

March 26, 2003

To: Sutter County Planning Commission

Re: Agenda Item #8: Public hearing on Tentative Subdivision Map #03-01 to allow the subdivision of a 120.8-acre property into six parcels of 20 acres each; and,

Agenda Item #9: Public hearing on Variance #03-01 to allow the creation of six 20-acre parcels, five of which would be without frontage on a County Road; AG (General Agricultural) District; located on the north side of South Butte Road, approximately 100 feet west of the intersection of South Butte Road and Wyncoop Road, near the rural community of Sutter; A. P. #13-200-063; applicant/property owner - Richard Wilson (Location: District 3 - Commissioner Barringer)

Current Proposal

A. Project Description:

The project is the subdivision of a 120.8-acre property into six parcels of 20 acres each and a variance to allow the creation of five of those parcels without frontage on a County maintained road. The subdivision would allow development of new residences on each parcel with individual septic systems and private wells serving all residences.

Access to the new parcels is proposed from a private, gravel road that runs northerly from South Butte Road in the vicinity of Wyncoop Road, approximately 1,500 feet to where it then has a "T" intersection to serve other lots in the subdivision.

B. Environmental Consideration:

Section 15270(a) of the California Environmental Quality Act Guidelines states that CEQA does not apply to projects that an agency rejects or disapproves. Staff will be recommending that the subdivision and variance applications both be denied; therefore the project is exempt from CEQA. Should your Planning Commission wish to approve the project, it will be necessary to continue the matter to a future Planning Commission agenda a minimum of 30 days from this meeting in order for the preparation and advertisement of the appropriate environmental document.

Background

A. Property Description:

The subject property is an approximately 121 acre orchard lying on the southern fringe of the Sutter Buttes. The subject property contains an existing barn and is crossed diagonally by a P. G. & E. power transmission line. Topography of the site raises in elevation as the property runs northerly from approximately 45 feet mean sea level at the property’s southwesterly corner, near the intersection of the access road of Southridge Golf Course and South Butte Road, to approximately 62 feet at its rear where the existing barn is located.

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

	Use	Zoning	General Plan
Subject Property	Orchard	AG	Ag-20 & Ag-80
North	Golf Course	FPARC	FPARC
East	Agricultural with home sites and an old class two waste disposal site.	AG	Ag-20 & Ag-80
South	Agricultural	AG/FPARC	Ag-20 & FPARC
West	Golf Course	FPARC	FPARC

(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. In reviewing the project in relationship to the General Plan, the following policies appear 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.

Staff Comments

A. Planning (P):

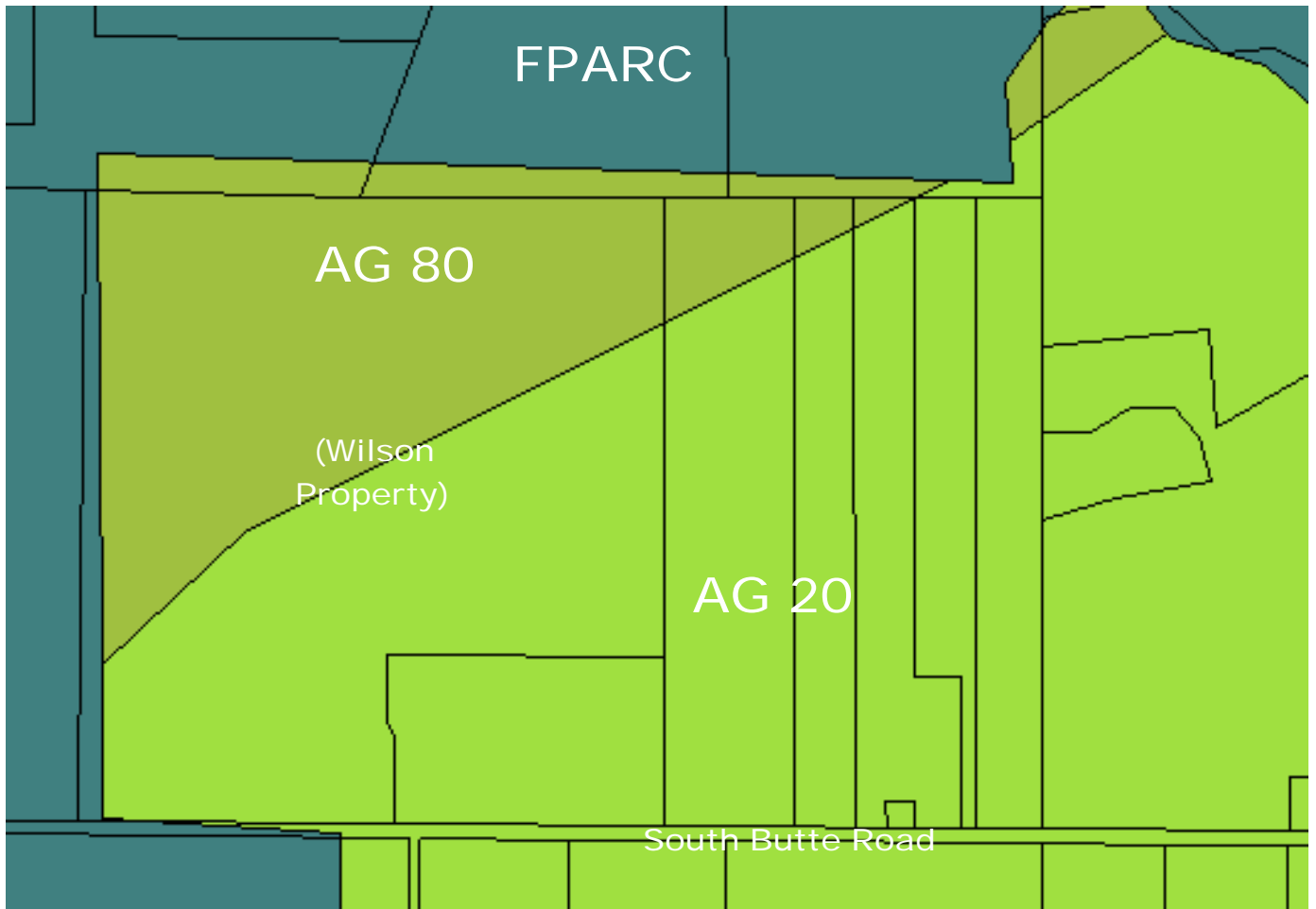
The subject property is shown on the General Plan land use diagram as being in both the Ag 20 and Ag 80 areas (see map on next page). Under the third sentence of policy 6.A-6 of the General Plan, since the property is split by the General Plan line between the Ag-20 and the Ag-80 acre parcel minimums, that area containing the Ag-80 designation is required to be in an 80-acre parcel minimum.

