MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF FEBRUARY 24, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of February 24, 2010, 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 9:05 a.m., on February 24, 2010, 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 Cindy Lashbrook Commissioner Rudy Buendia
Staff Present:	Robert Lewis, Development Services Director William Nicholson, Assistant Development Services Director Kim Anderson, Recording Secretary James Holland, Senior Planner David Gilbert, Senior Planner Jeff Fugelsang, Planner II
Legal Staff:	Marianne Greene, Deputy County Counsel
Commissioners Absent:	None

III. APPROVAL OF MINUTES

None

IV. CITIZEN COMMUNICATIONS

Tom Grave, City of Merced resident, said a notice of intention was published in the Merced Sunstar. This is a petition to give the public a direct voice in land use decisions. This petition will be circulated with the hopes of being on the ballot in November. The intent is to preserve agricultural land and water resources.

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP09-015 - Michael Ryel - To allow multiple light industrial land uses (i.e. child care facility, warehousing, fabrication, vehicle repair, specialized schools, etc.) at an existing business park. The project site is located on the east side of Highway 59, one-fifth mile south of Gerard Avenue in the Merced SUDP. The property is designated Merced SUDP 'Commercial General' land use in the General Plan and is zoned M-1 (Light Manufacturing). **JF**

Recommendation: The actions requested are to:
1) Determine the project is categorically exempt from CEQA; and
2) Approve Conditional Use Permit No. CUP09-015 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Project Planner Jeff Fugelsang said a request by both County Counsel and the Planning Department agreed to continue and refer this application back to Planning Staff with the consent of the applicant in order to obtain additional project description information and clarification regarding the compatibility of the proposed land uses within the project.

The public hearing opened 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, THE PLANNING COMMISSION AGREED TO CONTINUE THIS APPLICATION AND REFERRED THE PROJECT BACK TO PLANNING STAFF FOR FURTHER REVIEW AND STUDY.

B. **MINOR SUBDIVISION No. MS09-012 - Roberts & Roberts -** To subdivide three legal lots involving 39.28 acres into four lots of 9.37, 9.50, 9.78, and 10.63 acres for the purpose of estate planning. The project site is located at the southeast corner of Cardella Road and Hatch Road in the Merced Rural Residential Center (RRC) #1. The property is designated 'Agricultural-Residential' land use in the General Plan and zoned A-R (Agricultural Residential). **JF**

Recommendation: The actions requested are to:
1) Determine the project is categorically exempt from CEQA; and
2) Approve Minor Subdivision Application No. MS09-012 based on the project findings, and subject to the conditions of approval presented in the Staff Report.

Project Planner Jeff Fugelsang submitted a February 23, 2010 letter by Larry Bowers with Bedesen Cardoza-Associates, Inc., being the representative for this application, asking for a continuance of the project, due to their lack of understanding as to how and why certain Conditions of Approval are to be applied to this project and requested a face to face meeting.

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

No one spoke in favor or opposition to this application.

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

Robert Lewis, Development Services Director, said the applicant did request in writing that this application be continued, but later contacted the Department by e-mail asking for a 30 day continuance.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION AGREES TO CONTINUE THIS APPLICATION TO THE MARCH 24, 2010 HEARING.

C. **EXTENSION No. EXT10-001 TO CONDITIONAL USE PERMIT No. CUP08-011 - Hilmar Cheese -** To extend the expiration date for one year to February 11, 2011 in order to expand the existing Hilmar Cheese processing facility. The project is located at the northwest corner of Lander Avenue & August Road in the Hilmar area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **DG**

Recommendation: The actions requested are to:
1) Determine the previously adopted mitigated negative declaration prepared in accordance with CEQA Guidelines is adequate for the extension; and
2) Approve Extension No. EXT10-001 to Conditional Use Permit No. CUP08-011, based on the project findings, and subject to the conditions of approval and mitigation measures presented in the Staff Report.

Planner David Gilbert presented the Staff Report and recommendations of approval dated February 24, 2010.

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

No one spoke in favor or opposition to this application.

The public hearing closed at 9:21 a.m.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION ADOPTS THE PREVIOUS NEGATIVE DECLARATION PREPARED FOR EXTENSION No. EXT10-001 TO CONDITIONAL USE PERMIT No. CUP08-011.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED FEBRUARY 24, 2010, AND MAKES THE 12 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 12 FINDINGS, APPROVES EXTENSION No. EXT10-001 TO CONDITIONAL USE PERMIT No. CUP08-011 SUBJECT TO THE 23 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Approval of Extension No. EXT10-001 extends the expiration date of Conditional Use Permit No. CUP08-011 from February 11, 2010 to February 11, 2011. All conditions to CUP08-011 shall continue to apply and are listed below.

