

MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF JULY 24, 2019

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of July 24, 2019, are available online at www.co.merced.ca.us/planning/plancomarchive.html.

I. CALL MEETING TO ORDER

The regularly scheduled meeting of the Merced County Planning Commission was called to order at 9:00 a.m., on July 24, 2019, in the Board Chambers located at 2222 "M" Street, Third Floor, Merced, California.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL OF COMMISSIONERS

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

Staff Present: Steve Maxey, Deputy Director
 Kim Zinke, Recording Secretary
 Kristin McHaney, Recording Secretary
 Brian Guerrero, Planner III
 Tiffany Ho, Planner II

Legal Staff: Jeff Grant, Deputy County Counsel

Commissioners Absent: Commissioner Fernando Aguilera

IV. APPROVAL OF MINUTES

None

V. CITIZEN COMMUNICATIONS

None

VI. PUBLIC HEARINGS

A. GENERAL PLAN TEXT AMENDMENT GPA16-002/ZONE CHANGE ZC16-001/COMMUNITY PLAN CP16-001 – Adoption of the Le Grand Community Plan, an amendment of the Merced County General Plan and related rezones, in an area generally located in the southeastern corner of Merced County, approximately six miles east of State Highway 99 and 12 miles southeast of the City of Merced. **BG**

RECOMMENDATION(S):

- 1) Recommend to the Board of Supervisors Certification of the Final Environmental Impact Report (FEIR), recommend to the Board of Supervisors adoption of the CEQA Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program; and,
- 2) Recommend to the Board of Supervisors adoption of the Le Grand Community Plan and recommend to the Board of Supervisors approval of General Plan Text Amendment GPTA16-002, Zone Change ZC16-001 and Community Plan CP16-001 based on the findings listed in the staff report.

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Planner Brian Guerrero presented the Staff Report and recommendations of approval dated July 24, 2019.

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

No one spoke in favor or opposition to this application.

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

MOTION: M/S SPYCHER - MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT AND RECOMMENDS THE ADOPTION OF THE CEQA FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATION AND MITIGATION MONITORING AND REPORTING PROGRAM PREPARED FOR GENERAL PLAN TEXT AMENDMENT GPA16-002/ZONE CHANGE ZC16-001/COMMUNITY PLAN CP16-001.

MOTION: M/S SPYCHER - MOBLEY, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION RECOMMENDS THE BOARD OF SUPERVISORS ADOPT THE LEGRAND COMMUNITY PLAN AND RECOMMENDS THE BOARD OF SUPERVISORS APPROVE THE GENERAL PLAN TEXT AMENDMENT GPTA16-002, ZONE CHANGE ZC16-001 AND COMMUNITY PLAN CP16-001 BASED ON THE FINDINGS LISTED IN THE STAFF REPORT.

- B. CONDITIONAL USE PERMIT NO. CUP16-005 – Oliveira Dairy Expansion - A** request to expand an existing dairy from 2,218 animals (1,221 milking cows and 997 support stock) to 4,400 animals (2,500 milking and 1,900 support stock). The expansion will also include the addition of two 30,000 square foot shade barns, a two freestall barns of 52,500 square feet and 72,500 square feet and a new 30,000 square foot milking parlor. The project site is located at the southwest corner of West Oak Avenue & North Gurr Road in the Merced area, identified as APN 059-190-026. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). CEQA – An Environmental Impact Report was prepared for this project. **BG**

RECOMMENDATION(S):

- 1) Open/close public hearing;
- 2) Certify the Project Environmental Impact Report and adopt the Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program; and,
- 3) Approve Conditional Use Permit CUP16-005 based on the findings included in the staff report and subject to the proposed conditions of approval.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated July 24, 2019.

The public hearing opened at 9:23 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:24 a.m.

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MOTION: M/S MOBLEY - SPYCHER, AND CARRIED BY A VOTE OF 4 – 0, THE PLANNING COMMISSION CERTIFIES THE PROJECT ENVIRONMENTAL IMPACT REPORT AND ADOPTS THE FINDINGS OF FACT, STATEMENT OF OVERRRIDING CONSIDERATIONS, AND MITIGATION MONITORING AND REPORTING PROGRAM FOR CONDITIONAL USE PERMIT NO. CUP16-005.

