MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF JULY 14, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of July 14, 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 9:06 a.m., on July 14, 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 Cindy Lashbrook Commissioner Greg Thompson Commissioner Mark Erreca
Staff Present:	Robert Lewis, Development Services Director William Nicholson, Assistant Development Services Director Kim Anderson, Recording Secretary David Gilbert, Senior Planner Jeff Fugelsang, Planner II
Legal Staff:	Marianne Greene, Deputy County Counsel
Commissioners Absent:	None

III. APPROVAL OF MINUTES

M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF JUNE 23, 2010.

IV. CITIZEN COMMUNICATIONS

Tom Grave, City of Merced resident, said he is concerned with the County and City of Merced, as we are updating the General Plan, that there is some effort and cooperation in communication regarding housing, circulation, open space and biological resources.

Robert Lewis, Development Services Director, replied to Mr. Grave's comment and said they are in constant communication with all the Cities on General Plan issues. SB375 affects all Planning Departments, Cities and Counties, and they do enter into revenue sharing agreements with the Cities, and there are discussions about land use as well. They have done an extensive outreach and held over 60 meetings in the last 3 years, talking about activities going on in the County and coordinating with other Cities as well.

Commissioner Mobley added that the Commission will be meeting soon to discuss SB375 and the impact on the Planning process.

Commissioner Lashbrook said it would be good to have a forum where the City and County Planning Commissions meet for discussions on the process.

County Counsel Marianne Greene, said this discussion should be reserved and heard during the Commissioners comments portion of this meeting.

V. PUBLIC HEARINGS

A. ZONE CODE TEXT AMENDMENT NO. ZCTA09-003 – Model Water Efficient Landscape Standards - To review a proposed ordinance amendment that incorporates the State Model Water Efficient Landscape Standards (California Code of Regulations, Title 23, Division 2, Chapter 2.7). The purpose of the Model Efficient Landscape Standards is to promote the efficient use of water in landscaping throughout California. The ordinance amendment proposes necessary revisions to Section 18.38 of the Zoning Code (Landscaping Standards) to provide compliance with the State Model Water Efficient Landscape Standards. **DG**

Recommendation: The actions requested are to:
1) Recommend the Board of Supervisors determine the project is categorically exempt from CEQA review under Section 15307 of the CEQA Guidelines, and
2) Recommend the Board of Supervisors adopt the ordinance adopting the Model Water Efficient Landscape Standards and revising Section 18.38 of the Merced Zoning Code, based upon the findings presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated July 14, 2010.

Commissioner Lashbrook said historically, permits for landscaping have been for backflow prevention devices. Is that what we have been doing?

Planner David Gilbert said the County has to review the landscaping and also the irrigation, so the County checks those plans as part of a new development project.

Commissioner Lashbrook noticed that this project will need an audit and asked if County government staff or a private consultant will conduct that.

Planner David Gilbert said the Building Official has the authority to do that.

Commissioner Mobley said the report talks about existing landscaping over 1 acre. He said if you have a property that is say 1.1 acre, do you have to retrofit on your landscaping?

Planner David Gilbert responded and said he is not sure how the Building Official would enforce that, since the public wouldn't be aware of the ordinance.

Commissioner Mobley said he could see that being confusing to property owners. This should be grandfathered in a little better than it is currently.

County Counsel Marianne Greene asked Commissioner Mobley to repeat his question.

Commissioner Mobley read part of the report. He says that part of the applicability that according to adopting the state legislation and water efficiency and landscaping standards apply to a project requiring a building permit… if it meets any of the following thresholds, for existing landscaping installed before January 1, 2010, that is over one acre. He asked if existing homes that are in compliance with this, do they have to be retrofitted?

County Counsel Marianne Greene said no.

Commissioner Lashbrook said the report says there will be audits on those lots.

County Counsel Marianne Greene said if you look at the ordinance at the existing landscapes installed before January 1, 2010, they may require additional attention to irrigation and water analysis. This law is enforced by the State. More details will be revealed as various jurisdictions start to implement this ordinance. We will come back with an update on that aspect. Other jurisdictions are facing some of these limited resources and same issues as our County. This is simply a corporation of the State's law that we are required to incorporate into our Code. Details will emerge as we get a lead from the State.

Commissioner Mobley said it sounds like we need to pass the ordinance before they know what's in it.

Ms. Greene said we know what's in it, but not to the extent as to how it is implied. There is an understanding that a lot of jurisdictions are very short on enforcement right now. This is going to take time to implement. This is definitely a change. It will primarily affect new large development.

Commissioner Lashbrook read the ordinance and said there was a strikeout on the "low plant factor" and she doesn't understand.

County Counsel Marianne Greene, said this explanation is consistent with State Law. This is explained in the model ordinance.

The public hearing opened at 9:28 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:29 a.m.

County Counsel Marianne Greene read into the record the definition of the Water regulations. The State is applying their water efficiency landscape standards in this area.

Commissioner Lashbrook preferred to have "plant water use factor" words added to that definition rather than "plant factor" for more clarity.

Robert Lewis, Development Services Director, explained that these are definitions that have already been passed by our State Legislature and would be hesitant to change the definition. The definition is trying to explain in further detail what plant use water is as far as being a factor.

Commissioner Lashbrook is seeing two phrases, either one that is being defined. She is looking for the 2nd definition to be put in. She would like "water use" to be put in between plant factor. She doesn't feel like this is a big issue.

Commissioner Mobley said if he has a 1.1 acre home, will he get a mandate from the State saying he has to re-do his landscaping?

County Counsel Marianne Greene says this is not mandatory in this law. It says "may", and that's where the State is going to, in further details, be more forthcoming. The emphasis is on new development and not existing.

Commissioner Thompson said in most cases, a property owner would be working with a Building Official and part of the requirement with this landscape ordinance, you would be working with a Civil Engineer and they will interpret this language to the client or the general public.

Commissioner Lashbrook said there appears to be a huge pressure on staff. Again, those are two clarifying words and wouldn't hurt to be added in the ordinance.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS TO EXEMPT ZONE CODE TEXT AMENDMENT NO. ZCTA09-003 FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS APPROVE ZONE CODE TEXT AMENDMENT NO. ZCTA09-003, INCLUDING THE MODEL WATER EFFICIENT LANDSCAPE ORDINANCE WITH REVISIONS TO SECTION 18.38 OF THE MERCED COUNTY ZONING CODE, BASED ON THE FINDINGS LISTED IN THE STAFF REPORT

AND TO ADD THE WORDS "PLANT WATER USE FACTOR" TO THE DEFINITION FOR THE PLANT FACTOR.

