

**MERCED COUNTY PLANNING COMMISSION**  
**MINUTES FOR MEETING OF AUGUST 22, 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 August 22, 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 August 22, 2012, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

**II. ROLL CALL OF COMMISSIONERS**

Commissioners Present:           Commissioner Jack Mobley – Acting Chairman  
  Commissioner Mark Erreca  
  Commissioner Greg Thompson

Staff Present:                       Mark Hendrickson, Interim Development Services Director  
  William Nicholson, Assistant Development Services Director  
  Kim Anderson, Recording Secretary  
  James Holland, Planner III

Legal Staff:                         Marianne Greene, Deputy County Counsel

Commissioners Absent:           Commissioner Lynn Tanner - Chairman  
  Commissioner Rich Ford

**III. APPROVAL OF MINUTES**

**MOTION: M/S ERRECA – THOMPSON AND CARRIED BY A VOTE OF 3 – 0, THE COMMISSION APPROVES THE MINUTES FROM THE JULY 25, 2012 MEETING.**

**IV. CITIZEN COMMUNICATIONS**

None

**V. PUBLIC HEARINGS**

- A. CONDITIONAL USE PERMIT No. CUP12-012 - E & J Gallo Winery - To build and operate a 2 megawatt waste to energy facility, using winery waste products, at an existing winery. The project site consists of an eight acre addition to an 81 acre winery located on the north side of River Road approximately 600 feet east of Griffith Avenue in the Livingston area which is designated Agricultural land use in the General Plan 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 Conditional Use Permit Application No. CUP12-012
- 2) Approve Conditional Use Permit Application No. CUP12-012 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 August 22, 2012.

The public hearing opened at 9:20 a.m.

Glenn Wright, Project Manager for E & J Gallo Winery, thanked Planning staff for processing this application in a timely manner. Some members of the Gallo project are in attendance and are available to answer any questions the Commission may have.

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Greg Swaffer with Summit Engineering, said that James Holland covered many aspects of this project. This is a positive addition to the wine facility. This is simply to take waste water and solid waste, digest it, and generate biogas and create power to offset power demands for the existing facility. The project will treat up to 70% of the wineries process wastewater that is being applied directly to land without treatment. It will be treated to irrigation standards and that will allow it to go into an irrigation system and allows Gallo to convert about 760 acres of existing disposable area to be farmed. Approximately 174 million gallons of water is being re-used per year for irrigation. They believe there is the potential to reuse waste heat that isn't need within the project and offset some boiler demand. There will be two people operating the plant per day. This is an extension of Gallo's ongoing business. This project is a benefit for Merced County and local agriculture.

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

**MOTION: M/S ERRECA - THOMPSON, AND CARRIED BY A VOTE OF 3 - 0, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT No. CUP12-012.**

**MOTION: M/S ERRECA - THOMPSON, AND CARRIED BY A VOTE OF 3 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED AUGUST 22, 2012, AND MAKES THE 11 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES CONDITIONAL USE PERMIT No. CUP12-012 SUBJECT TO THE 28 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:**

### **Conditions:**

#### Planning & Community Development Department

1. Conditional Use Permit Application No. CUP12-012 is granted for construction and operation of the E & J Gallo Livingston Winery LWINE project, allowing the generation of electricity through processing of wastewater and biosolid wastes produced by existing winery operations. The project will be built on 8 acres of land, located immediately southwest of the 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 their 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 install a partial landscaping screen, consisting of plantings of intermittent groups of trees and shrubs, along the River Road frontage of the proposed Irrigation Water Storage Pond. Landscape species will complement existing tree plantings along the main entrance driveway. Minimum planting size for selected shrub species shall be 5 gallon and minimum planting size for tree species shall be 15 gallon.
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.

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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, should be provided for any permit submittal.

