

# SUMMARY ACTION MINUTES

## BOARD OF SUPERVISORS

Regular Meeting  
TUESDAY, JULY 22, 2008  
Closed Session – 9:00 a.m.  
Regular Meeting – 10:00 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 Agenda is divided into three sections:

**CONSENT CALENDAR** – These matters include routine financial and administrative actions and are approved by a single majority vote.

**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

9:00 A. M.

**CLOSED SESSION - CONFERENCE WITH REAL PROPERTY**

**NEGOTIATOR:** It is the intention of the Board to meet in Closed Session concerning a Conference with Real Property Negotiator(s) John Fowler, Director-Commerce, Aviation and Economic Development pursuant to Government Code Section 54956.8 as follows: Castle Property

**CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - EXISTING**

**LITIGATION:** It is the intention of the Board to meet in Closed Session concerning Existing Litigation pursuant to Government Code Section 54956.9(a): San Joaquin Raptor v. County of Merced, Riverside Motorsports Park RPI, Merced County Superior Court Case No. 150013

**THE BOARD RECESSED AT 9:00 A.M. AND RECONVENED AT 10:00 A.M. WITH ALL MEMBERS PRESENT AND THE CHAIRMAN ADVISED THERE WAS NOTHING TO REPORT**

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

10:00 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 12**

**PRESENTATIONS**

**(1) SERVICE PIN PRESENTATIONS**

**Human Services Agency**

**20 Years:** Sharon Hassler and Bernice Aguiar

**Probation**

**20 Years:** Mary McWatters

**Treasurer-Tax Collector:**

**15 Years:** Karen Adams

**A RECEPTION WILL BE HELD IN ROOM 310 IN HONOR OF AWARDS**

10:00 A. M.

**PRESENTATIONS (Continue)**

**(2) PRESIDENTIAL RECOGNITION**

Merced County Veterans Services Office

**REVIEW BOARD ORDER – SEE PAGE 12**

**APPROVAL OF CONSENT AGENDA CALENDAR (Items #1 - 41)**

**APPROVED AS RECOMMENDED AYES: ALL**

**HEALTH -- PUBLIC HEARING - PROPOSED ORDINANCE AND POSSIBLE ADOPTION**

To consider Proposed Ordinance: An Ordinance Amending the Health Department Fees Ordinance by adopting or changing the Fees set for Health Services performed by the Health Officer of Merced County (Amends Chapter 7.49 of the County Code and Ordinance No. 1820)

RECOMMENDATION: Adopt Ordinance

**REVIEW BOARD ORDER – SEE PAGE 13**

**PUBLIC WORKS - PUBLIC HEARING**

To consider vacation of a segment of Edminister Road in the Stevinson area and adopt Resolution

RECOMMENDATION: Adopt Resolution

**REVIEW BOARD ORDER – SEE PAGE 13**

**PUBLIC WORKS - CONTINUED PUBLIC HEARING (CONTINUED FROM MAY 20, 2008)**

To consider Sole Sourcing an Energy and Water Conservation Retrofit Contract with Siemens Building Technologies for twenty-two (22) Merced County Facilities in compliance with Government Code Section 4217.13

RECOMMENDATION: Accept Recommended Actions 3 through 7

**REVIEW BOARD ORDER – SEE PAGE 14**

**PLANNING AND COMMERCE, AVIATION AND ECONOMIC DEVELOPMENT - PUBLIC HEARING**

To consider Annual Grantee Performance Report for the 2005/2006/2007 CDBG General Allocations for Homebuyer Assistance and Housing Rehabilitation Programs (05-STBG-1409), the 2005 CDBG Economic Development Allocation for Public Airport Infrastructure (05-EDBG-2201), the Program Income Reuse Activities for Business Assistance, Housing Rehabilitation and Housing Acquisition; future activities under the 2009 CDBG funding cycle and proposed changes to the Housing Rehabilitation Program Participation Guidelines.

RECOMMENDATION: Adopt Resolution approving Revision to the Housing Rehabilitation Program Participation Guidelines

**REVIEW BOARD ORDER - SEE PAGES 14 AND 15**

10:00 A. M.

**PLANNING - PUBLIC HEARING**

To consider an Appeal received from Maureen McCorry, et al and SJRRC to Conditional Use Permit Application No. CUP99-009. Said application submitted by Jaxon Enterprises, Inc. to expand their existing aggregate mine from permitted reserves of 2.5 million tons (authorized for extraction under Conditional Use Permit (CUP) No. 3603) to 6 million tons of extractable, permitted material; said Project would excavate and process 6 million tons of aggregate by (1) expanding an existing aggregate surface mine laterally from 90+/- acres to approximately 357+/- acres; (2) increasing the depth of the permitted mine by ten feet (to increase from 18 feet below ground surface (bgs) to 28 feet bgs) at the southwest end of the site transitioning to 15 feet deeper (increase from 18 feet bgs to 33 feet bgs) at the northeast end of the site, and mining the expanded lateral area to the new depth; (3) increasing the annual material to be mined from the current baseline of 260,000 tons/year mined, and 240,000 tons/year marketed to a maximum of 550,000 tons/year mined and 500,000 tons/year marketed; (4) modifying the reclamation phasing from five acre increments to 20 acre increments; (5) establishing an updated reclamation plan with dryland cattle grazing as the end use; and (6) clarifying the permit to recognize the Applicant's ability to operate the plant at night to serve public agency projects which require nighttime deliveries. Slopes will be reclaimed to a 3:1 ratio when mining is complete. There also exists an on-site processing plant which was previously permitted. The property is designated as Agricultural land use in the Merced County General Plan and is zoned A-2 (Exclusive Agricultural) on property located on the south and east side of White Rock Road, 1/4 mile north of Le Grand Road in the Le Grand area

**REVIEW BOARD ORDER – SEE PAGES 15 THROUGH 32**

1:30 P. M.

**JOINT STUDY SESSION WITH BOARD OF SUPERVISORS AND PLANNING COMMISSION**

- Merced County General Plan Update

**REVIEW BOARD ORDER – SEE PAGE 32**

**REPORTS/BOARD DIRECTION**

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

CONSENT CALENDAR (Items #1 - 41)

**APPROVED AS RECOMMENDED AYES: ALL**

Public Works

1. Approve and authorize Chairman to sign Renewal Contract No. 2006186 with Office of the State Controller for the preparation of the Annual Street and Road Report for FY 2007/08 at an estimated cost not to exceed \$3,200.
2. Approve and authorize Public Works Director to sign Amendment to Contract No. 2006029 with Papich Construction for Highway 59 Landfill, Phase 6, Cell 1 Liner Project in the amount of \$366,836.94.

3. Adopt Resolution for Summary Vacation of that portion of Ladino Avenue that is 60 feet wide lying west of Fox Road near the City of Atwater.

**ADOPTED RESOLUTION NO. 2008-141**

4. Authorize increase in Change Fund from \$50 to \$100 to maintain two cash drawers at the front counter of the Building and Safety Division as recommended by the County Auditor.

Health

5. Approve and authorize Chairman to sign Renewal Contract No. 2007198 with Calif. Dept. of Public Health for Ryan White Care Program.

Human Services Agency

6. PULLED

7. PULLED

8. Approve and authorize Chairman to sign Renewal Contract No. 2004211 with California Dept. of Aging for Multipurpose Senior Services Program (MSSP) and adopt Resolution.

**ADOPTED RESOLUTION NO. 2008-142**

Library

9. Authorize Application to apply for a \$3,000 Target Grant to support the Library Literacy Program and to come back to the Board if awarded for acceptance.

10. Authorize Letter of Intent and Grant Application for a California State Library Literacy Services Grant to provide literacy programs to California's of all ages and authorize Chairman to sign the necessary documents to be returned to the Board if awarded for acceptance.

Ag. Commissioner

11. Approve and authorize Chairman to sign Renewal Contract No. 2007129 with Calif. Dept. of Food and Agriculture for eradication of Japanese Dodder and adopt Resolution.

**ADOPTED RESOLUTION NO. 2008-143**

12. Approve and authorize Chairman to sign Renewal Contract No. 2004082 with Calif. Dept. of Food and Agriculture for Organic Producer Registration and Inspection and adopt Resolution.

**ADOPTED RESOLUTION NO. 2008-144**

Child Support Services

13. Proclaim August, 2008 as Child Support Awareness Month in the County of Merced.

14. Approve and authorize Chairman to sign Renewal Contract No. 2008170 with California Dept. of Child Support Services for Plan of Cooperation.

Mental Health

15. Approve and authorize Chairman to sign Renewal Contract No. 2006058 with Rutan and Tucker, LLP for outside Counsel for two clients.

16. Approve and authorize Chairman to sign Renewal Contract No. 2003108 with Human Services Agency for Money Management Services.

17. Approve and authorize Chairman to sign Renewal Contract No. 2007250 with Aspira Foster & Family Services for specialty mental health services as part of the SB 163 Wraparound Program.
18. Approve and authorize Chairman to sign Renewal Contract No. 2006271 with Quantom-Leap, Inc. for Drug Medi-Cal Nonresidential Alcohol and Drug Treatment Services.
19. Approve and authorize Chairman to sign Renewal Contract No. 2007151 with Probation for Offender Treatment Program Assessment and Supervision Services.
20. Approve and authorize Chairman to sign Renewal Contract No. 2007052 with Trilogy Integrated Resources, LLC for Network of Care website for Mental Health community.
21. Approve and authorize Chairman to sign Renewal Contract No. 2006191 with Merced Lao Family for Southeast Asian Community Advocacy Program (SEACAP) through the Mental Health Services Act Three Year Plan.
22. Approve and authorize Chairman to sign Amendment to Contract No. 2007220 with State Dept. of Rehabilitation for Cooperative Agreement to provide Vocational Rehabilitation.
23. Approve and authorize Chairman to sign Amendment to Contract No. 2007161 with Dr. Jonathan Harry for Psychiatric Services.
24. Approve and authorize Chairman to sign Amendment to Contract No. 2006254 with State Dept. of Mental Health for Specialty Mental Health Services-Managed Care.

