

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF JULY 22, 2009**

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The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of July 22, 2009, are available online at [www.co.merced.ca.us/planning/plancomarchive.html](http://www.co.merced.ca.us/planning/plancomarchive.html).

**I. CALL MEETING TO ORDER**

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:05 a.m., on July 22, 2009, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

**II. ROLL CALL OF COMMISSIONERS**

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

Staff Present:                     Robert Lewis, Development Services Director  
  William Nicholson, Assistant Development Services Director  
  Oksana Newmen, Planner III  
  Brian Guerrero, Planner II  
  James Holland, Planner III  
  Kim Anderson, Acting Recording Secretary

Legal Staff:                       Marianne Greene, Deputy County Counsel

Commissioners Absent:           None

**III. APPROVAL OF MINUTES**

**M/S MOBLEY - LASHBROOK, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF FEBRUARY 11, 2009, FEBRUARY 25, 2009, MARCH 25, 2009 AND APRIL 8, 2009.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

**A.     Mining and Reclamation Conditional Use Permit No. CUP08-015 - Jim Brisco Enterprises** - To allow a sand mining operation by extracting 500,000 cubic yards of sand over a 5 year period. This project site is located on the south side of El Capitan Way, 1/2 mile east of Palm St, in the Delhi area. The property is designated Urban Reserve land use in the Delhi SUDP and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. ON**

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated July 22, 2009.

Commissioner Lashbrook asked if growing native grass and cover is part of the Reclamation Plan.

Planner Oksana Newmen responded and stated the final Reclamation Plan will be to sweet potatoes but in the interim there needs to be some erosion control, so there needs to be some seeding before they get to the sweet potatoes.

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Commissioner Lashbrook asked if that is water erosion for the slopes. Planner Oksana Newman answered that it is for water and wind erosion. The entire site will not be disturbed at once.

Commissioner Mobley noted that the report says on Page 3, that the ground water was recorded by the Department of Water Resources at 80 feet below ground surface. It says mining will not go below 105 feet leaving a 25 ft buffer between mining activities. Do they have those numbers switched?

Planner Oksana Newman responded that she should have used below sea level. The groundwater is 25 feet below surface.

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

Dennis Cote, Delhi resident, prepared a handout to the Commissioners. He says property owners along the major roadway were not notified of this project. He says he is concerned with the damage on the roadways and says that the 27 trucks per day will have an impact on the roads equivalent to 50,000 passenger cars. He says the water use has not been quantified or compared to Ag water use on the property. The permit proposes to allow 5 am to 9 pm operation with 24 hour operation for 20 days of each year and further 24 hour operation. He suggests that the hours should be reduced and no 24 hour operation be allowed due to nuisance to surrounding residents. He says there is no clause that says the Planning Director can approve for additional 24 hour operations. He states that larger trucks need bigger area to turn and suggests mitigation for the turn issue. The dust control is not good. A dust control plan is required for construction per 6.3.1 of the environmental checklist but the criteria listed may not include this extraction proposal. He is available for any questions the Commission may have for him.

Damien Galford, with Environmine, the company that prepared the Reclamation Plan, supports this project. He says this study reveals that the entire state is under extreme aggregate shortage. We need an additional 53 million tons of aggregate to meet the 50 year demand. Locating material near the project is a benefit. They supply too many parts of Merced County. This project would reduce truck traffic with less congestion and less miles traveled. This project could stimulate the economy bringing in 27 trucks a day. The operators are a small local business in Merced. The revenue generated would stay in Merced County. The Reclamation Plan will improve the overall quality of the farmland. He asked for approval of this project.

Commissioner Tanner asked if aggregate is different from sand?

Mr. Galford responded and said that aggregate is construction aggregate materials. This material could be used as fill sand, block, brick or plaster. Depends on what materials they encounter. We have to focus on what the market uses.

George Mora, Atwater resident, said they expanded to concrete production and want to supply to construction projects. Right now there are 8 acres that are marked off for planting potatoes and they are rotating that area. He says the truck traffic varies.

Commissioner Lashbrook asked if 100,000 tons a year is a limit? Mr. Mora says it is an estimate based on total number of yards available.

Richard Steen, Modesto resident and owner of property to the south of the application, says the trucks will be driving right in front of his property. He has a renter in his rental home and he does not want to live there anymore due to truck traffic. Mr. Steen is not happy and feels he will lose income because of this project. He said the owners could buy his property and says it could be a good location for monitoring of the project or office activities.

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

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Commissioner Lashbrook said there are issues not taken into consideration and asked what we could do regarding Mr. Steen's property.

Bill Nicholson, Assistant Development Services Director, says there are ways to minimize the impacts by moving the driveway further to the east. There are going to be trucks coming out in front of the property. There hasn't been any mitigation for trucks going by; they go by for ag activities.

