

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO

**A RESOLUTION OF THE SAN
BENITO COUNTY PLANNING
COMMISSION APPROVING A MINOR
SUBDIVISION, PLN180028, TO DIVIDE
THE PROPERTY AT 1271 LOS
VIBORAS ROAD, APN 016-050-048-000,
INTO TWO PARCELS.**

Resolution No. 2018-0X

WHEREAS, John & Tina Bourdet filed an application to subdivide a property under their ownership at 1271 Los Viboras Road (File # PLN180028) on June 6, 2018; and

WHEREAS, County staff received the minor subdivision proposal and distributed this plan to responsible County and peer agencies for review and comment; and

WHEREAS, the subject parcel is on the south side of Los Viboras Road, 1.3 miles northeast of Fairview Road, San Benito County, CA (APN 016-050-048-000) and is approximately 41.02 acres in area; and

WHEREAS, the Minor Subdivision PLN180028 proposes to subdivide the 41.02-acre subject parcel into one 28.02 acre parcel and one 13.0 acre parcel;

WHEREAS, no unusual circumstances, features of the land, or unexpected issues have arisen that prevent approval of this minor subdivision; and

WHEREAS, the subject parcel has a General Plan Designation of A Agriculture and a Zoning Designation of AP Agricultural Productive; and

WHEREAS, the County assessed the potential for any substantial effect on the environment for the project consistent with the requirements of the California Environmental quality Act (CEQA); and

WHEREAS, on December 5, 2018, the Planning Commission took note of Minor Subdivision PLN180028 and project and materials, and continued the item to a date certain; and

WHEREAS, on January 16, 2019, the Planning Commission in considering Minor Subdivision PLN180028 as described herein and in the staff report, heard and received all oral and written testimony and evidence that was made, presented, or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any matter related to the petition; and

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

WHEREAS, the Planning Commission of the County of San Benito finds that no enhancements or clarifications are necessary to the California Environmental Quality Act (CEQA) Findings and Evidence, nor to the Subdivision Findings and Evidence.

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 1: That the project is Categorically Exempt, per California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3).

***Evidence:** This is the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Simple conditions of approval will ensure that existing regulations and customary practices would be followed in the future, and that these are sufficient to make a determination of less than significant impact.*

The site presently contains two existing single-family residences on the property. Approval of a parcel map would result in one existing home on each resulting parcel—a subdivision that will be exempt under Section 15061(b)(3) as it can be seen with certainty there is no possibility that subdividing the property may have a significant effect on the environment.

No new development is proposed. The Christmas tree farm and sales operation would continue occupying the front half of the property, unchanged. Each resulting parcel has the potential to construct a secondary residence under AP Agricultural Productive zoning.

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

Subdivision Findings

Finding 1: The proposed map is consistent with the General Plan or any applicable specific plan.

***Evidence:** The property is designated as Agriculture (A) in the General Plan and Agricultural Productive (AP) by the Zoning Ordinance. The Agriculture designation is intended to maintain the productivity of agricultural land, applies to the full range of agricultural lands from crop land to vineyards to range lands, and allows agricultural support uses. Single-family dwellings on 5 acre minimum parcels are an allowed use in Agriculture (A) land use designation. The Parcels are proposed at 28.02 and 13.0 acres. There are no adopted Specific Plans in this area.*

***Evidence:** The project is subject to conditions that direct **the design and improvements** of the subdivision to meet the requirements of the County of San Benito Land Development and Engineering*

Standards, which are designed to fulfill the elements of or otherwise implement the objectives of the General Plan.

Finding 2: That the site is physically suitable for the type of development.

***Evidence:** The project site consists of 41.02 acres of level terrain with: a) a tree nursery and sales area on the front half of the property, and b) two (2) residences with separate driveways and water wells along with several acres of creek bottom, characterized by scattered live oaks and grassland or oak savanna, on the rear half of the property. This is a simple lot split, and no development is proposed at this time. Both existing homes sites are adjacent to a steep drop-off to the bench and creek bottom. The site is not susceptible to land slide events. No portion of the project falls on a fault, nor within a fault zone: Quien Sabe Fault is 1,874 feet to the southeast.*

Finding 3: That the site is physically suitable for the density of development.

