



SUMMARY ACTION MINUTES

BOARD OF SUPERVISORS

Regular Meeting

TUESDAY, JANUARY 27, 2004

Closed Session – 8:30 a.m.

Regular Meeting – 10:00 a.m.

MERCED COUNTY
ADMINISTRATION BUILDING
2222 "M" STREET
BOARD ROOM, THIRD FLOOR
MERCED, CALIFORNIA 95340
(209) 385-7366

GLORIA CORTEZ KEENE.....DISTRICT 1
KATHLEEN M. CROOKHAM.....DISTRICT 2
MICHAEL G. NELSON.....DISTRICT 3
CHAIR DEIDRE F. KELSEY.....DISTRICT 4
JERRY O'BANION.....DISTRICT 5
Lydia A. Beiswanger, Chief Clerk

DEMITRIOS O. TATUM
COUNTY EXECUTIVE OFFICER

RUBEN E. CASTILLO
COUNTY COUNSEL

*All supporting documentation is available for public review in the Office of the Clerk of the Board of Supervisors located in the County Administration Building, Third Floor, 2222 "M" Street, Merced, California, 95340
During regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday.
(209) 385-7366*

SCHEDULED ITEMS

8:30 A. M.

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: It is the intention of the Board to meet in Closed Session concerning - Initiation of Litigation (Government Code Section 54956.9(c)): Two Cases

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION: It is the intention of the Board to meet in Closed Session concerning Existing Litigation as follows (Government Code Section 54956.9(a)):

Protect our Water, San Joaquin Raptor Rescue Center and Merced River Valley Association v. County of Merced, Merced County Superior Court Case No. 144855

United Rentals v. Pro Se Services, Merced County et al., Case No.

147117

Pro Se Services v. Gardner, Superior Court Case No. 146816

CLOSED SESSION: It is the intention of the Board to meet in Closed Session pursuant to Subdivision (f) of Section 54957.6 concerning a Conference with County of Merced Staff Negotiators concerning negotiations with American Federation of State, County and Municipal Employees (AFSCME), Units 4, 5, 6 and 8; Independent Employees of Merced County (IEMC), Unit 3; Merced County Lawyers Association, Unit 7; Merced County Sheriff Employee Association (MCSEA), Unit 2; Merced County Law Enforcement Sergeants, Unit P and Deputy Sheriff Association, Unit 10

THE BOARD RECESSED AT 8:30 A.M. AND RECONVENED AT 10:00 A.M. WITH ALL MEMBERS PRESENT AND THE CHAIRMAN ADVISED DIRECTION WAS GIVEN TO STAFF

10:00 A. M.

PLEDGE OF ALLEGIANCE

PUBLIC OPPORTUNITY TO SPEAK ON ANY MATTER OF PUBLIC INTEREST WITHIN THE BOARD'S JURISDICTION INCLUDING ITEMS ON THE BOARD'S AGENDA, EXCEPT FOR THOSE ITEMS SPECIFICALLY SCHEDULED AS PUBLIC HEARINGS (See Board Clerk - Testimony limited to five minutes per person)

APPROVAL OF CONSENT AGENDA CALENDAR (Items #1 - 17)
APPROVED AS RECOMMENDED AYES: ALL

GOVERNMENT CODE SECTION 54950 COMPLIANCE (LATE AGENDA ITEMS)

REVIEW BOARD ORDER – SEE PAGE 9

10:30 A. M.

BUSINESS-ECONOMIC OPPORTUNITIES - PROPOSED ORDINANCE – SECOND READING AND POSSIBLE ADOPTION

An Ordinance to extend by one additional year the grant to Comcast of San Joaquin, Inc. of a non-exclusive franchise to construct, operate and maintain a cable communications system in the unincorporated territory of the County of Merced and providing terms and conditions for the operation of such system and providing for the payment of statutory fees by Comcast therefore (Amends Ordinance No. 1528 and Repeals Ordinance Nos. 1697 and 1713)

REVIEW BOARD ORDER – SEE PAGE 9

PUBLIC WORKS - PROPOSED ORDINANCE - SECOND READING AND POSSIBLE ADOPTION

An Ordinance to allow the Director of Public Works to approve the use of Amplified Music in Outdoor Areas of County Parks (Amends Chapter 10.28 and Ordinance No.1388 and 1231)

REVIEW BOARD ORDER – SEE PAGE 10

10:30 A. M.

