

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF APRIL 27, 2011

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of April 27, 2011, 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 April 27, 2011, 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 Rich Ford
Commissioner Greg Thompson

Staff Present: Paul A. Fillebrown, Interim Development Services Director
William Nicholson, Assistant Development Services Director
Kim Anderson, Recording Secretary
Jeff Fugelsang, Planner II
David Gilbert, Senior Planner
Bob King, 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 APRIL 13, 2011.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP10-003 - Foster Farms, LLC. - To demolish, reconstruct and expand a poultry ranch from 320,000 to 384,000 animal units by constructing eight (8) 36,000 square foot grow houses. The property is located on the northeast corner of Healy Road and Mariposa Way in the Merced area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **JF**

Recommendation: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration in conformance with CEQA Guidelines; and;
- 2) Approve Conditional Use Permit Application No. CUP10-003 based on the project findings, and conditions of approval presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated April 27, 2011.

The public hearing opened at 9:08 a.m.

No one spoke in favor or opposition to this application.

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

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT No. CUP10-003.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED APRIL 27, 2011, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP10-003 SUBJECT TO THE 29 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Conditional Use Permit No. CUP10-003 is granted to demolish, reconstruct, and expand a poultry ranch from 320,000 to 384,000 animal units by constructing eight (8) 36,000 square foot grow houses and several accessory buildings, in accordance with the approved Plot Plan and Operational Statement.
2. The project shall operate in a manner that is consistent with the approved Plot Plan and the applicant's Operational Statement. Minor Modifications may be approved by the Planning Director upon submittal of an acceptable application.
3. The applicant/property owner shall comply with all applicable conditions contained in Planning Commission Resolution 97-1 (attached).
4. For the purpose of condition monitoring, an inspection fee in the amount of **\$324.00** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of the inspection.
5. The applicant shall comply with all applicable local, state and federal standards and regulations.

County Counsel

6. FRESNO FARMING, LLC. and FOSTER FARMS, LLC. has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, 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 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 FRESNO FARMING, LLC. and FOSTER FARMS, LLC. FRESNO FARMING, LLC. and FOSTER FARMS, LLC. 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 FRESNO FARMING, LLC. and FOSTER FARMS, LLC., its 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. FRESNO FARMING, LLC. and FOSTER FARMS, LLC. will on request and at its expense, defend any action suit or proceeding arising hereunder.

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This clause and 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 during the term of this Agreement, but shall also apply to all such claims and the like, after the term of this contract, including but not limited to actions arising from public interest, land use and environmental legal actions, brought against the COUNTY following PROJECT approval, modification, denial, or the exercise or exhaustion of administrative appeals. Attorney's fees shall include any and all attorneys fees but not be limited to attorneys 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 clause for indemnification shall be interpreted to the broadest extent permitted by law.

Department of Public Health/Division of Environmental Health

7. A fly and odor control program must be submitted to MCDEH.
8. Any hazardous material stored on-site or threshold quantities (55 gallons, 200 cubic feet, or 500 pounds) requires that a hazardous material business plan (HMBP) be filed with the Division of Environmental Health. Any quantity of hazardous waste generated on-site also requires that a HMBP be filed.
9. The water well setback from the chicken houses is 100 feet. If the two proposed wells serve either the residence or the employee break room, the wells must be constructed to domestic standards.

If use of the existing well(s) serving the residences and/or the facility is to be discontinued, the well(s) must be destroyed under permit from MCDEH.
10. The existing septic tanks and leach line areas are to be unpaved, contain no structures, and be protected from compaction (vehicular traffic, etc.). The leach line replacement area (100% of the required existing leach field) is to be unpaved and contain no structures.
11. The septic tank serving the residence to be demolished must be destroyed under permit from MCDEH, unless it is to be used to serve the employee break room/ restroom.
12. The employee break room/ restroom on-site septic system shall conform to MCDEH minimum design standards for on-site sewage disposal systems. The permit for the system will take place in conjunction with the building permit process. The leach line setback from the storm water drainage basin is 50 feet.

