

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF SEPTEMBER 11, 2013

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of September 11, 2013, 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 September 11, 2013, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Jack Mobley - Chairman
 Commissioner Greg Thompson
 Commissioner Rich Ford

Staff Present: William Nicholson, Assistant Development Services Director
 Ana Muniz-Laguna, Recording Secretary
 Dave Gilbert, Senior Planner

Legal Staff: Michael Calabrese, Deputy County Counsel

Commissioners Absent: Commissioner Lynn Tanner
 Commissioner Mark Erreca

III. APPROVAL OF MINUTES

MOTION: M/S FORD– THOMPSON, AND CARRIED BY A VOTE OF 3 – 0, THE COMMISSION APPROVED THE MINUTES FROM THE AUGUST 14, 2013 HEARING

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

**A. CONDITIONAL USE PERMIT No. CUP12-002 – DAIRY CENTRAL – Bob Borba -
To bring into conformance an existing dairy of 1,250 cows and to expand to 4,265 cows, construct two freestall barns, construct 20 open lot corrals, and construct a calf hutch area all clustered on 29 acres of facilities, on a dairy involving six parcels totaling 462 acres. The project site is located on the east side of Central Avenue, .75 Miles north of Turner Road in the Hilmar area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **DG (THIS HEARING WAS CONTINUED FROM THE AUGUST 28, 2013 PLANNING COMMISSION MEETING IN ORDER TO COMPLETE THE ENVIRONMENTAL DOCUMENTS)****

Recommendations: The actions requested are to:

- 1) Certify the Environmental Impact Report and adopt the Environmental Findings of Fact; and;
- 2) Approve Conditional Use Permit No. CUP12-002 based on the project findings and subject to the conditions of approval and mitigation measures presented in the Staff Report, adopt the CEQA Findings of Fact, and approve the Mitigation Monitoring & Reporting Program.

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

No one spoke in favor or opposition to this application.

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

At the close of public hearing, Assistant Director Bill Nicholson indicated that, because the agenda and legal notice did not contain the full top range proposed by the applicant, the Commission's approval must be limited to the lower end of the range of maximum herd size which is 4,265 cows. Mike Mitchell from AEC Engineering, which represented Mr. Bob Borba, stated that this herd size is acceptable and commented that the EIR evaluated up to 4590 cows, so the applicant could come back and .

Modify the permit in the future if he desires to.

MOTION: M/S FORD –THOMPSON, AND CARRIED BY A VOTE OF 3-0, THE PLANNING COMMISSION CERTIFIED THE ENVIRONMENTAL IMPACT REPORT AND ADOPTED THE ENVIRONMENTAL FINDINGS OF FACT; AND

MOTION: M/S FORD –THOMPSON, AND CARRIED BY A VOTE OF 3-0, THE PLANNING COMMISSION APPROVED CONDITIONAL USE PERMIT No. CUP12-002 BASED UPON THE 9 PROJECT FINDINGS AND SUBJECT TO THE 21 CONDITIONS OF APPROVAL RECOMMENDED IN THE STAFF REPORT TO READ AS FOLLOWS:

Community and Economic Development Conditions:

1. Conditional Use Permit No. CUP12-002 is granted to expand the existing Bobby Borba dairy from 1,250 cows (800 milk cows & 450 support stock) to 4,265 (2,400 milk cows and 1,865 support stock) and construct two new freestall barns, 20 open lot corrals, and a calf hutch area on 9 acres for a total of 29 acres of dairy facilities, on 6 parcels totaling 462 acres.
2. The Bobby Borba Dairy Expansion project shall be located, developed and operated in a manner described on the approved plot plan, 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 a written request of the applicant to the Planning Director.
3. All mitigation measures identified in the Environmental Impact Report 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.

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6. The applicant shall obtain all necessary permits, and comply with all applicable regulations administered by Federal and State agencies.
7. The dairy owner shall install a backflow valve on each side of the box to prevent backflow of water from the project area into the irrigation line and/or onto the Assali property. This upgrade of the valve system is essential to providing a reasonable safeguard against accidental releases of wastewater and contaminants from the project onto the Assali property and/or into the irrigation system serving the Assali property.

County Counsel

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

Bobby Borba 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 Bobby Borba.

Bobby Borba'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. Bobby Borba 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 Conditional Use Permit No. CUP12-002 approval, modification, or denial.

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

Public Works/Roads Division

9. The applicant shall improve all driveways utilized by heavy truck operations associated with the dairy with either paved or concrete approaches onto the adjacent County roadway, in accordance with Chapter 7 of the Merced County Department of Public Works Improvement Standards and Specifications.