PUBLIC WORKS - PUBLIC HEARING

To consider a Mitigated Negative Declaration/Initial Study for a County Office Building and expansion of the existing County Facility located in Los Banos, California. Said proposed project would be a new County Office Building and the expansion of the existing County Court Facility in downtown Los Banos, the project is proposed in order to consolidate a number of county agencies and services scattered in downtown Los Banos and will address overcrowding and facility requirements

PUBLIC HEARING CONTINUED TO FEBRUARY 3, 2004 AT 10:30 A.M.

PLANNING - PUBLIC HEARING

To amend the Agriculture Preserve as per the provisions of the California Land Conservation Act of 1965 (Williamson Act) (California Government Code 52130 et seq.)

PUBLIC HEARING WILL BE CONTINUED TO FEBRUARY 10, 2004 AT 10:30 A.M.

PLANNING - PUBLIC HEARING

To consider Appeal of Planning Commission action approving Conditional Use Permit No. 01009, Bettencourt Ranch Mine (Santa Fe Aggregates, Inc.)

To expand existing open-pit aggregate mining operations onto an adjacent 536.6 acre site located south of and adjacent to the Merced River and northeast of Oakdale Road; elements of the project include the mining and processing of 25.5 million tons of aggregate on 419 acres, continue operation of the existing Santa Fe Aggregates Winton processing plant on the existing project site, and the future reclamation of four separate pits into ponds and islands to serve as habitat for fish and wildlife. In addition, approximately 100 acres of the project site would be reclaimed for agricultural use

REVIEW BOARD ORDER – SEE PAGE 10, 11, 12 AND 13

REPORTS/BOARD DIRECTION

County Executive Officer, County Counsel, County Auditor, Board of Supervisors Members

LUNCH BREAK

2:30 P. M.

PLANNING - PUBLIC HEARING

To withdraw prior project approval in accordance with judgment and peremptory writ of mandate issued in Merced Superior Court Case No. 144855, to consider re-approval of the project pursuant to a re-organized administrative record and previously adopted environmental findings and associated matters, to consider adoption of resolution re-approving the project and re-adopting required findings and associated matters in connection with the following Project: Conditional Use Application No. 99012 and Mining and Reclamation Plan for Calaveras Materials Incorporated (Woolstenhulme Ranch Mine) to mine rock, sand, and gravel resources by removing approximately 10 million cubic yards of material on a 635 acre site and to

reclaim the area to wildlife habitat and open lakes on property located on the west side of Highway 59, 12 miles north of the City of Merced in the Snelling area

REVIEW BOARD ORDER – SEE PAGE 13, 14, 15 AND 16

CONSENT CALENDAR (Items #1 - 17)

APPROVED AS RECOMMENDED AYES: ALL

Public Works

1. Approve and authorize Chairman to sign Contract with Le Grand Union Elementary School to place playground equipment on the Le Grand School Sports Park with funds from Proposition 12 Roberti Z'Berg Harris Block Grant Funds and the Le Grand Special Recreation Funds.

AUTHORIZED CONTRACT NO. 2004004

2. Authorize expenditure of \$2,500 from Special Board Project Funds-District No. One to pay for Grant Writing Services provided by RM Associates for completion and submission of a Caltrans 2002-2003 Transportation Planning Grant Application for the Le Grand Circulation Plan Development and Community Involvement and authorize the Auditor to issue payment.

Board of Supervisors

3. Adopt Resolution in support of retaining Mt. Bullion Youth Conservation Camp in the Mariposa area.

ADOPTED RESOLUTION NO. 2004-13

4. Adopt Resolution supporting Operation Clean Air and the goals of the San Joaquin Valley Air Action Plan and approve contribution of \$10,000 to Operation Clean Air.

ADOPTED RESOLUTION NO. 2004-14

Auditor-Controller/Clerk/Registrar of Voters

5. Approve consolidation of Election for March 2, 2004 Primary Election for Atwater Elementary School and McSwain Union School Districts for Bond Elections as submitted by Registrar of Voters.
6. Approve a Change Fund for Auditor-Controller-Clerk-Recorder Office in Los Banos in the amount of \$150.00.
7. Approve and authorize Chairman to sign Renewal Contract with State Franchise Tax Board for Court-Ordered Debt Collection Program and appoint Auditor as Contract Administrator.

