

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF JULY 25, 2012**

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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 July 25, 2012, 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 July 25, 2012, 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:                       Mark Hendrickson, Interim Development Services Director  
  William Nicholson, Assistant Development Services Director  
  Kim Anderson, Recording Secretary  
  Jeff Fugelsang, Planner III  
  Oksana Newmen, Planner III

Legal Staff:                         Marianne Greene, Deputy County Counsel

Commissioners Absent:           None

**III. APPROVAL OF MINUTES**

None

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

- A.     **REVOCATION No. REV12-001 OF ADMINISTRATIVE PERMIT No. AA11-021 - Iraj Safapour** – To revoke AA11-021 based on non-compliance with Conditions of Approval No. 6, 8, 9, 10, and 11. AA11-021 was approved by the Planning Commission on August 24, 2011 to bring into conformance a truck parking facility on a 2.0 acre portion of an 8.0 acre parcel. The property is located on the west side of Stephens Street and 300 feet north of August Road in the Delhi SUDP. The project site is designated Industrial land use in the Delhi Community Plan and zoned M-1 (Light Industrial). **Continued from the June 27, 2012 hearing. JF****

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

- 1) Determine that the project is categorically exempt from CEQA review under Section 15321(a) of the CEQA Guidelines, and;
- 2) Approve Revocation No. REV12-001 of Administrative Permit No. AA11-021 based on the findings, and subject to the terms of revocation presented in the Staff Report.

Planner Jeff Fugelsang presented a status report and recommendations dated July 25, 2012. Mr. Fugelsang stated that the applicant, Mr. Safapour, is in full compliance with conditions in the staff report, and presented slides showing the related improvements.

The public hearing opened at 9:14 a.m.

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No one spoke in favor or opposition to this application.

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

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION AGREES THE APPLICANT IS NOW IN COMPLIANCE WITH ALL CONDITIONS AND DENIES THE REVOCATION OF ADMINISTRATIVE PERMIT No. AA11-021 AND REFERRED THIS PROJECT BACK TO PLANNING STAFF.**

- B. ADMINISTRATIVE PERMIT APPLICATION No. AA12-023 – Leonardo Silva** - To establish a semi-mobile food vendor without seating in the parking lot of a convenience store and gas station on a 1.1 acre parcel. The project site is located west of the intersection of I-5 and Highway 165 (Mercy Springs Road) in the Los Banos area. The property is designated General Commercial in the General Plan and is zoned HIC (Highway Interchange Center). **JF**

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

- 1) Determine that the project is categorically exempt from CEQA review under Section 15321(a) of the CEQA Guidelines, and;
- 2) Approve Revocation No. REV12-001 of Administrative Permit No. AA11-021 based on the findings, and subject to the terms of revocation presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated July 25, 2012.

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 ADMINISTRATIVE PERMIT APPLICATION No. AA12-023 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 JULY 25, 2012, AND MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES ADMINISTRATIVE PERMIT APPLICATION No. AA12-023 SUBJECT TO THE 8 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

**Conditions:**

Planning & Community Development Department

1. Administrative Permit No. AA12-023 is granted to establish a semi-mobile food vendor without seating in the parking lot of a convenience store and gas station on a 1.1 acre parcel located at 24729 Interstate 5 in the Los Banos area, in accordance with the approved Plot Plan and Operational Statement.
2. The project shall operate in a manner that is consistent with the approved Plot Plan and applicant's Operational Statement. Minor Modifications may be approved by the Planning Director upon submittal of an acceptable application.
3. If the Administrative Permit is not implemented within one year, it shall expire and become null and void. The Planning Commission may extend the Permit if a request is filed by the applicant prior to its expiration.

