

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF NOVEMBER 18, 2009

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of November 18, 2009, 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 9:05 a.m., on November 18, 2009, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Lynn Tanner - Chairman
 Commissioner Mark Erreca
 Commissioner Cindy Lashbrook
 Commissioner Rudy Buendia

Staff Present: Robert Lewis, Development Services Director
 William Nicholson, Assistant Development Services Director
 Kim Anderson, Recording Secretary
 Oksana Newmen, Planner III
 David Gilbert, Senior Planner
 Brian Guerrero, Planner II

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Jack Mobley - Vice Chairman

III. APPROVAL OF MINUTES

M/S ERRECA - BUENDIA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF OCTOBER 14 AND OCTOBER 28, 2009.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP 06-011 - Santa Fe Aggregates - To excavate, crush and remove approximately 8 million tons of aggregate from tailing materials existing on a 409 acre portion of a 624 acre site. The proposed mining operations plan to remove an average of 100,000 tons of material per year to an approximate maximum of 435,000 tons per year over the lifetime of the project. The operations will include a portable processing facility to crush materials onsite. The project site is located on the southeast corner of the intersection of State Highway 59 and Snelling Road in the Snelling area. The property is designated Agricultural land use in the General Plan and zoned A-2 and A-1 (Exclusive Agricultural and General Agricultural). **THE ACTION REQUESTED IS TO MAKE A PROJECT ENVIRONMENTAL DETERMINATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. ON**

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated November 18, 2009. Ms. Newmen added that Condition #19 should be revised.

Bruce Steubing with Resource Design Technology also gave a brief overview of the Environmental Impact Report prepared for Santa Fe Aggregates.

The public hearing opened at 9:30 a.m.

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Michelle Cunningham, Manager at Santa Fe Aggregates, stated that she has worked for Santa Fe Aggregates for the past ten years and they have been operating in Merced County since 1992. Their main site is on Winton Way where they sell mainly concrete and asphalt from the site. The Doolittle site was permitted in 2000 and they will be shutting down the site and hoping to open nearby. The average worker makes \$20 an hour with benefits. They are responsible to the environment. Construction activity is down, but still needed. She provided some documents to the Commission. There are concerns with tailings, which is why they are using it as base rock. They preserve the farmland at the Winton facility for the concrete aggregates and asphalt. US Fish & Wildlife and the Fish & Game Department have been on the site many times. A lot of the materials are above the water table. They are preserving 225 acres of riparian lands and wetlands. This is a great project. This is an intermittent operation and averages about 80 days a year as a processing site. She is available for any questions.

Steve Silva, N. Hwy 59, says that no one is in favor of this project. They would like to see this project 1 or 2 miles away from them. There could be mercury. They have been below the water table for 2 years. The land is not worth anything because of this project.

David Arosing, N. Hwy 59, states that the tailings and rock piles have been there for over 50 years. The land has not recovered from the mining operations. There will be no protection for the wildlife. No one knows where the mercury is out there. There are a lot of shallow water wells. This is unacceptable.

Debbie Bower, owner of property in Snelling, stated that she is concerned with the crushing of the rock. The noise will be bad and asked how this will be mitigated. The residents in Snelling can hear the noise from the Doolittle Mine. This is a big problem. Disturbing the tailings will disturb the mercury. There has to be a better place to get your rock.

Gordon Gray, Snelling resident, stated that he understands that Santa Fe Aggregates will be used as a resource. The Snelling MAC has tried to negotiate an agreement to reduce the noise and traffic, time and hours of operations and setbacks. We need to establish an agreement for the Community. The requirements of the Planning Department are to do a diligent job in monitoring the site.

Richard Klups, Snelling resident, says there are plenty of mine sites. There are giant holes for miles, there are over 400 acres. Who monitors the site? 50 years is too long for the permit. The Doolittle site is full of pools where moss grows. It's not one-foot above water level.

Bill Nicholson, Assistant Development Director, stated that the Mines are the most severely regulated permit and by State Law a monitoring report is completed every year with many regulations and a financial assurance. The Planning Department does annual monitoring of the sites and returns a report to the State every year. This Commission will be given an opportunity to review the report. The Reclamation will start as they finish up a phase so there is a schedule and timing. If there are problems, that is an ongoing issue and has to be monitored every year.

Bob Thomas, Merced resident and Partner with Merced Land and Cattle Co., says he owns parcels in Snelling. 200 of his parcels are dredger tailings and believe the land use after mining will be useable. Santa Fe Aggregates are good and responsible neighbors; otherwise they would have not signed a lease with them. They operate by the State laws.

Rod Atteberry, Lawyer for Santa Fe Aggregates, said they are 5 years into this project. They would like to move forward. The applicants are willing to deal with the needs of the Community and figure out where the best resources are, including the tailings. He commends the Planning Department on the work they have done already. The Notice of Preparation went out in 2007, and they modified the hours of operations and boundaries. Staff has addressed the letters submitted to the Commission. The Hydrologist is available to answer any questions regarding the mercury. The water ponding at the Doolittle site was caused by a beaver dam, once it was removed, the water level dropped.

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Richard Klups, N. Hwy 59, speaking again, in reference to Merced Land and Cattle, if he had 10,000 acres, he would sell to mine the rocks too. is also concerned with wildlife. They are going to take the habitat out. Where will the wildlife go?

Ken Ulm, Production manager for Santa Fe Aggregates, says the Commission is invited to come out to the project and look at the wildlife or lack of and show what has been done to the site to date.

The public hearing closed at 10:05 a.m.

The Commission took a 10 minute break to look over letters submitted.

Oksana Newmen proposed a new Condition #64 to be added in the staff report to read: The Project shall not commence operations until such time as the Doolittle reserves are depleted. Although final stockpiles at Doolittle may be sold and trucked off the site during initial development and mining at the new Project, sales at the new Project shall not commence until the final stockpiles at Doolittle have been depleted. Once all of the material from the stockpiles at the Doolittle site has been sold, the only ongoing activities at the Doolittle site shall be related to final reclamation. Consequently, there will be no overlap of impacts created by the two projects in terms of truck traffic, air emissions, or noise.

Andrew White, Resource Design Technology, addressed the 6 comment letters received after the hearing began. They have addressed all concerns from the US Fish & Wildlife Service in the EIR. A letter was received from Marsha Bursh discussing the violation of the Brown Act. Debbie Bower submitted a letter and the response is there is significant dialogue with the County to review the hours of operation and the limits of the processing plant in removing some of the areas. Mitigation Measures are in the Draft EIR. The applicant agreed to restrict hours of operation and limits of processing. San Joaquin Raptor Rescue sent a letter also and Mr. White responded that a Notice of Completion and appropriate documents were completed. Merced County provided an Affidavit of mailing.

Ms. Newmen added that the documents have been available since January 2009 on the County's website and in review at the Planning Department office. There has been a fair amount of time to review all documents. The agenda and documents were made available 72 hrs in advance to the meeting today and comply with the Brown Act.

