

# **MERCED COUNTY PLANNING COMMISSION**

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## **MINUTES FOR MEETING OF MAY 14, 2008**

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of May 14, 2008, are available online at [www.co.merced.ca.us/planning/plancomarchive.html](http://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 9:15 a.m., on May 14, 2008, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

### **II. ROLL CALL OF COMMISSIONERS**

Commissioners Present:      Commissioner Jack Mobley  
   Commissioner Steve Sloan-Chairman  
   Commissioner Lynn Tanner  
   Commissioner Cindy Lashbrook  
   Commissioner Rudy Buendia

Staff Present:                      Robert Lewis, Development Services Director  
   William Nicholson, Assistant Development Services Director  
   Kim Anderson, Recording Secretary  
   Oksana Newmen, Planner II  
   Robert King, Senior Planner  
   Jeffrey Fugelsang, Planner I  
   Lona Franklin, Planner I  
   David Gilbert, Senior Planner

Legal Staff:                        Bob Gabriele, Deputy County Counsel

Commissioners Absent:        None

### **III. APPROVAL OF MINUTES**

**M/S MOBLEY - BUENDIA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF APRIL 9, 2008 AND APRIL 23, 2008.**

### **IV. CITIZEN COMMUNICATIONS**

None

### **V. PUBLIC HEARINGS**

**A.      CONDITIONAL USE PERMIT APPLICATION No. CUP06-014 - Thoreson Sand Mine - To excavate and remove approximately 75,000 cubic yards of sand material being a 7 acre portion of a 35 acre parcel over a five year period, and to reclaim the property back to grazing lands. The property is located on the south side of El Capitan Way and approximately 0.5 miles west of Santa Fe Drive in the Cressey area on land designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. ON****

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated May 14, 2008.

The public hearing opened at 9:28 a.m.

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Des Johnston, Santa Fe Land Planning and speaking on behalf of Central Valley Concrete, stated that staff has completed the process and presented a thorough staff report. He accepts the 30 conditions of approval and requests the Commission adopt the Mitigated Negative Declaration and approve the Conditional Use Permit. He said that Chuck Falkenstein, General Manager with CVC and himself are available to answer any questions.

Maureen McCorry, Valley Land Alliance, stated that her group did not see the Mitigated Negative Declaration. She said there is a Merced Stakeholders process which is a process that has been for quite some time and the County is there to attend to raise issues to members of the Stakeholders so there is some understanding about what is coming down the Merced River. She feels the reclamation plan is incomplete and inadequate. The Mitigated Negative Declaration was not seen in the local newspapers and she was not made aware that the Negative Declaration for the project was available until May 7, 2008. The Merced River impacts include water, habitat, and threatened or endangered species and the negative declaration defers analysis of these impacts and provides the public with little detail on the scope and impact on a very sensitive and valuable public resource. There was a code violation on this project since excavation was taking place by Central Valley Concrete. Were they unaware there was a permitting process, especially next to the Merced River? She asked the Commission to reject this project. At the minimum, this project should be sent back to prepare an Environmental Impact Report.

The public hearing closed at 9:35 a.m.

Commissioner Lashbrook stated that she lives close to the Merced River and she wants the river and habitat protected as well, but has never noticed effects or changes to the river. She is concerned about the straight 4:1 slope, she liked the way the old slope was terraced a bit and would rather see a setback that way.

Commissioner Mobley asked County Counsel Bob Gabriele to talk about an Environmental Impact Report as opposed to a Mitigated Negative Declaration.

County Counsel Bob Gabriele, explained that the Commission determines that whether sufficient evidence submitted to raise a "fair argument" that there is an inadequacy with respect to a material or significant element of the negative declaration analysis and proposed mitigation, so it is your discretion to determine if there is sufficient evidence. If the argument is corroborated by some factual evidence and additional studies are necessary to address an issue, then that can be taken into account you can make a determination.

Commissioner Lashbrook suggested a site visit by the Planning Commissioners and suggested continuing this item to the next Planning Commission meeting. Mr. Gabriele indicated that each Commissioner can go on a site visit on their own. The Brown Act requirements would have to be satisfied.

Mr. Johnston stated that Central Valley Concrete was not involved with this project in the beginning. There was another operator and CVC acquired the project from the property owner and CVC has no violations and any statement given about CVC was inappropriate and is factually incorrect. This site is small and the level of interest triggered by previous comments have been addressed by the agencies and 30

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conditions of approval attest to the constraints on the applicant to assure that there are no impacts on the environment and nothing is deferred.