AUTHORIZED CONTRACT NO. 2004005

Health

8. Approve and authorize Chairman to sign Renewal Contract No. 2003003 with State Dept. of Health Services for California Health Care for Indigents Program (CHIP) for 2003-04.

Fire

9. Approve Merced County Fire Department participation in the Fire Fighter's Burn Institute "Fill the Boot" Fundraiser.

Mental Health

10. Approve and authorize Chairman to sign Amendment to Contract No. 2004006 with Davis Guest Home for Specialized Residential Placement for Clients in need of assisted living arrangements.
11. Approve and authorize Chairman to sign Amendment to Contract No. 2004007 with Staff Care, Inc. for Temporary placement of psychiatrist.

Ag. Commissioner

12. Adopt Resolution authorizing Chairman to sign Renewal Contract No. 200256 with Calif. Dept. of Food and Agriculture for maintenance of permanent crop records.

ADOPTED RESOLUTION NO. 2004-15

Budget Transfer

13. Approve Budget Transfer submitted by Child Support Services-\$5,000 as recommended by Executive Office.

Business-Economic Opportunities

14. Set public hearing for February 10, 2004 to consider accomplishments of Community Development Block Grant Telecommunications Infrastructure and Demolition at Castle Airport and Aviation and Development Center.

Counsel

15. PULLED

Board Recognition

16. Authorize Certificate of Recognition in Celebration of the 50th Wedding Anniversary for Hal and Joyce Hambley.
17. Proclaim February, 2004 as "American Heart Month" and Friday, February 6, 2004 as "Wear Red for Women Day" in the County of Merced.

REGULAR CALENDAR

BOARD ACTION

PUBLIC WORKS

18. Resolution certifying Merced County has the required 10% of the local match for the California Dept. of Transportation Environmental Justice Grant for Circulation Plan Development and Community Involvement for the Le Grand area, authorize expenditure of \$7,600 from Special Board Project Funds-District No. One for the local match requirement and approve the necessary budget transfer.

ADOPTED RESOLUTION NO. 2004-16 AS RECOMMENDED AYES: ALL

19. Revised Total Project Budget for the Highway 59 Landfill Expansion New Water Well in the amount of \$202,600 and authorize preparation of Change Order No. 2 (Amendment to Contract No. 2003128) in the amount of \$19,715 to compensate the contractor for costs associated with the drilling and abandonment of the second test required, authorize the drilling of a third test borehole upon receipt of an acceptable Hydrogeologist's Report and to

prepare Change Order No. 3 (Amendment to Contract No. 2003128) for an amount not-to-exceed \$25,000 and authorize Public Works Director to sign.

APPROVED AS RECOMMENDED AYES: ALL

20. Public Facilities Impact Fees 2002/2003 Annual Report in accordance with reporting requirements per Section 66001(d) and 66006 of the California Government Code.

APPROVED AS RECOMMENDED AYES: ALL

HEALTH

21. Authorize preparation and release of Request for Proposal for Laboratory Courier Service, select the most responsive provider to perform such services and to return to the Board with the final contract approval.

APPROVED AS RECOMMENDED AYES: ALL

22. Amendment to Contract No. 2004008 with Teris, LLC dba MSE Environmental for Household Hazardous Waste Disposal, approve Budget Transfer-\$40,000 and adopt Resolution.

ADOPTED RESOLUTION NO. 2004-17 AS RECOMMENDED AYES: ALL

23. Contract with Decade Software Company, LLC for support of a software product called Envision which shall become effective upon Board approval for the annual fee amount of \$44,250 and adopt Resolution.

AUTHORIZE CHAIRMAN TO SIGN CONTRACT NO. 2004009 AND ADOPTED RESOLUTION NO. 2004-18 AS RECOMMENDED AYES: ALL

AUDITOR

24. Approve increasing the Bilingual Differential Positions in the Auditor-Controller's/Recorder's Office from three to four with the additional position being located in Los Banos and adopt Resolution.

