

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF SEPTEMBER 14, 2016

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of September 14, 2016, 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 14, 2016, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Jack Mobley (Acting Chairman)
 Commissioner Rich Ford
 Commissioner Robert Acheson

Staff Present: Mark Hendrickson, Director
 Kim Lewallen, Recording Secretary
 Steve Maxey, Planner III
 Sandy Saechao, Planner I

Legal Staff: Jeff Grant, Deputy County Counsel

Commissioners Absent: Chairman Mark Erreca
 Commissioner Greg Thompson

III. APPROVAL OF MINUTES

MOTION: M/S ACHESON – FORD, AND CARRIED BY A VOTE OF 3 – 0, THE COMMISSION APPROVES THE MINUTES FROM THE AUGUST 24, 2016 MEETING.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. MINOR SUBDIVISION No. MS16-004 – Richard Marchini - To divide a 79.6 acre parcel into 2 parcels for estate planning purposes, resulting in parcel sizes of: Parcel 1 = 39.5 acres and Parcel 2 = 40.1 acres. The project is located at the northeast corner of E. Le Grand Rd & S. Minturn Rd in the Le Grand area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **SM**

Recommendations: The actions requested are to:

- 1) Find the project requires no subsequent environmental review in compliance with Section 15162 "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report.
- 2) Approve Minor Subdivision Application No. MS16-004 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Steve Maxey presented the Staff Report and recommendations of approval dated September 14, 2016.

The public hearing opened at 9:03 a.m.

Rick Marchini, Attorney for the Marchini's, asked for approval of this application.

The public hearing closed at 9:04 a.m.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION FINDS THAT MINOR SUBDIVISION APPLICATION NO. MS16-004 REQUIRES NO SUBSEQUENT ENVIRONMENTAL REVIEW IN COMPLIANCE WITH SECTION 15162 "SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS" OF THE CEQA GUIDELINES BASED UPON THE ANALYSIS IN THE 2030 MERCED COUNTY GENERAL PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 14, 2016 AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION APPLICATION NO. MS16-004 SUBJECT TO THE 6 CONDITIONS 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. Prior to recording the final map, the applicant shall apply for and obtain any and all necessary permits for existing residences or accessory structures for which a land use permit are required.
3. 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.
4. 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.
5. The applicant shall comply with all applicable County, State and Federal regulations.

County Counsel

6. INDEMNITY AND HOLD HARMLESS AGREEMENT:

RICHARD MARCHINI 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 RICHARD MARCHINI.

RICHARD MARCHINI 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 RICHARD MARCHINI, its agents, subcontractors,

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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. RICHARD MARCHINI 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.

- B. CONDITIONAL USE PERMIT No. CUP16-010 – Pardeep Takhar** – To establish a used car dealership. The project site is located on the northeast corner of Park Avenue and Center Avenue in Winton. The property is designated General Commercial and zoned C-2 (General Commercial). **SS**

Recommendations: The actions requested are to:

- 1) Determine that Conditional Use Permit No. CUP16-010 is categorically exempt from CEQA review under Section 15061(b)(3) "General Rule" of the CEQA Guidelines, and;
- 2) Approve Conditional Use Permit No. CUP16-010 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Sandy Saechao presented the Staff Report and recommendations of approval dated September 14, 2016.

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

Mike Smith, CCPS, questioned condition #2 in regards to the amount of cars allowed. He feels it should be 14 and not 10 parking spaces.

Planner Sandy Saechao said that there should be two for the applicant and two for handicapped spaces, so it actually should be 12 spaces available. Noted that Condition #2 is to be modified for 12 parking spaces.

Mr. Smith agreed and asked for approval of this application.

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

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION DETERMINES THAT CONDITIONAL USE PERMIT NO. CUP16-010 IS CATEGORICALLY EXEMPT FROM CEQA REVIEW UNDER SECTION 15061(b)(3) "GENERAL RULE" OF THE CEQA GUIDELINES.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 14, 2016, AND MAKES THE 8 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT NO. CUP16-010 SUBJECT TO THE 14 CONDITIONS SET FORTH IN THE STAFF REPORT WITH CONDITION #2 BEING MODIFIED AS FOLLOWS:

Conditions:

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Community and Economic Development Department

1. Conditional Use Permit No. CUP16-010 shall operate in accordance with the approved Plot Plan and Operational Statement.
2. The number of vehicles for sale at this site shall not exceed 12 vehicles.
3. The applicant shall maintain existing landscape.
4. The project is subject to the performance standards under Chapter 18.41 of the Zoning Code.
5. The project shall comply with all requirements under Section 18.47.060 Automobile Sales of the Zoning Code (copy attached).
6. The applicant shall comply with all of the applicable standard conditions of approval listed in the Planning Commission Resolution No 97-1.5.
7. For the purpose of conditions monitoring, an inspection fee in the amount of **\$162.00** 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.
8. 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 Department and Public Works Departments.

