



Planning Commission

Staff Report

April 14, 2021

AGENDA ITEM # C

PREPARED BY:
APPROVED BY:

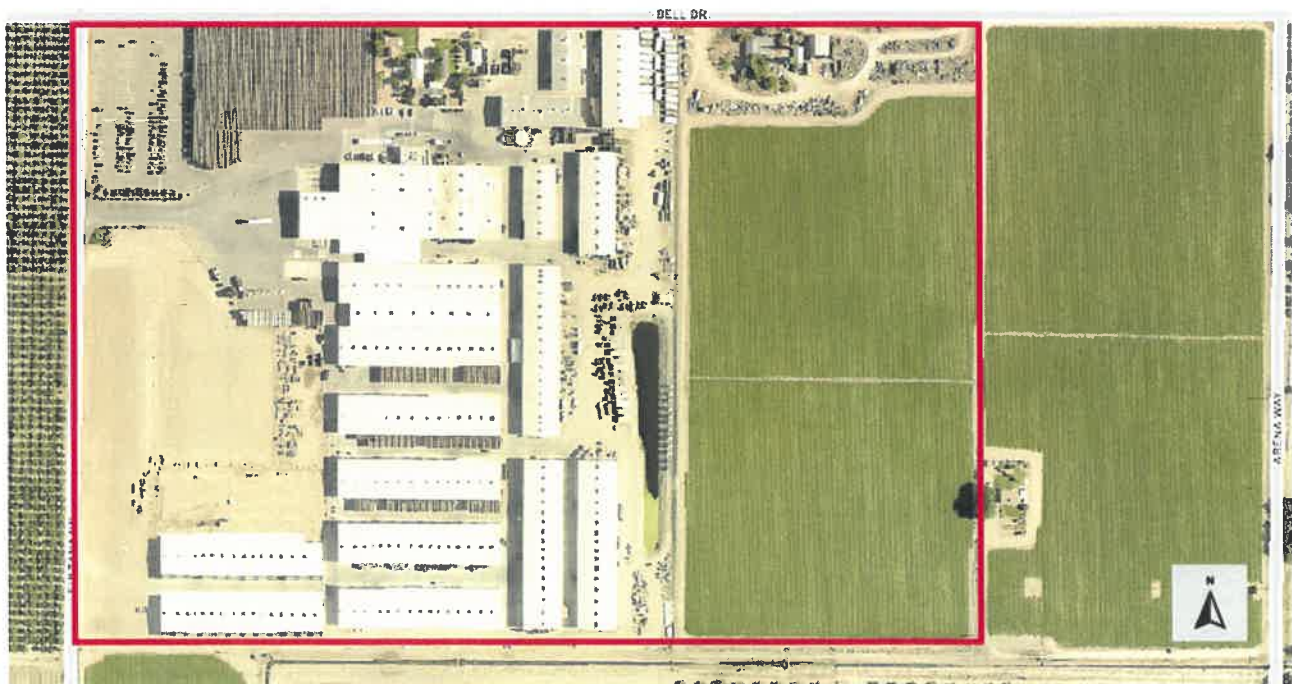
MARK MARSHALL, PROJECT PLANNER *mm*
MARK HENDRICKSON, DIRECTOR

MINOR SUBDIVISION APPLICATION No. MS21-003 – MARY SOUZA AND MANUEL VIEIRA - A request to subdivide a portion of a 19.43 acre parcel into one (1) 1.32 acre home-site parcel and combine the remainder 18.11 acres with an adjacent 38.4 acre parcel, creating a 56.5 acre parcel. The project site is located at the southeast corner of W. Bell Drive and N. Sultana Drive, adjacent to the Livingston area, identified as Assessor's Parcel Numbers APN(s) 056-220-001 and 056-220-002. 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 no further environmental review is required pursuant to Section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines. **MM**

RECOMMENDATION(S):

- 1) Open/close public hearing; and
- 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 Guidelines Section 15162 Findings and Analysis; and,
- 3) Approve Minor Subdivision No. MS21-003 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 southeast corner of W. Bell Drive and N. Sultana Drive, adjacent to the Livingston area, identified as Assessor’s Parcel Numbers (APNs) 056-220-001 and 056-220-002. The property is designated as Agricultural land use in the General Plan and is zoned A-1 (General Agricultural). Currently, proposed Parcel 1 has an existing residence. The remainder of Parcel 1 after this proposed subdivision will be combined with the adjacent commercial sweet potato processing facility to become the proposed Parcel 2.

