



STAFF REPORT

MEETING DATE: July 10, 2023

PRESENTER: Manuel Campos, Assistant Planner

SUBJECT: Public hearing regarding Conditional Use Permit 2023-07 to allow for the installation of barbed wire fencing and to approve the private parking lot use necessary to bring into conformance Overnite Truck Parking located at 15160 W Commerce Way, including adopting a finding of Categorical Exemption pursuant to section 15301 of CEQA Guidelines. (MC)

RECOMMENDATION: Planning Commission conducts a public hearing, deliberates, and by motion adopt a resolution approving CUP 2023-07 to allow for the installation of barbed wire fencing and to approve the private parking lot use necessary to bring into conformance Overnite Truck Parking located at 15160 W Commerce Way, including adopting a finding of Categorical Exemption pursuant to section 15301 of CEQA Guidelines.

EXECUTIVE SUMMARY:

Conditional use permit (CUP) 2023-07 was filed by Sartaj Chouhan, property owner; requesting approval of a conditional use permit to allow for the installation of barbed wire fencing and to approve the private parking lot use necessary to bring into conformance Overnite Truck Parking, located at 15160 W. Commerce Way encompassing 8.56-acres, approximately 800 feet west from the northwest corner of S. Madera Ave. and W. Commerce Way., in Kerman, CA., zoned CS (Service Commercial) with an I (Industrial) General Plan land use designation (APN 023-061-38S). A Categorical Exemption pursuant to 15301 CEQA Guidelines will be considered for the project.

APPLICABLE CODES AND PROCEDURES

KMC 17.12 – Conditional Use Permits

KMC 17.50 – Service Commercial District

KMC 17.78 – Development Standards

KMC 17.90 - Definitions

Public Resource Code – CEQA 15301 – Existing Facilities

The Kerman Municipal Code (KMC) allows the Commission to grant or deny approval of a conditional use permit provided that a public hearing is held on the proposed use to review and consider any public testimony. Prior to the public hearing, a staff report, environmental determination, and general plan finding for the use permit shall be made available to the Commission, interested agencies, and the public.

The use should be denied if the Commission cannot make the appropriate findings. Conditions may be attached to the approval of the use permit to ensure compatibility. Project design may be altered, and site improvements may be required to make the project compatible with nearby uses. In addition, the application may be subject to future review, modification, or revocation by the Commission as deemed necessary.

ANALYSIS

Background Information

On March 3rd, 2019, the project was approved ministerially under Site Plan Review (SPR) 2019-04 to allow for the development of a truck parking lot. As part of the applicant's recent SPR modification submittal, it was discovered that the private parking lot is subject to a conditional use permit. At present, the site is nearing final occupancy pending the completion of several conditions of approval required by SPR 2019-04.

Project Proposal

The project proposal includes an application for a CUP to allow for the installation of a barbed wire fence at 15160 W Commerce Way. The proposed fencing has been installed and is seven (7) feet tall. The fencing will span approximately 2,446 linear feet, and it is intended to provide an extra layer of security in addition to the surveillance system to be installed on the site. The truck parking lot will be open 24/7 to patrons and will be accessible via one (1) 60'6" gated driveway approach off Commerce Way. The truck stop's business operations will be managed by the property owner. Approval of CUP 2023-07 will bring the private parking lot into conformance with its respective permit requirements and allow for the installation of barbed wire fencing.

Site and Surrounding Land Uses and Setting

The project site has been developed with 194 truck parking stalls and has on-site lighting. As part of a condition of approval, all surveillance system footage will be made available to the Police Department upon request.

The site is predominantly surrounded by developed land. As described in **Table 1**, the site is neighboring a city-owned lot to the North, a vacant lot to the East, a packing facility (Panoche Creek Packing) to the south across Commerce Way, and a propane facility (JS West) to the west. All uses in the surrounding vicinity will not be affected by the addition of barbed wire fencing and will be negligibly affected by the private parking lot use.

