MERCED COUNTY PLANNING COMMISSION MINUTES FOR MEETING OF MARCH 10, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of March 10, 2010, 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 March 10, 2010, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Lynn Tanner - Chairman

Commissioner Jack Mobley - Vice Chairman

Commissioner Mark Erreca Commissioner Cindy Lashbrook

Staff Present: Robert Lewis, Development Services Director

William Nicholson, Assistant Development Services Director

Evie Gassaway, Recording Secretary Kim Anderson, Recording Secretary David Gilbert, Senior Planner James Holland. Senior Planner

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Rudy Buendia

III. APPROVAL OF MINUTES

M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF FEBRUARY 10, 2010 AND FEBRUARY 24, 2010.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. ADMINISTRATIVE APPLICATION No. AA09-023 - Panther Energy Company - To construct an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot enclosed drilling pad on 312 acres. The project is located on the south side of Rahilly Road, two miles west of Highway 59 in the Merced area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). DG

Recommendation: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-023 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report and recommendations of approval dated March 10, 2010.

The Planning Department received written questions for Panther Energy Company from Rose Jeanette Gomes, 346 Michael Road on March 9, 2010. Panther Energy Company submitted written responses to Ms. Gomes questions March 10, 2010. Also, comment letters were received from Marsha Burch, Attorney, dated March 9, 2010 and Lydia Miller/Steve Burke, San Joaquin Raptor Wildlife Rescue Center/Protect Our Water, dated March 10, 2010.

The public hearing opened at 9:16 a.m.

Rose Jeanette Gomes, 346 Michael Road Merced, says she appreciates the answers that Panther was able to give to her. The reason she is concerned is because Merced County has been putting a lot of stuff out on south Highway 59. She's always concerned when they put more traffic on that highway. In regards to this property, she doesn't even know who owns it therefore she has no idea which neighbors to talk to about the project; she was unable to find this information anywhere. She was glad to see a picture of the already existing well which she plans to take a closer look at so she knows what these four wells are going to look like on this property. There is a lot of noise in her area; she complained to the County last year because a temporary landing strip was put right next to her house without any notification at all. Anything that goes into her area even though it's adjacent to her property, she is not being notified. People just seem to do whatever they want to do so whenever anything new comes into the area she has questions. She wants to know what the decibles of noise that will be allowed when they are doing the drilling, whether it's going to affect her quality of life, how much pollution is it going to create, are water wells going to be used and will that affect her water well in any way. Also, she asks where the traffic is going to be directed if they are doing a 24 hour operation. Will the trucks go down Highway 59 or are they going to try to make them go down Gurr Road which is not traveled very much at all. It seems to her it would be more logical to put the traffic on Sandy Mush Road and Gurr Road since that is where the well is going to be located instead of adding more traffic to Highway 59. She wants to know who will be benefiting from the gas if it is found. She thought that the purpose of this was maybe to bring a natural gas source to her and other neighbors in the area so it could help lessen their utility bills, but Panther Energy clearly is not going to do this because the gas has not been treated for commercial use. So who is going to benefit then, she asks. These wells are going to be put in her area so she wants to know who will benefit from it. Is it somebody from the north side of town or someone in the city that's going to benefit from these wells? Also a neighbor wanted to me to ask how this will affect those in this area with Williamson Act contracts. Since Rahilly Road does not run straight through to Gurr Road, whose private property is that line going to go on? Will Rahilly Road have to go all the way to Gurr Road now? She says that land is private property which makes her wonder what route the line is going to take.

Planner Dave Gilbert responds first to Rose's question in regards to traffic. He says Rahilly Road is a dead end road and will not go through to Gurr Road so traffic will go out to Highway 59. With each well there will 44 daily trips which will only last for 15 days. After the 15 days those trips will be done. Two daily trips at the most will occur after the production process. The trips decrease after the first 15 days. As far as the noise, he says the environmental consultant is here, Trevor Macenski, but he believes noise will be below the 70 decible level. Mr. Gilbert says Trevor can explain the noise level better. To answer the question about who benefits from the gas, everyone can benefit from it. If you have a gas stove or gas water heater it is benefiting you. It can also be used for dairies and other agricultural production facilities. To address how this project would affect the property owners with the Williamson Act; because this is a temporary well and if they do not find gas within the 15 days, the area is restored to row crops. It's such a small area, a little over one acre that is being disturbed. Mr. Gilbert believes he answered all of Rose's questions.

Trevor Macinski, Consultant for Michael Brandman & Associates, states they are the consulting firm that prepared the initial study/mitigated negative declaration for the project. The question that was brought up regarding noise; on page 95 of the initial study/mitigated negative declaration it addresses this issue. The range of decibles is between 25 and 35, with the loudest noise being the separator.

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

The Planning Commission took a break at 9:26 a.m. for staff to review recent correspondence. The meeting reconvened at 10:08 a.m.

Commissioner Lashbrook feels some of Mrs. Gomes questions were unanswered such as water use for this project. How many gallons of water will it take, where will water be coming from, and how much pollution will this project cause? Another thing Rose Gomes mentioned was who benefits; she understands that they can't just tap into the gas since it has not been treated, but what about after?

Chairman Tanner states they have a point of order and asks County Counsel Marianne Greene to speak.

County Counsel Marianne Greene says in terms of procedure in regards to the hearing, she needs to go on record for three things. She says she was asked after the close of the Public Hearing by a Commissioner whether the CEQA notices to adjacent property owners can go beyond the 300 feet required by CEQA. She states if a local body such as the Board of Supervisors adopts an ordinance that would extend that distance then of course the County of Merced would follow that practice, but by State Law which is what the County of Merced follows and adheres to is the 300 foot rule from the exterior boundary of the project. Secondly, she says she would like to address the meeting we had during the break with the applicant and the consultant. She states for the record, the discussion they had was about procedural issues which will come up in a moment; it did not involve the substance of the project. Thirdly, she was asked when she returned to address a discussion format issue. When the hearing is closed, the Chair invites a motion which is the process under the Rosenberg Rules of Order not formerly adopted by this body, but will be today. The question that came up was "When does the discussion by the Planning Commission occur for the Commissioners to ask questions of the public, applicant, consultants, and/or staff?" Under the Rosenberg Rules of Order, that questioning process still occurs, but not until after the motion is made. Once the public hearing is closed, a motion is then made, and then the discussion or deliberation process occurs by the Commissioners. There was confusion because during prior hearings, the motion was always made after the discussion occurred. Under the Rosenberg Rules of Order, that will change. Since they haven't been officially adopted, it is up to Chairman Tanner to decide the format for today. The public hearing has been closed for this particular project so it is his decision whether he wants to go ahead and ask for a motion before the Planning Commission discusses the project or after. The concern is, under the Rosenberg Rules of Order, if adopted, the Commission will be foreclosed from discussing issues with the public.

Commissioner Lashbrook says her point today is that she made a request to speak before the public before the hearing closed, but it was unnoticed. She had some direct questions for the consultant, applicant, and the people who testified. Chairman Tanner must not have seen her request button on prior to the closure of the hearing.

Chairman Tanner says that Commissioner Lashbrook may ask her questions now, and then once we adopt the Rosenberg Rules of Order we will follow the format of asking questions after a motion is made.

Commissioner Lashbrook asks if Chairman Tanner can get a consensus from the rest of the Commissioners before he closes the public hearing.

Chairman Tanner explains that when no one else from the public comes up to speak, he automatically closes the Public Hearing. Under our old rules we were used to speaking to the public as well as the applicant and consultants right after the public hearing closed. With Rosenberg's Rules of Order, we close the public hearing, make a motion then we can ask any questions we want to the public.

Commissioner Lashbrook feels like some questions are really important before a motion is made. She states that the only time she has gotten something to go against the full yes is when she has made a motion to deny something. To her, the Planning Commission needs more information because she believes all of Ms. Gomes questions were not answered by either Mr. Gilbert or the consultant. She says she wanted to make sure all questions were answered before the Planning Commission decided what the motion is going to be.

County Counsel Marianne Greene explains that during the Planning Commission's deliberation process is when that discussion occurs. After the close of the public hearing, the questions can get answered and the motion is made by a particular Commissioner and then seconded. The Commissioners do not agree on a motion before it is formulated; it's subject to changes which are often shaped during the discussion.

Commissioner Lashbrook feels there should be an open time to directly respond and gather information from people who have testified before we go into a motion.

County Counsel Marianne Greene states that this discussion should be deferred to the portion of the agenda today that addresses the adoption of the Rosenberg Rules of Order by this Commission.

Robert Lewis, Development Services Director, says he would like to address the three correspondences we received. As staff, we would like to continue this particular application so we can respond to these letters. Also, we want to invite the public that came to the meeting today to share their comments and concerns on May 12, 2010. However, we still want to conduct the hearings for these four individual Panther Energy applications. That would be the recommendation from staff.

Commissioner Lashbrook says to the public that we are still working on our General Plan Update and there is going to be at least one more set of public and focus group meetings to give people a chance to put in their opinions and thoughts about how we should be doing things such as notifying property owners about an air strip temporarily being put next their home. She says especially for those living in the country when it comes to how they want to be notified. 300 feet is only about one football field which means notices probably only reach about one neighbor. She says she heard a lot of good testimony today, and asks the public to please insert their thoughts and concerns into the last part of this General Plan and the policies. There's a lot that can be done with policies so she wants to keep inviting the public to come add to this 20 year plan because it's going to make a huge difference.

Chairman Tanner asks for a motion to continue this item until May 12, 2010.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONTINUES ADMINISTRATIVE APPLICATION No. AA09-023 UNTIL MAY 12, 2010.

B. ADMINISTRATIVE APPLICATION No. AA09-024 - Panther Energy Company - To construct an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot enclosed drilling pad on 278 acres. The project is located on the south side of Sandy Mush Road, 4,000 feet east of Combs Road in the Merced area. The property is designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **DG**

Recommendation: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-024 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report dated March 10, 2010, and the recommendation to continue this item until the May 12, 2010 Planning Commission meeting.

The public hearing opened at 10:29 a.m.

Pat Correia, one of the landowners of this particular project, says she is also representing her partners Tony Correia and Richard Pimentel. She states that none of them see any negative effect on their property or any of the cattle there, and would greatly appreciate the Planning Commission's approval on this project today.

Chairman Tanner states that if anyone did not get a chance to come forward today, they can come back on May 12, 2010 and we will open the public hearing again.

County Counsel Marianne Greene says no, the public hearings will be closed. The May 12, 2010 meeting will be for the Planning Commission to deliberate at that time. She says the recommendation to continue is based on a series of late comments that we got on these four Projects which are quite dense so they need further review. What we are recommending is to close the public hearing on all four of these projects now, and then when you come back you will fully deliberate the project.