**MOTION: M/S TANNER - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT APPLICATION No. CUP06-014.**

**MOTION: M/S TANNER – MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 14, 2008, AND APPROVES THE RECLAMATION PLAN PREPARED FOR CONDITIONAL USE PERMIT APPLICATION No. CUP06-014 SUBJECT TO THE 30 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

**Planning and Community Development Department**

1. Conditional Use Permit No. CUP 06-014 is granted to excavate and remove sand mining material for the following:
  - Maximum production – 75,000 cubic yards of sand material.
  - Life of Permit: 5 years (until 6/30/2013).
  - Maximum Area to be excavated: 6.9 acres.
  - Maximum depth of excavation: Shall be at an elevation of approximately 113 feet above mean sea level
  - All mining and related uses shall be located, developed, and operated in a manner described on the approved plot plan, cross sections, elevations, and the conditions of this permit.
2. Hours of Business Operations shall be limited to the following:
  - Excavation operations shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday; and,
  - Infrequent occasions where nighttime and Sunday operations may be warranted in response to requests from Cities, the County, Caltrans, or other agencies for sand in the event of flooding emergencies.
  - Temporary portable lighting will be provided and set up to insure neighbors are not impacted by the lighting.
3. Reclamation of the site shall conform to the Reclamation Plan approved by the County and OMR. Reclamation shall commence at the end of mining, with final reclamation completed within one year of the completion of mining.
4. The project shall comply with standard conditions listed in Planning Commission Resolution No. 97-1 and 97-2.
5. The applicant shall comply with all Federal, State and County Requirements including, but not limited to the San Joaquin Valley Air Pollution Control District, the Regional Water Quality Control Board, California Department of Fish and Game, Office of Mine Reclamation, Merced County Public Works – Roads Division, and the Merced County Health Department; Environmental Health Division.
6. Pre-construction biological surveys, as outlined in the Mitigated Negative Declaration, shall be completed per California Department of Fish and Game requirements, and results of the surveys shall be forwarded to the County.

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7. Prior to exercising the permit, the applicant shall submit the financial assurance of \$4,110.00. The financial assurance may be in the form of a surety bond, certificate of deposit, letter of credit, or Trust Fund.
8. Upon completion of the project, all the machinery and equipment associated with the mining operation shall be removed from the property, unless it will be used for the planned reclaimed use of the site.
9. The applicant shall furnish the Planning and Community Development Director with a report describing compliance with the reclamation plan by July 1st of each year. With each report, the permittee shall provide a map to scale, showing current mining progress and reclamation.
10. The Planning and Community Development Director or his designee shall review the reclamation plan status report and inspect the mining operation to determine and assure continuing compliance with the approved reclamation plan and the Conditions of Approval. The applicant shall pay the County the actual cost of conducting inspections, annually or at other times, and shall make available to the Planning and Community Development Director such information necessary for determining compliance. The applicant shall be required to pay an initial conditions monitoring fee and mitigation measures monitoring fee of **\$304**. Additional fees may be assessed for subsequent inspections as deemed necessary by the County, and shall be billed on a time and materials basis.
11. If the Conditional Use Permit is not used within one year, it shall become automatically void without further action. The Planning Commission may extend the Conditional Use Permit if a request is filed by the applicant prior to its expiration. (Zoning Code Section 18.50.09B).
12. If the use authorized by the Conditional Use Permit is abandoned or discontinued for a period of one year the applicant must file an Interim Management Plan application with the County.
13. During the life of the project, the project sponsor shall comply with the requirements of regional, state, and local agencies with jurisdiction over the project or resources affected by the project.
14. Prior to the sale/transfer/lease of the project site and/or operations, the applicant shall notify the Planning Department of said transaction. The intent of this condition is solely to keep the County apprised of the owner and operator of the site.
15. If a bone is uncovered that appears to be human, the Merced County Coroner shall be contacted immediately. If the coroner determines that the bone is likely to be Native American in origin, then the Native American Heritage Commission, in Sacramento, shall be contacted to identify most likely descendants.
16. The required berm along the southern portion of the mining site shall be minimum 18 inches high and maintained at all times. A silt fence shall be installed on the south side of the berm and kept in working order through the duration of the project.
17. A 30 foot setback of the excavation area shall be maintained from the adjacent properties to the east and west.
18. Revisions and clarifications provided in the undated letter from the operator (CVC) to the State Office of Mine Reclamation shall be adhered to, and considered as part of the Reclamation Plan.

19. Applicant/property owner shall comply with all Federal, State, and Local agency regulations.

**Public Works/Road Division**

20. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to determine the potential impact that the project will have on Merced County roadways. This evaluation should take into consideration the truck traffic existing and generated from the project, the truck routes, truck types and weights, and shall calculate corresponding Traffic Indices for those routes most impacted. Corings of the structural sections of the roadways along the truck routes shall be taken, and R-Value analyses performed of the subgrade, which together shall be used to evaluate the structural integrity of each roadway. For any roadway whose service life is determined to be significantly reduced by the project, the applicant shall pay a corresponding contribution to the Merced County Road Fund to offset the impact; or

In lieu of performing a roadway impact evaluation, the applicant may enter into a Roadway Impact Agreement with Merced County, and pay a prescribed Roadway Impact Fee. The Roadway Impact Agreement will address the obligations of the applicant for mitigating the project's impact, and shall be effective for the term of the project. The applicant shall keep accurate records of all of the loaded trucks that exit the project site; and, at the end of each year, the applicant shall submit said records to the County, along with payment of an impact fee to the Merced County Road Fund corresponding to \$2.50 for every loaded truck, or \$0.10 per ton, that exited the site (empty trucks will not be counted) during the past year.

