Planning Commission Staff Report
Item # 1, January 16, 2020
Variance No. PA-1900247
Prepared by: Giuseppe Sanfilippo

PROJECT SUMMARY

Applicant Information

Property Owner:	Jo Ann Helen Van Dyk Trust
Project Applicant:	Shore, McKinley, Conger, & Jolley (c/o Brett Jolley)

Project Site Information

Project Address:	20306 East River Road, Ripon, CA
Project Location:	On the south side of East River Road, 2,650 east of South Carrolton Road, Ripon

Parcel Number (APN):	245-230-39,-43	**Water Supply:**	Private (Well)
General Plan Designation:	A/G	**Sewage Disposal:**	Private (Septic)
Zoning Designation:	AG-40	**Storm Drainage:**	On-Site
Project Size:	21.84-acres	**100-Year Flood:**	No
Parcel Size:	21.84- acres	**Williamson Act:**	No
Community:	Ripon	**Supervisorial District:**	4

Environmental Review Information

CEQA Determination: Notice of Exemption (Attachment C, Environmental Review)

Project Description

This project is a Variance application to reduce the minimum lot size in the AG-40 (General Agriculture, 40-acre minimum) zone from forty (40) acres to two (2) acres. The underlying project is a Minor Subdivision of a 21.84-acre parcel into a 2-acre parcel and a 19.84-acre parcel, and would be be submitted at a later date if the Variance is approved. The original parcel contains one (1) single-family residence and one (1) second-unit dwelling. (See Attachment A, Site Plan)

Recommendation

1. Deny Variance No. PA-1900247 based on the inability to make Findings Number 1 and 2 contained in the Staff Report. (Attachment D, Findings)

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NOTIFICATION & RESPONSES

(See Attachment B, Response Letters)

Public Hearing Notices

Legal ad for the public hearing published in the Stockton Record: January 6, 2020.
Number of Public Hearing notices: 68
Date of Public Hearing notice mailing: January 3, 2020.

Referrals and Responses

- **Project Referral with Environmental Determination Date:** November 18, 2019
- **Office of Planning and Research State Clearinghouse #:** N/A

Agency Referrals	Response Date - Referral
County Departments	
Ag Commissioner	
Assessor	
Community Development	
Buidling Division	
Fire Prevention Bureau	
Public Works	12/6/2019
Environmental Health	12/5/2019
General Services	
Sheriff Office	
Surveyor	
State Agencies	
A.B.C.	
Department of Transportation	
District 10	
Division of Aeronautics	
C.H.P.	
C.R.W.Q.C.B.	11/26/2019
C.V.F.P.B.	
Fish & Wildlife, Division:	
O.E.S.	
Federal Agencies	
F.A.A.	
F.E.M.A.	11/25/2019
Army Corps of Engineers	

Agency Referrals	Response Date - Referral
Local Agencies	
A.L.U.C.	
CalWater	
City of Stockton	
Motezuma Fire District	
Mosquito & Vector Control	
S.J.C.O.G.	
San Joaquin Farm Bureau	
San Joaquin Air Pollution Control District	
S.E.W.D. Irrigation District	
Stockton Municipal Airport	
Stockton Unified School District	
Miscellaneous	
A.T.&T.	
B.I.A.	
Builders Exchange	
Carpenters Union	
Haley Flying Service	
Kathy Perez	
P.G.&E.	11/26/2019
Precissi Flying Service	
Sierra Club	

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ANALYSIS

Background

On July 5, 1989, the Community Development Department approved Minor Subdivision No. MS-89-0080, to subdivide a 24.84-acre parcel into a 3.0-acre homesite parcel and a 21.84-acre remainder parcel. The remainder parcel is the subject parcel for this application.

On March 2, 2005, the Community Development Department approved Second Unit Dwelling No. PA-0500120. This single-family residence located on the southern portion of the property is the applicant's primary residence. A tenant currently occupies the single-family residence located closest to East River Road. The property owner is currently farming the property and is seeking the variance to facilitate a subdivision so that he can continue to live on-site and farm the land in almonds without the responsibility of maintaining two (2) homes.

