

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF JUNE 24, 2015

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of June 24, 2015, 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 24, 2015, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Mark Erreca
 Commissioner Greg Thompson
 Commissioner Jack Mobley – Acting Chair
 Commissioner Rich Ford
 Commissioner Robert Acheson

Staff Present: Mark Hendrickson, Director
 Oksana Newmen, Deputy Director Planning
 Ana Muniz-Laguna, Recording Secretary

Legal Staff: Michael Linden, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. Continued Item from the May 13, 2015 Regular Meeting - Conditional Use Permit No. CUP15-006 -Verizon Wireless - To construct and operate a telecommunication facility consisting of a 103 foot monopole and equipment building. The project is located at the north side of West Third Avenue, approximately 2,000 feet east of North Edminister Road in the Stevinson area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **SS**

Recommendations: The actions requested are to:

- 1) Find the project exempt from CEQA review under Section 15303 "New Construction or Conversion of Small Structures" of the CEQA guidelines, and;
- 2) Approve Conditional Use Permit Application No. CUP15-006 based on the project findings and subject to the conditions of approval presented in the staff report.

Planner Sandy Saechao presented the Staff Report and recommendations of approval dated June 24, 2015.

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

No one spoke in favor of or opposition to this application.

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

MERCED COUNTY PLANNING COMMISSION

Minutes – June 24, 2015

Page 2

MOTION: M/S ERRECA - THOMPSON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS CONDITIONAL USE PERMIT No. CUP15-006 FROM CEQA.

MOTION: M/S ERRECA - ACHESON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JUNE 24, 2015 AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP15-006 SUBJECT TO THE 14 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Department

1. Conditional Use Permit No. CUP15-006 grants the construction and operation of a wireless telecommunication facility consisting of a stealth monopole 105 feet in height with 12 panel antennas and two microwave antennas, and outdoor equipment within a 600 square foot area on an 18.82 acre parcel. The wireless telecommunication facility shall be developed and operated consistently with the approved plot plan, elevations, and operational statement. Minor Modifications to this approval may be reviewed and approved by the Director.
2. Applicant/property owner shall comply with all Federal, State, and Local agencies regulations.
3. For the purpose of condition monitoring, an inspection fee in the amount of **\$243** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of the inspection.
4. The applicant shall post an acceptable type of financial security with the County to ensure proper maintenance of the facility and pay for its removal if it is abandoned, or the permit expires. This security shall be for not less than one and a half times the cost of facility removal.
5. The applicant shall provide for the prompt removal of any graffiti that may be painted or otherwise marked on the equipment or structures approved by this permit.
6. The monopole shall allow co-location to other service providers upon request.
7. The project site shall be maintained in a condition that will not be dangerous or injurious to neighboring property. Weeds, rubbish and other dangerous or injurious materials are a public nuisance and are required to be abated under MCC Section 9.25.
8. Verizon Wireless c/o SAC Wireless 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

MERCED COUNTY PLANNING COMMISSION

Minutes – June 24, 2015

Page 3

any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with the Conditional Use Permit No. CUP15-006 (“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 Verizon Wireless c/o SAC Wireless. The liability of Verizon Wireless c/o of SAC Wireless 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 Verizon Wireless c/o SAC Wireless, 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. Verizon Wireless c/o SAC Wireless will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition 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.

Public Works/Roads Division

9. The applicant shall construct an agricultural paved driveway approach to the project site on Third Avenue to prevent further unraveling of the edge of pavement. An Encroachment Permit shall be obtained from the Merced County Department of Public Works before any construction starts.

Public Works/Building & Safety Division

10. A hired architect or engineer licensed in the state of California must draw the plans and provide any structural calculations for the proposed tower facility. The plans must be submitted to the Building Division for approval and a permit before any construction can begin. Required submittals must consist of:
 - a. Two (2) sets of plans and two (2) sets of calculations/reports on paper.
 - b. One set of all plans and calculations/reports in an electronic format (either on CD/Disk, flash drive, or e-mail).

MERCED COUNTY PLANNING COMMISSION

Minutes – June 24, 2015

Page 4

11. All proposed non-residential structures must first obtain a soils report completed by a licensed geotechnical engineer. That report must be reviewed by the design engineer to incorporate any mitigating measures into the design drawings.

Merced County Fire Department

12. If security gates are installed, they shall be approved by the Fire Department. As required, the applicant shall install and maintain a Merced County Coded “Knox” key switch or “Knox” padlock, whichever is most appropriate in relation to your needs.
13. The applicant shall install Reflective Building Identification that meets Fire Department Design Specifications.

Merced County Division of Environmental Health

14. The applicant shall maintain an accurate hazardous material business plan with Merced County Division of Environmental Health and maintain compliance with all applicable hazardous material regulations.

- B. MINOR SUBDIVISION APPLICATION No. MS15-005 - Estate of Jeremy Cook** - To divide a 0.53 Acre residential parcel into 2 parcels for estate planning purposes, resulting in parcel sizes of: Parcel 1 = .22 Acres and Parcel 2 = .31 Acres, on property located at the northeast corner of West August Road and North Hillside Drive. The property is designated Delhi Urban Community - Medium Density Residential and zoned R-1-5000 (Single Family Residence). **BG**

Recommendations: The actions requested are to:

- 1) Recommend the Planning Commission find the project exempt from CEQA review under Section 15315 – “Minor Land Divisions” of the CEQA Guidelines, and;
- 2) Recommend the Planning Commission approve Minor Subdivision No. MS15-005 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated June 24, 2015.