Commissioner Lashbrook would like to vote yes, but wants to see negotiations between Mr. Steen and the proponents or take it as it is.

Deputy County Counsel Marianne Greene asked if the operator could talk to the owner of the rental home adjacent to the property and work out some agreement and that could be added as a condition. She added that the 300 ft. notice to surrounding property owners is adequate.

Commissioner Mobley asked if 27 trucks equals half million cars a day?

Steve Rough, Public Works/Road Division, explained that there is something called an equivalence single axel load where a truck has a vehicle equivalent. Vehicles don't impact a structural section of a road trucks do. The information is a bit misleading as far as being equivalent. He added that there were two options. The applicant could do a structural section study to fine tune the impact or enter into a roadway impact agreement with Public Works at \$2.50 per truck that is the standard agreement entered into all mining projects approved over the last few years.

Commissioner Mobley asked if the County monitors the road surface. Mr. Rough said they would fix things as residents call in with complaints. At the intersection of El Capitan and Vincent, you have to do a right turn at Vincent, so that intersection has always been an issue as far as right turns. Agricultural trucks are expected to go down El Capitan Way and will continue to be a problem until the existing store there is improved. New interchange on South Avenue and Highway 99 is ok for trucks. The County will collect \$2.50 per load and will try to use that to offset the impacts on the Roads.

Commissioner Lashbrook asked if that money will be earmarked for the Roads in Snelling near the mining site.

Mr. Rough responded and said no, the impacts aren't necessarily happening in Snelling. The impacts happen to an entire route and to earmark it for the location is not appropriate.

Commissioner Mobley questioned the water use. Planner Oksana Newmen said the purpose of the water is only to keep dust down on the site.

Commissioner Mobley suggests creating a sound barrier to help the renter that is adjacent to the property.

Commissioner Lashbrook asked the applicant if they would be willing to put up some kind of vegetated berm.

Mr. Mora said he would be willing to work with the owner of the home to create some kind of barrier if needed.

Deputy County Counsel Marianne Greene suggested a break to review documents that were submitted by Dennis Cote. She suggested the applicant and the property owner of the home adjacent to the property should discuss an agreement for a barrier.

The Commissioners took a 25 minute break to review the letter submitted by Mr. Cote.

Bill Nicholson, Assistant Development Services Director, reviewed the 19 issues that Mr. Cote raised on his letter he handed to the Commissioners. 1. The notice is not given to anyone along the haul routes in and out of the facility. We followed the legal requirement. 2.

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There was a misunderstanding with the property line that has been resolved. 3. This is just for comparison sake, the real issue is the impact of the trucks and the fee of \$2.50 per truck has been addressed.

4. The applicant pointed out he had worked with the property owner to do urban development so that shouldn't be an issue. 5. There is not a lot of water use, this is a mining operation. In the end they will reclaim the land for growing sweet potatoes so water supply will remain. 6. The analysis in the Initial Study was adequate. The elevation is being mined up to 15 feet below grade. There is a huge separation still. The environmental document adequately analyzes this. 7. The hours of operation are 6am to 5pm and if there are extended hours, the owner must notify the Planning Department. 8. If there are extended hours, the Director can add that he will review all requests for extended hours of operation. 9. The truck hazards issue was addressed by the Public Works Department. 10. There is no way to limit the number of drivers on the truck routes. Condition #14 restricts the truck operators from using specific routes under any circumstances. Mining projects require annual monitoring. 11. Standards for dust control is a major part of the Reclamation Plan, and there is annual monitoring, but could be done more frequently. 12. The project will have a lower water use and will use the water more for farming than throughout the mining process and it was adequately addressed in the Environmental Study. 13. Not needed. 14. The noise mitigation in the Initial Study will be adequate. 15. We can't define noise as excessive if it results in more than 65 dBA at any property line. 16. All impacts have been analyzed. 17. All impacts have been analyzed. 18. There are 2 mitigation measures as part of the study, this is not a highly sensitive site. 19. The groundwater is 80 feet below grade and the project is not encroaching in the water table. Not an issue. Condition #2 needs to be modified by adding a sentence regarding night time operations. There is a condition #26 that requires moving the driveway on South Ave. as far to the east as possible. There needs to be a separation of 200 feet between the driveway and the adjacent Feather Road intersection. Condition #26 is being met.

Deputy County Counsel Marianne Greene says the Commission can add additional measures or conditions. The County Code states the Commissioners can consider comments from the Dept. of Conservation and responses.

Commissioner Lashbrook asked if the owner and property owner adjacent have talked about a barrier.

Mr. Mora said he discussed with Mr. Steen their options, but there will be 2 months until anything goes on in the property. He can't buy Mr. Steen's property right now, but later on he may be able to.