A plot plan, drawn to scale and showing proposed well and sewage disposal system locations, must be submitted with the Building Permit Application. Include a 100% leach line replacement area (300% replacement area for systems serving commercial facilities). The septic tank and leach line area (including replacement area) are to be unpaved and protected from compaction (traffic, etc.). The Merced County Division of Environmental Health (MCDEH) will review the application and determine the septic system specifications.

Department of Public Works/ Road Division

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13. The Applicant shall Quitclaim thirty feet (30') of road right of way along the project's entire western frontage of Healy Road, and along the west 181.37 feet of their southern frontage of Mariposa Way.

San Joaquin Valley Air Pollution Control District

14. The project may be subject to district rules and regulations, including: Regulation VIII (Fugitive PM10 Prohibitions), Rule 2010 (Permit Required), Rule 2201 (New and Modified Stationary Source Review), Rule 4002 (National Emission Standards for Hazardous Air Pollutants), Rule 4102 (Nuisance), Rule 4570 (Confined Animal Facilities), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving, and Maintenance Operations).

Mitigation Measures

15. **MM-Biology-1.** Ground clearing and removal of vegetation shall occur outside of the nesting season, which typically runs from March 1 through September 1.

If ground clearing or removal of vegetation must occur during the nesting season, a survey for nesting Swainson's hawk shall be conducted prior to implementation of any excavation or ground disturbing. The survey shall be limited to those areas within ¼ mile of the project site. The survey shall be conducted more than 14 days prior to the beginning of ground disturbance. If an active nest is located, Incidental Take and Minimization Measures shall be implemented as consistent with the Migratory Bird Treaty Act. The minimum setback from an active nest shall be no less than two times the greatest dripline of the tree as measured from the nest.

16. **MM-Biology-2.** No more than 14 days prior to the initiation of any excavation or ground disturbing activities, a pre-construction survey for burrowing owls shall be conducted by a qualified biologist in general accordance with the CDFG Staff Report on Burrowing Owl Mitigation (CDFG 1995). If no occupied burrows are identified, then no additional mitigation is required. If occupied burrows are identified, procedures as identified by the CDFG shall be implemented to either avoid or properly relocate the burrowing owls.
17. **MM-Cultural-1.** If potentially significant archeological resources are discovered during ground-disturbing activities associated with construction of the proposed project, all work within 100 feet of the find shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate mitigation measures in consultation with Merced County and other appropriate agencies and individuals. If significant resources are discovered, a formal evaluation using CEQA criteria will be conducted to determine if further study, test excavations, or data recovery procedures are necessary.
18. **MM-Cultural-2.** In the event that human remains are discovered on the project site, all project-related construction shall cease within a 100-foot radius of the remains. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California, the following shall occur:

The Merced County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are Native American, s/he shall notify the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will be responsible for designating the most likely descendant (MLD), who will be responsible for the ultimate disposition of the remains, as required by Public Resources Code Section 5097.98. The MLD will make his/her recommendations within 48 hours of their notification by the NAHC.

If no satisfactory agreement can be reached as to the disposition of the remains

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pursuant to this State law, then the landowner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

