is there evidence of the circumstances noted in criteria 1, 2 or 3 above. Therefore, a subsequent/supplemental environmental document is not required.

PUBLIC NOTICE:

Notices were sent to 26 property owners within 600 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

PROCEDURAL CONSIDERATIONS:

The Fresno County Zoning Ordinance requires that a Conditional Use Permit shall become void when substantial development has not occurred within two (2) years after approval of the Permit. The Zoning Ordinance authorizes the Planning Commission to grant a maximum of four (4) one (1)-year Time Extensions when it can be demonstrated that circumstances beyond the control of the Applicant have caused delays which do not permit compliance with the original time limitation. The request for extension must be filed prior to the expiration of the Conditional Use Permit.

The decision of the Planning Commission regarding a Classified Conditional Use Permit Time Extension is final, unless appealed to the Board of Supervisors within 15 days of the Commission's action.

BACKGROUND INFORMATION:

Classified Conditional Use Permit (CUP) No. 3478 was approved by the Planning Commission on March 24, 2016 and became effective 15 days later, as prescribed by law, with an approval period of two-years as per the County Ordinance. Subsequently, three separate one-year time extensions were approved by the Planning Commission between May 17, 2018 and June 11, 2020, extending the approval of the CUP until March 24, 2021.

The Applicant filed the current time extension request on March 1, 2021, prior to the expiration date noted above. If this fourth and final time extension request is granted, the Applicant will have until March 24, 2022 to achieve substantial development of the religious facility.

ANALYSIS/DISCUSSION:

Classified Conditional Use Permit (CUP) No. 3478 was approved by the Planning Commission based on a determination that the required Findings could be made. Attached is a copy of the Planning Commission's Resolution (Exhibit 4) documenting the conditions previously imposed on the project.

Approval of a time extension request for a Conditional Use Permit is appropriate if circumstances beyond the control of the Applicant related to COVID-19 which have caused delays in completing the approved development. It should be noted that the Planning Commission's jurisdiction in evaluating this request is limited to determining whether or not the Applicant should be granted an additional year to exercise the Classified Conditional Use Permit as approved.

According to the Applicant's letter describing the Time Extension application (Exhibit 5), the Applicant needs additional time to complete construction due to delays related to Covid-19 restrictions.

This Time Extension application was routed to the same agencies that reviewed Classified Conditional Use Permit Application No. 3478 and the previous time extensions. None of those agencies identified any change in circumstances, or the need for additional conditions, or expressed any concerns with the proposed extension of time that were not addressed with the original approval of this project.

PUBLIC COMMENT:

None.

CONCLUSION:

Staff believes the fourth and final one-year Time Extension for Classified Conditional Use Permit No. 3478 should be approved, based on factors cited in the analysis above. Approval of this final one-year Time Extension will extend the expiration date to March 24, 2022.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Approval Action)

- Move to approve the fourth and final one-year Time Extension for Classified Conditional Use Permit No. 3478; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Denial Action)

- Move to deny the fourth one-year Time Extension for Classified Conditional Use Permit No. 3478 (state reasons for denial); and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