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10. The applicant shall install a 150-watt pole mounted street light at each driveway approach. All work within the County right-of-way shall require an Encroachment Permit from the County.
11. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to assess the potential impact that the project may have on Merced County roadways. This evaluation shall include both an analysis of the traffic characteristics of the roadways most impacted by the project, and a geotechnical analysis of the existing structural section of those roadways. The traffic analysis will require classification counts to determine the existing and projected Traffic Indices of said roadways; and, the geotechnical analysis will require corings of said roadways to determine their structural integrity. Applicant shall enter into a Roadway Impact Agreement with Merced County Department of Public Works – Road Division committing to pay to the Merced County Road Fund an amount equivalent to improving said roadways sufficient to sustain the truck load impacts for the future 20-years, based upon said evaluation; or

In lieu of performing a roadway impact evaluation, the applicant may opt to enter into a Roadway Impact Agreement with Merced County Department of Public Works – Road Division. The Roadway Impact Agreement will stipulate that the applicant shall pay a Road Impact Fee to the Merced County Road Fund to compensate the County for the increased cost of maintaining the County roadways impacted by the applicant's project. The Road Impact Fee shall be paid annually, and shall be an amount equal to \$2.50 for every heavy truck (i.e. milk tankers, commodity deliveries, etc.) trip entering or leaving the project site during the previous 12 months, associated with the expansion approved by CUP12-002. The applicant shall also pay a fee of \$200.00 for processing said Roadway Impact Agreement

Merced County Division of Environmental Health

12. The dairy operation shall comply with the Merced County Animal Confinement Ordinance as follows:
 - Salt and other mineral feed supplements shall be limited to that required to maintain animal health and optimum production according to the National Research Council standards.
 - Feed management/diet optimization plan.
 - The applicant shall provide a site plan demonstrating that all off-site residences are at least 1,000 feet from the active dairy facility.
 - The applicant shall provide a vector (fly and mosquito) and odor control program to the Division to aid in evaluating manure storage practices.
 - The California Regional Water Quality Control Board requires submittal of a Nutrient Management Plan (NMP) and a separate Waste Management Plan (WMP) for all dairies. CRWQCB requires submittal of a nutrient management report by July 1 of each year.
 - An updated CNMP shall be submitted to Merced County whenever a dairy expansion occurs

- The applicant shall submit a signed copy of the most recent NMP and the most recent WMP reflecting the increase in facility footprint and number of cows.

Public Works/Building and Safety Division

13. A licensed architect or engineer shall design all structures to meet all local, state, and federal codes and ordinances, including but not limited to seismic and soil conditions.
14. If the property is in a flood zone the applicant shall meet FEMA requirements for structures and equipment

Merced County Fire Department

15. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Section 503.2.1 shall be maintained at all times.
16. Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official.
17. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

Turlock Irrigation District

18. The applicant shall install backflow prevention measures per District standards if wastewater and irrigation water is being mixed.
19. If wastewater is to be discharged directly into an improvement district facility a Revocable License Agreement shall be obtained.
20. If any overhead or underground power lines are relocated the applicant shall apply for a facility change at the applicant's expense

Final Environmental Impact Report Mitigation Measures

21. The following is a comprehensive list of CEQA Mitigation Measures that are contained in both the CEQA Findings of Fact and Statement of Overriding Considerations (SOC) and Mitigation Monitoring Reporting Program (MMRP) that are applicable to the Bobby Borba Dairy expansion project. The applicant shall be responsible to comply with all Mitigation Measures contained in the foregoing mentioned documents:

Air Quality

- AQ-3a: Reduction of ROG emissions, MMRP, page 2-1
- AQ-3b: Voluntary Emissions Reduction Agreement, MMRP, page 2-1.
- AQ-5a: Reduce potential cancer risk to sensitive receptors, MMRP, page 2-1.
- AQ-5b: Comply with APCD District Rule 4570, MMRP, page 2-2.
- AQ-5c: Implement MM-3a, MMRP, page 2-2.
- AQ-7: Reduce emissions of PM₁₀, PM_{2.5}, and H₂S, MMRP, pages 2-2.

Biological Resources

- BIO-1: Loss of foraging habitat for Swainson's hawk, MMRP, pages 2-2 to 2-4.
- BIO-2a: Loss of foraging and nesting habitat for sensitive birds species and migratory birds, including burrowing owl, MMRP, page 2-4.
- BIO-2b: Pre-construction survey for nesting birds, MMRP, page 2-4.
- BIO-2c: Avoidance measures for burrowing owl, MMRP, page 2-4 to 2-5.
- BIO-2d: Reduce impacts to active bird nests and reduce construction activities to interrupt breeding and rearing behaviors of birds, MMRP, page 2-5.
- BIO-4: Loss of habitat for the San Joaquin kit fox and/or American badger, MMRP, pages 2-5 to 2-6.
- BIO-5: Interference with night-active wildlife, MMRP, page 2-7.

Cultural Resources

- CUL-2a: Discovery of unanticipated buried cultural or paleontological resources, MMRP, page 2-7.
- CUL-2b: Discovery of human remains, MMRP, pages 2-7 to 2-8.

Greenhouse Gases and Energy

- GHG-2: Full facility audit under an energy management program, MMRP, page 2-8.
- GHG-3: Implement MM GHG-2, MMRP, page 2-8.

