



SUTTER COUNTY

BOARD OF SUPERVISORS AGENDA ITEM November 8, 2005

TO: Board of Supervisors
FROM: Danelle Stylos, Community Services Department

Doug Libby, AICP 
Senior Planner

SUBJECT: Planning Project 05-047 – A variance to waive the requirement for public road frontage upon an accepted and maintained County Road for an 85± acre parcel in south Sutter County north of the intersection of Scheiber and Cornelius Roads, Assessor's Parcels: Nos. 28-180-022, and -024.

Recommended Motions

Planning staff's recommendation for denial remains as presented to the Planning Commission at their October 5, 2005, staff report (see attachment "A" of this staff report).

Based upon the public hearing held by the Planning Commission, they recommend the following motion to approve the project which may be amended based on additional information received by the Board:

1. "I move that the Board of Supervisors find the project is Categorically Exempt from review under California Environmental Quality Act Guideline Section 15305."
2. "I move that the Board of Supervisors approve application #05-047; a variance to waive the requirement that a parcel have 50-feet of frontage upon an accepted and maintained County Road so that the property can be considered a "lot" for building purposes subject to the findings recommended by the Planning Commission."

Analysis

A variance is requested to waive the requirement that a parcel have 50-feet of frontage upon an accepted and maintained County Road so that an 85± acre parcel will be considered a "lot" for building purposes. The applicant, who actively farms the land, wishes to construct a home on the property.

The Planning Commission conducted a public hearing on this project on October 5, 2005. The public expressed no verbal opposition to the project at the meeting; however, a letter of opposition was received on the day of the Planning Commission meeting and it is included as Attachment "C".

During the Planning Commission meeting, the property owner expressed a willingness to restrict future development of the 85 acre parcel by entering into a development rights agreement, should the variance be granted. The Planning Commission recommended by a 6-0 vote (one member absent) that the Board of Supervisors grant the variance, subject to the following findings, and to the condition that the property owner enter into a development rights agreement limiting residential development of the entire 85 acre parcel to one dwelling unit.

1. This is an 85 acre parcel located in a 20 acre zone, and was duly provided access at the time it was created by a 60-foot wide easement across Assessor's Parcel 28-180-020 to Cornelius Avenue which is proximately located to the parcel, and is an accepted and maintained County road. These special circumstances are particular to this property, and under such circumstances the strict application of the Zoning Code would deprive the property owner of privileges enjoyed by other properties in the vicinity under the identical General Agricultural zoning classification.
2. Granting the variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone district in which the property is located because this is a large parcel which was lawfully established when there was no requirement for frontage upon a County maintained road. Access for the parcel was duly provided at the time of its creation, and that access is proximately located relative to a County maintained road.
3. The variance will not grant a use or activity which is not otherwise expressly authorized by the zoning classification governing the property.

Environmental Analysis

In accordance with the California Environmental Quality Act and the Guidelines, this project is Categorical Exempt, pursuant to CEQA Guidelines Section 15305 which allows Class 5 exemptions for minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density.

The proposed variance would allow for a home to be constructed consistent with General Plan density in an area zoned General Agricultural which considers a single family home a permitted use.

Summary

The Planning Commission has recommended approval of the variance application to the Board of Supervisors based upon the Findings and condition contained in this staff report.

Attachments:

- A. Planning Commission Staff Report
- B. Planning Commission minutes
- C. Written Comments Received from the Public

