

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF DECEMBER 21, 2011

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of December 21, 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 December 21, 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 Greg Thompson

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

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Rich Ford

III. APPROVAL OF MINUTES

MOTION: M/S MOBLEY – ERRECA, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION APPROVED THE MINUTES FROM THE NOVEMBER 16, 2011 HEARING.

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. MAJOR MODIFICATION No. MM11-018 to CONDITIONAL USE PERMIT No. CUP2714 – Gallo Winery – The project involves a three phase major expansion program, adding buildings, equipment and storage tanks at an existing winery to increase capacity by 17% to 628,000 tons per year. The project site is located at the northeast corner of River Road and Griffith Avenue in the Livingston area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). **JH**

Recommendation: The requested actions are to:

- 1) Adopt the CEQA Initial Study and Mitigated Negative Declaration prepared for Major Modification No. MM11-018 to Conditional Use Permit CUP2714.
- 2) Approve Major Modification No. MM11-018 based upon the project findings and subject to the conditions of approval recommended in the Staff Report.

Planner James Holland presented the Staff Report and recommendations of approval dated December 21, 2011.

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

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Dan Slagel, Engineering Department for the Gallo Winery, thanked Planner James Holland and everyone for their help with this project. He said Gallo Winery was established in 1974. There has been an increase in productivity. Gallo responds to the changing market with new equipment, more layout and new processing approaches. Gallo accepts the mitigation and comments that were received. They met with several neighbors to address any concerns they have had. This expansion will support 628,000 tons of grapes a year. Gallo supports agriculture in Merced County and Mr. Slagel asked for approval of the modification to the application.

Steve Mohler, neighbor, said he talked to Gallo representatives about his concerns with traffic, noise and waste. He said there has been talk about resurfacing River Road near the property. The road is very narrow and the big trucks do not fit on the road. There needs to be a more gentle curve so the cars can pass more safely and road widening needs to take place. There is also a sump hole and there is a flooding problem when it rains. This issue has not been addressed. He handed out pictures to the Commissioners showing the condition of the roads nearby the property.

Paul Fillebrown, Interim Planning Director, said there has been discussion about the condition of River Road and there are plans to add a width of 1 to 2 feet to each side. A new road can't be built but the widening will take place the next fiscal year. They are working to improve that road.

Doug Wells, neighbor on River Road, said that Gallo is a good neighbor. He has issues with County agencies not doing their jobs which include the Road Division and Water Quality Control Board. He feels the initial study is not professional. He said there is more mitigation on an Oak tree than for the safety of the neighbors in the area. There are trucks going by constantly at night time and the road conditions are not able to handle the truck traffic. He said he received a letter saying that he would be notified of anymore changes to this project, but he hasn't received anything. He showed a letter from former Planning Director Robert Smith from 2000. When he called Staff about the project he was referred to Gallo representatives but he thinks County staff should have addressed his complaints.

The public hearing closed at 9:41 a.m.

Commissioner Thompson asked what the schedule is for the roadway maintenance.

Mr. Fillebrown said the next Fiscal year, the funding should be approved by the Board of Supervisors to do extensive straightening, resurfacing and widening of River Road.

Commissioner Thompson asked how far the resurfacing will extend.

Dana Hertfelder, Public Works/Road Division Director, said a half mile section with two 90 degree curves, minor widening and some shoulder work will be done. A right of way is also needed so funding from Gallo and Merced County is needed.

Commissioner Mobley agreed that River Road is a problem and there is not a lot of funding. Safety is a concern.

Mr. Fillebrown said there is not a lot of history with accidents along River Road. The road is not great, but it is above average of the other roads out there.

Commissioner Mobley added that Gallo employees driving dangerously could result in lawsuits. Gallo needs to be receptive to safe driving and following speed limits.

Planner James Holland addressed Mr. Wells concern with not being notified of this project and said that 300 ft notices are mailed out to adjacent property owners.

Bill Nicholson, Assistant Development Services Director also added that the letter provided by the past County Director Robert Smith was not documented in the original file, and since

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2000 the Planning Department now has a (GIS) Geographical Information System that tracks the surrounding property owners to be notified of any projects with Merced County.

