MERCED COUNTY PLANNING COMMISSION MINUTES FOR MEETING OF JANUARY 13, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of January 13, 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 9:00 a.m., on January 13, 2010, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Lynn Tanner - Chairman

Commissioner Jack Mobley - Vice Chairman

Commissioner Mark Erreca Commissioner Cindy Lashbrook

Staff Present: Robert Lewis, Development Services Director

William Nicholson, Assistant Development Services Director

Kim Anderson, Recording Secretary David Gilbert, Senior Planner James Holland, Senior Planner Brian Guerrero, Planner II

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Rudy Buendia

III. APPROVAL OF MINUTES

M/S MOBLEY- ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF NOVEMBER 4, 2009; NOVEMBER 18, 2009 AND DECEMBER 2, 2009.

IV. <u>CITIZEN COMMUNICATIONS</u>

None

V. PUBLIC HEARINGS

A. MINOR SUBDIVISION APPLICATION No. MS09-014 - Pacheco LLC - To divide 6.17 acres into three 1.50 acre parcels and one 1.67 acre parcel. The project is located on the east side of Badger Flat Road, 4,200 feet north of Highway 152 in the Los Banos area. The property is designated Industrial land use in the General Plan and zoned M-1 (Light Manufacturing). THE ACTION REQUESTED IS TO MAKE A PROJECT ENVIRONMENTAL DETERMINATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. DG

Planner David Gilbert presented the Staff Report and recommendations of approval dated January 13, 2010.

Commissioner Lashbrook asked if a condition regarding the Right-to-Farm certificate can be added to the staff report.

Mr. Gilbert said verbiage can be added as a condition of approval.

The public hearing opened at 9:13 a.m.

Duane Andrews, Golden Valley Engineering, said he has no issues and no problem with adding a condition regarding a Right-to-Farm certificate.

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

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION EXEMPTS MINOR SUBDIVISION APPLICATION No. MS09-014, FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 13, 2010, AND MAKES THE 11 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 11 FINDINGS, APPROVES MINOR SUBDIVISION APPLICATION No. MS09-014 SUBJECT TO THE 3 CONDITIONS SET FORTH IN THE STAFF REPORT WITH THE ADDITION OF CONDITION #4 TO READ AS FOLLOWS:

Conditions:

Merced County Planning and Community Development

- 1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the Planning Commission approval date as required by the Subdivision Map Act and Merced County Subdivision Code.
- 2. The applicant/property owner shall comply with all applicable conditions contained in Planning Commission Resolution 97-1 (attached).
- 3. The applicant/property owner shall comply with all Federal, State, and Local regulations.
- 4. A Right-to-Farm Certificate shall be recorded prior to issuance of any building permits to notify subsequent occupants of the inconveniences of farming operations and the priority to which Merced County places on such operations.
- B. MAJOR SUBDIVISION APPLICATION No. MAS04-014 Lakeview Properties Ed Grossman To divide a 58 acre parcel into 35 single family residential lots, a 9.0 acre passive recreation area and an 8.0 acre remainder parcel. The project is located at the northeast corner of Merced Falls Road and La Grange Road within the Snelling SUDP. The property is designated General Commercial and Low-Density Residential land use in the General Plan and zoned C-2 (General Commercial) and R-1 (Single Family Residential). THE ACTION REQUESTED IS TO MAKE A PROJECT ENVIRONMENTAL DETERMINATION AND TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. JH

Planner James Holland presented the Staff Report and recommendations of approval dated January 13, 2010.

Marianne Greene, County Counsel, states that the Planning Commission consider comments on the Negative Declaration only when substantial evidence is provided in CEQA Guidelines Section 15384(6) and not just on comments containing assumptions, speculations or opinion not supported by facts.

Commissioner Lashbrook asked about the wells onsite and the water quality.

Mr. Holland said there is a good supply of water in the Snelling area and all of Snelling relies on wells.

Bob Klousner, Planning Partners, stated there were no hydrologic tests done for the project. If the concern is water quality, extensive tests were done to detect mercury. If the criterias are not met by Environmental Health, they would deem it a failed well. They are confident there are no problems with the wells in the Snelling area.

Russell Grossman, applicant, stated that he had drilled a well adjacent about 4 years ago and that well was 218 feet deep and the water has been good. There was some filter problems but the well is only used for irrigation purposes. The water was tested by the County and found to be fine.

