



## PLANNING COMMISSION STAFF REPORT

PLANNING COMMISSION HEARING MAY 19, 2004  
Agenda Item #8

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**Request:**

1. General Plan amendment from Agriculture to Agriculture Preserve on 120.8 acres,
2. Rezoning from AG (General Agricultural) District to AP (Agricultural Preserve) District and APR (Agricultural Preserve Residential) District,
3. Subdivision of the property into six, two-acre Agricultural Preserve Residential District parcels and one approximately 109-acre Agricultural Preserve District, and
4. Modification of the Subdivision Ordinance's lot width to depth ratio.

Located on the north side of South Butte Road near the intersection of South Butte Road and Wyncoop Road, A. P. #13-200-063, Project Numbers #04-007 and SM #03-01

**Planner:** Dale Follas, Associate Planner

**Applicant /  
Property Owner:** Richard Wilson, 2532 Franklin Road, Yuba City, CA 95993

### **Staff Recommendation**

Approve the requested entitlements for a General Plan amendment from Agriculture to Agriculture Preserve; rezoning of 109 acres to AP (Agricultural Preserve) District and 12 acres to APR (Agricultural Preserve Residential) District; the subdivision of 120.8 acres into six, 2.0 acre parcels and one, 109 acre parcel; and the modification of the Subdivision Ordinance lot width to depth ratio.

### **Project Description**

The project is a General Plan amendment to Agriculture Preserve for 120.8 acres, a rezoning of 109 acres to AP (Agricultural Preserve) District and 12 acres to APR (Agricultural Preserve Residential) District, and the subdivision of the property into six, 2.0-acre Agricultural Preserve Residential District parcels and one 109-acre Agricultural Preserve District parcel. The six APR District parcels would each be allowed one single-

family residence served by individual septic systems and wells. The single, 109-acre AP District parcel would remain in agricultural use and not be allowed any residential uses. All parcels would be accessed from South Butte Road (see Attachment B).

The proposed residential lots exceed the Subdivision Ordinance allowed lot width to depth ratio of 1:3; therefore, the project includes a request for a modification under the Subdivision Ordinance.

Setting

The subject property is a 121 acre orchard located on the southern fringe of the Sutter Buttes. Approximately 12 acres of the site are in the 80 acre land use area of the General Plan; however, the applicant planted this area in orchard several years ago. The subject property contains an existing barn and is crossed diagonally by a P. G. & E. power transmission line. The site’s elevation rises from approximately 45 feet mean sea level at the property’s southwestern corner along South Butte Road to approximately 62 feet along the northern boundary.

The property is located west of the Rural Community of Sutter (see Attachment A).

	<b>Land Use</b>	<b>Zoning Designation</b>	<b>General Plan Designation</b>
Site	Orchard	AG (General Agricultural) District	Ag-20
North	Driving Range	FPARC	FPARC
South	Agriculture	FPARC and AG (General Agricultural) District	FPARC and AG (General Agricultural) District
East	Abandoned Hazardous Waste Site and Orchard	AG (General Agricultural) District	Ag-20
West	Golf Course	FPARC	FPARC

Previous Actions

The applicant previously came before the Commission in April, 2003 with a proposed subdivision of the property into six, 20-acre parcels. Several of the proposed 20-acre lots required access from a private road; therefore, a variance from the zoning code was also required. At that time, the Board of Supervisors was considering adopting changes to the Zoning Code and General Plan for the AP/APR District. The applicant requested that the Commission continue his request in order to see what direction the Board would take.

During the April, 2003 meeting, the Commission discussed the issue of historical use of the property in relationship to the 20/80 soils line. Although no action was taken, the consensus of the Commission was that since the property had been planted in orchard, the property met the historical use provision of the General Plan for orchard use; therefore, the entire property should be designated for 20-acre minimum parcel size.

The applicant amended his map consistent with the newly adopted AP/APR District requirements. After a minor change due to requirements necessary to comply with the Environmental Health Division's sewage disposal ordinance, the project was determined to be complete and processing of the application commenced.

## **Environmental Analysis**

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, could have a significant impact on the environment; however, a mitigation measure has been included which reduces the possible impact to a less-than-significant level. Therefore, staff recommends the Commission adopt the attached Mitigated Negative Declaration and Mitigation Monitoring Program (see Attachment C).

## **Analysis**

### **General Plan**

This application is the first use of the AP/APR District since its adoption late in 2003.

