

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF NOVEMBER 16, 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 November 16, 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 9:00 a.m., on November 16, 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  
  David Gilbert, Senior Planner

Legal Staff:                         Marianne Greene, Deputy County Counsel

Commissioners Absent:           None

**III. APPROVAL OF MINUTES**

**MOTION: M/S MOBLEY – ERRECA AND CARRIED BY A VOTE OF 5 – 0, THE COMMISSION APPROVES THE MINUTES FROM THE NOVEMBER 2, 2011 MEETING.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

**A.       CONDITIONAL USE PERMIT APPLICATION No. CUP10-007 - John Pires - To expand an existing dairy from 4,123 cows to 6,050 cows and construct 120,000 square feet of shade structures on 10 parcels totaling 526 acres. The project site is located on the east side of Kniebes Road, 850 feet north of Highway 140 in the Gustine area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **Continued from the November 2, 2011 hearing. DG****

**Recommendation:** The requested actions 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. CUP10-007 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 November 16, 2011.

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

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No one spoke in favor or opposition to this application.

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

**MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 – 0, (COMMISSIONER FORD RECUSED HIMSELF FROM DISCUSSION AND THE VOTE) THE PLANNING COMMISSION CERTIFIES AND ENVIRONMENTAL IMPACT REPORT AND ADOPTS THE STATEMENT OF OVERRIDING CONSIDERATIONS FOR CONDITIONAL USE PERMIT APPLICATION No. CUP10-007.**

**MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, (COMMISSIONER FORD RECUSED HIMSELF FROM DISCUSSION AND THE VOTE) THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED NOVEMBER 16, 2011, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT APPLICATION No. CUP10-007 SUBJECT TO THE 22 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Planning and Community Development Conditions:

1. Conditional Use Permit No. CUP10-007 is granted to expand the existing John B. Pires dairy from 4,123 cows (2,369 milk cows & 1,754 support stock) to 6,050 cows (3,200 milk cows and 2,850 support stock) and construct 120,000 square feet of shade structures on 12 acres for a total of 65 acres of dairy facilities, on 10 parcels totaling 526 acres.
2. The John B. Pires 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 CEQA Findings of Fact and Statement of Overriding Considerations and Mitigation Monitoring Program 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.
7. The applicant shall obtain an Additional Dwelling Occupancy Monitoring Permit (ADOMP) for those residences exceeding one (1) per parcel.

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8. Prior to submittal of a building permit all CEQA Mitigation Measures for Biology, Air Quality, Hazards, Greenhouse Gas Emissions & Energy, and Water Quality and Term and Conditions 18, 19, and 20, shall be placed on the construction plans and stamped by a qualified engineer or architect prior to being submitted to the County for review.

County Counsel

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

John B. & Cecilia Pires, Trustees & the Pires Dairy Farms, Inc. has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of Applicant.

John B. Cecilia Pires, Trustees & the Pires Dairy Farms, Inc. liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Applicant, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. Applicant will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following Project approval, modification, or denial.

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

Public Works/Roads Division

10. The applicant shall improve the existing access to their hay storage area, just south of the dairy barns, with a paved approach onto Kniebes Road, in accordance with Chapter 7 of the Merced County Department of Public Works Improvement Standards and Specifications. Applicant shall be required to obtain an Encroachment Permit from the County to perform said driveway improvements.

11. The applicant shall install a 150 watt; pole mounted street light on the east side of Kniebes Road at each of the two driveways for the milk barn.

Merced County Division of Environmental Health

12. The existing septic tanks and leach lines are to be unpaved, contain no structures, and be protected from compaction (vehicular traffic, etc.). Leach lines are not to be located in areas subject to flood irrigation. The leach line replacement area (100% of required existing leach field) is to be unpaved and contain no structures.

The leach lines for two of the three employees' houses on the west side of Kniebes Road are located in the flood irrigated field. Provide a barrier around the leach lines to keep irrigation water at least seven feet away from the lines. Vehicles, including farm equipment should not be driven across or parked on the leach lines.

