

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF JUNE 22, 2011**

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The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of June 22, 2011, are available online at [www.co.merced.ca.us/planning/plancomarchive.html](http://www.co.merced.ca.us/planning/plancomarchive.html).

**I. CALL MEETING TO ORDER**

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:03 a.m., on June 22, 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 III  
  Robert 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 MAY 25, 2011.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

**A.     ADMINISTRATIVE PERMIT APPLICATION No. AA11-011 – Griselda Cardenas - To establish a semi-mobile food vendor with outdoor seating to be located within the parking lot of a nightclub on a 3.2 acre parcel. The project site is located at 2611 N. Santa Fe Drive, approximately one mile west of Highway 59 in the Merced area. The property is designated Merced SUDP - Industrial land use in the General Plan and zoned C-2 (General Commercial).  
      **JF****

**Recommendation:** The actions requested are to:

- 1) Determine that the project is categorically exempt from CEQA review under Section 15061(b)(3) of the CEQA Guidelines, and;
- 2) Approve Administrative Permit No. AA11-011 based on the project 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 December 15, 2010.

The public hearing opened at 9:10 a.m.

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No one spoke in favor or opposition to this application.

The public hearing closed at 9:11 a.m.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE PERMIT APPLICATION No. AA11-011 FROM CEQA.**

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JUNE 22, 2011, AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES ADMINISTRATIVE PERMIT APPLICATION No. AA11-011 SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

Conditions:

Planning & Community Development Department

1. Administrative Permit Application No. AA11-011 proposes to establish a semi-mobile food vendor within the parking lot of a nightclub on a 3.2 acre parcel, in accordance with the approved Plot Plan and modified Operational Statement.
2. Minor Modifications may be approved by the Planning 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 Planning Commission 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 18.47.79.D) including, but not limited to the following:
  - a. The operating hours shall be from 10:00 am to 10:00 pm, Sunday through Thursday, and 10:30 am to 2:30 am on Fridays and Saturdays.
  - b. There shall be adequate 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 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.

County Counsel

5. INDEMNITY AND HOLD HARMLESS AGREEMENT:

GRISELDA 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 GRISELDA CARDENAS. GRISELDA 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 the GRISELDA 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 a lawsuit, claim, petition, or allegation of liability against COUNTY. GRISELDA 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 Administrative Permit No. AA11-011 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/ Environmental Health Division

6. *Stationary Mobile Food Facility Permit*

Any mobile food facility must have a permit from MCDEH to operate in Merced County. Call MCDEH at 381-1100 to get a vehicle inspection appointment. Bring a completed commissary form and your food safety certificate to the inspection to the inspection. The mobile food facility must visit and be serviced at the commissary each day that the mobile food facility operates.

*Stationary Mobile Food Facility Restrooms*

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MCDEH considers a mobile food facility spending over one hour in the same location to be stationary. A stationary mobile food facility (aka semi-mobile food vendor) must be operated within 200 feet travel distance of an approved, readily available, permanent toilet and hand washing station for use by facility employees. 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 at that time. The restrooms must be inspected and approved by MCDEH.

### VI. COMMISSION ACTION ITEM (S)

- A. **MERCED COUNTY GENERAL PLAN 2030 UPDATE** – On May 3, 2011, the Board of Supervisors and the Planning Commission held a Joint Study Session to consider Focus Group comments on the Public Review Draft Policies (dated April 22, 2011).

This item is for the Planning Commission to consider and evaluate revisions made by Planning Department Staff, in consultation with the General Plan Update Consultants, resulting from the May 3, 2011, Joint Study Session. The resulting document for review by the Planning Commission is the Planning Commission Review Draft 2030 Merced County General Plan (dated June 2011).

This document contains revised draft policies covering the following subject areas (also known as General Plan Elements) that may affect future growth and land use in Merced County through 2030: Economic Development, Land Use and Community Character, Agricultural, Transportation and Circulation, Public Facilities and Services, Natural Resources, Recreation and Cultural Resources, Health and Safety, Air Quality, and Water. This document also contains the Draft 2030 General Plan Part 1: General Plan Overview, Part II: Countywide Goals, Policies and Programs, Part III: Community Plans, and the Glossary of terms.

