



## Planning Commission

### Staff Report

January 13, 2021

**PREPARED BY:**  
**APPROVED BY:**

BRODY PATTERSON, PROJECT PLANNER  
MARK HENDRICKSON, DIRECTOR

**ZONE VARIANCE APPLICATION No. ZV20-002 / MINOR SUBDIVISION APPLICATION No. MS20-018 – ADAN PEREZ** - A request to vary from the minimum A-1 (General Agricultural) zone parcel size and divide an 8.5 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 2.85 acres and Parcel 2 = 5.63 acres. The project site is located on the south side of W. Peach Avenue, 640 feet west of N. Robin Avenue in the Livingston area, identified as Assessor's Parcel Number (APN) 047-240-017. The property is designated Agricultural land use and zoned A-1 (General Agricultural). CEQA: Staff recommends that the Planning Commission determine that no further environmental review is required pursuant to section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based on the analysis in the 2030 Merced County General Plan Program Environmental Impact Report and the attached CEQA Section 15162 Findings and Analysis. **BP**

**SUPERVISORIAL DISTRICT:** 4 – Lloyd Pareira

#### **RECOMMENDATION(S):**

- 1) Open/close the public hearing;
- 2) Determine no further environmental review is required pursuant to Section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based on the analysis in the 2030 Merced County General Plan Program Environmental Impact Report and the attached CEQA Section 15162 Findings and Analysis;
- 3) Consider Zone Variance Application No. ZV20-002 and either: determine that the project meets the required findings for variance based on the findings in the staff report and approve Zone Variance Application No. ZV20-002; OR determine that the project does not meet the required findings for variance and deny Zone Variance Application No. ZV20-002; and,
- 4) If the Planning Commission approves Zone Variance Application No. ZV20-002, approve Minor Subdivision Application No. MS20-018 based on the applicable findings identified in the Staff Report and subject to the recommended Conditions of Approval.

#### **LOCATION MAP:**



**BACKGROUND:**

**Site Description**

The project site is located on the south side of W. Peach Avenue, 640 feet west of N. Robin Avenue in the Livingston area, identified as Assessor's Parcel Number (APN) 047-240-017. The project site and properties in the vicinity are designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). The project site and surrounding area is substantially flat and characterized by agricultural land uses and the occasional single-family residence, with the City of Livingston located nearby to the east.

By means of Zone Variance Application No. ZV20-002, the applicant is requesting to vary from the minimum A-1 parcel size of 20 acres. Approval of ZV20-002 would allow the Planning Commission to consider a subdivision of the subject property, which would create one additional parcel under the minimum required A-1 parcel size of 20 acres. Should the variance request be approved, the applicant is requesting to divide an 8.5 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 2.85 acres and Parcel 2 = 5.63 acres (Minor Subdivision Application No. MS20-018). Without approval of the variance request, the proposed subdivision cannot be considered.

Proposed Parcel 2 contains one existing dwelling served by a well and septic system, along with several miscellaneous structures. Proposed Parcel 1 contains a permitted agricultural equipment repair business and associated structures, served by its own septic system. Water for the agricultural equipment repair building is currently supplied by the well on Proposed Parcel 2. A new well to serve the agricultural equipment repair building will be required on Proposed Parcel 1 prior to recordation of the parcel map. Proposed Parcels 1 and 2 will both have frontage on Peach Avenue, with Proposed Parcel 1 having existing access to Peach Avenue over a canal. No changes in land use are proposed or anticipated for either of the proposed parcels, and no new residences are proposed as part of this project.

**Surrounding Uses**

	<b>General Plan</b>	<b>Zoning</b>	<b>Current Land Use</b>
<b>On-Site:</b>	Agricultural	A-1	Row Crops / Canal / Dwelling / Agricultural Equipment Repair Business
<b>North:</b>	Agricultural	A-1	Row Crops
<b>South:</b>	Agricultural	A-1	Orchards
<b>East:</b>	Agricultural	A-1	Row Crops / Dwelling
<b>West:</b>	Agricultural	A-1	Row Crops / Canal

**Prior Actions/Entitlements**

CUP 3455; CUP05-026; MM07-021 (Approved)  
 ZV96-002 / MS96-014 (Denied)

**ANALYSIS:**

**Project Description**

The applicant is requesting to vary from the minimum required A-1 (General Agricultural) zone parcel size and divide an 8.5 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 2.85 acres and Parcel 2 = 5.63 acres. The reason for this request is due to a canal that bisects the property, limiting land uses. The project site is designated Agricultural land use and zoned A-1 (General Agricultural).

