

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF MAY 25, 2016**

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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 May 25, 2016, 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 May 25, 2016, 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.      ADMINISTRATIVE APPLICATION No. AA16-005 – Sergio Olide - To establish an irrigation sales & supply business in an existing 10,850 square foot commercial building. The project site is located on the southwest side of 4th Street, 500 feet south of El Capitan Way. The property is designated Delhi Urban Community - Mixed Use and zoned C-3 (Heavy Commercial). **JB****

**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" and; section 15301 "Existing Facilities" of the CEQA Guidelines.
- 2) Approve Administrative Permit No. AA16-005 based on the project findings and subject to the recommended conditions of approval presented in the staff report.

Planner Jennifer Borobia presented the Staff Report and recommendations of approval dated May 25, 2016.

The public hearing opened at 9:08 a.m.

Commissioner Thompson asked if the project is a new business or existing business and Planner Jennifer Borobia stated it was a new business in an existing commercial structure. Ms. Borobia further stated there had been various businesses in the past at this facility and she confirmed for the Commission that 300 foot notices were mailed out.

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Mr. Michael Smith with Central California Permit Services addressed the Commission and stated he was working together with the applicant Sergio Olide. Mr. Smith informed where machinery for the business would be located and added that screening for parking would be put in place if staff felt it necessary and clarified that the business owner has applied for the applicable permits from various departments for this project.

Commissioner Ford asked about the extruding process for the PVC line and Mr. Smith clarified that the flexible pipe would be grinded on a machine in a designated area inside the building.

Mr. Brook Childers, Delhi resident, stated concerns he had about the project and the location of this business in his community.

Ms. Brenda Olide, introduced herself as the applicant's daughter and spoke in favor of the project. She informed that their business currently in operation in Turlock has not had any issues.

Ms. Maria Childers, Delhi resident, voiced concerns regarding the project being near a school and the impacts to nearby businesses and residents. She informed of a petition signed by residents of Delhi in opposition to the project.

Ms. Blanca Lozano, Delhi resident, and Abigail Alecia, translator for Ms. Lozano spoke about health worries regarding this project. Ms. Lozano stated she would like to see a report informing about the types of chemicals that will be used in this business. Commissioner Thompson informed Ms. Lozano about a Hazardous Materials Business Plan that the business will have to produce as part of condition and inspection requirements.

Ms. Nakita Darinani from Leadership Council for Justice and Accountability spoke about concerns with the project and the extruding process as well as noise levels that may arise and impact the neighborhood and nearby businesses.

Ms. Hayde B. Sanchez, Delhi resident, addressed the Commission and voiced her concerns regarding the business and impacts to the employees and residents in the area.

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

Commissioner Thompson asked Staff if there was an Environmental Impact Report (EIR) that was prepared for the Delhi Community Plan evaluating the different zones and the impacts on these. Ms. Oksana Newmen, Deputy Director stated that the impacts of zoning and uses were examined at the time through the EIR process.

Commissioner Ford commented that he was familiar with this type of operation and the issues that have been discussed can be addressed by the various departments to mitigate the issues.

Commissioner Mobley suggested that if the project got approved, the business owner may consider having an open house and have an opportunity for the community to come and learn about the business and the process.

**MOTION: M/S THOMPSON - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTs FROM CEQA REVIEW UNDER SECTION 15183 "PROJECTS CONSISTENT WITH A COMMUNITY PLAN OR ZONING" AND; SECTION 15301 "EXISTING FACILITIES" OF THE CEQA GUIDELINES.**

**MOTION: M/S THOMPSON - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION APPROVES ADMINISTRATIVE PERMIT No. AA16-005 BASED ON THE 8 PROJECT FINDINGS AND SUBJECT TO THE 12 RECOMMENDED CONDITIONS OF APPROVAL PRESENTED IN THE STAFF REPORT.**

**Conditions:**

Community and Economic Development Department

1. Administrative Permit No. AA16-005 is approved to establish an irrigation supply and storage business in accordance with the approved Plot Plan. The project shall operate in a manner that is consistent with the approved Plot Plan and the Operational Statement. Minor Modifications may be approved by the 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. For the purpose of conditions monitoring, an inspection fee in the amount of **\$324** shall be required. This fee shall be paid within 30 days of approval. Should additional inspections be required, inspection time shall be billed to the applicant / property owner at the established hourly rate at the time of the inspection. This permit will not be considered valid until the conditions monitoring fee has been paid.
4. The applicant shall comply with all applicable County, State and Federal regulations. These regulations shall include, but not be limited to standards administered by the County Fire, Health, Community and Economic Development, and Public Works Departments.
5. The applicant shall ensure that all outdoor storage and parking areas are screened in accordance with the Merced County zoning code and the Delhi Community Plan.

County Counsel

6. INDEMNITY AND HOLD HARMLESS AGREEMENT:

SERGIO OLIDE 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, boards, and officers of SERGIO OLIDE.

SERGIO OLIDE'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 SERGIO OLIDE, 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. SERGIO OLIDE 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 ADMINISTRATIVE PERMIT NO. AA16-005 approval, modification or denial.

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

### Department of Public Health/ Division of Environmental Health

7. The applicant shall maintain an accurate hazardous material business plan with Merced County Division of Environmental Health and maintain compliance with all applicable hazardous material regulations.