ADOPTED RESOLUTION NO. 2004-19 AS RECOMMENDED AYES: ALL

BUSINESS-ECONOMIC OPPORTUNITIES

25. Authorize an Emergency Sole-Source Purchase of three Masco Pro Sweep Sweepers for Castle Airport and authorize Purchase Order issuance.

APPROVED AS RECOMMENDED AYES: ALL

AGRICULTURAL COMMISSIONER

26. Contract with Calif. Dept. of Pesticide Regulation for Restricted Materials Permit Issuance and Inspections, approve the necessary Budget Transfer-\$22,360 and adopt Resolution.

AUTHORIZE CHAIRMAN TO SIGN CONTRACT NO. 2004010 AND ADOPTED RESOLUTION NO. 2004-20 AS RECOMMENDED AYES: ALL

SHERIFF

27. Authorize solicitation of proposals and negotiation of contract for the acquisition of Glock Handguns and applicable accessories and the trade in of the current Berettas and other safety items and approve necessary Budget Transfer-\$12,000 subject to concurrence of Counsel.

APPROVED AS RECOMMENDED AYES: ALL

EXECUTIVE OFFICE

28. Adopt Resolution changing the Board Election Cycle of the Dos Palos-Oro Loma Joint Unified School District as requested and direct Clerk-Elections to complete notifications.
ADOPTED RESOLUTION NO. 2004-21 AS RECOMMENDED AYES: ALL

DEPT. OF WORKFORCE INVESTMENT

29. Appoint Stephanie Busbea to the Merced County Youth Council as recommended by the Dept. of Workforce Investment.
APPROVED AS RECOMMENDED AYES: ALL

LAW LIBRARY

30. Appointment of 2004 Members to the Law Library Board of Trustees.
REVIEW BOARD ORDER – SEE PAGE 16

BOARD APPOINTMENTS

31. District Five - Los Banos Area Recreation Commission.
REAPPOINTED TESSE MAZZINA UNTIL JANUARY 1, 2005 AND APPOINTED ERASMO VIVEROS UNTIL JANUARY 1, 2007 TO SERVE AS MEMBERS OF THE LOS BANOS AREA RECREATION COMMISSION AYES: ALL

BOARD INFORMATION & POSSIBLE ACTION

ACCEPTED AND PLACED ON FILE AYES: ALL

32. Public Works re: Contract No. 2004011 with State Dept. of Parks and Recreation for Proposition 12 Per Capita (Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Act of 2000) California State Parks and Recreation in the amount of \$775,000.
33. Public Works re: Contract No. 2004012 with State Dept. of Parks and Recreation for the Proposition 12 Roberti Z'Berg Harris Block Grant Program (Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Act of 2000) in the amount of \$338,601.
34. Planning re: Hilmar Community Plan Update Status.
35. Planning re: Notification of withdrawal of Appeal on Minor Subdivision Application No. 03042 (Schilies Family Trust). (Public Hearing was set for December 11, 2003)
36. Sheriff re: Notification of proposed lease with Dept. of Justice for office space at the Sheriff Castle Station for the Merced County Narcotic Task Force.
37. Dept. of Workforce Investment re: 2003/2004 WIA Subgrant Agreement modification incorporating WIA Formula Rapid Response Funding for PY 2003/2004.
38. Dept. of Workforce Investment re: Notification of termination of Contract No. 9673 with Calif. Employment Development Department for labor market information - effective March 31, 2004 due to reductions in the 2003-2004 State Budget Act.
39. Madera County Board of Supervisors re: Letter to Commissioner of Insurance expressing opposition to the proposed changes in auto insurance rates.

40. Bartkiewicz, Kronick & Shanahan re: Temporary Water Transfer during 2004 from Yuba County Water Agency to Dept. of Water Resources and Contra Costa Water District.
41. Verizon Wireless re: Notification of CPUC Cell Site Report for addition of one microwave dish for Gustine of California RSA No. 4 Limited Partnership.

ADOPTED RESOLUTION AND ADJOURNED MEETING IN MEMORY OF CHUCK NELSON AND MICHAEL CARLUCCI UNTIL TUESDAY, FEBRUARY 3, 2004 AT 10:00 A.M.