Table 1. Existing Uses, General Plan Designations, and Zone Districts of Surrounding Properties

Location	Existing Land Use	General Plan Designation	Zone District
North	City Storage Yard	Service Commercial	CS – Service Commercial
East	Vacant Lot	General Commercial	CS – Service Commercial
South	Packing Facility	Industrial	M-2 – Heavy Manufacturing
West	Propane Facility	General Commercial	CG – General Commercial

Zoning & General Plan

The site is zoned CS (Service Commercial) with an I (Industrial) General Plan land use designation. The CS zone district is intended to provide a location for wholesale and heavy commercial uses and services in Kerman, which may not be compatible with other commercial zones. As noted in KMC 17.78 (Development Standards), barbed wire fences or similar material may only be constructed within the City with a use permit upon the City Planner making findings of extraordinary circumstances. However, Staff is referring to the conditional use permit because i. Conditional Use Permits are a discretionary matter decided by the Commission under Chapter 17.12 and ii. cure the nonconforming status of the parking lot.

Noting that parking lots are not specifically listed as permitted or conditionally permitted use within the CS zone district, the CS zone district allows for uses permitted in the CG (General Commercial) business zone district through the conditional use permit process. Approval of the “private parking [lot] area” as defined under KMC 17.90 and the barbed wire fencing will be consistent with the zone district and the General Plan land use designation. The barbed wire fencing will be consistent with the height and permit requirements of KMC 17.78. The private parking lot will alleviate truck traffic off-street parking on Commerce Way and nearby streets

Conclusion

A private parking lot and the installation of barbed wire fencing are permitted uses subject to a conditional use permit. There is not sufficient evidence that implies that the approval of the private parking lot and barbed wire fencing will not be detrimental to the public health, safety, and welfare of those residing or working nearby. The barbed wire fencing, as well as the surveillance system, are intended to reduce the risk of theft, vandalism, break-ins, and other security breaches. The conditions of approval will help preserve the compatibility of the proposed fencing with the surrounding land uses.

APPLICABLE GENERAL PLAN POLICIES

The 2040 General Plan includes policy recommendations related to the various physical development aspects of the community. The policies are supported by a set of goals and objectives. The Planning Commission shall refer to the General Plan’s policies, goals, and objectives when making a decision regarding this particular request.

Through the project and development review process and in collaboration with other City departments and outside agencies, the project has been designed to comply, by in large, with the City’s General Plan goals, policies, and objectives. The proposed private parking lot and the installation of barbed wire fencing will directly or indirectly provide compliance with the General Plan. Below is an excerpt from the General Plan that is germane to this conditional use permit request:

ED-1.1 Increase Business: The City shall strive to increase the number of businesses operating in Kerman to satisfy the routine needs and dining, services, and retail desires of residents while also increasing sales, property, business, and potential transient-occupancy taxes.

ED-3.5 Industrial Development: The City shall promote additional industrial development in the southern end of Kerman, including through pursuit of State and Federal infrastructure financing.

CIRC-4.1 Parking on the Public Right-of-Way: The City shall limit parking on the public right-of-way along, particularly along Madera Avenue, with public health and safety priorities.

ENVIRONMENTAL REVIEW:

The Planning Commission finds and determines that a Class 1 Categorical Exemption (Existing Facilities) set forth in CEQA Guidelines Section 15301 applies to this Project as it consists of the use of an existing private facility on an existing site to allow for barbed wire fencing and to bring the

parking lot use into conformance at a location previously approved as private parking lot through an SPR. There are no buildings on the site, and there are no buildings proposed at this time. Any maintenance or minor alternations to the site would be negligible and would not result in a significant, adverse impact on the environment. Furthermore, none of the exceptions set forth in CEQA Guidelines Section 15300.2 apply to this Project.

PLANNING COMMISSION FINDINGS:

Due to operational characteristics, conditional use permits are required for certain uses within each zone district in order to minimize impacts upon surrounding uses. In considering a conditional use permit, the Planning Commission must make certain findings pursuant to Section 17.12.040 (C) of the KMC.

