

**MINUTES OF THE
PLANNING COMMISSION MEETING
MAY 8, 2019**

The Imperial County Planning Commission convened a Meeting on Wednesday, May 8, 2019 at 9:00 a.m in the Board of Supervisors Chambers, El Centro, California.

Staff present: Director Jim Minnick, Planner IV Joe Hernandez, Planner III Diana Robinson, Planner I Isabel Patten, Clerk Michelle Garcia and GIS Tech Derek Newland.

Chairman Rudy Schaffner called meeting to order at 9:00 a.m

I. Roll Call: Commissioners present: Schaffner, Kalin, Bergh, Cabañas, Castillo, Wright, Medina, & Roben

Absent: Zendejas & Zuno

II. Pledge of Allegiance:

III. Approval of Minutes: Chairman Schaffner entertained a motion to approve the Planning Commission Minutes for April 24, 2019 meeting as submitted by staff. Motion was made by Commissioner Kalin seconded by Commissioner Cabañas and carried on the affirmative vote by the Commissioners present Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (yes).

1. Consideration of **Lot Merger #00139** as submitted by David and Karen Marsh, who propose to merge existing Parcel 1 (7511.37 SF) and Parcel 2 (7501.17 SF) into one parcel (approximately 15,012.53 SF). On property legally described as (Parcel 1) as Lot 9, Block 5, Tract 783, San Bernardino Base & Meridian, filed in the Office of the County Recorder of Imperial. County Assessor's Parcel Number 001-994-009-000 (221 Indo Ave., Salton Sea) and on property legally described (Parcel 2) as Lot 10, Block 5, Tract 783, San Bernardino Base & Meridian, filed in the Office of the County Recorder of Imperial. County Assessor's Parcel Number(s) 001-994-010-000 (223 Indio Ave., Salton Sea CA), (Supervisory District #4). The Commission took the following actions;

Jim Minnick gave a brief description of the project, and introduced Isabel Patten, Planner I to read the project into the record.

Isabel Patten, Planner I, read the project into the record and was there to answer any questions from the Commission.

Chairman Schaffner. Asked the representative to come forward to the podium, introduce themselves and state their name and address for the record.

David Marsh. Applicant, stated he read and agreed with the project and the conditions of approval.

Chairman Schaffner, opened/closed the public portion of the meeting, he then turned it over to the commission for any questions or comments.

Chairman Schaffner, entertained a motion.

- a. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (yes); to find that Lot Merger #00139 categorically exempt from CEQA pursuant to section 15301 of the CEQA guidelines and that no further environmental documentation is necessary; to find that Lot Merger #00139 is consistent with applicable Zoning and Building Ordinances; and to Approve Lot Merger #00139, subject to all the conditions.

Jim Minnick, Director, stated that the project stands approved by this Commission if any member of the public wishes to appeal this decision, must do so within 10 days of approval with the Planning Department with a \$650.00 fee.

Commissioner Roben, stated he would be stepping down from item #2 due to conflict of interest.

2. Consideration of Conditional Use Permit #18-0039 as submitted by Chapel L Transporters, LLC, for the expansion of an existing truck and auto facility currently operating under Conditional Use Permit (CUP) #06-0005. This CUP is to supersede existing CUP #06-0005 under Assessor's Parcel Number 059-513-015-000) to include Assessor's Parcel Number 059-513-004. On property legally described as being Lot 54 of Tract 941-Unit 2, in the unincorporated area of the County of Imperial. Assessor Parcel Number(s) 059-513-004-000 & 059-513-015-000, (363 Nina Lee Road, Calexico, CA), (Supervisory District #1). The Commission took the following actions;

Jim Minnick, gave a brief description of the project, and introduced Joe Hernandez, Planner IV to read the project into the record.

Joe Hernandez, Planner IV, read the project into the record and was there to answer any questions from the Commission.

Chairman Schaffner. Asked the representative to come forward to the podium, introduce themselves and state their name and address for the record.

Oscar Grijalva, Duggins Construction, stated he read and agreed with the project and the conditions of approval.

Chairman Schaffner, opened/closed the public portion of the meeting, he then turned it over to the commission for any questions or comments.

Commissioner Bergh, asked what was being stored in those trailers.

Joe Hernandez, stated auto parts and such.

Commissioner Bergh, stated if there were regulations as to what can be stored there.

Jim Minnick, stated no

Commissioner Bergh, so anything can be stored in them.

Jim Minnick, stated that is true to any storage facility

Chairman Schaffner, stated that would be controlled by the D.O.T coming and going.

Joe Hernandez, stated they have to abide by the customs and border laws he's not sure what it all includes but he believes there is some sort of registration for inventory purposes.

Chairman Schaffner, entertained a motion.

- b. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (abstained); to adopt the Negative Declaration by finding that the proposed project will not have a significant effect on the environment as recommended at the Environmental Evaluation Committee (EEC) meeting held on April 11, 2019; to make the De Minimus Findings, as recommended at the April 11, 2019 EEC Hearing, that the project will not individually or cumulatively have an adverse effect on Fish and Wildlife Resources, as defined in Section 711.2 of the Fish and Game Code; and to approve the Resolution(s), supporting findings and Conditional Use Permit #18-0039 (subject to all the conditions), and authorize the Planning and Development Services Director to sign the CUP contract upon receipt from the permittee.

Jim Minnick, Director, stated that the project stands approved by this Commission if any member of the public wishes to appeal this decision, must do so within 10 days of approval with the Planning Department with a \$650.00 fee.

