



Hearing Officer  
Staff Report  
August 9, 2021

AGENDA ITEM # B

PREPARED BY: PAM NAVARES, PROJECT PLANNER  
APPROVED BY: MARK HENDRICKSON, DIRECTOR

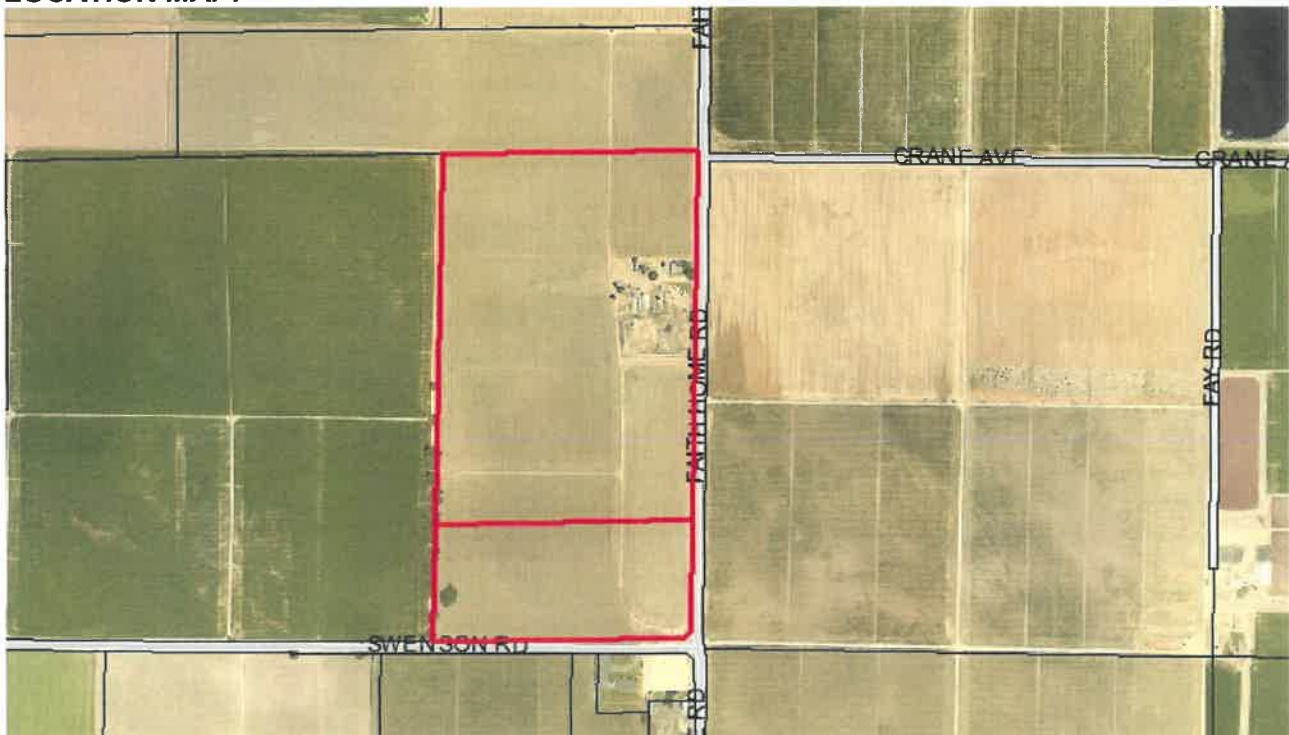
**MINOR SUBDIVISION No. MS21-013 – RAYMOND AND SHERI MACIEL, TRUSTEES** - A request to divide two parcels totaling 79.27 acres into three parcels, resulting in parcel sizes of: Parcel 1 = 28.33 acres, Parcel 2 = 22.86 acres, and Parcel 3 = 28.08 acres. The project site is located on the northwest corner of N. Faith Home Road and W. Swenson Road in the Hilmar area, identified as Assessor's Parcel Numbers (APNs) 045-050-035 and 045-050-036. The property is designated Agricultural land use and zoned A-1 (General Agricultural). CEQA: Staff recommends that the Hearing Officer determine that no further environmental review is required pursuant to Section 15162 - "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines. **PN**

**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; and,
- 3) Approve Minor Subdivision Application No. MS21-013 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 on the northwest corner of N. Faith Home Road and W. Swenson Road in the Hilmar area, identified as Assessor's Parcel Numbers (APNs) 045-050-035 and 045-050-036. The project site and properties in the vicinity are designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural). The property and surrounding area is substantially flat, characterized by agricultural land uses and the occasional single-family residence.