- A. That the proposed establishment, maintenance, and operations of the use applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the city.

Finding A (1). The conditions of approval (Exhibit 'A') will mitigate conditions or situations that may be detrimental to public health, safety, or welfare.

- B. That the proposed use is consistent with the Kerman General Plan.

Finding B (1). Barbed wire fencing is allowed in all zone districts of the city subject to conditional approval, which is consistent with the reasonable and necessary standards for development in the City. Private parking lots in the CS (Service Commercial) zone district is a permitted use subject to a conditional use permit which is a compatible zone with the I (Industrial) General Plan land use designation. The project is consistent with the general plan, including General plan objectives ED-1.1, ED-3.5, and CIRC-4.1.

Finding B (2). The Project is located within a that is suitable for uses that are involved in manufacturing, processing, warehousing, and storage of certain service commercial uses.

Finding B (3). The conditions of approval preserve the integrity and character of the zone district and ensure compliance with the General Plan and Zoning Ordinance.

Finding B (4). The project will alleviate truck parking along Commerce Way because it will provide a secure parking facility for trucks and other commercial vehicles in the City.

- C. That the environmental document is prepared as per the California Environmental Quality Act.

Finding C (1). As described in greater detail, above, a preliminary environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The project falls within Categorical Exemption per CEQA Guidelines Section 15301 (Existing Facilities) as the project is characterized as a use occupying a developed site and meets the required conditions described in said section. There are no

project-specific significant effects on the project or the site, which would require additional environmental review.

- D. That the site for the proposed use is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed. The project's design and operations are appropriate to meet all applicable development and operational standards of the Zoning Ordinance.

Finding D (1). The location of the project is within the CS (Service Commercial) zone district which is located near other service commercial uses that are intended to provide goods and services directly to the consumer. As presented the project's design and operations are appropriate to meet all applicable development and operational standards of the Zoning Ordinance.

Planning Commission Action:

The Commission will be acting on CUP 2023-07 and determine to either:

Motion 1: Adopt a resolution approving CUP 2023-07 to allow for the installation of barbed wire fencing and approve the private parking lot use necessary to bring into conformance Overnite Truck Parking at 15160 W. Commerce Way., including adopting a finding of a Categorical Exemption pursuant to Section 15301 of the CEQA Guidelines.

Motion 2: Move to continue the public hearing on CUP 2023-07 to a later meeting; or

Motion 3: Move to continue applications for CUP 2023-07 to a later meeting, with direction to staff to return with an updated resolution with appropriate findings for the denial of the application(s).

Any action taken by the Commission approving or denying the application(s) is subject to appeal to the City Council no later than ten (10) working days after the day on which the decision was made.

Attachments

- A. Resolution w/ Exhibits
- B. Aerial View 1 & 2

Attachment 'A'
Resolution No. 2023-__

A RESOLUTION OF THE CITY OF KERMAN PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT 2023-07, TO ALLOW FOR THE INSTALLATION OF BARBED WIRE FENCING AND TO APPROVE THE PRIVATE PARKING LOT USE NECESSARY TO BRING INTO CONFORMANCE OVERNITE TRUCK PARKING LOCATED AT 15160 WEST COMMERCE WAY IN KERMAN, CA (APN: 023-060-54S).

WHEREAS, the Planning Commission considered a request for a conditional use permit filed by Sartaj Chouan (property owner) to allow for the installation of barbed wire fencing and approve the private parking lot use necessary to bring into conformance Overnight Truck Parking, located at 15160 W. Commerce Way in Kerman, CA (APN: 023-060-54S); and

WHEREAS, a public notice was circulated to adjacent properties within a 300-foot radius of the project site and published in the local newspaper at least 10 days prior to the meeting as required by law; and

WHEREAS, a written report was prepared by staff which included a recommendation for approval of Conditional Use Permit 2023-07 and was made available for public review at least 72 hours prior to the public hearing; and

WHEREAS, the project was assessed under the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission, after hearing public testimony and deliberating, now desires to approve Conditional Use Permit 2023-07 subject to findings and conditions of approval, and adopt a finding of a Class 1 Categorical Exemption (Existing Facilities) pursuant to CEQA Guidelines Section 15301.