CEQA Exemption

Pursuant to the California Environmental Quality Act (CEQA), a project is not defined by the application, but the whole of an action that has the potential for resulting in impacts to the environment. Since the two residences are existing, the Community Development Department determined that the proposed project is exempt from CEQA under a Class 1 Categorical Exemption (CEQA Guidelines Section 15301) for "Existing Facilities" which states that projects involving existing structures or facilities on the same site with negligible or no expansion of an existing use are exempt from CEQA review. In addition, the project is exempt from CEQA under CEQA Guidelines Section 15061(b)(3), which states that the project is exempt from CEQA if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Policy Consideration

Pursuant to Development Title Section 9-827.5, the Planning Commission is required to make three (3) findings in the affirmative to approve the Variance application. The applicant submitted findings for the approval of the application. The Community Development Department has reviewed the applicant's findings and recommends that the Planning Commission deny the Variance application because Findings Number 1 and Number 2 cannot be made in the affirmative.

Finding 1: Special Circumstances

Because of the special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the regulation deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Applicant's Statement:

> *"The Variance seeks the ability to create a parcel of less than the 40-acre minimum proposed by the Code for the purpose of allowing Mr. Van Dyk to continue residing on and farming the property without the burden of maintaining a second residence on the property. The intent and purpose of this variance request are in accord with County policies promoting the continued family farming. Mr. Van Dyk desires to continue to reside on and farm the larger parcel, while conveying Residence 1 to a purchaser who desires 2-acres near town without the obligation to maintain a farm".*

"The property has already been developed with the residential uses. Mr. Van Dyk simply seeks the right to sell a portion of the developed property to the occupant".

- **This finding cannot be made because the subject parcel has no special circumstances which would deprive it of privileges enjoyed by other property in the vicinity and under identical zoning classification. The applicant's proposed finding that the parcels surrounding the subject parcel are similar or smaller in size does not constitute a finding of deprivation. The surrounding parcels that are below 40-acres in size are non-conforming parcels in the AG-40 zone, created under the regulations in place at the time of subdivision.**

Finding 2: No Special Privileges

The granting of the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

Applicant's Statement:

"Notwithstanding the AG-40 zoning designation, a quick survey of AG-40 zoned properties within a 1-mile radius of the Mr. Van Dyk's property reveals that a substantial number, if not a majority, are well below the 40-acre minimum. In fact along E. River Road, within a quarter mile of the property there are no fewer than eight 1-5 acre parcels primarily dedicated to single family residential use. (see, e.g., APNs 24523038 [1.02 ac]; 24523042 [3.0 ac], 24523055 [0.62 ac]; 24523054 [2.44 ac], 24523052 [4.42 ac]; 24523041 [1.0 ac]; 24523036 [2.0 ac]; 24523014 [1.22 ac]; 24524015 [1.0 ac]".

- **This finding cannot be made because granting this Variance will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated. Parcels in the vicinity of the project site that are below the forty (40) acre minimum were created consistent with the General Plan, zoning, and code requirements that were in effect at the time of creation. Surrounding property owners within the vicinity and with the same zoning classification are not permitted to subdivide parcels to less than the 40-acre minimum unless a specific Development Title exception applies. The exceptions to meeting the zone minimum include subdividing properties to create homesite parcels, homesite parcels for financing purposes, parcels for certain specified uses, parcels for dwellings on the same lot, or parcels based on lot size averaging. The subject parcel does not meet the requirements for any of these exceptions.**

Finding 3: Use Authorized

The Variance will not authorize a use or activity, which is not otherwise expressly authorized by the regulation governing the parcel of property.

Applicant's Statement:

"The existing/proposed single-family residential and agricultural orchard uses of the property are authorized in the AG-40 zone by the Development Title. See, TABLE 9-605.2".

- **This finding can be made because the Variance application does not authorize a use that is not otherwise expressly authorized by the General Plan or Development Title. The underlying subdivision, which would be required if the Variance application is approved, would permit the applicant to continue farming the parcel without the responsibility of maintaining a second residence. Crop production is a**

permitted use in the Development Title in the AG-40 (General Agriculture, 40-acre minimum) zone.

Minor Subdivision

If the Variance application is approved by the Planning Commission, the applicant must submit an application for a Minor Subdivision to complete the underlying project. The Minor Subdivision will be reviewed using the Staff Review with Notice procedure pursuant to Development Title Section 9-860. A fee is associated with this application.

