

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO

Resolution No. 2021-

A RESOLUTION OF THE SAN BENITO COUNTY PLANNING COMMISSION APPROVING COUNTY FILE PLN210016: A MINOR SUBDIVISION REQUEST TO DIVIDE A 23.7-ACRE AGRICULTURAL PARCEL INTO A 10.1-ACRE PARCEL AND A 13.6-ACRE PARCEL. THE PROJECT IS LOCATED AT 700 DUNCAN AVENUE, SAN JUAN BAUTISTA, CA; ASSESSOR'S PARCEL NUMBER (APN) 018-080-020.

WHEREAS, the subject parcel is located on the north side of Duncan Avenue, approximately ~1,200 feet west of its intersection with Bixby Road, Benito County, California (Assessor's Parcel 018-080-020) and currently contains 23.7 acres; and

WHEREAS, Alan Hendry of Wald, Ruhnke, Dost Architects, LLP, filed an application on behalf of 700 Duncan Holdings LLC, for a minor subdivision parcel map (illustrated in Attachment A) to subdivide the property into two lots; and

WHEREAS, the property is currently a legal lot designated in San Benito County Official Records Deed of Partition, Recorded February 28, 1961 in Volume 264, Page 570; and

WHEREAS, the property currently contains two residences with appurtenant septic fields and overhead wiring for electricity and communications; and

WHEREAS, the property currently has a General Plan land use designation of Agriculture (A) and a zoning designation of Agricultural Productive (AP); and

WHEREAS, the applicant and owner have demonstrated adequate street access, septic-system suitability, and water availability to demonstrate the subject parcel's usability and buildability to the satisfaction of responsible County personnel; and

WHEREAS, the Planning Commission has determined the project qualifies for Categorical Exemption under State CEQA Guidelines Section 15061 (b)(3). The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where there can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, the proposal has been reviewed in consideration of current, existing regulations that are designed to diminish the degree of negative environmental effect that could otherwise result from activities similar to the currently proposed project, and conditions of project approval have been included for the same purpose; and

WHEREAS, the Planning Commission of the County of San Benito reviewed the minor subdivision application at its regularly scheduled meeting held on November 17, 2021; and

WHEREAS, the Planning Commission of the County of San Benito reviewed all written and oral information presented to them by County staff and the public at the public hearing; and

WHEREAS, at the conclusion of the public testimony, the Planning Commission closed the public hearing, deliberated, and considered the merits of the proposal.

NOW THEREFORE BE IT RESOLVED that based on the evidence in the record, the Planning Commission of the County of San Benito hereby finds as follows:

California Environmental Quality Act (CEQA) Finding

Finding 1: That the project is Categorical Exempt, per California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3). The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where there can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

***Evidence:** The site is presently farmed agricultural land and no new development is proposed at this time. The two-lot parcel map conforms to the General Plan and Zoning District. The existing 23.7-acre agricultural parcel has grade-1 soils, is actively farmed, and does not include a Williamson Act contract. The new smaller parcels will remain productive.*

***Evidence:** The project would result in two agriculturally producing parcels that would allow the existing residential structures to be considered main residences (one per each), and potentially an accessory unit on both of the newly configured lots (by provisions of current state law allowing construction of Accessory Dwelling Units), exempt under State CEQA Guidelines §15303.*

***Evidence:** In addition, the proposal would not qualify for State CEQA Guidelines §15300.2's exceptions to Categorical Exemptions as it is located away from the attributes and circumstances listed in the exceptions. Land use and development similar to this proposal has occurred in the immediate surroundings to the south, east and west of the subject property, and the project has a low likelihood of creating significant environmental impact beyond current conditions.*

BE IT FURTHER RESOLVED by the Planning Commission of the County of San Benito that it hereby finds as follows:

Subdivision Findings:

Finding: Per County Code Section 23.007.006, the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan, and any applicable specific plan.