### Fire Department

8. PDF files of the site and floor plans are requested for Pre-Planning purposes. These drawings shall include the following:
  - a. Location of all fire water systems, sources and devices
  - b. Location of all utilities
  - c. Location of fire extinguishers
  - d. Location and width of aisles
  - e. Location of exits
  - f. Exit access doors
  - g. Exit signs
  - h. Height of storage
  - i. Locations of hazardous materials
9. An Evacuation plan for public accessible areas shall be submitted at the time of permit application, if applicable.
10. The applicant shall install Reflective Building Identification that meets Fire Department Design Specifications. Contact the Prevention Bureau for additional information.
11. If security gates are installed they shall be approved by the Fire Department. As required, the applicant shall install and maintain a Merced County Coded "Knox" key switch or "Knox" padlock, whichever is most appropriate in relation to your needs.

### Department of Public Works – Building and Safety Division

12. An architect or engineer licensed in the state of California must be hired to evaluate the building for the proposed use and to evaluate and comply with the Department of Public Works - Building and Safety Standards outlined in their memo attached.

- B. CONDITIONAL USE PERMIT APPLICATION No. CUP99-009 – Craven Pit Mine - Jaxon Enterprises, Inc.** – The Craven Pit Mine was approved on May 28, 2008 by the Planning Commission, and affirmed on appeal by the Board of Supervisors on July 22, 2008 to excavate and process approximately 6 million tons of aggregate material from 260,000 tons/year to a maximum 550,000 tons/year, and has been operating since that approval. As a result of violations relating to mining outside of permitted mining boundaries, a hearing is required to approve corrective actions. A stipulated order to comply with conditions of approval, mitigation measures, and the reclamation plan has been prepared detailing the requirements and schedule for the mine operator to correct the violations. The project is located on the east side of White Rock Road and approximately one quarter mile north of Le Grand Road in the Le Grand area. The property is designated Agricultural in the General Plan and zoned A-1 (General Agricultural).

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

- 1) Approve the required stipulated order to correct violations and comply with the conditions of approval, mitigation measures, and the reclamation plan.

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Planner Sandy Saechao presented the Staff Report and recommendations of approval dated May 25, 2016. Commissioner Thompson asked if the applicant has received any notifications for any other agency on corrective orders and Ms. Saechao confirmed that the applicant is meeting with Fish and Wildlife as well as working together with the Office of Mining Reclamation on compliance.

The public hearing opened at 9:45 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:46 a.m.

**MOTION: M/S THOMPSON - MOBLEY, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVE THE REQUIRED STIPULATED ORDER TO CORRECT VIOLATIONS AND COMPLY WITH THE 35 CONDITIONS OF APPROVAL, MITIGATION MEASURES, AND THE RECLAMATION PLAN.**

### Conditions:

#### Planning and Community Development Department

1. Conditional Use Permit No. CUP99-009 is granted to excavate and remove sand mining material for the following:
  - Maximum production – 6 million tons aggregate material.
  - Life of Permit: 20 years (until 5/31/2028).
  - Maximum Area to be excavated: 357 acres.
  - Maximum depth of excavation: Shall be at an elevation of approximately 33 feet below ground surface.
  - 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 7:00 AM to 6:00 PM, Monday through Friday; and,
  - Occasions where nighttime and weekend operations may be warranted in response to night road improvement projects or related to electricity peak hour restrictions. Advanced notification per is required per mitigation measures (shown as Condition of Approval #33) is required.
3. Upon project approval, the applicant shall commence reclamation of those areas where mining has been previously completed. These areas shall be completed within 30 days of the initiation of mining in any subsequent phases. Previously mined areas are subject to 3 phase maximum limits. The applicant shall submit a report to the County within 30 days of project approval, detailing areas where mining as been previously completed and reclamation activities will occur and those areas where mining activities are scheduled to begin, the report shall contain a map (drawn to scale) showing the areas to be reclaimed.
4. The applicant shall disturb no more than three phases at a time. The applicant shall identify the 3 phases that shall be active at any one time in writing, with accompanying site plan, to the County. Reclamation of any disturbed phases (where mining is complete) shall be complete prior to commencement of any mining activity in additional phases exceeding three phases. Final reclamation of the site shall be completed within three years of the completion of mining.

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5. The project shall comply with standard conditions listed in Planning Commission Resolution No. 97-1.
6. 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, and Merced County Public Works – Roads Division.
7. The applicant shall revise the Reclamation Plan and Financial Assurance Estimate (FAE) to incorporate comments submitted by OMR within 30 days of project approval. The Reclamation Plan and FAE shall be submitted to the County for review.
8. Upon completion of the project, all the machinery and equipment associated with the mining operation and reclamation shall be removed from the property.
9. The applicant shall furnish the Planning and Community Development Director with a report describing compliance with the Reclamation Plan, mitigation measures, and Conditions of Approval by July 1st of each year. With each report, the permitted shall provide a map to scale, showing current progress of mining 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, mitigation measures, 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 initial conditions monitoring fee and mitigation measures monitoring fee of \$608. Additional fees shall 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 idle for a period of one year or more by more than 90 percent of the operation's previous maximum annual mineral production the applicant must file an Interim Management Plan application with the County within 90 days of becoming idle.
13. 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.
14. 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.

### Merced Irrigation District

15. The applicant shall protect Mariposa Creek from any potential contamination generated on the applicant's site that could flow by either surface, or sub-surface migration to said creek.

Mitigation Measures

16. Mitigation Measure 3.3-2: If a complaint is lodged by the neighboring property owner(s) located within one mile of the Project site regarding water impacts to established (i.e., current at time of this study) agricultural practices, the Applicant will provide information on the soil water budget for the period in question. The information will be prepared and analyzed by a competent professional licensed in the State of California. The Applicant shall pay the reasonable costs incurred by the licensed professional. The County shall approve the selection of the licensed professional. The Applicant shall submit this information, together with any subsequent monitoring data, to the County upon the County's request.

