



Planning Commission

Staff Report

October 13, 2021

AGENDA ITEM # 

PREPARED BY:
APPROVED BY:

PAM NAVARES, PROJECT PLANNER *PN*
MARK HENDRICKSON, DIRECTOR

MINOR SUBDIVISION APPLICATION NO. MS21-014 and MINOR DEVIATION APPLICATION NO. MD21-002– JULIANA HERNANDEZ AND ALEJANDRO HERNANDEZ - A request to subdivide a 3.3 acre parcel into two parcels: Parcel 1 = 2.0 acres and Parcel 2 = 1.3 acres and to deviate from the maximum 3 to 1 depth to width ratio for newly created parcels. The project site is located on the north side of W. North Bear Creek Drive, approximately 250 feet west of N. Pira Drive, in the Merced area, identified as Assessor's Parcel Number (APN) 058-230-011. The property is designated Merced Urban Community- Low Density Residential land use in the General Plan and zoned R-1 (Single-Family Residential). CEQA: Staff recommends that the Planning Commission find the project exempt from environmental review pursuant to Section 15315 of the CEQA Guidelines - "Minor Land Divisions" and Section 15305(a) of the CEQA Guidelines – "Minor Alterations in Land Use Limitations". *PN*

SUPERVISORIAL DISTRICT: 2 – Josh Pedrozo

RECOMMENDATION(S):

- 1) Open/close public hearing;
- 2) Determine the project can be found exempt from environmental review pursuant to Section 15315 – "Minor Land Divisions" of the CEQA Guidelines; and Section 15305(a) "Minor Alterations in Land Use Limitations" of the CEQA Guidelines, and
- 3) Approve Minor Subdivision Application No. MS20-014 and Minor Deviation Application No. MD21-002 based on the findings included in the staff report and subject to the recommended conditions of approval.

LOCATION MAP:



BACKGROUND:

Site Description

The proposed project site is located at 1243 W. North Bear Creek Drive, Merced, California, also identified by Assessor's Parcel Number (APN) 058-230-011. The property is located within the Merced Urban Community, designated Low Density Residential land use in the General Plan, and zoned R-1 (Single-Family Residential).

The project site is located in a county island within the City of Merced. The property is improved with a single-family home and multiple accessory structures. The existing single-family home is served with a domestic well and septic system. The surrounding area, including the project site, has substantially flat terrain and is characterized by low-density housing.

Surrounding Uses

	General Plan	Zoning	Current Land Use
On-Site:	Low Density Residential	R-1	Single-Family Home
North:	City of Merced	City	Residential
East:	Low Density Residential	R-1	Residential
South:	City of Merced	City	Creek/Residential
West:	Low Density Residential	R-1	Residential

Prior Actions/Entitlements

None.

ANALYSIS

Project Description

The applicant is requesting to subdivide a 3.3 acre parcel into two parcels, resulting in the proposed sizes: Parcel 1 = 2.0 acres and Parcel 2 = 1.3 acres. The applicant is also requesting a Minor Deviation for Parcel 2 to deviate from the maximum 3 to 1 depth to width ratio. Minor Deviations are only approved when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Zoning Code denies the owner of the property privileges enjoyed by other property nearby (Merced County Zoning Code Chapter 18.126.010). Proposed Parcel 2 cannot meet the 3 to 1 ratio due to an existing domestic well on Parcel 1, that requires a 15 foot setback from the newly created parcel line. The Zoning Code allows for a 15 percent reduction in width. The proposed reduction to 127 feet of the required 137 feet is an 8 percent reduction.

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.

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

Goal LU-1

Create a countywide land use pattern that enhances the integrity of both urban and rural areas by focusing urban growth towards existing or suitably located new communities.

Policy LU-1.1: Countywide Development

Direct urban development to areas within adopted urban boundaries of cities, Urban Communities, and Highway Interchange Centers in order to preserve productive agriculture, limit urban sprawl, and protect natural resources.

Policy LU-1.4: Urban Communities

Continue to support compact Urban Communities through the efficient use of land to reduce conflicts with agricultural and open space areas, and minimize public service costs.