2. The applicant shall comply with all applicable standard conditions of approval listed in the Planning Commission Resolution No. 97-1.

3. For the purpose of conditions monitoring, an inspection fee in the amount of **$468** 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.

4. The applicant shall comply with all applicable County, State and Federal regulations.

Public Works Department Road Division Conditions:

5. Applicant shall enter into a Roadway Impact Agreement with the Merced County Department of Public Works/Road Division agreeing to pay an annual impact fee of $4,100 to the Merced County Road Fund.

Public Works/Building and Safety Division

6. Building plans shall be completed and submitted by a California licensed engineer or architect to the Building & Safety Division for review and approval prior to any construction activity.

7. All new construction started after January 1, 2008, shall require the submittal of a soils report prepared by a California licensed soil engineer. The building engineer shall review the soils report prior to designing the foundation to ensure that all requirements from the soils engineer are met.

Division of Environmental Health

8. The applicant and Environmental Health Staff shall meet to review all existing and proposed septic systems for the following:

   - Exact locations of existing septic systems need to be identified.
   - Leach field replacement areas for existing septic systems need to be identified and maintained.
   - Some proposed structures appear to be located on top of parts of existing septic systems.
   - Some proposed structures may be located on septic system replacement areas.
   - Proposed septic system sites and their replacement leach field areas need to be identified and maintained.
   - Standing groundwater levels for the past few years need to be reviewed to determine if adequate depth to groundwater can be maintained below leach lines.
   - Required setback distances between domestic water lines and septic systems shall be maintained

9. Public Water System permit amendment may be required to allow additional demand and increase in size of the distribution system.

10. Well and pump capacities shall be evaluated to determine if capacity is adequate for the proposed additional 200,000 gpd.

11. Documentation of compliance with California Code of Regulations, Title 22, Waterworks Standards shall be provided for new water mains.

Turlock Irrigation District

12. The Larson irrigation pipeline that runs from north to south along the western edge of the project site shall be protected from any damaged caused by construction activity.

13. A facility change permit shall be required for any pole or electrical facility re-location.

14. Underground Service Alert shall be notified before digging around underground power lines.

San Joaquin Valley Air Pollution Control District

15. The applicant shall contact the District prior to any construction activity in order to obtain the proper permits and/or comply with their regulations (letter attached – Public Agency Comments).

Regional Water Quality Control Board

16. Prior to expansion of the cheese processing facility the wastewater flows shall remain at 1.9 mgd until the improvements to the wastewater treatment system have been completed and all of the wastewater is fully treated prior to discharge. Once the wastewater treatment system has been improved and

the RWD has been approved by RWQCB the applicant can discharge wastewater up to 2.5 mgd.

Mitigation Measures

17. 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. The requirements of the dust control plan are described in Appendix A of this Initial Study.

18. The County will require construction contractors to implement the following measures to reduce construction-related emissions.

- Limit the area subject to excavation, grading, and other construction activity to one activity or phase at a time.
- Limit the hours of operation of heavy-duty equipment to a maximum of 8 hours per day, 5 days per week, or limit the amount of equipment operated concurrently.
- Replace fossil-fueled equipment with electrically driven equivalents where feasible (provided they are not run via a portable generator set).
- Require that all diesel engines be shut off when not in use to reduce emissions from idling.
- Curtail construction during periods of high ambient pollutant concentrations; this may include ceasing construction activity during the peak hour of vehicular traffic on adjacent roadways and “Spare the Air Days” declared by the SJVAPCD.
- Implement activity management (e.g., rescheduling activities to reduce short-term impacts) to minimize concurrent operation of construction equipment and concurrent construction of project phases.
- During the smog season (May through October), lengthen the construction period to minimize the number of vehicles and equipment operating at the same time.
- Equip off-road trucks with on-road engines when possible.
- Minimize the obstruction of traffic on adjacent roadways.
- Power construction equipment with diesel engines fueled by alternative diesel fuel blends or ultra-low sulfur diesel (ULSD). Only fuels that have been certified by ARB should be used. ARB has verified specific alternative diesel fuel blends for NO_X and PM emission reduction. Where practicable, use ARB-certified alternative fueled engines in construction equipment, such as compressed natural gas, liquid propane gas, electric motors, or other ARB-certified off-road technologies.
- Use construction equipment that meets the current off-road engine emission standard (as certified by the ARB) or that is re-powered with an engine that meets this standard. Tier I, Tier II, and Tier III engines have significantly less NO_X and PM emissions compared with uncontrolled engines.
- Retrofit construction equipment with diesel particulate filters and NO_X catalysts.