### Department of Public Health, Division of Environmental Health

9. The existing Hazardous Materials Business Plan (HMBP) produced for the E & J Gallo Livingston Winery shall be updated to reflect the potential storage of Methane/Biogas and the use of a transformer. 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.

### Department of Public Works Road Division

10. All stormwater runoff generated by the E & J Gallo LWINE project shall be retained on the project site.
11. Consistent with the requirements of the State Water Resources Control Board Order No. 2009-0009-DWQ, the applicant shall obtain an NPDES General Construction Permit for the project.

### Merced County Fire Department

12. All driveways accessing the parcel shall be surfaced with an approved all weather driving surface material. They shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all weather driving capabilities.
13. Any security gates on the site should include a "Knox" key switch, or "Knox" padlock to provide for Fire Department access.
14. An approved water supply capable of supplying the required fire flow for fire protection shall be provided upon which facilities, buildings, or portions of buildings, are hereafter constructed or moved into, or within the jurisdiction.

### San Joaquin Valley Air Pollution Control District (SJVAPCD)

15. The project is not subject to District Rule 9510 (Indirect Source Review). The project may be subject to the following District Rules and Regulations: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).
16. The applicant shall contact the SJVAPCD Small Business Assistance Office at (559) 230-5888 prior to commencing any construction activities.

### Mitigation Measures

17. 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.).

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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.
  - A three-sided structure with less than 50% porosity that is at least as high as the storage piles will be used.
- Outdoor storage of bulk materials.
  - Water or dust suppressants will be applied to storage piles.
  - 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.

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- 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).
18. Mitigation Measure BIO-1: Develop Worker Awareness Program Prior to construction, a Worker Awareness Program must be conducted to inform construction project workers of their responsibilities regarding sensitive environmental resources. Such program shall include environmental education about the American badger, San Joaquin kit fox, hoary bat, Swainson's hawk, northern harrier, and whitetailed kite, and shall include both visual aids to foster identification of suitable habitat, foraging practices, and identification of individuals of each species.
19. Mitigation Measure BIO-2: Avoid disturbance of American badger, San Joaquin Kit Fox, and Hoary Bat Immediately prior to the initiation of construction, a qualified biologist will be retained to conduct preconstruction surveys for American badger, San Joaquin Kit Fox, and hoary bat to avoid impacts to these species. If these species are not found within the project site then no further mitigation associated with this measure is necessary. If these species are found within the project site, a no activity-buffer shall be established and kept in place until the individual(s) leave the project site, at which point construction may start as determined by the biologist. If the individual(s) does/do not leave the project site or returns to the project site, the appropriate agencies (USFWS and/or CDFG) will be contacted and conferred in the development of an impact avoidance plan. Once the impact avoidance plan is developed and implemented, construction may begin as dictated by the plan.
20. Mitigation Measure BIO-3: Avoid disturbance of tree-nesting Swainson's hawk and conduct preconstruction nesting surveys.
1. Protocol Surveys. The project applicant must conduct a protocol-level survey in conformance with the "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley," Swainson's Hawk Technical Advisory Committee ([www.dfg.ca.gov/wildlife/nongame/docs/swain\\_proto.pdf](http://www.dfg.ca.gov/wildlife/nongame/docs/swain_proto.pdf)) (May 31, 2000) hereby incorporated by reference. This protocol prescribes minimum standards for survey equipment, mode of survey, angle and distance to tree, speed, visual and audible clues, distractions, notes and observations, and timing of surveys.
- a. Nesting surveys can only be performed between January 1 and July 30 and will vary depending on seasonal conditions and the actual nesting period.
  - b. Surveys must be performed by a qualified raptor biologist.
  - c. A written report with the pre-construction survey results must be provided to the Planning Department and CDFG within 30 days prior to commencement of construction-related activities. The report shall include: the date of the report, authors and affiliations, contact information, introduction, methods, study location, including map, results, discussion, and literature cited.
  - d. The project applicant must submit CNDDDB forms for Swainson's hawk occurrences and for any other listed, fully protected, or species of special concern encountered and positively identified during the surveys.  
[www.dfg.ca.gov/biogeodata/cnddb](http://www.dfg.ca.gov/biogeodata/cnddb).

