



**COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT**

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Equal Opportunity Employer

DATE: October 28, 2015

TO: PLANNING COMMISSION

PROJECT PLANNER: JENNIFER BOROBIA, PLANNER I *JM*

PROJECT NO: MINOR SUBDIVISION APPLICATION NO. MS15-014

APPLICANT: AKT SANTA NELLA INVESTORS, LLC

PROPERTY OWNERS: SAME AS APPLICANT

REPRESENTATIVE: MCR ENGINEERING, INC.

APPLICATION REQUEST: TO SUBDIVIDE A 209.85 ACRE PARCEL INTO TWO PARCELS. PARCEL 1 = 150.52 ACRES AND PARCEL 2 = 59.33 ACRES WITH NO HOMES PROPOSED.

LOCATION/SITUS: ONE MILE SOUTH OF W. HENRY MILLER ROAD, HALF A MILE WEST OF S. CHEROKEE ROAD IN THE LOS BANOS AREA.

APN: 078-130-025

SUPERVISORIAL DISTRICT: 5-O'BANION

MUNICIPAL ADVISORY COUNCIL: NONE

The following table indicates the designations for General Plan, Zoning, and current land use of the subject parcel and the adjacent parcels generally to the north, east, south and west of the application request:

	GENERAL PLAN	ZONING	CURRENT LAND USE
ON SITE	Agricultural	A-1	Row Crops/Vacant Land
NORTH	Agricultural	A-1	Residence/Orchard
EAST	Agricultural	A-1	Orchard
SOUTH	Agricultural	A-1	Row Crops
WEST	Low Density Residential	R-1 (5K)	Single-Family Residential

I. PROJECT DESCRIPTION

Minor Subdivision No. MS15-014 proposes to divide a 209.85 acre parcel into two parcels: Parcel 1 = 150.52 acres and Parcel 2 = 59.33 acres. The property is located one mile South of W. Henry Miller Road, half a mile West of S. Cherokee Road in the Los Banos area. The project site is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural).

II. SUMMARY OF RECOMMENDATION

Staff recommends the Planning Commission determine that the application is exempt from the California Environmental Quality Act (CEQA) under Section 15183 "Projects Consistent with a Community Plan, General Plan, or Zoning" of the CEQA Guidelines, and approve Minor Subdivision Application No. MS15-014 based on the 9 project findings and subject to the 6 conditions of approval found in this Staff Report.

III. ANALYSIS

A. Background

The project proposes to divide a 209.85 acre parcel to create two parcels, Parcel 1=150.52 acres and Parcel 2=59.33 acres. The project site is designated Agricultural land use in the 2030 Merced County General Plan and zoned A-1 (General Agricultural). The parcel is known as Assessor's Parcel Number (APN) 078-130-025 and is located one mile South of W. Henry Miller Road, half a mile West of S. Cherokee Road in the Los Banos area.

The purpose of the proposed minor subdivision is to sell Parcel 2 to a local resident to continue farming operations. Parcel 2 is currently being farmed with seasonal crops. The applicant anticipates that the property will continue in agricultural production for the foreseeable future. Parcel 2 is irrigated using the Central California Irrigation District (CCID) Outside Canal located west of the property. Parcel 2 will continue to have access to surface water for irrigation purposes through the CCD Outside Canal. Parcel 1 is currently vacant with no anticipated future use or development. Parcel 1 has frontage to Hilldale Road. Parcel 2 can be accessed through the use of the CCID Outside Canal bank from Henry Miller Avenue and Moraga Avenue. The project site is located within the Merced County Agricultural Preserve, but is not under a Williamson Act contract. No new homes are being proposed for either parcel as part of this application.

The project site is located in Los Banos, an area dominated by commercial agriculture. The project site and much of the surrounding area are substantially flat, being characterized by relatively intensive modification through commercial agricultural land uses.

B. General Plan Consistency

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 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 goal and policy 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

Limit allowed land use within Agricultural and Foothill Pasture areas to agricultural crop production, farm support operations, and grazing and open spaces uses.

