

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF MARCH 23, 2011

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of March 23, 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 9:03 a.m., on March 23, 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 Rich Ford
Commissioner Greg Thompson

Staff Present: Paul A. Fillebrown, Interim Development Services Director
William Nicholson, Assistant Development Services Director
Kim Anderson, Recording Secretary

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent:

III. APPROVAL OF MINUTES

M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF FEBRUARY 23, 2011.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP05-034 - Savant/Colorscape II - To legalize the operation of an existing green waste and wood processing, composting and recycling facility. The facility accepts green waste from Pleasanton, California and processed wood from mills in Sonora and Terra Bella. The two waste streams are processed into a variety of products including wood playground chips, colored mulch, fuel for wood burning power plants and compost. The project site is located on the south side of Washington Road approximately 1/2 mile east of Shultz Avenue, in the Chowchilla Area. The property is designated Agricultural in the General Plan and zoned A-1 (General Agricultural). **ON**

Recommendation: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration in conformance with CEQA Guidelines; and
- 2) Approve Conditional Use Permit Application No. CUP05-034 based on the project findings, and conditions of approval presented in the Staff Report.

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated December 15, 2010. She handed out a letter to the Commissioners with a request for the addition of Condition #10 that reads: Any trucks, trailers, and farm equipment being stored or parked on the property shall be removed within 60 days. If the applicant or property owner wishes to store trucks, trailers, and machinery, they will be required to apply for a new permit for this use, or to modify the existing permit.

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

No one spoke in favor or opposition to this application.

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

Commissioner Mobley asked if the new added condition is the same as Condition #6.

Planner Oksana Newmen said Condition #6 is for general employee parking, but as it stands now there is actual storage of trucks which is a separate use, not related to the permit.

Bill Nicholson, Assistant Development Services Director, explained that this project has a long history, so there were a lot of different uses going on. Years ago the truck parking was under different ownership and there was litigation to determine who the owner of the trucks was. Mr. Van Tassel, who runs Colorscape is not the owner of those trucks. That business is a separate business so they need to either remove the trucks or add them to the permit. Planner Oksana Newmen did a site check yesterday and determined that the trucks are still there and they are clearly not a part of the Colorscape operation. Mr. Van Tassel is satisfied to have them removed from the property.

Chairman Tanner asked who owns the trucks.

Mr. Nicholson said Mr. Savant owns them and there is currently a transfer going on.

Chairman Tanner asked if 60 days will be enough time to get the vehicles off the site.

Paul VanTassel, the applicant, asked if six months would be ok. Three quarters of what was out there is already gone.

Interim Director Paul Fillebrown asked if the addition of Condition #10 can be made as Condition #9A so it doesn't change the listing of the conditions.

Mr. Nicholson said we could renumber the listed conditions.

Deputy County Counsel Marianne Greene suggested adding the request for the addition of Condition #10 to be added as a sentence to Condition #6 since it addresses parking requirements. This could be just a modification to Condition #6.

Mr. Nicholson said the modification can be made and the time limit should be changed to six months.

Planner Oksana Newmen said the property is kept tidy, but if the trucks are removed sooner rather than later would it be better.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT No. CUP05-034 WITH 16 MITIGATION MEASURES.

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 MARCH 23, 2011, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP05-034 SUBJECT TO THE 37 CONDITIONS WITH THE MODIFICATION TO CONDITION #6 AS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Conditional Use Permit No. CUP05-034 is granted for four primary uses:
 - (a) Composting green material from a Material Recovery Facility in Pleasanton, California;
 - (b) Wood waste processing, composting, and recycling of material from one of two mills (located in Sonora and Terra Bella);
 - (c) Leasing a portion of the covered storage area to Black Rock Milling for the storage of cattle feed; and,
 - (d) Processing and storage of gypsum recovered from construction wallboard for use as an agricultural soil amendment.
2. The facility will not exceed a total of 118,500 cubic yards per year, which consists of approximately 75,000 cubic yards of green material and 43,500 cubic yards of wood waste. No more than 12,500 cubic yards of material will be on site at any given time.
3. The project shall operate in a manner that is consistent with the approved Plot Plan and the applicant's Operational Statement.
4. Hours of operation are 6:00 A.M. to 6:00 P.M. Monday through Saturday.
5. Minor Modifications to this permit may be approved by the Development Services Director upon submittal of an acceptable application.
6. The project site shall comply with the parking requirements in Section 18.40 of the Merced County Zoning Code. Any trucks, trailers, and farm equipment being stored or parked on the property shall be removed within 6 months. If the applicant or property owner wishes to store trucks, trailers, and machinery, they will be required to apply for a new permit for this use, or to modify the existing permit.
7. The applicant/property owner shall comply with all applicable conditions contained in Planning Commission Resolution 97-1 (attached).
8. For the purpose of condition monitoring, an inspection fee in the amount of **\$324.00** 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.
9. The applicant shall comply with all applicable local, state and federal standards and regulations.