Commissioner Lashbrook asked when the wells would be drilled. Mr. Grossman responded he will either sell vacant lots, or he will build the home and install the well to suit the buyer.

Commissioner Lashbrook asked what the minimum lot size is on the land to the west.

Mr. Holland showed the map of the land use and the land is low density development and at one home per 9 or 10 acres.

Ms. Lashbrook asked if the environmental study discusses the preservation and maintenance of the Oak trees.

Mr. Klousner answered that the Oak trees are protected, and each lot has designated areas to be buildable and areas that are not. Within the non-buildable areas are most of the natural resources. The intention is that there is no residential activity on those portions of the lot. Landowners have the ability to maintain property to avoid hazards.

Mr. Klousner pointed out a mitigation measure shows that an Arborist may be necessary and involved in Oak preservation.

Ms. Lashbrook asked what is going to be happening with the irrigation ditch and who is responsible.

Mr. Holland said the ditch is in private ownership. It was proposed the ditch would be moved but it turned out to not be a good idea according to Fish and Game. The small size and shallow nature of the ditch does not make it a safety problem for residents – wider ditches with trails and sidewalks exist in Merced.

Ms. Lashbrook added that pesticides on the lawns can be hurtful to the water, and use more native plants, less grass.

Mr. Klousner ensured that the requirements will be met (NPDES BMP requirements) to prevent contamination, and many lots have preserve areas that won't require watering. New landscaping law passed by State will apply.

County Counsel Marianne Greene, responded to a comment on page 3 of the letter submitted by San Joaquin Raptor Rescue Center, that talks about mitigation measure No. 5. It looks argumentative but she said if Commissioners have any concerns, this would be the time to raise any conflicts of interest.

Ms. Lashbrook said this is all speculative and there is no financial gain to her at all, and there is no conflict of interest.

The public hearing opened at 10:15 a.m.

Bryan Stice, representative, said Mr. Holland did a thorough job with the presentation and is a natural resource oriented project. He added that the project is near or adjacent to existing services and infrastructure. Many discussions and workshops were held before the Snelling MAC and there were concerns that were addressed and resulted in a redesigned development with positive qualities. The subdivision and surroundings determined that the project and community would be better servedwith the loop circular system. This project is above and beyond addressing how it interfaces with the natural surroundings. Every home constructed will be bordered along an open space area. The modifications include the revisions of the buffer area. The Snelling MAC supports this project.

Ms. Lashbrook asked who is liable for the maintenance or other issues regarding the ditch.

Mr.Stice said the ditch is difficult to reach and sees no future problems with it.

Mr. Holland said the irrigation ditch runs through the Snelling Community. It runs back behind the school. They are unaware of any safety or risk incidents.

Ms. Greene clarified that the ditch is privately owned. She asked if the ditch will be adjacent to the subject property.

Mr. Holland said the ditch is its own entity. Ms. Greene felt it was it is governed by State Law and didn't see as a County liability.

Mr. Klousner added that the ditch is subject to a legal settlement. He doesn't think subdividing that property extinguishes those rights. There is nothing proposed by this subdivision that would hinder people with rights to the ditch to maintain it.

Commissioner Lashbrook worried landowners along ditch may grade, block or contaminate the ditch.

Ms. Greene stated that the Sheriff or County Environmental Health Division can enforce protection measures.

The public hearing closed at 10:25 a.m.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR MAJOR SUBDIVISION APPLICATION No. MAS04-014 WITH THE 14 MITIGATION MEASURES.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 13, 2010, AND MAKES THE 9 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 9 FINDINGS, APPROVES MAJOR SUBDIVISION APPLICATION No. MAS04-014 SUBJECT TO THE 18 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

- 1. A Final Map shall be recorded within two years of the Planning Commission approval date as required by the Merced County Subdivision Code.
- 2. This project shall comply with the applicable Standard Conditions in Planning Commission Resolution No. 97-1.

- 3. Prior to approval of the Final Map, the developer shall submit a current 'Can and Will Serve' letter for the project issued by the Snelling Community Services District and shall demonstrate to the satisfaction of the County that any improvements required by this letter have been made or bonded for.
- 4. For the purpose of conditions monitoring, an inspection fee in the amount of \$486 shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant/property owner at the established hourly rate at the time of the inspection. This permit will not be considered valid until the conditions monitoring fee has been paid.