Rose Gomes, 346 Michael Road Merced, says she has the same issues she spoke of earlier but, this project is closest to her house. She states this is the same dairyman that put that temporary air strip in right next to her house. She said she did not receive a 300 foot notice to warn her. When County staff was notified, she was told nothing could be done because it was only temporary. Now, this same dairyman wants to put one of these wells on his property. Does that mean they will be able to tap into the natural gas even though it clearly states it will not be allowed? She explains that her property is adjacent to the property where this well is supposed to go. When the planner spoke about who can benefit from natural gas, he mentioned that dairies can. The answers from Panther Energy state the gas has not been treated for commercial use therefore landowner taps will not be permitted. She wants to know if it will be allowable for this dairy owner to have access to this gas. She feels that if they benefit then as landowners, she and all her neighbors on Rahilly Road should be allowed access to this natural gas as well. She says she has a question regarding letter C on the Area map. This is the one that is adjacent to her property. She says even though the parcels have different numbers, it is all a part of that one dairy she has been speaking of. She asks what water will these projects be using, and will it affect her water in any way. This was not answered earlier and she thanks Commissioner Lashbrook for realizing this concern wasn't addressed. She wants to know if they will have to drill new water well and whether that could affect the water level in her well. Also, the presentation says to drill these four wells it will take 34 trips per day. If you multiply that times four wells, that is about 176 trips per day on that Highway for these four projects. She says she doubts anyone would like having all those trucks go past your house, along with airplanes flying every night. Once this starts she will not only be disturbed all night long from the planes, but during the daytime too. She thinks she has a legitimate complaint. Another thing that was not answered was in regards to pollution and 300 foot notices. She explains that another property owner in the area, Mrs. Treewiler had some questions regarding those who have a Williamson Act contract which did not get addressed.

Colleen Treewiler, 1751 West Rahilly Road Merced, says she only has one question about the Williamson Act. Panther Energy says the gas wells are only going to be there for a month, but she asks if it's allowable to put an exploratory gas well on property that is under a Williamson Act contract. She would like to know the rule on that since she belongs to the Williamson Act.

Bill Nicholson, Assistant Development Services Director, says that it is allowed. He states that the Williamson Act contracts allow compatible uses within agricultural zones. The reason is agriculture is a natural resource and this is natural gas and is also below the surface. Also it is considered temporary use of the surface. If gas is found, the property owner will not lose their Williamson Act contract.

Colleen Treewiler, 1751 West Rahilly Road Merced, says her property is right behind the number three well on the Area map. She is wondering where the line will go if gas is found. She asks if it would go through Rodner's field to Gurr Road.

Chairman Tanner asks if Ms. Treewiler is referring to Item C, Administrative Permit Application No. AA09-031 on the agenda.

Planner Dave Gilbert says yes, the number three well she is speaking of, will be presented next. Chairman Tanner tells Colleen Treewiler her questions will be answered when the

Planning Commission gets to Item C. He explains to her that a slide presentation detailing the route of the gas line will be shown at that time.

The public hearing was closed at 10:45 a.m.

Chairman Tanner asks Trevor Macenski of Michael Brandman Associates, if he could come forward to answer some of these questions regarding water, pollution, and anything else that needs to be addressed.

Trevor Macenski, Michael Brandman Associates says some concerns he heard were about noise, air, traffic, pollution, water usage, and odor impacts. He explains the loudest noise would be approximately 25 to 35 decibels which will be from the separator. This is documented in the Initial Study which was publicly circulated. The air quality impacts as a result of the project are primarily associated with the construction activities. He states the air quality impacts have been fully analyzed and do not exceed any Air District's thresholds for temporary construction missions. The water quality impacts that will result from the project are also documented in the hydrology and water quality section of the Initial Study Mitigated Negative Declaration. The impacts associated with water quality are from the water extraction process in which the water is separated because it is a byproduct as a result of drilling. The drilling water is then stored in a water tank where it will be trucked offsite and disposed of as a Class II disposal well which is regulated by the Regional Water Quality Control Board. The next issue he wants to address is odor impact. He explains that odor impacts are not associated with natural gas wells. The type of natural gas that most people are familiar with is the kind in your home that has an odor; this actually has to go through a commercial treatment in order to give it that odor. The natural gas that comes out of the ground has no smell. He explains that it then has to be treated to make it safer for people to detect when it is around. Mr. Macenski says he will address the assumption of truck traffic that they identified in the technical document is for all four construction sites. The applicant's actually proposing economies of scale to save in order to avoid having four times the traffic. He says there will only be one crew for all four sites, and will be staged accordingly which is explained in the Initial Study Mitigated Negative Declaration. He continues on, addressing the next issue of pollution. He says he's assuming the term pollution referenced is in regards to air quality. The air quality analysis documents all criteria pollutants that will result from the project. It is also included in the Initial Study Mitigated Negative Declaration. The project will not result in any impacts that are above the Air Pollution Control District standards.

Chairman Tanner says someone had a question about the dairy hooking up even though he believes Mr. Macenski already addressed it. He asks him if he could re-address the fact that the gas is untreated, therefore, the landowner will not be allowed access to it.

Mr. Trevor Macenski, Michael Brandman Associates explains that in the project description they were only able to indicate that there would be no hookups from adjacent property owners to the line. He says, as Mr. Gilbert indicated earlier, the gas is not treated for commercial and/or residential application. There will no additional connections from surrounding property owners into the gathering lines.

Commissioner Mobley asks about the decibels rating regarding noise from the separator being in the 25 to 35 range. In his limited experience, he states that amount is not a lot of noise. He asks if Trevor could possibly give an example of how loud 35 decibels sounds.

Mr. Trevor Macenski agrees; he says watching the Super Bowl on television would be about 50 decibels; the noise caused by these projects would be less than that.

Commissioner Mobley asks if the sounds omitted from this drilling operation would even be heard outside the one acre.

Mr. Macenski states the separator which creates the most noise, will not be heard outside the acre. In fact, the surrounding land uses will be producing more noise than the proposed well operation.

Commissioner Mobley says after reading the literature received from Lydia Miller in regards to the drilling, he noticed the term "fracking" mentioned. He asks Trevor if that's the process that is going to be taking place here, and what are possible contaminates to ground water and those kinds of things.

Mr. Macenski states that hydrological fracking and/or fragmentation hydrology mining is not what's being proposed for the project. There is actually no need for that action associated with the shales underneath Merced County, and it is not being proposed by the applicant. The term "frack" is used in the document as an industry term; it's a reference to the frack tank which is the water holding tank. He says it is the separated water that will be a byproduct of the drilling activities which will then be disposed of in a Class II wastewater treatment well.

Commissioner Mobley asks if the drilling operations on this will have any affect on the aquifers or anything running through the area.

Mr. Macenski states that they will not be affected. Actually, they are proposing reinjection into the same ground water basin to offset the ground water that is going to be extracted as part of the separating process. However, there are only specific wells that can treat and ensure quality for the re-injected waters.

Commissioner Mobley asks if it will be necessary to drill a water well.

Mr. Macenski says no, there is already a proposed well. He explains that there are identified wells in regions of California which the Regional Water Quality Control Board oversees to ensure water that is being re-injected back into the ground is of the cleanest quality.

Commissioner Mobley wants to know if the residents in the area should have to worry about their water table going down. Mr. Macenski answers, no they will not.

Commissioner Lashbrook asks where the gas is pumped or piped to in order to be treated commercially.

Mr. Macenski says the project is proposing to connect to a gathering line or main trunk line which is located on Gurr Road. He says it was an existing gas line that travels throughout the County. He believes there is a treatment facility north of the project site, but is unsure of exact location.

Commissioner Lashbrook says when these wells are done, and they turn out to be good wells; it's only a small footprint.

Mr. Macenski agrees and states as a point of clarification, there is a limited amount of wells which can be on each pad as required by the application. The Planning Commission's approval of the project will only approve the amount of well heads that are actually permitted in the application. All of them have been included in their analysis.

Commissioner Lashbrook believes it is a great idea to use our native resources as long as it doesn't cause problems down the road. She says it would also be great if the people out in the country could get access to natural gas. At the May 12, 2010 Planning Commission, she says she looks forward to hearing more information to help answer the questions and concerns that weren't addressed today.

The public hearing closed at 10:48 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONTINUES ADMINISTRATIVE PERMIT APPLICATION No. AA09-024 UNTIL MAY 12, 2010.

C. ADMINISTRATIVE APPLICATION No. AA09-031 - Panther Energy Company - To construct an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot drilling pad on 529.4 acres. The project is located on the north side of Rahilly Road, two miles west of Highway 59 in the Merced area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). DG

Recommendation: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-031 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report dated March 10, 2010, and the recommendation to continue this item until the May 12, 2010 Planning Commission meeting.

The public hearing opened at 10:55 a.m.

Rose Jeanette Gomes, 346 Michael Road Merced, says she only has one question regarding Panther Energy's P.E.C. safety record. They state their P.E.C. safety record is nearly perfect. She asks what incident occurred that was not perfect.

Olivia McNamara, representative for Panther Energy, explains their nearly perfect record does not include any major incidents. She says they drive a lot of fleet vehicles which from time to time connect with a deer or bumpers of other vehicles; this keeps their record from being completely perfect.

Chairman Tanner wants to clarify that the only reason there record is not perfect is because of traffic only; it has nothing to do with drilling.

Olivia McNamara tells Chairman Tanner that he is exactly right. She says they drive a lot of miles; statistically those things happen.

Commissioner Lashbrook wants to know if it's truly only 15 days from start to finish for all four of these projects; are they done simultaneously.

Trevor Macenski, Michael Brandman Associates, says yes it will be completed within 15 days. However, realistically 15 days is longer than anticipated. The applicants are actually proposing anywhere from five to eight days to get all four wells done.

The public hearing closed at 10:58 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONTINUES ADMINISTRATIVE PERMIT APPLICATION No. AA09-031 UNTIL MAY 12, 2010.

The Planning Commission took a break at 10:59 a.m. reconvening at 11:09 a.m.

D. ADMINISTRATIVE APPLICATION No. AA09-032 - Panther Energy Company - To construct an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot drilling pad on 160 acres. The project is located at the southeast corner of Sandy Mush Road and Combs Road in the Merced area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). DG

Recommendation: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-032 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report dated March 10, 2010, and the recommendation to continue this item until the May 12, 2010 Planning Commission meeting. The public hearing opened at 11:13 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 11:14 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONTINUES ADMINISTRATIVE PERMIT APPLICATION No. AA09-032 UNTIL MAY 12, 2010.

E. RESCIND APPROVAL OF MINOR SUBDIVISION APPLICATION No. MS09-014 - Pacheco LLC - To divide 6.17 acres into three 1.50 acre parcels and one 1.67 acre parcel. The project is located on the east side of Badger Flat Road, 4,200 feet north of Highway 152 in the Los Banos area. The property is designated Los Banos SUDP Industrial land use in the General Plan and zoned M-1 (Light Manufacturing). **DG**

Recommendation: The actions requested are to:

- 1) Rescind the determination the application is exempt from CEQA, and
- Rescind approval of Minor Subdivision Application No. MS09-014 by the Planning Commission on January 13, 2010, that included 11 project findings, three conditions of approval, based on policy direction from the Board of Supervisors on January 26, 2010.

Planner David Gilbert presented the Staff Report and recommendations of approval dated March 10, 2010.

Marianne Greene, County Counsel, would like to bring to the Planning Commission's attention that there is a difference between Curing and Correcting and following the Board's policy that was announced on January 26, 2010 directed to this Planning Commission; the policy that was subsequently adopted by the Planning Commission on February 10, 2010. It would be the policy of the Planning Commission to include the title of the environmental document in the agendas. The difference that you would be asked to consider here is that you would be adopting the change as a matter of policy, not as a matter of law.

The public hearing opened at 11:19 a.m.

Duane Andrews, Golden Valley Engineering, states that he is available for questions.

