

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF AUGUST 24, 2016

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of August 24, 2016, 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 August 24, 2016, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Mark Erreca - Chairman
 Commissioner Greg Thompson - Vice Chairman
 Commissioner Jack Mobley
 Commissioner Rich Ford
 Commissioner Robert Acheson

Staff Present: Mark Hendrickson, Director
 Kim Lewallen, Recording Secretary
 Brian Guerrero, Planner III

Legal Staff: Jeff Grant, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

MOTION: M/S ACHESON – THOMPSON, AND CARRIED BY A UNANIMOUS VOTE, THE COMMISSION APPROVES THE MINUTES FROM THE AUGUST 10, 2016 MEETING.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP12-008 - B-6 Dairy - Mike Borba - To expand an existing dairy by increasing the herd size from 1,769 to 3,680 cows, and to construct several related buildings. The property is located at the northwest corner of Turner Avenue and Tegner Road in the Hilmar area. The project site is designated Agricultural land use and zoned A-1 (General Agricultural). **BG**

Recommendations: The actions requested are to:

- 1) Certify the Environmental Impact Report, adopt the Environmental Findings of Fact, Mitigation Monitoring Program and Statement of Overriding Considerations, and;
- 2) Approve Conditional Use Permit No. CUP12-008 based on the findings and subject to the conditions of approval and mitigations measures presented in the Staff Report.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated August 24, 2016.

Commissioner Thompson asked if this project is an expansion only. Planner Brian Guerrero answered yes.

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

No one spoke in favor or opposition to this application.

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The public hearing closed at 9:11 a.m.

MOTION: M/S THOMPSON - FORD, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CERTIFIES THE ENVIRONMENTAL IMPACT REPORT, ADOPTS THE FINDINGS OF FACT, MITIGATION MONITORING PROGRAM AND STATEMENT OF OVERRIDING CONSIDERATIONS PREPARED FOR CONDITIONAL USE PERMIT NO. CUP12-008 WITH 4 MITIGATION MEASURES.

MOTION: M/S THOMPSON - FORD, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED AUGUST 24, 2016, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT NO. CUP12-008 SUBJECT TO THE 22 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning and Community Development Conditions:

1. Conditional Use Permit No. CUP12-008 is granted to expand the existing B-6 dairy facility from 1,769 cows (1,052 milk cows and 717 support stock) to 3,680 cows (2,800 milk cows and 880 support stock) on approximately 26 acres of dairy facilities, on nine parcels totaling approximately 240 acres. Construction includes a new freestall barn, extension of an existing freestall barn, a dry cow barn, a shade structure, a commodity barn, a new milk barn and a sprinkler pen. The existing employee residence and existing milk barn will be removed as part of this application.
2. The B-6 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.
6. The applicant shall obtain all necessary permits, and comply with all applicable regulations administered by Federal and State agencies.

Cultural Resources Regulatory Requirements

7. If buried cultural resources such as chipped or ground stone, midden deposits, historic debris, building foundations, human bone, or paleontological resources are inadvertently discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until a qualified archaeologist or paleontologist can assess the significance of the find and, if necessary, develop responsible treatment measures in consultation with Merced County and other appropriate agencies.

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8. If remains of Native American origin are discovered during proposed project construction, it shall be necessary to comply with state laws concerning the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (NAHC). If any human remains are discovered or recognized in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:
 - The County coroner has been informed and has determined that no investigation of the cause of death is required; and
 - If the remains are of Native American origin:
 - √ The most likely descendants of the deceased Native Americans have made a recommendation to the landowner or person responsible for the excavation work for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC 5097.98; or
 - √ The NAHC has been unable to identify a descendant, or the descendant failed to make a recommendation within 24 hours after being notified.
9. According to the California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). Section 7050.5 requires that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the NAHC.

County Counsel

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

MIKE 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 MIKE BORBA. MIKE 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. MIKE 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. CUP12-008 approval, modification, or denial.

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

Public Works/Roads Division

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. Based upon said evaluation, the Applicant shall 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; 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 CUP12-008. The Applicant shall also pay a fee of \$200.00 for processing said Roadway Impact Agreement.
12. 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.
13. 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.

