

# SUMMARY ACTION MINUTES

## BOARD OF SUPERVISORS

Regular Meeting  
TUESDAY, JULY 08, 2008  
Closed Session – 8:00 a.m.  
Regular Meeting – 9:00 a.m.

MERCED COUNTY  
ADMINISTRATION BUILDING  
2222 “M” STREET  
BOARD ROOM, THIRD FLOOR  
MERCED, CALIFORNIA 95340  
(209) 385-7366

JOHN PEDROZO.....DISTRICT 1  
CHAIRMAN KATHLEEN M. CROOKHAM....DISTRICT 2  
MICHAEL G. NELSON.....DISTRICT 3  
DEIDRE F. KELSEY....DISTRICT 4  
JERRY O'BANION.....DISTRICT 5  
Lydia A. Beiswanger, Chief Clerk

DEMITRIOS O. TATUM  
COUNTY EXECUTIVE OFFICER

JAMES N. FINCHER  
COUNTY COUNSEL

*All supporting documentation is available for public review in the Office of the Clerk of the Board of Supervisors located in the County Administration Building, Third Floor, 2222 “M” Street, Merced, California, 95340  
During regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday.*

Any material related to an item on this Agenda submitted to the Clerk after distribution of the Agenda packet is available for public inspection in the Office of the Clerk of the Board.

**The Agenda is available online at [www.co.merced.ca.us](http://www.co.merced.ca.us)**

**Members of the public are advised that all pagers, cellular telephones and any other communication devices are to be turned off upon entering the Board Chambers**

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**THE PUBLIC IS INVITED TO SPEAK ON ANY ITEM ON THE AGENDA**

The Agenda is divided into sections:

**SCHEDULED ITEMS** – These items are noticed hearings, work sessions and public hearings.

**REGULAR CALENDAR** – These items include significant policy and administration actions. Immediately after approval of the CONSENT CALENDAR, if the time of the hearing of SCHEDULED ITEMS has not arrived, the REGULAR CALENDAR will be considered.

SCHEDULED ITEMS

8:00 A. M.

**CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - SIGNIFICANT EXPOSURE TO LITIGATION:** It is the intention of the Board to meet in Closed Session concerning significant exposure to litigation pursuant to Government Code Section 54956.9(b): One Case

**CLOSED SESSION:** It is the intention of the Board to meet in Closed Session pursuant to Government Code Section 54957: PUBLIC EMPLOYEE PERFORMANCE EVALUATION. Title: County Executive Officer

**THE BOARD RECESSED AT 8:00 A.M. AND RECONVENED AT 9:00 A.M. WITH ALL MEMBERS PRESENT AND THE CHAIRMAN ADVISED THERE WAS NOTHING TO REPORT**

**GOVERNMENT CODE SECTION 54950 COMPLIANCE (LATE AGENDA ITEMS)**

9:00 A. M.

**PLEDGE OF ALLEGIANCE**

**PUBLIC OPPORTUNITY TO SPEAK ON ANY MATTER OF PUBLIC INTEREST WITHIN THE BOARD'S JURISDICTION INCLUDING ITEMS ON THE BOARD'S AGENDA, EXCEPT FOR THOSE ITEMS SPECIFICALLY SCHEDULED AS PUBLIC HEARINGS** (Testimony limited to five minutes per person)

**REVIEW BOARD ORDER – SEE PAGE 4**

**PLANNING - PUBLIC HEARING (Continued from July 1, 2008)**

To receive testimony and comments directed only to a supplemental staff report and any new information due to comments already received at the June 10, 2008 public hearing (Continued from June 10, 2008 Board Meeting)  
Appeal of the Planning Commission approval of Minor Subdivision Application/Parcel Map Waiver No. MS07-058

**REVIEW BOARD ORDER – SEE PAGES 4 AND 5**

**PLANNING - PUBLIC HEARING (Continued from July 1, 2008)**

To consider an Appeal of Planning Commission decision on 1st Modification No. MM07-025 to Conditional Use Permit No. CUP05-031 and Minor Deviation No. MD08-004 submitted by Felix Torres Housing Center to revise the approved site development plan for the Felix Torres Housing Center by moving the site for construction of the previously approved child care facility to

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the southeast corner of the site and to reduce the required front yard setback by 25% (five feet) for three proposed buildings on property located on the west side of Plainsburg Road, approximately 2,000 north of Highway 140 in Planada