**Recommendations:** The actions requested are to:

- 1) Determine that the Planning Commission finds the Planning Commission Review Draft 2030 Merced County General Plan acceptable for public review, incorporating any changes recommended by the Commission.
- 2) Direct the Planning Department Staff to forward the Planning Commission's recommendation(s), on the Planning Commission Review Draft 2030 Merced County General Plan to the Board of Supervisors for their further consideration and direction to Planning Department Staff.

Dan Amsden with Mintier & Harnish, Consultant for the County, presented the staff report and recommendations for the Planning Commission Review Draft 2030 Merced County General Plan.

Chairman Tanner provided an opportunity for the public to provide comments on the Draft Plan at 9:20 a.m.

Paula Fitzgerald, Planning Director for the City of Los Banos, said she has concerns with Policy LU-7.11 that deals with discretionary approval by the County within the City's Sphere of Influence. The policy is contrary to a lot of the policies under Goal 7. It could encourage sprawl and put undue burden on Cities and goes against basic planning principles. There are a lot of commercial and residential vacancies and Cities aren't in the position to annex if an annexation application comes forward. It seems as if this Policy could create some issues.

Greg Arnaudo, member of the Santa Nella Chamber of Commerce, would like a revision to the Economic Development section of the 2030 Merced County General Plan (ED-4) to include the creation of a sufficient acreage of industrial land that can be developed through a ministerial approval process and a streamlined and accountable permitting process.

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Robbie Avila, Valley Land Alliance, said they believe in protecting agricultural land that will become increasingly important in the immediate future to the County. We are experiencing drought worldwide and have food shortages. She believes the 1:1 mitigation is below what our standards should be. The land evaluation and site assessment (LESA) land is mitigated on a sliding scale of 1 – 1 to 4 - 1 for land designated as prime. This was created as a tool to protect the best of our agricultural lands from urban sprawl. Valley Land Alliance urges the Commission to strive for the best protection of our agricultural lands by using the LESA model. They asked that Alternative E be chosen over Alternative D. Alternative E emphasizes growth in the City and existing communities that already have infrastructure in place to support residential needs.

Alternative E also shows a higher projection of employment in the 2030 General Plan with fewer acres used to house population figures. We need a Technical Advisory Committee to monitor pending major and federal state legislation which affect agricultural industries. The Committee can educate Commissioners and the Board of Supervisors. She suggests a Technical Advisory Committee; Alternative E to be chosen over Alternative D; and Ag Mitigation is higher than 1:1.

Lisa Keyser-Grant, has concerns with item 72 on the matrix Policy NR1.6; The policy is good for the General Plan, however she urges another step to be added and that is when new development takes place, these identified corridors are protected and preserved. She asked that this be included in that policy. A couple of years ago the State of California revised its code to have safe grey water system installed. She suggests having new development prepared with plumbing and use the grey water system to allow for more conservation of water. Other County's have adopted grading ordinances for waterways and drainage protection. The grading ordinance is guidelines for when land that is not developed and near drainage systems these guidelines are to be followed so waterways are not affected.

Amanda Carvajal, Merced County Farm Bureau, said the Farm Bureau is concerned with LU 3.3 and LU.4 regarding rural residential center minimum lot size of 1 acre. It is not a viable option for some rural areas to have onsite septic systems installed, since there is a possible high water table and backflow risk. Agriculture is still the leading industry in Merced County, and they want the Agricultural Committee reestablished as General Plan policy.

Frank Borgess, representative for Mike Gallo, said he has studied agreements in many Counties and several Cities regarding agricultural land mitigation. The 1:1 agricultural mitigation works successfully in many of those Counties and Cities due to protection of agricultural land. Yolo County did have specific language regarding 1:1 agricultural mitigation. It says "Agricultural mitigation requirements the ordinance mandates that all projects result in a permanent loss of farmland and habitat be mitigated with an equal amount of land". He asked the Commission to consider excluding commercial and industrial lands that are converted from farmland.