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CONDITION OF APPROVAL

PROJECT # 05-047 – Roderick and Jenny Smith

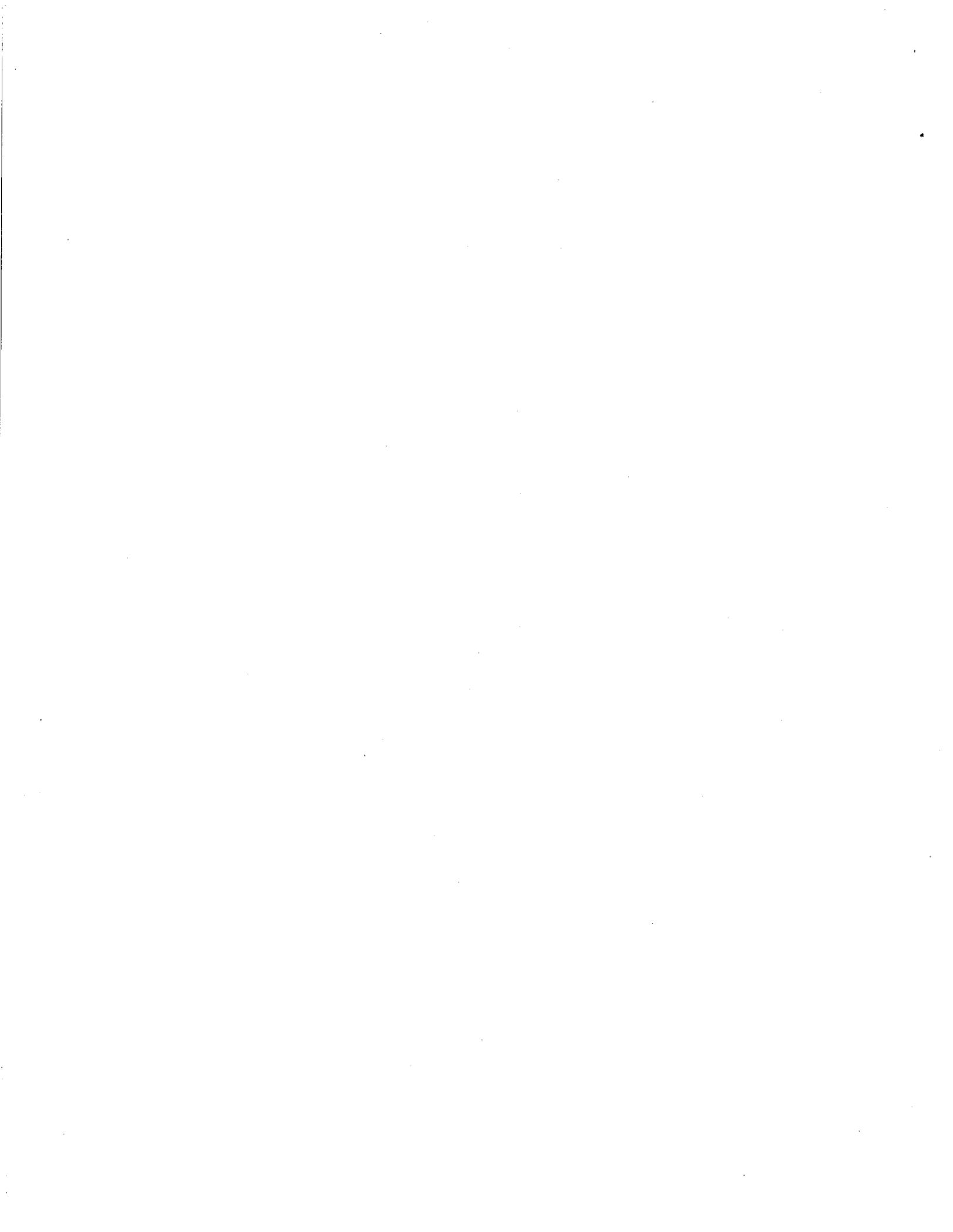
A variance is requested to waive the requirement that a parcel have 50-feet of frontage upon an accepted and maintained County Road so that an 85± acre parcel can be considered a “lot” for building purposes in south Sutter County north of the intersection of Scheiber and Cornelius Roads, Assessor’s Parcels: Nos. 28-180-022, and -024.

Project Condition

1. The property owner shall enter into a modified development rights agreement with Sutter County stipulating that only one dwelling can be constructed on the 85± acre parcel; Assessor’s Parcels 28-180-022 and -024.



Attachment A
Planning Commission Staff Report





PLANNING COMMISSION STAFF REPORT

PLANNING COMMISSION HEARING OCTOBER 5, 2005
Agenda Item #6

Project # 05-047

Request: A variance to waive the requirement that a parcel have 50-foot of frontage upon an accepted and maintained County Road so that the property can be considered a "lot" for building purposes.

Location: The 85± acre property is located on Cramer Road in South Sutter County, north of the intersection of Scheiber and Cornelius Roads, Assessor's Parcels: Nos. 28-180-022, and -024.

