

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF JANUARY 10, 2018

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of January 10, 2018, 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 10, 2018, 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 Rich Ford - Chairman
 Commissioner Jack Mobley - Vice Chairman
 Commissioner Fernando Aguilera
 Commissioner Mark Erreca
 Commissioner Robert Acheson

Staff Present: Mark Hendrickson, Director
 Steve Maxey, Deputy Director
 Kim Zinke, Recording Secretary
 Kristin McHaney, Recording Secretary
 Brian Guerrero, Planner III
 Tiffany Ho, Planner I
 Maya Tjahjadi, Planner I

Legal Staff: Jeff Grant, Deputy County Counsel

Commissioners Absent: None

IV. APPROVAL OF MINUTES

MOTION: M/S MOBLEY – ACHESON, AND CARRIED BY A VOTE OF 4 – 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE COMMISSION APPROVES THE MINUTES FROM THE MEETING OF DECEMBER 20, 2017.

V. CITIZEN COMMUNICATIONS

None

VI. PUBLIC HEARINGS

- A. MINOR SUBDIVISION APPLICATION MS17-006 - John Chang & Ming Hui Jiang -**
A request to divide a 55.8 acre parcel into two parcels resulting in parcel sizes of: Parcel 1 = 20 acres and Parcel 2 = 35.67 acres. The project site is located 1.25 miles west of South Moraga Road and 1.33 miles north of Highway 152, in the Los Banos area, identified by Assessor Parcel Number (APN) 078-130-075. The property is designated as Agricultural in the General Plan and zoned A-1 (General Agriculture). CEQA: No subsequent environmental review required in compliance with CEQA guidelines Section 15162 – “Subsequent EIRs and Negative Declarations”. **TH**

RECOMMENDATION(S):

- 1) Open/close public hearing;
- 2) Determine that no subsequent environmental review is required in compliance with Section 15162 – “Subsequent EIRs and Negative Declarations” of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan

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Program Environmental Impact Report, and the CEQA Section 15162 Findings and Analysis prepared as an attachment to the Staff Report.

- 3) Approve Minor Subdivision Application No. MS17-006 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 January 10, 2018.

The public hearing opened at 9:05 a.m.

Duane Andrews, Golden Valley Engineering, said he is available for any questions and asked for approval of this application.

The public hearing closed at 9:06 a.m.

MOTION: M/S MOBLEY - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION DETERMINES THAT NO SUBSEQUENT ENVIRONMENTAL REVIEW IS REQUIRED IN COMPLIANCE WITH 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 CEQA SECTION 15162 FINDINGS AND ANALYSIS.

MOTION: M/S MOBLEY - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 10, 2018 AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MINOR SUBDIVISION APPLICATION MS17-006 SUBJECT TO THE 5 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.

County Counsel

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

JOHN D. CHANG AND MING HUI JIANG, 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 JOHN D. CHANG AND MING HUI JIANG.

JOHN D. CHANG AND MING HUI JIANG'S 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 JOHN D. CHANG AND MING HUI JIANG, their 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. JOHN D. CHANG AND MING HUI JIANG 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.

- B. MINOR SUBDIVISION APPLICATION MS17-017 - John Herkert** - A request to convey 11.23 acres of a 12.4 acre parcel, and combine with an adjacent 13.4 acre parcel under the same ownership. The proposed subdivision would create a 24.56 acre remainder parcel and a 1.17 acre homesite parcel. The project site is located at the southwest corner of North Stein Road & West Liberty Avenue in the Atwater area, and identified as Assessor's Parcel Numbers (APNs) 143-230-003 and 143-230-004. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural).CEQA: Project can be found exempt from subsequent environmental review as in compliance with CEQA guidelines Section 15162 – "Subsequent EIRs and Negative Declarations". **TH**

RECOMMENDATION(S):

- 1) Open/close public hearing;

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- 2) Determine that no subsequent environmental review is required in compliance with 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 CEQA Section 15162 Findings and Analysis prepared as an attachment to the Staff Report.
- 3) Approve Minor Subdivision Application No. MS17-017 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 January 10, 2018.

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

Duane Andrews, Golden Valley Engineering, said he is available to answer any questions and asked for approval of this application.

The public hearing closed at 9:14 a.m.

