

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF MARCH 12, 2014

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of March 12, 2014 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 March 12, 2014 in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

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

Staff Present: Mark Hendrickson, Director
 William Nicholson, Assistant Director
 Ana Muniz-Laguna, Recording Secretary
 Dave Gilbert, Planner III
 Oksana Newmen, Planner III

Legal Staff: Trevor Finneman, County Counsel

Commissioners Absent: Commissioner Lynn Tanner- Chairman

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP12-005 – Vierra Dairy Farm - To expand an existing dairy from 3,375 cows to 5,600 cows and construct one freestall barn and a milk barn on 71.5 acres of dairy facilities on 16 parcels totaling 683 acres. The project is located at the northwest corner of Williams Avenue and Washington Road in the Hilmar area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **DG**

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. CUP12-005 based on the project findings and subject to the conditions of approval and mitigation measures presented in the Staff Report, adopt the Statement of Overriding Considerations and approve the Mitigation Monitoring & Reporting Program.

Dave Gilbert, Planner III, gave a PowerPoint presentation and summarized the Staff Report. Mr. Gilbert also passed out a copy of a letter received that morning from

MERCED COUNTY PLANNING COMMISSION

Minutes – March 12, 2014

Page 2

neighbor John R. Bettencourt. The letter stated a concern with the high number of large dairies in the area and the cropland being too close to the river for water quality. Mr. Gilbert explained that dairies are heavily monitored by the State and that the Dairy has had to provide a waste and nutrient management plan that address these concerns.

Commissioner Mobley asked about the concern received by a neighbor regarding runoff water going into her yard, and asked if this issue was addressed. Mr. Gilbert responded that this was addressed in a Condition of Approval where the dairy needs to put a berm around the cropland or install a backflow prevention device if pumping water and this will help prevent the water from going into neighboring properties.

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

Mr. Luke Miller, General Manager of Vierra Dairy, spoke to the Commission and informed that the concerns expressed by neighbors have been addressed and are open to future discussions with neighbors. The fields have been re-leveled and measures have been taken to ensure there will be no leakage into the river. Commissioner Thompson asked Mr. Miller if the reporting on the WDR is current and if it addresses the expansion, to which Mr. Miller responded yes.

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

MOTION: M/S ERRECA -THOMPSON AND CARRIED BY A VOTE OF 4-0, THE PLANNING COMMISSION CERTIFY THE ENVIRONMENTAL IMPACT REPORT AND ADOPT THE ENVIRONMENTAL FINDINGS OF FACT; AND

MOTION: M/S ERRECA -THOMPSON, AND CARRIED BY A VOTE OF 4-0, THE PLANNING COMMISSION APPROVE CONDITIONAL USE PERMIT No. CUP12-005 BASED ON THE 9 PROJECT FINDINGS, AND SUBJECT TO THE 21 CONDITIONS OF APPROVAL AND MITIGATION MEASURES PRESENTED IN THE STAFF REPORT, AND ADOPTED THE STATEMENT OF OVERRIDING CONSIDERATIONS AND APPROVE THE MITIGATION MONITORING & REPORTING PROGRAM.

1. Conditional Use Permit No. CUP12-005 is granted to expand the existing Anthony Vierra dairy from 3,375 cows (1,550 milk cows & 1,825 support stock) to 5,600 cows (2,650 milk cows and 2,950 support stock) and construct a 72-stall rotary milk barn a new free stall barn on 71.5 acres of dairy facilities, on 16 parcels totaling 683 acres.
2. The Anthony Vierra 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.

MERCED COUNTY PLANNING COMMISSION

Minutes – March 12, 2014

Page 3

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 obtain all necessary permits, and comply with all applicable regulations administered by Federal and State agencies.
7. All storm water that has been in contact with manure or wastewater shall be maintained on-site and shall not be allowed to flow or seep onto adjacent properties or public roads, or into any waterway. Existing berms or levies used to prevent the discharge of wastewater off-site shall be maintained to ensure continued protection of adjacent properties from wastewater discharge.