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RECOMMENDATION

It is recommended that the Planning Commission:

1. Deny Variance No. PA-1900247 based on the inability to make Findings Number 1 and 2 contained in the Staff Report. (Attachment D, Findings)

Attachment A
Site Plan

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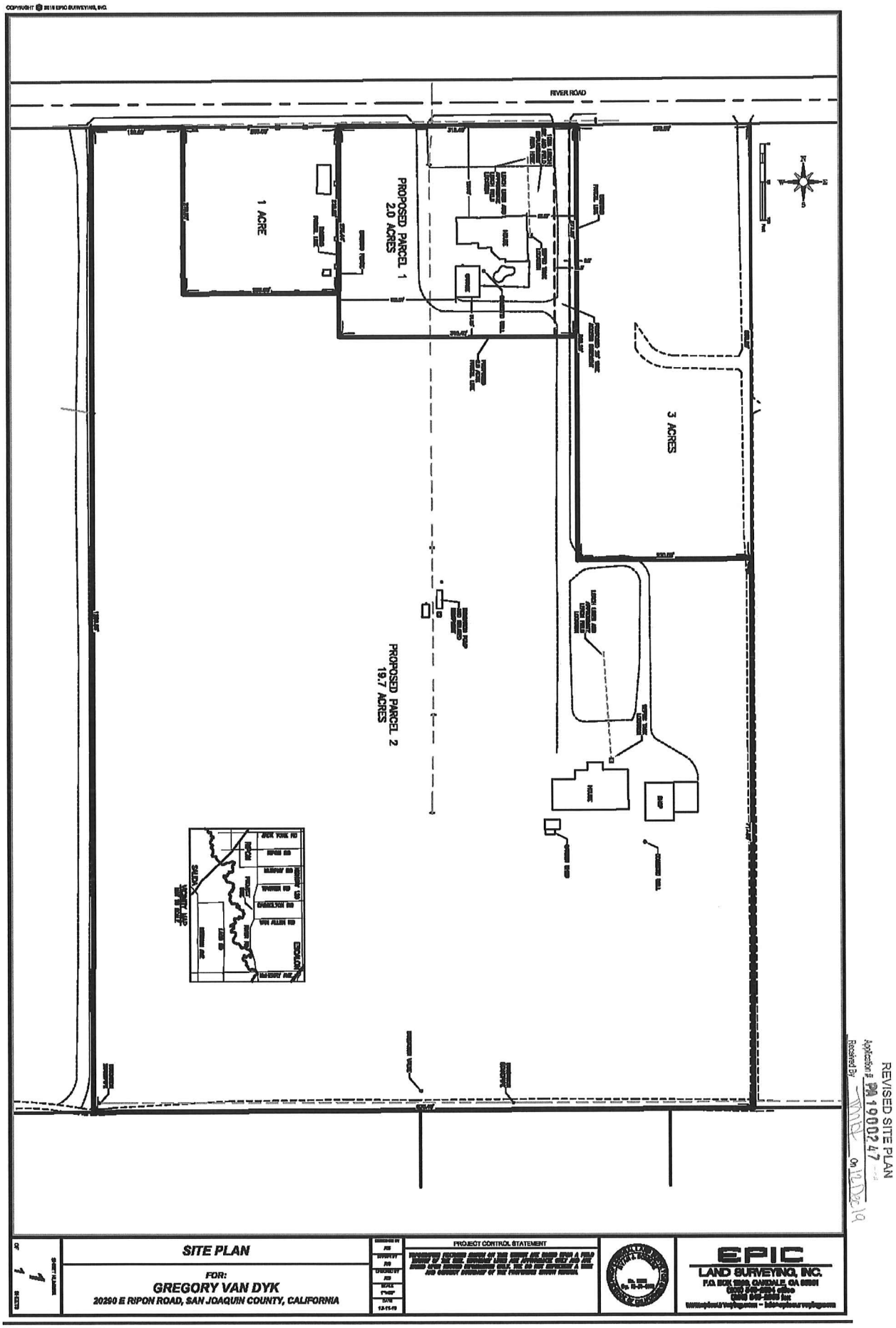
RIVER ROAD
PROPOSED PARCEL 1
2.0 ACRES
1 ACRE
3 ACRES
PROPOSED PARCEL 2
19.7 ACRES
SITE PLAN
FOR:
GREGORY VAN DYK
20290 E RIPON ROAD, SAN JOAQUIN COUNTY, CALIFORNIA
PROJECT CONTROL STATEMENT
EPIC
LAND SURVEYING, INC.
REVISED SITE PLAN
Application # PA 1900247
Received By
On 10 Dec 19