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4. The applicant shall comply with the Merced County Zoning Code Development Standards required for semi-mobile food vendors (Section 18.47.79.D) including, but not limited to the following:
  - a. The operating hours shall be from 8:00 am to 12:00 am, seven days a week.
  - b. There shall be adequate trash receptacles adjacent to the semi-mobile food vendor.
  - c. The site shall be kept clean and free of litter at all times. Trash and garbage shall be removed from the site at the end of each day.
  - d. Waste water generated by this use shall not be released on-site or into any storm drainage or irrigation system.
  - e. Grease shall be disposed per requirement of the Division of Environmental Health.
  - f. No additional advertising sign except a sign attached to the semi-mobile food vendor shall be reviewed and approved by the Development Services Director.
  - g. A copy of the administrative permit shall be kept with the operator at all times and shall not be transferable to another operator.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$162.00** 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.

### County Counsel

#### 6. INDEMNITY AND HOLD HARMLESS AGREEMENT:

LEONARDO OLIVA 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 LEONARDO OLIVA.

LEONARDO OLIVA'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 LEONARDO OLIVA, 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. LEONARDO OLIVA 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 ADMINISTRATIVE PERMIT NO. AA12-023 approval, modification, or denial.

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

Department of Public Health/ Environmental Health Division

7. The facility must operate in compliance with the Department of Public Health/ Environmental Health Division's memorandum dated July 5, 2012.

Commerce, Aviation and Economic Development Department

8. If the applicant/owner does not currently have a Business License Permit, they shall obtain one 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.

- C. CONDITIONAL USE PERMIT No. CUP12-010 – Lourdes Mendez -** To add a nightclub featuring live music and dancing, with beer and wine sales to an existing permitted social hall. The project site is located at the northeast corner of Bridget Court and Winton Way. The property is designated Winton SUDP - General Commercial land use and zoned C-2 (General Commercial). **ON**

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

- 1) Determine that the project is exempt from CEQA review under Section 15301, Existing Facilities, of the CEQA Guidelines, and;
- 2) Consider approval of Conditional Use Permit No. CUP12-010 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Planner Oksana Newmen presented the Staff Report and recommendations of approval dated July 25, 2012. A letter in opposition and signed by surrounding property owners/neighbors was submitted to the Commissioners.

Commissioner Ford asked how many bars and restaurants are in that area.

Planner Oksana Newmen said there are two bars and one restaurant serving alcohol in the area currently.

Commissioner Thompson asked if ABC would use Planning Commission findings on public need and necessity as adequate for the applicants use? Ms. Newmen replied yes.

The public hearing opened at 9:25 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:26 a.m.

Commissioner Ford said he is concerned with the letter submitted by the Sheriff's Department stating the concern of onsite sales. There are already four businesses in that area that have a liquor license.

Commissioner Thompson said it is difficult to make the findings in the staff report. Is this project necessary or convenient?

Commissioner Mobley feels adding another bar in that area would be detriment to the Community of Winton.

Commissioner Thompson asked if they are looking to expand the existing hall and also if alcohol is allowed in the social hall now?

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Planner Oksana Newmen said whoever is going to rent the hall must get a temporary permit to serve alcohol.

Chairman Tanner declared a five minute recess to discuss procedural issues with Deputy County Counsel Marianne Greene and Assistant Development Services Director Bill Nicholson. Upon return from the recess, Chairman Tanner indicated that should the Commission move to deny the application, identification of the findings that cannot be made should be included in the motion, or the application can be continued until the next meeting so new findings can be prepared.

**MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION DENIES CONDITIONAL USE PERMIT No. CUP12-010, DUE TO THE INABILITY TO MAKE FINDINGS 7 AND 10 LISTED IN THE STAFF REPORT.**

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

None

**VII. DIRECTOR'S REPORT**

Bill Nicholson, Asst. Development Services Director, said the Environmental Impact Report for the General Plan Update should be circulated in August 2012 and Public Hearings before the Planning Commission will take place in the Winter 2012.

**VIII. COMMISSIONERS COMMENTS**

Commissioner Thompson said he is on the Committee for the City of Merced Bellevue Corridor Community Plan and if the Commission or anyone has questions, he is available.

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:44 a.m.