

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF MAY 22, 2019**

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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 May 22, 2019, 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 9:00 a.m., on May 22, 2019, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

**II. PLEDGE OF ALLEGIANCE**

**III. ROLL CALL OF COMMISSIONERS**

Commissioners Present:       Commissioner Mark Erreca – Chairman  
  Commissioner Robert Acheson  
  Commissioner Jack Mobley  
  Commissioner Fernando Aguilera

Staff Present:                   Mark Hendrickson, Director  
  Steve Maxey, Deputy Director  
  Kim Zinke, Recording Secretary  
  Kristin McHaney, Recording Secretary  
  Brody Patterson, Planner I  
  Tiffany Ho, Planner II  
  Pam Navares, Planner II  
  Brian Guerrero, Planner III

Legal Staff:                   Tom Ebersole, Deputy County Counsel

Commissioners Absent:       Commissioner Kurt Spycher

**IV. APPROVAL OF MINUTES**

**MOTION: M/S MOBLEY-AGUILERA, AND CARRIED BY A VOTE OF 4-0, THE COMMISSION APPROVES THE MINUTES FROM THE MEETING OF MAY 08, 2019.**

**V. CITIZEN COMMUNICATIONS**

None

**VI. PUBLIC HEARINGS**

**A.     **MINOR SUBDIVISION APPLICATION No. MS19-006 – Vivian Soares** - A request to subdivide a 48.18 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 24.89 acres and Parcel 2 = 23.29 acres. The project site is located at the southeast corner of West White Road and North Goulart Road in the Turlock area, identified as Assessor's Parcel Number (APN) 045-100-066. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). CEQA: Staff recommends that the Planning Commission find that no further environmental review is required pursuant to Section 15162 of the CEQA Guidelines - "Subsequent EIRs and Negative Declarations." **BP****

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**RECOMMENDATION(S):**

- 1) Open/close the public hearing;
- 2) Determine no further environmental review is required pursuant to Section 15162 - “Subsequent EIRs and Negative Declarations” of the CEQA Guidelines; and,
- 3) Approve Minor Subdivision Application No. MS19-006 based on the findings identified in the Staff Report and subject to the proposed conditions of approval.

Planner Brody Patterson presented the Staff Report and recommendations of approval dated May 22, 2019.

The public hearing opened at 9:09 a.m.

No one spoke in favor or opposition of this application.

The public hearing closed at 9:09 a.m.

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINED THAT THE PROJECT REQUIRES NO FURTHER ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15162 – “SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS” OF THE CEQA GUIDELINES.**

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 22, 2019 AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION No. MS19-006 SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant shall comply with all applicable County, State and Federal regulations.
3. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.
4. A note shall be placed on the face of the parcel map stating that any new residences will be subject to review and approval of a Conditional Use Permit from the County, as per General Plan Policy AG-3.12, or as otherwise permitted by the County subject to the current policies in place at the time of the request.

Merced County Department of Public Health/Environmental Health Division

5. The final map shall indicate the distance from the existing domestic well on proposed Parcel 1 to the nearest property line. That distance shall be at least 15 feet, per the Merced County Well Ordinance, Chapter 9.28.

County Counsel

**6. INDEMNITY AND HOLD HARMLESS AGREEMENT:**

Vivian Soares has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. This duty shall arise at the first claim, action, or proceeding against COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

- B. 10<sup>th</sup> EXTENSION APPLICATION NO. EXT19-003, TO MAJOR SUBDIVISION APPLICATION NO. MAS03-013 – Soernsen Estates** - A request to extend the expiration date of the tentative map for Major Subdivision No. MAS03-013 for a period of 1 year FROM: March 24, 2019 TO: March 24, 2020. The project site is located at the northwest corner of North Golf Road & East Farmland Avenue, one mile east of the City of Merced, and identified as Assessor's Parcel Number (APN) 052-352-004. The property is designated Merced Rural Residential Center and zoned A-R (Agricultural-Residential). CEQA: Staff recommends that the Planning Commission determine that the project can be found exempt from further environmental review under CEQA Section 15162 – "Subsequent EIRS and Negative Declarations". **TH**

**RECOMMENDATION(S):**

- 1) Open/close public hearing;
- 2) Determine the project can be found exempt from further environmental review under CEQA Section 15162 – "Subsequent EIRS and Negative Declarations" of the CEQA Guidelines; and,
- 3) Approve Extension Application No. EXT19-003 based on the findings included in the staff report and subject to the proposed conditions of approval.

