



**PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT**

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Equal Opportunity Employer

**PLANNING COMMISSION AGENDA
REGULAR MEETING OF DECEMBER 5, 2007, 9:00 A.M.
2222 "M" STREET, BOARD ROOM, THIRD FLOOR,
MERCED, CALIFORNIA**

I. CALL MEETING TO ORDER

II. ROLL CALL OF COMMISSIONERS

Jack Mobley; Cindy Lashbrook; Lynn Tanner; Rudy Buendia; Steve Sloan, Chairman

III. APPROVAL OF MINUTES

IV. CITIZEN COMMUNICATIONS

Public opportunity to address the Planning Commission on items of interest over which the Planning Commission has jurisdiction.

SPEAKERS

If you would like to address the Planning Commission on any item on the agenda, please pick up a 3" x 5" card in the foyer, fill it out with your name, address, and item you wish to speak on, and give it to someone at the staff table (to the left of the podium) prior to speaking.

V. PUBLIC HEARING

**A. CONDITIONAL USE PERMIT No. CUP06-004 - Black Diamond Aggregates -
To excavate and remove approximately 1.5 million cubic yards of sand material over a 10 year period from a 29 acre portion of a 136 acre parcel. The project site is located on the south side of Turlock Road and 1.5 miles east of Looney Road in the Ballico area. The property is designated as Agricultural in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. ON****

**B. MINOR SUBDIVISION APPLICATION No. MS07-032 - David & Sherrie Van Vliet -
To divide a 115.46 acre parcel into four parcels and a remainder parcel: Parcel 1 = 20.0 acres, Parcel 2 = 20.62 acres, Parcel 3 = 20.0 acres, Parcel 4 = 20.0 acres, and remainder parcel = 34.84 acres. The project is located on the north side of Keyes Road, 2,000 feet west of Fields Road in the Snelling area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. BG****

VI. CORRESPONDENCE

VII. GENERAL BUSINESS

VIII. DIRECTOR'S REPORT

IX. ADJOURNMENT

APPEALS

Any person may appeal any action of the Planning Commission within five (5) calendar days after the day the action is made. [Within ten (10) calendar days of action on subdivisions]. The deadline for appeals of Planning Commission actions, excluding subdivisions, is 5:00 p.m. on the Monday following the Planning Commission meeting, and for subdivisions, the deadline is the following Monday at 5:00 pm. Please note that appeals may not be submitted on days that the County is officially closed.

Appeals of Development Services Director's actions may be filed with the Planning and Community Development Department and appeals of Planning Commission actions may be filed with the Clerk of the Board of Supervisors. Appeals must state appellant's name, action appealed and reasons for appeal. A filing fee set by Resolution of the Board of Supervisors must be submitted with the written appeal.

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF DECEMBER 5, 2007

A recording on tape and original minutes (for reference purposes only) of the Merced County Planning Commission meeting of December 5, 2007, are available in the Merced County Planning and Community Development Department, 2222 "M" Street, Second Floor, Merced, California.

I. CALL MEETING TO ORDER

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:20 a.m., on December 5, 2007, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Jack Mobley
 Commissioner Steve Sloan-Chairman
 Commissioner Lynn Tanner
 Commissioner Cindy Lashbrook

Staff Present: Robert Lewis, Development Services Director
 William Nicholson, Assistant Development Services Director
 Kim Anderson, Recording Secretary
 Oksana Newmen, Planner II
 Brian Guerrero, Planner I
 Jeff Wilson, Code Compliance Manager

Legal Staff: Bob Gabriele, Deputy County Counsel

Commissioners Absent: Commissioner Rudy Buendia

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

- A. CONDITIONAL USE PERMIT No. CUP06-004 - Black Diamond Aggregates - To excavate and remove approximately 1.5 million cubic yards of sand material over a 10 year period from a 29 acre portion of a 136 acre parcel. The project site is located on the south side of Turlock Road and 1.5 miles east of Looney Road in the Ballico area. The property is designated as Agricultural in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. ON****

Planner Oksana Newmen presented the Staff Report and Recommendations of approval dated December 5, 2007.