Policy LU-1.9: Regional Housing Needs Allocation Focus

Actively encourage the Merced County Association of Governments to focus future State regional housing needs allocations to the six cities in order to prevent urban sprawl, support compact development and redevelopment, and support the principles of the San Joaquin Valley Blueprint.

Policy LU-1.10: Orderly Community Growth

Require the orderly, well planned, and balanced growth of the unincorporated communities consistent with the limits imposed by local infrastructure, services, public facilities, and their ability to assimilate growth.

Goal LU-5.A

Preserve and enhance the character of Merced County by focusing future unincorporated development towards Urban Communities.

The project site is located within the Urban Community of Merced and is designated Low Density Residential land use. The project site and the surrounding area is characterized by residential land uses. Public water and sewer are not available from the City of Merced at this time. The existing residence on Parcel 1 is served by a domestic well and septic system and Parcel 2 will require its own private well and septic system if public services are not available when needed.

2. Merced County Zoning Code (MCZC)

The project site is zoned R-1 (Single-Family Residential) on the Merced County Zoning Map. The purpose of this zone is to provide a full range of urban services and reserve appropriately located areas for family living at a range of low population densities consistent with sound standards of public health, welfare, and safety. It is the intent of this zone to protect the residential characteristics of an area and to promote a suitable environment for family life.

a. Section 18.12.020, Allowable Land Uses and Permit Requirements

The primary land uses for the R-1 Zone are single-family homes. A ministerial permit will be required for any new single-family home.

b. Section 18.12.030, Development Standards

The proposed parcels meet the minimum lot development standards as required by Section 18.12.030, except for maximum depth to width ratio.

Lot Development Standards for R-1 (Single-Family Residential) Zone

	Interior Lot	Corner Lot
Minimum Parcel Size	6,000 square feet	6,400 square feet
Minimum Lot Width at Front Lot Line	60 feet	65 feet
Minimum Lot Depth	100 feet	100 feet

3. Other Adopted Policies

Subdivision Map Act and Title 17

The proposed subdivision may be found consistent with the Subdivision Map Act and Title 17 of the Merced County Code.

California Environmental Quality Act (CEQA)

Staff has determined that the project can be found exempt from environmental review pursuant to Section 15315 – “Minor Land Divisions” and Section 15305(a) – “Minor Alterations in Land Use Limitations” of the CEQA Guidelines.

Section 15315 states:

Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

Section 15305(a) states:

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to: (a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel.

The following findings can be made to support this determination:

1. The parcel is located within an urbanized area identified as the Merced Urban Community.
2. The parcel is designated Low Density Residential and zoned R-1 (Single-Family Residential).
3. The proposed project involves the division of property into four or fewer parcels.
4. The proposed project is consistent with the General Plan and Zoning Code.
5. No variances or exceptions are required to implement the proposed project.
6. All services and access to the proposed parcels are available.

7. The parcel has not been involved in a division of a larger parcel within the previous two (2) years.
8. The parcel has an average slope of less than 20 percent.
9. The proposed minor deviation would not result in any changes in land use or density.
10. The proposed minor deviation from the 3 to 1 depth to width ratio of 10 feet (less than 15%) is allowed in the R-1 zone. (Merced County Zoning Code Chapter 18.126.020: Table 6-3 (5)).
11. The proposed minor deviation would not result in the creation of a new parcel.
12. The determination that the project is exempt from CEQA review reflects the independent judgment of the County.

Community Engagement

The project application was routed to applicable County Departments, Merced Irrigation District and the City of Merced for comment. Comments were received from the Division of Environmental Health, Public Works / Roads Division and Merced Irrigation District. See Exhibit C for agency comments.

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 **October 1, 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 and minor deviation to be consistent with applicable provisions of the General Plan, Zoning Code, Title 17 of the Merced County Code, and the Subdivision Map Act. Furthermore, the project can be found exempt from environmental review pursuant to Section 15315 – “Minor Land Divisions” and Section 15305(a) – “Minor Alterations in Land Use Limitations” of the CEQA Guidelines.

