

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF OCTOBER 28, 2015**

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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 October 28, 2015, 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 October 28, 2015, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

**II. ROLL CALL OF COMMISSIONERS**

Commissioners Present:           Commissioner Mark Erreca - Chairman  
  Commissioner Greg Thompson - Vice Chairman  
  Commissioner Jack Mobley  
  Commissioner Rich Ford  
  Commissioner Robert Acheson

Staff Present:                     Mark Hendrickson, Director  
  Oksana Newmen, Deputy Director Planning  
  Ana Muniz-Laguna, Recording Secretary

Legal Staff:                      Michael Linden, Deputy County Counsel

Commissioners Absent:         None

**III. APPROVAL OF MINUTES**

None

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

- A.     7<sup>th</sup> EXTENSION No. EXT15-001 to MAJOR SUBDIVISION No. MAS03-010** - "The Parkway" - To extend for one year the expiration date of the tentative map of this major subdivision from September 10, 2015 to September. 10, 2016. The property is located at the northeast corner of South Highway 33 & West Parkway Boulevard. The property is designated Santa Nella Urban Community - Low Density Residential in the General Plan and zoned R-1-5000 (Single Family Residence.) **BG**

**Recommendations: The actions requested are to:**

- 1) Find the project exempt from CEQA review under Section 15182, "Residential Projects Pursuant to a Community Plan" of the CEQA Guidelines, and;
- 2) Approve Minor Subdivision Application No. EXT15-001 to Major Subdivision No. MAS03-010 based on the project findings and subject to the recommended conditions of approval presented in the Staff Report.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated October 28, 2015.

Commissioner Thompson asked if any development agreements have been generated?

John Palmer, applicants representative, said yes, they do have Improvement Plans. They started the Parkway Boulevard program and have a bond in place. They have not formed a CFD yet. They are working towards infrastructure solutions and water supply. He asked for support and is available for any questions.

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The public hearing opened at 9:14 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:15 a.m.

**MOTION: M/S MOBLEY - THOMPSON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS 7<sup>th</sup> EXTENSION No. EXT15-001 to MAJOR SUBDIVISION No. MAS03-010, FROM CEQA.**

**MOTION: M/S MOBLEY – THOMPSON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED OCTOBER 28, 2015, AND MAKES THE 15 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES 7<sup>th</sup> EXTENSION No. EXT15-001 to MAJOR SUBDIVISION No. MAS03-010 SUBJECT TO THE 22 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Community & Economic Development Department

1. A Final Map shall be recorded by September 10, 2008 as required by the Merced County Subdivision Code.
2. The applicant\property owners shall pay all applicable development impact fees as are now adopted, or modified, by the Board of Supervisors.
3. Prior to the Recordation of the Final Map the applicant shall provide the Planning and Community Development Department with an unconditional “Can and Will Serve Letter” from the Santa Nella County Water District and the San Luis Water District if still within its jurisdiction at the time of recordation.
4. No grading shall be undertaken until the developer provides to the Merced County Planning and Community Development Department evidence that approval for such activities has been granted from the California State Department of Fish and Game, The Army Corp of Engineers, and the United States Fish and Wildlife Service.
5. This project shall comply with the Standard Conditions in Planning Commission Resolution No. 97-1.
6. A noise study shall be prepared prior to recordation of the final map to determine whether projected noise levels will exceed 65 dBA Ldn. If sound exceed 65 dBA, measures to reduce noise levels (screening or increased setbacks) shall be identified and implemented as part of the project, and identified on the subdivision improvement plans. Sound alteration measures along Highway 33 shall incorporate landscaping improvements consistent with the guidelines in the Santa Nella CSP.

Department of Public Works Roads Division

7. Satisfy Improvement Level 1 requirements as set forth in Chapter 16.08 of the Merced County Code, which generally includes dedication of right-of-way and public utilities easements, roadway construction and installation of matching pavement along existing roadways, street lighting, storm drainage system and underground or relocate utilities and irrigation facilities. Curb and gutter shall be constructed along the Arboleda Drive frontage of the subdivision.