Commissioner Mobley asked if this project will have any impacts on the orchards nearby. Planner Oksana Newmen states that no complaints were received in that regard.

The public hearing opened at 9:32 a.m.

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Ted Thorn, owner of property to the east, is concerned with their almond orchard. They produce 2700 pounds of almonds per acre and do not want them disturbed by dust and mites. The 25 foot setback is not enough. Phase 1 is up against his property and he is requesting a larger setback. Also, there is a concern with the dangerous curves on Turlock Road nearby. His ranch is part of the Water Coalition and there will be some impacts on Merced River and endangered species. He would like a guarantee that his orchard will not be damaged. He is not opposed to this application, but wants a guarantee the project won't affect his property.

Chairman Sloan asked what setback Mr. Thorn would agree to. Mr. Thorn asked if 100 ft. would be sufficient.

Jennifer Pitts, neighbor, wanted to reiterate how dangerous the roads are in the area. The Bettencourt Ranch project is on the other side of their property as well and they have no problems with them.

Commissioner Lashbrook suggested putting up a windbreak. Mr. Thorn agreed that it would be a help. Commissioner Lashbrook also wanted to see more safety precautions taken on Turlock Road where the trucks are driving.

Planner Oksana Newmen states that applicant will be putting in the top soil along the property line making sure that no run-off happens. There should be no impacts to Dry Creek as a result of the mining. The applicant will also be placing 2 warning signs near the curves going east bound and west bound, notifying drivers of truck crossing.

Commissioner Lashbrook asked if seeds can be planted along the berms. Ms. Newmen answered that the planting is a requirement in the conditions of approval.

Lydia Miller, San Joaquin Raptor Rescue Center, handed in a letter for the record to the Commissioners. She summarized the letter stating that the excavation to a depth of 60 feet of an existing orchard for a sand mine has a significant impact on the environment and requires an EIR. The proposed conditions do not mitigate these impacts to a level of insignificance and therefore a full EIR is required. The General Plan should be updated as well. She disagrees with the environmental checklist in the Initial Study and that the conditions for approval are too numerous for a mitigated negative declaration and too many of them are deferred mitigation. She then went over the detailed impacts and problems identified in her letter.

Clint Meyer with Michael Brand & Associates, stated that the mitigation proposed for the conditions of approval address issues that were not initially included in the first Reclamation Plan. The Reclamation Plan was revised to control erosion. The Williamson Act Preserve does authorize the land use proposed. The use of mines is an allowed use in the A-1 zone. They required improvements to the driveway entrance to allow better turning movements and with signs warning traffic about the truck crossing. All impacts are mitigated to a level of less than significant.

Mrs. Pitt added that the \$11,000 reclamation cost does not go very far. Planner Newmen stated that that the \$11,000 is for Phase I, for grading and seeding. If the applicant does not comply it can be adjusted accordingly.

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The Commission took a break for 15 minutes to review the letter from Lydia Miller.

Mr. Meyer responded to Lydia Miller's letter submitted for the record. He states that the 50' setback would work and there is no need for an Environmental Impact Report. All mitigation is in place and not deferred. The Williamson Act Preserve is consistent with this use and covered in the checklist. There is a 300' minimum setback and an erosion control plan consistent with conditional waiver program for ag runoff currently followed. The site leveling will make site more farmable – sandy soil doesn't hold water as well and future depth is not an issue. The site is not under cultivation in mining area – grassland and 1 tree will be kept. The project will comply with Air District Rule 8; it adequately mitigates impact and the owner may be potentially willing to work with the neighbor. A biological study was done and a full list of the species was presented even though they are not present. They made a determination on the suitability of the site for individual species to occur. The table in the EIR are those they determined are reasonably likely to occur. Resolution 97-1 refers only to the conditions, not CEQA. The roadway impact becomes null and void after completion of the project if the project is completed in 10 years. The Kit Fox was not documented at the site, but the hole can be used by San Joaquin Kit Fox. The mitigation requires a protocol level survey that is standard operating procedure. Compliance with the conditions of approval does not address adequacy of the Initial Study.