Commissioner Mobley suggested adding Mr. Wells name to GIS for any future modifications to this application. He also doesn't understand why there is so much mitigation for one tree on the property.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION FOR MAJOR MODIFICATION No. MM11-018 to CONDITIONAL USE PERMIT No. CUP2714 WITH 7 MITIGATION MEASURES.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED DECEMBER 21, 2011, AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES MAJOR MODIFICATION No. MM11-018 TO CONDITIONAL USE PERMIT No. CUP2714 SUBJECT TO THE 22 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Major Modification Application No. MM11-018 is granted for expansion of the E & J Gallo Livingston Winery, allowing an increase in processing capacity from 538,000 to 628,000 tons of grapes per year. The expansion area is 33 acres of agricultural land located immediately adjacent to (east) of the existing winery.
2. The project shall be operated in a manner that is consistent with the approved Site Plan, the applicant's Operational Statement, and project description provided in the CEQA Initial Study. Minor Modifications may be approved by the Planning Director or his designee upon submittal of an acceptable application.
3. For the purpose of condition monitoring, an inspection fee in the amount of **\$486.00** 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.
4. The applicant shall provide no less than 32 additional on-site parking spaces to support the facility expansion. At least one of these spaces shall be sized, striped, and signed as a handicapped parking space (Zoning Code, Section 18.40.03.E). The new parking area identified on the approved site plan shall be improved to the level specified by Improvement Standards A, C, D and E in Section 18.40.4 of the Zoning Code.
5. The design, site clearing and construction of the project shall be undertaken in accordance with applicable standards provided in Section 18.41 of the Zoning Code (Performance Standards).
6. Any proposals to add new business signs, or modify existing signs, must meet the sign standards for the A-1 Zone provided in Section 18.42 of the Zoning Code.

7. The text of all CEQA Mitigation Measures required for this permit shall be placed on the cover page of all construction plans.

Department of Public Works Building and Safety Division

8. Building permits must be completed by a licensed engineer or architect and permit applications submitted prior to the start of any work. Four sets of complete construction plans, including electrical, mechanical, plumbing, and specifications for tanks with engineered foundations, structural analysis, and three sets of calculations, should be provided for any permit submittal.

Department of Public Health, Division of Environmental Health

9. Additions to the on-site refrigerant system may require changes to the Risk Management Plan for hazardous material, under California Accidental Release Program regulations. The applicant shall contact Kerri Gibbons at the Environmental Health Division to initiate this process.
10. The existing Hazardous Materials Business Plan (HMBP) produced for the E & J Gallo Livingston Winery shall be updated to reflect changes in the winery footprint and the amounts of hazardous materials used. New and updated HMBP's must be submitted electronically to the Merced County Division of Environmental Health. The applicant should visit <http://cupa.co.merced.ca.us> for more information.
11. The E & J Gallo Livingston Winery operates a Nontransient Noncommunity Public Water System. The company shall apply for a Public Water System Permit Amendment to allow for expansion of the distribution system.

Department of Public Works Road Division

12. Applicant shall pay the County of Merced, Department of Public Works, Road Division an additional \$50,000, which shall be combined with the \$150,000 previously paid as was required for approval of Modification No. 00001, and shall be used by DPW to resurface a 1 ½ mile segment of River Road/Vinewood Avenue near the project winery. The specific details of said compensation and work shall be more clearly detailed by a consummated revision of the existing Roadway Impact Agreement, DPW Contract No. 850-025.

San Joaquin Valley Air Pollution Control District

13. The applicant shall consult with San Joaquin Valley Air Pollution Control District to determine the rules and regulations promulgated by the district that are applicable to this project. The applicant shall work with the SJVAPCD as necessary to provide for project compliance with these requirements.

Regional Water Quality Control Board

14. Prior to the commencement of on-site construction activities, the applicant shall begin consultation with the Regional Water Quality Control Board (Central Valley Region) to secure agreement on the timing and scope for

production of a new Report of Waste Discharge (RWD) for the Livingston Winery.