3. Consideration of **Parcel Map #02482** as submitted by Thomas Moiola, who proposes to subdivide one (1) existing agricultural parcel into two (2) individual agricultural parcels down the centerline of Noland Road to simplify the management of the two parcels. On property legally described as Portion of Tract 120, Township 14 South, Range 15 East, San Bernardino Base & Meridian, filed in the Office of the County Recorder of Imperial County. Assessor's Parcel Number(s) 041-080-026-000, (west of Highway 115, between Gonder Road and Hart Road, Brawley CA), (Supervisory District #5). The Commission took the following actions;

Jim Minnick, gave a brief description of the project, and introduced Isabel Patten, Planner I to read the project into the record.

Isabel Patten, Planner I, read the project into the record and was there to answer any questions from the Commission.

Chairman Schaffner. Asked the representative to come forward to the podium, introduce themselves and state their name and address for the record.

Taylor Preece, Precision Engineering & Surveying, stated he read and agreed with the project and the conditions of approval.

Chairman Schaffner, opened/closed the public portion of the meeting, he then turned it over to the commission for any questions or comments.

Chairman Schaffner, entertained a motion.

- c. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (yes); to adopt the Negative Declaration on the basis of the initial study and any comments received showing no substantial evidence that the project will have a significant effect on the environment as determined by the Environment Evaluation Committee (EEC) on April 11, 2019; and make the De Minimis findings as recommended by the April 11, 2019 EEC hearing, that the project will not individually or cumulatively have an adverse effect on Fish and Wildlife Resources, as defined in Section 711.2 of the Fish and Game Code; and to adopt the Resolution and supporting findings, approving Parcel Map #02482, subject to all the conditions and authorize the Planning & Development Services Department to sign the Parcel Map upon receipt from the Permittee.

Jim Minnick, Director, stated that the project stands approved by this Commission if any member of the public wishes to appeal this decision, must do so within 10 days of approval with the Planning Department with a \$650.00 fee.

4A. Consideration of **Conditional Use Permit #18-0031** as submitted by Imperial Gold, LLC., to construct and operate a Cannabis Distribution Facility. On property legally described as a Portion of Lot C of Lot Line Adjustment #00291, also being the North Portion of Tract 82 & a Portion of Parcel 1 of Parcel Map #1586, Township 14 South, Range 13 East, San Bernardino Base & Meridian. Assessor's Parcel Number(s) 040-180-045-000, (3974 Austin Road, Suite E, Brawley, CA), (Supervisory District #3 & 4).

4B. Consideration of **Conditional Use Permit #18-0032** as submitted by Imperial Gold, LLC., to construct and operate a Cannabis Cultivation Facility. On property legally described as a Portion of Lot C, LLA #00291, also being the North Portion of Tract 82 & a Portion of Parcel 1, PM #1586, Township 14 South, Range 13 East, San Bernardino Base & Meridian. Assessor's Parcel Number(s) 040-180-045-000, (3971 Austin Road, Suite A, Brawley, CA), (Supervisory District #3 & 4).

4C. Consideration of **Conditional Use Permit #18-0033** as submitted by Paragon West, LLC., to construct and operate a Cannabis Virtual Retail Facility. On property legally described as a Portion of Lot C, LLA #00291, also being the North Portion of Tract 82 & a Portion of Parcel 1, PM #1586, Township 14 South, Range 13 East, San Bernardino Base & Meridian. Assessor's Parcel Number(s) 040-180-045-000, (3971 Austin Road, Suite B, Brawley, CA), (Supervisory District #3 & 4).

4D. Consideration of **Conditional Use Permit #18-0034** as submitted by Imperial Gold, LLC., to construct and operate a Cannabis Manufacturing Facility. On property legally described as a Portion of Lot C, LLA #00291, also being the North Portion of Tract 82 & a Portion of Parcel 1, PM #1586, Township 14 South, Range 13 East, San Bernardino Base & Meridian. Assessor's Parcel Number(s) 040-180-045-000, (3971 Austin Road, Suite D, Brawley, CA), (Supervisory District #3 & 4). The Commission took the following actions;

Jim Minnick, gave a brief description of the project, and introduced Patricia Valenzuela, Planner IV to read the project into the record.

Patricia Valenzuela, Planner IV, read the project into the record and was there to answer any questions from the Commission. She then mentioned that the applicant sent an email and stated some concerns, the applicant condensed his requests and would like to address each individually.

Chairman Schaffner. Asked the representative to come forward to the podium, introduce themselves and state their name and address for the record.

Oscar Grijalva, Duggins Construction, stated he read and agreed with the project with the exception of what was mentioned in the email yesterday, upon reviewing all the conditions of approval they had questions and needed clarification on a couple of them. The email originally requested clarification for about 14 of them they have then narrowed it down to 3 conditions and if the commission allows me to go through with them he would just like clarification.

Chairman Schaffner, stated yes, let's do it now.

Oscar Grijalva, S2-ASTHETICS, stated the condition reads that the project requires fencing along Austin Road, but the property. *He then pointed to the map and gave direction of where the entrance of the property was.* He went on to say that they are planning to fence around the facility that they are developing but not necessarily the whole field due to it being all agriculture fields. He stated he would like to see that condition changed to read where they would fence the project site not necessarily the frontage on Austin Road.

Chairman Schaffner, asked him what the other concern was.

Oscar Grijalva, Duggins Construction, stated the other condition they had a question with was **S-8** the condition reads that the project is provided with the exhaust for fire. In case of a fire that is provided with that exhaust system (which they plan to do) requires them to do a fire exhaust infiltration system. He stated he researched and couldn't find anything that would give them that. He stated if the building catches fire he would have ventilation systems that will open kind of like Costco for example that has sky lights the smoke would go up. The condition is asking them to filter for odor but when the sky lights open or the vents open it is just pushing the smoke up naturally and if they put carbon filters on those it won't go through the carbon filter and these exhaust systems are not meant to be mechanical because if the power is out then the fans aren't working and such. He then stated he didn't mind and they plan on doing the exhaust system they just cannot do the filtration system. He suggested putting a condition that if they do find something with the building department or fire department that allows that, they are more than happy to do so they just can't find anything that does that.