Surrounding Uses

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

Prior Actions/Entitlements

The main project site, APN 056-220-002, has several previous actions/entitlements, including:

- HM11-024 was approved in 2011 for an online sales home occupation;
- CE2011-0053 was closed in 2011 as a code enforcement case for unlicensed retail sales;
- FD2020-0809 was closed in 2020 as a fire department violation for weed abatement and refuse on property.

ANALYSIS

Project Description

Minor Subdivision No. MS21-003 is a request to create a home-site parcel and merge the remainder with the abutting parcel to the west. Proposed Parcel 1 will be 1.32 acres and the remaining 18.11 acres will be combined into Parcel 2, resulting in a newly reconfigured parcel of 56.5 acres. Proposed Parcel 2 will remain as a sweet potato processing facility site with no construction proposed at this time, and Proposed Parcel 1 will retain its existing use as a residence.

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.

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-1

Maintain the financial viability of the agricultural sector by encouraging expansion of commercial agriculture, attracting new agricultural support and value added industries, and promoting locally-grown commodity sales.

Policy AG-1.3: Promoting Local Agriculture

Establish, as part of the County's economic development strategy, programs that promote and maintain local commercial agriculture.

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-2.7: Modify Merced County Agricultural Preserve Rules

Modify the Agricultural Preserve Rules and Procedures to allow parcels smaller than 10 acres for a limited number of circumstances authorized as exceptions in the County Zoning Code and consistent with State law.

Policy AG-2.15: Merced County Agricultural Preserve Consolidation

Modify the Merced County Agricultural Preserve to be consistent with State Subdivision Map Act and Williamson Act rules for allowing parcels less than 10 acres for a limited number of circumstances authorized as exceptions in the County Zoning Code and consistent with State law.

Goal AG-3

Minimize conflicts between productive agricultural areas and urban land uses, and discourage the parcelization and conversion of large agricultural holdings into rural residential parcels or urban uses.

Policy AG-3.2: Agricultural Buffer

In consultation with the MCAC, require buffers between proposed non-agricultural uses and adjacent productive agricultural operations to protect farms, dairies, and agricultural-related production facilities from conflicts with non-agricultural uses, specifically rural residences and urban area residential development.

Minor Subdivision No. MS21-003 will allow for the subdivision of an agricultural parcel, which will increase the site area of an existing sweet potato processing facility. As such, the project can be found consistent with Goal AG-1 and Policy AG-1.3 of the Agricultural Element of the General Plan. The subject parcels are currently not under Williamson Act contract, allowing for the creation of a homesite parcel under 10 acres. Consistent with State law (Gov't Code Sec. 66474.4(c)(2)), the subject parcels have been under the same ownership for at least 10 years and the remaining parcel (non-homesite) is over the minimum 10 acres. The proposed subdivision is also in compliance with County Zoning Code Section 18.10.030(F)(5), to be discussed below. Therefore, the proposed project is considered consistent with Goal AG-2 and Policies AG-2.7 and AG-2.15. There is no new construction proposed at this time and the proposed homesite parcel will have the required 200-foot agricultural buffer discussed below. Therefore, the proposed project is in compliance with Goal AG-3 and Policy AG-3.2.

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 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. MS21-003 would subdivide a portion of a 19.43 acre parcel into one (1) 1.32 acre homesite parcel and combine the remaining 18.11 acres with a parcel to the west, creating one (1) newly reconfigured 56.5 acre parcel. Proposed Parcel 2 would meet the minimum agricultural lot size of 20 acres required by Section 18.10.030 of the Merced County Zoning Code, at 56.5 acres. However, for an agriculturally zoned parcel, 1.32 acres is substandard. The Zoning Code provides an exception to this standard under Section 18.10.030(F)(5), if the following conditions all met:

- a. *The portion of the parcel which does not contain the dwelling is combined with an abutting parcel;*
- b. *The parcel containing the dwelling shall not be less than one net acre and not more than five net acres in size and has a minimum 150 feet of frontage on a public road; and*
- c. *The dwelling which is to be retained must have been lived in by the parcel owner for at least 10 years.*