## Consistency with Adopted Plans and Policies

### 1. General Plan

The 2030 General Plan provides a set of guiding principles, goals, and policies that communicate the adopted philosophy of the County regarding growth, development and sustainability. These statements, together with adopted diagrams, standards and analysis, provide the context under which specific land use proposals are reviewed. The 2030 General Plan is therefore considered the local "constitution" for planning and development and serves to direct the physical growth and development of the County for the long term.

#### Land Use Element

The Land Use Element of the 2030 General Plan provides the policy context for Merced County to achieve its vision for both rural and urban land use. Agricultural land use designation is applied to much of the land within the County. It acknowledges the importance of agriculture to the economy and culture of the County, and seeks to protect productive agricultural land, promote agricultural processing and support operations, and recognize and preserve valuable open space resources.

The following land use goals and policies are applicable to the present application:

#### **Goal LU-2**

*Preserve, promote, and expand the agricultural industry in Merced County.*

#### **Policy LU-2.3: Land Use Activity Limitations**

*Limit allowed land use within Agricultural and Foothill Pasture areas to agricultural crop production, farm support operations, and grazing and open space uses.*

The proposed project is consistent with Policy LU-2.3 of the General Plan. The current land uses of the property, which include an agricultural equipment repair business, a single-family residence, and a small amount of row crops, will not be impacted by the proposed variance and subdivision. The parcel is already substandard in size, and the canal that bisects the property already limits land uses to agricultural support operations.

#### Agricultural Element

The Agricultural Element provides the policy context for Merced County to achieve its vision for the protection, preservation, and expansion of productive agriculture. Agriculture is the prominent economic segment in the County and accounts for more than 90 percent of all land area. Merced County is ranked fifth among all counties in California and sixth in the nation in the annual market value of farm products. Rich soils, accessible irrigation water, favorable climate, a large labor force, and reliable access to local, national, and global markets make Merced County a thriving agricultural community.

The following agricultural goals and policies are applicable to the present application:

#### **Goal AG-2**

*Ensure the long-term preservation and conservation of land used for productive agriculture, potentially-productive agricultural land, and agricultural-support facilities.*

#### **Policy AG-2.13: Minimum Agricultural Parcel Size Requirement**

*Require a 20 acre minimum permitted parcel size in areas designated Agricultural to discourage land divisions for rural residential purposes and maintain parcels large enough for*

*efficient commercial agricultural production. Require 160 acre minimum permitted parcel size in areas designated Foothill Pasture and in grassland areas.*

The requested variance from the minimum A-1 parcel size addresses Policy AG-2.13. To note, the existing parcel that is the subject of this project is approximately 8.5 acres, which is already below the minimum A-1 parcel size of 20 acres. This request would allow the applicant to create an additional parcel under the 20-acre minimum A-1 parcel size. If the variance request is approved, the applicant is requesting to divide the existing 8.5 acre parcel into two parcels of 2.85 acres and 5.63 acres, using the existing canal that bisects the parcel as the new shared property line.

The intent of Policy AG-2.13 is to preserve commercial agricultural production on parcels designated Agricultural in the General Plan. Because the subject parcel is already under 20 acres, agricultural land uses on the parcel are limited to agricultural support operations and non-commercial crops. The proposed variance would not change the existing or potential land uses of the parcel. The only potential land use change would be the allowance of a single-family dwelling on proposed Parcel 1, but that issue is addressed via Mitigation Measure AG-5g of the County's General Plan, which would require processing of a discretionary conditional use permit application for any new residences on the subdivided properties. This is a recommended condition of approval for the project.

With the above noted, and upon making the required findings for variance, the proposed Zone Variance and proposed Minor Subdivision can be found consistent with the Agricultural Element of the General Plan.

## **2. Zoning Code**

The project site is zoned A-1 (General Agricultural) on the Merced County Zoning Map. The purpose of the A-1 (General Agricultural) zone is to provide areas for more intensive farming operations that are dependent on higher quality soils, water availability, relatively flat topography, and agricultural commercial and/or industrial uses dependent on proximity to urban areas or locations in sparsely populated low traffic areas. In the A-1 zone, parcels smaller than 40 acres down to a minimum of 20 acres can be considered where the agricultural productivity of the property will not be reduced.