**REVIEW BOARD ORDER – SEE PAGES 6 THRU 8**

**PLANNING - PUBLIC HEARING (Continued from July 1, 2008)**

To consider an Appeal of the Planning Commission approval of Conditional Use Permit CUP06-014 by Maureen McCorry, et al. Said Application submitted by Central Valley Concrete/Thoreson to excavate and remove approximately 75,000 cubic yards of sand material from a 7 acre portion of a 35 acre parcel over a five year period and to reclaim the property back to grazing lands on property located on the south side of El Capitan Way and approximately 0.5 miles west of Santa Fe in the Cressey area

**REVIEW BOARD ORDER – SEE PAGES 8 THRU 14**

**REPORTS/BOARD DIRECTION**

County Executive Officer, County Counsel, County Auditor, Board of Supervisors Members

REGULAR CALENDAR

BOARD ACTION

BOARD OF SUPERVISORS

1. County Executive Officer – Consideration of Salary Modification.

**REVIEW BOARD ORDER – SEE PAGE 14**

BOARD APPOINTMENTS

2. Snelling Cemetery District – Appointed Danny Mendoza to serve until July 1, 2011.

**APPROVED AS RECOMMENDED AYES: ALL**

3. PULLED

BOARD INFORMATION & POSSIBLE ACTION

**ACCEPTED AND PLACED ON FILE AYES: ALL**

4. Stanislaus County re: Addendum to the Notice of Preparation of a Draft Environmental Impact Report for the West Park Specific Plan Request.
5. San Joaquin Valley Air Pollution Control District re: 2008-2009 Adopted Budget.
6. San Luis Water District re: San Luis Water District water transfers and related exchanges in Fresno, Merced, Santa Clara and Kern Counties.

**ADOPTED RESOLUTIONS IN MEMORY OF JOHN GARCIA, DAN COTTA, LISA CRABB LAMERSON-CERVANTES, FRANCES CUPPLES AND ROSEANNA DENISE PACHECO AND ADJOURNED THE MEETING UNTIL TUESDAY, JULY 22, 2008 AT 10:00 A.M.**

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**BOARD ORDERS – SUMMARY ACTION MINUTES – JULY 8, 2008**

**9:00 A.M. SCHEDULED ITEM**  
**2008-07-08 PUBLIC OPPORTUNITY**

Grant Wilson, Merced, requests the Board take the ban off Medical Marijuana Dispensaries, states he is still waiting for contact on censorship and Medical Marijuana program funds usage concerns and speaks regarding his violation of constitutional rights.

Present: Crookham, Pedrozo, Nelson, Kelsey, O'Banion

**9:00 A.M. SCHEDULED ITEM**  
**2008-07-08 PLANNING – CONTINUED PUBLIC HEARING**

The time and date previously set for a continued public hearing from July 1, 2008, to receive testimony and comments directed only to a Supplemental Staff Report and any new information due to comments already received at the June 10, 2008, public hearing for Appeal of Planning Commission approval of Minor Subdivision Application/Parcel Map Waiver No. MS07-058 submitted by Valley Land Alliance. Said application submitted by Chris Robinson to divide parcels (194.52 acres, 516.80 acres and 315.88 acres) totaling 1,027.20 acres into 3 parcels of: Parcel 1 = 198.63 acres, Parcel 2 = 343.18 acres, Parcel 3 = 165.63 acres and Remainder Parcel = 320.14 acres of property located on the east side of Highway 59, ½ mile north of Youd Road in the Snelling area.

(The Clerk notes for the record the following supplemental document has been received and is on file: Letter dated July 2, 2008 from Christine Gianascol Kemp.)

Development Services Director Robert Lewis reviews the Staff Report and Planner Dave Gilbert reviews the powerpoint presentation.

County Counsel James Fincher states the Board previously held a public hearing on this matter and since that time the Supplemental Staff Report from Planning, e-mail from Fish and Wildlife Service and letters by appellant and others have been submitted. He states if anyone wishes to speak, comments must be limited to the new information submitted.

Maureen McCorry, San Joaquin et al, speaks to the environmental review process and submits a letter on behalf of Mary Fury.

Chris Robinson, Robinson Ranch and General Partner for Robinson Cattle Company, addresses concerns in the letter submitted by Lydia Miller and Steve Burke.

County Counsel James Fincher comments on issues raised by Ms. McCorry.