If groundwater pumping from the deep aquifer causes a decline in water levels and pumping rates in wells on adjacent properties, such that the pumping rates will not sustain existing land uses, then the Applicant will implement one of the following measures:

**Mitigation Measure 3.3-2(a):** Several groundwater users are present within approximately one mile of the Project. The most significant adjacent groundwater user is the adjacent Frazier Nut orchard. Currently, an approximately 137-acre almond orchard is present on this property. It requires approximately 3.5 acre-feet of water per acre of orchard to irrigate almonds (DWR, 1986). Thus, the orchard requires approximately 480 AF/yr of irrigation water. There are five active supply wells on the Frazier Nut orchard with production rates ranging from 100 gpm to 450 gpm. If production rates in one or more supply wells decline to the level that is not sufficient to irrigate the orchard, the Applicant will pay the grower to add the necessary pumps and piping to add additional wells to the irrigation system, or install additional wells as necessary to sustain the orchard.

Or,

**Mitigation Measure 3.3-2(b):** The maximum increased groundwater use for the Project is 37.5 AF/yr. This is equivalent to the irrigation demand for approximately 10.7 acres of almonds. If production rates decline to levels that are not sufficient to irrigate the entire orchard, then the Applicant will pay the grower to remove up to 10.7 acres of orchard and convert it to dry land pasture at the rate of 3.5 acre-feet of water per acre of orchard for as long as the production rates remain at reduced levels. The potential removal and conversion to dry grazing of up to 10.7 acres of an almond orchard, when compared to a 2006 estimate of 87,771 bearable acres of almonds and 122,618 acres of bearable fruit and nut orchards (Merced County 2006 Crop Report) is de minimis. Data obtained from the Merced County Agricultural Commissioner's Office indicates that between 2002 and 2006, almond acreage in the county has increased 6,908 acres, therefore the potential removal of 10.7 acres of almonds would not contribute to a net reduction in productive almond orchards.

**Mitigation Measure 3.3-2(c):** The Applicant shall monitor its actual water use for make-up water from the deep water aquifer (as opposed to recycled water from the perched aquifer) by the use of a meter to ensure that the estimates provided in the EIR accurately estimate actual Project water use. In addition, the water use data shall be utilized regarding the numbers of acres of almond orchard that may be needed to be taken out of production. The Applicant shall retain water use data on site and make it available upon the County's request. (MM)

17. **Mitigation Measure 3.3-3:** Prior to operating within 250 feet of vernal pools or swales in Phases 3, 4, 5, 6, 7, and 11, the Applicant shall install a cutoff trench at the edge of the pit excavation (i.e., 25 feet away from any identified vernal pool/wet swale feature). This trench shall be keyed into the clay zone below the subsoil and shall be filled with extremely low permeability clay fines to create a barrier with an extremely low permeability to shallow subsurface flows that is less than the permeability of the vernal pool hardpan (refer to Figure 3.3-4, Cutoff Trench

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Schematic). The Applicant shall retain a qualified registered professional geologist or engineer with expertise in hydrological issues to determine the permeability of the vernal pool hardpan using a dual-ring infiltrometer or similar methodology, and to verify that the permeability of the backfill is less than that of the hardpan. Since the mining and cutoff trenches occur down slope of the vernal pools and other wetlands (i.e. not in the upslope watershed area), the extremely low permeability trenches will not interfere with water flow into the wetlands, and will prevent water loss from the wetlands in the down slope direction.

The trench shall extend along the pit limit wherever it is adjacent to the wetland features. The purpose of the cutoff trench shall be to eliminate the possibility of vernal pools draining into the mine pit. The Applicant shall notify the County prior to construction of the trench. A registered professional with expertise in hydrological issues and/or the County shall inspect both the cutoff trench design and its installation prior to excavation within 250 feet of the vernal pool/wet swale features.

The mined areas shall be sequentially backfilled with fines so that most areas will be restored to ensure that the mined areas are sloped internally towards the center of the Project site. Thus, the need for the cutoff trenches in most areas is only temporary until the pits are backfilled and sloped internally. The reclaimed pits shall be backfilled with overburden and fines from the mining operations; thus, these areas will have a lower permeability and percolation rate than the native soils. The backfilled areas shall be selected preferentially to be the ones within, or close to, wetland watersheds to ensure that this potential impact is less than significant. The Applicant's compliance with this reclamation obligation shall also be made a condition of approval and be incorporated in its Reclamation Plan and be enforced through the County's annual SMARA inspection procedure. (MM)

18. Mitigation Measure 3.3-4: If a complaint is lodged by the neighboring property owner(s) located within one mile of the Project site regarding water impacts to established (i.e., current at time of this study) agricultural practices, the Applicant will provide information on the soil water budget for the period in question. The information will be prepared and analyzed by a competent professional licensed in the State of California. The Applicant shall pay the reasonable costs incurred by the licensed professional. The County shall approve the selection of the licensed professional. The Applicant shall submit this information, together with any subsequent monitoring data, to the County upon the County's request. From that information, the licensed professional, in consultation with the County and Applicant, shall determine the Applicant's fair share of the soil water deficit in the downstream orchard. The Applicant shall provide an equivalent amount of water to replace the deficit. In the event of a soil water deficit in the downstream orchard, the Applicant shall provide sufficient water to remedy the deficit. Replacement may include, but is not limited to, any or all of the following methods:
  1. Rehabilitate the neighboring property owner(s) well and/or install a new pump to increase production;
  2. Provide an incremental replacement of water (e.g. from the Project ponds to the orchard) to offset the deficit;
  3. Deepen the existing well; or
  4. Provide a new replacement well at an adjacent or different location, as appropriate. (MM)
19. **Mitigation Measure 3.4-5(a):** All disturbed areas, including storage piles, which are not being actively utilized for mining or processing purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.