In the case of the subject property, it already falls below the 20-acre minimum A-1 zone parcel size and is therefore a legal nonconforming parcel. The applicant is requesting to vary from the 20-acre minimum A-1 zone parcel size that is required by Section 18.10.030 of the Zoning Code to create two nonconforming parcels from the one that is existing. While the subject property is already under the 20-acre minimum A-1 zone parcel size (8.5 acres), the applicant is proposing to further divide the property into two parcels (2.85 acres and 5.63 acres). Citing special circumstances, the applicant is allowed to request a variance from the minimum A-1 zone parcel size pursuant to Chapter 18.126 – Variances and Minor Deviations of the Merced County Zoning Code.

The applicant notes in the application that they are proposing a variance due to special circumstances, specifically that a canal bisects the property. The configuration of the parcel and canal limits land uses on the existing 8.5 acre parcel. Pursuant to Chapter 18.126 of the Zoning Code, as well as Government Code Section 65906, a variance may only be approved after the reviewing authority makes the following required findings:

1. There are special circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;
2. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other property in the vicinity and under an identical zoning classification;
3. Approving the Variance or Minor Deviation would not constitute a grant of special privilege inconsistent with the limitations on other properties in the same vicinity and zone in which the subject property is situated; and,
4. The requested Variance or Minor Deviation would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel.

Should the Planning Commission consider the above findings for variance to be met, it can be done so based on the following justifications:

- The special circumstance applicable to the subject property is that a canal bisects it, constraining potential land uses across the entirety of the existing 8.5 acre parcel.
- Strict compliance with Zoning Code requirements would deprive the subject property of the ability to establish land uses across the entirety of the parcel, which other parcels in the vicinity have the ability to do.
- Approval of the Variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the same vicinity and zone as the subject property, as land uses would still be limited to those allowed in the A-1 (General Agricultural) zone. The ability to construct a new dwelling on either of the proposed parcels would be subject to review by a Conditional Use Permit, a discretionary action consistent with the regulations applicable to all agriculturally zoned parcels which have been subdivided after December 10, 2013.
- The requested Variance would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel.

This project is also subject to the Agricultural Setback Requirement for Created Parcels pursuant to Section 18.10.030, subdivision (E) and Section 18.10.040, subdivision (M)(1) of the Zoning Code. These provisions of the Zoning Code require a 200-foot physical separation (buffer) between any habitable structure and any abutting parcels used for agricultural production. Because this subdivision is proposed in an agriculturally-zoned area, the project was reviewed for compliance with the Agricultural Setback Requirement for Created Parcels. There is only one existing dwelling on the project site, located on Proposed Parcel 2. Upon review, it has been determined that no new property lines are proposed within 200 feet of the existing dwelling. Therefore, the proposed project meets the Agricultural Setback Requirement for Created Parcels, and no further review is required.

### **3. Other Adopted Plans and Policies**

#### **Subdivision Map Act and Title 17**

The proposed subdivision can be found consistent with the Subdivision Map Act and Title 17 of the Merced County Code. No new homes or new land uses are proposed on the project site. Policy AG-3.12 of the Agricultural Element of the General Plan waives the right to construct residences on resulting parcels by placement of a note on the face of the recorded-map that would permit the construction of residences on the resulting parcels subject to the approval of a conditional use permit (or other applicable policy in place at the time of the request).

### **Agricultural Preserve and Williamson Act**

The project site is not currently located in the Agricultural Preserve, and therefore, the parcel is not eligible for a Williamson Act contract. The proposal is consistent with applicable provisions of the Agricultural Preserve and Williamson Act.

### **Previous Applications and Entitlements**

Conditional Use Permits No. CUP 3455 and No. CUP05-026, as well as Minor Modification No. MM07-021, were previously approved for the project site.

An application for a Zone Variance and Minor Subdivision (ZV96-002 / MS96-014), which proposed a reduction to the minimum required parcel size and subdivision similar to the request being considered currently, was denied in 1996. The applications (ZV96-002 / MS96-014) were denied on the grounds that the findings for variance were not met. At that time, the proposed variance would have resulted in inconsistencies with the County's General Plan policies related to land use compatibility due to a potential increase in intensity of residential uses in the agricultural zone. If the Planning Commission had approved the variance, it would have allowed a residence by-right on the proposed parcel that did not contain an existing dwelling, increasing the intensity of residential uses in an agriculturally-zoned area and creating potential conflicts between residential uses and nearby agricultural operations. The subdivision request was not considered because the variance request was not approved.