***Evidence:** Density under the Agricultural Productive (AP) zoning designation allows one single family residence per 5 acres. Proposed parcel sizes of 28.02 and 13.0 acres exceed the 5.0 acre minimum land area necessary for building sites.*

Finding 4: That the subdivision design or proposed improvements are unlikely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

***Evidence:** The site is not mapped or otherwise identified as suitable habitat for fish or wildlife. The existing 41.02 acre parcel includes two single-family dwellings, several accessory structures, separate existing gravel driveways, along with two wells, water lines and tanks, and existing septic fields. No evidence is available of any potential to cause substantial environmental damage, or substantially and avoidably injure fish or wildlife or their habitat.*

Finding 5: That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

***Evidence:** The project improvements have been reviewed by Responsible Agencies to ensure that the proposed subdivision would not have an impact on public health. No development is proposed. There is no evidence in the record that the proposal could cause serious problems for public health. Any future development on the new lots will be subject to additional review prior to building permit issuance.*

Finding 6: That the design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through, or use of, property within the proposed subdivision.

***Evidence:** The project will not conflict with any existing easements but will require the applicant to maintain the existing SBCWD regional waterline easement, and establish and maintain private easements for the existing well, waterlines and water tanks that currently serve both residences. Two existing access points onto Los Viboras Road will remain, and each would serve as a separate driveway serving only one of the resulting parcels.*

Finding 7: That Subject to Section 66474.4 of the Government Code, the land is not subject to a contract entered into pursuant to the California Land Conservation Act of 1965. The subject property contains a Christmas tree nursery limited to 17.91 acres in tree cultivation that will remain in operation on the resulting 28.02 acre parcel. The parcel is very unlikely to sustain other commercial agricultural uses, now, or after subdivision.

***Evidence:** The project was reviewed by the San Benito County Assessor. The Assessor did not identify this property as subject to a Williamson Act Contract.*

Finding 8: That subject to Section 66474.6 of the Government Code, the discharge of waste from the proposed subdivision into an existing community sewer system would not result in violation of existing requirements prescribed by the Central Coast Regional Water Quality Control Board pursuant to Division 7 of the Water Code.

***Evidence:** The existing residences will be served by the existing septic systems now serving each home. There is no indication from the Division of Environmental Health that the project as proposed would result in a violation of existing requirements prescribed by the Central Coast Regional Water Quality Control Board pursuant to Division 7 of the Water Code.*

Finding 9: That the subject parcel's boundaries and terrain make it advisable for the Planning Commission to grant an exception to the specified depth-to-width ratio, pursuant to County Code §23.25.011(B).

***Evidence:** The south, east, and west boundaries of the parcel are determined by the undulating curvature of Los Viboras Creek. This boundary along with the internal driveways and proposed parcel boundaries all follow the lot's topography as shaped by the creek. The shapes of the proposed parcels are constrained by the creek, the terrain, and the existing lot lines.*

***Evidence:** Terrain and current parcel boundaries preclude the applicant from meeting the 3:1 depth-to-width ratio specified in §23.25.011(B). To maintain the existing use as a Christmas tree nursery and ensure its viability as an agricultural operation, the cultivated tree fields, parking and sales area, and the internal driveway network must be maintained and kept intact. Since each existing residence is already equipped with separate driveway, water and septic facilities, however, dividing the property along topographic features so that a) existing uses are maintained and b) each home meets County ordinances is relatively straightforward.*

Finding 10: That, through characteristics specific to the subject property, and through aspects necessary to the proposed subdivision, the applicant has demonstrated the continued agricultural viability of parcels under 40 acres in size. (LU-3.12 Agricultural Viability of Small Parcel Sizes).