Commissioner Lashbrook asked if they can put stockpiles or berms between them as a barrier. Mr. Mora said it is too sandy. The better solution would be a 10-15 foot canvas curtain around the property. He will keep in touch with Mr. Steen.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR MINING AND RECLAMATION CONDITIONAL USE PERMIT No. CUP08-015, WITH 10 MITIGATION MEASURES.**

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JULY 22, 2009, AND MAKES THE 10 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 10 FINDINGS, APPROVES MINING AND RECLAMATION CONDITIONAL USE PERMIT No. CUP08-015 SUBJECT TO THE 34 CONDITIONS OF APPROVAL WITH CONDITION #2 BEING MODIFIED TO READ AS FOLLOWS:**

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### Conditions:

#### Planning and Community Development Department

1. Conditional Use Permit No. CUP 08-015 is granted to excavate and remove sand mining material for the following:
  - Maximum production – 500,000 cubic yards of sand material.
  - Life of Permit: 5 years (until 7/22/2014).
  - Maximum Area to be excavated: 53 acres.
  - Maximum depth of excavation: Shall be at an elevation of approximately 105 feet above mean sea level
  - All mining and related uses shall be located, developed, and operated in a manner described on the approved plot plan, cross sections, elevations, and the conditions of this permit.
2. Hours of Business Operations shall be limited to the following:
  - Excavation operations shall be limited to 6:00 AM to 5:00 PM, Monday through Saturday.
  - Any potential nighttime or extended hours of operations would be of a temporary nature. The applicant/operator shall notify the Planning Department in advance of any proposed nighttime or extended hours operations, shall state the reason or project for which the material will be supplied and shall delineate the projected length of the extended operations. The Director will review all requests for extended hours of operations and shall have the authority to bring the project back to the Planning Commission for review and possible reconsideration should concerns over extended operations arise.
3. Reclamation of the site shall conform to the Reclamation Plan approved by the County and the Office of Mine Reclamation. Reclamation shall commence at the end of mining, with final reclamation completed within one year of the completion of mining.
4. The project shall comply with standard conditions listed in Planning Commission Resolution No. 97-1 and 97-2.
5. The applicant shall comply with all Federal, State and County Requirements including, but not limited to the San Joaquin Valley Air Pollution Control District, Turlock Irrigation District, Office of Mine Reclamation, and Merced County Public Works – Roads Division.
6. Prior to exercising the permit, the applicant shall submit the financial assurance of \$13,540.00. The financial assurance may be in the form of a surety bond, certificate of deposit, letter of credit, or Trust Fund.
7. Upon completion of the project, all the machinery and equipment associated with the mining operation shall be removed from the property, unless it will be used for the planned reclaimed use of the site.
8. The applicant shall furnish the Planning and Community Development Director with a report describing compliance with the reclamation plan by July 1st of each year. With each report, the permittee shall provide a map to scale, showing current mining progress and reclamation.

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9. The Planning and Community Development Director or his designee shall review the reclamation plan status report and inspect the mining operation to determine and assure continuing compliance with the approved reclamation plan and the Conditions of Approval. The applicant shall pay the County the actual cost of conducting inspections, annually or at other times, and shall make available to the Planning and Community Development Director such information necessary for determining compliance. The applicant shall be required to pay any initial conditions monitoring fee and mitigation measures monitoring fee of **\$304**. Additional fees may be assessed for subsequent inspections as deemed necessary by the County, and shall be billed on a time and materials basis.
10. If the Conditional Use Permit is not used within one year, it shall become automatically void without further action. The Planning Commission may extend the Conditional Use Permit if a request is filed by the applicant prior to its expiration. (Zoning Code Section 18.50.09B). However, as identified in Condition No. 1, the permit has a maximum life of five (5) years.
11. If the use authorized by the Conditional Use Permit is abandoned or discontinued for a period of one year the applicant must file an Interim Management Plan application with the County.
12. Prior to the sale/transfer/lease of the project site and/or operations, the applicant shall notify the Planning Department of said transaction. The intent of this condition is solely to keep the County apprised of the owner and operator of the site.
13. A 10 foot setback of the excavation area shall be maintained from the public right-of-ways along El Capitan and South Avenue, and slopes shall not exceed 4:1.
14. Trucking routes, as outlined by the applicant in the Initial Study, shall be provided to truck operators obtaining sand from the mine site. Applicant shall also notify all truck operators using the mine site that Petaluma Avenue, Feather Avenue, and South Avenue east of the project site shall not be used under any circumstances.
15. Any revisions and clarifications required by the State Office of Mine Reclamation in regards to the reclamation plan or financial assurance shall be adhered to, and considered as part of the Reclamation Plan.
16. Applicant/property owner shall comply with all Federal, State, and Local agency regulations.