The public hearing closed at 11:20 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION RESCINDS THE DETERMINATION THAT MINOR SUBDIVISION APPLICATION No. MS09-014 IS EXEMPT FROM CEQA UNDER SECTION 15315 – "MINOR LAND DIVISIONS" BY THE PLANNING COMMISSION ON JANUARY 13, 2010, BASED ON POLICY DIRECTION FROM THE BOARD OF SUPERVISORS ON JANUARY 26, 2010.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION RESCINDS APPROVAL OF MINOR SUBDIVISION APPLICATION No. MS09-014 BY THE PLANNING COMMISSION ON JANUARY 13, 2010, THAT INCLUDED 11 PROJECT FINDINGS, THREE CONDITIONS OF APPROVAL, BASED ON POLICY DIRECTION FROM THE BOARD OF SUPERVISORS ON JANUARY 26, 2010.

F. MINOR SUBDIVISION APPLICATION No. MS09-014 - Pacheco LLC - To divide 6.17 acres into three 1.50 acre parcels and one 1.67 acre parcel. The project is located on the east side of Badger Flat Road, 4,200 feet north of Highway 152 in the Los Banos area. The property is designated Los Banos SUDP Industrial land use in the General Plan and zoned M-1 (Light Manufacturing). **DG**

Recommendation: The actions requested are to:

- 1) Determine the application is categorically exempt from CEQA, and
- 2) Approve Minor Subdivision Application No. MS09-014 based on the project findings, and subject to the conditions of approval.

Planner David Gilbert presented the Staff Report and recommendations of approval dated March 10, 2010.

Commissioner Lashbrook wants to know what adjacent uses are there because she notices quite a bit of agriculture. When this project first came to the Planning Commission, she believes she requested to add the right to farming language as a condition of approval. She still would like to see that added, at least until it gets annexed.

Planner Dave Gilbert says they can add that condition as a condition under the Planning and Community Development Department. It would be added as Condition No. 4, which would change the County Counsel condition to No. 5.

The public hearing opened at 11:31 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 11:32 a.m.

Robert Lewis, Development Services Director, would like to get the applicant's representative to confirm the condition being added is okay.

County Counsel Marianne Greene says to let the record reflect that the project applicant agrees.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION APPLICATION No. MS09-014, FROM CEQA REVIEW UNDER SECTION 15315 - "MINOR LAND DIVISIONS" OF THE CEQA GUIDELINES BASED UPON THE TWO CEQA FINDINGS.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MARCH 10, 2010, AND MAKES THE 11 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 11 FINDINGS, APPROVES MINOR SUBDIVISION APPLICATION No. MS09-014 SUBJECT TO THE FIVE CONDITIONS OF APPROVAL, WITH THE ADDITION OF CONDITION No. 4 AND CONDITION No. 5, SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Merced County Planning and Community Development

- 1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the Planning Commission approval date as required by the Subdivision Map Act and Merced County Subdivision Code.
- 2. The applicant/property owner shall comply with all applicable conditions contained in Planning Commission Resolution 97-1.

- 3. The applicant/property owner shall comply with all Federal, State, and Local regulations.
- 4. A Right-to-Farm Certificate shall be recorded prior to issuance of any building permits to notify subsequent occupants of the inconveniences of farming operations and the priority to which Merced County places on such operations.

County Counsel

- 5. Pacheco LLC and Michael Trevino must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "County") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Minor Subdivision Application No. MS09-014 ("project") 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 Pacheco LLC including Michael Trevino. The liability of Pacheco LLC and Michael Trevino for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Pacheco LLC and Michael Trevino, its employees, subcontractors, agents, and officers. The duty shall extend to any allegation or 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 notice of filing a lawsuit, claim, petition, or allegation of liability against County. Pacheco LLC and Michael Trevino will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.
- G. RESCIND APPROVAL OF MAJOR SUBDIVISION APPLICATION No. MAS04-014 Lakeview Properties Ed Grossman -To subdivide a 58 acre parcel into 35 single family residential lots, a 9.0 acre passive recreation area and an 8.0 acre remainder parcel. The project is located at the northeast corner of Merced Falls Road and La Grange Road within the Snelling SUDP. The property is designated General Commercial and Low-Density Residential land use in the General Plan and zoned C-2 (General Commercial) and R-1 (Single Family Residential). JH

Recommendation: The actions requested are to:

- 1) Rescind adoption of the Mitigated Negative Declaration, and
- Rescind approval of Minor Subdivision Application No. MAS04-014 by the Planning Commission on January 13, 2010, that included nine project findings, 18 conditions of approval, based on policy direction from the Board of Supervisors on January 26, 2010.

Planner James Holland presented the Staff Report and recommendations of approval dated March 10, 2010.

The public hearing opened at 11:36 a.m.

Gordon Gray, 15983 Third Street Snelling, says he will be speaking on behalf of the Snelling Municipal Advisory Committee (MAC) regarding actions taken at their last meeting. He asks whether he should speak at this time or wait until the next item which recommends approval of this particular project.

Chairman Tanner explains that this item is just to rescind approval; if he would like to speak in favor or opposition then he will want to wait. Mr. Gray says he will wait for the next item.

The public hearing closed at 11:37 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVES TO RESCINDS THE ADOPTION OF THE MITIGATED NEGATIVE DECLARATION PREPARED FOR MAJOR SUBDIVISION APPLICATION No. MAS04-014 BY THE PLANNING COMMISSION ON JANUARY 13, 2010, BASED ON POLICY DIRECTION FROM THE BOARD OF SUPERVISORS ON JANUARY 26, 2010.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVES TO RESCIND APPROVAL OF MAJOR SUBDIVISION APPLICATION No. MAS04-014 BY THE PLANNING COMMISSION ON JANUARY 13, 2010, THAT INCLUDED NINE PROJECT FINDINGS, 18 CONDITIONS OF APPROVAL, BASED ON POLICY DIRECTION FROM THE BOARD OF SUPERVISORS ON JANUARY 26, 2010.

H. MAJOR SUBDIVISION APPLICATION No. MAS04-014 – Lakeview Properties – Ed Grossman - To subdivide a 58 acre parcel into 35 single family residential lots, a 9.0 acre passive recreation area and an 8.0 acre remainder parcel. The project is located at the northeast corner of Merced Falls Road and La Grange Road within the Snelling SUDP. The property is designated General Commercial and Low-Density Residential land use in the General Plan and zoned C-2 (General Commercial) and R-1 (Single Family Residential). JH

Recommendation: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- Approve Major Subdivision Application No. MAS04-014 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner James Holland presented the Staff Report and recommendations of approval dated March 10, 2010.

The public hearing opened at 12:02 p.m.

Gordon Gray, 15983 Third Street Snelling, states again that he is here to speak on behalf of the Snelling Municipal Advisory Council (MAC). We have heard this project on many different occasions starting back in June primarily with the Mitigated Negative Declaration. From that point on, he says they responded with considerable comments to the Planning Department in regards to the project. He says they had several concerns at that point in time such as air quality, the cumulative effect, and traffic along with many others. They would still like to see the cumulative affect addressed in that particular area regarding the agriculture, mining, and subdivisions. He is here for only one reason today which is in relationship to the pedestrian walkway. This project was first brought to the Planning Commission on January 13, 2010. At which time none of the members of the community were able to make it because the meeting falls at nine in the morning when most work. He says it brought a lot of concerns to the Snelling MAC when they discovered the language was still the same in the final staff report that went to the Planning Commission. It was the same staff report that came before the

Snelling Municipal Advisory Committee back in November when comments were submitted in regards to the mitigation issues. The Snelling MAC and the community were really concerned about the pedestrian access from the project site to the school. The pedestrians will need to get to services within the community as well as to the school when in session. He asks Planner James Holland if he would bring up the photograph of the corner of La Grange Road and Merced Falls Road shown in his presentation. In the mitigation, it required the applicant to have a pedestrian walkway for safe route to school only to the intersection, and proposed to have it internally.

He says it creates a problem because you can bring pedestrians to that location, but then what are you going to do with them afterwards. Basically, it will create a nuisance by attracting people to that corner then leaving them to their own devices to decide how to get across the street. Primarily, we are talking about children and other people utilizing this particular walkway to get to the services provided in the community and the school. There is already a right of way coming from town to the school. Also, there is a walkway that runs in front of the cemetery. If you build a walkway internally, it would dump the pedestrians at the corner on the backside of that bridge embankment or irrigation canal which runs almost all year round. He states if you build the walkway along the highway similar to the one that already exists; there is adequate room adjacent to the property line in the right of way area for a Cal Trans approved walkway at the intersection in front of the embankment which is where a pedestrian walkway normally would be placed. He says the Snelling MAC sent a letter after they had a meeting deciding to rescind approval of this project because of this issue. This walkway would create a hazard rather than correcting a problem. If a development is going to build a subdivision within walking distance to a town and a school which could create a problem of this magnitude; they need to find a solution instead of creating additional problems. The correction to the problem would be to build a walkway from the main route going in and out of the subdivision along the highway with a setback similar to the one that is in town, make a Cal Trans approved crosswalk at the intersection, continue the walkway until it connects to the paved access in front of the school. This allows for the Commission to meet some of the alternative modes of transportation required by the State of California on pedestrian traffic, bikeways and other modes of transportation for communities being developed. This subdivision offers none of that, but creates additional problems which need to be corrected by the Commission. He believes the property owner should be responsible for correcting the problem instead of making the County do it. He says to the Commission that by approving the project as it is, they will be creating a liability. He wants to know who will be liable for this if someone gets hurt at that intersection. Would the County be liable? The builders are going to be gone once the subdivision is built which leaves those living in the subdivision to their own devices to help their children get to and from school safely. Since it is within walking distance, people will walk or ride their bikes because it's their nature. If you make the walkway more available, people will use it more, reducing the amount of traffic. He asks if the Commission has any questions.

Commissioner Mobley asks what the length of the sidewalk would be that Mr. Gray is referring to.

Gordon Gray, Snelling resident, says if you look at the subdivision map, the walkway will need to run from the single entrance/exit to the intersection of La Grange Road and Merced Falls Road. A crosswalk will need to be established. It would then continue until it reaches the paved area in front of the school giving pedestrians an adequate walkway which is safe and long term. The applicant has tried to create short term corrections, but it does not answer the long term affect of what people will do for the long haul.

Planner James Holland says he estimates that the distance is at least an eighth to a quarter of a mile.

Commissioner Mobley says there would be the cost to put in the walkway, and the cost to create a crosswalk. He wonders if adding the crosswalk would just be a matter of putting the paint on the road.

Planner James Holland states that a traffic engineer would be the one to ask in regards to the costs. However, he says that he would like to bring page 26 of the staff report to the Planning Commission's attention. He says number 12 listed under Condition No. 19 states verbatim "as part of the site improvement/preparation process required for recording a final map, the applicant shall construct a walking path on the north side of Merced Falls Road that runs from the southeast corner of proposed lot #25, as shown on Figure 5, Sensitive Biological Habitats, September 2009, westwards to the intersection of Merced Falls Road and La Grange Road. The applicant shall also provide for the installation of a street light at this intersection. The walking path shall be aligned to avoid additional impacts to oak trees on the project site beyond those outlined in the Mitigation and Monitoring Plan and detailed in Mitigation Measure 7. The exact alignment dimensions and surfacing of this walking path shall be approved by the Merced County Department of Public Works Road Division."

Commissioner Mobley asks Mr. Gordon Gray if Condition No. 19 addresses his concerns.

