

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF FEBRUARY 22, 2012

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of February 22, 2012, 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 February 22, 2012, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: 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
 Oksana Newmen, Planner III
 David Gilbert, Senior Planner

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Lynn Tanner - Chairman

III. APPROVAL OF MINUTES

MOTION: M/S ERRECA - THOMPSON, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION APPROVED THE MINUTES FROM THE JANUARY 25, 2012 HEARING.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP12-001 - Ed Vanek - To utilize two existing buildings to establish a small-engine repair shop, a custom motorcycle shop, a jeans manufacturing facility, and a medical office, research and development business. The project site is located at the northeast corner of Apron Avenue and Aviation Drive at Castle Airport in the Atwater area. The property is designated Castle SUDP - Aviation-Manufacturing land use in the General Plan and zoned SPZ (Special Planning Zone). **Continued from the February 8, 2012 hearing. ON**

Recommendation: The actions requested are to:

- 1) Determine that the project is consistent with the April 26, 1996, certified Final EIR for the Castle Air Force Base Reuse Plan and LAMBRA (State Clearinghouse #95122031) and with the December 18, 2007, Final Subsequent EIR for the Redevelopment Plan for the Castle Airport Aviation and Development Center (State Clearinghouse #2007011123), in accordance with CEQA Public Resources Code section 21083.8.1(b)(2), and that no further environmental review is required per Section 21166 of the CEQA Public Resources Code, and;
- 2) Approve Conditional Use Permit CUP12-001 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

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Planner Oksana Newmen presented the Staff Report and recommendations of approval dated February 22, 2012.

Commissioner Thompson asked if there is flexibility with the hours of operation.

Planner Oksana Newmen said there shouldn't be a problem since it won't be interfering with neighboring activities.

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

Duane Andrews, Golden Valley Engineering, said it is rare to have weekend operations of the businesses and if it was allowed, that would be great.

The public hearing closed at 9:12 a.m.

MOTION: M/S ERRECA – THOMPSON, AND CARRIED/CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINES THAT THE PROJECT IS CONSISTENT WITH THE CERTIFIED FINAL EIR FOR THE CASTLE AIR FORCE BASE REUSE PLAN AND THE FINAL SUBSEQUENT EIR FOR THE REDEVELOPMENT PLAN FOR THE CASTLE AIRPORT AVIATION AND DEVELOPMENT CENTER IN ACCORDANCE WITH CEQA.

MOTION: M/S ERRECA - FORD, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 22, 2012, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP12-001 SUBJECT TO THE 9 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. The Conditional Use Permit is granted to allow the applicant to occupy two existing buildings at Castle Airport: Building 1248 involves the relocation of an existing medical office, Advanced Orthopedics, which will also involve expansion of the business into orthopedic research and development; Building 1253 involving the establishment of American Revival, a company that will repair small engines as well as custom built and modified motorcycle, and, a separate division that will manufacture designer jeans.
2. Hours of operation will be 7:30 a.m. to 6:00 p.m., and the total number of employees between all of the businesses will not exceed 30.
3. The application shall comply with all applicable regulations administered by local, state, and federal government.
4. The applicant shall maintain availability for a minimum of 43 parking spaces between Buildings 1248 and 1253.
5. Any future signs proposed shall be approved by the Planning and Community Development Department, and shall be designed in compliance with Zone Code Section 18.28.020.E.
6. Existing landscape areas shall be required to comply with the Model Water Efficient Landscape ordinance.

County Counsel

7. Edward A. Vanek, Advanced Orthopedics, and American Revival, Inc.. must indemnify, defend and hold harmless, the County of Merced, 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 approval, modification, denial, or the exhaustion of administrative appeals associated with Conditional Use Permit No. CUP12-001 (“project”) 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 Edward A. Vanek, Advanced Orthopedics, and American Revival, Inc. The liability of Edward A. Vanek, Advanced Orthopedics, and American Revival, Inc. for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Edward A. Vanek, Advanced Orthopedics, and American Revival, Inc., 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. Edward A. Vanek, Advanced Orthopedics, and American Revival, Inc. will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition 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 at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. 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 term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

Building Division

8. Both buildings will need to be evaluated by an engineer to ensure compliance with the American’s with Disabilities Act (ADA), as well as entrances and paths of travel for both buildings. Permits from the Building Division will be required for all work, which shall include identification and abatement of hazardous materials. Prior to issuance of a building permit, the applicant must obtain, in writing, from the San Joaquin Air Pollution Control District, a determination as to whether the District is requiring a construction

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or operation permit, or both, for each of the project components and operations (research and development, manufacturing, engine repair) to fully comply with agency rules and regulations, for example, potentially including but not limited to: national emissions standards for hazardous air pollutants, asbestos demolition/removal (Rule 4002), stationary source review (Rule 2201), fugitive emissions (Rule 8011), and dust control (Rule 8021).