MOTION: M/S MOBLEY - SPYCHER, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JULY 24, 2019, AND MAKES THE 9 PROJECT FINDINGS (WITH THE MODIFICATION TO FINDING #1 AND #2) AS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT APPLICATION CUP16-005 SUBJECT TO THE 20 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Conditions:

1. Conditional Use Permit No. CUP16-005 is granted to expand an existing dairy from 2,218 animals (1,221 milking and 997 support stock) to 4,400 animals (2,500 milking and 1,900 support stock) and includes the addition of two 30,000 square foot shade barns, a two freestall barns of 52,500 square feet and 72,500 square feet and a new 30,000 square foot milking parlor.
2. The Oliveira Dairy Expansion project shall be located, developed and operated in a manner described on the approved plot plan, Nutrient Management Plan, Waste Management Plan, mitigation measures, mitigation monitoring and reporting program, and conditions of this permit. Any changes or proposed modifications to the approved project would be based on a written request of the applicant to the Planning Director.
3. All mitigation measures identified in the Environmental Impact Report are adopted and incorporated by reference as project conditions.
4. The project shall comply with all applicable regulations administered by the County Fire Department, Environmental Health Division, Community and Economic Development, and Public Works Departments.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$648** shall be required. This fee shall be paid within 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant / property owner at the established hourly rate at the time of the inspection. This permit will not be considered valid until the conditions monitoring fee has been paid.
6. The applicant shall obtain all necessary permits, and comply with all applicable regulations administered by Federal and State agencies.

County Counsel

7. INDEMNITY AND HOLD HARMLESS AGREEMENT:

OLIVEIRA DAIRY has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims,

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petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of OLVIERA DAIRY. OLVIERA DAIRY's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Applicant, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. OLVIERA DAIRY will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following Conditional Use Permit No. CUP16-005 approval, modification, or denial.

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

Public Works/Building and Safety Division

8. You must hire an architect or engineer licensed in the state of California to draw the plans for any proposed building. The plans and calculations must be submitted electronically to the Building Department for approval and a permit before any construction can begin.

Merced County Fire Department

9. CAD files of the site and floor plans are requested for Pre-Planning purposes. Pre-Planning improves Fire Department response in case of an emergency. These drawings shall include the following:
 - a. Location of all fire water systems, sources and devices
 - b. Location of fire extinguishers
 - c. Location and width of aisles
 - d. Location of exits
 - e. Exit access doors
 - f. Exit signs
 - g. Height of storage
 - h. Locations of hazardous materials
10. An exit/evacuation plan for public accessible areas shall be submitted at the time of permit application.

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11. In order to make a more thorough determination of your Fire Suppression/Protection requirements, plans must be submitted for plan review.
 - a. Submit all Fire Suppression/Protection Plans to the Building Division service counter.
12. An application for an Annual Combustible Liquids Permit shall be submitted at the time of permit application. (First year fee is included in review)CFC105.6.16 paragraph 3.
13. The applicant shall install Reflective Building Identification that meets Fire Department Design Specifications. Contact the Prevention Bureau for additional information.
14. If security gates are installed they shall be approved by the Fire Department.
 - a. As required, the applicant shall install and maintain a Merced County Coded “Knox” key switch or “Knox” padlock, whichever is most appropriate in relation to your needs.

Merced County Division of Environmental Health

15. The applicant shall maintain, including annual updates, an accurate hazardous material business plan with Merced County Division of Environmental Health and maintain compliance with all applicable hazardous material regulations.
16. Areas of unpaved intense animal confinement (animal barns and walkways with soil floors, corrals, etc.) shall be at least 100 feet away from any domestic well.
17. Each septic system shall be protected from parking, driving, and other soil-compacting activities, including farming, by installing a permanent barrier around the leach field and tank. Protection is not necessary for traffic rated tanks.
18. The dairy operation shall comply with the Merced County Animal Confinement Ordinance (Merced County Code, Title 18, Chapter 18.48 ANIMAL CONFINEMENT FACILITIES) or subsequent revisions.

Merced Irrigation District (MID)

19. The area south of the Bailey Lateral “A” be graded to drain away from the Bailey Lateral “A” and the east line be graded to drain away from the Dean Canal.

Final Environmental Impact Report Mitigation Measures

20. The following is a comprehensive list of CEQA Mitigation Measures that are contained in both the CEQA Findings of Fact and Statement of Overriding Considerations (SOC) and Mitigation Monitoring Reporting Program (MMRP) that are applicable to the AJ Borba Holsteins Dairy Expansion project. The applicant shall be responsible to comply with all Mitigation Measures contained in the foregoing mentioned documents:

Air Quality

- AQ-1: Dust Control Plan, MMRP, page 3
- AQ-3a: Reduction of ROG emissions, MMRP, page 3
- AQ-3b: Voluntary Emissions Reduction Agreement, MMRP, page 3
- AQ-5: Reduce PM₁₀ emissions, MMRP, page 3

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- AQ-6a: Implement Mitigation Measure AQ-5, MMRP, page 4
- AQ-6b: Complete a revised ambient air quality analysis, MMRP, page 4
- AQ-7a: Minimize Potential Odor Nuisance, MMRP, page 4.
- AQ-7b: Implement Nuisance Control Measures for Mitigation Measures HAZ – 1a and HAZ- 1b.