**Mitigation Measure 3.4-5(b):** All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.

**Mitigation Measure 3.4-5(c):** All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.

**Mitigation Measure 3.4-5(d):** When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.

**Mitigation Measure 3.4-5(e):** All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.)

**Mitigation Measure 3.4-5(f):** Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

**Mitigation Measure 3.4-5(g):** Trackout shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.

**Mitigation Measure 3.4-5(h):** Limit traffic speeds on unpaved roads to 15 mph.

**Mitigation Measure 3.4-5(i):** Install erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.

**Mitigation Measure 3.4-5(j):** Suspend excavation activity when winds exceed 20 mph.

**Mitigation Measure 3.4-5(k):** Regardless of windspeed, Applicant must comply with Regulation VIII's 20 percent opacity limitation.

**Mitigation Measure 3.4-5(l):** Use of alternative fueled or catalyst equipped diesel construction equipment, as feasible.

**Mitigation Measure 3.4-5(m):** Minimize idling time (i.e., 10 minute maximum).

**Mitigation Measure 3.4-5(n):** To the extent practicable, limit the hours of operation of heavy-duty equipment and/or the amount of equipment in use.

**Mitigation Measure 3.4-5(o):** If feasible, replace fossil-fueled equipment with electrically driven equivalents (provided they are not run via a portable generator set).

**Mitigation Measure 3.4-5(p):** Curtail excavation activities during periods of high ambient pollutant concentrations; this may include ceasing of excavation activity during the peak-hour of vehicular traffic on adjacent roadways.

**Mitigation Measure 3.4-5(q):** Implement activity management (e.g. rescheduling activities to reduce short-term impacts). (MM)

20. **Mitigation Measure 3.5-2:** The Applicant shall be responsible for its proportionate share of the cost of reconstructing White Rock Road, from the project entrance to Le Grand Road, and Le Grand Road, from White Rock Road to Santa Fe Avenue, as addressed in the Roadway Impact Agreement between the County of Merced and the Applicant, a copy of which is shown in Appendix B-5, and made a part hereof. (MM)

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21. **Mitigation Measure 3.5-4:** If bond money does not become available to pay for the full interchange at the Arboleda and State Route 99 Interchange is not implemented, the Applicant shall contribute its proportionate share towards improvements authorized by CalTrans to be implemented in lieu of anticipated interchange. (MM)
22. **Mitigation Measure 3.6-1(a):** Due to the presence of spiny-sepaled button celery (a special status plant species- CNPS List 1B) and the assumed presence of other special status species within the vernal pools/vernal pool complex, the project footprint shall be amended to reflect a 250-foot buffer area. No other vernal pool mitigation measures would be required, other than described in Mitigation Measure 3.6-1c.

**Mitigation Measure 3.6-1(b):** If the Applicant seeks to apply for a 25-foot buffer to the vernal pools (using the Project footprint proposed by the Applicant), the Applicant shall provide documentation to the Lead Agency that wetland functions and values of vernal pools and ephemeral wet swales shall be maintained and that these features shall be protected from dewatering by a buffer (setback) zone at least 25 feet wide. Any loss of function or values shall be mitigated through purchase of acreage in an approved mitigation bank on a 1:1 ratio. Mitigation Measure 3.3-3 requires construction of a cutoff trench to prevent vernal pool drainage and establishes performance standards for evaluating and, if need be, enhancing the efficacy of this mitigation. This mitigation shall be in addition to any mitigation measures identified for special status species, as described in Impact 3.6-3, 4, 5 and 6.

In addition, the Applicant shall implement a Site Management Plan to preserve and maintain the natural processes and functions of the retained vernal pools and ephemeral drainages. The Site Management Plan, as presented in Appendix D, includes management of the 25-foot wide upland buffer area such that this area effectively buffers mining activities from the retained vernal pools and ephemeral drainages and minimizes the edge effects of the project. The management plan also specifies seasonal mowing or grazing of the upland buffer to control/reduce annual grass and weed growth.

The plan include measures to periodically remove/control all occurrences of invasive non-native plant species (as recognized by the California Invasive Plant Council [Cal-IPC]) from the upland buffer and retained vernal pools and ephemeral drainages. The plan includes measures to prevent vehicular access to the retained vernal pools and ephemeral drainages and measures to remove trash and repair perimeter fencing.

The Plan also includes adaptive management strategies such that management actions can be refined and improved as new information on vernal pool management is gathered.