The applicant is requesting to divide two parcels totaling 79.27 acres into three parcels, resulting in parcel sizes of: Parcel 1 = 28.33 acres, Parcel 2 = 22.86 acres and Parcel 3 = 28.08 acres. All three parcels will have road frontage on N. Faith Home Road. There are currently two single-family residences located on what will become Parcel 3 that are served by one domestic well and their own septic system. All of the proposed parcels are currently being farmed in row crops. The tentative map shows two existing irrigation wells located on Proposed Parcel 1. The applicant will be required to show irrigation easements on the Parcel Map benefitting Parcels 2 and 3, so all of the proposed parcels will continue to have access to irrigation water. No changes to existing agricultural operations are proposed, and no new homes or structures are proposed with 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 / Residence
<b>North:</b>	Agricultural	A-1	Row Crops / Residence
<b>South:</b>	Agricultural	A-1	Row Crops / Residence
<b>East:</b>	Agricultural	A-1	Row Crops
<b>West:</b>	Agricultural	A-1	Row Crops

**Prior Actions/Entitlements**

CUP 2499- New Lagoon, MS03-066, Williamson Act WA2000-0086.

**ANALYSIS:**

**Project Description**

The applicant is requesting to divide two parcels totaling 79.27 acres into 3 parcels, resulting in parcel sizes of: Parcel 1 = 28.33 acres, Parcel 2 = 22.86 acres and Parcel 3 = 28.08 acres. 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 project site is currently farmed in row crops, with two existing single-family residences located on proposed Parcel 3. No changes to existing agricultural operations are proposed with this application.

### **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 agriculture production. Require 160 acre minimum permitted parcel size in areas designated Foothill Pasture and in grassland areas.*

The proposed parcels are all 20 acres or greater in size, meeting the minimum permitted parcel size in areas designated Agricultural.

## **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.

The proposed Minor Subdivision is consistent with the development standards in the Zoning Code. All proposed parcels, including Parcel 1 (28.33 acres), Parcel 2 (22.86 acres), and Parcel 3 (28.08 acres), equal or exceed the 20-acre minimum parcel size in the A-1 zone.

Because the project site and properties in the project vicinity are Agriculturally zoned, the Agricultural Setback Requirement for Created Parcels pursuant to Sections 18.10.030 (E) and 18.10.040 (M.1) of the Zoning Code applies. This provision of the Zoning Code requires a 200-foot physical separation (buffer) between any existing habitable structure and any abutting parcels used for agricultural production. The existing residences on proposed Parcel 3 are located more than 200 feet from the proposed parcel lines.

### **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. Additionally, 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.

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

The parcels involved in the proposed subdivision are located within the Agricultural Preserve. All proposed parcels are greater than 10 acres in size, meeting the minimum required parcel size for parcels in the Agricultural Preserve.

The existing parcels are under a Williamson Act Contract. The proposal is consistent with applicable provisions of the Williamson Act and Agricultural Preserve.

#### **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 Hearing Officer 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. MS21-013, 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 Permit application which would be subject to further environmental review.

### **Community Engagement**

The project application was routed to applicable County departments for comment. No comments were received.

Notice of the Hearing Officer public hearing was mailed to all owners of property located within 300 feet of the project site on **July 30, 2021** and published in the Merced Sun-Star on **July 30, 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 that the proposed Minor Subdivision is consistent with applicable provisions of the General Plan, Zoning Code, Subdivision Map Act and Williamson 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 Hearing Officer approve Minor Subdivision Application No. MS21-013 based on the findings identified below and subject to the recommended Conditions of Approval.

### **RECOMMENDED HEARING OFFICER ACTION:**

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

**MOTION:** The Hearing Officer determines 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.

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

**MOTION:** The Hearing Officer approves Minor Subdivision Application No. MS21-013 based on the findings identified in the Staff Report and subject to the recommended Conditions of Approval.

