# MERCED COUNTY PLANNING COMMISSION MINUTES FOR MEETING OF MAY 12, 2010

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of May 12, 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 May 12, 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 Greg Thompson

Staff Present: Robert Lewis, Development Services Director

William Nicholson, Assistant Development Services Director

Kim Anderson, Recording Secretary

David Gilbert, Senior Planner

Legal Staff: Marianne Greene, Deputy County Counsel

Commissioners Absent: None

### III. APPROVAL OF MINUTES

None

# IV. <u>CITIZEN COMMUNICATIONS</u>

None

### V. PUBLIC HEARINGS

None

### VII. COMMISSION ACTION ITEM(s)

A. ADMINISTRATIVE APPLICATION No. AA09-023 - Panther Energy Company - To construct an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot enclosed drilling pad on 312 acres. The project is located on the south side of Rahilly Road, two miles west of Highway 59 in the Merced area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). Continued from the March 10, 2010 Hearing. DG

**Recommendation**: The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-023 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report and recommendations of approval dated May 12, 2010.

Commissioner Lashbrook said we need this energy and this will be a short term disruption to the neighborhood. She requested to bring the neighbor, Ms. Gomes, up to see if she agrees to the responses to comments.

Deputy County Counsel Marianne Greene, stated the public hearing is closed, so we cannot ask for new testimony.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR ADMINISTRATIVE APPLICATION No. AA09-023.

MOTION: M/S MOBLEY - ERRECA, AND UNANIMOUSLY CARRIED, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 12, 2010, AND MAKES THE 13 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 13 FINDINGS, APPROVES ADMINISTRATIVE APPLICATION No. AA09-023 SUBJECT TO THE 26 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

#### **Conditions:**

### Planning & Community Development Department

- Administrative Application No. AA09-023 is granted to construct an exploratory natural gas well within a 62,500 square foot (250' x 250') drilling pad on a 312 acre parcel. The applicant shall operate the exploratory natural gas well site in a manner that is consistent with the submitted operational statement and approved plot plan.
- 2. If the exploratory natural gas well discovers a sufficient amount of natural gas the construction of a natural gas production well is granted on the same 62,500 square foot drilling pad. The applicant shall operate the production natural gas well site in a manner that is consistent with the submitted operational statement and approved plot plan. The Development Services Director may approve minor modifications to the application.
- 3. The applicant is required to submit a Minor Modification application to the Planning and Community Development Department to modify any part of this Administrative Application permit.
- 4. The applicant shall comply with all applicable local, state and federal standards and regulations.
- 5. 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.
- 6. The exploratory gas well permit shall be effective for 60 days upon commencement of drilling. This permit shall remain active for one year from the date of approval.

### County Counsel

7. Panther Energy Company must indemnify, defend and hold harmless, the County of Merced, 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 approval, modification, denial, or the exhaustion of administrative appeals associated with the Jade #1-27 Well ("project") 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 Panther Energy Company. The liability of Panther Energy Company for indemnity under this term and condition shall apply,

regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Panther Energy Company, 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. Panther Energy Company will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition 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 at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's 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 term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

### Department of Public Health/Division of Environmental Health

- 8. The natural gas well shall be drilled under permit from the California Division of Oil, Gas, and Geothermal Resources. If the well if dry or when use of the well is discontinued, it shall be destroyed under permit from the California Division of Oil, Gas, and Geothermal Resources.
- 9. All sewage generated on-site shall be contained in the sewage holding tanks of trailers or in portable restrooms. If dumped in Merced County, sewage shall be dumped at an approved site. If pumped from the holding tanks in Merced County, pumping shall be done by a business holding a septic pumper permit issued by MCDEH.
- 10. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. ft. or 500 pounds) requires that a hazardous materials 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. Contact Vickie Hayer 381-1083 or Kerri Gibbons at 381-1094.

### Merced Irrigation District (MID)

MID and Panther Energy have executed a Letter of Understanding (LOU) outlining each parties rights and responsibilities. MID has agreed to allow Panther Energy to use some of its facilities for ingress/egress and to allow them to cross some facilities with their gathering pipelines. <u>Each use of MID facilities by the applicant will require</u> the appropriate executed agreement first obtained and recorded at the expense of the applicant.

### Regional Water Quality Control Board

12. Prior to the start of construction of the exploratory natural gas well, the applicant shall explain how the drilling mud and liquids will be handled for disposal and identify the permitting facility that will be used for disposal and how the wastewater will be stored at the site and identify the permitted Class II injection well or disposal facility that will be used for wastewater disposal.

### San Joaquin Air Pollution Control District

- 13. The application shall be subject to Regulation VIII (Fugitive PM10 Prohibitions.
- 14. All portable emission units (including portable drilling rigs) shall be required to be registered with either the California Air Resources Board (CARB) or with the District (Rule 2280 Portable Equipment Registration).
- 15. The project may be subject to District Rule 9510 (Indirect Source Review). Rule 9510 requires applicants subject to the rule to provide information that enables the District to quantify construction, area and operational emissions, and potentially mitigate a portion of those emissions. An application must be filed with the District no later than concurrent with application with a local agency for the final discretionary approval.

### Department of Conservation

16. Prior to drilling, Panther Energy shall submit detailed drilling plans to the Department of Conservation for their review and approval.

### Mitigation Measures

MM-Biological-4. Prior to implementation of any ground clearing activities, a qualified biologist shall survey the area to determine whether burrows suitable for burrowing owl are present within 500 feet of the project site. The survey shall be conducted no more than 30 days prior to ground clearing activities. If no suitable burrows are identified, then no additional mitigation is required. However, if ground clearing activities are delayed beyond 30 days, additional surveys for burrows shall be required.

If suitable burrows are observed, then no more than 30 days prior to the beginning of ground disturbance a pre-construction survey for burrowing owls shall be conducted by a qualified biologist in general accordance with the Burrowing Owl Survey Protocol and Mitigation Guidelines by the California Burrowing Owl Consortium, and a report prepared and submitted to CDFG prior to groundbreaking.

If occupied burrows are identified, the following specific mitigation measures shall be implemented:

- Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by DFG verifies that egg-laying and incubation has not started or that juveniles from occupied burrows are capable of independent survival.
- 2. To avoid impacts to occupied burrows, no extraction shall occur within 500 feet of the burrows during the breeding season (February 1 through August 31), or within 160 feet during the non-breeding season (September 1 through January 31).
- 3. If destruction of occupied burrows is unavoidable:
  - Destruction shall occur only outside of the nesting season (between September 1 and January 31).
  - Resident owls shall be moved away from the disturbance area by a qualified biologist using only passive relocation techniques.
  - Existing unsuitable burrows shall be enhanced or new burrows created at a ratio of 2:1 prior to relocation of resident owls.