B. MINOR SUBDIVISION APPLICATION No. MS07-027 AND ADMINISTRATIVE PERMIT No. AA08-033 - Blohm Road Joint Venture (George Simmons & Don Chapin Company) - Minor Subdivision No. MS07-027 proposes to subdivide 26.9 acres into four parcels: Parcel 1 = 15.0 acres, Parcel 2 = 3.46 acres, Parcel 3 acres = 3.46 acres and Parcel 4 = 5.0 acres. Administrative Permit No. AA08-033 proposes to construct a concrete batch plant on a 4.03 acre portion of proposed Parcel 1 (15.0 acres). The project site is located at the southeast corner of Henry Miller Avenue and Volta Road in the Volta area. The property is designated 'Industrial' and 'Neighborhood Commercial' in the Volta SUDP and zoned M-1 (Light Industrial) and C-1 (Neighborhood Commercial). **JF**

Recommendation: The actions requested are to:
1) Adopt the Mitigated Negative Declaration in conformance with CEQA Guidelines; and
2) Approve Minor Subdivision No. MS07-027 and Administrative Permit No. AA08-033 based on the project findings, and subject to the conditions of approval and mitigation measures presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated July 14, 2010.

Commissioner Thompson asked if combining a Minor Subdivision and Administrative Application is common.

Planner Jeff Fugelsang said yes it is common on projects that are related and should be heard together for cumulative impacts.

County Counsel Marianne Greene said that would be called piecemealing if those applications were separate.

The public hearing opened at 10:38 a.m.

John Williams with Williams Research and here on behalf of Valley Citizens, submitted three additional documents for the record with his full comments. He will summarize each letter for the Commission.

County Counsel Marianne Greene asked Planner Jeff Fugelsang to go through each letter submitted and to make sure that each letter is made available to the public.

Planner Jeff Fugelsang said the first letter received was from Autumn Wind Associates Inc. dated July 13, 2010. The second letter was received from Dale La Forest & Associates on July 13, 2010. He added that a letter from John Williams shows a date of May 13, 2010, but this letter was not submitted to the Planning Department, it was submitted to John Williams from his Consultants. A letter was submitted from Mark E. Grismer dated May 10, 2010 and we are receiving this letter today on July 14, 2010.

Mr. Williams continued with his comments and said he believes an Environmental Impact Report would be appropriate. An Initial Study examined this project as a 300 cubic yard a day production facility. The plant is capable of over 1,000 cubic yards of production a day. The facility contains a yard for task concrete block production, an activity that was never analyzed in the Initial Study and Negative Declaration. The noise is significant. Ortegalita Road is going to become a haul route for incoming gravel and outgoing mixture trucks. There will also be significant noise impacts to the nearby residences in Los Banos. The traffic expert found the traffic impacts are underestimated in the Initial Study. The Public Utilities Commission commented that the County should ensure that the warning devices and median separations near the tracks are reviewed and improved. The PUC recommendations were never included in the Mitigation Monitoring Section of the Negative Declaration. The air quality impacts are underestimated regarding water usage. The plants claims are going to gather and reuse storm water and waste water on the site. The hydrology expert found that there is considerable

issues not dealt with adequately and deserved more discussion. The Grassland Ecological Area is directly adjacent and wells will be drilled near the wildlife area. There is no analysis of the potential conflicts regarding these draw downs of the ground water. Fish & Game wrote a letter initially, urging mitigation measures and none of these has been incorporated. Finally, he suggests a new condition on the permit suggesting a 300 cubic yard limit on production, mitigation lands should be provided as requested by Fish & Game. The PUC mitigation measures should be adopted and included in any project approvals. Mitigation fee for road damage should be included with 10-20 cents a ton for production, like in other Counties such as Tulare, Yuba and Yolo County.

Don Chapin, project applicant, responded to some comments made and said the data that was provided by Mr. Williams isn't accurate. He applied for an average 300 cubic yard per day plant, somewhere around 60,000 cubic yards per year would be its maximum output, with the plant having the capacity to produce about 160 cubic yards per hour. It's normal to have a large plant capacity so that you can maintain customer requests and orders. They do not intend to produce 2400 cubic yards of concrete a day. He currently has three ready mix operations, one of which is located in the California State University of Monterey Bay. They have the only plant placed in California CSU system on its own property. This is a model plant. It has all the mitigations that have been included in this current application, it captures 100% of the water that falls onto the pavement and is re-circulated and recycled as they intend to do with this project. Some comments indicate that they are going to put up a block plant and making small blocks. This is not what that is intended for. They recycle 100% of the material that comes into their plant and they can't reclaim it through their recycling system if it's a large quantity. They pour it into large blocks, into a cubic yard each and those blocks are used. These are used all over the County as bunkers to make various things. It's a very low quality block but it is a recycled concrete product. You have to have an area to store the blocks. The Fish & Game Department letter says they agree to the Mitigation Measures and his company has signed an agreement with the County Public Works Department to pay a $2.50 fee per loaded concrete truck leaving this facility for any road impacts they may create. This concludes his comments and is available to answer any questions and asked for approval of this application.

Maureen McCorry, San Joaquin et al, said she would like to request the original documents that caused Staff to create the memo from the Public Works Department.

Planner Jeff Fugelsang responded and said there is no email, and this was a phone call from Steve Lyons with the Public Works Department.

Ms. McCorry continued and said she would like to echo the concern that this rises to the level of an environmental impact report due to some of the concerns raised in prior testimony, and to some of the concerns she has. She does agree that the Fish & Game Department did provide sufficient comments, they do not see anything from the Fish & Wildlife Department and although the staff report acknowledges that they were sent a communication, there was also a time lag. The Public Works Department had commented on the fact that three years had expired since they made their initial comments. They have found that documents do not find their way into the reports and sometimes agencies that have regulatory oversight in this area, the ecological impacts are significant. She would like to know if there has been any consultation with the Fish & Wildlife Department. She is talking about a habitat here that is not adequately presented in the photographs. While it is a commercial zone, there are some huge issues that were ignored in the Staff Report and the mitigation measures, it is not about where the animals are nesting, this is a migratory corridor. Animals are moving in and out. The noise and light impacts as well as the under analysis or almost no analysis on water was significant here. There is no storm water report to analyze this, so the public doesn't have the opportunity to understand how the hazardous wastes are going to be handled, that's all deferred, so there are deferrals of hazardous waste in a concrete batch plant, we can expect very serious solvents and chemicals. It is their understanding that often tires will be washed with gasoline, we don't have a storm water report to analyze and understand what those impacts are. She referenced the letter from Chevron, as we know oil companies are overly optimistic about impacts. They have noted that there are oil lines and pipelines that are in this area and if they are properly studied before this is put into place there is no problem. But there is no analysis

and nothing that they could find that addresses that concern and how the applicant is going to move forward on these things. While Monterey is a model, this is a new plant and a new area. She questions the idea of capacity and trying to fulfill orders and their capacity is set up as their rate probably could have supplied the last applicant that was here. Is this going to be a place that is going to be piecemealing or tearing off and providing cement for that project as well as Hwy 152 or is this going to go into I-5 or Los Banos? What are the potentials here? This is a very big concern and there is never a mention as to why it needs to be parceled out. What happens to the remaining parcel that is not in the four acre amount that is listed? There are possible impacts on Ingomar Grade and the Railway. She would like to have the opportunity to make additional comments in the future.