Mr. White continued responding to Lydia Miller's comments and Mr. White said there is no knowledge that the General Plan has been found legally non-compliant. Ms. Miller disagrees with the Reclamation Plan and Mr. White said approval of the Reclamation Plan was part of the Environmental analysis. The County does perform annual mining inspections and compliance reports on annual basis. The applicant and EIR focuses on impacts of the project. Aggregate need is not an impact. In the next 50 years there needs to be additional permitted reserves to supply County demand. The hydrology section of the Environmental Impact Report addresses the alterations of flood plains and drainage patterns and was considered less than significant. The drip line requirements for no operations within the drip lines of the Oak and Willow trees was addressed. Mitigation Measures require avoidance if possible. UC Merced is almost 7 miles south of this project. The applicant's hydrologist can address the Mercury issue. Any mercury that may be found in the sandy tailings would be due to historical mining practices and would not be found in cobble rocks. No significant amounts of Mercury were found. This is a County land use decision. If permits are required, they will be obtained.

Bill Nicholson stated that the letter from Lydia Miller with San Joaquin Raptor Rescue Center and Steve Burke with Protect our Water in 2003 was received from the project applicant and Mr. Nicholson states that it refers to their project in Winton. A release of settlement agreement was also received and they are encouraging Santa Fe Aggregates to use tailings. A letter was received from Marsha Bursh saying they failed to provide proper noticing of this project and the application should be continued. Mr. Nicholson says this application was properly noticed and available to the public. The Brown Act requires a 72 hours prior notice and that was complied with.

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Robert Lewis, Development Services Director, asked Planner Oksana Newmen to read the modified Condition #19 to the Commission.

Planner Oksana Newmen read the modified Condition #19 and read new Condition #64.

Commissioner Lashbrook is concerned with the wildlife, water level monitoring and the neighbor's complaints.

Ms. Newmen explained that the applicants are avoiding the wetlands and there is a buffer setback and use machinery to scrape away gently to avoid impact on the wetlands. The applicant is successfully using this process at the Doolittle site.

Commissioner Lashbrook questioned the groundwater levels. Ms. Newmen said there is a condition of approval that requires monitoring of the ground water and must remain 1 foot above the perched water level based on the monitoring. The County Planning Department has to review and sign off any change in water level. There are annual inspections of the mines in progress.

Bruce Steubing added that Condition #12 requires a compliance report to be prepared to ensure the applicant is complying with conditions of approval and the Reclamation Plan.

Michelle Cunningham, Santa Fe Aggregates, said she has had contact with the receptor 4, and they are fine with the proposal. They explained that this is a short term impact and they will remove the tailings when finished.

Commissioner Lashbrook asked if there will be a schedule available for the Community.

Ms. Cunningham said they put in conditions so they can't do work within certain areas of the Community and another condition for night time operations that have to be notified.

Chairman Lynn Tanner asked Ms. Cunningham if there is a problem with the addition of Condition #64. Ms. Cunningham is fine with the new condition.

Dr. Andrew Kopana, Hydrologist and hired by Santa Fe Aggregates, discussed the locations of the Mercury testing. He measured changes in water levels for 2 ½ years. They found on this site that the tailings are the river flow and discharged through the ditches caused by local rainfall. They found that the discharges are the primary control. Department of Water Resources provided a comment letter that includes relatively wet periods. The plan will include ongoing level monitoring to verify the mining does not get within 1 foot of the perched water. When they tested in 2006, they sampled and measured any chemicals to look for presence and Santa Fe tested the cobbles and tailing for Mercury and it has not been detected or found in the area. Mercury dissolves gold and is collected from the dredge. They have tested the water and tested below the water table.

Commissioner Lashbrook feels the financial assurance agreement doesn't ask for enough money. Mr. Steubing explained the process to Ms. Lashbrook.

Gordon Gray, Snelling MAC, said a condition was created by the Snelling MAC that the annual SMARA report and the Mercury monitoring report, should be presented to them.

Ms. Newmen said annual mining reports are done every year. The MAC requested this, but the Planning Dept. didn't agree. Commissioner Lashbrook said this should be written in the Reclamation Plan.

Jeff Wilson, Code Compliance Manager, explained that they are mandated by State Law to prepare a Reclamation Plan and is reviewed and comments are received from the State. A

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site visit takes more than a month to complete and is an extensive process. To go before the Snelling MAC costs money and this is not required. The Mercury testing is above and beyond what SMARA is requiring. If this is a mitigation measure or condition of approval they can provide that but will not be a part of the annual SMARA report.

Mr. Steubing noted that the applicant provided material and water data and both came back as not detected for Mercury. There was no nexus between the projects impacts and a significant impact so they didn't require that as mitigation. The operations are required to stay above 1 foot above the groundwater elevation or outside the sandy tailings. There is no impact from Mercury so they didn't require this as mitigation. The Snelling MAC could request from the operator to do additional sampling and that is stated in Condition #14.

MOTION: M/S ERRECA - BUENDIA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE FINDINGS AS ATTACHED TO THE STAFF REPORT, ADOPTS THE MITIGATION MONITORING AND REPORTING PLAN AND CERTIFIES THE FINAL ENVIRONMENTAL IMPACT REPORT ACCORDING TO THE CEQA GUIDELINES CONSISTENT WITH THE FIVE FINDINGS.

MOTION: M/S ERRECA - BUENDIA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE ENVIRONMENTAL FINDINGS OF FACT, THE MITIGATION MONITORING AND REPORTING PROGRAM (MMRP), THE STATEMENT OF OVERRIDING CONSIDERATIONS, AND APPROVES CONDITIONAL USE PERMIT No. CUP06-011 AND THE RECLAMATION PLAN BASED ON THE 9 FINDINGS AND SUBJECT TO THE 63 CONDITIONS OF APPROVAL WITH THE ADDITION OF CONDITION #64 AND THE MODIFICATION TO CONDITION #19 TO READ AS FOLLOWS.

Conditions:

Planning and Community Development Department

1. Conditional Use Permit No. 06-011 is granted to excavate, process, stockpile and transport offsite dredge tailing materials for the following:
 - a. Production
 - i. Production - Approximately 8 million tons
 - ii. Maximum Annual Production – 435,000 tons
 - iii. Maximum Annual Off-Site Sales – 400,000 tons
 - b. Life of permit – 50 years
 - c. Maximum area to be excavated – 409 acres
 - d. Maximum depth of excavation – approximately 2 to 20 feet depending on the vertical extent of the dredge tailing pile, but maintaining a minimum 1 foot above the historic ground water table. No mining shall occur in the sandy tailings.
 - e. 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:

Hours of Operation

Operations	Daily Hours and Maximum Days/Year
Excavation and Processing	6:00 a.m. – 6:00 p.m. ; Monday - Saturday Maximum of 175 days/year
Expanded Excavation and Processing	5:00 a.m. – 9:00 p.m. ; Monday - Saturday Maximum of 74 days/year of the 175 days/year (see above)
Sales (Loadout)	6:00 a.m. -6:00 p.m.; Maximum of 166 days/year
Expanded Sales (Loadout)	24-hours/day, 7 days per week; Maximum of 74 days/year of the 166 days/year
Excavation, within 1,700 of Receptor #1	7:00 a.m. to 6:00 p.m Monday - Friday.

