

July 30, 2003

To: Sutter County Planning Commission

Re: Agenda Item #10, a): Public hearing on Tentative Parcel Map #03-06 to allow the subdivision of a 119-plus acre parcel into two parcels, a 2.0 acre homesite and a 117-plus acre agricultural parcel; and

Agenda Item #10, b): Public hearing on Variance #03-04 for the creation of two parcels without frontage on a County accepted and maintained road; AG (General Agricultural) District; located approximately 475 feet south of Pass Road and approximately 500 feet easterly of the intersection of Pass Road and Kellogg Road; A. P. #13-200-085; applicant/property owner - Heryford Farms (Rick Heryford) (Location: District 3 - Commissioner Barringer)

### **Current Proposal**

#### A. Project Description:

The project is the subdivision of a 119-plus acre parcel into a 2-acre home site parcel occupied by the property owner and a 117.4 acre agricultural remainder. The subject property is primarily within the County 80-acre minimum agricultural area and, therefore, a standard development rights agreement will be required on the agricultural remainder parcel. The existing 119-acre parcel does not have frontage on a County accepted and maintained road as required by the Zoning Code; therefore, a variance has also been requested for the homesite and agricultural remainder parcels for the creation of parcels without the required frontage on a County road.

The subject property contains an existing residence that is the property owner's residence. Since a development rights agreement will be required on the agricultural remainder parcel, the subdivision would not allow any additional residential use of the property. The only uses that will be allowed on the remainder parcel are those agricultural uses that are allowed under the AG District.

Access to the agricultural remainder parcel would be via a 475-foot long driveway from Pass Road. Access to the homesite parcel would be across the remainder parcel to the existing 475-foot driveway to Pass Road. The existing residence that will be on the homesite parcel is currently served from an existing well and septic system.

#### B. Environmental Consideration:

An Initial Study was prepared for this project in accordance with the California Environmental Quality Act and the Guidelines. The Study revealed that the project, as proposed, would not have a significant impact on the environment. Therefore, if the Planning Commission wishes to approve the project, staff recommends the Commission adopt the attached Negative Declaration (see Exhibit C - “Negative Declaration and Initial Study”).

**Background**

A. Property Description:

The subject property contains 119 acres with an existing residence. The property is located within the Sutter Buttes. Its northernmost area near Pass Road is relatively flat and planted in orchard. The rear portion of the site changes in elevation from approximately 160 feet mean sea level (MSL) up to 280 feet MSL and is in open grazing land but does not appear to have been used as such recently. The eastern portion of the property is planted in field crops. The property contains a small pond.

B. Surrounding Land Use, Zoning Classification and General Plan Designation:

	<b>Use</b>	<b>Zoning</b>	<b>General Plan</b>
<b>Subject Property</b>	Agricultural (Orchard, field crops, grazing land, and a small pond)	AG	Ag-80
North	Agricultural	AG	Ag-20
East	Agricultural	AG	Ag-20
South	Agricultural	FPARC	FPARC
West	Agricultural with a gas well	AG	Ag-20 & Ag-80

(See Exhibit A for study sketch.)

C. Previous Commission Actions/Policies:

In order for your Commission to approve a tentative map, the State Subdivision Map Act requires that the proposed map be consistent with the applicable General Plan and County Zoning Code. In reviewing the project in relationship to the General Plan, the following policies appear to apply:

- 6.A.-4: A landowner shall be allowed to separate his or her homesite from the original parcel. Additionally, homesites for landowner's sons or daughters shall be permitted as long as it is clearly documented that the family member is involved in the family farming operation. Divisions for this purpose shall provide, to the extent possible, for cluster housing and minimize acreage removed from farming. Applicants requesting divisions that would not provide for cluster housing shall be required to provide evidence of a physical constraint on the property that would show cluster housing is not possible or is infeasible. Development rights shall be granted to Sutter County or its designee for the remaining agricultural lands. Densities shall be limited to those permitted by the underlying agricultural land use designation.

6.A-6: Minimum parcel sizes in agriculturally designated areas shall be 20 acres in those areas containing orchard compatible soil and 80 acres in those areas with soils used primarily for row crops, field crops, and range land as shown on the Land Use Diagram. Historical uses and physical boundaries may be considered on a case by case basis. All parcels resulting from subdivisions or parcel maps shall contain the minimum required acreage for the land use designation. Homesite parcels, as permitted in Policy 6.A-4, shall not exceed 2 acres unless the Environmental Health program grants a waiver for sewage disposal, in which case the parcel may be allowed for up to 5 acres. Remainder parcels shall meet the minimum parcel size of the agricultural land use designation.

The AG District contains provisions for one-family residences as a permitted use and provides for the creation of agricultural homesite parcels by tentative map that are consistent with General Plan Policy 6.A-4.

Your Commission has previously approved a variance on the subject property in 1997 when it also approved the subdivision of the property that created the subject property (SM #97-01, Pete Carr Subdivision).