County Counsel Marianne Greene asked the Consultant to respond to the issues raised during the public comments and respond to the issue of the SWIP, the hazardous material analysis, the Chevron letter and the technical report provided by Mr. Williams. Ms. Greene asked Mr. Fugelsang to respond to the letter from the US Fish & Wildlife.

Trevor Macenski with Michael Brandman and Associates, said he would like to see the additional comments that were submitted, so he can review them. He began with the Air Quality comments. He said regarding the Autumn Wind Associates Inc. letter, in reviewing the analysis provided, there were eight points the letter touched on with the issue between maximum verses average. The con-eco equipment diagram mentions a storage bin capacity of the proposed batch plant, having an aggregate bin of 200 cubic yards. So the bin that will actually be processing the concrete only has a storage capacity of 200 yards, which would then have to be refilled and the stockpiling requirements which the San Joaquin Valley Unified Air Pollution Control District will require on the stockpiles will limit the capacity. The 2nd point is the exceeding of the average 300 cubic yards figure affecting a particular matter, in particular 2.5 and PM10 levels per year should be addressed. The comment letter incorrectly describes how the SJVAPCD addresses those things. To understand the matter, you have to first look at the regional impacts as well as the localized impacts. The regional impacts will be evaluated annually and we are well below those thresholds based on the 300 cubic yards. The localized impacts are restricted by Regulation 8 of the SJVAPCD, which are the stockpiling requirements. The 3rd point brought up is the capacity and he previously spoke about the equipment that has a limit to its capacity in the stockpiling also associated with the facility. The 4th point brought up was trip generation that was also miscategorized. There was a concern about the 70th percentile development and how trip generations were developed with that. That was coordinated with the County Roads Department and it is specifically for the analysis of peak hour traffic in the AM and PM. The 5th point that was addressed in the letter was regarding the proposed equipment can only carry and hold a capacity of 200 cubic yards per day before it has to be refilled. The 6th point in the letter in regards to identifying individuals who would be responsible for inspections related to the filters on the trucking equipment. Mr. Chapin has a solid record of implementing these types of measures, as they have done so on previous projects and in working with Merced County, the person responsible for implementing and signing off on the MMR would be the same person that would be implementing this specific mitigation measure. The 7th point in the letter is regarding the Crystalline Sillica health risks. Crystalline Sillica is not listed by the Air Resources Board as a toxic air contaminant; therefore it wasn't analyzed in the health risk assessment which was prepared for the project. The potential impacts that were a result from Crystalline Sillica will also be mitigated by the existing Regulation 8 for the SJVAPCD, which is the dust monitoring measure. He said if the Commission has any questions on this specific letter, he is available to answer them. The Commission had no questions. Mr. Macenski moved on to the LaForest Associates analysis letter on the noise impacts. There are two primary fundamental flaws in the analysis which need to be clearly articulated to make sure you understand why these numbers are not accurate. The noise analysis focuses on local residents within the City of Los Banos, which has a different noise ordinance than the County of Merced. The residence surrounding the proposed batch plant also has a different noise threshold than was articulated in this report. The residence surrounding the batch plant are not held to the same standard of single family residential given their land use and zoning and Planner Jeff Fugelsang can speak to that point.

Planner Jeff Fugelsang responded and said there is an attachment to the staff report that is in response to the initial comments from Dale LaForest showing the residences that he identified in relation to their zoning. Staff identified that the overwhelming majority of the residents were not residentially zoned or designated. They are all commercial, industrial and agriculturally zoned residences. He mentioned two residences and both are red tagged, the roofs had collapsed and those were permitted by a Conditional Use Permit as an accessory building to an old auto repair shop that used to be there, none of which exist anymore.

Robert Lewis, Development Services Director asked Mr. Fugelsang to expand on the homes that were red tagged.

Mr. Fugelsang replied and said that the two to the south were red tagged and a trailer was red tagged for being illegally occupied.

Mr. Macenski said they were evaluated and based on the commercial and industrial threshold; it will not exceed the County's threshold for noise exposure. The noise impacts from Ortigalia were also mentioned in this document, but they didn't mention the previous environmental documents which were developed by the town of Los Banos, identifying the residential structures along Ortigalia Road will be exposed to a higher than normal noise exposure from truck and traffic. The town has not identified Ortigalia as a non-trucking route.

Mr. Lewis asked Mr. Macenski to further explain the cumulative noise impacts as far as the entire area and the impacts with the high speed rail.

Mr. Macenski said you have to establish a base line of an existing noise scenario, so the existing Community is in an Industrial area which is currently exposed to higher than normal noise exposure levels with the cumulative effect of the existing processing plant, the existing truck traffic and also the proposed high speed rail, which will far surpass the previous two mentioned noise sources. So the cumulative of that area will already impact the noise in the surrounding area and the residences in that area. When you have an impacted noise area, which establishes your base line, you use the approach of a change above and beyond that existing scenario, so it has to be a decibal increase above and beyond three decibals, which is considered to be perceivable which is above and beyond the regulatory establishment of the threshold. In modeling that we determined that there would not be a three decibal increase above the County's threshold for industrial and commercial areas keeping it below the impact.

Planner Fugelsang said the Highspeed Railway will be located to the north of the project site on Henry Miller Avenue.

Mr. Macenski said in the County's General Plan there was a specific noise analysis done in the area to identify areas within the County that are impacted from noise.

Mr. Lewis asked Mr. Macenski to discuss the lighting impacts as well.

Mr. Macenski said the lighting impacts of the facility will also be subject to the County's existing ordinance on lighting. It's proposed that the lighting is only going to be used for the early morning operations and sun down operations in the winter when there isn't as much light. The intent is to not "glow" but rather to allow for safe operations of the facility. The County will require directional shielding as not to flow onto adjacent properties.

Marianne Greene suggested a 20 minute break to review all additional comments regarding this application.