### Publics Works – Roads Division

17. South Avenue fronts the southern portion of the property to be mined. The ultimate right-of-way width for typical county roads is 60 feet, with 30 feet on each side of centerline. The existing right-of-way dedicated for this road is 40 feet, with 20 feet on either side. The property owner shall have a licensed land surveyor prepare a dedication to Merced County for an additional 10 feet of right-of-way along the First Avenue South frontage of the property. This is necessary to fulfill the property owner's half (30 feet) of an ultimate right-of-way of 60 feet.
18. The mining operation shall not in any way adversely affect the structural integrity of the County roads fronting the property or interfere with public utilities that front county roadways. To insure this, there shall not be removal of sand or material within 10 feet of the dedicated right-of-way or 40 feet measured from road centerline. Slopes shall be a maximum of 4:1 (horizontal: vertical) or 25% grade to the 10 foot offset from public right-of-way.

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19. Paved driveway approaches shall be installed where vehicles are accessing or exiting the site of mining operations. These shall be installed under encroachment permits obtained from the Road Division and subject to inspection and approval by a Road Division inspector prior to commencement of mining operations.
20. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to determine the potential impact that the project will have on Merced County roadways. This evaluation should take into consideration the truck traffic existing and generated from the project, the truck routes, truck types and weights, and shall calculate corresponding Traffic Indices for those routes most impacted. Corings of the structural sections of the roadways along the truck routes shall be taken, and R-Value analyses performed of the subgrade, which together shall be used to evaluate the structural integrity of each roadway. For any roadway whose service life is determined to be significantly reduced by the project, the applicant shall pay a corresponding contribution to the Merced County Road Fund to offset the impact; or In lieu of performing a roadway impact evaluation, the applicant may enter into a Roadway Impact Agreement with Merced County, and pay a prescribed Roadway Impact Fee. The Roadway Impact Agreement will address the obligations of the applicant for mitigating the project's impact, and shall be effective for the term of the project. The applicant shall keep accurate records of all of the loaded trucks that exit the project site; and, at the end of each year, the applicant shall submit said records to the County, along with payment of an impact fee to the Merced County Road Fund corresponding to \$2.50 for every loaded truck.

### **Turlock Irrigation District**

21. There are numerous irrigation pipelines belonging to Improvement District 52, the California State Land Settlement and Improvement District 5246, Delhi Service Area 46, that run along several property lines of the subject parcels. In addition, there are private facilities that traverse the subject parcels, some of which serve adjacent land. Measures must be taken to protect these pipelines and appurtenances from damage during the proposed mining activities. Costs for the repair of any damage to these facilities resulting from the work will be the responsibility of the applicant.
22. The District's electric distribution maps show existing overhead facilities throughout the subject project. If the applicant desires that these facilities remain, then they must not be disturbed during the proposed mining activities (no excavation near poles).
23. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility changes are performed at developer's expense.

### **Regional Water Quality Control Board**

24. If construction associated with the project will not contain storm water on-site, compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ (Industrial Storm Water Permit) will be required. Before construction begins, the proponent must obtain coverage under the Industrial Storm Water Permit.
25. If the project will involve the storage of petroleum products in above-ground tanks, with a single tank capacity of greater than 660 gallons, or a cumulative capacity of greater than 1,320 gallons, the proponent will be subject to State above-ground petroleum tank regulations. The proponent must file a storage statement with the State Water Resources Control Board, pay a facility fee, and prepare a federal Spill Prevention Control and Countermeasure Plan.

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### Mitigation Measures

26. **AES-1** Construct the South Avenue exit so that truck traffic is directed to the eastern portion of the Phase 1 parcel, but it be at least 200 feet, west of the Feather/Petaluma intersection. The exit shall be oriented to direct trucks west: parallel to South Avenue prior to entering the roadway. (MM)

27. **BIO-1 (a)** Prior to initiation of mining activities, on undisturbed areas of the site during the nesting season for nesting migratory birds (February 1 - September 15), including Swainson's hawk, loggerhead shrike and other raptors, pre-construction surveys for active nests shall be conducted with 250 feet of the project site. If an active nest is located, CDFG shall be consulted to determine if mining activities may proceed during the nesting season. Surveys must be conducted within two weeks of the start of mining activities. Survey results must be provided to Merced County and CDFG. (MM)

**(b)** If the above survey does not identify any nesting species within 250 feet of the project site, no additional mitigation would be required to offset impacts on nesting birds. However, should any active bird nests be located within 250 feet of the project site, the following mitigation measures shall be implemented. If bird nests occur on the adjacent properties and mining is scheduled to occur during the breeding season (approximately February 1 through September 15) avoidance shall include the establishment of a non-disturbance buffer zone around the nest site. The size of the buffer zone will be determined in consultation with CDFG, but will likely be 200 feet. The buffer zone shall be delineated by highly visible temporary construction fencing. If mining related activities may cause nest abandonment or forced fledging are necessary within the buffer zone, monitoring of the nest site (funded by the project proponent) by a qualified biologist will be required to determine if the nest is abandoned. If the nest is abandoned and if the nestlings are still alive, the project proponent shall fund the recovery and hacking (controlled release of captive reared young) of the nestling(s). Routine disturbances, such as routine maintenance activities within 200 feet of an active nest, shall not be prohibited. (MM)