- 18. **MM-Biological-5.** If construction of the well sites is initiated during the nesting season of California horned lark and loggerhead shrike (March July), pre-construction nesting bird surveys shall be conducted in all suitable habitat within 150 feet of the project site. Surveys shall be conducted by a qualified biologist no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 150 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 19. MM-Biological-6. If construction occurs during the nesting season (generally March 1 through September 1), preconstruction surveys for nesting Swainson's hawk shall be conducted within 0.5 mile of the project site. Surveys shall be conducted no more than 14 days prior to initiation of construction. If active nests are located, construction shall be halted until fledging has occurred or nest failure documented as determined by a qualified biologist. Alternatively, CDFG may be consulted to determine if project construction is likely to impact nesting individuals and if construction may proceed. If construction proceeds, CDFG may require additional mitigation, including the presence of a biological monitor to ensure that construction does not result in nest abandonment.
- 20. MM-Biological-7. Pre-construction nesting bird surveys shall be conducted for any project component to be installed during the nesting season, which typically runs from March 1 through September 1. The surveys shall be conducted by a qualified biologist and shall include all trees and shrubs (suitable for loggerhead shrike) within 250 feet of the project site. Surveys shall be conducted no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 250 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 21. **MM-Biological-8.** Prior to construction of all well sites, a qualified biologist shall conduct a San Joaquin kit fox habitat assessment. All potentially suitable burrows shall be mapped, and photographed, and any observations in or around the burrow shall be described. A brief report shall be prepared and included in the Section 404 Clean Water Act permit submitted to USACE. If it is determined that the project may impact San Joaquin kit fox, mitigation requirements for impacts would be determined during Section 7 consultation between USACE and USFWS.
- 22. **MM-Biological-9.** Prior to issuance of a permit to construct, and no less than 14 days and no more than 30 days prior to ground disturbance or commencement of construction, a qualified biologist shall conduct a protocol level survey to determine the presence of the San Joaquin Kit Fox. In the event that this species is detected during protocol-level surveys, consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS) shall be required to discuss how to implement the project and avoid "take". If "take" cannot be avoided, acquisition of a State Incidental Take Permit and corresponding federal take permit will be required prior to project implementation. If the survey identifies potential dens (defined as burrows at least four inches in diameter that open up within two feet), potential den entrances shall be dusted for three calendar days to register track of any San Joaquin kit fox present. If no kit fox activity is identified, potential dens may be destroyed.

If San Joaquin kit fox is identified, then dens shall be monitored to determine if occupation is by an adult fox only or is a natal den (natal dens usually have multiple openings). If the den is occupied by an adult only, the den may be destroyed when the adult fox has moved or is temporarily absent. If the den is a natal den, in coordination with the USFWS, a buffer zone of 250-feet shall be maintained around the den until the biologist determines that the den has been vacated. Where San Joaquin kit fox is identified, the provisions of the USFWS's published Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1999) shall apply (except that preconstruction survey protocols shall remain as established in this paragraph). These standards include provisions for

educating construction workers regarding the kit fox, keeping heavy equipment operating at safe speeds, checking construction pipes for kit fox occupation during construction, and similar low or no-cost activities.

- 23. MM-Cultural-1. If potentially significant historic or archaeological resources are discovered during ground-disturbing activities associated with construction of the proposed project, all work within 100 feet of the resource shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate mitigation measures in consultation with Merced County and other appropriate agencies and individuals. If significant resources are discovered, a formal evaluation using CEQA criteria will be conducted to determine if further study, test excavations, or data recovery procedures are necessary.
- 24. **MM-GHG-1.** The project applicant shall work with the SJVAPCD to determine the applicable BPS measures for the project. The project shall incorporate either the identified BPS or Approved Alternate Technology prior to construction.
- 25. **MM-Hydrology-1.** A site-specific SWPPP shall be prepared as part of the NPDES General Construction Activities Stormwater Permit, if project grading or trenching will occur during the rainy season (November March). If project grading or trenching will occur outside the rainy season, then a site-specific SWPP will not be required. The site-specific SWPP will require the construction contractor to incorporate the SWPPP Best Management Practices (BMP) measures into all aspects of the project. The BMPs will include measures for management and operation of construction sites to control and minimize the potential contribution of pollutants to storm runoff from these areas. These measures address procedures for controlling erosion and sedimentation and management of all aspects of the construction to ensure control of potential water pollution sources.

Construction phase BMPs will include:

- Dust control
- Minimal use of water for dust control (only as much as needed)
- Dry sweeping and/or storm drain inlet control measure (e.g. sandbags, filter fabric, fiber rolls, etc.)
- Install silt barriers around sensitive areas and wherever earthwork activities might result in erosion and sediment transport
- Stabilize stockpiled soils
- Post-construction stabilization or revegetation
- Runoff control

The measures included in the SWPPP will be monitored regularly for effectiveness. If a measure is found to be ineffective, it will be redesigned or replaced immediately.

- 26. **MM-Noise-1.** The Applicant shall implement the following measures during project-related construction:
  - Construction activities, with the exception of well drilling activities, shall be limited to between 7 a.m. and 6 p.m., Monday through Saturday, to avoid noisesensitive hours of the day. Construction activities shall be prohibited on Sundays and holidays.
  - Construction staging and heavy equipment maintenance activities shall be performed a minimum distance of 300 feet from the nearest residence, unless safety or technical feasibility takes precedence, which will be determined by the Construction Site Manager.
  - Construction equipment noise shall be minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.

- Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences. Stationary combustion equipment such as pumps or generators operating within 300 feet of the nearest residence shall be shielded with a noise protection barrier.
- B. ADMINISTRATIVE APPLICATION No. AA09-024 Panther Energy Company To construct an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot enclosed drilling pad on 278 acres. The project is located on the south side of Sandy Mush Road, 4,000 feet east of Combs Road in the Merced area. The property is designated as Agricultural land use in the General Plan and zoned A-1 (General Agricultural). Continued from the March 10, 2010 Hearing. DG

**Recommendation:** The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-024 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report and recommendations of approval dated May 12, 2010.

Marianne Greene, County Counsel, asked Commissioner Thompson if he had reviewed the March 10, 2010 hearing to become familiar with the Panther Energy applications.

Commissioner Thompson said he reviewed the staff reports but did not watch the live Planning Commission meeting from March 10<sup>th</sup>.

Ms. Greene said Commissioner Thompson should abstain from voting for Items B, C & D regarding Panther Energy since he did not vote at the March 10<sup>th</sup> meeting. Commissioner Thompson agreed.

Commissioner Lashbrook said if the biologist found a vernal pool habitat in the area, what permits would be required and what would stop the project?

Planner David Gilbert replied and said the applicant would have to get the proper federal permits, if its cost effective, the applicants are not going to pursue this well site, and time is a factor.