Planner: Doug Libby, AICP, Senior Planner *DL*

Zoning Code Designation: AG (General Agricultural) District

General Plan Designation: Agriculture, 20-acre minimum parcel sizes

Applicant/Owner: Roderick and Jenny Smith

Staff Recommendation

Staff recommends that the Planning Commission recommend denial of the proposed variance to the Board of Supervisors together with the findings outlined in the staff report.

Setting

The 85± acre project site has been used agriculturally over the years. The site is currently developed with a walnut orchard and there are no structures located on the property. The land use, zoning and General Plan designations for the adjacent parcels are listed below.

Site	Land Use	Zoning Designation	General Plan Designation
North	Agricultural, Residences	General Agriculture and Flood Plain Combining District	Agriculture 20 and Open Space
South	Agricultural, Residences	General Agriculture	Agriculture 20
East	Agricultural, Residences	General Agriculture	Agriculture 20
West	Agricultural, Residences	General Agriculture	Agriculture 20

Previous Actions

The Planning Commission approved the creation of the 85± acre subject parcel on November 1, 1977, and waived the requirement that a parcel map be recorded (Planning application No. 381P). The parcel was established on December 9, 1977, by grant deed (Book 912 of Official Records, Page 94). As part of the Planning Commission staff report at that time, it was acknowledged that the subject parcel would not have access onto a County maintained roadway.

Analysis

The applicant is requesting a variance to waive the requirement that a parcel have 50-feet of frontage upon an accepted and maintained County Road so that the 85± acre property is considered a "lot" for building purposes. The applicant has stated that they desire to construct a home on the property.

In order to approve a variance, California Government Code Section 65906 and Sutter County's Zoning Code Section 1500-8412 require that specific findings be made and supported by evidence of record (all three findings must be made). The required findings are:

1. Due to special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Zoning Code deprives the property owner of privileges enjoyed by other property in the vicinity and under identical zoning classification.
2. Granting the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone district in which the property is located.
3. A variance shall not be granted for a property which authorizes a use or activity which is not otherwise expressly authorized by the zoning classification governing the property.

The purpose of a variance is to allow minor deviation from the requirements of the Zoning Code where unusual or special physical circumstances of the property would deprive the property owner of the use of the property. The intent is that because of the special physical circumstances, the property owner must be relieved of some requirement of the Zoning code in order to use the property in a manner similar to other property owners in the vicinity with the same zoning.

The subject property does not have public road frontage and was created through approval of a parcel map application in 1977 (Tentative Parcel Map application No. 381p). At that time it was recognized the parcel would result in a parcel being created without public road frontage. The requirement to have 50-feet of public road frontage for a "buildable lot" became a standard of the Zoning Code in the early 1990's. Review of the project file and minutes of the November 1, 1977 Planning Commission meeting do not reveal that the property was being created so that a house could be constructed. The applicant has stated

that since a variance was approved for an adjacent property in 2004 that one should be granted to them also.

A similar variance was approved for an adjacent property in 2004 (Variance No. 03-07) as well as two other variances in the area (Variance No. 540) in 1990 and Variance No. 02-01 in 2002. Staff recommended denial of those variance requests because staff did not believe the required findings could be made.

There are numerous agricultural parcels throughout the County that do not have public road frontage. The fact that this 85± acre parcel does not have public road frontage does not constitute a special circumstance and does not prevent persons from farming the property which is the primary purpose of the General Agricultural zoning district. The parcel is generally level in topography, similar to most other parcels in the County. While the parcel is long in length running in a north-south direction, staff does not believe that this fact constitutes a special circumstance because the existing configuration is what the property owner in 1977 desired. The existing parcel configuration meets the County's size and minimum lot width requirement for agricultural parcels. Staff does not believe that a special circumstance has been demonstrated and that granting the variance will constitute a grant of special privilege. Therefore staff believes that the required findings cannot be met.

Approval of previous variances is not adequate justification for the approval of subsequent variance applications. Each variance proposed must be viewed individually and the findings made based upon each project's unique circumstances.

Environmental Analysis

In accordance with the California Environmental Quality Act and the Guidelines, this project is Categorically Exempt, pursuant to CEQA Guidelines Section 15305 which allows Class 5 exemptions for minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density.

The proposed variance would allow for a home to be constructed consistent with General Plan density in an area zoned General Agriculture which considers a single family home a permitted use.