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

- 1) Recitals: The above recitals are true and correct and are incorporated herein:
- 2) CEQA: The Planning Commission finds and determines that a Class 1 Categorical Exemption (Existing Facilities) set forth in CEQA Guidelines Section 15301 applies to this Project as it consists of the use of an existing private facility on an existing site, to allow for barbed wire fencing and to bring the parking lot use into conformance at a location previously approved as private parking lot through an SPR. There are no buildings on the site and there are no buildings proposed at this time. Any maintenance or minor alternations to the site would be negligible, and would not result in a significant, adverse impact on the environment. Furthermore, none of the exceptions set forth in CEQA Guidelines Section 15300.2 apply to this Project.
- 3) Conditional Use Permit: The Planning Commission has determined that all findings required for approval of Conditional Use Permit 2023-07 can be made, including those required by the City of Kerman Municipal Code Section 17.12.040 (C) as follows:
 - E. That the proposed establishment, maintenance, and operations of the use applied for will not be detrimental to the public health, safety, and welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the city.

Finding A (1). The conditions of approval (Exhibit 'A') will mitigate conditions or situations that may be detrimental to public health, safety, or welfare.

- F. That the proposed use is consistent with the Kerman General Plan.

Finding B (1). Barbed wire fencing is allowed in all zone districts of the city subject to conditional approval, which is consistent with the reasonable and necessary standards for development in the City. Private parking lots in the CS (Service Commercial) zone district is a permitted use subject to a conditional use permit which is a compatible zone with the I (Industrial) General Plan land use designation. The project is consistent with the general plan, including General plan objectives ED-1.1, ED-3.5, and CIRC-4.1.

Finding B (2). The Project is located near an industrial hotspot that is suitable for uses that are involved in manufacturing, processing, warehousing, and certain service commercial uses.

Finding B (3). The conditions of approval preserve the integrity and character of the zone district and ensure compliance with the General Plan and Zoning Ordinance.

Finding B (4). The project will alleviate truck parking along Commerce Way because it will provide a secure parking facility for trucks and other commercial vehicles in the City.

- G. That the environmental document is prepared as per the California Environmental Quality Act.

Finding C (1). As described in greater detail, above, a preliminary environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The project falls within Categorical Exemption per CEQA Guidelines Section 15301 (Existing Facilities) as the project occurs on a developed site and meets the required conditions described in said section. There are no project-specific significant effects on the project or the site which would require additional environmental review.

- H. That the site for the proposed use is adequate in size, shape, and location to accommodate the use as it relates to the district for which the use is proposed.

Finding D (1). The location of the project is within the CS (Service Commercial) zone district which is located near other service commercial uses that are intended to provide goods and services directly to the consumer. As presented the project's design and operations are appropriate to meet all applicable development and operational standards of the Zoning Ordinance.

4. Conditions of Approval: Given the foregoing, the Planning Commission approves Conditional Use Permit 2023-07, subject to the conditions of approval attached herein as **Exhibit 'A'**.
5. Effective Date: This Resolution shall take effect immediately.

I HEREBY CERTIFY that the foregoing Resolution was approved at a regular meeting of the Planning Commission of the City of Kerman on the 10th day of July 2023, and was fully adopted at the said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

Scott Bishop
Chairperson

ATTEST:

Jesus R. Orozco
Planning Commission Secretary

Exhibit 'A'
Conditions of Approval
Overnite Truck Parking – CUP 2023-07
July 10, 2023

Notice To Applicant

Pursuant to Government Codes Section 66020(d)(1) and/or Section 66499.37, any protest related to the imposition of fees, dedications, reservations, or exactions for this project or any proceedings undertaken regarding the City's actions taken or determinations made regarding the project, including but not limited to the validity of conditions of approval must occur within ninety (90) calendar days after the date of this decision. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

Important: Please Read Carefully

This project is subject to a variety of discretionary conditions of approval. These include conditions based on adopted City plans and policies; those determined through conditional use permit review and environmental assessment essential to mitigate adverse effects on the environment including the health, safety, and welfare of the community; and recommended conditions for development that are not essential to health, safety, and welfare, but would, on the whole, enhance the project and its relationship to the neighborhood and environment.