**ADOPTED RESOLUTION NO. 2008-145**

25. Approve and authorize Chairman to sign Renewal Contract No. 2005089A with Aegis for provision of Drug Medi-Cal outpatient narcotic treatment services.
26. Approve and authorize Chairman to sign Renewal Contract No. 2007288A with Resource Development Associates (RDA) for consulting services for Prevention and Early Intervention Plan.

**Planning**

27. Approve and authorize Chairman to sign Addendum to Contract No. 2007145 with Resource Design Technology, Inc. for reimbursement of additional costs related to consultant costs for preparation of an EIR for Conditional Use Permit No. CUP99-009.
28. Approve and authorize Chairman to sign Amendment to Contract No. 2007144 with Jaxon Enterprises, Inc., Applicant and Property Owner, for reimbursement of additional costs related to consultant costs for preparation of an EIR for Conditional Use Permit No. CUP99-009.

**Probation**

29. Approve and authorize Chairman to sign Renewal Contract No. 2007186 with City of Atwater to house two deputy probation officers at the Atwater Police Department.
30. Approve and authorize Chairman to sign Renewal Contract No. 2003059 with Merced County Jail Ministry to provide educational, counseling and religious services to minors confined at the Juvenile Justice Correctional Complex.

Dept. of Workforce Investment

31. Accept Termination Letter from Merced County Office of Education for Contract No. 2006264 for P-16 Council Website effective June 29, 2008 due to budgetary constraints.

Executive Office

32. Approve Travel Request submitted by Dept. of Workforce Investment as recommended by Executive Office.

Board Recognition

33. Authorize Certificates of Recognition to Frank and Helen Gallichio and Todd and Michelle Prichard as Volunteer of the Quarter and Merced County Fair Friends Helping Friends Committee as Good Business Citizen Award recognized by the Merced County Chamber of Commerce.
34. Authorize Certificate of Recognition to Joseph Kieta for dedicated service as the Merced Sun-Star Editor for period of 2001 through 2008.
35. Authorize Certificate of Recognition to the Tree Partners for the Dedication Ceremony of Growing Grounds and Atwater Rotary Donor Garden.
36. Authorize Certificates of Recognition to Georgia Johnson as 2007/2008 Volunteer of the Year, Big Creek Lumber as 2007/2008 Business of the Year and Wilson's Funeral Chapel as 2007/2008 Entrepreneur of the Year as recognized by the Atwater Chamber of Commerce.
37. Authorize Certificates of Recognition to Brian Wells-Chairman, Kelly Medrano-Vice Chairman of Special Projects; Susan Bubenchik-Past Chairman; Jim Brown, Lupe Dawson and John Rivard as Directors; Kevin Kelley-Booster President, Geraldine Brown-Athena Recipient; Grey Roberts-Citizen of the Year; Jill Macha-Educator of the Year; Merced County Employees Federal Credit Union-Business of the Year; Farmers Insurance District Office-Small Business of the Year; J. West Group (Jennifer West)-Home Based Business of the Year; Charlie Crandell-Volunteer of the Year by the Greater Merced Chamber of Commerce for the 2008/2009 Year.
38. Authorize Certificates of Recognition to the 2008 Essay Contest winners selected by the Father of the Year Committee.

**REVIEW BOARD ORDER – SEE PAGE 33**

39. Authorize presentation of Plaque in celebration of the Merced County Courthouse Museum 25th Anniversary.

Dept. of Admin. Services

40. Approve and authorize Chairman to sign Addendum to Contract No. 2003217 with Evercom Systems, Inc. for Juvenile Inmate Telephone Service.
41. Declare Miscellaneous Office Furniture and Miscellaneous Office Equipment labeled on Exhibit A as Surplus Property and authorize its disposal through Internet Auction to be conducted by Public Surplus LLC.

REGULAR CALENDAR

BOARD ACTION

PUBLIC WORKS

42. Authorize related Indemnity Agreement with the City of Gustine releasing the County of Merced of liability from accidents or injuries occurring from construction and maintenance of the dual-purpose storm water detention basin/recreational park facility; authorize Chairman to sign Contract with City of Gustine and authorize Grant Deed Contract with Doug/Carol Stephens and Hostetler Investments, LLC for Jensen Road in connection with Administrative Permit No. 06-076 in Gustine and adopt Resolution.

**AUTHORIZED CONTRACT NO. 2008169 AND ADOPTED RESOLUTION NO. 2008-146 AYES: ALL**

43. Adopt Resolution authorizing Public Works Director and Auditor-Controller to sign and file the Local Transportation Fund Claim for the 2008-2009 FY with the Merced County Association of Governments.

**ADOPTED RESOLUTION NO. 2008-147 AS RECOMMENDED AYES: ALL**

HEALTH

44. Resolution approving the Merced County Association of Governments as the Service Authority for Abandoned Vehicle Abatement and approve the Merced County Abandoned Vehicle Service Authority Plan dated July 2008.

**ADOPTED RESOLUTION NO. 2008-148 AS RECOMMENDED AYES: ALL**

45. Contract with California Forensic Medical Group, Inc. for Correctional Health Services.

**AUTHORIZED CONTRACT NO. 2008171 AS RECOMMENDED AYES: ALL**

COMMERCE, AVIATION AND ECONOMIC DEVELOPMENT

46. Approve the release of the Fast Open Contracts Utilization Services (FOCUS) Program Request for Joint Venture Proposal (RFJVP) for Telecommunications Technology Solutions and authorize the appropriate departments to select the most qualified firms to fulfill the scope of work delineated in the RFJVP and return to the Board for final approval.

**APPROVED AS RECOMMENDED AYES: ALL**

HUMAN SERVICES AGENCY

47. Authorize Notice of Intent for Three-Year Contracts for SFY's 2008-11 with the California Dept. of Social Services for the Child Abuse Prevention, Intervention and Treatment (CAPIT), Community Based Child Abuse Prevention (CBCAP) and Promoting Safe and Stable Families (PSSF) Funding.

**APPROVED AS RECOMMENDED AYES: ALL**

48. Contract with CareAccess for utilizing the Q Continuum Software System for mandated reporting, Medi-Cal billing and the integration of case management services for the Multipurpose Senior Services Program.

**AUTHORIZED CONTRACT NO. 2008172 AS RECOMMENDED AYES: ALL**

MENTAL HEALTH



49. Contract with Community Care Center, an Institute of Mental Disease, for placement options for clients who have severe behavior problems and in jeopardy of being placed in state hospital.

**AUTHORIZED CONTRACT NO. 2008173 AS RECOMMENDED AYES: ALL**

50. Contract with Jack Tanenbaum, LCSW, MFT for Total Systems Review of alcohol and drug and mental health programs.

**AUTHORIZED CONTRACT NO. 2008174 AS RECOMMENDED AYES: ALL**

51. Contract with Living Hope Care Home for provision of Residential Care to consumers.

**AUTHORIZED CONTRACT NO. 2008175 AS RECOMMENDED AYES: ALL**

52. Contract with Tulare County Superintendent of Schools dba California Friday Night Live Partnership (FNL) to provide a Youth Mentoring Program.

**AUTHORIZED CONTRACT NO. 2008168 AS RECOMMENDED AYES: ALL**

53. Adopt Substance Abuse and Crime Prevention Act of 2000 for the Fiscal Year 2008-2009 County Plan and authorize acceptance of funding of the Substance Abuse and Crime Prevention Act of 2000 in the amount of \$634,923 and Substance Abuse Offender Treatment Program in the amount of \$119,291 that requires a match in the amount of \$13,255 and adopt Resolution.

**ADOPTED RESOLUTION NO. 2008-149 AS RECOMMENDED AYES: ALL**

#### PLANNING

54. 2008 Home Investment Partnership Program (HOME) Application for Funding - provide direction on funds for first-time homebuyer and owner-occupied housing rehabilitation programs from Dept. of Housing and Community Development (HCD) and return to the Board for final award if application is successful.

**REVIEW BOARD ORDER - SEE PAGE 33**

#### COUNSEL

55. Contract with Allen, Proietti & Fagalde, LLP for the Affholter v. Franklin et al flood litigation legal services.

**AUTHORIZED CONTRACT NO. 2008176 AS RECOMMENDED AYES: ALL**

#### EXECUTIVE OFFICE

56. Resolution opposing the 2008 Farm Animal Initiative and authorize the Chairman to sign a Letter to Californians for SAFE Food indicating the Board's opposition to the ballot measure.

**REVIEW BOARD ORDER - SEE PAGE 34**

57. Early Retirement Incentive Plan - Results of the Actuarial Analysis, Staff does not recommend the Early Retirement Incentive Plan.

**REVIEW BOARD ORDER - SEE PAGE 34**

58. Resolution in opposition to any raid on Proposition 42 or Proposition 1A funding by the State Legislature as a means of balancing the budget and authorize the Resolution be forwarded to California State Association of Counties (CSAC).

**ADOPTED RESOLUTION NO. 2008-152 AS RECOMMENDED AYES: ALL**

59. Resolution expressing concern over the Air Resource Board's Draft AB 32 Scoping Plan and asking the Governor to take an active role at the Federal level to demand that the United States Forest Service take action in California's federal wild and forest lands to do

the prevention and maintenance work required to mitigate the risk of catastrophic wildfires and authorize Chairman to sign a Letter to the Air Resources Board expressing these same sentiments with Resolution and provide same to the Governor and RCRC.

**ADOPTED RESOLUTION NO. 2008-153 AS RECOMMENDED AYES: ALL**

**BOARD OF SUPERVISORS**

60. Resolution in support of the Correctional Officers at the United States Penitentiary-Atwater and request the Federal Bureau of Prisons consider providing protective equipment for its correctional officers.

**REVIEW BOARD ORDER – SEE PAGES 34 AND 35**

61. Authorize Special Board Project Funds-District Four be paid in the amount of \$5,000 to D & D Associates for training services to the Snelling Municipal Advisory Council.