Agricultural Element

This element identifies the protection, preservation, and expansion of productive agriculture as the County's vision. The proposed project is to subdivide an existing parcel into two smaller parcels. The following Agricultural Element goals and policies are applicable to the proposed minor subdivision:

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 20 acre minimum permitted parcel in areas designated Agricultural to discourage land divisions for rural residential purposes and maintain parcels large enough for efficient commercial agricultural production. Require 160 acre minimum permitted parcel size in areas designated Foothill Pasture and grassland areas.

Policy AG-2.17: Continued Access to Surface Water for Subdivided Parcels

Where requested by the water purveyor, when agricultural parcels are subdivided and the original parcel (prior to subdivision) has access to surface water (such as from an irrigation or water district facility), require that an easement be provided over the parcel(s) that has/have access to the surface water source to the remaining parcel(s) that will not be adjacent to or near the surface water source. The easement should specify the purpose of the easement and whose responsibility it is to maintain private water conveyance facilities within said easement.

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

Revise the Merced County Zoning Code, Section 18.02.02, Table 4, to allow for two classes of minor subdivisions within the A-1, A-1-140, A-2 zones: one that would conditionally waive the right to construct residences on resulting parcels by placement of a note on the face of the recorded-map; and one that would permit

the construction of residences on the resulting parcels is subject to a conditional use permit.

B.1 General Plan Consistency Analysis

The proposed project is to subdivide a 209.85 acre agricultural parcel into two parcels: Parcel 1 = 150.52 acres and Parcel 2 = 59.33 acres. The Land Use Element of the General Plan calls for the preservation and expansion of commercial agriculture in the county and limiting preferred land uses on agriculturally designated land to those directly related to commercial agriculture. The Agricultural Element is more directive, calling for the conservation of land used for productive agriculture and establishing a 20 acre minimum in areas designated Agricultural to discourage land division for rural residential purposes and maintain parcels large enough for efficient commercial agriculture production (Policy AG-2.13).

The stated purpose of this subdivision is to divide the existing parcel into two parcels with the intent to sell one of the parcels (Parcel 2). Consistent with Policy AG-2.14, both proposed parcels exceed the minimum parcel size requirement and in agricultural production.

Staff discussion with Douglas Parsons (Project Engineer) revealed that the proposed parcels will be irrigated through the use of the Delta Mendota and CCID Outside Canals, which will allow for continued access to surface water for both parcels (Policy AG-2.17). There are no new residences being proposed on any of the proposed parcels, consistent with Policy AG-3.12.

C. Zoning Code Consistency

The parcel is designated A-1 (General Agricultural) in the Merced County Zoning Code. The purpose of this 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 location in sparsely populated low traffic areas.

Minor Subdivision Application No. MS15-014 proposes to divide an existing 209.85 acre parcel into a 150.52 acre parcel (Parcel 1) and a 59.33 acre parcel (Parcel 2). Both parcels are consistent with the 20-acre minimum size identified by policy AG-2.13 of the 2030 Merced County General Plan as the minimum necessary to be accepted as viable for commercial agricultural production. No use is presently being proposed for the property that requires the approval of an additional discretionary land use permit.

Allowable and Permitted Uses (Section 18.02.02.020)

The provisions of Table 4 identifying permitting requirements for residential land uses have been superseded by Policy AG-3.12 of the Agricultural Element "Subdivision and Residential Uses in Agricultural Areas". The applicant has not submitted a conditional use permit application for construction of a new residence on either proposed parcel. A notice consistent with the requirement of Policy AG-3.12 will therefore be placed on the face of the recorded parcel map.

Development Standards and Subdivision Considerations (Section 18.02.03)

The proposed parcels comply with the minimum size standards provided in the 2030 Merced County General Plan and Table 5 Section 18.02.03 of the Zoning Code. No new structures have been proposed as part of this application and any future structures that may be located on these proposed parcels would be required to comply with the setback standards provided in this table.

Section 18.02.03.B, Subdivision Considerations, of the Zoning Code identifies six factors that must be considered to determine conformity with the Merced County Year 2000 General Plan objective of avoiding divisions which reduce the agricultural productivity of the property. While the Year 2000 General Plan has been entirely replaced by the 2030 General Plan, a brief analysis of those six factors is provided as they provide useful information on the proposed subdivision.

