

**MERCED COUNTY PLANNING COMMISSION
MINUTES FOR MEETING OF SEPTEMBER 22, 2021**

DRAFT

The agenda, original minutes, video, and all supporting documentation (for reference purposes only) of the Merced County Planning Commission meeting of September 22, 2021 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 September 22, 2021, 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 Kurt Spycher – Chairman
 Commissioner Mark Erreca
 Commissioner Robert Acheson
 Commissioner Jack Mobley
 Commissioner Fernando Aguilera

Staff Present: Mark Hendrickson, Director
 Steve Maxey, Deputy Director
 Brian Guerrero, Planner
 Pam Navares- Planner II
 Desiree Dobbs, Recording Secretary

Legal Staff: Tom Ebersole, County Counsel

Commissioners Absent: None.

IV. APPROVAL OF MINUTES

MOTION: M/S ACHESON- MOBLEY AND CARRIED BY A VOTE OF 5 – 0, THE COMMISSION APPROVES THE MINUTES FROM THE SEPTEMBER 8, 2021 MEETING.

V. CITIZEN COMMUNICATIONS

None

VI. PUBLIC HEARINGS

A. CONDITIONAL USE PERMIT No. CUP19-008 - HILMAR CHEESE / CALIFORNIA BIOENERGY LLC – A request to construct, install and operate a Biogas Upgrading Facility and associated pipelines to individual dairy digesters. The project site is located on the west side of North Lander Avenue, approximately 700 Feet north of West August Road in the Hilmar area, identified as APN 045-140-087. The property is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). CEQA: Staff recommends that the Planning Commission adopt a Mitigated Negative Declaration for the project pursuant to Section 15070 – "Decision to Prepare a Negative or Mitigated Negative Declaration" of the CEQA Guidelines. **BG**

RECOMMENDATION(S):

- 1) Open/close the public hearing;
- 2) Determine the project will not have a significant effect on the environment and

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- adopt the proposed Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project pursuant to Section 15070 - "Decision to Prepare a Negative or Mitigated Negative Declaration" of the CEQA Guidelines; and,
- 3) Approve Conditional Use Permit No. CUP19-008 based on the findings identified in the Staff Report and subject to the recommended Conditions of Approval.

Planner Brian Guerrero presented the Staff Report and recommendations of approval dated September 22, 2021.

The public hearing opened at 9:09 a.m.

Steve Maxey, Planning Deputy Director, reported that on September 21, 2021 one letter was received from Leadership Counsel for Justice and Accountability. Mr. Maxey provided an overview of the letter, which in opposition to the project, requested a full Environmental Impact Report, suggested concerns with regard to groundwater and air quality and offered speculative impact of potential gas leaks, explosions and increasing herd sizes. Mr. Maxey clarified that an Initial Study and Mitigated negative Declaration have been completed to address and mitigate potential impacts, further stating that there is no evidence to support the speculative impacts or concerns listed in the opposing letter, Mr. Maxey commented that the studies conducted are adequate to move forward with the project.

Breanne Vandenberg, Executive Director of Merced County Farm Bureau, spoke in favor of the project.

The public hearing closed at 9:11 a.m.

MOTION: M/S MOBLEY - ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION DETERMINED THE PROJECT CAN BE FOUND EXEMPT FROM ENVIRONMENTAL REVIEW PURSUANT TO SECTION 15070 – "DECISION TO PREPARE A NEGATIVE OR MITIGATED NEGATIVE DECLARATION" OF THE CEQA GUIDELINES.

MOTION: M/S MOBLEY - ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION MOVES TO ADOPT THE INITIAL STUDY MITIGATED NEGATIVE DECLARATION AND ASSOCIATED MITIGATION MONITORING AND REPORTING PROGRAM.

MOTION: M/S MOBLEY- ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED APRIL 28, 2021 AND MAKES THE 8 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT No. CUP19-008 SUBJECT TO THE 11 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Conditions:

1. Conditional Use Permit No. CUP19-008 is granted to construct a central biogas upgrading, cleansing, monitoring and metering facility processing methane gas collected from regional dairy digesters via underground pipelines on property located on the west side of North Lander Avenue, approximately 700 feet north of West August Road, identified as APN 045-140-087.
2. The project shall be located, developed and operated in a manner described on the approved Plot Plan, Project Description, and Conditions of Approval of this permit.