Planner Jeff Fugelsang addressed the Grassland Ecological Area Plan, the Chevron letter, the letter from Public Utilities Commission, the City of Los Banos letter with concerns and the Fish & Wildlife letter. The public raised concerns over the grasslands ecological plan and the inconsistencies. The land use and economic study was completed for the Grasslands Water District in July 2000. It identified a two mile buffer area, not an actual boundary around the ecological area boundary in which development should not occur.

However, it was never adopted by the County and is voluntary and not law. It identified that portions of the City of Gustine, Dos Palos, Merced and Los Banos are within the 2 mile buffer area. They do not recognize that and the City of Los Banos has developed housing within that area. They proceeded with the plan and the plan did not evaluate the Volta SUDP. The high speed rail will be travelling through that corridor. They've been working with the Ecological area management team and it finalized that route, even though it has not been approved yet. Regarding the Chevron letter; Mr. Chapin has agreed to a protocol. Staff has had extensive conversations with the Chevron Environmental Company; no materials are expected to be uncovered, since the pipeline was on the south end of the Union Pacific Railroad. The substance is molasses like and it's not likely to travel through soil. He has had extensive conversations with the Public Utilities Commission staff. Their letter was addressing the Roadway Impact Agreement and he requested a modification.

Mr. Lewis asked Mr. Fugelsang to detail the Chevron letter before covering the traffic portion.

Mr. Fugelsang said the Chevron letter identified a former Tidewater Associated Oil Company pipeline that existed near the Don Chapin proposed batch plant. The alignment was near the railroad right-of way and was constructed in the early 1900s to transmit crude oil from the southern San Joaquin Valley into the Bay area until the 1970s. It hasn't been used for the last 40 years. Chevron did not seem overly concerned about it and we established a protocol which will be the following: If hazardous substances are found during the construction, the applicant shall do the following steps. Immediately stop construction and contact the Chevron Environmental Company, analyze the soils and then produce a report to the County and to Chevron and Mr. Chapin has agreed to that protocol.

Marianne Greene, County Counsel, suggested that statement be modified to state: If substances are found that match the description in the Chevron letter, because we wouldn't know what materials consist of, but from the letter, it does say that it can be plainly identified by plain eyesight. Is that correct?

Mr. Fugelsang said yes that is correct. Ms. Greene asked if it was Chevron Environmental Company that Mr. Fugelsang spoke with. Mr. Fugelsang said it was their environmental portion of their Company.

Mr. Macenski added that he is a registered Environmental Assessor with the Department of Toxic Substance control and conducts evaluations throughout the State of California for Phase I and Phase II of site assessments and he did evaluate the site of this project. He saw no indication of pipelines on the subject property or in the direct immediate vicinity. This is not specifically documented anywhere, but he wants to put it into testimony now that he did go out and evaluate that.

Ms. Greene asked Mr. Macenski to identify the project he did an evaluation for.

Mr. Macenski said the project he did a site visit for the Administrative Permit No. AA08-033 and Minor Subdivision Application No. MS07-027, the Don Chapin Company concrete batch plant project which is located in Volta, CA and he conducted a site visit that is documented in the Initial Study/Mitigated Negative Declaration.

Mr. Fugelsang said he has had extensive conversations with Moses Steit with the Public Utilities Commission and the understanding is that they wish to work with the County to incorporate railroad intersection improvements into some sort of Roadway Impact Agreement fee. At this time it is not incorporated, however, he did speak with Steve Lyon with the Public Works/Road Division, and confirmed that warning signals are in place and the photos are attached to the staff report, which is attachment number 6 of the project photos, showing the two intersections of the Union Pacific Railroad with warning signals and they were active the day he went out there. Additionally the concerns with the City of Los Banos; we have had extensive conversations with the City of Los Banos, they were the ones that had asked for the traffic study, and they submitted no comments. US Fish & Wildlife supplied no comments as well. The project was referred to them at the beginning of the project submittal process. The

IS/MND was referred to them April 15, 2010 and no comments were received. The County is not obligated to receive comments from them when no federal endangered species were listed.

Mr. Macenski added that it is pertinent to understand how the local and federal state jurisdiction process works. Federal agencies only get involved in projects which there is a species of concern or some other reason as to why they need to be involved, for example, if there is federal funding, or a federal species is identified onsite at which time the federal agency would step in and work with the local state agency, the Department of Fish & Game.

Mr. Fugelsang continued and addressed a portion of the letter submitted by Dale LaForest and Associates, stating that a public records act request was submitted. One was submitted on June 21, 2010. The response was sent back to Mr. LaForest by email and fax on June 25, 2010 with an attached letter. Many of the documents that he requested were not available at the time, they were part of the public hearing notification process and we submitted a letter to him on June 25, 2010 stating when and where all the these items would be available for his review and anything that was available before that including public comment letters on the IS/MND site plan designs, operational statements, and County agency comments were attached to that letter and was available for review at that time.

Mr. Lewis asked Mr. Fugelsang to define the Fish & Game conclusions.

Mr. Fugelsang referred to Attachment #8 and #9 of the staff report. The California Department of Fish & Game letter raised the concerns of the ecological area. During the IS/MND process, California Department of Fish & Game did not follow up on their original comments so staff requested a follow up and on June 7, 2010, they sent an email saying that the mitigation measures appear to be sufficient.

Mr. Macenski addressed a few more remaining items that appeared in the three additional documents submitted today. One document speaks to traffic, one speaks to hydrology and water use and the third speak to summary points that have been discussed already. There are a number of points in relation to noise that have been covered addressing similar concerns.

Marianne Greene, County Counsel, said for the record that those documents were prepared between May 10 and May 13, 2010 during the public comment period on the IS/MND. It is now July 14th, over two months later. The Planning Department and the project applicant have not seen these letters, they have not been disclosed, they were provided during the public comment period and the 60 days has lapsed, which our agency would have had time to review and comment.