***Evidence.** The proposed subdivision maintains the current land uses and existing tree nursery operation as a whole and intact unit. Cultivation of trees occupies approximately 17.91 acres of the 41.02-acre subject parcel. Parking, display, and sales areas occupy another 3.54 acres (21.45 acres total). The agricultural viability of the smaller-than-40-acre parcel will be maintained because the 21.45-acre tree farm will be contained, whole, on the proposed 28.02-acre parcel. The remaining portions of the 41.02-acre subject parcel has not been farmed and cannot be farmed; it consists of residential home sites, internal gravel driveways and creek bottom. The whole of the second proposed 13.0-acre parcel cannot be farmed due to topography and current residential land use, and would consist of one home, driveways and creek bottom.*

Finding 11: The design and location of each lot in the subdivision, and the subdivision as a whole, are consistent with any applicable regulations adopted by the State Board of Forestry and Fire Protection pursuant to Sections 4290 and 4291 of the Public Resources Code (GC §66474.02, subd. (a)(1)).

***Evidence:** The project site lies within a designated State Responsibility Area (SRA) for wildland fire suppression provided by the California Department of Forestry and Fire Protection (CALFIRE). Structural fire protection and other related emergency services are the responsibility of the San Benito County Fire District.*

Finding 12: Structural fire protection and suppression services will be available for the subdivision through CALFIRE and/or the *San Benito County Fire District*. (GC §66474.02, subd. (a)(2)).

***Evidence:** The closest career staffed fire station is the CALFIRE station 5.9 miles away at 1979 Fairview Drive, Hollister; CALFIRE also operates a Fire Attack Base at the Hollister Airport, 5.2 miles from the site; and the City of Hollister will build Fire Station #3 on Rosa Morada Road, under 4 miles from the project site. Hollister Fire Department provides additional fire protection support services.*

Finding 13: Ingress and egress for the subdivision meet the regulations regarding road standards for fire equipment access adopted pursuant to Section 4290 of the Public Resources Code and any applicable local ordinance. (GC §66474.02, subd. (a)(3)).

***Evidence:** Qualified personnel from Responsible Agencies have reviewed the proposed minor subdivision and found that no improvements are necessary to provide adequate ingress/egress pursuant to applicable Fire Codes.*

BE IT FURTHER RESOLVED by the Planning Commission of the County of San Benito that based on the foregoing findings and evidence in the record, that the proposal to subdivide the 41.02 acre property at 1271 Los Viboras Road, APN 016-050-048-000, into two parcels of 28.02 acres and 13.0 acres, is approved with the following conditions of approval.

CONDITIONS OF APPROVAL

1. Indemnification: 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 to Plan:** The development of the site shall conform substantially to the proposed Minor Subdivision and Conditions of Approval as approved by the Planning Commission. [Planning]
3. **Conditions of Approval:** Prior to or upon approval of the subdivision by the Planning Commission, the Applicant shall sign the statement below certifying that they are 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: _____

4. **Compliance Documentation:** 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]
5. **Assessment:** Prior to recordation of the minor subdivision, 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 for review and approval by the County Resource Management Agency, and shall be 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:** Easements shall be created for all common areas and resources, specifically for any common access driveways to be used by owners of both parcels, and for water wells, tanks, water lines and associated equipment serving one parcel but located on the other. The parcel map shall show all easements for access; water wells, tanks, and waterlines; and utilities. [Public Works, Planning]

SAN BENITO COUNTY WATER DISTRICT (SBCWD)