Biological Resources

- BIO-1a: Protocol Surveys for Swainson's Hawk, MMRP, page 5.
- BIO-1b: Consultation with CDFW, MMRP, page 6
- BIO-2a: Implement Mitigation Measures BIO -1a and BIO-1b, MMRP, page 7
- BIO-2b: Pre-construction survey for birds, MMRP page 7
- BIO-3a: Implement Mitigation Measures BIO-1a and BIO-1b if necessary, MMRP page 7
- BIO-3b: Implement Mitigation Measure BIO -2b for TCBB or MBTA, MMRP, page 7
- BIO -3c: TCBB Nest Colony Discovery, MMRP, Page 8
- BIO – 4: Various Mitigation Measures, MMRP, Page 8
- BIO – 9: Implement ACO, MMRP, Page 10

Cultural Resources

- CUL-1: Discovery of cultural/paleontological resources, MMRP, page 9
- CUL-2a: Implement Mitigation Measure CUL-1
- CUL-2b: Discovery of human remains, MMRP, pages 9-10

Nuisance Conditions from Insects

- HAZ-1a: Vector Control Plan, MMRP, Page 11
- HAZ-1b: Implement measures of the ACO, MMRP, pages 11-12

Hydrology and Water Quality

- HYD-1: Submit Permit Registration Documents, MMRP, page 12
- HYD -3a: Implement Best Management Practices, MMRP pages 12
- HYD-3b: Comply with requirements of the NMP/WMP, MMRP, page 13
- HYD-3c: Agronomic Rates for Best Management Farming Practices, MMRP, page 13
- HYD-3d: Salinity Report, MMRP, page 13
- HYD-3e: Continue membership of the Groundwater Monitoring Coalition, MMRP, page 13
- HYD-3f: Groundwater Monitoring, MMRP, page 13
- HYD-3g: Concentration in Groundwater of Constituents of Concern, MMRP, Pages 14
- HYD-3h: Closure of Existing Heifer Facility on Buhach Field, MMRP, page 14
- HYD-3i: Community and Economic Development Department and Division of Environmental Health Inspection, MMRP, page 12
- HYD-6: Obtain a flood-proofing certificate and submit to the Merced County Department of Public Works Building Department for verification, MMRP page 14
- HYD-8: Project sponsor shall obtain written agreement from recipients of manure exported off site in regards to rates and times for application,

storm water, wells and that manure shall not be applied within 100 feet of any domestic wells. MMRP pages 14-15

- HYD-9a: Permit Obtained to Abandon Three Septic Systems from DEH, MMRP, Page 15
- HYD-9b: Permit Obtained from DEH to Install the OWTS, MMRP, Page 15
- HYD-9c: Additional Conditions from DEH, MMRP, Page 15

Land Use Compatibility

- LU-2a: Implement Odor Control Measures in Mitigation Measure AQ-7a
- LU-2b: Implement Nuisance Control Measures in Mitigation Measures HAZ-1a and HAZ-1b

- C. ADMINISTRATIVE APPLICATION No. AA19-002 – Tlah LLC/Sergio Pereira - A** request to establish a large animal veterinary clinic that will provide both field and in-house services, including 24/7 emergency services, daily field calls, and small retail sales of veterinarian supplies and medications. The project site is located on the east side of North Youngstown Road, 0.4 mile north of West Clausen Avenue in the Turlock area, identified as Assessor's Parcel Number (APN) 041-030-039. The property is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). CEQA: Staff has prepared a Negative Declaration. **TH**

RECOMMENDATION(S):

- 1) Open/close the Public Hearing;
- 2) Determine the project will not have a significant effect on the environment and adopt a Negative Declaration pursuant to CEQA Guidelines Section 15070 – “Decision to Prepare a Negative or Mitigated Negative Declaration”; and,
- 3) Approve Administrative Application No. AA19-002 based on the findings and subject to the recommended conditions of approval.

Planner Tiffany Ho presented the Staff Report and recommendations of approval dated July 24, 2019.

The public hearing opened at 9:30 a.m.

No one spoke in favor or opposition to this application.

The public hearing closed at 9:31 a.m.