Commissioner Lashbrook asked for an estimation of when this project will get started with biological issues, spring is not a good time. Mr. Gilbert said that Chairman Tanner could open the public hearing to allow for an answer to Commissioner Lashbrook's question by the applicant. He added that the applicant will have to follow the mitigation measures.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER THOMPSON ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION APPROVES THE MITIGATED NEGATIVE DECLARATION PREPARED FOR ADMINISTRATIVE APPLICATION No. AA09-024.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER THOMPSON ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 12, 2010, AND MAKES THE 12 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 12 FINDINGS, APPROVES ADMINISTRATIVE APPLICATION No. AA09-024 SUBJECT TO THE 32 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

### Planning & Community Development Department

- 1. Administrative Application No. AA09-024 is granted to construct an exploratory natural gas well within a 62,500 square foot (250' x 250') drilling pad on a 278 acre parcel. The applicant shall operate the exploratory natural gas well site in a manner that is consistent with the submitted operational statement and approved plot plan.
- 2. If the exploratory natural gas well discovers a sufficient amount of natural gas the construction of a natural gas production well is granted on the same 62,500 square foot drilling pad. The applicant shall operate the production natural gas well site in a manner that is consistent with the submitted operational statement and approved plot plan.
- The applicant is required to submit a Minor Modification application to the Planning and Community Development Department to modify any part of this Administrative Application permit.
- 4. The applicant shall comply with all applicable local, state and federal standards and regulations.
- 5. 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.
- 6. The exploratory gas well permit shall be effective for 60 days upon commencement of drilling. This permit shall remain active for one year from the date of approval.

### **County Counsel**

7. Panther Energy Company must indemnify, defend and hold harmless, the County of Merced, 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 approval, modification, denial, or the exhaustion of administrative appeals associated with the Lucy Goose #1-3 Well ("project") 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 Panther Energy Company. The liability of Panther Energy Company for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Panther Energy Company, 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. Panther Energy Company will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition 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 at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's

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 term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

# Department of Public Health/Division of Environmental Health

- 8. The natural gas well shall be drilled under permit from the California Division of Oil, Gas, and Geothermal Resources. If the well if dry or when use of the well is discontinued, it shall be destroyed under permit from the California Division of Oil, Gas, and Geothermal Resources.
- All sewage generated on-site shall be contained in the sewage holding tanks of trailers or in portable restrooms. If dumped in Merced County, sewage shall be dumped at an approved site. If pumped from the holding tanks in Merced County, pumping shall be done by a business holding a septic pumper permit issued by MCDEH.
- 10. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. ft. or 500 pounds) requires that a hazardous materials 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. Contact Vickie Hayer 381-1083 or Kerri Gibbons at 381-1094.

#### Regional Water Quality Control Board

11. Prior to the start of construction of the exploratory natural gas well, the applicant shall explain how the drilling mud and liquids will be handled for disposal and identify the permitting facility that will be used for disposal and how the wastewater will be stored at the site and identify the permitted Class II injection well or disposal facility that will be used for wastewater disposal.

### San Joaquin Air Pollution Control District

- 12. The application shall be subject to Regulation VIII (Fugitive PM10 Prohibitions.
- 13. All portable emission units (including portable drilling rigs) shall be required to be registered with either the California Air Resources Board (CARB) or with the District (Rule 2280 Portable Equipment Registration).
- 14. The project may be subject to District Rule 9510 (Indirect Source Review). Rule 9510 requires applicants subject to the rule to provide information that enables the District to quantify construction, area and operational emissions, and potentially mitigate a portion of those emissions. An application must be filed with the District no later than concurrent with application with a local agency for the final discretionary approval.

#### Department of Conservation

15. Prior to drilling, Panther Energy shall submit detailed drilling plans to the Department of Conservation for their review and approval.

### U.S. Army Corps of Engineers - Department of the Army

16. A Department of the Army permit shall be required for the placement of fill within approximately 0.10 acre of waters of the United States within the well pad footprint.

#### California Department of Fish and Game

17. The project site and surrounding areas shall be surveyed by a qualified biologist using the Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander whish was issued by the Department of the United States Fish and Wildlife Service (USFWS) in 2003. Fish and Game and USFWS should then be consulted regarding potential impacts to this species and for permitting requirements, well in advance of any potential project-related impacts

#### Mitigation Measures

- 18. **MM-Biological-1.** Prior to construction of the Lucy Goose well site, protocol-level botanical surveys shall be conducted by a qualified botanist. Surveys shall be conducted in accordance with the Botanical Survey Guidelines of the California Native Plant Society (2001 revised). The timing of the surveys shall occur during the identifiable period for all potentially occurring species. For the 15 species that may occur on the site, surveys in early May and in late July would be sufficient, given average temperatures and rainfall. If populations are identified, the report prepared for the survey shall be submitted to CDFG and/or USFWS to determine the appropriate mitigation, if necessary. This may include collection and transport of topsoil to the area adjacent to the project, and/or transplanting of perennial individuals.
- MM-Biological-2. Prior to construction of the Lucy Goose well site, protocol-level surveys for listed vernal pool invertebrate species shall be conducted in all suitable seasonal wetland features within the project site and within 250 feet of the project site. Surveys will be conducted according to the Interim Survey Guidelines to Permittees for Recovery Permit under Section 10(a)(1)(A) of the Endangered Species Act for Listed Vernal Pool Branchiopods (USFWS 1996). The guidance recommends that either two full wet season surveys be conducted within a five-year period or a full wet season and a consecutive dry season (or vice versa) be conducted. Alternatively, presence of these species may be assumed throughout this area.

Impacts to vernal pool invertebrate species and mitigation requirements for impacts would be determined during Section 7 consultation between USACE and USFWS. In general, mitigation for wetland features that do not provide suitable habitat for listed vernal pool branchiopods will occur at a minimum ratio of 2:1 (one acre of habitat preserved and one acre of habitat restored) for each acre directly impacted. If listed vernal pool branchiopods are present; direct impacts to these occupied habitats will be mitigated at an offsite USFWS-approved mitigation bank at a ratio of 3:1 (2:1 preservation and 1:1 creation), and indirect impacts will be mitigated at a ratio of 2:1 preservation.

- 20. MM-Biological-3. Prior to construction of the Lucy Goose well site, protocol-level surveys for blunt-nosed leopard lizard shall be conducted by a permitted biologist Surveys shall be conducted in accordance with the Approved Survey Protocol for the Blunt-Nosed Leopard Lizard (CDFG 2004). If present, impacts to blunt-nosed leopard lizard and mitigation requirements for impacts would be determined during Section 7 consultation between USACE and USFWS. Given the limited well pad size avoidance and minimization measures prescribed through the Section 7 consultation process would insure impacts to the Blunt-Nosed Leopard Lizard are less-than-significance
- 21. MM-Biological-4. Prior to implementation of any ground clearing activities, a qualified biologist shall survey the area to determine whether burrows suitable for burrowing owl are present within 500 feet of the project site. The survey shall be conducted no more than 30 days prior to ground clearing activities. If no suitable burrows are identified, then no additional mitigation is required. However, if ground clearing activities are delayed beyond 30 days, additional surveys for burrows shall be required.