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Operations	Daily Hours and Maximum Days/Year
(Snelling)	
Excavation, within 1,000 of Receptors #2, 3, 4	7:00 a.m. to 6:00 p.m.

Notes:

See Figure 3.8-1 of the Draft EIR for a graphical depiction of Receptor Locations 1, 2, 3 and 4.
Advance notice to County required for nighttime operations exceeding 4 days in duration

No excavation or processing will occur on Sundays or Major Holidays

Excavation and processing shall be limited on Saturdays to 6:00 a.m. to 6:00 p.m.

No processing or sales will occur within 1,700 feet of Receptor #1 (Snelling) or 1,000 feet of Receptors #2,3,4

3. The Applicant shall notify the Planning Department, via telephone or e-mail, of expanded hours of operations and their approximate duration for nighttime operations exceeding 4 days in duration, or any expanded processing operations of any duration.,
4. Prior to exercising the permit, the applicant shall submit the financial assurance of \$35,774.28. The financial assurance may be in the form of a surety bond, certificate of deposit, letter of credit, or Trust Fund.
5. The Applicant shall have no more than 200 acres disturbed at any one time. Acreage considered disturbed shall include all areas of active dredge tailing removal, processing operations, internal haul roads, stockpiles, and areas subject to concurrent reclamation not yet determined complete per County annual SMARA inspections.
6. The Applicant shall remove dredge tailings consistent with the approved Phasing Plan commencing with Phase 1a and 1b through phases 2a and 2b, 3 and 4. Dredge tailing removal shall not commence in a subsequent phase until removal is complete in the previous phase and concurrent reclamation of the complete phase has been initiated. When possible, reclamation shall be started on areas constituting less than a whole phase when no longer subject to future excavation or related activity disturbance. Phase 4 will be mined as the last project phase to help minimize project impacts to the Community of Snelling by retaining the rows of tailing and vegetation until other site resources have been mined.
7. The Applicant shall reclaim disturbed areas of the site consistent with the approved Reclamation Plan.
8. The Applicant shall provide the County an annually updated Financial Assurance Cost Estimate. The cost estimate shall be prepared consistent with the State Mining and Geology Boards, Surface Mine and Reclamation Act Financial Assurance Guidelines (July 2004). The cost estimate shall provide a figure showing current progress of mining, disturbed acreage, the next years anticipated disturbed acreage, and areas subject to concurrent reclamation.
9. The Project shall comply with the applicable standard conditions listed in Planning Commission Resolution No. 97-1 and 97-2 not otherwise provided in the specific conditions contained in this staff report.
10. The Applicant shall comply with all federal, State and County requirements and subsequent permitting including, but not limited to, the Mine Safety and Health Administration, U.S. Fish and Wildlife Service, Regional Water Quality Control Board,

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State Water Resources Control Board, California Department of Fish and Game, California Air Resources Board, Reclamation Board, California Occupational Safety and Health Administration, California Department of Conservation, Office of Mine Reclamation, Merced County Department of Public Works, Merced County Environmental Health Department, and the San Joaquin Air Pollution Control District.

11. The Applicant shall furnish the Planning and Community Development Director with a “compliance report” demonstrating compliance with the Conditions of Approval, mitigation measures, and Reclamation Plan by July 1st of each year. The report shall include all necessary permits, monitoring reports, photographic documentation, and/or other compliance data necessary to demonstrate compliance.
12. The Planning and Community Development Director or his designee shall review the “compliance report” and inspect the mining operation to determine and assure the accuracy of the information provided in the “compliance report” and site conditions are in continuing compliance with the approved conditions of approval, mitigation measures, and Reclamation Plan. The Applicant shall pay the County the actual costs of conducting these inspections, and shall make available to the Planning and Community Development Department all such information necessary for compliance. The Applicant shall be required to pay an initial conditions monitoring fee and mitigation measures monitoring fee of \$486. Additional fees shall be assessed for subsequent inspections, and/or follow-up condition compliance data gathering and analysis, as deemed necessary by the County, and shall be billed on a time and material basis.
13. After every 2 phases of operation, the Merced County Planning Commission shall be presented with the status of compliance with the Conditions of Approval and the related effectiveness of mitigation measures. The Operator shall submit all necessary compliance data and shall be responsible for reasonable costs necessary for performing the compliance update. The Operator may continue approved activities authorized by the Use Permit and Reclamation Plan during this process. Presentation of the compliance update shall be presented by the Planning and Community Development Department and the Applicant to the Planning Commission at a publicly noticed meeting.
14. The Applicant shall present a status report to the Snelling Municipal Advisory Council (MAC), upon request of the MAC, at a mutually agreeable MAC meeting.
15. The Applicant shall implement a water level monitoring program with the goal to ensure that dredge tailing removal activities leave a minimum of 1 to 2 feet of material over the perched groundwater level throughout the Project site. The data from the monitoring program will be submitted to the County at least 30 days prior to dredge tailing removal within each phase. The Applicant shall provide the County annual water level monitoring reports that summarizes quarterly monitoring data of the active phase. The water level monitoring program shall include monitoring of the Applicant's eleven existing monitoring locations throughout the Project site. In addition, the Applicant will install additional monitoring locations in each mining phase 2 years prior to the start-up of mining activity in the phase. The Applicant will work with a hydrologist and the County to develop a grid or pattern for these monitoring locations such that data from the monitoring program can be used to fine-tune the mining elevations represented on the cross-sections. If water level monitoring data demonstrates that the ultimate mining elevation will vary by more than 1 foot from that represented on the cross-sections, the Applicant will be required to consult with the County prior to the start of each Phase to reach concurrence for the final mining elevation of that phase.
16. The maximum depth of dredge tailing removal shall maintain a minimum 1 foot of material above the perched water level, as determined in Condition of Approval 15, shall not result in the excavation and removal of sandy tailings. Sandy tailings shall be considered “sands with fines” as defined by the Unified Soils Classification System.

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“Removal of sandy tailings” is considered to occur when 50% or more of the coarse materials removed are smaller than a No. 4 sieve size.