#### **Project Findings:**

1. Minor Subdivision Application No. MS21-013 proposes to divide two parcels totaling 79.27 acres into three parcels, resulting in parcel sizes of: Parcel 1 = 28.33 acres, Parcel 2 = 22.86 acres, and Parcel 3 = 28.08 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, the Agricultural Preserve, and the Merced County Rules of Procedure to Implement the California Land Conservation Act of 1965 (Williamson Act).
6. 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.
7. The project is subject to all applicable Local, State and Federal regulations.
8. Notice of the Hearing Officer public 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. Tentative Parcel Map
- C. CEQA Section 15162 Findings and Analysis

cc:

Property Owner – Raymond and Sheri Maciel  
Engineer – Golden Valley



COMMUNITY AND ECONOMIC  
DEVELOPMENT DEPARTMENT

Mark J. Hendrickson  
*Director*

Steve Maxey  
*Deputy Director*

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Merced, CA 95340  
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(209) 726-1710 Fax  
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Equal Opportunity Employer

**MS21-013 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. 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.
3. The applicant shall comply with all applicable Local, State and Federal regulations.
4. An irrigation easement shall be shown on the parcel map for the benefit of Parcels 2 and 3.

County Counsel

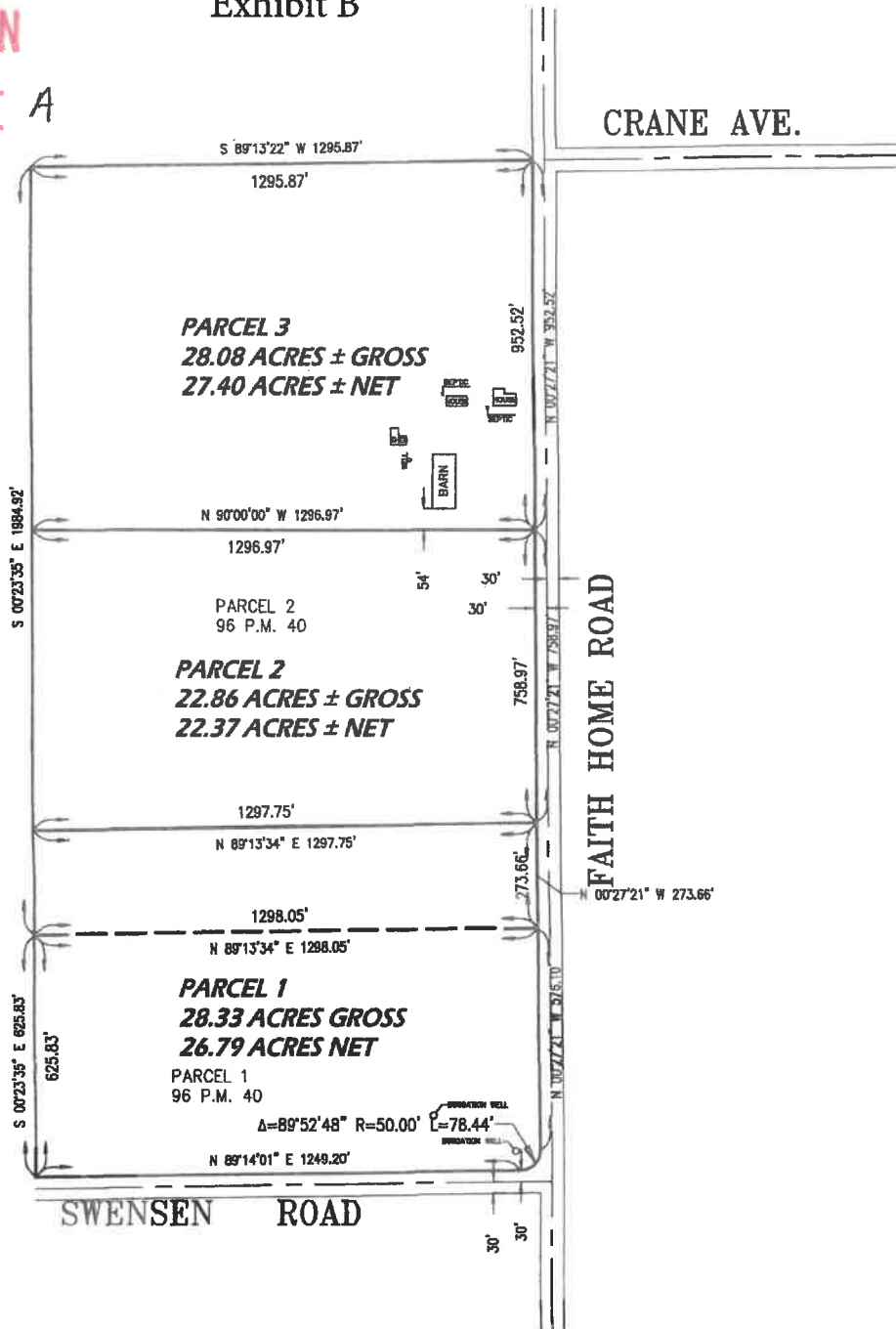
5. **INDEMNITY AND HOLD HARMLESS AGREEMENT:**