MOTION: M/S SPYCHER – ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION DETERMINED THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND ADOPTS THE NEGATIVE DECLARATION PURSUANT TO CEQA GUIDELINES SECTION 15070 “DECISION TO PREPARE A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION PREPARED FOR ADMINISTRATIVE APPLICATION NO. AA19-002.

MOTION: M/S SPYCHER - ACHESON, AND CARRIED BY A VOTE OF 4 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED JULY 24, 2019 AND MAKES THE 8 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES ADMINISTRATIVE APPLICATION NO. AA19-002 SUBJECT TO THE 23 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Merced County Community and Economic Development Department

1. Administrative Application No. AA18-005 is granted to allow a large animal veterinary clinic, featuring emergency surgical services, daily field calls, and sales of vet supplies/medications, in accordance with the approved Site Plan and Operational Statement. Minor Modifications may be approved by the Director upon submittal of an acceptable application.
2. For the purpose of conditions monitoring an inspection in the amount of **\$162.00** shall be required. This fee shall be paid with 30 days of the approval date. Should additional inspections be required, inspection time shall be billed to the applicant at the established hourly rate at the time of inspection.
3. All signage shall conform to the regulations contained in Merced County Zoning Code (MCZC) Chapter 18.42. The applicant shall submit sign plans all proposed signage for review and approval by the Community and Economic Development Department.
4. The proposed trash enclosure shall comply with MCZC Chapter 18.44. The trash enclosure and be located to the rear of the building and/or screened from public street view. The trash container shall be designed to be enclosed by solid fence or wall of a minimum of six feet in height on three sides with a solid gate, a minimum of five feet in height, and the trash enclosure shall be covered and protected from adverse environmental conditions which might spread collected materials or cause nuisance.
5. All exterior lighting shall be designed and maintained in a manner so that glare and reflections are contained within the boundaries of the parcel, and shall be hooded and directed downward away from adjoining properties and public right-of-ways as contained in Merced County Zoning Code Section 18.41.060.
6. The project shall comply with all the standard conditions in Planning Commission Resolution No. 97-1.
7. The applicant shall comply with all applicable County, State, and Federal regulations. These regulations shall include, but not be limited to standards administered by the County Fire, Health, and Public Works Departments.

Merced County Buildings and Safety Division

8. The applicant shall hire an architect or engineer licensed by the State of California to draw the plans and provide any structural calculations for the proposed structure. The plans shall be submitted to the Buildings and Safety Division for approval. No construction shall begin until a permit is issued.
9. The applicant shall submit a soils report completed by a licensed geotechnical engineer. The report shall be reviewed by the design engineer to incorporate any mitigating measures into the design drawings.

10. The reuse of the single-family home as intern housing shall be evaluated for compliance with the American Disabilities Act (ADA) by a licensed engineer. The evaluation and associated drawings and calculation shall be submitted to the Buildings and Safety Division, and a building permit to issued prior to any construction.

Merced County Division of Environmental Health

11. The applicant shall file the facility as a Small Quantity Medical Waste Generator and submit a medical waste management plan with the Division of Environmental Health.
12. The applicant shall submit a hazardous material business plan (HMBP) with the Division of Environmental Health if the facility contains storage of chemical, including cleaning solution and products, over the threshold amount. The HMBP must be filed electronically no later than 30 days of the commencement of operations. Visit <http://cers.calepa.ca.gov/> to submit or update an HMBP.

Merced County Roads Division

13. The proposed driveway to be located on Youngstown Road shall be designed and installed as an agricultural paved approach per County Standards.
14. An Encroachment permit shall be obtained and paid for prior to commencing any work along the County's right-of-way.
15. The Applicant shall comply with the County's MS4 storm Water Permit, Order No. 2013-0001-DWQ.

Merced County Fire Department

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

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20. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. (CFC 507.1)
21. An automatic sprinkler system shall be provided for fire areas of the building where one of the following conditions exists:
 1. The structure exceeds 5,000 square feet (464 m2).
 2. The fire area is located on a floor other than a level of exit discharge serving such occupancies. (CFC 903).
22. A fire alarm notification system may be required per CFC 903.

County Counsel

23. INDEMNITY AND HOLD HARMLESS AGREEMENT:

SERGIO PEREIRA has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of SERGIO PEREIRA.

SERGIO PEREIRA 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 SERGIO PEREIRA, his agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. SERGIO PEREIRA will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following permit approval, modification, or denial.

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

VII. COMMISSION ACTION ITEM (S)

None

VIII. DIRECTOR'S REPORT

None

IX. COMMISSIONERS COMMENTS

None

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:32 a.m.