17. If at any time during mining and reclamation of an active phase, the perched water level rises above ground surface in excavated areas, creating a pond or seasonal wetland, the Applicant will be required to investigate the cause of the ponded water. If it is determined that the ponded water is not a “temporary condition,” the Applicant will be required to backfill those areas to reestablish a 1-foot buffer. For purposes of this requirement, “temporary condition,” is a timeframe mutually agreed between the County and the Applicant; however, such timeframes shall not exceed 180 days in any complete 365-day period.
18. The Applicant shall maintain a minimum of 100 feet, or one row of dredge tailings, whichever is greatest, along the Merced River. In each active phase adjacent to the Merced River, these buffer zones shall be demarcated by bright orange construction fencing or some other similar form of demarcation.
19. Mining setbacks from either edge of the top of the bank of the three ditches owned and maintained by Cowell Area Water Users shall be fifty feet. Work can proceed between the twenty-five and fifty foot setback under the supervision and direction of the Cowell Area Water Users. In addition, any excavation within 50 feet on the north side or 150 feet on the south side of the Ruddle Ingalsbe Ditch must remain one foot above the high water level in the ditch.
20. The operator shall, at all times, prohibit processing activities within 1,700 feet of the community of Snelling, and 1,000 feet of residential receptors to the east, west, and south. The proximity line identifying the placement of the Processing Plant to the revised boundary is identified in the attached map (revised Figure 3.8-1).
21. If 3 or more noise complaints by separate individuals are received within three consecutive months by the Planning and Community Development Department, the County shall retain, at the sole cost of the Operator, a qualified noise consultant to conduct noise surveys at up to 5 locations within the Community of Snelling and surrounding the Project site to assess the Project’s compliance with applicable noise standards. In the event monitoring indicates an exceedence of these standards, the Operator shall implement noise reduction measures sufficient to reduce noise levels to applicable standards. If monitoring indicates compliance with applicable noise standards, no other monitoring would be required in that particular phase unless the Planning Department has reason to believe further testing is warranted.
22. 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).
23. If the use authorized by the Conditional Use Permit is abandoned or discontinued for a period of one year, the applicant must file an Interim Management Plan application with the County.
24. If the use authorized by the Conditional Use Permit is idle for a period of one year or diminished by more than 90 percent of the operations previous year’s maximum annual production (as documented in the Applicant’s Annual Mining Operational Report, MRRC-2 submitted to the Department of Conservation, Office of Mine Reclamation), the Applicant shall file an Interim Management Plan application with the County within 90 of July 1st of a calendar year.
25. 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.

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26. 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.

Merced Irrigation District

27. The Applicant shall protect the Merced River from any potential contamination generated on the site that could flow by either surface or subsurface means to the Merced River.
28. The Applicant shall protect the water quality and water rights of the private Cowell riparian users whose three facilities traverse the Project site.

California Regional Water Quality Control Board

29. The applicant shall be required to obtain coverage under the Industrial General Permit (National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 for Storm Water Discharges Associated With Industrial Activity, Water Quality Order No. 97-03-DWQ (Industrial General Permit).

Mitigation Measures

30. **Mitigation Measure 3.1-1:** Although this Impact is considered less than significant, the project will maintain Exterior lighting designed 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. Unless otherwise required by law or for safety purposes 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)
31. **Mitigation Measure 3.2-1:**
 - All construction equipment shall be operated and maintained according to manufacturer's specifications. Maintenance records shall be available for inspection. The records may be inspected by either County or APCD at any time.
 - Maintain and operate all construction equipment so that exhaust emissions do not exceed 20 percent opacity for more than three minutes in any on-hour period. Equipment that exceeds this opacity standard shall be removed from operation and repaired upon the earliest safe opportunity.
 - Avoid prolonged idling of equipment unless necessary to maintain a safe construction environment; and
 - Maintain all construction equipment in good condition and proper tune. (MM)
32. **Mitigation Measure 3.3-1(a):** The Applicant shall avoid, minimize, and compensate for impacts to living oak trees, as required by the California Oak Woodland Conservation Act in the absence of a Merced County Oak Woodland Management Plan. Avoidance of oak trees outside the limits of setbacks and jurisdictional wetlands shall be practiced by the Applicant to the maximum extent feasible and field avoidance measures shall be implemented for trees to be left in place. Such measures shall include installing, where feasible, protective fencing around the dripline of trees to be retained, proper techniques for trimming, and other field measures recommended by the Applicant's qualified biologist to protect and/or preserve native trees. In addition, the Applicant shall avoid impacts to live "landmark" oak trees (trees 24 inches or more in diameter) to the greatest extent feasible. Trees/tree groves protected by fencing or other measures shall be marked in the field as "SENSITIVE HABITAT AREA – NO ACCESS".

The Applicant's biologist shall monitor compliance with tree avoidance and impact minimization measures and shall document the size and location of all oak trees 6

inches or greater in diameter that were removed or otherwise impacted as a result of activities associated with tailings removal. This information shall be reported to the County Planning Department as part of the annual mitigation and monitoring report.

Within 12 months of the completion of construction, the Applicant shall implement compensation for impacts to protected oak trees. Compensation may be implemented through one of the following mechanisms, or some combination thereof:

1) replacement via replanting, 2) permanent preservation of oak trees, which could include, but not be limited to, establishment of a conservation easement on lands that support existing oak trees, or 3) contribution to the Oak Conservation Fund established under CDFG or another County-approved oak woodland conservation fund. If compensation includes plantings, maintenance and monitoring of the plantings shall occur for five years after planting. Annual reports shall be submitted to Merced County by July 1 of each monitoring year, describing the results of the plantings, maintenance actions implemented, and any remedial measures necessary to achieve a performance standard of 80 percent survival. The Applicant shall replace each removed, protected tree on a 3:1 ratio (three trees planted for each protected tree removed), except for landmark trees which shall be replaced at a 5:1 ratio.

If off-site mitigation is used, the ratio for impacted oaks to protected oak woodland shall be a minimum of 3:1. If contributions are made to an oak woodland conservation fund, funds shall be provided at a rate approved by the County, and shall be sufficient to meet the required mitigation ratio through planting or conservation of existing oaks at off-site locations. Funds shall be used for oak woodland preservation and/or plantings, as determined by the County, or their designated agent (e.g., CDFG or other conservation entities). (MM)

33. **Mitigation Measure 3.3-1(b):** The Applicant shall hire a qualified biologist to develop an oak tree identification and avoidance training plan. The training plan shall provide approximate locations of on-site oak trees, upland tree groves, and jurisdictional wetlands to be avoided. The training plan shall provide oak tree and wetlands recognition, instruction on wetland avoidance, and mining practices to minimize disturbance to oak trees and vegetation to the extent practical. All employees operating mobile equipment shall read and understand the training plan. (MM)

34. **Mitigation Measure 3.3-2(a):** Best Management sediment control measures shall be in place by October 15th of each year and shall be monitored and maintained until project operations have ceased. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion (e.g. silt fences, straw bales).