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LOCATION MAP

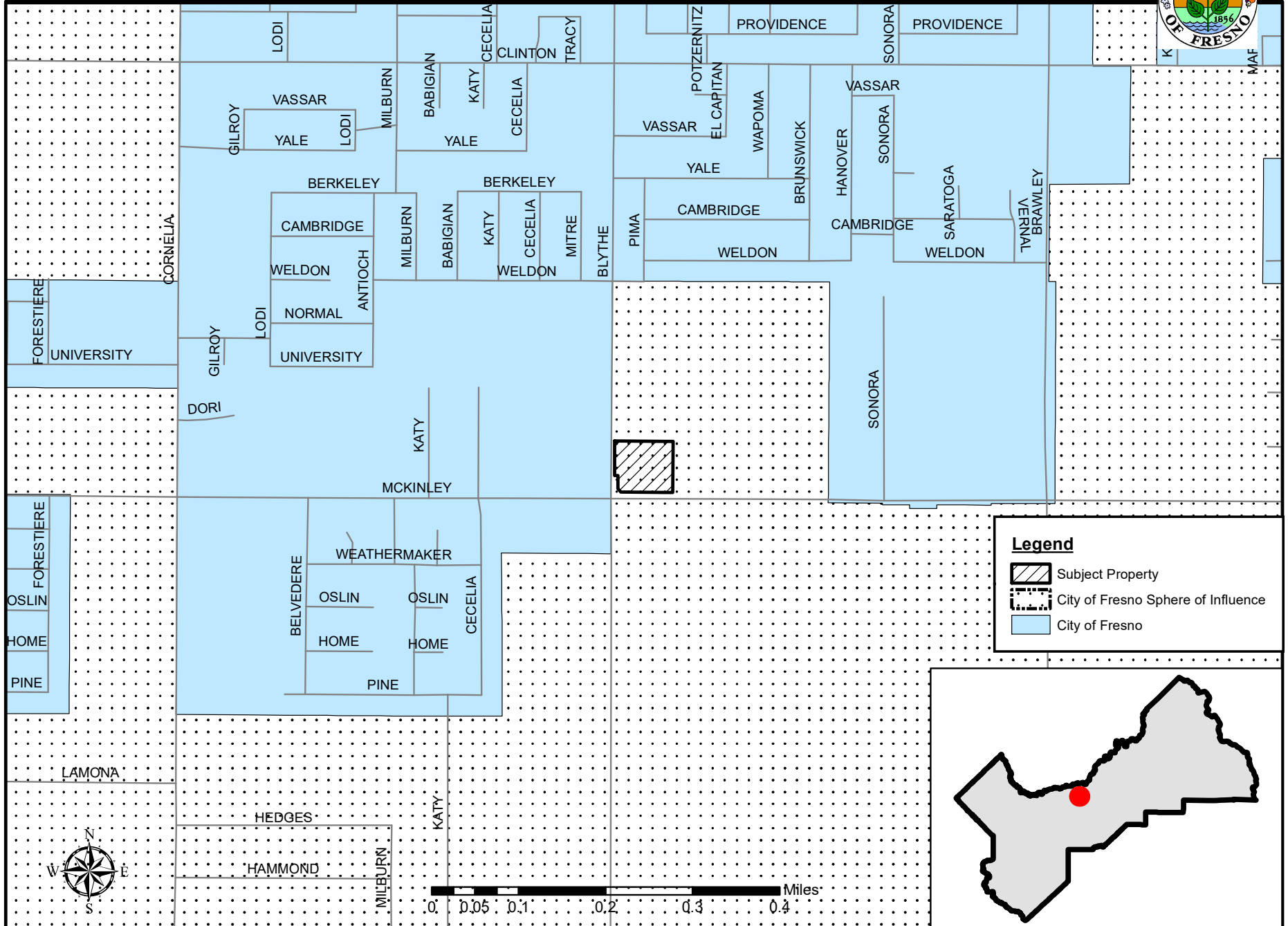