Mr. Macenski spoke about the Mark E. Grismer letter that speaks about hydrology. As it states on page 78 and 79 of the IS/MND, for part of the project's analysis we utilized existing information as well, following up with technical resources in the surrounding area. Page 78 identifies that the Department of Water Resources Bulletin 118 which speaks to California's groundwater update and Department of Water Resources Bulletin 118 dated 2006, also speaks to the groundwater, which is the source of our information. He felt it was pertinent to speak to local authorities on the status of groundwater that is within the area. Page 79 shows that the project is located in the Volta Community Services District. They contacted John Laridy at the District to speak about water service and he voiced his opinion regarding that water service would not affect the District and the water supplies are abundant enough in the area. It is pertinent to understand that the adjacent packing plant across the road from the proposed batch plant. If you were to compare the water usage of the proposed project to that it would be about a 1 to 2 percent of the packing plant's water usage, so if there was a draw down in the region it would not be a result of the proposed project. In the IS/MND, it identifies that we require a storm water pollution prevention plan for construction in accordance with the California general construction permit revisions. That will prevent construction storm water pollutants running off the site and impacting water to the US. The second point is operational storm water and as part of the Building Permit approval process of Merced County, a set of designs of the site plan will be required prior to issuing a building permit. Those plans will be circulated to the Planning Department to ensure consistency with the project as stated in the

IS/MND. It will ensure that the design which is described such as capturing all the water on site and not allowing it to go offsite is actually implemented. He went over the third letter submitted by Mr. John Williams with Smith Engineering and Management. Mr. Macenski said it is pertinent to mention on the last page of the letter the conclusion sentence says that for the above reasons the analysis is adequate, he suggests revisions and recirculation if there is any additional changes to the analysis that is provided in the IS/MND. The primary concerns which were addressed in our traffic study were related to the s-curve. The concern brought up in the letter by Mr. Williams were addressed in the IS/MND and he will entertain questions at this time.

Mr. Fugelsang said the traffic study was conducted over a year in time and the routes were revised multiple times.

Ms. Greene asked for clarification on what the mitigation is for the s-curve.

Mr. Fugelsang said Mitigation Measure Transportation 1 for traffic says the applicant will fund roadway improvements was recommended changes in to the Planning Commission in a memo dated July 13, 2010 available to the public. The Roads Division requested the following change: To this mitigation measure: "Project applicant will construct roadway improvements required for the safe turning movements, large trucks, at the Ingomar Grade, Badger Flat Roads, southwest corner and west Pacheco Blvd., Volta Roads, northeast corner. The project applicant will obtain an encroachment permit from the Merced County Department of Public Works or Caltrans, as appropriate. Necessary improvements will be approved by the Merced County Public Works Department or Caltrans implemented by the project applicant or applicant's contractor. These improvements will be implemented prior to the 1st day of plant operation".

Ms. Greene asked Mr. Fugelsang to read the Mitigation Measure for hydrology that addresses one comment letter.

Mr. Fugelsang said staff recommends the Planning Commission to modify Mitigation Measure Hydrology 1 to state: "For the construction activity covering more than one acre, a storm water pollution prevention plan shall be prepared by the project applicant and submitted for review and approval of both the County and Regional Water Quality Control District with the addition to that and a new construction storm water permit shall be obtained, Order No. 2009-0009 DWQ State Law".

Commissioner Mobley said the traffic study talks about the plant operating at maximum capacity of more than 300 cubic yards, it sounds like that is not going to be a player since the plant is not capable of producing that without being reloaded so the lower estimate is going to be the limiting factor in the traffic going along the roads.

Mr. Macenski said that is correct and as it relates to impacts from traffic. You need to look at what the jurisdictions evaluate for and impact which is level of service during the AM/PM peak hours and the projects contribution to AM/PM hours for traffic, in the AM he believes it is 26 trips at the maximum and the PM is 11 trips.

Commissioner Mobley asked if the $2.50 charge per trip for road damage is adequate to maintain the roads with the damage that would be done from those heavy trucks.

Mr. Macenski said the number was developed by the Planning Department, the applicant and the Road Department to develop the appropriate fee associated with each truck.

Mr. Fugelsang said Mr. Chapin entered into a Roadway impact agreement with the County and agreed upon with the Road Division.

Mr. Macenski said US Fish & Wildlife will not initiate review of a project unless there is concern associated with the proposed project for them to do so. Such concerns for example would be a federal listed species or federal funding associated with an applicable project. There are a number of projects being processed across the nation, so they delegate their authority to the

local state agency, which is the State of California Department of Fish & Game, to review projects that involve them as necessary. This relationship is similar to the Federal Highway Administration and Caltrans who also implements the local authority for the Federal Highway Administration.

Commissioner Lashbrook asked if this project could impact the 2 new wells in the wildlife area nearby.

Mr. Macenski said the project's water usage figure will not drastically draw down the ground water table given the information he has received that was included in the IS/MND. The proposed water usage on the project site is minimal for the groundwater basin and all the water that will be used will be captured on-site and reused as Mr. Chapin articulated earlier. It would not impact those wells.

Commissioner Lashbrook asked if anyone has spoken about the suggested permit language in the Smith letter. How are we dealing with that?

Mr. Macenski said they anticipated that capacity of the facility based on the equipment's potential to carry it. You would have to physically reload the machines to go through 300 cubic yards per day and they would be required to stockpile enough material to put out above and beyond that. The Air District regulates their stockpiling requirements, so the average output will not be greater than that. It is the Commissions discretion if they would like to condition that.

Mr. Fugelsang said Condition of Approval #2 states that "Administrative Permit No. AA08-033 is granted to allow the 4.03 acre concrete batch plant on Proposed Parcel 1 (15.0 acres) of Minor Subdivision No. MS07-027, in accordance with the approved Plot Plan and Operational Statement". The operational statement on the second paragraph states that the proposed plant is estimated to produce an average of 300 cubic yards of concrete daily. The proposed annual production would be approximately 60,000 -70,000 cubic yards. The applicant will be held to this operational statement.

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

County Counsel Marianne Greene asked if a hazardous material business plan is going to be required for this project?

Planner Jeff Fugelsang said yes it will be required and the applicant has agreed to submit that as well.

MOTION: M/S MOBLEY - ERRECA, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR MINOR SUBDIVISION APPLICATION No. MS07-027 AND ADMINISTRATIVE PERMIT No. AA08-033 IN ACCORDANCE WITH THE CEQA GUIDELINES, BASED ON THE 4 CEQA FINDINGS, WITH THE LANGUAGE MODIFICATION TO MITIGATION MEASURE MM TRANSPORTATION 1 AS REQUESTED BY THE DEPARTMENT OF PUBLIC WORKS, MITIGATION MEASURE MM HYDROLOGY 1 TO REFLECT NEW REGIONAL WATER QUALITY CONTROL BOARD REGULATIONS.

During discussion prior to the vote, Commissioner Lashbrook said she would like more study time for this project and to see this application continued.

MOTION: M/S LASHBROOK - , DIED FOR A LACK OF SECOND TO CONTINUE THIS APPLICATION TO ALLOW MORE STUDY TIME.

County Counsel Marianne Greene asked Commissioner Lashbrook if she is prepared to make a decision on this project based on preparation and review.

Commissioner Lashbrook feels that a lot of new information has come before the Planning Commission and it would be good to be able to read all that information. She said she is as ready to vote as the process allows her to be.