28. **BIO-2 (a)** Prior to the start of mining activity, a focused pre-construction survey shall be conducted for burrowing owls where suitable habitat is present within 250 feet of the mining areas. The survey shall be conducted in accordance with CDFG burrowing owl survey protocol. As all areas of the project site will be subject to either cultivation, excavation, or reclamation activities throughout the life project following completion of the preconstruction survey, subsequent surveys are not required to ensure no impact on burrowing owl if no burrows or owls are found on the project site during the preconstruction survey. (MM)

**(b)** If the preconstruction survey finds unoccupied burrows on the project site during the non-breeding season (September 1 through January 31), the project applicant may collapse the unoccupied burrows, or otherwise obstruct their entrances to prevent owls from entering and nesting in the burrows. This measure would prevent inadvertent impacts during mining activities. If no occupied burrows are found in the survey area, a letter report documenting survey methods and findings shall be submitted to Merced County and CDFG, and no further mitigation is necessary. If occupied burrows are found on or off the project site, impacts on the burrows shall be avoided by providing a buffer of 165 feet during the non-breeding season (September 1 through January 31) or 250 feet during the breeding season (February 1 through August 31). The size of the buffer area may be adjusted if a qualified biologist and CDFG determine it would not be likely to have adverse effects on the owls. No project activity shall commence within the buffer area until a qualified biologist confirms that the burrow is no longer occupied. If the burrow is occupied by a nesting pair, a minimum of 7.5 acres of foraging habitat contiguous to the burrow shall be maintained until the breeding season is over. If direct impacts on occupied burrows are unavoidable, on-site passive relocation techniques approved by CDFG shall be used to encourage owls to move to alternative burrows outside of the impact

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area. However, no occupied burrows shall be disturbed during the nesting season unless a qualified biologist verifies through non-invasive methods that juveniles from the occupied burrows are foraging independently and are capable of independent survival. (MM)

29. **CUL-1** If any cultural resources, such as unusual amounts of bone or shell, artifacts, or human remains, are encountered during any mining and/or reclamation activities, work shall be suspended within 100 feet of the find. The County of Merced shall be notified immediately of the discovery, and the project proponent shall retain the services of an archaeologist who meets the Secretary of the Interior's Standards for Archaeology to evaluate the find and provide recommendations for treatment of any significant archaeological resources. The archaeologist's recommendations shall be submitted for approval to the County of Merced. The project proponent shall implement approved mitigation, to be verified by the County of Merced. If human remains are discovered during any reclamation activities, work within 100 feet of the remains shall be suspended immediately and the Merced County Coroner shall be immediately notified. If the remains are determined by the county coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours. The project proponent shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The County of Merced will be responsible for the approval of recommended mitigation, taking account of the provisions of state law, as set forth in CEQA Guidelines Section 15064.5(e) and Public Resources Code Section 5097.98. The project proponent shall implement the approved mitigation, to be verified by the County of Merced, before the resumption of activities at the site where the remains were discovered. (MM)
30. **CUL-2** To minimize potential adverse impacts on unique, scientifically important paleontological resources, the project applicant implement the following: Before the start of mining/excavation activities, the project applicant shall retain a qualified paleontologist or archaeologist to train all mining personnel involved with earthmoving activities, including the site superintendent, regarding the possibility of encountering fossils, the appearance and types of fossils likely to be seen during construction, and proper notification procedures should fossils be encountered. If paleontological resources are discovered during mining, the construction crew shall immediately cease work in the vicinity of the find and notify the Merced County Department of Planning and Community Development. The project applicant shall retain a qualified paleontologist to evaluate the resource and prepare a recovery plan in accordance with Society of Vertebrate Paleontologists (SVP) guidelines (1996). The recovery plan may include a field survey, construction monitoring, sampling and data recovery procedures, museum storage coordination for any specimen recovered, and a report of findings. Recommendations determined by the county to be necessary and feasible shall be implemented before mining activities can resume at the site where the paleontological resources were discovered. (MM)
31. **NOI-1** Operation of the powerscreen shall be limited to the hours of 7 AM to 6 PM. (MM)
32. **NOI-2** The powerscreen shall be located no closer than 300 feet from the nearest off-site residence property boundary. (MM)
33. **NOI-3** To the extent practicable, stockpiles created adjacent to the project processing facilities shall be situated between the processing facilities and the property line of the nearest residence. (MM)
34. **NOI-4** The County shall designate a County-staff contact to be notified in the event

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that adjacent residences experience excessive noise from project operations. The contact information for this staff member shall be provided to all residences within 500 feet of the project site boundary. County staff shall work with the project applicant to address any complaint (s) received by the County. Possible solutions to potential complaints could include, but would not be limited to, relocation of processing facilities, redirection of trucks entering/exiting the project site to the alternate site entrance, or installation of an earthen berm.