**APPROVED AS RECOMMENDED AYES: ALL**

62. Authorize Special Board Project Funds-District Three be utilized in the amount of \$3,157 for lawn and landscaping at the Atwater Branch Library and direct Dept. of Admin. Services to issue a blanket purchase order to Kings View Experience Center to provide said services for FY 2008/09.

**APPROVED AS RECOMMENDED AYES: ALL**

63. Adopt Resolution to include the Appointed Members of the Merced County Employees Retirement Board to be indicated as At-Large, non-District specific appointments subject to the required conditions set by Resolution No. 2008-28.

**REVIEW BOARD ORDER – SEE PAGE 35**

**APPOINTMENTS**

**BOARD INFORMATION & POSSIBLE ACTION**

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

64. Public Works re: Notification that Merced County did not receive monies from the AB 900 Grant Funds Application to the Calif. Dept. of Corrections and Rehabilitation for Grant Funds to build a 96-Bed Housing Unit, Administration Building, Warehouse and Associated Remodeling of the East Campus of the John Latorraca Adult Correctional Center.
65. U.S. Dept. of Homeland Security, FEMA re: Reminder of deadline for Merced County to submit a 1-year Progress Report regarding the Provisionally Accredited Levee (PAL) designation for the levees that are accredited on the effective Flood Insurance Rate Map (FIRM).
66. State Water Resources Control Board re: Notice of Public Workshop - Workshops to receive information regarding Draft Policy for Maintaining Instream Flows in Northern California Coastal Streams to be held August 5 and 6, 2008.
67. State Water Resources Control Board re: Notice of issuance of two Orders approving petitions to facilitate the transfer of water - from South Feather Water and Power Agency to several State Water Contract Agencies and from Dept of Water Resources to the Westlands Water District.

68. State Water Resources Control Board re: Notice of Workshop concerning the Calif. Dept .of Fish and Game's Salmon Escapement Model, Review of the Vernalis Adaptive Management Plan and other information related to San Joaquin River Flows.
69. San Luis Water District re: Notice of corrected copy of Notice of Exemption for Water Transfers to San Luis Water District.
70. State Water Resources Control Board re: Draft - State Water Resources Control Board, Central Valley Regional Water Quality Control Board and San Francisco Bay Regional Water Quality Control Board - Strategic Workplan for Activities. (On file with Clerk)

**ADOPTED RESOLUTIONS IN MEMORY OF CARLOS MEZA AND ARTHUR MELLO  
AND ADJOURNED MEETING UNTIL TUESDAY, AUGUST 5, 2008 AT 10:00 A.M.**

## **BOARD ORDERS – SUMMARY ACTION MINUTES – JULY 22, 2008**

### **10:00 A.M. SCHEDULED ITEM** **2008-07-22 PUBLIC OPPORTUNITY**

County Executive Officer Demitrios Tatum introduces Mark Cowart as the new Director of Administrative Services.

Child Support Services Director Rhonda Walton states August, 2008 is proclaimed as Child Support Awareness Month and reviews services provided.

Community Social Advocates Representative Laurie Newman presents the Pledge made by the Women of the Hobie House program.

Peter Koch, representing Merced County Farm Bureau, extends an invitation for the bus trip to Sacramento on July 23, 2008 to address water issues and reports on the State emergency on water.

Merced County Farm Bureau Executive Director Diana Westmoreland-Pedrozo states action is needed at the City and County level to receive responses from Sacramento and Washington D.C. on the water situation.

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

### **10:00 A.M. SCHEDULED ITEM** **2008-07-22 HUMAN SERVICES AGENCY**

Supervisor Nelson states the Veterans Service Office has been recognized by the highest office in the land due to the staff work of Aurora Rocha and the entire Staff at the Veterans Service Office and presents a plaque on behalf of the County of Merced thanking Mrs. Rocha for her services and congratulating her on the recognition of the Presidential Acclamation at the 2008 DAV Summer Awards Dinner.

Veterans Service Officer Darren Hughes reviews the volume of services provided on behalf of the Veterans Office and states Mrs. Rocha assisted a local veteran who then wrote to the President commending her for her service. In response, President George W. Bush sent an acclamation which was delivered at the Dinner and Mr. Hughes reads the Presidential Acclamation into the record.

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

**10:00 A.M. SCHEDULED ITEM**

**2008-07-22 HEALTH – PUBLIC HEARING – ORDINANCE NO. 1847**

The time and date previously set for a public hearing to consider Proposed Ordinance: An Ordinance Amending the Health Department Fees Ordinance by adopting or changing the Fees set for Health Services performed by the Health Officer of Merced County (Amends Chapter 7.49 of the County Code and Ordinance No. 1820).

Director of Public Health John Volanti is present and briefly reviews the Staff Report.

The Chairman asks if there is anyone present wishing to speak. No one speaks.

The Chairman closes the public hearing.

Upon motion of Supervisor Kelsey, seconded by Supervisor Pedrozo, duly carried, the Board waives further reading and adopts Ordinance No. 1847.

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

**10:00 A.M. SCHEDULED ITEM**

**2008-07-22 PUBLIC WORKS – PUBLIC HEARING**

The time and date previously set for a public hearing to consider a Resolution to vacate a segment of Edminster Road in the Stevinson area.

Public Works Director Paul Fillebrown states the Staff Report has been provided and he is available for questions.

The Chairman asks if there is anyone present wishing to speak. No one speaks.

The Chairman closes the public hearing.

Upon motion of Supervisor Kelsey, seconded by Supervisor Pedrozo, duly carried, the Board vacates a segment of Edminster Road in the Stevinson area and adopts Resolution 2008-139.

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

**10:00 A.M. SCHEDULED ITEM**

**2008-07-22 PUBLIC WORKS – CONTINUED PUBLIC HEARING**

The time and date previously set for a continued public hearing to consider Sole Sourcing an Energy and Water Conservation Retrofit Contract with Siemens Building Technologies for twenty-two (22) Merced County Facilities in compliance with Government Code Section 4219.13 submitted by Public Works.

Assistant Public Works Director Richard Schwarz provides an overview of the project.

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

Merced County Farm Bureau Executive Director Diane Westmoreland-Pedrozo commends the conservation efforts of the Public Works Department.

The Board discusses the savings to the County and Supervisor Nelson comments on NACo's forum and ideas on energy.

The Chairman closes the public hearing.

Upon motion of Supervisor O'Banion, seconded by Supervisor Pedrozo, duly carried, the Board accepts the Siemens Building Technologies, Inc. Detailed Study Report for energy and water conservation measures at the identified County facilities; Finds this project qualifies as a Class I Categorical Exemption – Minor Alteration to existing facilities pursuant to the California Environmental Quality Act (CEQA); Determines it is in the County's best interest to enter into a Performance Contract with Siemens Building Technologies, Inc. to install the energy and water conservation measures at twenty-two County facilities identified in the Siemens Detailed Study Report; Finds the funds for the repayment of the financing of the cost of the energy and water conservation measures are projected to be available from funding that otherwise would have been used for the purchase of electrical, gas, and water utilities required by the County of Merced in the absence of the energy and water conservation measures; and authorizes the Chairman to sign Contract No. 2008177 pending approval of the necessary capital contribution of \$1,000,000 in the Fiscal Year 2008-09 Final Budget and after review and approval by County Counsel and Public Works.

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

**10:00 A.M. SCHEDULED ITEM**

**2008-07-22 PLANNING AND COMMERCE, AVIATION AND ECONOMIC DEVELOPMENT–PUBLIC HEARING**

The time and date previously set for a public hearing to consider Annual Grantee Performance Report for the 2005/2006/2007 Community Development Block Grant (CDBG) General Allocations for Homebuyer Assistance and Housing Rehabilitation Programs (05-STBG-1409), the 2005 CDBG Economic Development Allocation for Public Airport Infrastructure (05-EDBG-2201), the Program Income Reuse Activities for Business Assistance, Housing Rehabilitation and Housing Acquisition; future activities under the 2009 CDBG funding

cycle and proposed changes to the Housing Rehabilitation Program Participation Guidelines submitted by Planning and Commerce, Aviation and Economic Development.

The Chairman asks if there is anyone present who wishes to speak.

Sheri Rawlins, Self-Help Enterprises representative, provides CDBG activities report and addresses the Housing Rehabilitation Program Participation Guidelines.

Commerce, Aviation and Economic Development Director John Fowler reviews numerous staff reports advising Grantee Performance Reports and Economic Development Allocations are submitted and reviews program status for the Revolving Loan Fund Program Income Activity and the Housing Rehabilitation and Business Expansion and Retention.

The Chairman asks if there is anyone present wishing to speak. No one speaks.

The Chairman closes the public hearing.

Upon motion of Supervisor Pedrozo, seconded by Supervisor Kelsey, duly carried, the Board approves the revisions to the Housing Rehabilitation Program Participation Guidelines to provide funds up to \$7,500 for emergency repairs and/or repair or installation of curbs, gutters and sidewalks and the revisions to the Housing Acquisition Program Participation Guidelines to provide funds up to \$10,000 for health and safety repairs on homes in the First Time Homebuyer Program as necessary and as recommended and adopts Resolution No. 2008-140.