19. **MM-Geology-1.** Prior to the issuance of building permits, the project applicant shall obtain a site-specific soils report from a qualified California licensed soils engineer. The applicant's engineer must review the report before finalizing foundation designs to ensure that all requirements from the soils engineer are met. The soils report must be submitted to the Merced County Building and Safety Division as part of any building permit application.
20. **MM-GHG-1.** At a minimum, groundwater pumps installed for the onsite groundwater wells shall be variable speed drive, and the drive size shall be matched as closely as possible to expected loads. A more efficient pump may be installed, such as a premium efficiency motor.
21. **MM-GHG-2.** Interior and exterior lighting of the facilities shall be energy efficient, following the guidance of the Best Practice Guide for Food and Beverage Growers and Processors. Lighting installed shall (as dictated by the application):
 - Be high-output T8 or T5 fluorescents,
 - Have energy efficient electronic ballasts,
 - Use compact fluorescent lamps,
 - Use occupancy sensors in restrooms and closets,
 - Use photosensors for outdoor lighting systems.
22. **MM-Hazards-1.** Prior to the first day of operations, the project applicant shall submit to Merced County Department of Public Health/Environmental Health Division, a Hazardous Materials Business Plan in accordance with Merced County Code 18.41.050. The Hazardous Materials Business Plan shall outline the types and quantities of hazardous materials used onsite and indicate onsite safety measures to ensure such materials are properly handled and stored.
23. **MM-Hazards-2.** A lead based paint survey shall be conducted prior to demolition or all paint coated materials shall be treated and disposed of as containing lead in accordance with DTSC hazardous materials laws and regulations and CalOSHA Construction Safety Orders or Title 8 CCR Section 1532.1).
24. **MM-Hydrology-1.** This project involves construction activities greater than one acre. Therefore, a Storm Water Pollution Prevention Plan (SWPPP) shall be prepared by the project applicant and submitted for review and approval by both the County and Regional Water Quality Control District and a New Construction Stormwater Permit shall be obtained (Order No. 2009-0009-DWQ). The applicant or person responsible shall meet Merced County construction site requirements regarding the control of surface water, erosion, and runoff. Runoff created at the project site shall meet the following minimum requirements:
 - (1) Sediments generated on the project site shall be retained using adequate treatment control or structural Best Management Practices (BMPs);
 - (2) Construction-related materials, wastes, spill or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters or adjacent properties by wind or run-off;
 - (3) Non-storm water run-off from equipment and vehicle washing and any other activity shall be contained at the site; and
 - (4) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Water Quality Control Board Resolution Number 99-03) such as limiting grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.

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25. **MM-Hydrology-2.** The project applicant shall submit to the County of Merced, for review and approval, grading and construction plans for the manure staging area that include elevation differences to ensure any stormwater runoff emanating from the manure storage area be contained at the manure storage area for evaporation or percolation. The project applicant shall implement the grading and construction plans as approved by the County of Merced.
26. **MM-Floodplains-1.** The project applicant shall submit to the County of Merced, for review and approval, grading and construction plans for the onsite residence at the Ewing Poultry Ranch that include elevation differences to ensure the residence would be located approximately two feet above the 100-year flood plain. The project applicant shall implement the grading and construction plans as approved by the County of Merced.
27. **MM-Noise-1.** The Applicant shall implement the following measures during project-related construction:
- Construction activities shall be limited to between 7 a.m. and 6 p.m., Monday through Saturday, to avoid noise-sensitive hours of the day. Construction activities shall be prohibited on Sundays and holidays.
 - Construction staging and heavy equipment maintenance activities shall be performed a minimum distance of 300 feet from the nearest residence, unless safety or technical feasibility takes precedence, which will be determined by the Construction Site Manager.
 - Construction equipment noise shall be minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.
 - Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences. Stationary combustion equipment such as pumps or generators operating within 300 feet of the nearest residence shall be shielded with a noise protection barrier.
28. **MM-Transportation-1.** Prior to the issuance of building permits, the project applicant shall submit a roadway impact evaluation prepared by a registered Geotechnical Engineer or Civil Engineer to the Merced County Department of Public Works, Roads Division concerning the structural integrity of Mariposa Way and Healy Road near the project site. Based upon said evaluation, the applicant shall pay to the Merced County Road Fund an amount equivalent to improving said roadways sufficient to sustain the truck load impacts for the future 20-years to the satisfaction of the Merced County Department of Public Works, Roads Division; or
- In lieu of performing a roadway impact evaluation, the applicant shall enter into a Roadway Impact Agreement (RIA) with the Merced County Department of Public Works, Roads Division to reconstruct the width of Mariposa Way along the project frontage sufficient to sustain the anticipated truck loads generated by the project. The applicant shall enter into the RIA, including the submittal of a \$200 processing fee for said agreement, to the satisfaction of the Merced County Department of Public Works, Roads Division prior to building permit issuance.
29. **MM-Transportation-2.** Prior to final occupancy, the project applicant shall install a County approved single, pole-mounted 250-watt street light at each truck access driveway onto Healy Road and Mariposa Way (for a total of two new streetlights) to the satisfaction of the Merced County Department of Public Works, Roads Division. The light fixtures shall be shielded to reduce light spillage on to adjacent properties.