Development Services Director Robert Lewis responds to the Lydia Miller/Steve Burke letter.

Following discussion and upon motion of Supervisor Kelsey, seconded by Supervisor Pedrozo, duly carried, the Board determines that Minor Subdivision Application/Parcel Map Waiver No. MS07-058 is exempt from CEQA based on the following findings:

1. The application is exempt from CEQA review under Section 15061(b)(3) – “Common Sense” exemption of the CEQA Guidelines based on the following:
  - There are no proposed physical changes to the project site.
  - The project site will continue to be actively farmed after the subdivision is recorded.
  - The agricultural use will not change.
  - The proposed subdivision will only separate agricultural land uses from proposed Parcel 2 which consists of a Conservation Easement along the Merced River.
  - The sheer sizes of the parcels do not convey the intent for the potential for “ranchettes,” and the total number of residences that could be allowed by separate discretionary permits, will not increase as a result of the minor subdivision due to the Parcel 2 conservation easement restrictions prohibiting any dwelling units.
  - The 160 acre minimum parcel size of the A-2 Zoning prevents any potential for “ranchettes”.
  - The County is not authorizing nor allowing any change nor intensity of any use on any parcel.
  - There is no evidence of any intent to add to, intensify or change any use on any parcel.
  - It is merely an adjustment of property lines from 3 parcels to 4 parcels.
  - Evidence provided at the hearing supports the ability to conclude, with certainty, that there is no possibility the project will cause a significant impact to the environment.
2. The determination that the application is exempt from CEQA review reflects the independent judgment of the County.

Ayes: Crookham, Pedrozo, Nelson, Kelsey, O'Banion

Upon motion of Supervisor Kelsey, seconded by Supervisor Pedrozo, duly carried, the Board denies the Appeal and based on Findings approves Parcel Map Waiver/Minor Subdivision Application No. MS07-058 subject to the following Conditions:

Merced County Planning and Community Development

1. A Certificate of Compliance along with an “Exhibit Map”, legal descriptions of all Proposed Parcels, and the Waiver Certificate, shall be recorded within two (2) years of the Planning Commission approval date as required by the Merced County Subdivision Code.
2. The applicant shall comply with all applicable County, State, and Federal regulations.
3. A “Right-to-Farm” Certificate shall be recorded, if and when a Parcel Map is recorded, along with the Exhibit Map notifying any potential buyer that the property is in the vicinity of active farming operations and residents may be subject to inconveniences or discomforts resulting from the pursuit of agricultural operations.

Ayes: Crookham, Pedrozo, Nelson, Kelsey, O'Banion

**9:00 A.M. SCHEDULED ITEM**  
**2008-07-08 PLANNING – CONTINUED PUBLIC HEARING**

The time and date previously set for a continued public hearing to consider an Appeal of Planning Commission decision on 1<sup>st</sup> Modification No. MM07-025 to Conditional Use Permit No. CUP05-031 and Minor Deviation No. MD08-004 submitted by Felix Torres Housing Center to revise the approved site development plan for the Felix Torres Housing Center by

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moving the site for construction of the previously approved child care facility to the southeast corner of the site and to reduce the required front yard setback by 25% (five feet) for three proposed buildings on property located on the west side of Plainsburg Road, approximately 2,000 north of Highway 140 in Planada.

(The Clerk notes for the record the following supplemental documents have been received and are on file: Letter dated July 7, 2008 from Kenneth R. Mackie, CD (printed pages of CD) and Index Sheet dated July 1, 2008 from Maureen McCorry, Fax dated July 4, 2008 and E-mail dated July 8, 2008, from Bryant Owens.)

Development Services Director Robert Lewis reviews the staff report and Planner James Holland reviews the powerpoint presentation.

The Chairman asks if there is anyone present wishing to speak.

The following speak in opposition to MM07-025: Ernie Kahl (on behalf of Planada Association) submits numerous documents and Maureen McCorry, et al states Felix Torres should have a day care center but disagrees with the process and states concern with infrastructure.

The following speak in favor of MM07-025: Debra Pugero Clipper (Grantor to obtain funds to provide operational services for Felix Torres and as 100-year family farmer in Merced County), Maria Lucio (Housing Authority of the County of Merced), Don Bordwarg (Development Director for the Housing Authority of the County of Merced), Olivia Gomez (Planada resident and member of the Planada Community Service District), Alicia Rodriguez (Planada) submits a list of signatures in favor of the project, Anna Moreno (Planada resident and employee to child development centers), Marian Scorby (Merced College Child Development Center), Margaret Warmack (Commissioner of the Housing Authority of the County of Merced), Fabby Alvarez (Planada), Martin Diaz (Golden Valley Center) and Guadalupe Perez with Martin Diaz Interpreting.

