



Planning Commission Staff Report

PLANNING COMMISSION HEARING OCTOBER 15, 2003

Request: A Tentative Parcel Map to divide 871 acres into 12 parcels ranging from 40-85 acres; a Variance to the frontage requirements for 11 parcels and a variance to the access improvement standards for the FPARC zone district.

Location: 9413 South Butte Road, Sutter

APN: 13-200-018, 073 and 096

File: PM #01-08 and VR #01-02

Planner: Lisa Wilson

| Property Owner | Applicant | Representative |
|--|--|---|
| Cal-Ontario, Inc. 9413 South Butte Road Sutter, CA 95982 | Pramod & Lucy Kumar 9413 South Butte Road Sutter, CA 95982 | George Carpenter Hefner, Stark & Marois 2150 River Plaza Drive, Suite 450 Sacramento CA 95833-3883 |

Staff Recommendation

Staff recommends approval of the parcel map to create 12 parcels and denial of the variance to the road frontage and standards requirement.

Project Description

The project is a request for a Tentative Parcel Map to create 12 parcels ranging in size from 40 acres to 85 acres in the FPARC zoning district and a Variance to the frontage requirements and access improvement standards to allow 11 parcels to be created without any County road frontage (applicant proposes access from a private, 15' wide, gravel road).

Setting

The project site is located at 9413 South Butte Road, wrapping around the existing Southridge Golf Course.

Currently the 871 acre project site is utilized for cattle grazing. The property also contains gas wells, a gas collection piping system and multiple historic sites and historic rock walls.

Adjacent land uses, zoning and general plan designations for the surrounding properties are summarized below.

| | Land Use | Zoning Designation | General Plan Designation |
|---|--|---|---------------------------------|
| North | Agriculture | AG (General Agriculture) | AG 80 |
| South | Agriculture, ag homesites, abandoned class two waste disposal site, stable | AG and FPARC (Food Processing, Agriculture, Recreation Combining) | AG 20, AG 80 and FPARC |
| East | Agriculture, ag homesites | AG (General Agriculture) | AG 20, AG 80 |
| West | Agriculture, open pit surface mine | FPARC (Food Processing, Agriculture, Recreation Combining) and AG (General Agriculture) | AG 80 and FPARC |
| NOTE - Southridge Golf Course cuts through the middle of the subject parcel. Adjacent land uses listed above are to the exterior of the project boundaries. | | | |

Background

The project site is located within the open space portion of the FPARC (Food Processing, Agriculture, Recreation Combining) District. The FPARC zone is peculiar in that it was created by a vote of the people, rather than adopted by the Board of Supervisors. At the time this zoning was established (through the initiative process) environmental analysis was not required, however, today's CEQA standards would require environmental review.

The manner in which the FPARC zone is written has created some confusion over the years with some believing that the FPARC open space designation is the same zone as the general agriculture zone (AG) that overlies the majority of the County; however, this is incorrect and discussed as follows.

Below is a comparison of the permitted uses within the AG and the open space FPARC zone designations. It should be noted that some of the FPARC uses could have the potential to create significant impacts even though structures are not necessarily present. These permitted uses do not themselves require environmental analysis and can be accomplished by simply obtaining the necessary building permits (in both the AG and the FPARC zones).

If a project requires a use permit, an environmental analysis will be conducted on the proposed project.

| AG zone permitted uses | FPARC open space permitted uses |
|---|---|
| accessory buildings | open space uses such as golf courses and recreational areas |
| non-commercial ag processing facilities | undeveloped open space |
| crop and tree farming | general farming and tree growing |
| grazing | rice and cotton farming |
| animal husbandry | grape wine yards |
| wholesale nurseries, greenhouses | golf courses and country clubs |
| apiaries, honey extraction plants | golf driving ranges and training facilities |
| conversion to permanent habitat land | gun clubs and shooting/skeet ranges |
| residences | stables and boarding facilities |
| residential care home | horse riding and training facilities |
| non-commercial ag equipment repair | privately operated hiking, riding trails |
| small family day care home | training range for race horses |
| wayside stands for display and sale of ag products produced in the property | fishing ponds |
| | RV parking facilities |

