

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF OCTOBER 14, 2009

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of October 14, 2009, 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 9:06 a.m., on October 14, 2009, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

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

Staff Present: Robert Lewis, Development Services Director
 William Nicholson, Assistant Development Services Director
 Evie Gassaway, Recording Secretary
 James Holland, Senior Planner

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

M/S MOBLEY/ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF JUNE 24 AND SEPTEMBER 23, 2009.

IV. CITIZEN COMMUNICATIONS

Tom Grave spoke about the high speed rail meeting that took place last week and asked Bill Nicholson if he could share his report about it with the Commissioners.

V. PUBLIC HEARINGS

A. MINOR SUBDIVISION APPLICATION No. MS07-030 - William Morris - To divide three parcels totaling 380.45 acres into nine parcels, ranging from 40.00 acres to 54.72 acres in size. The project site is located at the southwest corner of American Avenue and Mitchell Road in the Hilmar area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **THE ACTION REQUESTED IS TO APPROVE, DISAPPROVE OR MODIFY THE APPLICATION. JH**

Planner James Holland presented the Staff Report and recommendations of approval dated October 14, 2009.

Commissioner Lashbrook asked Mr. Holland "with 12 residences going to be allowed on nine parcels, is this going to be allocated before the final subdivision map?"

Planner James Holland responds that the applicant would have to come to us as part of the final map preparation process with a proposal for a distribution of those residences and that would be recorded with the final map. If anyone pulled it up, it would show how many homes are allowed per parcel. They would have the option to put a second residence on three of the parcels.

MERCED COUNTY PLANNING COMMISSION

Minutes – October 14, 2009

Page 2

Commissioner Lashbrook asks even with this, would they be able to put a granny unit or a farm workers unit.

Mr. Holland responds that this is hard limit so they would not be able to on some parcels.

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

Duane Andrews, Golden Valley Engineering asked for the Commission's approval of this project and stated he is available to answer any questions. He also clarified that there is already one house on the property so they would only be able to add one residence to two of the parcels.

Chairman Tanner asks about the easement and who owns it.

Mr. Andrews responds that Turlock Irrigation District is responsible and has put their conditions in the staff report which the applicant has agreed to. He also mentions that Mr. Morris recycles almost 100% of his irrigation water.

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

Commissioner Lashbrook asks if this is the first project that has come to them without the General Exemption, but with a Negative Declaration. Also are there any risks to the Williamson Act?

Bill Nicholson, Assistant Director of Planning responds by saying the length of a Williamson Act contract is ten years. Although there's discussion about what to do with the Williamson Act with the State not making subvention payments like they have this year; even if the County decided on non-renewal, property owners are still under contract.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION ADOPTED THE MITIGATED NEGATIVE DECLARATION ACCORDING TO THE CEQA GUIDELINES BASED UPON THE 3 CEQA FINDINGS.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED OCTOBER 14, 2009, AND MAKES THE 10 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 10 FINDINGS, APPROVES MINOR SUBDIVISION APPLICATION No. MS07-030 SUBJECT TO THE SIX CONDITIONS SET FORTH IN THE STAFF REPORT WITH THE REQUESTED CHANGE TO THE SECOND SENTENCE UNDER MITIGATION AG-1 AS FOLLOWS:

Conditions:

Planning & Community 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. A Right-to-Farm Certificate shall be recorded prior to issuance of any building permits to notify subsequent occupants of the inconveniences of farming operations and the priority to which Merced County places on such operations.

Turlock Irrigation District

MERCED COUNTY PLANNING COMMISSION

Minutes – October 14, 2009

Page 3

4. The final map should acknowledge the 80-foot strip of land for the Turlock Irrigation District's Lateral 6 right-of-way.
5. The District's electric utility maps show existing 12KV overhead facilities throughout the subject parcels. If these facilities are to remain, the District will require electrical easement dedications. Easement descriptions may be done by separate instrument at a later date.
6. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility changes are performed at developer's expense.