BOARD ORDER – SUMMARY ACTION MINUTES – JANUARY 27, 2004

8:30 A.M. SCHEDULED ITEM

2004-01-27 ADDED AGENDA ITEM – CLOSED SESSION

The Board recesses to meet in Closed Session at 8:30 a.m. and reconvenes at 9:10 a.m. with all members present.

Following discussion and upon motion of Supervisor O'Banion, seconded by Supervisor Nelson, duly carried, the Board finds a need arose, subsequent to the posting of the agenda, to consider the following and places the item on the Agenda for Board consideration:

CLOSED SESSION – CONFERENCE WITH REAL PROPERTY NEGOTIATOR: It is the intention of the Board to meet in Closed Session concerning a Conference with Real Property Negotiator(s) John Fowler-Business-Economic Opportunities Director pursuant to Section 54956.8.

Ayes: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion

The Board recesses at 9:12 a.m. into Closed Session with all members present.

Present: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion

10:30 A.M. SCHEDULED ITEM

2004-01-27 BUSINESS-ECONOMIC OPPORTUNITIES - ORDINANCE NO. 1718 ADOPTED

The time and date previously set for a Second Reading and Possible Adoption of An Ordinance to extend by one additional year the grant to Comcast of San Joaquin, Inc. of a non-exclusive franchise to construct, operate and maintain a cable communications system in the unincorporated territory of the County of Merced and providing terms and conditions for the operation of such system and providing for the payment of statutory fees by Comcast therefore (Amends Ordinance No. 1528 and Repeals Ordinance Nos. 1697 and 1713) as submitted by Business-Economic Opportunities.

The Chairman asks if there is anyone present wishing to speak. No one speaks.

Upon motion of Supervisor Cortez Keene, seconded by Supervisors Nelson, duly carried, the Board waives further reading of proposed ordinance and adopts Ordinance No. 1718 An Ordinance to extend by one additional year the grant to Comcast of San Joaquin, Inc. of a non-exclusive franchise to construct, operate and maintain a cable communications system in the unincorporated territory of the County of Merced and providing terms and conditions for the operation of such system and providing for the payment of statutory fees by Comcast therefore (Amends Ordinance No. 1528 and Repeals Ordinance Nos. 1697 and 1713).

Ayes: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion

10:30 A.M. SCHEDULED ITEM

2004-01-27 PUBLIC WORKS – ORDINANCE NO. 1719 ADOPTED

The time and date previously set to consider Second Reading and Possible Adoption of An Ordinance to allow the Director of Public Works to approve the use of Amplified Music in Outdoor Areas of the County Parks (Amends Chapter 10.28 and Ordinance Nos. 1388 and 1231).

The Chairman asks if there is anyone present wishing to speak. No one speaks.

Upon motion of Supervisor O'Banion, seconded by Supervisor Nelson, duly carried, the Board waives further reading of proposed ordinance and adopts Ordinance No. 1719 An Ordinance to allow the Director of Public Works to approve the use of Amplified Music in Outdoor Areas of the County Parks (Amends Chapter 10.28 and Ordinance Nos. 1388 and 1231).

Ayes: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion

10:30 A.M. SCHEDULED ITEM

2004-01-27 PLANNING – PUBLIC HEARING

The time and date previously set for a public hearing to consider an Appeal of the Planning Commission action approving Conditional Use Permit No. 01009, Bettencourt Ranch Mine (Santa Fe Aggregates, Inc.) to expand existing open-pit aggregate mining operations onto an adjacent 536.6 acre site located south of and adjacent to the Merced River and northeast of Oakdale Road; elements of the project include the mining and processing of 25.5 million tons of aggregate on 419 acres, continue operation of the existing Santa Fe Aggregates Winton processing plant on the existing project site, and the future reclamation of four separate pits into ponds and islands to serve as habitat for fish and wildlife. In addition, approximately 100 acres of the project site would be reclaimed for agricultural use.

Planning Director Bill Nicholson reviews the staff report and briefly highlights on the Bettencourt Ranch Aggregate Mining and Reclamation Project power point presentation reviewing the history and project details of the project.

Engineer for Santa Fe Aggregates Michelle Cunningham provides an overview of the mining operation.

EIP Consultant Rick Hansen reviews project description, EIR Process and Schedule, Contents of the Final EIR, Project Alternatives, Alternative Considered but Rejected from Detailed Evaluation, EIR Key Technical Issues, Impacts Found to be Significant and Unavoidable, and Mitigation Monitoring Plan.