Environmental Health

9. The applicant will be required to file a hazardous material business plan and obtain a biomedical waste permit.

- B. ADMINISTRATIVE APPLICATION No. AA11-028 – Alvaro de Oca** - To establish a semi-mobile food vendor within the parking lot of a convenience store/gas station on a .54 acre parcel. The project site is located at the northwest corner of Lander Avenue and Third Avenue in the Stevinson community. The property is designated General Commercial land use in the General Plan and zoned C-2 (General Commercial). **Continued from the February 8, 2012 hearing. DG**

Recommendation: The actions requested are to:

- 1) Determine the project is categorically exempt under Section 15061(b)(3) of the CEQA Guidelines; and
- 2) Approve Administrative Application No. AA11-028 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 February 22, 2012.

The public hearing opened at 9:18 a.m.

No one spoke in favor or opposition to this application.

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

MOTION: M/S ERRECA – FORD, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE APPLICATION No. AA11-028 FROM CEQA.

MOTION: M/S ERRECA - FORD, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 22, 2012, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES ADMINISTRATIVE APPLICATION No. AA11-028 SUBJECT TO THE 13 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Administrative Permit No. AA11-028 is granted to allow Alvaro Montes de Oca (applicant) to operate a semi-mobile food vendor (taco truck) with one outside table within the parking lot of an existing convenience store/gas station located at 20015 West Third Avenue in the community of Stevinson.
2. The project shall operate in a manner that is consistent with the approved Plot Plan and the applicant's Operational Statement, except no operation of the semi-mobile food vendor on Sunday. Minor Modifications may be

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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:
 - a. The operating hours shall be limited to 10:00 a.m. to 6:00 p.m., Monday through Saturday.
 - 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 **\$243.00** 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.

County Counsel

6. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Alvaro Montes de Oca (applicant) and Kulbirinderpal Kaur Singh (property owner) 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. 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.

Alvaro Montes de Oca (applicant) and Kulbirinderpal Kaur Singh (property owner) 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.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

Department of Public Health/ Environmental Health Division

7. 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.
8. 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

9. 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

10. Employees shall be provided with accessible restrooms, including the path of travel to the restrooms and shall comply with the requirements of the California Building and Plumbing Code.

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11. The applicant shall demonstrate that there is adequate accessible parking and path of travel to the semi mobile food vendor.
12. Any structures built for shade shall be approved by the Building and Safety Division through a Building Permit.
13. The proposed seating area shall be accessible and meet requirements set forth in CBC Chapter 1122B for seating, tables, and counters.

- C. CONDITIONAL USE PERMIT No. CUP10-005 - Hillcrest Dairy** - To bring into conformance an existing dairy with a maximum of 8,050 cows on 14 parcels totaling 1,995 acres. The project is located on the west side of Hayden Road, .75 miles north of Highway 140 in the Planada area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **DG**

Recommendation: The requested actions are to:

- 1) Certify the Environmental Impact Report and adopt the Environmental Findings of Fact; and
- 2) Approve the Mitigation Monitoring Plan, and approve Conditional Use Permit No. CUP10-005 based on the project findings and subject to the conditions of approval and mitigation measures presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated February 22, 2012.

Acting Chairman Mobley said there was a petition handed out to the Commissioners with approximately 50 signatures in opposition to this application. They are asking the Planning Commission to stop any expansion of this project to protect the present and future health of the children and residents in Planada.

Commissioner Ford asked if they are prohibited from using certain fields completely or just until the tail water system is in place.

Planner David Gilbert said they have to install the tail water system before they can apply the manure to those fields.

Commissioner Ford asked if the water at the School is monitored for drinkability.