County Counsel

10. Paul Van Tassel has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, COUNTY, its Board of Supervisors, commissions, officers, employees, agents and assigns, from and against any and all loss, injury, damage, expense, 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, resulting from or arising out of or in any way connected with, the performance of this Agreement, whether in tort, property, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or

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the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, open meetings violations, actions arising from public interest, land use and environmental legal actions, or otherwise, alleged to be caused to any person or entity including, but not limited to employees, sub consultants, agents, commissions, boards, officers, successors and assigns of Applicant or COUNTY in any way resulting from or arising out of the PROJECT, application for the PROJECT, the hearings or appeals of hearings for the PROJECT or otherwise.

Paul Van Tassel's liability for indemnity under this Agreement shall apply, regardless of fault, to any and all acts or omissions, negligence, recklessness, or willful misconduct, of any kind, on the part of the Paul Van Tassel, his employees, sub consultants, agents, commissions, boards, officers, successors and assigns. 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 legal result of the sole negligence of COUNTY. This duty shall arise at the first notice of filing a lawsuit, claim, petition, or allegation of liability against COUNTY.

Paul Van Tassel will on request and at his sole expense, defend any claim, administrative appeal, legal action, lawsuit, judicial appeal, or proceeding arising hereunder. This clause shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert witness or consultant fees, as well as, legal research fees, staff time, 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 Agreement, including but not limited to bodily injury, property damage, personal injury, contractual damages, writ of mandamus, open meetings violations, actions arising from public interest, and land use and environmental actions, brought against the COUNTY before or following PROJECT approval, modification, denial, or the exercise of administrative appeals. Attorneys fees shall include any and all attorneys fees, and all 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.

The broadest indemnity and defense protection for the COUNTY under this section that is permitted by law shall be provided by Paul Van Tassel.

Department of Public Health/Division of Environmental Health

11. Any hazardous material stored on-site or 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.

Department of Public Works

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12. The applicant shall be required to retain the an engineer or a qualified inspection firm to inspect the grading shown on the Stormwater Routing Design plans to insure the drainage facilities are constructed accordingly. The inspection company shall be required to provide a letter to the County stating the construction has been completed according to plan.
13. The applicant shall install county standard streetlights and driveway approaches at the entrance(s) and exit(s) of the property. This shall be done under encroachment permits obtained from the Road Division and subject to inspection and approval by a Road Division inspector prior to operation of the facility. The streetlights shall be 150 Watts and may be mounted on wooden poles.

Merced Irrigation District

14. That applicant will not discharge any drainage water from the property into MID facilities.
15. An appropriate crossing agreement be executed for new and existing crossings over the El Nido Canal, including proper reinforcement at the crossing points as approved by MID Water Engineering.

California Regional Water Quality Control Board

16. Prior to commencing operations at the facility, the project proponent must obtain coverage under the Industrial General Permit, or apply for a NONA for a waiver of coverage under the Industrial General Permit.
17. To obtain coverage under the Industrial General Permit, the proponent needs to submit a Notice of Intent, a site map, and a fee of \$1,008 to the California State Water Resources Control Board.
18. To qualify for a NONA for a waiver of coverage under the Industrial General Permit, the proponent needs to provide appropriate evidence to substantiate that all storm water runoff is retained on-site. Appropriate evidence can be a site plan that is stamped and signed by a California registered civil engineer or certified engineering geologist.
19. To ensure that waste constituents from the receiving, processing, and composting areas are not concentrating in the facility's storm water retention/percolation basin at concentrations that could percolate to and degrade groundwater, the proponent needs to propose a sampling plan for the storm water runoff within the retention/percolation basin.
20. Storm water runoff accumulated within the retention/percolation basin needs to be sampled at least annually and preferably at the end of the rainy season and the samples analyzed for general minerals.
21. If waste constituent concentrations in the facility's storm water retention/percolation basin are determined to pose a threat groundwater quality, the proponent will need to submit a report of waste discharge to the Central Valley Water Board.