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8. Release and relinquish all abutters' rights of access to and from the entire Arboleda Drive frontage of Lots 1 and 17.
9. Provide a letter from M.I.D. accepting storm drainage water from this proposed development into their facilities prior to recording the final map.
10. The detention basin shall be constructed with 4:1 (horizontal:vertical) or flatter side slopes beginning 10 feet from the fence or property line and with a 8:1 or flatter sloped ramp from bottom of the basin to the access point from a County maintained road. The storm drain easement along the back of Lots 16 and 17 shall be 15 feet in width.
11. The proposed storm water pump station at the northeast corner of the intersection of Arboleda Drive and Childs Avenue shall be located within a storm drainage easement outside of the ultimate road right-of-way and public utility easement width. The ultimate right-of-way width of Childs Avenue is 80 feet.
12. Pursuant to Improvement Level 1 requirements, prior to recordation of the final map, the owner shall pay all costs and provide all documents necessary to form a street lighting and storm drainage maintenance zone of benefit in County Service Area No. one. If landscaping is required along the storm basin perimeter fence, the zone of benefit shall include landscape maintenance. An independent water source shall be provided for any landscaping to be maintained by the County.
13. All lot grading shall be completed, all underground improvements shall be installed and aggregate base material on all new streets shall have been rough graded and compacted, prior to the issuance of any building permits. The developer shall enter into an agreement with Public Works that no occupancy shall take place until such time as all improvements are completed.
14. Provide centerline striping for those new roads which intersect the existing peripheral streets.
15. Developer/Applicant is advised that he/she may be obligated to comply with Federal Regulations for storm water runoff issued by the U.S. EPA on November 16, 1990 (40 Code of Federal Regulations Parts 122, 123 and 124).
16. Construction equipment used at the site shall be equipped with catalysts/particulate traps to reduce particulate and NOx emissions unless demonstrated to be infeasible by project contractors.
17. Sewage disposal system areas and 100% replacement areas shall not be paved or used for such purposes as traffic areas, parking of vehicles, or storage of equipment. Structures and impervious surfaces shall be sized to allow for future septic replacement area with a notation of this restriction placed on the subdivision map.
18. Hazardous materials stored and/or handled in excess of 55 gals, 500 pounds, or 200 cubic feet of gas at standard temperature and pressure, or any hazardous waste, shall provide a hazardous materials business plan to the Division of Environmental Health.
19. This project shall comply with the Standard Conditions in Planning Commission Resolution No. 97-1.
20. For the purpose of mitigation and/or condition monitoring, a fee in the amount of **\$276.00** shall be required. The fee shall be paid prior to recordation of the Final Map.

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21. Prior to recordation of the final map creating new County roads the owner shall provide all documentation and pay all fees associated with forming a road maintenance zone of benefit in County Service Area Number One for extended road maintenance services which includes, but is not limited to, street sweeping.
22. The project shall be subject to the current Law Enforcement Facilities Impact Fee established by Resolution No. 2004-148, adjusted for inflation, in place at the time of building permit issuance.
23. The project shall be subject to the current Fire Facilities Impact Fee established by Resolution No. 2004-149, adjusted for inflation, in place at the time of building permit issuance.
24. The project shall be subject to the current Regional Transportation Impact Fee (RTIF) pursuant to Chapter 5.60 of the Merced County Code and established by Ordinance No. 1749 in place at the time of building permit issuance.

- B. MINOR SUBDIVISION No. MS15-008 – Bob Erickson** - To re-subdivide a 112.5 acre parcel into 2 parcels - Parcel 1 = 46.71 acres and Parcel 2 = 65.81 acres. The project site is located on the north side of E. Sandy Mush Road, 1 mile east of S. Healy Road in the Merced area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **PN**

**Recommendations: The actions requested are to:**

- 1) Recommend the Planning Commission find the project exempt from CEQA under Section 15183 – “Projects Consistent with a Community Plan or Zoning” based on the findings listed in the Staff Report;
- 2) Recommend the Planning Commission make a determination (approve or deny) on Minor Subdivision No. MS15-008 based on the project findings and subject to the conditions of approval in the Staff Report.

Planner Pam Navares presented the Staff Report and recommendations of approval dated October 28, 2015.

Commissioner Thompson asked if the applicant has indicated who the interested party is in purchasing the two parcels.

Ms. Navares said the neighbor next door is the interested party.

Commissioner Thompson understands that they will be applying for a Property Line Adjustment and divide and combine under the existing County Ordinance. Is the property owner ok with that? Ms. Navares said they are ok with the parcelization.

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

Duane Andrews with Golden Valley Engineering, said Mr. Erickson is trying hard to deal with neighbor for a Property Line Adjustment, but haven't had luck. He has issues with the surrounding parcels. He read a sentence from one of the applications: For A-1 land zone only, if any parcels are less than 40 acres, provide a map and information showing the parcel size to nearby landowners within half a mile. He thought that only applied when you want to go down to 20 acres. Mr. Erickson is working on enhancing the soil. He wants it to be a viable farming use. The property line adjustment will not work and asked that Option A be considered for this project.

Commissioner Thompson clarified that the Property line adjustment option was given to the neighbor, and he is not willing to participate and Mr. Andrews clarified that. He said the applicant meets all the qualifications.

Commissioner Ford asked if the soil condition is a result from the fish farm? Mr. Andrews said it probably was a result of the fish farm, but he is not sure.

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Robert Erickson, applicant, said the grounds to the north of them has tomatoes growing on it and the grounds to the south is being grown with alfalfa. The saline numbers used had an active fish farm at the time. He appreciates the Commission's time and asked for approval.

Deputy Planning Director Oksana Newmen addressed Mr. Andrews' point. The zoning code specifically under subdivision consideration, it says: In order to determine conformance with the General Plan objective avoiding divisions which reduce the agricultural productivity of the property, the following factors will be considered in reviewing subdivision proposals in the A-1, A-2 zones. It applies to all subdivisions. If the Commission approves Motion A approval, staff has revisited Condition #2 in replacing a note on the map.

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

Director Mark Hendrickson said this Commission shouldn't need a motion to discuss.

Commissioner Thompson said there are portions of the code that can be interpreted differently. He is in support of this project.

