

HEARING OFFICER AGENDA Regular Meeting

Monday, May 11, 2020 - 9:00 a.m

Merced County Administration Building
Development Resource Center, Second Floor 2222 M Street
Merced, California 95340

Phone: 209.385.7654 Fax: 209.726.1710 IMPORTANT NOTICE: DUE TO THE ONGOING COVID-19 CRISIS, AND AS AUTHORIZED BY THE GOVERNOR'S

EXECUTIVE ORDER N-29 -20, THIS MEETING WILL BE HELD VIA CONFERENCE CALL. PUBLIC ACCESS TO A MEETING LOCATION WILL BE UNAVAILABLE. FOR THE SAFETY OF COUNTY STAFF AND THE PUBLIC, MEMBERS OF THE PUBLIC WHO WISH TO PARTICIPATE MAY DO SO VIA TELEPHONE BY CALLING (712)432-6135 AND ENTERING MEETING ID NUMBER 740720 ON THE DAY OF THE MEETING. IF YOU HAVE ANY ISSUES VIEWING OR PARTICIPATING IN THIS MEETING OR REQUIRE REASONABLE ACCOMMODATION FOR YOUR PARTICIPATION, PLEASE CONTACT PLANNING STAFF AT (209)385-7654.

1. CALL TO ORDER

2. CITIZEN COMMUNICATIONS

Public opportunity to address the Hearing Officer on any item of interest over which the Planning Commission has jurisdiction that is not on the agenda

3. PUBLIC HEARING(S)

3.I. MINOR SUBDIVISION APPLICATION MS20-003

Christopher Bertuccio: A request to divide a 197 acre parcel into two parcels resulting in parcel sizes of: Parcel A = 94 acres and a remainder parcel of 103 acres. The project site is located approximately 175 feet east of Healy Road, south of Mariposa Way in the Merced area identified by Assessor Parcel Number (APN) 066-110-035. The property is designated Agricultural in the General Plan and zoned A-1 General Agricultural. CEQA: No further environmental review is required pursuant to CEQA Section 15162 – "Subsequent EIRs and Negative Declarations". **DL**

RECOMMENDATION(S):

- 1) Open/Close the public hearing;
- 2) Determine that no subsequent environmental review is required in compliance with Section 15162 "Subsequent EIRs and Negative Declarations" of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report, and the CEQA Section 15162 Findings and Analysis prepared as an attachment to the Staff Report; and,
- 3) Approve Minor Subdivision Application No. MS20-003 based on the findings included in the staff report and subject to the conditions of approval.

Documents:

[ITEM A - MS20-003 - CHRISTOPHER BERTUCCIO.PDF](#)

4. HEARING OFFICER AGENDA

4.I. Hearing Officer Meeting 5/11/2020 Agenda

Documents:

[051120.PDF](#)



Hearing Officer

AGENDA ITEM # A

Staff Report

May 11, 2020

PREPARED BY:
APPROVED BY:

DIANA LOWRANCE, PROJECT PLANNER
MARK HENDRICKSON, HEARING OFFICER

MINOR SUBDIVISION APPLICATION MS20-003: Christopher Bertuccio: A request to divide a 197 acre parcel into two parcels resulting in parcel sizes of: Parcel A = 94 acres, and a reminder parcel of 103 acres. The project site is located approximately 175 feet east of Healy Road, south of Mariposa Way in the Merced area identified by Assessor Parcel Number (APN) 066-110-035. The property is designated Agricultural in the General Plan and zoned A-1 General Agricultural. CEQA: No further environmental review is required pursuant to CEQA Section 15162 – "Subsequent EIRs and Negative Declarations". DL

SUPERVISORIAL DISTRICT: 1 – Rodrigo Espinoza

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3. Approve Minor Subdivision Application No. MS20-003 based on the findings included in the staff report and subject to the conditions of approval.

LOCATION MAP:



Site Description

The applicant is proposing to divide a 197 acre parcel into two parcels resulting in parcel sizes of: Parcel A = 94 acres and a remainder Parcel of 103 acres, on property located approximately 175 feet east Healy Rd, south of Mariposa Way in the Merced area. The parcels have no structures and are currently being farmed with alfalfa. No change in farming is proposed.

The proposed parcel sizes and uses are consistent with properties in the project vicinity, which are characterized by row crops, agricultural structures, and scattered/isolated single-family residences.

Surrounding Uses

	General Plan	Zoning	Current Land Use
On-Site:	Agricultural	A-1	Row Crops
North:	Agricultural	A-1	Row Crops/Ag. Structures
South:	Agricultural	A-1	Row Crops/Ag. Structures
East:	Agricultural	A-1	Row Crops/Ag. Structures
West:	Agricultural	A-1	Row Crops/Ag. Structures

Prior Actions/Entitlements

None.

ANALYSIS

Project Description

A request to divide a 197 acre parcel into two parcels resulting in parcel sizes of: Parcel A = 94 acres and a remainder parcel of 103 acres. The project site is located approximately 175 feet east of Healy Road, south of Mariposa Way in the Merced area identified by Assessor Parcel Number (APN) 066-110-035.