Merced County Division of Environmental Health

14. 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.

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- 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

15. An architect or engineer licensed in the state of California must be hired to draw the plans for any proposed building. The plans and calculations must be submitted to the Building Department for approval and a permit before any construction can begin. All drawings must be submitted electronically via CD/Flash Drive.
16. The buildings may require a soils report from a licensed geotechnical engineer that will have to be reviewed by the engineer for design compliance before submittal. The buildings/structures may also qualify for a waiver to the soils report under some circumstances and as long as certain conditions are met in the designs. Please contact the Building Division at your earliest convenience to set up a time to discuss these options further.
17. Mandatory measures of the 2010 California Green Code for a structure must be specified in the plans.

Merced County Fire Department

18. A site plan identifying fire department access roads, parking lots and water supply shall be submitted to the Merced County Fire Department for review and approval.
19. 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 shall be maintained at all times. For dead-end fire apparatus access roads in excess of 150 feet in length, an area for turning fire apparatus around shall be provided as approved by the Merced County Fire Department. Parking lots shall be provided with twenty-foot wide roads consistent with Section 503 of the Code.
20. At the time of application for a Building Permit, a more in-depth plan review of the new supporting building's compliance with all current fire and life safety codes will be conducted by the Merced County Fire Department.
21. Additional water storage may be required for new construction.

Final Environmental Impact Report Mitigation Measures

22. 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 B-6 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-5: Reduce PM10 emissions below SJVAPCD thresholds, MMRP, page 2-1
- AQ-6: Implement Mitigation Measure AQ-5, MMRP page 2-1.

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- AQ-7a: Prepare Odor Control Plan for submittal, MMRP, page 2-1.
- AQ-7b: Implement nuisance control measures, MMRP, page 2-3

Hydrology and Water Quality

- HYD-1: Applicant shall submit Permit Registration Documents (PRD), MMRP, page 2-4.
- HYD-3a: Implement Best Management Practices, MMRP, page 2-4.
- HYD-3b: Comply with requirements of the NMP/WMP, MMRP, page 2-5.
- HYD-3c: Agronomic Rates for Best Management Farming Practices, MMRP, Page 2-5.
- HYD-3d: Salinity Report, MMRP, page 2-5.
- HYD-3e: Site Specific Monitoring Well Installation Plan, MMRP, page 2-5.
- HYD-3f: Groundwater Monitoring, MMRP, page 2-5.
- HYD-3g: Concentration in Groundwater of Constituents of Concern, MMRP, page 2-6.
- HYD-3h: Community and Economic Development Department and Division of Environmental Health Inspection, MMRP, page 2-6.
- HYD-5: Dairy operator shall notify TID of the increase in potential stormwater runoff, MMRP, Page 2-6
- HYD-6: Obtain a flood-proofing certificate and submit to the Merced County Department of Public Works Building Department for verification, MMRP page 2-6.
- HYD-7: Inspection of On-site Water Supply Wells, MMRP, page 2-6.
- HYD-8: Project sponsor shall obtain written agreement from recipients of manure exported off site in regards to rates and times for application, stormwater, wells and that manure shall not be applied within 100 feet of any domestic wells. MMRP page 2-6.
- HYD-9: Implement sections of the Merced County Animal Confinement Ordinance, MMRP, Page 2-7

- B. CONDITIONAL USE PERMIT No. CUP16-009 - Robert Murphy** - To develop an owner/operator 10-space RV park on 2.5 acres of a 4.34 acre parcel located on the south side of West Bradbury Road, 2000 feet east of North Cortez Avenue in the Delhi area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **BG**

Recommendations: The actions requested are to:

- 1) Find the project exempt from CEQA review under section 15061(b)(3) – “General rule” of the CEQA guidelines, and;
- 2) Approve Conditional Use Permit No. CUP16-009 based on the project findings and subject to the recommended conditions of approval presented in the staff report.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated August 24, 2016. He noted that a phone call was received from a neighbor with a complaint about the dust and fumigation on the property.