Recommended Findings

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

CEQA

The California Environmental Quality Act and the Guidelines state that CEQA does not apply to projects which an agency rejects or disapproves.

General Plan

1. The proposed variance has been reviewed and is consistent with the General Plan.
2. The proposed variance complies with all other applicable requirements of state law and local ordinances.

Variance

In accordance with California Government Code Section 65906 and Sutter County Zoning Code Section 1500-8412:

1. There are no special circumstances applicable to the property that justify the variance of the strict application of the Zoning Ordinance, in that the property owner is not deprived thereby of privileges enjoyed by other property in the vicinity and under identical zoning classification.
2. The strict application of the Zoning Ordinance will not deprive the property of privileges enjoyed by other property in the vicinity and under identical zoning classification because the property owner can continue farming the property as it is today.
3. Granting the variance would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone district in which the property is located.

Recommended Action

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

"I move the Planning Commission recommend denial of application #05-047 to the Board of Supervisors; a proposed variance to waive the requirement that a parcel have 50-feet of frontage upon an accepted and maintained County Road so that the property can be considered a "lot" for building purposes based on the recommended findings contained in this staff report."

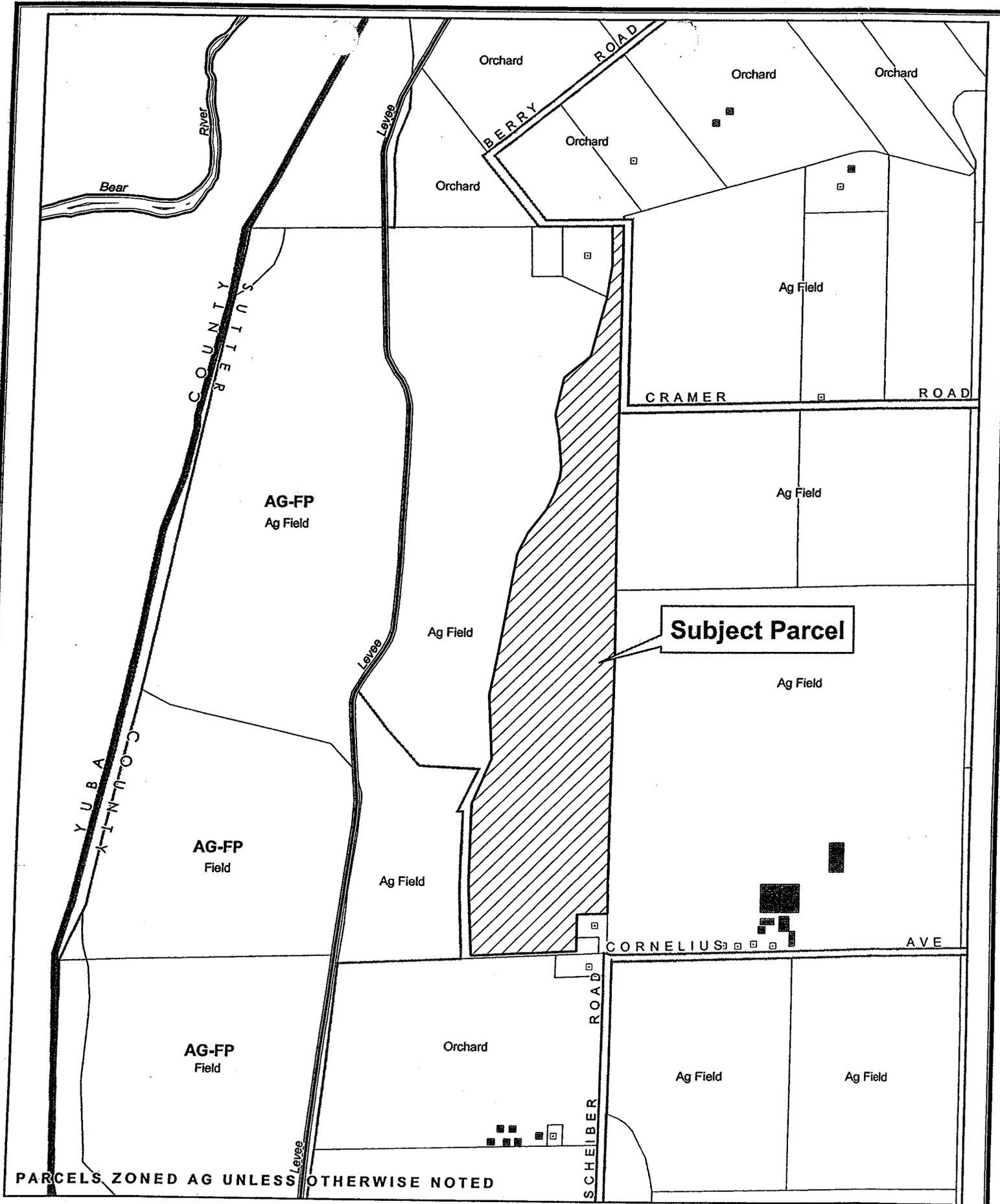
Attachments

- A. Study Sketch

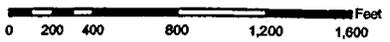
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ATTACHMENT A
Study Sketch