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3. The project shall comply with the Mitigation Measures listed in the IS/MND.
4. The project shall comply with all applicable public health, safety, and welfare regulations administered by the County of Merced, and in particular the County Fire Department, the Health Department/ Environmental Health Division, the Community and Economic Development Department, and Public Works Department/ Road and Building and Safety Divisions.
5. For the purpose of conditions monitoring, an inspection fee in the amount of **\$324.00** shall be required. This fee shall be paid within 30 days of approval of the project. Should additional inspections be required, inspection time shall be billed to the applicant/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. Prior to issuance of a building permit, the project applicant must obtain all necessary permits and written authorizations and must demonstrate compliance with all applicable regulations administered by Federal and State agencies.
7. No later than 45 days prior to commencing construction, trenching, grading, or preparation for any pipeline work associated with the project, the project applicant shall provide written, mailed notice to all owners and residents of properties adjacent to any pipeline. Each mailed notice shall include a description of the project, and a figure or map of the pipeline to be installed adjacent to the property. Each mailed notice shall also include the name, phone number, and email address of an individual managing or overseeing the construction process that is capable of answering questions or responding to concerns from property owners or residents.
8. The applicant shall comply with all applicable standard conditions of approval listed in the Planning Commission Resolution No. 20-001.

County Counsel

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

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

Building and Safety Division

10. 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 Division for approval and a permit before any construction can begin.
11. California requires that all proposed non-residential structures must first obtain a soils/geotechnical report completed by a licensed geotechnical engineer. That report must be reviewed by the design engineer to incorporate any mitigating measures into

the design drawings.

- B. MINOR SUBDIVISION No. MS20-020 - CASTLE ASSETS** - A request to subdivide a 5.5 Acre parcel into 4 parcels and a Remainder parcel with parcel sizes as follows: Parcel 1 = 1.0 acres, Parcel 2 = 1.1 acres, Parcel 3 = 1.08 acres, Parcel 4 = 1.37 acres and a 1.0 acre Remainder parcel. The project site is located on the northeast corner of 2nd Avenue South and N. Petaluma Street in the Delhi area, identified as APN 046-143-008. The property is designated Delhi Agricultural-Residential land use in the General Plan and is zoned R-R (Rural Residential). CEQA: Staff recommends that the Planning Commission find the project exempt from environmental review pursuant to Section 15315 - "Minor Land Divisions" of the CEQA Guidelines. **PN**

RECOMMENDATION(S):

- 1) Open/close the public hearing;
- 2) Determine the project is exempt from environmental review pursuant to Section 15315 - "Minor Land Divisions" of the CEQA Guidelines; and,
- 3) Approve Minor Subdivision No. MS20-020 based on the findings identified in the Staff Report and subject to the recommended Conditions of Approval.

Planner Pam Navares presented the Staff Report and recommendations of approval dated September 22, 2021.

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

No one spoke in favor of or opposition to proposed project.

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

MOTION: M/S MOBLEY- ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION DETERMINED THE PROJECT IS EXEMPT FROM ENVIRONMENTAL REVIEW SUBJECT TO SECTION 15315 - "MINOR LAND DIVISIONS" OF THE CEQA GUIDELINES.

MOTION: M/S ERRECA- ACHESON, AND CARRIED BY A VOTE OF 5 - 0, THE PLANNING COMMISSION CONCURS WITH THE STAFF REPORT AND RECOMMENDATIONS DATED SEPTEMBER 22, 2021 AND MAKES THE 9 PROJECT FINDINGS SET FORTH IN THE STAFF REPORT AND APPROVES CONDITIONAL USE PERMIT NO. MS20-020 SUBJECT TO THE 17 CONDITIONS SET FORTH IN THE STAFF REPORT AS FOLLOWS:

Conditions:

Community and Economic Development Department

1. A parcel map, including all parcels involved, shall be recorded within two (2) years of the approval date, as required by the Subdivision Map Act and Merced County Subdivision Code.
2. A Site Plan and Design Review application shall be submitted and approved by the Community and Economic Development Department prior to the issuance of a Building Permit for any new residences in the subdivision.
3. The applicant shall comply with all applicable County, State and Federal regulations.
4. The project shall comply with all standard conditions contained in Planning Commission Resolution No. 20-001.