1. Soil Capability and Productivity of the Site and Vicinity

The State Important Farmlands Map shows the parcel 1 as “Farmland of Local Importance,” land of importance to the local agricultural economy as determined by each county's board of supervisors and a local advisory committee. Parcel 2 is shown as being composed of “Prime Farmland.” Soils of Prime Importance are soils with the best combination of physical and chemical features able to sustain long term agricultural production. The 2030 Merced County General Plan policies identify land containing soils identified as ‘Prime’ as productive agricultural lands that require protection.

2. Current and Proposed Irrigation Facilities on the Site

The property is currently irrigated through the use of the CCID Outside canal and the Delta Mendota Canal. Parcel 1 will continue to have access to surface water through both canals. The applicant suggests that the subdivision will not affect access to surface water and that both parcels will continue to have access to surface water through the CCID Outside Canal.

3. Access to Public Roads and Right-of-Ways

Parcel 1 is divided by Interchange Route 5. Parcel 1 has frontage to Hilldale Road to the west. Access to the east portion of Parcel 1 is granted through the use of undercrossing easement. Parcel 2 has been accessed through the use of the CCID Outside Canal bank through either Henry Miller Avenue or Moraga Avenue since the canal was established.

4. Compatibility with Existing Agricultural Uses and Cropping Patterns in the Vicinity

The project site, and the majority of land in the general area, is devoted to

commercial agricultural production. With the exception of land to the west which is composed of single-family residences. Given the probability the project site will be farmed with row crops, based on the soil preparation and existence of necessary irrigation facilities, and no requested residential development, the proposed subdivision will not result in incompatibility with the surrounding agricultural uses.

Similarly, Minor Subdivision Application No. MS15-014 would divide the property into two parcels of sufficiently regular shape and size to support modern commercial farming methods. Finally, the project site is located within the Agricultural Preserve; however it is not under Williamson Act Contract.

5. Relationship to Current Parcel Sizes and Parcel Configurations in the Vicinity

Minor Subdivision Application No. MS15-014 proposes to divide an existing 209.85 acre parcel into a 150.52 acre parcel (Parcel 1) and an 59.33 acre parcel (Parcel 2). Planning staff analyzed the size distribution of existing parcels located within a quarter mile radius of the project site and identified the following size distribution of these parcels as summarized in Table 1.

**Table 1
 MS15-014 Parcel Size Analysis**

Parcel Sizes	# Parcels	Total Acres	Average Size
0 - 10 Acres	7	15.14	2.16
10.01 - 20 Acres	5	79.6	15.92
20.01 - 40 Acres	9	241.27	26.80
40.01 - 60 Acres	5	275.33	55.06
60.01 - 100 Acres	6	441.95	73.65
Over 100 Acres	9	1648.77	183.19
Total:	41	2702.06	65.09

Note: Figures may not sum precisely due to rounding variation

It is apparent from Table 1, that there is a variation in the size of parcels located in the vicinity of the project site. Review of the aerial map found that two of the smaller parcels are arguably dedicated to residential use – in addition to farming purposes. Larger parcels occur more frequently to the south and west of the project site, with this land being devoted to commercial agricultural production. Given that 20 of the 41 existing parcels in the vicinity are larger than 40 acres in size, the proposed minor subdivision will not result in the creation of parcel sizes that are inconsistent with those presently found in the vicinity. Additionally, as noted in the previous section of this analysis, the parcels proposed for creation through this minor subdivision are of a sufficiently regular shape and size to support modern commercial farming methods.

6. Applicants Reasons for the Proposed Division

The submitted application materials state that the purpose of the proposed minor subdivision is to allow for the sale of one of the created parcels.