Ron Rowe, Environmental Health Director, said the School water system is monitored intensively by the State and there are no contaminating issues at this time.

Acting Chairman Mobley asked about the nuisance of the flies and odors.

Mr. Rowe responded and said the numbers of complaints have been reduced over time due to regulations and ordinances. The facilities are completely in compliance with County ordinances.

Mr. Mobley asked for clarification that this application is not to expanding or increasing the number of cows.

Mr. Gilbert said based on the Waste Management Plan, the applicant must meet requirements and they are complying with the Animal Confinement Ordinance and must meet the Regional Water Quality Control Board requirements yearly and they conduct inspections as well.

Commissioner Thompson asked if this application is to approve a new Conditional Use Permit and not a modification.

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Mr. Gilbert said that is correct.

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

Stacy Henderson, Law office of Tom Terpstra and representing the applicant, said they are trying to bring the existing permit in conformance. There won't be any changes. They went through a full environmental review. The applicant is willing to and has been working on the issues of flies and odors. They agree with the conditions in the staff report and thanked staff.

Commissioner Ford asked about the issue of the pigeons on the neighboring property.

Edward Hukestra, Managing partner at Hillcrest Dairy, said he has an agreement regarding the pigeon issue to be resolved.

Ms. Henderson said the petition refers to an expansion of the dairy and wants to clarify that this application is not for an expansion.

Stan Rodriguez, Manager at the Planada County Water District, said he is concerned with the smell in the area of Planada. They were never notified by the County of any changes to this application. The school has its own well and Planada County Water District does not monitor that well.

Mr. Mobley asked whose responsibility it is for the monitoring of the wells?

Mr. Rodriguez said it is the schools responsibility and not the Planada County Water District.

Mr. Rowe said schools are monitored by the State of California. All schools are monitored for water quality.

David Rodriguez, citizen of Planada, said he has endured the odor of the dairy for years. This issue has been brought up by many residents over the years. An administrative application allowed for 3,000 cows and the dairy submitted an application for the increase of cows. He would like to see this denied until the problems are resolved.

Jose Morales, citizen of Planada, said there is contamination in the air from the odors coming from the dairy. Eventually if the problem is not taken care of, there will be contaminated water. He is a teacher at the school in Planada and said the students are drinking the water that is not filtered. This project started with 3500 cows and now they are at 8000 cows. Residents have stopped complaining because they feel they are being ignored. He said that according to the mitigation measures, mitigation is not required for the flies, so nothing can be done about that. He understands you can't spray manure within 100 feet of a well. His well is about 60 feet from the manure. His neighbors well is about 40 feet away. Two inspections a year is not enough. They are not opposed to the business as long as it is run properly.

Mr. Gilbert said that schools are not typically notified of dairies in rural areas. Referrals are sent to schools for applications that are increasing the number of residents, especially children. There are pages in the mitigation monitoring report that addresses odors and flies for dairies.

Bob Klousner with Planning Partners, who prepared the EIR document, said that dairies are regulated by Regional Water Quality Control Board. The dairy has obtained a permit from them. The San Joaquin Valley Unified Air Pollution Control District also requires a permit to regulate toxic air pollutants. The dairy has obtained that permit as well. Merced County regulates through the Animal Confinement Ordinance and they are required to comply. This permit is being applied to bring the use permit in compliance with the number of cows the dairy has now. They were required to be in compliance with the county zoning ordinance. The dairy was requesting no change from existing conditions. This project was to legalize the existing conditions. The mitigation measures are not promises. They appear as conditions of approval. They are required by the Animal Confinement ordinance.

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Mr. Mobley asked if the residents would see improvements such as the smells and flies?

Mr. Klousner said yes the conditions will resolve these issues. There is mitigation that the applicant has to cease application of liquid manure to those fields that drained surface water feature until such time they build a tail water return system that would prevent water from draining into the surface water feature, and at that point it would be re-inspected and allowed to resume putting liquid manure on those fields.

Ron Rowe, Environmental Health, says that each field is inspected and some fields to the south could use some mitigation. The tail water collection system could solve that. Setbacks of 150 feet from wells are required.