Attachment B
Response Letters

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SAN JOAQUIN
COUNTY
Greatness grows here.

Public Works
Working for YOU

Department of Public Works

Kris Balaji, Director of Public Works

Fritz Buchman, *Deputy Director/Development*
Jim Stone, *Deputy Director/Operations*
Najee Zarif, *Interim Deputy Director/Engineering*
Kristi Rhea, *Manager of Strategic Initiatives*

December 6, 2019

MEMORANDUM

TO: Community Development Department
CONTACT PERSON: Giuseppe Sanfilippo

FROM: Alex Chetley, Engineering Services Manager AC
Development Services Division

SUBJECT: PA-1900247; A Variance application to reduce the minimum lot size in the AG-40 zone (General Agriculture, 40-acre minimum) from forty (40) acres to two (2) acres. The underlying project is a Minor Subdivision of a 21.84 acre parcel into a 2-acre parcel and a 19.84 acre parcel, to be submitted at a later date. The original parcel contains one (1) single-family residence and one (1) second unit dwelling; located on the south side of East River Road, 2,650 feet east of South Carrolton Road, east of Ripon. (Supervisorial District 4)

PROPERTY OWNER: Jo Ann Helen Van Dyk

APPLICANT: Shore, McKinley, Conger & Jolley

ADDRESS: 20306 E. River Road, Ripon

APN: 245-230-39 & -43

INFORMATION:

The site is not currently located within Federal Emergency Management Agency Designated Flood Hazard Area.

East River Road has an existing right-of-way of 60 feet and planned right-of-way of 84 feet.

RECOMMENDATIONS:

1. None.

AC:CH

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COUNTY
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Environmental Health Department

Kasey Foley, REHS, Interim Director

PROGRAM COORDINATORS
Robert McClellon, REHS
Jeff Carruesco, REHS, RDI
Willy Ng, REHS
Muniappa Naidu, REHS
Michael Kith, REHS
Melissa Nissim, REHS

December 5, 2019

To: San Joaquin County Community Development Department
Attention: Giuseppe Sanfilippo

From: Aaron Gooderham; (209) 468-3442
Environmental Health Specialist

RE: **PA-1900247 (VR), Referral, SU0012656**
20306 E. River Rd. Ripon

The Environmental Health Department has the following comment: All Onsite Wastewater Treatment Systems (OWTS) must comply with San Joaquin County Local Agency Management Program (LAMP) and current OWTS standards.

Pacific Gas and Electric Company

Plan Review Team
Land Management

PGEPlanReview@pge.com

6111 Bollinger Canyon Road 3370A
San Ramon, CA 94583

November 26, 2019

Giuseppe Sanfilippo
San Joaquin County
1810 E Hazelton Ave.
Stockton, CA 95205

Ref: Gas and Electric Transmission and Distribution

Dear Mr. Sanfilippo

Thank you for submitting 20306 East River Rd - PA-1900247 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.

2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.

3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team
Land Management

Attachment 1 – Gas Facilities

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: http://usanorth811.org/wp-content/uploads/2017/05/CA-LAW-English.pdf

1. Standby Inspection: A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.

2. Access: At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

3. Wheel Loads: To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. Grading: PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.

5. Excavating: Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 12 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches [24/2 + 24 + 36/2 = 54] away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 12 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible (90° +/- 15°). All utility lines crossing the gas pipeline must have a minimum of 12 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.

11. Cathodic Protection: PG&E pipelines are protected from corrosion with an "Impressed Current" cathodic protection system. Any proposed facilities, such as metal conduit, pipes,

service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

Attachment 2 – Electric Facilities

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as "**RESTRICTED USE AREA – NO BUILDING.**"

2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.