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

**10:00 A.M. SCHEDULED ITEM**  
**2008-07-22 PLANNING - PUBLIC HEARING**

The time and date previously set for a public hearing to consider an Appeal received from Maureen McCorry, et al and SJRRC to Conditional Use Permit Application No. CUP99-009. Said application submitted by Jaxon Enterprises, Inc. to expand their existing aggregate mine from permitted reserves of 2.5 million tons (authorized for extraction under Conditional Use Permit (CUP) No. 3603) to 6 million tons of extractable, permitted material; said Project would excavate and process 6 million tons of aggregate by (1) expanding an existing aggregate surface mine laterally from 90+/- acres to approximately 357+/- acres; (2) increasing the depth of the permitted mine by ten feet (to increase from 18 feet below ground surface (bgs) to 28 feet bgs) at the southwest end of the site transitioning to 15 feet deeper (increase from 18 feet bgs to 33 feet bgs) at the northeast end of the site, and mining the expanded lateral area to the new depth; (3) increasing the annual material to be mined from the current baseline of 260,000 tons/year mined, and 240,000 tons/year marketed to a maximum of 550,000 tons/year mined and 500,000 tons/year marketed; (4) modifying the reclamation phasing from five acre increments to 20 acre increments; (5) establishing an updated reclamation plan with dryland cattle grazing as the end use; and (6) clarifying the permit to recognize the Applicant's ability to operate the plant at night to serve public agency projects which require nighttime deliveries. Slopes will be reclaimed to a 3:1 ratio when mining is complete. There also exists an on-site processing plant which was previously permitted. The property is designated as

Agricultural land use in the Merced County General Plan and is zoned A-2 (Exclusive Agricultural) on property located on the south and east side of White Rock Road, 1/4 mile north of Le Grand Road in the Le Grand area.

Development Services Director Robert Lewis reviews the staff report and the Supplemental Board Meeting material received from Kim Enderson on behalf of Leonard Bandell dated July 15, 2008 and the Letter dated July 21, 2008 from Lydia Miller representing San Joaquin Raptor/Wildlife Rescue Center and Steve Burke, Protect Our Water.

Code Compliance Manager Jeff Wilson and Jaxon Enterprises Representative Bruce Steubing review the powerpoint presentation. Mr. Wilson reviews the amendments to the Staff Report: Page 4, Section C, Impacts to Surface Water and Page 8, Section B, Endangered/Threatened Species.

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

Jaxon Enterprises Representative Jack Baker reviews the process and timeline of the existing project.

Attorney for Jaxon Enterprises Tom Terpstra speaks on behalf of applicant and the concerns that have been addressed stating the applicant is prepared to proceed with the project as proposed.

Maureen McCorry, et al, states no documents are late that are submitted today, comments on the Final EIR, Miles Creek, the Bald Eagle, biological resources and submits letter dated July 22, 2008.

Mary Furey speaks to the water situation asking the Board to study the entire County before a decision is made and submits letter dated July 22, 2008.

Merced County Farm Bureau Executive Director Diana Westmoreland-Pedrozo comments on behalf of Jeff Marchini, 2<sup>nd</sup> Vice President of the Farm Bureau and reviews the concerns about the groundwater plan, the quantity of water availability on the eastside, requests monitoring wells and questions the impact on the region and states she is opposed to the lack of the identification of what we are going to do with our water and how we are going to manage it for the whole region.

The Chairman closes the public hearing and based on Counsel's recommendation, the Board recesses at 12:40 p.m. and reconvenes at 1:00 p.m. in order to allow review of the documents received.

Development Services Director Robert Lewis states the letter received by Maureen McCorry has been reviewed and the issues raised in the letter have been addressed in the environmental review and Staff Report.

Jaxon Enterprises Representative Bruce Steubing comments on the letter received from Ms. McCorry relative to the environmental impact report on water impacts on region, scope of the environment for the study, unproven technology on Clarifier, Mariposa Creek impacts, endangered or threatened habitat native plants wetlands species and other natural resources and road impacts and states these issues have been addressed by Impact 3.3-8, Table 3.3-3 and pages 3.3-27



through 31 and 3.3-7 through 11, pages 2.0-16 and pages 3.3-25 through 26 and Appendix J to Draft EIR, pages 3.3-4 and 5 and 3-1 Final EIR response and added Mitigation Measure that require monitoring of water use and is added as 3.3-2A as part of the Final EIR and the applicant will implement as part of the project and included Appendix B 5 of the Final EIR.

Code Compliance Manager Jeff Wilson responds to comments in Ms. McCorry's letter and reviews the history of the project relative to enforcement and permits.

Assistant Planning Director Bill Nicholson reviews and responds to the following correspondence received from Ms. McCorry, the email provided by Lydia Miller and the CD delivered:

Letter from Ms. McCorry – Staff responses and rebuttals to documents, adequacy of EIR and the County's legal responsibilities, MAGPIE Report and Plan which is Merced Area Ground Water Pooled Interest stating this is a cooperative effort and the County is part of this effort through Environmental Health, Policy Point and Coalition Statement to not approve projects until the Merced County General Plan update is completed;

Lydia Miller Email and documents - List of maps not labeled and no reference to relevance; Coalition Statement to wait for general plan update; 597 pages Dept. of Fish and Game Policy Report covering the States of California and Colorado; MAGPIE Draft Plan and 5 related docs; East Merced Bird List which covers all birds in Merced County; Ecofull 2002 Report prepared by John Vollmar; Paving Paradise prepared by American Farmland Trust; Silviera Bird Study; Rangeland Resolution; SJKF Recovery Area Map and SJV Focus Area; Slope Classifications and Maps; TNC Vernal Pool Target Map; U.S. Fish and Wildlife Recovery Plan Maps and Upland Recovery; Vernal Pool and Related Wetlands; Wildlands Maps and Williamson Act Map.

CD documents - Comments from 2004 Jaxon DEIR from Lydia Miller and Steve Burke, Nicole M. Phillips letters dated June 1 and May 24, 2004; Bio of Petra Pless, D.Env. and John Paul Williams, Industrial Researcher and comments on Draft EIR of Jaxon Enterprises Mine and Reclamation Project dated May 31, 2004; Bio of Tom Brohard, PE and Tables of Emission Estimates and Williams Research and Carol Witham, Botanical Consulting on Jaxon Enterprises Review. Mr. Nicholson states the documents are old comments from the first round that have been responded to and new comments have not been made this time and Planning Staff feels the documents are not relevant and nothing has been found that would invalidate the EIR.

The Board discusses water issues monitoring and the 100 "nighttime" hours use.

Attorney Terpstra responds to the Board's concerns on the 100 nighttime hour use stating the applicant is in agreement to a 100-day Limit in a Calendar Year and if this is anticipated to be exceeded, then Planning Staff would need to review prior to any change.

Following a lengthy discussion and upon motion of Supervisor Kelsey, seconded by Supervisor Pedrozo, duly carried, the Board adopts the Final Environmental Impact Report for CUP99-0009 as adequate for compliance with CEQA based on the Findings in the Planning Commission Staff Report dated May 28, 2008.

Following further discussion and upon motion of Supervisor Kelsey, seconded by Supervisor Pedrozo, duly carried, the Board approves Conditional Use Permit CUP99-009 and the Reclamation Plan and denies the appeal and upholds the Planning Commission's approval based on the Findings and subject to the following Conditions finding there is a modification as agreed to the "100-day Limit in a Calendar Year":

## Planning and Community Development Department

1. Conditional Use Permit No. CUP99-009 is granted to excavate and remove sand mining material for the following:
  - Maximum production – 6 million tons aggregate material.
  - Life of Permit: 20 years (until 5/31/2028).
  - Maximum Area to be excavated: 357 acres.
  - Maximum depth of excavation: Shall be at an elevation of approximately 33 feet below ground surface.
  - 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 7:00 AM to 6:00 PM, Monday through Friday; and,
  - Occasions where nighttime and weekend operations may be warranted in response to night road improvement projects or related to electricity peak hour restrictions. Advanced notification is required per mitigation measures (shown as Condition of Approval #33) is required.
3. Upon project approval, the applicant shall commence reclamation of those areas where mining has been previously completed. These areas shall be completed within 30 days of the initiation of mining in any subsequent phases. Previously mined areas are subject to 3 phase maximum limits. The applicant shall submit a report to the County within 30 days of project approval, detailing areas where mining as been previously completed and reclamation activities will occur and those areas where mining activities are scheduled to begin, the report shall contain a map (drawn to scale) showing the areas to be reclaimed.
4. The applicant shall disturb no more than three phases at a time. The applicant shall identify the 3 phases that shall be active at any one time in writing, with accompanying site plan, to the County. Reclamation of any disturbed phases (where mining is complete) shall be complete prior to commencement of any mining activity in additional phases exceeding three phases. Final reclamation of the site shall be completed within three years of the completion of mining.
5. The project shall comply with standard conditions listed in Planning Commission Resolution No. 97-1.
6. 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, and Merced County Public Works – Roads Division.
7. The applicant shall revise the Reclamation Plan and Financial Assurance Estimate (FAE) to incorporate comments submitted by OMR within 30 days of project approval. The Reclamation Plan and FAE shall be submitted to the County for review.
8. Upon completion of the project, all the machinery and equipment associated with the mining operation and reclamation shall be removed from the property.

9. The applicant shall furnish the Planning and Community Development Director with a report describing compliance with the Reclamation Plan, mitigation measures, and Conditions of Approval by July 1st of each year. With each report, the permittee shall provide a map to scale, showing current progress of mining 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, mitigation measures, 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 **\$608**. Additional fees shall 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 idle for a period of one year or more by more than 90 percent of the operation's previous maximum annual mineral production the applicant must file an Interim Management Plan application with the County within 90 days of becoming idle.
13. 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.
14. 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.

#### Merced Irrigation District

15. The applicant shall protect Mariposa Creek from any potential contamination generated on the applicant's site that could flow by either surface, or sub-surface migration to said creek.

#### Mitigation Measures

16. **Mitigation Measure 3.3-2:** If a complaint is lodged by the neighboring property owner(s) located within one mile of the Project site regarding water impacts to established (i.e., current at time of this study) agricultural practices, the Applicant will provide information on the soil water budget for the period in question. The information will be prepared and analyzed by a competent professional licensed in the State of California. The Applicant shall pay the reasonable costs incurred by the licensed professional. The County shall approve the selection of the licensed professional. The Applicant shall submit this

information, together with any subsequent monitoring data, to the County upon the County's request.