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 Agricultural land use designation is applied to much of the land within the County. It acknowledges the importance of agriculture 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-2.1: Agricultural Designation

Apply the Agricultural land use designation as the primary designation in the County to support productive agricultural lands and promote the agricultural industry.

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 is consistent with this General Plan Land Use Element Goal LU-2, Policies LU-2.1 and LU-2.3 in that the agricultural land use designation is being preserved, and the proposed parcels will continue to be used for agricultural crop production.

2. Zoning Code

The 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. Parcels smaller than 40 acres down to a minimum of 20 acres may be allowed where consistent with surrounding parcel sizes.

The proposed parcels are in compliance with the minimum size standards provided in the 2030 Merced County General Plan and the requirements of the Merced County Zoning Code, as the proposed Parcel A = 94 acres and the remainder = 103 acres. No new structures have been proposed as part of this application. Additionally, pursuant to the Merced County Zoning Code, the construction of a new single-family home or employee housing, residential (with six residents or less) on the newly created parcel would require the approval of a Conditional Use Permit.

3. Other Adopted Plans and Policies

The proposed minor subdivision is consistent with the subdivision map act and Title 17 of the Merced County Code.

California Environmental Quality Act (CEQA)

Staff conducted an assessment of the proposed minor subdivision project in relation to the Program Environmental Impact Report (EIR) prepared for the 2030 Merced County General Plan Update, and determined that no additional environmental review is required in compliance with Section 15162 “Subsequent EIRs and Negative Declarations” of the CEQA Guidelines.

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. In this instance, no new residences are proposed. However, Mitigation Measure AG-5e was adopted to require the approval of a Conditional Use Permit for any new housing proposed on a newly created lot. A note is required to be placed on the face of the Parcel Map indicating that the right to seek housing on

the newly created parcel 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.

Attachment C to this Staff Report contains the CEQA Section 15162 findings and analysis which supports the conclusion that no additional environmental review is required for this project.

Community Engagement

The project application was routed to applicable County departments as well as outside agencies for comment. Comments were received from the Department of Public Health, Division of Environmental Health as well as from the Building Divisions and Public Works.

Notice of the public hearing was published in the Merced Sun-Star and mailed to all owners of property located within 300 feet of the project site on April 27, 2020.

CONCLUSION:

The analysis provided in this staff report finds the proposed minor subdivision to be consistent with applicable provisions of the General Plan, Zoning Code, and Subdivision Map Act. Additionally, the minor subdivision is not in conflict with the Agricultural Preserve. Further no additional environmental review is required of the project in compliance with Section 15162 “Subsequent EIRs and Negative Declarations” of the CEQA Guidelines. based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report, and the CEQA Section 15162 Findings and Analysis prepared as an attachment to the Staff Report.

As such, Staff recommends the Hearing Officer approve Minor Subdivision Application No. MS20-003 based upon these findings and subject to the recommended conditions of approval provided in the following section of this report.

RECOMMENDED HEARING OFFICER ACTION:

A. CEQA Determination

MOTION: Determine that no additional environmental review is required in compliance with Section 15162 - “Subsequent EIRs and Negative Declarations” of the CEQA Guidelines based upon the analysis in the 2030 Merced County General Plan Program Environmental Impact Report, and the CEQA Section 15162 Findings and Analysis prepared as an attachment to the Staff Report.

B. Project Determination

MOTION: Approve Minor Subdivision Application No. MS20-003 based on the findings included in the staff report and subject to the proposed conditions of approval.

Project Findings:

1. Minor Subdivision Application No. MS20-003 proposes to request to divide a 197 acre parcel into two parcels resulting in parcel sizes of: Parcel A = 94 acres and a remainder parcel of 103 acres. The project site is located approximately 175 feet east of Healy Road, south of Mariposa Way in the Merced area identified by Assessor Parcel Number (APN) 066-110-035.

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.
5. The proposal is consistent with the Subdivision Map Act.
6. The project has been reviewed by the Department of Public Health Environmental Health Division and the Department of Public Works Building and Safety Division.
7. The proposed minor subdivision is compatible with adjacent uses, and properties, 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 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 Section 15162 Analysis

cc.
Property Owner(s) – Christopher Bertuccio

MS20-003 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 applicant shall comply with all applicable County, State and Federal regulations.
3. In conjunction with submittal of the final map for review, the applicant shall apply for and obtain any necessary permits for existing residences or accessory structures for which a land use permit is required.
4. 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 Merced County Zoning Code Section 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.
5. A 20-foot wide access easement from Parcel A west to Healy Road shall be provided and shown on the Parcel Map for the benefit of any future owner of Parcel A.

Merced Irrigation District

6. A note shall be placed on the face of the parcel map stating that both parcels have access to MID water; and the current owners are to provide a new gate with appropriate meters.