Commissioner Lashbrook asked if the applicant agrees with the windbreak. Mites can be a real problem in the area. Mr. Meyer states that it hasn't been prepared yet but a windbreak screening is a good idea for a longer term project. It would take 5-10 years for adequate growth and the mining is temporary on this site – with a 10 year life.

Bob Gabriele, County Counsel, explained that the Planning Commission has discretion and authority to place weight on reasonable analysis based on information and testimony. A reasonable person would consider as "reasonable" concern is what makes a fair argument – fact vs. opinion. Planning Commission can also close any "loose ends". The difference between a negative declaration and an EIR is elimination of any uncertainty – if a fair argument exists that is credible.

William Schmidt, property owner, states that Mr. Thorn had disced the top of the hill to take control of squirrels. There are no mites or dust as a result.

Mrs. Pitt states that assurance and a guarantee about the mites are needed. She would like to see flag men on the weekends to ensure traffic safety on Turlock Road.

Jeff Wilson, Code Compliance Manager, explained that the setback of 50 feet would be on top of the slope. The applicant agrees to a vegetated berm on top of the slope to keep the dust down. Commissioner Lashbrook asked about the irrigation. Mr. Wilson replied that Condition # 8 requires water control to avoid erosion.

The public hearing closed at 10:40 a.m.

Commissioner Tanner wants an added condition regarding the additional 25' setback with a vegetated berm. Chairman Sloan agreed. Commissioner Lashbrook would like to see a flagman. Development Services Director Robert Lewis stated that only 15 daily trips are made on the roads and does not warrant a flagman.

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Commissioner Lashbrook asked if the \$11,000 would cover dust control. Mr. Lewis explained that the money is for reclamation for the site and not for operations.

MOTION: M/S TANNER – MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT No. CUP06-004 WITH 14 MITIGATION MEASURES.

MOTION: M/S TANNER - MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED DECEMBER 5, 2007 AND MAKES THE 9 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 9 FINDINGS, APPROVES CONDITIONAL USE PERMIT No. CUP06-004 SUBJECT TO THE 38 CONDITIONS SET FORTH IN THE STAFF REPORT WITH THE ADDITION OF CONDITION #39 TO READ AS FOLLOWS:

Conditions:

Planning and Community Development Department

1. Conditional Use Permit No. CUP 06-004 is granted only for the following:
 - Maximum production – 1.5 million cubic yards of sand.
 - Life of Permit: 10 years (until 12/31/2017).
 - Maximum Area to be excavated: 29 acres.
 - Maximum depth of excavation: Shall be at an elevation of approximately 150 feet above mean sea level
 - All mining and related uses shall be located, developed, and operated in a manner described on the approved plot plan, cross sections, elevations, and the conditions of this permit.
2. Hours of Operation shall be limited to the following:
 - Excavation shall be limited to 6:00 AM to 6:00 PM, Monday through Saturday.
3. Reclamation of the site shall conform to the approved Reclamation Plan. Reclamation shall commence at the end of each phase of mining, with final reclamation completed within two years of the third phase of mining.
4. The project shall comply with standard conditions listed in Planning Commission Resolution No. 97-1.
5. The applicant shall comply with all Federal, State and County Requirements including, but not limited to the San Joaquin Valley Air Pollution Control District, the Regional Water Quality Control Board, California Department of Fish and Game, Office of Mine Reclamation, Merced Irrigation District, Merced County Public Works – Roads Division, and the Merced County Health Department; Environmental Health Division.
6. Pre-construction biological surveys, as outlined in the Mitigated Negative Declaration, shall be completed per California Department of Fish and Game requirements, and results of the surveys shall be forwarded to the County.
7. Prior to exercising the permit, the applicant shall submit the financial assurance of \$11,804. The financial assurance may be in the form of a surety bond, certificate of deposit, letter of credit, or Trust Fund.