Mr. Hendrickson advised the Commission that it could continue the item to a later date if it so chose to address the concerns made by the caller.

Commissioner Thompson asked if the applicant was made aware of the right to farm ordinance. Planner Brian Guerrero said they were made aware.

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

Robert Murphy, property owner and applicant, says he farms 2 acres on the property. The phone callers father came to visit him to talk about the proposed project. He feels they do not like his project. This is his retirement project.

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Commissioner Thompson asked if an agricultural notice has been posted.

Mr. Murphy said he will post the notice. He said he is not concerned for the strawberry growers across the street. He has no issues with the other surrounding neighbors.

The public hearing closed at 9:24 a.m.

MOTION: M/S THOMPSON - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION EXEMPTS CONDITIONAL USE PERMIT No. CUP16-009 FROM CEQA GUIDELINES.

MOTION: M/S THOMPSON - MOBLEY, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED AUGUST 24, 2016, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP16-009 SUBJECT TO THE 17 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Department:

1. Conditional Use Permit Application No. CUP16-009 is approved to establish a recreational vehicle (RV) park with up to 10 RV parking spaces on a 2.5 acre portion of a 4.34 acre site and shall be operated in a manner consistent with the submitted operational statement and site plan. Minor Modifications may be approved by the Community and Economic Development Director with an approved application.
2. For the purpose of conditions monitoring, an inspection fee in the amount of **\$162.00** 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.
3. 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, and Public Works Departments (See attached Public Agency Comment Letters regarding any additional requirements).
4. The applicant shall operate the RV park consistent with County Resolution 97-1 (Attached).
5. The owner/operator shall obtain a business license prior to opening/operating the RV park.
6. The applicant shall install signage indicating to patrons of the RV Park that adjacent properties have a right to farm their properties and that complaints of normal farming operations of adjacent properties should be directed to the owner/operator of the RV Park.

Environmental Health Division:

7. A permanent barrier shall surround each septic system. The barrier shall protect each septic tank (unless the tank is traffic rated and has traffic rated risers and lids) and leach line area from vehicle traffic, parking, and any other soil-compacting activity.

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Department of Public Works Building and Safety Division

8. You must hire an architect or engineer licensed in the state of California to draw plans and provide any structural calculations for any proposed structures. The plans must be submitted to the Building Division for approval and permit before any construction can begin.
9. This facility will have to be in compliance with State and Federal regulations for disabled access. As we will also be looking into this during the building permit phase, it is strongly recommended that you obtain the services of an engineer/architect or a CASp Inspector. A CASp Inspector is certified by the State of California as an expert in accessibility. Preliminarily it is possible you may need some or all spaces to be accessible in the space and around the “hookups” and paths of travel to and around any common areas such as a picnic/BBQ area.

Department Public Works/Roads Division

10. The applicant shall install a paved agricultural driveway approach on Bradbury Road to access the site. An Encroachment Permit shall be obtained and paid for prior to any construction.

Merced County Fire Department

11. The applicant shall install reflective address identification signage that meets Fire Department design specifications. Contact the Prevention Bureau for additional information.
12. If security gates are installed, they shall be approved by the Fire Department.
 - a. As required, the applicant shall install and maintain a Merced County Coded “Knox” key switch or “Knox” padlock, whichever is most appropriate in relation to your needs.

Merced County Agricultural Commissioner

13. Create a setback of at least 60 feet from surrounding properties.
14. Temporarily close RV park while nursery stock is being fumigated 9-18 days.
15. Place a fence around RV park that prevents public from entering a treated area or buffer zone.

Turlock Irrigation District

16. Submit plans detailing the existing irrigation facilities, relative to the proposed site improvements, in order for the District to determine specific impacts and requirements. Additionally, there will be restrictions on planting landscape trees within the easement in close proximity to District facilities.
17. Work on irrigation facilities can only be performed during the non-irrigation season which typically runs from November 1, thru March 1, but can vary.
18. Developed property adjoining irrigated ground must be graded so that finished grading elevations are at least 6 inches higher than irrigated ground. A protected berm must be installed to prevent irrigation water from reaching non-irrigated properties.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

None

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:25 a.m.