If groundwater pumping from the deep aquifer causes a decline in water levels and pumping rates in wells on adjacent properties, such that the pumping rates will not sustain existing land uses, then the Applicant will implement one of the following measures:

**Mitigation Measure 3.3-2(a):** Several groundwater users are present within approximately one mile of the Project. The most significant adjacent groundwater user is the adjacent Frazier Nut orchard. Currently, an approximately 137-acre almond orchard is present on this property. It requires approximately 3.5 acre-feet of water per acre of orchard to irrigate almonds (DWR, 1986). Thus, the orchard requires approximately 480 AF/yr of irrigation water. There are five active supply wells on the Frazier Nut orchard with production rates ranging from 100 gpm to 450 gpm. If production rates in one or more supply wells decline to the level that is not sufficient to irrigate the orchard, the Applicant will pay the grower to add the necessary pumps and piping to add additional wells to the irrigation system, or install additional wells as necessary to sustain the orchard.

Or,

**Mitigation Measure 3.3-2(b):** The maximum increased groundwater use for the Project is 37.5 AF/yr. This is equivalent to the irrigation demand for approximately 10.7 acres of almonds. If production rates decline to levels that are not sufficient to irrigate the entire orchard, then the Applicant will pay the grower to remove up to 10.7 acres of orchard and convert it to dryland pasture at the rate of 3.5 acre-feet of water per acre of orchard for as long as the production rates remain at reduced levels. The potential removal and conversion to dry grazing of up to 10.7 acres of an almond orchard, when compared to a 2006 estimate of 87,771 bearable acres of almonds and 122,618 acres of bearable fruit and nut orchards (Merced County 2006 Crop Report) is de minimis. Data obtained from the Merced County Agricultural Commissioner's Office indicates that between 2002 and 2006, almond acreage in the county has increased 6,908 acres, therefore the potential removal of 10.7 acres of almonds would not contribute to a net reduction in productive almond orchards.

**Mitigation Measure 3.3-2(c):** The Applicant shall monitor its actual water use for make-up water from the deep water aquifer (as opposed to recycled water from the perched aquifer) by the use of a meter to ensure that the estimates provided in the EIR accurately estimate actual Project water use. In addition, the water use data shall be utilized regarding the numbers of acres of almond orchard that may be needed to be taken out of production. The Applicant shall retain water use data on site and make it available upon the County's request. (MM)

17. **Mitigation Measure 3.3-3:** Prior to operating within 250 feet of vernal pools or swales in Phases 3, 4, 5, 6, 7, and 11, the Applicant shall install a cutoff trench at the edge of the pit excavation (i.e., 25 feet away from any identified vernal pool/wet swale feature). This trench shall be keyed into the clay zone below the subsoil and shall be filled with extremely low permeability clay fines to create a barrier with an extremely low permeability to shallow subsurface flows that is less than the permeability of the vernal pool hardpan (refer to Figure 3.3-4, Cutoff Trench Schematic). The Applicant shall retain a qualified registered professional geologist or engineer with expertise in hydrological issues to determine the

permeability of the vernal pool hardpan using a dual-ring infiltrometer or similar methodology, and to verify that the permeability of the backfill is less than that of the hardpan. Since the mining and cutoff trenches occur downslope of the vernal pools and other wetlands (i.e. not in the upslope watershed area), the extremely low permeability trenches will not interfere with water flow into the wetlands, and will prevent water loss from the wetlands in the downslope direction.

The trench shall extend along the pit limit wherever it is adjacent to the wetland features. The purpose of the cutoff trench shall be to eliminate the possibility of vernal pools draining into the mine pit. The Applicant shall notify the County prior to construction of the trench. A registered professional with expertise in hydrological issues and/or the County shall inspect both the cutoff trench design and its installation prior to excavation within 250 feet of the vernal pool/wet swale features.

The mined areas shall be sequentially backfilled with fines so that most areas will be restored to ensure that the mined areas are sloped internally towards the center of the Project site. Thus, the need for the cutoff trenches in most areas is only temporary until the pits are backfilled and sloped internally. The reclaimed pits shall be backfilled with overburden and fines from the mining operations; thus, these areas will have a lower permeability and percolation rate than the native soils. The backfilled areas shall be selected preferentially to be the ones within, or close to, wetland watersheds to ensure that this potential impact is less than significant. The Applicant's compliance with this reclamation obligation shall also be made a condition of approval and be incorporated in its Reclamation Plan and be enforced through the County's annual SMARA inspection procedure. (MM)

18. **Mitigation Measure 3.3-4:** If a complaint is lodged by the neighboring property owner(s) located within one mile of the Project site regarding water impacts to established (i.e., current at time of this study) agricultural practices, the Applicant will provide information on the soil water budget for the period in question. The information will be prepared and analyzed by a competent professional licensed in the State of California. The Applicant shall pay the reasonable costs incurred by the licensed professional. The County shall approve the selection of the licensed professional. The Applicant shall submit this information, together with any subsequent monitoring data, to the County upon the County's request. From that information, the licensed professional, in consultation with the County and Applicant, shall determine the Applicant's fair share of the soil water deficit in the downstream orchard. The Applicant shall provide an equivalent amount of water to replace the deficit. In the event of a soil water deficit in the downstream orchard, the Applicant shall provide sufficient water to remedy the deficit. Replacement may include, but is not limited to, any or all of the following methods:

1. Rehabilitate the neighboring property owner(s) well and/or install a new pump to increase production;
2. Provide an incremental replacement of water (e.g. from the Project ponds to the orchard) to offset the deficit;
3. Deepen the existing well; or
4. Provide a new replacement well at an adjacent or different location, as appropriate.

(MM)

19. **Mitigation Measure 3.4-5(a):** All disturbed areas, including storage piles, which are not being actively utilized for mining or processing purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.

**Mitigation Measure 3.4-5(b):** All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.

**Mitigation Measure 3.4-5(c):** All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.

**Mitigation Measure 3.4-5(d):** When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.

**Mitigation Measure 3.4-5(e):** All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.)

**Mitigation Measure 3.4-5(f):** Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

**Mitigation Measure 3.4-5(g):** Trackout shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.

**Mitigation Measure 3.4-5(h):** Limit traffic speeds on unpaved roads to 15 mph.

**Mitigation Measure 3.4-5(i):** Install erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.

**Mitigation Measure 3.4-5(j):** Suspend excavation activity when winds exceed 20 mph.

**Mitigation Measure 3.4-5(k):** Regardless of windspeed, Applicant must comply with Regulation VIII's 20 percent opacity limitation.

**Mitigation Measure 3.4-5(l):** Use of alternative fueled or catalyst equipped diesel construction equipment, as feasible.

**Mitigation Measure 3.4-5(m):** Minimize idling time (i.e., 10 minute maximum).

**Mitigation Measure 3.4-5(n):** To the extent practicable, limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use.

**Mitigation Measure 3.4-5(o):** If feasible, replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set).

**Mitigation Measure 3.4-5(p):** Curtail excavation activities during periods of high ambient pollutant concentrations; this may include ceasing of excavation activity during the peak-hour of vehicular traffic on adjacent roadways.

**Mitigation Measure 3.4-5(q):** Implement activity management (e.g. rescheduling activities to reduce short-term impacts). (MM)

20. **Mitigation Measure 3.5-2:** The Applicant shall be responsible for its proportionate share of the cost of reconstructing White Rock Road, from the project entrance to Le Grand Road, and Le Grand Road, from White Rock Road to Santa Fe Avenue, as addressed in the Roadway Impact Agreement between the County of Merced and the Applicant, a copy of which is shown in Appendix B-5, and made a part hereof. (MM)
21. **Mitigation Measure 3.5-4:** If bond money does not become available to pay for the full interchange at the Arboleda and State Route 99 Interchange is not implemented, the Applicant shall contribute its proportionate share towards improvements authorized by CalTrans to be implemented in lieu of anticipated interchange. (MM)
22. **Mitigation Measure 3.6-1(a):** Due to the presence of spiny-sepaled button celery (a special status plant species- CNPS List 1B) and the assumed presence of other special status species within the vernal pools/vernal pool complex, the project footprint shall be amended to reflect a 250-foot buffer area. No other vernal pool mitigation measures would be required, other than described in Mitigation Measure 3.6-1c.

**Mitigation Measure 3.6-1(b):** If the Applicant seeks to apply for a 25-foot buffer to the vernal pools (using the Project footprint proposed by the Applicant), the Applicant shall provide documentation to the Lead Agency that wetland functions and values of vernal pools and ephemeral wet swales shall be maintained and that these features shall be protected from dewatering by a buffer (setback) zone at least 25 feet wide. Any loss of function or values shall be mitigated through purchase of acreage in an approved mitigation bank on a 1:1 ratio. Mitigation Measure 3.3-3 requires construction of a cutoff trench to prevent vernal pool drainage and establishes performance standards for evaluating and, if need be, enhancing the efficacy of this mitigation. This mitigation shall be in addition to any mitigation measures identified for special status species, as described in Impact 3.6-3, 4, 5 and 6.

In addition, the Applicant shall implement a Site Management Plan to preserve and maintain the natural processes and functions of the retained vernal pools and ephemeral drainages. The Site Management Plan, as presented in Appendix D, includes management of the 25-foot wide upland buffer area such that this area effectively buffers mining activities from the retained vernal pools and ephemeral drainages and minimizes the edge effects of the project. The management plan also specifies seasonal mowing or grazing of the upland buffer to control/reduce annual grass and weed growth.

The plan include measures to periodically remove/control all occurrences of invasive non-native plant species (as recognized by the California Invasive Plant Council [Cal-IPC]) from

the upland buffer and retained vernal pools and ephemeral drainages. The plan includes measures to prevent vehicular access to the retained vernal pools and ephemeral drainages and measures to remove trash and repair perimeter fencing. The Plan also includes adaptive management strategies such that management actions can be refined and improved as new information on vernal pool management is gathered.