Staff recommends the Planning Commission approve Minor Subdivision Application No. MS21-014 and Minor Deviation No. MD21-002 based upon the findings and subject to the recommended conditions of approval provided in the following section of this report.

RECOMMENDED PLANNING COMMISSION ACTION:

A. CEQA Determination

MOTION: Determine the project can be found exempt from environmental review pursuant to Section 15315 – “Minor Land Divisions” and Section 15305(a) “Minor Alterations in Land Use Limitations” of the CEQA Guidelines.

CEQA Findings:

1. The parcel is located within the Merced Urban Community.
2. The parcel is designated Low Density Residential and zoned R-1 (Single-Family Residential).

3. The proposed project involves the division of property into four or fewer parcels.
4. The proposed project is consistent with the General Plan and Zoning Code.
5. No variances or exceptions are required to implement the proposed project.
6. All services and access to the proposed parcels are available.
7. The parcel has not been involved in a division of a larger parcel within the previous two (2) years.
8. The parcel has an average slope of less than 20 percent.
9. The proposed minor deviation would not result in any changes in land use or density.
10. The proposed Minor Deviation from the 3 to 1 depth to width ratio of 10 feet in width (less than 15%) is allowed. (Merced County Zoning Chapter 18.126.020, Table 6-3, (5))
11. The proposed Minor Deviation would not result in the creation of a new parcel.
12. The determination that the project is exempt from CEQA review reflects the independent judgment of the County.

B. Project Determination

MOTION: Approve Minor Subdivision Application No. MS21-014 and Minor Deviation Application No. MD21-002 based on the findings included in the staff report and subject to the recommended conditions of approval.

Project Findings:

1. Minor Subdivision Application No. MS21-014 and Minor Deviation Application No. MD21-002 would subdivide a 3.3 acre parcel into two parcels: Parcel 1 = 2.0 acres and Parcel 2 = 1.3 acres and would allow Parcel 2 to deviate from the required 3 to 1 depth to width ratio for newly created parcels. The project site is located on the north side of W. North Bear Creek Drive, approximately 250 feet west of N. Pira Drive, in the Merced area, identified as Assessor's Parcel Number (APN) 058-230-011. The property is designated Merced Urban Community - Low Density Residential land use and zoned R-1 (Single Family Residential).
2. The proposed project is consistent with applicable provisions of the 2030 Merced County General Plan.
3. The proposed project is consistent with applicable provisions of the Merced County Zoning Code that have not been superseded through adoption of the 2030 General Plan.
4. The proposal is consistent with the Subdivision Map Act and Title 17 of the Merced County Code.

5. The project has been reviewed by the County Roads Division, Environmental Health Division, Building and Safety Division, Fire Department, City of Merced, and Merced Irrigation District.
6. The proposed project is compatible with adjacent uses, properties, and neighborhoods, and will not be a nuisance or detrimental to the public health, safety or general welfare.
7. The project is subject to all applicable Federal, State, and local regulations.
8. 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.
9. 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.
10. 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.
11. Approval of the 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.
12. The requested Minor Deviation would not allow a use or activity that is not otherwise expressly authorized by the regulations governing the subject parcel.

EXHIBITS

- A. Conditions of Approval
- B. Tentative Parcel Map
- C. Agency Comments

cc.
Property Owners- Alejandro Hernandez
Agent – Golden Valley Engineering

EXHIBIT A



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

MS21-014/MD21-002 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. R-1 zoning does not allow ingress and egress easements. Each parcel is required to have its own access to W. North Bear Creek Drive.