Audra Barbo, Le Grand resident, said the smell is very offensive in the area. She has bought many fly strips over the years and she attends the Community meetings in Planada and someone had asked what was going to be done about the odors. They were told they would look into the issue. She understands that living in the country you have to deal with animals, smell and flies. But she is still concerned.

Mr. Rowe said the Environmental Health Department can be contacted anytime at 209-381-1100.

Melvin Truett, E. Hwy 140 resident, said he is a 35 year resident in the area. He has made many complaints over the last 20 years and was always told that they "will look into it". Originally this dairy had a permit for about 2500 cows and over the years, there are about 8000 cows. He feels there is not enough water on dairies. The smell in the area is bad.

Harry Zarate, Planada School District employee, said that the water at the schools is tested and the school takes care of that. Water is a big problem in that area. There are huge ponds at the dairy and sometimes they get so thick, aerators are constantly breaking down and it is a constant problem.

Alicia Rodriguez, Planada resident, said that Hillcrest Dairy is not the only dairy in the area. There are others that make noise and create smell as well.

Frank Garbo, Planada resident, said the smell is strong in Planada. He has worked at dairies in the past and the problem is water. More water is needed on dairies to flush out.

Will Morena, Planada resident, said there are a lot of flies and smell is a problem. He asked that these problems be fixed.

Shirley Makensen, Planada resident, said she is confused that the original use permit was for 5000 cows, then she hears that they are in compliance. Is that with the 5000 cows or are they in compliance with the 8000 cows that have been run now. She added that odors and flies will always be a bother with dairies. What happened to the permit for 5000 cows?

Bill Nicholson, Assistant Development Services Director, said there are different regulations in effect. The Regional Water Quality Control Board says the Dairy is in compliance. The dairy also has a permit with the San Joaquin Valley Air Pollution Control District, so they are in compliance with them also. They are not in compliance with the Merced County Planning Department for the zoning compliance, so that is the purpose of this meeting today. No matter how many cows they added, they have to have a land use permit to authorize the number of cows they have to bring the dairy into conformance.

The public hearing closed at 10:35 a.m.

Commissioner Thompson said he works on a dairy. This permit is not a reward. It's an opportunity for the applicant to work with the County to come into compliance.

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Commissioner Ford agrees and said mitigation measures are created in dealing with air quality and water quality issues. This is a good process for the Community to address these situations. The whole process works for everyone.

Commissioner Erreca asked what the schedule of checking on the compliance of this Dairy is.

Commissioner Thompson said annual monitoring is required.

Acting Chairman Mobley said it would nice if the County checked the dairies in the evenings. He feels the Hillcrest Dairy wants to be a good neighbor and wants to be in compliance with all rules and regulations. The County is willing to monitor that. This is a win/win situation.

MOTION: M/S ERRECA - FORD, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CERTIFIES THE ENVIRONMENTAL IMPACT REPORT AND ADOPTS THE ENVIRONMENTAL FINDINGS OF FACT PREPARED FOR CONDITIONAL USE PERMIT No. CUP10-005 WITH ONE MITIGATION MEASURES.

MOTION: M/S ERRECA - FORD, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 22, 2012, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES CONDITIONAL USE PERMIT No. CUP10-005 SUBJECT TO THE 20 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning and Community Development Conditions:

1. Conditional Use Permit No. CUP10-005 is granted to bring the Hillcrest Dairy into compliance with County requirements with a total of 8,050 cows (4,000 milk cows & 4,050 support stock).
2. The Hillcrest Dairy project shall be located, developed and operated in a manner described on the approved plot plan, and in the Nutrient Management Plan, Waste Management Plan, Mitigation Measures, Mitigation Monitoring and Reporting Program, and conditions of this permit. Any changes or proposed modifications to the approved project would be based on the applicant's written request to and prior written approval by the Planning Director.
3. The mitigation measure (HYD-1) identified in the Environmental Impact Report/Mitigation Monitoring and Reporting Program are adopted and incorporated by reference as project conditions.
4. The project shall comply with all applicable regulations administered by the County Fire Department, Environmental Health Division, Planning & Community Development, and Public Works Departments.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$648** 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 / 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.

6. The applicant shall work with the adjacent truck repair facility property owner to resolve the pigeon problem on an ongoing basis.

County Counsel

7. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

Edward Hoekstra 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. 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.