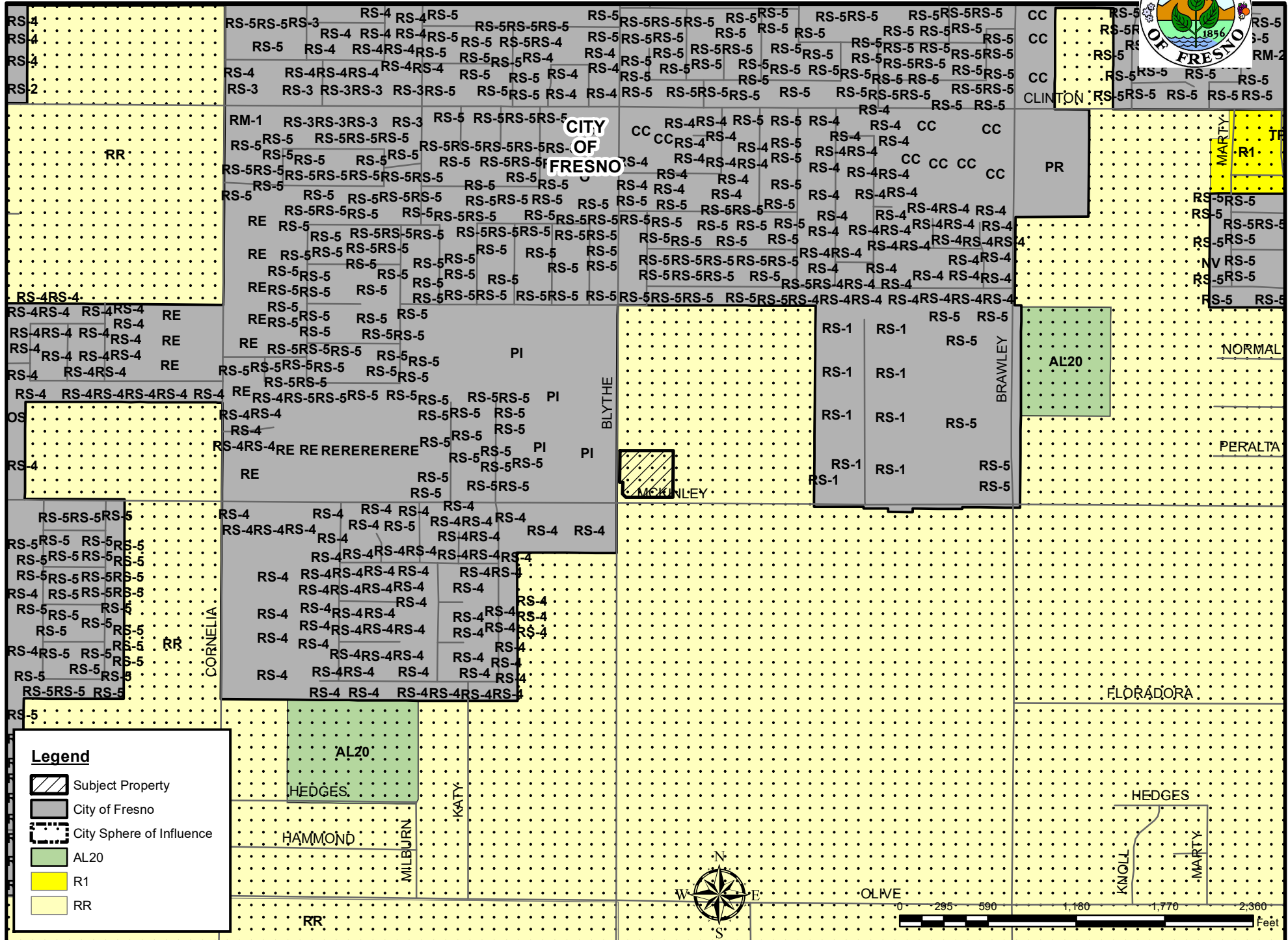
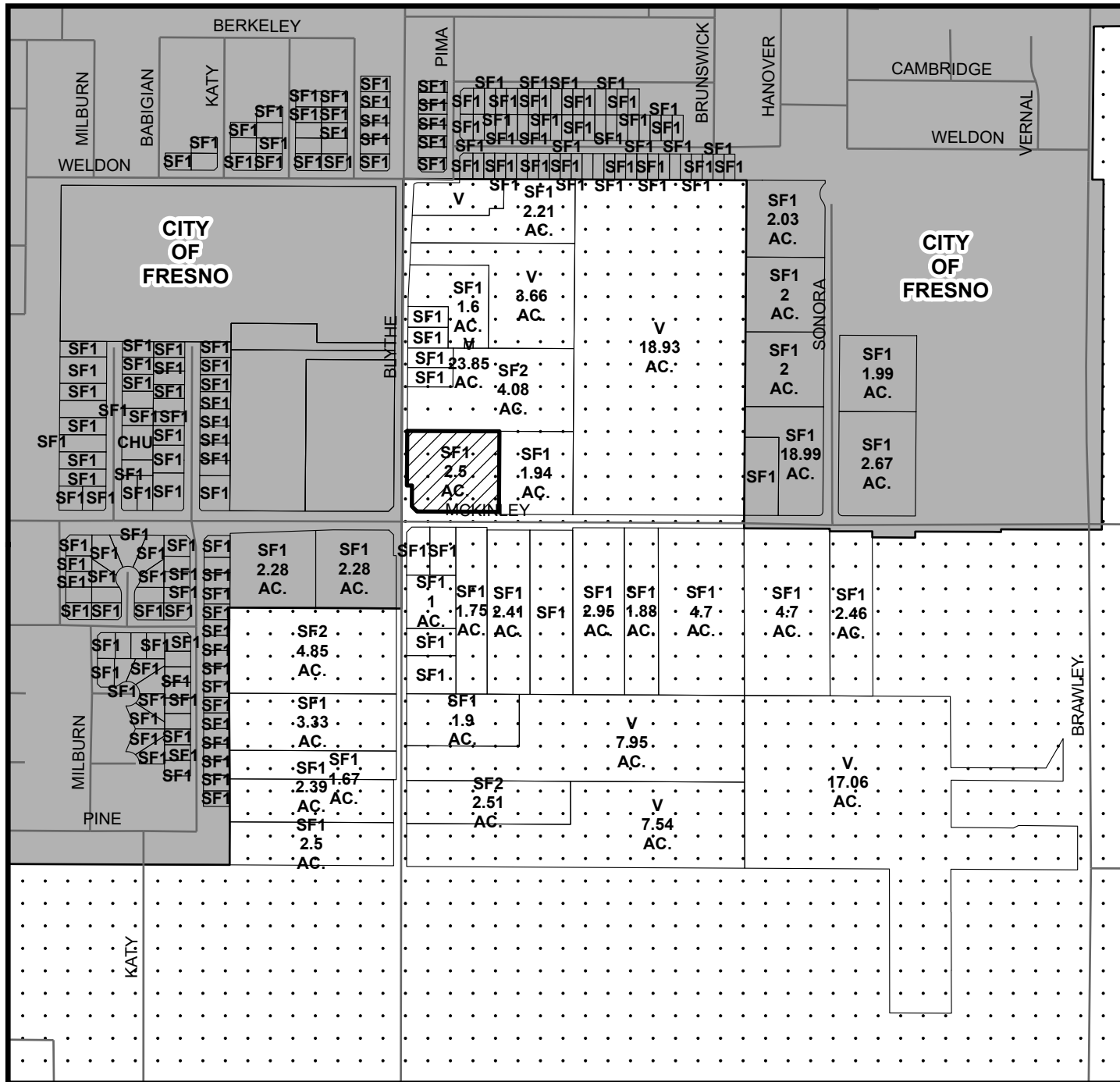


