



## Planning Commission

### Staff Report

March 10, 2021

AGENDA ITEM # B

PREPARED BY:  
APPROVED BY:

MARK MARSHALL, PROJECT PLANNER  
MARK HENDRICKSON, DIRECTOR

**MINOR SUBDIVISION APPLICATION No. MS21-002 – GRISSOM FAMILY LAND & CATTLE.** - A request to subdivide a 40 gross acre parcel into two (2) 20 gross acre parcels. The project site is located at the northwest corner of N. Kilroy Road and W. Turner Avenue, in the Hilmar area, identified as Assessor's Parcel Number (APN) 045-261-002. 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 determine that the project is exempt from environmental review pursuant to Section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines. **MM**

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

- 1) Open/close public hearing;
- 2) Determine that the project can be found exempt from environmental review pursuant to Section 15162 – "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines; and,
- 3) Approve Minor Subdivision No. MS21-002 based on the findings identified in the staff report and subject to the recommended conditions of approval.

#### **LOCATION MAP:**



**BACKGROUND:**

**Site Description**

The project site is located at the northwest corner of N. Kilroy Road and & W. Turner Avenue, in the Hilmar area, identified as Assessor Parcel Number (APN) 045-261-002. The property is designated as Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). Currently, Parcel 1 has an existing residence and agricultural accessory structures and Parcel 2 currently has fallow land but remains undeveloped, with no new construction or change in use proposed at this time.

**Surrounding Uses**

	<b>General Plan</b>	<b>Zoning</b>	<b>Current Land Use</b>
<b>On-Site:</b>	Agricultural (A-1)	General Agricultural (A-1)	Residential / Agricultural
<b>North:</b>	Agricultural (A-1)	General Agricultural (A-1)	Row Crops / Residential
<b>East:</b>	Agricultural (A-1))	General Agricultural (A-1)	Agricultural / Residential
<b>South:</b>	Agricultural (A-1)	General Agricultural (A-1)	Row Crops / Residential
<b>West:</b>	Agricultural (A-1)	General Agricultural (A-1)	Row Crops / Residential

**Prior Actions/Entitlements**

The project site has several previous actions/entitlements, including:

- HST-20052037 was approved in 2005 to establish a new agricultural building and shelter;
- BP2016-0802 was approved in 2019 for electrical service to an agricultural well;
- BP2019-0223 was approved in 2019 for a residential reroof, and;
- BP2019-0224 was approved in 2019 for a residential reroof.

**ANALYSIS**

**Project Description**

Minor Subdivision No. MS21-002 is a request to divide a forty (40) gross acre parcel into two (2) 20 gross acre parcels. Parcel 1 will be 18.1 acres (net) and Parcel 2 will be 18.7 acres (net) when adjusted from the land removed by road frontage. Proposed Parcel 2 will remain undeveloped and Proposed Parcel 1 has an existing use as a residence with agricultural accessory structures.

**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. Countywide growth and development policies serve to direct urban development to vacant and/or underused land within cities and unincorporated communities (i.e., Urban Communities).

The following land use 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 agriculture production.

### **Policy AG-2.14: Viability of Smaller Parcels**

Require applicants seeking to divide agriculturally-zoned parcels to demonstrate the continued viability of lots less than 40 acres for commercial agriculture, using specific standards (i.e., access to agricultural water, joint farm management, access for aerial spraying, size viability for specific commodities) and farm management plans.

### **Policy AG-3.12: Subdivision and Residential Uses in Agricultural Areas**

Per the Merced County Zoning Code, Section 18.10.040 (N) (1) and [General Plan Program Environmental Impact Report], there are two classes of allowable minor subdivisions within the A-1, A-1-40, and A-2 zones, one that would conditionally waive the right to construct residences on resulting parcels by placement of a note on the face of the recorded map; and one that would permit the construction of residences on the resulting parcels subject to a Conditional Use Permit.

Minor Subdivision No. MS21-002 will allow for the subdivision of an agricultural parcel with residential accessory uses. As such, the project can be found consistent with Goal AG-2 of the Land Use Element of the General Plan. Additionally, as Minor Subdivision No. MS21-002 will allow for the creation of another parcel which will be conditioned for further residential use over agricultural use, the project can be considered consistent with Policy AG-2.13. Both proposed parcels are currently and will continue to be under Williamson Act contract, and therefore the project is consistent with Policy AG-2.14. The recorded map will be conditioned to conform to Policy AG-3.12, the Zoning Code, and Program Environmental Impact Report, and there is no new construction proposed at this time. A CUP shall be required for any new residence on either parcel, unless otherwise permitted by the County subject to the current policies in place at the time of the request.

## **2. Merced County Zoning Code (MCZC)**

The project site is zoned A-1 (General Agricultural). The purpose of the General Agricultural Zone (A-1) is to provide for areas for intensive farming operations dependent on higher quality soils, water availability, relatively flat topography, and agricultural commercial and/or industrial uses dependent on proximity to urban areas or location in sparsely populated low traffic areas.

