

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF MAY 11, 2011**

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The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of May 11, 2011, are available online at [www.co.merced.ca.us/planning/plancomarchive.html](http://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 9:02 a.m., on May 11, 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  
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 5- 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF APRIL 27, 2011.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

**A. GENERAL PLAN AMENDMENT No. GPA10-002 AND ZONE CHANGE No. ZC10-002 - Merced County** - To amend the General Plan from Agricultural to Low Density Residential with a concurrent rezoning from General Agricultural (A-1) to Single-Family Residential (R-1) within the Dos Palos Specific Urban Development Plan (SUDP). The project site consists of 14 parcels of 12.46 acres in size with Assessor Parcel Numbers 014-030-016 through 014-030-030 (excluding 014-030-024). The project is located on the north side of Christian Avenue between Lexington Avenue and Reynolds Avenue in the Dos Palos area. **JF**

**Recommendation:** The actions requested are to:

- 1) Recommend the Board of Supervisors determine the project is exempt from CEQA review under Section 15183, Projects Consistent with a Community Plan or Zoning, of the CEQA Guidelines; and
- 2) Recommend the Board of Supervisors approve the project based on the project findings, and conditions of approval presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated May 11, 2010.

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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.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS GENERAL PLAN AMENDMENT No. GPA10-002 AND ZONE CHANGE No. ZC10-002 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 MAY 11, 2011, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES GENERAL PLAN AMENDMENT No. GPA10-002 AND ZONE CHANGE No. ZC10-002.**

- B. ADMINISTRATIVE APPLICATION No. AA10-037 – Yasir Khanshali - To reconstruct a nonconforming convenience store and gas station. The project site is located at the northeast corner of Lander Avenue and Bradbury Road in the Hilmar area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). JF**

**Recommendation:** The actions requested are to:

- 1) Determine that the application is exempt from CEQA review under Section 15302 of the CEQA Guidelines, and;
- 2) Approve, Disapprove, or Modify Administrative Application No. AA10-037 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 May 11, 2010.

Commissioner Thompson questioned the architectural guidelines of Hilmar.

Planner Jeff Fugelsang said this project is outside of the MAC boundary for Hilmar and is only subject to the County's regulations.

Commissioner Thompson questioned the condition on the above ground storage tanks. He asked if this is an above ground situation.

Planner Jeff Fugelsang said the fuel storage tanks were underground but will be above ground if this application is approved.

Commissioner Mobley questioned the number of gas pumps on the property site.

Planner Jeff Fugelsang read Section III. C. of the Staff Report that says, "The enlargement and replacement of a single-lined underground fuel storage tank with a double-lined fuel storage tank. The enlargement shall be limited to a one hundred percent increase in tank size. The enlargement may exceed a maximum of ten thousand gallons holding capacity if an administrative permit is obtained. This does not permit additional dispensing facilities, or any increase in the number of petroleum products dispensed by the existing underground tanks."

The applicant has requested an onsite fuel storage capacity of 20,000 gallons of gasoline and 10,000 gallons of diesel fuel in two above ground storage tanks. The previous facility had a total capacity of 13,000 gallons of gasoline and 24,000 gallons of diesel fuel. Therefore, the request complies with the 100 percent increase allowed by the Code, for fuel storage but not dispensing.

County Counsel Marianne Greene said the Zoning Code would have to be changed. The Board of Supervisors would have to revisit that restriction.

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William Nicholson, Assistant Development Services Director, said this is a non-conforming use, and commercial uses in agricultural areas is being addressed in the pending General Plan updates.

The public hearing opened at 9:28 a.m.

Ted Bramble, Commercial Architecture in Modesto and representing the applicant, said he has no problem with any information staff has presented. They are stuck on counting hoses rather than dispensers. There were 3 dispensers previously and there are 3 dispensers being proposed now. There is a possibility of 6 hoses with their 3 dispensers, but they are not proposing anymore dispensing stations. Fuel capacity of not exceeding what they are allowed to do on this site. They are proposing above ground tanks. They are fully walled, contained, bullet proof tanks. They are asking for a reinstatement of uses that have been there for the last 40 years. They were shut down because of the EPA requirements. This project will provide 4-6 jobs.

The public hearing closed at 9:34 a.m.

Commissioner Mobley said this seems a convenience deal and piping is the issue. The County is concerned with safety and possibly fighting a fire. This project seems to work, the modern technique is two hoses per pump versus one.

Commissioner Thompson says this project fits the Zoning Code. The issue that was raised is the number of hoses and dispensers that deals with traffic impacts. The site plan addresses circulation and the number of parking spaces within the property site. Fire suppression doesn't look like it would be an issue.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION EXEMPTS ADMINISTRATIVE APPLICATION No. AA10-037 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 MAY 11, 2011, AND MAKES THE 17 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES ADMINISTRATIVE APPLICATION No. AA10-037 SUBJECT TO THE 28 CONDITIONS SET FORTH IN THE STAFF REPORT WITH MODIFICATION TO CONDITION 1 BY REMOVING THE LIMITATION FOR ONLY ONE DISPENSER AS FOLLOWS:**

**Conditions:**

Planning & Community Development Department

1. Administrative Permit No. AA10-037 is granted to reconstruct a nonconforming convenience store and a gas station on a 9.97 acre parcel in the A-1 (General Agricultural) zone, in accordance with the approved Operational Statement.
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 Planning Director upon submittal of an acceptable application.
3. The business shall operate between the hours of 5:00 am to 11:00 pm, daily.
4. The property shall comply with the landscaping and irrigation requirements in Section 18.38.040 of the Merced County Zoning Code.
5. The applicant shall comply with all of the applicable standard conditions of approval listed in the Planning Commission Resolution No 97-1.