The Site Management Plan requires monitoring to document the Applicant's compliance with the management plan. Monitoring will also be used to document the effectiveness of the cut-off trenches (installed at the outer edge of the 25-foot buffer area) in preventing indirect impacts of mining on the retained vernal pools and ephemeral drainages. Monitoring, as presented in the Site Management Plan (Appendix D), will be implemented for a period of five years and will include the following tasks:

- Establishment of an on-site reference vernal pool; such pool shall be located a minimum of 250 feet from the edge of mining;
- Establishment of an on-site reference ephemeral drainage; such drainage shall be located a minimum of 250 feet from the edge of mining;
- At yearly intervals, monitoring the maximum depth and period of inundation in the reference pool/drainage and all pools/drainages within 100 feet of mining. Staff gauges will be installed within these pools and monitored weekly during the wet season. Data on depth, area, and duration of inundation will be recorded, with results portrayed with hydrographs and photographs;
- At yearly intervals, monitoring the vegetation, including number of vernal pool endemic (VPE) plant species, per pool and drainage. Measuring absolute cover and relative cover using transects with point intercept or square meter quadrats, and photo documentation;
- At yearly intervals, monitoring the cover of any special status plant species (e.g., spiny-sepaled button celery)/pool and drainage;
- Twice a year, monitoring site maintenance. Monitoring for uncontrolled human disturbance (i.e., vehicles, trash) and other unexpected conditions (i.e., soil piping, erosion, water run-off, pollutants);
- Identifying routine site maintenance;
- Preparing and submitting annual monitoring reports to Merced County Planning Department by December 31<sup>st</sup> of each year;
- Establishing reference pool/drainage-based performance standards as follows:
- Hydrology: maximum depth of inundation within range of reference pools/drainage and longest period of inundation not greater than 125 percent of reference pools/drainage.
- Vegetation: absolute cover and relative cover by VPEs in pool/drainage within 100 feet of mining shall be within 80% of that recorded in the reference pool/drainage; each pool/drainage within 100 feet of mining must support at least 80% of the VPEs recorded in reference pool/drainage; VPEs shared by the pools shall be as vigorous and reproductively active; cover by spiny-sepaled button celery shall be within 80 percent of reference pools/drainage; and
- Implement remedial measures if performance standards are not met. Such measures may include, but not limited to, additional weeding and/or removal of invasive non-native plant species, supplemental seeding of vernal pool endemic species, or modifications to the cut-off trench to prevent significant hydrological changes in the retained vernal pools.

**Mitigation Measure 3.6-1(c):** The Applicant shall implement the Site Management Plan to preserve and maintain the vernal pool/swale complex and the designated buffer area (either



250-feet in 3.6-1a or 25-feet in 3.6-1b). The buffer shall be maintained as upland grassland. The Management Plan, as presented in Appendix D, specifies the following tasks:

- Inter-seeding of the setback zone with non-invasive herbaceous plant species;
- Periodic mowing;
- Rotational grazing; and
- Weedy plant species abatement.

The plan also includes the following measurable performance standard:

- Grazing or mowing shall be scheduled such that the grasses are maintained at an average of no more than 18 inches height over any three-year period;
- Amount of grazing or mowing in any one year will depend upon the winter rainfall and thus the vegetative growth; and
- The plan shall include measures to periodically remove/control all occurrences of invasive non-native plant species (as recognized by Cal-IPC) from the vernal pool/swale complex and upland buffer and measures to remove trash and repair perimeter fencing.

**Mitigation Measure 3.6-1(d):** A temporary fence shall be installed along the outside edge of the setback (along the excavation limits) prior to excavation of Phases 4, 5, 6, 7 and 11 to preclude inadvertent entry by excavation crews. A qualified biologist or other certified professional shall verify the location and integrity of protective fencing prior to on-site activities. This fencing shall be maintained for the duration of mining operations in the phases identified above, and shall be periodically inspected by the Applicant and/or County to ensure the fencing remains intact until mining in these areas is completed. Results of these inspections shall be included in annual monitoring reports submitted to the County. (MM)

23. **Mitigation Measure 3.6-2:** The Applicant shall incorporate erosion control measures to preclude erosion or sediments from entering the vernal pools and ephemerally wet drainage swales during and after mining. Specific measures shall be identified in the Project plans and specifications and shall include the following features:

**Mitigation Measure 3.6-2(a):** The limits of work shall be marked with temporary fencing, as described in Mitigation Measure 3.6-1c, above, and all mining activities shall occur outside the fenced areas.

**Mitigation Measure 3.6-2(b):** Measures to control dust as described in air quality Mitigation Measures 3.4-5a through q shall be employed during all mining operations.

**Mitigation Measure 3.6-2(c):** Silt fences and/or straw bales shall be used to prevent sediments from entering the vernal pools and ephemerally-wet drainage swales.

**Mitigation Measure 3.6-2(d):** The effectiveness of the erosion control measures shall be monitored during the rainy season of the first year following excavation within 300 feet of the vernal pools and remedial measures outlined in CRWQCB stormwater management specifications (see Mitigation Measure 3.3-1b) shall be implemented if erosion is noted. If sediment enters any vernal pool or swale, a wetlands specialist or plant ecologist shall inspect the vernal pool or swale and determine if the vernal pool functions and values have been reduced. The specialist shall be selected by the County and paid by the Applicant. The specialist shall recommend appropriate remediation

and/or replacement measures to restore the original functions and values of the vernal pool or swale. Such remediation measures may include removal of sediment using hand tools only, so as not to disturb the underlying clay layers. If the specialist determines that the sediment has caused total loss of functions and values, the specialist shall recommend appropriate replacement value on a 1:1 ratio. Replacement may be accomplished by creating a vernal pool/swale within the conservation area on site, or may be mitigated off-site by purchase of credits in an agency-approved mitigation bank. Creation of replacement vernal pool/swale on-site would also include a five-year monitoring plan to ensure that the created pool/swale attains the same function and values as those lost. The remediation and/or replacement measures shall be approved by CDFG and USFWS. (MM)

24. **Mitigation Measure 3.6-3(a):** If the Applicant seeks to apply for a 25-foot buffer to the vernal pools, the Applicant shall have a qualified biologist conduct a spring season plant survey to determine presence or absence of two early-blooming special-status plant species from within the vernal pools and ephemeral wet drainage swales within the Jaxon Enterprises property boundary: dwarf downingia and succulent owl's clover. The supplemental plant survey shall be conducted prior to any on-site mining activities within 250 feet of the vernal pool/wet swale features. If special-status plant species are documented on the site, the biologist will map such occurrences. Results of the survey shall be submitted to CDFG and/or the U.S. Fish and Wildlife Service (USFWS) for review, depending on the state and federal status of any identified species of concern.

**Mitigation Measure 3.6-3(b):** If the Applicant seeks to apply for a 25-foot buffer to the vernal pools, the Applicant shall implement the Conservation Area Management Plan (as specified in Mitigation Measure 3.6-1b and as presented in Appendix D) that describes each special-status plant species confirmed on-site and specific management actions to be implemented to ensure the long-term conservation of each species. Currently, the plan addresses only the spiny sepal'd button celery. If additional special-status plant species are documented during surveys conducted as per Mitigation Measure 3.6-3a, the Site Management Plan shall be amended to address these species. Presently, the Management Plan includes periodic mowing, rotational grazing, and weed abatement as needed to protect known special-status plant species and prevent decline in species distribution or population. The Plan also identifies adaptive management measures for the upland areas around the pools/swales should they be found to be important for pollinators or as dispersal areas for plants and animals important for conservation of the target rare plant species. The vernal pool/drainage performance standards (and remedial measures if necessary) are presented in Appendix D. The Plan includes yearly monitoring of the special status plant species confirmed on-site. Populations shall be stable or increasing over at least one multi-year period that includes above average, average, and below average local rainfall, a multi-year drought, and a minimum of 5 years of post-drought monitoring. Monitoring the population(s) over this multi-year period will capture the range of variability in environmental conditions and variability in population numbers and distribution.

Only after this Management Plan has been reviewed by and concurrence reached with the USFWS, ACOE, and the CDFG, to the extent required, shall the Applicant be allowed to mine beyond the initial 250-foot setback in Phases 4, 5, 6, 7, and 11 identified above. Once an opinion has been rendered by the agencies, the Applicant may apply to the County for a modification of the 300-foot setback such that it would revert to the 25-foot setback

proposed by the Applicant and described in Section 2.0, Project Description. If deemed appropriate, the Director of the Merced County Planning and Community Development Department will approve this extension of excavation limits. (MM)

25. **Mitigation Measure 3.6-4(a):** The Applicant shall presume that all listed Vernal Pool crustacean species are present, until such time as protocol surveys prove their absence, and shall implement the following mitigation measures:

- The Applicant shall establish a 250-foot buffer between vernal pools/swales and the mining areas. No mining shall occur in the 250-foot buffer;
- The Applicant shall consult with the USFWS regarding mitigation to compensate for potential impacts to vernal pool crustacean species. Based on the results of this consultation, the Applicant shall be responsible for compliance with the requirements of the Endangered Species Act, including obtaining an incidental take permit, if it is determined that “take” will occur. Such requirements include:
  - Placing a deed restriction or conservation easement on the portion of the Applicant’s property containing the complex of vernal pools located in the northwestern portion of the property (approximately 27 acres) and the vernal pools/swales on the eastern portion of the property (approximately 50 acres). These proposed areas include the 250-foot buffer zone described above and are shown on Figure 3.6-2, Proposed Conservation Easements;
  - Implementing the Site Management Plan for the vernal pool conservation area to minimize non-native plant species (e.g., annual mowing). Management Plan’s performance standards are provided in Mitigation Measure 3.6-1. This plan shall be approved by appropriate regulatory agencies pursuant to take provisions within the ESA.
  - Obtaining a “take permit” from the USFWS prior to any site disturbance that may directly or indirectly impact listed vernal pool crustaceans; and
  - Purchasing acreage on a 1:1 ratio in an approved mitigation bank if any of the vernal pools cannot be included within the 250-foot buffer. This would also require a “take permit” from the USFWS.