***Evidence:** The property is designated as Agricultural (A) by the General Plan and Agricultural Productive (AP) by the Zoning Ordinance. Both designations allow the continuation of farming activities and allow for single-family dwellings with a minimum building site of five acres. While General Plan Policy LU-3.12 expects that agricultural viability be demonstrated in subdivisions with lots under 40 acres, the existing lot is already significantly smaller than this standard.*

***Evidence:** The proposed project would provide adequate access, septic systems, and other infrastructure in a manner compliant with General Plan policies, and the proposal is similar to land patterns and uses in the surrounding area. Planning and Public Works staff of the County Resource Management Agency have analyzed the proposed subdivision and determined that the subdivision's design and improvements are consistent with General Plan policies and Subdivision Ordinance design standards provided compliance with conditions of approval. No specific plan affects the subject property.*

Conditions of Approval

- 1. Indemnification:** The property owner and tenant (hereinafter collectively referred to as “APPLICANT”) shall defend, indemnify, and hold San Benito County, its agents, officers, and/or employees (hereinafter “COUNTY”) free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as “Legal Action”), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys’ fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of APPLICANT’S Project or action taken by COUNTY thereon, including Legal Actions based on the negligence of COUNTY. APPLICANT will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any settlement, default judgment, or other judgment taken against the County, whether the result of APPLICANT’S decision not to defend Legal Action or otherwise. COUNTY retains its discretion to direct counsel regarding whether to defend, settle, appeal, or take other action regarding any Legal Action. APPLICANT shall defend COUNTY’S actions with competent legal counsel of APPLICANT’S choice without charge to COUNTY, subject to COUNTY approval, which shall not be unreasonably withheld. Nothing contained in the foregoing, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a Legal Action. Furthermore, in no event shall COUNTY have any obligation or liability to APPLICANT in connection with COUNTY’S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. If either COUNTY or APPLICANT determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and APPLICANT shall pay the reasonable attorneys’ fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement or statements. [Planning]
- 2. Conformity with Plan:** The development and use of the site shall conform substantially to the proposed Tentative Parcel Map (Attachment A to this Resolution) and Conditions of Approval as approved by the Planning Commission. Any increase, change, or modification in the nature or intensity of the land use on the site shall be subject to further Planning Commission review and approval. [Planning]
- 3. Compliance Documentation:** Prior to map recordation, the permittee shall submit a summary response in writing to these Conditions of Approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
- 4. Notice of Determination (California Department of Fish and Wildlife Fees):** The APPLICANT/owner shall file a Notice of Exemption, provided by the County Resource Management Agency, with the County Clerk within five (5) days of approval of the use

permit. An administrative fee of \$50.00 shall be submitted to the Planning Department for the filing of the notice. Should the Notice not be filed and the fee not paid within five (5) days, the application is subject to action described in Public Resource Code §21167 and the project is not operative, vested, or final until the Notice is filed and the fee is paid (Public Resources Code §21089(b)). [Planning, California Department of Fish and Wildlife]

5. **Assessment:** Prior to recordation of the parcel map, the applicant shall pay applicable security for taxes and special assessments as required by Sections 66492, 66493, and 66494 of the Subdivision Map Act; this includes pre-payment of taxes for the current year the final parcel map is recorded. [Planning, Assessor]
6. **Recordation:** The applicant shall submit a parcel map to the County subject to the approval of the County Resource Management Agency and recorded with the County Recorder. The tentative parcel map shall expire two (2) years after the Planning Commission approval date, unless extended as provided by the Subdivision Map Act and the County Subdivision Ordinance. Failure to record a parcel map within the period of approval or a period of extension shall terminate all subdivision proceedings. [Public Works, Planning]
7. **Easements:** The parcel map shall show all easements for access, utilities, and drainage. All future development shall maintain a ten (10) foot setback from the noted easements. [Public Works, Planning]
8. **Construction Hours:** A note shall be placed on the project improvement plan to state that construction on the project site, in accordance with County Code §25.37.035 and County Code Chapter 19.39, shall be limited to the hours of 7 a.m. to 7 p.m. Monday through Saturday, with no construction activities allowed on Sundays and holidays. [Planning]
9. **Exterior Lighting:** All exterior lighting for new development shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. All fixtures shall comply with County Ordinance 748 (along with the requirements of Zone II regulations set within Ordinance 748). [Planning]
10. **Dust Control:** The APPLICANT shall incorporate the following requirements into any grading activities occurring as part of this project:
 - a. All graded areas shall be watered at least twice daily. If dust is not adequately controlled, then a more frequent watering schedule shall be incorporated. Frequency shall be based on the type of operation, soil, and wind exposure.
 - b. All grading activities during periods of high wind, over 15 mph, are prohibited.
 - c. Haul trucks shall maintain at least two feet of freeboard.
 - d. All trucks hauling dirt, sand, or loose materials shall be covered.
 - e. Inactive storage piles shall be covered.
 - f. Streets shall be swept if visible soil material is carried out from the construction site. [Planning]