VOTE ON CEQA MOTION: APPROVED BY UNANIMOUS VOTE OF THE COMMISSION.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JULY 21, 2010, AND MAKES THE 11 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 11 FINDINGS, APPROVES MINOR SUBDIVISION APPLICATION No. MS07-027 AND ADMINISTRATIVE PERMIT No. AA08-033 SUBJECT TO THE 29 CONDITIONS WITH CONDITION #27 BEING MODIFIED AND CONDITION #29 BEING MODIFIED AS REQUESTED BY THE DEPARMENT OF PUBLIC WORKS AS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

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. Administrative Permit No. AA08-033 is granted to allow a 4.03 acre concrete batch plant on Proposed Parcel 1 (15.0 acres) of Minor Subdivision No. MS07-027, in accordance with the approved Plot Plan and Operational Statement.

3. Concrete batch plant hours of operation shall be from 5:00 am to 6:00 pm, Monday through Saturday.

4. Minor Modifications to this permit may be approved by the Development Services Director upon submittal of an acceptable application.

5. The property shall comply with the landscaping and irrigation requirements in Section 18.38.040 of the Merced County Zoning Code.

6. The project site shall comply with the parking requirements in Section 18.40 of the Merced County Zoning Code.

7. A seven (7) foot opaque landscaping screen or wall shall be installed to screen the parking and storage area from public right-of-ways and adjacent properties as required in Section 18.37.020 of the Merced County Zoning Code.

8. The applicant/property owner shall comply with all applicable conditions contained in Planning Commission Resolution 97-1 (attached).

9. For the purpose of condition monitoring, an inspection fee in the amount of **$405.00** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of the inspection.

10. The applicant shall comply with all applicable local, state and federal standards and regulations.

County Counsel

11. George Simmons and Don Chapin Company 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 No. MS07-027 and Administrative Permit No. AA08-033 ("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 George Simmons and Don Chapin Company. The liability of George Simmons and Don Chapin Company 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 George Simmons and Don Chapin Company, 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. George Simmons and Don Chapin Company 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.

Department of Public Health/Division of Environmental Health

12. A hazardous materials business plan (HMBP) shall be filed with the Division of Environmental Health. Contact Vickie Hayer 381-1083 or Kerri Gibbons at 381-1094.

Fire Department

13. If security gates or bollard locks are to be installed or existing on site. They shall be approved by this office. As required, including the installation of a Merced County coded "Knox" key switch or "Knox" padlock, whichever is most appropriate in relation to your needs. (CFC Sec. 506)

14. All driveways accessing the parcel shall be surfaced with an approved all weather driving surfacing material. Shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities. (CFC Sec. 503) Fire apparatus access roads shall have an unobstructed width of not less than 20 feet except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 13 feet 6 inches. (CFC 503.2.1)

15. The building and project plans shall meet current California Fire Code Requirements and its entirety. This would also include a Hazardous Material Management & Fire Safety Plan in place. There is a $185.00 commercial plan review fee, in addition $85.00 an hour fee for on-site fire inspections. If applicable, additional charges would apply such as deferred submittals for fire sprinkler and alarm systems.

Department of Commerce, Aviation and Economic Development

16. The applicant/owner shall obtain a Business License from the Commerce, Aviation and Economic Development Department. The Property Owner/Applicant shall pay all required fees for the Business license. The Property Owner/Applicant shall annually renew the Business License and pay all required fees.

Mitigation Measures

17. **MM-Air Quality-1:** The front end loader shall be equipped with a diesel particulate matter filter capable of achieving a diesel particulate matter emission reduction of 85 percent or less than 0.01 grams per brake horsepower per hour emission rate (CARB Level 3 emission controls). A listing of the CARB – verified controls can be found at:

    http://www.arb.ca.gov/diesel/verdev/level3/level3.htm.The operation of the front end loader shall be restricted to a maximum of 10 hours per day of operation.

18. **MM-Air Quality-2:** All heavy-heavy duty (33,001 to 60,000 pounds) raw aggregate and concrete delivery trucks shall attain a minimum fleet average diesel particulate matter emission rate of 0.53 grams/mile by the proposed project's build out year 2010. This is two years earlier than the fleet average emission target level specified under the CARB On-Road In-Use Truck and Bus Regulation. This shall be accomplished through the installation of diesel particulate matter filters, engine rebuilding, or replacement of older trucks with newer trucks that attain the CARB 2007 model year PM10 emission standard.

19. **MM-Air Quality-3:** The project applicant for the concrete batch plant shall work with the SJVAPCD to determine the applicable BPS measures for the project. The project shall incorporate either the identified BPS or Approved Alternate Technology prior to construction.

20. **MM-Biology-1:** Prior to any ground disturbance, protocol-level, pre-construction surveys for alkali milk-vetch, heartscale, Lost Hills crownscale, recurved larkspur, and hispid bird's-beak shall be conducted by a qualified botanist during the identifiable period (i.e., blooming period). Timing of the survey shall be determined based on climate conditions for that growing year; unusual weather patterns influence the blooming period. Should any of these species be identified, CDFG shall be contacted to determine suitable mitigation (e.g., transplanting, seed collection).

21. **MM-Biology-2:** Removal of woody vegetation shall occur outside of the nesting season, which typically runs from March 1 through October 1.

22. **MM-Biology-3:** If project construction occurs during the nesting season (March 1 – October 1), pre-construction surveys for active bird nests shall be conducted by a qualified biologist no more than 15 days prior to initiation of construction activities. Pre-construction surveys for active Swainson's hawk nests shall be conducted within one-quarter mile of the project site. Concurrently preconstruction surveys for active nests of other raptor species shall be conducted within 250 feet of the project site. Pre-construction surveys shall be conducted within the project site for California horned lark nests. If no active nests are identified, no additional mitigation is required. If an active nest of one or more of these species is identified within the specified survey area, the nest shall be photographed and the location mapped, and CDFG shall be consulted to determine if project construction may proceed during the nesting season.

23. **MM-Biology-4:** Pre-construction surveys for burrowing owl shall be conducted by a qualified biologist no more than 30 days prior to grading of the proposed project site. In accordance with the CDFG Staff Report on Burrowing Owl Mitigation (Staff Report) (CDFG 1995), the surveys shall be conducted within the proposed project site, and in suitable habitat areas within 500 feet of the project impact zone. If no suitable burrows are detected, no additional mitigation is required. If suitable burrows are detected,

additional surveys shall be conducted after sunset and before sunrise to determine whether the burrows are occupied by burrowing owls. If burrowing owls are not detected, then no additional mitigation is necessary.