County Counsel

9. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

Pardeep Takhar 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 Pardeep Takhar. Pardeep Takhar'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 Pardeep Takhar, 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. Pardeep Takhar 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 Conditional Use Permit No. CUP16-010 approval, modification, or denial.

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

Division of Environmental Health

10. Vehicle maintenance or repair (including anti-freeze or oil changes) shall not be performed on the parcel, nor shall more than 500 pounds of batteries be stored onsite unless a hazardous material business plan is filed with Merced County Division of Environmental Health.

Buildings and Safety Division

11. The applicant shall have an architect, engineer, or CASp Inspector evaluate the site for disabled access. 100% compliance with disabled access is required for the site, office area, restroom, parking, etc. An architect or engineer must provide any necessary drawings for work required in order to be in compliance. The plans must be submitted to the Building Division for approval and a permit before any construction or business operations can begin. Submittals must consist of one set of plans and calculations/reports in an electronic format (either on CD/Disk or flash drive).

Road Division

12. The applicant shall install paved driveway approaches along Park Avenue and Center Avenue where access to the site is proposed (proposed gates). An Encroachment Permit shall be obtained and paid for prior to start of any construction.
13. All on-sale vehicles shall be parked within the property boundary. On-sale vehicles shall not be permitted along the right-of-way.

Fire Department

14. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the fire code official, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6 mm) high with a minimum stroke width of 0.5 inch (12.7 mm). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained.

- C. MINOR SUBDIVISION APPLICATION No. MS16-008 – Matthew Kahl** - To divide two parcels into three parcels to align with current farming operations, resulting in parcel sizes of: Parcel 1 = 50.63 acres, Parcel 2 = 50.05 acres and Parcel 3 = 59.64 acres. The project site is located on the northwest corner of Mariposa Way and Plainsburg Road in the Merced area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **SS**

Recommendations: The actions requested are to:

- 1) Determine that no subsequent environmental review is required in compliance with Section 15162 "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report.
- 2) Approve Minor Subdivision No. MS16-008 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Sandy Saechao presented the Staff Report and recommendations of approval dated September 14, 2016.

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The public hearing opened at 9:21 a.m.

Matthew Kahl, applicant, stated that Parcel 2 is the canal road and the east side is the home and there is hay on the creek bank and the gate is on the creek side of the bridge for access.

Commissioner Ford asked if there is an existing roadway. Mr. Kahl said yes for Plainsburg Road.

The public hearing closed at 9:24 a.m.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION FINDS THAT MINOR SUBDIVISION APPLICATION NO. MS16-008 REQUIRES NO SUBSEQUENT ENVIRONMENTAL REVIEW IN COMPLIANCE WITH SECTION 15162 "SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS" OF THE CEQA GUIDELINES BASED UPON THE ANALYSIS IN THE 2030 MERCED COUNTY GENERAL PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT.

MOTION: M/S FORD – ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 14, 2016 AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES MINOR SUBDIVISION APPLICATION NO. MS16-008 SUBJECT TO THE 7 CONDITIONS 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 years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. A notice shall be placed on the face of the parcel map stating there is no right to construct new (or additional) residences on any of the parcels created through Minor Subdivision No. MS16-008. In the future, if a new residence is proposed, a modification to this condition of approval may be processed through a map modification application along with a conditional use permit application consistent with Policy AG-3.12 of the Agricultural Element of the General Plan, (or any subsequent policy), and with compliance under the California Environmental Quality Act.
3. A notice shall be placed on the face of the parcel map stating that in order to provide for continued access of irrigation water to each parcel, easements shall be provided over the parcel that has access to the irrigation well to the remaining parcels. ~~The easement should specify whose responsibility it is to maintain the irrigation well with said easement.~~
4. The applicant shall comply with all applicable County, State and Federal regulations.
5. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.