S-21 stated Public Works is requesting a right of way granted for a six lane prime arterial road. Stated this was a new condition and mentioned they had not seen, stated they don't necessarily oppose it but the applicant is the tenant if you will, and they would have to talk to the owner. Oscar, then pointed to the map and stated they would only be able to grant it on their pieces not in the middle, that is a separate lot. They were just wondering if the 68 foot right of way dedication is something that can be discussed at a later time or is that something that needs to be approved now, and if so they don't have the owner's approval for that.

S-24 stated they just wanted a little more clarification on the sales tax. Stated they read that several times and couldn't understand what that meant. Stated he is sure someone is available clarify that for them.

Jim Minnick, stated that in regards to the fencing, they are not opposed to reduce the fencing footprint. These cannabis operations are typically required by the State to be secured in this manner so if they can provide a closer perimeter or a different alternative and if it passes with the Department and the state they should have no problem with that.

Regarding condition **S-8**, the concept is to make sure that your standard filtration system has the carbon filters and such for the cannabis operations so it won't emit odors. If there is a secondary system in terms of fire suppression, fire escape or smoke, they wouldn't expect that second system which would only be triggered at the time of an actual emergency to require that filtration. It is the same system so yes you would have carbon filters on the same exact system. Also, depends on how the system is structured so the conditions basically point out that out, so if you are using that as an excuse to not put the carbon filters for odor that is not going to work. We don't know the exact nature of the building or how the system is right now but they will work with them along with County Fire to make sure that it all works out in accordance with the State Law.

Oscar Grijalva, stated that sounded good, and they planned to be two separate systems.

Jim Minnick, stated that Fire, Public Works and CEO's are present if they would like to add to that. In regards to **S-21**, Public Works can attest to this but this is in our General Plan circulation element which requires as well as a Board orders Public Works to require right of way whenever possible for any type of project that comes in but it is at the discretion of the Director of Public Works.

John Gay, Director of Public Works, stated typically for a project of this nature they can't ask for any type of right of way that is not on the property in question, he referenced back to the map in the triangular area as they mentioned being a concern, stating they could not require the applicant to dedicate off of a parcel that is not owned by the applicant. As far as the areas that are owned by the applicant, they do have a need ultimately to a right of way but what they have done in the past that they think has helped development is require what is called and irrevocable offer of right of way. An offer is made, recorded but not necessarily acted upon, it could be acted upon on a later date and generally speaking the reason that they have started to move more towards an irrevocable offer is because it takes decades if not many years before that particular road way is going to be widen to 136 feet wide and so the irrevocable offer allows the owner to use that space. The only issue would be whether or not they would want to build within that space, but that is something that they can come back to our department, normally the answer is no. He stated he would like to keep that requirement but stated they are very open and they can work out whatever arrangement they may need in terms of dedication.

Oscar Grijalva, stated okay.

Commissioner Castillo, asked John Gay, Director of Public Works, the values are established at the time they make the agreement or at the time they exercise the option.

John Gay, stated it is not a value but an offer and so it is not a taking per se. He then stated he wasn't sure if he was answering his question.

Commissioner Castillo, stated he was a bit confused, you are asking him to sign an agreement to sell or to give?

John Gay, stated it is and irrevocable offer of dedication so it is a "give".

Commissioner Castillo, stated how about if they choose not to. The value of the property can be worth ten dollars now and one thousand dollars 10 years from now, so things may change and obviously they would change unless the expansion benefits the property owner.

John Gay, stated the irrevocable offer is essentially a give of property at that point in time so if you are looking at value it would freeze at that point in time but it is something that they don't pay for either because it is part of the development so it is a requirement so it would be very similar to an action that they would take under a parcel map or final map. The reason, to be honest, a lot of this has come about because a lot of the solar they have done and a lot of the offers of dedication they have had them build outside of what the ultimate right of way is and those offers per se still have private laterals that run through or even public utilities, IID poles but those aren't moved and they don't ask for those to be moved because they haven't established it as a dedicated right of way at that point in time it is just an offer for dedication. That helps with future liability associated with once they do establish a formal offer, the expectation would be that the road would be widened to a county standard. So in this particular case there is a taking if you will, there doesn't have to be any kind of relocation of any private laterals or any IID facilities it is just a taking and in some point in time in the future they would formalizing that offer to an actual dedication and then improvements would take place.

Chairman Schaffner, stated so this allows them to keep taking taxes from them until you take it for free.

Commissioner Bergh, stated oh yes, I have been there before. County takes a piece of his property for a right of way to later find out from the realtor that it dropped 30% in value because he gave the County the right of ways so they can't build on it, so the value of the lot dropped.

John Gay, stated they can come back to you with that, he stated that was a valid question because actually it is more of a taking and so whether or not someone is actually paying taxes on that he thinks there could be an argument where they can meet both ways but they are restricting that use which essentially they would be, in particular if we said you can't build on it. That would be more of a question we can come back with.

Commissioner Castillo, stated he could understand when it is a benefit to both parties because sometimes it is, it could make the property more valuable however this isn't the case and let's say I don't want to give you anything right now because it isn't to my benefit, how does that impact the applicants project if they choose to not go along with that offer.

John Gay, stated it could affect processing the application moving forward then we would have to have that dialog, it would slow things down and possibly go into a different direction.

Commissioner Castillo, stated you can always do a taking if it is to the public's interest in subject to point in time, it may take just a little longer but since this is way in the future you can condemn if it is for the benefit of the public, so it would be easier he thinks.