If active burrows are detected, impacts may be avoided by restricting project activities to at least 160 feet from occupied burrows during the nonbreeding season (September 1 through January 31), or within 250 feet during the breeding season (February 1 through August 31). In addition, a minimum of 6.5 acres of foraging habitat shall be permanently preserved contiguous with occupied burrow sites for each pair of breeding owls or single unpaired resident birds.

If avoidance is not possible, then owls shall be passively relocated from the proposed project site by a qualified biologist outside of the breeding season (September 1 through January 31). Mitigation for loss of burrow habitat shall be implemented in accordance with the Staff Report, or with the California Burrowing Owl Consortium's (CBOC) Burrowing Owl Survey Protocol and Mitigation Guidelines (CBOC 1993).

24. **MM-Biology-5:** If construction is proposed during the nesting season for Swainson's hawk (March 1- September 15) pre-construction surveys shall be conducted to identify active nests within 1,000 feet of the project site. If a nest is identified, CDFG shall be contacted to determine if project construction may proceed during the nesting season. Avoidance measures may include establishing an exclusion zone during construction or monitoring the nest during construction to determine if the project activities are affecting the nesting cycle. The applicant must submit proof of CDFG consultation and notify Merced County (Planning and Community Development) prior to construction activities.

25. **MM-Biology-6:** Prior to issuance of a building permit, and no less than 14 days and no more than 30 days prior to ground disturbance or commencement of construction, a qualified biologist shall conduct a protocol level survey to determine the presence of the San Joaquin kit fox. In the event that this species is detected during protocol-level surveys, consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS) shall be required to discuss how to implement the project and avoid "take." If "take" cannot be avoided, acquisition of a State Incidental Take Permit and corresponding federal take permit will be required prior to project implementation. If the survey identifies potential dens (defined as burrows at least four inches in diameter that open up within two feet), potential den entrances shall be dusted for three calendar days to register track of any San Joaquin kit fox present. If no San Joaquin kit fox activity is identified, potential dens may be destroyed.

If San Joaquin kit fox activity is identified, then dens shall be monitored to determine if occupation is by an adult fox only or is a natal den (natal dens usually have multiple openings). If the den is occupied by an adult only, the den may be destroyed when the adult fox has moved or is temporarily absent. If the den is a natal den, in coordination with the USFWS, a buffer zone of 250-feet shall be maintained around the den until the biologist determines that the den has been vacated. Where San Joaquin kit fox is identified, the provisions of the USFWS's published Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance (June 1999) shall apply (except that preconstruction survey protocols shall remain as established in this paragraph). These standards include provisions for educating construction workers regarding the kit fox, keeping heavy equipment operating at safe speeds, checking construction pipes for kit fox occupation during construction, and similar low or no-cost activities.

26. **MM-Cultural-1:** If potentially significant archaeological resources are discovered during ground-disturbing activities associated with construction of the proposed project, all work within 100 feet of the find shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate mitigation measures in consultation with Merced County and other appropriate agencies and

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

27. **MM-Hydrology-1:** For construction activity covering more than one acre, a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared by the project applicant and submitted for review and approval by both the County and Regional Water Quality Control District and a New Construction Stormwater Permit shall be obtained (Order No. 2009-0009-DWQ. The applicant or person responsible shall meet Merced County construction site requirements regarding the control of surface water, erosion, and runoff. Runoff created at the project site shall meet the following minimum requirements:

    (1) Sediments generated on the project site shall be retained using adequate treatment control or structural Best Management Practices (BMPs);

    (2) Construction-related materials, wastes, spill or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters or adjacent properties by wind or run-off;

    (3) Non-storm water run-off from equipment and vehicle washing and any other activity shall be contained at the site; and

    (4) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Water Quality Control Board Resolution Number 99-03) such as limiting grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

28. **MM-Noise-1:** The Applicant shall implement the following measures during project-related construction:

    - Construction activities shall be limited to between 7 a.m. and 6 p.m. Monday through Saturday to avoid noise-sensitive hours of the day. Construction activities shall be prohibited on Sundays and holidays.

    - Construction staging and heavy equipment maintenance activities shall be performed a minimum distance of 300 feet from the nearest residence, unless safety or technical feasibility takes precedence.

    - Construction equipment noise shall be minimized by muffling and shielding intakes and exhaust on construction equipment (per the manufacturer's specifications) and by shrouding or shielding impact tools.

    - Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences. Stationary combustion equipment such as pumps or generators operating within 300 feet of the nearest residence shall be shielded with a noise protection barrier.

29. **MM-Transportation-1:** The project applicant will construct roadway improvements required for the safe turning movements of large trucks at the Ingomar Grade/Badger Flat Road's southwest corner and West Pacheco Boulevard/Volta Road's north east corner. The project applicant will obtain an encroachment permit from the Merced County Department of Public Works or Caltrans, as appropriate. Necessary improvements will be approved by the Merced County Public Works Department or Caltrans and implemented by the project applicant or applicant's contractor. These improvements will be implemented prior to the first day of plant operation.

C. **TIER 1 DEVELOPMENT AGREEMENT – Villages 189, LLC –** To recommend to the Board of Supervisors adoption of an ordinance thereby entering into a Tier 1 Development Agreement between Merced County and the property owners (Villages 189, LLC, Brian Vail of River West Investments) regarding the development of 1,822.66 acres within the Villages of Laguna San Luis Community Plan (Application No. CP07-002 and ZC07-006). The properties are located on the north and south sides of Highway 152 and west of Interstate 5 in the Villages of Laguna San Luis SUDP and contain a variety of residential, commercial, mixed use, industrial and public land use and zoning designations. **DG**

Recommendation: The actions requested are to:

1) Recommend the Board of Supervisors determine the project is consistent with the Environmental Impact Report (EIR) certified for the Villages of Laguna San Luis Community Plan and Zone change and that no subsequent EIR is required in accordance with Section 15162(a) of the CEQA Guidelines.
2) Recommend the Board of Supervisors adopt an ordinance thereby entering into a Tier 1 Development Agreement between Villages 189, LLC and Merced County based on the project findings presented in the Staff Report.

Senior Planner David Gilbert presented the Staff Report and recommendations of approval dated July 14, 2010.

Commissioner Lashbrook asked if this Tier 1 development agreement is typical.

County Counsel Marianne Greene said yes, this is authorized and consistent with Government Codes 65864. There was a case called the "Smart Decision" and it was a Tier 1 agreement that the courts upheld, so yes, Tier 1 agreements are allowed under the law. Ms. Greene asked Robert Lewis, Development Services Director, if this is the first Development Agreement the County has entered into?

