

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF SEPTEMBER 26, 2012

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of September 26, 2012, are available online at www.co.merced.ca.us/planning/plancomarchive.html.

I. CALL MEETING TO ORDER

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:00 a.m., on September 26, 2012, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Lynn Tanner - Chairman
 Commissioner Jack Mobley - Vice Chairman
 Commissioner Mark Erreca
 Commissioner Rich Ford
 Commissioner Greg Thompson

Staff Present: Mark Hendrickson, Interim Development Services Director
 William Nicholson, Assistant Development Services Director
 Kim Anderson, Recording Secretary
 David Gilbert, Planner III

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

MOTION: M/S MOBLEY – ERRECA, AND CARRIED BY A VOTE OF 5 – 0, THE COMMISSION APPROVED THE MINUTES FROM THE AUGUST 22, 2012 MEETING.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. MINOR SUBDIVISION No. MS12-003 - Church of Christ of Merced - To subdivide a 134.19 acre parcel into 4 parcels and a remainder: Parcel 1 through 3 = 16.24 acres, Parcel 4 = 47.25 acres and a Remainder Parcel of 38.22 acres. The project site is located on the north side of Cardella Road, .6 miles east of "G" Street in the Merced area. The property is located in the Merced Specific Urban Development Plan and is designated Agricultural Residential land use in the General Plan, and zoned A-R (Agricultural-Residential). **DG**

Recommendation: The requested actions are to:

- 1) Make the determination that the project is categorically exempt from CEQA review under Section 15315, Minor Land Divisions, of the CEQA Guidelines; and,
- 2) Approve Minor Subdivision Application No. MS12-003 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated September 26, 2012.

The public hearing opened at 9:10 a.m.

Rod Hawkins, Project Manager for Church of Christ in Merced, thanked Planning staff and said he is available to answer any questions the Commission may have.

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

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION No. MS12-003, FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 26, 2012, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES MINOR SUBDIVISION No. MS12-003 SUBJECT TO THE 9 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the tentative parcel map approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant shall comply with all applicable Local, State and Federal laws and regulations.
3. The applicant shall provide on the Parcel Map a means of access to the Remainder Parcel from Gardner or Cardella Roads.

Department of Public Works/Roads Division

4. The property owner/ applicant shall satisfy Level 1 Improvements for Parcels 1 – 4 according to Chapter 16.08 of the Merced County Code

County Counsel

5. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Bandoni Sunrise LP and Church of Christ of Merced have the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Bandoni Sunrise LP and Church of Christ of Merced.

Bandoni Sunrise LP's and Church of Christ of Merced's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of Bandoni Sunrise LP and Church of Christ of Merced, their agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. Bandoni Sunrise LP and Church of Christ of Merced will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the

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term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following MINOR SUBDIVISION NO. MS12-003 approval, modification, or denial.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

City of Merced

6. All lots are required to have reciprocal public cross-access easements. In conjunction with these easements, road and driveway access to the lots shall be consistent with the City's circulation plan, unless temporary access points are permitted. An Encroachment Permit shall be required from the City. If a City Encroachment Permit is not required, then the City Planning Department shall be consulted with regard to the provision of access to future arterial streets in a manner that is consistent with the Merced Vision 2030 General Plan.
7. Any roadway-related improvements (including, but not limited to, curb, gutter, sidewalk, parkstrips, bike lanes, shoulders, travel lanes, and traffic signals) constructed in the County for this project shall be consistent with City standards. Deferred construction of any of these elements shall not occur without consent of the City of Merced City Engineer.
8. The owner shall dedicate the ultimate right-of-way for the half section of Cardella Road and Gardner Road that fronts said proposed lots.
9. A paved minimum two-lane roadway, meeting City standards, will be constructed in the Cardella Road right-of-way, as well as any necessary connection with the existing paved roadway in Gardner Road right-of-way, to provide access to the lots. Design and construction of the road should be coordinated with the City of Merced City Engineer. If the applicant or County calls for the extension of Cardella Road to G Street, then such road would be required to be constructed to City standards too, including any intersection needs of traffic control at G Street.

