

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF OCTOBER 14, 2015

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of October 14, 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 October 14, 2015, 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
 Commissioner Robert Acheson

Staff Present: Mark Hendrickson, Director
 Oksana Newmen, Deputy Director Planning
 Ana Muniz-Laguna, Recording Secretary
 Jennifer Borobia, Planner I
 Sandy Saechao, Planner I

Legal Staff: Michael Linden, Deputy County Counsel

Commissioners Absent: Commissioner Greg Thompson – Vice Chairman
 Commissioner Jack Mobley

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

- A. **MINOR SUBDIVISION No. MS15-011 – 14 Mile Ranch, LP** - To divide 1 parcel totaling 637.13 acres into 2 parcels: Parcel 1 = 324.19 acres and Parcel 2 = 312.94 acres. The project site is located at the Southwest corner of N. Washington Blvd and W. Atwater-Jordan Road in the Livingston area. The property is designated Agricultural and zoned A-1 (General Agricultural). **JB****

Recommendation: The actions requested are to:

- 1) Find the project exempt from CEQA review under Section 15183, "Projects Consistent with a Community Plan or Zoning" of the CEQA Guideline and;
- 2) Approve Minor Subdivision Application No. MS15-011 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Jennifer Borobia presented the Staff Report and recommendations of approval dated October 14, 2015.

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.

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MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION No. MS15-011 FROM CEQA.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED OCTOBER 14, 2015, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION No. MS15-011 SUBJECT TO THE 4 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. A notice shall be placed on the face of the parcel map stating that in order to provide for the continued possible delivery of irrigation water to each parcel, easements shall be provided as needed for each parcel to have direct access to Lone Tree Mutual Water Company irrigation facilities.
3. The applicant shall comply with all applicable County, State and Federal regulations.

County Counsel

4. INDEMNITY AND HOLD HARMLESS AGREEMENT:

NORMAN MONTAGUE 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 NORMAN MONTAGUE.

NORMAN MONTAGUE's 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 NORMAN MONTAGUE, 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. NORMAN MONTAGUE will on request and at its 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.

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- B. CONDITIONAL USE PERMIT No. CUP15-013 -Verizon Wireless** - To construct and operate a telecommunication facility consisting of a 130 foot monopole and outdoor equipment. The project is located on the east side of Deep Well Road, approximately 575 feet east of Highway 152 in the Dos Palos area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **SS**

Recommendation: 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. CUP15-013 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 October 14, 2015.

The public hearing opened at 9:15 a.m.

Daniel Azevedo, property owner near the proposed cell tower, said his main argument is he wants to sell his property for his son to live there and a real estate agent said the cell tower installation would affect the sale of the property because people don't want to live near a cell tower.

Ryan Beaumont, representative for Verizon Wireless, said a EME report was done for the tower and it is below the FCC guidelines for radio emissions. They have studies that it does not affect property values in the area from San Jose, CA.

The public hearing closed at 9:19 a.m.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION EXEMPTS CONDITIONAL USE PERMIT No. CUP15-013, FROM CEQA.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED OCTOBER 14, 2015, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES CONDITIONAL USE PERMIT No. CUP15-013 SUBJECT TO THE 15 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Department

1. Conditional Use Permit No. CUP15-013 grants the construction and operation of a telecommunication facility consisting of a stealth monopole 130 feet in height with antennas and outdoor equipment within a 2,500 square foot area on a 23.47 acre parcel. The 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.

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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 install a chain link fence with slats to screen infrastructure and 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. Prior to issuance of a Building Permit, the applicant shall provide plans showing a warning light on top of the monopole in order to alert aircraft flying in the area.
9. 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 any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with the Conditional Use Permit No. CUP15-013 ("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 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

10. The applicant shall construct an agricultural paved driveway approach to the project site on Deep Well Road to access the project site. An Encroachment Permit shall be obtained from the Merced County Department of Public Works before any construction starts.

Public Works/Building & Safety Division

11. 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).
12. 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

13. 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.
14. The applicant shall install Reflective Building Identification that meets Fire Department Design Specifications.

Merced County Division of Environmental Health

15. 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.

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 9:23 a.m.