Merced Irrigation District

4. An Encroachment Agreement with MID will be required for any work associated with MID facilities and for any roadways, bridges, walkways, bike paths, utilities and pipelines crossing MID facilities or rights of way.
5. No structures, trees or fences will be allowed within the MID right of way.
6. If storm water runoff from the site is to be discharged into an MID facility, the Owner would be required to enter a Storm Drainage Agreement with MID, paying all applicable fees.
7. Septic system leach fields shall be a minimum of 50 feet from any open MID facility or 20 feet from a piped facility to protect from contamination and to protect the septic systems from leakage from MID facilities.
8. MID was not able to locate any record of an Encroachment Agreement for the existing bridge providing access over the Merced Lateral to the subject parcel. The property owner shall contact MID Engineering to obtain an Encroachment Agreement for the existing crossing and any future crossings over the Merced Lateral.
 - (a) As a condition of the Encroachment Agreement, Owner will be required to have the existing bridge inspected and rated by a licensed Professional Engineer to determine maximum load capacity and shall post signs on each side of the bridge accordingly.
9. MID reserves the right for further comment as unforeseen circumstances may arise.

County Counsel

10. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:

ALEJANDRO HERNANDEZ and JULIANA HERNANDEZ (“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.

EXHIBIT B



LEGEND

————— PROPERTY LINE
 - - - - - NEIGHBORING PROPERTY LINE
 - - - - - ROAD CENTER LINE



NOTE:

JOB NO.: 21-096 SHEET 1 OF 2

NOTE: PLEASE USE BLACK INK OR DARK PENCIL **PLOT PLAN** FOR SCALE 1"=50'

APPLICATION TYPE MINOR SUBDIVISION	NUMBER	A.P.N. 058-230-011	DATE 5/27/2021
---------------------------------------	--------	-----------------------	-------------------

PROPERTY OWNER(S): ALEX HERNANDEZ PREPARED BY: GOLDEN VALLEY ENGINEERING AND SURVEYING, INC.
 ADDRESS: 1243 W NORTH BEAR CREEK DR MERCED, CA 95348 ADDRESS: 405 W. 19TH STREET, MERCED, CA 95340
 TELEPHONE: (209) 777-7767 TELEPHONE: (209) 722-3200
 MERCED COUNTY



August 18, 2021

Pam Navares, Planner II
Merced County
2222 M Street, 2nd Floor
Merced, CA 95340

Sent By Email Only To: pam.navares@countyofmerced.com

Re: MS21-014 Hernandez

Dear Ms. Navares,

Merced Irrigation District (MID) has reviewed the above referenced Minor Subdivision application for APN 058-230-011 and offers the following comments:

1. MID operates and maintains the Merced Lateral, which adjoins the southern boundary of the subject property, within a 30-foot wide fee strip as shown in Volume 2 of Official Plats, at Page 36, Merced County Records.

MID requests that the County require, as conditions of approval, the following:

1. An Encroachment Agreement with MID will be required for any work associated with MID facilities and for any roadways, bridges, walkways, bike paths, utilities and pipelines crossing MID facilities or rights of way.
2. No structures, trees or fences will be allowed within the MID right of way.
3. If storm water runoff from the site is to be discharged into an MID facility, the Owner would be required to enter into a Storm Drainage Agreement with the MID, paying all applicable fees.
4. Septic system leach fields shall be a minimum of 50 feet from any open MID facility or 20 feet from a piped facility to protect from contamination and to protect the septic systems from leakage from MID facilities.
5. MID was not able to locate any record of an Encroachment Agreement for the existing bridge providing access over the Merced Lateral to the subject parcel. The Property Owner shall contact MID Engineering to obtain an Encroachment Agreement for the existing crossing and any future crossings over the Merced Lateral.



August 18, 2021

Pam Navares, Planner II
Merced County
2222 M Street, 2nd Floor
Merced, CA 95340

Sent By Email Only To: pam.navares@countyofmerced.com

Re: MS21-014 Hernandez

Dear Ms. Navares,

Merced Irrigation District (MID) has reviewed the above referenced Minor Subdivision application for APN 058-230-011 and offers the following comments:

1. MID operates and maintains the Merced Lateral, which adjoins the southern boundary of the subject property, within a 30-foot wide fee strip as shown in Volume 2 of Official Plats, at Page 36, Merced County Records.

