



**PLANNING AND COMMUNITY  
DEVELOPMENT DEPARTMENT**

**William Nicholson**  
*Director*

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**PLANNING COMMISSION AGENDA  
REGULAR MEETING OF FEBRUARY 11, 2004, 9:00 A.M.  
2222 "M" STREET, BOARD ROOM, THIRD FLOOR,  
MERCED, CALIFORNIA**

**I. CALL MEETING TO ORDER**

**II. ROLL CALL OF COMMISSIONERS**

Larry Whitney; Kimberly Clauss; Steve Sloan, Chairman; Lynn Tanner; David Wager.

**III. APPROVAL OF MINUTES**

**IV. CITIZEN COMMUNICATIONS**

Public opportunity to address the Planning Commission on items of interest over which the Planning Commission has jurisdiction.

**SPEAKERS**

**If you would like to address the Planning Commission on any item on the agenda, please pick up a 3" x 5" card in the foyer, fill it out with your name, address, and item you wish to speak on, and give it to someone at the staff table (to the left of the podium) prior to speaking.**

**V. PUBLIC HEARING**

- A. 1<sup>ST</sup> EXTENSION NO. 03010 TO MAJOR SUBDIVISION NO. 01007 – El Capitan Meadows – To extend for one year a previously approved application known as El Capitan Estates. Major Subdivision No. 01007 was approved to create 229 single-family residential lots and a five acre park on the north side of Lobo Avenue, 190 ft. east of Beachwood Drive in the Merced area on land designated as Franklin-Beachwood SUDP in the Merced County General Plan and zoned R-1 (Residential) (48.7 acres). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Dan Skidmore****

- B. CONDITIONAL USE PERMIT APPLICATION NO. 03012 - Galvan / Ochoa** - To legalize an existing neighborhood cocktail lounge, which was previously operated only as a bar, called "Chikito Banano". Nightly entertainment such as dancing and bands will be allowed a maximum of six nights per year under the new proposed project. The lounge will keep the same name, and will be open 7 days per week. The property is located on the northwest corner of Winton Way and Gerard Avenue in the Winton area on land designated Winton SUDP Commercial land use in the General Plan and zoned C-2 (General Commercial) (.15 Acres). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Dan Skidmore**
- C. CONDITIONAL USE PERMIT NO. 99022 – Vander Woude Dairy** – To construct and operate a dairy with a maximum of 7,613 animal units on a 123 acre portion of a 1,147 acre property located northeast of the intersection of Rahilly Road and State Highway 59 in the Merced area designated as Agricultural in the Merced County General Plan and zoned A-1 (General Agriculture). **TO CERTIFY THE ENVIRONMENTAL IMPACT REPORT AND APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Robert King**

**VI. CORRESPONDENCE**

None

**VII. GENERAL BUSINESS**

None

**VIII. DIRECTOR'S REPORT**

None

**IX. ADJOURNMENT**

**APPEALS**

Any person may appeal any action of the Planning Director or Planning Commission within five (5) calendar days after the day the action is made. [Within ten (10) calendar days of action on subdivisions]. The deadline for appeals of Planning Commission actions, excluding subdivisions, is 5:00 p.m. on the Monday following the Planning Commission meeting. Please note that appeals may not be submitted on days that the County is officially closed.

Appeals of Planning Director's actions may be filed with the Planning Department and appeals of Planning Commission actions may be filed with the Clerk of the Board of Supervisors. Appeals must state appellant's name, action appealed and reasons for appeal. A filing fee set by Resolution of the Board of Supervisors must be submitted with the written appeal.

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF FEBRUARY 11, 2004**

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A recording on tape and original minutes (for reference purposes only) of the Merced County Planning Commission meeting of February 11, 2004, are available in the Merced County Planning and Community Development Department, 2222 "M" Street, Second Floor, Merced, California.

**I. CALL MEETING TO ORDER**

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:15 a.m., on February 11, 2004, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

**II. ROLL CALL OF COMMISSIONERS**

Commissioners Present:     Commissioner Larry Whitney  
  Commissioner Kimberly Clauss  
  Commissioner Steve Sloan-Chairman  
  Commissioner Lynn Tanner

Staff Present:                   William Nicholson, Planning and Community Development  
  Director  
  Michael Ricker, Assistant Director  
  Desmond Johnston, Deputy Director  
  Kim Lewallen, Recording Secretary  
  Robert King, Planner III  
  Dan Skidmore, Planner II