**B. Minor Modification Application No. MM09-004 to Administrative Application No. AA07-074 - Growers Transplanting Inc. - To modify the hours of operation for an existing agricultural nursery. The project site is located on the west side of Highway 33, north of Borba Road in the Gustine area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. JF****

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated July 22, 2009.

The public hearing opened at 10:56 a.m.

Michelle Gomes, neighbor across the street from this project, asked that extending the hours of operation be denied due to the noise. She says the applicants operation runs 24 hrs a day, 7 days a week. She gets no sleep and is asking the owner to work with her regarding the noise problems. Their home is established and they do not want to move out or sell their property. Everyone is entitled to a good quality of life and her family is not getting that. She asked the Commission to deny extending the hours.

Marilyn Arman, neighbor, understands that the area is zoned for agricultural but she is not happy with the noise and bright light comes into her bedroom window at night from the Transplanting project. She is concerned with the operations taking place 24 hours a day 7 days a week. She says there needs to be a compromise with the hours of operation.

David Ramado, Civil Engineer in Modesto and representing for this project, says he agrees with the neighbors and says a 24-7 operation is not ok. The applicant is however, requesting reasonable operating hours. Growers Transplanting Inc. grows and transplants millions of tomatoes per year. There is a long process the tomatoes go through before they are taken off the property. The months between March and May are the peak season. The facility is a service for other farmers. He asked that a modification be made to Condition #2 regarding the installation of landscaping for evergreen trees along the southern and eastern property line. The eastern edge is fine for that. The southern part is a bit more difficult. He concluded that the hours they are requesting to extend are reasonable and asked for approval of this application with a modification being made to Condition #2.

Commissioner Mobley asked if the hours would be for all year round.

Mr. Ramado responded and said March through May will have the peak hours of operation. The operation statement says they have to be consistent with the statement. Nothing will be changed other than the hours of operation. This is the most functional area to operate as far as the trucks coming in and out.

Commissioner Lashbrook says she likes the business. She asked if there was another way to move the operation further back to help with the noise. She asked if there was a way to stack hay as a barrier. Is there a way to mitigate the noise?

Mr. Ramado said the noise is happening during the day. He suggested that the owner, Sergio Silva, respond to Commissioner Lashbrook's questions.

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Sergio Silva, business owner, stated that he has been in business for 30 years. They grow plants and flowers. His operation is not being run 24 hours 7 days a week. He says he has never had complaints before. They are only there from March – May. He is always available to the neighbors to try and work with their complaints. Harvesting tomatoes takes consistency. He is not asking for 24 hours. He is asking from 6am to 10pm. He asked for approval of this application.

Michelle Gomes, neighbor, says the operators are running 24 hrs 7days a week. The Sheriffs department was out there but couldn't do anything so Code Enforcement got involved. The noise carries throughout their house. She is not against their business. Three months is too long to have a 24 hr day business.

Jeff Wilson, Code Compliance Manager, gave some background and history involved with this project. The Code Compliance Division became involved with the first permit when they installed the beds for the nursery. The original Administrative Permit was then issued. No complaints were received until this year from a neighbor. They contacted Sergio Silva reminding him of the hours stated in the operational statement. He added that there are 3 phases to this process. First is the maintenance of the tomatoes, then loading and unloading of the trucks, the final phase is picking up the trailers and leaving.

He did submit an application to increase the hours to 10pm instead of 8pm to allow more time if there is a delay in picking up the trailers.

Commissioner Lashbrook asked if a temporary mass wall of hay or something similar would make a difference.

Mr. Wilson said that would be up to the Planning Commissioners to decide on and up to the applicant on whether he can install that. He can ensure there is enforcement if the Commissioners decide on a condition to add a barrier.

Commissioner Lashbrook would like to see the business owner move the stack bins to the front as a barrier and to also help keep the neighbors properties clean.

Mr. Wilson says the original permit has a condition that includes Resolution 97-1 and that addresses the trash issues, so that can be monitored.

Commissioner Lashbrook said planting trees there won't help as a noise barrier, maybe hay stacks would help. Chairman Tanner wouldn't like to see hay stacks if his property was across the street.

Mr. Wilson just spoke with Mr. Silva and he said an option would be to restack the storage bins to the front as a barrier during the peak season to help reduce the noise.

Commissioner Mobley says he is sensitive to the fact of disturbing neighbors, but this area is designated as Agricultural and it is a legitimate use for land. Mr. Silva seems an honorable business owner, and sometimes there will be inconveniences.