Stormwater run-off and erosion from overburden and aggregate stockpiles, dredge tailing removal areas, and any other ground-disturbing activities shall be controlled through the implementation of a program of erosion control Best Management Practices (BMPs) and engineered sediment control structures. Erosion control BMPs may include, but are not limited to, the application of straw mulch; seeding with fast-growing grasses; and the construction of berms, silt fences, hay bale dikes, stormwater detention basins, and other energy dissipaters. (MM)

35. **Mitigation Measure 3.3-2(b):** The Applicant shall maintain a riparian buffer zone between the Merced River and the dredge tailing removal and processing operations. The buffers, as measured from the top of the bank, will be a minimum of 100 feet or one row of dredge tailings, whichever is greatest, along the Merced River. These buffer zones shall be demarcated on the mining plan and reclamation plan; no mining or related activities are allowed within these buffers and existing vegetation within the buffer zones will be left undisturbed. (MM)

36. **Mitigation Measure 3.3-2(c):** To ensure that dredge tailing removal operations avoid wetland areas, the Applicant shall provide, as part of their annual Mitigation and Monitoring Report to Merced County, photographic documentation of avoidance in those areas of new surface disturbance for that calendar year. (MM)

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37. **Mitigation Measure 3.3-3(a):** Pursuant to the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle (see Draft EIR Appendix E, Valley Elderberry Longhorn Beetle Guidelines), the Applicant shall establish a 100 foot buffer zone, unless a small buffer has been approved in writing by USFWS, around each potentially affected elderberry shrub. No dredge tailings removal or other activities that could result in the damage to or loss of the elderberry shrubs shall occur within the established buffer. (MM)
38. **Mitigation Measure 3.3-3(b):** Prior to any ground disturbing activities within 20 feet of the dripline of any elderberry shrubs, the applicant or their representative shall initiate consultation pursuant to the Federal Endangered Species Act with the USFWS. Section 7 Consultation will occur if the US Army Corps of Engineers (ACOE) is involved with this project through a Section 404 permit. Section 10 Consultation will be required if there is no ACOE involvement with this project. Specific mitigation measures for project related impacts on VELB will be developed during this process, but will generally include the following mitigation measures. (MM)
39. **Mitigation Measure 3.3-3(c):** If the elderberry shrubs cannot be avoided then those elderberry shrubs shall be transplanted to a USFWS approved location following the guidelines set forth in the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle. This location may be established on site, or at an approved mitigation bank. (MM)
40. **Mitigation Measure 3.3-3(d):** In addition to transplanting the affected shrubs, the Project Applicant shall plant additional seedlings or cuttings in the established mitigation area following the guidelines set forth in the July 9, 1999 USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle. (MM)
41. **Mitigation Measure 3.3-4(a):** If tree or vegetation removal is planned during the nesting season (March through September 15), the Applicant shall hire a qualified biologist to conduct preconstruction surveys for nesting bird species no more than thirty (30) days prior to construction or ground stripping. The surveys shall be conducted during the nesting season (March through September 15). If any nesting non-raptor special status bird species are observed, the qualified biologist shall recommend a suitable buffer area around the nest (this will vary by species). No construction, operation of heavy equipment, machinery, or mining, shall take place within the buffer 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. (MM)
42. **Mitigation Measure 3.3-4(b):** 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 (CDFG, 1994). These surveys, the parameters of which were designed to optimize detectability, must be conducted to reasonably assure 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, a 0.25-mile non-disturbance buffer shall be established until consultation with CDFG to reduce the buffer and discuss how to implement the Project and avoid "take". Regardless of occupied nesting status, nesting 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.

If protected raptor species nests are found they will be protected by a minimum no-disturbance buffer of 250 feet. In the case of State-listed and/or fully protected raptor species such as the Swainson's hawk and the white-tailed kite (*Elanus leucurus*), the no disturbance buffer shall be a minimum of 0.25 miles around the nest(s). Any changes to these distances should only occur through consultation with the CDFG. If State-listed species are found to be nesting in the Project area, the CDFG shall be notified to discuss Project implementation and "take" avoidance. (MM)

43. **Mitigation Measure 3.3-4(c):** Any living oak trees that must be cut prior to implementation of the Project, shall also be moved to areas outside the mining perimeter, in pieces as large as possible, placed on the ground and allowed to naturally decompose, as habitat for native wildlife. As described in Mitigation Measure 3.3-4a above, trees to be removed shall be surveyed by a qualified biologist prior to moving them, to ensure that no active bird nests are present. (MM)
44. **Mitigation Measure 3.4-1(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 are to be kept on-site and available to excavation crews and other employees. Part of the annual report prepared pursuant to the Mitigation Monitoring and Reporting Plan shall identify the responsible individuals and personnel present during training. (MM)
45. **Mitigation Measure 3.4-1(b):** If cultural resources, such as chipped or ground stone, historic debris, building foundations are discovered during ground-disturbance activities, work shall be stopped within 20 meters (66 feet) of the discovery. The Merced County Planning Director shall be notified at once. An archaeologist shall be contacted to document the potential resource(s) and evaluate their significance. (MM)
46. **Mitigation Measure 3.4-1(c):** Cultural resources found on the Project site will be recorded or described in a professional report and submitted to Merced County. (MM)
47. **Mitigation Measure 3.4-1(d):** In the event that a significant cultural resource is discovered, one or more of the following actions shall be implemented to reduce impacts to a less than significant level:
 - An archaeological resource site shall be reserved in place by either:
 - Planning construction to avoid the archaeological sites; or
 - Covering the archaeological sites with a layer of chemically-stable soil before building parking lots or similar facilities; or
 - Deeding the site into a permanent conservation easement.
 - If data recovery through excavation is the only feasible mitigation, a data recovery plan which makes provisions for adequately recovering the scientifically consequential information from and about the historic resource shall be prepared and adopted prior to any excavation being undertaken; and
 - All studies prepared regarding the significant resource shall be deposited with the California Historical Resources Regional Information Center and the Merced County Historical Society. (MM)

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48. **Mitigation Measure 3.4-2:** 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. (MM)
49. **Mitigation Measure 3.5-1(a):** The Applicant will use above ground storage tanks that have been approved by the U.S. Environmental Protection Agency when storing all petroleum products and other regulated substances. The above ground tanks shall be double walled and meet all ballistic and flame impingement requirements in CFC Article 79. The containment structures shall not be equipped with any valves or drains. (MM)
50. **Mitigation Measure 3.5-1(b):**
 1. Project site equipment and servicing materials shall be maintained in a neat and orderly manner to aid in accounting for, and detecting, potential sources of contamination;
 2. Non-functional equipment, scrap metal, construction debris, used batteries and tires, and similar objects shall be removed from the site on a regular basis and disposed of at appropriately licensed facilities;
 3. Spare equipment such as heavy equipment parts, conveyor belts, tires and other replacement or extra equipment pieces, shall be stored indoors or on impermeable surfaces that do not drain off-site whenever possible to avoid surface water contamination. Spare parts containing petroleum products (i.e., lubricants, hydraulic oil, etc.) shall be stored using Best Management Practices (BMPs) to prevent contamination of soil or storm water runoff; and
 4. Storage areas shall be inspected by the Operator monthly. Any petroleum leaks shall be documented and cleaned up. Leaking equipment shall be repaired. Inspection and monitoring documentation shall be retained for a minimum of five years and be available to County staff during site inspections. (MM)
51. **Mitigation Measure 3.5-1(c):** All delivery, maintenance, and repair trucks containing petroleum products will be required to comply with the Department of Transportation’s regulations for transport of hazardous materials. All trucks carrying petroleum products will be equipped with quick connect couplings and automatic shut-off valves to prevent spills, and will carry appropriate absorbent materials to contain and recover spillage. (MM)
52. **Mitigation Measure 3.5-1(d):** A Hazardous Materials Business Plan (Plan) will be developed for the Project site to address the potential hazards to the public and environment associated with the transport, use, or storage of these hazardous materials. The Plan will be submitted to the Merced County Environmental Health for approval. The Plan will include the methods used to test and evaluate wastes generated on-site, including from leaks and spills in the chemical storage areas and equipment maintenance areas (see Mitigation Measure 3.8-7b). If the wastes are determined to be hazardous, the Plan must specify the measures that will be taken to comply with Chapter 15 of Title 22 of the CCR. Daily inspection logs of the chemical storage and equipment maintenance areas will be prepared by the Operator and maintained on-site for inspection. (MM)
53. **Mitigation Measure 3.5-1(e):** Upon completion of the Project, all hazardous materials and above ground storage tanks will be removed and the site will be cleaned of hazardous material. (MM)
54. **Mitigation Measure 3.5-2:** The Operator shall comply with County and State guidelines to prevent potential fires on the Project site, as enumerated in California