If suitable burrows are observed, then no more than 30 days prior to the beginning of ground disturbance a pre-construction survey for burrowing owls shall be conducted by a qualified biologist in general accordance with the Burrowing Owl Survey Protocol and Mitigation Guidelines by the California Burrowing Owl Consortium, and a report prepared and submitted to CDFG prior to groundbreaking.

If occupied burrows are identified, the following specific mitigation measures shall be implemented:

- Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by DFG verifies that egg-laying and incubation has not started or that juveniles from occupied burrows are capable of independent survival.
- 2. To avoid impacts to occupied burrows, no extraction shall occur within 500 feet of the burrows during the breeding season (February 1 through August 31), or within 160 feet during the non-breeding season (September 1 through January 31).
- 3. If destruction of occupied burrows is unavoidable:
  - Destruction shall occur only outside of the nesting season (between September 1 and January 31).
  - Resident owls shall be moved away from the disturbance area by a qualified biologist using only passive relocation techniques.
  - Existing unsuitable burrows shall be enhanced or new burrows created at a ratio of 2:1 prior to relocation of resident owls.
- 22. **MM-Biological-5.** If construction of the well sites is initiated during the nesting season of California horned lark and loggerhead shrike (March July), pre-construction nesting bird surveys shall be conducted in all suitable habitat within 150 feet of the project site. Surveys shall be conducted by a qualified biologist no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 150 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 23. **MM-Biological-6**. If construction occurs during the nesting season (generally March 1 through September 1), preconstruction surveys for nesting Swainson's hawk shall be conducted within 0.5 mile of the project site. Surveys shall be conducted no more than 14 days prior to initiation of construction. If active nests are located, construction shall be halted until fledging has occurred or nest failure documented as determined by a qualified biologist. Alternatively, CDFG may be consulted to determine if project construction is likely to impact nesting individuals and if construction may proceed. If construction proceeds, CDFG may require additional mitigation, including the presence of a biological monitor to ensure that construction does not result in nest abandonment.
- 24. MM-Biological-7. Pre-construction nesting bird surveys shall be conducted for any project component to be installed during the nesting season, which typically runs from March 1 through September 1. The surveys shall be conducted by a qualified biologist and shall include all trees and shrubs (suitable for loggerhead shrike) within 250 feet of the project site. Surveys shall be conducted no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 250 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 25. **MM-Biological-8.** Prior to construction of the well site, a qualified biologist shall conduct a San Joaquin kit fox habitat assessment. All potentially suitable burrows

shall be mapped, and photographed, and any observations in or around the burrow shall be described. A brief report shall be prepared and included in the Section 404 Clean Water Act permit submitted to USACE. If it is determined that the project may impact San Joaquin kit fox, mitigation requirements for impacts would be determined during Section 7 consultation between USACE and USFWS.

26. **MM-Biological-9.** Prior to issuance of a permit to construct, and no less than 14 days and no more than 30 days prior to ground disturbance or commencement of construction, a qualified biologist shall conduct a protocol level survey to determine the presence of the San Joaquin Kit Fox. In the event that this species is detected during protocol-level surveys, consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS) shall be required to discuss how to implement the project and avoid "take". If "take" cannot be avoided, acquisition of a State Incidental Take Permit and corresponding federal take permit will be required prior to project implementation. If the survey identifies potential dens (defined as burrows at least four inches in diameter that open up within two feet), potential den entrances shall be dusted for three calendar days to register track of any San Joaquin kit fox present. If no kit fox activity is identified, potential dens may be destroyed.

If San Joaquin kit fox is identified, then dens shall be monitored to determine if occupation is by an adult fox only or is a natal den (natal dens usually have multiple openings). If the den is occupied by an adult only, the den may be destroyed when the adult fox has moved or is temporarily absent. If the den is a natal den, in coordination with the USFWS, a buffer zone of 250-feet shall be maintained around the den until the biologist determines that the den has been vacated. Where San Joaquin kit fox is identified, the provisions of the USFWS's published Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1999) shall apply (except that preconstruction survey protocols shall remain as established in this paragraph). These standards include provisions for educating construction workers regarding the kit fox, keeping heavy equipment operating at safe speeds, checking construction pipes for kit fox occupation during construction, and similar low or no-cost activities.

- 27. MM-Biological-11. Prior to construction of the Lucy Goose well site, a report of the jurisdictional delineation of waters of the U.S., including wetlands, conducted for the project shall be prepared and submitted to USACE Sacramento District for verification. Once verified, a Clean Water Act Section (CWA) 404 permit shall be prepared and submitted to USACE, and a CWA Section 401 permit prepared and submitted to the Regional Water Quality Control Board. No construction activities shall occur until all permits have been received and all mitigation has been carried out and verified.
- 28. MM-Cultural-1. If potentially significant historic or archaeological resources are discovered during ground-disturbing activities associated with construction of the proposed project, all work within 100 feet of the resource shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate mitigation measures in consultation with Merced County and other appropriate agencies and individuals. If significant resources are discovered, a formal evaluation using CEQA criteria will be conducted to determine if further study, test excavations, or data recovery procedures are necessary.
- 29. **MM-GHG-1.** The project applicant shall work with the SJVAPCD to determine the applicable BPS measures for the project. The project shall incorporate either the identified BPS or Approved Alternate Technology prior to construction.
- 30. **MM-Hydrology-1.** A site-specific SWPPP shall be prepared as part of the NPDES General Construction Activities Stormwater Permit, if project grading or trenching will

occur during the rainy season (November – March). If project grading or trenching will occur outside the rainy season, then a site-specific SWPP will not be required. The site-specific SWPP will require the construction contractor to incorporate the SWPPP Best Management Practices (BMP) measures into all aspects of the project. The BMPs will include measures for management and operation of construction sites to control and minimize the potential contribution of pollutants to storm runoff from these areas. These measures address procedures for controlling erosion and sedimentation and management of all aspects of the construction to ensure control of potential water pollution sources.

Construction phase BMPs will include:

- Dust control
- Minimal use of water for dust control (only as much as needed)
- Dry sweeping and/or storm drain inlet control measure (e.g. sandbags, filter fabric, fiber rolls, etc.)
- Install silt barriers around sensitive areas and wherever earthwork activities might result in erosion and sediment transport
- Stabilize stockpiled soils
- Post-construction stabilization or revegetation
- Runoff control

The measures included in the SWPPP will be monitored regularly for effectiveness. If a measure is found to be ineffective, it will be redesigned or replaced immediately.