Planner Tiffany Ho presented the Staff Report and recommendations of approval dated May 22, 2019.

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

No one spoke in favor or opposition of this application.

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

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINED THAT THE PROJECT IS EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15162 – "SUBSEQUENT EIRS AND NEGATIVE DECLATIONS" OF THE CEQA GUIDELINES.**

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 22, 2019 AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES EXTENTION No. EXT19003 TO MAJOR SUBDIVISION No. MAS03-013 SUBJECT TO THE 26 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Merced County Community and Economic Development Department

1. The applicant shall take no action in violation of the California Endangered Species Act, Fish and Game Code Sections 2081 and 1600, or any other provision of state or federal law pertaining to the protection and/or endangered species. Compliance with said laws shall be the sole and exclusive responsibility of the applicant, and the County of Merced shall be held harmless from and against any claims, whether by regulatory agency(s) or third party(s) in that regard.
2. The Final Map shall be recorded within one year of the Planning Commission approval.
3. Prior to recording the final map, the developer shall submit a landscaping plan to the Community and Economic Development Department that provides for the installation of a fence and landscaping screen around the proposed storm water detention basin.
4. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.
5. For the purpose of mitigation and/or condition monitoring, a fee in the amount of **\$300.00** shall be required. The fee shall be paid prior to recordation of the Final Map.

Merced County Division of Environmental Health

6. A soils analysis and percolation test must be performed on each lot and submitted to the Division of Environmental Health for approval prior to recording of the final map. All lots must meet Merced County minimum standards for sewage disposal systems.
7. The final subdivision map shall be redrawn, as necessary, to eliminate conflicts with the proposed location of on-site sewage disposal systems and site topography.
8. With the exception of the existing residence on proposed Lot #6, the existing structures, (including an underground vault), must be removed prior to recording the final map.
9. Prior to recording the final map, the applicant shall prepare and submit to the County Division of Environmental Health for review and approval a hydrological Study (including test results), that assesses groundwater quality and quantity on the project site and the impacts of the proposal on groundwater supplies.
10. The subdivision shall be subject to new sewage disposal system requirements, effective November 18, 2005 which require special design onsite sewage treatment systems, which release an effluent concentration of less than 10 mg/l of total nitrogen. Such systems shall be operated and maintained by the property owner, and a Zone of Benefit shall be formed for the subdivision project to monitor the operation and maintenance of the new onsite treatment systems.

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### Merced County Roads Division

11. The project shall be subject to the current Law Enforcement Facilities Impact Fee established by Resolution No. 2004-148 adjusted for inflation, in place at the time of building permit issuance.
12. The project shall be subject to the current Fire Facilities Impact Fee established by Resolution No. 2004-149 adjusted for inflation, in place at the time of building permit issuance.
13. The project shall be subject to the current Regional Transportation Impact Fee (RTIF) pursuant to Chapter 5.60 of the Merced County Code and established by Ordinance No. 1749, in place at the time of building permit issuance.
14. Prior to recordation of the final map creating new County roads, the owner shall provide all documentation and pay all fees associated with forming a road maintenance zone of benefit in County Service Area Number One for extended road maintenance services which includes, but is not limited to, street sweeping.
15. The developer shall satisfy Improvement Level 1 requirements as set forth in Chapter 16.08 of the Merced County Code. Such improvements generally include dedication of right-of-way and public utility easements, roadway construction and installation of matching pavement along existing roadways, street lighting, storm drainage system and under grounding or relocation of utilities and irrigation facilities
16. The applicant shall release and relinquish all abutter's rights of access to and from the entire Golf Road frontage of Lots 6, 7 and 8.
17. 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 Public Works that no occupancy shall take place until such time as all improvements are completed.
18. The developer shall provide centerline striping for those new roads which intersect existing peripheral streets.
19. The proposal shall provide for side and back yard drainage ditches, as applicable, on the lots in order to convey off site storm water runoff through the lot to a public roadside transmission facility and to prevent runoff onto an abutting lot.
20. The Golf Road roadside ditch, located within the right-of-way, shall have a maximum foreslope of 4:1 (horizontal:vertical) and backslope of 3:1. Additional right-of-way may be required to meet the minimum grading requirement.
21. Construction activities disturbing five 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 sponsor shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce potential impacts to water quality during construction of the project.