Additionally, within the last 12 years, your Commission has approved at least a dozen variances for various parcels that are within 1½ miles of the subject property and that have the same AG District zoning as the subject parcel. Each of these variances were either for the creation of parcels without frontage or for allowing the placement of a residential dwelling on a parcel that lacked required road frontage.

### **Staff Comments**

A. Public Works Department (PW):

See recommended conditions.

B. Environmental Health Division (EH):

See recommended conditions.

C. Office of the Sheriff/Coroner:

The proposed tentative map has been reviewed by this office and we find that there is no anticipated impact on our services (paraphrased).

D. Pacific Gas and Electric Company:

Any relocation of any existing PG&E facility to accommodate this project will be at the property owners' expense. There shall be no building of structures allowed under or over any of our facilities or inside any PG&E easements that may exist within the subject property.

E. Planning (P):

The proposed tentative map would subdivide an approximately 119-acre parcel into two parcels, a two-acre homesite parcel and a 117-plus acre agricultural remainder parcel.

Under General Plan Policy 6.A-4, homesite parcels may be allowed provided that the development rights are provided on the agricultural remainder parcel. The applicant is aware that a standard development rights agreement would be required on the agricultural remainder parcel. With the agreement, no new residential building sites would be created by the subdivision.

In order to approve the parcel map, your Commission must also approve a variance for the creation of two new parcels without frontage on a County road. As noted under "Previous Commission Actions/Policies", the subject property previously had a variance approved on it when the parcel was created under the Pete Carr Subdivision in 1997 (SM #97-01). The approval of that variance expired in 1998.

In order to approve a variance, the Zoning Code and State Government Code require that your Commission make several, specific findings. In summary, those findings pertain to:

1. Special circumstances relating to the property's size, shape, topography, location, etc;
2. Denial of privilege in that without the variance the property cannot be used in a similar manner as other properties in the area with similar zoning;
3. Approval of the variance would not be a grant of special privilege, and
4. The variance requested represents the minimal deviation necessary for reasonable development of the property.

Each of these findings is required to be supported by written evidence of record.

Additionally, the Zoning Code specifically states that a variance shall not be granted for any use or activity which is not otherwise expressly authorized by the applicable provisions of the Zoning Code.

In support of the required findings, the applicant has submitted the following statements:

**Special Circumstances** – The variance is in connection with a tentative parcel map that proposes to subdivide an existing home from the existing parcel. To maintain a maximum 2 ac. parcel size, road frontage can't be met.

**Denial of Privilege and Not a Special Privilege** – The existing parcel configuration does not have frontage therefore any configuration to allow a homesite parcel would not meet County ordinances.

**Minimum Deviation** – The proposal to split off the 2 ac. homesite is the only option available. Applicant can't meet road frontage requirement.

As indicated previously, the subject property was created in 1997 as part of the Pete Carr Subdivision. At that time, your Commission made the necessary findings for the property and allowed the creation of the subject parcel without frontage. Therefore, special circumstances exist in that (1) the subject parcel was created without required frontage in 1997 by Commission action and (2) the proposed subdivision is of a parcel that is in a location where it does not have the required frontage on a County maintained and accepted road.

Your Commission has approved several other variances in this same area for parcels that have the same zoning and that lack County road frontage. Denial of the variance would deny the property owner the opportunity to subdivide his property under the homesite policies of the General Plan in that the property's location without frontage on a County road makes the conformance to the requirement for frontage impossible to achieve; therefore, denial of the variance would be denial of privilege afforded other individuals in the area with the same zoning classification. Additionally, approval of the variance for this same reason would not be a grant of special privilege.

Since the subject property does not have County road frontage to begin with, the approval of a variance for the proposed parcels without County road frontage is the minimum deviation from the County Ordinance Code that could be approved and still allow the property owner the use of his property in a manner similar to other in the same area with the same zoning.

As indicated in under "Previous Commission Actions/Policies", the Zoning Code allows residential homesites on agriculturally zoned property and, therefore, the proposed use is a use or activity that is expressly authorized by the Zoning Code.

Staff has recommended approval of the tentative map subject to several conditions. These conditions are necessary for the proposed use to provide minimum safety requirements for the protection of life and property for the intended use, the protection of existing public improvements, or to comply with code requirements.

### **Recommended Findings**

Based on information contained in the agenda report and/or testimony received at the public hearing, the Commission finds:

- 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 project for the subject property. The study revealed that the project, as proposed, would not create a significant impact on the environment. No written comments have been provided which present

evidence that the project will have a significant impact on the environment. Therefore, the proposed Negative Declaration attached to this staff report is appropriate.