21. The applicant shall obtain an encroachment permit from the Department of Public Works Road Division to construct an agricultural type rural driveway approach at the El Capitan Way access point to the project prior to the start of removal of material from the site.

**Environmental Health Division**

22. Any hazardous materials stored on-site over threshold quantities (55 gallons, 200 cubic feet, or 500 pounds) shall require that a hazardous business plan (HMBP) be filed with this division. Likewise, any quantity of hazardous waster generated on-site shall also trigger the requirement that a HMBP be filed. Contact Vickie Hayer or Kerri Gibbons at (209) 381-1100 to obtain information.
23. Care should be taken to protect the well located in the center of the pit being saved for use during and after the reclamation period from damage during the mining phase.

**Turlock Irrigation District**

24. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility changes are performed at the developer's expense.

**Department of Water Resources**

25. The applicant shall obtain an encroachment permit for the State Adopted Plan of Flood Control, if necessary, by contacting the Department of Water Resources at (916) 653-5791.

**Mitigation Measures**

**26. Biology - 1**

- (a) Pursuant to the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle, the project applicant shall establish a 20 foot buffer zone around each of the two potentially affected elderberry shrubs within which, no mining or excavation or other activities that could result in the damage to or loss of the elderberry shrubs shall occur. This buffer shall be marked with high visibility fencing during excavation so excavation crews can easily avoid them during the excavation of the site. This buffer zone shall remain in place throughout the life of the project.
- (b) The project applicant shall conduct Worker Environmental Awareness Program (WEAP) training for construction crews before construction activities begin. The WEAP shall include a brief review of the special-status species and other sensitive resources that could occur in the proposed project site (including their life history and habitat requirements and what portions of the proposed project site they may be found in) and their legal status and protection. The program shall also cover all mitigation measures, environmental permits and proposed project plans, such as the Stormwater Pollution Prevention Plan (SWPPP), Best Management Practices (BMPs), erosion control and sediment plan, and any other required plans. During WEAP training, construction personnel shall be informed of the importance of avoiding ground-disturbing activities outside of the designated work area.
- (c) Prior to any ground disturbing activities within 20 feet of the dripline of any elderberry shrub, the applicant or their representative shall initiate consultation pursuant to the Federal Endangered Species Act with the USFWS. Section 7 Consultation will occur if the US Army Corps of Engineers (ACOE) is involved with this project through a Section 404 permit. Section 10 Consultation will be required if there is no ACOE involvement with this project. Specific mitigation measures for project related impacts on VELB will be developed during this process, but will generally include the following mitigation measures.
- (d) If the elderberry shrubs cannot be avoided then those elderberry shrubs shall be transplanted to a USFWS approved location following the guidelines set forth in the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle. This location may be established on site, or at an approved mitigation bank.
- (e) In addition to transplanting the affected shrubs, the project applicant shall plant additional seedlings or cuttings in the established mitigation area following the guidelines set forth in the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle. (MM)

**27. Biology - 2**

- (a) If proposed project construction occurs during the nesting season for Swainson's hawk (March 1 - September 15), pre-construction surveys for active nests shall be conducted with 1000 feet of the project site. If an active nest is located, CDFG shall be consulted to determine if project construction may proceed during the nesting season. Suitable avoidance measures may include establishing a construction exclusion buffer or monitoring the nest during construction to determine if activities are adversely affecting the nesting cycle. Applicants must submit proof of CDFG consultation, in addition to survey results, to the Planning and Community Development Department prior to grading and excavation.

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- (b) If the above survey does not identify any nesting species protected by the Migratory Bird Treaty Act, within 1000 feet of the project site, no additional mitigation would be required for nesting birds. However, should any active bird nests (excluding Swainson's hawk) be located within 250 feet on the project site, the following mitigation measures shall be implemented.

The applicant shall avoid all birds nest sites located in or within 250 feet of the project site during the breeding season (approximately February 1 through August 30) while the nest is occupied with adults and/or young. Avoidance shall include the establishment of a non-disturbance buffer zone around the nest site, the size of which will be determined in consultation with DFG. The buffer zone shall be delineated by highly visible temporary construction fencing. Any occupied nest shall be monitored by a qualified biologist to determine when the nest is no longer in use. Every effort should be made to preserve Swainson's hawk nest trees through Project design or avoidance measures. However, if removal of the nest tree during the nesting season is unavoidable, a Section 2081 permit would be required from the CDFG. Mitigation for the loss of active Swainson's hawk nest trees at any time of year would be determined in consultation with the CDFG and could include the replacement of trees at a CDFG approved mitigation site and ratio. (MM)

### 28. **Biology - 3**

- (a) Pre-construction surveys for burrowing owls shall be conducted by an experienced biologist within 30-days prior to the start of work activities where land construction is planned in known or suitable habitat areas. If construction activities are delayed for more than 30 days after the preconstruction surveys, then a new preconstruction survey shall be required. All surveys shall be conducted in accordance with the CDFG/California Burrowing Owl Consortium survey protocols.

