

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF AUGUST 24, 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 August 24, 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 9:00 a.m., on August 24, 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

Legal Staff:                         Marianne Greene, Deputy County Counsel

Commissioners Absent:           None

**III. APPROVAL OF MINUTES**

**MOTION: M/S MOBLEY – ERRECA AND UNANIMOUSLY CARRIED, THE COMMISSION APPROVED THE MINUTES FOR JUNE 22, 2011, WITH THE RECOMMENDED CHANGES BEING MADE ON PAGE 7; JULY 13, 2011 AND JULY 27, 2011.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

**A.       CONDITIONAL USE PERMIT No. CUP11-006 – Ryan Cunha - To bring into conformance an agricultural contractor business within an existing facility on a 4.8 acre parcel for the purpose of servicing farm equipment. The property is located at 19705 W. August Road, one-quarter mile east of Lander Avenue (Highway 165) in the Hilmar area. The project site is designated Agricultural land use 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 Section 15301 of the CEQA Guidelines, and;
- 2) Approve Conditional Use Permit No. CUP11-006 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 August 24, 2011.

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

Mike Smith, CCPS, reviewed the staff report and accepts the conditions. He asked for approval of this application.

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Jerry Morrison, property owner to the south of this project, said he is opposed to this application. He built the storage building on the property and was denied an application for ag storage because there was not 50,000 gallons of water available for possible fire services. He doesn't want the added traffic and says his farm equipment has been vandalized. He does not want this project in his area. Mr. Morrison submitted legal documents to the Planning Commissioners.

Gary Rambaran said there is a pending lawsuit that involves this project. The price of this property was \$190,000. It sold on auction for \$99,000. He asked that this project be put on hold until this lawsuit is done.

The public hearing closed at 9:13 a.m.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION AGREES TO CONTINUE CONDITIONAL USE PERMIT No. CUP11-006 TO INVESTIGATE ANY POTENTIAL LAWSUIT AND ADDRESS COMMENTS RECEIVED.**

- B. ADMINISTRATIVE PERMIT APPLICATION No. AA11-021 - Iraj Safapour - To bring into conformance a truck parking facility on an 8 acre parcel. The property is located on west side of Stephens Street and 300 feet north of August Road in the Delhi SUDP. The project site is designated Delhi Community Plan - Industrial land use and zoned M-1 (Light Manufacturing). JF**

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

- 1) Determine that the project is categorically exempt from CEQA review under Section 15183 of the CEQA Guidelines, and;
- 2) Approve Administrative Permit No. AA11-021 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 August 24, 2011.

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

Brian Hensler, owner of property to the North of this project, he is concerned with the encroachments on the property. The encroachments are unsafe and trucks have fallen into the ditch and all the proper permits have not been obtained by the property owner. This has been going on for four years. He understood that you could not park north of the basin, but there are trucks parked in the fuel islands and south side of the basins and across the street. If there were to be a fire issue, it would cause a big problem. Does the property owner have permits to park there as an overnight storage use?

Planner Jeff Fugelsang said currently the facility does not have overnight parking. This is a temporary issue right now.

Gewan, the Manager of the truck parking facility, said the reason to park the trucks by the fuel lines is because of an issue that came up so the trucks had to be moved. Some trucks park next to the basin/drainage area. It is only a temporary thing until it gets resolved.

Commissioner Thompson asked what the status is for the encroachment permit.

Planner Jeff Fugelsang said the Public Works Department is currently working on the encroachment permit.

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

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Interim Director Paul Fillebrown, said the current encroachment does not meet current County Standards and will be required to be realigned. The angle with the roadway needs to be reconstructed.

Commissioner Mobley asked if that would satisfy the concerns presented when the encroachment permit is obtained.

Mr. Fillebrown said they should be in compliance after the permit is obtained.

Commissioner Thompson said once the encroachment permit is received then it will fix every concern with this project.

Mr. Fillebrown said the driveway is currently blocked.

Chairman Tanner asked if there are any on-site buildings at the location.

Planner Jeff Fugelsang said there is only 2 acres paved and 6 acres remaining and the water drainage facility.

Chairman Tanner asked where the 2 employees are using restrooms, where will they be housed.

Planner Jeff Fugelsang said the 2 employees are also employed at the auto repair shop and the gas station to the south and can use those restrooms. Both properties are under one ownership so an assigned agreement is not necessary.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE PERMIT APPLICATION No. AA11-021 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 AUGUST 24, 2011, AND MAKES THE 13 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES ADMINISTRATIVE PERMIT APPLICATION No. AA11-021 SUBJECT TO THE 26 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

### Conditions:

#### Planning & Community Development Department

1. Administrative Permit No. AA11-021 proposes to bring into conformance a truck parking facility on a 2.0 acre portion of an 8.0 acre parcel, in accordance with the approved Plot Plan and Operational Statement.
2. This facility is to provide a location for local commercial truck drivers to park their trucks when not in use. Sleeping or extended staying in trucks is prohibited.
3. This facility is allowed to be open 24 hours for drivers to pick up and drop off their trucks.
4. The applicant shall provide 27 truck parking spaces. These spaces shall be striped and installed in accordance with the approved Plot Plan within one year of project approval.