D. Subdivision Map Act Consistency

The proposed subdivision is found to be consistent with Title 17 of the Merced County Zoning Code. Currently the parcel is non-contiguous, separated from the rest of the parcel by the C.C.I.D Outside Canal. The approval of the proposed subdivision will not impact existing access to the parcel. No new homes or new land use projects are being proposed on site that would require a land use permit. Currently, Policy AG-3.12 of the General Code waives the right to construct residences on resulting parcels by placement of a note on the face of the recorded-map; and one that would permit the construction of residences on the resulting parcels subject to a conditional use permit. In the event that any new homes are proposed on this parcel access will be assessed through the permitting process. Any new construction of land use projects will require a discretionary permit, which will require the parcel owner to show prove of an access easement prior to consideration of said project.

IV. PRELIMINARY PUBLIC AGENCY REVIEW

A. County Department Comments

Minor Subdivision Application No. MS15-014 was reviewed at the Preliminary Application Review (PAR) meeting held on September 3, 2015. The meeting was attended by representatives of the applicant and County staff representatives from the Department of Health Environmental Health Division, the Department of Public Works Building and Safety Division, the Department of Public Works Road Division, Merced County Fire Department, and the Community and Economic Development Department.

The following comments and observations were made regarding the application:

The Environmental Health Division submitted a memorandum stating they have no objection to the proposed subdivision. The Department of Public Works Road Division submitted a memorandum noting the project is not subject to the Regional Transportation Impact Fee program since no new homes are being proposed. No formal comments were submitted by any other County agency.

B. Other Agency Comments

The application was also referred to the Agricultural Commissioner, Cooperative Extension, and Merced County Farm Bureau for review and comment. No response had been received from any of these agencies as of the date this report was sent to the Planning Commission.

V. PROJECT NOTIFICATION and PUBLIC COMMENT

Notice of the Planning Commission public hearing on Minor Subdivision Application No. MS15-014 was published in the Merced Sun-Star newspaper on October 17, 2015 and mailed to property owners within 300 feet of the project site on October 16, 2015. No comments have been received prior to the completion of this report.

VI. ENVIRONMENTAL REVIEW

Staff recommends that the Planning Commission determine the project to be exempt from California Environmental Quality Act (CEQA) review under Section 15183 of the CEQA Guidelines “Projects Consistent with a Community Plan or Zoning”. Section 15183 of the CEQA Guidelines provides that:

“Projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”

This recommended determination is based on the following findings:

1. The project is to divide an existing 209.85 acre parcel into a 150.52 acre parcel (Parcel 1) and an 59.33 acre parcel (Parcel 2). No intensification of land uses on either of the proposed parcels is proposed as part of this application. Land use for both parcels will remain agricultural.
2. The minor subdivision is consistent with existing land uses, adopted zoning, and General Plan designations.
3. There are no mapped or known environmentally sensitive areas on, or immediately adjacent to the project site.
4. The Community and Economic Development Department has received no information from any responsible or affected agencies identifying any potentially significant project-specific effects which are peculiar to the proposed project or its site.
5. The determination that the application is exempt from CEQA review reflects the independent judgment of the County.
6. A Program Environmental Impact Report (EIR) on the Merced County 2030 General Plan was certified on December 10, 2013. This Program EIR included an evaluation of agricultural subdivisions such as the one proposed with this application and there are no identified impacts resulting from this division as the parcels are over 40 acres in size and no new housing is proposed.

VII. CONCLUSION

Minor Subdivision Application No. MS15-014 proposes the division an existing 209.85 acre parcel into a 150.52 acre parcel (Parcel 1) and a 59.33 acre parcel (Parcel 2). The purpose for the subdivision is to allow sale of one parcel while AKT SANTA NELLA INVESTORS, LLC retains the second parcel for continued farming. Both of these proposed parcels meet the minimum size standard set by 2030 Merced County General Plan Policy AG-2.13: Minimum Agricultural Parcel Size Requirement, for assumed efficient commercial agriculture production.

The analysis provided in this staff report finds the proposed minor subdivision to be consistent with applicable provisions of the General Plan and Zoning Code and not in

conflict with the Williamson Act Agricultural Preserve. Further 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 upon this consistency.

Staff recommends the Planning Commission approve Minor Subdivision Application No. MS15-014 based upon the findings and subject to the recommended conditions of approval provided in the following section of this report.