EXHIBIT 1

EXISTING ZONING MAP






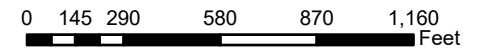
EXISTING LAND USE MAP



LEGEND	
CHU	- CHURCH
SF#	- SINGLE FAMILY RESIDENCE
V	- VACANT

LEGEND:

-  Subject Property
-  City of Fresno
-  City of Sphere of Influence



Department of Public Works and Planning
Development Services Division

EXHIBIT 3



Inter Office Memo

DATE: March 24, 2016

TO: Board of Supervisors

FROM: Planning Commission

SUBJECT: RESOLUTION NO. 12563 - INITIAL STUDY APPLICATION NO. 6888 and
CLASSIFIED CONDITIONAL USE PERMIT APPLICATION NO. 3478

APPLICANT/
OWNER:

Sy Nguyen Le

REQUEST:

Allow an approximately 3,939 square-foot religious facility with related improvements on a 2.50-acre parcel in the R-R(nb) (Rural Residential, two-acre minimum parcel size, Neighborhood Beautification Overlay) Zone District.

LOCATION:

The subject parcel is located on the northeast corner of McKinley Avenue and Blythe Avenue, approximately 40 feet east of the nearest city limits of the City of Fresno (4354 W. McKinley Avenue) (Sup. Dist. 1) (APN 312-082-14).

PLANNING COMMISSION ACTION:

At its hearing of November 19, 2015, the Commission considered the Staff Report and testimony (summarized in Exhibit A).

A motion was made by Commissioner Borba and seconded by Commissioner Egan to continue the hearing to a date uncertain to allow Staff an opportunity to re-evaluate the Initial Study (IS) environmental analysis as it pertains to transportation and traffic in order to address concerns that the Commission expressed regarding Irrevocable Offers of Right-of-Way Dedication for McKinley Avenue and Blythe Avenue being required as Mitigation Measures for the project.

This motion passed on the following vote:

VOTING:	Yes:	Commissioners Borba, Egan, Abrahamian, Mendes, Rocca, Woolf and Zadourian
	No:	None
	Absent:	Commissioner Lawson
	Abstain:	None

RESOLUTION NO. 12563

At its continued hearing of March 24, 2016, the Commission considered the Staff Report and testimony (summarized in Exhibit A).

A motion was made by Commissioner Abrahamian and seconded by Commissioner Lawson to adopt the Mitigated Negative Declaration prepared for the project, adopt the required Findings for approval of a Conditional Use Permit, and approve Classified Conditional Use Permit Application No. 3478, subject to the Conditions in the Staff Report, with the inclusion of additional Conditions to prohibit the accumulation of trash on the subject parcel, prohibit the use of outdoor sound amplification related to facility activities, require the construction of a six-foot-tall chain-link fence along the perimeter of the subject parcel with slats installed in the chain-link fence along the eastern property line of the subject parcel spanning from the northern boundary of the front yard setback (measured from the McKinley Avenue ultimate right-of-way) to a point 155 feet south of the northern property line of the subject parcel, and require landscaping consisting of drought-tolerant trees and shrubs along the eastern property line of the subject parcel spanning from the northern boundary of the McKinley Avenue ultimate right-of-way to a point 155 feet south of the northern property line of the subject parcel. All Conditions are listed in Exhibit B.

This motion passed on the following vote:

VOTING:	Yes:	Commissioners Abrahamian, Lawson, Chatha, Eubanks and Mendes
	No:	Commissioners Egan and Zadourian
	Absent:	Commissioners Borba and Woolf
	Abstain:	None

BERNARD JIMENEZ, INTERIM DIRECTOR
Department of Public Works and Planning
Secretary-Fresno County Planning Commission

By: 
 William M. Kettler, Manager
 Development Services Division

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NOTE: The approval of this project will expire two years from the date of approval unless a determination is made that substantial development has occurred. When circumstances beyond the control of the Applicant do not permit compliance with this time limit, the Commission may grant an extension not to exceed one additional year. Application for such extension must be filed with the Department of Public Works and Planning before the expiration of the Classified Conditional Use Permit.

Attachments

EXHIBIT A

Initial Study Application No. 6888
Classified Conditional Use Permit Application No. 3478

Public Hearing dated November 19, 2015

Staff: The Fresno County Planning Commission considered the Staff Report dated November 19, 2015, and heard a summary presentation by staff.

Applicant: The Applicant's representative agreed with the Staff Report; however, he disagreed with the Irrevocable Offers of Right-of-Way Dedication for McKinley Avenue and Blythe Avenue being required as Mitigation Measures for the project. He described the project and offered the following information:

- The proposed temple will be independently operated by the Applicant, and will not be affiliated with other Buddhist Temples in the area.
- The temple may expand in the future; however, the Applicant will apply for the necessary permits to authorize any such expansion.
- The Applicant is not comfortable with losing land from the subject parcel through the Mitigation Measures requiring right-of-way dedications for Blythe Avenue and McKinley Avenue.

