

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF JANUARY 12, 2011

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of January 12, 2011, 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 January 12, 2011, 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
 Commissioner Greg Thompson

Staff Present: James Brown, Interim Development Services Director
 William Nicholson, Assistant Development Services Director
 Kim Anderson, Recording Secretary
 David Gilbert, Senior Planner

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

III. APPROVAL OF MINUTES

M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF DECEMBER 15, 2010.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP07-004 - Michael Brasil - To expand an existing dairy from 1,385 cows to 2,400 cows and to construct a freestall barn on 37 acres of five parcels totaling 315 acres. The project is located at the northeast corner of First Avenue and Van Clief Road in the Stevinson area. The project site is designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **DG**

Recommendation: The actions requested are to:

- 1) Certify the Environmental Impact Report and adopt the Environmental Findings of Fact; and
- 2) Adopt the Statement of Overriding Considerations, approve the Mitigation Monitoring Plan, and approve Conditional Use Permit No. CUP07-004 based on the project findings and subject to the conditions of approval and mitigation measures presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated December 15, 2010.

Commissioner Thompson asked where the wells are located on the map.

Bob Klousner with Planning Partners, said that Figure 6-3 in the Environmental Impact Report shows where the wells are.

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Commissioner Lashbrook said Figure 6-2 shows multiple wells across the property.

Mr. Klousner said the map also shows the irrigation and monitoring wells. There are three domestic wells.

Commissioner Thompson asked if there is adequate buffering in the wells?

Mr. Klousner said the Environmental Health Department will inspect all the wells beforehand.

The public hearing opened at 9:15 a.m.

Michael Brasil the applicant, said he is available for any questions the Commission may have.

The public hearing closed at 9:16 a.m.

Planner David Gilbert added that the Environmental Health Department submitted comments for the Commissioners and noted that Condition #37 should be modified to read all "liquid" manure.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CERTIFIES THE ENVIRONMENTAL IMPACT REPORT AND ADOPTS THE FINDINGS OF FACT PREPARED FOR CONDITIONAL USE PERMIT No. CUP07-004.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 12, 2011, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES CONDITIONAL USE PERMIT No. CUP07-004 SUBJECT TO THE 48 CONDITIONS SET FORTH IN THE STAFF REPORT WITH THE REQUESTED MODIFICATION TO CONDITION No. 37, AS FOLLOWS:

Conditions:

Planning and Community Development Conditions:

1. Conditional Use Permit No. CUP07-004 is granted for the expansion of the Michael Brasil Dairy with a total of 2,400 cows (2,000 milk cows & 400 support stock) and construction of one freestall barn.
2. The Michael Brasil 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.

County Counsel

7. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Michael & Veronica Brasil 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 Michael & Veronica Brasil.

Michael & Veronica Brasil 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 Michael & Veronica Brasil, their 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. Michael & Veronica Brasil 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. CUP07-004 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.

Public Works/Roads Division

8. The applicant shall improve the existing access from First Avenue to the hay barn and commodity storage area with a paved, rural agriculture driveway approach, in accordance with Chapter 7 of the Merced County Department of Public Works Improvement Standards and Specifications, and install pole-mounted, 100-watt, street lights at both truck access driveway entrances to the dairy. Applicant shall be required to obtain an Encroachment Permit from the County to perform said driveway improvements.
9. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to access 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 road

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corings 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 amount of the Road Impact Fee shall be \$30,000, which is based upon the projected increase in annual heavy truck trips generated by the project (600 trucks/yr x 20 yrs x \$2.50/truck), which shall be paid in five (5) annual payments of \$6,000 each, beginning the second January following activation of this permit. The applicant shall also pay a fee of \$200 for processing said Roadway Impact Agreement.