- B. ADMINISTRATIVE APPLICATION No. AA11-006 - Rebeca Cardenas** - To establish a semi-mobile food vendor within the parking area of a used car sales and tire repair facility on a .27 acre parcel. The project site is located at the southeast corner of Highway 140 and Gwinn

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Street in the town of Planada. The property is designated Commercial land use in the General Plan and zoned C-2 (General Commercial). **DG**

Recommendation: The actions requested are to:

- 1) Determine that the application is exempt from CEQA review under Section 15061(b)(3) of the CEQA Guidelines, and;
- 2) Approve Administrative Application No. AA11-006 based on the findings and subject to the conditions of approval presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated April 27, 2011.

Commissioner Thompson asked how many mobile food vendors are in Planada currently.

Planner David Gilbert said there are two existing mobile food vendors. One of them is to the west of Plainsburg Road and then this application would be number two, which involves the relocation of the vehicle from another location in Planada to this property.

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

Mike Smith, CCPS, agrees with the staff report and the conditions listed. He has no issues with the conditions and he is available to answer any questions the Commissioners may have.

The public hearing closed at 9:20 a.m.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE APPLICATION No. AA11-006 FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED APRIL 27, 2011, AND MAKES THE 8 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES ADMINISTRATIVE APPLICATION No. AA11-006 SUBJECT TO THE 17 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Administrative Permit No. AA11-006 is granted to allow Rebeca Cardenas (applicant) to operate a semi-mobile food vendor (catering truck) with one outside table within a used auto sales and auto repair facility located at 9075 Highway 140 in the community of Planada.
2. The project shall operate in a manner that is consistent with the approved Plot Plan and the applicant's Operational Statement. Minor Modifications may be approved by the Development Services Director upon submittal of an acceptable application.
3. If the Administrative Permit is not implemented within one year, it shall expire and become null and void. The Development Services Director may extend the Permit if a request is filed by the applicant prior to its expiration.
4. The applicant shall comply with the Merced County Zoning Code Development Standards required for semi-mobile food vendors (Section 18.47.280.D) including, but not limited to the following:

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- a. The operating hours shall be limited to 10:00 a.m. to 8:00 p.m., every day of the week.
 - b. There shall be adequately sized and covered trash receptacles adjacent to the semi-mobile food vendor.
 - c. The site shall be kept clean and free of litter at all times. Trash and garbage shall be removed from the site at the end of each day.
 - d. Waste water generated by this use shall not be released on-site or into any storm drainage or irrigation system.
 - e. Grease shall be disposed per requirement of the Division of Environmental Health.
 - f. No additional advertising sign except a sign attached to the semi-mobile food vendor shall be utilized and any sign shall be reviewed and approved by the Development Services Director.
 - g. A copy of the administrative permit shall be kept with the operator at all times and shall not be transferable to another operator.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$324.00** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of the inspection.
 6. The property owner shall pave the parking area with asphalt where the semi mobile food vendor will be located and stripe the parking spaces as shown on the plot plan, with one of those parking spaces being a "Van Accessible" handicap parking space.

County Counsel

7. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Rebeca Cardenas has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, 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 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 Rebeca Cardenas. Rebeca Cardenas 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 Rebeca Cardenas, their 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

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a lawsuit, claim, petition, or allegation of liability against COUNTY. Rebeca Cardenas will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause and 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 during the term of this Agreement, but shall also apply to all such claims and the like, after the term of this contract, including but not limited to actions arising from public interest, land use and environmental legal actions, brought against the COUNTY following Conditional Use Permit No. AA11-006 approval, modification, denial, or the exercise or exhaustion of administrative appeals. 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 clause for indemnification shall be interpreted to the broadest extent permitted by law.