MID requests that the County require, as conditions of approval, the following:

1. An Encroachment Agreement with MID will be required for any work associated with MID facilities and for any roadways, bridges, walkways, bike paths, utilities and pipelines crossing MID facilities or rights of way.
2. No structures, trees or fences will be allowed within the MID right of way.
3. If storm water runoff from the site is to be discharged into an MID facility, the Owner would be required to enter into a Storm Drainage Agreement with the MID, paying all applicable fees.
4. Septic system leach fields shall be a minimum of 50 feet from any open MID facility or 20 feet from a piped facility to protect from contamination and to protect the septic systems from leakage from MID facilities.
5. MID was not able to locate any record of an Encroachment Agreement for the existing bridge providing access over the Merced Lateral to the subject parcel. The Property Owner shall contact MID Engineering to obtain an Encroachment Agreement for the existing crossing and any future crossings over the Merced Lateral.

- a. As a condition of the Encroachment Agreement, Owner will be required to have the existing bridge inspected and rated by a licensed Professional Engineer to determine maximum load capacity and shall post signs on each side of the bridge accordingly.

6. MID reserves the right for further comment as unforeseen circumstances may arise.

Thank you for the opportunity to comment on the above referenced application. If you have any questions, please contact me at 209-354-2849.

Sincerely,

Kevin Padway

Kevin Padway
Associate Engineer

CC: electricplanning@mercedid.org
waterplanning@mercedid.org



Rebecca Nanyonjo-Kemp, DrPH
Director

Salvador Sandoval, MD, MPH
Health Officer

Memorandum

DATE: July 29, 2021

TO: Mark Marshall, Planner I

FROM: Brent Cronk, EHS III
(209) 385-7654 xt4568; Brent.Cronk@countyofmerced.com

SUBJECT: **MINOR SUBDIVISION No. MS21-014 - ALEJANDRO HERNANDEZ** - To subdivide a 3.3-acre residential-zoned parcel into 2 parcels, resulting in parcel sizes of: Parcel 1 = 2 acres and Parcel 2 = 1.3 acres, on property located on the north side of W. North Bear Creek Dr., 250 ft. west of N. Pira Dr., identified as APN 058-230-011. The property is designated Merced Urban Community - Residential land use in the General Plan and is zoned R-1 (Single Family Residential).

SITUS: 1243 W. North Bear Creek Dr., Merced

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

The well, leach lines, leach line depths, and 100% leach line replacement area at 1215 W. North Bear Creek Drive are not indicated. Those features may have a significant impact on the location of the well and septic system on the proposed Parcel 2, but will not make the parcel undevelopable.

1230 and 1235 Pira Drive, Merced appear to be on community water service, but the septic system and 100% leach line replacement area locations and leach trench depth are not indicated. Those features may have a significant impact on the location of the well and septic system on the proposed Parcel 2, but will not make the parcel undevelopable.

The terminal points of the measurements on the tentative map of 77.75' and 301.37' are not indicated and appear to be meaningless.

One of the terminal points of the measurement on the tentative map of 1.19' is not indicated.

The measurement indicated on the tentative map of 632.59' does not appear to be related to any aspect of this subdivision.

MCDEH recommends that the applicant create a site plan for proposed Parcel 2 that shows the location of all existing nearby wells and leach fields, the 100% leach line replacement area for those existing leach fields, the setbacks associated with those wells, leach lines, and leach line replacement areas, the proposed location of the new well, new septic system, and the 100% leach line replacement area, and all the setbacks associated with those new features.



**DEPARTMENT OF PUBLIC WORKS
Road Division**

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: July 12, 2021

To: Mark Marshall, Planner I
Planning and Community Development Department

From: Gerardo Elias, Engineering Associate
Department of Public Works

Subject: Minor Subdivision MS21-014
Alejandro Hernandez

MEMORANDUM

MINOR SUBDIVISION No. MS21-014 -ALEJANDRO HERNANDEZ - To subdivide a 3.3 Acre residentially zoned parcel into 2 parcels, resulting in parcel sizes of: Parcel 1 = 2 Acres and Parcel 2 = 1.3 Acres, on property located on the north side of W. No. Bear Creek Dr, 250 ft west of N. Pira Dr, identified as APN 058-230-011. The property is designated Merced Urban Community - Residential land use in the General Plan and is zoned R-1 (Single Family Residential).

The Roads Division has no comments