The Chairman closes the public hearing.

The Board discusses the LAFCo issue, eligibility for services at the Day Care Center and the need to improve communication between the Housing Authority and the community.

The Board recesses at 11:00 a.m. to review material submitted during the public hearing and reconvenes at 11:23 a.m. with all members present.

Mr. Nicholson addresses documentation submitted:

1. Letter from Kenneth Mackie, attorney for Bryant Owens on behalf of Planada Association, (letter in bin and e-mailed by Mr. Owens). Letter rehashes issues presented in the staff report and attachments. There is no Zone Variance/Zone Change. Reference also made to parcelization by Housing Authority - under Map Act governmental agencies do not have to go through the Map Act for land divisions.
2. Engineering Report refers to Felix Torres Camp not the Minor Modification - not relevant.
3. Can and Will serve letters – not relevant.
4. E-mail to David Capron – not relevant.
5. Letter from Kenneth Mackie to LAFCo – not relevant.
6. Old Letter from Realtor Charles Giangani – not relevant.

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7. Letter from PHR Communities regarding General Plan Amendment – not relevant.
8. Map of Planada, part of Community Plan Update - not relevant.
9. Copy of Bryant Owens fax dated July 4<sup>th</sup>, everyone received through e-mail and is part of the record – not relevant.
10. Municipal Service Review – LAFCo document – not relevant.
11. State Office of Planning and Research Guidelines – LAFCo – not relevant.
12. Settlement Agreement regarding the Sewer Plant Cover Page – not relevant.
13. California Regional Water Quality Control Board regarding Transmittal of adopted order for Planada Community Services District, Wastewater Treatment Facility, nothing attached – not relevant.
14. Fax submitted by Bryan Owens – many documents previously submitted and part of the record and some older documents already submitted – not relevant.

Mr Nicholson advises nothing new or different submitted that would be pertinent to making a decision on the Minor Modification.

Following discussion and upon motion of Supervisor Pedrozo, seconded by Supervisor O'Banion, duly carried, the Board finds that Minor Modification No. MM07-025 to CUP05-031 and Minor Deviation No. MD08-004 will not create any impacts beyond those previously addressed in the Negative Declaration adopted by the Housing Authority of the County of Merced and in accordance with Section 15162 of the CEQA Guidelines, no further environmental documentation is necessary based on the following findings and upholds the Appeal:

1. An Initial Study was conducted by the Housing Authority of the County of Merced to evaluate the potential for adverse environmental impacts for Conditional Use Permit No. CUP05-031.
2. A Negative Declaration (SCH No. 2005101023) was prepared by the Housing Authority of the County of Merced for Conditional Use Permit No. CUP05-031.
3. As Responsible Agency, Merced County has chosen to rely upon the mitigated negative declaration drafted by the Housing Authority of the County of Merced for environmental review of Minor Modification No. MM07-025 to CUP05-031 and Minor Deviation No. MD08-004, as these applications will not create any impacts beyond those already considered in the mitigated negative declaration (SCH No. 2005101023).

Ayes: Crookham, Pedrozo, Nelson, Kelsey, O'Banion

Upon motion of Supervisor Pedrozo, seconded by Supervisor O'Banion, duly carried, the Board, based on Findings, approves Minor Modification No. MM07-025 to CUP05-031 and Minor Deviation No. MD08-004 subject to the following conditions:

Planning and Community Development Department

1. Minor Modification No. MM07-025 to Conditional Use Permit No. CUP05-031 and Minor Deviation No. MD08-004 is granted to allow construction of the previously approved accessory child development/Head Start facility on the southeast corner of the site and reduce the front yard setback from the required 20 feet to 15 feet from the property line along Plainsburg Road.
2. The project site shall be developed and operated in a manner that is consistent with the site plan approved for applications MM07-025 and MD08-004 and the site plan approved for CUP05-031 (as applicable) and the Applicant's Operational Statement.
3. All conditions of approval required for CUP05-031 shall remain in effect for this modification unless already complied with or specifically amended.