Gordon Gray says no, because it drops the pedestrians on the backside of that bridge embankment as he pointed out before. They will have to cross several feet behind the corner which creates a hazardous situation. He says automobiles making a left turn would be meeting those pedestrians as they cross causing the driver to make an emergency stop. It would also stop them prior to the stop sign currently on La Grange Road. The crosswalk has to be in front of the bridge embankment. He says if you look at the Right of Way easements along La Grange Road, they exist from the property line to the shoulder of the road or edge of the asphalt, the same as the one located in town. He describes the Right of Way in town, saying that it leaves about five to seven feet of separation from the edge of pavement, to an eight foot walkway already constructed, which starts in town and goes all the way to the school. He says the mitigation calls for a street light only. People do not walk at this location at night; they walk here during the day, so a street light would be of no consequence to them. A crosswalk in the correct location and a walkway for the remainder of the distance is appropriate. In order to make it work, the crosswalk must be in front instead of behind the embankment as identified in the mitigation.

Commissioner Lashbrook says she agrees that the crosswalk definitely needs to be in front of the embankment. She believes that there should be a crosswalk whether there are people trying to end the effects of SB32; we all are supposed to be working on trying to make things more walk able and bike ride able. These little kids should not have to find a ride to school every day. She asks what kind of surface or gravel they would need to add an extra 10,000 feet of walkway.

Gordon Gray, says it would need to be cleared to put in whatever kind of surface which is unknown. He feels that it definitely needs to be a designated surface area that can be maintained. It has to be graded and compacted in order to keep it from rutting due to people riding their bikes and stepping on it creating mud holes. He states the walkway which already exists, was paved off of a gravel walk way approximately in the 1940's. If this walk way is created, it will have to be an improved walk way because of the length of distance from the subdivision's entrance/exit to another paved or surface area which is year round weatherized.

Chairman Tanner says to Planner James Holland that on Condition No. 12, it states exact alignment dimensions and surface of the walking path shall be approved by Merced County Department of Public Works." He wants to clarify if that means, the Department of Public Works could put the walk way where Mr. Gray wants because they will be determining exactly where and how long the walk way should be.

Planner James Holland tells Chairman Tanner that he is exactly right.

Gordon Gray, explained that the decision the Planning Commission makes will determine what happens from the point where the condition stops the walk way. The condition stops the walk way at La Grange Road on the east side of the roadway. He says it needs to go from the subdivision, all the way to the paved area in front of the school.

Planner James Holland says staff very carefully through reasonable processes laid this out in the staff report deliberately considered this issue. He says there are two things he wants to draw the Planning Commission's attention to at this point. The first thing, Cal Trans did not request the installation of a crosswalk. They are the responsible agency because Merced Falls Road is a State Highway until it reaches La Grange Road, when the State Highway turns north in which La Grange Road then becomes a State Highway. The point to remember is that the majority of that intersection in question is State Highway. The portion that isn't State Highway is the portion of the western most property boundary of the Grossman parcel eastwards. He says that most of that intersection if not all of it is State Highway.

At no time has the County received any requests from Cal Trans to construct a pedestrian cross walk in the area questioned. They have had multiple occasions to comment and make this request, but did not. Secondly, he explains that this issue was carefully studied as noted in the supplemental responses and analysis performed in response to the issues raised by the Snelling MAC in June. He states that detailed responses were prepared regarding their concerns in the document that was circulated to the Snelling MAC in November 2009. He says we did request that the Department of Public Works Engineering staff take another look at this issue. Neither the environmental consultants retained for the purpose of this performance analysis, nor Public Works engineering staff identified a cross walk as being necessary. He says the final point he would like to make is the Planning staff and whatever opinion we have on the matter, have reached the point where we have to ask ourselves to what extent is sufficient nexus for asking the County to require construction of a walk way which is what is being asked for, from off the project site extending approximately one quarter mile west, to correct what is already an existing defect. He says it is unknown if there is sufficient nexus for a 35 lot subdivision since the number of students likely to be generated will be really small. We can't say it won't increase, but since we are unsure whether there is sufficient linkage between this development and what is being requested offsite; the County cannot take any authority to require it.

County Counsel Marianne Greene thinks that Planner James Holland stated the issues well in terms of jurisdiction over the State Highway, and in terms of their being a nexus given the small size of the subdivision. She says her office can take it under submission if you want further analysis as to whether the County could require the walk way given these issues. She says she would support staff's and the lead agencies determination on this.

Commissioner Lashbrook says neither Department of Public Works nor Cal Trans identified cross walks as necessary, but did they designate cross walks as unnecessary. She wants to know if they just didn't designate any either way.

Planner James Holland says there is no agency that would send in comments stating that a cross walk would be absolutely unnecessary under any circumstances. However, the fact that they did not request it, limits themselves to general comments. They had the clear opportunity to identify specific, local impacts associated with this development; they chose not to.

Commissioner Lashbrook asks if the land from La Grange Road to the school is developed or agriculture.

Gordon Gray said that the land is owned by the school district and about thirty percent of it is considered flood plain land because that is the direction of the overflow when the river floods. He says it doesn't mean that something can't be built through it, like a road is now. Basically, the area is an empty lot. He believes that the area across the street is considered future residential.

Commissioner Lashbrook feels that this development is going to the furthest edge of their SUDP or development area. She knows they already had to cut back on the original number of homes they wanted to build there. The only reason kids would be walking to school is because of this development so she doesn't see a cross walk as unnecessary. She says there could or should be grants available, but it would need to be designated necessary as part of this subdivision. She feels it is important that the applicant be responsible for at least a

major portion of making sure there is a safe walk way for children and residents. All those gravel companies up in that area should help by donating materials in her opinion.

Commissioner Mobley wonders if this issue was carefully looked at as part of the Cal Tans evaluation. If they saw the need to put the cross walk in, wouldn't it have been included as part of their approval process?

Planner James Holland says it is his understanding that lead agencies such as Cal Trans have standard evaluation criteria that they apply when looking at a project in terms of evaluating its trip generation potential to determine the impact on their road system. He says the Planning Department does have a reasonable relationship with the individual inspectors when we get down to the County level, and if they had concerns about these projects, he would expect a detailed letter and/ or phone call with full explanation of their concern. For this project, we did not get any comments expressing concern from any of the individual inspectors nor from the regional office in Stockton.

Commissioner Mobley says the way this project would affect the transportation of the people walking is what Cal Trans does, and they didn't submit anything expressing concern. He asks Planner James Holland, if they had concerns then they would have sent a letter or called.

Planner James Holland says that is what they usually do.

Commissioner Lashbrook wants to know when the request for general comment was sent.

Planner James Holland says that Cal Trans was first notified back in 2004 and then again notified when 18 copies of Initial study were sent to the State Clearinghouse in May 2009, where they distributed them to proper agencies. Cal Trans is one of the agencies that will always receive an Initial Study. He states they were given opportunity again when we recirculated a copy of the comments for additional analysis in November 2009.

Commissioner Lashbrook asks if the requests from the Snelling MAC were included when the comments were sent out.

Planner James Holland says yes, the Snelling MAC's issues were included.

Commissioner Lashbrook believes that ever since the State started doing the work furloughs, they are understaffed. They do not have sufficient time to do their work. Since the last hearing, the state has had six or seven Fridays off as well as a few Monday's. She thinks a lot of things are falling apart somewhat because of this. She believes that we should find a way to include this cross walk and walk way or send it back like County Counsel said, so we can find out the parameters. Maybe we can ask Cal Trans directly about this issue and where the liability lies if a group of kids get hit because cars are going around a corner unable to see the drop off point located further back. She feels this is a real concern and we need to have development pay for these things otherwise it just comes from the rest of the tax payers. She wants to see the walk way go further. She does feel that the applicant has a good job addressing the environmental concerns, but public safety and making this subdivision become a part of the community rather than a piece that is separate is really important. Without that walk way, it's not really a part of Snelling.

Marianne Greene, County Counsel says one idea she might suggest, with the consent of the applicant, would be to continue this until someone from Public Works can come and talk to the Planning Commission in detail about the fact that Cal Trans owns this Right of Way. We can ask how they would normally handle this, and whether it's feasible from a jurisdictional point of view. She says it seems that we need some technical expertise that hasn't been provided.

Gordon Gray says that another issue with the County goes back to the last General Plan Update for Snelling which was around 1990, he believes. When the County put that residential area in Snelling's General Plan Update, they should've at that time made sure they knew how they would make this a part of the community and how would they make sure kids

could get to school safely. When the County did this General Plan Update, they took on the responsibility of these issues. A conversation was made by the Public Works Department after contact by the Planning Department in regards to the crosswalk stating that they felt this was a necessity and Cal Trans may have overlooked it in the initial review. Steve Rough, the engineer in that department was the one who stated this. He asks Planner James Holland if what he is saying is not true.

He asks if he had that conversation with Mr. Rough. Planner James Holland states that he does not recall that conversation and cannot comment. Mr. Gray says he did have a conversation with Steve Rough. He continues, stating that since the County put that residential bubble in the General Plan Update for Snelling, they took on the responsibility to make sure there is a method of resolving any problems that come up out there. If the County decides to do something like that, they need to make sure the project can be complete, not partially complete. Like Commissioner Lashbrook says, it's an isolated pocket out in the County, not a part of the Snelling Community. He says that Snelling is not opposed to development; we are opposed to development that does not cover its basis and try to become a part of the community.

Robert Lewis, Development Services Director, says he thinks we have someone here, from Public Works, Richard Schwartz, who can speak on some of the concerns regarding traffic and Cal Trans.

Richard Schwartz, Assistant Public Works Director, says the County's jurisdiction stops at the intersection of La Grange Road and Merced Falls Road. He states that they can have their own opinions about what we should or shouldn't have at that particular intersection. The Planning Commission can direct staff, specifically from the Public Works Department, to engage in further direct conversations with Cal Trans to determine whether or not they have any concerns or requirements regarding this development. He says, for the Public Works Department to dictate what we want to be required in a Cal Trans' Right of Way, is out of our jurisdiction. Everything north and east of the intersection of La Grange Road and Merced Falls Road is Merced County's right of way, but that intersection is a State Highway. Cal Trans would have to grant an encroachment permit to do any improvements, modifications or striping at that intersection and along their right of way.

Commissioner Lashbrook feels Cal Trans most likely overlooked this issue. She thinks the Planning Commission should direct the Public Works Department to engage in further direct conversations with Cal Trans before we make a decision on this project.

Richard Schwartz, Assistant Public Works Director, says the Planning Commission could continue this project and direct staff to engage in more focused conversations with Cal Trans as opposed to just letting them respond through the State Clearinghouse process.

Chairman Tanner asks if the Planning Commission has ever required offsite improvements like this before. He says he has only known the Planning Commission to require improvements to an applicant's property, but not on someone else's property.

Bill Nicholson, Assistant Development Services Director, says that for most SUDP's and urban boundaries, there are bridge and thorough-fare fees. The developer either does improvements or puts money into the bridge and through-fare account that is collected by Public Works to do improvements. Those improvements are community wide based on the priority of where the greatest need is. A developer in one area of Hilmar might put money into that fund to put in a traffic signal in another part of town. It might be off site for that project, but they are part of the thorough-fare zone. In a community like Snelling where we don't have a community plan, a traffic zone isn't set up. He says this is a unique issue where we want to require an offsite improvement without an overall plan for those improvements or a funding mechanism for it. You pick on one developer to come up with that solution, but is there a fair share of contribution or is it 100 percent this developer. Usually only what is needed gets done which is decided by the bridge and thoroughfare fee program. In this case, Snelling doesn't have it. He says he would also like to clarify that it wasn't in 1990 that this property was designated residential in the community plan; it was in the water district when the district

was formed in 1978. At this time, the County adopted SUDP's as a planning concept and put this property in as residential. It's been sitting there waiting for development since 1978, and Mr. Grossman has owned it most of that time.