Discretionary conditions of approval may be appealed. All code requirements, however, are mandatory and may only be modified by variance, provided the findings can be made.

All discretionary conditions of approval for CUP 2023-07 will ultimately be deemed mandatory unless appealed by the applicant to the City Council within ten (10) working days after the decision by the Planning Commission. In the event you wish to appeal the Planning Commission's decision or discretionary conditions of approval for this entitlement, you may do so by filing a written appeal with the City Clerk. The appeal shall state the grounds for the appeal and wherein the Commission failed to conform to the requirements of the zoning ordinance. This should include identification of the decision or action appealed (including its identification number) and specific reasons why you believe the decision or action appealed should not be upheld, and the identity of the appellant.

Approval of this conditional use permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development.

Approval of this conditional use permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this use permit, the zoning ordinance, and all City standards and specifications. This use permit and site plan review is granted, and the conditions imposed, are based upon the application submittal provided by the applicant, including any operational statement. The application is material to the issuance of this use permit. Unless the conditions of approval specifically require an operation inconsistent with the application, a new or revised use permit is required if the operation of this establishment changes or becomes inconsistent with the application. Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the use permit, or any other enforcement remedy available under the law. The City shall not assume responsibility for any deletions or omissions resulting from the use permit review process, or for additions or alterations to any construction or building plans not specifically submitted and reviewed and approved pursuant to this use permit or subsequent amendments or revisions. These conditions are conditions imposed solely upon the use permit as delineated herein and are not

conditions imposed on the City or any third party. Likewise, imposition of conditions to ensure compliance with federal, state, or local laws and regulations does not preclude any other type of compliance enforcement.

These conditions are applicable to any person or entity making use of this use permit, and references to “developer” or “applicant” herein also include any applicant, property owner, owner, leasee, operator, or any other person or entity making use of this use permit.

General Conditions

1. Project approval is conditioned upon acceptance of the conditions of approval contained herein, as evidenced by the receipt in the Planning Division of the applicant’s signature upon an Acknowledgement and Acceptance of Conditions within 30 days of the date of approval.
2. Any intensification or expansion of the use beyond its approval shall be cause for review and modification of the use permit to be approved by the Commission.
3. Any proposed future modifications to the site not specifically contemplated by CUP 2023-07, including but not limited to, the building exterior, parking/loading areas, fences/walls, new buildings, or landscaping shall require an amendment to CUP 2023-07.
4. All conditions of approval shall be the sole financial responsibility of the applicant/owner, except where specified in the conditions of approval listed herein or mandated by statute.
5. It shall be the responsibility of the property owner and/or applicant to ensure that any required permits, inspections, and approval from any regulatory agency are obtained from the concerned agency prior to the issuance of a business license or final occupancy issuance.
6. Failure to comply with the conditions of approval contained herein shall be cause for review and possibly modification or revocation to CUP 2023-07.
7. CUP 2023-07 shall be approved with the contingencies that all original conditions set forth in SPR 2019-04 and subsequent modification to said SPR shall be completed within one year of this approval.
8. Approval of CUP 2023-07 is for the benefit of the applicant. The submittal of application(s) by the applicant for this project was a voluntary act on the part of the applicant not required by the City. Therefore, as a condition of approval of this project, the applicant agrees to defend, indemnify, and hold harmless the City of Kerman and its agents, officers, consultants, independent contractors, and employees (“City”) from any and all claims, actions, or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the project, including any challenges to associated environmental review, and for any and all costs, attorney’s fees, and damages arising therefrom (collectively “claim”). The City shall promptly notify the applicant of any claim.