- (b) If burrowing owls are discovered in the project site, CDFG shall be notified. Where construction activities could directly affect burrowing owl survival or reproductive behavior, or where maintenance of a minimum 250-foot buffer zone around active burrowing owls nests (160 feet when owls are not nesting) is not practical, the applicant shall retain an experienced burrowing owl biologist to recommend project/site-specific mitigation measures to avoid violating California Fish and Game Codes Section 3503 and Section 3503.5 and the MBTA, which could include the following or equally effective measures:

- A site-specific plan to complete sand extraction and reclamation when adult owls are in burrows attending to young nestlings (and thus not disturbed by the presence of construction equipment);
- Modification of construction procedures so construction tasks could be completed in as short a time as possible; and
- Close monitoring of the owls' behavior before, during and after construction so any significant changes in the owls' behavior would be apparent. (MM)

### 29. **Cultural - 1**

If any cultural resources, such as unusual amounts of bone or shell, artifacts, or human remains, are encountered during any reclamation activities, work shall be suspended within 100 feet of the find. The Merced County Community Development Department shall be notified immediately of the discovery, and the project proponent shall retain the services of an archaeologist who meets the Secretary of the Interior's Standards for Archaeology to evaluate the find and provide recommendations for treatment of any significant archaeological resources. If human remains are discovered during any reclamation activities, work within 100 feet of the remains shall be suspended immediately and the County Coroner shall be immediately notified. If the remains are determined by the county coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours.

The project proponent shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely

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Descendant, including the excavation and removal of the human remains. The Merced County Department of Community Development will be responsible for the approval of recommended mitigation, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The project proponent shall implement the approved mitigation, to be verified by the County, before the resumption of activities at the site where the remains were discovered. (MM)

**30. Hazards - 1**

If any hazardous materials or waste that are stored on-site that exceed threshold quantities, the project applicant will prepare a hazardous materials business plan (HMBP) with the Merced County Department of Public Health: Division of Environmental Health. (MM)

**B. CONDITIONAL USE PERMIT APPLICATION No. CUP08-002 - Brett Tate – To establish an 1,800 sq. ft. micro-brewery with any on-premise consumption and sales being strictly prohibited east of Mahoney Road, approximately 1/2 mile south of Riverside Avenue in the Hilmar area. The property is designated as Agricultural land use in the Merced County General Plan and zoned A-1 (General Agricultural). THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. LF**

Planner Lona Franklin presented the Staff Report and recommendations of approval dated May 14, 2008.

The public hearing opened at 10:03 a.m.

Mike Smith, CCPS, reviewed the staff report and agrees and asked for approval of this application.

Maureen McCorry, Valley Land Alliance, asked if the applicant will be brewing beer on site.

Planner Lona Franklin explained that there will be a small beer brewery on site, but there will be no beer tasting or parties at all.

Ms. McCorry asked why an environmental review has not been done since this project is located near the Merced River.

Bill Nicholson, Assistant Development Services Director, stated that the brewery is in a small building and a tennis court is located on the northern part of the parcel and the Merced River is a distance of about 350 ft. from the subject application.

The public hearing closed at 10:06 a.m.

**MOTION: M/S TANNER – BUENDIA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS CONDITIONAL USE PERMIT APPLICATION No. CUP08-002, FROM CEQA.**

**MOTION: M/S TANNER - BUENDIA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 14, 2008, AND MAKES THE 14 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 14 FINDINGS, APPROVES CONDITIONAL USE PERMIT APPLICATION No. CUP08-002 SUBJECT TO THE 18 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**



**Conditions:**

Planning and Community Development Department

1. Conditional Use Permit CUP08-002 is granted to allow a micro-brewery operation as described in the applicant's operational statement, the approved plot plan, submitted application and subject to conditions herein. Minor modifications may be approved by the Development Services Director upon submittal of an acceptable application.
2. Annual production shall be a maximum of 500 barrels/kegs (15,500 gallons) per year.
3. The purpose of the micro-brewery operation shall be research and development of test batches of specialty beer for retail distribution locally to selected vendors for off-site consumption and for special events at off-site locations only.
4. The applicant shall obtain necessary permits from local, state and federal agencies for micro-brewery manufacturing and comply with all applicable regulations.
5. The applicant shall comply with all standard conditions of approval listed in Planning Commission Resolution No. 97-1.
6. The hours of operation shall be from 6:00 a.m. to 8:00 p.m. and limited to no more than three days per week on weekdays. A certified brewmaster shall be present at all times during operating hours of the micro-brewery.
7. No customers shall visit the micro-brewery operations and no beer tasting facilities or any sales facilities for consumption shall be permitted on site.
8. If this conditional use permit is not implemented within one year from the date of Planning Commission approval, it shall expire and become null and void. The Planning Commission may extend the permit if a request is filed by the applicant prior to its expiration.
9. For the purpose of condition monitoring, an inspection fee in the amount of \$304.00 is 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.