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4. The applicant shall provide public transit service to and from the Felix Torres Child Development Center at the request of Merced County.
5. For the purpose of conditions monitoring, an inspection fee in the amount of \$456 shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant/property owner at the established hourly rate at the time of the inspection. This permit will not be considered valid until the conditions monitoring fee has been paid.
6. The applicant shall install Type A landscaping per Section 18.38 of the Zoning Code along the entire frontage of Plainsburg Road.
7. The child development/Head Start Center will not be permitted to open until the housing units in the Felix Torres Housing Center are constructed and occupied.
8. Seventy five percent (75%) or more of the students attending the child development/Head Start facility must be children of residents of the Felix Torres Center housing units.
9. The Minor Modification is considered a temporary relocation of the child development center (Head Start Program), and the permanent facility will be constructed in the center of the Felix Torres Housing Complex in conformance with the site plan approved with CUP05-031 once permanent funding is obtained by the Housing Authority.

Public Works Building & Safety Division

10. The applicant shall provide proof that inspection approval was given from a third party inspection agency or the applicant shall submit copies of contracts made with the private inspection firm. Copies of all inspection reports, testing and materials used on the project to insure that all work performed to date is in compliance with applicable building and safety codes.
11. An updated “Can and Will Serve” letter from the Planada Community Services District must be obtained prior to issuance of the building permit for the child development/head start center, or any subsequent housing units in the Felix Torres Center. Such “Can and Will Serve” letter shall clearly indicate it is issued for the purpose of obtaining building permits, and is a precondition to the issuance of any building permit. The applicant shall also provide evidence to the County that LAFCo approval has been issued for annexation of the property into the District, or that LAFCo has approved an out of boundary service connection.

Ayes: Crookham, Pedrozo, Nelson, Kelsey, O’Banion

**9:00 A.M. SCHEDULED ITEM**  
**2008-07-08 PLANNING – CONTINUED PUBLIC HEARING**

The time and date previously set for a continued public hearing to consider an Appeal of the Planning Commission approval of Conditional Use Permit CUP06-014 by Maureen McCorry, et al. Said Application submitted by Central Valley Concrete/Thoreson to excavate and remove approximately 75,000 cubic yards of sand material from a 7 acre portion of a 35 acre parcel over a five-year period and to reclaim the property back to grazing lands on property located on the south side of El Capitan Way and approximately 0.5 miles west of Santa Fe in the Cressey area.

Development Services Director Robert Lewis reviews the Staff Report and Planner Oksana Newmen reviews the powerpoint presentation.



In response to questions and inquiries, Assistant Planning Director Bill Nicholson states as part of routine process, there was a site visit, photos taken which were included in the record during the Planning Commission meeting and Planner Newman states the original application indicated less than 1,000 cubic yards of top soil had been removed but this has not been verified.

The Chairman asks if there is anyone present wishing to speak.

Maureen McCorry, et al, states the supplemental staff report did not respond to Marsha Burch's comments and asks if the Board received her letter dated July 1, 2008, and speaks to censorship and the County deciding what is relevant on an issue. Ms. McCorry submits a page from the Governor's Office of Planning and Research website and speaks to the time issue of the Notice of Determination filed May 19, 2008, and states it seems the process is in favor of the property owner and applicant with no regard to resources. She re-submits the letter from Marsha Burch dated July 1, 2008.

Tim Miller, Miller Planning and Design representing Central Valley Concrete, states the Mitigated Negative Declaration is the appropriate level of review for this application and requests the Board deny the Appeal, accept the Mitigated Negative Declaration and authorize the Conditional Use Permit.

The Chairman closes the public hearing.

The Board discusses removal of top soil and impact fees.

County Counsel James Fincher states the Brown Act was complied with and addresses the alleged discrepancies of the Brown Act.

Following discussion and upon motion of Supervisor Kelsey, seconded by Supervisor Pedrozo, the Board denies the Appeal and based on Findings upholds Planning Commission approval of Conditional Use Permit CUP06-014 and Reclamation Plan subject to the following conditions with Condition No. 20 amended to reflect Public Works and Planning staff will work together to determine whether or not more than 1,000 cubic yards of top soil was removed and if road or other fees should have been paid with the understanding no penalties will apply.

