

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF DECEMBER 5, 2012

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of December 5, 2012, 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 9:04 a.m., on December 5, 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 Rich Ford
 Commissioner Jack Mobley
 Commissioner Greg Thompson

Staff Present: Mark Hendrickson, Interim Development Services Director
 William Nicholson, Assistant Development Services Director
 Kim Anderson, Recording Secretary
 Malinda Farias, EH Office Assistant III
 David Gilbert, Planner III

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: Commissioner Mark Erreca

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

None

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP09-011 - Antonio Azevedo - To expand an existing dairy from 5,140 cows to 7,766 cows and to construct a number of buildings and improvements all confined on 95 acres of four parcels totaling 550 acres. The project is located at the northwest corner of El Nido Road and Newhall Road in the El Nido area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **Continued from the November 14, 2012 hearing. DG**

Recommendations: The requested actions are to:

- 1) Certify the Environmental Impact Report and;
- 2) Approve Conditional Use Permit No. CUP09-011 based on the project findings and subject to the conditions of approval and mitigation measures presented in the Staff Report, adopt the CEQA Findings of Fact, and approve the Mitigation Monitoring & Reporting Program

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Planner David Gilbert presented the Staff Report and recommendations of approval dated December 5, 2012.

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

No one spoke in favor or opposition to this application.

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

MOTION: M/S THOMPSON – FORD AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION EXEMPTS ZONE CHANGE No. CUP09-011 FROM CEQA.

MOTION: M/S THOMPSON – FORD AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED DECEMBER 5, 2012, AND ADOPTS THE 33 MITIGATED MEASURES, MAKES THE 10 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES ZONE CHANGE No. CUP09-011 SUBJECT TO THE 32 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Planning and Community Development Conditions:

1. Conditional Use Permit No. CUP09-011 is granted for the expansion of an existing dairy from 5,140 cows to 7,766 cows and to construct seven different sized cow pens, construct a freestall barn, construct a freestall bedding and manure storage area, install a manure treatment pond and a liquid manure storage pond, and install a mechanical manure separator stacking pad and pump pit on a 95 acre portion of four parcels totaling 550 acres.
2. The Antonio Azevedo Dairy expansion project shall be located, developed and operated in a manner described on the Plot Plan, Project Description, 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 Environmental Impact Report and the Mitigation Monitoring and Reporting 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.

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7. If the applicant obtains an Additional Dwelling Occupancy Monitoring Permit (ADOMP) for each of the five (5) mobile homes, per Term and Condition 17, then the applicant is required to use Tier 4 emission level engines per San Joaquin APCD Rule 4702 (Agricultural Internal Combustion Engines) in the feed loading and delivery tractors, prior to issuance of the first building permit for expansion of the active dairy facility, in order to protect the health of the residential occupants of the mobile homes.
8. Prior to issuance of the buildings permit the applicant shall obtain a State Registered WDID number from the Regional Water Quality Control Board per 2009-0009-DWQ Construction General Permit. This as a procedural condition associated with Mitigation Measure HYD-1 which requires the applicant to prepare and implement a Stormwater Pollution Prevention Plan (SWPPP).

County Counsel

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

Antonio Azevedo 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 Antonio Azevedo.

Antonio Azevedo'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 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. Antonio Azevedo 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 dedicate an additional ten feet of right-of-way along the project's entire frontage on the north side of El Nido Road.
11. The applicant shall improve all driveways utilized by heavy truck operations associated with the dairy with either paved or concrete approaches onto the adjacent County roadway, in accordance with Chapter 7 of the Merced County of 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.
12. The applicant shall provide a roadway impact evaluation, prepared by a registered Geotechnical Engineer or Civil Engineer, to assess the potential impact that the project may have on Merced County roadways. This evaluation shall include both an analysis of the traffic characteristics of the roadways most impacted by the project, and a geotechnical analysis of the existing structural section of those roadways. The traffic analysis will require classification counts to determine the existing and projected Traffic Indices of said roadways; and, the geotechnical analysis will require road corings to determine their structural integrity. Based upon said evaluation, the applicant shall pay to the Merced County Road Fund an amount equivalent to improving said roadways sufficient to sustain the truck load impacts for the future 20 years; **or**

In lieu of performing a roadway impact evaluation, the applicant may opt to enter into a Roadway Impact Agreement with Merced County Department of Public Works – Road Division. The Roadway Impact Agreement will stipulate that the applicant shall pay a Road Impact Fee to the Merced County Road Fund to compensate the County for the increased cost of maintaining the County roadways impacted by the applicant's project. The Road Impact Fee shall be paid annually, and shall be an amount equal to \$2.50 for every heavy truck trip (i.e. milk tankers, commodity deliveries, etc.) entering or leaving the project site during the previous 12 months, associated with the expansion approved by CUP09-011. The applicant shall also pay a fee of \$200 for processing said Roadway Impact Agreement.