Merced County Fire Department

10. The California Fire Code requires that responding fire personnel have adequate access to water for purposes of fire extinguishing; on-site fire suppression water storage would be required. Fire flow requirements shall be met in accordance to the California Fire Code using NFPA 1142 as a reference standard. Existing or new tanks on site for fire suppression shall be inspected to meet Merced County Fire Department standards such as fitting size, capacity, access, sight gauge, and labeling.
11. Private fire service mains and water tanks shall be periodically inspected, tested and maintained in accordance with Title 19 California Code of Regulations Chapter 5.
12. Posts, fences, vehicles, growth, trash, storage, and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections of fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.
13. If security gates or bollard locks are to be installed or existing on site. They shall be approved by this office. As required, including the installation of a Merced County coded "Knox" key switch or "Knox" padlock, whichever is most appropriate in relation to your needs.
14. All driveways accessing the parcel shall be surfaced with an approved all weather driving surfacing material. All driveways 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 have an unobstructed width of not less than 20 feet except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 13 feet 6 inches.
15. LP gas equipment shall be installed in accordance with the California Mechanical Code and NFPA 58. Weeds, grass, trash, and other combustible materials shall be kept a minimum of 10 feet from LP-gas tanks or containers.
16. Portable fire extinguishers complying with Section 906 shall be provided as specified in NFPA 58.
17. "No Smoking" signs complying with Section 310 shall be posted when required by the fire code official. Smoking within 25 feet of a point of transfer, while filling operations are in progress at containers or vehicles, shall be prohibited.

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18. Any hazardous materials stored or used on site shall conform to the California Fire Code Section 2701.
19. All other applicable requirements in the California Fire Code and requirements in the Fire Department letter dated January 21, 2010 shall be complied with.

Department of Public Works/Building & Safety Division

20. Prior to any construction activity of any structures, building plans shall be submitted drawn by a California licensed engineer or architect. A soils report shall be prepared by a California licensed soils engineer along with the building plans. The building engineer shall review the soils report before designing the foundation to ensure that all requirements from the soils engineer are met.

Native American Heritage Commission

21. The applicant shall comply with all requirements contained in the letter dated February 16, 2010.

California Regional Water Quality Control Board

22. The applicant shall comply with all requirements and obtain any permits contained in the letters dated March 1, 2010 and October 27, 2010.

San Joaquin Valley Air Pollution Control Board

23. The applicant shall comply with all requirements and obtain any permits contained in the letters dated March 1, 2010 and November 4, 2010 (attached).

Final Environmental Impact Report Mitigation Measures

24. Previously Adopted Mitigation Measure BIO-3: A qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree and ground nesting raptors) on site within 30 days of the onset of ground disturbance, if ground disturbance is to occur during the breeding season (February 1 to August 31). These surveys shall be based on the accepted protocols (e.g. as for the burrowing) for the target species. If a nesting raptor is detected, an appropriate construction buffer would be needed (up to 250 feet). The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. A qualified ornithologist shall conduct pre-construction surveys for burrowing owls during the non-breeding season. Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors, as they are expected to abandon their roosts during construction.

If burrowing owls are detected on site during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapse and ground disturbance can proceed.

25. Previously Adopted Mitigation Measure BIO-2S: Prior to issuance of a permit to construct, and no less than 14 days and no more than 30 days prior to ground disturbance or commencement of construction, a qualified biologist shall conduct a protocol level survey to determine the presence of the San Joaquin Kit Fox. In the event that this species is detected during protocol-level surveys, consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS) shall be required to discuss how to implement the project and avoid "take". If "take" cannot be avoided, acquisition of a State Incidental Take Permit and corresponding federal take permit will be required prior to project implementation. If the survey identifies potential dens (defined as burrows at least four inches in diameter that open up within two feet, potential den entrances shall be

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dusted for three calendar days to register track of any San Joaquin kit fox present. If no kit fox activity is identified potential dens may be destroyed.

If San Joaquin kit fox is identified, then dens shall be monitored to determine if occupation is by an adult only or is a natal den (natal dens usually have multiple openings). If the den is occupied by an adult only, the den may be destroyed when the adult fox has moved or is temporarily absent. If the den is a natal den, in coordination with the USFWS, a buffer zone of 250 feet shall be maintained around the den until the biologist determines that the den has been vacated. Where San Joaquin kit fox is identified, the provisions of the USFWS's published Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1990) shall (except that preconstruction survey protocols shall remain as established in this paragraph).

These standards include provisions for educating construction workers regarding the kit fox, keeping heavy equipment operating at safe speeds, checking construction pipes for kit fox occupation during construction, and similar low or no cost activities.