Legal Staff:                    Ruben Castillo, County Counsel

Commissioners Absent:        Commissioner David Wager

**III. APPROVAL OF MINUTES**

**M/S WHITNEY - TANNER, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF JANUARY 28, 2004.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

**A.     1<sup>ST</sup> EXTENSION NO. 03010 TO MAJOR SUBDIVISION NO. 01007 – El Capitan Meadows – To extend for one year a previously approved application known as El Capitan Estates. Major Subdivision No. 01007 was approved to create 229 single-family residential lots and a five acre park on the north side of Lobo Avenue, 190 ft. east of Beachwood Drive in the Merced area on land designated as Franklin-Beachwood SUDP in the Merced County General Plan and zoned R-1 (Residential) (48.7 acres). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Dan Skidmore****

Planner Dan Skidmore presented the Staff Report and Recommendation dated February 11, 2004.

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

No one spoke in favor or opposition to this project.

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

**MOTION: M/S WHITNEY - CLAUSS, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATION DATED FEBRUARY 11, 2004, AND MAKES THE 10 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 10 FINDINGS, APPROVES 1<sup>ST</sup> EXTENSION NO. 03010 TO MAJOR SUBDIVISION NO. 01007 SUBJECT TO THE 40 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

### Conditions:

1. A final map shall be recorded within two (2) years of the Board of Supervisors approval date as required by the County Subdivision Code and the State Subdivision Map Act.
2. The subdivider shall satisfy Improvement Level I requirements as set forth in Chapter 16.08 of the Merced County Code which generally includes dedication of road rights-of-way, public utility easements, roadway construction and installation of matching pavement along the existing roadways, street lighting, storm drainage system and under grounding or relocating utilities and irrigation facilities. Lobo Avenue shall be partially reconstructed.
3. Provide a letter from Franklin County Water District accepting storm water drainage from this proposed development into their facilities.
4. All lot and street grading shall be completed prior to the issuance of any building permits. The developer shall enter into an agreement with Public Works that no occupancy shall take place until such time as all improvements are completed.
5. Provide centerline striping for those new roads that intersect the existing peripheral streets.
6. At the building permit stage, \$1,514.00 shall be paid per single family dwelling unit, for community wide circulation improvements.
7. The developer shall provide a signature block on the El Capitan Meadows improvement plans for the Merced Irrigation District (MID). The developer will need to satisfy MID regarding various improvements and easements for use and protection of MID facilities.
8. The subdivider shall dedicate a five-acre community parksite, and pay any recreational parkland space and improvement fees beyond the value of the parksite, consistent with the requirements of Merced County Ordinance No. 1090. Said fee is payable prior to or concurrent with the recording of the Final Map. In the event that progress toward development of an off-site community park in a more centralized location within the SUDP occurs to the satisfaction of the directors of the Planning and Public Works departments

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prior to recordation of the El Capitan Meadows Final Map, the parksite in this subdivision may be reduced to a neighborhood scale commensurate with the population formula in Ordinance No. 1090. The neighborhood park shall be located in the interior of the project and shall have at least two or three street frontages.

9. Any relocation, removal or under grounding of PG&E facilities shall be done at developer's expense.
10. Right to Farm Certificate shall be placed on the Final Map in compliance with Ordinance No. 1213.
11. The developer shall comply with all the standard conditions of approval listed in the Planning Commission Resolution No. 97-1, and development standards in Section 18.08.03 of the Zoning Code.
12. Prior to recording of the Final Map, a landscape plan for the street trees in conformance with the Landscaping Chapter of the County Zoning code shall be submitted to the Planning and Community Development Department for review and approval. Approved street trees shall be installed prior to occupancy of each house. The general location of the street trees shall be shown on the improvement plans.
13. The proposed lots within the Flood Zone AO must have an elevation certificate provided by an engineer or surveyor indicating the minimum floor elevations are above the flood level prior to issuance of a building permit.
14. Fire hydrant distribution and location shall be in accordance with the Fire Code, marking shall reflect that no vehicle parking or stopping is allowed within 15 feet of a hydrant, and a three-foot clear space shall be maintained around hydrants.
15. In accordance with Zoning Code Performance Standards in Section 18.41.07C, a note shall be placed on subdivision construction plans stating as follows: The applicant shall ensure that construction hours shall be limited to the daytime hours between 7:00 a.m. and 6:00 p.m., and all construction equipment shall be properly muffled and maintained.
  - a. To mitigate noise on the site to 65 dB in accordance with the Merced County General Plan noise standards, noise barriers would need to be constructed. The noise barrier must be at least 13 feet high referenced from the elevation of the north property line to reduce rail noise to the Merced County 65 dB Ldn compatibility standard. In addition to the noise barrier along the north property line, noise barriers should be placed along the east and west sides of the subdivision to prevent flanking noise. The side barriers should be at least 10-feet high and extend for at least 100 feet. Such a barrier could be in the form of an earth-berm or a variety of sturdy materials, or a combination of both. (Note: The subdivision shall conform to the noise standards in effect at the time the final map is recorded.)
  - b. The noise barrier structure shall be landscaped or otherwise constructed in such a manner as to reduce the potential for the structure to be vandalized by graffiti.