- 8. Water Line Easement:** The 36.08" water line easement documented in Recorder's File No. 8403871 shall be maintained. The owner/representatives shall ensure that the parcel map for this minor subdivision and deeds for both resulting parcels shall contain/include documentation of this easement.
- 9. Water Treatment:** Use of on-site regenerating water softeners shall be prohibited.
- 10. Cultural Resources:** If, at any time in the preparation for or process of excavation or otherwise disturbing the ground, discovery occurs of any human remains of any age, or any significant artifact or other evidence of an archeological site, the applicant or builder shall:
 - a. Cease and desist from further excavation and 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 not less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals.
 - c. Notify the Sheriff-Coroner of the discovery if human and/or questionable remains have been discovered. The Resource Management Agency Director shall also be notified.
 - d. Subject to the legal process, grant all duly authorized representatives of the Coroner and the Resource Management Agency Director permission to enter onto the property and to take all actions consistent with Chapter 19.05 of the San Benito County Code and consistent with §7050.5 of the Health and Human Safety Code and Chapter 10 (commencing with §27460) of Part 3 of Division 2 of Title 3 of the Government Code. [Planning]

ENVIRONMENTAL HEALTH DIVISION

- 11. Water:** Prior to recordation of final map, the owner shall identify the source of potable water for proposed Parcel 2, and shall provide water easements and record them on map and deed, from water source on Parcel 1 to dwelling unit on Parcel 2 (easements to include well, tanks, waterlines; all necessary equipment).
- 12. Sewage Disposal:** The owner shall contact a licensed third party septic system installer to determine the exact size and location of the existing septic systems (tank and leach field) and all distances to all existing dwelling and to proposed property lines.
- 13. Hazardous Materials:** If any hazardous materials are to be stored in any existing or proposed facilities/buildings/structures, a Hazardous Materials Business Plan must be completed and submitted to this department.

FIRE DEPARTMENT

- 14. Fire Code.** Any and all development on this property shall be required to meet the standards set forth in the latest editions of the 2016 California Fire Code, Public Resources Codes 4290 and 4291, Ordinances 822 and 823 of the San Benito County Code and other related codes as they apply to a project of this type and size.

Turnouts/Turnarounds. The Fire Marshal has confirmed that existing access driveways and the internal drive network are maneuverable, provide ample width, and are constructed to a standard that alleviates the need for any improvements. Construction of turnouts or turnarounds is not required pursuant to the Fire Marshal's approval of the driveways for fire access road purposes. [§23.27.004(J)(1)]

PUBLIC WORKS DIVISION

Prior to Recordation of the Parcel Map, applicant shall address conditions detailed below.

- 15. Improvements Maintenance:** Prior to recordation of the parcel map, the applicant shall prepare and establish a maintenance agreement between the two parcels for the purposes of maintaining any water wells/facilities, easements, or common facilities over one parcel that serve the other, to the satisfaction of the RMA Director. The County Resource Management Agency shall ensure that the maintenance agreement is concurrently approved with the approval of the parcel map, per County Code §23.25.007.
- 16. Encroachment Permit.** Applicant shall obtain an Encroachment Permit from Engineering for any work being performed within the County ROW prior to commencement of any improvements.
- 16. Parkland Dedication:** The subdivider shall dedicate land for park and recreational purposes, or pay a fee in lieu thereof or a combination of both, at the option of the County, pursuant to County Code §23.15.008. [Planning, Public Works]
- 17. Habitat Conservation Plan Impact Fees:** The applicant shall contribute, prior to recordation of the subdivision map, a habitat conservation plan mitigation fee of \$1,200.00 under County Code §19.19.004, which sets fees of \$600.00 for each lot larger than 5.1 acres for habitat conservation plan financing. [Planning]
- 18. Notice of Exemption (Fish & Game Fees):** The applicant/owner shall be required to file a Notice of Exemption for the project. The notice shall be provided by the County Planning Department and filed with the County Clerk within five (5) days of approval of the project. An administrative fee of \$50.00 shall be submitted to the Planning Department for the filing of the notice. [Planning/CDFG]

**PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF
SAN BENITO THIS 16TH DAY OF JANUARY 2019 BY THE FOLLOWING VOTE:**

AYES:

NOES:

ABSENT:

ABSTAIN:

Chair
San Benito County Planning Commission

ATTEST:

Taven M. Kinison Brown, Principal Planner
Resource Management Agency San Benito County