The public hearing closed at 11:25 a.m.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS MINOR MODIFICATION APPLICATION No. MM09-004 TO ADMINISTRATIVE APPLICATION No. AA07-074 FROM CEQA.**

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JULY 22, 2009, AND MAKES THE 15 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 15 FINDINGS, APPROVES MINOR MODIFICATION APPLICATION No. MM09-004 TO ADMINISTRATIVE APPLICATION No. AA07-074 SUBJECT TO THE 6 CONDITIONS IN STAFF REPORT TO READ AS FOLLOWS:**

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**Conditions:**

Planning & Community Development Department

1. This Minor Modification is granted to allow Condition of Approval #3 of Administrative Permit No. AA07-074 to state:  
  
*The hours of operation shall be from 6:00 a.m. to 10:00 p.m., seven days a week.*
2. All other conditions of approval for Administrative Permit No. AA07-074, with the exception of Condition #3 which has been revised by this modification, shall remain in effect.
3. The applicant shall indicate on a new plot plan and install landscaping of evergreen trees along the southern and eastern property lines to screen the adjacent residences and land uses from the land use.
4. For the purpose of conditions monitoring, an inspection fee in the amount of **\$304** 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.
5. The project is subject to all applicable Local, State and Federal regulations.

Department of Public Health/ Environmental Health Division

6. To avoid creating a public water system (25 or more people for 60 or more days of the year), the on-site water system must be used for irrigation only. The operator must demonstrate that the human consumption of water from the on-site water system is not taking place and cannot reasonably take place. For example, no sinks, showers, drinking fountains, or cooking facilities may be present. All water connections must be specifically for irrigation purposes. Portable hand washing facilities as provided with the portable restrooms are allowable. Cool bottled drinking water must be readily available in adequate supply to employees.

- C. General Plan Text Amendment Application No. GPTA 09-002 - Merced County -** To add text into the General Plan Circulation Chapter and corresponding diagram regarding the Atwater-Merced Expressway for a regional roadway alignment from State Route 140 to State Route 59 between the Atwater and Merced areas. The properties in this general vicinity are designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. JH (Continued from the June 24, 2009 meeting)**

Planner James Holland presented the Staff Report and recommendations of approval dated July 22, 2009. This item was continued from the June 24, 2009 meeting.

Jimmy Sims, with the Mark Thomas Company, Consultant for Merced County Association of Governments, gave a presentation on the history of this project.

Commissioner Lashbrook asked if climate change was addressed in the Environmental Impact Report (EIR) or can that be added at a later date?

Mr. Holland said the State hasn't adopted a specific set of standards with relation to investigation of a project and whether there would be a significant impact. This project may have a cumulative impact, but he is not in a position to take mitigation that may be employed beyond those normally applied under existing sections through CEQA.

Steve Rough, Department of Public Works/Road Division, stated that Bellevue Road is considered the northern portion of the loop; Atwater-Merced Expressway is the eastern portion and Mission – Dickenson Ferry is the southern loop.

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Megan Russell, with Circle Point, consultant for Merced County Association of Governments, addressed Commissioner Lashbrooks question regarding climate change. The EIR evaluated vehicle miles traveled, which is the recommended approach in evaluating green house gas emissions impacts. The project reduces the vehicle miles traveled in the area which concludes that there is a reduction in green house emissions.

Chairman Tanner explained that the Commission does not have the ability to change the Expressway route and all the Commission can do today is set aside the land so people know for the future that the expressway will go through that land.

The public hearing opened at 12:05 p.m.

Jeff Stovern, President of the Atwater Chamber of Commerce and Manager of Big Creek Lumber, stated that he is in favor of this application moving forward. He owns a business in Atwater and will be close to the Interchange and feels the Expressway will create more business for business owners in Atwater. Modesto didn't build an expressway in advance and there will be less congestion throughout the town and pollution will be reduced with the new expressway. He asked for approval of this application.

Elaine Parker, Atwater resident, says there is a lot of misunderstanding about the alternatives they would have if this application is approved. Can they put in a new agricultural well if the one you currently have goes out? Can improvements be made to properties, etc.? She is requesting the Commission to provide information to property owners about what alternatives they do have so they can understand.

Bill Nicholson, Assistant Development Services Director, stated the exercise for the County similar to the Hwy 152 bypass in Los Banos is to identify that this regional route is a significant project for the long term growth of the County and put the alignment within the General Plan. The land use for development, recreation, jobs and housing are identified in the General Plan. This project is serving the long term growth of the Region. The alignment will show the future area will be preserved for this right of way. Agricultural operations will not change and won't be affected after the road is built.

Chairman Tanner says if you want to build a brand new home you probably won't be able to, but, if you want to fix your home, you can do that.

John Lufti, Atwater resident, says the interchange will basically go right through his 10 acres of land. He said when he wants to sell his property, he is out of luck. He asked when this project will begin.