26. Previously Adopted Mitigation Measure BIO-5: Project related lighting shall be minimized and directed away or shielded from sensitive areas. Minimizing and/or directing/shielding lighting away from sensitive areas will ensure that disruption of night-active species will not occur. This will help reduce or minimize and accelerated nighttime predation rates on the dairy and adjacent agricultural fields. Around residences and other areas where it may be appropriate, landscaping shall be used to shield the agricultural fields from additional lighting.
27. Previously Adopted Mitigation Measure: The Vector Control Plan for mosquitoes required by the Merced County Animal Confinement Ordinance (ACO), shall contain, but not be limited to, the following operational measures to be implemented during project operations as identified by University of California Cooperative Extension (UCCE):
 - Owners are responsible for weed and flottage control.
 - Separator bypass drains shall be equipped to prevent pond flottage.
 - Solids floating on the surface of ponds and lagoons shall be removed no less frequently than weekly.
 - Lagoon/pond-to-field discharges shall not stand more than 4 days.
28. Previously Adopted Mitigation Measure: The applicant shall pay any excess treatment cost expended by the Mosquito Abatement District.
29. Previously Adopted Mitigation Measure HAZ-2: The following operational measures identified in the EIR for the Animal Confinement Ordinance shall be implemented.
 1. All confined animal facilities shall implement the following Best Management Practices to address potential fly problems:
 - a. Daily inspection of manure flushing systems to ensure that manure is being effectively removed from flushed areas with particular attention paid to corners and isolated areas.
 - b. Daily inspections of water supply and circulation systems to ensure that any leaks are promptly repaired. These inspections shall include all watering troughs to ensure that mechanisms for controlling water level are operating effectively and are protected from damage.
 - c. Regular blading of feeding lanes in freestall barns and corrals to ensure that spilled feed is promptly removed and disposed.

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- d. Daily removal of manure and spilled feed from stalls in freestall barns.
 - e. Regular scraping of corrals to minimize the potential for development of fly population on manure.
 - f. Weekly inspection of silage storage areas to ensure proper covering, drainage, and removal of any spoiled silage.
 - g. Weekly inspection of fence lines of corrals and other “edge” areas and removal of any accumulated manure.
 - h. Periodic monitoring of stable flies by direct observation and counting of the number of stable flies on the legs of a representative number, minimum of two percent, of the support stock herd.
 - i. All exterior doors and windows in milk rooms shall have screens that are inspected monthly to determine if they are working properly and to identify rips in the screening. Ripped or otherwise damaged screens are repaired or replaced immediately.
 - j. If necessary, flytraps are set throughout barns at strategic locations. The traps are inspected monthly or more frequently if necessary, and replaced when saturated with captured flies.
2. In addition to fly management practices in the cattle housing and milking areas of dairy facilities, the following sanitation practices shall be implemented at animal confinement facilities to control fly populations:
- a. Dead animals are stored in a secured area at the dairy facility and off-site rendering plant operators are immediately notified for pickup of carcasses.
 - b. Residual feed shall be removed from infrequently used feeding areas.
 - c. All garbage shall be disposed of in closed dumpsters that are regularly emptied by a contracted waste management service for off-site disposal.
 - d. Grass and other landscape clippings shall be removed from the site for off-site disposal or reuse (as feed or soil amendment).
30. Mitigation Measure AQ-3: Prior to the initiation of operations on the Michael Brasil Dairy Expansion, the applicant is required to implement all air quality provisions of the ACO, including Chapter 18.45.050 U and OO, comply with all applicable SJVAPCD Rules including but not limited to Rule 2010 – apply for Authority to Construct/Permit to Operate; Rule 2201 New Source Review and implement BACT appropriate for this dairy operation to be developed during permit review in cooperation with SJVAPCD staff including but not limited to all applicable required measures in Table 7-6 of this EIR; Rule 4570, Confined Animal Facilities, and Rules 4701 and 4702, Internal Combustion Engines.
- U. The animal confinement facility and access roads shall meet the requirements of the San Joaquin Valley Unified Air Pollution Control District.
 - OO. Animal confinement facilities constructed and expansions of existing facilities resulting in more than a 10% increase in manure animals, after the effective date of this Ordinance that exceed the significance threshold for new sources for either reactive of organic gases (10 tons/year) or PM₁₀ (15tons/year) established by the San Joaquin Valley Unified Air Pollution Control District, shall reduce air emissions for these compounds to a level below the significance thresholds will be determined by the inclusion of the total air

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emissions from the facility. The schedule for compliance is as follows: 1) submit plans and calculations showing compliance no later than January 1, 2007. 2) Construction of improvements and/or implementation of reduction measures must be completed no later than January 1, 2008, 3) New animal confinement facilities constructed after January 1, 2008 shall submit plans as part of the CNMP indicating compliance to the PM₁₀ and reactive organic gas (ROG) threshold criteria. If the San Joaquin Valley Unified Air Pollution Control District adopts regulations for the control of ROG and/or PM₁₀ emissions for animal confinement facilities, Chapter 18.48.050 OO is void.