The project would amend the General Plan designation from Agriculture (20/80 acre minimum) to AP (Agricultural Preserve) on the approximately 121-acre parcel. The AP designation is a mechanism for agricultural parcels to transfer the residential density of a large agricultural parcel to clustered, residential parcels. In order to use the AP designation a project must meet all of the following tests: (1) the project's residential density is consistent with the 20/80 acre General Plan policies, (2) the property can be subdivided into conforming 20/80 acre parcels without the use of a variance, (3) each of the new parcels have frontage on an existing County road, and (4) the residential parcels will not adversely affect the surrounding agricultural operations.

#### (1) General Plan 20/80 Acre Density Policy

The subject property is shown on the General Plan land use map at a location where the 20/80 acre line passes through the property with approximately 12 acres of the site located in the 80 acre area.

General Plan policy 6.A-6 contains language for 20/80 acre density determinations which is listed below:

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.

At the April 2, 2003 Planning Commission meeting, the Commission discussed the issue of the property's historical use. Although no action was taken, the consensus of the Commission was that since the property had been planted in orchard, the property met the historical use provision of the General Plan for orchard use; therefore, the subject property would be considered as a 20-acre agricultural minimum designated area.

Based upon the historical use provision, the property could be subdivided into six 20+ acre parcels each with one residence per parcel; therefore, under the first test of the General Plan for the Agricultural Preserve designation, the subject property conforms to the 20/80 acre density requirements with the finding that the property meets the historical use test of General Plan Policy 6.A-6.

(2) Subdivided Into Conforming 20/80 Acre Parcels

The second test for the use of the AP designation is that the property can be subdivided into conforming 20/80 acre parcels without a variance. The property has adequate road frontage access, although several of the parcels would be "flag lots" with long driveways. Although these parcels meet current Zoning requirements, in order to meet the requirements of the Subdivision Ordinance the applicant must invoke the modification section (1400-810).

(3) Frontage on Existing County Road

Each parcel has the minimum required frontage on a County road. The minimum for the APR District is 60 feet and the minimum for the AP District portion is 150 feet. The proposed residential parcels all have 150 feet of frontage while the AP parcel has a total of over 290 feet of frontage; therefore, all parcels meet the third test.

(4) Residential Parcels Affect on Agricultural Operations

The last test is that the residential parcels will not adversely affect the surrounding agricultural operations. The residential parcels are buffered by South Butte Road on the south, the access drive on the east, the Southridge Golf Course on the west, and the AP District property on the north providing adequate protection for agricultural properties. A condition has been included requiring a 100 foot residential setback from the APR parcels' north property line to protect the future agricultural operations on the AP District parcel; therefore, the fourth test for agricultural separation can be met.

## **Rezoning**

The project includes a rezoning to AP (Agricultural Preserve) District of approximately 109 acres and to APR (Agricultural Preserve Residential) District of approximately 12

acres. The rezoning to AP and APR Districts is consistent with the proposed "Agricultural Preserve" General Plan amendment designation.

The subdivider will be required to enter into a development rights agreement that prohibits the use of the AP District parcel for residential uses or any other use requiring a septic system [pursuant to Zoning Code Section 1500-1216(b)(3) and (6)].

The proposed rezoning to AP and APR District conforms to the policies of the General Plan and Zoning Code.

### **Subdivision Map**

The proposed subdivision would divide the property into six, 2.0-acre Agricultural Preserve Residential District parcels and one, 109-acre Agricultural Preserve District parcel. The six Agricultural Preserve Residential District parcels would each be allowed one single-family residence served by an individual septic system and well. The single, 109-acre Agricultural Preserve District parcel would remain in agricultural use and not be allowed any residential uses. All parcels have access from South Butte Road.

The project's proposed tentative map is for Agricultural Preserve and Agricultural Preserve Residential parcels and with the inclusion of the recommended conditions of approval, the proposed subdivision is consistent with the General Plan and Zoning Code Agricultural Preserve policies.

South Butte Road is subject to increasing vehicle traffic as the area's population increases. The project would add six residential driveways to this section of the road. Staff has proposed a condition to consolidate the six residential driveway access points into three access points. Thus parcels 1 and 2, parcels 3 and 4, and parcels 5 and 6 would share their driveway accesses on South Butte Road. The idea is to minimize the number driveways on South Butte Road that would conflict with traffic along the road (see Exhibit E).

### Subdivision Modification

The proposed residential lots are each two acres in size. Under the Subdivision Ordinance they are required to have a lot width to depth ratio of less than 1:3. The lot width is 150 feet and depth is 580 feet for a width to depth ratio of 1:3.87.