The leach lines for the middle of the three employee houses on the west side of Kniebes Road are located in the unpaved driveway. Provide a barrier around the leach lines to keep vehicles off the leach lines.

13. The site plan shows a number of dwellings associated with the dairy. Provide to MCDEH a schematic showing all wells (not irrigation) that provide potable water to family and employee residences. Label each well with a unique identifier (such as a number or letter). Show the location and address of each residence. Indicate the number of year-round residents in each. Indicate which wells provide water to each residence
14. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. ft., or 500 pounds) shall require that a Hazardous Materials 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. The HMBP shall be submitted electronically.
15. The dairy operation shall comply with the Merced County Animal Confinement Ordinance as follows:
  - Salt and other mineral feed supplements shall be limited to that required to maintain animal health and optimum production according to the National Research Council standards.
  - Feed management/diet optimization plan.
  - The applicant shall provide a site plan demonstrating that all off-site residences are at least 1,000 feet from the active dairy facility.
  - The applicant shall provide a vector (fly and mosquito) and odor control program to the Division to aid in evaluating manure storage practices.
  - The California Regional Water Quality Control Board requires submittal of a Nutrient Management Plan (NMP) and a separate Waste Management Plan (WMP) for all dairies. CRWQCB requires submittal of a nutrient management report by July 1 of each year.

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- An updated CNMP shall be submitted to Merced County whenever a dairy expansion occurs
- The applicant shall submit a signed copy of the most recent NMP and the most recent WMP reflecting the increase in facility footprint and number of cows.

### Merced County Fire Department

16. An approved water supply capable of supplying the required fire flow for fire protection shall be provided on the project site.
17. If there are existing aboveground fuel tanks on site, they shall be permitted for their use, including all applicable hazardous material management plans shall be up to date.

### Native American Heritage Commission

18. An on-call archaeologist and cultural resources specialist (“ARC”) shall be identified prior to the start of construction and shall be available during all ground-disturbing activities. This contact information and the content of terms and conditions 18, 19, and 20 shall be incorporated into the pre-construction Worker Awareness Program found at Mitigation Measure BIO-2c in the FEIR, Table 2-1, Summary of Impacts and Mitigation Measures.
19. Should unrecorded, subterranean, cultural or paleontological resources, that are not human remains, be encountered during ground-disturbing activities:
  - a. All construction and excavation work shall be immediately halted.
  - b. The project engineer shall divert ground-disturbing activities in the area of discovery, take photographs of the identified resource in place, and promptly notify the ARC and the Merced County Planning and Community Development Department.
  - c. The ARC shall assess the resource, determine its significance, and prepare a written report, indicating whether additional mitigation is required. This report shall be forwarded to the:
    - i. Merced County Planning and Community Development Department for review and development of a response plan.
    - ii. Central California Information Center at the California State University, Stanislaus for confirmation and recordation.
20. If human remains are uncovered during ground-disturbing activities, the project engineer shall immediately halt ground disturbing activities excavation in the area of the burial and notify the Merced County Coroner and the ARC to determine the nature of the remains.
  - a. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands per Health and Safety Code section 7050.5(b)).
  - b. If the coroner determines that the remains are those of a Native American, he or she must contact the Native American Heritage Commission (NAHC) by phone within 24 hours of making that determination per Health and Safety Code section 7050.5(c).
  - c. Following the coroner’s findings, the property owner, contractor or project proponent, an archaeologist, and the NAHC-designated Most Likely Descendent (MLD) shall determine the ultimate treatment and

disposition of the remains and take appropriate steps to ensure that additional human interments are not disturbed. The responsibilities for acting on notification of a discovery of Native American human remains shall be followed per California Public Resources Code section 5097.98.

San Joaquin Valley Air Pollution Control Board

21. The applicant shall comply with all requirements and obtain the following permits prior to issuance of a building permit:
  1. Modification of the Conservation Management Plan
  2. Authority to Construct Permit to Operate
22. Construction equipment shall be powered by engines that meet at minimum, Tier II emission standards (4.8 g/hp-hr NOx) as set forth in Section 2423 of Title 13 of the California Code of Regulations, and Part 89 of the Title 40 Code of Federal Regulations.