Public Works Department/Administrative Division

10. The parcel is located within FEMA Flood Zone A, therefore, prior to application for building permits the applicant shall contact the Merced County Public Works Department Administrative Division to initiate the National Flood Insurance Program (NFIP) screening process. Please contact Kellie Jacobs at (209) 385-7602, Ext. 4678.

Public Works Department/Building and Safety Division

11. The owner must submit plans to the Building Department for a permit prior to the start of any work. Three (3) sets of plans and two (2) sets of all calculations are required.

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12. A soils report must be prepared by a licensed soils engineer for all new construction. The soils engineer must make certain that liquefaction is addressed in the report. No plans will be accepted and no permit will be started without this soils report.

Department of Health/Environmental Health Division

13. Prior to beginning construction/erection of the proposed building, applicant must obtain approval for the proposed septic system from the Division of Environmental Health. In addition, a Hazardous Materials Business Plan must be filed if required by Environmental Health. Contact Mary Coakley at 209-710-6096, [MCoakley@co.merced.ca.us](mailto:MCoakley@co.merced.ca.us).
14. Significant amounts of hazardous substances shall not be used or housed in the building.
15. The proposed engineered septic system shall be subject to inspection and approval by Merced County Department of Health Environmental Division.

Fire Department

16. Prior to beginning construction/erection of the proposed building, applicant must contact Merced County Fire Department regarding on-site water storage requirements. Applicant shall comply with all County Fire regulations.

Commerce, Aviation and Economic Development

17. The property owner shall obtain a business license within 30 days from the Planning Commission's approval. This business license shall be renewed annually.

Turlock Irrigation District (TID)

18. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility changes are performed at developer's expense.

- C. 1<sup>ST</sup> EXTENSION No. EXT08-007 TO MAJOR SUBDIVISION APPLICATION No. MAS05-013 – “Lands of Mercado” - Manuel Mercado - To extend the expiration date of the tentative subdivision map for one year to March 22, 2009. The property is located on the west side of Hinton Avenue, 300 feet north of August Avenue in the Delhi area. The project site is designated Delhi Community Plan - Low Density Residential land use in the General Plan and zoned R-1-5000 (Single Family Residential). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE EXTENSION. JF****

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated May 14, 2008.

The public hearing opened at 10:15 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 10:16 a.m.

**MOTION: M/S TANNER – MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS 1<sup>ST</sup> EXTENSION No. EXT08-007 TO MAJOR SUBDIVISION APPLICATION No. MAS05-013, FROM CEQA.**

**MOTION: M/S TANNER - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND**

RECOMMENDATIONS DATED MAY 14, 2008, AND MAKES THE 11 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 11 FINDINGS, APPROVES 1<sup>st</sup> EXTENSION No. EXT08-007 TO MAJOR SUBDIVISION APPLICATION No. MAS05-013 SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

**Conditions:**

Planning & Community Development Department

1. Approval of this extension shall extend the period of time for recording the final map to March 22, 2009. This condition replaces Condition #1 in the March 22, 2006 report.
2. Landscaping, including one street tree per lot shall be installed by the developer as required by the zoning ordinance and other applicable county regulations.
3. This project shall comply with the Standard Conditions in Planning Commission Resolution No. 97-1.
4. For the purpose of mitigation and/or condition monitoring, a fee in the amount of **\$296.00** shall be required. The fee shall be paid prior to recordation of the Final Map.

Environmental Health Division

5. Obtain permits from the Division of Environmental health for destruction of the existing well and removal of existing septic tanks prior to grading.

Parks and Recreation

6. The developer shall pay park fees of \$280 per lot as required per County Ordinance No. 1090.

- D. MAJOR SUBDIVISION APPLICATION No. MAS06-011 - "Lucca Villas" - Pietro Bandoni -**  
To divide 22.2 acres into 17 single family residential lots ranging from 1.0 acres to 1.97 acres in size. The project is located on the east side of Leeds Road, 1,450 feet north of Olive Avenue in the Merced area. The project site is designated Merced Rural Residential Center #1 Agricultural Residential land use in the General Plan and zoned A-R (Agricultural-Residential). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. DG**

**This item has been continued to an unknown future Planning Commission date at the request of Golden Valley Engineering due to Fire Department concerns.**

- E. MAJOR SUBDIVISION APPLICATION No. MAS08-002 - "Castle Commerce Center # 2" -**  
To divide 508.59 acres into eight (8) parcels consisting of: Parcel A = 1.19 acres, Parcel B = 1.45 acres, Parcel C = 1.64 acres, Parcel D = 2.85 acres, Parcel E = 3.96 acres, Parcel F = 4.73 acres, Parcel G = 1.16 acres, Parcel H = 0.61 acres with a Remainder Parcel of 491.0 acres. The project is located at the northeast corner of Santa Fe Drive and Buhach Road in the Atwater area. The project site is designated Castle SUDP land use in the General Plan

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and zoned SPZ (Special Planning Zone). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. DG**

Planner David Gilbert presented the Staff Report and recommendations of approval dated May 14, 2008.