Nothing in this condition shall obligate the City to defend any claim and the City shall not be required to pay or perform any settlement arising from any such claim not defended by the City unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any claim, and if the City does decide to independently defend a claim, the applicant shall be responsible for the City’s attorney’s fees, expenses of litigation, and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any claim, the applicant shall not be required to pay or perform any settlement arising from any such claim unless the applicant approves the settlement.

Building Division

9. A building permit shall be required for all proposed or future tenant and site improvements as required by the California Building Code, California Fire Code, and Americans with Disability Act (ADA) prior to occupancy.
10. The developer and/or property owner shall submit plans consistent with the California Building Standards Code, including site development and ADA accessibility based upon the codes in effect at the time of plan check submittal.
11. The Owner / Applicant shall also submit an application for a Construction and Demolition (C&D) permit per KMC, Chapter 8.12 and required permits from other enforcement agencies including but not limited to the following: Mid Valley Disposal, San Joaquin Valley Air Pollution District.
12. Prior to the commencement of any work on the project site, the general contractor and all sub-contractors shall obtain a City business license.
13. Construction, repair, and/or remodeling shall be permitted to occur between the hours of 7:00 a.m. and 10:00 p.m., consistent with 9.26.020 of the KMC.

Planning Division

General

14. On-site litter and graffiti shall be corrected per the KMC, Section 17.100.050 (B) – Litter and Graffiti.
15. The business and/or property owner shall keep the property clear of all trash, rubbish, and debris at all times. Dumping of refuse shall be restricted to the refuse containers scheduled to service the site.
16. The business and/or property owner shall comply with all applicable federal, state, or local laws, rules, and regulations. Material violations of said laws, rules, and regulations may be cause for review and possible revocation of the use permit.
17. Business owner(s) shall be responsible for securing a business license from the Finance Department before the commencement of any commercial activity.

Conditional Use Permit 2023-07

18. CUP 2023-07 allows for:
 - A. The operation of a 24-hour private parking lot area for the storage and parking of semi-trailer trucks, automobiles, recreational vehicles, boats, and boat trailers.
 - B. The installation of barbed wire fencing as further described in conditions 23 through 25.
19. CUP 2023-07 shall not allow for the repair or storage of any mechanical or vehicular equipment or other activities not customary of a private parking lot.

Signage

20. Proposed and future permanent signage shall comply with KMC 17.76.050 and 17.100.060
21. No sign shall interfere with a driver's or pedestrian's view of public right-of-way or in any other manner impair public safety or interfere with the safe operation of a motor vehicle on public streets. This includes, but is not limited to, the driver's view of approaching, merging, or intersecting traffic.

22. Temporary signage shall be permitted for special events (i.e. grand opening, local, State, or Federal recognized holidays), to be displayed for thirty (30) days or less per year and advertise a grand opening or community affair.