22. Street trees shall be provided in the front yard of each lot. The tree species shall be accepted by the County Department of Public Works Parks and Recreation Division and Planning Department as part of the improvement plan approval process.

Merced Irrigation District

23. Prior to recording the final map, the developer shall enter into a 'Subdivision Drainage Agreement' with the Merced Irrigation District and provide the County with a letter from the District stating that they will accept storm drainage water from this subdivision and that all applicable fees have been paid.
24. The developer shall enter into a "Construction Agreement" with the Merced Irrigation District for work associated with storm drainage discharge into the 'Tower Lateral'.
25. A signature block shall be provided for the Merced Irrigation District on all improvement plans associated with storm drainage discharge to MID facilities.

County Counsel

26. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

WALTER JR. & KATHLEEN SOERENSEN, has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

- C. MINOR SUBDIVISION APPLICATION No. MS19-005 - Amarjit Kandola - To divide a 75.67 acre parcel into 2 parcels, resulting in parcel sizes of: Parcel 1 = 37.97 acres and Parcel 2 = 37.7 acres, on property located at the northeast corner of North Lincoln Boulevard and West Atwater-Jordan Road in the Livingston area, identified as APN 049-060-027. The property is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). CEQA: Staff recommends that no further environmental review is required pursuant to Section 15162 of the CEQA Guidelines - "Subsequent EIRs and Negative Declarations." **BG****

**RECOMMENDATION(S):**

- 1) Open/close the public hearing;
- 2) Determine no further environmental review is required pursuant to Section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines; and,
- 3) Approve Minor Subdivision Application No. MS19-005 based on the findings identified in the Staff Report and subject to the proposed conditions of approval.

Planner Brian Guerrero presented the Staff Report and recommendations of approval date May 22, 2019.

The public hearing opened at 9:18 a.m.

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No one spoke in favor or opposition of this application.

The public hearing closed at 9:18 a.m.

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION NO FURTHER ENVIRONMENTAL REVIEW REQUIRED PURSUANT TO SECTION 15162 – “SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS” OF THE CEQA GUIDELINES.**

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 22, 2019 AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION No. MS19-005 SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant shall comply with all applicable County, State and Federal regulations.
3. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.
4. A note shall be placed on the face of the parcel map stating that any new residences will be subject to review and approval of a Conditional Use Permit from the County, as per General Plan Policy AG-3.12, or as otherwise permitted by the County subject to the current policies in place at the time of the request.

County Counsel

**5. INDEMNITY AND HOLD HARMLESS AGREEMENT:**

AMARJIT KANDOLA has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. This duty shall arise at the first claim, action, or proceeding against COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

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Merced Irrigation District (MID)

6. Delivery of MID irrigation water shall be ensured to all new parcels and an irrigation easement be provided from the existing irrigation deliver gates currently serving the whole property if there is not an existing irrigation delivery located within each new parcel.