As the proposed homesite parcel is over one acre, the remainder is being combined with an abutting parcel, and the owner has resided in the dwelling for more than 10 years, the project complies with 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 homesite 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, east and south of the existing residence on proposed Parcel 1. While that residence is not 200 feet from the property line to the north, the property line to the north is not being adjusted as part of this project, and therefore, the 200-foot buffer does not need to be incorporated in that direction. 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 Section 17.12.040 of the Merced County Subdivision Code, this tentative parcel 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 C** 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. MS21-003, no additional residences are proposed and the remainder land will be combined with the abutting parcel to the west containing the commercial sweet potato processing facility. Should the landowner wish to construct an additional dwelling on either parcel 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 application was forwarded to County staff representatives from the Merced County Public Works/Road Division, Merced County Fire Department, Merced County Environmental Health Division, Merced County Agricultural Commissioner, and the Merced County Public Works/Building & Safety Division for review and comment. No comments were received.

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 **April 2, 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. MS21-003 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 EIR and the attached CEQA Guidelines Section 15162 Findings and Analysis.

B. Project Determination

MOTION: Approve Minor Subdivision Application No. MS21-003 based on the findings included in the staff report and subject to the recommended conditions of approval.

Project Findings:

1. Minor Subdivision Application No. MS21-003 proposes to subdivide a portion of a 19.43 acre parcel into one (1) 1.32 acre homesite parcel and combine the remaining 18.11 acres with a parcel to the west, creating one (1) newly reconfigured 56.5 acre parcel. The project site is located at the southeast corner of W. Bell Drive and N. Sultana Drive, adjacent to the Livingston 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

cc.

Property Owner(s) – Mary Souza and Manuel Vieira
Applicant – Mary Souza and Manuel Vieira
Engineer – Golden Valley Engineering & Surveying, Inc.