31. Mitigation Measure AQ-6a: To reduce methane and CO₂ emission from the proposed dairy expansion, the applicant shall implement the requirements of Chapter 18.45.050 U and OO of the Merced County Animal Confinement Ordinance, BACT appropriate for this dairy operation to be developed during permit review in cooperation with SJVAPCD staff including but not limited to all applicable measures in Table 7-6 of this DEIR, and any future regulations promulgated by the EPA, the CARB, and the SJVAPCD (see ACO measures and BACT above).
32. Mitigation Measure AQ-6b: In order to minimize greenhouse gas emissions (GHG) and optimize equipment efficiency, all equipment shall be operated in accordance with manufacturer specifications and approved design specifications.
33. Mitigation Measure AQ-6c: All ruminant animal feed shall include at least 6% cottonseed, or, upon SJVAPCD approval, based on sufficient demonstration that use of cottonseed is not feasible, an equivalent substitute.
34. Mitigation Measure AQ-6d: Manure from animal housing areas for mature cows shall be removed and transferred into appropriate treatment facilities at least four times a day and at least once a day for all other animals.
35. Mitigation Measure AQ-6e: Manure shall be incorporated into soil within 24 hours after application.
36. Mitigation Measure AQ-6f: The applicant shall obtain from the appropriate utility company a full facility audit under the company's energy management program. The applicant shall implement all no cost items identified in the energy audit, and additionally shall implement their choice of low cost and/or investment grade opportunities to reach a total reduction of 10% in the energy consumption in the facility. The implementation shall be verified by submission of the utility "Installation Completion Form" or equivalent to Merced County Division of Environmental Health.
37. Mitigation Measure HAZ-1: Over the course of dairy operations, the project sponsor shall obtain written agreement from the recipients of manure exported off-site for the following:
 - All liquid manure shall be applied to cropland at rates and times which are reasonable for the crop, soil, climate, special local situations, and management system. Manure applications shall be timed and managed to minimize nitrogen movement below the root zone and to minimize percolation of waste constituents to groundwater.
 - All stormwater that is or has been in contact with manure shall be maintained on site. No storm drainage that has been in contact with manure shall be allowed to flow or seep onto adjacent properties or public roads, or into any waterway.
 - Where the commingling of water containing manure can take place with irrigation wells and irrigation and/or drainage district facilities, these facilities must be protected from pollution by a backflow device or method that is approved by the Division of Environmental Health and/or appropriate irrigation/drainage district. It is the obligation of the property owner to install and

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maintain or cause to be installed and maintained the backflow device or method.

- Manure shall not be applied with 100 feet of any domestic well, irrigation well or surface water body. Surface water bodies include creeks, streams, lakes, and reservoirs, but do not include canals constructed above grade. Adequate protection of surface water bodies or irrigation wells shall prevent discharge or infiltration of manure constituents to the water body or well.

The project sponsor shall provide the most recent analysis of the dry manure, in writing, to the manure recipient. The signed agreement between the project sponsor and the recipient of manure exported off site shall be submitted to the Merced County Division of Environmental Health for review