Mitigation Measures

- AG-1:** The potential loss of productive farmland to non-agricultural use due to residential development shall be mitigated by the applicant agreeing to restrict the number of potential residences to a maximum of 12 dwelling units for the entire project (nine parcels). The allocation of these residences shall be proposed by the property owner and upon review pursuant to Section 18.00.03.A and B and Table 4 of Section 18.02 of the Zoning Code, be placed accordingly on the face of the parcel map.
- AG-2:** In order to preserve and encourage the economic stability of agriculture, the applicant shall provide accessibility to the existing Turlock Irrigation District facilities for irrigation water through easements to the proposed parcels. The easements shall be reviewed and approved by the Public Works Director. The easements shall be recorded with the parcel map.
- AG-3:** In order to provide for the continued commercial agricultural viability of each of the nine parcels proposed by Minor Subdivision Application No. MS07-030, no further subdivision of any of these parcels shall be allowed. A notice restricting future redivision of these parcels shall be placed on the face of the parcel map and recorded on the title of each of the nine parcels.
- CULT-1:** If archeological materials or paleontological materials are identified, work on that portion of the project shall cease until a resources protection plan conforming to CEQA Section 15064.5 is prepared by a qualified archeologist and/or paleontologist and approved by the County of Merced Community Development Director or authorized representative. Project work may resume in compliance with such plan. If human remains are encountered, the County Coroner shall be contracted immediately and the provisions of State Law carried out.
- BIO-1:** To ensure there is no take of any Swainson's hawk that may move in to the site between the time the initial study was completed and the initiation of ground/breaking construction activities, a pre-construction survey within 0.25 miles of the project site shall be conducted by a qualified biological consultant to determine the presence of nesting Swainson hawk's prior to any construction occurring on the project site between March 1 and September 15. The survey shall take place no more than thirty days prior to the start of ground breaking/construction activities, and a copy of the survey shall be provided to the Merced County Planning and Community Development Department no less than 20 days prior to the proposed

MERCED COUNTY PLANNING COMMISSION

Minutes – October 14, 2009

Page 4

construction start date. Should a nest be discovered within .25 miles of the project site, temporal construction restrictions may be necessary to eliminate the potential for noise disturbance to the nesting hawks. The consultant, who shall consult with appropriate regulatory agencies on possible mitigation, shall base the necessity for restrictions on the location of the nest in relation to construction activities.

BIO-2: Prior to any site disturbance, including commencement of any site improvements necessary for recordation of the parcel map, or, the issuance of any building permit, a qualified biological consultant approved by the County shall be retained by the project proponent to identify any trees that can be used by nesting raptors and/or other birds. These trees shall be clearly marked on-site and the maximum possible number shall be retained during the construction of the project. The retention effort may require the redesign of the site plan. Should it be necessary to remove any trees that could be used by nesting raptors/or other birds to accommodate development and site redesign is not feasible do to site characteristics, the trees shall be felled between September 15 and January 31, outside of the nesting season. The proposed tree retention or removal plan recommended by biological consultant shall be reviewed and approved by the Merced County Planning and Community Development Department no less than 20 days prior to implementation the project proponent shall state in writing to the Merced County Planning and Community Development Department as to why it is necessary to remove any identified tree. The Planning Community Department shall determine the replacement ratio for any identified raptor (or other bird) nesting tree removed from project site.

VI. CORRESPONDENCE

None.

VII. GENERAL BUSINESS

None.

VIII. DIRECTOR'S REPORT

Robert Lewis reminded the Commission about the Joint Study Session with the Board of Supervisors on the General Plan Update looking at the revised alternatives on November 10, 2009 at 1:30 p.m.

Mr. Lewis says that Bill is going to talk about the High Speed Rail Meeting he attended last week at the City of Merced which involved designating a preferred route. Staff reviewed three different possible routes that Bill will go into more detail about.

Bill Nicholson summarized the High Speed Rail Meeting with the California High Speed Rail Authority. He says the original preferred alignments that the High Speed Rail Authority approved showed a line coming up along Highway 99 from Bakersfield into the San Joaquin Valley. They also agreed to do the Pacheco Pass alignment versus the Altamont Pass. The alignment going east and west across the valley was along Henry Miller Road and an extension of that alignment cutting in through Madera County which is Avenue 24. Now they are doing a supplemental EIR and a refined EIS, which is a federal equivalent of an EIR, for federal dollars for a project level review because now they are actually identifying the location of where the tracks are going to go. During this process they are actually coming up with more alternatives. They have broken up the state into six or seven segments and they have different teams working on different environmental documents and Merced County being in the middle; we are apart of three separate links. We are the Merced to Sacramento link, the Merced to San Jose link, and the Merced to Bakersfield link so every environmental document will overlap into our County. The meeting that was held last Thursday was the team for the San Jose to

MERCED COUNTY PLANNING COMMISSION

Minutes – October 14, 2009

Page 5

Merced alignment going through Pacheco Pass, through Morgan Hill, Gilroy up to San Jose and then cutting through Santa Nella and then extending to Highway 99. They then leave it to the Fresno to Merced team to define the alignment. The latest alternatives they came up with were all additional to the original preferred alignment, and that's what we were commenting on.

