

# ATTACHMENT D

## FINDINGS ZONE FILE #2023-031 PYLMAN TENTATIVE PARCEL MAP AND VARIANCE

Upon due consideration of the facts presented in the staff report and at the public hearing for Zone File #2023-031, the Planning Commission approves the proposed Tentative Parcel Map #5426 and variance. In support of this decision, the Planning Commission makes the following finding (*A summary of the evidence to support each FINDING is shown in italics*):

### **California Environmental Quality Act**

1. The project request is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) (“general rule” or “common sense”).

*As stated in CEQA Guidelines Section 15061(b)(3), where it can be seen with certainty there is no possibility the activity would result in a significant effect on the environment, the activity is not subject to CEQA. A project that qualifies for neither a statutory nor a categorical exemption may nonetheless be found exempt under what is called the ‘common sense’ exemption. The common sense exemption applies to this project because it includes no development, will not facilitate future development, and result in no physical changes to the project site or environment. Approving Parcel Map #5426 will allow the applicant to greatly reduce the property’s flood insurance cost.*

### **Yolo County General Plan**

2. That the proposal is consistent with the Yolo County General Plan as follows:

*The Yolo County 2030 Countywide General Plan designates the subject property as Agriculture (AG), Agricultural District Overlay (AD-O), and Delta Protection Overlay (DP-O). As conditioned, the tentative parcel map is consistent with the policies, goals, and objectives of the General Plan. No development is proposed as part of the project.*

*Specifically, the project is consistent with the following General Plan policies:*

**Policy LU-2.3** *Prohibit the division of land in an agricultural area if the division is for non-agricultural purposes and/or if the result of the division will be parcels that are infeasible for farming. Projects related to clustering and/or transfers of development rights are considered to be compatible with agriculture.*

**Policy LU-2.4** *Vigorously conserve, preserve, and enhance the productivity of the agricultural lands in areas outside of adopted community growth boundaries and outside of city SOIs.*

**Policy LU-3.8** *The intent of allowing residences in the agricultural areas is to provide dwellings for those directly involved in on-site farming activity, including farm employees, the landowners and their immediate families.*

**Policy LU-4.1** *Recognize the unique land use constraints and interests of the Delta area.*

**Policy LU-4.2** Continue active involvement with State and regional efforts to establish policy, regulation and management for the Delta, to promote the economic and social sustainability of the town of Clarksburg, the viability of the Agricultural District.

**Policy LU-5.8** Ensure that respect for and protection of private property rights is balanced with all other factors considered by the County in making land use decisions.

**Policy AG-1.1** Protect and enhance the County's four key agricultural sectors. This includes: (1) retaining existing growers and processors of crops.

**Policy AG-1.3** Prohibit the division of agricultural land for non-agricultural uses.

**Policy AG-6.1** Continue to promote agriculture as the primary land use in the portion of Yolo County that lies within the Primary Zone of the Sacramento-San Joaquin Delta.

**Policy AG-6.2** Advance the economic and cultural vitality of heritage or legacy communities in the Delta, such as Clarksburg.

**Policy AG-6.3** Within the Delta Primary Zone, ensure compatibility of permitted land use activities with applicable agricultural policies of the Land Use and Resource Management Plan of the Delta Protection Commission.

### **Development and Zoning Code**

3. That the proposal is consistent with applicable standards set forth in Title 8, Chapter 1, Article 3 of the Yolo County Code (Subdivision Map Requirements).

*The proposed project would create two parcels and meets the criteria set forth in County Code Section 8-1.302(a), which states that a tentative parcel map and a parcel map shall be required for all subdivisions creating four or fewer lots.*

4. That the proposed Tentative Parcel Map is consistent with the applicable zoning standards set forth in Title 8, Chapter 2, Article 3 of the Yolo County Code (Agricultural Zones).

*The proposed project is a request for a tentative parcel map to divide a 73-acre parcel into a 58-acre and 15-acre parcel. The tentative parcel map does not meet the minimum parcel size for the A-N zone (40 acres for permanent crops) and will require Variance approval findings to be consistent with applicable zoning standards set forth in Title 8, Chapter 2, Article 3 of the Yolo County Code.*

### **Subdivision Map Act**

5. Pursuant to Section 66474 of the Subdivision Map Act and Section 8-1.312 of the Yolo County Code, a legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451 of the Government Code.

*The subject property for the tentative parcel map is designated as Agriculture in the 2030 Countywide General Plan. The property is planted in wine grapes; there are two varieties grown on the parcel. The vineyards are separated physically by Netherlands Ave and they will remain in production, but will be managed under separate vineyard contracts associated with the two newly created parcels.*

- b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

*The tentative parcel map would align the legal boundaries of the property with the two Assessor's Parcel Number boundaries that were assigned to the parent parcel when Netherlands Ave was constructed in the 1900's. No residential development is proposed as part of the tentative parcel map. The resultant 'Parcel 1' includes five residences, which exceeds current residential allowance in the ag area. However, the County Code provides that a property within the Agricultural Intensive (A-N) zone can establish a 2.5-acre homesite [County Code Sections 8-2.304/Table 8- 2.304(e) and 8-2.402(b)]. The Clarksburg Agricultural District Overlay (CADO) zone allows for the construction of one primary home and up to two ancillary dwellings on each of the newly created parcels; therefore, the resultant 'Parcel 2' could establish ancillary dwellings. Development of additional residences is likely infeasible due to Flood Hazard restrictions and unlikely given the applicant's justification that the tentative parcel map is related to reducing the cost of flood insurance.*

- c) That the site is not physically suitable for the type of development.

*No development is included in the project request and the parcels would remain in wine grape production following the tentative parcel map.*

- d) That the site is not physically suitable for the proposed density or development.