Mitigation Measures

22. **Mitigation Measure 3.3-1 (Air Quality):** The applicant shall not allow green waste brought to the project site for humus and boiler fuel production to remain onsite for more than two days without it being composted.
23. **Mitigation Measure 3.3-2 (Air Quality):** The applicant shall submit all necessary permit applications to the San Joaquin Valley Air Pollution Control District (SJVAPCD) within 30 days of any County approvals being issued for this project and demonstrate ongoing compliance with SJVAPCD permitting requirements to the County.
24. **Mitigation Measure 3.3-3 (Air Quality):** No internal combustion engines used to power any equipment or vehicles located on the project site shall be left to 'idle' without use for more than 10 minutes and any exhaust emission control equipment installed on equipment or vehicles used on the project site shall be maintained in good condition.
25. **Mitigation Measure 3.4-1 (Biological Resources):** The applicant shall comply with all permit conditions for Permit No.'s QC 1190 and QC 1101. It is the responsibility of the applicant to have a valid permit on hand at all times material that is potentially contaminated with LBAM and SOD is being received and/or processed. Compliance with these permit conditions will ensure the prevention of further spreading of LBAM and SOD into areas where it is not yet known to occur.
26. **Mitigation Measure 3.5-1 (Cultural Resources):** In the event presently unknown archaeological or historical resources are discovered during future on site construction activities, all work shall cease until a resources protection plan conforming to CEQA Section 15064.5 is prepared by a qualified archeologist and approved by the County of Merced Community Development Director or authorized representative. Project work may resume in compliance with such plan. If human remains are encountered, the County Coroner shall be contracted immediately and the provisions of State Law carried out.
27. **Mitigation Measure 3.7-1 (Hazards/Hazardous Materials):** Within 120 days of Conditional Use Permit approval, the applicants shall install fire fighting facilities on the project site that are consistent with the requirements of the Merced County Fire Department. These shall include a water storage tank with a minimum capacity of 90,000 gallons and fire hydrants within 400 feet of each building, as measured by drivable access. Fire hydrants shall also be located in the waste storage and composting area(s) of the site, with the location of each hydrant being approved by Fire Marshall staff.
28. **Mitigation Measure 3.7-2 (Hazards/Hazardous Materials):** No material storage or composting piles (windrows) shall be located less than 30 feet from the external property lines of the ColorScape II site.
29. **Mitigation Measure 3.7-3 (Hazards/Hazardous Materials):** All Physical Contaminants and refuse removed from feedstock, compost, or chipped and ground material shall be removed from the site within 7 days and transported to an appropriate facility. Until the materials are removed from the site they

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shall be stored in a manner approved by the LEA and/or the Merced County Fire Department.

30. **Mitigation Measure 3.7-4 (Hazards/Hazardous Materials):** The applicant shall comply with all standards set forth in California Code of Regulations (Title 14) with regards to composting and green waste facilities.
31. **Mitigation Measure 3.7-5 (Hazards/Hazardous Materials):** Flies shall be controlled by topical spraying of essential oil neutralizers and organic pesticides. A Vector Control Plan shall be submitted Merced County Department of Environmental Health. At a minimum the plan shall include information regarding how often the project site will be checked for vectors, frequency of cleaning feeding areas, a description of types of vector control that will be utilized (biological, chemical or cultural), other information needed to prevent vector problems and any additional information required by the Merced County Department of Environmental Health.
32. **Mitigation Measure 3.7-6 (Hazards/Hazardous Materials):** Upon request, Colorscape shall provide the County with current proof of compliance with State of California and Alameda County permit conditions for the importation of green waste from Light Brown Apple Moth (LBAM) and SOD (Sudden Oak Death) impacted areas.
33. **Mitigation Measure 3.8-1 (Hydrology/Water Quality):** The applicant shall implement the following stormwater control measures for the Colorscape project site:

Within 120 days of Conditional Use Permit approval, the applicant shall develop, have approved and construct a storm water management system that will meet Merced County and CVRWQCB standards to prevent on-site stormwater runoff contaminating groundwater or entering the El Nido Canal.