Mr. Nicholson summarizes the proceedings from the Planning Commission Hearing on December 3, 2003 and submits the following handouts: Letter from Weinberg, Roger & Rosenfeld dated January 22, 2004 and Letter dated January 26, 2004 from Edna Rocco.

General Manager for Santa Fe Aggregates Ron Turcotte reviews Santa Fe Aggregates History and Purpose.

Attorney for Santa Fe Aggregate Tom Sheppard briefly reviews support of the project, the Environmental Impact Report and disclosures and the discussions with the neighbor, Mrs. Rocco.

Attorney Rod Attebery reviews CEQA issues and notices mailed.

Planning Director Bill Nicholson submits a copy of the resolution titled Certification of the Final Environmental Impact Report for the Bettencourt Ranch Aggregate Mining Project, Adoption of a Statement of Finding Regarding Significant Effects and Alternatives, Adoption of a Statement of Overriding Consideration, and Adoption of a Mitigation Monitoring Plan.

The following speak in support of the Mining Project:

Central Valley Concrete General Manager Chuck Faulkenstine; Santa Fe Aggregates Production Manager Ken Ulm; Quality Control Technician for Santa Fe Aggregates Scott Ross; Executive Director-Santa Fe Aggregate Charlie Ray; Fred Sherman, Snelling/Winton area farmer; CEO Greater Merced Chamber of Commerce Don Bergman; Clark Holbert, resident of Hilmar; Moore Biological Consultant Diane Moore, Harry Strawbridge, Atwater resident and Kent Sanlig.

The Board recesses at 12:15 p.m. and reconvenes at 1:15 p.m. with all members present.

Bettencourt Family representative Patricia Bettencourt Ferrigno speaks on behalf of the mining project and submits Property Owner's Perspective for Consideration by the Merced County Board of Supervisors dated January 27, 2004.

Legal and Safety Employer Research, Inc. (LASER) Researcher John Williams displays an aerial photo of the mining project and speaks in opposition.

President of San Joaquin Raptor Rescue Center Lydia Miller submits and reviews letters dated January 26 and January 27, 2004 in opposition.

Bryant Owens submits and reviews letter dated January 26, 2004 in opposition.

Mike Bettencourt reviews the Williamson Act proposed issues with his property stating this property was not to be part of the agricultural preserve yet this issue keeps coming before the Board.

The Board discusses the concerns relative to the Williamson Act contract issue, availability of documents, General Plan consistency, the road impact fees and the contract provided to Mrs. Rocco.

Attorney Rod Attebery responds to the concerns addressed.

The Chairman adds a stipulation - If any changes in the form of mitigation occur, notification and approval not be at the Board level but taken to the Planning Commission.

Following discussion, Supervisor O'Banion moves, seconded by Supervisor Cortez Keene, the Board denies the appeal and supports the Planning Commission approval of Conditional Use Application No. 01009, adopts the Resolution which certifies the Final Environmental Impact Report (EIR) for the Bettencourt Ranch Aggregate Mining Project, adopts the Statement of Findings regarding Significant Effects and Alternatives, adopts the Statement of Overriding Considerations and adopts the Mitigation Monitoring Program understanding the corrections reflected in the Recommendation dated December 3, 2003 has been incorporated into the Staff Report subject to the following conditions and modifications:

Modification to the Findings - New Finding Added:

The Merced County Board of Supervisors hereby finds that the Statement of Overriding Considerations was independently reviewed and considered by this Board and this project is approved accordingly.

Conditions of Approval:

1. Conditional Use Permit No. 01009 is granted, and accompanying Reclamation Plan is approved, for the mining of sand and cobbles to an average depth of 40 feet and maximum depth of 55 feet, and reclamation of, the 419 acres known as Bettencourt Ranch.
2. The mining and reclamation project shall be located, developed and operated in a manner described on the approved plot plan, sections, phasing map, elevations, Reclamation Plan narrative, Reclamation Plan, mitigation measures, mitigation monitoring and reporting program, and conditions of this permit. Any changes or proposed modifications to the approved project would be based a written request of the applicant.
3. Upon completion of on-site mining the processing plan may continue to operate at historic production rates for processing materials transported from off-site resource areas. At closing of on-site mining operations, the Planning Commission will review the processing facility operation and determine whether modifications or additional conditions of approval are warranted to ensure continued compatibility of this facility with adjacent land uses.
4. All mitigation measures recommended in the Environmental Impact Report are adopted and incorporated by reference as project conditions.
5. Prior to exercising the permit, the applicant shall enter into a reimbursement agreement with the County Road Division to maintain the structural section of County Roads.
6. Prior to exercising the permit, the applicant shall provide the County with a financial guarantee for reclamation of the site under the provisions of SMARA and County Code Section 18.43 in the amount acceptable to the Planning and Community Development Director and the State Department of Conservation.
7. Upon completion of the project, all machinery and equipment associated with the mining operation shall be removed from the property, except for the processing plan (Winton plant).
8. The applicant shall furnish the Planning and Community Development Director with a report describing compliance with the Reclamation Plan and Mitigation Monitoring and Reporting Program by July 1st of each year. With each report the permittee shall provide a map to scale, showing current progress of mining and reclamation, revegetation, wetland protection and other phased and time-sensitive permit conditions and provision of the Reclamation Plan programs.
9. If the use authorized is abandoned or discontinued for a period of one year or more, the Planning and Community Development Department may initiate revocation proceedings at a public hearing before the Planning Commission.
10. Condition of Approval No. 2 from the Planning Commission Staff Report of December 3, 2003, be modified to include that the Reclamation Plan, if modified by any agency be in substantial compliance with the plan now before the Board.

12. If there are changes in the project or in mitigation measures that require a major or minor modification of the permit, such modification shall occur at the Planning Commission level so that all affected property owners are so notified and the modification is duly advised.

and adopts Resolution No. 2004-22.

The Chairman calls for a Vote on the Motion. Motion carries.

Ayes: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion

2:30 P.M. SCHEDULED ITEM
2004-01-27 PLANNING – PUBLIC HEARING

The time and date previously set for a public hearing to consider to withdraw prior project approval in accordance with judgment and peremptory writ of mandate issued in Merced Superior Court Case No. 144855, to consider re-approval of the project pursuant to a re-organized administrative record and previously adopted environmental findings and associated matters, to consider adoption of resolution re-approving the project and re-adopting required findings and associated matters in connection with the following Project: Conditional Use Application No. 99012 and Mining and Reclamation Plan for Calaveras Materials Incorporated (Woolstenhulme Ranch Mine) to mine rock, sand, and gravel resources by removing approximately 10 million cubic yards of material on a 635 acre site and to reclaim the area to wildlife habitat and open lakes on property located on the west side of Highway 59, 12 miles north of the City of Merced in the Snelling area.

Planning and Community Development Director Bill Nicholson reviews the Staff Report and possible actions before the Board in order to comply with a Superior Court Order regarding inadequacy of the administrative record and the inability to locate adopted findings.

Upon motion of Supervisor O'Banion, seconded by Supervisor Crookham, duly carried, the Board rescinds its previous approval relative to Conditional Use Application No. 99012 and Mining and Reclamation Plan for Calaveras Materials Incorporated (Woolstenhulme Ranch Mine) in order to comply with a Superior Court Order regarding inadequacy of the administrative record and the inability to locate adopted findings.

Ayes: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion

Mr. Nicholson continues to review the remaining action before the Board to consider possible re-approval of the Project and states the Administrative Record has been organized into a standard legal format containing a detailed index which clearly identifies all records, including the location of the findings.

Mr. Nicholson comments on the slides and continues to review the staff report reviewing Conditional Use Permit No. 99012 – Woolstenhulme Ranch Mine.

Mr. Nicholson submits and reviews revised Resolution and Resolution-Supplemental Findings.

Supervisor Cortez Keene questions the phasing activity.

Mr. Nicholson reviews Table 3-1, Estimated Mine Phasing and Distribution Consumption Schedule.

County Counsel Ruben Castillo reviews Exhibit F - Environmental Findings, Certification of the EIR.

The Board recesses at 2:50 pm and reconvenes at 3:00 pm

Mr. Nicholson continues the review of the revised Resolution and Findings-Exhibit F.