Before Item B., the Commission took a five minute recess.

- B. CONDITIONAL USE PERMIT APPLICATION No. CUP10-008 - River West Investments -**
To construct a 110 megawatt photovoltaic (solar) energy generation facility on approximately 1,012 acres of land. The project site is located on the north and south sides of McCabe Road, and on the west side Whitworth Road in the Santa Nella area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **DG**

Recommendation: The requested actions are to:

- 1) Recommend to the Board of Supervisors certification of the Environmental Impact Report; and
- 2) Recommend to the Board of Supervisors:
 - (a) Approval of Conditional Use Permit No. CUP10-008 based on the project findings and subject to the conditions of approval and mitigation measures presented in the Staff Report,
 - (b) Adoption of the Environmental Findings of Fact,
 - (c) Approval of the Mitigation Monitoring and Reporting Program, and
 - (d) Removal of the project site from the Williamson Act Agricultural Preserve.

Before the public hearing, Commissioner Mobley recused himself from the public hearing for this application, and left the hearing chamber.

Planner David Gilbert presented the Staff Report and recommendations of approval dated September 26, 2012.

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Four letters received within 24 hours of the hearing on September 25 & 26, 2012 from Center for Biological Diversity; Department of Fish & Game; Los Banos Chamber of Commerce and Marsha Burch were handed out to Commissioners and were made available to the public. Planning Staff prepared response letters to each of the letters submitted to the Commission, except for the Los Banos Chamber of Commerce letter.

Deputy County Counsel Marianne Greene, Chairman Tanner, Mark Hendrickson and Bill Nicholson left the Board Chambers for a twenty minute recess to consult on procedural issues associated with the said letters that were submitted and handed out to Commissioners. The remaining three Commissioners stayed seated in the Board Chambers.

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

Bret Hogge, representing Riverwest Investments, spoke in support of the project and introduced the applicant team.

Gerry Loughman with Sunpower Corporation, went through the slideshow for this application, containing information about the company and the project.

Tina Thomas, Attorney with Thomas Law Group, representing the applicant, thanked staff and she noted the changes to the project in the Final Environmental Impact Report, including increase habitat set aside for San Joaquin Kit Fox and Swainson's Hawk, the increase in agricultural mitigation to a 2:1 ratio reference to 291 peak jobs over 16 months and \$81 million in direct and indirect benefits from the project.

Amanda Carvajal, Executive Director for the Merced County Farm Bureau, suggested that the Final Environmental Impact Report be re-circulated to show the changes that were noted from the State Department of Fish & Game. There is a mention of in-lieu fees, they would then pay a certified conservation easement group, but there is no mention of this in the Final Report. She noted they no longer want mitigation credit for sheep grazing which is good. They are concerned with the cumulative effects of the loss of 492 acres of ag land and habitat. Fifty percent of this project is in prime ag land. Water is always a concern, especially on the west side. Currently, the Del Puerto Water District does not sell water for anything other than for ag purposes. Merced County Farm Bureau finds it strange that the property has a 5,000 square foot facility on site and this will include structural and sewage and that will be reclaimed back to agriculture. The bonding for reclamation is key and glad it was included but would prefer it would contain automatic increase for inflation reasons, simply because it only takes a three person vote to kill that increase. She doesn't believe in the \$81 million benefit to the County, and she doesn't want the County left in a bad financial position. They also want to make sure there are no non-compatible uses on easements. The Farm Bureau wants to avoid accepting 2:1 ratio for agricultural mitigation as a precedent. She asked if Army Corps Engineers responded to their comments from in the Final EIR?

Kate Kelly on behalf of Defenders of Wildlife, said she is opposed to the project. The goal of the Endangered Species Act is to restore species, maintain their population. The five day survey relied upon in the EIR does not disprove Kit Fox use of the property. The applicant claims that the proposed project is compatible with Kit Fox, but there is no data that supports that. The proposed project is relying on an outdated biological opinion for a mining use that was never established and a new biological opinion is necessary for this proposal. The EIR failed to consider the impacts on California Tiger Salamander. The proposed amendment to the conservation easement is unsupportable. The easement was intended to support the use of the land and the Kit Fox. The proposed amendments would overturn those protections that were established. Defenders will challenge such an amendment. The Final EIR should be revised and re-circulated with responses to Fish and Game. She hopes the applicant will take their concern and work with them, so they can support this project.