PARCELS ZONED AG UNLESS OTHERWISE NOTED

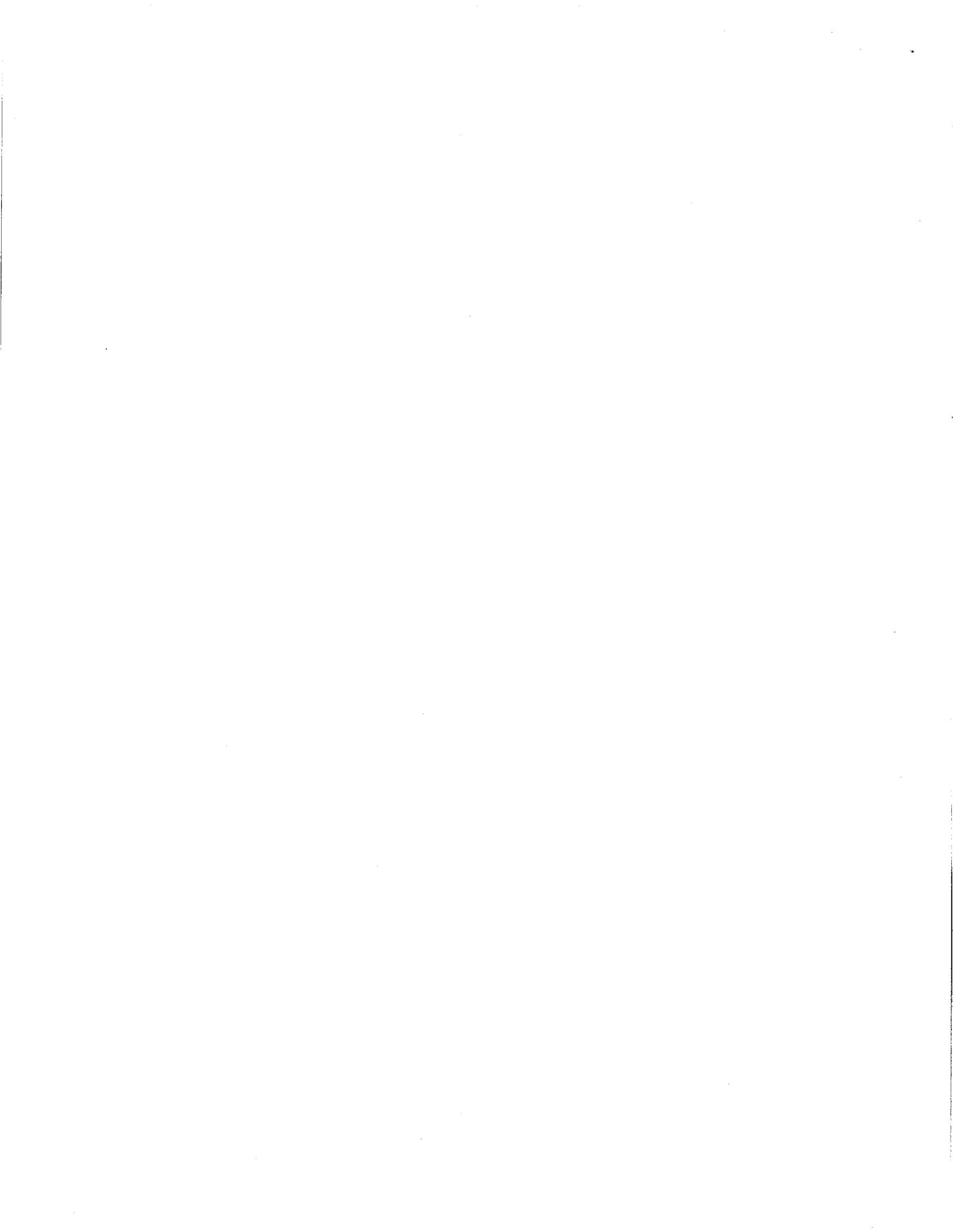