Others: No other individuals presented information in support of or in opposition to the application.

Correspondence: No letters were presented to the Planning Commission in support of or in opposition to the application.

Public Hearing dated March 24, 2016

Staff: The Fresno County Planning Commission considered the Addendum Staff Report dated March 24, 2016, and heard a summary presentation by staff.

Applicant: The Applicant's representative agreed with the Addendum Staff Report and the recommended Conditions. He described the project and offered the following information:

- A paved parking area was improved on the east side of the existing residence in order to provide temporary off-street parking for the proposed facility while the Applicant pursues approval of the proposed land use.
- The Applicant recently hosted a New Year Celebration at the project site which probably motivated the easterly-adjacent neighbors to provide the late correspondence in opposition to the project.

RESOLUTION NO. 12563

- The Applicant has plans to address the concerns identified by the easterly-adjacent neighbors in their late correspondence opposing the project, including improvements to the perimeter fencing so as to keep the on-site guard dog contained on the subject parcel.
- Although more than 40 people have visited the subject parcel for events such as the recently-hosted New Year Celebration, no more than 40 people have visited the subject parcel at the same time.

Others:

No other individuals presented information in support of the application, and one individual presented information in opposition to the application, citing:

- The subject parcel is not adequately secured, which allows the on-site guard dog to cross onto neighboring properties.
- People visiting the subject parcel park off site, along Blythe Avenue and McKinley Avenue.
- The subject parcel is not large enough to accommodate the number of people visiting.
- The Applicant has utilized a tent to host outdoor services at the subject parcel.
- The Applicant should construct a block wall around the perimeter of the subject parcel.

Correspondence:

No letters were presented to the Planning Commission in support of the application, and one letter provided as late correspondence was presented to the Planning Commission in opposition to the application.

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Mitigation Monitoring and Reporting Program
Initial Study Application No. 6888 / Classified Conditional Use Permit Application No. 3478
(Including Conditions of Approval and Project Notes)

Mitigation Measures						
Mitigation Measure No.*	Impact	Mitigation Measure Language	Implementation Responsibility	Monitoring Responsibility	Time Span	
*1.	Aesthetics	All lighting shall be hooded and directed as to not shine toward adjacent properties and public streets.	Applicant	Applicant/Fresno County Department of Public Works and Planning (PW&P)	Ongoing	
*2.	Cultural Resources	In the event that cultural resources are unearthed during ground-disturbing activity, all work shall be halted in the area of the find, and an Archeologist shall be called to evaluate the findings and make any necessary mitigation recommendations. If human remains are unearthed during ground-disturbing activity, no further disturbance is to occur until the Fresno County Coroner has made the necessary findings as to origin and disposition. If such remains are determined to be Native American, the Coroner must notify the Native American Commission within 24 hours.	Applicant	Applicant	Ongoing	
*3.	Geology and Soils	Construct an 8-inch sanitary sewer main (including sewer house branches to adjacent properties) in N. Blythe Avenue from the existing 15-inch sewer main in W. McKinley Avenue north across the project frontage.	Applicant	Applicant/City of Fresno	Ongoing	
*4.	Geology and Soils	Construct a 15-inch sanitary sewer main (including sewer house branches to adjacent properties) in W. McKinley Avenue from the existing 15-inch sewer main at the intersection of W. McKinley and N. Blythe Avenue east across the project frontage.	Applicant	Applicant/City of Fresno	Ongoing	
*5.	Geology and Soils	Any existing septic system located on the subject parcel shall be properly destroyed under permit and inspection by the Fresno County Department of Public Works and Planning prior to occupancy being granted for the proposed religious facility.	Applicant	Applicant/PW&P	Ongoing	