EXHIBIT A

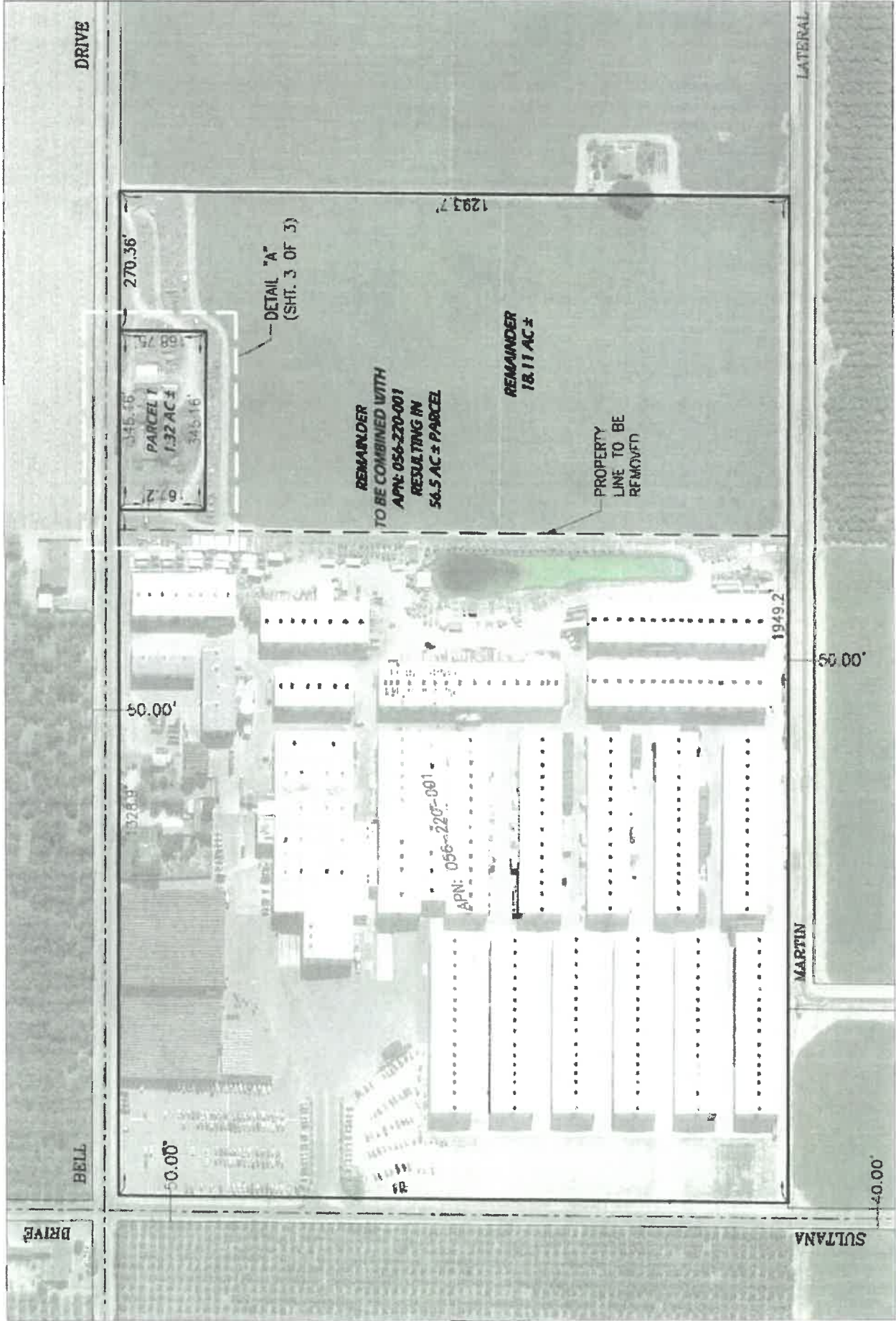


EXHIBIT B



COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

Mark J. Hendrickson
Director

Steve Maxey
Deputy Director

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Equal Opportunity Employer

MS21-003 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 of the newly created parcels, unless otherwise permitted by the County subject to the current policies in place at the time of the request.
4. Any new non-habitable structure must be ancillary to the existing commercial agricultural use of the newly reconfigured Parcel 2 and is subject to the applicable design and permit requirements.

County Counsel

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

MANUEL VIEIRA and MARY SOUZA ("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) Guidelines Section 15162 Findings:

Application: Minor Subdivision No. MS21-003 (Mary Souza and Manuel Vieira)

Assessor Parcel Number or Location: Assessor’s Parcel Numbers (APNs) 056-220-001 and 056-220-002

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

- | | | |
|--|--------------------------|-------------------------------------|
| | Yes | No |
| 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.)

- | | | |
|--|--------------------------|-------------------------------------|
| | Yes | No |
| 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).

- | | | |
|---|--------------------------|-------------------------------------|
| | Yes | No |
| 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).

EXHIBIT C

Section B - New Information

- A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration. Yes No

- B) Significant effects previously examined will be substantially more severe than shown in the previous EIR. Yes No

- 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 No

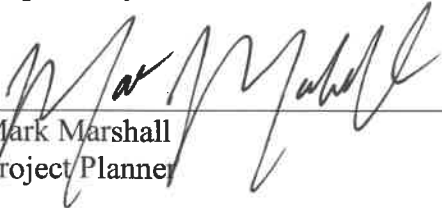
- D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative. Yes No

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:

- 1. It is found that subsequent negative declaration will need to be prepared.
- 2. It is found that an addendum Negative Declaration will need to be prepared.
- 3. That a subsequent EIR will need to be prepared.
- 4. No further documentation is required.

Date: March 9, 2021
Prepared By:



Mark Marshall
Project Planner

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

Minor Subdivision Application No. MS21-003 is a request to subdivide a portion of a 19.43 acre parcel into one (1) 1.32 acre homesite parcel and combine the remaining 18.11 acres with an adjacent parcel, creating a 56.5 acre parcel. The project site is located at the southeast corner of W. Bell Drive and N. Sultana Drive, adjacent to the Livingston area, identified as Assessor's Parcel Numbers (APNs) 056-220-001 and 056-220-002. 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. MS21-003, no additional residences are proposed and the remainder will be absorbed into the abutting parcel, currently operating as a sweet potato processing facility. 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-2.7 "Modify Merced County Agricultural Preserve Rules" along with Policy AG-2.15 "Merced County Agriculture Preserve Consolidation." 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 is a request to subdivide a portion of a 19.43 acre parcel into one (1) 1.32 acre homesite parcel and combine the remaining 18.11 acres with an adjacent parcel, creating a 56.5 acre parcel. The proposal is consistent with Title 17 of the Merced County Zoning Code. Changes in farming practices and other existing land uses for the newly reconfigured 56.5 acre parcel are not being proposed, and the existing residential use on the 1.32 acre homesite parcel will remain the same. 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.