David Helsel, representing Collins Electrical Company, said this project is beneficial for employment. He said that these projects require a lot of labor, which allows the IEW union to bring people to do these jobs. He asked that the Commission consider his request.

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Denard Davis, Merced resident, said that unemployment is high in California and Merced is at the top of the unemployment and poverty lists. This project would create jobs in Merced County. This project will bring revenue to Merced County. He recommends approval of this project.

Mark Bowden, Training Director for the IBEW union program in Modesto, CA, an electrician's apprentice program. He said this project is a win-win situation and will help take care of electrical supply problems. Jobs will be created and will create revenue for Merced County. They will do what they can to get local hire and will further help County. He recommended approval of this project.

Greg Arnaudo, Santa Nella Chamber President, said this project will help with the needs of green energy and the high unemployment rates. This would help stimulate the economy, especially in the Santa Nella area. This is a great area for the project to be built. We need to encourage new businesses in California, not discourage them. He supports this project.

The public hearing closed at 10:26 a.m.

The Commission recessed for 15 minutes to look over correspondence that was received.

Marianne Greene, Deputy County Counsel, said the comment letters are available for the public including comment letters from Marsha Burch, Center of Biological Diversity and the Department of Fish & Game. There are also charts with responses to these comment letters. One of the purposes today is for the Commission to determine if the proposed changes constitute a need for re-circulation of the Final Environmental Impact Report.

Tina Thomas with Riverwest Investment added that the Department of Fish & Game letter represents conversations from the last 18 months. When the County concluded the Draft Environmental Impact Report, the conclusion was that the impact to the Kit Fox was less than significant. The additional mitigation measures are on top of the measures already committed to in the Draft EIR. Adding mitigation measures does not required re-circulation of the Final EIR.

Brian Boroski with H.T. Harvey-Associates, went over the additional mitigation measures. He said they redesigned the project. The additional preservation would be beneficial so the 534 acre area north of the existing easement will be added at the time this becomes operational. They are required to record the conservation easement at that time. They use the Habitat Management Plan to maintain and enhance habitat in conditions appropriate for use based on scientific information, to manage the conserved lands to reduce the impact of predators and to monitor the population of SJKF on conserved lands which include installation and maintenance of kit fox escape dens; fire break maintenance; noxious weed monitoring and control; signage & sign maintenance; database management and replacing the 20% contingency with a 10% contingency and 24% administration fee. The timing of funding the endowment and separation of duties between the CE holder and the land manager should be specified before recordation of the CE and the timing of funding shall be made a COA by the County. The applicant agrees to provide SJKF escape opportunities by installation of one escape den per every 1/8 mile. The revised Landscape Screening Plan is an improvement over the plan referenced in the Draft EIR; use of shrubby species is more limited and pruning will be conducted to prevent use by SJKF predators.

Bill Nicholson, Assistant Development Services Director, responded to Amanda Carvajal's comments. In response to Ms. Carvajal's comment regarding the in-lieu fees for ag mitigation; the first revision is to remove the in-lieu fee option and the applicant will have to put in a conservation easement directly and not pay money to a trust. In the Final EIR, the option to have sheep grazing in the mitigation measures has been removed. Sheep grazing in a commercial venture was proposed, but is not viable in context of the Kit Fox mitigation and conservation easement, so sheep grazing is only for site management. In the Final EIR the mitigation has been increased from a 1:1 ratio of a conservation easement to a 2:1 ratio. This is unique as a Solar project: when the project is over and the panels removed, the land