Mitigation Measures

5. Mitigation Measure 1: Maintain aesthetic vegetation buffer

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

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

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

- A. Comply with SJVAPCD's Regulation VIII, Dust Suppression Measures (described above), Rule 8021, preparation of a Dust Control Plan and Rule 3135, Dust Control Plan Fee.
- B. Comply with SJVAPCD's Rules 4901 and 4902 regarding wood burning devices and natural gas-fired water heaters.
- C. Comply with SJVAPCD's additional measures 1 through 6 as follows to further reduce ozone precursors. The project applicant shall implement the following:
 - Energy efficient design including automated control systems for heating/air conditioning and energy efficiency beyond Title 24 requirements, lighting controls and energy-efficient lighting in buildings, increased insulation beyond Title 24 requirements, and light colored roof materials to reflect heat.
 - 2. Planting of deciduous trees on the south and westerly facing sides of buildings.

- 3. Providing low nitrogen oxide (NO_x) emitting and/or high efficiency water heaters.
- Sidewalks and bike paths throughout as much of the project as is possible and should be connected to any nearby open space areas, parks, schools, commercial areas, etc.
- 5. Natural gas/propane lines and electrical outlets should be installed in patio areas to encourage the use of gas and/or electric barbecues.
- 6. All housing units should include as part of the purchase an electric lawn mower and electric edger.
- D. Comply with all applicable SJVAPCD Rules and Regulations that may apply, including: Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), and Rule 4002 (National Emissions Standards for Hazardous Air Pollutants).

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

No later than six months after the granting of any preliminary map approval by the County, and prior to the submittal of any improvement plans or other permit applications, the property owner/applicant shall enter into a contract with the County that provides for the establishment of a fund to pay for hiring a qualified consultant who shall be responsible for implementing or overseeing the implementation of (as necessary) all Biological Resource mitigations required by this Mitigated Negative Declaration. This contract shall also provide for payment of consultant costs for monitoring all biological resource mitigations where such monitoring does not fall within the identified responsibilities of other public agencies.

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

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

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

- A. The applicant shall indicate buildable areas on the Final Subdivision Map, outside of which all future construction or grading shall be prohibited.
- B. The applicant shall permanently protect biological resources within the two preserve areas shown on Figure 5 (four-acre Ecological Preserve on the west, nine-acre Passive Recreation Area on the north) through dedication in fee of the two areas to a Homeowner's Association (HOA). In forming the Homeowner's Association, the applicant shall establish an endowment and annual maintenance fees sufficient to ensure permanent management of the two preserve areas, including annual monitoring by a professional biologist (further described in

Mitigation Measure 5). Alternately, the applicant may deed the areas to a conservation organization or public entity, or through another mechanism acceptable to Merced County, that would result in permanent conservation and maintenance of the three areas. Within the preserved areas, all development or habitat modification, including changes in site hydrology through the creation of grassy areas, landscaping irrigation or the introduction of invasive/weed species (unless approved by CDFG and USFWS), shall be prohibited.

- C. The applicant shall establish open space conservation easements in favor of the HOA within all affected lots on the Final Subdivision Map as indicated in Figure 5 (Lots 1, 5, 6, 7, 8, 9, 10, 25, 26, 27, 29, 30, 31, 32, 33 and 36).
- D. The applicant shall protect sensitive biological resources within the passive recreation area, ecological preserve area, and open space conservation area during mass site grading and road and underground utility construction through installation of construction fencing along all preservation area or conservation area boundaries. Specific protections described in Mitigation Measure 5, 6, 7, and 8 must be followed to protect sensitive species.
- E. The applicant shall establish Conditions, Covenants and Restrictions (CCR) applicable to the single-family residential lots, and enforceable by the Homeowner's Association, that ban construction or grading within the open space conservation easements. The CCRs shall include the following protocol: Homeowner and/or their agent shall not perform any grading or construction outside of buildable areas as indicated on the Final Subdivision Map. No individual building permit will be granted by Merced County without Homeowner's Association review and approval of all proposed clearing and construction on individual lots. These CCRs and Homeowner's Association by laws shall be either placed on the face of the final map or recorded with the title of each lot.