The Site Management Plan requires monitoring to document the Applicant's compliance with the management plan. Monitoring will also be used to document the effectiveness of the cut-off trenches (installed at the outer edge of the 25-foot buffer area) in preventing indirect impacts of mining on the retained vernal pools and ephemeral drainages. Monitoring, as presented in the Site Management Plan (Appendix D), will be implemented for a period of five years and will include the following tasks:

- Establishment of an on-site reference vernal pool; such pool shall be located a minimum of 250 feet from the edge of mining;
- Establishment of an on-site reference ephemeral drainage; such drainage shall be located a minimum of 250 feet from the edge of mining;
- At yearly intervals, monitoring the maximum depth and period of inundation in the reference pool/drainage and all pools/drainages within 100 feet of mining. Staff gauges will be installed within these pools and monitored weekly during the wet season. Data on depth, area, and duration of inundation will be recorded, with results portrayed with hydrographs and photographs;

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- At yearly intervals, monitoring the vegetation, including number of vernal pool endemic (VPE) plant species, per pool and drainage. Measuring absolute cover and relative cover using transects with point intercept or square meter quadrats, and photo documentation;
- At yearly intervals, monitoring the cover of any special status plant species (e.g., spiny-sealed button celery)/pool and drainage;
- Twice a year, monitoring site maintenance. Monitoring for uncontrolled human disturbance (i.e., vehicles, trash) and other unexpected conditions (i.e., soil piping, erosion, water run-off, pollutants);
- Identifying routine site maintenance;
- Preparing and submitting annual monitoring reports to Merced County Planning Department by December 31st of each year;
- Establishing reference pool/drainage-based performance standards as follows:
- Hydrology: maximum depth of inundation within range of reference pools/drainage and longest period of inundation not greater than 125 percent of reference pools/drainage.
- Vegetation: absolute cover and relative cover by VPEs in pool/drainage within 100 feet of mining shall be within 80% of that recorded in the reference pool/drainage; each pool/drainage within 100 feet of mining must support at least 80% of the VPEs recorded in reference pool/drainage; VPEs shared by the pools shall be as vigorous and reproductively active; cover by spiny-sealed button celery shall be within 80 percent of reference pools/drainage; and
- Implement remedial measures if performance standards are not met. Such measures may include, but not limited to, additional weeding and/or removal of invasive non-native plant species, supplemental seeding of vernal pool endemic species, or modifications to the cut-off trench to prevent significant hydrological changes in the retained vernal pools.

**Mitigation Measure 3.6-1(c):** The Applicant shall implement the Site Management Plan to preserve and maintain the vernal pool/swale complex and the designated buffer area (either 250-feet in 3.6-1a or 25-feet in 3.6-1b). The buffer shall be maintained as upland grassland. The Management Plan, as presented in Appendix D, specifies the following tasks:

- Inter-seeding of the setback zone with non-invasive herbaceous plant species;
- Periodic mowing;
- Rotational grazing; and
- Weedy plant species abatement.

The plan also includes the following measurable performance standard:

- Grazing or mowing shall be scheduled such that the grasses are maintained at an average of no more than 18 inches height over any three-year period;
- Amount of grazing or mowing in any one year will depend upon the winter rainfall and thus the vegetative growth; and
- The plan shall include measures to periodically remove/control all occurrences of invasive non-native plant species (as recognized by Cal-IPC) from the vernal pool/swale complex and upland buffer and measures to remove trash and repair perimeter fencing.

**Mitigation Measure 3.6-1(d):** A temporary fence shall be installed along the outside edge of the setback (along the excavation limits) prior to excavation of Phases 4, 5, 6, 7 and 11 to preclude inadvertent entry by excavation crews. A qualified biologist or other certified professional shall verify the location and integrity of protective fencing prior to on-site activities. This fencing shall be maintained for the duration of mining operations in the phases identified above, and shall be periodically inspected by the Applicant and/or County to ensure the fencing remains intact until mining in these areas is completed. Results of these inspections shall be included in annual monitoring reports submitted to the County. (MM)

23. **Mitigation Measure 3.6-2:** The Applicant shall incorporate erosion control measures to preclude erosion or sediments from entering the vernal pools and ephemerally wet drainage swales during and after mining. Specific measures shall be identified in the Project plans and specifications and shall include the following features:

**Mitigation Measure 3.6-2(a):** The limits of work shall be marked with temporary fencing, as described in Mitigation Measure 3.6-1c, above, and all mining activities shall occur outside the fenced areas.

**Mitigation Measure 3.6-2(b):** Measures to control dust as described in air quality Mitigation Measures 3.4-5a through q shall be employed during all mining operations.

**Mitigation Measure 3.6-2(c):** Silt fences and/or straw bales shall be used to prevent sediments from entering the vernal pools and ephemerally-wet drainage swales.

**Mitigation Measure 3.6-2(d):** The effectiveness of the erosion control measures shall be monitored during the rainy season of the first year following excavation within 300 feet of the vernal pools and remedial measures outlined in CRWQCB stormwater management specifications (see Mitigation Measure 3.3-1b) shall be implemented if erosion is noted. If sediment enters any vernal pool or swale, a wetlands specialist or plant ecologist shall inspect the vernal pool or swale and determine if the vernal pool functions and values have been reduced. The specialist shall be selected by the County and paid by the Applicant. The specialist shall recommend appropriate remediation and/or replacement measures to restore the original functions and values of the vernal pool or swale. Such remediation measures may include removal of sediment using hand tools only, so as not to disturb the underlying clay layers. If the specialist determines that the sediment has caused total loss of functions and values, the specialist shall recommend appropriate replacement value on a 1:1 ratio. Replacement may be accomplished by creating a vernal pool/swale within the conservation area on site, or may be mitigated off-site by purchase of credits in an agency-approved mitigation bank. Creation of replacement vernal pool/swale on-site would also include a five-year monitoring plan to ensure that the created pool/swale attains the same function and values as those lost. The remediation and/or replacement measures shall be approved by CDFG and USFWS. (MM)

24. **Mitigation Measure 3.6-3(a):** If the Applicant seeks to apply for a 25-foot buffer to the vernal pools, the Applicant shall have a qualified biologist conduct a spring season plant survey to determine presence or absence of two early-blooming special-status plant species from within the vernal pools and ephemerally wet drainage swales within the Jaxon Enterprises property boundary: dwarf downingia and succulent owl's clover. The supplemental plant survey shall be conducted prior to any on-site mining activities within 250 feet of the vernal pool/wet swale features. If special-status plant species are documented on the site, the biologist will map such occurrences. Results of the survey shall be submitted to CDFG and/or the U.S. Fish and Wildlife Service (USFWS) for review, depending on the state and federal status of any identified species of concern.