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will be used a grazing and will have some ag value. This is different than an urban project. Because of the Kit Fox easement will be placed on the productive areas of the site, (Site Area #2), it won't be crop land anymore and will serve a low agricultural purpose because it's not being reclaimed into productive ag land. The water can only be used for ag purposes and is not needed anymore. The 5,000 square foot building is part of the reclamation proposed and the site would be re-graded. Comments were not received from the Army Corps of Engineers. In response to Kate Kelly's comments on behalf of the Defenders of Wildlife, her comments are similar to the letter from the Center for Biological Diversity. In the analysis of the movement corridor, the fact is that there were multiple studies over the Santa Nella area and the Final EIR has responses to comments that reference other surveys; there is a lot of information in the Appendix that supports the conclusions of values of the area. The Center of Biological Diversity stated that the project supports a mix of medium and high suitability habitat for Kit Fox. A petition was filed with US Fish & Wildlife to support the creation of critical habitat designation for the Kit Fox, (the Feds identify land that would protect that species), and there is no such critical habitat designation currently for the Kit Fox. The Center for Biological Diversity proposed that and submitted documents, but it has not been approved yet.

Mr. Nicholson summarized the response to comments in the September 25, 2012 Center for Biological Diversity (CBD) letter as follows: The project area does not include critical habitat for San Joaquin kit fox. CBD filed a petition to request that critical habitat be designated by USFWS, proposing that critical habitat areas for kit fox comprise the entire western, eastern, and southern rim of the San Joaquin Valley (Page 25 of CBD's petition). USFWS has not acted upon CBD's petition. See Response to Comment 8-13 (CBD) at pages 2-73 to 2-77 of the Final EIR; Response to Comment 8-43 (CBD) at pages 2-98 to 2-99; Response to Comment 10-10 Defenders of Wildlife (DoW) on page 2-135; Response to Comments 10-19 and 10-21 (DoW) on pages 2-138 to 2-146; Response to Comments 11-2 and 11-4 (CDFG) at pages 2-158 to 2-166; Response to Comments 11-7 to 11-8 (CDFG) on pages 2-169 to 2-173.).

The comment concerning the existing conservation easement does not relate to the adequacy of the EIR. Impacts on San Joaquin kit fox are less than significant as mitigated. See Response to Comment 8-43 (CBD) at pages 2-98 to 2-99; Response to Comments 10-19 and 10-21 (DoW) on pages 2-138 to 2-146; Response to Comments 11-2 and 11-4 (CDFG) at pages 2-158 to 2-166; Response to Comments 11-7 to 11-8 (CDFG) on pages 2-169 to 2-173. The Project is consistent with the existing Biological Opinion and does not require a new Biological Opinion. (See Response to Comment 8-37 (CBD) at pages 2-93 to 2-94; Response to Comment 11-1 (CDFG) at pages 2-156 to 2-158; Response to Comment 11-11 (CDFG) at page 2-176. The Final EIR mitigates impacts to foraging habitat for Swainson's hawk at a ratio that exceeds CDFG's recommendation of between 0.5:1 and 1:1, depending upon the active level management. Mitigation is adequate. (See Response to Comments 8-14 and 8-15 (CBD) at pages 2-77 to 2-83; Response to Comment 8-38 (CBD) at pages 2-94 to 2-95; Response to Comments 11-14 to 11-15 (CDFG) at pages 2-178 to 2-181; FEIR, Appendix C (2012 Swainson's hawk survey report).

The EIR discusses the California Climate Adaptation Strategy (2009) and the EIR proposes mitigation to reduce impacts on connectivity corridors to a less than significant level. (See Response to Comment 8-11 (CBD) at pages 2-70 to 2-77; Response to Comments 8-38 and 8-39 (CBD) at pages 2-94 to 2-95; Response to Comment 8-42 (CBD) at pages 2-97 to 2-98; Final EIR, Appendix D (San Joaquin Kit Fox Data).

The cumulative development scenario addresses impacts to San Joaquin kit fox that have and would occur within the western portion of the San Joaquin Valley. The FEIR explains the rationale for utilizing this geographic boundary, which is similar to the satellite population boundary that CBD described for the Santa Nella area in their petition requesting critical habitat for kit fox. Also see Response to Comment 8-43 (CBD) at pages 2-98 to 2-99; Response to Comment 10-21 (DoW) at pages 2-144 to 2-146.).

