MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF SEPTEMBER 22, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of September 22, 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 9:10 a.m., on September 22, 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
Staff Present:	James L. Brown, Interim Director William Nicholson, Assistant Development Services Director Kim Anderson, Recording Secretary Jeff Fugelsang, Planner II Isaac Cabrera, GIS/Development Services Manager
Legal Staff:	Marianne Greene, Deputy County Counsel
Commissioners Absent:	Commissioner Greg Thompson

III. APPROVAL OF MINUTES

M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVED THE MINUTES OF AUGUST 25, 2010.

IV. CITIZEN COMMUNICATIONS

Tom Grave, Merced resident, handed out a portion of the Merced County Tax Collector Property Tax Default (Delinquent) List to the Planning Commissioners showing Fox Hills SPE LLC as being delinquent.

V. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP09-013 – George & Patricia Kapor – To establish a one acre outdoor recreational area and an 800 square foot winery building for the purpose of agricultural tourism and holding weekend events such as dinners, weddings, festivals, craft classes, and the like. The property is located on the northwest corner of Golf Link Road and Clausen Avenue in the Turlock area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **JF**

Recommendation: The actions requested are to:
1) Adopt the Mitigated Negative Declaration in conformance with CEQA Guidelines; and
2) Approve Conditional Use Permit No. CUP09-013 based on the project findings, and subject to the conditions of approval and mitigation measures presented in the Staff Report.

Planner Jeff Fugelsang presented the Staff Report and recommendations of approval dated September 22, 2010.

The public hearing opened at 9:16 a.m.

Joaquin Rhodes, neighbor, said there is nothing wrong with this application and feels the project would be a good fit for the area.

Earl Mennents, neighbor, said he has no problem with this application, there is no noise and he is in support of this application.

The public hearing closed at 9:22 a.m.

Commissioner Lashbrook feels this is a good project and it supports good quality agricultural tourism for Merced County.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR CONDITIONAL USE PERMIT No. CUP09-013 WITH 8 MITIGATION MEASURES.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 22, 2010, AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP09-013 SUBJECT TO THE 24 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Planning & Community Development Department

1. Conditional Use Permit No. CUP09-013 is granted to establish a one acre outdoor recreational area and an 800 square foot winery building for the purpose of agricultural tourism and holding weekend events such as dinners, weddings, festivals, craft classes, and the like.

2. The project shall operate in a manner that is consistent with the approved Plot Plan and the applicant's Operational Statement.

3. Minor Modifications to this permit may be approved by the Development Services Director upon submittal of an acceptable application.

4. The project site shall comply with the parking requirements in Section 18.40 of the Merced County Zoning Code.

5. The applicant/property owner shall comply with all applicable conditions contained in Planning Commission Resolution 97-1 (attached).

6. For the purpose of condition monitoring, an inspection fee in the amount of **$162.00** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of the inspection.

7. The applicant shall comply with all applicable local, state and federal standards and regulations.

County Counsel

8. George and Patricia Kapor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, commissions, officers, employees, agents and assigns (hereinafter "COUNTY") from and against any and all claims, petitions, demands, liability,

judgments, awards, interest, attorney's fees, expert witness and consultant fees and other costs 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 George and Patricia Kapor. George and Patricia Kapor'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 George and Patricia Kapor, its employees, subcontractors, agents, and officers. The duty shall extend to any allegation or 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 notice of filing a lawsuit, claim, petition, or allegation of liability against COUNTY. George and Patricia Kapor will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause and shall not be limited to any claim, petition, demand, liability, judgment, award, interest, attorney's fees, expert or consultant witness fees, legal research fees, staff and administrative costs, administrative record costs, materials, and costs 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, including but not limited to actions arising from public interest, land use and environmental legal actions, brought against the COUNTY following PROJECT approval, modification, denial, or the exercise or exhaustion of administrative appeals. Attorney's fees shall include any and all attorneys fees but not be limited to attorneys fees and staff time incurred by the offices of COUNTY counsel. COUNTY shall have full discretion to select legal counsel of its own choosing to represent COUNTY, at a cost not exceeding the prevailing and reasonable rates for counsel practicing environmental and land use law in the State of California, or practicing any other area of law that the COUNTY determines the Claim may reasonably require. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

<u>Department of Public Health/Division of Environmental Health</u>

9. The existing septic tanks and leach line areas are to be unpaved, contain no structures, and be protected from compaction (vehicular traffic, etc.). The leach line replacement areas (100% of required existing leach field) are to be unpaved and contain no structures.

10. Waste materials from the winery may enter on-site septic systems, requiring approval from MCDEH.

11. Food or drink services associated with events that are open to the public shall be under permit from MCDEH.

12. Any food provided or sold onsite requires a food facility permit from MCDEH.

13. The submitted plot plan shows two existing wells, one near the house, and the other on the north side of the proposed parking area. Both wells should

be protected against tampering. The one near the parking area needs to be protected against damage by vehicles.