**Mitigation Measure 3.6-3(b):** If the Applicant seeks to apply for a 25-foot buffer to the vernal pools, the Applicant shall implement the Conservation Area Management Plan (as specified in Mitigation Measure 3.6-1b and as presented in Appendix D) that describes each special-status plant species confirmed on-site and specific management actions to be implemented to ensure the long-term conservation of each species. Currently, the plan addresses only the spiny sepaled button celery. If additional special-status plant species are documented during surveys conducted as per Mitigation Measure 3.6-3a, the Site Management Plan shall be amended to

address these species. Presently, the Management Plan includes periodic mowing, rotational grazing, and weed abatement as needed to protect known special-status plant species and prevent decline in species distribution or population. The Plan also identifies adaptive management measures for the upland areas around the pools/swales should they be found to be important for pollinators or as dispersal areas for plants and animals important for conservation of the target rare plant species. The vernal pool/drainage performance standards (and remedial measures if necessary) are presented in Appendix D. The Plan includes yearly monitoring of the special status plant species confirmed on-site. Populations shall be stable or increasing over at least one multi-year period that includes above average, average, and below average local rainfall, a multi-year drought, and a minimum of 5 years of post-drought monitoring. Monitoring the population(s) over this multi-year period will capture the range of variability in environmental conditions and variability in population numbers and distribution.

Only after this Management Plan has been reviewed by and concurrence reached with the USFWS, ACOE, and the CDFG, to the extent required, shall the Applicant be allowed to mine beyond the initial 250-foot setback in Phases 4, 5, 6, 7, and 11 identified above. Once an opinion has been rendered by the agencies, the Applicant may apply to the County for a modification of the 300-foot setback such that it would revert to the 25-foot setback proposed by the Applicant and described in Section 2.0, Project Description. If deemed appropriate, the Director of the Merced County Planning and Community Development Department will approve this extension of excavation limits. (MM)

25. **Mitigation Measure 3.6-4(a):** The Applicant shall presume that all listed Vernal Pool crustacean species are present, until such time as protocol surveys prove their absence, and shall implement the following mitigation measures:

- The Applicant shall establish a 250-foot buffer between vernal pools/swales and the mining areas. No mining shall occur in the 250-foot buffer;
- The Applicant shall consult with the USFWS regarding mitigation to compensate for potential impacts to vernal pool crustacean species. Based on the results of this consultation, the Applicant shall be responsible for compliance with the requirements of the Endangered Species Act, including obtaining an incidental take permit, if it is determined that “take” will occur. Such requirements include:
  - Placing a deed restriction or conservation easement on the portion of the Applicant’s property containing the complex of vernal pools located in the northwestern portion of the property (approximately 27 acres) and the vernal pools/swales on the eastern portion of the property (approximately 50 acres). These proposed areas include the 250-foot buffer zone described above and are shown on Figure 3.6-2, Proposed Conservation Easements;
  - Implementing the Site Management Plan for the vernal pool conservation area to minimize non-native plant species (e.g., annual mowing). Management Plan’s performance standards are provided in Mitigation Measure 3.6-1. This plan shall be approved by appropriate regulatory agencies pursuant to take provisions within the ESA.
  - Obtaining a “take permit” from the USFWS prior to any site disturbance that may directly or indirectly impact listed vernal pool crustaceans; and
  - Purchasing acreage on a 1:1 ratio in an approved mitigation bank if any of the vernal pools cannot be included within the 250-foot buffer. This would also require a “take permit” from the USFWS.

**Mitigation Measure 3.6-4(b):** The Applicant may elect to hire a County- and USFWS-approved biologist to conduct protocol surveys for listed vernal pool crustacean species according to the approved USFWS protocol, as described below. If listed Vernal Pool crustacean species are not found to be present after protocol surveys, the Applicant shall obtain written concurrence from the USFWS that these species are absent and Mitigation Measure 3.6-4a above shall not be required for

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these species. The buffer between vernal pools/swales and limits of mining would be maintained at 25 feet. The survey shall include protocol one-year winter wet season surveys for conservancy fairy shrimp, vernal pool tadpole shrimp and fairy shrimp, plus one year dry season survey for crustacean cysts if the winter wet season survey is negative. (MM)

26. **Mitigation Measure 3.6-5:** The Applicant shall implement the USFWS' 1999 "Standardized recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance" and consult with the USFWS and CDFG regarding mitigation to compensate for potential impacts to San Joaquin kit fox. Based on the results of this consultation, the Project Applicant shall be responsible for compliance with the requirements of the ESA and CESA, including obtaining an incidental take permit, if it is determined that "take" will occur. Such requirements may include:

- Preconstruction surveys for San Joaquin kit fox prior to mining of each phase, and relocation of kit fox if denning on site;
- After mining is completed, place a conservation easement over the entire reclaimed mining and processing area; and
- No 'take' of state or federally listed species shall occur prior to obtaining the required permits that authorize the incidental take of such species. (MM)

27. **Mitigation Measure 3.6-6(a):** The Applicant shall presume that California tiger salamander and western spadefoot toad are present on the site (unless surveys are conducted as required under Mitigation Measure 3.6-6b). The following measures shall be implemented to minimize direct harm to the species and to offset the loss of upland habitat.