Planning and Community Development Department

1. Conditional Use Permit No. CUP 06-014 is granted to excavate and remove sand mining material for the following:
  - Maximum production – 75,000 cubic yards of sand material.
  - Life of Permit: 5 years (until 6/30/2013).
  - Maximum Area to be excavated: 6.9 acres.
  - Maximum depth of excavation: Shall be at an elevation of approximately 113 feet above mean sea level.
  - All mining and related uses shall be located, developed, and operated in a manner described on the approved plot plan, cross sections, elevations, and the conditions of this permit.
2. Hours of Business Operations shall be limited to the following:
  - Excavation operations shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday; and,

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- Infrequent occasions where nighttime and Sunday operations may be warranted in response to requests from Cities, the County, Caltrans, or other agencies for sand in the event of flooding emergencies.
  - Temporary portable lighting will be provided and set up to insure neighbors are not impacted by the lighting.
3. Reclamation of the site shall conform to the Reclamation Plan approved by the County and OMR. Reclamation shall commence at the end of mining, with final reclamation completed within one year of the completion of mining.
  4. The project shall comply with standard conditions listed in Planning Commission Resolution No. 97-1 and 97-2.
  5. The applicant shall comply with all Federal, State and County Requirements including, but not limited to the San Joaquin Valley Air Pollution Control District, the Regional Water Quality Control Board, California Department of Fish and Game, Office of Mine Reclamation, Merced County Public Works – Roads Division, and the Merced County Health Department; Environmental Health Division.
  6. Pre-construction biological surveys, as outlined in the Mitigated Negative Declaration, shall be completed per California Department of Fish and Game requirements, and results of the surveys shall be forwarded to the County.
  7. Prior to exercising the permit, the applicant shall submit the financial assurance of \$4,110.00. The financial assurance may be in the form of a surety bond, certificate of deposit, letter of credit, or Trust Fund.
  8. Upon completion of the project, all the machinery and equipment associated with the mining operation shall be removed from the property, unless it will be used for the planned reclaimed use of the site.
  9. The applicant shall furnish the Planning and Community Development Director with a report describing compliance with the reclamation plan by July 1st of each year. With each report, the permittee shall provide a map to scale, showing current mining progress and reclamation.
  10. The Planning and Community Development Director or his designee shall review the reclamation plan status report and inspect the mining operation to determine and assure continuing compliance with the approved reclamation plan and the Conditions of Approval. The applicant shall pay the County the actual cost of conducting inspections, annually or at other times, and shall make available to the Planning and Community Development Director such information necessary for determining compliance. The applicant shall be required to pay an initial conditions monitoring fee and mitigation measures monitoring fee of **\$304**. Additional fees may be assessed for subsequent inspections as deemed necessary by the County, and shall be billed on a time and materials basis.
  11. If the Conditional Use Permit is not used within one year, it shall become automatically void without further action. The Planning Commission may extend the Conditional Use Permit if a request is filed by the applicant prior to its expiration. (Zoning Code Section 18.50.09B).
  12. If the use authorized by the Conditional Use Permit is abandoned or discontinued for a period of one year the applicant must file an Interim Management Plan application with the County.
  13. During the life of the project, the project sponsor shall comply with the requirements of regional, state, and local agencies with jurisdiction over the project or resources affected by the project.
  14. Prior to the sale/transfer/lease of the project site and/or operations, the applicant shall notify the Planning Department of said transaction. The intent of this condition is solely to keep the County apprised of the owner and operator of the site.

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15. If a bone is uncovered that appears to be human, the Merced County Coroner shall be contacted immediately. If the coroner determines that the bone is likely to be Native American in origin, then the Native American Heritage Commission, in Sacramento, shall be contacted to identify most likely descendants.
16. The required berm along the southern portion of the mining site shall be minimum 18 inches high and maintained at all times. A silt fence shall be installed on the south side of the berm and kept in working order through the duration of the project.
17. A 30 foot setback of the excavation area shall be maintained from the adjacent properties to the east and west.
18. Revisions and clarifications provided in the undated letter from the operator (CVC) to the State Office of Mine Reclamation shall be adhered to, and considered as part of the Reclamation Plan.
19. Applicant/property owner shall comply with all Federal, State, and Local agency regulations.