Previous applications for this property (or portions of)

1982 - The Zoning and General Plan of the property was changed by a vote of the County electorate through an initiative. The former zoning of AG (General Agriculture) was changed to FPARC (Food Processing Agriculture and Recreation Combining). At the time this zoning was established (through the initiative process) there was no environmental analysis required. Such initiatives require environmental analysis today.

1988 - A Zoning Code Amendment (ZC #22) was submitted to make several changes to the FPARC uses, including allowing residential uses in the open space portion of FPARC. A consultant began preparation of a draft EIR; however, the draft EIR was never completed and no action was taken.

1990 - An initiative was proposed to expand the allowed uses to those similar to ZC #22 in 1988; however, this second initiative was defeated.

1991 - A Lot Line Adjustment (LLA #91-40) for Cal-Ontario was approved for four parcels north of South Butte Road. Parcel sizes were changed from a range of 43 to 505 acres to a new range of 81-617 acres.

1996 - The Planning Commission approved a three parcel tentative parcel map (PM #96-03) and variance (VR #96-05) to allow the subdivision of 1,010 acres (this project site with some additional land). The variance was to allow the creation of 3 parcels without frontage on a County approved and maintained road. In approving the variance, the Commission required that all parcels have a 60 foot access easement to a public road and that a 22 foot wide paved section be provided within the easement for all lots without frontage on a County road. That approval resulted in the paved road to the Southridge clubhouse that is used today.

1999 - The Planning Commission approved a tentative subdivision map (TSM #99-01) for John Beutler for the subdivision of 250 acres of FPARC lands, in the industrial portion, into 13 lots. All streets in the Beutler subdivision were required to be fully improved with curbs, gutter, sidewalks and full width street improvements.

2001 - Lot Line Adjustment (LLA #01-04) modified the boundaries of six parcels, placing the Southridge golf course and driving range on one parcel of 214 acres. The remaining parcels ranged from 7 to 127 acres.

2002 - The Planning Commission approved use permit UP #02-25 on an adjacent FPARC parcel owned by the Kumar's to place a primary dwelling on their property in addition to the caretaker unit.

2002 - Lot Line Adjustment (LLA #02-30) was approved for four FPARC parcels owned by Cal-Ontario. This adjustment placed the golf course on one parcel and the driving range on another parcel of 47 acres. A 14 acre parcel was created and the remaining acreage became 871 acres that are the subject of this application.

2003 - Application for a parcel map and variance to create 21 parcels, each over 40 acres, was submitted. This application was incomplete and was later revised to become the current application under consideration (PM #01-08 and VR #01-02). The applicant was notified an EIR would be required for the application to be processed. The applicant's representative disagreed with that determination and requested the application go forward. Staff recommended quick denial (denial without environmental analysis being prepared) of both the parcel map and variance at the April 16, 2003 Planning Commission meeting and indicated an EIR would be required for any reconsideration of the application. The Planning Commission action was to continue the application to an unspecified date in order for staff to prepare the environmental analysis. The applicant appealed the Environmental Control Officer's decision to require an EIR to the Board of Supervisors. During the May 20, 2003 appeal hearing, the applicant's representative indicated the land would continue to be used for agriculture, most likely grazing. The Board of Supervisors determined a Mitigated Negative Declaration was the appropriate environmental analysis for the described project and directed staff to process the application.