Commissioner Ford said the boundaries on the property are unusual. Proper farming is more likely with a subdivision.

Ms. Newmen read the revised Condition #2.

**MOTION: M/S MOBLEY - ACHESON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION No. MS15-008, FROM CEQA.**

**MOTION: M/S MOBLEY - ACHESON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION APPROVES MOTION A, AND CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED OCTOBER 28, 2015, AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION No. MS15-008 SUBJECT TO THE 4 CONDITIONS WITH THE REVISION OF CONDITION #2, AS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

### **Conditions:**

#### Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant will conditionally waive the right to construct residences on the resulting parcels. A note shall be placed on the face of the parcel map stating that any new residences will be subject to review and approval of a Conditional Use Permit from the County as per General Plan policy AG-3.12 or as otherwise permitted by the County subject to the current policies in place at the time of the request.
3. The applicant shall comply with all applicable County, State and Federal regulations.

#### County Counsel

### **4. INDEMNITY AND HOLD HARMLESS AGREEMENT:**

ROBERT ERICKSON has 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

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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 ROBERT ERICKSON.

ROBERT ERICKSON 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 ROBERT ERICKSON, its 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. ROBERT ERICKSON 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 term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following project approval, modification, or denial.

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

- C. MINOR SUBDIVISION No. MS15-014 – AKT Santa Nella Investors, LLC.** - To divide 1 parcel totaling 209.85 acres into 2 parcels: Parcel 1 = 150.52 acres and Parcel 2 = 59.33 acres. The project site is located one mile South of W. Henry Miller Road, half a mile West of S. Cherokee Road in the Los Banos area. Property is designated Agricultural land use and zoned A-1 (General Agricultural). **BG**

**Recommendations: The actions requested are to:**

- 1) Find the project exempt from CEQA review under Section 15183, "Projects Consistent with a Community Plan or Zoning" of the CEQA Guideline and;
- 2) Approve Minor Subdivision Application No. MS15-014 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated October 28, 2015.

Deputy Planning Director Oksana Newmen said Condition #2 will be revised to read: The applicant will conditionally waive the right to construct residences on the resulting parcels. A note shall be placed on the face of the parcel map stating that any new residences will be subject to review and approval of a Conditional Use Permit from the County as per General Plan policy AG-3.12 or as otherwise permitted by the County subject to the current policies in place at the time of the request .

Commissioner Thompson asked if the two parcels have any access issues?

Ms. Newmen said in this case the small parcel to the northeast does not have a legal easement. They are currently going along the canal bank and there is no official agreement of that being used as an easement. CCID refuses to go into a formal easement access. We found that the parcel is used for farming, that the use of the irrigation easement access would be sufficient for farming. If they come back to ask for a structure, they would have to come up with a formal access easement.

The public hearing opened at 9:47 a.m.

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John Palmer, AKT Santa Nella Investors, said he is here to answer any questions. The property is a landlocked parcel. The parcel was held because it was originally provided that parcel as part of the infrastructure solution for the Santa Nella County Water District. Now that they are updating the infrastructure master plans, they are going to need these parcels for a new sewer plant. When the adjacent property owner approached them, it worked out well and cured access to these parcels. It is an awkward accessibility and the sale of the property will help.

The public hearing closed at 9:50 a.m.

**MOTION: M/S MOBLEY - THOMPSON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION No. MS15-014 FROM CEQA.**

**MOTION: M/S MOBLEY - THOMPSON, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED OCTOBER 28, 2015, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES MINOR SUBDIVISION No. MS15-014 SUBJECT TO THE 6 CONDITIONS WITH CONDITION #2 BEING MODIFIED AND AS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

### **Conditions:**

#### Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant will conditionally waive the right to construct residences on the resulting parcels. A note shall be placed on the face of the parcel map stating that any new residences will be subject to review and approval of a Conditional Use Permit from the County as per General Plan policy AG-3.12 or as otherwise permitted by the County subject to the current policies in place at the time of the request .
3. Any proposed future uses may be subject to a discretionary permit which would require the property owner to show adequate access to the property through the use of an easement or public road.
4. In the event that a new access route to Parcel 2 becomes available in the future, it should be used to access the parcel and access through the CCID Outside Canal should not be the primary access road.
5. The applicant shall comply with all applicable County, State and Federal regulations.

#### County Counsel

### **6. INDEMNITY AND HOLD HARMLESS AGREEMENT:**

AKT SANTA NELLA INVESTORS, LLC has 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,

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boards, and officers of AKT SANTA NELLA INVESTORS, LLC.

AKT SANTA NELLA INVESTORS, LLC 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 AKT SANTA NELLA INVESTORS, LLC, its 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. AKT SANTA NELLA INVESTORS, LLC 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 term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following project approval, modification, or denial. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

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

None

**VII. DIRECTOR'S REPORT**

Director Mark Hendrickson reminded the Planning Commissioners that there will be a joint Study Session on November 3<sup>rd</sup> at 10:45 a.m with the Board of Supervisors on the Zoning Code Update.

**VIII. COMMISSIONERS COMMENTS**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:55 a.m.