RAYMOND J. MACIEL and SHERI I. MACIEL, TRUSTEES OF THE MACIEL REVOCABLE TRUST, DATED NOVEMBER 25, 2008 have the contracted duty (hereinafter "the duty") to defend, indemnify and hold harmless the County of Merced, its Board of Supervisors, commissions, officers, employees, agents, and assigns (hereinafter "COUNTY") from any claim, action, or proceeding arising out of, or in connection with the COUNTY's approval of the project including, but not limited to, COUNTY's actions regarding related environmental determinations. This obligation shall extend to any such claim, action, or proceeding against COUNTY to attack, set aside, void, or annul, an approval by COUNTY. This duty shall arise at the first claim, action, or proceeding against COUNTY. In the event that a claim, action, or proceeding is brought, COUNTY shall promptly notify the applicant and cooperate fully in the defense. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

MERCED RIVER  
FLOOD PLAIN

Exhibit B

FLOOD ZONE A



LEGEND

- PROPERTY LINE
- NEIGHBORING PROPERTY LINE
- ROAD CENTER LINE



JOB NO.: 21-087

NOTE: PLEASE USE BLACK INK  
OR DARK PENCIL

PLAN  
FOR

SCALE 1"=300'

APPLICATION TYPE	NUMBER	A.P.N.	DATE
MINOR SUBDIVISION	21013	045-050-035 & 036	5/13/2021

PROPERTY OWNER(S): JEFF MACIEL PREPARED BY: GOLDEN VALLEY ENGINEERING AND SURVEYING, INC.

ADDRESS: 24665 SWENSON ROAD, HILMAR, CA 95324 ADDRESS: 405 W. 19TH STREET, MERCED, CA 95340

TELEPHONE: (209)785-6857 TELEPHONE: (209) 722-3200

MERCED COUNTY PLANNING DEPARTMENT



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

**Application:** Minor Subdivision No. MS21-013 (Raymond and Sheri Maciel)

**Assessor Parcel Number or Location:** Assessor’s Parcel Number(s) (APNs) 045-050-035 and 045-050-036.

**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 substantive 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:**

- 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: July 22, 2021

Prepared By:

*Pam Navares*

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Pam Navares  
Project Planner

## CEQA Section 15162 Findings: Supporting Analysis

### I. Introduction

Minor Subdivision No. MS21-013 is a request to divide two parcels totaling 79.27 acres into 3 parcels, resulting in parcel sizes of: Parcel 1 = 28.33 acres, Parcel 2 = 22.86 acres, and Parcel 3 = 24.55 acres. The project site is located on the northwest corner of N. Faith Home Road and W. Swenson Road in the Hilmar area, identified as Assessor's Parcel Numbers (APNs) 045-050-035 and 045-050-036. 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. MS21-013, 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 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 divide two parcels totaling 79.27 acres into 3 parcels, resulting in parcel sizes of: Parcel 1 = 28.33 acres, Parcel 2 = 22.86 acres, and Parcel 3 = 28.08 acres. The proposal is consistent with Title 17 (Subdivisions) of the Merced County Code. Farming practices at the project site will not change from existing operations. 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.