John Gay, stated at the end of the day it is a policy call and if it is done today there are certain things that take place in the future he believes you can argue that the public would save on the taking, but the public will also end up paying for whatever portion of roadway improvements to widen in the future which would be more expensive. The other thing is the applicant may not be able to use certain tax exchanges they get through the IRS when you do a formal taking there are certain advantages even though they are losing property, so there is that give and take but at the end of the day it is policy and what they are trying to do today is follow the ordinance, but those are legitimate questions that can be brought up later.

Vice Chairman Kalin, stated Mr. Menvielle may be able to shed some light on the issue.

Robert Menvielle, Imperial County Assessor, stated probably at that time when there is a recording of a document they would require that part of the property to be split off, then they would reduce the size of it of the main parcel and then you would have a reduction. He stated there probably won't be a reduction until that final right of way is established.

Chairman Schaffner, stated where that came from is for quite a while is they were pretty much requiring that the county would take the right of way on everything that came through. A gentlemen came in and said he just bought this 80 acre field and they were changing the lot line direction to another direction and he said he's going to be paying on this for 30 years to give it to the County at the end of the 30 years and said why don't I just give it to you now and then the County can pay it off, and that is what started the irrevocable offer. He believes it hasn't really been settled for everyone concerned, eventually they are going to have to come up with something different.

Robert Menvielle, stated he recalled when the state of California was building Highway 111 and they were requesting the right of way to the east of the old Highway 111 and when property owner didn't quite agree they would just take that and say they would compensate you later and one property owner came in and said, I can't use it so why am I paying property taxes and they were quite upset about it and once the State records the document where they have taken it, then they will reduce the size of your farm parcel and you will see the tax savings there, now if it comes back retroactive to a certain date of course they will go back to that date whenever that taking took place. This is in interim status that there is going to be a right of way granted at that time and eventually when the document comes through the Recorder's office that is when the Assessor's is going to act on it.

John Gay, stated for clarification, there is a recorded document and it is recorded saying there is an irrevocable offer and the only action that needs to take place is a formal acceptance by the board.

Chairman Schaffner, stated they went from them getting all of them to us finding out that they couldn't get all of them and then we just started saying no as they came through and now we are back to this.

Jim Minnick, stated in regards to the gentlemen he was talking about, under the Sub Division Map Act, section of Lot Line Adjustments doesn't allow for right of way, easements. That is the only reason why they didn't require right of way after that point. He did point out that the state code excluded Lot Line Adjustments, nothing else is excluded. The board gave direction in the early 90's and they have a minute order that requires us to always ask for the right of way for any discretionary action. The only exception is Lot Line Adjustments because the State says we can't but we are requested and required to try to do our best to get right of way whenever a discretionary action comes before your board to reduce the future cost to the County for that expansion, period, whether Public Works requires a straight right of way or an irrevocable offer of right of way, this commission, the code and the Boards direction is to ask for that right of way.

Chairman Schaffner, so we don't have the ability to say "no" anymore?

Jim Minnick, stated no you don't, not based on the minute order passed by the board.

Chairman Schaffner, asked if they vote no and they take it to the Board they over ride and say yes.

Jim Minnick, stated you can vote no, but it doesn't mean anything because they Board requires you to leave it in there.

Commissioner Castillo, stated wouldn't that be considered taking without compensation.

Jim Minnick, stated no because it is a discretionary action that you are providing to them that is not a standard requirement. If you come in with a building permit and I say I want right of way, that is taking but you are asking the County for something that is not normally allowed which in this case is the cannabis operation.

Jim Minnick, stated in regards to S24- invited Mr. Andy Horne to explain.

Andy Horne, Deputy CEO, stated the language is similar to language that has been very effectively included in the conditional use permits for a lot of the solar projects that have been built down here and they request that the Planning Commission include this language in all conditional use permits and appreciate their cooperation in doing so. In reality it has worked quite well for the solar projects they generated a significant amount of revenue to the County from solar projects because they have the ability under state regulations to designate the job site where the project is going to be built as a point of sale for sales tax and the sales tax is generated by the purchase of materials used in construction of the project is allocated to if the project is in an unincorporated area of the County to the County as opposed to a location where the materials might have been purchased, which are many times outside of the County, because the materials are being used here and installed here in the County and State regulations do allow the sales tax to be allocated to the area/jurisdiction where the project is being built. It is not necessarily an easy thing to comply with, generally speaking the job site permit can be acquired and they have no way of knowing how big of a project this is in terms of a dollar amount. A job site permit can only be obtained if the project exceeds five million dollars. I'm sure Duggins will give these people a good deal, however it is more than five million they have to get a sub permit and allocate those sales tax for material purchases to the County. There are other ways to accomplish similar things and even if the threshold of the five million dollars is not met, they would just like an opportunity to explore the potential for maximizing sales tax revenue with the developer and project owner but they have the language in there that says prior to the issuing of the building permit they will sit down with them and spell out why you can't comply with the regulations and why the project does not meet the threshold. For instance there are other thresholds for materials purchased out of state over five hundred thousand dollars so that is less than the five million there is also a mechanism of forming a buying cooperation that would purchase all the materials and allocate the project site as the point of sale. He sated they can send him a handbook of all our sales tax consultant HDL has provided them with that can go in a little more detail of how that can best be accomplished, again it has worked very well with the solar projects and they would just like to expand the use of that language and to the conditions and requirements to other projects being built here in the County.

Oscar Grijalva, stated to make sure he understands, it is actually something different than what they were interpreting it to be. So basically, during construction it is how to retain the taxes paid for the construction materials or whatever taxes they pay during construction and keep it at the county level vs paying taxes buying out of state for example in Arizona.

Jim Minnick, yes when we do that we are giving other jurisdictions money and all its doing is allowing it to stay local. We are going to be asking that with every planning project.

Oscar Grijalva, stated okay thank you.

Chairman Schaffner, opened/closed the public portion of the meeting, he then turned it over to the commission for any questions or comments.