County Counsel

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

Anthony & Marie Vierra 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 Anthony & Marie Vierra.

Anthony & Marie Vierra'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. Anthony & Marie Vierra 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. CUP12-005 approval, modification, or denial.

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

MERCED COUNTY PLANNING COMMISSION

Minutes – March 12, 2014

Page 4

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. Applicant shall also be required to install 150-watt pole-mounted street lights at each driveway approach. Said work shall require that the applicant obtain an Encroachment Permit from the County to perform said improvements.

Public Works/Building and Safety Division

10. The applicant's licensed engineer or architect shall submit 4 sets of construction plans and 3 sets of calculation for the construction of any structure.
11. A soils report shall be completed by a licensed geotechnical engineer for any structure.
12. Mandatory measures of the 2010 California Green Code for a structure of this type shall be specified on the plans.

Merced County Division of Environmental Health

13. The applicant shall submit a Hazardous Materials Business Plan. That plan shall be submitted electronically at <http://cupa.merced.ca.us>.
14. A plot plan, drawn to scale and showing the well and sewage disposal system locations shall be submitted with the Building Permit application. The plan shall include a 300% leach line replacement area. The septic tank and leach line areas shall be unpaved and protected from compaction.
15. If the existing milk barn is to be demolished, a permit to demolish the septic tank shall be required.
16. The applicant shall comply with the Merced County Animal Confinement Ordinance under Title 18, Chapter 18.48, specifically
 - Salt and other mineral feed supplement shall be limited to that required to maintain animal health and optimum production according to the National Research Council standards.
 - Comprehensive Nutrient Management Plan.
 - Feed management/diet optimization plan.
17. Provide a site plan that shows compliance with the 1,000 foot setback between the active dairy facility and any off-site residences or a setback waiver signed by the dairy owner and property owner of the off-site residence that is within the 1,000 foot setback area, if the dairy expansion results in reducing the distance to the off-site residences.
18. Provide a vector (fly and mosquito) and odor control program to aid in evaluating manure storage practices.

Turlock Irrigation District

19. Upon request, the District shall review and quit claim drainage easements that are no longer required. There is a \$100.00 application fee for this review.

20. It will be necessary for the developer to submit plans detailing the existing irrigation and drainage facilities, relative to the proposed site improvements, in order for the District to determine specific impacts and requirements.

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 Anthony Vierra Dairy expansion project. The applicant shall be responsible to comply with all Mitigation Measures contained in the foregoing mentioned documents

- B. 4th MAJOR MODIFICATION No. MM13-017 to CONDITIONAL USE PERMIT No. CUP02-001 – Liberty Packing Co. - To increase production by 30% at an existing tomato processing facility by adding and relocating equipment, adding a rail spur, expanding settling and cooling ponds, expanding the truck/trailer staging area, adding additional storage structures, and increasing open storage capacity. The project site located on the west side of Ingomar Grade, and a 1/2 mile south of Fahey Road in the Volta area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **ON****

Recommendation: The requested actions are to:

- 1) Adopt the CEQA Initial Study and Mitigated Negative Declaration prepared for Minor Modification No. MM13-017 to Conditional Use Permit Application No. CUP02-001; and
- 2) Approve Minor Modification No. MM13-017 to Conditional Use Permit Application No. CUP02-001 based upon the project findings and subject to the conditions of approval recommended in the Staff Report.

Oksana Newmen, Planner III, gave a PowerPoint presentation and summarized the Staff Report.

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

No one spoke in favor or opposition to this application.

The public hearing closed at 9:26 a.m.

MOTION: M/S ERRECA -THOMPSON, AND CARRIED BY A VOTE OF 4-0, THE PLANNING COMMISSION ADOPTED THE CEQA INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION PREPARED FOR MINOR MODIFICATION No. MM13-017 TO CONDITIONAL USE PERMIT APPLICATION No. CUP02-001; AND

MOTION: M/S ERRECA -THOMPSON, AND CARRIED BY A VOTE OF 4-0, THE PLANNING COMMISSION APPROVED MINOR MODIFICATION No. MM13-017 TO CONDITIONAL USE PERMIT APPLICATION No. CUP02-001 BASED UPON THE PROJECT FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL RECOMMENDED IN THE STAFF REPORT AS AMENDED.