Robert Lewis, Development Services Director, said no, not for a Development Agreement, but yes for a Tier 1 agreement.

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

Tim Terron, representative for River West Investments, asked the Commission to concur with the recommendations and recommend that the Board of Supervisors approve this application. This process was started with the Planning office late last year. They wanted to do a full blown development agreement, but the Planning Department suggested a Tier 1 Development Agreement. They agreed. They need some certainty that rules won't be changed due to the amount of money the applicants will be spending during this time. They are getting ready to embark on the 2nd phase of this project and in order to make sure that they know what rules apply to the multi-year phase, we ask that Tier 1 Development Agreement is approved. Most changes have been incorporated into this agreement and believe this is a fair and straight forward agreement. He requested a copy of the Valley Land Alliance letter. He will look over and review this letter so he can respond to it.

Chairman Tanner would like time to review the letters submitted by Marsha Burch and Eduardo & Graciella Kneler, Stephen Macie and Arthur Petrie. The Commission took a 10 minute break to review the submitted letters.

Mr. Terron continued discussion and responded to the letter from Valley Land Alliance. The Final EIR is already certified for this project, there have been no sufficient changes and they concur with that. There was a reference in the letter stating Valley Land Alliance did not have access to these documents. All entitlements have been approved for a couple years now and are public record. They are available. There is zoning existing on the property and they still need to do a Tier 2 Development Agreement, subdivision maps and get financing approved. If they want to change any zoning, they will have to come back to the Planning Department to request a zoning change. There is an argument in the Valley Land Alliance letter that says the Agreement is not consistent with the provisions of the Government Code Section 65865.2, because that Section requires a development agreement that says "shall specify the duration

of the agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes". Mr. Terron replied to that statement and said that it does because the Community Plan addresses each one of those areas on what they can and can't do. Those issues will be addressed before the project moves forward.

The public hearing closed at 10:16 a.m.

County Counsel Marianne Greene, agrees with Mr. Terron's analysis. It is the Merced County Ordinance 1361 that specifies the requirements for Development Agreements in our County Code. Section 1.04.10 of that Ordinance refers all Development Agreements to the Planning Commission to recommend to the Board of Supervisors, requiring review of the Agreement and Section 1.04.03 requires that the recommendation be in writing to the Board of Supervisors. In Ordinance 1361, Section 1.06.03 the Development Agreement public notification needs to be available to the public prior to hearing. There is a 10 day notice prior to the hearing and that has been adhered to regarding this Agreement. There was a comment in the Valley Land Alliance letter regarding the Community Plan. The Draft Community Plan is on the Planning website with the Final Community Plan needing to be posted but the Draft Plan has been available for years and subject to public comments.

Robert Lewis, Development Services Director, agrees with Ms. Greene's comments.

Commissioner Lashbrook feels that this Agreement is grandfathering things in, so it would be making this Plan not having to live under the new General Plan Update requirements, the landscape ordinance that's going to be coming in, the SB375 which is very environmental. Are they going to be grandfathered in before those standards come in?

Mr. Terron responded to Commissioner Lashbrook's comments and said that the SB375 preempts County law, so we are subject to whatever State Laws are required. This is a timing issue, for example the water conservation is State mandated. Anything approved by the Board of Supervisors would be required in a Tier 2 agreement going to be done as well, so in the Tier 2 agreement, the likelihood is that it will be brought up to current standard. If there is some other local law, they would be vested against that.

County Counsel Marianne Greene said this would not be subject to the Save Farm initiative as the zoning would already be changed.

MOTION: M/S MOBLEY - ERRECA, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS DETERMINE THAT THE PROJECT IS CONSISTENT WITH THE ENVIRONMENTAL IMPACT REPORT (EIR) CERTIFIED FOR THE VILLAGES OF LAGUNA SAN LUIS COMMUNITY PLAN AND ZONE CHANGE AND THAT NO SUBSEQUENT EIR IS REQUIRED IN ACCORDANCE WITH SECTION 15162(a) OF THE CEQA GUIDELINES.

During discussion prior to the vote, Commissioner Lashbrook said she didn't have a lot of time to read the staff report for this project and feels she needed to have the Environmental Impact Report and Community Plan available to her to look back and forth. She is having trouble with this action.

MOTION: M/S LASHBROOK – DIED FOR A LACK OF A SECOND, COMMISSIONER LASHBROOK RECOMMENDED CONTINUING THIS APPLICATION.

VOTE ON CEQA MOTION: APPROVED BY A 4 – 0 VOTE, COMMISSIONER LASHBROOK ABSTAINING.

County Counsel Marianne Greene asked Commissioner Lashbrook for clarification of her vote for this project. Commissioner Lashbrook said she was not given enough adequate time to review all documents.

MOTION: M/S MOBLEY – ERRECA, AND CARRIED BY A VOTE OF 4 – 0, WITH COMMISSIONER LASHBROOK ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS ADOPT THE ORDINANCE, THEREBY ENTERING INTO A TIER 1 DEVELOPMENT AGREEMENT BETWEEN VILLAGES 189, LLC AND MERCED COUNTY BASED ON THE FIVE PROJECT FINDINGS.

VI. COMMISSION ACTION ITEM(s)

None

VIII. DIRECTOR'S REPORT

A. PLANNING COMMISSION TRAINING PROGRAM – Regional Planning and Climate Change, Understanding SB 375. To be held in Room 301 following public hearing items on this agenda. **RAL/MG**

Robert Lewis, Development Services Director, recommended continuing this item for discussion to the July 28, 2010 Commission meeting.

MOTION: M/S MOBLEY – ERRECA, AND UNANIMOUSLY CARRIED, THE COMMISSION AGREES TO CONTINUE THE PLANNING COMMISSION TRAINING PROGRAM TO THE JULY 28, 2010 MEETING.

IX. COMMISSIONER'S COMMENT

County Counsel Marianne Greene said on a general matter, if you do not feel you are ready to make a vote, it would be best, in advance of the hearing item that you say you did not have time to prepare for an application and if you will be abstaining from the vote.

She was asked by Commissioners before if they have the right to enter onto private land when projects are submitted, so she referred to Government Code 65105 which, in summary, says that Planning agency personnel may enter upon private land and make examinations and surveys provided such entry does not interfere with the use and possession of the land. Planning Commissioners may visit project sites to become familiar with surroundings, but to inform landowners in advance and let the neighbors know you are coming. If more than one Commissioner wants to visit a site, then it would be agendized as a meeting. You should go through the Secretary of the Planning Commission and let him know that you wish to visit a site. You are encouraged to make site visits.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 12:10 p.m.