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8. Upon completion of the project, all the machinery and equipment associated with the mining operation shall be removed from the property, unless it will be used for the planned reclaimed use of the site.
9. The applicant shall furnish the Planning and Community Development Director with a report describing compliance with the reclamation plan by July 1st of each year. With each report, the permittee shall provide a map to scale, showing current mining progress and reclamation.
10. The Planning and Community Development Director or his designee shall review the reclamation plan status report and inspect the mining operation to determine and assure continuing compliance with the approved reclamation plan and the Conditions of Approval. The applicant shall pay the County the actual cost of conducting inspections, annually or at other times, and shall make available to the Planning and Community Development Director such information necessary for determining compliance. The applicant shall be required to pay an initial conditions monitoring fee and mitigation measures monitoring fee of \$608. Additional fees may be assessed for subsequent inspections as deemed necessary by the County, and shall be billed on a time and materials basis.
11. If the Conditional Use Permit is not used within one year, it shall become automatically void without further action. The Planning Commission may extend the Conditional Use Permit if a request is filed by the applicant prior to its expiration. (Zoning Code Section 18.50.09B).
12. If the use authorized by the Conditional Use Permit is abandoned or discontinued for a period of one year the applicant must file an Interim Management Plan application with the County.
13. During the life of the project, the project sponsor shall comply with the requirements of regional, state, and local agencies with jurisdiction over the project or resources affected by the project.
14. Prior to the sale/transfer/lease of the project site and/or operations, the applicant shall notify the Planning Department of said transaction. The intent of this condition is solely to keep the County apprised of the owner and operator of the site.
15. 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.

Department of Public Works – Roads Division

16. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to determine the potential impact that the project will have on Merced County roadways. This evaluation should take into consideration the truck traffic generated from the project, the truck routes, truck types and weights, as well as the structural integrity of the roadways along the truck routes. Should any roadway be identified that will be significantly impacted by the project (significantly reduced service life, etc.) then the applicant shall pay a "fair share" contribution to the Merced County Road Fund to offset the impact.
17. In lieu of performing a roadway impact evaluation, the applicant may enter into a Roadway Impact Agreement with Merced County. The Roadway Impact Agreement will stipulate that the project applicant shall keep accurate records of all of the loaded heavy trucks that either enter or exit the project site. Once every year, the applicant shall contribute \$2.00 into the Merced County Road Fund for every loaded heavy truck that either enters or exits the site (empty trucks will not be counted). The

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Roadway Impact Agreement will stay in place for twenty (20) years. If the project terminates before twenty years has passed, the Roadway Impact Agreement will become void. The fee for processing a Roadway Impact Agreement is \$200.00.

18. The applicant shall obtain an encroachment permit from the Department of Public Works Road Division to construct an agricultural rural driveway approach at the Turlock Road access point to the project prior to the start of removal of material from the site.

Environmental Health

19. At least one chemical toilet shall be provided for on-site employees.

Merced Irrigation District

20. Mitigation measures shall be followed to protect the Merced River and Dry Creek from any potential contamination generated on the site that could flow by either surface or subsurface means to the Merced River or Dry Creek.

San Joaquin Valley Air Pollution Control District

21. The applicant shall comply with all applicable District rules and regulations as they relate to the project which include and shall not be limited to Regulation VII, and the submittal of a Dust Control Plan and paying the required fees prior to commencing any surface mining activities. Upon receiving approval of the Dust Control Plan by the APCD the applicant shall submit a copy of the approval material to the Planning and Community Development Department.

Department of Water Resources

22. The applicant shall review the State Adopted Plan of Flood Control. If the project encroaches on the adopted flood control plan, and encroachment permit from the Reclamation Board must be obtained prior to initiating any activities.