Community and Economic Development Department

1. Fourth Modification No. MM13-017 to Conditional Use Permit No. CUP02-001 proposes to permit 1) expanding an existing cooling pond from 60 acres to 140 acres; 2) expanding an existing settling pond from 1.25 acres to 2.5 acres; 3) addition of 9,000 square feet to an existing product filling and packaging building; 4) construction of 5 small utility sheds; 5) addition of an evaporator; 6) an additional boiler; 7) an additional 120 loaded tomato truck trips per day during peak season; 8) adding 12 acres of open product storage to the existing 43 acres; 9) addition of a railroad spur with associated loading docks; 10) adding a 65,000 square foot pole shed to cover existing outdoor storage; and, 11) future mounded septic leach mound system replacement area, in accordance with the approved Plot Plan.
2. The project shall operate in a manner that is consistent with the approved Plot Plan and the Project Description in the IS/MND. Minor Modifications may be approved by the Planning Director upon submittal of an acceptable application.
3. All applicable conditions of approval for Conditional Use Permit No. CUP02-001, First Minor Modification No. MM06-021, Second Minor Modification No. MM12-012, Third Minor Modification No. MM13-001, as well as CUP841 and associated modifications 134, 142, 153, and 01-020 shall remain in effect.
4. For the purpose of conditions monitoring, an inspection fee in the amount of **\$972.00** 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.
5. The project is subject to all applicable Local, State and Federal regulations.

Grasslands Water District/Grasslands Regional Working Group

6. Applicant shall install and abide by the lighting plan agreed to between Liberty Packing and Grasslands Water District on March 7, 2014.

San Joaquin Valley Air Pollution Contract District

7. The proposed project may be subject to District Rules and Regulations, including: District Rule 2201 (New and Modified Stationary Source Review Rule) or District Rule 2010 (Permits Required). The applicant shall coordinate with the District in obtaining necessary permits prior to commencement of construction activity.

County Counsel

8. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Liberty Packing Company 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,

MERCED COUNTY PLANNING COMMISSION

Minutes – March 12, 2014

Page 7

or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Liberty Packing Company LLC.

Liberty Packing Company LLC'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 Liberty Packing Company 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. Liberty Packing Company 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 Second Minor Modification No. MM12-002 to Conditional Use Permit No. CUP02-001 approval, modification, or denial.

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

Fire Department

9. The facility shall comply with the requirements stated in the Fire Department's comment letter dated September 25, 2013.

Building Department

10. Building permits must be obtained. Plans must be drawn up by an architect or engineer licensed in the State of California. Plans and calculations, including a soils report completed by a licensed geotechnical engineer, must be submitted for approval prior to any construction. If you have obtained a soils report has been prepared for this site previously, it can be used for any future projects as well.

Environmental Health

11. Changes in facility footprint and possible changes in hazardous materials and/or the amounts and location of storage will necessitate filing of an updated Hazardous Material Business Plan.
12. The soil above all existing and future leach lines shall be protected from flooding, compaction or sealing.

Central Valley Regional Water Quality Control Board

13. Final design plans for the expansion of the cooling and settling ponds should be submitted to this office for review and comments prior to commencement of construction activities.
14. Compliance with the NPDES General Permit No. CAS000002 for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities is required.

MERCED COUNTY PLANNING COMMISSION

Minutes – March 12, 2014

Page 8

15. The applicant has removed the 4.7 acre expansion to the truck/trailer area (shown at item “J” in the IS/MND) and shall submit a revised plot plan removing that element.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Mr. Hendrickson thanked Staff for their hard work and acknowledged Vierra Dairy and Liberty Packing Company for their investment in Merced County.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:27 a.m.