*6.	Geology and Soils	Engineered improvement plans prepared by a Registered Civil Engineer shall be submitted for City of Fresno Department of Public Utilities review and approval for proposed additions to the City sewer system.	Applicant	Applicant/City of Fresno	Ongoing
*7.	Geology and Soils	All public sanitary sewer facilities shall be constructed in accordance with City of Fresno Standards, Specifications, and Policies.	Applicant	Applicant/City of Fresno	Ongoing
*8.	Geology and Soils	Pay all applicable City of Fresno Sewer Connection Fees per the Fresno Municipal Code and the City of Fresno Master Fee Schedule.	Applicant	Applicant/City of Fresno	Ongoing
*9.	Hydrology and Water Quality	The existing single-family residence shall be connected to the community water system operated by the City of Fresno prior to occupancy being granted for the proposed religious facility.	Applicant	Applicant/City of Fresno	Ongoing
*10.	Hydrology and Water Quality	The Applicant shall provide the City of Fresno Department of Public Utilities with a detailed water usage analysis identifying water fixture, landscape, and laundry efficiencies to document water conservation design characteristics, subject to approval by the Director of the City of Fresno Department of Public Utilities.	Applicant	Applicant/City of Fresno	Ongoing
*11.	Hydrology and Water Quality	Installation of water service(s) and meter box(es) shall be required.	Applicant	Applicant/City of Fresno	Ongoing
*12.	Hydrology and Water Quality	Pay all applicable City of Fresno Water Connection Fees per the Fresno Municipal Code and the City of Fresno Master Fee Schedule.	Applicant	Applicant/City of Fresno	Ongoing
*13.	Hydrology and Water Quality	Seal and abandon any existing on-site water well in accordance with City of Fresno Standards and State of California Well Standards Bulletin 74-90, or current revisions issued by the California Department of Water Resources.	Applicant	Applicant/City of Fresno	Ongoing
*14.	Hydrology and Water Quality	Outdoor storage areas shall be constructed and maintained in such a manner that material that may generate contaminants will be prevented from contact with rainfall and runoff, thereby preventing the conveyance of contaminants in runoff into the storm drain system.	Applicant	Applicant/Fresno Metropolitan Flood Control District (FMFCD)	Ongoing
*15.	Transportation and Traffic	All parking and circulation areas shall be surfaced with asphalt concrete (AC) paving prior to occupancy being granted for the proposed religious facility.	Applicant	Applicant/PW&P	Ongoing

Conditions of Approval

1.	Development of the property shall be in accordance with the Site Plans, Floor Plans, Elevations, and Operational Statement approved by the Planning Commission, except as modified by Site Plan Review.
2.	Prior to occupancy, a Site Plan Review shall be submitted to and approved by the Department of Public Works and Planning in accordance with Section 874 of the Fresno County Zoning Ordinance. Conditions of the Site Plan Review may include: design of parking and circulation areas, access, on-site grading and drainage, fire protection, landscaping, signage and lighting.
3.	The property owner shall not allow trash to accumulate on the subject parcel.
4.	There shall be no use of outdoor sound amplification equipment related to facility activities.
5.	Prior to occupancy, the property owner shall construct a six-foot-tall chain-link fence along the perimeter of the subject parcel with slats installed in the chain-link fence along the eastern property line of the subject parcel spanning from the northern boundary of the front yard setback (measured from the McKinley Avenue ultimate right-of-way) to a point 155 feet south of the northern property line of the subject parcel.
6.	Prior to occupancy, the property owner shall provide landscaping consisting of drought-tolerant trees and shrubs along the eastern property line of the subject parcel spanning from the northern boundary of the McKinley Avenue ultimate right-of-way to a point 155 feet south of the northern property line of the subject parcel.

*MITIGATION MEASURE – Measure specifically applied to the project to mitigate potential adverse environmental effects identified in the environmental document. Conditions of Approval reference required Conditions for the project.

Notes

The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.