- Conservation easements shall be placed over the complex of vernal pools located on the northwestern corner of the property (approximately 19.5 acres) and the vernal pools/swales on the eastern portion of the property (approximately 34.5 acres), as shown on Figure 3.6-2;
- After mining is completed, a conservation easement shall be placed over the entire reclaimed mining and processing area;
- A 250-foot buffer shall be established between vernal pools/swales and limits of mining area;
- "One-way" fencing shall be installed to allow amphibians to leave grassland upland habitat prior to mining, and prohibit their return to the area prior to mining. The timing of the installation of the fence is important to the life ecology of the amphibian species. The one-way fence shall be installed in September and maintained through March of any given year. The one-way fence may be placed around each individual Phase of the mining area prior to commencement of mining in each Phase;
- A qualified biologist shall be present on the site to guide the workers in the design and installation of the one-way fence to avoid all burrows inhabited by amphibians where possible, and to inspect and hand excavate those that cannot be avoided. A miniature fiber optics camera may be useful in this situation to detect amphibians in burrows, and the CDFG and USFWS should be consulted in the use of this device to detect amphibians. The biologist shall obtain all necessary permits to relocate any amphibians that may be found in the burrows inspected;
- No 'take' of state or federally listed species shall occur prior to obtaining the required permits that authorize the incidental take of listed species; and
- No 'take' of California Species of Special Concern shall occur prior to obtaining the required MOU with the CDFG.

**Mitigation Measure 3.6-6(b):** The Applicant may elect to hire a qualified biologist to conduct protocol surveys for California tiger salamander and western spadefoot toad according to the interim USFWS protocol, as described below.

If California tiger salamander or western spadefoot toad are not found present after protocol surveys, the Applicant shall obtain written concurrence from the USFWS and CDFG that these species are absent and Mitigation Measure 3.6-6a, above, would not be required for these species. The following surveys shall be required:

- Three spring aquatic surveys for larvae conducted in March, April and May;
- If aquatic surveys are negative, one winter drift fence with pitfall traps shall be conducted. The CDFG and USFWS shall be consulted regarding the location of the drift fences; and
- If drift fence/pitfall trapping is negative, another spring larval survey shall be conducted in March, April and May following the winter pitfall trapping survey.

Should the agencies render an opinion of species absence, the Applicant may apply to the County for a modification of the 250-foot setback such that it would revert to the 250-foot setback proposed by the Applicant and described in 2.0, Project Description. If deemed appropriate, the Planning Commission will approve this extension of excavation limits, recognizing the 250-foot setback requirement of other mitigation measures must also be satisfied. (MM)

28. **Mitigation Measure 3.6-7(a):** The Applicant shall presume that burrowing owls nest and winter on the Project site. The following measures shall be implemented to minimize direct harm to the species and to offset the loss of its habitat.

- An area of 6.5 acres of grassland habitat with suitable burrows for each wintering burrowing owl or each nesting pair (9 wintering owls identified in 1999) shall be preserved, as recommended by the CDFG and Burrowing Owl Consortium. This area may be concurrent with the vernal pool preserve recommended above in 3.6-4a and shown on Figure 3.6-2, if approved by CDFG;
- After mining is completed, a deed restriction shall be placed over the entire reclaimed mining and processing area;
- The Applicant shall implement the section of the Site Management Plan that addresses burrowing owl habitat. The burrowing owl management plan shall be approved by CDFG prior to any mining and implementation of the proposed plan. The Site Management Plan (as presented in Appendix D) shall contain the following elements: periodic grazing, prohibition of poisoning of ground squirrels, periodic surveys for burrowing owl, and adaptive management techniques. The plan shall include measurable performance standards as follows: (1) Grazing shall be scheduled such that the grasses are maintained at an average of no more than 18 inches height over any three year period. Amount of grazing in any one year will depend upon the winter rainfall and thus the vegetative growth. Grazing reduces thatch build up, prevents noxious invasive plants such as star thistle from becoming established, and maintains a more open grassland suitable for burrowing mammals such as ground squirrel that create the burrows required by burrowing owls. (2) Since the area will be a preserve, no ground squirrel control may be necessary. If ground squirrel control is deemed necessary in some years to prevent conflict with grazing animals, only methods approved by CDFG shall be employed. No cyanide traps shall be employed. (3) Surveys for burrowing owl shall be conducted during Year 1, Year 3, Year 5, and thereafter at five year intervals to document their continued use of the preserve area, and thereby evaluate the effectiveness of the other plan constituents. (4) If monitoring surveys show a decrease in the population at this site, as evaluated using appropriate population statistics over time, then adaptive management measures shall be employed to enhance the conditions favorable to burrowing owl. Such measures may include placement of artificial burrows, removal of non-native predators, and changes in grazing regime to enhance habitat. If new scientific data becomes available in the future that enhances the population of burrowing owls, adaptive management shall include such information to further the survival of the population; and
- Protocol preconstruction surveys for burrowing owls shall be conducted no more than 30 days prior to commencement of ground disturbance prior to each phase. If

burrowing owls are present, implement a plan, as approved by CDFG, for passive relocation of wintering owls, and maintain a minimum 250 foot buffer around nesting owls until a qualified biologist has determined that all young have fledged and are foraging independently. If burrowing owls are absent, the operator may commence ground disturbance activities provided all applicable surveys (e.g., tiger salamander surveys) allow for such disturbance.