The public hearing opened at 10:30 a.m.

Rick Mummert, with Benchmark Engineering, stated that the application is to divide the 8 buildings in Castle to get redevelopment going. He read the conditions of approval listed in the staff report and agrees and asked the Commission to approve this application.

The public hearing closed at 10:31 a.m.

**MOTION: M/S TANNER - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS MAJOR SUBDIVISION APPLICATION No. MAS08-002, FROM CEQA.**

**MOTION: M/S TANNER - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 14, 2008, AND MAKES THE 8 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 8 FINDINGS, APPROVES MAJOR SUBDIVISION APPLICATION No. MAS08-002 SUBJECT TO THE 8 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Planning & Community Development Department

1. A Final Map shall be recorded within two years of the Planning Commission approval date as required by the Merced County Subdivision Code.
2. This project shall comply with the applicable Standard Conditions in Planning Commission Resolution No. 97-1.
3. A Right-To-Advise Notice shall be placed on the Final Map to be recorded

Public Works/Road Division

4. The existing and proposed roadways shall be monumented at endpoints of line segments, beginnings and endings of curves. Bearing and distances of right-of-ways and curve data for right-of-ways shall be shown on the map. Dimensions and widths of right-of-ways shall be noted.
5. Right-of-ways shall be labeled "Public Road Easement" on the map sheet.
6. Utility easements shall be labeled "Public Utility Easement" on the map sheet.
7. Lot corners shall be filleted (cut off) to the chord line of 15 foot radius curve

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at intersections and interior lot corners. Larger radii may be allowed where necessary for turning of large vehicles.

Merced Irrigation District (MID)

8. Merced County may have to alter the existing Agency Agreement with the Merced Irrigation District Drainage Improvement District No. 1 (MIDDID No. 1) to allow the discharge of their storm water run-off in the MID's Casad Lateral, upon new construction, paying all applicable fees. The County shall provide MIDDID No. 1 with the total impermeable area of any future construction that may benefit from this service, for the computation of the fees.

- F. PARCEL MAP WAIVER MINOR SUBDIVISION APPLICATION No. MS08-008 - Four S Land & Cattle Co** - To divide 1,664.1 acres into three parcels and a remainder parcel of: Parcel 1 = 160 acres, Parcel 2 = 216 acres, Parcel 3 = 369.6 acres with a Remainder Parcel of 918.5 acres. The property is located on the north and south sides of Greenhouse Road, 2 miles west of Dan McNamara Road in the Livingston area. The project site is designated Agricultural land use in the General Plan and zoned A-2 (Exclusive Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. DG**

Chairman Steve Sloan excused himself from hearing and voting on this item due to a conflict of interest since his cattle ranch deals with 4-S Land & Cattle Co.

Planner David Gilbert presented the Staff Report and recommendations of approval dated May 14, 2008.

The public hearing opened at 10:42 a.m.

Duane Andrews, Golden Valley Engineering, stated that all the land is in a Conservation Easement so there will be no development proposed or allowed. The 4-S stands for 4 sisters and they only want the option to sell separately. This is just a normal easement. He asked for approval of this application.

Maureen McCorry, Valley Land Alliance, feels that this is not a normal easement, they are individual contracts with individual landowners and if you have multiple easements you have multiple monitoring and management plans. It appears as though we do not know what those easements are. She said there are two issues with this application and the first is that the Commissioners do not have in front of them the information to decide if this parcel split will impact these easements and the public does not have access to that information and they do not know how the sale will impact those easements. She quoted from a statement by Kim Forest with Fish & Wildlife which says that Merced County is at capacity for protecting endangered species in this region. Ms. McCorry is disappointed that staff did not include an easement publicly in the staff report. This project is not exempt from CEQA.

The public hearing closed at 10:50 a.m.

Commissioner Lashbrook stated that she wants to see the easements.

Commissioner Mobley agreed that there is no hurry to see this application go through and would like to see the easements as well.

Robert Lewis, Development Services Director, asked Mr. Andrews if those conservation easements were made as part of the application packet. Mr. Andrews said they were not. Mr. Lewis asked if there would be a problem with coming back to the Planning Commission on June 11<sup>th</sup> to provide those easements. Mr. Andrews said as soon as possible, he would like to see this application come back.