Hazards, Health Risks, and Vectors

- HAZ-3: Obtain a written agreement from the recipient of manure from dairy operations, MMRP, pages 2-8 to 2-9.

Hydrology and Water Quality

- HYD-1: Submission of Permit Registration Documents, MMRP, page 2-9.
- HYD-2: Submission of Form for Documenting Backflow Prevention Under Waste Discharge Requirements, MMRP, page 2-9.
- HYD-3a: Completion of a regulatory compliance audit of the dairy facility, MMRP, page 2-9.
- HYD-3b: Agronomic Rates for Best Management Farming Practices, MMRP, page 2-10.
- HYD-3c: Site specific Salinity Report, MMRP, page 2-10.
- HYD-3d: Additional shallow groundwater monitoring wells or contribute to a regional representative groundwater monitoring system, MMRP, page 2-10.
- HYD-3e: Well monitoring schedule, MMRP, page 2-10.

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- HYD-3f: Submittal of a new Report or Waste Discharge to demonstrate that the herd size will not constitute a threat to groundwater quality, MMRP, page 2-10.
 - HYD-3g: Community and Economic Development Department Inspection, MMRP, page 2-11.
- HYD-7: Inspection of water supply wells and compliance with the Merced County Well Ordinance, MMRP, page 2-11

- B. MODIFICATION No. MM13-013 TO MAJOR SUBDIVISION No. MAS03-019 AND PLANNED DEVELOPMENT No. PD03-001 - LINDGREN COTTAGES – Christine Waterson** - To modify a senior's only condominium development to become a non-age restricted condominium development on 1.8 acres. The project is located on the south side of Bloss Avenue, 130 feet west of Pearl Street. The property is designated Hilmar Community Plan Low Density Residential and zoned PD (Planned Development). **DG**

Recommendation: The actions requested are to:

- 1) Determine that the project is exempt from CEQA review under Section 15183, Projects Consistent with a Community Plan or Zoning, of the CEQA Guidelines; and;
- 2) Approve the modification based on the project 9 findings, and the 5 conditions of approval presented in the Staff Report

Commissioner Ford asked if the parking requirements would change upon changing the zoning to include under 62 age limit. Dave Gilbert, Staff responded that they would probably have to modify their CCRs to limit parking spaces. The Waterson's will have to manage the residents and limit the number of cars each resident can have.

Commissioner Thompson asked if the Notices and Publications included local school districts to reflect how this project will affect educational impact fees since there will be new families in the local area. Bill Nicholson, Assistant Development Services Director, stated that under Proposition 50, for every building permit the County issues, the school district must provide a letter regarding their fees whether they are exempt from them or if they have been paid. Mr. Nicholson also further addressed the zoning issue adding that this project has a unique Planned Development zone specifically created for this project and setbacks are different and smaller for this project as it is customized more like a typical condominium project.

The public hearing opened at 9:27 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:28 a.m.

MOTION: M/S FORD –THOMPSON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION DETERMINE THAT MODIFICATION No. MM13-013 TO MAJOR SUBDIVISION No. MAS03-019 AND PLANNED DEVELOPMENT No.

PD03-001 IS EXEMPT FROM CEQA REVIEW UNDER 15183, OF THE CEQA GUIDELINES;AND

MOTION: M/S FORD – THOMPSON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION APPROVED MODIFICATION No. MM13-013 TO MAJOR SUBDIVISION No. MAS03-019 AND PLANNED DEVELOPMENT No. PD03-001 BASED UPON THE 9 PROJECT FINDINGS AND SUBJECT TO THE 5 CONDITIONS OF APPROVAL RECOMMENDED IN THE STAFF REPORT TO READ AS FOLLOWS:

Planning Department Conditions:

1. Minor Modification Application No. MM13-013 is granted to modify the project description from a 18-unit senior's only condominium development to a non-age restricted condominium development within a 1.8 acre privately gated residential community
2. The applicant shall be responsible to comply with all original conditions of approval for MAS03-019 and PD03-001.
3. The applicant shall comply with applicable regulations administered by the County. These regulations include, but are not limited to standards administered by the County Fire, Environmental Health and Public Works Departments.
4. The applicant shall comply with all applicable local, state and federal standards and regulations.

County Counsel

5. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Waterson Enterprises 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 Waterson Enterprises.

Waterson Enterprises 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 Waterson Enterprises, their 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. Waterson Enterprises will on request and at its expense, defend any action or suit or proceeding arising

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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 MM13-013 approval, modification, or denial.

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

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Bill Nicholson, Assistant Development Services Director, stated that September 10th, 2013 was the deadline for comments on the re-circulated program EIR of the General Plan. Many comments were received and Staff and Consultants are working on preparing a final EIR in order to bring the General Plan forward to the Planning Commission for consideration and recommendation to the Board of Supervisors. This should be ready in the next couple of months.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:33 a.m.