- 31. **MM-Noise-1.** The Applicant shall implement the following measures during project-related construction:
  - Construction activities, with the exception of well drilling activities, shall be limited to between 7 a.m. and 6 p.m., Monday through Saturday, to avoid noise-sensitive hours of the day. Construction activities shall be prohibited on Sundays and holidays.
  - Construction staging and heavy equipment maintenance activities shall be performed a minimum distance of 300 feet from the nearest residence, unless safety or technical feasibility takes precedence, which will be determined by the Construction Site Manager.
  - Construction equipment noise shall be minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.
  - Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences. Stationary combustion equipment such as pumps or generators operating within 300 feet of the nearest residence shall be shielded with a noise protection barrier.
- 32. **MM-Transportation-1.** Prior to the commencement of drilling activities, the project applicant will consult with the Merced County Fire Marshal to determine the appropriate site configuration of the Champ and Lucy Goose well sites to allow for emergency equipment turning-radius. Turning-radius configuration will be determined by Section D103.4 of the California Fire Code or as approved by the Merced County Fire Marshal.

an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot drilling pad on 529.4 acres. The project is located on the north side of Rahilly Road, two miles west of Highway 59 in the Merced area. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). **Continued from the March 10, 2010 Hearing. DG** 

### **Recommendation:** The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-031 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report and recommendations of approval dated May 12, 2010.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER THOMPSON ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION ADOPTS THE MITIGATED NEGATIVE DECLARATION PREPARED FOR ADMINISTRATIVE APPLICATION No. AA09-031.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, WITH COMMISSIONER THOMPSON ABSTAINING FROM THE VOTE, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 12, 2010, AND MAKES THE 13 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 13 FINDINGS, APPROVES ADMINISTRATIVE APPLICATION No. AA09-031 SUBJECT TO THE 29 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

#### **Conditions:**

### Planning & Community Development Department

- 1. Administrative Application No. AA09-031 is granted to construct an exploratory natural gas well within a 62,500 square foot (250' x 250') drilling pad on a 278 acre parcel. The applicant shall operate the exploratory natural gas well site in a manner that is consistent with the submitted operational statement and approved plot plan.
- If the exploratory natural gas well discovers a sufficient amount of natural gas a
  natural gas production natural gas well is granted on the same 62,500 square foot
  drilling pad. The applicant shall operate the production natural gas production well in
  a manner that is consistent with the submitted operational statement and approved
  plot plan.
- The applicant is required to submit a Minor Modification application to the Planning and Community Development Department to modify any part of this Administrative Application permit.
- 4. The applicant shall comply with all applicable local, state and federal standards and regulations.
- 5. 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.
- 6. The exploratory gas well permit shall be effective for 60 days upon commencement of drilling. This permit shall remain active for one year from the date of approval.

7. Panther Energy Company must indemnify, defend and hold harmless, the County of Merced, 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 approval, modification, denial, or the exhaustion of administrative appeals associated with the Champ #1-22 Well ("project") 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 Panther Energy Company. The liability of Panther Energy Company for indemnity under this term and condition shall apply. regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Panther Energy Company, 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. Panther Energy Company will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition 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 at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's 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 term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

#### Department of Public Health/Division of Environmental Health

- 8. The natural gas well shall be drilled under permit from the California Division of Oil, Gas, and Geothermal Resources. If the well if dry or when use of the well is discontinued, it shall be destroyed under permit from the California Division of Oil, Gas, and Geothermal Resources.
- 9. All sewage generated on-site shall be contained in the sewage holding tanks of trailers or in portable restrooms. If dumped in Merced County, sewage shall be dumped at an approved site. If pumped from the holding tanks in Merced County, pumping shall be done by a business holding a septic pumper permit issued by MCDEH.
- 10. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. ft. or 500 pounds) requires that a hazardous materials 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. Contact Vickie Hayer 381-1083 or Kerri Gibbons at 381-1094.

MID and Panther Energy have executed a Letter of Understanding (LOU) outlining each parties rights and responsibilities. MID has agreed to allow Panther Energy to use some of its facilities for ingress/egress and to allow them to cross some facilities with their gathering pipelines. <u>Each use of MID facilities by the applicant will require</u> the appropriate executed agreement first obtained and recorded at the expense of the applicant.

### Regional Water Quality Control Board

12. Prior to the start of construction of the exploratory natural gas well, the applicant shall explain how the drilling mud and liquids will be handled for disposal and identify the permitting facility that will be used for disposal and how the wastewater will be stored at the site and identify the permitted Class II injection well or disposal facility that will be used for wastewater disposal.

### San Joaquin Air Pollution Control District

- The application shall be subject to Regulation VIII (Fugitive PM10 Prohibitions.
- 14. All portable emission units (including portable drilling rigs) shall be required to be registered with either the California Air Resources Board (CARB) or with the District (Rule 2280 Portable Equipment Registration).
- 15. The project may be subject to District Rule 9510 (Indirect Source Review). Rule 9510 requires applicants subject to the rule to provide information that enables the District to quantify construction, area and operational emissions, and potentially mitigate a portion of those emissions. An application must be filed with the District no later than concurrent with application with a local agency for the final discretionary approval.

## **Department of Conservation**

16. Prior to drilling, Panther Energy shall submit detailed drilling plans to the Department of Conservation for their review and approval.

#### U.S. Army Corps of Engineers - Department of the Army

17. A Department of the Army permit may be required for the gathering pipeline crossing Duck Slough. It is unclear of the design on this crossing and whether it would require the placement of fill with Duck Slough. The crossing should be designed to avoid impacts to the creek.

### Mitigation Measures

MM-Biological-4. Prior to implementation of any ground clearing activities, a qualified biologist shall survey the area to determine whether burrows suitable for burrowing owl are present within 500 feet of the project site. The survey shall be conducted no more than 30 days prior to ground clearing activities. If no suitable burrows are identified, then no additional mitigation is required. However, if ground clearing activities are delayed beyond 30 days, additional surveys for burrows shall be required.

If suitable burrows are observed, then no more than 30 days prior to the beginning of ground disturbance a pre-construction survey for burrowing owls shall be conducted by a qualified biologist in general accordance with the Burrowing Owl Survey Protocol and Mitigation Guidelines by the California Burrowing Owl Consortium, and a report prepared and submitted to CDFG prior to groundbreaking.