**MOTION: M/S LASHBROOK – MOBLEY AND CARRIED BY A VOTE OF 4 – 0, THE COMMISSIONERS CONTINUED THIS ITEM TO THE JUNE 11, 2008 PLANNING COMMISSION TO ALLOW STAFF TO PROVIDE CONSERVATION EASEMENTS TO THE COMMISSIONERS.**

- G. ADMINISTRATIVE APPLICATION No. AA07-092 - John Oliveira - To operate 10 trucks and associated trailers for agricultural hay hauling on property located north of Johnson Avenue, 1/2 mile west of Golf Link Road in the Hilmar area and designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. BK****

Planner Robert King presented the Staff Report and recommendations of approval dated May 14, 2008.

The public hearing opened at 11:06 a.m.

Mike Smith, CCPS, stated that the land has been farmed and is a seasonal crop, they do oats and corn on a rotation basis. The applicant will only utilize a portion of the property the southwest corner of the property. The home approved to be built is for the property owner as he is moving his operation from Stanislaus County to Merced County. He agrees with the staff report and asked for approval of this application.

Jim Laforde, neighbor to this property, is concerned with the location of parking all of his trucks.

Planner Bob King explained that the trucks will be parked there overnight, but will not be there during the day since the drivers will be out hauling. He showed Mr. Laforde a map showing the proposed building and parking spaces.

Mr. Laforde stated that 80,000 pounds of trucks go along there each day and could be rough on the County roads.

The public hearing closed at 11:10 a.m.

Commissioner Tanner asked if the trucks are empty most of the time. Mr. Smith answered yes, the trucks will be empty mostly and there is a condition that states the trucks are not loaded when on-site.

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Commissioner Lashbrook stated that this is a good project and is in support of agricultural projects.

Bob Gabriele, County Counsel, stated that the Planner did note that there would be 10 trucks in and out on a daily basis and that is the extent, correct? Planner Robert King said that is correct. Mr. Gabriele said he doesn't see the actual condition that is restricting it to 10 trucks in and out daily. Mr. King explained that the 10 trucks in and out are based on average daily trips. There are only 5 employees on a normal daily basis so many vehicles won't leave, but this is only an average, and they are only expecting an average of 10 trucks.

**MOTION: M/S TANNER - MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE APPLICATION No. AA07-092, FROM CEQA.**

**MOTION: M/S TANNER - MOBLEY, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 14, 2008, AND MAKES THE 8 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 8 FINDINGS, APPROVES ADMINISTRATIVE APPLICATION No. AA07-092 SUBJECT TO THE 16 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Planning and Community Development Department

1. Administrative Application No AA07-092 is granted to operate an agricultural hauling business with ten (10) truck and trailer (flat beds) vehicles, construct a 6,000 square foot shop building for equipment storage, light vehicle maintenance and business offices consistent with the approved plot plan and the applicant's Operational Statement. Minor modifications may be approved by the Development Services Director upon submittal of an acceptable application.
2. The applicant shall comply with all of the applicable standard conditions of approval listed in the Planning Commission Resolution No 97-1.
3. An inspection fee of **\$380** required for conditions monitoring shall be paid within 30 days of the approval date. Additional inspections (if required) shall be paid by the applicant/ property owner at the hourly rate as adopted by the Board of Supervisors at the time of inspection. **The permit is not valid until the conditions monitoring fee is paid.**
4. Truck hauling operations shall be between the hours of 6:00 a.m. and 6:00 p.m., except for occasional periods when returning trucks may be delayed due to weather, road conditions, or mechanical breakdowns.
5. The storage of agricultural commodities on site in connection with the agricultural hauling business is prohibited.

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6. The number of truck and trailer (flat beds) vehicle units allowed to park and operate at this location shall not exceed ten (10), and no more than sixteen (16) employees are allowed on site for business operations.
7. The applicant shall comply with applicable Local, State and Federal regulations including, but not limited to the County's Fire, Sheriff, Environmental Health, Planning, and Public Works Departments.

### Public Works/Building & Safety Division

8. The applicant shall obtain all necessary building permits for the construction of the 6,000 square foot shop building and the new single family residence as required.

### Commerce Aviation and Economic Development Department

9. The applicant/owner shall obtain and keep current a Business License Permit to operate within Merced County.

### Public Works/Road Division

10. Trucks entering and exiting the site shall be unloaded. County roads are not designed to support continuous traffic of heavy trucks. If loaded trucks are operated from the site, the applicant will be required to enter into a Road Impact Agreement with the Department of Public Works for a fee of \$2.50 per loaded truck entering or exiting the site.
11. Johnson Avenue is designated as a Minor Collector type roadway in the county's road system. The ultimate right-of-way for a Minor Collector is 60 feet or 30 feet each side of road centerline. To complete the property owner's half of the 60 feet, a 10 foot dedication shall be made to Merced County for Road purposes. The legal description and exhibit shall be prepared by a California Licensed Land Surveyor.
12. The applicant shall install a county standard driveway approach where trucks will be entering and exiting the site. This shall be done under an encroachment permit obtained from the Roads Division and subject to the approval of a Road Division inspector.