Fencing

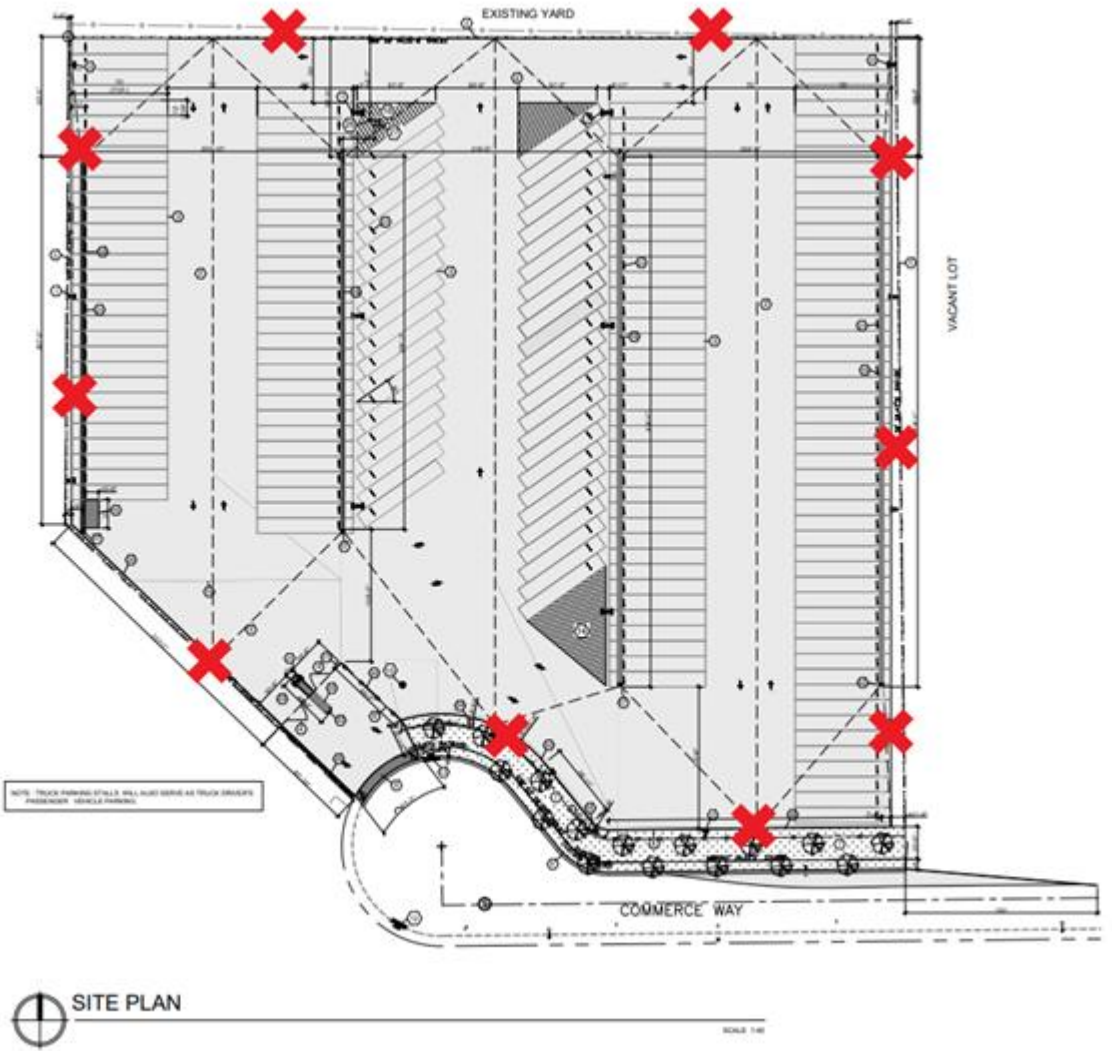
23. The proposed barbed wire fencing at its highest point shall not exceed seven (7) in height.
24. The appropriate barbed wire warning signs shall be installed along the fence to closely resemble the location and quantity shown in Exhibit 'A-1'. The signs shall alert all passersby that the fence has been installed with barbed wire. Examples of said signs are shown in Exhibit 'A-1'.
25. Barbed wire fencing shall be of resemble conventional twist barbed wire or of similar material to be reviewed and approved by the Planning Division.