14. Any hazardous material stored on-site or threshold quantities (55 gallons, 200 cubic feet, or 500 pounds) requires that a hazardous material business plan (HMBP) be filed with the Division of Environmental Health. Any quantity of hazardous waste generated on-site also requires that a HMBP be filed.

15. Refrigerant for a refrigeration system may qualify the facility for California Accidental Release Program regulations and may require a risk management plan for the hazardous material.

16. The proposed two (2) cubic yard dumpster, with weekly pickup, should be adequate for events.

Mitigation Measures

17. **Mitigation Measure AES-1:** In accordance with Zoning Ordinance Section 18.41.060, 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 and away from adjoining properties and public rights-of-way. The use of blinking, flashing or unusually high intensity or bright lights shall not be allowed. To the satisfaction of the Planning Department, all lighting fixtures shall include yellow, energy saving light bulbs, and be appropriate to the use they are serving, in scale, intensity and height. To reduce the impacts of any additional unwanted glare or fugitive lighting caused by the special events night time usage, the applicant is required to have all lighting shielded and pointed downward.

18. **Mitigation Measure AIR-1:** Based on the San Joaquin Valley Air Pollution Control District's (SJVAPCD) review, the non-agricultural portion of the project may be subject to District Rule 9510. This would require the applicant to submit an Air Impact Assessment (AIA) application to the District. Compliance with District Rule 9510 along with the full payment of all applicable fees would need to be paid prior to the issuance of a building permit. ~~In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 402 for National Emission Standards for Hazardous Air Pollutants.~~

19. **Mitigation Measure AIR-2:** The following dust control measures shall be implemented during construction activities onsite (but not required for agricultural practices) in accordance with SJVAPCD Regulation VIII:

- All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.

- All onsite unpaved roads and offsite unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.

- All land clearing, grubbing, scraping, excavation, land leveling, grading, cut and fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.

- When materials are transported off site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least 2 feet of freeboard space from the top of the container shall be maintained.
- All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (The use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the. visible dust emissions.) (Use of blower devices is expressly forbidden.)

- Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.

20. **Mitigation Measure CULT-1:** If archeological materials or paleontological materials are identified, work on that portion of the project shall cease until a resources protection plan conforming to CEQA Section 15064.5 is prepared by a qualified archeologist and/or paleontologist and approved by the County of Merced Community Development Director or authorized representative. Project work may resume in compliance with such plan. If human remains are encountered, the County Coroner shall be contracted immediately and the provisions of State Law carried out.

21. **Mitigation Measure NOISE-1:** Amplified noise shall be confined to daytime hours (7:00 am to 10:00 pm) as required by the County's Noise Ordinance and the noise source shall be restricted to the event center staging area.

22. **Mitigation Measure NOISE-2:** The applicant shall demonstrate compliance with the County's Noise Ordinance by performing the following protocol:

    1) Contact the Planning Department at least three days prior to an upcoming event and provide the date, type of event, estimated attendance, and beginning and ending times.

    2) Acquire a noise measurement instrument and conduct and record noise measurement readings at the adjacent property lines to the south and east of the project site at the following times during an event:

       - Prior to the start on an event.
       - At peak attendance and/or estimated maximum noise volume.
       - At 10:00 pm, in accordance with the County Noise Ordinance.

    3) A log of the noise measurement readings shall be kept with the event date, type of event, estimated attendance, beginning and ending times of the event, noise measurement readings, and noise measurement reading times.

    4) The log book shall kept onsite at all times and shall be produced to Planning Department Staff upon request.

23. **Mitigation Measure NOISE-3:** The applicant shall place a temporary 125 foot long by four foot deep by six foot high hay bale wall for events or a permanent 125 foot long by six foot high solid masonry or stucco wall on the northeast side of the event center as identified in Figure 9 of the Initial Study.

24. **Mitigation Measure UTL-1:** Prior to holding any events onsite, the applicant shall submit the site's septic system design information—including septic tank size, tank construction features, leach line dimensions, and amount of rock below the pipe—to the Merced County Division of Environmental Health (MCDEH) for review and approval.

VI. COMMISSION ACTION ITEM (S)

None

VII. DIRECTOR'S REPORT

A. PLANNING COMMISSION TRAINING PROGRAM – Geographic Information Systems (GIS). **IC**

Isaac Cabrera, GIS/Development Services Manager, gave a PowerPoint presentation on the background and usage of the Geographic Information System program used for Merced County.

Tom Grave, Merced resident, asked if there is coordination between Merced County and Merced County Association of Governments with the GIS program.

VIII. COMMISSIONERS COMMENTS

None

IX. ADJOURNMENT

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