

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF JANUARY 25, 2012**

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The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of January 25, 2012, 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 9:00 a.m., on January 25, 2012, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

**II. ROLL CALL OF COMMISSIONERS**

Commissioners Present:           Commissioner Jack Mobley - Acting Chairman  
  Commissioner Mark Erreca  
  Commissioner Rich Ford  
  Commissioner Greg Thompson

Staff Present:                     Paul A. Fillebrown, Interim Development Services Director  
  William Nicholson, Assistant Development Services Director  
  Kim Anderson, Recording Secretary  
  Oksana Newmen, Planner III

Legal Staff:                       Marianne Greene, Deputy County Counsel

Commissioners Absent:           Commissioner Lynn Tanner

**III. APPROVAL OF MINUTES**

**MOTION: M/S ERRECA – THOMPSON, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION APPROVED THE MINUTES FROM THE JANUARY 11, 2012 HEARING.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

**A.     **MINOR MODIFICATION NO. MM11-003 TO CONDITIONAL USE PERMIT No. CUP97-018 - Santa Fe Aggregates** - To amend the approved Reclamation Plan to include an Interim Management Plan in order to provide for the maintenance the site when mining activities are idle. The permitted mine involves 37.7 acres of a 303.4 acre property. The project site is located on the north side of Oakdale Road, and 600 feet west of Shaffer Road in the Winton area. The property is designated Agricultural land use and zoned A-1 (General Agricultural).  
**ON****

**Recommendation:** The actions requested are to:

- 1) Determine that the Interim Management Plan is not considered a project under Public Resources Code section 21000 et. seq. and therefore not subject to CEQA review, and;
- 2) Approve Minor Modification No. MM11-003 to Conditional Use Permit No. CUP97-018 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated January 25, 2012.

The public hearing opened at 9:06 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:07 a.m.

**MOTION: M/S ERRECA - THOMPSON, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION DETERMINES THAT THE INTERIM MANAGEMENT PLAN FOR MINOR MODIFICATION NO. MM11-003 TO CONDITIONAL USE PERMIT No. CUP97-018 IS NOT SUBJECT TO CEQA IN ACCORDANCE WITH PUBLIC RESOURCES CODE SECTION 2770(h)(1).**

**MOTION: M/S ERRECA - THOMPSON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 25, 2012 AND MAKES THE 12 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR MODIFICATION NO. MM11-003 TO CONDITIONAL USE PERMIT No. CUP97-018 SUBJECT TO THE 5 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Planning & Community Development Department

1. The Minor Modification is granted to allow the applicant to implement an interim management plan (IMP). The IMP shall implement erosion control, dust control, water quality control, weed abatement, hazardous material containment, security of stored equipment, and financial assurances, as indicated in the IMP document (Jean Kiel, February 17, 2011). (Attached)
2. The application shall comply with all applicable regulations administered by local, county, state, and federal government.
3. All conditions of approval from previous discretionary permits associated with the subject property shall remain in effect, including Conditional Use Permit CUP97-018.

County Counsel

4. Santa Fe Aggregates, Inc. must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "County") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Minor Modification No. MM11-003 ("project") whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Santa Fe Aggregates, Inc. The liability of Santa Fe Aggregates, Inc. for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Santa Fe Aggregates, Inc., its employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or

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allegation of liability against County. Santa Fe Aggregates, Inc. will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

### Surface Mining and Reclamation Act (SMARA) Regulations

5. The IMP will expire within five (5) years of this approval date. The operator may request to extend the IMP for a period of five (5) years, or the County may require the reclamation process be completed in accordance with the approved IMP. Extension of the IMP will require findings that the operator has complied fully with the IMP.

- B. MINOR MODIFICATION No. MM11-016 TO CONDITIONAL USE PERMIT No. CUP98-003 - Central Valley Resources** - To amend the approved Reclamation Plan for a 400 acre mine to include an Interim Management Plan in order to provide for the maintenance of the site when mining activities are idle. The project site is located on the south side of Paul Negra Road and 1600 feet west of I-5 in the Los Banos area. The property is designated Agricultural and Foothill Pasture and zoned A-2 (Exclusive Agricultural) and HIC (Highway Interchange Center). **ON**

#### Recommendation: The actions requested are to:

- 1) Determine that the Interim Management Plan is not considered a project under Public Resources Code section 21000 et. seq. and therefore not subject to CEQA review, and;
- 2) Approve Minor Modification No. MM11-016 to Conditional Use Permit No. CUP98-003 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated January 25, 2012.

The public hearing opened at 9:11 a.m.

John Minney, the Civil Engineer for this project, had no comments regarding this project, but made himself available for any questions the Commission may have.

The public hearing closed at 9:12 a.m.

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**MOTION: M/S ERRECA - FORD, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINES THAT THE INTERIM MANAGEMENT PLAN FOR MINOR MODIFICATION NO. MM11-016 TO CONDITIONAL USE PERMIT No. CUP98-003 IS NOT SUBJECT TO CEQA IN ACCORDANCE WITH PUBLIC RESOURCES CODE SECTION 2770(h)(1).**

**MOTION: M/S ERRECA - FORD, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 25, 2012, AND MAKES THE 12 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR MODIFICATION NO. MM11-016 TO CONDITIONAL USE PERMIT No. CUP98-003 SUBJECT TO THE 5 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Planning & Community Development Department

1. The Minor Modification is granted to allow the applicant to implement an interim management plan (IMP). The IMP shall implement erosion control, dust control, water quality control, weed abatement, hazardous material containment, security of stored equipment, and financial assurances, as indicated in the IMP document.
2. The application shall comply with all applicable regulations administered by local, county, state, and federal government.
3. All conditions of approval from previous discretionary permits associated with the subject property shall remain in effect, including Land Excavation Permit 627, Conditional Use Permit No. CUP3662, and Zone Change ZC98-001/Conditional Use Permit CUP98-003.

County Counsel

4. Central Valley Resources, LLC must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "County") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Minor Modification No. MM11-016 ("project") whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Central Valley Resources, LLC. The liability of Central Valley Resources, LLC for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Central Valley Resources, LLC, its employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against County. Central Valley Resources, LLC will on request and at its expense, defend any action suit or proceeding

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arising hereunder. This term and condition and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

Surface Mining and Reclamation Act (SMARA) Regulations

5. The interim management plan will expire within five (5) years of this approval date. The operator may request to extend the IMP for a period of five (5) years, or the County may require the reclamation process be completed in accordance with the approved IMP. Extension of the IMP will require findings that the operator has complied fully with the IMP.

**VI. COMMISSION ACTION ITEM (S)**

None

**VII. DIRECTOR'S REPORT**

None

**VIII. COMMISSIONERS COMMENTS**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:15 a.m.