- D. CONDITIONAL USE PERMIT No. CUP19-007 – AT&T Wireless** – A request to construct a new unmanned telecommunications tower with a height of 150 feet with a 29 foot faux windmill atop which will bring the total tower height to 179 feet. The project will include ancillary equipment consisting of an 8x8 walk-in equipment closet and a standby backup generator. The project site is located on the south side of East Mariposa Way, 1300 feet west of South Plainsburg Road in the Merced area, identified as Assessor's Parcel Number (APN) 067-050-007. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). CEQA: Staff recommends that the Planning Commission find the project may be found exempt pursuant to Section 15303 of the CEQA Guidelines – “New Construction or Conversion of Small Structures”.
- JO**

**RECOMMENDATION(S):**

- 1) Open/close the public hearing;
- 2) Determine the project can be found exempt from environmental review pursuant to Section 15303 “New Construction or Conversion of Small Structures” of the CEQA guidelines; and,
- 3) Approve Conditional Use Permit No. CUP19-007 based on the findings included in the staff report and subject to the conditions of approval.

Director Steve Maxey presented the Staff Report and recommendations of approval date May 22, 2019.

The public hearing opened at 9:23 a.m.

Commissioner Mobley inquired about required FAA approval

Deputy Director Steve Maxey responded to inquiry informing Commissioners that project did not require comment or approval from any airport.

Sarah King, AT&T representative, thanked staff for work on project and informed Commissioners she is available for any questions.

The public hearing closed at 9:23 a.m.

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINED THE PROJECT EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15303 – “NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES” OF THE CEQA GUIDELINES.**

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 22, 2019 AND MAKES THE 7 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP19-007 SUBJECT TO THE 21 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**



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### Conditions:

#### Community and Economic Development Department

1. Conditional Use Permit No. CUP19-007 is granted to allow the installation of a new unmanned telecommunications tower with a height of 150 feet with a faux windmill atop which will bring the total tower height to 179 feet. The tower will include the appropriate equipment consisting of an 8x8 walk-in equipment closet and a standby backup generator. All structures will be located on a 1,200 square foot lease area.
2. Applicant/property owner shall comply with all Federal, State, and Local agencies regulations.
3. For the purpose of condition monitoring, an inspection fee in the amount of **\$243** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required; inspection time shall be billed to the Applicant at the established hourly rate at the time of the inspection. All on-site lighting shall be stationary and directed away from adjoining properties and public rights-of-way.
4. The applicant shall post an acceptable type of financial security with the County to ensure proper maintenance of the facility and pay for its removal if it is abandoned, or if the permit expires. This security shall be for not less than one and a half times the cost of facility removal.
5. The applicant shall provide for the prompt removal of any graffiti that may be painted or otherwise marked on the equipment or structures approved by this permit.
6. The project site shall be maintained in a condition that will not be dangerous or injurious to neighboring property. Weeds, rubbish and other dangerous or injurious materials are public nuisance and are required to be abated under MCC Section 9.25.
7. Pursuant to the Merced County General Plan, Public Facilities and Services Element, Policy PFS-5.8 (which requires new telecommunication infrastructure to be screened, camouflaged, or designed in such a way as to be nearly invisible from public areas), the 179 foot telecommunications tower shall be screened camouflaged, or designed in such a way as to be nearly invisible. Specifically, the 179 foot telecommunications tower shall be camouflaged as a windmill. Note: The faux windmill blades will exceed the tower height of 150 feet; however, no antennas may be mounted such that any portion of them exceeds a maximum height of 179 feet. Additionally, the six-foot chain link fence surrounding the site shall include slats to help screen the equipment.
8. The project is subject to the provisions of Planning Commission Resolution No. 97-1, attached.

#### Merced County Fire Department Prevention Bureau

9. **Address Identification.** New and existing buildings shall have approved address numbers, building number or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property (CFC 505.1).