They showed an alignment that didn't come into Merced County until Interstate Five meets the County. The rest of it cuts through miles and miles of agricultural land in Fresno County. It puts Merced 30 or 40 miles north of that conversion point and the original proposal says the Merced station is going to be in the first phase. The reason for that alignment was to skirt the Grassland Ecological Area. Part of the environmental analysis for them was to cut through the grasslands and through the City of Los Banos. The High Speed Rail Authority then agreed to look at a few alternatives that wouldn't impact grasslands greatly. The other alternative was to go north of Merced and more or less follow Highway 140 and kind of curve around the Stevinson area and then go past Gustine. This would bring the train through Merced but it cuts through McSwain and a lot of rural housing. It also would cut through the town of Stevinson and their golf course as well the Gustine Airport. It still ends up cutting into grasslands on the northern part. One of the main objections to this was the fact that the original alignment going from Los Angeles to San Francisco needs to be in two hours and 40 minutes. This alignment adds a lot of extra miles which will add more traveling time as well as a lot of extra track just to avoid grasslands. What we recommended is straight across from Highway 99 to Pacheco Pass; it follows Henry Miller Road through the Los Banos segment and then they had a couple alternatives which are to follow Highway 152 right down the median because there is a lot of room there. This shows less impact on grasslands and is the shortest distance across the valley.

We gave them environmental issues that were negative to look at as well as positive comments on the original or preferred alignment which has been fine tuned a little bit with Highway 152 and an area around Chowchilla. The City of Chowchilla requested the alignment to go up the Santa Fe tracks on the north. They can actually go from Highway 152 around Chowchilla and Madera then curve back toward Santa Fe before getting to Fresno. In terms of Merced, you'd catch the train going north along Highway 99, and the goal is to have the preferred station near the transpo station on 16th Street which is next to the Union Pacific tracks. There is a lot of room to build the station, and all the commercial as well as residential development they want to have. The other option is located where the Amtrak station is now which is all developed; there isn't really any open land to build. There are all kinds of conflicts if we put it there. The goal is to make sure the train coming through Merced County going north falls on Highway 99 because it's already blocked from most roads. There's already a long path there, and you'd bring the train into the spot where the station is going to be versus coming in through Le Grand and Planada on Santa Fe and then have to curve across to the alignment near Highway 99. This alignment which they call the Gold Alignment by Chowchilla fits really well with Merced County and helps reduce impacts on Chowchilla and Madera. They are really going at a fast-pace trying to get their EIR's done so every time they want input you get a real fast turn around. The meeting was coordinated with the Merced County High Speed Rail Committee that consists of two Supervisors, John Pedrozo and Mike Nelson, and a group of community leaders in the City of Merced and Atwater. They want to make sure Merced gets the station, and hopefully the High Speed Rail maintenance hub as well.

Commissioner Lashbrook asks what the impact will be on the grasslands with this preferred alignment.

Mr. Nicholson says it will cut through two segments of grasslands, one area east of Los Banos and one area west between Los Banos and Volta. They are talking about raising the train on pillars so it doesn't affect the waters as much. The real impact would be birds flying and hitting the train while it's going 250 mph. They did talk about coming up with mitigation easements to maintain the area for habitat. The high speed rail authority has offered 10,000 acres of easements to mitigate their coming through the grasslands.

Chairman Tanner wants to know what they are going to do about the Kit Fox.

Mr. Nicholson responds that they had only considered the ducks until we pointed it out to them. There is an east-west alignment going down Henry Miller that has a bridge over Interstate Five which goes near the Santa Nella sewer plant. That area doesn't have any development so they can cut across the

MERCED COUNTY PLANNING COMMISSION

Minutes – October 14, 2009

Page 6

town east-west and get through without any real disruption to the community plan so it's a great location near San Luis Wasteway.