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Health and Safety Code 13800 *et. seq.* and Public Resources Code Section 4125 *et. seq.* (MM)

55. **Mitigation Measure 3.8-1(a):** The Operator shall maintain, within each phase, during processing and dredge tailings removal operations within the current phase one row of dredge tailings, material stockpiles, and/or riparian vegetation at least 100 feet thick between current operational areas and receptor locations. The dredge tailings rows, material stockpiles, and/or riparian vegetation shall be of a height adequate to shield all receptors from view of processing and mobile equipment. The remaining tailings shall be removed at the end of each phase, with the final row of tailings removal limited to daytime hours (7:00 a.m. - 10:00 p.m.). (MM)
56. **Mitigation Measure 3.8-1(b):** The following noise reduction measures shall be implemented prior to Project operations and maintained throughout the life of the Project to the extent feasible:
 1. Mobile equipment shall be equipped with noise control measures (e.g. broadband backup alarms, engine exhaust mufflers);
 2. Project equipment shall be maintained and operated in accordance with manufacturer guidelines and recommendations; and
 3. Tailings piles shall be left in place and temporary barriers of sufficient height to completely intercept line of sight between the noise source and the nearest receptor(s) shall be erected in close proximity to the crushing and screening plant equipment. Temporary barrier materials such as hay bales would provide the required degree of noise reduction. (MM)
57. **Mitigation Measure 3.8-1(c):** The Applicant shall notify landowner of Receptor Location 4 in advance of removal of the final row of tailings and provide the landowner an estimate of the duration of mining remaining in Phase 1a of the Project site. (MM)
58. **Mitigation Measure 3.8-1(d):** With the landowner's approval, the Applicant shall construct a 6-foot temporary berm along the property lines between the Project site and Receptor Location 4 to provide additional screening of Project noise levels. (MM)
59. **Mitigation Measure 3.8-4(a):** The Applicant shall notify landowners along Robinson Road, between the Project access and Snelling Road, that they will be operating during nighttime and/or early morning hours as soon as feasible. (MM)
60. **Mitigation Measure 3.8-4(b):** Signage shall be provided at the exit of both Project access points prohibiting the use of Jake brakes on Robinson Road and Snelling Road, and encouraging truck drivers to limit engine noise to the maximum extent possible while in close proximity to Receptor 3. (MM)
61. **Mitigation Measure 3.9-1(a):** The Applicant shall enter into a Roadway Impact Agreement with Merced County for the annual payment of ten cents (\$0.10) per ton, or \$2.50 per loaded truck, leaving the site, for the life of the project, prior to activating this permit. The Roadway Impact Agreement shall stipulate that the Applicant shall keep an accurate record of all of the loaded trucks, or tonnage of material, that leaves the Project site throughout the year; and prior to February 1st of each year, the Applicant shall submit an accounting of said data, along with payment for such (the fee for processing a Roadway Impact Agreement is \$200.00). (MM)

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62. **Mitigation Measure 3.9-1(b):** The Applicant shall construct an agricultural rural driveway approach, conforming to County Drawings DW-03 and DW-04, at the Snelling Road access point for the Project, prior to the start of removal of material from the site, to protect the existing edge of pavement on Snelling Road from breaking down due to the truck turning movements (said construction will require an Encroachment Permit from the Department of Public Works Road Division, which currently requires a processing fee of \$99.00). (MM)
63. **Mitigation Measure 3.9-1(c):** The Applicant shall install and maintain a 100-watt, pole-mounted street light at the driveway access onto Snelling Road, prior to the start of removal of material from the site, to enhance traffic safety during nighttime operations. (MM)
64. The Project shall not commence operations until such time as the Doolittle reserves are depleted. Although final stockpiles at Doolittle may be sold and trucked off the site during initial development and mining at the new Project, sales at the new Project shall not commence until the final stockpiles at Doolittle have been depleted. Once all of the material from the stockpiles at the Doolittle site has been sold, the only ongoing activities at the Doolittle site shall be related to final reclamation. Consequently, there will be no overlap of impacts created by the two projects in terms of truck traffic, air emissions, or noise.

- B. CONDITIONAL USE PERMIT NO. CUP09-008 - Ingomar Packing Co. -** To construct a solar panel array and underground transmission line to supply renewable energy to the existing tomato processing facility on 7.8 acres. The project is located on the north side of Ingomar Grade and 0.5 miles west of Hearst Road in the Volta area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO MAKE A PROJECT ENVIRONMENTAL DETERMINATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. BG**

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated November 18, 2009.

The public hearing opened at 11:45 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 11:46 a.m.

Commission Lashbrook asked if these were solar panels on the roof so there is better use of the land? Will parcels reflect glare on birds?

Trevor Macenski, MBA Consultants for the CEQA Initial Study, said these are LEO panels that attract heat and light; no glare. The roof is not designed to support the weight of panels. Commissioner Lashbrook asked if there is an impact on the ground if we need to ag land later? Mr. Macenski replied no, it's mounted on the beam though vibration, no concrete slabs, so no problems.

MOTION: M/S ERRECA - BUENDIA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT NO. CUP09-008 WITH 6 MITIGATION MEASURES AND 4 CEQA FINDINGS.

MOTION: M/S ERRECA - BUENDIA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED NOVEMBER 18, 2009, AND MAKES THE 11 FINDINGS SET FORTH IN THE STAFF REPORT AND BASED ON THOSE 11 FINDINGS, APPROVES CONDITIONAL USE PERMIT

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NO. CUP09-008 SUBJECT TO THE 18 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning and Community Development Department Conditions:

1. Conditional Use Permit No. CUP09-008 is granted to permit the construction of a one Megawatt (1 Mw) solar power generation photovoltaic facility and a 1,600 foot underground transmission line to provide alternative energy to the existing tomato processing facility.
2. The use shall be developed and maintained consistent with the adopted mitigation measures, approved plot plan and submitted operational statement. Minor modifications to the approved permit may be reviewed and approved by the Development Services Director.
3. The applicant shall comply with all applicable standard conditions of approval listed in the Planning Commission Resolution No. 97-1.
4. For the purpose of conditions monitoring, an inspection fee in the amount of **\$390** shall be required. This fee shall be paid within 30 days of the approval date. 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.
5. The applicant shall comply with all applicable County, State and Federal regulations.