**Mitigation Measure 3.6-4(b):** The Applicant may elect to hire a County- and USFWS-approved biologist to conduct protocol surveys for listed vernal pool crustacean species according to the approved USFWS protocol, as described below. If listed Vernal Pool crustacean species are not found to be present after protocol surveys, the Applicant shall obtain written concurrence from the USFWS that these species are absent and Mitigation Measure 3.6-4a above shall not be required for these species. The buffer between vernal pools/swales and limits of mining would be maintained at 25 feet. The survey shall include protocol one-year winter wet season surveys for conservancy fairy shrimp, vernal pool tadpole shrimp and fairy shrimp, plus one year dry season survey for crustacean cysts if the winter wet season survey is negative. (MM)

26. **Mitigation Measure 3.6-5:** The Applicant shall implement the USFWS’ 1999 “Standardized recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance” and consult with the USFWS and CDFG regarding mitigation to compensate for potential impacts to San Joaquin kit fox. Based on the results of this consultation, the Project Applicant shall be responsible for compliance with the requirements of the ESA and

CESA, including obtaining an incidental take permit, if it is determined that “take” will occur. Such requirements may include:

- Preconstruction surveys for San Joaquin kit fox prior to mining of each phase, and relocation of kit fox if denning on site;
- After mining is completed, place a conservation easement over the entire reclaimed mining and processing area; and
- No ‘take’ of state or federally listed species shall occur prior to obtaining the required permits that authorize the incidental take of such species. (MM)

27. **Mitigation Measure 3.6-6(a):** The Applicant shall presume that California tiger salamander and western spadefoot toad are present on the site (unless surveys are conducted as required under Mitigation Measure 3.6-6b). The following measures shall be implemented to minimize direct harm to the species and to offset the loss of upland habitat.

- Conservation easements shall be placed over the complex of vernal pools located on the northwestern corner of the property (approximately 19.5 acres) and the vernal pools/swales on the eastern portion of the property (approximately 34.5 acres), as shown on Figure 3.6-2;
- After mining is completed, a conservation easement shall be placed over the entire reclaimed mining and processing area;
- A 250-foot buffer shall be established between vernal pools/swales and limits of mining area;
- “One-way” fencing shall be installed to allow amphibians to leave grassland upland habitat prior to mining, and prohibit their return to the area prior to mining. The timing of the installation of the fence is important to the life ecology of the amphibian species. The one-way fence shall be installed in September and maintained through March of any given year. The one-way fence may be placed around each individual Phase of the mining area prior to commencement of mining in each Phase;
- A qualified biologist shall be present on the site to guide the workers in the design and installation of the one-way fence to avoid all burrows inhabited by amphibians where possible, and to inspect and hand excavate those that cannot be avoided. A miniature fiber optics camera may be useful in this situation to detect amphibians in burrows, and the CDFG and USFWS should be consulted in the use of this device to detect amphibians. The biologist shall obtain all necessary permits to relocate any amphibians that may be found in the burrows inspected;
- No ‘take’ of state or federally listed species shall occur prior to obtaining the required permits that authorize the incidental take of listed species; and
- No ‘take’ of California Species of Special Concern shall occur prior to obtaining the required MOU with the CDFG.

**Mitigation Measure 3.6-6(b):** The Applicant may elect to hire a qualified biologist to conduct protocol surveys for California tiger salamander and western spadefoot toad according to the interim USFWS protocol, as described below. If California tiger salamander or western spadefoot toad are not found present after protocol surveys, the Applicant shall obtain written concurrence from the USFWS and CDFG that these species

are absent and Mitigation Measure 3.6-6a, above, would not be required for these species. The following surveys shall be required:

- Three spring aquatic surveys for larvae conducted in March, April and May;
- If aquatic surveys are negative, one winter drift fence with pitfall traps shall be conducted. The CDFG and USFWS shall be consulted regarding the location of the drift fences; and
- If drift fence/pitfall trapping is negative, another spring larval survey shall be conducted in March, April and May following the winter pitfall trapping survey.

Should the agencies render an opinion of species absence, the Applicant may apply to the County for a modification of the 250-foot setback such that it would revert to the 250-foot setback proposed by the Applicant and described in 2.0, Project Description. If deemed appropriate, the Planning Commission will approve this extension of excavation limits, recognizing the 250-foot setback requirement of other mitigation measures must also be satisfied. (MM)

28. **Mitigation Measure 3.6-7(a):** The Applicant shall presume that burrowing owls nest and winter on the Project site. The following measures shall be implemented to minimize direct harm to the species and to offset the loss of its habitat.

- An area of 6.5 acres of grassland habitat with suitable burrows for each wintering burrowing owl or each nesting pair (9 wintering owls identified in 1999) shall be preserved, as recommended by the CDFG and Burrowing Owl Consortium. This area may be concurrent with the vernal pool preserve recommended above in 3.6-4a and shown on Figure 3.6-2, if approved by CDFG;
- After mining is completed, a deed restriction shall be placed over the entire reclaimed mining and processing area;
- The Applicant shall implement the section of the Site Management Plan that addresses burrowing owl habitat. The burrowing owl management plan shall be approved by CDFG prior to any mining and implementation of the proposed plan. The Site Management Plan (as presented in Appendix D) shall contain the following elements: periodic grazing, prohibition of poisoning of ground squirrels, periodic surveys for burrowing owl, and adaptive management techniques. The plan shall include measurable performance standards as follows: (1) Grazing shall be scheduled such that the grasses are maintained at an average of no more than 18 inches height over any three year period. Amount of grazing in any one year will depend upon the winter rainfall and thus the vegetative growth. Grazing reduces thatch build up, prevents noxious invasive plants such as star thistle from becoming established, and maintains a more open grassland suitable for burrowing mammals such as ground squirrel that create the burrows required by burrowing owls. (2) Since the area will be a preserve, no ground squirrel control may be necessary. If ground squirrel control is deemed necessary in some years to prevent conflict with grazing animals, only methods approved by CDFG shall be employed. No cyanide traps shall be employed. (3) Surveys for burrowing owl shall be conducted during Year 1, Year 3, Year 5, and thereafter at five year intervals to document their continued use of the preserve area, and thereby evaluate the effectiveness of the other plan constituents. (4) If monitoring surveys show a decrease in the population at this site, as evaluated using appropriate population statistics over time, then adaptive management measures shall be employed to enhance the conditions favorable to burrowing owl. Such measures may include placement of artificial burrows,

removal of non-native predators, and changes in grazing regime to enhance habitat. If new scientific data becomes available in the future that enhances the population of burrowing owls, adaptive management shall include such information to further the survival of the population; and

- Protocol preconstruction surveys for burrowing owls shall be conducted no more than 30 days prior to commencement of ground disturbance prior to each phase. If burrowing owls are present, implement a plan, as approved by CDFG, for passive relocation of wintering owls, and maintain a minimum 250 foot buffer around nesting owls until a qualified biologist has determined that all young have fledged and are foraging independently. If borrowing owls are absent, the operator may commence ground disturbance activities provided all applicable surveys (e.g., tiger salamander surveys) allow for such disturbance.

**Mitigation Measure 3.6-7(b):** The Applicant may elect to hire a qualified biologist to conduct one-time protocol surveys for western burrowing owl according to the Burrowing Owl Consortium and CDFG approved protocol, as described below. If western burrowing owl are not found present after protocol surveys, the Applicant shall obtain written concurrence from the USFWS and CDFG that these species are absent and Mitigation Measure 3.6-7a above would not be required for this species. Protocol surveys shall include winter (Dec – Jan) and breeding season (April 15 – July 15) surveys for burrowing owls as recommended by the Burrowing Owl Consortium (1993) to determine the current number of burrowing owls on site. (MM)

29. **Mitigation Measure 3.6-8(a):** Portions of the proposed mining Phases 4, 5, 6, 7, and 8 occur within 500 feet of mature black cottonwood trees which may provide suitable nesting habitat for tree-nesting raptor species. Mining shall be scheduled to occur outside the nesting season for raptors (generally September 1 to March 1).

**Mitigation Measure 3.6-8(b):** If the schedule identified in Mitigation Measure 3.6-8a is not practical, the Applicant shall hire a qualified biologist to conduct preconstruction surveys for nesting raptors no more than 30 days prior to construction in the portions of Phases 4, 5, 6, 7, and 8 that are within 500 feet of mature black cottonwood trees. If any protected species are observed, the qualified biologist, in consultation with CDFG, shall recommend a buffer area around the nest. No construction or mining shall take place within the buffer area until the biologist has determined that all young have fledged and are capable of foraging independently. The buffer area shall be delineated with orange construction fencing.

**Mitigation Measure 3.6-8(c):** Surveys for nesting raptors shall be conducted following the survey methodology developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to any disturbance within 5 miles of a potential nest tree (DFG, 1994). These surveys, the parameters of which were designed to optimize detectability, must be conducted to reasonably assure the CDFG that "take" of this species will not occur as a result of disturbance associated with Project implementation.

In the event that this species or any other special status raptor species is detected during protocol-level surveys, consultation with the CDFG is warranted to discuss how to implement the Project and avoid "take." Regardless of nesting status, trees that must be removed should be replaced with an appropriate native tree species planting at a ratio of 3:1

in an area that will be protected in perpetuity. This mitigation is needed to offset potential impacts to the loss of potential nesting habitat. (MM)

30. **Mitigation Measure 3.6-9:** If special-status species are present, implement Mitigation Measures 3.6-3a, 3.6-3c, 3.6-5a, 3.6-6a, and 3.6-7a, as appropriate for the particular species found. (MM)
31. **Mitigation Measure 3.6-11:** Implementation of Mitigation Measures 3.6-1a through c, 3.6-2a through d, 3.6-3a through c, 3.6-4a and b, 3.6-5, 3.6-6a and b, 3.6-7a and b, and 3.6-8a, along with implementation of the proposed Reclamation Plan would prevent cumulatively significant impacts. (MM)
32. **Mitigation Measure 3.7-6:** The Applicant shall notify the County in writing regarding the expected commencement date of a nighttime project and the duration of nighttime operations. The Applicant shall also notify the County in writing when a particular nighttime Project is completed. (MM)
33. **Mitigation Measure 3.8-3:** Exterior lighting shall be designed and maintained in a manner such that glare and reflections are contained within the boundaries of the parcel, and shall be hooded and directed downward and away from adjoining properties and public rights-of-way. The use of blinking, flashing or unusually high intensity or bright lights shall not be allowed. All lighting fixtures shall be appropriate to the use they are serving, in scale, intensity and height. (MM)
34. **Mitigation Measure 3.9-1(a):** The Applicant shall train field personnel in identification procedures, prior to beginning excavation in the expansion area. Training materials shall be prepared by a professional archaeologist and shall provide a review of the natural and cultural history of the Project area, archaeological sensitivity, most likely locations of buried cultural materials, and specific instructions on how to address such discoveries and what immediate actions must be taken in the event that materials are, in fact, unearthed. Instructional materials or artifacts are to be kept on-site and under direction of identified specific individuals. Part of the annual report prepared pursuant to the Mitigation Monitoring and Reporting Plan shall identify the responsible individuals and personnel present during training.

