

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF DECEMBER 1, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of December 1, 2010, 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 9:05 a.m., on December 1, 2010, 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 Jack Mobley - Vice Chairman
 Commissioner Mark Erreca
 Commissioner Cindy Lashbrook – arrived at 9:10 a.m.
 Commissioner Greg Thompson

Staff Present: William Nicholson, Assistant Development Services Director
 Kim Anderson, Recording Secretary
 Jeff Fugelsang, Planner II

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF NOVEMBER 17, 2010.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP10-009 - John Silva - To establish an agricultural contractor business on a 5.0 acre parcel for the purpose of storing and transporting agricultural commodities (hay). The property is located one-quarter (1/4) of a mile east of Winton Way and one-quarter (1/4) of a mile north of Eucalyptus Avenue in the Winton area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **Continued from the November 17, 2010 hearing. JF**

Recommendation: The actions requested are to:

- 1) Determine that the project is categorically exempt from CEQA review under Section 15061(b)(3) of the CEQA Guidelines, and;
- 2) Approve Conditional Use Permit No. CUP10-009 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated December 1, 2010.

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

Paul Lo, Attorney and representing John Silva, not on this application but on a civil dispute on Mr. Silva's property, says he is available to answer any questions the Commission may have. He says the property had one parcel with one owner and the parcel was split into three parcels and sold to three new owners and those three properties combined make up 40

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acres. Mr. Silva purchased his five acre parcel first. Mr. Holman then purchased the two separate twenty acre parcels and then sold one to the Taylor family. Finally the other 20 acres was sold to Mr. Placedo. The access easement has been a question. There is a well on Mr. Silva's property that was used to irrigate all three parcels and a dispute occurred two years ago when neighbors questioned their right to use the well. The agreement was granted for three years of use for the well to the two twenty acre parcels. That agreement has expired but Mr. Silva still allowed the neighbors to use the wells. The neighbors then brought a suit saying Mr. Silva was on their easement. Part of the settlement, was useage of the underground water lines. Overall, the lawsuit ended up amicably and settlement was settled and dismissed. The complaints of the neighbors came up during the lawsuit. Mr. Silva wants to do what is legal and in compliance of County Code.

Commissioner Lashbrook asked what year the property was split.

John Silva, applicant, said the property was purchased in 2001 and sold the two twenty acre parcels a year later. Mr. Placedo purchased his property in 2004, which was after the easement agreement. He felt he was being nice by letting them continue the use of the well.

Chairman Tanner asked if the easement has been taken care of in the lawsuit?

Mr. Lo said that is not an issue in the lawsuit. He understood that when Mr. Silva's trucks were coming in on paved road, that there was debris kicked onto Mr. Placedo's orchard. Any trash from use of the access road is taken care of by Mr. Silva, but that was not an issue in the lawsuit either.

Chairman Tanner asked for explanation of the turning access onto the property.

Planner Jeff Fugelsang said Mr. Silva had widened his access easement larger than when it was recorded.

Mr. Lo said that is not in the lawsuit that was settled and dismissed. This may be a separate issue. At this point, this hasn't been brought to their attention.

Commissioner Thompson said we should separate the civil issues from the actual permit and trucking issues.

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

Commissioner Lashbrook said this project is allowable in the agricultural zone and feels this is a good project.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION DETERMINES CONDITIONAL USE PERMIT No. CUP10-009 IS EXEMPT FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED DECEMBER 1, 2010, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP10-009 SUBJECT TO THE CONDITIONS WITH A MODIFICATION TO CONDITION #1 AND THE ADDITION OF CONDITIONS #4 AND #5 FOR A TOTAL OF 12 CONDITIONS AS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Conditional Use Permit No. CUP10-009 is granted to allow an agricultural contractor business on a 5.0 acre parcel for the purpose of storing and transporting agricultural commodities (hay) and parking three trucks.

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2. The project shall operate in a manner that is consistent with the approved Plot Plan and the applicant's Operational Statement. Minor Modifications may be approved by the Development Services Director upon submittal of an acceptable application.
3. The applicant shall provide adequate area for three commercial trucks and six employee parking spaces.
4. No vehicles operated by third parties shall access the site for purchasing or transporting agricultural commodities (hay).
5. The number of employees for the facility shall not exceed six (6).
6. The applicant shall comply with all of the applicable standard conditions of approval listed in the Planning Commission Resolution No 97-1.
7. 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.
8. 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, Planning, Commerce, Aviation, and Economic Development, and Public Works Departments.

County Counsel

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

John David Silva has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, 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 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 John David Silva. John David Silva'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 John David Silva, 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. John David Silva will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause and 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 during the term of this Agreement, but shall also apply to all such claims and the like, after the term of this contract, including but not limited to actions arising from public interest, land use and environmental legal actions, brought against the COUNTY following Conditional Use Permit No. CUP10-009 approval, modification, denial, or the exercise or exhaustion of administrative appeals.

Attorney's fees shall include any and all attorneys fees but not be limited to attorneys 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 clause for indemnification shall be interpreted to the broadest extent permitted by law.

Commerce Aviation and Economic Development Department

10. The applicant/owner shall obtain a Business License 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.

Department of Public Health/ Division of Environmental Health

11. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cubic feet or 500 pounds) requires that a hazardous material 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 and updated HMBPs are to be submitted electronically to MCDEH at: <http://cupa.co.merced.ca.us>. Contact Vickie Hayer at (209) 381-1083 or Kerri Gibbons at (209) 381-1094.
12. A permit for above ground storage tanks must be obtained from MCDEH.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Bill Nicholson, Assistant Development Services Director, said they are working with the Consultants on the General Plan Update Policies and will set the Focus Group meetings which should be soon. We will also get the Policies on the Planning website for the public and once input has been received from the Focus Groups, then a Joint Planning Commission/Board of Supervisors meeting will take place.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:28 a.m.