If occupied burrows are identified, the following specific mitigation measures shall be implemented:

- Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by DFG verifies that egg-laying and incubation has not started or that juveniles from occupied burrows are capable of independent survival.
- 2. To avoid impacts to occupied burrows, no extraction shall occur within 500 feet of the burrows during the breeding season (February 1 through August 31), or within 160 feet during the non-breeding season (September 1 through January 31).
- 3. If destruction of occupied burrows is unavoidable:
  - Destruction shall occur only outside of the nesting season (between September 1 and January 31).
  - Resident owls shall be moved away from the disturbance area by a qualified biologist using only passive relocation techniques.
  - Existing unsuitable burrows shall be enhanced or new burrows created at a ratio of 2:1 prior to relocation of resident owls.
- MM-Biological-5. If construction of the well sites is initiated during the nesting season of California horned lark and loggerhead shrike (March July), pre-construction nesting bird surveys shall be conducted in all suitable habitat within 150 feet of the project site. Surveys shall be conducted by a qualified biologist no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 150 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 20. MM-Biological-6. If construction occurs during the nesting season (generally March 1 through September 1), preconstruction surveys for nesting Swainson's hawk shall be conducted within 0.5 mile of the project site. Surveys shall be conducted no more than 14 days prior to initiation of construction. If active nests are located, construction shall be halted until fledging has occurred or nest failure documented as determined by a qualified biologist. Alternatively, CDFG may be consulted to determine if project construction is likely to impact nesting individuals and if construction may proceed. If construction proceeds, CDFG may require additional mitigation, including the presence of a biological monitor to ensure that construction does not result in nest abandonment.
- 21. MM-Biological-7. Pre-construction nesting bird surveys shall be conducted for any project component to be installed during the nesting season, which typically runs from March 1 through September 1. The surveys shall be conducted by a qualified biologist and shall include all trees and shrubs (suitable for loggerhead shrike) within 250 feet of the project site. Surveys shall be conducted no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 250 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 22. **MM-Biological-8.** Prior to construction of all well sites, a qualified biologist shall conduct a San Joaquin kit fox habitat assessment. All potentially suitable burrows shall be mapped, and photographed, and any observations in or around the burrow shall be described. A brief report shall be prepared and included in the Section 404 Clean Water Act permit submitted to USACE. If it is determined that the project may impact San Joaquin kit fox, mitigation requirements for impacts would be determined during Section 7 consultation between USACE and USFWS.
- 23. **MM-Biological-9.** Prior to issuance of a permit to construct, and no less than 14 days and no more than 30 days prior to ground disturbance or commencement of

construction, a qualified biologist shall conduct a protocol level survey to determine the presence of the San Joaquin Kit Fox. In the event that this species is detected during protocol-level surveys, consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS) shall be required to discuss how to implement the project and avoid "take". If "take" cannot be avoided, acquisition of a State Incidental Take Permit and corresponding federal take permit will be required prior to project implementation. If the survey identifies potential dens (defined as burrows at least four inches in diameter that open up within two feet), potential den entrances shall be dusted for three calendar days to register track of any San Joaquin kit fox present. If no kit fox activity is identified, potential dens may be destroyed.

If San Joaquin kit fox is identified, then dens shall be monitored to determine if occupation is by an adult fox only or is a natal den (natal dens usually have multiple openings). If the den is occupied by an adult only, the den may be destroyed when the adult fox has moved or is temporarily absent. If the den is a natal den, in coordination with the USFWS, a buffer zone of 250-feet shall be maintained around the den until the biologist determines that the den has been vacated. Where San Joaquin kit fox is identified, the provisions of the USFWS's published Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1999) shall apply (except that preconstruction survey protocols shall remain as established in this paragraph). These standards include provisions for educating construction workers regarding the kit fox, keeping heavy equipment operating at safe speeds, checking construction pipes for kit fox occupation during construction, and similar low or no-cost activities.

- 24. MM-Biological-10. The California Department of Fish and Game (DFG) regulates alterations to stream courses, including adjacent riparian habitat, under Section 1600 of the state Fish and Game Code. Prior to installation of the Champ gathering line, the applicant shall submit a Notification of Lake or Streambed Alteration (notification) to DFG to conduct HDD beneath Duck Slough. A formal jurisdictional delineation report would be included to determine the requirement for any additional federal permits. The application shall demonstrate how the gathering line would be engineered and installed to minimize impacts to the slough and comply with applicable regulations. A final copy of the notification and jurisdictional delineation report will be submitted to Merced County.
- 25. MM-Cultural-1. If potentially significant historic or archaeological resources are discovered during ground-disturbing activities associated with construction of the proposed project, all work within 100 feet of the resource shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop appropriate mitigation measures in consultation with Merced County and other appropriate agencies and individuals. If significant resources are discovered, a formal evaluation using CEQA criteria will be conducted to determine if further study, test excavations, or data recovery procedures are necessary.
- 26. **MM-GHG-1.** The project applicant shall work with the SJVAPCD to determine the applicable BPS measures for the project. The project shall incorporate either the identified BPS or Approved Alternate Technology prior to construction.
- 27. **MM-Hydrology-1.** A site-specific SWPPP shall be prepared as part of the NPDES General Construction Activities Stormwater Permit, if project grading or trenching will occur during the rainy season (November March). If project grading or trenching will occur outside the rainy season, then a site-specific SWPP will not be required. The site-specific SWPP will require the construction contractor to incorporate the SWPPP Best Management Practices (BMP) measures into all aspects of the project. The BMPs will include measures for management and operation of construction sites to control and minimize the potential contribution of pollutants to storm runoff from these areas. These measures address procedures for controlling erosion and

sedimentation and management of all aspects of the construction to ensure control of potential water pollution sources.

Construction phase BMPs will include:

- Dust control
- Minimal use of water for dust control (only as much as needed)
- Dry sweeping and/or storm drain inlet control measure (e.g. sandbags, filter fabric, fiber rolls, etc.)
- Install silt barriers around sensitive areas and wherever earthwork activities might result in erosion and sediment transport
- Stabilize stockpiled soils
- Post-construction stabilization or revegetation
- Runoff control

The measures included in the SWPPP will be monitored regularly for effectiveness. If a measure is found to be ineffective, it will be redesigned or replaced immediately.

- 28. **MM-Noise-1.** The Applicant shall implement the following measures during project-related construction:
  - Construction activities, with the exception of well drilling activities, shall be limited to between 7 a.m. and 6 p.m., Monday through Saturday, to avoid noisesensitive hours of the day. Construction activities shall be prohibited on Sundays and holidays.
  - Construction staging and heavy equipment maintenance activities shall be performed a minimum distance of 300 feet from the nearest residence, unless safety or technical feasibility takes precedence, which will be determined by the Construction Site Manager.
  - Construction equipment noise shall be minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.
  - Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences. Stationary combustion equipment such as pumps or generators operating within 300 feet of the nearest residence shall be shielded with a noise protection barrier.
- 29. **MM-Transportation-1.** Prior to the commencement of drilling activities, the project applicant will consult with the Merced County Fire Marshal to determine the appropriate site configuration of the Champ and Lucy Goose well sites to allow for emergency equipment turning-radius. Turning-radius configuration will be determined by Section D103.4 of the California Fire Code or as approved by the Merced County Fire Marshal.
- D. ADMINISTRATIVE APPLICATION No. AA09-032 Panther Energy Company To construct an exploratory natural gas well and if successful to construct a natural gas production well within a 62,500 square foot drilling pad on 160 acres. The project is located at the southeast corner of Sandy Mush Road and Combs Road in the Merced area. The property is designated Agricultural land use and zoned A-1 (General Agricultural). Continued from the March 10, 2010 Hearing. DG

**Recommendation:** The actions requested are to:

- 1) Adopt the Mitigated Negative Declaration, and
- 2) Approve Administrative Application No. AA09-032 based on the project findings, and subject to the conditions of approval and mitigation measures.