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Under CEQA, where a significant impact can be substantially lessened (i.e., mitigated to an “acceptable level”) solely by the adoption of mitigation measures, the agency has no obligation to consider the feasibility of alternatives with respect to that impact, even if an alternative would mitigate the impact to a greater degree than the proposed project. Response to Comment 8-2 (CBD) at pages 2-64 to 2-67; Response to Comment 10-5 at page 2-132 (DoW); Response to Comments 10-3 and 10-4 (DoW) at pages 2-131 to 2-132.)

Mr. Nicholson went over the response to comments from Marsha Burch representing San Joaquin Raptor Rescue Center and Protect our Water. The letter expresses agreement with comments from state and federal resources agencies, DOW and CBD that the project will cause harm to San Joaquin Kit Fox (SJKF) through cumulative impacts. See Responses to Comment letters 8 (CBD), 10 (DOW), and 11 (DFG), addressing potential impacts to SJKF. The Draft EIR and Final EIR (including appendices) are available on the County’s website, under the County Planning and Community Development page, “Environmental Documents”. As stated in Responses to Comments 8-31, 8-32, 8-33, and 10-22, other plans referenced in the Draft EIR can be accessed at the following URL: <https://www.box.com/s/c300d8d3027cf3b24acc>. While the letter references Appendix A, it cites to pages containing all appendices. The appendices to the Final EIR do not require recirculation. Appendix A is a letter from Kenneth Whitney, The Habitat Management Foundation, concurring that Grantee supports the proposed amendment to the Conservation Easement. This is not new information regarding the impact assessment. Appendix B is a Revised Landscape Screening Plan prepared in Response to Comments from PG&E (see RTC 9-2) and DFG (see RTC 11-6) and amplifies or clarifies the Landscape Plan that appeared in the DEIR and is not new information regarding the impact assessment.

Appendix C includes 2012 Burrowing Owl, Western Spadefoot Toad, and Swainson’s Hawk Survey Reports. These reports amplify or clarify the previously prepared studies and confirm their conclusions. Appendix D is San Joaquin Kit Fox Data, which summarizes published information from the 2010 USFWS 5-Year Review and Constable et al. 2009 reports, , both referenced in the DEIR and available on-line. This is not new information.

Appendix E is a 2011 California Tiger Salamander Assessment that was relied upon in the DEIR analysis and is therefore not new information. Appendix F is a Resume for Dr. Brian Boroski and does not contain new information related to impacts. The easement for the 534-acre Site 2 is not drafted or recorded yet. See Response to Comment 10-19 for information on the process for recording proposed easements. The “Quinto Farms Conservation Easement area” is a general term for all existing, recorded conservation easements including Monte Dorado and mining, discussed below. Monte Dorado (Parkway) Project: Quinto Farms Phase 2 Conservation Easement Deed is available at the FTP site referenced in Response to Comments 8-31 through 8-33 and 10-22, and above under IA. The San Joaquin Kit Fox Management Plan for Monte Dorado Parkway Project is available at the FTP site referenced in Response to Comments 8-31 through 8-33 and 10-22, and above under IA. 992-acre permanent conservation easement of irrigated agricultural land including 390 acres for Swainson’s hawk foraging habitat is not drafted or recorded yet. See Response to Comment 10-19 for information on the process for recording proposed easements. 110-acre SJKF mitigation easement is not drafted or recorded yet. See Response to Comment 10-19 for information on the process for recording proposed easements. The Monte Dorado Parkway Project easements – the CE Deed and Management Plan are available at the FTP site referenced in Response to Comments 8-31 through 8-33 and 10-22, and above under IA. The Habitat Management Foundation easement – HMF is the easement holder on the recorded Monte Dorado CE available at the FTP site referenced in Response to Comments 8-31 through 8-33 and 10-22, and above under IA. 484.4-acre easement is included in the Monte Dorado Biological Assessment and is not available for mitigation banking credit. The HCP for SJKF in the Santa Nella area does not cover Site 1 or Site 2 of the proposed Project. The Santa Nella Phase I (Arnaudo Brothers/Wathen-Castanos and River East Holding Sites) HCP is available from the U.S. Fish and Wildlife Service or H. T. Harvey & Associates.