Mitigation Measures

6. **MM-Biology-1:** A qualified biologist shall survey all burrows within 500 feet of the project site for signs of burrowing owl occupation and no more than 14 days prior to the start of ground-disturbing activities. Surveys shall be conducted no earlier than 2 hours before sunset and no later than 1 hour after sunset, or from 1 hour before sunrise to 2 hours after sunrise. If no owls or owl sign is observed, then no additional mitigation is necessary. If owls or owl sign is observed within 160 feet of the project site, CDFG shall be consulted prior to initiation of any construction-related activities to determine appropriate mitigation to be implemented.
7. **MM-Biology-2:** If preparation of the project site for construction (i.e., grubbing) occurs during the nesting season for California horned lark (March through August), pre-construction surveys for this species shall be conducted. A qualified biologist shall conduct surveys for active nests of California horned lark within 250 feet of the project site and no more than 14 days prior to the start of ground-disturbing activities. If an active nest is found, all construction-related activities shall be suspended until fledging (or nest failure) has occurred, as determined by a qualified biologist. Young

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typically leave the nest within 12 days after hatching and are volant within 3-5 days.

8. **MM-Biology-3:** In accordance with the Dissemination of Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance (USFWS 2001), the following mitigation measures would be implemented prior to construction and, where appropriate, would continue until all equipment is removed and all construction-related activities have ceased:
 - a. Project-related vehicles should observe a 20-mph speed limit in all project areas, except on county roads and State and Federal highways; this is particularly important at night when kit foxes are most active. Construction will not occur during night-time hours. Off-road traffic outside of designated project areas is prohibited.
 - b. To prevent inadvertent entrapment of kit foxes or other animals during construction, all excavated, steep-walled holes or trenches more than 2 feet deep will be covered at the close of each working day by plywood or similar materials, or provided with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled, they will be thoroughly inspected for trapped animals. If at any time a trapped or injured kit fox is discovered, the procedures under number 13 of this section must be followed.
 - c. Kit foxes are attracted to den-like structures such as pipes and may enter stored pipe, becoming trapped or injured. All construction pipes, culverts, or similar structures with a diameter of 4 inches or greater that are stored at the construction-site for one or more overnight periods will be thoroughly inspected for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a kit fox is discovered inside a pipe, that section of pipe will not be moved until the USFWS has been consulted. If necessary, and under the direct supervision of the biologist, the pipe may be moved once to remove it from the path of construction activity, until the fox has escaped.
 - d. All food-related trash items such as wrappers, cans, bottles, and food scraps will be disposed of in closed containers and removed at least once a week from the project site.
 - e. No firearms shall be allowed on the project site.
 - f. To prevent harassment, mortality of kit foxes, or destruction of dens by dogs or cats, no pets are permitted on project sites.
 - g. Use of rodenticides and herbicides in project areas are restricted to prevent primary or secondary poisoning of kit foxes and the depletion of prey populations on which they depend. All uses of such compounds should observe label and other restrictions mandated by the U.S. Environmental Protection Agency, California Department of Food and Agriculture, and other State and Federal legislation, as well as additional project-related restrictions deemed necessary by the USFWS. If rodent control is conducted, zinc phosphide should be used because of proven lower risk to kit fox.
 - h. A representative shall be appointed by the project proponent who will be the contact source for any employee or contractor who might

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inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped individual. The representative will be identified during the employee education program. The representative's name and telephone number shall be provided to the USFWS.

- i. An employee education program will be conducted. The program will consist of a brief presentation by persons knowledgeable in kit fox biology and legislative protection to explain endangered species concerns to contractors. The program will include the following:
 - a description of the San Joaquin kit fox and its habitat needs;
 - a report of the occurrence of kit fox in the project area;
 - an explanation of the status of the species and its protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation.
 - A fact sheet conveying this information will be prepared for distribution to the above-mentioned people and anyone else who may enter the project site.
 - j. Upon completion of the project, all areas subject to temporary ground disturbances, including storage and staging areas, temporary roads, pipeline corridors, etc. will be recontoured to promote restoration of the area to pre-project conditions.
 - k. In the case of trapped animals, escape ramps or structures will be installed immediately to allow the animal(s) to escape, or the USFWS should be contacted for advice.
 - l. Any contractor, employee, or military or agency personnel who inadvertently kills or injures a San Joaquin kit fox shall immediately report the incident to their representative. This representative shall contact the CDFG immediately in the case of a dead, injured or entrapped kit fox. The CDFG contact for immediate assistance is State Dispatch at (916) 445-0045. They will contact the local warden or biologist.
 - m. The Sacramento Fish and Wildlife Office and CDFG will be notified in writing within three working days of the accidental death or injury to a San Joaquin kit fox during project related activities. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information. The Service contact is the Chief of the Division of Endangered Species, at the addresses and telephone numbers given below. The CDFG contact is Mr. Ron Schlorff at 1416 9th Street, Sacramento, California 95814, (916) 654-4262.
9. **MM-Biology-4:** Prior to implementation of grading or trenching activities, silt fencing shall be erected at the upland edges of all drainage features. Fencing shall be maintained throughout project construction and shall be removed only when construction activities are completed.
 10. **MM-Cultural-1:** If potentially significant archaeological resources are discovered during ground-disturbing activities associated with construction of the project, all work within 100 feet of the find shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate mitigation measures in consultation with Merced County

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and other appropriate agencies and individuals. If significant resources are discovered, a formal evaluation using CEQA criteria will be conducted to determine if further study, test excavations, or data recovery procedures are necessary.

11. **MM-Hydrology-1:** A site-specific SWPPP shall be prepared as part of the NPDES General Construction Activities Stormwater Permit. It will require the construction contractor to incorporate the SWPPP Best Management Practices (BMP) measures into all aspects of the project. The BMPs will include measures for management and operation of construction sites to control and minimize the potential contribution of pollutants to storm runoff from these areas. These measures address procedures for controlling erosion and sedimentation and management of all aspects of the construction to ensure control of potential water pollution sources. Construction phase BMPs will include:

- dust control
- minimal use of water for dust control (only as much as needed)
- dry sweeping and/or storm drain inlet control measures (e.g. sandbags, filter fabric, fiber rolls, etc.)
- install silt barriers around sensitive areas and wherever earthwork activities might result in erosion and sediment transport
- stabilize stockpiled soils (if any)
- post-construction stabilization or revegetation
- runoff control

Post-construction BMPs will include:

- minimal use of water for system washing (only as much as needed), and timing of washing to maximize infiltration immediately below the system

The measures included in the SWPPP will be monitored regularly for effectiveness. If a measure is found to be ineffective, it will be redesigned or replaced immediately

Building and Safety Division

12. The applicant shall hire a California licensed engineer or architect to design and draw the plans for the new photovoltaic system. The plans will have to be submitted to the Building Department for review and permits prior to the start of any work. For permit submittal you will need to turn in four (4) sets of plans and three (3) sets of calculations.
13. All electrical system components and other equipment that is not sealed against water damage must be above the base flood elevation. A statement from Kelly Jacobs at Public Works showing the base flood elevation will be required at the time of submittal and the plans must reflect that elevation and show compliance.