Planner David Gilbert presented the Staff Report and recommendations of approval dated May 12, 2010.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION APPROVES THE MITIGATED NEGATIVE DECLARATION PREPARED FOR ADMINISTRATIVE APPLICATION No. AA09-032.

MOTION: M/S MOBLEY - ERRECA, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED MAY 12, 2010, AND MAKES THE 13 FINDINGS SET FORTH IN THE STAFF REPORT AND, BASED ON THOSE 13 FINDINGS, APPROVES ADMINISTRATIVE APPLICATION No. AA09-032 SUBJECT TO THE 25 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

### **Conditions:**

### Planning & Community Development Department

- 1. Administrative Application No. AA09-032 is granted to construct an exploratory gas well within a 62,500 square foot (250' x 250') drilling pad on a 160 acre parcel. The applicant shall operate the exploratory natural gas well site in a manner that is consistent with the submitted operational statement and approved plot plan.
- 2. If the exploratory natural gas well discovers a sufficient amount of natural gas a natural gas production natural gas well is granted on the 62,500 square foot same drilling pad. The applicant shall operate the natural gas production well site in a manner that is consistent with the submitted operational statement and approved plot plan.
- The applicant is required to submit a Minor Modification application to the Planning and Community Development Department to modify any part of this Administrative Application permit.
- 4. The applicant shall comply with all applicable local, state and federal standards and regulations.
- 5. 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.
- 6. The exploratory gas well permit shall be effective for 60 days upon commencement of drilling. This permit shall remain active for one year from the date of approval.

### **County Counsel**

7. Panther Energy Company must indemnify, defend and hold harmless, the County of Merced, 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 approval, modification, denial, or the exhaustion of administrative appeals associated with the Blue #1-3 Well ("project") 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 Panther Energy Company. The liability of Panther Energy Company for indemnity under this term and condition shall apply, regardless of fault, to any acts or omissions, willful misconduct, or negligent conduct of any kind, on the part of Panther Energy Company, 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. Panther Energy Company will on request and at its expense, defend any action suit or proceeding arising hereunder. This term and condition 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 at the time of project approval, modification, or denial, but shall also apply to all such claims and the like, after project approval, modification, denial, or the exercise or exhaustion of administrative appeals, including but not limited to actions arising from public interest, land use and environmental legal actions. Attorney's fees shall include any and all attorney's fees but not be limited to attorney's 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 term and condition for indemnification shall be interpreted to the broadest extent permitted by law.

#### Department of Public Health/Division of Environmental Health

- 8. The natural gas well shall be drilled under permit from the California Division of Oil, Gas, and Geothermal Resources. If the well if dry or when use of the well is discontinued, it shall be destroyed under permit from the California Division of Oil, Gas, and Geothermal Resources.
- 9. All sewage generated on-site shall be contained in the sewage holding tanks of trailers or in portable restrooms. If dumped in Merced County, sewage shall be dumped at an approved site. If pumped from the holding tanks in Merced County, pumping shall be done by a business holding a septic pumper permit issued by MCDEH.
- 10. Any hazardous material stored on-site over threshold quantities (55 gallons, 200 cu. ft. or 500 pounds) requires that a hazardous materials 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. Contact Vickie Hayer 381-1083 or Kerri Gibbons at 381-1094.

### Regional Water Quality Control Board

11. Prior to the start of construction of the exploratory natural gas well, the applicant shall explain how the drilling mud and liquids will be handled for disposal and identify the permitting facility that will be used for disposal and how the wastewater will be stored at the site and identify the permitted Class II injection well or disposal facility that will be used for wastewater disposal.

#### San Joaquin Air Pollution Control District

- 12. The application shall be subject to Regulation VIII (Fugitive PM10 Prohibitions.
- 13. All portable emission units (including portable drilling rigs) shall be required to be registered with either the California Air Resources Board (CARB) or with the District (Rule 2280 Portable Equipment Registration).
- 14. The project may be subject to District Rule 9510 (Indirect Source Review). Rule 9510 requires applicants subject to the rule to provide information that enables the District

to quantify construction, area and operational emissions, and potentially mitigate a portion of those emissions. An application must be filed with the District no later than concurrent with application with a local agency for the final discretionary approval.

#### Department of Conservation

15. Prior to drilling, Panther Energy shall submit detailed drilling plans to the Department of Conservation for their review and approval.

#### Mitigation Measures

MM-Biological-4. Prior to implementation of any ground clearing activities, a qualified biologist shall survey the area to determine whether burrows suitable for burrowing owl are present within 500 feet of the project site. The survey shall be conducted no more than 30 days prior to ground clearing activities. If no suitable burrows are identified, then no additional mitigation is required. However, if ground clearing activities are delayed beyond 30 days, additional surveys for burrows shall be required.

If suitable burrows are observed, then no more than 30 days prior to the beginning of ground disturbance a pre-construction survey for burrowing owls shall be conducted by a qualified biologist in general accordance with the Burrowing Owl Survey Protocol and Mitigation Guidelines by the California Burrowing Owl Consortium, and a report prepared and submitted to CDFG prior to groundbreaking.

If occupied burrows are identified, the following specific mitigation measures shall be implemented:

- 1. Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by DFG verifies that egg-laying and incubation has not started or that juveniles from occupied burrows are capable of independent survival.
- 2. To avoid impacts to occupied burrows, no extraction shall occur within 500 feet of the burrows during the breeding season (February 1 through August 31), or within 160 feet during the non-breeding season (September 1 through January 31).
- 3. If destruction of occupied burrows is unavoidable:
  - Destruction shall occur only outside of the nesting season (between September 1 and January 31).
  - Resident owls shall be moved away from the disturbance area by a qualified biologist using only passive relocation techniques.
  - Existing unsuitable burrows shall be enhanced or new burrows created at a ratio of 2:1 prior to relocation of resident owls.
- MM-Biological-5. If construction of the well sites is initiated during the nesting season of California horned lark and loggerhead shrike (March July), pre-construction nesting bird surveys shall be conducted in all suitable habitat within 150 feet of the project site. Surveys shall be conducted by a qualified biologist no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 150 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 18. MM-Biological-6. If construction occurs during the nesting season (generally March 1 through September 1), preconstruction surveys for nesting Swainson's hawk shall be conducted within 0.5 mile of the project site. Surveys shall be conducted no more

than 14 days prior to initiation of construction. If active nests are located, construction shall be halted until fledging has occurred or nest failure documented as determined by a qualified biologist. Alternatively, CDFG may be consulted to determine if project construction is likely to impact nesting individuals and if construction may proceed. If construction proceeds, CDFG may require additional mitigation, including the presence of a biological monitor to ensure that construction does not result in nest abandonment.

