

December 26, 2001

To: Sutter County Planning Commission

Re: Agenda Item #6: Continued public hearing on Tentative Parcel Map #01-11 to allow the division of an 80.35 acre parcel into three parcels, 39.5, 39.0, and 1.8 acres in size; AG (General Agricultural) District; located at 1155 Lee Road, Nicolaus; A. P. #33-240-001; applicants/property owners - Leo & Eleanor Michel and Kenny & Cecelia Engasser (Location: District 5 - Commissioner Shannon)

Current Proposal

A. Project Description

The applicant requests approval of a tentative parcel map to divide the subject 80.35-acre parcel into a 39.5, 39.0, and 1.8 acre parcel.

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. Staff therefore recommends the Commission adopt the attached Negative Declaration.

Background

This item was continued from the December 5, 2001 meeting. At that meeting, the Planning Commission considered both Tentative Parcel Map #01-11 and Variance #01-05. The Commission will recall that the variance application was necessary since the proposed parcel sizes were less than the 80-acre minimum required by the AG-80 designation by the Sutter County General Plan. The original staff report is attached as Exhibit D.

Based on testimony provided by the applicant at that meeting, the Commission determined that the subject parcel contains soils that are suitable for orchard crops and therefore, the parcel

should be designated AG-20. Based on this, the Planning Commission determined a variance application was no longer needed. The Commission therefore directed the applicant to withdraw the variance application and on a 6-0 vote (one member absent), voted to continue the tentative parcel map to the January 2, 2002 meeting to allow staff time to prepare the appropriate environmental document (Negative Declaration), as well as appropriate findings and conditions of approval.

While having provided this revised staff report to the Commission with the findings and conditions for approval, staff notes that it has concerns with regard to the Commission's AG-20 determination. General Plan Policy 6.A-6, which addresses minimum parcel sizes in agriculturally designated areas, states that "Historical uses and physical boundaries may be considered on a case by case basis" in determining the appropriate minimum parcel size designation. The intent of this policy is to allow the Commission discretion in reviewing the appropriate land use designation provided by the County General Plan Land Use Diagram, based on "historical uses and physical boundaries". Staff does not believe the applicant provided sufficient background information on the historical uses of the subject parcel to demonstrate that an AG-20 designation is appropriate.

According to the applicant, there is a viable walnut orchard currently on the subject property that is approximately 8 or 9 acres in size. This orchard is located just to the west of Coon Creek, which traverses the eastern portion of the subject parcel. The USDA Soil Conservation Service Soil Survey describes a relatively small area on the subject property, along the western side of Coon Creek, as having Nueva loam soil. According to the Soil Survey, "Most areas of this unit are used for irrigated crops, mainly walnuts." The majority of the subject parcel, however, including the central and western portions, is comprised of Marcum clay loam, siltstone substratum, and Capay silty clay soils. According to the Soil Survey, most areas having these soils are used for irrigated crops, mainly rice and tomatoes. The Survey does list peaches and prunes among "other" crops grown on Marcum clay loam. Staff notes that orchard crops such as peaches and prunes are often listed as secondary crops even though the soils are marginal for orchards. However, it is more important to note that the County has made the determination in its General Plan that this soil type is a field crop soil, hence the AG-80 designation.

Staff conducted a site inspection of the property and surrounding area and observed that the majority of the subject property is planted in alfalfa or is fallow ground. Surrounding parcels are also planted in alfalfa or are fallow. There is no visual evidence that the soils on the subject parcel or surrounding parcels are capable of supporting productive orchards, which is typical of AG-20 designated parcels.

Based on this information and the location of the existing orchard on the parcel, staff does not believe the applicant has demonstrated that a significant portion of the parcel can or has supported orchards in the past. Without any historical background showing orchard use on the property, staff is concerned that the AG-20 determination on this parcel sets a precedent for future similar proposals where a parcel may be located on the border between AG-80 and AG-20 designations.

Staff Comments

With the determination by the Planning Commission that on-site soils are suitable for orchard crops and that the parcel should be designated AG-20, the request to divide the subject parcel into a 39.5, a 39.0 and a 1.8 acre parcel is consistent with County regulations, as will be addressed below. The proposed parcels have the potential to be developed with all uses provided for by the Zoning Code within the AG zone district.

The State Subdivision Map Act requires that the proposed map be consistent with the County's General Plan, Zoning Ordinance, and Subdivision Ordinance. The previous staff report identifies those related General Plan policies and zoning requirements. Since the Planning Commission has determined the appropriate land use designation should be AG-20, the request is consistent with the General Plan and Zoning Ordinance.

The County Subdivision Ordinance establishes standards and requirements to regulate and control the design and improvement of land. Staff has reviewed the proposal against the Subdivision Ordinance and believes it complies with established standards.