Merced County Fire Department

13. Fire flow requirements shall be met in accordance to the California Fire Code using NFPA 1142 as a reference standard. Existing or new tanks on site for fire suppression shall be inspected to meet Merced County Fire Department standards such as fitting size, capacity, access, sight gauge, and labeling.
14. If security gates or bollard locks are to be installed or existing on site. They shall be approved by this office. As required, including the installation of a Merced County coded "Knox" key switch or "Knox" padlock, whichever is most appropriate in relation to your needs.
15. All driveways accessing the parcel shall be surfaced with an approved all weather driving surfacing material. All driveways 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. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet

except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 13 feet 6 inches.

Department of Public Works/Building & Safety Division

16. Applicant shall submit four (4) sets of complete engineered plans and electrical plans. Engineered plans shall include a plan sheet that lists and contains: (1) all final terms and conditions of this permit approval, and (2) all final mitigation measures for this project as required by the County of Merced upon final project approval.
17. Prior to issuance of the first building permit for expansion of the active dairy facility, the applicant shall either: (a) Legalize each of the five (5) mobile homes by obtaining Additional Dwelling Occupancy Monitoring Permit (ADOMP) for each of the five (5) mobile homes, (b) Convert each of the five (5) mobile homes to other non-residential uses, or (c) Permanently remove all five (5) mobile homes from the property. To legalize the homes the applicant must submit plans for the mobile home foundation systems sufficient to meet all state building codes, which includes but is not limited to a licensed survey that determines the base flood elevation and a licensed soils report. To demolish the mobile homes, the applicant must apply for a demolition permit.
18. This site is shown to be in a Flood Zone A. Prior to submitting the plans for any new buildings or to legalize any existing buildings, the applicant shall hire a licensed surveyor to determine the base flood elevation and submit that information to Kelly Jacobs at Merced County Public Works.
19. All new construction requires a soils report prepared by a California licensed soils engineer. The building engineer shall review the soils report before designing the foundation to ensure that all requirements from the soils engineer are met.
20. Prior to issuance of the first building permit for the expansion of the active dairy facility, the applicant shall apply for a demolition permit to remove all illegal structures or submit plans to legalize any existing structures that have not been permitted before this Conditional Use Permit is approved.

Merced County Division of Environmental Health (MCDEH)

21. Any new dairy structures shall meet Merced County setback requirements per the Animal Confinement Facility ordinance (1,000 foot setback to off-site residences).
22. MCDEH recommends that the applicant meet with dairy program staff prior to submittal of a building permit application.
23. A fly and odor control program shall be submitted to MCDEH to address manure storage issues.
24. File a Hazardous Material Business Plan to address storage and generation of hazardous materials prior to issuance of the first building permit. Contact Vickie Hayer at (209) 381-1083 or Kerri Gibbons at (209) 381-1094.

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25. The presence of five residences will create a state small water system, as long as the number of people served at the residences are fewer than 25. Water quality and water system construction shall meet certain local and state standards. The facility shall apply for and obtain a state small water system permit from MCDEH prior to issuance of the certificate of occupancy by the Building and Safety Division.

Native American Heritage Commission

26. 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 26, 27, and 28 shall be incorporated into a pre-construction Worker Awareness Program.
27. 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.
28. 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 District (SJVAPCD)

29. Prior to issuance of the first building permit, the applicant shall demonstrate written proof of compliance from the SJVAPCD with the following rules and regulations as follows:

- Rule 2201 (New and Modified Stationary Source Review).
- Rule 4550 (Conservation Management Practices).
- Rule 4570 (Confined Animal Facilities).
- Regulation IV: Rules 4570 (CAFO), 4550 (CMP), 4701 and 4702 (Internal Combustion Engines).
- Regulation II: Rules 2010 (ATC/PTO) and 2201 (New Source Review). (see also MMRP, AQ-3)

Regional Water Quality Control Board (RWQCB)

30. Prior to issuance of the first building permit, the applicant shall demonstrate written proof of compliance from the RWQCB with the following rules and regulations, as follows: Construction General Permit Order 2009-0009-SWQ and state-required water quality control Management Plans as administered and required by Merced County Animal Confinement Ordinance 18.48.050(J) (see also MMRP, HYD-1 and HYD-3).