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Merced County is the lead agency for the conditional use permit for the project. The project includes a proposed amendment to the Monte Dorado (Parkway) Project Quinto Farms Phase 2 Conservation Easement Deed. The fact that such amendment must be approved by the Easement Grantee and Grantor, and by US Fish and Wildlife Service as third party beneficiary, does not preclude the County from approving the Project. The Project is not tiering from Monte Dorado environmental analysis. See Response to Comment 11-1. The correspondence between DOW and the Paul Hastings law firm relates to the proposed amendment to the Monte Dorado (Parkway) Project Quinto Farms Phase 2 Conservation Easement Deed and is outside the County's jurisdiction. See Response to Comment 11-1 regarding availability of Monte Dorado easement for use as mitigation. The reference to in-lieu fees in AG-1 was in error and will be deleted. The applicant has committed to provide a conservation easement over 992 acres, as stated in Response to Comment 7-12. The reference to in-lieu fees in AG-1 was in error and will be deleted. The applicant has committed to provide a conservation easement over 992 acres, as stated in Response to Comment 7-12. The Letter expresses disagreement with removal of DEIR language in AES-2 regarding glare. See Response to Comment 9-2. Mitigation measure AES-2 was revised in response to comments from PG&E that the substation and switching station facilities would now be relocated approximately 3,000 feet farther from the San Luis Creek Campground than originally proposed. Therefore, potential impacts of lighting on the San Luis Creek Campground addressed by AES-2 will be substantially reduced such that the impact will be less than significant. Because the impact will no longer be potentially significant, mitigation measure AES-2 is not required and has been deleted from the Draft EIR. The area with 9 % slope cited in the letter is the southern tip of the site, which will not have panels and will not be graded. No heavy grading is proposed on the rest of the site. The site is very flat already so only very minor grading is proposed. No deep ripping will be necessary. See DEIR, pp. 9-13 – 9-14. See Response to Comment 8-6 concluding that multiple years of surveys are not inherently required to evaluate the potential impact of the proposed project on potentially occurring biological resources.

The commercial grazing plan was deleted from the EIR in response to comments from DFG and Farm Bureau. (See Responses to Comments 7-12, 11-9). Non-commercial, light sheep grazing is allowed, but see Responses to Comments 8-36 and 11-9 regarding the requirement that grazing be consistent with the Conservation Easement. The existing conditions on the site include naturalized non-native grasslands. (DEIR, pp.7-3 to 7-4.) The decommissioning plan requires that the site be restored to its pre-development conditions, minus the existing orchard trees. (FEIR, p. 4-6.) Therefore, a mix of native and naturalized non-native grass seeds will be planted consistent with grasslands that support upland species in the region.

As set forth in Response to Comment 11-13 and in Final EIR Chapter 3, EIR revisions on page 3-5, mitigation for impacts to burrowing owl has been revised to be consistent with the most recent guidance from DFG. See Response to Comment 9-1 and FEIR pp. 4-32 to 4-33, which explain that the 43 metric tons were not included in the total emissions table because the applicant has modified the project design such that its anticipated service life would be reduced from 35 years, as reported in the Draft EIR, to 30 years. With this change, the volume of project GHG emissions generated by the project during its service would decline, as would volume of GHG emissions off-set by the project. See FEIR, pp. 4-6 through 4-12 for the Decommissioning Plan, which will generally follow SMARA; however, since reclamation of the site is provided to restore the site post solar uses, rather than post mining uses, not all requirements of SMARA are relevant.

See Response to Comment 8-24 regarding potential impacts to migratory birds covered under the Migratory Bird Treaty Act due to solar panel surface glare, concluding that with the implementation of mitigation measures BIO-10, BIO-11, and BIO-12, there would be less than significant impacts to migratory birds. Elsewhere in California, reported bird mortality associated with solar arrays has consisted predominantly of collisions with mirrors and partially attributed with increased numbers of birds attracted to the adjacent evaporation ponds and agricultural fields. The Quinto Solar Project does not utilize mirrors or include added attractants such as an evaporation pond.