Department of Public Health/ Environmental Health Division

8. A stationary mobile food preparation unit (aka semi-mobile food vendor) must be operated within 200 feet travel distance of an approved, readily available, permanent toilet and hand washing facility for use by facility employees. If a permanent structure where food is stored, prepared, served or consumed is provided for customers at the site, then a permanent restroom must be available for customer use. In either case, written permission from the restroom owner should be provided indicating who has permission to use the restrooms and the days and times the restrooms are available. The food vehicle cannot operate unless the restrooms are available. The restrooms must be inspected and approved by MCDEH.
9. A mobile food facility shall have a permit from MCDEH to operate in Merced County. Call MCDEH at 381-1100 to get a vehicle inspection appointment. Bring a completed form to the inspection. Unless the vehicle also has an AA permit from the Planning Department for a semi-mobile food vendor business, the vehicle is not allowed to be stationary. Call Mary Coakley at (209) 710-6096.

Commerce Aviation and Economic Development Department

10. If the applicant/owner does not currently have a Business License Permit, they shall obtain one from the Commerce Aviation and Economic Development Department. The property owner/applicant shall pay all required fees for the Business license. The property owner/applicant shall annually renew the Business License and pay all required fees.

Public Works/Building & Safety Division

11. Employees shall be provided with accessible restrooms, including the path of travel to the restrooms and shall comply with the requirements of the 2010 California Building and Plumbing Code.
12. In food preparation areas, fixture requirements may be dictated by health

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codes of the 2010 California Plumbing Code.

13. Each dining area if provided shall have one wheelchair seating for each 20 seats provided.
14. Provide Accessible Parking if one accessible space is required, that space shall be "Van Accessible" located, marked and signage as required per the 2010 California Building Code.
15. All electrical equipment and cords shall be secured and protected per the 2010 California Electrical Code.

- C. CONDITIONAL USE PERMIT No. CUP11-004 - Carlos Rogue** – To allow an existing restaurant to also operate a bar and nightclub, along with an upgrade to a full liquor license. The project site is located on the west side of Highway 33 and 300 feet south of Comet Drive within the community of Santa Nella, and designated as General Commercial in the Santa Nella Community Plan, and zoned C-2 (General Commercial). **BK**

Recommendation: The actions requested are to:

- 1) Determine that the application is exempt from CEQA review under Section 15301 (existing facilities) of the CEQA Guidelines, and;
- 2) Approve Conditional Use Permit No. CUP11-004 based on the findings and subject to the conditions of approval presented in the Staff Report.

Planner Bob King presented the Staff Report and recommendations of approval dated April 27, 2011.

Commissioner Thompson asked if the six foot masonry fence was a requirement of the prior application and the applicant is not in compliance with the prior application. He has project requirements that are not complete prior to this application being processed

Planner Bob King said the applicant is a new lessee. The landowner is responsible and has not followed through with the requirements.

Commissioner Mobley asked how long he has been leasing the restaurant.

Planner Bob King said he has been leasing the property for over a year.

William Nicholson, Assistant Development Services Director, says he has been involved with the enforcement of this project for over ten years. The issues go back to 1993. This is an opportunity for the County to get the landowner to build the wall if the applicant wants a liquor license and night club to be opened. He will not be able to get a building permit without the requirement. There is a property line separating the parcel from the parking lot. The wall needs to cover both parcels.

Planner Bob King said this use is serving the Community and tourists. They are consistent with the zoning. The problem is with the development standards. There is excessive noise from the idling trucks. There is adequate parking, but not well maintained, as well as the landscaping.

Commissioner Ford asked how the business changed hands in ownership without complying with existing conditions.