Counsel Representative Mr. Wolfe responds to letter dated January 26, 2004, submitted by Rose M. Zoia, Attorney, directed to Chairperson Kelsey and Supervisors.

Supervisor Cortez Keene questions the Planning Staffs conclusion relative to concerns raised by Attorney Zoia.

Mr. Nicholson states it is Planning's opinion the concerns have already been addressed based on evidence and findings already before the Board.

The Chairman asks if there is anyone present that wishes to speak.

Steve Burke, Protect Our Water and Merced Valley River Association representative, comments on the court decision and reviews his difficulties and concerns with accessing documents before the Board today.

Lydia Miller, representing San Joaquin Raptor Rescue Center reads Letter into the record dated January 27, 2004.

Bill Gnass, Attorney for Calaveras Materials, Inc. (CMI), states the documents before the Board today is the same record, same findings, same documents that were before the Board in 2001. The updated resolution is to add the findings located in the administrative record that were missing in the original draft of the resolution. He further states the EIR has been prepared in accordance with the law. He briefly comments on the Williamson Act contracts and the Williamson Act Preserve.

Joe Mitchell, citizen, clarifies and reviews his understanding of the Williamson Preserve and the mining being allowed.

The Chairman closes the public hearing

Counsel Castillo requests Counsel Wolfe respond to the various comments.

Attorney Wolfe appears and comments on the reorganized record stating the Board Resolution and copies were provided in a timely manner. The Board is not considering new evidence, the Board certified the EIR in 2001, and comments should be limited to the Resolution and not reopen prior discussion on findings. He states an error did exist in the Board Minutes regarding a reference to Condition 2. Mr. Wolfe noted the Board intended to approve the Planning Commission action in its entirety and the documents are submitted for further clarification.

Counsel Castillo responds to concerns about availability of documents stating the Board, may have as an option, to continue this hearing to insure that the Board has provided access to all documents and allowed adequate review.

Supervisor Crookham expresses concern about the comment regarding the time to review.

Supervisor Cortez Keene expresses concern on the court time line and the urgency to re-certify.

Counsel Castillo responds stating the deadline was to un-do action in 15 days, and there is no deadline to re-certify.

Following discussion, Attorney Gnass states Merced County is doing nothing new, the record was disorganized and so it has been organized.

Supervisor O'Banion states the EIR was not thrown out. He expresses concern on what happens to CMI employees if the project is not approved. He states he supports the project and supports going forward in the least time so that employees' livelihoods are not affected and to go forward with the reorganized record.

Supervisor Nelson states he does not agree with the allegations against the EIR and is very displeased with the Planning document distribution. He states he is not in favor of postponing the issue.

Counsel Castillo suggests as an option, the Board continue the meeting to insure that the public has had adequate opportunity to look at the original resolution, revised resolution and to make sure all objections are on the record.

Supervisor O'Banion asks the professional opinion of County Counsel.

Supervisor Crookham expresses concern with the time frame and family hardship due to jobs.

Supervisor Cortez Keene states if this had been thrown out in court for inadequacy of the EIR issue, then she would question everything that comes up because at that point, the EIR becomes questionable and feels the matter does not need to be postponed.

Supervisor Kelsey questions the testimony and letters and timeframe for input.

CEO Demitrios Tatum requests Counsel Wolfe respond.

Attorney Wolfe states there is no legal requirement to continue the matter but that County Counsel's comments are still valid.

Supervisor O'Banion states he will not support a continuance to next week, however, he will support a continuance to tomorrow morning.

Attorney Gnass states the applicant's preference is the Board take action today. The material in the administrative record has been available, it is all the same material presented in

2001, before you although it might be in different order. He states the applicants also have the same concern about employees on the job.

Following discussion, the Chairman continues the matter until 8:00 a.m. Wednesday, January 28, 2004.

Present: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion

ACTION ITEM NO. 30

2004-01-27 LAW LIBRARY

Upon motion of Supervisor Cortez Keene, seconded by Supervisor Crookham, duly carried, the Board appoints Melbourne Gwin, representing the Bar Association as President, and Bruce Hendricks, representing the Bar Association as Vice-President, to serve as members of the Merced County Law Library Board of Directors until January 1, 2005.

Ayes: Kelsey, Cortez Keene, Crookham, Nelson, O'Banion