

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF JUNE 12, 2013

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of June 12, 2013, are available online at www.co.merced.ca.us/planning/plancomarchive.html.

I. CALL MEETING TO ORDER

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:00 a.m., on June 12, 2012, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Mark Erreca - Chairman
 Commissioner Rich Ford - Vice Chairman
 Commissioner Greg Thompson

Staff Present: Mark Hendrickson, Interim Development Services Director
 William Nicholson, Assistant Development Services Director
 Kim Anderson, Recording Secretary
 Oksana Newmen, Planner III

Legal Staff: Michael Calabrese, Deputy County Counsel

Commissioners Absent: Commissioner Lynn Tanner
 Commissioner Jack Mobley

III. APPROVAL OF MINUTES

MOTION: THOMPSON – FORD AND CARRIED BY A VOTE OF 3 – 0, THE COMMISSION APPROVED THE MINUTES FROM APRIL 24, 2013.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. MINOR MODIFICATION No. MM13-007 TO CONDITIONAL USE PERMIT No. CUP01-021 - George Reed – Interim Management Plan for Hardin Ranch - Mine ID # 91-24-0043: To approve an Interim Management Plan to allow for management of an idle aggregate mine. The property is located on the west side of Snelling Road, 600 feet north of Robinson Road in the Snelling area. The parcel is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural) (23 acres). **ON**

Recommendation: The actions requested are to:

- 1) Determine that the Interim Management Plan is not considered a 'project' under Public Resources Code section 2770 (h)(1) and therefore not subject to CEQA review, and;
- 2) Approve Minor Modification No. MM13-007 to Conditional Use Permit No. CUP01-021 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

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Planner Oksana Newmen presented the Staff Report and recommendations of approval dated June 12, 2012.

The public hearing opened at 9:05 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:06 a.m.

MOTION: M/S FORD – THOMPSON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION DETERMINE THAT THE INTERIM MANAGEMENT PLAN FOR MINOR MODIFICATION No. MM13-007 TO CONDITIONAL USE PERMIT No. CUP01-021 IS NOT CONSIDERED A 'PROJECT' UNDER PUBLIC RESOURCES CODE SECTION 2770 (H)(1) AND THEREFORE NOT SUBJECT TO CEQA REVIEW.

MOTION: M/S FORD – THOMPSON, AND CARRIED BY A VOTE OF 3 – 0, THE COMMISSION APPROVES MINOR MODIFICATION No. MM13-007 TO CONDITIONAL USE PERMIT No. CUP01-021, SUBJECT TO THE 12 PROJECT FINDINGS AND 6 CONDITIONS IN THE STAFF REPORT TO READ AS FOLLOWS:

Planning & Community Development Department

1. The Minor Modification is granted to allow the applicant to implement the Interim Management Plan. The IMP shall implement erosion control, dust control, water quality control, weed abatement, hazardous material containment, security of stored equipment, and financial assurances, as indicated in the May 2013 IMP document, attached.
2. The application shall comply with all applicable regulations administered by local, county, state, and federal government.
3. All conditions of approval from previous discretionary permits associated with the subject property shall remain in effect, including Conditional Use Permit No. CUP01-021.

County Counsel

4. George Reed, Inc. must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "County") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Minor Modification No. MM13-007 ("project") whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of George Reed, Inc.

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The liability of George Reed, Inc. for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of George Reed, Inc., its employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against County. George Reed, Inc. will on request and at its expense, defend any action suit or proceeding arising hereunder.

This term and condition and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

Surface Mining and Reclamation Act (SMARA) Regulations

5. The IMP will expire within five (5) years of this approval date. The operator may request to extend the IMP for a period of five (5) years, or the County may require the reclamation process be completed in accordance with the approved IMP. Extension of the IMP will require findings that the operator has complied fully with the IMP.

- B. MINOR MODIFICATION No. MM13-006 TO CONDITIONAL USE PERMIT No. CUP2870 - George Reed – Interim Management Plan - Blasingame Mine - Mine ID # 91-24-0008: To approve an Interim Management Plan to allow for management of an idle aggregate mine. The property is located on the east side of Highway 59, 1.2 miles west of Snelling Road in the Snelling area. The parcel is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural) (33 acres). ON**

Recommendations: The actions requested are to:

- 1) Determine that the Interim Management Plan is not considered a 'project' under Public Resources Code section 2770 (h)(1) and therefore not subject to CEQA review, and;
- 2) Approve Minor Modification No. MM13-006 to Conditional Use Permit No. CUP2870 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated June 12, 2012.

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The public hearing opened at 9:10 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:11 a.m.

MOTION: M/S FORD – THOMPSON, AND CARRIED BY A VOTE OF 3 - 0 , THE PLANNING COMMISSION DETERMINED THAT THE INTERIM MANAGEMENT PLAN FOR MINOR MODIFICATION No. MM13-006 TO CONDITIONAL USE PERMIT No. CUP2870 IS NOT CONSIDERED A 'PROJECT' UNDER PUBLIC RESOURCES CODE SECTION 2770 (H)(1) AND THEREFORE NOT SUBJECT TO CEQA REVIEW.

MOTION: M/S FORD – THOMPSON, AND CARRIED BY A VOTE OF 3 – 0, THE PLANNING COMMISSION APPROVES MINOR MODIFICATION NO. MM13-006 TO CONDITIONAL USE PERMIT NO. CUP2870 BASED ON THE 12 PROJECT FINDINGS, AND SUBJECT TO THE 6 CONDITIONS OF APPROVAL PRESENTED IN THE STAFF REPORT AS FOLLOWS:

Planning & Community Development Department

1. The Minor Modification is granted to allow the applicant to implement the Interim Management Plan. The IMP shall implement erosion control, dust control, water quality control, weed abatement, hazardous material containment, security of stored equipment, and financial assurances, as indicated in the May 2013 IMP document.
2. The application shall comply with all applicable regulations administered by local, county, state, and federal government.
3. The operator shall submit an updated bond in the amount of \$888,375 within 60 days of the approval of this IMP.
4. All conditions of approval from previous discretionary permits associated with the subject property shall remain in effect, including Conditional Use Permit No. CUP2870 and CUP3622.

County Counsel

5. George Reed, Inc. must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "County") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Minor Modification No. MM13-006 ("project") whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of George Reed, Inc. The liability of George Reed, Inc. for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of George Reed,

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Inc., its employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against County. George Reed, Inc. will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

Surface Mining and Reclamation Act (SMARA) Regulations

6. The IMP will expire within five (5) years of this approval date. The operator may request to extend the IMP for a period of five (5) years, or the County may require the reclamation process be completed in accordance with the approved IMP. Extension of the IMP will require findings that the operator has complied fully with the IMP.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

None

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:13 a.m.