Environmental Health Department

5. All parcels, including Parcel 1 and the Remainder parcel shall consist of at least 1.0 net acre.
6. The parcel should not be recorded until the existing well (on Remainder Parcel) has been destroyed under permit from Merced County Division of Environmental Health.
7. The parcel map should not be recorded until the two existing septic tanks (on Parcel 1 and Remainder parcel) have been destroyed under permit from Merced County Division of Environmental Health.
8. The parcel map should not be recorded until a map showing the following has been provided for review by Merced County Division of Environmental Health:
 - A. Confirmed well locations on these adjacent parcels:
 - 1) 14356 and 14460/14490 2nd Avenue South
 - 2) 9081, 9087, and 9089 Petaluma Avenue
 - B. Proposed well locations (at the front of parcel, 47 feet from the front property line). See sketch provided by Merced County Division of Environmental Health.
 - C. A 100-foot radius circle around each proposed well in the subdivision.
 - D. Proposed septic system areas on Parcels 1-4 and the Remainder Parcel (6000 sq. ft., rectangular in shape, no dimension greater than 105 feet; at least 5 feet, but no more than 15 feet, from the back of the house pad, minimum 100 feet from the well).

Roads Division

9. The project site is subject to Level 2 Improvements that require items such as dedicating required right-of-way or easements, rolled curb and gutter and other improvements (County Code Ch. 16.08.040). Applicant shall enter into a Deferment of Construction Agreement to install the improvements at a later date.
 - a. Right-of-Way dedication is required to fulfill the property owner's half of a 46-foot ultimate Right-of-Way on Petaluma Avenue and a 60-foot Right-of-Way on Second Avenue South. As a result, the owners shall dedicate a 3 foot Right-of Way along the property frontage on Petaluma Avenue and a 10-foot Right-of-Way along the Second Avenue South frontage. Public utility relocation shall be located in the last two feet of the Right-of-Way and be located outside any future improvements.

Turlock Irrigation District

10. An irrigation pipeline belonging to Improvement District 52 enters the property near the southwest corner and continues west for approximately 200 feet before turning south and crossing under Second Avenue South. A District standard 15 foot wide Irrigation easement shall be dedicated for this pipeline.
11. District rules prohibit irrigating across separately owned parcels. If the new parcels will continue to irrigate, then a 25-foot wide irrigation easement shall be provided from the existing pipeline on the south side of proposed Parcel 1 continuing north-northwesterly to the nearest property line of proposed Parcel 4. This would be a private easement to the benefit of each of the downstream parcels.

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12. In the event the new parcels will no longer irrigate, then District Standards require that properties that will no longer irrigate or have direct access to water must apply for abandonment of the parcel(s) from the improvement district(s).
13. The District shall review and approve all maps and plans of the project. Any improvements to this property which impact irrigation facilities shall be subject to the District's approval and meet all District standards and specifications.
14. The District currently has combine overhead 115kV transmission and 12kV distribution lines along the north side of Second Avenue South. A 15-foot wide electrical easement shall be dedicated along the south side of proposed Parcel 1 to facilitate the relocation of this line when the full width street improvements are required to be made.
15. Additionally, there is an overhead 12kV distribution line fronting proposed Parcels 2, 3, and 4 along Petaluma Avenue. Upon full width street improvements, this line can be relocated within the future road right of way, unless it requires undergrounding. If the line is to be undergrounded, then a 10-foot wide electric easement, or PUE, will be required across the frontage of Parcels 2, 3, and 4.
16. The final map shall include a signature block for Turlock Irrigation District.

County Counsel

17. INDEMNITY AND HOLD HARMLESS AGREEMENT:

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

VII. COMMISSION ACTION ITEM (S)

Rotation of Chair and Vice Chairman for October 2021 to October 2022, commission has approved Robert Acheason as Chairman and Mark Erreca as Vice Chairman for 2021-2022 rotation.

VIII. DIRECTOR'S REPORT

Recognition of Commissioner Spycher's service as Chairman of the Planning Commission.

IX. COMMISSIONERS COMMENTS

Commissioner Mobley commented that he is thankful for Hilmar Cheese's continued work with Merced County.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:19 a.m.