Commissioner Lashbrook asks what is the chance that some of the speculation about a train station being in these new towns would happen?

Mr. Nicholson states that it wasn't in the funding or part of the original proposal so other folks want stations. The High Speed Rail Authority has their hands full of people that want stations. The goal is Los Angeles to San Francisco in two hours and 40 minutes. They are considering one in Visalia but they are really not looking at any other stations; just at where they are going to lay the tracks.

Commissioner Lashbrook asks if there were any suggestions to prevent birds from flying into the train.

Mr. Nicholson responds that flashing lights, maybe horns but that will most likely be a part of the environmental review.

Mr. Tom Grave comments that he has been following the High Speed Rail Authority for awhile. He believes that Bill provided a lot of information. This is not a commuter train that can have many stops along the way but there will be one available that will provide our needs.

Mr. Nicholson stated there is a proposal for an ACE train that will be more of commuter train than the High Speed Rail. There are studies going on for that as well.

Chairman Tanner states that Marianne would like to speak on something.

County Counsel Marianne Greene says she would like to make comments on the process of the Planning Commission. She says the Planning Commission has asked three questions that she would like to address. The general rule is the Commission may make and enforce rules and regulations necessary for the governance of the Commission. The preservation of order and transaction of business which is Government Code Section 25003. The general rule is that the Commission can make rules. Often a Commission will form a subcommittee for rules and then bring those recommendations back to the Commission for adoption. The Commission is basically limited by due process, First Amendment and the Brown Act. The specific question the Commission had for me was how to handle materials that arrive at the hearing during the hearing. The Commission must accept these sorts of late hits because it is within the public's right to comment during the hearing, but you do have a couple of options in how you choose to handle these materials. You can recess to review the material, continue the matter so you have time to review, and if you know in advance that the hearing is going to be lengthy, you can bifurcate the hearing into two parts. You can hear the staff report, ask questions and take public comment during the first hearing then have a second hearing to deliberate. The second question was what about e-mails? If an e-mail arrives in your box before a public hearing, it is part of the administrative record, but if it arrives during the public hearing it is to be treated as if it arrived after the close of the hearing because you do not have access to e-mails. These computers are not on and you are not checking your e-mails during the meeting. It would not be unreasonable for the Commission to adopt a specific rule that would require e-mails to arrive within 15 minutes of the start of the hearing. This would have to be included in all your meeting notices. Another question you asked was if you could reorder the agenda. The Commission may reorder the agenda. There is no rule governing the Commission otherwise. The Rosenberg rules assume the agenda will be taken in order but there is nothing specific, however, the Robert's rules of order do. Reordering of the agenda can be done with a two-thirds vote, but the Commission has not adopted Rosenberg's rules or Robert's Rules so there is no rule governing the Commission as I previously stated. My understanding is the Board of Supervisor's reorders their agenda from time to time for the convenience of the public. Does that answer all your questions regarding process that you had for me?

Chairman Tanner asked what if someone comes in with a late hit and we decide we want to continue the meeting for two weeks; what happens after we continue the meeting for those two weeks only to have someone come in with another late hit?

County Counsel Marianne Greene responds that she supposes the Planning Commission can continue it again, but you might decide to recess instead. You could get significant new information in the form of a late hit, but realistically a lot of times these late hits seem to have repetitive material. You

MERCED COUNTY PLANNING COMMISSION

Minutes – October 14, 2009

Page 7

can establish rules, for example, you won't take information that is just repetitious with prior comments. There still is a concern that the material may contain new information so this is just part of the process unfortunately. It is very common nowadays for this to happen.

Chairman Tanner states there is no way he can determine if the new information is going to be repetitive so he feels that each person has a right to come up and comment.

Commissioner Lashbrook feels that maybe splitting up the hearing into two would be easier and if we receive a lot of late hits before the second meeting then we might need to take a recess.

Marianne Greene responds that maybe she was misunderstood regarding splitting the hearing. She says the first part would be specifically for public comment and the hearing; the second part would be strictly for you to deliberate. The public hearing would be closed after the first part preventing public comment and late hits during the second part.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:58 a.m.