MOTION: M/S MOBLEY - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING DETERMINES THAT NO SUBSEQUENT ENVIRONMENTAL REVIEW IS REQUIRED IN COMPLIANCE WITH 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 CEQA SECTION 15162.

MOTION: M/S MOBLEY - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 10, 2018, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES MINOR SUBDIVISION APPLICATION NO. MS17-017 SUBJECT TO THE 5 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.

County Counsel

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

JOHN J. HERKERT AND ROMANA H. HERKERT, TRUSTEES OF THE HERKERT FAMILY 2004 TRUST, 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 THE HERKERT FAMILY 2004 TRUST.

THE HERKERT FAMILY 2004 TRUST's 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 THE HERKERT FAMILY 2004 TRUST, their 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. THE HERKERT FAMILY 2004 TRUST 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.

- C. **7th EXTENSION APPLICATION NO. EXT17-003 TO MAJOR SUBDIVISION APPLICATION NO. MAS05-001 - Cypress Estates** - A request to extend the expiration date of the approved tentative map for Major Subdivision Application No. MAS05-001 by 1 year From: January 11, 2018 To: January 11, 2019. The project site is located on the north side of West Walnut Avenue, approximately 300 feet east of North Barbera Avenue in the Winton area, identified as Assessor's Parcel Number (APN) 147-043-014. The property is designated Winton Urban Community - Low Density Residential land use in the General Plan and zoned R-1 (Single-Family Residential). CEQA: Project can be found exempt from further environmental review under CEQA Section 15162 – "Subsequent EIRS and Negative Declarations" of the CEQA Guidelines. **PN**

RECOMMENDATION(S):

- 1) Open/close public hearing;
- 2) Determine the application 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. EXT17-003 based on the findings included in the staff report and subject to the proposed conditions of approval.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated January 10, 2018.

Chairman Rich Ford asked how many extensions an applicant can apply for.

Planner Brian Guerrero believes it is seven extensions.

Jeff Grant, County Counsel, said they can agree to six years of extensions.

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

No one spoke in favor or opposition to this application.

The public hearing closed at 9:19 a.m.

MOTION: M/S MOBLEY – ACHESON, AND CARRIED BY A VOTE OF 4 – 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION DETERMINES THE APPLICATION CAN BE FOUND EXEMPT FROM FURTHER ENVIRONMENTAL REVIEW UNDER CEQA SECTION 15162 – “SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS” OF THE CEQA GUIDELINES.

MOTION: M/S MOBLEY - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 10, 2018, AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES SUBJECT TO THE 23 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Department, Planning Division

1. The approval of Major Subdivision Application No. MAS05-001 shall expire on January 11, 2019, unless an extension request is applied for.
2. The project proponents shall obtain and submit an Unconditional Water and Sewer Commitment Notice from the Winton Water and Sanitary District prior to recordation of the Final Map, or a first phase Final Map.
3. Water and sewer improvements shall be constructed and applicable user fees paid as per the specifications and requirements of the Winton Water and Sanitary District.

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4. The minimum fire hydrant flow of 1,000 gallons per minute for residential areas shall be required by the Merced County Fire Department.
5. The developer shall pay the local parkland dedication and improvement fees as required by County Ordinance No. 1090 prior to recording the final map.
6. 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.
7. The project shall comply with the Standard Conditions in Planning Commission Resolution No. 97-1
8. At the same time that Improvements Plans are submitted, the developer shall provide the Merced County Planning Department with a set of landscaping plans that shall provide for the installation of a fence and a landscaping screen around the proposed storm water detention basin that also includes landscaping along the frontage of the basin along Chablis Lane.
9. For the purpose of condition monitoring, a fee in the amount of **\$243** shall be required. The fee shall be paid prior to recordation of the Final Map.