- MM-Biological-7. Pre-construction nesting bird surveys shall be conducted for any project component to be installed during the nesting season, which typically runs from March 1 through September 1. The surveys shall be conducted by a qualified biologist and shall include all trees and shrubs (suitable for loggerhead shrike) within 250 feet of the project site. Surveys shall be conducted no more than 30 days prior to the start of construction. If an active nest is found, no construction shall occur within 250 feet of the nest until all chicks have successfully fledged, or until nest failure is documented as determined by a qualified biologist.
- 20. **MM-Biological-8.** Prior to construction of all well sites, a qualified biologist shall conduct a San Joaquin kit fox habitat assessment. All potentially suitable burrows shall be mapped, and photographed, and any observations in or around the burrow shall be described. A brief report shall be prepared and included in the Section 404 Clean Water Act permit submitted to USACE. If it is determined that the project may impact San Joaquin kit fox, mitigation requirements for impacts would be determined during Section 7 consultation between USACE and USFWS.
- 21. **MM-Biological-9.** Prior to issuance of a permit to construct, and no less than 14 days and no more than 30 days prior to ground disturbance or commencement of construction, a qualified biologist shall conduct a protocol level survey to determine the presence of the San Joaquin Kit Fox. In the event that this species is detected during protocol-level surveys, consultation with the California Department of Fish and Game (DFG) and the United States Fish and Wildlife Service (USFWS) shall be required to discuss how to implement the project and avoid "take". If "take" cannot be avoided, acquisition of a State Incidental Take Permit and corresponding federal take permit will be required prior to project implementation. If the survey identifies potential dens (defined as burrows at least four inches in diameter that open up within two feet), potential den entrances shall be dusted for three calendar days to register track of any San Joaquin kit fox present. If no kit fox activity is identified, potential dens may be destroyed.

If San Joaquin kit fox is identified, then dens shall be monitored to determine if occupation is by an adult fox only or is a natal den (natal dens usually have multiple openings). If the den is occupied by an adult only, the den may be destroyed when the adult fox has moved or is temporarily absent. If the den is a natal den, in coordination with the USFWS, a buffer zone of 250-feet shall be maintained around the den until the biologist determines that the den has been vacated. Where San Joaquin kit fox is identified, the provisions of the USFWS's published Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1999) shall apply (except that preconstruction survey protocols shall remain as established in this paragraph). These standards include provisions for educating construction workers regarding the kit fox, keeping heavy equipment operating at safe speeds, checking construction pipes for kit fox occupation during construction, and similar low or no-cost activities.

22. **MM-Cultural-1.** If potentially significant historic or archaeological resources are discovered during ground-disturbing activities associated with construction of the proposed project, all work within 100 feet of the resource shall stop until a qualified archaeologist can assess the significance of the find, and, if necessary, develop

appropriate mitigation measures in consultation with Merced County and other appropriate agencies and individuals. If significant resources are discovered, a formal evaluation using CEQA criteria will be conducted to determine if further study, test excavations, or data recovery procedures are necessary.

- 23. **MM-GHG-1.** The project applicant shall work with the SJVAPCD to determine the applicable BPS measures for the project. The project shall incorporate either the identified BPS or Approved Alternate Technology prior to construction.
- 24. **MM-Hydrology-1.** A site-specific SWPPP shall be prepared as part of the NPDES General Construction Activities Stormwater Permit, if project grading or trenching will occur during the rainy season (November March). If project grading or trenching will occur outside the rainy season, then a site-specific SWPP will not be required. The site-specific SWPP will require the construction contractor to incorporate the SWPPP Best Management Practices (BMP) measures into all aspects of the project. The BMPs will include measures for management and operation of construction sites to control and minimize the potential contribution of pollutants to storm runoff from these areas. These measures address procedures for controlling erosion and sedimentation and management of all aspects of the construction to ensure control of potential water pollution sources.

Construction phase BMPs will include:

- Dust control
- Minimal use of water for dust control (only as much as needed)
- Dry sweeping and/or storm drain inlet control measure (e.g. sandbags, filter fabric, fiber rolls, etc.)
- Install silt barriers around sensitive areas and wherever earthwork activities might result in erosion and sediment transport
- Stabilize stockpiled soils
- Post-construction stabilization or revegetation
- Runoff control

The measures included in the SWPPP will be monitored regularly for effectiveness. If a measure is found to be ineffective, it will be redesigned or replaced immediately.

- MM-Noise-1. The Applicant shall implement the following measures during projectrelated construction:
  - Construction activities, with the exception of well drilling activities, shall be limited to between 7 a.m. and 6 p.m., Monday through Saturday, to avoid noisesensitive hours of the day. Construction activities shall be prohibited on Sundays and holidays.
  - Construction staging and heavy equipment maintenance activities shall be performed a minimum distance of 300 feet from the nearest residence, unless safety or technical feasibility takes precedence, which will be determined by the Construction Site Manager.
  - Construction equipment noise shall be minimized by muffling and shielding intakes and exhaust on construction equipment (in accordance with the manufacturer's specifications) and by shrouding or shielding impact tools.
  - Construction contractors shall locate fixed construction equipment (such as compressors and generators) and construction staging areas as far as possible from nearby residences. Stationary combustion equipment such as pumps or generators operating within 300 feet of the nearest residence shall be shielded with a noise protection barrier.

### VI. CORRESPONDENCE

None

### VII. GENERAL BUSINESS

Bill Nicholson, Assistant Development Services Director, said the schedule for the General Plan Update will be posted soon on the Planning Department website showing when the Focus Groups will be meeting.

Marianne Greene, County Counsel, suggested in the situation that a public hearing is closed, any public member that has comments or questions regarding any applications, to address their representative, whether it be to the Board of Supervisors or the Planning Commissioners.

Commissioner Lashbrook requested that an item for Discussion be set on the agenda for the Planning Commissioners regarding the Rosenberg Rules of Order, the latest State mandates related to Green House Gas, Land Use Planning and Development of Planning Commission bylaws, be agendized for the next Planning Commission meeting. She suggests having an annual meeting between the Planning Commissioners to come to decisions on Commission protocol. She is frustrated that the public hearing was closed for all the applications heard today.

Robert Lewis, Development Services Director, agreed and said this item for discussion will be added to the May 26, 2010 Planning Commission agenda.

# VIII. <u>DIRECTOR'S REPORT</u>

None

## IX. <u>ADJOURNMENT</u>

There being no further business, the meeting adjourned at 9:53 a.m.