05-047
September 21, 2005

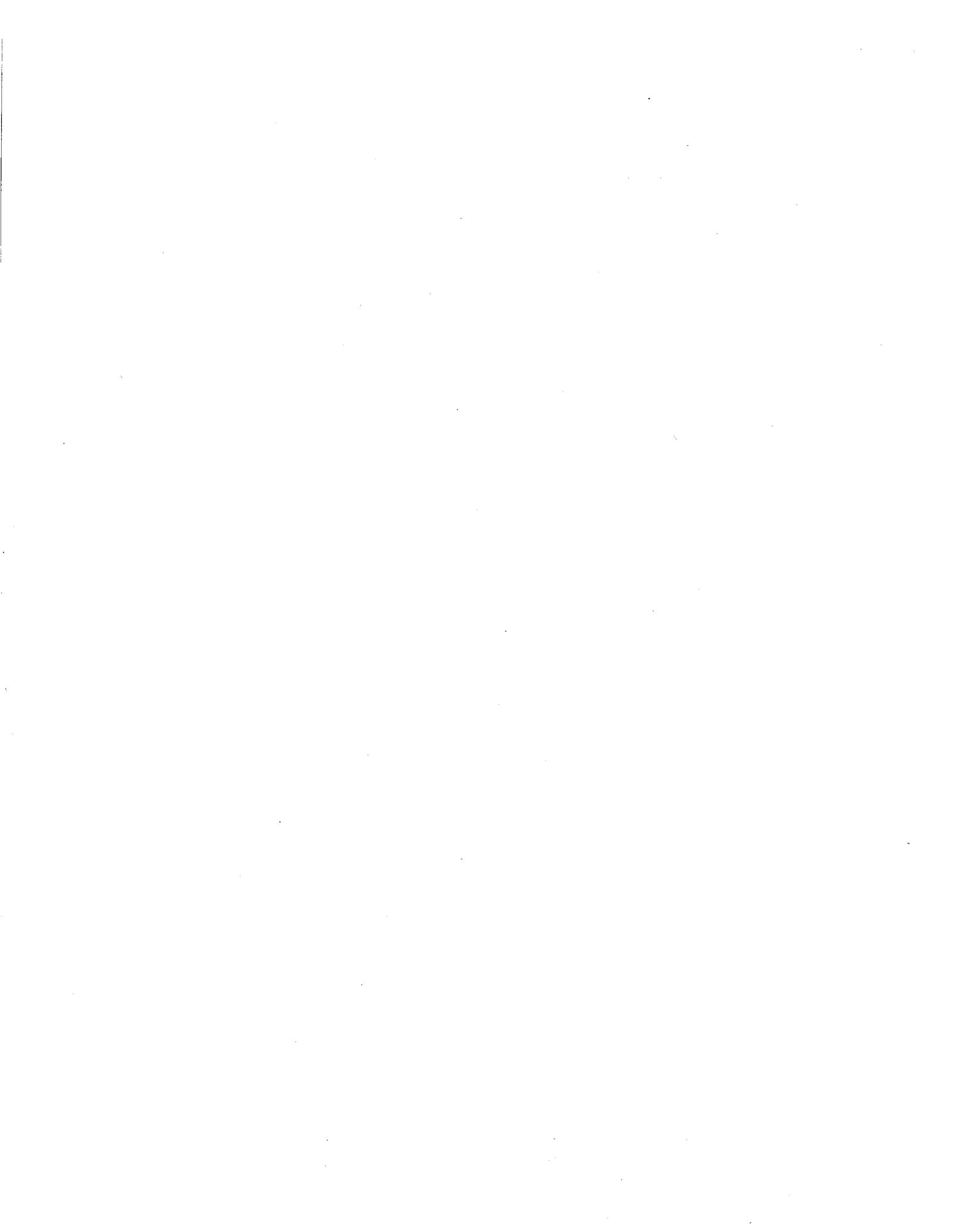
(not to scale)