Robert Lewis, Development Services Director, asks Richard Schwartz of Public Works if he knows if this area is a part of a capital improvement program. He says there has to be rational nexus to have this type of exaction. Agencies get into trouble when they exact properties without making a rational connection to needing those improvements.

Planner James Holland states that there are other fee mechanisms in place; we also charge regional transportation impact fees, and fees when issuing building permits. We use all these fees to make system wide improvements either in the local system or based on priorities for Regional improvements assigned by Cal Trans and adopted by the County of Merced. The thing to remember is when we are talking about offsite improvements, just because something is in the community plan does not mean they have an automatic right as a city or a county to require an exaction to meet the goals of that plan. When you move offsite, your moving from a specific project to a system, and the rule of thumb he would offer as a planner is the more you move offsite, you start looking at the system as a total rather than a specific issue of that project. He says he has to ask himself, to what extent does this project contribute to or affect that system. The further you move away from the site, arguably, the lower the influence of the project on that system. He says the point is, once you move off that site, you start to move into the broader Snelling system. To what extent can this project be reasonably expected to make a contribution toward improvements to that system? He states that for every foot you move away from the project site, the impact of that project lessens. He says when this happens, his ability to reasonably request the applicant to make that improvement, diminishes.

Commissioner Lashbrook says that her point was, this project is the only thing impacting this area since there is no development in between. If it wasn't for this development, we wouldn't need this walk way and cross walk. She wants to know if there is ability within the Snelling community to help bring in some money. Maybe there can be a joint effort to help with the costs. She says the developer should be the major contributor.

Ed Grossman, Applicant, says that he has been working with the school district and they have a policy stating any student living over a mile from the school gets picked up. Nearly all of them get bused to school because most live over a mile away from the school. He says the entrance to the subdivision is eight tenths of a mile from the school. He asked the school if he were to build a bus stop for the kids in the subdivision, would they consider picking them up. As of yet, he has not received an answer from them, but he believes the issue was going to be brought up at their next meeting. He states the main reason for this walk way is for the kids. Personally, he would not want any of his grandchildren walking along that road in Snelling because there is a 55 mph speed limit and most people go faster than that. He says if he was living in that subdivision, he would not want to send his kids to walk along that road even if a walk way and cross walk did exist due to the danger. He feels that the school district will probably agree to pick up all the kids from the subdivision.

Commissioner Lashbrook explains that with the way budgets are these days, the first thing school districts are cutting is bus service especially for anything that is so close to the school already. Bus service is not a guarantee, and if you live in a beautiful area like Snelling, compelling children to get on a bus instead of walking is not a good idea. She says she would really like to see this project go back to Public Works so they can talk to Cal Trans about other possibilities to make this walk way a reality. She feels that without this walk way, this subdivision would not be a part of Snelling. Also, cutting the speed limit down to 35 mph through town wouldn't be a bad idea either. She asks Ed Grossman if he would be willing to contribute once a solution is decided.

Ed Grossman, Applicant, says he has accepted so many responsibilities for this subdivision, and he has lost so much land. He says yes, he would work with somebody in regards to the walk way and cross walk, depending on how far he is going to be pushed. He says that it is horrible how much time this has taken already. He started this application six years ago, and

he just doesn't know how much further he can go with it. He believes he has been unreasonably pushed in regards to some of the requirements. Elderberry bushes were not even a concern back when this project started, and oak trees were not protected at that time. He states that he has always tried to protect the oak trees there, and he now has 42 Elderberry bushes which were studied on two different occasions. They did find a single penetration of an Elderberry Beetle which is the reason they are protected. He says to be fair, he will work with somebody but he will not agree to pay for the entire thing. Right now, he is losing about \$22,000.00 a month in interest alone, that's not including other holding costs. Commissioner Mobley asks Ed Grossman how much it would cost for him to build the walk way being requested.

Ed Grossman, Applicant, says that he has no idea; he hasn't seen any engineered drawing. He is unsure of everything they would need required so cannot even estimate.

Commissioner Mobley asks Ed Grossman if he is planning on building the homes himself.

Ed Grossman, Applicant, says that he is retired so he would not be building the homes. He says the only thing he is trying to do is get the project approved so he can move on. With the economy the way it is, he honestly does not think he could fund the development of the subdivision at this time. He just wants to get it approved so he can try selling the subdivision, which might not be possible anyway since the housing market isn't doing so well.

Commissioner Lashbrook asks how this site is related to the flood plain and possible flooding if the river breaches.

Planner James Holland says it was covered in the initial study; the flooding is covered under the hydrology section. He says there were no significant issues since there weren't any mitigation measures identified.

Ed Grossman, Applicant, states that the site is located above the flood plain,

Commissioner Lashbrook feels that it is really important to have this project be a part of Snelling. She says she thinks it should be continued until more information can be brought forward including some rough designs and estimates on what it might cost to put in the walk way. Without it, the subdivision would be a rural subdivision standing alone, away from the Snelling community.

Gordon Gray said on February 26, 2010, the school district voted unanimously, to not address the issue regarding the bus stop Ed Grossman requested.

The public hearing closed at 12:52 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVES THE MITIGATED NEGATIVE DECLARATION AND EXEMPTS MAJOR SUBDIVISION APPLICATION No. MAS04-014, FROM CEQA BASED ON THE 14 MITIGATION MEASURES.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 3 - 1, NAY BY COMMISSIONER LASHBROOK, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MARCH 10, 2010, AND MAKES THE 9 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 9 FINDINGS, APPROVES MAJOR SUBDIVISION APPLICATION No. MAS04-014 SUBJECT TO THE 19 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

 A Final Map shall be recorded within two years of the Planning Commission approval date as required by the Merced County Subdivision Code.

- 2. This project shall comply with the applicable Standard Conditions in Planning Commission Resolution No. 97-1.
- 3. Prior to approval of the Final Map, the developer shall submit a current 'Can and Will Serve' letter for the project issued by the Snelling Community Services District and shall demonstrate to the satisfaction of the County that any improvements required by this letter have been made or bonded for.
- 4. For the purpose of conditions monitoring, an inspection fee in the amount of \$486 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.

County Counsel

5. Ed and Jill Grossman and Lakeview Properties must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "County") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Lakeview Properties ("project") 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 Ed and Jill Grossman and Lakeview Properties. The liability of Ed and Jill Grossman and Lakeview Properties for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Ed and Jill Grossman and Lakeview Properties, their employees, subcontractors, agents, and officers. The duty shall extend to any allegation or 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 notice of filing a lawsuit, claim, petition, or allegation of liability against County. Ed and Jill Grossman and Lakeview Properties will on request and at their expense, defend any action suit or proceeding arising hereunder. This term and condition and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorneys fees shall include any and all attorneys fees but not be limited to attorneys fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

Mitigation Measures

6. Mitigation Measure 1: Maintain aesthetic vegetation buffer

Retain the existing oak woodland habitat within individual parcels while permitting the construction of single-family dwellings and appurtenant structures. Except for the

construction of two access roads from Merced Falls Road and proposed on-site roadways or driveways for individual lots, construction in the areas of the existing riparian woodland and oak woodland shall maintain a sufficient vegetative buffer between developed structures and facilities and Henderson Park to mask the presence of developed uses on the site during the seasons of the year when deciduous trees are in leaf. The buffer shall be sufficient to break the mass of buildings and to prevent glare from windows and glazing into the park. Implementation of Mitigation Measure 1 will result in the preservation of 7.598 acres of oak woodland at the perimeters of the project area, providing a sufficient vegetative buffer.

7. Mitigation Measure 2: Comply with SJVAPCD Requirements and Recommendations

During project construction, the project applicant and contractors shall comply with the following measures. Additionally, a note shall appear on the final subdivision map notifying purchasers of individual lots of applicable rules as set forth below and as they might be amended of the duty to comply with the requirements of this mitigation measure and the regulations of the SJVAPCD.

- A. Comply with SJVAPCD's Regulation VIII, Dust Suppression Measures (described above), Rule 8021, preparation of a Dust Control Plan and Rule 3135, Dust Control Plan Fee.
- B. Comply with SJVAPCD's Rules 4901 and 4902 regarding wood burning devices and natural gas-fired water heaters.
- C. Comply with SJVAPCD's additional measures 1 through 6 as follows to further reduce ozone precursors. The project applicant shall implement the following:
 - Energy efficient design including automated control systems for heating/air conditioning and energy efficiency beyond Title 24 requirements, lighting controls and energy-efficient lighting in buildings, increased insulation beyond Title 24 requirements, and light colored roof materials to reflect heat.
 - Planting of deciduous trees on the south and westerly facing sides of buildings.
 - 3. Providing low nitrogen oxide (NO_x) emitting and/or high efficiency water heaters.
 - 4. Sidewalks and bike paths throughout as much of the project as is possible and should be connected to any nearby open space areas, parks, schools, commercial areas, etc.
 - Natural gas/propane lines and electrical outlets should be installed in patio areas to encourage the use of gas and/or electric barbecues.
 - 6. All housing units should include as part of the purchase an electric lawn mower and electric edger.
- D. Comply with all applicable SJVAPCD Rules and Regulations that may apply, including: Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), and Rule 4002 (National Emissions Standards for Hazardous Air Pollutants).

8. Mitigation Measure 3: Provide Funding for Implementation and Monitoring of Mitigation Measures

No later than six months after the granting of any preliminary map approval by the County, and prior to the submittal of any improvement plans or other permit applications, the property owner/applicant shall enter into a contract with the County

that provides for the establishment of a fund to pay for hiring a qualified consultant who shall be responsible for implementing or overseeing the implementation of (as necessary) all Biological Resource mitigations required by this Mitigated Negative Declaration. This contract shall also provide for payment of consultant costs for monitoring all biological resource mitigations where such monitoring does not fall within the identified responsibilities of other public agencies.

9. Mitigation Measure 4: Preservation of passive recreation area, ecological preserve and open space conservation area

No clearing, grading, tree-cutting, brush-clearing or other modification of on-site habitats and biological resources shall occur until Mitigation Measures 3, 4, 5, 6, 7 and 8 are implemented in their entirety, except for any required future monitoring, which may be completed after implementation of required mitigation.

To protect riparian habitat, oak woodland, blue elderberry shrubs and associated sensitive biological resources within the project area:

- A. The applicant shall indicate buildable areas on the Final Subdivision Map, outside of which all future construction or grading shall be prohibited.
- B. The applicant shall permanently protect biological resources within the two preserve areas shown on Figure 5 (four-acre Ecological Preserve on the west, nine-acre Passive Recreation Area on the north) through dedication in fee of the two areas to a Homeowner's Association (HOA). In forming the Homeowner's Association, the applicant shall establish an endowment and annual maintenance fees sufficient to ensure permanent management of the two preserve areas, including annual monitoring by a professional biologist (further described in Mitigation Measure 5). Alternately, the applicant may deed the areas to a conservation organization or public entity, or through another mechanism acceptable to Merced County, that would result in permanent conservation and maintenance of the three areas. Within the preserved areas, all development or habitat modification, including changes in site hydrology through the creation of grassy areas. landscaping irrigation or the introduction of invasive/weed species (unless approved by CDFG and USFWS), shall be prohibited.
- C. The applicant shall establish open space conservation easements in favor of the HOA within all affected lots on the Final Subdivision Map as indicated in Figure 5 (Lots 1, 5, 6, 7, 8, 9, 10, 25, 26, 27, 29, 30, 31, 32, 33 and 36).
- D. The applicant shall protect sensitive biological resources within the passive recreation area, ecological preserve area, and open space conservation area during mass site grading and road and underground utility construction through installation of construction fencing along all preservation area or conservation area boundaries. Specific protections described in Mitigation Measure 5, 6, 7, and 8 must be followed to protect sensitive species.
- E. The applicant shall establish Conditions, Covenants and Restrictions (CCR) applicable to the single-family residential lots, and enforceable by the Homeowner's Association, that ban construction or grading within the open space conservation easements. The CCRs shall include the following protocol: Homeowner and/or their agent shall not perform any grading or construction outside of buildable areas as indicated on the Final Subdivision Map. No individual building permit will be granted by Merced County without Homeowner's Association review and approval of all proposed clearing and construction on individual lots. These CCRs and Homeowner's Association by laws shall be either placed on the face of the final map or recorded with the title of each lot.