Commissioner Bergh, stated he had concerns about the fire. His understanding is fire breaks out in the building then they vent it out and the wind is coming from the west everyone in Brawley will be out. So there is no capture to that at all.

Jim Minnick, stated that would be a question for fire.

Andrew Loper, Imperial County Fire Department, stated the buildings will be required to have automatic fire suppression systems installed for all of it or anything that contains cannabis, so that would be early extinguishment or suppression of the fire if that happens. The reason for the smoke removal is for a certain tempter or if it over runs it, it will allow ventilation operations to allow our firefighters to enter the building in a safer environment. What normally happens in all firefighting techniques is vertical ventilation, but with these types of buildings they will not be putting firefighters on top of those roofs to ventilate it because of the steel construction and the support members, so having the automatic ventilation allows the Fire Dept. to further extinguish the fire, you may have a short burst or time of release of that smoke and heat but that would be with any type of structure or building. With the automatic suppression system it is designed to suppress it at the early stages so they don't have to get to that, kind of a backup.

Commissioner Bergh, stated so very little would escape.

Andrew Loper, stated yes, it is a backup to our firefighter operation if by some chance that system fails or overruns it by chance it allows the heat and smoke to disperse the building so they can enter the building in a safer atmosphere to extinguish it.

Commissioner Bergh, stated the County was talking about a filtration system and does that make any difference.

Jim Minnick, stated the way that was written was that they were putting both those things on top of each other, and what they were told was that they are separate systems. So the regular HVAC filtration system is not the same system that would be used to vent the building for a fire.

Commissioner Bergh, stated so one would have charcoal and the other one wouldn't.

Jim Minnick, stated yes, the other one is like an ejection seat on an airplane. You basically pull when all bets are off when you're venting that building. They wrote the condition as to where the overlap them, they are different systems.

Commissioner Bergh, stated another concern would be operation of virtual cannabis retail store, he would like a better definition of that. Is that the same thing as mail order or amazon? Will anyone be coming to the property according to the traffic study there will not be any of that traffic.

Jim Minnick, stated it is like a mail order, the county passed the cannabis ordinance and created two types of retail one is virtual retail and the other is a physical retail. Physical retail we only have one license for and that will be down in the Gateway area, that was the one you saw with Seeley that ended up going to the Board. All the other virtual ones are essentially a delivery.

Commissioner Bergh, stated so no one actually goes on the property.

Jim Minnick, no, the public does not enter the property and pick what they want and then you ship it to them. The public will use the internet or the phone to order what they want he can later show them how it works on weed maps on one operation the currently have in the Gateway area. Should the board however change their mind and allow for more physical sites then that would be an increase in public traffic. At this point it is only the employees and their delivery people which in since are the employees as well operating in these 4 suites.

Commissioner Bergh, stated okay.

Chairman Schaffner, entertained a motion.

- d. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (abstained); to approve the Resolution to Adopt the Negative Declaration by finding that the proposed Project will not have a significant effect on the environment as recommended by the Environmental Evaluation Committee (EEC) on March 14, 2019; make the De Minimums Findings that the project will not individually or cumulatively have an adverse effect on the Fish and Wildlife Resources, as defined in Section 711.2 of the Fish and Game Codes; and to adopt the Resolution to Approve Conditional Use Permit #18-0031 (subject to the Conditions of Approval)and findings and authorize the Planning & Development Services Department Director to execute the CUP Agreement.
- e. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (abstained); to adopt the Resolution to Approve Conditional Use Permit #18-0032 (subject to the Conditions of Approval)and findings and authorize the Planning & Development Services Department Director to execute the CUP Agreement.
- f. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (abstained); to the Resolution to Approve Conditional Use Permit #18-0033 (subject to the Conditions of Approval and findings and authorize the Planning & Development Services Department Director to execute the CUP Agreement.
- g. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (yes), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (abstained); to Adopt the Resolution to Approve Conditional Use Permit #18-0034 (subject to the Conditions of Approval and findings and authorize the Planning & Development Services Department Director to execute the CUP Agreement.

Jim Minnick, Director, stated that the project stands approved by this Commission if any member of the public wishes to appeal this decision, must do so within 10 days of approval with the Planning Department with a \$650.00 fee.

5. Consideration of **Appeal #19-0001** of the Environmental Evaluation Committee (EEC)'s February 14, 2019 determination of a Mitigated Negative Declaration for the Revised Initial Study #17-0026 with regards to Zone Change #17-0006. On property legally described as the East half of Tract 122 Township 14 South Range 15 East (south parcel), in an unincorporated area of the County of Imperial. Assessor's Parcel Number 041-090-004-000, (1594 Gonder Road, Brawley, CA), (Supervisory District #5). The Commission took the following actions;

Jim Minnick, gave a brief description of the project, stated this is a project has been heard before by this commission, several months ago. It is a request for a Zone Change went through the Initial Study process and came to your hearing on appeal based on the Initial Study, you heard and requested that the department take it back through the environmental process, they have done that and have gone through the environmental process the second time. Additional, air and traffic study were done at the request of this office as well as the appeal, and now that process has been appealed again. Your stance in this hearing is to review the appeal basis of the environmental document that they have now presented to you for the second time revised. You are not to approve or deny or make a recommendation for the entitlement part of it that will be seen at a later date, you are just looking at the environmental review done. He then introduced Diana Robinson, Planner III to read the project into the record.

Diana Robinson, Planner III, read the project into the record and was there to answer any questions from the Commission.

Chairman Schaffner. Asked the representative to come forward to the podium, introduce themselves and state their name and address for the record.