- Agriculture Building
- House

prepared by
SUTTER COUNTY COMMUNITY SERVICES DEPARTMENT



Attachment B
Planning Commission Minutes



6. **Project #05-047 to allow a variance to waive the requirement that a parcel have 50 feet of frontage upon an accepted and maintained County road so that the property can be considered a "lot" for building purposes; AG (General Agricultural) District; located on Cramer Road in south Sutter County, north of the intersection of Scheiber and Cornelius Roads; A. P. #28-180-022 & -024; applicants/property owners - Roderick & Jenny Smith**

Senior Planner Libby summarized the staff report and noted a letter had been received in opposition and had been provided the Commission tonight.

Commissioner Starkey asked if the County maintained the portion of Cramer Road is where the trailers are. Senior Planner Libby replied yes, there is a house there and to the east of that, Cramer is a gravel/dirt road. Mr. Libby stated that access to the property is provided by easement off of Cornelius Avenue.

Commissioner Dunn asked if Cramer and Cornelius Roads were County improved. Senior Planner Libby replied that Cornelius Road is a paved, accepted and maintained County road and that a portion of Cramer Road is accepted and maintained as a gravel road. Commissioner Dunn then asked if Scheiber Road was a County maintained Road. Mr. Libby replied that it is.

Chairperson Shannon opened the public hearing.

The applicant, Dr. Roderick Smith, stated he and his wife have owned the property since 1992 and farm 163 acres of walnuts in the area. Dr. Smith said it is his ambition to live where he is farming. Dr. Smith then summarized the properties history and stated his intention is to construct his home on the property and not to subdivide it. He then discussed the Commission's approval of previous variance applications in the area.

Commissioner Starkey stated Dr. Smith indicated he would not object to a stipulation that he could not divide the property further. Commissioner Starkey said that in the future, a subsequent landowner may not want to farm and could propose dividing the land.

Planning Division Chief Stylos responded that any future land division request would be subject to the same requirement that a parcel have frontage upon a County maintained road and that a subsequent variance application would need to be approved at that time.

Commissioner Dunn asked Dr. Smith if he would give up development rights for the rest of the property if a variance was approved and secondly questioned County Counsel if such a proposal was possible.

Deputy County Counsel Lewis replied anything is possible by agreement but it is doubtful the County could take those kinds of rights as a condition of the variance if the applicant did not concur with the County's request.

Commissioner Dunn asked Dr. Smith if he would agree to such a proposal and Dr. Smith replied that he did not object.

Chairperson Shannon closed the public hearing.

Commissioner Starkey stated just because the Commission has approved variances in the past is not necessarily justification they can approve another variance. He asked if the Commission had any indication of why past variances were approved.

Commissioner Dunn stated he believed there was a family who lived there and owned that property for a long time and wanted to build another home. The Commission approved a variance for that purpose. Commissioner Dunn stated he believed the family was going to give the development rights on property located west of the levee.

Commissioner Dunn asked Dr. Smith if he accessed the property by the easement on Cornelius. Dr. Smith responded yes.

Commissioner Dunn said he wants the Commission to consider approving the variance because other variances have been granted in the area. In addition, Dr. Smith has indicated his willingness to give up future residential development rights on the property.

Chairperson Shannon asked Dr. Smith where he planned on placing his home. Dr. Smith replied it would be on the north end of the property.

Commissioner Singh asked if the Commission would have to go back to the Planning Department for findings. Chairperson Shannon responded that they would either recommend approval or denial to the Board of Supervisors and they would either approve or deny it.

Commissioner Dunn asked if the Commission recommended approval of the variance, would they have to have some findings. Senior Planner Libby replied that is correct and directed the Commission to Page 2 of the staff report where the required findings are discussed.

Commissioner Singh stated this variance is not nearly as bad as the Midha parcel split during the last meeting, so he could approve this variance.

Commissioner Dunn stated he wanted some assurances that they will keep the land preserved.

Commissioner Dunn made a motion to recommend approval of the variance application with the addition of a condition that residential development rights are taken on the remainder of the property.

Commissioner Singh seconded the motion.