Minor Subdivision No. MS21-002 would divide a 40 gross acre parcel into two (2) parcels, resulting in parcel sizes of: Parcel 1 = 20 acres (gross) and 18.1 acres (net) and Parcel 2 = 20 acres (gross) and 18.7 acres (net). The proposed parcels meet the minimum lot subdivision standards as required by the Zoning Code.

This project is also subject to the Agricultural Setback Requirement for Created Parcels pursuant to Sections 18.10.030, subdivision (E) and 18.10.040, subdivision (M)(1) of the Zoning Code. Those 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.

The 200-foot buffer between the existing residence on the home site parcel (Parcel 1) and any abutting parcels used for agricultural production has been implemented where necessary. The 200-foot buffer was appropriately incorporated to the west, and north of the existing residence on Parcel 1. While that residence is not 200 feet from the property line to the east, the property line to the east is not being adjusted as part of this project, and therefore, the 200-foot buffer does not need to be incorporated in that direction. As no new property lines are encroaching upon the existing residence on the remainder parcel, no 200-foot buffer is necessary for that residence. Based on the tentative map submitted for this application, the Agricultural Setback Requirement has been satisfied for the existing residence on Parcel 1, and no further action or analysis is required.

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

Consistent with the Subdivision Map Act, this application and all land divisions approved by the planning director, commission and/or the board after March 4, 1972, and recorded by the county recorder consistent with conditions of approval and ordinances in effect at the time of approval shall be considered legal.

Consistent with 17.12.040 of the County of Merced Subdivision Code, this tentative map application has provided the adequate and legible information regarding the proposed subdivision and its dimensions, existing structures, well and septic locations.

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

Staff has assessed the proposed 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 that 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 a conditional use permit be processed for any new housing 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 the current application, Minor Subdivision No. MS21-002, 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. Comment was received from Environmental Health. See **Exhibit D**.

Notice of the public hearing was mailed to all owners of property located within 300 feet of the project

site and published in the Merced Sun-Star on **February 26, 2021**. No written or verbal comments were received by staff prior to the completion of this staff report.

## **CONCLUSION:**

The analysis provided in this staff report finds the proposed minor subdivision to be consistent with applicable provisions of the General Plan, the Zoning Code, Title 17 of the Merced County Code, and the Subdivision Map Act. Furthermore, no further environmental review is required pursuant to Section 15162 – “Subsequent EIRs and Negative Declarations” of the CEQA Guidelines.

Staff recommends the Planning Commission approve Minor Subdivision Application No. MS21-002 based upon the findings in the staff report 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 Guidelines Section 15162 Findings and Analysis.

### **B. Project Determination**

**MOTION:** Approve Minor Subdivision Application No. MS21-002 based on the findings included in the staff report and subject to the recommended conditions of approval.

#### **Project Findings:**

1. Minor Subdivision Application No. MS21-002 proposes to divide a 40 acre gross parcel into two parcels, resulting in parcel sizes of: Parcel 1 = 20 acres (18.1 acres net) and Parcel 2 = 20 acres (18.7 acres net). The project site is located at the northwest corner of N. Kilroy Road and & W. Turner Avenue near the Hilmar area.
2. The property is designated Agricultural (A) in the General Plan and is zoned A-1 (General Agricultural).
3. The proposed project is consistent with applicable provisions of the 2030 Merced County General Plan.
4. The proposed project is consistent with applicable provisions of the Merced County Zoning Code.
5. The proposed project is consistent with the Subdivision Map Act and Title 17 of the Merced County Code.
6. The project has been reviewed by the County Roads Division, Environmental Health Division, Building and Safety Division, and the Fire Department.

7. The proposed minor subdivision is compatible with adjacent uses, properties, and neighborhoods, and will not be a nuisance or detrimental to the public health, safety or general welfare.
8. The project is subject to all applicable Federal, State, and local 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.