Charlotte Flannigan, attorney to applicant Bruce Smith, stated they had a chance to quickly review the revised staff report that was given to them about 6:00 PM last night and wanted to please ask the commission to bear with them as they refer to the wrong thing. The county response has indicated that the whole entire 160 acres of the applicants project has to be rezoned, you can't just rezone a portion of it, they are alleging you only need 45 acres to house the 18,000 expansion head of cattle they would like to add there, because they can't just rezone a portion of that their argument is that CEQA requires an analysis of the entire environmental effects of the entire project, including reasonable foreseeable future projects, an expansion of an initial project in this case it is the duty of the environmental commission to analyze that the entire 160 acres could be utilized to house cattle that is much more than 18,000 head of cattle can be placed on there and in the past the applicant has shown that the feedlot that was originally constructed in 1968 has continuously used every bit of acreage it has to grow and expand its feed lots and sometimes placing them on areas that are setbacks and have been rezoned in other non-permissible uses so it is entirely reasonable and foreseeable that they are going to use all 160 acres to place more than just 18,000 head of cattle that they have said in their project. Unfortunately, the Initial Study and the traffic report and air quality study were only based on 18,000 head of cattle it was not based on the full amount of cattle that they could place on 160 acres. The transportation impact analysis is still incomplete, as per the table of contents that was attached, the transportation impact analysis that was circulated and provided indicated that Appendix A contains intersections count sheets and Caltrans traffic volume on Appendix B was supposed to contain peak hour intersection analysis worksheet, these documents were not included at the EEC hearing on February 14, 2019 and they still haven't been included. Attachment 3 to the County response contains the transportation impact analysis but the Appendix A & B don't seem to be those that are referenced in the actual table of contents instead

the Appendix A that is attached consist of worksheets from the March 13-19th seven day traffic count they are not intersection count sheets and Appendix B is brand new table 2 trip generation table which just appears to be an exact copy of table 7.1 that was already included in the TIA previously. New Appendices A & B were inserted after the February 14, 2019 EEC hearing and were only added to this packet last night when they received it at 6:00 PM. The applicant said a new tube count was performed on March 13-19th, 2019 because Mr. Smith disputed the previous tube counts, he never disputed the previous tube counts because that was never provided to them until about 5 days ago. The traffic count sheets from July 19th were performed at 2 different locations, the second location being the project entrance and that showed 431 vehicles entering and exiting the driveway of the applicant's project on one day alone that is much more than claimed by the applicant occurs or that the TIA says. The March 13-19th only conducted the traffic count at one location, so they looked at the 115 through Gonder Road but they did not look at traffic count for the project site driveway and that is a great deal higher than what is occurring on that one stretch of road. So there was only one count that was recorded on March as what was done previously, and she believes have they included a secondary count showing how many vehicles enter and exit the driveway on the July 19th study they would have seen a higher number. The Initial Study and the transportation impact analysis were prepared using information that was provided by the applicant and therefor they don't believe it reflects the true environmental impacts of the project, until the email on March 7th the applicant claimed to only have 20,000 head of cattle at its existing feedlot and provided a map which left off two other feedlots that he either owns and manages. At these other two feedlots that the applicant provided, it has an additional 16,000 head of cattle, the applicant does not address these issues in their response but merely includes an image of the locations of a bunch of feedlots in the Imperial County and they only provided those numbers as of yesterday. So when you include the other two feedlots that the applicant either owns or manages that means they have a total of 36,000 head of cattle right now being fed from their current feedlot and they want to add an additional 18,000, so you are looking at a higher number of what was considered in the original Initial Study, transportation study or within the air quality study. That is about 45% of the cattle that are being fed on offsite locations, all those trucks that feed the cattle on other locations, employees that have to go out to other locations means all those trucks are going to have to come out of the applicants current existing feedlots and then transport or go to and from the feedlots meaning a higher traffic count than considered. Additionally, the transportation impact study did not seem to consider that 8 trucks and 10 passenger vehicles would be accessing and would be used as an increase for just the project that is being anticipated as an expansion, however as they looked through it, it does not seem to include trucks used by the applicant for its cattle operation, manure removal trucks, transporting, trucks used to transfer compost, and skip loaders or utility vehicles used by the applicant to transport employees between feedlots and the satellite feedlot. Also I don't believe that it included a motorcycle that she believes one of the employees does use she believes those weren't considered when the applicant did traffic study was done. The TIA in terms of the 10 passenger vehicles that does not take into account that each employee will have to cross Gonder Road very many times in one day in order to use the restrooms, take meals and clock in and out and this is because the applicant has stated that there will be no new buildings added to the expansion other than cattle feedlots, meaning that all the restrooms, meal and break areas will be on the main feedlots so they are going to be crossing Gonder Road quite often. The TIA doesn't include entrance to the project site only to the existing feedlot, both the applicant and the County response state that the updated site plan was provided to show more detail to the entrance to the project site but the issue is that none of the figures on the TIA show where the project site is actually

going to be located and it doesn't even show where the entrance to that project site is going to be. It does not show any traffic entering or exiting the actual project site, the County response revised last night says that because the project site doesn't exist at this time there were no turning counts to the site counted but the study was performed in order to look at both existing traffic conditions currently and also traffic conditions as it would exist once the expansion was concluded, this means that there is going to be traffic going to and from and entering and exiting that new project site, yet that does not appear to be in the traffic study. The TIA does not include accurate information of hours of operation of the future feedlot. Mr. Smith on his own, just knowledge of being a neighbor and property owner as well as a farmer in the area noticed that the feed mill begins making feed at 3:00 am, compost starts at 5:00 am, but the applicant has said his business hours are 6:00 am to 4:00 pm, however in the July 19, 2019 traffic count sheet which was done at the location of the project entrance shows 14 vehicles enter the existing feedlot driveway at the 2:00 am hour and 10 vehicles leaving the project driveway at the 7:00 pm hour. Those are clearly outside the alleged hours of operation. The Air Quality also uses unrealistic data, does not properly analyze the potential environmental effects of the applicants project. The air quality study states that it only has Doc Trucks delivering cattle and picking up that cattle in a feed supply truck or picking up hay within a half mile radius and no data entry for trucks that deliver other feed ingredients, no entry for the feed truck that delivers the feed or for trucks to remove and haul manure and compost, no entry to remove carcass from the project.