County Counsel

10. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Chris J. Madson must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "County") from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Extension No. EXT17-003 ("project") whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Chris J. Madson. The liability of Chris J. Madson for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Chris J. Madson, his employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against County. Chris J. Madson will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like,

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after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

Department of Public Works/Road Division

11. The temporary cul-de-sac easement at the south end of Chablis Lane shown in Detail "B" on the map of Vintage Estates filed in Volume 28 of Official Plats at Pages 17 and 18, Merced County Records, is no longer needed for temporary turnaround purposes and shall be abandoned with the recording of the final map of Cypress Estates No. 3, Subdivision No. 05001.
12. The developer shall 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 relocate utilities and irrigation facilities.
13. The developer shall construct permanent roadway improvements in place of the temporary turnaround on Chablis Lane.
14. Provide a letter from MID accepting storm drainage from this proposed development into their facilities prior to recording the final map.
15. The detention basin shall be constructed with 4:1 (horizontal: vertical) or flatter slopes beginning 10 feet from the fence or property line and with a 8:1 or flatter sloped ramp from the bottom of the basin to the access point from a County maintained road.
16. Prior to recordation of the final map, the owner shall pay all costs and provide all documents necessary to from a street lighting and storm drainage maintenance zone of benefit in County Service Area No. 1. If landscaping is required along the Chablis Lane frontage of the storm drainage detention basin, the zone of benefit shall include landscape maintenance.
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 the existing peripheral streets.
19. Due to the unpredictable performance of storm drainage percolation basins,

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the Developer shall ensure function to minimum County standards within two years of acceptance of the subdivision improvements (recording date of the Notice of Completion) by one of the following methods prior to recordation of the final map:

- a. Reserve one abutting residential lot by entering into a construction agreement with the County, provide security and plan check and inspection fees, for expansion of the basin into the reserved lot; or:
- b. Locate the basin adjacent to a Merced Irrigation District facility with confirmation to accept storm water runoff from the subdivision by entering into construction agreements with the County and MID, provide security and plan check and inspection fees, for installation of a storm water pump station; or:
- c. If recommended by the geotechnical engineer, enter into a construction agreement with the County, provide security and plan check and inspection fees, to significantly over –excavate the basin and backfill with select highly permeable import material.

The developer shall be responsible for all costs associated with the design, plan check, construction, and inspection for storm drainage basin modifications if the percolation basin does not function to minimum County standards.

20. The acceptance of storm water from the project site into MID facilities must be met by the developer including, but not limited to, the following:
 - a. Extend the irrigation box as needed
 - b. Installation of a combination gate at the inlet to the pipeline
 - c. Other improvements as needed.
21. The Developer/Applicant is advised that he/she may be obligated to comply with Federal Regulations for storm water runoff issued by the U.S. EPA on November 16, 1990 (40 Code of Federal Regulations Parts 122, 123, and 124). For information and direction, contact 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.
22. The project shall be subject to the current Regional Transportation Impact Fee (RTIF) pursuant to Chapter 5.60 of the Merced County Code established by Ordinance No. 17.49 in place at the time of building permit issuance.
23. 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.

The project shall be subject to the current Fire Facilities Impact Fee established by Resolution No. 2004-149, adjusted for inflation, in place at time of building permit issuance.

- D. 6th EXTENSION APPLICATION NO. EXT17-002 TO MINOR SUBDIVISION APPLICATION MS06-065 - Vernon Fisher** - A request to extend for 1 year the expiration date of the approved Tentative Map for Minor Subdivision No. MS06-065 From: December 18, 2017 To: December 18, 2018, on property located at the east side of North Herrod Ave, 1,100 feet north of West Fleming Road, designated Atwater Rural Residential Center land use and zoned A-R (Agricultural- Residential), and identified as Assessor's Parcel Number (APN) 207050014. The property is designated Rural Residential Center land use in the General Plan and zoned A-R (Agricultural Residential).CEQA: Project can be found exempt from subsequent environmental review as in compliance with CEQA guidelines Section 15315 – “Minor Land Divisions”. **MT**

RECOMMENDATION(S):

- 1) Open/close public hearing;
- 2) Determine that no subsequent environmental review is required in compliance with Section 15315 “Minor Land Divisions” of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report, and the CEQA Section 15315.
- 3) Approve 6th Extension to Minor Subdivision Application No. MS06-065 based on the findings included in the staff report and subject to the proposed conditions of approval.

Planner Maya Thahjadi presented the Staff Report and recommendations of approval dated January 10, 2018.

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

Duane Andrews, Golden Valley Engineering, said he has an issue with Condition #6 and feels it is not necessary. There is an approved Minor Subdivision adjacent to this property, so a one foot non access easement along the street frontage is not necessary. It cuts off two lots. He asked that the Condition be removed.

Deputy Director Steve Maxey, explained that this is a carryover conditions from the original application approved. His recommendation that PC approve as it is written. This is a Public Works conditions. We can determine whether a condition can fill the needs of what is written, and they will work with Public Works to address if this is still necessary.