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- c. Mechanical ventilation or air conditioning is to be installed so that windows and doors may remain closed.
  - d. All windows are to be mounted in low air infiltration rate frames (0.5 cfm/ft. or less per ANSI specifications).
  - e. Exterior doors, not including patio doors, are solid-core wood with perimeter weather-stripping and threshold seals.
  - f. All attic vents facing or perpendicular to the railway are baffled as shown in Appendix “B” of the Brown-Buntin Noise Study so that noise must take an indirect route when entering the attic space.
  - g. Second story rooms are not constructed on lots adjacent to the railroad, unless analysis of building plans confirms satisfactory noise levels in such rooms.
16. Placement of a note implementing Section 18.41.07c of Merced County Code on construction plans shall be monitored by the County Public Works Department. Field performance monitoring shall be conducted on a random basis by the County Planning Department. All noise mitigation measures will be shown on the Final Map of the subdivision. All construction plans will contain construction details with respect to the construction of the sound barrier and all housing unit construction plans will contain construction details with respect to residential construction mitigation. All subdivision plans and residential construction plans will be reviewed for conformance with the applicable mitigation measures by County staff prior to the issuance of any construction permits.
  17. For the purpose of condition monitoring, a fee in the amount of **\$250.00** shall be required. The fee shall be paid prior to recordation of the Final Map.
  18. Abandon, with the recording of the final map, the northerly portion of Bryant Road: The 40 feet of road right of way along the west side of El Capitan Canal and now known as Bryant Road, and as described in deed from Crocker-Huffman Land and Water Company to Merced County recorded April 24, 1939, in Volume 609 of Official Records at Page 351, Merced County Records, is no longer necessary for public road purposes and shall be abandoned with the recordation of the final map for El Capitan Meadows, Major Subdivision No. 01007.
  19. Abandon, with the recording of the final map, the southerly portion of Bryant Road and that portion of Lobo Avenue along the south side of proposed Lot 1: The 40 feet of road right of way along the west side of El Capitan Canal and now known as Bryant Road, and the 25 feet of road right of way along the south side of proposed Lot 1 and now known as Lobo Avenue, as all of Bryant Road and a portion of Lobo Avenue are described in deed from Luigi and Isola Bianchi to Merced County recorded March 6, 1939, in Volume 603 of Official Records at Page 440, Merced County Records, is no longer necessary for public road purposes and shall be abandoned with the recordation of the final map for El Capitan Meadows, Major Subdivision No. 01007.
  20. Abandon, with the recording of the final map, the public utility easement along the south side of Santa Fe Road on the west side of the subdivision: The 10 foot Public Utility Easement along the Santa Fe Road frontage of Parcels 1 and 2 as shown on Parcel Map for M.A. & A.L. Maxwell recorded in Book 70 of Parcel Maps at Pages 13 and 14, Merced County Records, is no longer necessary for public utility purposes and shall be abandoned with

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the recordation of the final map for El Capitan Meadows, Major Subdivision No. 01007.