3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&'s facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.

4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 15 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.

5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.

6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.

7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.

8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for

proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (https://www.dir.ca.gov/Title8/sb5g2.html), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 (http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

CALIFORNIA
Water Boards

GAVIN NEWSOM
GOVERNOR

JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

26 November 2019

Giuseppe Sanfilippo
San Joaquin County
Community Development Department
1810 East Hazelton Avenue
Stockton, CA 95205

CERTIFIED MAIL
7019 0700 0002 0111 6098

COMMENTS TO REQUEST FOR REVIEW FOR THE APPLICATION REFERRAL, PA-1900247 (VR) PROJECT, SAN JOAQUIN COUNTY

Pursuant to the San Joaquin County Community Development Department's 18 November 2019 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Application Referral* for the PA-1900247 (VR) Project, located in San Joaquin County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office

of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website: http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at: https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf

In part it states:

> *Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*
>
> *This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits[1]

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

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[1] Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

Clean Water Act Section 401 Permit – Water Quality Certification
If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State
If USACE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Waste Discharge Requirements – Discharges to Land
Pursuant to the State Board's Onsite Wastewater Treatment Systems Policy, the regulation of the septic system may be regulated under the local agency's management program.

For more information on waste discharges to land, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_land/index.shtml

Dewatering Permit
If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board

General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at: http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf

Regulatory Compliance for Commercially Irrigated Agriculture
If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program.

There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: https://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/regulatory_information/for_growers/coalition_groups/ or contact water board staff at (916) 464-4611 or via email at IrrLands@waterboards.ca.gov.

2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 11-100 acres are currently $1,277 + $8.53/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the

Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at IrrLands@waterboards.ca.gov.

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/help/permit/

If you have questions regarding these comments, please contact me at (916) 464-4812 or Jordan.Hensley@waterboards.ca.gov.

Jordan Hensley
Environmental Scientist

U.S. Department of Homeland Security
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA. 94607-4052

FEMA

November 25, 2019

Giuseppe Sanfilippo, Project Manager
San Joaquin County
Community Development Department
1810 East Hazelton Avenue
Stockton, California 95205

Dear Mr. Hernandez:

This is in response to your request for comments regarding Application Referral Application Number PA 1900247 (VR), Variance application (APN/Address: 245-230-39, -43/20306 East River Road, Ripon) (Supervisorial District 4).

Please review the current effective Flood Insurance Rate Maps (FIRMs) for the County of San Joaquin (Community Number 060299), Maps revised October 20, 2016 and City of Ripon (Community Number 060457), Maps revised October 16, 2009. Please note that the City of Ripon, San Joaquin County, California is a participant in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows:

- All new subdivision proposals that are greater than 5 acres or 50 lots (whichever is the lesser) include within such proposals base flood elevation data.

- All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.

- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any ***development*** must not increase base flood elevation levels. **The term *development* means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.** A hydrologic and hydraulic analysis must be performed *prior* to the start of

development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at http://www.fema.gov/business/nfip/forms.shtm.

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community's floodplain manager for more information on local floodplain management building requirements. The Ripon floodplain manager can be reached by calling Ken Zuidervaart, Director, Planning and Economic Development, at (209) 599-2108. The San Joaquin County floodplain manager can be reached by calling John Maguire, Engineering Services Manager, at (209) 953-7617.

If you have any questions or concerns, please do not hesitate to call Brian Trushinski of the Mitigation staff at (510) 627-7183.

Sincerely,

Gregor Blackburn, CFM, Branch Chief
Floodplain Management and Insurance Branch

cc:
Ken Zuidervaart, Director, Planning and Economic Development, City of Ripon
John Maguire, Engineering Services Manager, Flood Management Division, Public Works Department, San Joaquin County
Ray Lee, WREA, State of California, Department of Water Resources, North Central Region Office
Patricia Rippe, Floodplain Manager Specialist, DHS/FEMA Region IX
Alessandro Amaglio, Environmental Officer, DHS/FEMA Region IX

Attachment C
Environmental Review

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NOTICE OF EXEMPTION

TO: ☒ Office of Planning & Research
P. O. Box 3044, Room 212
Sacramento, California 95812-3044

