

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF AUGUST 10, 2016

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of August 10, 2016, 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 August 10, 2016, 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 Greg Thompson - Vice Chairman
 Commissioner Jack Mobley
 Commissioner Robert Acheson

Staff Present: Mark Hendrickson, Director
 Kim Lewallen, Recording Secretary
 Brian Guerrero, Planner III
 Jennifer Borobia, Planner I

Legal Staff: Tom Ebersole, Deputy County Counsel

Commissioners Absent: Commissioner Ford

Director Mark Hendrickson noted that a memo was handed out to the Planning Commissioners. It reads as follows:

Previously, Staff has required a condition of approval on minor subdivision applications to place a note on the parcel map stating that no new homes would be allowed on any of the newly created parcels. This was required to ensure that the subdivision of land in agricultural zones would not create a significant cumulative impact by allowing the construction of homes on agricultural parcels, consistent with the Merced County 2030 General Plan Update Program EIR. Staff is proposing modification to the condition of approval to state what would be needed if an applicant proposes to construct a new home in the future on property that has been subdivided. Staff is requesting the condition of approval to read the following:

A notice shall be placed on the face of the parcel map stating that there is no right to construct new (or additional) residences on any of the parcels created through Minor Subdivision No. MS16-xxx. In the future, if a new residence is proposed, a modification to this condition of approval may be processed through a map modification application along with a conditional use permit application consistent with Policy AG-3.12 of the Agricultural Element of the General Plan, (or any subsequent policy), and with compliance under the California Environmental Quality Act.

This revised language would be applied to Minor Subdivision Application Numbers MS16-006, MS16-007 and MS16-009 on today's Commission agenda.

III. APPROVAL OF MINUTES

MOTION: M/S ACHESON – MOBLEY, AND CARRIED BY A VOTE OF 4 – 0, THE COMMISSION APPROVES THE MINUTES FROM THE JULY 13, 2016 AND JULY 27, 2016 MEETINGS.

IV. CITIZEN COMMUNICATIONS

None

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V. PUBLIC HEARINGS

- A. MINOR SUBDIVISION APPLICATION No. MS16-007 - Matthew Kahl** - To subdivide a 74.34 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 34.04 acres and Parcel 2 = 43.30 acres, with no new homes proposed. The project site is located at the southwest corner of Plainsburg Road and Mariposa Way in the Merced area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **Continued from the July 27, 2016 hearing. JB**

Recommendations: The actions requested are to:

- 1) Determine that no subsequent environmental review is required in compliance with Section 15162 “Subsequent EIRs and Negative Declarations” of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report; and
- 2) Approve Minor Subdivision Application No. MS16-007 based on the project findings and subject to the conditions of approval found in this Staff Report.

Planner Jennifer Borobia presented the Staff Report and recommendations of approval dated August 10, 2016.

The public hearing opened at 9:08 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:09 a.m.

MOTION: M/S THOMPSON - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINES FOR MINOR SUBDIVISION APPLICATION NO. MS16-007, THAT NO SUBSEQUENT ENVIRONMENTAL REVIEW IS REQUIRED IN COMPLIANCE WITH SECTION 15162 “SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS” OF THE CEQA GUIDELINES BASED UPON THE ANALYSIS IN THE 2030 MERCED COUNTY GENERAL PLAN PROGRAM ENVIRONMENTAL REPORT.

MOTION: M/S THOMPSON - ACHESON, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED AUGUST 10, 2016, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION APPLICATION No. MS16-007 SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT WITH THE MODIFICATION TO CONDITION #2 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 there is no right to construct new (or additional) residences on any of the parcels created through Minor Subdivision No. MS16-007. In the future, if a new residence is proposed, a modification to this condition of approval may be processed through a map modification application along with a conditional use permit application consistent with Policy AG-3.12 of the Agricultural Element of the General Plan, (or any subsequent policy), and with compliance under the California Environmental Quality Act.

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3. Prior to parcel map recording, the applicant is to provide a recorded well access ("Shared Well") agreement between the owners of the two properties. If the parcels will be owned by the same party at the time of map recording, a note shall be placed on the parcel map indicating that a Shared Well agreement will be required at the time of sale of either parcel. An easement for well access shall be indicated on the map.
4. The applicant shall comply with all applicable County, State and Federal regulations.

County Counsel

5. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

KITT KAHL 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 KITT KAHL .

KITT KAHL '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 KITT KAHL , 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. KITT KAHL 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.

Fire Department

6. The applicant shall install Reflective Building Identification that meets Fire Department Design Specifications for the existing building in the property. Contact the Fire Prevention Bureau for additional information.

- B. MINOR SUBDIVISION APPLICATION No. MS16-006 – John Ferrari** - To divide an 80.37 acre parcel into 4 parcels: Parcel 1 & 2 = 20 acres each, Parcel 3 = 20.16 acres and Parcel 4 = 20.21 acres, with no homes proposed. The project site is located on the west side of North Newport Road., 0.25 miles south of West Sunny Acres Avenue in the Ballico area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **BG**

Recommendations: The actions requested are to:

- 1) Determine that no subsequent environmental review is required in compliance with Section 15162 "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report; and

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- 2) Approve Minor Subdivision No. MS16-006 based on the findings and subject to the conditions of approval listed in the Staff Report.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated August 10, 2016.