21. Pursuant to the terms of a Deferment of Construction Agreement recorded in Volume 2924 of Official Records at page 442, include Parcel 1 as shown on the Parcel Map for M.A. & A.L. Maxwell recorded in Book 70 of Parcel Maps at Pages 13 and 14, Merced County Records, also known as Assessor' Parcel Number 057-380-052, in all Improvement Level 1 requirements, including dedication of rights of way and easements.
22. As an offsite improvement, design and construct improvements along the Santa Fe Road frontage of Assessor's Parcel Number 057-380-013, as described in deed recorded in Volume 2532 of Official Records at Pages 876 and 877, Merced County Records. Acquire necessary road right of way, public utility and irrigation district easements necessary to construct improvements. Provide an easement to Big Sandy Drive (Avenue) for the aforementioned parcel through Parcel 1 as shown on the Parcel Map for M.A. & A.L. Maxwell recorded in Book 70 of Parcel Maps at Pages 13 and 14, Merced County Records. Construct an all-weather access road from Big Sandy Drive (Avenue) within the easement.
23. As an offsite improvement for Fir Avenue, acquire for road purposes Lot 23 as shown on the map of Airport Home Sites recorded in Volume 10 of Official Plats at Page 50, Merced County Records. Acquisition of right of way and construction of offsite improvements shall be at the developer's expense.
24. As an offsite improvement for Fir Avenue, acquire from Lots 22 and 24 of Airport Home Sites recorded in Volume 10 of Official Plats at Page 50, Merced County Records, adequate easements to provide 52 feet of road right of way and provide wheelchair ramps at the intersection with Beachwood Drive. Acquisition of right of way and construction of offsite improvements shall be at the developer's expense.
25. Dedicate 5 feet of right of way along the Lobo Avenue frontage of the subdivision.
26. Dedicate sufficient right of way along the Santa Fe Road frontage of the subdivision to provide an ultimate right of way width of 56 feet. Dedicate a minimum 7-foot wide public utility easement, if such easement is necessary, along the ultimate Santa Fe Road right of way line. Joint use of dedications or easements shall not be allowed. At the developer's option, sidewalk may be eliminated along Santa Fe Road. The noise barrier wall may be placed within the Santa Fe Road right of way.
27. Prior to recording the final map, the owner shall provide all documentation to the Department of Public Works to form a park maintenance zone of benefit in County Service Area No. 1 for the proposed neighborhood park.
28. Pursuant to Section 17.04.050.B of the Merced County Code, streets which run north south shall be designated as Avenues, and streets which run east-west shall be designated as Street or Drive, on the final map.
29. Drake Avenue shall be aligned with the proposed Drake Avenue northerly extension through Hollywood Park, Major Subdivision No. 01001.

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30. The developer shall participate in the County's improvement of Lobo Avenue from Beachwood Drive to the western boundary of the subdivision. The amount of \$11,600 for materials only shall be paid to the Department of Public Works prior to recordation of the final map.
31. Noise mitigation measures shall not be shown on the final map.
32. Through encroachment permit, temporary access from Santa Fe Road may be allowed to model homes. Residential construction within identified noise contours exceeding 65 dBA CNEL shall comply with all noise mitigation measures including construction of a noise barrier.
33. Satisfy Improvement Level 1 requirements as set forth in Chapter 16.08 of the Merced County Code, which generally includes dedication of right-of-way and public utilities easements, roadway construction and installation of matching pavement along existing roadways, street lighting, storm drainage system and underground or relocate utilities and irrigation facilities. Lobo Avenue shall be partially reconstructed.
34. Release and relinquish all abutters' right of access to and from the entire Santa Fe Road frontage of Lots 201 through 209, 211, 212, and 229.
35. Provide a letter from the Franklin County Water District, or Merced Irrigation District as appropriate, accepting storm drainage water from this proposed development into their facilities.
36. All lot and street grading shall be completed prior to the issuance of any building permits. The developer shall enter into an agreement with Public Works that no occupancy shall take place until such time as all improvements are completed.
37. Provide centerline striping for those new roads, which intersect the existing peripheral streets.
38. The developer shall enter into a development agreement with the County of Merced pursuant to Article 2.5 of Chapter 4 of Division 1 of the State of California Government Code prior to final map recordation agreeing to pay \$1,514.00 per single-family dwelling unit at the building permit state.
39. The developer shall construct speed humps on roads adjacent to the park as part of the subdivision improvements.
40. Developer/Applicant is advised that he/she may be obligated to comply with Federal Regulations for storm water runoff issued by the U.S. EPA on November 16, 1990 (40 Code of Federal Regulations Parts 122, 123 and 124). For information and direction, contact the State Water Resources Control Board's Construction Activity Storm Water Hotline at (916)657-1146.



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- B. CONDITIONAL USE PERMIT APPLICATION NO. 03012 - Galvan / Ochoa - To legalize an existing neighborhood cocktail lounge, which was previously operated only as a bar, called "Chikito Banano". Nightly entertainment such as dancing and bands will be allowed a maximum of six nights per year under the new proposed project. The lounge will keep the same name, and will be open 7 days per week. The property is located on the northwest corner of Winton Way and Gerard Avenue in the Winton area on land designated Winton SUDP Commercial land use in the General Plan and zoned C-2 (General Commercial) (.15 Acres). **TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Dan Skidmore****

Planner Dan Skidmore presented the Staff Report and Recommendation dated February 11, 2004 and passed out a letter from Merced Irrigation District with a request for an additional condition regarding the storm water runoff.