11. Cultural Resources: The property owner/applicant, if at any time discovering any human remains of any age, or any significant archaeological artifact or other evidence of an archeological site, shall

- a. cease and desist from further disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains;
- b. arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of no less than one hundred feet from the point of discovery, provided that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking and that said staking not include flags or other devices which may attract vandals;
- c. notify the County Sheriff–Coroner and County Resource Management Agency of the discovery if human and/or questionable remains have been discovered; and
- d. grant, subject to due legal process, to all duly authorized representatives of the Coroner and the Resource Management Agency permission to enter onto the property and to take all actions consistent with Chapter 19.05 of San Benito County Code, with State Health and Human Safety Code §7050.5, and with State Government Code Title 3 Division 2 Part 3 Chapter 10 (§27460 *et seq.*). [Planning]

12. Water Treatment: Use of on-site regenerating water softeners shall be prohibited. [Planning]

13. Habitat Conservation Plan Impact Fees: In accordance with County Ordinance 541, which sets fees for the habitat conservation plan financing and kit fox protection measures, the applicant shall contribute, prior to recordation of the parcel map, a habitat conservation plan mitigation fee of \$300 for each lot between 1.1-5 acres and \$600.00 for each lot over 5.1 acres. [Planning]

Division of Environmental Health:

14. Sewage Disposal: The owner shall provide a detailed plot plan showing the locations of the proposed septic system areas* for the proposed lots, existing structures, existing septic systems, existing or proposed water systems (wells), water courses, and lot lines. Note proposed septic systems shall be located in approved tested areas.

15. Water: How many connections (water lines directly from the water system) will the well(s) have? If there are two or more connections, a Local Small Water System application shall be completed for each water well with this department. Note, for an ADU, the water line may come from the Main SFD.

16. Hazardous Materials: If any hazardous materials are to be stored in any existing or proposed facilities/buildings/structures, a Hazardous Materials Business Plan (HMBP) must be completed and submitted to this department.

Public Works:

17. Dedicate Right of Way. Prior to the recordation of the Parcel Map, the applicant shall irrevocably dedicate half of the 60-foot right-of-way along property frontage on Duncan

Avenue to the County of San Benito and the public for public use. [§ 23.15.002 Dedication of Streets, Alleys and Other Public Rights-of-Way or Easement]:

- 18. Improve Duncan Avenue.** Prior to the recordation of the Parcel Map, the applicant shall improve Duncan Avenue by constructing half of 32-foot AC on 42-foot AB along the whole property frontage. Design of improvements shall comply with County Code improvement standards.
- 19. Project subject to Geotechnical Engineering Report.** Prior to recordation of Parcel Map, a comprehensive design-level geotechnical engineering investigations report shall be submitted for review and approval by RMA Engineering, which shall be the basis for the design of improvements for the subdivision. Prior to acceptance of required improvements, a letter of geotechnical compliance shall be submitted to RMA Engineering upon completion of site improvements. A note shall be placed on the parcel map referencing the aforementioned report for future reference by potential property owners. [§ 23.31.023]
- 20. Drainage Improvements to be made.** As part of submission of engineered improvement plans for this project, the applicant shall comply with County Drainage Standards and provide erosion control details for the project. Included in this will be drainage calculations and construction details for either a retention or detention pond for impermeable surfaces created as part of this project. Details and direction of flows of drainage swales and grades shall also be included. All drainage improvements must be installed in conjunction with any improvements that would create impermeable surfaces as part of this project. [§ 23.17.003 (B); § 23.31 Article III]
- 21. Underground Utilities.** All proposed utilities within the subdivision and along peripheral streets shall be placed underground except those facilities exempted by Public Utilities Commission regulations. All necessary utilities must be installed prior to recordation of the Parcel Map. [§ 23.17.003 REQUIRED IMPROVEMENTS, (F) (I).]
- 22. Utility Plans subject to third party review.** Applicant must submit with the Improvement Plans all applicable utility plans approved by the respective utility company. Approved utility plans will be included as part of the final or approved improvement Plan. It is the applicant's responsibility to provide utility easement(s) to each of the utility companies whose services are necessary for the proposed subdivision. Said easement(s) shall be shown on the Parcel Map.
- 23. Develop A Storm Water Pollution Prevention Plan (SWPPP).** If disturbed area exceeds one (1) acre, the applicant shall be responsible for complying with the California State Water Resources Control Board's Construction Stormwater General Permit (General Permit) as amended, file a complete Notice of Intent (NOI) package, and develop a Storm Water Pollution Prevention Plan (SWPPP) conforming to the General Permit. A Waste Discharge Identification (WDID) number or Erosivity Waiver shall be provided to the Public Works Division prior to start of any construction activities as part of this project. A note to this effect must be added on the

Improvement Plans.

- 24. Obtain a Public Works Encroachment Permit.** Pursuant to §19.27.004 of the County Code, the applicant shall obtain a Public Works Encroachment Permit for any work being performed within the County Right-of-Way, and for any road offered for dedication to the County prior to commencement of any improvements associated with this project.
- 25. Provide Warranty Security.** Upon completion of required improvements, applicant shall provide warranty security in an amount not less than 10% of the estimated cost of construction of the improvements to guarantee the improvements against any defective work or labor done or defective materials used in the construction or installation of the improvements throughout the warranty period which shall be the period of one year following completion and acceptance of the improvements. [§ 23.17.009(C)(4)]
- 26. Prepare and Submit "As Built" Improvement Plans.** Prior to the recordation of the Parcel Map or before release of alternate Bond, one set of "As Built" Improvement Plans on a suitable reproducible media shall be prepared by the applicant's engineer and shall be submitted to Engineering. [§ 23.31.002.(K)(1)]
- 27. Annex Into Mello-Roos Community Facilities District (CFD) No. 2018-1.** Prior to the recordation of the Parcel Map, the project area shall annex into Mello-Roos Community Facilities District (CFD) No. 2018-1 to fund the project's fair share of project-specific costs, as well as to offset the project's impact on general county costs. The applicant, on behalf of future landowners, shall agree to pay any such taxes/fees as may be determined in the reasonable discretion of the County to fund both project specific and countywide costs, through the CFD process. Applicant shall further pay all costs incurred by the County for the CFD annexation process, including but not limited to any necessary fiscal impact fee study.
- 28. Dedicate Parkland.** Pursuant to San Benito County Code of Ordinances Section 23.15.008 Dedication of Parkland, the subdivider shall be required to dedicate land, pay a fee in lieu thereof, or a combination of both, at the option of the County, for park and recreational purposes.

Fire Department:

No Fire Department comments at this time for the 700 Duncan Avenue Parcel Map. (Per telephone confirmation with Charlie Bedolla 11/05/2021).

29. Agreement with All Conditions of Approval and Mitigation Measures: Prior to or upon approval by the Planning Commission, APPLICANT shall sign the statement below certifying that APPLICANT is in agreement with all conditions of approval. [Planning]

I certify that I understand and agree to comply with all Conditions of Approval imposed by the Planning Commission, or Board of Supervisors as applicable, on this Permit.

APPLICANT Signature:

Date: _____
By: _____

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO THIS 17TH DAY OF NOVEMBER 2021 BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

Robert Gibson, Chair
San Benito County Planning Commission

ATTEST:

Robin Bolster-Grant, Assistant Director of Planning and Building
Resource Management Agency San Benito County