Within 10 days of Conditional Use Permit approval, the applicant shall install and maintain temporary on-site stormwater management Best Management Practices approved by the County to provide needed water quality protections during design and construction of the permanent on-site stormwater management system.
34. **Mitigation Measure 3.8-2 (Hydrology/Water Quality):** The applicant shall develop operational procedures that include minimizing the amount of water applied to the windrows to reduce or eliminate standing water on the pad. The conditions of all surfaces in the receiving, processing, and composting areas shall be inspected on an annual basis to eliminate conditions that would lead to ponding of water or infiltration into groundwater.
35. **Mitigation Measure 3.8-3 (Hydrology/Water Quality):** The applicant shall comply with all standards set forth in California Code of Regulations (Title 14 and Title 27) with regards to composting and green waste facilities that protect ground water. Additionally the applicant shall ensure that leachate is controlled to prevent contact with the public.
36. **Mitigation Measure 3.11-1 (Noise):** All operational equipment shall be kept in good working order and fitted with factory equipped mufflers that achieve conformance with applicable state noise generation standards for that equipment type.

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37. **Mitigation Measure 3.15-1 (Transportation/Traffic):** The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to determine the potential impact that the project will have on Merced County roadways. This evaluation should take into consideration the truck traffic existing and generated from the project, the truck routes, truck types and weights, and shall calculate corresponding Traffic Indices for those routes most impacted. Corings of the structural sections of the roadways along the truck routes shall be taken, and R-Value analyses performed of the subgrade, which together shall be used to evaluate the structural integrity of each roadway. For any roadway whose service life is determined to be significantly reduced by the project, the applicant shall either provide improvements to the roadway commensurate with the impact, or applicant shall pay a corresponding contribution to the Merced County Road Fund to offset the impact cost; or

In lieu of performing a roadway impact evaluation, the applicant may enter into a Roadway Impact Agreement with Merced County, and pay a prescribed Roadway Impact Fee. The Roadway Impact Agreement will address the obligations of the applicant for mitigating the project's impact, and shall be effective for the term of the project. The applicant shall keep accurate records of all of the loaded trucks that exit the project site; and, at the end of each year, the applicant shall submit said records to the County, along with payment of an impact fee to the Merced County Road Fund corresponding to \$2.50 for every loaded truck that exited the site (empty trucks will not be counted) during the past year.

- B. CONDITIONAL USE APPLICATION No. CUP10-001 - Brian Luis -** To bring into conformance an existing dairy with a maximum of 2,650 cows. The project site is located on the south side of Charleston Road, .5 miles west of Mercey Springs Road in the Los Banos area. The project site is designated Agricultural in the General Plan and zoned A-1 (General Agricultural). **DG**

Recommendation: The actions requested are to:

- 1) Adopt the Negative Declaration in conformance with CEQA Guidelines; and
- 2) Approve Conditional Use Permit No. CUP10-001 based on the project findings, and conditions of approval presented in the Staff Report.

Planner David Gilbert requested that this project be continued indefinitely. Environmental Health needs to do their inspections and the rain is holding them up. San Joaquin Valley Unified Air Pollution Control District also submitted an email saying they did a start up inspection, but due to water and rain, the property site is flooded. This project will be re-advertised and re-notified when a meeting date is determined.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONTINUED CONDITIONAL USE PERMIT No. CUP10-001 INDEFINITELY.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Bill Nicholson, Assistant Development Services Director, said the General Plan Focus Groups are now complete and attendance was good. The comments from the Focus Group meetings will be presented

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at the Joint Study Session between the Board of Supervisors and the Planning Commission on May 3rd so the Planning Department can get feedback from them.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

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