14. New construction started after January 1, 2008 requires a soils report. That report must be completed by a California licensed soils engineer. The building engineer must review the report before designing the foundation to ensure that all requirements from the soils engineer are met.
15. The applicant shall install a disconnect at the beginning and end of the underground transmission line.
16. If the applicant sells either property which the underground transmission line travels, the applicant shall remove that portion of the transmission line from the property.

Division of Environmental Health

17. The transformer oil may qualify as a hazardous material. Ingomar Packing may need to add it to their existing HMBP inventory with the Division.
18. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. Ft. or 500 pounds) requires that a hazardous materials business plan (HMBP) be filed with the Division of Environmental Health. Any quantity of hazardous waste generated on-site also requires that a HMBP be filed. Contact Vickie Hayer at (209) 381-1083 or Kerri Gibbons at (209) 381-1094.

- C. ZONE VARIANCE NO. ZV09-003 AND CONDITIONAL USE PERMIT NO. CUP09-012 - Ken Myers** – To vary the advertisement area from a 50/50 ratio to a 56/44 ratio devoted to community identification and business advertisement and to vary from the maximum sign height of 10 feet to a height of 85 feet for a community entry sign and, to allow the community entry sign area to increase from 75 square feet to a maximum area of 1,232 square feet. The project is located at the southeast corner of Flower Street and Merced Avenue in the Delhi area. The property is designated as Business Park in the Delhi Community Plan and zoned M-1 (Light Industrial). **THE ACTION REQUESTED IS TO MAKE A PROJECT ENVIRONMENTAL DETERMINATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. DG**

Planner David Gilbert presented the Staff Report and recommendations of approval dated November 18, 2009 and reference applicant's future intentions for an animated sign.

The public hearing opened at 12:00 p.m.

Kenneth Myers, applicant, stated that he would be available if there are any questions for him.

Commissioner Lashbrook stated there is no local opposition and other signs exist along the highway, but she doesn't like them.

The public hearing closed at 12:01 a.m.

MOTION: M/S ERRECA - BUENDIA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION EXEMPTS ZONE VARIANCE NO. ZV09-003 AND CONDITIONAL USE PERMIT NO. CUP09-012 FROM CEQA.

MOTION: M/S ERRECA - BUENDIA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED NOVEMBER 18, 2009, AND MAKES THE 13 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 13 FINDINGS, APPROVES ZONE VARIANCE NO. ZV09-003 AND CONDITIONAL USE PERMIT NO. CUP09-012 SUBJECT TO THE 8 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning and Community Development Department

1. Zone Variance No. ZV09-003 grants the advertisement area from a 50/50 ratio to a 56/44 ratio devoted to business advertisement and community identification and to vary from the maximum sign height limit of 10 feet to a height of 85 feet for a community entry monument sign.
2. Conditional Use Permit No. CUP09-012 grants the community entry sign area to increase from 75 square feet to a maximum area of 1,232 square feet. The community entry monument sign shall be developed and operated consistent with the approved plot plan, elevations, and operational statement. Minor Modifications to this approval may be reviewed and approved by the Development Service Director.
3. Applicant/property owner shall comply with all Federal, State, and Local Agencies regulations.
4. For the purpose of condition monitoring, an inspection fee in the amount of **\$243** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of the inspection.

Fire Department

5. Construction plans shall be submitted to the Merced County Fire Department for review and approval. The plans review fee is \$185.

Public Works/Building & Safety Division

6. Prior to the start of any construction, a California licensed engineer shall submit four (4) sets of plans and three (3) sets of calculations to the Building & Safety Division for the new photovoltaic system and sign.
7. Prior to issuance of any building permit, the applicant property owner shall submit a soils report. That report shall be completed by a California licensed soils engineer. The engineer shall review the report before designing the foundation to ensure that all requirements from the soils engineer are met.

Turlock Irrigation District

8. An irrigation pipeline and 25-foot easement belonging to Improvement District 304, the Allinson is located in close proximity of the proposed sign structure. The foundation of the structure shall be located a minimum of 12.5 feet from the centerline of the pipe.

VI. COMMISSION ACTION ITEMS

- A. TO CONSIDER AND DECIDE ON THE SUFFICIENCY OF THE AGENDA ITEM DESCRIPTION (GOV CODE § 54954.2) FOR THE OCTOBER 28, 2009, AGENDA ITEM: Public Hearing Item B: Major Subdivision Application No. MAS06-011, "Lucca Villas". This is in response to a November 6, 2009, request from Marsha A. Burch, to Cure and Correct an alleged violation of the Ralph M. Brown Act (Gov Code § 54960.1)**

David Gilbert gave a presentation and recommendations dated November 18, 2009.

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The public hearing was opened at 12:06 p.m.

No one spoke in favor or opposition to this application.

The public hearing was closed at 12:07 p.m.

MOTION: ERRECA – BUENDIA, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION DENIES THE LETTER SUBMITTED BY SAN JOAQUIN RAPTOR RESCUE CENTER AND PROTECT OUR WATER ON BEHALF OF MARSHA BURCH.

- B. TO CONSIDER AND DECIDE ON THE SUFFICIENCY OF THE AGENDA ITEM DESCRIPTION (GOV CODE § 54954.2) FOR THE OCTOBER 28, 2009, AGENDA ITEM: Director's Report VIII. This is in response to a November 6, 2009, request from Marsha A. Burch, to Cure and Correct an alleged violation of the Ralph M. Brown Act (Gov Code § 54960.1)**

James Holland gave a presentation and recommendations dated November 18, 2009.

The public hearing was opened at 12:20 p.m.

No one spoke in favor or opposition to this application.

The public hearing was closed at 12:21 p.m.

MOTION: ERRECA – BUENDIA, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION DENIES THE LETTER SUBMITTED BY SAN JOAQUIN RAPTOR RESCUE CENTER AND PROTECT OUR WATER ON BEHALF OF MARSHA BURCH.

VI. CORRESPONDENCE

None

VII. GENERAL BUSINESS

None

VIII. DIRECTOR'S REPORT

Robert Lewis, Development Services Director said that the Joint Study Session between the Board of Supervisors and the Planning Commission was continued to an unspecified Board of Supervisors date in 2010.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 12:37 p.m.