Senior Planner Libby reiterated that specific findings are required to be made and suggested that the Commission take a brief recess so that staff could draft some potential findings. After a five minute break, Senior Planner Libby read the following findings into the record:

1. This is an 85 acre parcel located in a 20 acre zone, and was duly provided access at the time it was created by a 60-foot wide easement across Assessor's Parcel 28-180-020 to Cornelius Avenue which is located proximate of the parcel, and is an accepted and maintained County road. This special circumstance is particular to this property, and under such circumstance the strict application of the Zoning Code would deprive the property owner of privileges enjoyed by other properties in the vicinity under the identical General Agricultural zoning classification.
2. Granting the variance will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone district in which the property is located because this is a large parcel which was lawfully established when there was no requirement for frontage upon a County maintained road. Access for the parcel was duly provided at the time of its creation, and that access is proximately located relative to a County maintained road.
3. The variance will not grant a use or activity which is not otherwise expressly authorized by the zoning classification governing the property.

Commissioner Singh withdrew his second. Commissioner Dunn amended his motion to include the one condition and three findings as listed above. Commissioner Singh seconded the motion, which carried by a unanimous roll call vote.

7. Project #05-015 for a Zoning Code amendment to restrict the establishment of medical marijuana dispensaries within the County; located Countywide; initiated by the Sutter County Board of Supervisors

Senior Planner Wilson summarized the staff report.

Deputy County Counsel Lewis stated this proposal just speaks to medical marijuana dispensaries, not to medical marijuana. This is just the prohibition of dispensaries.

Commissioner Singh asked that this be continued to the meeting of November 16 because Sheriff Denny is not here tonight. He said he talked to staff to see if it could be continued.

Chairperson Shannon stated it appears that the Commission supports staff's position. Commissioner Singh said he realizes that, but he felt it would be more appropriate to

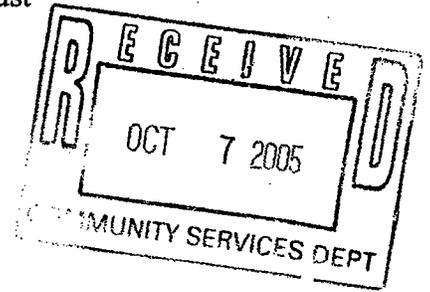


Attachment C
Written Comments Received from the Public



Loek Van Warmerdam
Anna Van Warmerdam Revocable Living Trust
1616 Cornelius Avenue
Nicolaus, California 95659
(530) 656-2397

October 5, 2005



Sutter County Community Services Department
Sutter County Planning Commission
1130 Civic Center Drive
Yuba City, California 95993

Via facsimile (530) 822-7109

Re: Planning Commission Project 04-047
Roderick and Jenny Smith; request for variance

Ladies & Gentlemen:

The Anna Van Warmerdam Revocable Living Trust is the owner of approximately 150 acres of land located off of Cornelius Avenue at 1616 Cornelius Avenue, Nicolaus, California. Loek Van Warmerdam is the operator of the 400-cow dairy located upon the property.

We have received notice of the proposed variance application which would permit the construction of a residence upon the neighboring property, APNs 28-180-022 and -024 consisting of 80 acres of walnuts.

Obviously, agricultural uses being maintained within the area requires that residences be discouraged and parcels be maintained at the largest size possible for economic operation. If the area is to be maintained for agricultural use, we think that your General Plan should be changed to raise the minimum parcel size to at least 60 acres.

20-acre minimum parcel size effectively permits parcels along a road to be split into sizes which are incompatible with economic agricultural use. These residences upon them then become occupied by persons who do not understand the smells and noise of agriculture, and myself and other farmers are pushed out.

The current owners of the subject parcels have been good neighbors. If there was a way for you to ensure that the owner of the parcel and the occupant of the home, if one were constructed, would be engaged in operating the walnut orchard and no further splits

To: Sutter County Community Services Department
Sutter County Planning Commission
Re: Planning Commission Project 04-047
Roderick and Jenny Smith; request for variance
Date: October 5, 2005

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of the property would ever occur, we would understand the variance being granted. However, you cannot make those assurances or police the occupant of any home on the parcel in the future. We therefore believe that the staff recommendation of denial is the best possible decision in these circumstances.

Very truly yours,

By: Loek Van Warmerdam
LOEK VAN WARMERDAM