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6. A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared by the project applicant and submitted for review and approval by both the County and Regional Water Quality Control District and a New Construction Stormwater Permit shall be obtained (Order No. 2009-0009-DWQ). The applicant or person responsible shall meet Merced County construction site requirements regarding the control of surface water, erosion, and runoff. Runoff created at the project site shall meet the following minimum requirements:
  - (a) Sediments generated on the project site shall be retained using adequate treatment control or structural Best Management Practices (BMPs);
  - (b) Construction-related materials, wastes, spill or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters or adjacent properties by wind or run-off;
  - (c) Non-storm water run-off from equipment and vehicle washing and any other activity shall be contained at the site; and
  - (d) Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs (as approved in Regional Water Quality Control Board Resolution Number 99-03) such as limiting grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.
7. For the purpose of conditions monitoring, an inspection fee in the amount of **\$648.00** 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:**

Yasir Khanshali 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 Yasir Khanshali. Yasir Khanshali'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 Yasir Khanshali, 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. Yasir Khanshali 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 Administrative Permit No. AA10-037 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. Upon completion of the underground storage tank cleanup, the applicant must have the domestic well destroyed before or at the same time as destruction of the monitoring wells. MCDEH will not issue a food facility permit for the proposed convenience store until the abandoned domestic well is destroyed.
12. Permits must be obtained from MCDEH for septic tank destructions for tanks at the main house, mobile home, and the old store.
13. If a food facility makes drinking water available to 25 or more people for 60 days or more per year, then the facility must have a permit to operate a public water system.  
  
If a food facility does not make drinking water available, then the facility is exempt from public water system regulations, but under Cal-code the facility is still required to meet certain water quantity and quality standards. The applicant must submit the paperwork necessary to operate the public water system under an exemption to public water system regulations.
14. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. ft. 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 a HMBP be filed.
15. A permit for above ground fuel storage tanks must be obtained from MCDEH.
16. For proposed retail food facilities, a plan review application form (attached), one complete set of building plans, one set of equipment specification sheets, and plan review fee payment must be submitted to MCDEH for review and approval prior to issuance of a building permit.

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### Department of Public Works/ Road Division

17. Applicant shall construct a Type 2 Commercial driveway approach at both the Bradbury Road and Lander Avenue access to the project.
18. Applicant shall install and maintain pole-mounted street lights at each driveway access.
19. Applicant shall construct a stormwater drainage system for the project to contain all stormwater runoff onsite. The design for said stormwater system shall be submitted to the DPW for review and approval.

### San Joaquin Valley Air Pollution Control District

20. The project may be subject to the following District Rules and Regulations: Regulation VII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).
21. Since existing buildings will be demolished and removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).

### Turlock Irrigation District

22. An irrigation pipeline belonging to Improvement District 99B, the Jaderberg, runs from east to west along the north right-of-way of Bradbury Road. This line was upgraded to current District Standards by CalTrans during the Lander Avenue/Bradbury Road intersection improvements in 2001. Repair of any damage to the pipeline or appurtenances as a result of construction activities will be the responsibility of the contractor.
23. Developed property adjoining irrigated ground must also be graded so that finished grading elevations are at least 6 inches higher than irrigated ground. A protective berm must be installed to prevent irrigation water from reaching non-irrigated properties.
24. Electric utility maps indicate existing 12KV overhead facilities fronting the proposed project along Bradbury Road. The owner/developer must apply for a facility change for any pole or electrical facility relocation. Facility charges are performed at the developer's expense.

### Caltrans

25. The proposed driveway on SR 165 should be a right-in and right-out access only. Allowing a left turn from the driveway on SR 165 onto southbound SR 165 will conflict with traffic movements at the SR 165/Bradbury Road intersection
26. The applicant shall provide a diagram showing the fuel truck turning movements at the proposed facility.
27. If the proposed facility is to be graded, it must be determined if grading would divert drainage from this proposed project and result in increased runoff to existing State facilities. This will not be allowed. A hydrology and hydraulic report is required to determine if grading would divert drainage from this proposed project and cause an increase in runoff to existing State facilities. The report must include hydraulic calculations for both existing and proposed conditions, using 25-year storm events at the project site location. The calculations should identify the affected drainage inlets, the amount of flow being intercepted and spread width calculations.

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28. The applicant must proceed with an Encroachment Permit application prior to any commencement of work within the State Right-of-Way (ROW) and upon any access (driveway) point onto the State Highway System (SHS). All work performed within/adjacent to the State ROW will be subject to Caltrans Highway Design Manual (HDM) and Standards and Specifications.

**VI. COMMISSION ACTION ITEM (S)**

None

**VII. DIRECTOR'S REPORT**

William Nicholson, Assistant Development Services Director, said comments were taken at the Joint Study Session on May 3<sup>rd</sup> and will go to the Planning Commission for recommendations on June 22<sup>nd</sup> and will be scheduled at the Board Agenda for July 12<sup>th</sup>. The information for the Commissioners should be received ten days before. The documents will be posted on the County website, mailed out to the Planning Commissioners and made available to the public.

Deputy County Counsel Marianne Greene asked for additional time if they think the document will have any legal issues.

**VIII. COMMISSIONERS COMMENTS**

Commissioner Erreca said there is a County Planning Commissioners conference on May 21<sup>st</sup> in Clarksburg, CA.

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:45 a.m.