1.	Plans related to construction and development of the project prepared by a licensed design professional shall be submitted to the Development Services Division of the Fresno County Department of Public Works and Planning for review and approval in order to acquire building and installation permits, and necessary inspections.
2.	20-foot by 20-foot corner cutoffs shall be maintained for sight distance purposes at any driveway accessing McKinley Avenue or Blythe Avenue.
3.	An Encroachment Permit shall be required from the Road Maintenance and Operations Division for any work performed within the County right-of-way.
4.	Due to the subject parcel being located within Fresno Metropolitan Flood Control District (FMFCD) Drainage Area AN, project development will require payment of a \$13,918.00 Drainage Fee to FMFCD.
5.	If construction associated with this proposal disturbs more than one acre, compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activity will be required. Should compliance with the NPDES General Permit for Discharges of Storm Water Associated with Construction Activity be required, before

Notes

construction begins, the Applicant must submit to the State Water Resources Control Board a Notice of Intent to comply with said permit, a Storm Water Pollution Prevention Plan (SWPPP), a Site Plan, and appropriate fees. The SWPPP must include descriptions of measures taken to prevent or eliminate unauthorized non-storm water discharges, and best management practices (BMP) implemented to prevent pollutants from discharging with storm water into waters of the United States.

6. A Grading Permit or Voucher shall be required for any grading activity associated with this proposal.

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County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
BERNARD JIMENEZ, INTERIM DIRECTOR

April 11, 2016

Sy Nguyen Le
4354 W. McKinley Avenue
Fresno CA 93722

Dear Applicant:

Subject: Resolution No. 12563 - Initial Study Application No. 6888 and Classified
Conditional Use Permit Application No. 3478

On March 24, 2016, the Fresno County Planning Commission approved your application with modified Conditions. A copy of the Planning Commission Resolution is enclosed.

Since no appeal was filed with the Clerk to the Board of Supervisors within 15 days, the Planning Commission's decision is final.

The approval of this project will expire two years from the date of approval unless a determination is made that substantial development has occurred. When circumstances beyond the control of the Applicant do not permit compliance with this time limit, the Commission may grant an extension not to exceed one additional year. Application for such extension must be filed with the Department of Public Works and Planning before the expiration of the Classified Conditional Use Permit.

If you have any questions regarding the information in this letter please contact me at dchambers@co.fresno.ca.us or 559-600-4205.

Sincerely,

Derek Chambers, Planner
Development Services Division

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Enclosure

March 1, 2021

To Ms. Marianne Mollring

Chief of Planning Department, Fresno County Department of Public Works and Planning
2220 Tulare St, Fresno, CA 93721

Subject: Request an extension for the CUP No. 3478 (Resolution 12563)

Attention Mr. Jeremy Shaw

Dear Ms. Mollring and Mr. Shaw,

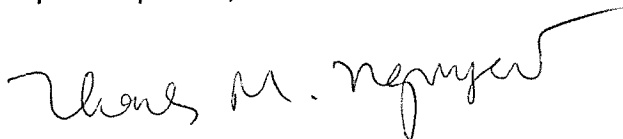
This is concerning the Classified Condition Use Permit No. 3478 (Resolution 12563) approved on March 24, 2016 for our Temple at 4354 W. McKinley Ave, Fresno, CA 93722.

Due to restrictions of activities in religious facilities per California COVID-19 requirements in the last several months, it has been extremely difficult for us to carry out the construction improvements required by the CUP. Virtually we could not make any improvement progress since approval of the CUP extension last year.

We would like to request a time extension on the CUP, so we can continue to work to meet the requirements of the CUP.

Thank you for your approval.

Respectfully Yours,

A handwritten signature in black ink that reads "Thanh Nguyen". The signature is written in a cursive style with a long, sweeping underline.

Thanh Nguyen

Representative for Thien-An Buddhist Temple of Fresno

4354 W. McKinley Ave, Fresno, CA 93722

310-972-0548