Since consideration of ZV96-002 / MS96-014 in 1996, the County has adopted a new General Plan, the 2030 Merced County General Plan, which further analyzed parcels designated for Agricultural uses. In the 2030 General Plan, the creation of smaller agriculturally-designated parcels was analyzed. This analysis did not exist in the General Plan that was in effect in 1996. The 2030 General Plan analysis of smaller agriculturally-designated parcels may be utilized by the Planning Commission should they support the required findings for variance. The 2030 General Plan Program EIR incorporates a mitigation measure that requires processing of a discretionary conditional use permit for any new residences proposed on a newly created parcel in the agricultural zones, which mitigates the impact of new residences that was anticipated by the Planning Commission when considering the 1996 project. See the California Environmental Quality Act section below for clarification of potential environmental impacts associated with subdividing agriculturally-zoned parcels.

### **California Environmental Quality Act (CEQA)**

Staff has assessed the proposed Zone Variance and Minor Subdivision project in relation to the Program Environmental Impact Report (PEIR) prepared for the 2030 Merced County General Plan Update, and is recommending that the Planning Commission determine no further environmental review is required pursuant to Section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines. See **Exhibit B** for the findings and analysis which support this conclusion.

The 2030 Merced County General Plan Program EIR contained an extensive analysis of the potential impacts from subdivisions located in agricultural and open space areas of the County (specifically, Chapter 6 in the Recirculated Draft Program EIR dated July 26, 2013). The Draft and Final Program EIR concluded that the impact from agricultural subdivisions was less than significant when no new residences are proposed. Additionally, Mitigation Measure AG-5g was adopted to require processing of a discretionary conditional use permit for any new residences proposed on a newly created parcel in the agricultural zones.

However, because new residences were permitted on existing agricultural parcels, the EIR concluded the overall impact of the General Plan would be significant and unavoidable. In this subdivision application, Minor Subdivision No. MS20-018, no additional residences are proposed,

and a note will be placed on the face of the parcel map indicating that the right to seek additional housing on the parcels has been waived. Should the landowner change their decision in the future, Mitigation Measure AG-5g would require processing of a discretionary conditional use application which would be subject to further environmental review.

### **Community Engagement**

The project application was routed to applicable County departments for comment. The Roads Division noted that additional right-of-way dedication will be required along Peach Avenue frontage, and the Building and Safety Division noted that a well will be required on Proposed Parcel 1.

Notice of the Planning Commission's public hearing was mailed to all owners of property located within 300 feet of the project site on **December 31, 2020** and published in the Merced Sun-Star on **January 1, 2021**. No written or verbal comments were received by staff prior to the completion of this Staff Report.

### **CONCLUSION:**

Should the Planning Commission not make the required findings for variance and deny Zone Variance Application No. ZV20-002, the Planning Commission cannot consider Minor Subdivision Application No. MS20-018. Should the Planning Commission make the required findings for variance and approve Zone Variance Application No. ZV20-002, the analysis provided in this Staff Report finds that the proposed Minor Subdivision Application No. MS20-018 is consistent with applicable provisions of the General Plan, Zoning Code, and Subdivision Map Act. Furthermore, the project is consistent with the range of possible uses considered for the area in the General Plan Program Environmental Impact Report and can be exempted from further CEQA review based on this consistency.

Staff recommends that the Planning Commission consider Zone Variance Application No. ZV20-002, and, if approved, approve Minor Subdivision Application No. MS20-018 based on the findings identified below and subject to the recommended Conditions of Approval.

### **RECOMMENDED PLANNING COMMISSION ACTION:**

#### **A. CEQA Determination**

**MOTION:** Determine no further environmental review is required pursuant to Section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based on the analysis in the 2030 Merced County General Plan Program Environmental Impact Report and the attached CEQA Section 15162 Findings and Analysis.

Staff recommends that the Planning Commission consider Zone Variance Application No. ZV20-002 and review the request for consistency with the findings for variance outlined in Chapter 18.126 – Variances and Minor Deviations of the Merced County Zoning Code as well as Government Code Section 65906.