- B. The Planning Commission has independently reviewed, analyzed, and considered the Initial Study and proposed Negative Declaration prior to making its decision on the project and finds that the Negative Declaration reflects the independent judgment of the County of Sutter.
- C. The proposed subdivision would allow the division of approximately 119-plus acres of land into two parcels for a 2-acre homesite parcel and a 117-acre plus agricultural remainder parcel for agricultural use and in an area where provisions and policies the AG (General Agricultural) District and the Sutter County to General Plan allow such uses; therefore, the proposed parcel sizes and uses are consistent with the Sutter County Zoning Code, the Sutter County General Plan, and policies thereof.
- D. Any dedications and/or improvements required of the proposed subdivision and imposed as conditions of approval are consistent with the property's agricultural use in a rural, agricultural area in order to provide an adequate level of access and services for the public's health, safety and general welfare, in order to conform to regulations of the Sutter County Ordinance Code and General Plan, and to conform to requirements pertaining to the protection of public resources and other public and private improvements.
- E. Special circumstances exist in that (1) the subject parcel was created without required frontage in 1997 by Commission action and (2) the proposed subdivision is of a parcel that is in a location where it does not have the required frontage on a County maintained and accepted road.
- G. Denial of the variance would deny the property owner the opportunity to subdivide his property under the homesite policies as specified by the General Plan in that the property's location without frontage on a County Road makes the conformance to the requirement for frontage impossible to achieve for this property; therefore, denial of the variance would be denial of privilege afforded other individuals in the area with the same zoning classification.
- H. Approval of the variance is not a grant of special privilege in that other property owners in the same vicinity with the same zoning have similar parcels without frontage that have been approved as building sites and/or been approved for their creation without County road frontage by the Commission.
- I. Since the subject property does not have County road frontage to begin with, the approval of a variance for the proposed parcels without County road frontage is the minimum deviation from the County Ordinance Code that could be approved and still allow the property owner the use of his property in a manner similar to other properties in the same area with the same zoning.
- J. The proposed residential use of the homesite parcel and the agricultural use of the remainder parcels are uses that are expressly authorized by the Zoning Code.

### **Recommended Action**

- A. Review and consider the Negative Declaration;
- B. Adopt the recommended findings;
- C. Adopt the Negative Declaration;
- D. Approve the tentative map subject to the following conditions:

### **Upon Approval of the Map**

- 1. A Notice of Determination including any fees shall be filed in the Office of the County Clerk within five (5) days of the end of the ten-(10) day appeal period. (P)

### **On-Going**

- 2. 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 Public Works Department. Additionally, no grading or alteration of the existing terrain that would direct additional waters from one lot to any adjacent lot is allowed. This condition shall be so stipulated on the parcel map. (PW)
- 3. 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)
- 4. Building Pads shall be at elevations in conformance with Section 1300-022(F) of the Sutter County Ordinance Code, as defined by Resolution No. 92-124. (PW)

### **Prior to Recordation of the Map**

- 5. 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 completed. (PW)
- 6. All on-site wells that have been abandoned shall be destroyed in accordance with Sutter County Environmental Health regulations. The subdivider shall provide to the Environmental Health Division a signed statement that this has been completed or that no abandoned wells are located on the property. The subdivider shall obtain from said Division permits, for the destruction of any abandoned well prior to the commencement of well destruction. (EH)
- 7. The subdivider shall provide to Environmental Health Division a map, which clearly shows the exact location of the Minimum Useable Sewage Disposal Area (MUSDA)

for the homesite parcel. The MUSDA delineation shall comply with Sutter County Environmental Health regulations. (EH)

8. The applicant shall submit to Environmental Health for review and approval the following documents:
  - a. A site plan prepared by a qualified consultant, showing lot boundaries, the minimum usable sewage disposal area designated for each lot, locations of existing and proposed water wells, test hole locations, roadways, driveways, easements, and other constraints to on-site sewage system siting.
  - b. Additional soils testing information prepared by a qualified consultant indicating the basis for the sizing and design of the on-site sewage system. (EH)

**With the Recording of the Map**

9. All rights of way and easements, public or private, shall be shown on the parcel map along with the recording references. (PW)
10. 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 is 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)
11. A note must be recorded on the map stating the following:
  - a. The water supply for the property shall be from individual wells located on the subject properties. (Off-site private water supplies are prohibited unless proper documentation of easements and legal contracts are provided).
  - b. All structures producing wastewater shall connect to the public sewer when it is available, per the Uniform Plumbing Code (UPC).
  - c. The Minimum Usable Sewage Disposal Area (MUSDA) on record with Sutter county Environmental Health shall remain unimproved and reserved exclusively for on-site wastewater needs until such time as structures or facilities served by the MUSDA have been connected to a sewer system operating under permit from the California Regional Water Quality Control Board. (EH)
12. The subdivider shall enter in to a standard development rights agreement with the County on the agricultural remainder parcel. (P)

13. An access easement shall be shown on the record map providing access to the homesite parcel across the agricultural remainder parcel. (P)

Sincerely,

DANELLE STYLOS  
PLANNING DIVISION CHIEF

Dale Follas  
Associate Planner

Attachments: Exhibit A - Study Sketch  
Exhibit B - Tentative Map  
Exhibit C - Negative Declaration and Initial Study

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