9. Mitigation Measure 5: VELB protection

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

A. The applicant shall permanently protect blue elderberry shrubs within the two preserve areas shown on Figure 5 (four-acre Ecological Preserve and nine-acre Passive Recreation Area), as described in Mitigation Measure 4, through dedication in fee of the two areas to a Homeowner's Association (HOA). In forming the Homeowner's Association, the applicant shall establish an endowment and annual maintenance fees sufficient to ensure permanent management of the two preserve areas, including annual monitoring by a professional biologist pursuant to measures c-vii, d-v, d-vi, and d-vii below.

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

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

- a. Homeowner and/or their agent shall not perform any grading or construction outside of buildable areas as indicated on the Final Subdivision Map.
- b. Homeowner and/or their agent shall avoid disturbing roots within the blue root protection zone (30 feet from the shrub).
- c. Homeowner and/or their agent shall avoid filling, trenching or paving within the root protection zone.
- d. Should any of the events listed above as (1)-(3) occur, homeowner or their agent shall be responsible for restoring the damaged area to its state prior to the initiation of construction or grading.
- e. Homeowner and/or their agent shall notify the USFWS in the event that a blue elderberry shrub is damaged. If shrubs must be removed, the homeowner will be responsible for the cost of replacing the shrub according to USFWS protocol (see conservation measure e below).
- 5. A certified biologist shall be present on-site at the initiation of single family residence construction within Lots 7, 8, 25, 26, 27, 30, 31, 32, and 36 to ensure that builders and crew have been adequately instructed to avoid disturbance within blue elderberry conservation areas and that blue elderberry shrubs have been flagged and enclosed by fences at least 30 feet from the canopy dripline (or other distance determined by the USFWS) during construction activities:
- 6. After major construction and landscaping is completed within Lots 7, 8, 25, 26, 27, 30, 31, 32, and 36 and prior to issuance of a final occupancy permit by Merced County, a certified biologist shall visit the site to confirm that blue elderberry shrubs have not been degraded, damaged or removed.
- 7. For 10 years after construction of the first residence within the subdivision is completed (as indicated by issuance of a certificate of occupancy by Merced County), a certified biologist shall annually monitor protection of blue elderberry shrubs within the project area (including single family residential lots). Every annual visit will include a survey of the number of shrubs and a count of the number of basal stems with a diameter of one inch or greater by size class, as well as visual inspections of all such stems for VELB and/or VELB exit holes.
- 8. A written report, presenting and analyzing the data from the project monitoring, will be prepared by a qualified biologist for each year of monitoring efforts. Copies of the report will be submitted by December 31 of that year to

the USFWS and the CDFG. The report will address the status and progress of the blue elderberry shrubs, as well as any failings of the conservation plan and the steps taken to correct them. Any observations of VELB or fresh exit holes will be noted. Copies of original field notes, raw data, photographs and maps of the conservation area will be included with the report.

The elderberry survival rates, conditions, and sizes of the plants will be analyzed and presented in the report. Observed and likely future threats will be addressed along with suggested remedies and preventative measures. A copy of each annual report shall be submitted to Merced County concurrently with its submission to USFWS and CDFG.

- E. The Federal Endangered Species Act (as managed through the USFWS) requires transplanting or replacing of elderberry shrubs for any direct or indirect impacts to shrubs with stems greater than one (1) inch before removal of any existing elderberry shrubs. If approved by the USFWS, prior to any further site disturbance or grading, or recordation of any Final Subdivision Map, any blue elderberry shrubs on the project site that will be impacted shall be transplanted to compatible sites with compatible habitat within the proposed preserves adjacent to the site. This preserve provides optimal conditions for elderberry shrubs, as evidenced by the thriving extant populations in the proposed preserve. In order to minimize the potential adverse effects of relocation, transplanting shall be completed during the winter season, while the elderberries remain in their dormant phase. Transplanting efforts shall be completed well in advance of any construction activities on the project site, and shall be overseen by a qualified biologist to ensure that proper procedures are followed. The applicant shall implement any additional mitigation identified by the USFWS.
- F. Construction and operation of the off-site stormwater detention system and any mitigation planting or transplanting undertaken by the project applicant or successor-in-interest shall avoid all existing blue elderberry shrubs, including a minimum 30-foot buffer area around each shrub or as otherwise approved by the USFWS.