38. Mitigation Measure HYD-1: The project applicant shall be required to submit permit registration documents for the Construction General Permit Order 2009-0009-DWQ to the SWRCB and comply with all requirements of the permit. The annual fees are based on total disturbed area of the construction project in acres. A Legally Responsible Person shall electronically submit Permit Registration Documents (PRDs) prior to commencement of construction activities in the Storm Water Multi-Application Report Tracking System (SMARTS). PRDs consist of the Notice of Intent, Risk Assessment, Post-Construction Calculations, a Site Map, the SWPPP, a signed certification statement by the LRP, and the first annual fee. All requirements of the site specific SWPPP shall be included in construction documents for the project.
39. Mitigation Measure HYD-3a: The applicant shall comply with requirements of the NMP/WMP, and implement applicable RWQCB requirements as required by an individual WDR for the proposed expansion, and with all Merced County ACO requirements not superseded the conditions of the individual WDR.
40. Mitigation Measure HYD-3b: As set forth in the NMP, proposed application rates of liquid and/or solid manure shall not exceed agronomic rates for best management farming practice. Nutrient samples shall be collected prior to and during application periods to confirm agronomic rates and protect water supplies. Soil testing frequency for nitrogen, potassium, phosphorus and salts are described in the NMP. Modifications to the NMP may be required as outlined in the individual WDR for the proposed expansion to be issued by the RWQCB.
41. Mitigation Measure HYD-3c: A best practicable treatment or control (BPTC) evaluation to be submitted to the RWQCB shall be completed for the existing pond prior to operation or final inspection. The evaluation shall meet the applicable requirements of the RWQCB and the approved WDR. The BPTC shall set forth a schedule (as short as practicable) for a systematic and comprehensive technical evaluation of the existing pond to determine if the existing construction is protective of groundwater. Should the BPTC determine that additional nutrients are leaking underneath the pond than previously assumed in the WMP, alterations to the WMP shall be completed to account for the difference in nutrient loading and avoid potential violations. Increased pond sizing or additional ponds to increase treatment surface area may be necessary. Prior to the enlargement of any of the existing storage lagoons or settling ponds, construction of any new lagoon or settling pond; or in the event that the design, construction, operation and/or maintenance of the lagoons and/or ponds is not protective of water quality, the project applicant shall submit a design for review and approval. The design shall conform to either of the options described below:
 - Tier 1: A pond designed to consist of a double liner constructed with 60-mil high density polyethylene or material of equivalent durability with a leachate collection and removal system (constructed in accordance with Section 20340 of Title 27) between the two liners would be considered to be consistent with Resolution 68-16.

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- Tier 2: A pond designed in accordance with California Natural Resource Conservation Service (NRCS) Conservation Practice Standard 313 or equivalent and must demonstrate through submittal of technical reports that the alternative design is protective of groundwater quality as required in the WDR specifications.
42. Mitigation Measure HYD-3d: If required by the RWQCB, an industry wide or site-specific salinity report shall be submitted to the RWQCB for review and approval prior to operation or final inspection. The salinity report shall identify sources of salt in waste generated at the dairy; evaluate measures that can be taken to minimize salt in the dairy waste, and include an affirmative commitment by the applicant to implement measure identified to minimize salt in the dairy waste to meet Basin Plan requirements. Any necessary measures shall be incorporated into the WDR issued for the facility or become a required deliverable of the WDR.
 43. Mitigation Measure HYD-3e: Prior to the issuance of any building permit, additional monitoring wells within the shallow groundwater and the regional groundwater system will be warranted to assess water table gradients and water quality variation over time. A monitoring well installation work plan will be submitted to the RWQCB. The work plan will provide the rationale for the completion of a minimum of two additional monitoring wells within the shallow and regional groundwater system. Monitoring well requirements and a monitoring schedule shall be incorporated into the WDR issued for the facility.
 44. Mitigation Measure HYD-3f: At a minimum, annual groundwater monitoring of on-site monitoring wells and soil monitoring on the project site shall be completed. A monitoring plan shall be prepared by the project applicant and approved by the RWQCB, which will detail the sampling elements. Surrounding properties with a domestic water supply well within 500 feet of the land application property should be sampled for Nitrate and EC at a minimum. A well monitoring schedule shall be incorporated in the WDR issued for the facility.
 45. Mitigation Measure HYD-3g: After project implementation and subsequent groundwater monitoring, if groundwater contamination is shown, a reduction in herd size may be necessary, or additional crop acres may be necessary to accommodate the proposed herd size. A new Report of Waste Discharge (ROWD) shall be prepared. The ROWD shall clearly demonstrate that the herd size will not constitute a threat to water quality. If necessary, the RWQCB shall revise the WDR issued to the facility.
 46. Mitigation Measure HYD-3h: The Department of Planning Community Development shall make a final inspection of the facility prior to the commencement of operation to confirm the dairy meets all local and state requirements.
 47. Mitigation Measure HYD-4: Annual groundwater monitoring of on-site monitoring wells shall be completed, including measurement of groundwater levels. In the event groundwater levels under the project site show “critical overdraft conditions” which are attributed predominantly to the site-specific activities of the dairy project in excess of any regional overdraft conditions, the project applicant shall as required by the County or any applicable groundwater management authority, implement reasonable water conservation measures (e.g. recycling of wash water or similar measures), or shall, if available and legally permitted, substitute dairy barn groundwater use with surface water.