Final Environmental Impact Report Mitigation Measures

The following is a comprehensive list of CEQA Mitigation Measures that are contained in both the CEQA Findings of Fact and Statement of Overriding Considerations (SOC) and Mitigation Monitoring Program (MMP) that are applicable to the John B. Pires Dairy expansion project. The applicant shall be responsible to comply with all Mitigation Measures contained in the foregoing mentioned documents:

Air Quality

- AQ-3 – ROG Emissions, MMP, page 2-1
- AQ-6a – Odor Control Plan, MMP, page 2-1
- AQ-6b – Implement Land Use Control Measures, MMP, page 2-3
- AQ-6c – Implement Nuisance Control Measures, MMP, page 2-3

Biology

- BIO-1a – USFWS & CDFG Prior Approval, MMP, page 2-3
- BIO-1b – Habitat Conservation, MMP, page 2-3
- BIO-2a – Swainson's hawk Mitigation, MMP, page 2-3
- BIO-2b – Burrowing Owl Mitigation, MMP, page 2-4
- BIO-2c – Worker Awareness Program (Environmental Education), MMP, page 2-4
- BIO-4a – Implement Mitigation Measure BIO-1a, MMP, page 2-4
- BIO-4b – PCN Guidelines to Protect SJ kit fox and American Badger, MMP, page 2-4
- BIO-5a – Implement Mitigation Measures Per Approvals at BIO-1a, MMP, page 2-6
- BIO-5b – Preconstruction Surveys for Bird Species, MMP, page -6
- BIO-5c – Shield Lighting From Sensitive Areas, MMP, page 2-6

Greenhouse Gas Emissions & Energy

- GHG-2 – Energy Audit, MMP, page 2-7

Hazards

- HAZ-1 – Preparation of a Vector Control Plan, MMP, page 2-7
- HAZ-1b – Best Management Practices for Fly Problems, MMP, page 2-7

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- HAZ-1c – Planting of Trees to Intercept Flies, MMP, page 2-8
- HAZ-2a – Implementation of the Vector Control Plan, MMP, page 2-8
- HAZ-2b – Mosquitoes, MMP, page 2-8
- HAZ-2c – Mosquito Abatement District Excess Treatment Costs, MMP, page 2-8
- HAZ-3 – Manure Exportation, MMP, page 2-8

Hydrology & Water Quality

- HYD-1 – Construction General Permit Order – SWRCB, MMP, page 2-9
- HYD-3a – Water Discharge Report Requirements, MMP, page 2-9
- HYD-3b – Agronomic Rates for Best Management Farming Practices, MMP, page 2-9
- HYD-3c – Best Practical Treatment or Control Evaluation, MMP, page 2-10
- HYD-3d – Salinity Report, MMP, page 2-10
- HYD-3e – Groundwater Monitoring Wells, MMP, page 2-10
- HYD-3f – Well Monitoring Schedule, MMP, page 2-11
- HYD-3g – Groundwater Contamination, MMP, page 2-11
- HYD-3h – Planning & Community Development Inspection, MMP, page 2-11
- HYD-7 – Compliance with Merced County Well Ordinance, MMP, page 2-11

Land Use Compatibility

- LU-2a – Planting of Trees to Intercept Flies (MM HAZ-1c), MMP, page 2-12
- LU-2b – Implement Odor Control Measures (MM AQ-6a), MMP, page 2-12
- LU-2c – Implement Nuisance Control Measures (All Hazard MMs), MMP, page 2-12

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

None

**VII. DIRECTOR'S REPORT**

Bill Nicholson, Assistant Development Services Director, said the General Plan Update Environmental Impact Report will be ready in 2012.

The Le Grand & Winton Community Plan Workshops are complete for 2011 and will be on going until the Community Plan updates are finalized and adopted.

**VIII. COMMISSIONERS COMMENTS**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:17 a.m.