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

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

A. Construction Scheduling. Any trees that need to be removed to facilitate future development shall be felled outside of the local avian nesting season (February 1 through August 31). If trees are to be felled within these dates, the applicant shall arrange for preconstruction nest surveys to be conducted by a qualified biologist no more than 30 days prior to the initiation of proposed development activities. A copy of the raptor nest survey report

shall be provided to the County. If surveys identify nest-building activity or an active nest near the proposed development, the applicant shall initiate consultation with the Department of Fish and Game to obtain recommendations on avoiding impacts to nesting birds while the nest is occupied.

Generally, buffers are erected around active raptor nests until the young have fledged or the nest is abandoned. Buffers range between 50 and 500 feet, depending on the species, and are determined through consultation with the CDFG.

- B. Foraging habitat compensation. The project applicant shall implement one of the following options to mitigate for the loss of ~20 acres of low-moderate quality Swainson's hawk foraging habitat on the project site:
 - 1. Prior to the initiation grading activities, purchase conservation easements and/or fee title acquisition of suitable foraging habitat (within 10 miles of a Swainson's hawk nest tree) at a 0.75:1 ratio (e.g. 15 acres for 20 acres impacted), as well as establishment of an associated management endowment to fund management of these lands in perpetuity.

OR

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

11. Mitigation Measure 7: Oak woodland preservation

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

- A. During construction, the 179 oak trees and their root protection zone (150% circumference of the dripline) within the portion of the project site to be developed, and within the conservation/deed restriction area, shall be protected from disturbance with flagging and hay bales along the root protection zone
- B. Compensation plantings at a ratio of 3:1 shall be required for all Oak trees to be removed as a result of project implementation that

are five inches in dbh or greater existing at the date of project approval, or having existed on the site in the period from January 1, 2003 to project approval. The replacement trees must have a guaranteed survival rate of 70 percent at the end of seven years.

Additional plantings at a ratio to 3:1 shall be made if, at the end of seven years, the survival rate is less than 70 percent; such additional plantings shall be monitored for a subsequent seven year period. Compensation plantings shall be implemented for the 45 impacted valley oaks. Diameter at Breast Height (dbh) measurements (measured at approximately 4.5-feet above the ground) for the 45 impacted oaks aggregate to a total of 504 inches.

- C. The remaining 177 trees on the project site shall be preserved within open space conservation areas (deed restrictions) to prohibit their cutting or interference, along with 138 valley oaks within the two proposed preserves, for a sum total diameter of 4,544 inches. Further, the 138 oaks within the two preserves shall provide 13 acres of undisturbed, natural oak woodland habitat.
- D. The applicant shall establish Conditions, Covenants and Restrictions (CCR), enforceable by the Homeowner's Association, applicable to the single-family residential lots that will require future homeowners to comply with standard oak tree care practices including (but not limited to):
 - 1. Avoid disturbing roots within the tree's root protection zone (150% dripline circumference, up to 90 feet from the trunk for a mature tree)
 - 2. Avoid filling, trenching or paving within the root protection zone
 - 3. Provide enclosures for seedlings and saplings to prevent damage from herbivores or domestic livestock
 - Employ the services of a certified arborist for pruning or supplemental maintenance such as thinning a crowded stand or tree replacement
 - 5. Avoid overwatering oak trees by planting only droughttolerant plants that require no summer water around old established oaks, and no closer than 6 feet from the base of the tree.
- E. It is presumed that the existing thriving population of preserve oaks will remain healthy. Nonetheless, the overall health and long-term viability of each oak within the two preserves shall be monitored visually at least once a year for a period of 7 years by a qualified biologist.

12. Mitigation Measure 8: Wetland impact compensation

In accordance with project Mitigation and Monitoring Plan (Vollmar 2006), the project applicant shall compensate for a total of 0.423 acres of wetland loss with the creation of two on-site wetlands totaling 0.899 acres in the preserve areas.

As a condition of project approval, prior to any site grading or construction involving fills, road crossings, utility crossings or other direct impacts to Waters of the U.S, the project applicant shall obtain all necessary wetland permits and/or certification from the USACE, CDFG, and Regional Water Quality Control Board (RWQCB). The Biological Resources Mitigation and Monitoring Plan (Vollmar 2009) includes an on-site wetlands compensation construction plan and monitoring plan. Both created wetlands will be constructed to sustain seasonal inundation and perennial sub-surface saturation. A proposed 0.432-acre wetland (CW-1) would be created in an area currently covered by tailings in the northeastern corner of the nine-acre proposed passive recreation preserve just north of the project site impact area. A proposed 0.467-acre created wetland (CW-2) will be constructed in an area covered by tailings in the northern section of the proposed four-acre ecological preserve. CW-2 would effectively extend an existing narrow wetland situated just north of the proposed limit of grading for the wetland. It is anticipated that the created wetlands will match, if not exceed, the habitat quality of the existing wetlands among the project site tailings.