VIII. RECOMMENDED ACTIONS

A. CEQA Determination

If the Planning Commission can make the determination that MS15-014 is eligible for exemption from California Environmental Quality Act (CEQA) review under Section 15183 of the CEQA Guidelines "Projects Consistent with a Community Plan or Zoning," staff recommends the Planning Commission make the following motion:

MOTION: The Planning Commission finds that Minor Subdivision No. MS15-014 is exempt from the California Environmental Quality Act (CEQA) under Section 15183 "Projects Consistent with a Community Plan or Zoning" of the CEQA Guidelines, based on the CEQA findings provided on page 6 of the Staff Report.

B. Project Determination

If the Planning Commission can make the determination that Minor Subdivision No. MS15-014 is exempt from CEQA review under Section 15183 of the CEQA Guidelines; Staff recommends the Planning Commission make the following motion:

MOTION: The Planning Commission approves Minor Subdivision No. MS15-014 based on the 9 project findings and subject to the 6 recommended conditions of approval.

Project Findings:

1. Minor Subdivision Application No. MS15-014 proposes to divide an existing 209.85 acre parcel into two parcels. Parcel 1 = 150.52 acres and Parcel 2 = 59.33 acres.
2. The project site is located one mile South of W. Henry Miller Road, half a mile West of S. Cherokee Road in the Los Banos area.
3. The property is designated Agricultural land use in the General Plan and zoned A-1 (General Agricultural).
4. The proposal is consistent with applicable provisions of the 2030 Merced County General Plan.
5. The proposal is consistent with applicable provisions of the Merced

County Zoning Code.

6. The project has been reviewed by the Agricultural Commissioner's Office, The Department of Health Environmental Health, The Merced County Fire Department, The Department of Public Works Building and Safety Division, The Department of Public Works Road Division, CalTrans-District 6, Fish & Wildlife (los Banos), Fish & Wild Life (Sacramento), The Merced County Farm Bureau, Central California Irrigation, and the San Luis Water District.
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 Planning Commission hearing was published in the Merced Sun Star and mailed to property owners within 300 feet of the project site.

C. Conditions of Approval

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 notice shall be placed on the face of the parcel map waiving the right to construct any new residences on the parcels created through Minor Subdivision No. MS15-014.
3. Any proposed future uses may be subject to a discretionary permit which would require the property owner to show adequate access to the property through the use of an easement or public road.
4. In the event that a new access route to Parcel 2 becomes available in the future, it should be used to access the parcel and access through the CCID Outside Canal should not be the primary access road.
5. The applicant shall comply with all applicable County, State and Federal regulations.

County Counsel

6. INDEMNITY AND HOLD HARMLESS AGREEMENT:

AKT SANTA NELLA INVESTORS, LLC has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County,

its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract, writ of mandamus, or otherwise. This duty shall include, but not be limited to, claims, petitions, or the like for bodily injury, property damage, personal injury, contractual damages, writ of mandamus, or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents, commissions, boards, and officers of AKT SANTA NELLA INVESTORS, LLC.

AKT SANTA NELLA INVESTORS, LLC liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of AKT SANTA NELLA INVESTORS, LLC, its agents, subcontractors, employees, boards, and commissions. The duty shall extend to any allegation, claim of liability, or petition, except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim, petition, or allegation of liability against County. AKT SANTA NELLA INVESTORS, LLC will on request and at its expense, defend any action or suit or proceeding arising hereunder. This clause and shall not be limited to any and all claims, petitions, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, that may arise during the term of this Agreement but shall also apply to all such claims and the like after the term of this contract, for example, arising from land use and environmental law actions, or meeting notice law actions, brought against the County following project approval, modification, or denial.

This clause for indemnification shall be interpreted to the broadest extent permitted by law.

IX. ATTACHMENTS

1. Project Vicinity and Aerial
2. Tentative Parcel Map
3. Public Agency Comments

cc: AKT SANTA NELLA INVESTORS, LLC, Applicant
Zachary Janz, Golden Valley Engineering