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48. Mitigation Measure HYD-7: Prior to issuance of any building permit, all existing water supply wells at the facility site and property shall be inspected by the Merced County Division of Environmental Health to ensure that each well is properly sealed at the surface to prevent infiltration of waterborne contaminants into the well casing or surrounding gravel pack. If any of the wells are found not to comply with the Merced County Well Ordinance standards, the project applicant shall retain a qualified professional as described in the respective Ordinance to install the required seal or functional equivalent including setbacks distances of 100 feet from manured areas as required by the RWQCB General Order. Documentation of the inspections and seal installations, if any, shall be provided to the County Division of Environmental Health prior to commencement of dairy operations.

- B. CONDITIONAL USE PERMIT No. CUP09-014 - Frank Soares** - To bring into conformance an existing wood chipping facility on 3 acres of a 40.95 acre parcel. The project is located on the east side of Spruce Road, 900 feet north of Almond Road in the Los Banos area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **DG**

Recommendation: The actions requested are to:

- 1) Make the determination 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. CUP09-014 based on the project findings and subject to the conditions of approval presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated December 15, 2010. He referenced new correspondence from County Public Works that requested the deletion of Condition #10 since it is not necessary to have the Spruce Road dedication.

Commissioner Lashbrook said she is concerned with the dye used to color the wood chips and asked how the spare wood chips will be collected.

Planner David Gilbert said the staff report says the dye in the wood chips is organic and will not affect the groundwater. Environmental Health will conduct inspections on the wood chips as well. There is minimal dye going into the ground. They are just a color, not a preservative.

Brent Cronk, Environmental Health, said if the color of the wood chips change, the application will need to do a hazardous business material plan and routine inspections will be made.

Commissioner Mobley asked if they dump or burn any unused material.

Planner David Gilbert said any nails or other metals are taken to the Stanislaus County dump.

The public hearing opened at 9:30 a.m.

Rickey Egan, agent for Frank Soares, said he is available to answer any questions the Commission may have.

The public hearing closed at 9:31 a.m.

Chairman Tanner asked if Spruce Road is in the County's jurisdiction or the Central California Irrigation District?

Planner David Gilbert said the road is unpaved and is a County road but along the Central California Irrigation District canal. CCID has right of way easements.

Commissioner Thompson said it is not uncommon to have interfacing with the right of way. There is no need for a dedication since there are only 14 trips a day along Spruce Road.

Planner David Gilbert added that Central California Irrigation District does any maintenance on this road.

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Marianne Greene, Deputy County Counsel, had no legal objection to the deletion of Condition #10.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS CONDITIONAL USE PERMIT No. CUP09-014 FROM CEQA.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JANUARY 12, 2011, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES CONDITIONAL USE PERMIT No. CUP09-014 SUBJECT TO THE 27 CONDITIONS SET FORTH IN THE STAFF REPORT INCLUDING THE DELETION OF CONDITION #10 AS FOLLOWS:

Conditions:

Planning and Community Development Conditions:

1. Conditional Use Permit No. CUP09-014 is granted to operate a wood chipping facility on 3 acres of a 40.95 acre parcel, which supports dairy and other agricultural operations.
2. The wood chipping facility shall be located, developed and operated in a manner described on the approved plot plan, 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. The project shall comply with all applicable regulations administered by the County Fire Department, Environmental Health Division, Planning & Community Development, and Public Works Departments.
4. For the purpose of conditions monitoring, an inspection fee in the amount of **\$486** 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.
5. The property owner shall obtain all necessary permits, and comply with all applicable regulations administered by Federal and State agencies.
6. The hours of operation shall be limited to 8:00 a.m. to 5:00 p.m. three days out of the week.
7. The applicant shall contain all storm and waste water on-site through installing berming and/or straw waddles along property lines so that the water will not get onto other properties or the CCID Main Canal to the south.

County Counsel

8. INDEMNITY AND HOLD HARMLESS AGREEMENT:

Frank Soares 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

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otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Frank Soares. Frank Soares 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 Frank Soares, 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. Frank Soares 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. CUP09-014 approval, modification, denial, or the exercise or exhaustion of administrative appeals. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's 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

9. The applicant/property 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.

Merced County Fire Department

10. The California Fire Code requires that responding fire personnel have adequate access to water for purposes of fire extinguishing; on-site fire suppression water storage would be required. Fire flow requirements shall be met in accordance to the California Fire Code using NFPA 1142 as a reference standard. Existing or new tanks on site for fire suppression shall be inspected to meet Merced County Fire Department standards such as fitting size, capacity, access, sight gauge, and labeling.
11. Private fire service mains and water tanks shall be periodically inspected, tested and maintained in accordance with Title 19 California Code of Regulations Chapter 5. Since the water being stored in the water tank comes from a nearby canal, that water shall be free of weeds and debris and the tank shall be full of water at all times.
12. Posts, fences, vehicles, growth, trash, storage, and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections of fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.
13. If security gates or bollard locks are to be installed or existing on site. They shall be approved by this office. As required, including the installation of a Merced County coded "Knox" key switch or "Knox" padlock, whichever is most appropriate in relation to your needs.