*The tentative parcel map does not propose residential development.*

- e) The design of the subdivision provides for public improvements in accordance with Article 9 of this title, and the Yolo County Improvement Standards.

*No residential development, or any other urban development, is proposed as part of the tentative parcel map. The design of the subdivision will be in accordance with Article 9 of the County subdivision regulations, and the Yolo County Improvement Standards.*

- f) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

*The tentative parcel map will not cause environmental damage and or injure fish, wildlife, or their habitat as there are no proposed improvements or development included in the project request. The tentative parcel map will divide the 73 acres that result in two parcels that are already physically divided*

*by Netherlands Ave and mirror their assessment parcels (i.e., Assessor's Parcel Numbers).*

- g) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

*The proposed design of the requested tentative parcel map will not cause serious health problems. No residential development, or any other urban development, is proposed as part of this application.*

- h) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

*The design of the tentative parcel map will not conflict with any of the existing easements acquired by the public at large, for access through or use of, property within the proposed parcel subdivision.*

- i) The design of the subdivision does not provide for, to the extent feasible, future passive or natural heating or cooling opportunities.

*The tentative parcel map does not propose residential or any other urban development as part of this application. The land will remain in agricultural production and uses that will provide significant opportunities for future development to incorporate passive or natural heating and cooling features.*

- j) The discharge of waste from the proposed subdivision into an existing community sewer system would not result in, or add to, a violation of existing requirements prescribed by a California Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

*The tentative parcel map does not propose any development that would require the discharge of waste into an existing community system, and would therefore not violate any existing requirements prescribed by a California Regional Water Quality Control Board.*

- k) If the proposed subdivision fronts along a public waterway, public river or public stream, it provides for a dedication of a public easement along a portion of the bank of the waterway, river or stream bordering or lying within the subdivision, which easement is defined so as to provide reasonable public use and maintenance of the waterway, river or stream consistent with public safety.

*The project site is adjacent to Elk Slough, but the proposed tentative parcel map will have no effect on existing access to the slough.*

- I) If the project is within the 100-year and 200-year floodplain the project meets FEMA and local flood requirements and is consistent with the findings required by Government Code 66474.5.

*The tentative parcel map does not propose any development that would be required to meet FEMA and local flood requirements. Any future development would require adherence to the County's Flood Protection Ordinance for constructing in the 100-year floodplain.*

### **Variances**

The Planning Commission shall grant a Variance only when, in accordance with the provision of Section 65906 of the California Government Code, all of the following circumstances are found to apply:

6. That any Variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated;

*Although the County sets limitations on minimum parcel sizes, there are many Agricultural Intensive (A-N) zoned parcels that do not meet current minimum parcel size requirements, many of which legally exist within the immediate vicinity of project site. So, while the requested action does not meet the current minimum parcel size with respect to 'Parcel 2', approval of a variance will eliminate a cost burden and allow the applicant to continue more efficiently farming the property in vineyards. Two distinct viticultural varieties are grown on the property, which are split between the two proposed parcels, and could be accounted and managed separately from one another offering greater opportunity for enhanced operations. More importantly, approval of a variance would not change the existing use of the land or allow any other privileges not explicitly allowed under the A-N zoning or the Clarksburg Agricultural District Overlay zoning regulations. Rather, the requested action will allow legal recognition of the existing parcels, improve the economic viability of family farming in the Delta, and ensure generational farming in Clarksburg.*

7. That, because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under the identical zone classification;

*The project applicant, under belief that the construction of Netherlands Avenue and issuance of separate APNs resulted in a second legal lot, constructed a residence on APN 043-220-013 after receiving a building permit from the County in 2008. At that time, five homes already existed on APN 043-220-015. Had County staff known the two APN parcels were legally one lot, a building permit would not have been issued without approval of a use permit. It is a common misconception that construction of roads is an official subdivision of properties or that separate APNs constitute separate legal lots. However, the County Assessor may assign multiple parcel numbers to one*

*property, for a multitude of assessment purposes, including where a road bisects a property.*

*Upon construction of the residence in 2008, it was unknown what the ramifications associated with the Federal Emergency Management Agency's updated Flood Insurance Rate Maps in 2010 would have on the existing viticultural operations. Given the home's location within Flood Zone A, the property owner must provide proof of flood insurance to secure a mortgage. Pursuant to insurance provisions, the flood insurance must cover all structures located on the legal parcel receiving coverage. As such, the applicant has been required to insure not only his home on APN 043-220-013, but all structures located on APN 043-220-015, including five homes which do not have mortgages. Approval of the requested Tentative Parcel Map and Variance request would rectify the misunderstanding, allow the continuance of separately established vineyard operations, and further the County's preference for retaining existing agricultural operators in the unincorporated area.*

8. That the Variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property, excluding uses allowed by conditional Use Permit; and

*The requested Tentative Parcel Map and Variance would allow for the continuance of agricultural uses in one of the three federally designated wine appellations in Yolo County. Known as "American Viticulture Areas," or AVAs, these areas denote a winegrowing region with officially recognized boundaries. These areas are shown in Chapter 6 of the Countywide General Plan, Agriculture and Economic Development Element, Figure AG-4.*

9. That the granting of such Variance will be in harmony with the general purpose and intent of this chapter and will be in conformity with the Master Plan.

*Granting approval of the requested Tentative Parcel Map and Variance will allow for the continued use of the project site to maintain and enhance the existing farm economy and wine grape growing industry in the Clarksburg federally designated wine appellation.*

*Approval of the project is also in harmony with other policies aimed at retaining existing growers and processors of crops, and rectify an issue whereby the construction of Netherlands Avenue resulted in impacts to an existing agricultural operation.*