California Regional Water Quality Control Board

23. Since the project will disturb one acre or more, compliance with the National Pollutant Discharge Elimination System (NPDES) General Order No. CAS000002 for Discharges of Storm Water Associated with Construction Activities is required. The SIC codes of activities requiring coverage are listed in the General Permit. In order to obtain coverage by the General Permit, the proponent shall submit a Notice of Intent (NOI) to comply with the permit, a site map, and appropriate fee to the State Water Resources Control Board and a Storm Water Prevention Plan (SWPPP) must be prepared and retained at the project site.

Mitigation Measures

24. **Agricultural Resources-1.** The Reclamation Plan for the Project shall be modified to incorporate elements of a comprehensive soil resource extraction, maintenance and reintroduction plan. The ultimate goal of the plan will be to ensure the future productivity of the soil resource and its availability for future agricultural cultivation in compliance with the performance standards for prime agricultural land reclamation, Title 14 of the California Code of Regulations, Section 3707 and 3711. At a minimum, the plan shall consist of the following elements:
 - A. Existing Conditions. This element of the plan shall identify the existing soil fertility in terms of pertinent soil physical, chemical, and biological attributes. It will identify the soil attributes that are most able to be maintained during the 10-year life of the mining plan and will be used as the baseline, with which to compare the soil resource following reclamation.

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- B. Soil Harvesting and Transport. This element will identify appropriate soil harvesting and transport methods to limit the compaction of the soil resource, maintain the existing soil profile, and to the extent feasible during transport, ensure the viability of existing soil biota.
 - C. Soil Stockpile Maintenance and Monitoring. This element of the plan will outline performance standards and monitoring procedures for the soil stockpiles over the 10-year life of Project-related mining. In general, this element will identify suitable vegetative species (e.g., legumes) to be planted on the soil stockpiles, monitoring protocols for any periodic analytical analysis determined necessary, watering requirements for the stockpiles, and protocols for pest and invasive species control.
 - D. Reclamation Activities. Following the completion of mining activities, soil tests of the reclaimed sites shall be systematically performed to ensure that the redistributed soil is suitable for an orchard. In addition, the applicant shall complete an agronomic evaluation shall prior to permanent plantings to establish rates of fertilizer and herbicide applications. (MM)
25. **Biology-1a - Valley Elderberry Longhorn Beetle.** Prior to the commencement of the third phase of mining, the one elderberry shrub that cannot be avoided by the project shall be transplanted following USFWS (1999) guidelines. If the listed status of the VELB changes prior to the commencement of the third phase of mining, this mitigation shall be modified, as deemed appropriate by the County, to respond the changed regulatory requirements, if any. (MM)
26. **Biology-1b – Swainson’s Hawk.** In order to avoid impacts to nesting Swainson’s hawk, pre-construction surveys shall be conducted by a qualified biologist during the breeding season (March 1 to August 15), before the start of any construction activities. Similar to Mitigation Measure 4.13.2d the Applicant shall have a qualified biologist to conduct surveys in habitat suitable for nesting raptors. For Swainson’s hawk, however, the survey area includes one-half-mile from any construction activity, in accordance with CDFG guidance.
- If nesting Swainson’s hawks are detected within the survey area, the Applicant shall maintain a one-half-mile buffer around the Swainson’s hawk nest. No construction activities shall be allowed within this buffer during active nesting. Buffers shall be marked in the field with stakes and flagging at all potential access points to the buffer. Buffers shall remain in place until the nest is no longer active, as determined by a qualified biologist. If a buffer distance needs to be reduced, a qualified biologist will determine if the reduction is appropriate, and what the reduced buffer distance will be. A reduction in buffer distance must be approved by the Applicant, who may consult with CDFG. If the buffer is reduced, a qualified biologist shall be retained to monitor the nest during construction activity occurring within one-half-mile of the nest. The biologist shall inform the Applicant’s construction manager immediately if construction activities within the half mile buffer threaten to cause the adults to abandon the nest. The biologist shall submit the locations of nests detected during the surveys to the CNDDB. (MM)
27. **Biology-1c – San Joaquin Kit Fox.** The Applicant shall perform an early evaluation of the Project site according to USFWS protocol for San Joaquin kit fox surveys in the northern range (USFWS, 1999a), as updated. This protocol includes consultation with USFWS. If USFWS concludes that the Project would not affect San Joaquin kit fox habitat, no further mitigation would be required for the Phase. If USFWS determines that the Phase may affect San Joaquin kit fox habitat, it may require the Applicant to conduct protocol-level surveys for San Joaquin kit fox and to implement avoidance or minimization measures in addition to the mitigation required here.