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

No one spoke in favor of or opposition to this application.

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

MOTION: M/S ERRECA - THOMPSON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION APPLICATION No. MS15-005 FROM CEQA.

MOTION: M/S ERRECA - THOMPSON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JUNE 24, 2015, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES MINOR SUBDIVISION APPLICATION No. MS15-005 SUBJECT TO THE 7 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant shall comply with all applicable County, State and Federal regulations.
3. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.

Public Works Road Division

4. Pursuant to Chapter 16.08 of the Merced County Code, the Applicant shall install Level 2 Improvements along the August Avenue and Hillside Drive frontage of their property which includes construction of curb, gutter, sidewalk and pavement widening; this obligation may be satisfied through executing a Deferment of Construction Agreement.
5. Right-of-Way dedication is required to be shown on the parcel map as follows:
 - a. The owner shall dedicate an additional 10 feet of right-of-way along the August Avenue and Hillside Drive frontage of the property.
 - b. The owner shall dedicate a right-of-way radius on the southwest corner of their property to accommodate construction of an ADA-compliant curb ramp.
 - c. The owner shall dedicate a 10-foot wide Public Utility Easement along the August Avenue and Hillside Drive frontage of the property.

Fire Department

6. The applicant shall install Reflective Building Identification that meets Fire Department Design Specifications.

County Counsel

7. INDEMNITY AND HOLD HARMLESS AGREEMENT:

JEREMY COOK has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, 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 JEREMY COOK.

JEREMY COOK liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of JEREMY COOK, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, 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 claim, petition, or allegation of liability against County. JEREMY COOK will on request and at its

MERCED COUNTY PLANNING COMMISSION

Minutes – June 24, 2015

Page 6

expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following project approval, modification, or denial.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

- C. Continued Item from the May 27, 2015 Regular Meeting - ZONE CHANGE No. ZC03-019 AND VESTING MAJOR SUBDIVISION No. MAS03-018 - "BUENA VISTA I" - John Sessions** - To rezone four parcels totaling 60 acres from A-1 (General Agricultural) to R-1-5000 (Single Family Residential) and M-1 (Light Manufacturing), and to create a 211 lot residential subdivision with lot sizes between 5,000 and 6,000 square feet, a 14.3 acre Business Park as well as a 2.1 acre neighborhood park. The property is located on the northwest corner of E. Childs Avenue and N. Plainsburg Road in the Urban Community of Planada. The parcel is designated Planada Community Plan - Low Density Residential and Business Park and zoned A-1 (General Agricultural). **ON**

Recommendations: The actions requested are to:

- 1) Consider recommending the Board of Supervisors certify the Environmental Impact Report based upon the CEQA findings listed in the Staff Report; adopt the Statement of Overriding Considerations, Findings of Fact, and Mitigation and Monitoring Reporting Program; and;
- 2) Consider recommending the Board of Supervisors approve Zone Change No. ZC03-019 and Major Subdivision No. MAS03-018 based upon the project findings and subject to the recommended conditions of approval found in the Staff Report.

Planner Oksana Newmen presented the staff report and recommendations of approval dated June 24, 2015. A comment letter was received from Marsha Burch on behalf of Valley Land Alliance and was distributed to the Planning Commission.

The public hearing was opened at 9:25 a.m.

John Sessions, applicant, thanked staff and explained the market conditions. They have built 100 houses in Planada in the last 15 years. It's unlikely that there will be changes to Plainsburg/Planada area. He asked for approval of this application saying it is compatible with the Community Plan. He is available for any questions.

Luis Flores, School Board for City of Livingston, said he is concerned with this project. The timeline is his main concern and why is it being presented now? Page 15 of the staff report shows a reference to appropriate conversation entity; who would be that potentially? He is concerned about the water mitigation. He feels this is unnecessary housing and an advocate for keeping farmland. Why now?

Amanda Priest, Merced County Farm Bureau, said there were a lot of inconsistencies on the numbers. The housing in the DEIR said 221 and the Final EIR it said 211. She said there was no date as to when water meters would be put in. The errata said there were some climate changes. We have been in a drought for a few years and the study doesn't address that change. The landowners need to take into account on how they are going to handle the lack of groundwater because tables are dropping throughout the County. The document addresses the current use of trees in the 60 acre area. When this goes from agriculture to a residential, it's a permanent change. She submitted her letter in for the official record.

MERCED COUNTY PLANNING COMMISSION

Minutes – June 24, 2015

Page 7

Jean Okuye, Livingston, said it costs more money for the infrastructure with houses. She is on the Merced County Strategy Committee and we are the first Counties to require study due to air quality. We need to reduce the greenhouse gas emissions. We are one of two Counties that have not reduced them. Vehicle miles traveled by car is a big problem. We are destroying our environment. 2009 is too long ago and send this document back to be updated.

Mark Hendrickson said staff recommends that the public hearing remain open. This application will be continued to an unknown Planning Commission hearing to confer and provide a response to each issue that was raised today.

County Counsel Michael Linden agreed.

MOTION: M/S THOMPSON – ERRECA, AND UNANIMOUSLY CARRIED, THE COMMISSION CONTINUES THIS APPLICATION TO AN UNKNOWN FUTURE PLANNING COMMISSION HEARING.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

None

VIII. COMMISSIONERS COMMENTS

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:40 a.m.