Mitigation Measures

15. **MM AIR-1: Prepare and implement a dust control plan.**

To control the generation of construction-related PM10 emissions, the County will require construction contractors to prepare a dust control plan and submit it to the SJVAPCD at least 48 hours before any earthmoving or construction activities. As previously indicated, implementation of a dust control plan would satisfy the requirements of Regulation VIII (Siong pers. comm.). Potential measures that might be included in the dust control plan could include,

but are not limited to:

- Pre-activity.
 - Pre-water the work site and phase work to reduce the amount of disturbed surface area at any one time.
- Active operations.
 - Apply water to dry areas during leveling, grading, trenching, and earthmoving activities.
 - Construct and maintain wind barriers and apply water or dust suppressants to the disturbed surface areas.
- Inactive operations, including after work hours, weekends, and holidays.
 - Apply water or dust suppressants on disturbed surface areas to form a visible crust, and vehicle access will be restricted to maintain the visible crust.
- Temporary stabilization of areas that remain unused for 7 or more days.
 - Restrict vehicular access and apply and maintain water or dust suppressants on all unvegetated areas.
 - Establish vegetation on all previously disturbed areas.
 - Apply gravel and maintained at all previously disturbed areas.
 - Pave previously disturbed areas.
 - Unpaved access and haul roads, traffic and equipment storage areas.
 - Apply water or dust suppressants to unpaved haul and access roads.
 - Post a speed limit of not more than 15 miles per hour, using signs at each entrance and again every 500 feet.
 - Water or dust suppressants will be applied to vehicle traffic and equipment storage areas.
- Wind events.
 - Water application equipment will apply water to control fugitive dust during wind events, unless unsafe to do so.
 - Outdoor construction activities that disturb the soil will cease whenever visible dust emissions cannot be effectively controlled.
- Outdoor handling of bulk materials.
 - Water or dust suppressants will be applied when handling bulk materials.
 - Wind barriers with less than 50% porosity will be installed and maintained, and water or dust suppressants will be applied.
- Outdoor storage of bulk materials.
 - Water or dust suppressants will be applied to storage piles.

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- Storage piles will be covered with tarps, plastic, or other suitable material and anchored in such a manner that prevents the cover from being removed by wind action.
- Wind barriers with less than 50% porosity will be installed and maintained around the storage piles, and water or dust suppressants will be applied.
- A three-sided structure with less than 50% porosity that is at least as high as the storage piles will be used.
- On-site transporting of bulk materials.
 - Vehicle speed will be limited on the work site.
 - All haul trucks will be loaded such that the freeboard is not less than six inches when transported across any paved public access road.
 - A sufficient amount of water will be applied to the top of the load to limit visible dust emissions.
 - Haul trucks will be covered with a tarp or other suitable cover.
- Off-site transporting of bulk materials.
 - The following practices will be performed:
 - The interior of emptied truck cargo compartments will be cleaned or covered before leaving the site.
 - Spillage or loss of bulk materials from holes or other openings in the cargo compartment's floor, sides, and tailgates will be prevented.
 - Outdoor transport using a chute or conveyor.
 - No open chutes or conveyors will be used.
 - Chutes or conveyors will be fully enclosed.
 - Water spray equipment will be used to sufficiently wet the materials.
 - Transported materials will be washed or screened to remove fines (PM10 or smaller).

16. **MM BIO-1 Conduct Preconstruction surveys for presence of Swainson's hawk nesting habitat.**

To ensure there is no take of any Swainson's hawk that may move in to the area between the time the initial study is completed and the initiation of site clearing and construction activities, a preconstruction survey of land within 0.5 miles of the project site shall be conducted by a qualified biological consultant to determine the presence of nesting Swainson's hawks, or potential Swainson's hawk nests. This survey shall follow the methodology developed by the Swainson's Hawk Technical Advisory Committee (2000) and be conducted no more than 20 days prior to the commencement of any site preparation or construction activity. Due to the project being proposed for construction in three distinct phases, the County may, at its option, require a new survey be performed prior to the commencement of a new construction phase. A copy of each survey shall be provided to the Merced County Planning and Community Development Department no less than 10 days prior to the proposed construction start date. Should a nest be discovered within 0.5 miles of the project site, temporal construction restrictions may be necessary to eliminate the potential for noise disturbance to the nesting hawks. The consultant, who shall consult with appropriate regulatory agencies on possible mitigation, shall base the necessity for restrictions on the location of the nest in relation to construction activities.