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

Mike Smith, CCPS, stated that he has no issues regarding this application and no problem with the additional condition requested by Merced Irrigation District.

The public hearing closed at 9:27 a.m.

**MOTION: M/S WHITNEY - CLAUSS, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION EXEMPTS CONDITIONAL USE PERMIT APPLICATION NO. 03012 FROM CEQA.**

**MOTION: M/S WHITNEY - CLAUSS, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATION DATED FEBRUARY 11, 2004, AND MAKES THE 9 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 9 FINDINGS, APPROVES CONDITIONAL USE PERMIT APPLICATION NO. 03012 SUBJECT TO THE 9 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS WITH THE ADDITION OF CONDITION #9 ADDED BY MERCED IRRIGATION DISTRICT:**

**Conditions:**

1. Administrative Permit No. 03012 is granted for this project, which shall be located, developed and operated in a manner as described on the approved plot plan and submitted application, consistent with the specific conditions provided in this approval. Minor modifications may be approved by the Planning Director.
2. The project shall comply with the Standard Conditions in Planning Commission Resolution No. 97-1 (attached).
3. The applicant shall comply with applicable regulations administered by the County. These regulations include, but are not limited to standards administered by the County Fire, Environmental Health, Planning and Public Works Departments.

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4. Complete plans and specifications for all proposed retail food facilities shall be submitted for review and approval by the Environmental Health Division prior to the issuance of a building permit.
5. Any live performance events such as bands, and/or disc jockeying, held at the cocktail lounge must be limited to 6 times per year with a 1 week notice to the Planning Department of the scheduled event. Operational hours of the night club are from 6 a.m. to 2 a.m. All bands and music must end no later than 1:30 AM.
6. A minimum of two private security guards shall be hired and attend any evening event held at the cocktail lounge where any of the following is to take place: Live music, and/or dancing.
7. The owners or event promoters shall notify the Sheriffs Department a minimum of 48 hours in advance of any event likely to generate attendance at or near maximum hall capacity.
8. For the purpose of condition monitoring, an inspection fee in the amount of **\$408.00** shall be required. This fee shall be paid within 14 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.
9. The property owner will be required to enter into an Agreement of Inclusion with the Merced Irrigation District Drainage Improvement District (MIDDID No. 1), paying all applicable fees.

**C. CONDITIONAL USE PERMIT NO. 99022 – Vander Woude Dairy – To construct and operate a dairy with a maximum of 7,613 animal units on a 123 acre portion of a 1,147 acre property located northeast of the intersection of Rahilly Road and State Highway 59 in the Merced area designated as Agricultural in the Merced County General Plan and zoned A-1 (General Agriculture). **TO CERTIFY THE ENVIRONMENTAL IMPACT REPORT AND APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. Project Planner Robert King****

Planner Robert King and Planning Consultant Bob Klousner presented the Staff Report and Recommendations dated February 11, 2004.

The public hearing opened at 9:55 a.m.

Tom Terpstra, attorney for Vander Woude, thanked staff for a detailed and thorough staff report and Environmental Impact Report. He wants to make five key points regarding this application. 1. The project is consistent with the County General Plan. 2. The EIR addresses the environmental effects of this project. 3. The EIR identifies and imposes mitigation measures to lessen the environmental effects of the project. 4. The EIR properly identifies and analyses alternatives to the project. 5. The benefits of this project are significant and they outweigh any environmental consequences of the project. He stated that he will answer any questions anyone may have.

Joe Ramos, Western United Dairyman, supports this project. He will ensure that this dairy will remain in compliance. He stated that the applicant serves on the San

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Joaquin Valley Air Pollution Control District Committee. He also participates in committee's regarding dairies. Mr. Ramos thanked the staff and asked for approval of this project.

J.P. Cativiela, of the Community Alliance for Responsible Environmental Stewardship, submitted a letter to the Commission. He stated that Merced County already benefits from a large share of the state's dairy farms, creameries and dairy products processors. The county leads the stated in number of dairies and is second only to Tulare County in milk produced. This means that there are thousands of jobs on dairies, which provide year round employment with benefits for those who feed, milk and care for cattle and assist with cultivation of the surrounding croplands. Some 11, 500 Merced County jobs would not exist today without the dairy industry. He urged for support of this project.