**Mitigation Measure 3.9-1(b):** If human skeletal remains are encountered during construction, work within 20 meters (66 feet) of the discovery shall be stopped immediately and the County Coroner notified. If the remains are Native American, the Native American Heritage Commission shall be consulted, and the Most Likely Native American Descendant identified and given the opportunity to confer with the property owner about the disposition of the remains.

**Mitigation Measure 3.9-1(c):** If cultural resources, such as chipped or ground stone, historic debris, building foundations, or human bone are discovered during ground-disturbance activities, work shall be stopped within 20 meters (66 feet) of the discovery, an archaeologist shall be contacted for an evaluation, and the Merced County Planning Director shall be notified at once.

**Mitigation Measure 3.9-1(d):** Cultural resources found on the Project site will be recorded or described in a professional report and submitted to Merced County. (MM)

35. **Mitigation Measure 3.9-3:** If bone is uncovered that appears to be human, the Merced County Coroner shall be contacted. 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. (MM)

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

**1:30 P.M. SCHEDULED ITEM**  
**2008-07-22 PLANNING – JOINT STUDY SESSION**

The time and date previously set for a Joint Study Session with the Planning Commission concerning the Merced County General Plan Update.

Development Services Director Robert Lewis reviews the Staff Report and Derek DiManno with Mintier Associates is present to review the powerpoint presentation.

Planning Commissioner Cindy Lashbrook comments on Page 15-Biological Resources and Page 16, a Grading Ordinance and states more planning and citizen groups input is needed.

Discussion is had on the 20 acre parcel issue, policies that tie in housing to job creation and mitigation of prime or ag. land and development on non-prime ag. land.

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

Lisa Kayser-Grant speaks on soil and water and grading ordinance issues and questions the date the Report by Mintier Associates was provided to the public.

Tom Grave (Merced) discusses the water issue, the County involvement in MAGPIE and suggests Mr. DiManno provide a sample Grading Ordinance.

Rod Webster (Merced) comments on the mining issue.

Merced County Farm Bureau Executive Director Diana Westmoreland-Pedrozo speaks on the water issues and new Westside communities stating there is a preference for a uniform enforcement of rules that are in existence.

Bedesen-Cardoza-Associates, Inc. representative Larry Bowers reviews and submits a July 2008 Ag Parcel Split Study for the period of 1978 to current.

The Chairman concludes the 4<sup>th</sup> Joint Study Session on the General Plan Update.

Present: Board Members Crookham, Nelson, Kelsey, O'Banion  
Planning Commissioners Buendia, Mobley, Lashbrook, Sloan

Not Present: Board Member Pedrozo  
Planning Commissioner Tanner



**CONSENT ITEM NO. 38**

**2008-07-22 BOARD OF SUPERVISORS**

Upon motion of Supervisor Pedrozo, seconded by Supervisor O'Banion, duly carried, the Board authorizes Certificates of Recognition to the following selected by the Father of the Year Committee as 2008 Essay Winners:

2008 Essay Contest Winner - Kylea Moshier (McSwain-K), Cameron Gray (McSwain-1<sup>st</sup>), Zachary Castillo (Chenoweth-2<sup>nd</sup>), Alex Gueorguieva (Alicia Reyes-3<sup>rd</sup>), Dominique M. Batt (Ada Givens-4<sup>th</sup>), McKenzie Nelson (Charles Wright-5<sup>th</sup>), Nicolette-Elena Solano (McSwain-6/7), Ashley Mustin (El Capitan-8), Elaynah Rodriguez (GVHS-9<sup>th</sup>), Armond Henderson (LBHS-10<sup>th</sup>), and Aldo Ramirez Gomez (LBHS-11/12).

2008 Essay Contest, 1<sup>st</sup> Runner Up – Mikaylah Vaught (McSwain-K), Colby Hanning (McSwain-1<sup>st</sup>), Jessica Gutierrez (McSwain-2), Alex Ortiz (McSwain-3<sup>rd</sup>), Brittany Johnston (Ada Givens-4<sup>th</sup>), Brittany Phillips (McSwain-5<sup>th</sup>), Crystal Hernandez (McSwain-6/7), Veronica Contreras (El Capitan-8<sup>th</sup>), Kayla Youngblood (GVHS-9<sup>th</sup>), Brianna Morse (LBHS-10<sup>th</sup>) and Victor Soria Hernandez (LBHS-11/12).

2008 Essay Contest, 2<sup>nd</sup> Runner Up – Lauren Palumbo (McSwain-K), Sadie Datray (McSwain-1<sup>st</sup>), Kevin Bandala (Shaffer-2<sup>nd</sup>), Chandler McGee (Alicia Reyes-3<sup>rd</sup>), Jaclyn Delgadillo (Selma Herndon-4<sup>th</sup>), Aidan Melo (McSwain-5<sup>th</sup>), Matthew Parson (McSwain-6/7), Karina Servin (El Capitan-8<sup>th</sup>), Kathya Valencia (GVHS-9<sup>th</sup>), Nayeli Vaca-Sotelo (GVHS-10<sup>th</sup>) and Carmen Romero (LBHS-11/12).

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

**ACTION ITEM NO. 54**

**2008-07-22 PLANNING**

The Clerk announces the 2008 HOME Investment Partnership Program Application for Funding submitted by Planning is before the Board for consideration.

Upon motion of Supervisor O'Banion, seconded by Supervisor Nelson, duly carried, the Board authorizes preparation of an Application in the amount of \$800,000 for First-Time Homebuyer Funds (with or without rehabilitation) or Housing Rehabilitation Funds or a combination of both Programs from the 2008 HOME Program Grant with the Dept. of Housing and Community Development (HCD) returning to the Board to accept the 2008 HOME Program Grant if the application is successful and adopts Resolution No. 2008-150.

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

**ACTION ITEM NO. 56**

**2008-07-22 EXECUTIVE OFFICE**

The Clerk announces the proposed Resolution opposing the 2008 Farm Animal Initiative submitted by Executive Office is before the Board for consideration.

Bill Mattos, California Poultry, speaks in opposition of ballot measure Proposition 2 and reports on the egg industry in California and the California Standards for Food Safety.

Supervisor Kelsey states her support of Bill Mattos' statements and opposition to Proposition 2.

Upon motion of Supervisor Pedrozo, seconded by Supervisor Kelsey, duly carried, the Board authorizes the Chairman to sign a Letter to Californians for SAFE Food indicating the Board's opposition to the ballot measure and the 2008 Farm Animal Initiative and adopts Resolution No. 2008-151.

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

**ACTION ITEM NO. 57**

**2008-07-22 EXECUTIVE OFFICE**

The Clerk announces the Early Retirement Incentive Plan proposal submitted by Executive Office is before the Board for consideration.

County Executive Officer Demitrios Tatum reviews the Staff Report stating the Actuarial Analysis has been provided and based on the results of the actuarial analysis staff does not recommend the Early Retirement Incentive Plan. He states the 120 eligible employees that declared their intent would be positions that would have to be held vacant and therefore the Executive Office could not recommend approval.

Upon motion of Supervisor Nelson, seconded by Supervisor Pedrozo, duly carried, the Board does not implement the Early Retirement Incentive Plan proposal based on the Actuarial Analysis Report.

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

**ACTION ITEM NO. 60**

**2008-07-22 BOARD OF SUPERVISORS**

The Clerk announces the Resolution in support of improved safety equipment at United States Penitentiary-Atwater is before the Board for consideration.

Andy Krotik (Atwater), representing Friends & Families of Correctional Officers organization located at [correctionalsafety.org](http://correctionalsafety.org), reviews goals and speaks in favor of the Resolution.

Supervisor Nelson briefly reviews the Staff Report and states the immediate goal is to insist that the prisoners be kept on lockdown until certain safety measures are made.

Flip Hassett (Atwater) states he feels the correctional officers should be in a safe working environment and speaks in support of the Resolution.

Dennis Anderson (Atwater) advises a member of his family works at the Penitentiary and he speaks in regard to non-lethal weapons, stab resistant vests and the national movement on safety equipment.

James Spencer states he feels the Atwater Penitentiary should remain in lockdown and speaks in support of Resolution.

Upon motion of Supervisor Pedrozo, seconded by Supervisor Nelson, duly carried, the Board supports the Correctional Officers at the Atwater Federal Penitentiary and asks the Federal Bureau of Prisons to provide officers with protective gear and adopts Resolution No. 2008-154.

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

### **ACTION ITEM NO. 63**

#### **2008-07-22 BOARD OF SUPERVISORS**

The Clerk announces the Merced County Employees Retirement Board At Large membership is before the Board for consideration.

Upon motion of Supervisor Pedrozo, seconded by Supervisor Nelson, duly carried, the Board amends the Policy relating to the Appointment of At-Large Representatives (non-District) adopted on February 26, 2008 to include the Appointed Members of the Merced County Employees Retirement Board to be indicated as At Large Representatives (non-District specified appointments) subject to the Supplemental Application, FPPC Form 700 requirement and Interview process set by the Board of Supervisors in Resolution No. 2008-28.

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