### Environmental Health Division

13. If the applicant proposes to conduct any truck repair, a Hazardous Material Business Plan shall be required. Contact Vickie Hayer (381.1083) or Kerri Gibbons (381.1094).

### Merced County Fire Department

14. Applicant shall comply with all Fire Code regulations. Please contact Pat Wright located at 385-7347.

### Turlock Irrigation District

15. The private irrigation pipeline along the north side of Johnson Avenue shall be protected from additional trucks entering or leaving the project site upon the county road.
16. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility changes are performed at developer's expense.



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- H. **VILLAGES OF LAGUNA SAN LUIS COMMUNITY PLAN - CP07-002 - Merced County - To recommend Certification of the Final Environmental Impact Report (FEIR); Adoption of the Villages of Laguna San Luis Community Plan; Amendment of the Merced County General Plan; Related Re-zonings; and withdrawal of lands from the Merced County Agricultural Preserve, in an area generally located east of the San Luis Recreation Area, West of Interstate 5 and extending approximately two miles south and one mile north of State Highway 152. TO RECOMMEND THE BOARD OF SUPERVISORS CERTIFY THE ENVIRONMENTAL IMPACT REPORT AND APPROVE, MODIFY OR REJECT THE PROPOSED COMMUNITY PLAN AND ACTIONS. BK**

Chairman Steve Sloan excused himself for hearing and voting on this project since he is on the Board of Directors for the San Luis Water District. Commissioner Tanner acted as Chairman.

Robert Lewis, Development Services Director, indicated that late correspondence was received from the Fish & Wildlife Service and the comments were substantial, so Planner Robert King will proceed with the presentation and staff is changing its recommendation. Staff is requesting that the Planning Commission open the public hearing, receive testimony, close the public hearing and refer the project back to staff to address the comments from the US Fish & Wildlife Service.

Planner Robert King presented the Staff Report dated May 14, 2008.

The public hearing opened at 12:20 p.m.

William Miller, with the Villages of Laguna San Luis group, gave a presentation on the project.

Steve Teecham, Superintendent at the Los Banos Unified School District, stated that the applicants have been working with the School District for the last six months to come up with a mitigation agreement and signed an agreement with the owners and they are supportive of adequate school housing in the project area. The school district is in full support of the project.

Maureen McCorry, Valley Land Alliance, feels that this project is not needed and Merced County is #1 in foreclosures and there is a surplus on the housing market. The County should not approve anymore development. She states that there is not enough water to support this project. The Kit Fox letter states that the area is at capacity already and the project is not needed.

Marilyn Wright, Los Banos resident, stated that she is concerned with the lack of water. The water will be limited and they are facing restrictions on the water already. You can't get a building permit currently, unless you can prove that you have a water source other than irrigation water. She is also worried about the wildlife and habitat out in the area. This project is not needed.

Diana Westmoreland-Pedrozo, Merced County Farm Bureau, stated that Los Banos is leading Merced County in #1 for foreclosures. She has asked many times for a 4:1 ag mitigation for ag land. Water is a big issue and there is no guarantee that the San Luis Water District will be able to have their water in the future. Water issues are not being addressed. The County has done nothing to protect the Valley floor and the General Plan should address this issue. She is not saying she is for or against this project, but the County needs to assess all issues.

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Bryant Owens, Plainsburg Road, asked about the jobs shown in the Community Plan presentation and asked how many jobs would be involved in the actual construction of the homes and what would happen to those jobs after the houses are built. He is confused with some of the statistics presented in the presentation. The jobs have not been coordinated with the Community Plan or the County General Plan update. He asked that this project be sent back to Planning until it is needed.

Brian Vail, River West Investments, stated that he has been working with this project for 15 years now and believes over that course of time, they have worked out the concerns expressed today. There are significant mitigation measures that take care of each concern. This is however, just a Community Plan and zoning and there will still be significant environmental work to be done. There is no tentative map until the water is in adequate supply.

The public hearing closed at 12:40 p.m.

**MOTION: M/S MOBLEY – BUENDIA, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION AGREED TO REFER THIS APPLICATION BACK TO STAFF TO BRING BACK TO A FUTURE PLANNING COMMISSION MEETING.**

**VI. CORRESPONDENCE**

None

**VII. GENERAL BUSINESS**

None

**VIII. DIRECTOR'S REPORT**

Robert Lewis said the next Joint Workshop with the Board of Supervisors and Planning Commissioners will be held on July 1, 2008 at 1:30 pm.

An example of the Planning Departments website was handed out to the Planning Commissioners showing the Typical Discretionary Planning Application and CEQA process, application status and how to obtain Project Status Information.

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 12:50 p.m.