Fire Department

6. Applicant shall install and maintain approved address numbers, building numbers or approved building identification on new and existing buildings in a position that is legible and visible from the street or road fronting the property.

County Counsel

7. INDEMNITY AND HOLD HARMLESS AGREEMENT:

MATTHEW KAHL 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 MATTHEW KAHL.

MATTHEW KAHL'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 MATTHEW KAHL 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. MATTHEW KAHL 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.

- D. CONDITIONAL USE PERMIT APPLICATION NO. CUP16-007 – Foster Farms -** To replace 26 existing turkey houses totaling 399,360 square feet with 14 modern turkey shelters totaling 393,120 square feet and construct related support buildings at an existing poultry facility. The project site is located on a property located on the South side of W. Hwy 140, approximately one mile East of N. Van Clief Road in the Stevinson area. The property is designated Agricultural land use and zoned A-2 (Exclusive Agricultural). **SM**

Recommendations: The actions requested are to:

- 1) Find the project categorically exempt from environmental review under section 15302, "Replacement or Reconstruction" of the CEQA guidelines.
- 2) Approve Conditional Use Permit Application No. MS16-007 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Steve Maxey presented the Staff Report and recommendations of approval dated September 14, 2016.

The public hearing opened at 9:32 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:33 a.m.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION FINDS CONDITIONAL USE PERMIT NO. CUP16-007 CATEGORICALLY

EXEMPT FROM ENVIRONMENTAL REVIEW UNDER SECTION 15302, “REPLACEMENT OR RECONSTRUCTION” OF THE CEQA GUIDELINES.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 14, 2016, AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES CONDITIONAL USE PERMIT NO. CUP16-007 SUBJECT TO THE 16 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning and Community Development Department

1. Conditional Use Permit No. CUP16-007 is granted for the construction and operation of 14 modern turkey shelters totaling approximately 393,120 square feet and construct related support buildings at an existing poultry facility. The project site is located on a property located on the South side of W. Hwy 140, approximately one mile East of N. Van Clief Road in the Stevinson area. The property is designated Agricultural land use and zoned A-2 (Exclusive Agricultural).
2. The project shall be located, developed and operated in a manner described on the approved Plot Plan, Project Description, and Conditions of Approval of this permit.
3. New poultry buildings shall be sited on the southern portion of the same site as buildings to be demolished.
4. The project shall comply with Chapter 7.08 of the Merced County Code pertaining to Poultry Operations. All cage, confinement, and range operations shall comply with the Ordinance.
5. The project shall comply with all applicable public health, safety, and welfare regulations administered by the County of Merced, and in particular the County Fire Department, the Health Department/ Environmental Health Division, the Community and Economic Development Department, and Public Works Department/ Road and Building and Safety Divisions.
6. For the purpose of conditions monitoring, an inspection fee in the amount of **\$405.00** shall be required. This fee shall be paid within 30 days of approval of the project. 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.
7. Prior to issuance of a building permit, the project applicant must obtain all necessary permits and written authorizations and must demonstrate compliance with all applicable regulations administered by Federal and State agencies.

Department of Environmental Health

8. Site plans submitted to the building department for permits shall indicate replacement areas for leach fields (residential – 100%, non-residential – 300%) and a protective barrier around each constructed leach field. Please make sure the replacement areas meet applicable setbacks.
9. The exact condition of the well which is identified on the site plan as “abandoned” is to be determined by the applicant, and that information provided to MCDEH before submittal of building permit application(s).

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10. 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.
11. All septic tanks shall be protected against flooding.
12. A permanent barrier shall surround each septic system. The barrier shall protect each septic tank (unless the tank is traffic rated and has traffic rated risers and lids) and leach line area from vehicle traffic, parking, and any other soil-compacting activity.
13. Leach line areas shall be unpaved.
14. The leach field replacement area (100% for residential systems, 300% for non-residential systems) shall remain unpaved, contain no structure, and not be under a permanent drive or parking area.
15. Any well not active with a working pump and permanent power supply shall be demolished under permit from Merced County Division of Environmental Health. An inactive well can be retained for up to one year under an out-of-service well permit from MCDEH.

County Counsel

16. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

FOSTER FARMS, 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, boards, and officers of FOSTER FARMS, LLC.

FOSTER FARMS, 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 FOSTER FARMS, 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. FOSTER FARMS, 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.