19. As a condition of approval, the project applicant shall enter into a development mitigation contract with the SJVAPCD to demonstrate that project emissions of ROG and NOx shall not exceed 9.9 tons/year through the payment of fees (on a per-ton basis) to the SJVAPCD.
The payment of fees shall be made to the SJVAPCD based on the fee schedule in the development mitigation contract and the amount of reductions necessary to offset project NO_X and ROG emissions below the SJVAPCD thresholds.

20. If buried cultural resources such as chipped or ground stone, midden deposits, historic debris, building foundations, human bone, or paleontological resources are inadvertently discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until a qualified archaeologist or paleontologist can assess the significance of the find and, if necessary, develop appropriate treatment measures in consultation with Merced County and other appropriate agencies.

21. If remains of Native American origin are discovered during proposed project construction, it shall be necessary to comply with state laws concerning the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (NAHC). If any human remains are discovered or recognized in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

    - the County coroner has been informed and has determined that no investigation of the cause of death is required; and
    - If the remains are of Native American origin:
    - The most likely descendants of the deceased Native Americans have made a recommendation to the landowner or person responsible for the excavation work for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC 5097.98; or
    - The NAHC has been unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified.

    According to the California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100) and disturbance of Native American cemeteries is a felony (Section 7052). Section 7050.5 requires that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the NAHC.

22. The project proponent will develop plans to prevent the pollution of surface water and groundwater, and to promote the health and safety of workers and other people in the project vicinity. These programs will include an operations and maintenance plan, site-specific safety plan, and fire prevention plan. The programs are required by law and will require approval by responsible agencies. Required approvals are as follows:

- The site-specific safety plan and the operations and maintenance plan will be approved by the California Occupational Safety and Health Administration (Cal-OSHA).
- The fire safety plan will be approved by the local fire department.

23. Included below is list of requirements that will help control the constituents contained in the effluent process water from migrating down into the shallow groundwater aquifer. These plan elements will be used to show the Central Valley RWQCB that management practices are in place to reduce the affects of shallow groundwater pollution**.**

- *Site specific conservation practices.* Identify buffer zones or equal controls to minimize the potential for pollutant runoff to be able to discharge into waters of the United States and local Irrigation District Canals/laterals.

- *Soil testing.* Identify protocols for testing process wastewater for nitrogen and conductivity near the effluent discharge locations. The NMP will include technical standards for testing and analysis including additional analysis if other constituents that are known to be problematic.
- *Land Application.* As applicable, the Nutrient Management Plan coordinator will establish protocols for the process wastewater to ensure appropriate agricultural utilization of nutrients.
- *Records and documentation.* Identify specific site records that will developed and maintained throughout the development, implementation, and management of the NMP and compliance with the Central Valley RWQCB permit.

With implementation of Mitigation Measure HYD-1, the effluent process wastewater impacts to the shallow groundwater aquifer will be reduced to a less than significant level. In addition, approval by the Central Valley RWQCB of the *Amended Report of Discharge* <u>and completion of the WTP</u> will be required prior to HCC being able to increase their process wastewater discharges.

VI. <u>COMMISSION ACTION ITEMS</u>

A. TO CONSIDER A REQUEST TO CURE AND CORRECT AN ALLEGED VIOLATION OF THE RALPH M. BROWN ACT (GOV CODE § 54954.2) FOR THE JANUARY 13, 2010 AGENDA ITEM: "Public Hearing Item A: Minor Subdivision Application No. MS09-014, Pacheco LLC." **DG**

<u>Recommendation</u>: The actions requested are to:
1) Follow the January 26, 2010, Board of Supervisor's policy directive to the Planning Commission to revise its agenda descriptions, as a matter of sound public policy, to conform to the agenda format used by the Board of Supervisors, specifically including the type of CEQA document, if any, under consideration.
2) Re-advertise the application pursuant to state planning and zoning law and place it on the March 10, 2010 Planning Commission Agenda with the new agenda format description.