☒ County Clerk, County of San Joaquin

FROM: San Joaquin County
Community Development Department
1810 East Hazelton Avenue
Stockton, California 95205

Project Title: Variance No. PA-1900247

Project Location - Specific: The project site is on the south side of East River Road, 2,650 east of South Carrolton Road, Ripon. (APN/Address: 245-230-39, -43/20306 East River Road, Ripon, CA) (Supervisorial District: 4)

Project Location – City: Ripon

Project Location – County: San Joaquin County

Project Description: A Variance application to reduce the minimum lot size in the AG-40 (General Agriculture, 40-acre minimum) zone from forty (40) acres to two (2) acres. The underlying project is a Minor Subdivision of a 21.84-acre parcel into a 2-acre parcel and a 19.84-acre parcel, to be submitted at a later date. The original parcel contains one (1) single-family residence and one (1) second-unit dwelling.

The Property is zoned AG-40 (General Agriculture, 40-acre minimum) and the General Plan designation is A/G (General Agriculture).

Project Proponent(s): Jo Ann Helen Van Dyk Trust / Shore, McKinley, Conger, & Jolley (c/o Brett Jolley)

Name of Public Agency Approving Project: San Joaquin County Community Development Department

Name of Person or Agency Carrying Out Project: Giuseppe Sanfilippo, Associate Planner
San Joaquin County Community Development Department

Exemption Status:
Categorical Exemption Class 1, CEQA Guidelines Section 15301, and Section 15061(b)(3)

Exemption Reason:
Processed under the provisions of the California Code of Regulations Section 15301 and Section 15061 (b)(3) which are exempt from CEQA.

This project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 and Section 15061 (b)(3). Article 19 Categorical Exemptions includes a list of classes of projects that have been determined not to have a significant effect on the environment and that are, therefore, exempt from the provisions of CEQA. Section 15301 lists Class 1 projects, which consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The proposed project involves existing structures or facilities on the same site with negligible or no expansion of an existing use and, therefore, the project is not subject to CEQA.

Section 15061(b)(3) states that "CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it 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." There is no possibility that this project may have a significant effect on the environment and, therefore, the project is not subject to CEQA.

Lead Agency Contact Person:
Giuseppe Sanfilippo Phone: (209) 468-0227 FAX: (209) 468-3163 Email: gsanfilippo@sjgov.org

Signature: _____ Date: _____

Name: Domenique Martorella Title: Deputy County Clerk

Signed by Lead Agency

Date Received for filing at OPR: _____

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Attachment D
Findings

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FINDINGS FOR VARIANCE

Finding 1: Special Circumstances

Because of the special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the regulation deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

- **This finding cannot be made because the subject parcel has no special circumstances which would deprive it of privileges enjoyed by other property in the vicinity and under identical zoning classification. The applicant's proposed finding that the parcels surrounding the subject parcel are similar or smaller in size does not constitute a finding of deprivation. The surrounding parcels that are below 40-acres in size are non-conforming parcels in the AG-40 zone, created under the requirements at the time of subdivision.**

Finding 2: No Special Privileges

The granting of the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

- **This finding cannot be made because granting this Variance will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated. Parcels in the vicinity of the project site that are below the forty (40) acre minimum were created consistent with the General Plan, zoning, and code requirements that were in effect at the time of creation. Surrounding property owners within the vicinity and with the same zoning classification are not permitted to subdivide parcels to less than the 40-acre minimum unless a specific Development Title exception applies. The exceptions to meeting the zone minimum include subdividing properties to create homesite parcels, homesite parcels for financing purposes, parcels for certain specified uses, parcels for dwellings on the same lot, or parcels based on lot size averaging. The subject parcel does not meet the requirements for any of these exceptions.**

Finding 3: Use Authorized

The Variance will not authorize a use or activity, which is not otherwise expressly authorized by the regulation governing the parcel of property.

- **This finding can be made because the Variance application does not authorize a use that is not otherwise expressly authorized by the General Plan or Development Title. The underlying subdivision, which would be required if the Variance application is approved, would permit the applicant to continue farming of the parcel without the responsibility of maintaining a second residence. Crop production is a permitted use in the Development Title in the AG-40 (General Agriculture, 40-acre minimum) zone.**