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10. **Fire Department Access.** Fire access shall be maintained in accordance with CFC Sec. 503.(503.1.2). A knoxbox keyed entry system is required. Approved locks shall be installed on gates or similar barriers where required by the fire code official (CFC 506.1.1)
11. **Hazardous Material Storage.** Hazardous materials/battery storage shall comply with CFC 08.1/608.4
12. **Standby Power Systems.** Standby/auxiliary power systems shall comply with all current building codes CFC 604.1.
13. **Fire Extinguishers.** Minimum 2A: 10BC required. CFC 906.
14. **Signage.** CFC 608.7.1.
15. **Information on Construction Documents.** Construction documents shall be drawn to scale upon suitable material. Electronic media documents are allowed to be submitted where approved by the fire code official Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations as determined by the fire code official. (CFC 105.4.2)
16. **Utilities shall be identified in accordance with CFC 509.1.1.** Specification sheets for all equipment shall be provided with plan submittal.
17. All construction shall be completed in a professional manner and in compliance with all provisions of the current California Building Standards Codes and all referenced documents contained within. The Code Sections cited are specific to our project and provided to assist you, however, they are not intended to be all-inclusive. See attached comments.

### Merced County Department of Public Health – Division of Environmental Health

18. The Applicant shall maintain an accurate hazardous material business (HMBP) plan with Merced County Division of Environmental Health and maintain compliance with all applicable hazardous material regulations. The HMBP must be filed electronically no later than 30 days of the commencement of operations. Visit <http://cers.calepa.ca.gov/> to submit the HMBP. See attached comments.

### Merced County Department of Public Works – Building and Safety Division

19. The Applicant shall hire an architect or engineer licensed in the state of California to draw the plans and provide structural calculations for the proposed facility. The plans shall be submitted to the Building Division for approval and a permit before and construction can begin. We require submittal to consist of: 1 set of all plans and calculations/reports in an electronic format (either on CD/Disk or flash drive). A flier is attached to detail formatting of the electronic documents for submittal.
20. The Applicant shall have a complete geotechnical/soils report done for the project site. California requires that all proposed non-residential structures must first obtain a soils/geotechnical report completed by a licensed geotechnical engineer. That report must be reviewed by the design engineer to incorporate any mitigating measures into the drawings/calculations. See attached comments.

County Counsel

21. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

AT&T WIRELESS has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of AT&T WIRELESS.

AT&T WIRELESS liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of AT&T WIRELESS, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. AT&T WIRELESS will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following Project approval, modification, or denial.

This clause for indemnification shall be interpreted to the broadest extent permitted by law

- E. MINOR SUBDIVISION APPLICATION MS19-004 - James and Karen Barstow/Robert and Jana Nairn** - A request to create a homesite parcel by removing a 5 acre portion of two lots totaling 37 acres, and combining the remaining portion to create a 30.30 acre parcel. The project site is located on the south side of W. Sunny Acres Avenue, approximately 670 feet west of N. Pepper Street in the Turlock area, identified as Assessor's Parcel Numbers (APNs): 041-120-013. The property is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). CEQA: Staff recommends that the Planning Commission determine no further environmental review is required pursuant to Section 15162 of CEQA Guidelines – "Subsequent EIRs and Negative Declarations". **PN**

**RECOMMENDATION(S):**

- 1) Open/close the public hearing;
- 2) Determine that no subsequent environmental review is required for the project in pursuant to Section 15162 – "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report and the attached CEQA Section 15162 Findings and Analysis (Exhibit C); and,
- 3) Approve Minor Subdivision Application No. MS19-004 based on the findings included in the staff report and subject to the proposed conditions of approval.

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Planner Pam Navares presented the Staff Report and recommendations of approval date May 22, 2019. Pam noted that changes have been made to the conditions of approval. Revised COA's have been given to Commissioners.

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

Commissioner Mobley asked if water storage could be a residential pool.

Pam Navares stated that Fire has allowed that type of water storage in the past.

Director Mark Hendrickson clarified that the revised COA is #11. Director asked that as part of the motion to include the revised condition of approval.

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

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINED NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED PURSUANT TO SECTION 15162 – “SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS” OF THE CEQA GUIDELINES.**

**MOTION: M/S MOBLEY-ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 22, 2019 AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION No. MS19-004 SUBJECT TO THE 11 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Merced County Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. The applicant shall comply with all applicable County, State and Federal regulations.
3. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.
4. A note shall be placed on the face of the parcel map stating that any new residences will be subject to review and approval of a Conditional Use Permit from the County, as per General Plan Policy AG-3.12, or as otherwise permitted by the County subject to the current policies in place at the time of the request.
5. Proposed Parcel 1 will require a shared well agreement from Proposed Parcel 2 until a new residential well is drilled.