Mr. Nicholson explained that the permit runs with the land. If you sell a business or rent it out, it doesn't reopen a permit or give someone a chance to look at the conditions. Merced County doesn't get to approve or deny the sale of a property.

Commissioner Thompson asked if there was a parking agreement between the restaurant owner and the owner of the parking lot.

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Planner Bob King said they have some agreement because of the way it's being used. There needs to be a more formal agreement submitted to the County.

Commissioner Thompson asked if the parcels created along Hwy 33 have an encroachment agreement with CalTrans.

Planner Bob King said all three parcels were a part of the original encroachment permits.

Commissioner Thompson would like to see vegetation incorporated in the land to help with the noise between the residential uses and the existing commercial.

Planner Bob King said they could add some taller vegetation to the conditions.

Commissioner Mobley said he has a hard time approving an expansion of the uses since the applicant has still not put up a wall.

Commissioner Ford said there is a risk with the impact of the noise from a possible night club on the adjacent mobile homes.

Commissioner Mobley feels it's not appropriate to have a night club 20 yards away from residential area.

County Counsel Marianne Greene said the operational hours needs to be looked at.

The public hearing opened at 9:50 a.m.

Lupita Shafer, Santa Nella resident, lives near the Restaurant, said that a wall was asked for and was never done. She doesn't get any sleep because of the trucks coming in and out of the parking lot 24-7. The owner has had many citations requiring her to put up a wall. The music from the nightclub will also add to the noise. There are not enough police patrols to come out to Santa Nella. Ms. Shafer handed out pictures of the trucks coming and going. Environmental Health sent a letter requiring Helen Loos, the owner of the property, to get rid of the weeds and trash on the property.

Bernadette Vierra, daughter of Ms. Shafer, said applicants need to comply to requirements. If they can't address those issues, it will be worse if they are granted a liquor license and night club. The noise issue is infringing upon the neighbors. The property owner has neglected the entire property. The District Attorney's office needs to be brought out. The neighbors in the area will do a petition if necessary. This is not a commercial area.

Commissioner Mobley said this is not an appropriate place for a night club so close to a residential area. There is a lack of caring for the neighbors and the law and what they have been required to do. Why hasn't the County made this right?

Commissioner Thompson said businesses are hard to manage and it seems that the owner is having problems with their operations. They need to provide documentation on the truck parking.

County Counsel Marianne Greene, said the Commission can revoke the permit or continue this application. You can deny this, but the underlying issue should be addressed. Or the Commission can approve the application with modified conditions.

Commissioner Ford would like to see the history of the property from Code Enforcement. He doesn't think the applicant will comply due to their history record.

County Counsel Marianne Greene said the wall will have to go up and the landscaping maintained in order from them to get their licensing. This project should be continued to allow examination of the history of this property.

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Commissioner Thompson would also like to see history on the project. There is an opportunity for cleanup of the property in the meantime and also to obtain document agreements on the parking lot.

Paul Fillebrown, Interim Development Services Director, asked if there is a possibility to deny this project without prejudice with the statement from the Planning Commission that there may not being any new permits on this site until previous conditions are met.

County Counsel Marianne Greene said that there should be a continuance of this hearing.

Commissioner Ford said they are not complying now, why would they comply on the expansion of this new business?

Commissioner Mobley said he has a problem with a nightclub being 50 feet from a residential area.

The public hearing closed at 10:09 a.m.

MOTION: M/S MOBLEY – ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION REFERS CONDITIONAL USE PERMIT APPLICATION No. CUP11-004 BACK TO STAFF AND CONTINUED THIS APPLICATION TO AN UNKNOWN PLANNING COMMISSION DATE AND TO ALLOW THE PLANNING COMMISSION TO REVIEW HISTORY OF THIS PROPERTY.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Bill Nicholson, Assistant Development Services Director, reminded the Planning Commissioners that the Joint Study Session with the Board of Supervisors on the General Plan Update policies will be May 3rd at 1:30pm in the Board Chambers.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting was adjourned to the May 3, 2011 Joint Study Session meeting at 1:30pm.