10. Mitigation Measure 5: VELB protection

Avoid and minimize impacts to potential VELB habitat in blue elderberry shrubs through preservation, protection and enhancement.

- A. The applicant shall permanently protect blue elderberry shrubs within the two preserve areas shown on Figure 5 (four-acre Ecological Preserve and nine-acre Passive Recreation Area), as described in Mitigation Measure 4, through dedication in fee of the two areas to a Homeowner's Association (HOA). In forming the Homeowner's Association, the applicant shall establish an endowment and annual maintenance fees sufficient to ensure permanent management of the two preserve areas, including annual monitoring by a professional biologist pursuant to measures c-vii, d-v, d-vi, and d-vii below.
- B. Alternately, the applicant may deed the areas to a conservation organization or public entity, or through another mechanism acceptable to Merced County, that would result in permanent conservation and maintenance of the two areas. Within the preserved areas, all development or habitat modification, including changes in site hydrology through the creation of grassy areas, landscaping irrigation or the introduction of invasive/weed species (unless approved by CDFG and USFWS), shall be prohibited.
- C. During mass site grading and road and underground utility construction, all elderberry shrubs within the project area, but outside of the permanent preserves identified above, shall be preserved and protected through incorporating no-disturbance construction setbacks and regular monitoring in accordance with USFWS guidance. Specifically, the project must maintain non-disturbance buffers of at least 30 feet from any retained shrub to avoid habitat take, including the following protocols:
 - 1. All blue elderberry shrubs within the project site, and a 30-foot buffer line around them, shall be shown on grading and vegetation clearance plans.
 - 2. To avoid incidental take of habitat, all existing elderberry shrubs within the project site shall be flagged and enclosed by fences at least 30 feet from the canopy dripline (or other distance determined by the USFWS) during construction activities.
 - 3. Contractors shall be briefed on the legal requirement to avoid damaging the elderberry plants and the criminal penalties for not complying with these requirements.
 - 4. Work crews will be instructed about the status of the VELB and the need to protect its elderberry host plant.
 - 5. Signs shall be erected every 50 feet along the edge of all blue elderberry conservation areas, with information pertaining to the sensitivity of, listed status of, and penalties involved with damage to the plants. Signs shall include the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines and imprisonment." The signs shall be clearly readable from a distance of 30 feet, and shall be maintained for the duration of construction.
 - 6. A penalty fee of \$10,000 shall be included in the construction specifications for each act of damage to a blue elderberry shrub within a conservation area. The penalty fee shall be submitted to the HOA to be used solely for restoration and/or mitigation of the damaged area. Any penalties or requirements imposed by the USFWS and/or CDFG shall be the responsibility of the applicant or its contractor.

- 7. During periods of mass site grading and active roadway or underground utility construction, a qualified biologist shall regularly visit the construction site (at least weekly during active construction periods) to ensure that the elderberry shrubs are not being impacted.
- D. Blue elderberry shrubs within individual lots shall be permanently protected through the following conservation measures, in addition to those described in Mitigation Measure 4:
 - Locations of existing blue elderberry within Lots 1, 5, 6, 8, 25, 26, 27, 29, 30, 31, 32, 33 and 36, and the 30-foot buffer conservation area/deed restriction shall be clearly marked on individual lot maps. All grading or construction shall be prohibited within open space conservation easement areas.
 - 2. Blue elderberry conservation easements (including the shrub and a 30 foot buffer) shall be permanently fenced (e.g. low profile stakes and natural material rope) and marked with a sign providing information pertaining to the sensitivity of, listed status of, and penalties involved with damage to the plants. Signs shall include the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines and imprisonment." The signs shall be clearly readable from a distance of 30 feet, and shall be permanently maintained;
 - 3. A penalty fee of \$10,000 shall be included in the construction specifications for each act of damage to a protected plant, tree, and/or habitat. The penalty fee shall be submitted to the HOA to be used solely for restoration and/or mitigation of the damaged area. Any penalties or requirements imposed by the USFWS and/or CDFG shall be the responsibility of the homeowner or their contractor.
 - 4. The applicant shall establish Conditions, Covenants and Restrictions (CCR) applicable to the single-family residential lots, and enforceable by the Homeowner's Association, that ban construction or grading within the open space conservation easements. The CCRs shall require homeowners of lots that include blue elderberry shrubs (Lots 7, 8, 25, 26, 27, 30, 31, 32, and 36) to permanently abide by a prohibition on the clearing and construction (according to setbacks as directed by the USFWS) within 30 feet of any blue elderberry shrub. The CCRs will include the following protocols:
 - a. Homeowner and/or their agent shall not perform any grading or construction outside of buildable areas as indicated on the Final Subdivision Map.
 - b. Homeowner and/or their agent shall avoid disturbing roots within the blue root protection zone (30 feet from the shrub).
 - c. Homeowner and/or their agent shall avoid filling, trenching or paving within the root protection zone.
 - d. Should any of the events listed above as (1)-(3) occur, homeowner or their agent shall be responsible for restoring the damaged area to its state prior to the initiation of construction or grading.

- e. Homeowner and/or their agent shall notify the USFWS in the event that a blue elderberry shrub is damaged. If shrubs must be removed, the homeowner will be responsible for the cost of replacing the shrub according to USFWS protocol (see conservation measure e below).
- 5. A certified biologist shall be present on-site at the initiation of single family residence construction within Lots 7, 8, 25, 26, 27, 30, 31, 32, and 36 to ensure that builders and crew have been adequately instructed to avoid disturbance within blue elderberry conservation areas and that blue elderberry shrubs have been flagged and enclosed by fences at least 30 feet from the canopy dripline (or other distance determined by the USFWS) during construction activities;
- 6. After major construction and landscaping is completed within Lots 7, 8, 25, 26, 27, 30, 31, 32, and 36 and prior to issuance of a final occupancy permit by Merced County, a certified biologist shall visit the site to confirm that blue elderberry shrubs have not been degraded, damaged or removed.
- 7. For 10 years after construction of the first residence within the subdivision is completed (as indicated by issuance of a certificate of occupancy by Merced County), a certified biologist shall annually monitor protection of blue elderberry shrubs within the project area (including single family residential lots). Every annual visit will include a survey of the number of shrubs and a count of the number of basal stems with a diameter of one inch or greater by size class, as well as visual inspections of all such stems for VELB and/or VELB exit holes.
- 8. A written report, presenting and analyzing the data from the project monitoring, will be prepared by a qualified biologist for each year of monitoring efforts. Copies of the report will be submitted by December 31 of that year to the USFWS and the CDFG. The report will address the status and progress of the blue elderberry shrubs, as well as any failings of the conservation plan and the steps taken to correct them. Any observations of VELB or fresh exit holes will be noted. Copies of original field notes, raw data, photographs and maps of the conservation area will be included with the report. The elderberry survival rates, conditions, and sizes of the plants will be analyzed and presented in the report. Observed and likely future threats will be addressed along with suggested remedies and preventative measures. A copy of each annual report shall be submitted to Merced County concurrently with its submission to USFWS and CDFG.
- E. The Federal Endangered Species Act (as managed through the USFWS) requires transplanting or replacing of elderberry shrubs for any direct or indirect impacts to shrubs with stems greater than one (1) inch before removal of any existing elderberry shrubs. If approved by the USFWS, prior to any further site disturbance or grading, or recordation of any Final Subdivision Map, any blue elderberry shrubs on the project site that will be impacted shall be transplanted to compatible sites with compatible habitat within the proposed preserves adjacent to the site. This preserve provides optimal conditions for elderberry shrubs, as evidenced by the thriving extant populations in the proposed preserve. In order to minimize the potential adverse effects of relocation, transplanting shall be completed during the winter season, while the elderberries remain in their dormant phase.

Transplanting efforts shall be completed well in advance of any construction activities on the project site, and shall be overseen by a qualified biologist to ensure that proper procedures are followed. The applicant shall implement any additional mitigation identified by the USFWS.

F. Construction and operation of the off-site stormwater detention system and any mitigation planting or transplanting undertaken by the project applicant or successor-in-interest shall avoid all existing blue elderberry shrubs, including a minimum 30-foot buffer area around each shrub or as otherwise approved by the USFWS.

11. Mitigation Measure 6: Swainson's hawk and other raptor protection

Avoid and minimize impacts to Swainson's hawk, through preservation, protection and enhancement.

- A. Construction Scheduling. Any trees that need to be removed to facilitate future development shall be felled outside of the local avian nesting season (February 1 through August 31). If trees are to be felled within these dates, the applicant shall arrange for pre-construction nest surveys to be conducted by a qualified biologist no more than 30 days prior to the initiation of proposed development activities. A copy of the raptor nest survey report shall be provided to the County. If surveys identify nest-building activity or an active nest near the proposed development, the applicant shall initiate consultation with the Department of Fish and Game to obtain recommendations on avoiding impacts to nesting birds while the nest is occupied. Generally, buffers are erected around active raptor nests until the young have fledged or the nest is abandoned. Buffers range between 50 and 500 feet, depending on the species, and are determined through consultation with the CDFG.
- B. Foraging habitat compensation. The project applicant shall implement one of the following options to mitigate for the loss of ~20 acres of low-moderate quality Swainson's hawk foraging habitat on the project site:
- Prior to the initiation grading activities, purchase conservation easements and/or fee title acquisition of suitable foraging habitat (within 10 miles of a Swainson's hawk nest tree) at a 0.75:1 ratio (e.g. 15 acres for 20 acres impacted), as well as establishment of an associated management endowment to fund management of these lands in perpetuity.

OR

Prior to grading activities, place 15 acres of suitable agricultural land within 10 miles of the nearest Swainson's hawk nest tree into an agricultural easement managed by CDFG for Swainson's hawk foraging. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Certain low growing row or field crops are appropriate as well. Vineyards, orchards, cotton fields and other dense vegetation do not provide adequate foraging habitat.