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If, required by USFWS, the applicant shall conduct pre-construction surveys per Standardized Recommendations for the Protection of the San Joaquin Kt Fox Prior to or During Ground Disturbance (USFWS 1999b), as updated. Potential dens (including man-made structures) and known dens shall be protected by minimum buffers of 50 feet and 100 feet, respectively. If an occupied or unoccupied natal den is detected, no construction shall occur for the Phase until the USFWS has been contacted and authorization to proceed has been obtained by the applicant.

The applicant shall, at a minimum, implement the following measures, unless directed otherwise through consultation with the USFWS:

- Restrict project-related vehicle speed to 20 mph on project roads.
- Cover all excavated, steep-walled holes or construction trenches more than 2 feet deep at the close of each working day by plywood or similar materials or provide such holes or trenches with one or more escape ramps constructed of earth fill or wooden planks, inspect such holes or trenches for trapped San Joaquin kit fox prior to filling.
- Inspect all construction pipes, culverts, or similar structures with a diameter of 4 inches or greater that are stored at a construction site for one or more overnight periods for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in any way.
- Contain all food-related trash items in closed containers and remove food-related trash at least once a week from the project site.
- No firearms shall be allowed on the project site.
- No pets shall be permitted on the project site.
- Use of rodenticides and herbicides on the project site shall be restricted to the use of zinc phosphide, in cases where it is necessary to protect public health and safety.
- A representative shall be appointed by the project proponent who will be the contact source for any employee or contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped individual. The representative will be identified during the employee education program. The representative's name and telephone number shall be provided to the Service.
- An employee education program shall be conducted and shall consist of a brief presentation by persons knowledgeable in kit fox biology and legislative protection to explain endangered species concerns to contractors, their employees, and agency personnel involved in the project. The program shall include the following: a description of the San Joaquin kit fox and its habitat needs; a report of the occurrence of kit fox in the project area; an explanation of the status of the species and its protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation. A fact sheet conveying this information shall be prepared for distribution to the above-mentioned people and anyone else who may enter the project site.
- In the case of trapped animals, escape ramps or structures shall be installed immediately to allow the animal(s) to escape, or the Service shall be contacted for advice. (MM)

28. **Biology-1d – Tricolored Blackbird.** In order to avoid impacts to nesting tricolored blackbirds, pre-construction surveys shall be conducted in potential breeding habitat within 500 feet of construction by a qualified biologist during the breeding season (March 1 to July 15), before the start of any construction activities. The Applicant

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shall have a qualified biologist to conduct surveys in habitat suitable for tricolored colonies. Any construction within the Project study area shall avoid active tricolored blackbird colonies by a 500-foot buffer. If warranted by site conditions (as evaluated and documented by a qualified biologist), this buffer may be reduced with the approval of the County, which may consult with CDFG. (MM)