California Department of Fish and Game (CDFG)

31. Prior to issuance of the first building permit, the applicant shall demonstrate written proof of compliance from CDFG with the following rules and regulations as follows: California Endangered Species Act Section 2081 (see also MMRP, BIO-1a)

Final Environmental Impact Report Mitigation Measures

32. 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 Reporting Program (MMRP) that are applicable to the Antonio Azevedo Dairy expansion project. The applicant shall be responsible to comply with all Mitigation Measures contained in the foregoing mentioned documents:

Air Quality

- AQ-3: Ozone precursor emissions from daily operations, farm equipment, and increased traffic, MMRP, page 2-1.
- AQ-5a: Hazardous pollutant emissions from project operations, MMRP, page 2-1.
- AQ-5b: Compliance with San Joaquin Valley Air Pollution Control District Rule 4570, MMRP, page 2-1.
- AQ-5c: Minimize ROG emissions under AQ-3, MMRP, page 2-1.
- AQ-6a: Adverse odor from project operations, MMRP, pages 2-1 to 2-3.
- AQ-6b: Implement Mitigation Measures LU-2a and HAZ-1c, MMRP, page 2-3.
- AQ-6c: Implement Mitigation Measures HAZ-1 and HAZ-2, MMRP, page 2-3.

Biological Resources

- BIO-1a as revised per the December 5, 2012 Errata to the Mitigation Monitoring and Reporting Program (Pages 34 & 35 of this Staff Report): Loss of foraging habitat for Swainson's hawk and other bird species, MMRP, page 2-3.

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- BIO-2a: Implement BIO-1a, minimize potential impacts to Swainson's hawk, MMRP, page 2-5.
- BIO-2b: Preconstruction survey for burrowing owl, MMRP, page 2-6.
- BIO-2c: Avoidance measures for burrowing owl, MMRP, page 2-6.
- BIO-4: Loss of habitat for the San Joaquin kit fox and/or American badger, MMRP, pages 2-6 to 2-8.
- BIO-5a: Reduce impacts to active bird nests and reduce construction activities to interrupt breeding and rearing behaviors of birds, MMRP, page 2-8.
- BIO-5b: Minimize and shield night time lighting from sensitive areas, MMRP, page 2-8.

Greenhouse Gases and Energy

- GHG-2: Full Facility Audit to Determine Energy Inefficiency in Dairy Facility Operations, MMRP, pages 2-8 and 2-9.

Hazards, Health Risks, and Vectors

- HAZ-1a: Preparation of a Vector Control Plan, MMRP, page 2-9.
- HAZ-1b: Follow Best Management Practices to Address Potential Fly Problems, MMRP, pages 2-9 and 2-10.
- HAZ-1c: Planting of Trees Along Southern Boundary of Project Site to Control Flies, MMRP, page 2-10.
- HAZ-2a: Vector Control Plan to Control Mosquito Breeding, MMRP, page 2-10.
- HAZ-2b: Measures to Control Mosquitoes in Ponds and/or Lagoons, MMRP, page 2-10.
- HAZ-2c: Payment to Mosquito Abatement District to Control Mosquitoes in Oversized Ponds, MMRP, page 2-10.
- HAZ-3: Human Health Impacts from Increased Manure Exportation, MMRP, pages 2-10 and 2-11.

Hydrology and Water Quality

- HYD-1: Degradation of water quality due to stormwater runoff during project construction, MMRP, page 2-11.
- HYD-3a: Groundwater contamination from dairy expansion operations, MMRP, page 2-11.
- HYD-3b: Agronomic Rates for Best Management Farming Practices, MMRP, page 2-11.
- HYD-3c: Best Practical Treatment or Control Evaluation, MMRP, pages 2-11 to 2-12.
- HYD-3d: Salinity Report, MMRP, page 2-12.
- HYD-3e: Shallow Groundwater Monitoring Wells, MMRP, page 2-12.
- HYD-3f: Well Monitoring Schedule, MMRP, page 2-12.
- HYD-3g: Groundwater Quality, MMRP, pages 2-12 to 2-13.
- HYD-3h: Planning & Community Development Inspection, MMRP, page 2-13.
- HYD-3i: Removal and closure plan for existing treatment ponds and lagoons, MMRP, page 2-13.
- HYD-7: Compliance With Merced County Well Ordinance, MMRP, page 2-13.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

Mark Hendrickson, Interim Development Services Director stated that he would like to thank the following people: Mr. Nicholson, Mrs. Greene, Mrs. Anderson, and Mr. Wilson for working on the General Plan Update Draft Environmental Impact Report and distributing out to the public last week for review and comments due by January 29, 2013.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 9:16 a.m.