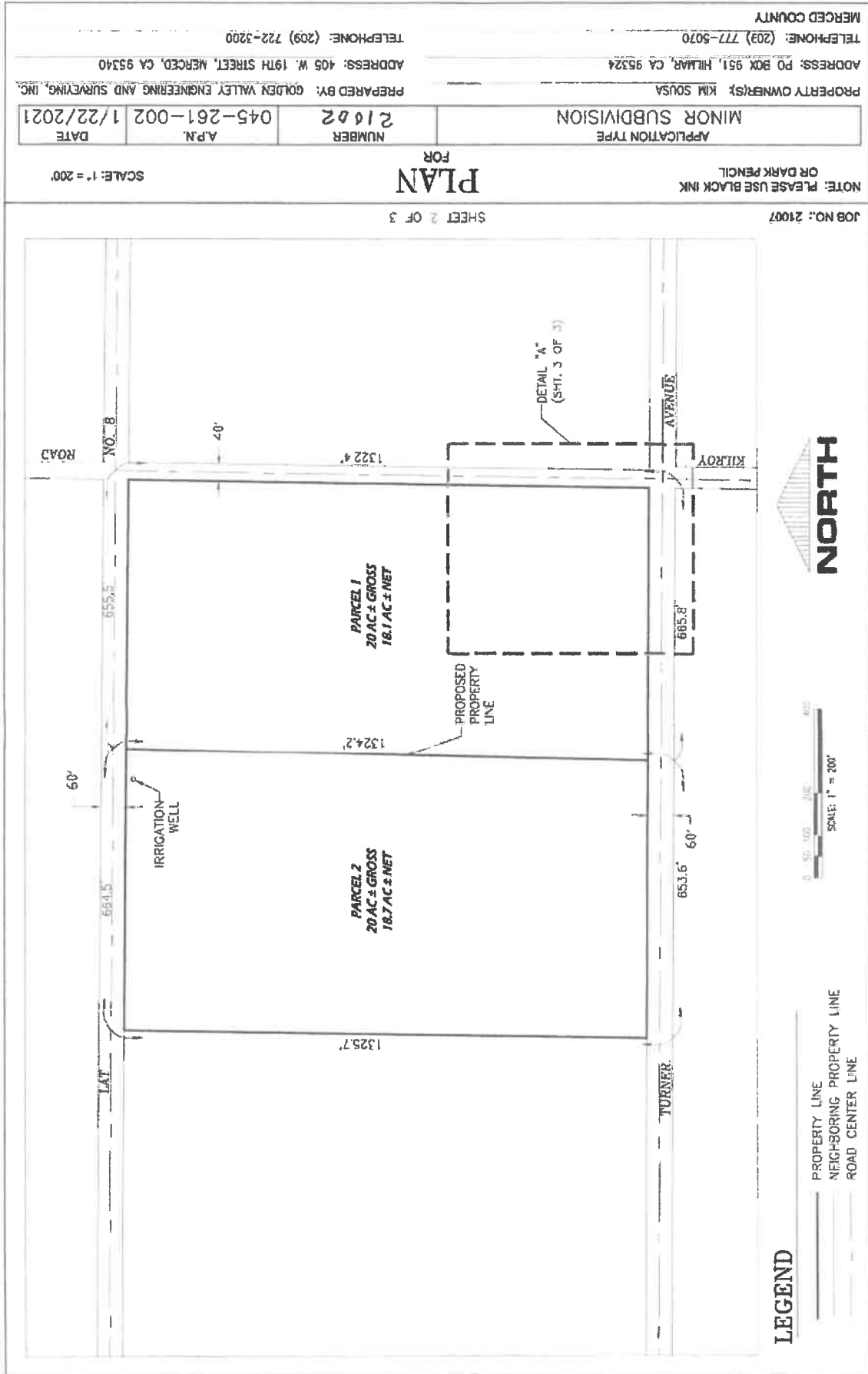
## **EXHIBITS**

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

cc.

Property Owner(s) – Kimberly Souza – Grissom Family Land & Cattle  
Applicant – Grissom Family Land & Cattle  
Engineer – Golden Valley Engineering & Surveying, Inc.

# EXHIBIT A





**COMMUNITY AND ECONOMIC  
DEVELOPMENT DEPARTMENT**

**Mark J. Hendrickson**  
*Director*

**Steve Maxey**  
*Deputy Director*

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**MS21-002 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 applicants shall comply with all applicable Local, State and Federal regulations.
3. A CUP shall be required for any new residence on either parcel, unless otherwise permitted by the County subject to the current policies in place at the time of the request.
4. The parcels shall continue to comply with the terms and conditions of their Williamson Act contract as originally approved.
5. Any new habitable structure must be located at least 200 feet from every property line unless otherwise allowed in the Zoning Code, and must conform to the standard setbacks for the applicable land use category.

County Counsel

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

KIMBERLY SOUSA and GRISSOM FAMILY LAND & CATTLE, L.P. ("Applicants") 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 duty 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 Applicants 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:** Minor Subdivision No. MS21-002 (Kimberly Sousa / Grissom Family Land & Cattle, L.P.)

**Assessor Parcel Number or Location:** Assessor’s Parcel Numbers (APNs) 045-261-002

**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 known 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 exercise of 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: February 17, 2021  
Prepared By:

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Mark Marshall  
Project Planner

## CEQA Section 15162 Findings: Supporting Analysis

### I. Introduction

Minor Subdivision Application No. MS21-002 is a request to subdivide a 40 gross acre parcel into two (2) 20 gross acre parcels. The project site is located at the northwest corner of N. Kilroy Road and & W. Turner Avenue, near the Hilmar area, identified as Assessor Parcel Number (APN) 045-261-002. The property is designated Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). No new residences are proposed.

### II. Analysis

The extensive analysis in the 2030 Merced County General Plan Program EIR (“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. MS21-002, 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, EIR 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 conclusion in the Program EIR was that the subdivision of productive agricultural land into parcels over 20 acres in size that does not involve the construction of new housing units would have a less than significant impact on the environment.

This proposed minor subdivision will divide a forty (40) gross acre parcel into two (2) 20 gross acre parcels. Parcel 1 will be 18.1 acres (net) and Parcel 2 will be 18.7 acres (net) when adjusted from the land removed by road frontage. The proposal is consistent with Title 17 of the Merced County Zoning Code. Farming practices and other existing land uses for the newly created 20 acre parcel will not change, nor will the agricultural and residential accessory use on the other 20 acre parcel. 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.