

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF AUGUST 14, 2019

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of August 14, 2019, 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 August 14, 2019, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL OF COMMISSIONERS

Commissioners Present: Commissioner Jack Mobley – Acting Chairman
 Commissioner Mark Erreca
 Commissioner Robert Acheson
 Commissioner Kurt Spycher
 Commissioner Fernando Aguilera

Staff Present: Mark Hendrickson, Director
 Steve Maxey, Deputy Director
 Kim Zinke, Recording Secretary
 Kristin McHaney, Recording Secretary

Legal Staff: Jeff Grant, Deputy County Counsel

Commissioners Absent: None

IV. APPROVAL OF MINUTES

None

V. CITIZEN COMMUNICATIONS

None

VI. PUBLIC HEARINGS

A. **CONDITIONAL USE PERMIT No. CUP19-009 – Jim Hernandez - A request to re-establish a seasonal farm labor housing facility and house 24 agricultural workers during the peak harvest season. The project site is located at the southeast corner of West Mervel Road and South Center Avenue in the Los Banos area, identified as Assessor's Parcel Number (APN) 088-105-005. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). CEQA: Staff recommends that the Planning Commission find that the project is exempt from environmental review pursuant to Section 15301 - "Existing Facilities" of the CEQA Guidelines. **CONTINUED FROM THE JULY 10, 2019 HEARING. BP****

RECOMMENDATION(S):

- 1) Open/close the public hearing;
- 2) Determine the project can be found exempt from environmental review pursuant to Section 15301 - "Existing Facilities" of the CEQA Guidelines; and,
- 3) Approve Conditional Use Permit No. CUP19-009 based on the findings identified in the Staff Report and subject to the proposed conditions of approval.

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Planner Brody Patterson presented the Staff Report and recommendations of approval dated August 14, 2019.

The public hearing opened at 9:04 a.m.

Gary Rogers, Architect for the project, said he was hired to help get this project out of violation. He will get the proper permits from the Building Division. He asked for approval of this application.

The public hearing closed at 9:06 a.m.

MOTION: M/S SPYCHER - ACHESON, AND CARRIED BY A VOTE OF 5 – 0, THE PLANNING COMMISSION DETERMINE THE PROJECT CAN BE FOUND EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15301 - “EXISTING FACILITIES” OF THE CEQA GUIDELINES.

MOTION: M/S SPYCHER - ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED AUGUST 14, 2019, AND MAKES THE PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND, APPROVES SUBJECT TO THE 19 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Merced County Community and Economic Development Department

1. Conditional Use Permit No. CUP19-009 is granted to allow the re-establishment of a seasonal farm labor housing facility and house 24 agricultural workers during the peak harvest season.
2. The project shall be located, developed and operated in a manner described on the approved Site Plan, Operational Statement, and Conditions of Approval of this permit.
3. The project shall comply with all applicable public health, safety, and welfare regulations administered by the County of Merced; in particular the Community and Economic Development Department, Department of Public Health/Environmental Health Division, Fire Department, Department of Public Works/Building and Safety Division, and Department of Public Works/Roads Division.
4. 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 approval of the project. Should additional inspections be required, inspection time shall be billed to the applicant 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.
5. The applicant shall obtain any applicable permits with the Department of Public Works/Building and Safety Division, including Certificates of Occupancy for the Dormitory-Style Buildings/Barracks, prior to occupancy and use of the existing buildings on site.

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6. The project shall comply with all applicable Local, State, and Federal Regulations.
7. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 97-1.

Merced County Department of Public Health/Environmental Health Division

8. Permanent, protective barriers shall be immediately erected and then maintained around the existing leach fields for the main septic system and the north mobile home.
9. All water pipes to other than the conference building, the restroom building, and the two mobile homes shall be capped at the exterior of the building served, reducing the number of structures served by the water system to no more than four. Outdoor hose bibbs may remain.
10. All plumbing fixtures (e.g. faucets, sinks, toilets, shower heads, shower control valves, shower pans) in buildings not served by the water system shall be removed. All wastewater drain pipes in those buildings shall be plugged with concrete.
11. If the facility water system will provide water for 5 to 14 structures and fewer than 25 persons, the owner shall obtain a state small water system permit prior to crossing this threshold.
12. If the facility water system provides water for 15 or more structures or 25 or more persons for 60 or more days of the year, the owner shall obtain a public water system permit prior to crossing either of these thresholds.