Planner David Gilbert presented the staff memorandum and recommendations dated February 24, 2010.

MOTION: M/S MOBLEY – ERRECA, AND UNANIMOUSLY CARRIED, THE COMMISSION FOLLOWS THE JANUARY 26, 2010 BOARD OF SUPERVISOR'S POLICY DIRECTIVE TO THE PLANNING COMMISSION TO REVISE ITS AGENDA DESCRIPTIONS, AS A MATTER OF SOUND PUBLIC POLICY, TO CONFORM TO THE AGENDA FORMAT USED BY THE BOARD OF SUPERVISORS, SPECIFICALLY INCLUDING THE TYPE OF CEQA DOCUMENT, IF ANY, UNDER CONSIDERATION.

Robert Lewis asked David Gilbert to read the last sentence of the staff memorandum that reads:

"Although there was no violation of the Ralph M. Brown Act in the form and content of the agenda and legal notices, the Board of Supervisors desires as a matter of sound public policy to give the most complete description of an action item as reasonable".

MOTION: M/S MOBLEY – ERRECA, AND UNANIMOUSLY CARRIED, THE COMMISSION APPROVES TO RE-ADVERTISE MINOR SUBDIVISION APPLICATION No. MS09-014, THE APPLICATION PURSUANT TO STATE PLANNING AND ZONING LAW AND PLACE THIS APPLICATION ON THE MARCH 10, 2010 PLANNING COMMISSION AGENDA WITH THE NEW AGENDA FORMAT DESCRIPTION.

B. TO CONSIDER A REQUEST TO CURE AND CORRECT AN ALLEGED VIOLATION OF THE RALPH M. BROWN ACT (GOV CODE § 54954.2) FOR THE JANUARY 13, 2010 AGENDA ITEM: "Public Hearing Item B: Major Subdivision Application No. MAS04-014, Lakeview Properties." **JH**

Recommendation: The actions requested are to:
1) Follow the January 26, 2010, Board of Supervisor's policy directive to the Planning Commission to revise its agenda descriptions, as a matter of sound public policy, to conform to the agenda format used by the Board of Supervisors, specifically including the type of CEQA document, if any, under consideration.
2) Re-advertise the application pursuant to state planning and zoning law and place it on the March 10, 2010 Planning Commission Agenda with the new agenda format description.

Project Planner James Holland presented the staff memorandum dated February 24, 2010.

Mr. Holland handed out two letters to the Commission from Lydia Miller with San Joaquin Raptor Rescue Center and Steve Burke, Protect our Water, raising procedural issues and environmental issues.

MOTION: M/S MOBLEY – ERRECA, AND UNANIMOUSLY CARRIED, THE COMMISSION FOLLOWS THE JANUARY 26, 2010 BOARD OF SUPERVISOR'S POLICY DIRECTIVE TO THE PLANNING COMMISSION TO REVISE ITS AGENDA DESCRIPTIONS, AS A MATTER OF SOUND PUBLIC POLICY, TO CONFORM TO THE AGENDA FORMAT USED BY THE BOARD OF SUPERVISORS, SPECIFICALLY INCLUDING THE TYPE OF CEQA DOCUMENT, IF ANY, UNDER CONSIDERATION.

MOTION: M/S MOBLEY – ERRECA, AND UNANIMOUSLY CARRIED, THE COMMISSION APPROVES TO RE-ADVERTISE MAJOR SUBDIVISION APPLICATION No. MAS04-014, PURSUANT TO STATE PLANNING AND ZONING LAW AND PLACE THIS APPLICATION ON THE MARCH 10, 2010 PLANNING COMMISSION AGENDA WITH THE NEW AGENDA FORMAT DESCRIPTION.

VII. CORRESPONDENCE

None

VIII. GENERAL BUSINESS

Marianne Greene, County Counsel, said that for procedural motions, the three vote requirement for action items – meaning quasi-legislative, which includes policy decisions and quasi-judicial decisions - does not apply.

Bill Nicholson, Assistant Development Services Director, said there needs to be three affirmative votes of the Commission to approve a judicial, quasi judicial or legislative action.

Chairman Tanner clarified that for a regular application, an absence by a Commissioner is a “no” vote and an abstaining vote is a “no” vote also. It must be three votes to pass.

Mr. Nicholson responded yes. It still needs three “yes” votes to pass the application.

IX. DIRECTOR'S REPORT

None

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:40 a.m.