Commissioner Thompson asked if the property is currently in almonds and Planner Brian Guerrero answered yes. Commissioner Thompson asked about the current irrigation system. Mr. Guerrero replied that there is one irrigation well and they will be required to have easements to each individual. At this time they will not drill their own individual wells.

The public hearing opened at 9:13 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:14 a.m.

MOTION: M/S THOMPSON – MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINES FOR MINOR SUBDIVISION APPLICATION NO. MS16-006, THAT NO SUBSEQUENT ENVIRONMENTAL REVIEW IS REQUIRED IN COMPLIANCE WITH SECTION 15162 “SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS” OF THE CEQA GUIDELINES BASED UPON THE ANALYSIS IN THE 2030 MERCED COUNTY GENERAL PLAN PROGRAM ENVIRONMENTAL REPORT.

MOTION: M/S THOMPSON - MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED AUGUST 10, 2016, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION APPLICATION NO. MS16-006 SUBJECT TO THE 5 CONDITIONS SET FORTH IN THE STAFF REPORT WITH CONDITION #2 BEING MODIFIED 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 there is no right to construct new (or additional) residences on any of the parcels created through Minor Subdivision No. MS16-006. In the future, if a new residence is proposed, a modification to this condition of approval may be processed through a map modification application along with a conditional use permit application consistent with Policy AG-3.12 of the Agricultural Element of the General Plan, (or any subsequent policy), and with compliance under the California Environmental Quality Act.
3. 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 that will provide future owners of each parcel direct access to the existing agricultural irrigation well or any replacement well.
4. The applicant shall comply with all applicable County, State and Federal regulations.

County Counsel

5. INDEMNITY AND HOLD HARMLESS AGREEMENT:

John Ferrari 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 John Ferrari.

John Ferrari'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 John Ferrari, 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. John Ferrari 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.

- C. MINOR SUBDIVISION APPLICATION No. MS16-009 – David Bettencourt/ Larry Bettencourt** - To subdivide a 19.8 acre parcel to create a 3.18 acre home site parcel. The remaining 16.62 acre parcel would be combined with an adjacent 19.2 acre parcel resulting in a (Parcel 2) 35.82 acre parcel. The project site is located at the northwest corner of Pepper Street and Linwood Road in the Turlock area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **JB**

Recommendations: The actions requested are to:

- 1) Recommend that the Board of Supervisors determine no subsequent environmental review is required in compliance with Section 15162 "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report; and
- 2) Recommend that the Board of Supervisors approve Minor Subdivision Application No. MS16-009 based on the project findings and subject to the conditions of approval found in this Staff Report.

Planner Jennifer Borobia presented the Staff Report and recommendations of approval dated August 10, 2016.

The public hearing opened at 9:20 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:21 a.m.

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MOTION: M/S THOMPSON - MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS DETERMINE THAT NO SUBSEQUENT ENVIRONMENTAL REVIEW IS REQUIRED IN COMPLIANCE WITH SECTION 15162 “SUBSEQUENT EIRs AND NEGATIVE DECLARATIONS” OF THE CEQA GUIDELINES BASED UPON ANALYSIS IN THE 2030 MERCED COUNTY GENERAL PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT FOR MINOR SUBDIVISION APPLICATION NO. MS16-009.

MOTION: M/S THOMPSON - MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS APPROVE MINOR SUBDIVISION APPLICATION NO. MS16-009 BASED ON THE 10 PROJECT FINDINGS AND SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT WITH CONDITION #2 BEING MODIFIED 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 there is no right to construct new (or additional) residences on any of the parcels created through Minor Subdivision No. MS16-009. In the future, if a new residence is proposed, a modification to this condition of approval may be processed through a map modification application along with a conditional use permit application consistent with Policy AG-3.12 of the Agricultural Element of the General Plan, (or any subsequent policy), and with compliance under the California Environmental Quality Act.
3. The applicant shall comply with all applicable County, State and Federal regulations.

County Counsel

4. INDEMNITY AND HOLD HARMLESS AGREEMENT:

LARRY BETTENCOURT 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 LARRY BETTENCOURT .

LARRY BETTENCOURT '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 LARRY BETTENCOURT , 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. LARRY BETTENCOURT 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

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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.

Fire Department

5. The applicant shall install Reflective Building Identification that meets Fire Department Design Specifications for the existing building in the property. Contact the Fire Prevention Bureau for additional information.

Turlock Irrigation District

6. If any portions of the TID electric facilities providing service to the well/pump are located on proposed Parcel 1, then an easement should be dedicated across proposed Parcel 1 to the well/pump facilities on proposed Parcel 2.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Mark Hendrickson, Planning Director, thanked Tom Ebersole for his participation as Legal Counsel for the Planning Commission meeting and welcomed the new Legal Counsel Jeff Grant.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:21 a.m.