2. Nest Avoidance. If the required nesting surveys show there are no active nests within the appropriate radius then no additional mitigation will be required. If active nests are documented on the CNDDDB data base, or other environmental study, or are discovered during the protocol survey, the project applicant must obtain CESA 2081 Management Authorization prior to the start of construction-related activities. CDFG preapproved mitigation measures to avoid nest impacts during construction must include:
  - e. No intensive new disturbances (for example, heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities), habitat conversions, or other project-related activities that may cause nest abandonment or forced fledging, should be initiated within a 0.5 between March 1 and September 15, or August 15 if written CESA 2081 Management Authorization obtained from CDFG prior to such disturbance.
  - f. Nest trees shall not be removed unless there is no feasible way of avoiding it. If a nest tree must be removed, written CESA 2081 Management Authorization must be obtained from CDFG prior to tree removal. Such written authorization must specify:
    - i. The tree removal period, which can typically be expected to be between October 1 and February 1.
    - ii. The conditions required to offset the loss of the nest tree.
  - g. If disturbances, habitat conversions, or other project-related activities, that may cause nest abandonment or forced fledging, are necessary, within the nest protection buffer zone, monitoring of the nest site by a qualified raptor biologist, funded by the project applicant, shall be required, to determine if the nest is abandoned. If the nest is abandoned, but the nestlings are still alive, the project proponent is required to fund the recovery and hacking that is the controlled release of captive reared young of the nestling.
  - h. Routine disturbances such as agricultural activities, commuter traffic, and routine maintenance activities within 0.25 mile of an active nest are not prohibited.

21. Mitigation Measure BIO-4: Compensate for loss of foraging habitat, As described above, known nesting trees are located closer than 5 miles to the project site, and therefore the project site qualifies as foraging habitat. Compensation for loss of foraging habitat is based on the distance from the nearest nest, as described on the table below. The specific compensation ratio will be based on the results of the preconstruction survey described in Mitigation Measure BIO-3.

Distance from Project Boundary Mitigation Acreage Ratio*	
Within 1 mile	1.00:1**
Between 1 and 5 miles	0.75:1

\*Ratio means [acres of mitigation land] to [acres of foraging habitat impacted].

\*\*This ratio shall be 0.5:1 if the acquired lands can be actively managed for prey production.

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CDFG provides options for off-site habitat management by fee title acquisition or conservation easement acquisition with CDFG-approved management plan, and by the acquisition of comparable habitat. Mitigation credits may be pursued through a CDFG approved mitigation bank for Swainson's hawk impacts in Merced County.

Go to: [www.dfg.ca.gov/habcon/conplan/mitbank/catalogue/catalogue.html](http://www.dfg.ca.gov/habcon/conplan/mitbank/catalogue/catalogue.html).

The CDFG pre-approved CEQA mitigation measures are found at: "DFG Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California," CDFG ([http://www.maderacounty.com/rma/archives/uploads/1188143775\\_Document\\_upload\\_23w.pdf](http://www.maderacounty.com/rma/archives/uploads/1188143775_Document_upload_23w.pdf)) (November 8, 1994).