If the Planning Commission determines that the project meets the required findings for variance, staff recommends that the Planning Commission make the following motion:

#### **B. Project Determination**

**MOTION:** Determine that the project meets the required findings for variance based on the findings in the staff report and approve Zone Variance Application No. ZV20-002.

### **Project Findings:**

1. Zone Variance Application No. ZV20-002 proposes to vary from the minimum A-1 (General Agricultural) parcel size of 20 acres to allow consideration of a minor subdivision, which would create a 2.85 acre parcel and a 5.63 acre parcel from an existing 8.5 acre parcel.
2. The property is designated Agricultural in the General Plan and zoned A-1 (General Agricultural).
3. The project is subject to all applicable Local, State and Federal regulations.
4. Notice of the application and the Planning Commission hearing was published in the Merced Sun-Star and mailed to property owners within 300 feet of the project site.
5. There are special circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;
6. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other property in the vicinity and under an identical zoning classification;
7. Approving the Variance or Minor Deviation would not constitute a grant of special privilege inconsistent with the limitations on other properties in the same vicinity and zone in which the subject property is situated; and,
8. The requested Variance or Minor Deviation would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel.

If the Planning Commission determines that the project does not meet the required findings for variance, staff recommends that the Planning Commission make the following motion:

#### **B. Project Determination**

**MOTION:** Determine that the project does not meet the required findings for variance and deny Zone Variance Application No. ZV20-002.

Should the Planning Commission deny Zone Variance Application No. ZV20-002, staff recommends that the Planning Commission take no action on Minor Subdivision Application No. MS20-018. Should the Planning Commission approve Zone Variance Application No. ZV20-002, staff recommends that the Planning Commission consider the following motion related to Minor Subdivision Application No. MS20-018:

#### **C. Project Determination**

**MOTION:** Approve Minor Subdivision Application No. MS20-018 based on the findings identified in the Staff Report and subject to the recommended Conditions of Approval.



**Project Findings:**

1. Minor Subdivision Application No. MS20-018 proposes to subdivide an 8.5 acre into two parcels, resulting in parcel sizes of: Parcel 1 = 2.85 acres and Parcel 2 = 5.63 acres.
2. The property is designated Agricultural in the General Plan and zoned A-1 (General Agricultural).
3. The proposal is consistent with applicable provisions of the 2030 Merced County General Plan requiring the preservation of commercial agricultural land and maintaining the commercial viability of agricultural parcels.
4. The proposal is consistent with applicable provisions of the Merced County Zoning Code that have not been superseded through adoption of the 2030 General Plan.
5. The proposal is consistent with the Subdivision Map Act.
6. The proposal is consistent with the Agricultural Preserve and the Williamson Act.
7. The proposed Minor Subdivision is compatible with adjacent uses and properties, and will not be a nuisance nor be detrimental to the public health, safety or general welfare.
8. The project is subject to all applicable Local, State and Federal regulations.
9. Notice of the application and the Planning Commission hearing was published in the Merced Sun-Star and mailed to property owners within 300 feet of the project site.

**EXHIBITS:**

- A. Recommended Conditions of Approval
- B. CEQA Section 15162 Findings and Analysis
- C. Tentative Parcel Map
- D. Agency Comments

cc:

Applicant/Property Owner – Adan Perez  
Engineer – Golden Valley Engineering



COMMUNITY AND ECONOMIC  
DEVELOPMENT DEPARTMENT

Mark J. Hendrickson  
*Director*

Steve Maxey  
*Deputy Director*

2222 "M" Street  
Merced, CA 95340  
(209) 385-7654  
(209) 726-1710 Fax  
www.co.merced.ca.us

Equal Opportunity Employer

**ZV20-002 / MS20-018 CONDITIONS OF APPROVAL**

Merced County 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. The applicant shall comply with all applicable Local, State and Federal regulations.
3. A note shall be placed on the face of the parcel map stating that any new residences will be subject to review and approval of a Conditional Use Permit from the County, as per General Plan Policy AG-3.12, or as otherwise permitted by the County subject to the current policies in place at the time of the request.

Merced County Department of Public Works, Roads Division

4. Right-of-Way dedication is required to fulfill the 60' ultimate right-of-way for Peach fronting the property. Peach Avenue has an existing 40' right-of-way. The owners shall dedicate an additional 10' of right-of-way along the Peach Avenue frontage of the property, to be indicated on the final parcel map.