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There is no connection between REH/RWI and HMF. The chairman of the board for HMF is Ken Whitney. The only connection with Ken Whitney is that REH/RWI has hired Foothill and Associates to work on several projects and Mr. Whitney is the president of Foothill. REH/RWI has no partnerships with Mr. Whitney. See response to II.A regarding in lieu fees. In lieu fees will not be used to satisfy mitigation obligations and the reference to such fees in AG-1 will be deleted as it was in error. See also response to II.B regarding additional mitigation through banking credits. County need not consider such additional mitigation when impacts will be reduced to less than significant with measures already provided in MMRP.

Commissioner Thompson asked what the life of one of the solar panels is.

Mr. Loughman said the panels have about a 25 year life guarantee.

Commissioner Ford asked what amount is correct as far as the revenue generated.

Mr. Nicholson said that the 4 million dollar amount is not correct. The number is more for the life of the project. The photocells are tax exempt under State Law. The tax generation coming from the operation and maintenance building would estimate to about 10 million dollars. The applicant will purchase equipment locally. The money spent in the general area will generate sales tax revenue from meals and mileage.

Mr. Laughman said the project will be in commercial operation and deliver power before the end of 2014.

Commissioner Ford said converting ag land to commercial is saying we are willing to trade half our prime farmland to protect the other half. This is not going to go back into prime farmland. What happens when the project is approved, are we setting precedence?

Mr. Nicholson said this is the first solar project before the Planning Commission and the Board of Supervisors. The reason for going to the Board is the Williamson Act ag issue. This is in the Agricultural Preserve. The only body to remove land from the preserve is the Board of Supervisors. The unique feature of this application is that the applicant decided to go for full mitigation. The downside for agriculture is the rules and laws that protect habitat, and also they have to put the land into a conservation easement.

Deputy County Counsel Marianne Greene, explained for the record, that generally off-site ag mitigation measures do not replace the converted farmland. It diminishes the development pressures created by the conversion of farmland and can provide important assistance to the public and private sectors in preserving other farmland against the danger of the domino effect created by a project in general. In other words, off-site conservation easements fall well within the concept of mitigation under CEQA. In *BIA v. Stanislaus* in 2012 the appellate court upheld the adoption of a[n] agricultural mitigation program that included 1:1 ratio, as well as options for in-lieu fees. The court found reasonable the legislative goal of balancing development with preserving the agricultural industry as a whole rather than substituting the court's judgment for what is an adequate ratio. Here before you today the Planning staff is proposing a 2:1 ratio under the same line of reasoning, to mitigate impacts to farmland under CEQA. There is no adopted policy, regulation, or law at the local, state, or federal level that establishes what constitutes adequate agricultural mitigation. The County has on past projects found 1:1 mitigation to be inadequate under CEQA. Before you today is the first ever County project with a proposed 2:1 mitigation ratio. Your finding today in support or against the adequacy of the proposed mitigation ratio in no way constitutes the adoption of a policy, regulation, or law that binds the County in the future. And as is well known, the County is on the verge of determining what the County policy will be in the regard. That future policy is unknown, the ratio is unknown, and has no bearing on today's hearing.

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MOTION: M/S ERRECA – THOMPSON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT AS REVISED BY THE ERRATA AND CONDITIONS OF APPROVAL WITH 10 REVISIONS PREPARED FOR CONDITIONAL USE PERMIT APPLICATION No. CUP10-008.

MOTION: M/S ERRECA – THOMPSON, AND CARRIED BY A VOTE OF 3 – 1, NAY BY COMMISSIONER FORD, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS APPROVE CONDITIONAL USE PERMIT No. CUP10-008 WITH THE 18 CONDITIONS OF APPROVAL AND 31 MITIGATION MEASURES AND ADDITIONAL 6 TERMS AND CONDITIONS, ADOPT THE CEQA FINDINGS OF FACT, THE MITIGATION MONITORING PROGRAM AND REMOVE CUP10-008 FROM THE WILLIAMSON ACT AGRICULTURAL RESERVE.

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 11:55 a.m.