Analysis

Parcel Map

The applicant is requesting approval of a parcel map to create 12 parcels. The proposed parcels are sized as follows:

| Parcel # | Acreage | | Parcel # | Acreage |
|----------|---------|--|----------|---------|
| 1 | 53.0 | | 7 | 83.0 |
| 2 | 85.0 | | 8 | 82.1 |
| 3 | 80.1 | | 9 | 80.9 |
| 4 | 40.0 | | 10 | 80.8 |
| 5 | 81.0 | | 11 | 80.5 |
| 6 | 80.9 | | 12 | 42.0 |

The proposed parcels conform to the General Plan and Zoning Code with the exception of the proposed variance to the access and improvement standards.

In early 2003, the Board of Supervisors responded to an appeal by the applicant over the appropriate environmental document for the project and determined that a Mitigated Negative Declaration was the appropriate environmental review for the proposed Tentative Parcel Map based on the applicant stating the land will be used for agricultural uses (see representatives letter at Attachment H).

The applicant is requesting approval of a land division and related variance, both of which are defined as a “project” by the California Environmental Quality Act (CEQA). CEQA requires an evaluation of the potential impacts of a project and the inclusion of conditions to reduce and/or prevent those impacts to the extent possible. Therefore staff prepared a mitigated negative declaration which restricts development upon the land to the applicant’s proposed agricultural use. By including this restriction, the land may be divided and used for the applicant’s stated purpose. If, at a future time, a specific project is proposed for any of the parcels that requires an entitlement, staff will analyze that project and the potential impacts, as required by CEQA.

Variance

This application for a variance is to allow 11 of the 12 parcels to be created without frontage on a County approved and maintained road. The applicant also proposes that a private, 15’ wide, gravel road is sufficient to serve as access because the only use is agricultural; however, the proposed road does not meet required County road standards to create the parcels.

The frontage and improvement requirements are found in Zoning Code Section 1500-1740(g) “Access” and Subdivision Ordinance section 1400-510 “Access to Public Streets” and 1400-520(b) Minimum Standards. These standards must be complied with unless the Planning Commission grants a variance.

In order to approve a variance, findings must be made in accordance with California Government Code Section 65906 and Sutter County’s Zoning Code Section 1500-8412 which states that a Variance can only be granted if the following findings can be made:

1. *That special circumstances apply to the property, including size, shape, topography, location or surroundings.*

The shape of the parcel is only unusual in that it is large and has irregular boundaries. However, neither the size nor the irregular boundaries of these parcels prevent development of this land for any of the permitted FPARC uses. The Zoning Code allows the creation of parcels only if each has frontage on a County approved and maintained road and that the access ways be improved with a minimum of 4 inches of Class II aggregate base rock and 2 inches of asphalt concrete. There is no special circumstance to prevent the required paving of the property, thereby providing the required frontage. The applicant has not adequately demonstrated compliance with this variance finding. Therefore, staff recommends denial of the variance.

2. *That strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.*

The property can be developed under current zoning code standards, thus the property owner is not deprived of development opportunities enjoyed by other properties in the vicinity.

3. *That the granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is located.*

The granting of a variance in this case is a grant of special privilege inconsistent with the limitations upon other properties in the vicinity because the property can be developed without the request for a parcel map. The only other land division within FPARC was in the industrial portion (1999 Beutler map). That approval contained requirements for paving all streets and providing curbs and gutters.

4. *That the variance from the strict interpretation of this code represents the minimum deviation possible to enable reasonable development of the property.*

The Zoning Ordinance and the Subdivision Ordinance both require access and frontage to each parcel from a State or County approved and maintained road. If the proposed parcels are required to provide 60 feet of frontage on a County maintained road, the need for a variance is eliminated.