Kathy Kivley, City Manager of the City of Atwater, said in the Sphere of Influences, the County is allowing septic and water wells and currently in the City of Atwater, the waste water treatment plant is being expanded. We could handle most of development within the Sphere of Influence and we would be able to treat the wastewater. She is concerned that the County will allow wells and septic within the Sphere of Influence.

Dave Spaur, president of the Economic Development Corporation, said the Sphere of Influence in each City does extend to the County and there are areas that could accommodate revenue sources and job sources. He sees from the County General Plan and City of Merced General Plan that we tend to build some conflict in the General Plans instead of compatibility. He wants to see policies strengthened where Agricultural development is encouraged and would like to see the agricultural mitigation excluded for Commercial-Industrial.

The public hearing closed at 9:42 a.m.

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Chairman Tanner suggested the Commissioners go over each suggested change to the Draft 2030 General Plan.

There were no comments or recommended changes to Goal #1, 5, 7 and 21.

On Goal #25, Commissioner Ford said there was discussion on whether or not to allow new applications for Urban Centers. There has been new development in the past that hasn't been successful. He doesn't want to see new urban centers until the old applications are going good. This would put a strain on staff dealing with applications for new urban communities which is an intense process.

Commissioner Thompson said that they don't want to take away the planning tool from Planning staff. This issue was already raised and voted on.

Interim Director Paul Fillebrown said anything that was brought up at the previous Joint Study Session is up for discussion at any time. Planning Commission recommendations will be going before the Board of Supervisors.

Commissioner Ford said he doesn't recommend allowing new town applications to the Board of Supervisors, however, the other Commissioners each commented that the General Plan should allow for their consideration.

There were no comments or recommended changes to Goal #27, 29 and #30.

On Goal #31, Bill Nicholson, Assistant Planning Director, said that to interpret "more meat" that program AD-J shows more detail. It describes how to carry out policies.

There were no comments or recommended changes to Goal #33.

On Goal #34, Commissioner Thompson said he is in favor of the 1-1 Ag Mitigation. This is an opportunity for unity and a policy that works for everyone. The commercial and industrial exemption is the "carrot" that is needed for the cities to come in line.

Commissioner Ford agrees and said he is somewhat confused on the LESA Model that allows up to 4-1 mitigation. He asked for an explanation of the LESA model.

Bill Nicholson, Assistant Planning Director, said if one has a 20 acre parcel of land and you were going to mitigate another piece of 20 acre land that was designated as prime soil, then you would have a comparable in mitigating ratio, then you don't need to have a model that determines that is prime soil. The tradition in Merced County is equivalent or better soil. You are not allowed to swamp prime land with poor quality soil. The proof of that is through looking at soil proposed for mitigation.

Commissioner Thompson likes the flexibility of negotiating with other Cities on adopting a 1-1 mitigation on excluding commercial and industrial as a tool to get a universal mitigation with the Cities.

Commissioner Ford agrees with Commissioner Thompson.

Chairman Tanner said one could use the LESA model but it is not required.

Robert King, Senior Planner, gave a brief presentation on the LESA model and its purpose. One part, the land evaluation looks at the NRCS soil classifications. The second part looks at the parcel size, water availability and surrounding uses and protected land. It is recommended in CEQA Guidelines to use this model. It is consistent and establishes the common basis. You can set or not set mitigation ratios. If the County was going to incorporate or require LESA, it could graduate fixed mitigation ratios to LESA scores, the lower the score the lower the ratio, and vice versa. The LESA model is an objective way of looking at the soil but it does not determine any mitigation ratios.

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Chairman Tanner asked if the cost would be placed on the landowner to run the model.

Planner Robert King said there is no cost since it consists of looking at a map.

There were no comments or recommended changes to Goal #37 and #45.

Goal #48: Bill Nicholson, Assistant Development Services Director, said there is a change to Alternative A-G 2.7 which is called Merced County Agricultural Preserve consolidation. The alternative language that was to be retained in the General Plan has to do with the issues of the agricultural preserve and the wording of this policy is: Modify the Merced County Agricultural preserve to be consistent with State Subdivision Map Act and Williamson Act rules for allowing parcels less than 10 acres for a limited number of circumstances authorized as exceptions in the County Zoning Code and consistent with State Law. If the ag preserve size wasn't reduced, this would be an alternative where you change the rules. This is recommended to be added back in.

