

July 30, 2003

To: Sutter County Planning Commission

Re: Agenda Item #9, a): Public hearing on Tentative Parcel Map #03-10 to allow the subdivision of a 227-plus acre parcel into two agricultural parcels of 80 acres and 147 acres; and

Agenda Item #9, b) Public hearing on Variance #03-05 for the creation of two lots without the required minimum frontage on a County road; AG (General Agricultural) District; located at the southern terminus of Powerline Road south of Striplin Road; A. P. #33-290-003 & #33-300-019; applicant/property owner - Harbans Panu (Location: District 5 - Commissioner Shannon)

Current Proposal

A. Project Description:

The project is the subdivision of a 227-plus acre parcel into two agricultural parcels of 80 and 147-plus acres (see Exhibit B). The subject property is within the County 80-acre minimum agricultural area. No development of either parcel is proposed. The purpose of the parcel map is to facilitate the sale of a portion of the existing orchard for agricultural use.

Access to both parcels would be from Striplin Road via Powerline Road which dead ends into the north portion of the subject property. The portion of Powerline Road between the subject property and Striplin Road is maintained by Sutter County as a gravel road. Access to the south parcel would be from an existing 55-foot wide, recorded irrigation and roadway easement crossing the northern parcel along its easterly edge.

The Zoning Code requires that new parcels in the AG District have a minimum of 60 feet of frontage on a County road. Currently, Powerline Road which terminates at the property's northern boundary is less than the required 60 feet minimum width. With the recording of the parcel map, if approved, the south parcel will have no frontage on a County road and the north parcel will have less than the required minimum frontage on a County road; therefore, a variance is included as part of the project for two parcels without the required minimum frontage on a County road.

No development of either parcel is proposed.

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 a 227-acre orchard and is located on the southern terminus of Powerline Road, south of Striplin Road. There are no structural improvements on the property. The southerly portion of the property borders Bunkham Slough and the westerly boundary of the property runs along the realigned Coon Creek (Main Canal) for a portion of its distance.

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

	Use	Zoning	General Plan
Subject Property	Agricultural	AG	Ag -80
North	Agricultural	AG	Ag -80
East	Agricultural	AG	Ag -80
South	Agricultural	AG	Ag -80
West	Agricultural	AG	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 map be consistent with the applicable General Plan and County Zoning Code. In reviewing the project in relationship to the General Plan, the following policy appears to apply:

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.

Your Commission has previously approved a variance and subdivision on the subject property in 1995. That subdivision was never recorded and both it and the variance expired. The applicant desires to reinstate the proposed tentative map.

Aside from the 1995 variance on the subject property, your Commission last approved a variance for the creation of a parcel without road frontage in this area in 1983.

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 227-plus acre parcel into two agricultural parcels of 80 and 147-plus acres for sale for agricultural uses. No development of the property is proposed.

The subject property appears to have been created by a "description" subdivision prior to 1965. In fact, based upon the numbering sequence of the northern portion of the property, that portion was described prior to 1955.

In order to approve the parcel map, your Commission must also approve a new variance for the creation of two new parcels without frontage on a County road. As previously noted under "Previous Commission Actions/Policies", a previous similar subdivision and variance had been approved on the subject property in 1995 (TPM #94-17). The approval of the previous variance expired in 1996. 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 - One special "physical" circumstance pertains to the property's size, shape, location, topography and/or surroundings which limits the property's ability in accordance with the County's Zoning Code.

Denial of Privilege and Not a Special Privilege - Another special circumstance is the fact that the application of the Zoning Code deprives the property of privileges enjoyed by other property in the neighborhood under identical zoning. These special "physical" circumstances apply to the property because of its remote location. The subject property is located at the Southerly terminus of a County right-of-way in a remote agricultural part of Sutter County which makes the creation of new parcels with frontage on a County maintained road impossible.

Minimum Deviation - The request for the Variance is the minimum deviation possible from the Code which would otherwise enable reasonable development of the property; in this case, the property owner may agree to grant development rights for both parcels to the County because only agricultural use is intended, thus ensuring the fact that both parcels will remain in agricultural use.

The subject property was created as a parcel prior to 1965 without County road frontage. Prior to 1965, minor subdivision could occur by simply recording deed descriptions. Therefore, special circumstances exist in that (1) the subject parcel was created without required frontage prior to 1965, (2) your Commission has previously approved a variance and tentative map on the subject property for the same division as proposed by the subject tentative map, and (3) 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 appears to have approved only one other variance in this same area for parcels that have the same zoning and that lack frontage on a County road. That approval was in 1983.

There are at least seven parcels within two miles of the subject property that have the same zoning, that are 80 acres or larger, and that also lack frontage on a County maintained road.

Denial of the variance would deny the property owner the opportunity to subdivide his property and sell his property for agricultural use in a manner similar to those other parcels lacking frontage and with the same zoning as allowed under policies of the General Plan and Zoning Code; therefore, denial of the variance would be denial of a privilege afforded other individuals in the area with the same zoning classification.

Additionally, in as much as your Commission has previously approved this same variance in 1995 and you have previously approved a similar variance for another parcel in the same area with the same zoning, approval of this variance would not be a grant of special privilege.

Since the subject property does not have the required amount of frontage on a County road 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 “Previous Commission Actions/Policies”, the Zoning Code allows for the agricultural use of the property with a minimum parcel size of 80 acres; 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.

The applicant has offered to give up development rights on both parcels (see the applicant’s statement in support of the variance findings). Given that the proposed parcel split conforms to parcel size and use policies as allowed by the Zoning Code and General Plan, staff did not require that a development right agreement be provided.

Although both parcels of the subject tentative map are over 80 acres and, therefore, eligible for a waiver of the recording of a parcel map, the subdivider has indicated that he prefers that a parcel map be recorded. Therefore, staff did not include provisions for the waiver of the recording of a parcel map.

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 227-plus acres of land into 2 parcels of 80-plus acres and 147 acres for agricultural uses in an area where the AG (General Agricultural) District and the Sutter County to General Plan allow agricultural uses with 80-acre parcel minimums; 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 prior to 1965, (2) your Commission has previously approved a variance and tentative map on the subject property for the same division as proposed by the subject tentative map, and (3) 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 for agricultural uses and sale under 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 for subdivision and/or been approved for their creation without County road frontage.
- 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 agricultural use of the parcels is a use that is 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 rights of way and easements, public or private, shall be shown on the parcel map along with the recording references. (PW)
- 7. 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)

With the Recording of the Map

8. The following statement shall be placed on the parcel 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)

9. 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. A note must be recorded on the map stating that all structures producing wastewater shall connect to the public sewer when it is available, per the Uniform Plumbing Code (UPC).

 - c. A site evaluation to determine the suitability of the proposed parcel(s) for utilizing an on-site sewage system has not been conducted nor shall any use be permitted that generates sewage or wastewater regulated by the Environmental Health Division of the Sutter County Community Services Department or the Regional Water Quality Control Board unless all requirements of the Sutter County Ordinance Code, or any amendments thereto in effect at the time of development are met. (EH)

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

H:\planning commission-2003\08-06-03\reports\pm 03-10 (panu)