- E. CONDITIONAL USE PERMIT APPLICATION NO. CUP16-008 – Foster Farms** -To replace 24 existing chicken shelters totaling 368,640 square feet with 15 modern chicken shelters totaling 367,200 square feet and construct related support buildings at an existing poultry facility. The project site is located on the South side of W. Longview Avenue, .25 Miles east of N. Weir Avenue in the Livingston area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **SM**

Recommendations: The actions requested are to:

- 1) Find the project categorically exempt from environmental review under section 15302, "Replacement or Reconstruction" of the CEQA guidelines.
- 2) Approve Conditional Use Permit Application No. MS16-008 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner Steve Maxey presented the Staff Report and recommendations of approval dated September 14, 2016.

The public hearing opened at 9:36 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:37 a.m.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION FINDS CONDITIONAL USE PERMIT NO. CUP16-008 CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW UNDER SECTION 15302, "REPLACEMENT OR RECONSTRUCTION" OF THE CEQA GUIDELINES.

MOTION: M/S FORD - ACHESON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 14, 2016 AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT NO. CUP16-008 SUBJECT TO THE 16 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning and Community Development Department

1. Conditional Use Permit No. CUP16-008 is granted for the construction and operation of 15 replacement chicken shelters and related accessory buildings at an existing poultry facility. The project site is located on the South side of W. Longview Avenue, .25 Miles east of N. Weir Avenue in the Livingston area. The property is designated Agricultural land use and zoned A-1 (General Agricultural)).
2. The project shall be located, developed and operated in a manner described on the approved Plot Plan, Project Description, and Conditions of Approval of this permit.
3. Replacement poultry buildings shall be sited on the same site area as existing structures to the extent feasible.
4. The project shall comply with Chapter 7.08 of the Merced County Code pertaining to Poultry Operations. All cage, confinement, and range operations shall comply with the Ordinance.

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5. The project shall comply with all applicable public health, safety, and welfare regulations administered by the County of Merced, and in particular the County Fire Department, the Health Department/ Environmental Health Division, the Community and Economic Development Department, and Public Works Department/ Road and Building and Safety Divisions.
6. For the purpose of conditions monitoring, an inspection fee in the amount of **\$405.00** shall be required. This fee shall be paid within 30 days of approval of the project. 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.
7. Prior to issuance of a building permit, the project applicant must obtain all necessary permits and written authorizations and must demonstrate compliance with all applicable regulations administered by Federal and State agencies.

Department of Environmental Health

8. Site plans submitted to the building department for permits shall indicate replacement areas for leach fields (residential – 100%, non-residential – 300%) and a protective barrier around each constructed leach field. Please make sure the replacement areas meet applicable setbacks.
9. The exact condition of the well which is identified on the site plan as “abandoned” is to be determined by the applicant, and that information provided to MCDEH before submittal of building permit application(s).
10. 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.
11. All septic tanks shall be protected against flooding.
12. A permanent barrier shall surround each septic system. The barrier shall protect each septic tank (unless the tank is traffic rated and has traffic rated risers and lids) and leach line area from vehicle traffic, parking, and any other soil-compacting activity.
13. Leach line areas shall be unpaved.
14. The leach field replacement area (100% for residential systems, 300% for non-residential systems) shall remain unpaved, contain no structure, and not be under a permanent drive or parking area.
15. Any well not active with a working pump and permanent power supply shall be demolished under permit from Merced County Division of Environmental Health. An inactive well can be retained for up to one year under an out-of-service well permit from MCDEH.

County Counsel

16. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

FOSTER FARMS, 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, boards, and officers of FOSTER FARMS, LLC.

FOSTER FARMS, 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 FOSTER FARMS, 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. FOSTER FARMS, 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**

The rotation of Chairman (Commissioner Thompson) and Vice Chairman (Commissioner Ford) will begin at the October 12, 2016 Planning Commission meeting.

VIII. **COMMISSIONERS COMMENTS**

Commissioner Ford mentioned that Building Permit fees in Merced County are substantially higher than in Stanislaus County and that is something that needs to be addressed.

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Director Mark Hendrickson replied that Board of Supervisors is always looking at how Merced County can be the most competitive. A fair portion of the fees are related to the regional transportation impact fees and is a significant driver of those fees. It is being evaluated and should be in front of the Board of Supervisors soon.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:41 a.m.