Simon Vander Woude, applicant and owner, stated that this dairy will be a partnership between 3 families. He feels this is a state of the art dairy and he feels that Merced is a great place to operate a dairy. He takes his responsibility to the environment very seriously. He is committed to protecting the environment.

Paul Martin, Western United Dairyman, submitted a letter from Diana Westmoreland-Pedrozo of Merced County Farm Bureau. He stated this project is environmentally sound. The Vander Woude family has been cooperative and responsive throughout the entire steps of this project. He asked for support of this application and asked for certification of the project.

### **10:15 a.m. BREAK – returned at 10:30 a.m.**

Colleen Triweiler, Rahilly Road resident, stated that this dairy will impact the heifer ranch nearby. There are many bad smells and flies associated with dairies. There are too many in one area. Ms. Triweiler feels that big dairies put the smaller dairies out of business.

Gordon Aue, neighbor, stated that he has no problems with the application. He knows the Vander Woude's and feels they will be an asset to Merced County and he is in support of this application.

Vivian McGhee, El Nido resident, stated that she knows what it's like to live by dairies. There is a constant problem with flies, dust, mosquitoes and the smell is bad. He's not in favor of this project.

Lydia Miller, San Joaquin Valley Raptor Rescue Center, urged the Commission not to certify the Environmental Impact Report. She feels that there are a lot of issues with this application. She feels the findings can not be made. She re-submitted her previous letters for the record to the Commission.

Gale Trieweiler, 1751 W. Rahilly Road resident, feels that money is more important than the health of Merced residents. He is not in favor of this application.

Tom Terpestra, attorney, stated that everyone's concerns are thoroughly addressed in the Environmental Impact Report. The air quality analysis is contained in the EIR as well. The project has been fully addressed under CEQA.

The public hearing closed at 10:46 a.m.

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Ruben Castillo, County Counsel, asked Mr. Klousner if he has any response to the criticisms. Mr. Klousner responded to Mr. Trieweiler concerns. He stated that no grading has occurred. He agrees with the EIR and feels it is adequate.

**MOTION: M/S WHITNEY - CLAUSS, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE RESOLUTION CERTIFYING THE ENVIRONMENTAL IMPACT REPORT AND ADOPTS THE RELATED FINDINGS ON THE SIGNIFICANT IMPACTS AND ALTERNATIVES AND THE STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING PLANS FOR CONDITIONAL USE PERMIT NO. 99022 FROM CEQA.**

**MOTION: M/S WHITNEY - CLAUSS, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATION DATED FEBRUARY 11, 2004, AND MAKES THE 8 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 8 FINDINGS, APPROVES CONDITIONAL USE PERMIT NO. 99022 SUBJECT TO THE 8 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

### Conditions:

1. Conditional Use Permit No. 99022 is granted for the construction and operation of a 7,613 animal unit milk cow dairy on 1,147 acres, and the construction and occupancy of a second dwelling unit for a qualified agricultural worker.
2. The Vander Woude Dairy project shall be located, developed and operated in a manner described on the approved plot plan, Comprehensive Nutrient Management 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 on a written request of the applicant to the Planning Director.
3. All mitigation measures identified in the Environmental Impact Report are adopted and incorporated by reference as project conditions.
4. Prior to obtaining a building permit for the second dwelling on the site, the project sponsor shall obtain approval from the Merced County Health Department indicating that the proposed dwelling is in compliance with the regulations administered by the Health Department.
5. To implement Mitigation Measure NOP-1 (Traffic) within 90 days of final approval of Conditional Use Permit No. 99022 and prior to obtaining any building permits, the applicant shall enter into a Road Impact Agreement with the Department of Public Works Road Division to maintain the structural section of County Roads including payment of an impact fee for the cost of asphalt concrete material to overlay Rahilly Road.
6. An encroachment permit shall be obtained from the Department of Public Works, and a paved driveway approach constructed and streetlight installed to County standards at the primary access at Rahilly Road, and ten feet of right-of-way dedicated along Rahilly Road frontage, prior to utilizing the conditional use permit.

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7. The project shall comply with all applicable regulations administered by the County Fire, Health, Planning and Public Works Departments.
8. For the purpose of condition and mitigation monitoring, an annual fee in the amount of \$300.00 shall be paid prior to utilizing the conditional use permit.

**VI. CORRESPONDENCE**

None

**VII. GENERAL BUSINESS**

**As part of the 20-Year Regional Transportation Plan update, MCAG will present transportation scenarios, funding strategies, and a project list at the February 25, 2004 Planning Commission meeting.**

**VIII. DIRECTOR'S REPORT**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 10:55 a.m.