Merced County Department of Public Works, Building and Safety Division

5. A new well shall be installed on Proposed Parcel 1 to serve the existing agricultural equipment repair building prior to recordation of the final parcel map.

County Counsel

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

ADAN PEREZ 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.

**The California Environmental Quality Act  
(CEQA) Section 15162 Findings:**

**Application:** Zone Variance No. ZV20-002 and Minor Subdivision No. MS20-018 (Adan Perez)

**Assessor Parcel Number or Location:** Assessor’s Parcel Number (APN) 047-240-017.

**Previous Initial Study/EIR Reference:** The subdivision of “Agriculturally” designated land was previously comprehensively reviewed through the Program Environmental Impact Report (EIR) for the 2030 Merced County General Plan Update (SCH #2011041067).

**Original Project Date:** The Program Environmental Impact Report was certified on December 10, 2013, by the Merced County Board of Supervisors.

**Section A - Previous Studies**

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | <b>Yes</b>               | <b>No</b>                           |
| 1. Substantial changes are proposed in the project that will require major revisions of the previous project EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**Comment/Finding:** The proposed project is consistent with the previous environmental review. No substantial changes are proposed. (See Page 3 for supporting analysis.)

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | <b>Yes</b>               | <b>No</b>                           |
| 2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**Comment/Finding:** There have been no changes in the circumstances under which the project is undertaken that would require major revisions in the previous EIR. There are no new significant environmental effects or substantial increases in the severity of previously identified environmental effects. (See Page 3 for supporting analysis).

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
|  | <b>Yes</b>               | <b>No</b>                           |
| 3. New information of substantial importance that was not known and could not have been know with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, has been revealed? (If “Yes” is checked, go to Section “B” below) | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**Comment/Finding:** There is no new information of substantial importance that was not known and could not have been known with the reasonable diligence at the time the previous EIR was adopted. (See Page 3 for supporting analysis).

**Section B - New Information**

- |   |                                 |   |
|---|---------------------------------|---|
| A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration.   | Yes<br><input type="checkbox"/> | No<br><input checked="" type="checkbox"/> |
| B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.  | Yes<br><input type="checkbox"/> | No<br><input checked="" type="checkbox"/> |
| C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.           | Yes<br><input type="checkbox"/> | No<br><input checked="" type="checkbox"/> |
| D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. | Yes<br><input type="checkbox"/> | No<br><input checked="" type="checkbox"/> |

**Comment/Finding:** All previously identified mitigation measures were adopted as General Plan policies and implementation measures as part of the Agricultural Element. Approval of this subdivision project will be dependent upon finding the project is consistent with the General Plan and all applicable policies. Therefore, the potential impacts resulting from the subdivision are no greater than those previously analyzed and the previously imposed mitigation measures remain sufficient to address all impacts from this project.

**On the basis of this evaluation, in accordance with the requirements of Section 15162 of the CEQA Guidelines:**

- |                                     |  |
|-------------------------------------|--|
| <input type="checkbox"/>            | 1. It is found that subsequent negative declaration will need to be prepared.  |
| <input type="checkbox"/>            | 2. It is found that an addendum Negative Declaration will need to be prepared. |
| <input type="checkbox"/>            | 3. That a subsequent EIR will need to be prepared.                             |
| <input checked="" type="checkbox"/> | 4. No further documentation is required.                                       |

Date: January 6, 2021  
Prepared By:

Brody Patterson  
Brody Patterson  
Project Planner

**CEQA Section 15162 Findings: Supporting Analysis****I. Introduction**

Zone Variance Application No. ZV20-002 and Minor Subdivision Application No. MS20-018 are requests to vary from the minimum A-1 (General Agricultural) zone parcel size and divide an 8.5 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 2.85 acres and Parcel 2 = 5.63 acres. The project site is located on the south side of W. Peach Avenue, 640 feet west of N. Robin Avenue in the Livingston area, identified as Assessor's Parcel Number (APN) 047-240-017. The property is designated Agricultural land use and zoned A-1 (General Agricultural). No new residences are proposed.

**II. Analysis**

The extensive analysis in the 2030 Merced County General Plan Program EIR concluded that the impact from agricultural subdivisions was less than significant when no new residences are proposed. However, because new residences were permitted on existing agricultural parcels, the EIR concluded the overall impact of the General Plan would be significant and unavoidable.