Edward Hoekstra'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.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

Public Works/Roads Division

8. The applicant shall dedicate 30 feet of right-of-way along the project's entire frontage of the west side of Hayden Road.

Merced County Division of Environmental Health

9. Any hazardous materials stored on-site over threshold quantities (55 gallons, 200 cu. ft., or 500 pounds) shall require that a Hazardous Materials 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. New or updated HMBP shall be submitted electronically.
10. The dairy operation shall comply with the Merced County Animal Confinement Ordinance as follows:

- Limit salt and other mineral feed supplements to that required to maintain animal health and optimum production according to the National Research Council standards.
 - Prepared and adhere to a feed management/diet optimization plan.
11. The applicant shall provide a site plan demonstrating that all off-site residences are at least 1,000 feet from the active dairy facility.
 12. The applicant shall provide a vector (fly and mosquito) and odor control program to the Division to aid in evaluating manure storage practices.
 13. The applicant shall submit a Comprehensive Nutrient Management Plan (CNMP), which combines a Nutrient Management Plan (NMP) and a Waste Management Plan (WMP). Where the State and County standards overlap, the dairy operation is required to comply with the stricter of the two standards.
 14. The applicant shall submit a signed copy of the most recent NMP and the most recent WMP and submit a signed copy of the 2009 Annual Report required by the California Regional Water Quality Control Board.

Merced Irrigation District (MID)

15. The retention ponds/settling basins and lagoons shall be set back a minimum of 50 feet from the outside edge of the MID canals.
16. All wastewater containing manure must be contained on the subject property and isolated from MID facilities. MID shall not accept any drainage water into its facilities from the subject property or the property of assignees contracted to accept wastewater that contains manure.
17. MID laterals canals or pipelines cannot be use by the dairy to wheel, drain, transport, or convey any water from the dairy site to other parts of the subject property or to the property of assignees contracted to accept wastewater.
18. The MID canals deliver irrigation water to the dairy site and supporting cropland. Wherever there is co-mingling of wastewater containing manure at an MID irrigation delivery point, backflow prevention devices meeting MID standards shall be installed. The purpose of the installation is to keep wastewater containing manure from entering any MID facilities and contaminating the water in the facility.
19. License Agreements or easements shall be obtained by the property owner for any existing or future crossings over or under MID facilities. These include, but are not limited to, roadways, utilities, and pipelines.
20. MID currently have two agreements with a former owner (Precie Farms) allowing three discharge locations into the Planada Canal for agricultural tail water disposal. MID can and will terminate those agreements. The agreements also call for applicant's removal of all discharge facilities at these locations after termination.

Project Requirements

21. The following is a comprehensive list of Project Requirements that are contained in the Draft EIR that are applicable to the Hillcrest Dairy project. The applicant shall be responsible on an ongoing basis to comply with all Project Requirements contained in the Draft EIR:

Odors

Preparation of an Odor Control Plan, DEIR, page 3-15.

Biology

Minimizing/Directing/Shielding Lighting Away from Sensitive Areas, DEIR, page 3-16

Energy/Greenhouse Gas Emissions

Energy Reduction Measure, DEIR, page 3-16

Nuisance Insects

Preparation of a Vector Control Plan, DEIR, page 3-16

Best Management Practices to Control Flies, DEIR, page 3-16

Operational Measures to Control Mosquitoes, DEIR, page 3-17

Move Drainage Channels Away from Drylot Pens, DEIR, page 3-18

Reduce Fly Activity and Fly Dispersal to Planada, DEIR, page 3-18

Remove Manure Beneath Fence Lines Weekly, DEIR, page 3-18

Separate Manure Piles into Windrows During Summer Months, DEIR, page 3-18

Repaired Commodity Pad Drainage Compromised by Vehicle Traffic, DEIR, page 3-18

Water Quality

Obtain Written Agreement from Recipients of Manure Exported Off-site, DEIR, page 3-18

Comply With Requirements of the NMP and WMP, DEIR, page 3-19

Inspection of All Water Wells for Properly Sealed, DEIR, page 3-19

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Bill Nicholson, Assistant Development Services Director, said the General Plan Update Draft Environmental Impact Report, then will be released to the public in March. There will be meetings this summer on the General Plan Update.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 10:43 a.m.