Fire Department Prevention Bureau

7. Fire Department Access. Fire Access shall be maintained in accordance with CFC Section 503.

County Counsel

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

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

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

Application: Minor Subdivision No. MS20-003 – Christopher Bertuccio

Assessor Parcel Number or Location: Assessor’s Parcel Number (APN) 066-110-035

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 substantive 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 know with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, has been revealed? (If “Yes” is checked, go to Section “B” below) | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

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

Section B - New Information

A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration. Yes 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: The project will not have any significant effects not discussed in the previous EIR or negative declaration. All previously identified mitigation measures were adopted as General Plan policies and implementation measures as part of the Agricultural Element. Additionally, approval of this minor subdivision project will be dependent upon finding the project is consistent with the General Plan and all applicable policies. Finally, any potential impacts resulting from this minor subdivision are no greater than those previously analyzed in the previous EIR, 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: April 24, 2020
 Prepared By:

Diana Lowrance
 Planner III

CEQA Section 15162 Findings: Supporting Analysis

I. Introduction

Minor Subdivision No. MS20-003 is a request to subdivide a 197-acre parcel into two parcels resulting in parcel sizes of: Parcel A = 94 acres and a remainder parcel of 103 acres. The project site is located approximately 175 feet east of Healy Road, south of Mariposa Way in the Merced area identified by Assessor Parcel Number (APN) 066-110-035. The property is designated Agricultural in the General Plan and zoned A-1 (General Agricultural).

II. Analysis

Based on the extensive analysis in the 2030 Merced County General Plan Program EIR, it was concluded that the impact from agricultural subdivisions was less than significant when no new residences are proposed (Mitigation Measure AG-5e). 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. MS20-003, no residences are proposed, and a note will be placed on the face of the Parcel Map indicating that the right to seek 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 application which would be subject to further environmental review.

The General Plan EIR also concluded that the impact from subdivision of agricultural parcels 40 acres 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.” Basically, 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.

Minor Subdivision No. MS20-003, which is a request to subdivide a 197 acre parcel into two parcels resulting in parcel sized of: Parcel A = 94 acres and a remainder parcel of 103 acre, is exceeds the minimum parcel sizes required in the Zoning Code. Additionally, the project proposes no change in land use and no structures are proposed which would result in a significant impact not previously evaluated in the General Plan Program EIR.



Mark J. Hendrickson
Hearing Officer

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Equal Opportunity Employer

HEARING OFFICER AGENDA

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The Hearing Officer welcomes you and encourages your participation.

CITIZEN COMMUNICATIONS: If you wish to speak on a matter that does NOT appear on the agenda, you may do so during the citizen communications period. Please state your name and address for the record. Each speaker will be limited to five (5) minutes.

PUBLIC COMMENT: If you would like to address the Hearing Officer on any item on the agenda, please fill it out with your name, street address, phone number, email address and the application number on the sign-in sheet. Each speaker will be limited to five (5) minutes.

AGENDAS and MINUTES: Hearing Officer agendas, minutes, and copies of items to be considered are published on the County's Website no later than the Wednesday, but generally on the Monday, preceding each Commission meeting and may be viewed at www.co.merced.ca.us/planning/hearingoffcomarchive.html. All proposed agenda items with supportive documents are available for viewing at the Merced County Planning and Community Development Department between the hours of 8:30am and 4:30pm, Monday - Friday (except holidays). This is the same packet that the Hearing Officer will review and discuss at the meeting. In addition, if you would like a copy of any record related to an item on the agenda, please contact the Department and copies will be provided for the direct cost of duplication or emailed at no cost.

PUBLIC RECORDS: As required by Government Code Section 54957.5, any public record distributed to the Hearing Officer less than 72 hours prior to this meeting in connection with any agenda item shall be made available for public inspection at the Merced County Administration Building, 2222 M Street, Merced, CA 95340. Public records distributed during the meeting will be available for public inspection at the meeting if prepared by the County. If the public record is prepared by some other person and distributed at the meeting it will be made available for public inspection following the meeting at the Planning and Community Development Department.

REASONABLE ACCOMMODATIONS: In compliance with the Americans with Disabilities Act (ADA), the Merced County Hearing Officer meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Planning and Community Development Department at (209) 385-7654. Notification 48 hours prior to the scheduled meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting.

APPEAL NOTICE: Any person aggrieved by the decision of the Hearing Officer may appeal the decision within five (5) calendar days after the day the action is made. [Within ten (10) calendar days after the day the action is made on subdivisions]. The deadline for appeals of Hearing Officer actions, excluding subdivisions, is 5:00 p.m. on the Monday following the Hearing Officer meeting, and for subdivisions, the deadline is the following Thursday at 5:00 pm. Please note that appeals may not be submitted on days that the County is officially closed.

Appeals of Hearing Officer actions may be filed with the Planning and Community Development Department. Appeals must state appellant's name, action appealed and reasons for the appeal. A filing fee set by Resolution of the Board of Supervisors must be submitted with the written appeal.

Members of the public are advised that all pagers, cellular telephones and any other communication devices are to be turned off upon entering the Hearing Officer meeting.



Mark J. Hendrickson
Hearing Officer

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CONFERENCE CALL MEETING PARTICIPATION: (712)432-6135, MEETING ID NUMBER: 740720

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