The Commissioners agree with Mr. Nicholson's explanation.

There were no comments or recommended changes to Goal #54, 66, 68, 69, 70, 71, 72, 74 and 78.

Goal #80: In response to Commissioner Thompson's question about a solar project on City property, Bill Nicholson said if you are doing a "commercial" solar facility, the solar facility would be a power generating source that goes onto the grid and it's like a power plant that gets power from the sun. The County would process that as if it were a power plant. Where the scrutiny is more on a ministerial level is for a facility that needs electricity. If you are at an industrial facility and your putting panels on your property related to that facility and generating your own power to reduce your draw from PG & E or MID, then you are actually tied into their grid to reduce their power and its going to your facility.

Commissioner Ford said if you have an open piece of ground that is being farmed, you wouldn't be allowed to have a solar farm on the property?

Mr. Nicholson said no. The issue is how you eventually put the land back into farming. In the case of mining, you prepare a reclamation plan and you get a bond and when their done mining, unless you're doing deep wet mining and creating a pond and you can't return to farming, the bond pays for the property to go back to farming, once the solar panels are pulled off the property. It would be like a solar reclamation plan.

Deputy County Counsel Marianne Greene would like to see the term "utilities scale solar" substituted for "solar power farms." Solar "facilities" under the Solar Rights Act apply to residences and smaller businesses, so for the larger, solar power farms, the term "utility scale solar" should be used to avoid confusing it with the meaning of "facility" under the Solar Rights Act.

Goal #94: Chairman Tanner asked Mr. Nicholson for an explanation of this goal, and if we are policing private property owners tearing down old shacks?

Mr. Nicholson said if they were doing a project where we are doing CEQA that would determine if there are cultural or historical resources being identified during that process. However, if a landowner wanted to identify their site as historic, we would help them do that. In rural areas, we would not randomly go out looking at sites. We would wait for the landowner to come in and identify the site as historic or for solar farms, if it turns out there was a burial ground, then we would recognize that and protect it as part of that process.

Chairman Tanner said if he had a home he wanted to tear down, who would determine that the home was historic?

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Marianne Greene, Deputy County Counsel, said this is determined through the CEQA process and the architect can determine if it would be a historic site. During the CEQA process, historical and cultural resources consultants would look through their various academic resources and data bases to determine if the house meets their historical criteria and then would inform the Planning Department that there is historical significance and if the home is demolished by the virtue of the proposal, then there would be a significant impact to historical resources. The mitigation could range from preserving from photographic and archive methods.

Chairman Tanner asked what happens if you don't need to go through the CEQA process?

Interim Director Paul Fillebrown said if you are not going through a discretionary project through the Planning Department or applying for a demolition permit that doesn't require CEQA, then basically it is up to you.

There were no comments or recommended changes to Goal #95, 96, 101, 103, 111, 112, 121, 126, 128, 129, 130, 139, 140 and 142.

Planning Commissioners took a break from 10:30 am – 10:39 am.

Dan Amsden with Mintier and Harnish said the recommendations made today will be updated on the Table presented and the recommended changes will be heard at the Board of Supervisors meeting on July 12<sup>th</sup> and the Board of Supervisors can make changes at that time for a more formal Public Review Draft of the General Plan Update.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION RECOMMENDS TO THE BOARD OF SUPERVISORS THAT THE 2030 PUBLIC DRAFT REVIEW IS ACCEPTABLE FOR PUBLIC REVIEW.**

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION DIRECT PLANNING STAFF TO FORWARD THE PLANNING COMMISSIONS RECOMMENDATIONS OF THE 2030 PUBLIC DRAFT REVIEW TO THE MERCED COUNTY BOARD OF SUPERVISORS FOR FURTHER CONSIDERATION AND DIRECTION TO THE PLANNING DEPARTMENT STAFF.**

**VII. DIRECTOR'S REPORT**

None

**VIII. COMMISSIONERS COMMENTS**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 10:42 a.m.