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5. Directional arrows shall be painted to reinforce on-site circulation within one year of project approval, except for directional painting associated with the installation of the two commercial driveway approaches listed in Condition No. 23 which must be completed as part of the driveway construction.
6. The facility requires lighting capable of providing adequate illumination for security and safety. Light fixtures shall employ lower intensity lighting that is directed towards the ground, away from adjoining properties and public right-of-ways. Additionally, no more than 10 percent of light shall cast above the horizontal plane of lighting fixtures. This lighting shall be installed in accordance with the approved Plot Plan and the Department of Public Works/Roads Division requirements within 60 days of project approval.
7. This proposal does not include the construction of a sign. However, if the owner chooses to construct one, the Delhi Community Plan requires it to be monument style.
8. Three sets of landscaping and irrigation plans shall be submitted in conformance with Section 18.38.04.I of the Zoning Code to implement Conditions No. 8 through 11. These plans shall be submitted for review within 60 days of project approval. Landscaping in accordance with the approved plans shall be installed within 120 days of project approval. Landscaping shall be setback sufficiently so that the plant's roots do not interfere with Turlock Irrigation District (TID) facilities. The owner shall be responsible for maintaining this landscape and ensuring that it does not have a negative impact on TID facilities.
9. In conformance with the "Type C" broken screen design requirements of Section 18.38.04.F of the Zoning Code, five drought tolerant dense canopy gateway accent trees shall be installed in accordance with the approved plan within 120 days of project approval. These shall be fast growing trees and shall be setback sufficiently so that their roots do not interfere with Turlock Irrigation District (TID) facilities. The owner shall be responsible for maintaining this landscape and ensuring that it does not have a negative impact on TID facilities.
10. Three drought tolerant dense canopy trees shall be installed intermittently between the gateway accent trees along the Stephens Street right-of-way, in accordance with the approved plan within 120 days of project approval. These shall be fast growing and shall be setback sufficiently so that their roots do not interfere with Turlock Irrigation District (TID) facilities. The owner shall be responsible for maintaining this landscape and ensuring that it does not have a negative impact on TID facilities.
11. Hedge landscaping shall be installed around the north and east perimeter of the stormwater basin to screen it from the truck parking area and Stephens Street right-of-way in accordance with the approved Plot Plan within 120 days of project approval.
12. The existing unpermitted facility consists of a two acre paved portion of the eight acre property. At this time, the owner does not propose development of the remaining six acres. Therefore, that area shall remain vacant and unpaved until an application to expand the truck parking or for some other land use has been submitted and approved.

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13. The remainder of the property shall actively be maintained and cleared of weeds and brushes on a regular basis, at least quarterly.
14. Minor Modifications may be approved by the Planning Director upon submittal of an acceptable application.
15. The applicant shall comply with all of the applicable standard conditions of approval listed in the Planning Commission Resolution No 97-1.
16. For the purpose of conditions monitoring, an inspection fee in the amount of **\$648.00** shall be required. This fee shall be paid within 30 days of project approval. Should additional inspections be required, inspection time shall be billed to the applicant / property owner at the established hourly rate at the time of the inspection. This permit will not be considered valid until the conditions monitoring fee has been paid.
17. In accordance with the Enforcement Procedures and Penalties in Chapter 18.53 of the Zoning Code, any person who institutes a use for which a permit is required without first having obtained a land use permit shall pay a penalty assessment in the amount of fifty (50) percent of the processing fee in addition to the permit processing fees required and enforcement costs assessed by the Planning Director. The cost of this Administrative Permit was \$1,164.00. Therefore, the owner shall pay a **\$582.00** penalty fee in-full within 30 days of project approval.
18. In accordance with the Enforcement Procedures and Penalties in Chapter 18.53 of the Zoning Code, three Notices of Violations were issued to the owner. These notices stated the existence of the violation, informed the owner of the Planning Department's intent to charge him for all administrative costs associated with enforcement, and informed the owner of his rights to object to the imposition of such costs. The Final Notice of Violation was issued on March 24, 2011. These notices required a recovery payment of all administrative costs associated with code enforcement, totaling **\$903.00**. Therefore, the owner shall pay this fee in-full within 30 days of project approval.
19. 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.

### County Counsel

#### 20. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Applicant has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees 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.

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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 Applicant. Applicant's 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 Applicant, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, 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 claim, petition, or allegation of liability against County. Applicant will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees 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, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following Project approval, modification, or denial.

Commerce Aviation and Economic Development Department

21. The applicant/owner shall obtain a Business License 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.

Department of Public Health/ Division of Environmental Health

22. No truck service, maintenance, or repair is allowed in the truck parking facility.

Department of Public Works/ Roads Division

23. Applicant shall reconstruct the existing two driveway approaches onto Stephens Street to comply with Type 3 Commercial driveway design standards, and orient to intersect said street at perpendicular angle.
24. Applicant shall install and maintain 150-watt, pole-mounted street lights at each driveway.

Turlock Irrigation District

25. An irrigation pipeline to Improvement District 52, the California State Land Settlement, runs along the northwest and southwest property lines of the subject parcel. While the current development does not appear to negatively impact this pipeline, future development of the remainder of the parcel may require upgrading of these irrigation facilities to current District Standards. The District reserves the right to review any and all future development plans on the subject parcel in order to determine specific impacts and requirements.

26. Electric utility maps show existing 12KV and 115 KV overhead facilities within

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and along the public roads right-of-way. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility changes are performed at the developer's expense.

**VI. COMMISSION ACTION ITEM (S)**

None

**VII. DIRECTOR'S REPORT**

Bill Nicholson, Assistant Development Services Director, said Planning Department is currently working with the Consultants on the environmental analysis and traffic analysis for the General Plan Update. The EIR will be available for review in the Fall. The hearings will take place in the Spring for recommendations to the Board of Supervisors. There is still debate on the direction of the General Plan. Some issues are the "new town" policies and Minor Subdivisions and Ag Parcels. The LESA model is still an alternative to use to value the soil. The EIR is going to analyze the 1:1 mitigation. The consensus is to go for a 1:1 agricultural mitigation.

**VIII. COMMISSIONERS COMMENTS**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:32 a.m.