Merced County Fire Department

6. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. (CFC 505.1)
7. Fire Access shall be maintained in accordance with CFC Sec. 503 (Roadways).

8. An onsite water storage requirement of 3,000 gallons for Fire Department use is required per MC code 9.24.55.

Turlock Irrigation District

9. A 20 foot easement shall be dedicated for canal and access purposes along the easterly lines of Proposed Parcel 1 and Proposed Parcel 2.
10. A 25 foot easement for electric utility service and access purposes shall be dedicated extending from the northerly right of way lines of Santa Fe Drive, along the easterly line of Proposed Parcel 2 to a point no less than 10 foot northerly of the second electrical utility pole lying approximately 325 feet northerly of Santa Fe Drive.

County Counsel

11. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

JAMES AND KAREN BARSTOW, has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law

- F. VESTED RIGHTS HEARING/DETERMINATION – Kelsey Ranch LP** - A request for determination of vested mining rights on approximately 810 acres of land, generally located on the north side of Merced Falls Road, 2.5 miles east of La Grange Road in the Snelling area, identified as APN's: 043-150-001, 043-150-004, 043-010-007 and 043-160-028. The project site is designated Foothill Pasture in the General Plan and zoned A-2 (Exclusive Agricultural). CEQA: Vested Rights Determinations are not considered a project as defined by Section 15378 of the CEQA Guidelines. **BG**

**RECOMMENDATION(S):**

- 1) Open/close the public hearing; and,
- 2) Consider evidence provided in the entire documentary record referenced in the staff report, and evidence presented at the public hearing, in order to make a determination in favor of, or against, the vested rights interest of the Applicant.

Planner Brian Guerrero presented the Staff Report and recommendations of approval date May 22, 2019.

The public hearing opened at 9:43 a.m.

Deputy Director Steve Maxey clarified with Commission that the question is to determine if there is enough evidence provided to prove that the applicant has the vested right to continue mining entire area indicated on the map

Brayden Chadwick, attorney, provided presentation of a summary of evidence

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Ed Tuttle, neighbor to mining site, stated that his property was negatively affected by past mining done by the applicant. Expressed concerns about possible future damage to property as a result of continued mining

Bryan Walbrink, Owner of Almond Brothers LP, expressed support of the continued mining by applicant

Commissioner Mobley acknowledged the neighbors concern of possible future property damage but recognizes the Commissions position is to solely determine if the applicant does have the vested rights to mine the said area.

The public hearing closed at 10:18 a.m.

Commissioner Mobley asked if the vesting is accurate? Can enforcement be done to keep the Mining operation from flooding onto the neighbor's property?

Steve Maxey, Deputy Director, said these are two separate issues. The Reclamation Plan is in place, the property owner must meet all conditions or face enforcement processies.

**MOTION: M/S MOBLEY- ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION BASED ON THE STAFF REPORT, THE ENTIRE DOCUMENTARY RECORD REFERENCED IN THE STAFF REPORT, AND THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, TENTATIVELY FINDS THAT THE APPLICANT HAS THE VESTED RIGHT TO CONDUCT SURFACE MINING OPERATIONS ON THE CLAIMED VESTED RIGHTS AREA.**

**MOTION: M/S MOBLEY- ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION REFERS THE MATTER TO COUNTY COUNSEL FOR PREPARATION OF A FINDINGS RESOLUTION THE COMMISSION'S FINDINGS, TO BE CONSIDERED FOR ADOPTION BY THE COMMISSION AT ITS REGULARLY SCHEDULED MEETING ON JUNE 12, 2019.**

**VII. COMMISSION ACTION ITEM (S)**

None

**VIII. DIRECTOR'S REPORT**

None

**IX. COMMISSIONERS COMMENTS**

None

**X. ADJOURNMENT**

There being no further business, the meeting adjourned at 10:22 a.m.