Police Department

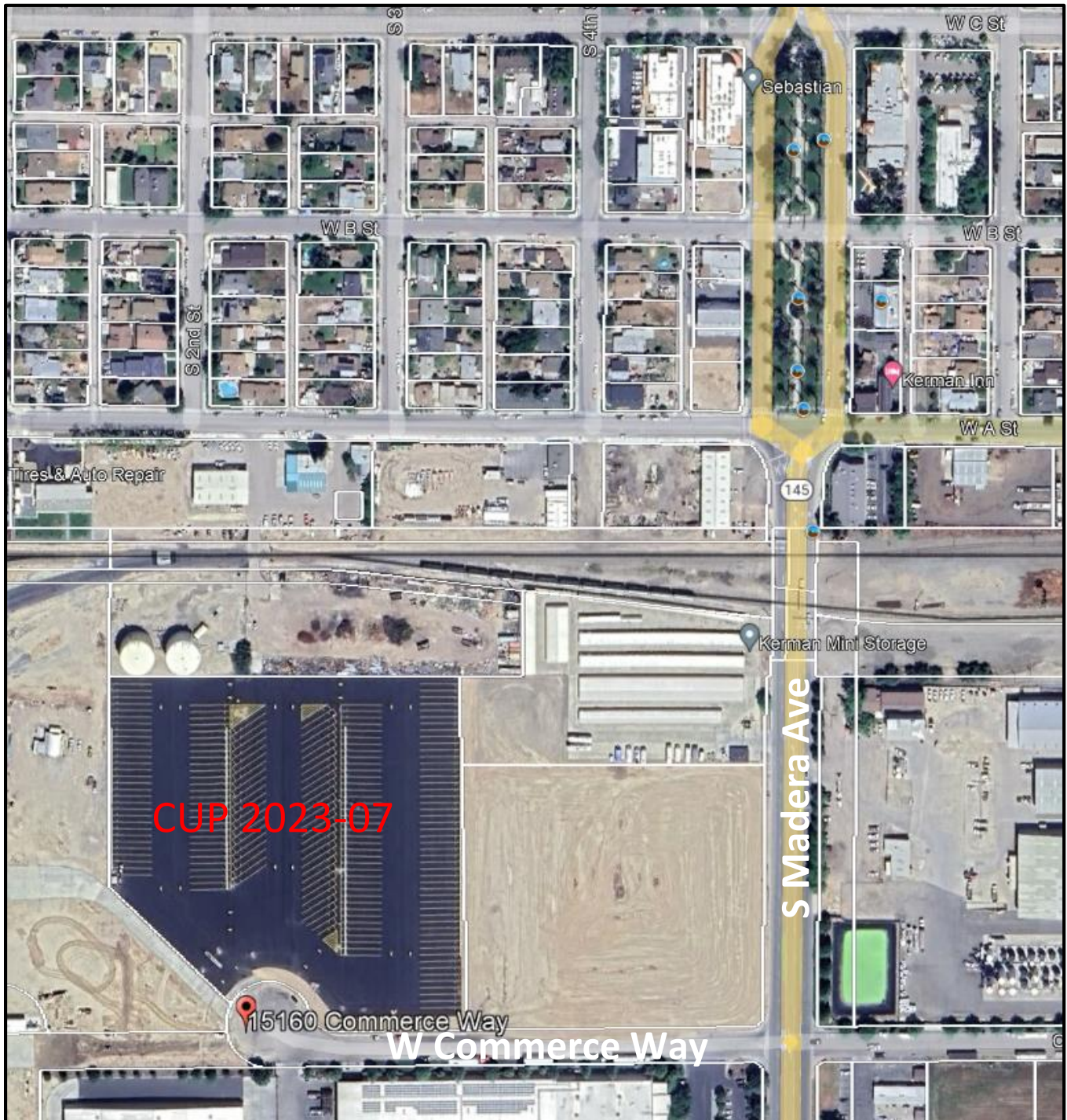
26. Video Surveillance shall be installed. The surveillance system installed shall be in color and monitor the entire site to the furthest extent possible. The system shall have the correct date and time stamped and retained for no less than thirty (30) days. Footage shall be made available to law enforcement within 24 hours of initial request.
27. The operation of the business shall not result in criminal activity or repeated nuisance activities on the property as defined by applicable federal, state, or local laws.
28. The business owner or operator shall be responsible for the removal of deterrent behavior, including loitering and/or vagrancy in or upon the business site. The business owner shall install "No Trespassing" and "No Loitering" signs on the premise to the specifications of the Police Department.

End of Conditions

Exhibit 'A-1'
Barbed Wire Warning Map



Attachment B
Aerial 1



Attachment B
Aerial 2