22. Mitigation Measure BIO 5: Avoid disturbance of tree-, shrub-, and ground-nesting migratory birds and raptors (other than Swainson's hawk) and conduct preconstruction nesting bird surveys. The proposed project may adversely affect active migratory bird and raptor nests within the project vicinity because suitable nesting substrate occurs within 0.5-mile of the project site and active nests could be adversely affected by project activities. If preconstruction surveys indicate the presence of migratory bird nests in any areas that would be directly affected by vegetation removal, construction activities, or any other ground disturbing activities, a no-disturbance buffer will be established around the nesting site. Factors determining the buffer size typically include the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. These factors will be analyzed in order to make an appropriate decision on buffer distances. The distance, extent, and nature of the buffers will be determined by a qualified wildlife biologist in consultation with and subject to CDFG written approval. To avoid disturbance or destruction of a nesting site, no construction will occur within the no-disturbance buffer until after the breeding season, or until a qualified wildlife biologist determines that the young have fledged, a report summarizing the survey results will be submitted to CDFG and subject to the agency's approval.
23. Mitigation Measure CUL-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 Section 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.
24. Mitigation Measure CUL-2: Stop Work if Buried Paleontological Resources are Encountered during Construction Activities. If buried paleontological resources are inadvertently discovered during ground disturbing activities, work will stop in that area and within 100 feet of the find until a qualified paleontologist can assess the significance of the find and, if necessary, develop responsible treatment measures in consultation with Merced County and other appropriate agencies.
25. Mitigation Measure CUL-3: 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 notifies 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

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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 notifies 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.

26. Mitigation Measure GEO-1: Prepare a Design-Level Geotechnical Investigation Report. Prior to the issuance of any site-specific building permits, a design-level geotechnical investigation will be prepared by the project applicant and submitted to the Merced County Building and Safety Division for review and confirmation that the proposed development fully complies with the California Building Code. The report will address potential seismic hazards such as ground shaking, liquefaction, and expansive soils. The report will identify building techniques appropriate to minimize seismic damage. The project applicant shall ensure that the seismic safety recommendations of this report are included as conditions of building permit issuance.
27. Mitigation Measure TT-1: Require a Site-Specific Traffic Control Plan  
The project applicant will develop a site-specific traffic control plan to minimize the effects of construction on local roadways. The plan will be subject to review and approval by the County. The applicant will be responsible for ensuring that the plan is effectively implemented. The traffic control plan will include, at a minimum, information regarding working hours, allowable and restricted roadways, allowable times for lane or roadway closures, emergency vehicle access, detours, and access to private and public properties. All construction traffic control plans will contain the following general requirements.
- Maintain two-way traffic flow on all roadways except where closure is needed to accommodate construction of project facilities.
  - Limit lane or roadway closures to the duration and area required for safety.
  - Provide 72-hour advance notification if access to driveways or private roads will be affected. Limit effects on driveway and private roadway access to working hours and ensure that access to driveways and private roads is uninterrupted during non-work hours. If necessary, use steel plates, temporary backfill, or another accepted measures to provide access.
  - Where temporary lane closures cannot be avoided, two-way flow may be provided as flow in alternating directions, controlled by flaggers. Provide advance construction warning signage for lane closures.
  - Where full roadway closures cannot be avoided, provide a clearly marked detour to serve general purpose traffic, emergency vehicles, pedestrians and bicyclists.
  - Notify and consult with emergency service providers, and provide emergency access by whatever means necessary to expedite and facilitate the passage of emergency vehicles. Ensure clear emergency access to all existing buildings and facilities at all times.
  - Provide adequate parking for construction vehicles, equipment, and workers within the designated staging areas throughout the construction period.  
Fences, barriers, lights, flagging, guards, and signs will be installed as determined appropriate by the public agency having jurisdiction to give adequate warning to the public of the construction and of any dangerous condition to be encountered as a result thereof.

### County Counsel

28. 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.



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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 E & J Gallo, Inc.

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 E & J Gallo, Inc., 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. E & J Gallo, Inc., 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.

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

None

**VII. DIRECTOR'S REPORT**

Assistant Development Services Director Bill Nicholson said the Planning Department is still working on the process of mailing the Environmental Impact Report for the General Plan Update.

Mark Hendrickson, Interim Development Services Director, thanked Planner James Holland for a job well done with helping to move the Gallo Winery project forward.

**VIII. COMMISSIONERS COMMENTS**

None

**IX. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:27 a.m.