

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF SEPTEMBER 25, 2013

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of September 25, 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 25, 2013, 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 Greg Thompson
 Commissioner Mark Erreca

Staff Present: William Nicholson, Assistant Development Services Director
 Ana Muniz-Laguna, Recording Secretary
 Oksana Newmen, Planner III
 James Holland, Senior Planner

Legal Staff: Michael Calabrese, Deputy County Counsel

Commissioners Absent: Commissioner Jack Mobley
 Commissioner Rich Ford

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP13-001 - Ecos Energy, LLC - To construct a 3.0 megawatt photovoltaic solar facility on 29.1 acres of a 39.9 acre parcel. The project site is located on the north side of Vassar Avenue, 665 feet east of Highway 59 in the Merced area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **ON**

Recommendations: The actions requested are to:

- 1) Adopt the CEQA Initial Study and Mitigated Negative Declaration prepared for Conditional Use Permit Application No. CUP 13-001; and;
- 2) Approve Conditional Use Permit Application No. CUP13-001 based upon the 12 project findings and subject to the 13 conditions of approval.

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

No one spoke in favor or opposition to this application.

The public hearing closed at 9:14 a.m.

MOTION: M/S ERRECA –THOMPSON, AND CARRIED BY A VOTE OF 3-0, THE PLANNING COMMISSION ADOPTS THE CEQA INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT APPLICATION NO. CUP13-001.

MOTION: M/S ERRECA –THOMPSON, AND CARRIED BY A VOTE OF 3-0, THE PLANNING COMMISSION APPROVES CONDITIONAL USE PERMIT APPLICATION No. CUP13-001 BASED UPON THE 12 PROJECT FINDINGS AND SUBJECT TO THE 13 CONDITIONS OF APPROVAL RECOMMENDED IN THE STAFF REPORT TO READ AS FOLLOWS:

Planning and Community Development Department

1. Conditional Use Permit No. CUP13-001 is granted for the construction of a 3 megawatt solar photovoltaic electrical generating facility on a 29.1 acre portion of a 39.9 acre parcel located on the north side of Vassar Avenue, 665 feet east of Highway 59 (Assessor Parcel No. 066-061-013) in the Merced area, in accordance with the approved Plot Plan and Operational Statement.
2. The solar photovoltaic electrical generating facility and project shall be located, developed and operated in a manner described on the approved Plot Plan, Project Description, CEQA Mitigation Measures, Mitigation Monitoring and Reporting Program, and Conditions of Approval of this permit. The operation of this facility shall cease no later than 30 years from the Commercial Operation Date. Any subsequent changes must be made in accordance with Merced County Code section 18.50.
3. All CEQA Mitigation Measures identified in the Mitigation Monitoring and Reporting Program are adopted and incorporated by reference as Project Conditions of Approval.
4. The project shall comply with all applicable public health, safety, and welfare regulations administered by the County of Merced, and in particular the County Fire Department, the Health Department/ Environmental Health Division, the Community and Economic Development Department, and Public Works Department/ Road and Building and Safety Divisions.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$405.00** 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/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. Prior to issuance of a building permit, the project applicant must obtain all necessary permits and written authorizations and must demonstrate compliance with all applicable regulations administered by Federal and State agencies.
7. Prior to issuance of the building permit the applicant shall obtain a State Registered WDID number from the Regional Water Quality Control Board per 2009-0009-DWQ Construction General Permit. This is a procedural condition which requires the applicant to prepare and implement a Stormwater Pollution Prevention Plan (SWPPP).

8. Immediately following the cessation of Project business operations or the abandonment of the Project, the applicant shall reclaim the site to pre-project conditions. Prior to the issuance of the first occupancy permit, the applicant shall place a financial assurance (bond, letter of credit, or similar instrument) dedicated specifically for the project. The County and Ecos Energy, LLC will determine an appropriate amount for the financial assurance instrument. It is the intent of this requirement that the instrument shall provide sufficient financial assurances for Merced County to decommission the Project and fully restore the property following cessation of business operations or the abandonment of the Project if the applicant does not properly decommission the Project and fund full reclamation.

County Counsel

9. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Ecos Energy, LLC 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 Ecos Energy, LLC.

Ecos Energy, LLC 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 Ecos Energy, LLC, 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. Ecos Energy, LLC 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 Department/ Roads Division

10. Applicant shall construct a paved rural driveway approach for the proposed access onto Vassar Avenue, in accordance with Chapter 7, Driveways, of the Merced County DPW Improvement Standards and Specifications. Said Construction shall require an Encroachment Permit from DPW.
11. Applicant shall dedicate an additional 10 feet of right of way for road purposes along the entire Vassar Avenue frontage of the property.

Health Department/ Division of Environmental Health

12. Any hazardous materials stored on-site over threshold quantities (55 gallons, 200 cu. ft. or 500 pounds) requires that a hazardous materials business plan (HMBP) be filed with the Division of Environmental Health. Any quantity of hazardous water generated onsite also requires that a HMBP be filed.

Public Works Department/ Building and Safety Division

13. Applicant shall submit to the County four (4) sets of complete engineered plans and electrical plans. Engineered plans shall include a plan sheet that lists and contains: (1) all final terms and Conditions of Approval of this permit approval, and (2) all final CEQA mitigation measures for this project as required by the County of Merced upon final project approval.

- B. MAJOR MODIFICATION No. MM13-009 TO CONDITIONAL USE PERMIT No. CUP2714 – E & J Gallo Winery** - To expand the winery site area by 2 acres, allowing 215 additional cooperage tanks for storage and fermentation with a total capacity of 28 million gallons. The project site is located at the northeast corner of River Road and Griffith Avenue in the Livingston area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **JH**

Recommendation: The actions requested are to:

- 1) Adopt the CEQA Subsequent Initial Study and Mitigated Negative Declaration prepared for the project; and;
- 2) Approve Major Modification Application No. MM13-009 to Conditional Use Permit No. CUP2714 based on the project findings and subject to the conditions of approval presented in the staff report.

Chairman Lynn Tanner stated he had a conflict of interest with this project and excluded himself from voting. Quorum was not reached without Mr. Tanner.

MOTION: M/S ERRECA – THOMPSON, AND CARRIED BY A VOTE OF 3-0, THE PLANNING COMMISSION CONTINUED MAJOR MODIFICATION No. MM13-009 TO CONDITIONAL USE PERMIT No. CUP2714 TO THE MEETING OF OCTOBER 09, 2013.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

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Bill Nicholson, Assistant Development Services Director, informed that the meeting on October 23rd is the target date for the next General Plan update. There will be public hearing for the Commission and packets are being worked on for this.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:17 a.m.