Merced County Fire Department

13. All driveways accessing the parcel shall be surfaced with an approved all weather driving surfacing material. Driveways shall be designed and maintained to support the imposed loads of fire apparatus and so as to provide all-weather driving capabilities (CFC Sec. 503).
14. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet exclusive of shoulders, except for approved security gates in accordance with Section 503.6 and an unobstructed vertical clearance of not less than 13 feet 6 inches (CFC 503.2.1).
15. Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type listed in accordance with UL 1037, and shall contain keys to gain necessary access as required by the fire code official (CFC 506.1).
16. An approved fire safety and evacuation plan in accordance with Section 404 shall be prepared and maintained for Group R-2 occupancy.
17. The project shall meet the fire flow requirements as per the California Fire Code.

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18. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction (CFC 507.1 and 507.5.3).

County Counsel

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

JIM HERNANDEZ has the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. This duty shall arise at the first claim, action, or proceeding against COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

- B. CONDITIONAL USE PERMIT No. CUP19-002 – Dash Dream Plant Inc. – Orchid Barn Expansion Project** - A request to expand an existing orchid growing/sales facility with the construction of a 3,696 square foot detention basin and five greenhouses, totaling in 184,508 square feet of new greenhouse area, and the installation of a 480 square foot mobile office. The project site located on the north side of Highway 152, 1,000 feet east of South Turner Island Road in the Dos Palos area, identified as Assessor's Parcel Number (APN) 085-190-029. The property is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). CEQA: Staff has prepared Negative Declaration. **TH**

RECOMMENDATION(S):

- 1) Open/close Public Hearing;
- 2) Determine the project will not have a significant effect on the environment and adopt the proposed Negative Declaration pursuant CEQA Guidelines Section 15070 – "Decision to Prepare a Negative or Mitigated Negative Declaration"; and,
- 3) Approve Conditional Use Permit No. CUP19-002 based on the findings included in the staff report and subject to the recommended conditions of approval.

Planner Tiffany Ho presented the Staff Report and recommendations of approval dated August 14, 2019.

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

No one spoke in favor or opposition to this application.

The public hearing closed at 9:13 a.m.

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MOTION: M/S MOBLEY - SPYCHER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION DETERMINE THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND ADOPT THE PROPOSED NEGATIVE DECLARATION PURSUANT CEQA GUIDELINES SECTION 15070 – “DECISION TO PREPARE A NEGATIVE OR MITIGATED NEGATIVE DECLARATION

MOTION: M/S MOBLEY – SPYCHER, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED AUGUST 14, 2019, AND MAKES THE PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP19-002 SUBJECT TO THE 12 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Merced County Community and Economic Development Department

1. Conditional Use Permit No. CUP19-002 is granted to allow the expansion of an existing orchid growing/sales facility with the construction of a 3,696 square foot detention basin and five greenhouses, totaling in 184,508 square feet of new greenhouse area, and the installation of a 480 square foot mobile office, in accordance with the approve Site Plan and Operational Statement. Minor Modifications may be approved by the Director upon submittal of an acceptable application.
2. For the purpose of conditions monitoring an inspection in the amount of **\$243.00** shall be required. This fee shall be paid with 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 inspection.
3. All exterior lighting shall be designed and maintained in a manner so that glare and reflections are contained within the boundaries of the parcel and shall be hooded and directed downward away from adjoining properties and public rights-of-way as contained in Merced County Zoning Code (MCZC) Section 18.41.060 (Lighting).
4. All construction and operations shall comply with the performance standards contained in MCZC Chapter 18.41 (Performance Standards).
5. The project shall comply with all the standard conditions in Planning Commission Resolution No. 97-1.
6. The applicant shall comply with all applicable County, State, and Federal regulations. These regulations shall include, but not be limited to standards administered by the County Fire, Health, and Public Works Departments.