12. Mitigation Measure 7: Oak woodland preservation

Avoid and minimize impacts to oak woodlands, through preservation, protection and enhancement. The amount of oak woodland scheduled to be removed as part of this project requires mitigation in compliance with Public Resources Code §21083.4 (SB 1334). The project applicant shall implement all measures described in the Biological Resources Mitigation and Monitoring Plan (Vollmar 2009) (attached as Appendix A, of this MMP). The Biological Resources Mitigation and Monitoring plan includes, but is not limited to the following requirements:

- A. During construction, the 179 oak trees and their root protection zone (150% circumference of the dripline) within the portion of the project site to be developed, and within the conservation/deed restriction area, shall be protected from disturbance with flagging and hay bales along the root protection zone.
- B. Compensation plantings at a ratio of 3:1 shall be required for all Oak trees to be removed as a result of project implementation that are five inches in dbh or greater existing at the date of project approval, or having existed on the site in the period from January 1, 2003 to project approval. The replacement trees must have a guaranteed survival rate of 70 percent at the end of seven years. Additional plantings at a ratio to 3:1 shall be made if, at the end of seven years, the survival rate is less than 70 percent; such additional plantings shall be monitored for a subsequent seven year period. Compensation plantings shall be implemented for the 45 impacted valley oaks. Diameter at Breast Height (dbh) measurements (measured at approximately 4.5-feet above the ground) for the 45 impacted oaks aggregate to a total of 504 inches.
- C. The remaining 177 trees on the project site shall be preserved within open space conservation areas (deed restrictions) to prohibit their cutting or interference, along with 138 valley oaks within the two proposed preserves, for a sum total diameter of 4,544 inches. Further, the 138 oaks within the two preserves shall provide 13 acres of undisturbed, natural oak woodland habitat.
- D. The applicant shall establish Conditions, Covenants and Restrictions (CCR), enforceable by the Homeowner's Association, applicable to the single-family residential lots that will require future homeowners to comply with standard oak tree care practices including (but not limited to):
 - Avoid disturbing roots within the tree's root protection zone (150% dripline circumference, up to 90 feet from the trunk for a mature tree)
 - 2. Avoid filling, trenching or paving within the root protection zone
 - 3. Provide enclosures for seedlings and saplings to prevent damage from herbivores or domestic livestock
 - Employ the services of a certified arborist for pruning or supplemental maintenance such as thinning a crowded stand or tree replacement
 - 5. Avoid overwatering oak trees by planting only drought-tolerant plants that require no summer water around old established oaks, and no closer than 6 feet from the base of the tree.
- E. It is presumed that the existing thriving population of preserve oaks will remain healthy. Nonetheless, the overall health and long-term viability of each oak within the two preserves shall be monitored visually at least once a year for a period of 7 years by a qualified biologist.

13. Mitigation Measure 8: Wetland impact compensation

In accordance with project Mitigation and Monitoring Plan (Vollmar 2006), the project applicant shall compensate for a total of 0.423 acres of wetland loss with the creation of two on-site wetlands totaling 0.899 acres in the preserve areas. As a condition of project approval, prior to any site grading or construction involving fills, road crossings, utility crossings or other direct impacts to Waters of the U.S, the project applicant shall obtain all necessary wetland permits and/or certification from the USACE, CDFG, and Regional Water Quality Control Board (RWQCB). The Biological Resources Mitigation and Monitoring Plan (Vollmar 2009) includes an onsite wetlands compensation construction plan and monitoring plan. Both created wetlands will be constructed to sustain seasonal inundation and perennial sub-

surface saturation. A proposed 0.432-acre wetland (CW-1) would be created in an area currently covered by tailings in the northeastern corner of the nine-acre proposed passive recreation preserve just north of the project site impact area. A proposed 0.467-acre created wetland (CW-2) will be constructed in an area covered by tailings in the northern section of the proposed four-acre ecological preserve. CW-2 would effectively extend an existing narrow wetland situated just north of the proposed limit of grading for the wetland. It is anticipated that the created wetlands will match, if not exceed, the habitat quality of the existing wetlands among the project site tailings. As indicated, typical species inhabiting the existing wetlands include tall nutsedge, rushes, and pale-spike rush, as well as overstory cottonwoods and willows. Excavating new wetland pools to a depth comparable to existing wetlands (typically one foot in depth) will provide suitable hydrology conducive to natural colonization by these native species. Criteria and timetables for evaluating the incremental success of the created wetlands are outlined in the Mitigation and Monitoring Plan (Vollmar 2006). The plan includes measures to insure that on-site un-impacted wetlands and created wetlands will remain inundated or saturated for sufficient duration to support hydrophytic vegetation. Additionally, project designs provide a drainage system (consistent with Mitigation Measures in the Hydrology section of this Initial Study) to prevent surface stormwater or landscaping irrigation runoff from flowing into on-site wetlands in preserve zones, or other nearby wetlands areas, unless adequately filtered by new wetlands or grasslands.

The Sacramento District Corps of Engineers will be provided with an annual report within sixty days of the completion of vegetation sampling for years one, two, three and five. These reports will present the results of the current year's data and discuss the program's progress toward achieving mitigation success. Both COE and USFWS will be notified in writing once it has been determined by the project's wetland monitor that the success criteria for the project have been met, as outlined below. USACE authorization for fill must be secured, and the appropriate wetlands mitigation plan must be approved by Merced County and the USACE prior to issuance of construction permits or recordation of parcel or subdivision maps. The wetlands mitigation plan must also be submitted to the Merced County Planning & Community Development Department for review and approval. Compensation wetlands must meet the following success criteria, as well as any additional criteria identified by the USACE, CDFG and/or the RWQCB:

- Compensation wetlands will remain inundated or saturated for sufficient duration to support hydrophytic vegetation.
- Compensation wetlands will exhibit biotic communities comparable to impacted wetlands.
- Project designs must provide a drainage system to prevent surface stormwater or landscaping irrigation runoff from flowing into compensation wetlands, or other nearby wetlands areas, unless adequately filtered by new wetlands or grasslands.
- Compensation wetlands will be monitored each year for five years, and a report of monitoring results will be submitted to the USACE and Merced County Planning & Community Development Department for review.
- Mitigation plans shall include provisions for reevaluation, in the event that mitigation success criteria are not met within specified time frames.

14. Mitigation Measure 9: Storm Water Pollution Prevention Plan

Construction activities disturbing one or more acres are required by the State Water Resources Control Board (SWRCB) to obtain a General Construction Activity Stormwater Permit and a National Discharge Elimination System (NPDES) permit. Prior to the initiation of grading, the project applicant shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce potential impacts to water quality during construction of the project. As required by regulations implementing the Construction Stormwater Permit, the SWPPP shall include:

- Specific and detailed Best Management Practices (BMP) to mitigate construction related pollutants, including sediments. These controls would include practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricant, paints, solvents, and adhesives) with stormwater. The SWPPP would specify properly designed centralized storage areas that keep these materials out of the rain and/or protected from the wind.
- Dust control BMPs for the stabilization of exposed surfaces and to minimize
 activities that suspend or track dust particles. For heavily traveled and
 disturbed areas, wet suppression (watering), chemical dust suppression,
 gravel or asphalt surfacing, temporary gravel construction entrances,
 equipment wash-out areas, and haul truck covers can be employed as dust
 control applications. Permanent or temporary vegetation and mulching, and
 sand fences can be employed to prevent sediment-laden stormwater from
 reaching receiving waters, or to force stormwater to drop their sediment load
 on-site.
- The SWPPP is required to specify a monitoring program to be implemented by the construction site supervisor. SWRCB personnel, who may make unannounced site inspections, are empowered to levy appropriate fines if it is determined that the SWPPP has not been properly prepared and implemented.

15. Mitigation Measure 10: Fire breaks and fire setbacks

- A. The project shall comply at all times with the requirements set forth in §51182 of the Government Code and §4291 of the Public Resources Code regarding minimum standards for on-site firebreaks, vegetation management, and structure design and maintenance. For lots with 1-acre or greater buildable area, these requirements include:
 - Creation of a minimum 30-foot wide firebreak around the perimeter or each dwelling unit and commercial structure cleared of all flammable vegetation or other combustible growth. Landscaping may be developed within this area if it does not form a means of rapidly transmitting fire from the native growth to any dwelling or structure.
 - 2. Creation of a secondary firebreak from the outside of the 30-foot area described above to 100 feet in which all brush, flammable vegetation, or combustible growth is removed. Grass and other vegetation located more than 30 feet from the dwelling or structure and less than 18 inches in height above the ground may be maintained where necessary to stabilize the soil and prevent erosion. This will not affect requirements for preservation of oaks and elderberry bushes because these preserved resources are not within lots with 1-acre or grater buildable area.
 - 3. Removal of that portion of any tree that extends within 10 feet of the outlet of any chimney or stovepipe.
 - 4. Any tree located adjacent to, or overhanging, a building should be kept free of dead and dying wood.
 - 5. Maintaining the roof of any structure free of leaves, needles, or other dead vegetative growth.
 - Providing and maintaining at all times a screen over the outlet of every chimney or stovepipe that is attached to any fireplace or stove
 - Obtaining a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards.
- B. Prior to approval of building plans for each individual structure, a Defensible Space1 Plan shall be prepared and submitted for review and approval by

¹ Defensible space is the area around a structure, where material capable of causing fire has been cleared, reduced or

the Merced County Fire Department. The Defensible Space Plan shall demonstrate that all material surrounding structures capable of furthering the spread of fire has been cleared, reduced, or modified to act as a barrier between an advancing fire and the structure, and that the Plan complies with the state requirements set forth in SB 1369.

16. Mitigation Measure 11: Comply with Merced County Storm Water Detention Requirements

Pursuant to Merced County Code §17.20.050.D1.g and t, the applicant shall ensure that the capacity of the proposed stormwater detention is adequate to accommodate stormwater flows from the proposed project. The project applicant shall revise the design of the storm detention basin to be constructed consistent with Merced County requirements, therefore accommodating a 25-year storm event. The created wetland shall be constructed and managed as a water quality improvement feature to protect groundwater from the adverse effects of urban runoff.

17. Mitigation Measure 12: Comply with County NPDES BMP Requirements

The project applicant and all successors in interest shall protect the Merced River from any potential contamination generated on the site that could flow by surface or subsurface to the Merced River by implementing Best Management Practices as required by the Merced County Public Works Department pursuant to the County's NPDES permit, and any such additional measures as may be required by the Regional Water Quality Control Board.

Prior to issuance of grading or building permits, the project applicant shall be required to submit plans of the proposed detention and wetland treatment facilities to the Merced County Public Works Department for review and approval. Plans at a minimum shall include detention basin location, size, inlet and outlet details, and specified lining and construction materials. This will allow for engineering review of the designs to ensure that polluted water is sufficiently detained and treated without impacting groundwater quality.

18. Mitigation Measure 13: Extend sewer main

Prior to the recordation of any Final Subdivision Map, the project applicant or any successor in interest shall extend the sewer main either within Merced Falls Road or within a utility easement to serve Lots 11 through 33, or provide surety in a form acceptable to the County for installation of the sewer main. The sewer main shall be installed prior to the issuance of any building permits for individual residences.

19. Mitigation Measure 14: Comply with local and state requirements

The property owner/applicant shall comply with Merced County Public Works and Caltrans requirements as set forth as conditions 1-12 below.

The following specific measures would be required to meet County Roads Division requirements:

- Satisfy Improvement Level 1 requirements as set forth in Chapter 16.08 of the Merced County Code which generally includes dedication of right of way and public utilities easements, roadway construction and installation of matching pavement along existing roadways, street lighting, storm drainage system and underground or relocated utilities and irrigation facilities.
- 2. Release and relinquish all abutter's rights of access to and from the entire Merced Falls Road frontage of Lots as designated by Merced County Department of Public Works.
- 3. The owner shall dedicate on the final map 15 feet of road right of way, for a total road right of way width of 80 feet, and a 10-foot wide public utility easement along the La Grange Road frontage of the property.