In the current Minor Subdivision Application No. MS20-018, no additional residences are proposed and a note will be placed on the face of the Parcel Map indicating that the right to seek additional housing on the parcels has been waived. Should the landowner change their mind in the future, Mitigation Measure AG-5g would require processing of a discretionary conditional use permit application which would be subject to further environmental review.

The General Plan EIR also concluded that the impact from the subdivision of agricultural parcels 40 acres or less in size would typically not result in a significant impact on the environment in the analysis under Impact AG-7: "Involve other land use changes that would result in conversion of farmland to non-agricultural uses due to inadequate parcel sizes." (Starting on Page 6-71 of the Recirculated Draft Program EIR). This conclusion was reached based on the fact that the General Plan contained Policy AG-2.13 "Minimum Agricultural Parcel Size Requirement" along with Policy AG-2.14 "Viability of Smaller Parcels."

The applicant is requesting to vary from the minimum A-1 (General Agricultural) zone parcel size due to a canal that bisects the property. The applicant is also requesting a minor subdivision to divide an 8.5 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 2.85 acres and Parcel 2 = 5.63 acres. The proposed subdivision will only be considered if the Planning Commission makes the required findings for variance and approves Zone Variance Application No. ZV20-002, which would allow the applicant to vary from the minimum A-1 zone parcel size. Should the variance request be approved, the proposal is consistent with Title 17 of the Merced County Zoning Code. The project proposes no change in land use, intensification of farming, and/or increase in demand for irrigation water. Additionally, no new structures are proposed which would result in a significant impact not previously evaluated in the General Plan Program EIR.



**EXHIBIT D**  
 Rebecca Nanyonjo-Kemp, DrPH  
*Director*  
 Salvador Sandoval, MD, MPH  
*Health Officer*

**Revised Memorandum**

**DATE:** December 16, 2020  
**TO:** Brody Patterson, Planner I  
**FROM:** Brent Cronk, EHS III  
 (209) 385-7654 xt4568; [Brent.Cronk@countyofmerced.com](mailto:Brent.Cronk@countyofmerced.com)  
**SUBJECT:** **MINOR SUBDIVISION APPLICATION No. MS20-018 and ZONE VARIANCE APPLICATION No. ZV20-002 - ADAM PEREZ** - A request to vary from the minimum A-1 (General Agricultural) zone parcel size and divide an 8.5 acre parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 2.85 acres and Parcel 2 = 5.63 acres. The project site is located on the south side of W. Peach Avenue, 640 feet west of N. Robin Avenue in the Livingston area, identified as Assessor's Parcel Number (APN) 047-240-017. The property is designated Agricultural land use and zoned A-1 (General Agricultural).  
**SITUS:** Parcel 1: 14165 Peach Ave., Livingston – ag shop building  
 Parcel 2: 14231 Peach Ave., Livingston – SFD (14239, historical address, use unknown)

**Observations and Comments – Merced County Division of Environmental Health (MCDEH):**

The existing canal essentially divides this parcel already. The division line will follow the canal. However, Parcel 1 has a septic system because the ag shop building has a bathroom. The applicant indicates that the water for that restroom comes via pipe across the canal from the well on Parcel 2. The applicant will work with the Building Division to meet their requirements for the water supply to the shop building. MCDEH has no objection to the Minor Subdivision or the Zone Variance.



**DEPARTMENT OF PUBLIC WORKS  
Road Division**

**EXHIBIT D**

Dana S. Hertfelder  
*Director*

345 West 7th Street  
Merced, CA 95340  
(209) 385-7601  
(209) 722-7690  
www.co.merced.ca.us

Equal Opportunity Employer

Date: December 18, 2020

To: Brady Patterson, Planner I  
Planning and Community Development Department

From: Gerardo Elias, Engineering Associate  
Department of Public Works

Subject: ZV20-002 and MS20-018  
Adam Perez

**MEMORANDUM**

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We have reviewed this Zone Variance ZV20-002 and Minor Subdivision MS20-018, a request to divide an existing parcel APN 047-240-017 into 2 parcels: Parcel 1 (2.85 Acres) and Parcel 2 (5.63 Acres). The property is designated agricultural in the general plan and zoned A. The road department has the following comment.

1. Right-of-Way dedication is required to fulfill the 60' ultimate right-of-way for Peach fronting the property. Peach Avenue has an existing 40', the owners shall dedicate an additional 10' of right-of-way along the Peach Avenue frontage of the property.