**Mitigation Measure 3.6-7(b):** The Applicant may elect to hire a qualified biologist to conduct one-time protocol surveys for western burrowing owl according to the Burrowing Owl Consortium and CDFG approved protocol, as described below. If western burrowing owl are not found present after protocol surveys, the Applicant shall obtain written concurrence from the USFWS and CDFG that these species are absent and Mitigation Measure 3.6-7a above would not be required for this species. Protocol surveys shall include winter (Dec – Jan) and breeding season (April 15 – July 15) surveys for burrowing owls as recommended by the Burrowing Owl Consortium (1993) to determine the current number of burrowing owls on site. (MM)

29. **Mitigation Measure 3.6-8(a):** Portions of the proposed mining Phases 4, 5, 6, 7, and 8 occur within 500 feet of mature black cottonwood trees which may provide suitable nesting habitat for tree-nesting raptor species. Mining shall be scheduled to occur outside the nesting season for raptors (generally September 1 to March 1).

**Mitigation Measure 3.6-8(b):** If the schedule identified in Mitigation Measure 3.6-8a is not practical, the Applicant shall hire a qualified biologist to conduct preconstruction surveys for nesting raptors no more than 30 days prior to construction in the portions of Phases 4, 5, 6, 7, and 8 that are within 500 feet of mature black cottonwood trees. If any protected species are observed, the qualified biologist, in consultation with CDFG, shall recommend a buffer area around the nest. No construction or mining shall take place within the buffer area until the biologist has determined that all young have fledged and are capable of foraging independently. The buffer area shall be delineated with orange construction fencing.

**Mitigation Measure 3.6-8(c):** Surveys for nesting raptors shall be conducted following the survey methodology developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to any disturbance within 5 miles of a potential nest tree (DFG, 1994). These surveys, the parameters of which were designed to optimize detectability, must be conducted to reasonably assure the CDFG that "take" of this species will not occur as a result of disturbance associated with Project implementation.

In the event that this species or any other special status raptor species is detected during protocol-level surveys, consultation with the CDFG is warranted to discuss how to implement the Project and avoid "take." Regardless of nesting status, trees that must be removed should be replaced with an appropriate native tree species planting at a ratio of 3:1 in an area that will be protected in perpetuity. This mitigation is needed to offset potential impacts to the loss of potential nesting habitat. (MM)

30. **Mitigation Measure 3.6-9:** If special-status species are present, implement Mitigation Measures 3.6-3a, 3.6-3c, 3.6-5a, 3.6-6a, and 3.6-7a, as appropriate for the particular species found. (MM)
31. **Mitigation Measure 3.6-11:** Implementation of Mitigation Measures 3.6-1a through c, 3.6-2a through d, 3.6-3a through c, 3.6-4a and b, 3.6-5, 3.6-6a and b, 3.6-7a and b, and 3.6-8a, along with implementation of the proposed Reclamation Plan would prevent cumulatively significant impacts. (MM)
32. **Mitigation Measure 3.7-6:** The Applicant shall notify the County in writing regarding the expected commencement date of a nighttime project and the duration of nighttime operations. The Applicant shall also notify the County in writing when a particular nighttime Project is completed. (MM)

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33. **Mitigation Measure 3.8-3:** Exterior lighting shall be designed and maintained in a manner such that glare and reflections are contained within the boundaries of the parcel, and shall be hooded and directed downward and away from adjoining properties and public rights-of-way. The use of blinking, flashing or unusually high intensity or bright lights shall not be allowed. All lighting fixtures shall be appropriate to the use they are serving, in scale, intensity and height. (MM)
34. **Mitigation Measure 3.9-1(a):** The Applicant shall train field personnel in identification procedures, prior to beginning excavation in the expansion area. Training materials shall be prepared by a professional archaeologist and shall provide a review of the natural and cultural history of the Project area, archaeological sensitivity, most likely locations of buried cultural materials, and specific instructions on how to address such discoveries and what immediate actions must be taken in the event that materials are, in fact, unearthed. Instructional materials or artifacts are to be kept on-site and under direction of identified specific individuals. Part of the annual report prepared pursuant to the Mitigation Monitoring and Reporting Plan shall identify the responsible individuals and personnel present during training.
- Mitigation Measure 3.9-1(b):** If human skeletal remains are encountered during construction, work within 20 meters (66 feet) of the discovery shall be stopped immediately and the County Coroner notified. If the remains are Native American, the Native American Heritage Commission shall be consulted, and the Most Likely Native American Descendant identified and given the opportunity to confer with the property owner about the disposition of the remains.
- Mitigation Measure 3.9-1(c):** If cultural resources, such as chipped or ground stone, historic debris, building foundations, or human bone are discovered during ground-disturbance activities, work shall be stopped within 20 meters (66 feet) of the discovery, an archaeologist shall be contacted for an evaluation, and the Merced County Planning Director shall be notified at once.
- Mitigation Measure 3.9-1(d):** Cultural resources found on the Project site will be recorded or described in a professional report and submitted to Merced County. (MM)
35. **Mitigation Measure 3.9-3:** If bone is uncovered that appears to be human, the Merced County Coroner shall be contacted. 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. (MM)

### VI. COMMISSION ACTION ITEM (S)

None

### VII. DIRECTOR'S REPORT

Mr. Mark Hendrickson, Community and Economic Development Director, thanked Ms. Oksana Newmen for her years of service and commitment to the County as a Planner and Deputy Director and he informed the Commission that Ms. Oksana would be leaving Merced County and this would be her last Planning Commission meeting.

### VIII. COMMISSIONERS COMMENTS

Commissioners thanked Ms. Oksana Newmen and wished her well.

### IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:50 a.m.