Merced County Buildings and Safety Division

7. The applicant shall hire an architect or engineer licensed by the State of California to draw the plans and provide any structural calculations for the proposed structure. The plans shall be submitted to the Buildings and Safety Division for approval. No construction shall begin until a permit is issued.

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8. The applicant shall submit a soils report completed by a licensed geotechnical engineer. The report shall be reviewed by the design engineer to incorporate any mitigating measures into the design drawings.

Merced County Division of Environmental Health

9. The applicant shall maintain the 300% leach line replacement area for the employee restrooms proposed to be located near the northeast corner of the parcel, as identified in the Site Plan.

Merced County Roads Division

10. The Applicant shall comply with the County's MS4 storm Water Permit, Order No. 2013-0001-DWQ.

San Joaquin Valley Air Pollution Control District

11. The applicant shall comply with the San Joaquin Valley Air Pollution Control District's Rules and Regulations, which may include: Regulation VAll (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4002 (National Emission Standards for Hazardous Air Pollutants), Rule 4601 (Architectural Coatings), Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), and Rule 9410 (Employer Based Trip Reduction).

County Counsel

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

DASH DREAM PLANT, 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 DASH DREAM PLANT, INC.

DASH DREAM PLANT, 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 DASH DREAM PLANT, INC., his 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. DASH DREAM PLANT, 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

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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 permit approval, modification, or denial.

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

C. PROVIDE A RECOMMENDATION TO THE BOARD OF SUPERVISORS ON AN ORDINANCE ESTABLISHING REGULATIONS FOR THE CULTIVATION OF INDUSTRIAL HEMP IN THE UNINCORPORATED AREAS OF MERCED COUNTY.

The Board of Supervisors has directed staff to draft a land use ordinance related to the cultivation of hemp for commercial and industrial purposes that would limit cultivation of hemp to agricultural zoning districts on parcels meeting specific development standards and requiring cultivators to obtain a license from the Merced County Agricultural Commissioner. CEQA: The activity regulated by this ordinance is within the scope of the program environmental impact report prepared for the Merced County 2030 General Plan, which adequately describes the activity for the purposes of CEQA. Therefore no further environmental review is required pursuant to Section 15162 of the CEQA guidelines.

RECOMMENDATION(S):

- 1) Open/close the Public Hearing;
- 2) Recommend the Board of Supervisors find the project exempt from further CEQA review pursuant to Section 15162 of the CEQA guidelines; and,
- 3) Adopt the resolution recommending the Board of Supervisors adopt the ordinance.

Deputy Director Steve Maxey, Ag Commissioner Dave Robinson, presented the Staff Report and recommendations of approval dated August 14, 2019.

There was discussion on the rules and regulations between Mark Hendrickson, Dave Robinson and all Planning Commissioners.

Director Mark Hendrickson noted that this ordinance will go before the Board of Supervisors on August 27, 2019, and if adopted, the ordinance will take effect September 26, 2019.

The public hearing opened at 10:03 a.m.

David Good, Stevinson resident, said this is a good thing for Merced County. He owns 29.3 acres and is interested in the cultivation of Industrial Hemp. Being that he doesn't meet the 20 acre minimum, he would like to have discussions with Planning staff to allow for participation in the Hemp Industry.

Planning Director Mark Hendrickson invited Mr. Good to have discussions on his request.

The public hearing closed at 10:07 a.m.

MOTION: M/S SPYCHER - MOBLEY, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS FIND THE PROJECT EXEMPT FROM FURTHER CEQA REVIEW PURSUANT TO SECTION 15162 OF THE CEQA GUIDELINES.

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MOTION: M/S SPYCHER - MOBLEY, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION ADOPTS THE RESOLUTION RECOMMENDING THE BOARD OF SUPERVISORS ADOPT THE ORDINANCE.

VII. COMMISSION ACTION ITEM (S)

None

VIII. DIRECTOR'S REPORT

None

IX. COMMISSIONERS COMMENTS

None

X. ADJOURNMENT

There being no further business, the meeting adjourned at 10:10 a.m.