As indicated, typical species inhabiting the existing wetlands include tall nutsedge, rushes, and pale-spike rush, as well as overstory cottonwoods and willows. Excavating new wetland pools to a depth comparable to existing wetlands (typically one foot in depth) will provide suitable hydrology conducive to natural colonization by these native species. Criteria and timetables for evaluating the incremental success of the created wetlands are outlined in the Mitigation and Monitoring Plan (Vollmar 2006). The plan includes measures to insure that on-site un-impacted wetlands and created wetlands will remain inundated or saturated for sufficient duration to support hydrophytic vegetation. Additionally, project designs provide a drainage system (consistent with Mitigation Measures in the Hydrology section of this Initial Study) to prevent surface stormwater or landscaping irrigation runoff from flowing into on-site wetlands in preserve zones, or other nearby wetlands areas, unless adequately filtered by new wetlands or grasslands. The Sacramento District Corps of Engineers will be provided with an annual report within sixty days of the completion of vegetation sampling for years one, two, three and five. These reports will present the results of the current year's data and discuss the program's progress toward achieving mitigation success. Both COE and USFWS will be notified in writing once it has been determined by the project's wetland monitor that the success criteria for the project have been met, as outlined below. USACE authorization for fill must be secured, and the appropriate wetlands mitigation plan must be approved by Merced County and the USACE prior to issuance of construction permits or recordation of parcel or subdivision maps. The wetlands mitigation plan must also be submitted to the Merced County Planning & Community Development Department for review and approval. Compensation wetlands must meet the following success criteria, as well as any additional criteria identified by the USACE, CDFG and/or the RWQCB:

 Compensation wetlands will remain inundated or saturated for sufficient duration to support hydrophytic vegetation.

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

13. Mitigation Measure 9: Storm Water Pollution Prevention Plan

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

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

14. Mitigation Measure 10: Fire breaks and fire setbacks

A. The project shall comply at all times with the requirements set forth in §51182 of the Government Code and §4291 of the Public Resources Code regarding minimum standards for on-site firebreaks, vegetation management, and structure design and

maintenance. For lots with 1-acre or greater buildable area, these requirements include:

- Creation of a minimum 30-foot wide firebreak around the perimeter or each dwelling unit and commercial structure cleared of all flammable vegetation or other combustible growth. Landscaping may be developed within this area if it does not form a means of rapidly transmitting fire from the native growth to any dwelling or structure.
- 2. Creation of a secondary firebreak from the outside of the 30-foot area described above to 100 feet in which all brush, flammable vegetation, or combustible growth is removed. Grass and other vegetation located more than 30 feet from the dwelling or structure and less than 18 inches in height above the ground may be maintained where necessary to stabilize the soil and prevent erosion. This will not affect requirements for preservation of oaks and elderberry bushes because these preserved resources are not within lots with 1-acre or grater buildable area.
- 3. Removal of that portion of any tree that extends within 10 feet of the outlet of any chimney or stovepipe.
- 4. Any tree located adjacent to, or overhanging, a building should be kept free of dead and dying wood.
- 5. Maintaining the roof of any structure free of leaves, needles, or other dead vegetative growth.
- 6. Providing and maintaining at all times a screen over the outlet of every chimney or stovepipe that is attached to any fireplace or stove.
- Obtaining a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards.
- B. Prior to approval of building plans for each individual structure, a Defensible Space1 Plan shall be prepared and submitted for review and approval by the Merced County Fire Department. The Defensible Space Plan shall demonstrate that all material surrounding structures capable of furthering the spread of fire has been cleared, reduced, or modified to act as a barrier between an advancing fire and the structure, and that the Plan complies with the state requirements set forth in SB 1369.

¹ Defensible space is the area around a structure, where material capable of causing fire has been cleared, reduced or changed, to act as a barrier between an advancing fire and the structure.