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

MOTION: M/S ERRECA – ACHESON, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION DETERMINES THAT NO SUBSEQUENT ENVIRONMENTAL REVIEW IS REQUIRED IN COMPLIANCE WITH SECTION 15315 “MINOR LAND DIVISIONS” OF THE CEQA GUIDELINES BASED UPON THE ANALYSIS IN THE 2030 MERCED COUNTY GENERAL PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT, AND THE CEQA SECTION 15315.

MOTION: M/S ERRECA - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER AGUILERA ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 10, 2018, AND MAKES THE 8 PROJECT FINDINGS SET FORTH

IN THE STAFF REPORT AND APPROVES 6th EXTENSION APPLICATION NO. EXT17-002 TO MINOR SUBDIVISION APPLICATION MS06-065 SUBJECT TO THE 11 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the Hearing Officer 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.

Department of Public Works/Road Division

3. The property owner/applicant shall 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 relocate utilities and irrigation facilities. All improvements shall be in accordance with Merced County Improvement Standards. Improvement Plans prepared by a licensed civil engineer, shall be submitted to the DPW/Road Division accompanied by engineer's cost estimate, for review and approval, prior to the recordation of the parcel map. All improvements, constructed under an encroachment permit from the Road Division, shall be constructed to the satisfaction of the County, prior to the recordation of the map. It shall include a "rural" type drive way approach and a street light at the access point onto Herrod Avenue. As an alternative to constructing the improvements prior to the recordation of the map, the property owner may enter into an Improvement Agreement with Merced County Road Division. Acceptable security as specified in the Subdivision Ordinance of Merced County must accompany the Agreement. Agreement shall be fully executed prior to the recordation of the parcel map.
4. The property owner shall dedicate to the County of Merced, annotated on the parcel map, 10-foot wide Public Utility Easement (PUE) along the entire street frontage of Herrod Avenue, 10-foot wide PUE along the entire frontage of proposed Appaloosa Way turn around, and road right-of way as shown on the approved plot plan.
5. Recorded concurrently with the parcel map shall be dedication from the adjacent property owner for the road right-of-way as shown on the approved plot plan and a 10-foot wide Public Utility Easement (PUE) fronting the adjacent property owner's portion of the Appaloosa Way turn around.
6. Recorded concurrently with the map shall be a dedication from the adjacent property owner for a 1-foot wide non-access easement along the entire adjacent property's street frontage of proposed Appaloosa Way turn around.
7. The property owner shall process through the County vacationing (abandonment) of the existing one-foot wide non-access easement at the current terminus of Appaloosa Way.

8. The property owner shall form, annex to, or include into a lighting and drainage maintenance zone of benefits, and pay the required process fees. This is to be accomplished through the Department of Public Works, Public Services Division and prior to the recordation of the Parcel Map.
9. The property owner/applicant shall pay all current fees associated with the subdivision map and processing of the necessary documents.

Merced Irrigation District

10. The applicant shall enter into a “Subdivision Drainage Agreement” or a “Deferred Fee Subdivision Agreement” with MID, paying all applicable fees, if project’s storm drainage water is discharged into any MID facilities now, or in the future.

County Counsel

11. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Vernon Fisher must indemnify, defend and hold harmless, the County of Merced, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter “County”) from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney’s fees, expert witness and consultant fees and other costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the approval, modification, denial, or the exhaustion of administrative appeals associated with Extension No. EXT17-002 (“project”) whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Vernon Fisher. The liability of Vernon Fisher for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Vernon Fisher, his employees, subcontractors, agents, and officers. The duty shall extend to any allegation or claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against County. Vernon Fisher will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney’s fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs and expenses of whatsoever kind or nature, that may arise at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney’s fees shall include any and all attorney’s fees but not be limited to attorney’s fees and staff time incurred by the offices of County counsel. County shall have full discretion to select legal counsel of its own

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choosing to represent County, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the County determines the claim may reasonably require. This term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

VII. COMMISSION ACTION ITEM (S)

None

VIII. DIRECTOR'S REPORT

Director Mark Hendrickson welcomed the newest Planning Commissioner Fernando Aguilera.

IX. COMMISSIONERS COMMENTS

None

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:27 a.m.