Bruce Smith, stated on the traffic count, to him it is reasonable if you have 431 trucks entering and leaving the current feedlot a day with 36,000 head of cattle and it's reasonable to believe that adding an additional 18,000 head of cattle to the operation will increase trucks by about 33% so that would be another 200 trucks a day, so the total count would be an excess of 600 vehicles entering and leaving the facility a day.

Charlotte Flannigan, stated and again that is a great deal larger.

Bruce Smith, stated they have said it would be 68 vehicles added but it is going to be closer to 200 vehicles. The Air Quality Report uses the same figures and doesn't apply to the project.

Chairman Schaffner, then called upon the opposing party, representing Moiola Brothers.

Tim DuBose, DuBose Design Group, representing the applicant, introduced himself, Matthew Harmon & Anette Leon. Stated Mr. Boarman of Linscott Law & Greenspan who conducted the traffic study would address the issues of traffic.

John Boarman, Linscott Law & Greenspan, stated traffic studies are a little bit difficult for anyone to understand, especially reading the reports so he does understand where there could be some confusion. They are the people the put the black tubes on the road that you have all driven over before. They put a tube on Gonder Road between 115 and the project driveway, separately the count the driveway itself during the peak hours so they do 2 separate reports. Putting a tube on Gonder captures all traffic and whoever uses that road, whether it be from Moiola or Mr. Smith it could be anybody so the worst case is Gonder because that captures all traffic. There are counts that happen at 2:00 am and that was the tube count on Gonder not at the project driveway so that is where the confusion is when they say there are people coming in the driveway at 2:00 am they didn't count the driveway just Gonder itself. He stated he wasn't sure where the 431 cars coming in and out of the driveway came from, the count that again during the peak hours and that came out to much less. Again all traffic on Gonder in the original traffic study counted 330 trips a day going up and down Gonder, that was just a one day count so they did a 7 day count to make sure

those were accurate and the average was around 300 again. There is a lot of data on Gonder. That number could be five times as much and they would still have good operations on this road, they are not even close to having some type of impact on this road and he believes that is important to understand. The 8 and 10 numbers in the traffic number of new trucks and new employees that is the additional traffic that is going to be added by this project, the existing traffic generated by the site is part of the existing count when you put the tube down they are just measuring the delta, why the number of 8 & 10 seems small, that is the number of new employees, new trucks based on this expansion but all the existing traffic is already included in the traffic when we put the tubes down. They also look at cumulative traffic as well.

Commissioner Bergh, stated he had some questions, why no turning counts.

John Boarman, stated they did do turning counts at the 115, Gonder intersection and at the project driveway.

Commissioner Bergh, asked why the hours of operation are different. What happens to 2:00 am?

John Boarman, stated again it is a little confusing, they focus the analysis on the commuter analysis 7-9 am or 3-5 pm.

Commissioner Bergh, stated feedlots don't work by time clocks, if you are having a set of hours that the feedlot is supposed to be operating but you are not taking that into account.

John Boarman, stated they did do a 24 hour count and went back and did another 7 days so total 8 days and the counts were aligned very well.

Commissioner Bergh, stated why not the 2:00 am, you had to have known they were operating at that time.

John Boarman, stated the 2:00 am count is on Gonder itself that might be someone in this operation or just a random person.

Commissioner Bergh, at the entrance?

John Boarman, stated we didn't count 2:00 am at the entrance or all day at their entrance, that is just how traffic studies are done, they don't analyze those types of hours there is not enough traffic at that time to warrant analysis during those times.

Commissioner Bergh, so you didn't take into account their satellite operations and combine them together to figure out where they're going.

John Boarman, stated we have all that traffic, it's on Gonder, we don't know who exactly those people are or where they were going.

Commissioner Roben, stated the whole idea of a traffic study is to determine the level of service to a road, correct.

John Boarman, stated yes.

Commissioner Roben, stated are we anywhere near or above? Even if it was like you said five times the traffic we are still nowhere near and nothing gets done to this road no matter what.

John Boarman, stated correct.

Vice Chairman Kalin, stated so you said average is about 300 a day.

John Boarman, stated on Gonder itself.

Vice Chairman Kalin, stated and you said that road would support a level of five times greater than that.

John Boarman, stated yes and then some.

Vice Chairman Kalin, stated so you can go up to 1,500 trips a day and still not have to do any improvements to the road.

John Boarman, stated he would say 50 years from now you won't have that many cars on that road, unless they build a big sub division.

Commissioner Castillo, stated you have the average daily at about 300-330 trips and then the additional traffic caused by the expansion would be how many?

John Boarman, stated 68 trips a day.

Commissioner Castillo, stated so approximately 400.

Commissioner Bergh, stated based on 18,000.

Commissioner Castillo, stated so take another 18,000 what would that do?

John Boarman, stated another 180.

Commissioner Bergh, stated but it is large enough area that more can go in.

Commissioner Roben, stated yes but they have up to 1,500 more they can do before the road even becomes a problem. He stated he doesn't even know why they are discussing this.

Vice Chairman Kalin, stated the location that you measured on Gonder Road, where was that?

John Boarman, stated between 115 and the driveway.

Vice Chairman Kalin, asked if that picked up the count going over to the satellite yard.

John Boarman, stated anybody that used Gonder it would pick up.

Vice Chairman Kalin, stated his point is there is a feed truck delivering feed to their satellite yard on a regular basis for all cattle and what he wants to know is was the count west of the entrance or east.