Environmental Analysis

An Initial Study was prepared for this project in accordance with the California Environmental Quality Act and the CEQA Guidelines. The study revealed that the project, as proposed, could have a significant impact on the environment; however mitigation measures have been recommended by staff to reduce the possible impacts to a less-than-significant level. No written comments have been provided which present evidence that the project will have a significant impact on the environment. Therefore, staff recommends the Commission adopt the attached Mitigated Negative Declaration and Mitigation Monitoring Program contained therein. (Attachment E)

Summary

Staff recommends approval of the tentative parcel map to create 12 parcels, with conditions to provide an approved County maintained road. Staff evaluated the map based on current County policies/standards and was constrained by the project with minimal, or no, road frontage. Therefore, to obtain approval of a map, the applicant must either obtain a variance or provide a County maintained road. Staff cannot support the variance request because the project has not demonstrated the ability to meet the findings necessary to approve this entitlement. Therefore, staff does support the parcel map request with the condition of a County maintained road.

Recommended Action

Should the Planning Commission agree with staff's recommendation, the following motions would be appropriate:

1. "The Planning Commission finds the proposed mitigated negative declaration was prepared in accordance with the California Environmental Quality Act and the Guidelines."
2. "The Planning Commission approves Parcel Map #01-08 to allow the creation of 12 parcels as depicted on the attached Tentative Parcel Map, based on the recommended findings and conditions contained in this staff report."
3. "The Planning Commission denies Variance #01-02 allowing the creation of 11 parcels without the required frontage on a County approved and maintained road, and to the improvement standards requiring paving, based on the recommended findings contained in this staff report."

CEQA Findings

Based upon information contained in the staff report and/or testimony received at the public hearing, the Planning Commission recommends the following findings:

- A. In accordance with the California Environmental Quality Act and the Guidelines, an Initial Study was prepared to analyze the potential impacts of the proposed Parcel Map and Variance for the subject property. The study revealed that the project, as proposed, could have a negative impact on the environment; however, with the mitigation measures identified in the Initial Study, all potential impacts would be reduced to a level of less than significant. No written comments have been provided which present evidence that the project will have a significant impact on the environment. Therefore, the proposed Mitigated Negative Declaration and Monitoring Program attached to this staff report are appropriate.

- B. The Planning Commission has independently reviewed, analyzed, and considered the Initial Study and Mitigated Negative Declaration prior to making its recommendation on the project and finds that the Mitigated Negative Declaration reflects the independent judgment of the County of Sutter.
- C. The Planning Commission has reviewed, analyzed, and considered the request and public testimony prior to making its recommendation and finds that the Parcel Map will not be detrimental or injurious to property and improvements or to the general welfare of the County.

General Plan

- 1. Finding: The County shall not approve any proposed development project unless the following findings are made, based on substantial evidence in the record:
 - (a) The parcel map is consistent with the adopted General Plan and Zoning Ordinance.
 - (b) The proposal complies with all other applicable requirements of state law and local ordinances.

Evidence:

- (a) The proposed project has been reviewed and is consistent with the General Plan. The land use being proposed is agriculture and will be located on an FPARC zoned parcel, consistent with the General Plan.
- (b) The proposed project parcel map has little or no probability of causing substantial detriment or interference with the adopted General Plan. The proposed project is consistent with the General Plan Land Use Map.
- (c) The proposed parcel map complies with all other applicable requirements of state law and local ordinances, with exception of the Variance request. The Variance request would conflict with the Zoning Ordinance and the Subdivision Ordinance.

Tentative Parcel Map Findings

- 1. Finding: The creation of the proposed 12 parcels will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

Evidence: The proposed parcel map will be consistent with the County's Zoning Code and General Plan without the Variance. Furthermore, staff has identified no effects from the proposal that would result in a significant detrimental impact on

adjoining or neighboring properties if the conditions, as recommended by staff, are adopted.

Variance Findings

1. Finding: That special circumstances apply to the property, including size, shape, topography, location or surroundings.

Response: There are no special circumstances that apply to the property that warrant the approval of a variance. The property has an unusual shape but does not prohibit development under the current zoning code standards.

2. Finding: That strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

Response: The property can be developed under current zoning code standards, thus the property owner is not deprived of development opportunities enjoyed by other properties in the vicinity.