The Environmental Health Division has reviewed the project and conducted soil tests on proposed Parcel 1, which is vacant. Based on the tests, Environmental Health has determined that the soil is unsuitable for a sewage disposal system in the tested locations and therefore is recommending a condition requiring that a perpetual open area easement and grant of development rights agreement be recorded with the map prohibiting uses on Parcel 1 that would require an on-site sewage system. Staff is recommending that this be required as a condition of approval. Additional conditions recommended by Environmental Health are also included as part of this staff report.

Reclamation District No. 1001 has reviewed the project and will require that the owner grant additional right of way for the main canal (Coon Creek) for maintenance purposes if less than fifty feet currently exists.

Conclusion

Based on the Planning Commission's determination that on-site soils are suitable for orchards, which are characterized by an AG-20 (20-acre minimum) General Plan designation, the proposed project is considered consistent with the County General Plan, Zoning Ordinance, and Subdivision Ordinance. Staff has therefore been directed by the Commission to develop an approval recommendation with appropriate findings and conditions of approval for the proposed tentative parcel map.

Recommended Findings

Based on the information contained in the staff report and/or testimony received at the public hearing, the Planning 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 tentative parcel map. The Study revealed that the project, as proposed, would not create an impact on the environment. There have been no comments provided demonstrating the project will have a significant effect 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 Negative Declaration prior to making its decision on the project and finds that the Negative Declaration reflects the independent judgement of the County of Sutter.
- C. The Planning Commission has determined that the subject parcel contains soils that are suitable for orchard crops and therefore, the parcel should be designated AG-20 rather than AG-80. Sutter County General Plan Policy 6.A-6 allows for minimum parcel size determinations to be made based on historical uses of the property. There is currently a walnut orchard located on the eastern portion of the subject parcel.
- D. The proposed tentative parcel map and use of the subject property complies with the applicable requirements of the Sutter County General Plan, Zoning Ordinance, and Subdivision Ordinance.

Recommended Action

- A. Make the findings for approval as prepared by staff.
- B. Adopt the proposed Negative Declaration prepared for the project and attached to this report.
- C. Approve Tentative Parcel Map #01-11, subject to the following conditions:
 - 1. The applicant shall file a Notice of Determination, including payment of associated fees, in the office of the County Clerk within five (5) days after the end of the ten (10) day appeal period. (P)
 - 2. The final map shall be recorded within 36 months of the approval date or the engineer/surveyor shall submit a request for and receive approval of a time extension in accordance with the Sutter County Subdivision Ordinance. (P, PW)
 - 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. 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: (PW)

Lee Road	20' R/W + 10' P.U.E.
Powerline Road	20' R/W + 10' P.U.E.
9. 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)
10. Prior to the recordation of the map, the subdivider shall provide to Environmental Health a map that clearly shows the location of the existing on-site sewage systems and a Minimum Useable Sewage Disposal Area (MUSDA) for parcels 2 and 3. The MUSDA delineation shall comply with Sutter County Environmental Health regulations for the designation of on-site sewage system replacement areas. (EH)
11. Prior to the recordation of the map, the subdivider shall provide to Environmental Health a map that clearly shows the exact location of all existing and/or proposed wells. (EH)
12. Prior to the recordation of the map, the subdivider shall provide a signed statement that any abandoned on-site wells and sewage systems have been destroyed in accordance with Sutter County Environmental Health regulations. Sutter County Environmental Health permits shall be obtained prior to the commencement of this work. (EH)
13. A note must be recorded on the map stating that water supply shall be from individual wells located on the subject properties. (EH)
14. The following note shall be recorded on or with the map:

“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)

15. A perpetual open area easement and grant of development rights agreement must be recorded with the map prohibiting uses on Parcel 1 that would require an on-site sewage system. Prior to any abandonment of this easement and grant of development rights by the County for on-site sewage systems, all requirements in effect at the time of the abandonment must be met. (EH)
16. Coon Creek traverses the subject parcel and is a main canal for Reclamation District 1001. Should the District have less than fifty (50) feet of right of way on this main canal, the owners shall grant to the District right of way necessary for a fifty (50) foot total for maintenance purposes. The right of way shall be granted prior to recordation of the map. (RD1001)
17. Any relocation or rearrangement of any existing PG&E facilities to accommodate this project will be at the developer's/applicant's expense. There shall be no building of structures allowed under or over any PG&E facilities or inside any PG&E easements that may exist within the project site. (PG&E)

Sincerely,

THOMAS A. LAST
PLANNING DIVISION CHIEF

Steve Geiger
Associate Planner

Attachments: Exhibit A - Study Sketch
Exhibit B - Tentative Map
Exhibit C - Proposed Negative Declaration and Initial Study
Exhibit D - Original Tentative Parcel Map #01-11, Variance #01-05 staff report
from December 5, 2001 Planning Commission meeting

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