The subdivider has requested approval of the subdivision of the property into twenty acre parcels. The basis for the subdivider's request for twenty acre parcels is that the entire property, except for a small area around the existing barn, is planted in orchard. Under the second sentence of General Plan policy 6.A-6, on a case-by-case basis, the Planning Commission may approve 20 acre minimum parcel sizes even where the General Plan land use diagram clearly otherwise requires 80 acre minimums if the property owner can show "historical uses."

Staff questions whether the current planting of the property in orchard meets the requirements of sentence two of policy 6.A-6 of the General Plan for historical use. Richard Wilson acquired the property in February 1997. Prior to that time, aerial photographs of the property show that the most northwestern portion of the property (about 13.4 acres) had not been planted in orchard crops for at least the last 35 years. This area is within the Ag-80 area of the General Plan.

About 3 to 4 years ago, the property owner planted this area in orchard (see photos on page five of this report).

General Plan Designation Of Wilson Property and Surrounding Area



Given the relatively recent change of the rear portion of the property to orchard use and the immature nature of the trees planted in that area, staff does not believe that the subject property meets the “historical” requirements of General Plan policy 6.A-6. To give credit as a historical use for the planting of the trees would mean that any other property owner wishing to acquire a “historical use” need only plant his or her property in orchard and may then subdivide the property into 20 acre parcels where 80-acre parcel minimums would otherwise have been required. This appears to defeat both the intent and purpose of the policy.

2003 Immature Orchard on rear area of Wilson Property



1998 Aerial Photo of Wilson Property Area



Since the subject property does not meet the historical requirement of orchard use for the northwestern most portion of the property under the second sentence of General Plan policy 6.A-6, that portion of the

site is required to have parcels that meet the 80-acre parcel minimum. In that this area is not proposed to be included in an 80-acre parcel as required by the third sentence in policy 6.A-6, the proposed subdivision is not consistent with the General Plan land use policy and, therefore, not consistent with the General Plan.

In order to approve a variance, your Commission is required to 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, and
- 3. Approval of the variance would not be a grant of special privilege.

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

The proposed use, 20-acre agricultural parcels, is substantially similar to many other if not several hundred other existing agricultural parcels located throughout Sutter County in the AG District. Many, if not most of those parcels, have frontage on a County maintained road. Given that this project is substantially similar to many other agricultural parcels that have frontage on a County maintained road, there are no special circumstances pertaining to the property's size, shape, topography, location, etc and approval of the variance would be a grant of special privilege that is not and has not been previously generally afforded other agriculturally zoned properties.

Additionally, even if the variance is not approved, the property owner will still have full use of the property as an agricultural parcel and, therefore, denial of the variance will not deny the property owner the use of the property in a manner similar to other agriculturally zoned properties in Sutter County.

Finally, since the basic project does not comply with the General Plan, the finding as summarized above cannot be made and the variance must also be denied.

Recommended Findings

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

- A. Section 15270(a) of the California Environmental Quality Act Guidelines state that CEQA does not apply to projects which an agency rejects or disapproves.
- B. The tentative subdivision map and variance applications proposes a parcel size of twenty (20) acres per parcel in an area where the General Plan designates a minimum parcel size of at least 80-acres per parcel for a portion of the subject property.

- C. The design of the proposed subdivision and variance is not consistent with the goals and policies of the Sutter County General Plan.
- D. There are no special circumstances relating to the property's size, shape, topography, location, etc.
- E. Denial of the variance will not deprive the property owner of the use of the property in a similar manner as other properties in the area with similar zoning.
- F. Approval of the variance would be for a use that is not consistent with the General Plan and, therefore, it would be a grant of special privilege.

Recommended Action

- A. Adopt the recommended findings; and
- B. Deny Variance #03-01 and Tentative Subdivision Map #03-01.

Sincerely,
LISA WILSON
INTERIM PLANNING DIVISION CHIEF

Dale Follas
Associate Planner

Attachments: Exhibit A - Study Sketch
Exhibit B - Tentative Map

H:\planning commission-2003\04-02-03\reports\sm 03-01 (wilson)