3. Finding: That the granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is located.

Response: Approval of the variance would result in a grant of special privilege. The only other land division in the FPARC zone was required to provide frontage and full street improvements to County standards.

4. Finding: That the variance from the strict interpretation of this code represents the minimum deviation possible to enable reasonable development of the property.

Response: The property currently has opportunity for development without the variance and without the parcel map. The request for a variance from the standards grants an economic privilege.

Attachments

- A Conditions of Approval
- B Study Sketch
- C Reduced size parcel map
- D Staff/Agency Comment letters
- E Environmental Checklist Form
- F Minutes from the May 20, 2003 Board of Supervisors appeal hearing
- G Minutes from the April 16, 2003 Planning Commission hearing
- H Representative's letter defining the use of the property

Attachment "A"
Conditions of Approval
Parcel Map #01-08
Kumar/Cal-Ontario, South Butte Road

This application is to subdivide 871 acres into 12 parcels ranging from 40-85 acres for Cal-Ontario, Inc (Pramod & Lucy Kumar).

Prior to Recordation of the Map

1. All County roads within the development site must be improved to current County standards for rural local roads. Improvement plans and construction of the roadways and other public works shall be approved by the Director of Public Works. Owner shall grant a 40 foot road right of way, with 10 foot public utility easement on each side, to the County of Sutter. (PW)
2. Access roads shall comply with Article 9, Section 901 and 902 of the 1997 Uniform Fire Code. (F)
3. All rights of way and easements, public or private, shall be shown on the final map along with the recording references. (PW)
4. Where existing rights of way are prescriptive or where their locations cannot be determined to a reasonable certainty, per official records, the subdivider shall grant to Sutter County rights of way to all roads within the lands being subdivided which are also shown as County maintained on the current County maintained mileage maps. (PW)
5. No grading or alteration of the existing terrain that would direct additional waters to the County road shall be done without the approval of the Department of Public Works. Additionally, no grading or alteration of the existing terrain that would direct additional waters from any one lot to any adjacent lot is allowed. This condition shall be so stipulated on the final map. (PW)
6. All tests and investigations required to assure, to a reasonable certainty, that the lots created by this subdivision meet the minimum standards for its intended use shall be conducted prior to filing of a parcel or final map. (PW)
7. Encroachment permits are to be obtained from the Public Works Department for any new driveway or road connections to be made to existing County roads. Construct new driveway(s) to current County standards. (PW)
8. If sufficient rights of way do not already exist, additional rights of way and/or public utility easements shall be deeded to Sutter County to provide the specified one-half widths of the following indicated roads:
South Butte Road 33.0' RW + 10.0' P.U.E. (PW)

Ongoing

9. There shall be no development upon the land other than agricultural well(s) that may be needed for allowed agricultural pursuits and the minor improvements to existing roads as determined by a licensed engineer. This includes no structures upon the parcels, unless or until an adequate analysis of the potential impacts from the proposed structure(s), or road widening activities, is provided. (MM)
10. If any ground disturbing/ development activities occur, including a change in proposed use or rezoning, a professional archaeologist shall be consulted to determine the impact of possible development on the recorded sites within the project boundaries. This professional will be able to determine preservation and/or mitigation measures for the recorded sites located within the project boundaries. (MM)
11. If any potential prehistoric, protohistoric, and/or historic cultural resources are encountered during any phase of project operations, all work shall cease in the area of the find pending an examination of the site and materials by a professional archaeologist. (MM)

If the Planning Commission is going to approve the variance, the below condition must be included in substitution for above condition #1.

1. The following statement shall be placed on the final map:

“Access to the parcels created by this parcel map and shown hereon as rights of way or easements are not to be construed to indicate that a passable roadbed exists within the limits shown on this parcel map. Road construction or maintenance within these limits will not be accomplished or administered by Sutter County and is solely the responsibility of the landowners being served by the private road.” (PW)