Public Works/Road Division (Revised)

20. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to determine the potential impact that the project will have on Merced County roadways. This evaluation should take into consideration the truck traffic existing and generated from the project, the truck routes, truck types and weights, and shall calculate corresponding Traffic Indices for those routes most impacted. Corings of the structural sections of the roadways along the truck routes shall be taken, and R-Value analyses performed of the subgrade, which together shall be used to evaluate the structural integrity of each roadway. For any roadway whose service life is determined to be significantly reduced by the project, the applicant shall pay a corresponding contribution to the Merced County Road Fund to offset the impact; or  
 In lieu of performing a roadway impact evaluation, the applicant may enter into a Roadway Impact Agreement with Merced County, and pay a prescribed Roadway Impact Fee. The Roadway Impact Agreement will address the obligations of the applicant for mitigating the project's impact, and shall be effective for the term of the project. The applicant shall keep accurate records of all of the loaded trucks that exit the project site; and, at the end of each year, the applicant shall submit said records to the County, along with payment of an impact fee to the Merced County Road Fund corresponding to \$2.50 for every loaded truck, or \$0.10 per ton, that exited the site (empty trucks will not be counted) during the past year. The Department of Public Works shall determine if more than 1,000 cubic yards of material was excavated and removed from the site during the un-permitted sand mining operations, and the appropriate impact fee per ton will be collected based on an estimate of the material removed in excess of 1,000 cubic yards, if any.
21. The applicant shall obtain an encroachment permit from the Department of Public Works Road Division to construct an agricultural type rural driveway approach at the El Capitan Way access point to the project prior to the start of removal of material from the site.

Environmental Health Division

22. Any hazardous materials stored on-site over threshold quantities (55 gallons, 200 cubic feet, or 500 pounds) shall require that a hazardous business plan (HMBP) be filed with this division. Likewise, any quantity of hazardous waster generated on-site shall also trigger the requirement that a HMBP be filed. Contact Vickie Hayer or Kerri Gibbons at (209) 381-1100 to obtain information.
23. Care should be taken to protect the well located in the center of the pit being saved for use during and after the reclamation period from damage during the mining phase.

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### Turlock Irrigation District

24. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility changes are performed at the developer's expense.

### Department of Water Resources

25. The applicant shall obtain an encroachment permit for the State Adopted Plan of Flood Control, if necessary, by contacting the Department of Water Resources at (916) 653-5791.

### Mitigation Measures

#### 26. Biology - 1

- (a) Pursuant to the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle, the project applicant shall establish a 20 foot buffer zone around each of the two potentially affected elderberry shrubs within which, no mining or excavation or other activities that could result in the damage to or loss of the elderberry shrubs shall occur. This buffer shall be marked with high visibility fencing during excavation so excavation crews can easily avoid them during the excavation of the site. This buffer zone shall remain in place throughout the life of the project.
- (b) The project applicant shall conduct Worker Environmental Awareness Program (WEAP) training for construction crews before construction activities begin. The WEAP shall include a brief review of the special-status species and other sensitive resources that could occur in the proposed project site (including their life history and habitat requirements and what portions of the proposed project site they may be found in) and their legal status and protection. The program shall also cover all mitigation measures, environmental permits and proposed project plans, such as the Stormwater Pollution Prevention Plan (SWPPP), Best Management Practices (BMPs), erosion control and sediment plan, and any other required plans. During WEAP training, construction personnel shall be informed of the importance of avoiding ground-disturbing activities outside of the designated work area.
- (c) Prior to any ground disturbing activities within 20 feet of the dripline of any elderberry shrub, the applicant or their representative shall initiate consultation pursuant to the Federal Endangered Species Act with the USFWS. Section 7 Consultation will occur if the US Army Corps of Engineers (ACOE) is involved with this project through a Section 404 permit. Section 10 Consultation will be required if there is no ACOE involvement with this project. Specific mitigation measures for project related impacts on VELB will be developed during this process, but will generally include the following mitigation measures.
- (d) If the elderberry shrubs cannot be avoided then those elderberry shrubs shall be transplanted to a USFWS approved location following the guidelines set forth in the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle. This location may be established on site, or at an approved mitigation bank.
- (e) In addition to transplanting the affected shrubs, the project applicant shall plant additional seedlings or cuttings in the established mitigation area following the guidelines set forth in the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle. (MM)

#### 27. Biology - 2

- (a) If proposed project construction occurs during the nesting season for Swainson's hawk (March 1 - September 15), pre-construction surveys for active nests shall be conducted with 1000 feet of the project site. If an active nest is located, CDFG shall be consulted to determine if project construction may proceed during the nesting season. Suitable avoidance measures may include establishing a construction exclusion buffer or monitoring

**TESTIMONY IS LIMITED TO FIVE MINUTES PER PERSON**

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**THE PUBLIC IS INVITED TO SPEAK ON ANY ITEM ON THE AGENDA**

the nest during construction to determine if activities are adversely affecting the nesting cycle. Applicants must submit proof of CDFG consultation, in addition to survey results, to the Planning and Community Development Department prior to grading and excavation.