29. **Biology-1e – Burrowing Owl.** The following mitigation will be implemented to avoid potential impacts from Project construction activities:
- A. A pre-construction survey of suitable habitat and buffers will be conducted within 30 days prior to construction to ensure no additional burrowing owls have established territories since the initial surveys. If ground-disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the site shall be resurveyed.
 - B. No disturbance shall occur within 75 meters (about 250 feet) of an occupied burrow during the breeding season (February 1 to August 31) or within 50 meters (about 160 feet) during the non-breeding season.
 - C. Foraging habitat contiguous with occupied burrow sites shall be permanently preserved, where feasible, at a ratio of 6.5 acres per pair of breeding or single unpaired resident burrowing owl; this is equivalent to a 100-meter (about 300-foot) foraging radius around the burrow. The protected habitat shall be adjacent to occupied burrowing owl habitat and its configuration shall be approved by a qualified biologist.
 - D. When destruction of occupied burrows is unavoidable, existing unsuitable burrows shall be enhanced (enlarged or cleared of debris) or new burrows shall be created by installing artificial burrows at a ratio of 2:1 on the protected site, in consultation with CDFG.
 - E. If owls must be moved away from the disturbance area, passive relocation during the non-breeding season with one-way doors shall be used. Owls shall be excluded from burrows in the immediate impact zone and within a 50-meter (about 160 foot) buffer zone by installing one-way doors in burrow entrances. One-way doors shall be left in place 48 hours to insure owls have left the burrow before excavation. Two natural or artificial burrows shall be provided for each burrow in the Project study area that will be rendered biologically unsuitable. The Project study area shall be monitored daily for one week to confirm owl use of the new burrows before excavating burrows in the immediate impact zone. Burrows shall be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe shall be inserted into the tunnels that become established prior to excavation to maintain an escape route for any animals within the burrow. Relocation shall be performed in consultation with CDFG and conducted by a biologist with appropriate authority to implement this measure. (MM)
30. **Cultural-1.** If potentially significant archaeological resources are discovered during ground-disturbing activities associated with Project preparation, construction, or completion, all work within 100 feet of the find shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate mitigation measures in consultation with Merced County and other appropriate agencies and individuals. If significant resources are discovered, a formal evaluation using CEQA criteria will be conducted to determine if further study, test excavations, or data recovery procedures are necessary. (MM)
31. **Cultural-2a.** To ensure the protection of burials that may be located outside the fenced area, the Project Applicant shall establish a 100 foot buffer from the existing cemetery where excavation will be restricted. The Applicant shall include appropriate

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fencing along the buffer to provide a clearly visible demarcation for equipment operators. (MM)

32. **Cultural-2b.** In the event that human remains and/or cultural materials are found in other areas of the Project site, all project-related construction shall cease within a 100 ft radius of the find. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California, the following shall occur:
 - A. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Merced County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. (MM)
33. **Geology-1.** The Project's erosion control plan (ECP) shall implement multiple BMPs to provide effective erosion and sediment control along perimeter slopes and access road that do not drain into the mining excavation(s). Erosion control measures such as silt fences, staked straw bales/wattles, silt/sediment basins and traps, check dams, geofabric, sandbag dikes, and temporary revegetation or other ground cover will be employed for disturbed areas. At minimum, permanent revegetation applications shall be complete by October 15th to allow for plant establishment. (MM)
34. **Hazards-1.** The Applicant shall prepare and submit a Hazardous Materials Business Plan for the Merced County Division of Environmental Health's approval prior to implementation of the Project. The Plan will include a spill prevention and containment component that identifies appropriate spill containment and counter control measures in the event of a spill. (MM)
35. **Hazards-2.** Work crews shall be required to carry sufficient fire suppression equipment to ensure that any fire resulting from construction activities is immediately extinguished. The Project Applicant shall ensure, through the enforcement of contractual obligations, that during excavation and reclamation activities, staging areas shall be cleared of dried vegetation or other materials that could serve as fire fuel. Erosion control measures shall be placed as appropriate. (MM)
36. **Hydrology-1a.** The Applicant shall include, as part of the final project design elements, runoff control BMPs to minimize stormwater runoff caused by Project-related improvements to the site access road. All drainage outlets shall include energy dissipater technologies (e. g. rip-rap, gabions, etc.) to minimize runoff velocity and supplemental down-slope protection (e. g. erosion control blankets, fiber rolls, etc.). The construction of the BMPs shall reasonably follow the design and construction schedule of the Project as a whole and the proper implementation of these measures is to be the responsibility of the Applicant and their contractors. (MM)
37. **Hydrology-1b.** The Applicant shall prepare design specifications for the proposed containment berms to ensure that sufficient storage is provided for up to a 10 year, 24 hour storm event. A detailed maintenance schedule shall be included for the containment berms to ensure for periodic removal of sediment, vegetation, and debris that may reduce the facility's storage capacity. (MM)