17. **MM BIO-2: Replacement of native Valley oak tree.**
To mitigate for the loss of a single Valley oak tree located in the north-central area of the winery expansion site, the applicant shall provide for the planting of a minimum of five (5) replacement Valley oak saplings immediately adjacent to the Merced River corridor in the location identified by Kjeldsen Biological Consulting. The planting shall be made within one year of project approval and follow the guidelines provided by Kjeldsen Biological Consulting. The plantings shall use the largest local native Valley oak specimens reasonably available and the applicant shall provide for the maintenance of the planting site (including replacement of dead or diseased trees) until the mitigation planting is established to the satisfaction of Merced County.

18. **MM CR-1: Stop Work if Buried Cultural Deposits Are Encountered during Construction Activities.**
If buried cultural resources such as chipped or ground stone, historic debris, or building foundations, are inadvertently discovered during ground-disturbing activities, work will stop in that area and within a 100-foot radius of the find until a qualified archaeologist can assess the significance of the find and, if necessary, develop a Response Plan, with appropriate treatment measures, in consultation with the County, the State Historic Preservation Officer (SHPO), and other appropriate agencies. Preservation in place shall be the preferred treatment method per CEQA Guideline sec. 15126.4(b) (avoidance, open space, capping, easement). Data recovery of important information about the resource, research, or other actions determined during consultation, is allowed if it is the only feasible treatment method.

19. **MM-CR-2: Stop Work if Human Remains Are Encountered During Construction Activities.** If human skeletal remains are encountered, ground disturbing activities stop within a 100 foot radius of the discovery. The County Coroner must be contacted immediately and is required to examine the discovery within 48 hours. If the County Coroner determines that the remains are Native American, the Coroner is required to contact the Native American Heritage Commission (NAHC) within 24 hours. A qualified archaeologist (QA) should also be contacted immediately. The Coroner is required to notify and seek out a treatment recommendation of the NAHC-designated Most Likely Descendant (MLD). If the NAHC identifies an MLD, and the MLD makes a recommendation, and the landowner accepts the recommendation, then ground-disturbing activities may resume after the QA verifies and notices the County that the recommendations have been completed. If the NAHC is unable to identify the MLD, or the MLD makes no recommendation, or the landowner rejects the recommendation, and mediation per PRC 5094.98(k) fails, then ground disturbing activities may resume, but only after the QA verifies and notices the County that the landowner has completely reinterred the human remains and items associated with Native American burials with appropriate dignity on the property, and ensures no further disturbance of the site per PRC 5097.98(e) by county recording, open space designation, or a conservation easement.

If the coroner determines that no investigation of the cause of death is required and that the human remains are not Native American, then ground-disturbing activities may resume, after the Coroner informs the County of Merced of such determination. According to state law, six or more human

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burials at one location constitute a cemetery and disturbance of Native American cemeteries is a felony. Refs: *PRC* secs. 21083.2, 5094.98, 5097.5, 5097.9; *H&S* sec. 7050.5, 7052.

20. **MM CC-1: Implement best management practices for GHG missions.**
The project applicant shall implement, to the extent feasible, best management practices outlined below. BMPs include:
- Alternative-fueled (e.g., biodiesel, electric) construction vehicles/equipment of at least 15% of the fleet;
 - Local building materials of at least 10%; and
 - Recycle at least 50% of construction waste or demolition materials.
21. **MM NOI-1: Reposition evaporative condenser units.**
The applicant shall design and construct the air inlets for all the proposed evaporative condenser units to minimize permanent increases in ambient noise levels above County General Plan hourly (Leq) nighttime criterion of 45 dBA. The applicant shall submit design specifications and studies (as necessary) to the County prior to installation of these units to demonstrate conformance with this standard.

County Counsel

22. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**
E & J Gallo 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.

E & J Gallo 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.

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

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Bill Nicholson said the Merced County General Plan EIR will be ready in January and released to the public in February 2012.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:55 a.m.