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14. All driveways accessing the parcel shall be surfaced with an approved all weather driving surfacing material. All driveways 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 have an unobstructed width of not less than 20 feet except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 13 feet 6 inches.
15. Portable fire extinguishers complying with Section 906 shall be provided as specified in NFPA 58.
16. “No Smoking” signs complying with Section 310 shall be posted when required by the fire code official. Smoking within 25 feet of a point of transfer, while filling operations are in progress at containers or vehicles, shall be prohibited.
17. Any hazardous materials stored or used on site shall conform to the California Fire Code Section 2701.

Department of Public Works/Building & Safety Division

18. The property owner shall obtain a building permit for the above ground water tank to ensure that it is properly anchored for any seismic activity or wind loads.

California Regional Water Quality Control Board

19. Operators of the wood chipping facility shall be required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 for Storm Water Discharges Associated With Industrial Activity, Water Quality Order No. 97-03-DWQ (General Permit). Prior to commencing operations at the site, the facility operator shall obtain coverage under the Industrial General Permit.
20. If the operator stores petroleum products in above ground tanks with a single tank capacity of greater than 66 gallons, or a cumulative capacity of greater than 1,320 gallons, the operator shall be subject to State above-ground petroleum tank regulations. The operator shall file a storage statement with the State Water Resources Control Board, pay a facility fee, and prepare a federal Spill Prevention Control and Countermeasure Plan.
21. If operations at the site will include the discharge of waste water or process water, the operator shall submit a Report of Waste Discharge 190 days prior to commencing operations at the site.

UC Cooperative Extension

22. Rabbits, squirrels, and gophers shall be controlled on-site to prevent them from becoming a pest to adjacent farmers. Fugitive dust shall be minimized that may travel onto nearby crops and cause mite damage. Storm water shall be contained on-site.

Division of Environmental Health

23. Wood Chipping & Grinding – Cal Recycle Solid Waste Notification:
The wood chipping and grinding operations shall require submittal of Enforcement Agency Notification (Cal Recycle form 169 or equivalent) to MCDEH as the Local Enforcement Agency (LEA) for the State of California Department of Resources, Recycling and Recovery (Cal Recycle, formally the California Integrated Waste Management Board). Submittal of this form shall occur prior to beginning operation.

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- 24. Water & Sewer:
The mobile home on the property shall house one of the two facility employees and will be available for restroom use and potable water supply. The mobile home, well, and on-site septic system are located at least 1,500 feet from the project work site.

- 25. Portable Restrooms (chemical toilets):
MCDEH concurs with the applicant's proposal to provide a portable toilet at the work site, with regular service by a company permitted by Merced County to pump, haul, and dispose of chemical toilet waste.

- 26. Protect Existing Septic System:
Any existing septic tanks and leach line areas shall be unpaved, contain no structures, and be protected from compaction (vehicular traffic, etc.). The leach line replacement area (100% of required existing leach field) shall be unpaved and contain no structures.

- 27. Haz-Mat:
No fuel or oil storage is proposed on the property. The operation plan indicates that no motorized equipment shall be fueled, maintained or repaired on-site except by an appropriately permitted licensed service provider. No hazardous waste will be generated on-site. These are conditions of approval.

Liquid colorant for the wood chips will be stored on-site in vessels exceeding 55 gallons. Even if the colorant is determined to be non-hazardous by federal standards, it may be considered hazardous by California standards.

Any hazardous material stored on-site over threshold quantities (55 gallons or 500 pounds) requires a hazardous materials business plan (HPMB) be file with the Division of Environmental Health. Any quantity of hazardous waste generated on-site also requires that a HMBP be filed.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

James Brown, Interim Planning Director, said the General Plan Update Policies will be released soon and the Focus Groups will be held in February 2011.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:37 a.m.