John Boarman, stated it was west of the entrance.

Chairman Schaffner, asked if the tube that goes across the road is the one recording all the trips. He mentioned that once speaking with the previous Public Works director that he could just drive up and down that road to have higher readings jokingly but he stated these meters are really smart and will pick up most, he then asked if they picked up the motorcycle.

John Boarman, stated yes they did pick up the motorcycle too.

Chairman Schaffner, opened the public portion of the meeting.

Charlotte Flannigan, stated a quick point of clarification, the 431 trips that was mentioned didn't know where it came from the project driveway count that was performed on July 19th as did the 14 cars at the 2:00 am hours that was also located at the project driveway not at the tube count that was performed between 115 and Gonder Road.

Bruce Smith, stated this document is in the Appendix of the traffic study supplied in this package.

Charlotte Flannigan, stated while there were turn counts that were performed going to the current project there were no anticipated turns going to where the expansion is going to be located nor was there any traffic heading across the street where the expansion will be located and obviously that is because there is no project that exists there now but there doesn't seem to be any kind of future counts that were considered going to that project.

Bruce Smith, stated obviously it won't reach the level of service point, but you're saying they don't take into account the turning left or right turn of all the trucks on Gonder going into and out that feedlot on Gonder Road. I don't know if any of you have been on Gonder Road but it is pretty busy, it is a narrow road and not a very well kept road. I would assume the County would take into account the number of people turning into and out to the feedlot.

Commissioner Castillo, asked Mr. Smith if he lived next to the feedlot.

Bruce Smith, stated his parents own the house across the street.

Commissioner Castillo, stated if he could point it out on the map.

Bruce Smith, stated the other thing is he is not sure about the retention pond being built next to the house but he guesses they will attack that later.

Chairman Schaffner, stated that would be when the project actually comes before them. He then stated just as a point of interest he doesn't understand how a feedlot could ever have operational hours, you have to take care of these animals, it is like a hospital you got people having to take care of stuff so he doesn't know how it got to that point.

Jim Minnick, stated they don't have limits on an operation of a feedlot, he believes the point is when you operate as well there is time where the majority of your employees are working and then you have your skeleton crews or overnight crew, you are going to have people there but in terms of the impact on traffic the bulk of it is during a certain window of time.

John Gay, Director of Public Works, stated they did provide a letter with regards to this particular zone change required us to and he wants to highlight some important things within that letter. One, for any type of new development south of Gonder they are going to have to put in a commercial driveway, what that means for this particular site is the one thing they are going to condition is it can't be in the same location as their existing driveway to the north, so they will have to move that driveway easterly to allow enough distance for any turning movements. Our letter stated 1,000 feet and they can possibly adjust that but he does want it far enough away from the existing driveway to the north so that means that they are going to end up having to go over an IID drain, that will be a new driveway location. The other thing they are going to require is a continuing count for that particular area they want to know if overtime it is going to expand and if does they will be required to provide documentation because if it grows to another parcel and it keeps expanding he believes there to be expectations for possible increasing widths for turning movements whether it be right hand turn lane or left hand turn lane. With that being said

he thinks it is important to look at levels of service and capacity of the road and so today even if you inflate it with the tubes that you put out to the road in between Highway 115 and existing driveway there was less than 400 trips per day now to put that into context what does that mean? It means that, the road today is a Level of Service A and degrade as you add trips to that road so where does it start to degrade? It degrades at a Level of Service D and that particular trip count doesn't happen until they have 7,200 trips on that road, combined in both directions, it's cumulative. In regards to that project less than 5% of that capacity would be until we have to look at widening the road and likewise in regards to turning movements. So when you look at turning movements you look at traffic and you don't have enough trips in the opposing direction to require any kind of widening for turn lanes at this point in time, that doesn't say that if in the future they come back through the development process require more property to expand that we wouldn't look at that again but today as it stands it does not require any kind of specific widening for turns because at their peak hour you're talking about 44 movements in and out the driveway going in and out so if you look at the Appendix it breaks it down basically into half. Stated Mr. Boarman can attest to that but that is what we are talking about today.

Tim DuBose, stated the only thing he wanted to add in closing is again to recap what staff has said in the earlier presentation this has come back for further look, with the request to do some additional studies and they have completed that so it would be their request to you take that into consideration along with the overall reduction in the project that was originally conceived when it first came and the expense of conducting those studies and Deny this appeal and allow this document to circulate so the rest of the public can take a look.

Chairman Schaffner, closed the public portion of the meeting, he then turned it over to the commission for any questions or comments.

Vice Chairman Kalin, stated the traffic study has been done, we have looked at it closely and he doesn't see the need to require an environmental document to be done or one at a higher level that we have now. He then entertained a motion.

- h. Motion made by Commissioner **Kalin** and seconded by Commissioner **Cabañas** on the affirmative vote by the Commissioners present; Schaffner (yes), Kalin (yes), Bergh (no), Cabañas (yes), Castillo (yes), Wright (yes), Medina (yes), & Roben (yes); to Deny Appeal #19-0001, and find that the EEC's February 14, 2019 determination of a Mitigated Negative Declaration is appropriate

Jim Minnick, Director, stated Appeal stands denied, project will proceed forward through the Mitigated Negative Declaration process and be circulated for not less than 35 days.

Public Comments:	NONE
Commissioner Comments:	NONE
Director Comments:	NONE
Adjournment:	Meeting adjourned at 10:42 am.

Rudy Schaffner

Submitted by Rudy Schaffner;
Chairman of the Planning Commission

Attest: 

Jim Minnick, Director of
Imperial County Planning Commission

Michelle Garcia PC Recording Clerk

S:\PLANNING CLERICAL\MINUTES & RESOLUTIONS\2019\Minutes\05 08 19 MINUTES.docx