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

Pursuant to Merced County Code §17.20.050.D1.g and t, the applicant shall ensure that the capacity of the proposed stormwater detention is adequate to accommodate stormwater flows from the proposed project. The project applicant shall revise the design of the storm detention basin to be constructed consistent with Merced County requirements, therefore

accommodating a 25-year storm event. The created wetland shall be constructed and managed as a water quality improvement feature to protect groundwater from the adverse effects of urban runoff.

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

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

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

17. Mitigation Measure 13: Extend sewer main

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

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

The property owner/applicant shall comply with Merced County Public Works and Caltrans requirements as set forth as conditions 1-11 below.

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

 Satisfy Improvement Level 1 requirements as set forth in Chapter 16.08 of the Merced County Code which generally includes dedication of right of way and public utilities easements, roadway construction and installation of matching pavement along existing roadways, street lighting, storm drainage system and underground or relocated utilities and irrigation facilities.

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

the north side of Merced Falls Road that runs from the southeast corner of proposed lot #25, as shown on Figure 5, Sensitive Biological Habitats, September 2009, westwards to the intersection of Merced Falls Road and La Grange Road. The applicant shall also provide for the installation of a street light at this intersection.

The walking path shall be aligned to avoid additional impacts to oak trees on the project site beyond those outlined in the Mitigation and Monitoring Plan and detailed in Mitigation Measure 7. The exact alignment, dimensions, and surfacing of this walking path shall be approved by the Merced County Department of Public Works Road Division.

The Planning Commissioners took a 10 minute break.

VI. <u>COMMISSION ACTION ITEMS</u>

A. TO CONSIDER AND DECIDE ON THE SUFFICIENCY OF THE AGENDA ITEM DESCRIPTION (GOV CODE § 54954.2) FOR THE NOVEMBER 18, 2009, AGENDA ITEM: Public Hearing Item B. Conditional Use Permit No. CUP09-008 – Ingomar Packing Co. This is in response to a December 10, 2009, request from Marsha A. Burch, to Cure and Correct an alleged violation of the Ralph M. Brown Act (Gov Code § 54960.1). BG

MOTION: MOBLEY – ERRECA, AND CARRIED BY A VOTE OF 4 – 0, THE COMMISSION DECIDES THAT THE NOVEMBER 18, 2009, DETERMINATION AND ACTION TAKEN ON CUP09-008 WAS IN CONFORMANCE WITH THE BROWN ACT AND CEQA GUIDELINES AND NO FURTHER RESPONSE TO THIS APPEAL IS NECESSARY.

B. TO CONSIDER AND DECIDE ON THE SUFFICIENCY OF THE AGENDA ITEM DESCRIPTION (GOV CODE § 54954.2) FOR THE DECEMBER 2, 2009, AGENDA ITEM: Public Hearing Item B: Major Subdivision Application No. MAS05-015, "Park Street Estates". This is in response to a December 9, 2009, request from Marsha A. Burch, to Cure and Correct an alleged violation of the Ralph M. Brown Act (Gov Code § 54960.1). JH

MOTION: MOBLEY – ERRECA, AND CARRIED BY A VOTED OF 4 – 0, THE COMMISSION DECIDES THAT THE DECEMBER 2, 2009 DETERMINATION AND ACTION FOR MAS05-015 WERE IN CONFORMANCE WITH THE BROWN ACT AND CEQA GUIDELINES AND THAT NO FURTHER RESPONSE TO THE SAN JOAQUIN RAPTOR RESCUE CENTER/PROTECT OUR WATER APPEAL IS NECESSARY.

VII. <u>CORRESPONDENCE</u>

None

VIII. GENERAL BUSINESS

Commissioner Lashbrook would like to see more wording on the Planning Commission agendas regarding Initial Studies or Mitigated Negative Declarations to let the public know what type of environmental documents will be heard at each meeting.

Robert Lewis, Development Services Director, explained that more wording can be added regarding exempting projects from CEQA, by defining what action is being taken.

Marianne Greene, County Counsel said this can be agendized. This item can be listed on the agenda as a Commission Action item on the February 10, 2009 agenda so the public can comment if necessary.

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

Mr. Lewis thanked the Planning Commissioners for their input and participation in the Joint Study Session with the Board of Supervisors on January 12th.

X. <u>ADJOURNMENT</u>

There being no further business, the meeting adjourned at 11:00 a.m.