- (b) If the above survey does not identify any nesting species protected by the Migratory Bird Treaty Act, within 1000 feet of the project site, no additional mitigation would be required for nesting birds. However, should any active bird nests (excluding Swainson's hawk) be located within 250 feet on the project site, the following mitigation measures shall be implemented.

The applicant shall avoid all birds nest sites located in or within 250 feet of the project site during the breeding season (approximately February 1 through August 30) while the nest is occupied with adults and/or young. Avoidance shall include the establishment of a non-disturbance buffer zone around the nest site, the size of which will be determined in consultation with DFG. The buffer zone shall be delineated by highly visible temporary construction fencing. Any occupied nest shall be monitored by a qualified biologist to determine when the nest is no longer in use.

Every effort should be made to preserve Swainson's hawk nest trees through Project design or avoidance measures. However, if removal of the nest tree during the nesting season is unavoidable, a Section 2081 permit would be required from the CDFG. Mitigation for the loss of active Swainson's hawk nest trees at any time of year would be determined in consultation with the CDFG and could include the replacement of trees at a CDFG approved mitigation site and ratio. (MM)

28. Biology - 3

- (a) Pre-construction surveys for burrowing owls shall be conducted by an experienced biologist within 30-days prior to the start of work activities where land construction is planned in known or suitable habitat areas. If construction activities are delayed for more than 30 days after the preconstruction surveys, then a new preconstruction survey shall be required. All surveys shall be conducted in accordance with the CDFG/California Burrowing Owl Consortium survey protocols.

- (b) If burrowing owls are discovered in the project site, CDFG shall be notified. Where construction activities could directly affect burrowing owl survival or reproductive behavior, or where maintenance of a minimum 250-foot buffer zone around active burrowing owls nests (160 feet when owls are not nesting) is not practical, the applicant shall retain an experienced burrowing owl biologist to recommend project/site-specific mitigation measures to avoid violating California Fish and Game Codes Section 3503 and Section 3503.5 and the MBTA, which could include the following or equally effective measures:

- A site-specific plan to complete sand extraction and reclamation when adult owls are in burrows attending to young nestlings (and thus not disturbed by the presence of construction equipment);
- Modification of construction procedures so construction tasks could be completed in as short a time as possible; and
- Close monitoring of the owls' behavior before, during and after construction so any significant changes in the owls' behavior would be apparent. (MM)

29. Cultural - 1

If any cultural resources, such as unusual amounts of bone or shell, artifacts, or human remains, are encountered during any reclamation activities, work shall be suspended within 100 feet of the find. The Merced County Community Development Department shall be notified immediately of the discovery, and the project proponent shall retain the services of an archaeologist who meets the Secretary of the Interior's Standards for Archaeology to

evaluate the find and provide recommendations for treatment of any significant archaeological resources.

If human remains are discovered during any reclamation activities, work within 100 feet of the remains shall be suspended immediately and the County Coroner shall be immediately notified. If the remains are determined by the county coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours. The project proponent shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The Merced County Department of Community Development will be responsible for the approval of recommended mitigation, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The project proponent shall implement the approved mitigation, to be verified by the County, before the resumption of activities at the site where the remains were discovered. (MM)

30. Hazards - 1

If any hazardous materials or waste that are stored on-site that exceed threshold quantities, the project applicant will prepare a hazardous materials business plan (HMBP) with the Merced County Department of Public Health: Division of Environmental Health. (MM)

Ayes: Crookham, Pedrozo, Nelson, Kelsey, O'Banion

**ACTION ITEM NO. 1**

**2008-07-08 BOARD OF SUPERVISORS**

The Clerk announces Salary Modification for the County Executive Officer is before the Board for consideration.

Upon motion of Supervisor Kelsey, seconded by Supervisor Nelson, duly carried, the Board authorizes a five percent increase of salary for the County Executive Officer Demitrios Tatum based on Mr. Tatum's broad experience and effectiveness managing County resources during challenging fiscal times effective Pay Period 15.

Ayes: Crookham, Pedrozo, Nelson, Kelsey, O'Banion