Jesse Brown, Executive Director for Merced County Association of Governments, explained that we are financially challenged so it could take 10-15 years before they get to the next step, which is the engineering and buying the right-of-way. This project is a high priority for the region and his Board of Directors. He can't give a specific date as to when this will begin.

Janet Young, Associate Chancellor at UC Merced, says she is in support of this application and feels it would be an important improvement to the area. This project would help with economic development and the Expressway would be a link from Castle over to Bellevue and UC Merced. She asked the Commission to consider their comments.

Jeannie Knight, Atwater resident, says she owns 3 acres of Commercial property that will be taken away for this Expressway. She asked that the text not be added to this General Plan. No one knows when this project will be completed so they won't get paid for their land for a long time.

Dave Dolter, Project Manager for Ferrari Ranch, supports staff recommendations. The entry way sits on 40 acres of his clients' property. They are working hard to get a financing plan but they have to get this on a land use map. They are part of a stakeholder group with MCAG, Merced County, Atwater and UC Merced. This project needs to move along. There are

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20,000 jobs at stake between UC Merced and Castle. He asks for support in moving this project forward to the Board of Supervisors.

Charlie Woods, Atwater Community Development Director, stated that MCAG has done a terrific job in managing this process. He feels this Interchange would be a success for the City of Atwater. This project will not be started for 10-15 years, not only because of money, but all of that will be driven by the market and right now there isn't anything driving that amount of Commercial or Residential. A financing plan will address land use and be an important document that pulls together the phasing, financing and other critical operational details of how to get it done. There needs to be a minimum of at least two lanes from the Interchange to Green Sands as a starting point. They will include this route in their future General Plan Update. They are focused on the west side of the Community now. Their objective is to work with the County to connect Bellevue with that Interchange at Highway 99.

Linda Abai, Atwater resident, spoke on behalf of some residents near her. She asked that the Commission get a date, time and when this project will happen. She is not for this project. They don't want their life on hold. She asked the County not to hold their properties hostage until they are ready to move forward with this project. Merced needs to focus on how to get the jobs back to Merced County.

The public hearing closed at 12:30 p.m.

Commissioner Mobley understands the necessity of putting restrictions on properties, but for someone that does have property that will be taken by this project, what options does a property owner have when he wants to sell the property before the project starts?

Marianne Greene, Deputy County Counsel, stated that amending the General Plan is part of planning. This is advanced planning and there is no current remedy. All property value is not lost here. They can still use or lease their property.

Commissioner Mobley says he wouldn't want to buy any property that would be affected by the Expressway.

Ms. Greene added that it is a risk when you buy property. There is no right that one would have if you buy property and use that as retirement.

Jess Brown, MCAG, stated that without knowing where the alignment is going would be more of a question for the public. MCAG did their best to avoid taking as many houses as they could. They are attempting to do their best job to let property owners know where this alignment will be going. There is a remedy that Caltrans uses called a "Hardship" where a property owner can apply and if they qualify they can be compensated for their property earlier at fair market value.

Ms. Greene stated that this land is agricultural now but there is no guarantee that this will depress values. Highways can generate interest in zoning changes. This could also benefit these owners. The task is to try to plan as well as you can for the future.

Commissioner Lashbrook suggested a conservation easement beforehand to help with the property. She is concerned about no green buffer between the towns. She hopes that there is not Commercial business all the way down Highway 99. She wants to be sure everyone understands what is going on with this alignment. Maybe there could be money for conservation easements. We need development and new businesses but she wants to ensure the Valley is not covered up by Commercial properties. We need more infill, not have outer roads attract growth causing ag loss. She would like to have a fact sheet for property owners in case they have questions.

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**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS TO ADOPT THE MITIGATION MEASURES AND ADOPT THE FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS IN THE STAFF REPORT, AND ADOPT THE ENVIRONMENTAL IMPACT REPORT PREPARED FOR GENERAL PLAN TEXT AMENDMENT APPLICATION No. GPTA09-002.**

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS APPROVE GENERAL PLAN TEXT AMENDMENT APPLICATION No. GPTA09-002.**

**VI. CORRESPONDENCE**

None

**VII. GENERAL BUSINESS**

Robert Lewis said the City of Merced is now enforcing on the 2 hour parking in the front and back part of the County Administration building and members of public attending the Planning Commission meetings have the opportunity to obtain a day parking pass from the Board of Supervisors office since Planning Commission Meetings at times go longer than 2 hours. There will be a notation on future Planning Commission Agendas reminding the public of the new parking policy.

There will be a Housing Element Joint Study Session between the Planning Commission and Board of Supervisors in September.

There will be a General Plan Steering Committee today at 1:30pm in the Board Chambers.

**VIII. DIRECTOR'S REPORT**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 12:30 p.m.