- 4. The owner shall dedicate on the final map 20 feet of road right-of-way along the Merced Falls Road frontage of the property to provide a total road right of way width of 80 feet. A 10-foot wide public utility easement shall be dedicated along all public road rights of way.
- 5. The minimum easement width for sewer or storm drain pipelines located outside of the road right of way shall be 15 feet.
- 6. The internal streets shall be designated as a Court and named to the satisfaction of the Department of Public Works and Fire Department. The internal streets shall be designed and constructed per Drawings ST-06B and ST-10 of the Merced County Department of Public Works Improvement Standards and Specifications.
- 7. The proposed internal rights of way to provide access to the internal lots shall be improved to Merced County Department of Public Works standards and named to the satisfaction of the Department of Public Works and Fire Department. A gated entry shall be placed if the road is to be privately maintained. Conditions, covenants, and restrictions shall be provided to address maintenance of a private road, gate, and landscaping as applicable.
- 8. The storm drainage basin(s) shall be delineated on the final map. The storm drainage system shall be designed pursuant to the Merced County Department of Public Works Storm Drainage Manual.
- 9. All lot grading shall be completed, all underground improvements shall be installed and aggregate base material on all new streets shall have been rough graded and compacted, prior to the issuance of any building permits. The developer shall enter into an agreement with Merced County Department of Public Works that no occupancy shall take place until such time as all improvements are completed.
- 10. The Developer/Applicant shall provide centerline striping for those new roads which intersect the existing peripheral streets.
- 11. The Developer/Applicant is advised that he/she may be obligated to comply with Regulations for stormwater runoff issued by the EPA on November 16, 1990 (40 Code of Federal Regulations Parts 122, 123, and 124). For information and direction, contract the State Water Resources Control Board's Construction Activity Storm Water Hotline at (916) 341, 5537, e-mail: stormwater@swrcb.ca.gov, or visit their website at www.swrcb.ca.gov.
- 12. As part of the site improvement/preparation process required for recording a final map, the applicant shall construct a walking path on the north side of Merced Falls Road that runs from the southeast corner of proposed lot #25, as shown on Figure 5, Sensitive Biological Habitats, September 2009, westwards to the intersection of Merced Falls Road and La Grange Road. The applicant shall also provide for the installation of a street light at this intersection. The walking path shall be aligned to avoid additional impacts to oak trees on the project site beyond those outlined in the Mitigation and Monitoring Plan and detailed in Mitigation Measure 7. The exact alignment, dimensions, and surfacing of this walking path shall be approved by the Merced County Department of Public Works Road Division.

VI. COMMISSION ACTION ITEM

A. ROSENBERG'S RULES OF ORDER – Rules of Parliamentary procedure for the 21st Century by Dave Rosenberg. (Adopted by the Merced County Board of Supervisors on January 27, 2009).

Recommendation: The action requested is to:

1) Adopt the Rosenberg's Rules of Order.

County Counsel Marianne Greene says, the last issue the Planning Commission left with in regards to the Rosenberg Rules of Order was how we would handle abstentions, in terms of the vote count. She says she has consulted with her office and the Board of Supervisors does count abstentions as no votes which would be the present-only vote option. This was the one issue she was asked to examine by the Planning Commission. To be consistent with

the Board of Supervisors, the Planning Commission would count abstention votes as no votes. She says she would like to address a prior agenda item for the benefit of all. In regard to the process and basic format of a meeting, it has been customary for the Planning Commission to deliberate as soon as the public hearing closes and then make a motion. Under the Rosenberg's Rules of Order, it would be a different procedure; the motion would be made first following the close of the public hearing and then the deliberation would occur. She says deliberation includes having people come up to answer questions. The public hearing portion is where the public essentially pushes information at the Planning Commission. When deliberating, the Commission is pulling information from the public. Under the Rosenberg's Rules of Order, a motion would come first, it would be seconded, and then there would be the deliberation, discussion and questions by the Commission followed by a vote. There was concern that if we make a motion before deliberation, it would influence the deliberation itself. When you go through the Rosenberg's Rules of Order, there are three basic motions. There will be a basic motion and then deliberating, but there is an option to make a motion to move to amend if a member of the Planning Commission wants to change the motion. As the Commission is deliberating and getting more information to help get everything clarified, they may decide to change the motion based on the information he or she is learning. She says there is a substitute motion which can be made if a member wants to completely do away with the basic motion that is before the body. They would move to substitute the motion. She says by having the motion read after the close of the public hearing, doesn't change the Planning Commission's ability to deliberate in any way. It will take some time to learn the Rosenberg's Rules of Order, but essentially, it provides everybody on the Commission with the same tool box with the same tools, and it creates a level playing field when it comes to the process in which the Planning Commission operates by. This is not only for this Commission, but for the Commission that follows this one as well as all future Commissions. It will create a predictable set of rules that are very clearly laid out. She says once the Planning Commission gets used to using them, it will become easier and easier. She knows that change is hard when you're used to doing things one way, but hopefully these tools will create a very positive set of procedures that everyone will be very clear on. Also, the Commission will be consistent with the Board of Supervisors and incidentally the County Counsel's office is directing that all Boards, Commissions, and the Municipal Advisory Council's (MAC) adopt the Rosenberg Rules of Order so the County is completely unified in the process that we follow.

Commissioner Lashbrook says that in other organizations she's been involved in, if you ask to amend or substitute a motion, it seems like you have to get permission from the person who made the motion originally. She asks if that's how it would be with these Rosenberg Rules of Order.

County Counsel Marianne Greene says no she would not have to get permission to make a motion to amend or to make a substitute motion.

Commissioner Lashbrook asks if the motion has to be voted on before making another motion.

County Counsel Marianne Greene states that there can be more than one motion on the table at once. They get resolved in the most logical order. She says if you look at the Rosenberg Rules of Order on page four in the Commission's back up materials; there can be up to three motions before the body at the same time. The Chair can reject a fourth motion until the Commission has resolved the other motions. When there are two or three motions on the floor at the same time, the vote should precede first on the last motion that is made. She says it is not easy to handle multiple motions, but it's something the Commission will get used to. We will all be learning together. This is for the higher good of the process of the body.

Chairman Tanner wants to clarify that the process will stay exactly the same as it has been except for the fact that now the Planning Commission will be making the motion first and then have a discussion instead of waiting until after the discussion to make the motion.

Commissioner Lashbrook asks if she will have a chance to ask staff technical questions

before the public hearing opens. She also wants to know if, once the public hearing is closed, whether the Planning Commission is allowed to ask questions of the public and applicant, or do they have to wait until after a motion is made.

Chairman Tanner says when a person comes up to speak during the public hearing, and the Commission can ask questions like we did today. He says that Mr. Gordon Gray was asked several questions while the public hearing was still open so he does not think it would be a problem.

County Counsel Marianne Greene says, normally the public gives their testimony, and then the Planning Commission waits until the hearing is closed before asking follow up questions. That is the way it actually has to be done. She says the Commissioners keep notes then call a specific person back up to answer all the questions you want after the public hearing closes and after the motion is made.

Commissioner Lashbrook says that after being on the Planning Commission for three years; sometimes members of the public can barely make it up to the podium to speak either because they have to hurry back to work or they are physically unable to stay. She says the meetings are held at the worst time for working people. To not be able to ask a person from the public a direct, pertinent question based on their testimony at that moment, is confining in her opinion and she is not happy with it.

County Counsel Marianne Greene says she has seen in other jurisdictions where, for a particular project, they may have a night time meeting if they think it will bring a large number of people. She says the Planning Commission can have special meetings that are called at night.

Commissioner Lashbrook says she would like to reserve the ability to ask a direct question to somebody that testifies because she feels it could be important and pertinent to getting a story out. A lot of times, members of the public have to leave right after they give their testimony. At that point, they are gone without any way to call them back up to answer questions the Planning Commission may have.

County Counsel Marianne Greene states that it wouldn't be in conformance with the Rosenberg's Rules of Order. She believes the policy reason behind that rule is if the Planning Commission is questioning somebody during the public hearing, a Commissioner could be influencing their testimony and influencing the other Commissioners. For every Commissioner that would be asking these questions to bring out more information could be perceived by another Commissioner as bringing out more points on one side of an issue over another. She says other Commissioners may tend to create a perception of unfairness for other Commissioners. This may cause the other Commissioners to think they are coaxing someone who is giving testimony during the public hearing by bringing up certain points, which is unfair. The public hearing is for the public to come up and testify. When it's the Planning Commission's turn to deliberate, then follow up questions can be asked. She believes it causes a perception of bias. The Commissioner's hold a position which may influence how a person responds if you talk to them during the public hearing, because it is their turn to speak to the Planning Commission uninterrupted. She says the public hearing is their time. When it's the Commission's time nobody is allowed to ask questions. She states that asking a question is never just completely neutral; there is intention behind the question or a certain type of concern that gets heard. It could be heard not just through the words, but through the tone. She explains that there is a reason for this and it creates a more pure process when we keep those separate.

Chairman Tanner says there may be a lady in the back who could be too intimidated to come up and speak because she may get drilled by the Commission. She should be able to come up and give her testimony and know that nobody is going to ask her questions. If everyone that comes up gets asked a technical question, it may prevent other people from wanting to come up to ask their questions.

County Counsel Marianne Greene agrees and adds that it can create a feeling of intimidation

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and/or bias even when it is well intended. The public hearing is the public's time to speak.

Commissioner Lashbrook says she could see having a rule to not interrupt the person speaking until they are finished, and then ask them if they would be willing to answer a question or two. They would have the right to say no if they choose. She feels that by asking questions, it could possibly open doors to new information that may not have been discovered. She believes that not being allowed to address the public during the public hearing closes down the public process in a certain way. She thinks there should more open conversation, but understands having to have some of these rules.

Chairman Tanner says the Planning Commission can still ask the public questions once the public hearing closes.

Commissioner Lashbrook says that the speakers may not still be at the meeting when the public hearing closes depending on how long it stays open.

County Counsel Marianne Greene states that asking any member of the public if they would be willing to answer questions when they finish giving their testimony would not conform to the Rosenberg's Rules of Order. It should also be taken into account the Commissioners who are not apt to speak to people while they are giving their testimony or ask them follow up questions. It creates a much more level playing field between Commissioners when everyone is required to be patient and listen fully during the public hearing.

Commissioner Lashbrook says those same Commissioners do not ask questions or make statements during the deliberating process.

Chairman Tanner states that it is a Commissioners option not to ask questions if that's what they choose.

Commissioner Lashbrook asks if there is a video the Planning Commission could watch or some training. She also wants to know if Chairman Tanner has to repeat the motion so many times like he has today,

Chairman Tanner says that it is the job of the Chair to be clear about what motion is on the table. If the Commission has a long discussion he wants to make sure to repeat the motion so there isn't any misunderstanding prior to the vote.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVES THE ADOPTION OF THE ROSENBERG RULES OF ORDER OF PARLIMENTARY PROCEDURE FOR THE 21ST CENTURY BY DAVE ROSENBERG AS ADOPTED BY MERCED COUNTY THE BOARD OF SUPERVISORS.

VII. <u>DIRECTOR'S REPORT</u>

Robert Lewis, Development Services Director, says he would like to thank the Planning Commission for a great day today. Also, today's first four items from Panther Energy that the Planning Commission decided to continue until May 12, 2010, will be on the agenda as Commission Action Items. He says there will be no public hearings because they were held today.

VII. COMMISSIONERS COMMENT

None

IX. <u>ADJOURNMENT</u>

There being no further business, the meeting adjourned at 1:20 p.m.