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38. **Traffic-1.** The Applicant shall enter into a Roadway Impact Agreement (RIA) with the County and agree to fund two dollars per loaded truck. As part of the RIA, the Applicant shall agree to limit to the extent feasible the use of heavy trucks and other construction transport vehicles during the busiest commute hours, including 7 to 8 a.m. and 5 to 6 p.m. on weekdays. (MM)
39. The mining limit setback from the eastern property boundary shall be 50 feet. A vegetated berm, between 6 and 8 feet high, shall be constructed and placed within this setback. The setback shall be clearly marked, and the vegetative cover shall be maintained throughout the life of the project with an adequate irrigation system. Vegetation used shall be of the same species as used on the lower topsoil/runoff containment berms (buckwheat). Vegetation must meet a minimum 80% survival, and shall be replanted as necessary. The berm shall be removed upon completion of final reclamation of the site.

B. MINOR SUBDIVISION APPLICATION No. MS07-032 - David & Sherrie Van Vliet - To divide a 115.46 acre parcel into four parcels and a remainder parcel: Parcel 1 = 20.0 acres, Parcel 2 = 20.62 acres, Parcel 3 = 20.0 acres, Parcel 4 = 20.0 acres, and remainder parcel = 34.84 acres. The project is located on the north side of Keyes Road, 2,000 feet west of Fields Road in the Snelling area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. BG**

Planner Brian Guerrero presented the Staff Report and Recommendations dated December 5, 2007.

The public hearing opened at 10:55 a.m.

Tom Grave, Sueno Ct., would like to see the added portion of the staff report. He states that the Snelling MAC didn't look at this project, is that because it doesn't fall in their jurisdiction? Mr. Guerrero explained that this project is outside of the boundary of the Snelling area. Robert Lewis, Development Services Director, states that staff is not opposed to the project, staff thinks it may have warrant for an Initial Study to be done. Mr. Grave just wanted clarification on staffs recommendation. He also asked if this project was approved would a CEQA review study be required. Mr. Lewis answered that a CEQA determination is being made currently, it could be for an Initial Study or it could be for an exemption and then project level review. Mr. Grave asked if a home could then be placed on each parcel, by law? Mr. Lewis stated yes. Mr. Grave questioned the average parcel size in that area. Bob Gabriele, County Counsel, explained that the chart presentation permits each reader to apply a variety of averages. There is an additional or average that can be computed. The chart avoids misleading the reader. It is a good thing that the chart shows average parcel sizes so an evaluation can be done.

The public hearing closed at 11:04 a.m.

Commissioner Lashbrook asked if this project is in the Williamson Act. Mr. Guerrero states that this project is not in the Williamson Act.

Chairman Sloan opened the public hearing again at 11:06 a.m. so that he can continue this application to the December 19, 2007 meeting, to allow additional time to make a decision on the CEQA determination on the three possible courses of action from the handout given to the Commissioners today.

Bob Gabriele, Deputy County Counsel, instructed to have Rudy Buendia, the absent Commissioner today, listen to the Planning Commission tapes to get updated in

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order to make a decision on the December 19th meeting and become a full participant.

This application has been continued to the December 19, 2007 Planning Commission meeting.

VI. CORRESPONDENCE

None

VII. GENERAL BUSINESS

There will be a meeting today at 2pm to meet with the Consultants for the last series of the General Plan Update Focus Groups. There are plans being made to have another joint study session with the Board of Supervisors/Planning Commission on the General Plan update in late January or early February 2008.

VIII. DIRECTOR'S REPORT

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 11:11 a.m.