

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF JULY 13, 2011

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of July 13, 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 9:06 a.m., on July 13, 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
James Holland, Senior Planner
Jeff Fugelsang, Planner III

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. ADMINISTRATIVE APPLICATION No. AA11-017 - Irma Becerra - To locate and operate a Semi-Mobile Food Vendor business (Taco Truck) at the rear of the Cressey Store property. The project site is located at the northeast corner of Santa Fe Drive & 3rd Street in Cressey, designated Cressey SUDP - Commercial and zoned C-2 (General Commercial). **JH**

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. AA11-017 based on the findings and subject to the conditions of approval presented in the Staff Report.

Planner James Holland presented the Staff Report and recommendations of approval dated July 13, 2011.

Commissioner Thompson says this application doesn't look like it is a conflict, but having the mobile food vendor along the fence line would be a concern.

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

No one spoke in favor or opposition to this application.

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The public hearing closed at 9:21 a.m.

Commissioner Thompson said he has some concerns for the adjacent property owner. There are parking issues and alley parking is not suitable. Are there requirements to be added as far as the parking goes?

Planner James Holland said Condition #5 says the applicant shall install a "No Parking" sign adjacent to the alley right-of-way at the intersection of the public alley and Third Street at the rear of the project site.

Interim Planning Director Paul Fillebrown added that parking is allowed unless it is signed otherwise.

Commissioner Erreca asked if the property northeast is designated residential. Planner James Holland said the property is designated residential.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE APPLICATION No. AA11-017, FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JULY 13, 2011, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES ADMINISTRATIVE APPLICATION No. AA11-017 SUBJECT TO THE 9 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Administrative Permit Application No. AA11-017 proposes to establish a semi-mobile food vendor at the rear of the 6,000 square feet parcel occupied by the Cressey Store, in accordance with the revised Plot Plan and Operational Statement.
2. The project shall be operated in a manner that is consistent with the revised plot plan and 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 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. Allowed operating hours shall be from 10:00 am to 6:00 PM for seven days a week.
 - b. Adequate trash receptacles shall be provided in the immediate vicinity of 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.

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- e. Grease shall be disposed per requirement of the Division of Environmental Health.
 - f. No additional advertising signs are permitted for the semi-mobile food vendor business except those that are painted onto the vehicle.
 - 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. The applicant shall install a “No Parking” sign adjacent to the alley right-of-way at the intersection of the public alley and Third Street at the rear of the project site.

Department of Public Health/ Environmental Health Division

6. a. *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. 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.

- b. *Stationary Mobile Food Facility Restrooms*

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. If a permanent structure (i.e. building) where food is stored, prepared, served or consumed is provided for mobile food facility 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 restrooms must be available at all times the food vehicle is operating (including setup at the beginning of the day and cleanup at the end). Because the Cressey Store is a food facility operating under permit from MCDEH, the restrooms have been inspected and approved by MCDEH.

- c. *Stationary Mobile Food Facility Commissary and Water Supply*

The Cressey Store may not be used as a commissary and may not provide water to the taco truck. The semi-mobile food facility must visit and be serviced at an approved commissary each day that it is in operation.

Department of Public Works Building and Safety Division

7. The application shall enter into a written agreement with the County that commits to the semi – mobile food vendor providing in-car services to any disabled person wishing to purchase food from them.

Department of Public Works Road Division

8. Applicant shall locate their vehicle (Taco Truck) only on the rear (north side) portion of the subject property, entirely out of the alleyway right-of-way.

County Counsel

9. Irma Becerra 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 Irma Becerra. Irma Becerra 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 Irma Becerra, 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. Irma Becerra 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 Application No. AA11-017 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.

- B. MAJOR MODIFICATION APPLICATION No. MM11-011 TO ADMINISTRATIVE PERMIT APPLICATION No. AA07-074 - Growers Transplanting Inc. -** To extend the months of operation for an existing agricultural (tomato seedlings) nursery from February through June to February through October to allow for the raising of an additional crop (onion seedlings). The project site is located on the west side of Highway 33 and north of Borba Road in the Gustine area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **JF**

Recommendation: The actions requested are to:

- 1) Determine that the project is categorically exempt from CEQA review under Sections 15301 and 15061(b)(3) of the CEQA Guidelines, and;
- 2) Approve Major Modification No. MM11-011 to Administrative Permit No. AA07-074 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated July 13, 2011.

The public hearing opened at 9:33 a.m.

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Dave Romano, Growers Transplanting, said he is happy to extend the operation to add onions. The onions transplanting starts after tomatoes are done. This is an opportunity to continue to use this site. There are 500,000,000 tomato transplants a year and the onion market is growing. He agrees with the conditions in the staff report and asked for approval of this application.

Commissioner Ford recused himself from voting since Growers Transplanting is a customer of his.

Commissioner Thompson said the project looks good. Condition #2 may need to be modified regarding the security and operational purposes of the lighting.

Planner Jeff Fugelsang said Condition #2 is in regards to the flood lighting, not security lighting. This is based off a neighbor's complaint from the previous minor modification.

The public hearing closed at 9:35 a.m.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 4 – 0, (COMMISSIONER FORD RECUSED HIMSELF) THE PLANNING COMMISSION EXEMPTS MAJOR MODIFICATION APPLICATION No. MM11-011 TO ADMINISTRATIVE PERMIT APPLICATION No. AA07-074 FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 4 - 0, (COMMISSIONER FORD RECUSED HIMSELF) THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JULY 13, 2011, AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MAJOR MODIFICATION APPLICATION No. MM11-011 TO ADMINISTRATIVE PERMIT APPLICATION No. AA07-074 SUBJECT TO THE 6 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Major Modification No. MM11-011 is granted to modify the approved Operational Statement for Administrative Permit No. AA11-011 by extending the months of operation for an agricultural (tomato seedlings) nursery from February through June to February through October to allow for the raising of an additional crop (onion seedlings).
2. To restrict operations during nighttime hours, the installation of outdoor area lighting shall be prohibited.
3. All conditions of approval for Administrative Permit No. AA07-074, except for Condition No. 3 which has been revised by this modification, shall remain in effect. Condition No. 3 shall now state:

The hours of operation shall be from 6:00 am to 10:00 pm, February through October.

4. For the purpose of conditions monitoring, an inspection fee in the amount of **\$304** 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.

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5. The applicant shall comply with all applicable County, State and Federal regulations. These regulations shall include, but not be limited to standards administered by the County Fire, Health, Planning, Commerce, Aviation, and Economic Development, and Public Works Departments.

Department of Public Health/ Environmental Health Division

6. The facility's hazardous material business plan (HMBP) will need to be updated to reflect the new modification.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Paul Fillebrown, Interim Planning Director, said that three items will go back to the Board of Supervisors on August 9th regarding the Draft General Plan Update.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:41 a.m.