Under section 1400-810 of the Subdivision Ordinance, a modification or exception to the development standards of the Ordinance may be approved, "Whenever the land involved in any subdivision is of such size or shape or is subject to such title limitations of record or is affected by such topographical location or conditions or is to be devoted to such use that it is impossible, impractical, or undesirable in a particular case for the subdivider fully to conform to the regulations contained in this Chapter, the Planning Commission may permit modification thereof as may be reasonably necessary if such modifications are in conformity with the spirit and purpose of the Subdivision Map Act and of this Chapter."

The modification findings, although similar to the Zoning Code's findings for a variance, are substantially different in that a modification is not a supposedly rare or exceptional situation; e. g., the location of easements affecting the property. As noted in the modification purpose statement of the Subdivision Ordinance, the modification is to be in "...conformity with the spirit and purpose of the Subdivision Map Act and this Chapter."

The Project's engineer has submitted a letter requesting approval of a modification for the lot ratio requirements (see Attachment D).

In order to approve the modification, the Planning Commission is required to find the following facts with respect to the application (*the comments in italics are staff's responses*):

- a. There are exceptional or extraordinary circumstances or conditions applicable to the property such as topography, fixed rights-of-way, unique location of easements, etc.

*With the adoption of the AP and APR Districts, the applicant revised his project from six 20-acre parcels to six, 1.37-acre Agricultural Preserve Residential parcels and a 111.8-acre Agricultural Preserve parcel. The size of the parcels was selected in order to conform with the County's lot depth to width ratio, provide required frontage on a County road for each parcel, and fit in the area along the parcel's frontage along South Butte Road.*

*In reviewing the parcels, the Environmental Health Division required that the parcel sizes be increased to 2.0 acres in order to have sufficient acreage on each residential parcel for the required MUSDA.*

*Due to the location of the P. G. and E. easement, the project's parcel configuration does not meet the lot width to depth ratio.*

*Therefore, the location of the P. G. and E easement creates an exceptional or extraordinary circumstance pursuant to the modification requirements of section 1400-810 of the County's Subdivision Ordinance.*

- b. Because of the unique nature of a particular subdivision concept, design innovations are proposed which meet the functional standards of the zoning and subdivision regulations without strict adherence to the requirements of this Chapter.

*The conditions of approval include a provision for the sharing of driveway access points, thereby reducing the frequency of driveway intersections at the public right-of-way.*

- c. That the modification is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

*The modification is necessary in order to allow the property owner to subdivide the subject property at a density allowed by the Agricultural Preserve General Plan designation. Without the modification, due to the existing P. G. and E. easement, the property owner would be required to reduce the number of residential parcels in the proposed subdivision.*

- d. That the granting of the modification will not be detrimental to the public welfare or safety, or injurious to other property in the territory in which said property is situated.

*Approval of the modification will not be detrimental to the public welfare or safety, or injurious to other properties in the vicinity in which the subject property is situated. The modification will allow one more residential parcel over what the project would be allowed if the modification was not approved. The addition of one residence to the project area does not create or cause a safety hazard, adversely affect the public welfare in any manner, nor will it cause injury to any other property in the area.*

## **Findings**

### **CEQA**

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

1. 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. The study revealed that the project, as proposed, could have a negative impact on the environment; however, with the mitigation measures identified in the Initial Study, all potential impacts would be reduced to a level of less than significant. No written comments have been provided which presents evidence that the project will have a significant impact on the environment. Therefore, the proposed Mitigated Negative Declaration and Monitoring Program attached to this staff report are appropriate.
2. The Planning Commission has independently reviewed, analyzed, and considered the Initial Study and Mitigated Negative Declaration prior to making its recommendation on the project and finds that the Mitigated Negative Declaration reflects the independent judgment of the County of Sutter.
3. The Planning Commission has reviewed, analyzed, and considered the request and public testimony prior to making its recommendation and finds that the project will not be detrimental or injurious to property and improvements or to the general welfare of the County.

## General Plan

1. The subject property is located in an agricultural area of Sutter County and is used for agricultural purposes.
2. The subject property is divided by the County's 20/80 agricultural land use density line; however, consistent with the historical use provision of General Plan policy 6.A-6, the property has been determined to have been used for orchard uses and, therefore, qualifies to be determined to be entirely under the one dwelling unit per 20 acre classification.
3. The subject property contains approximately 121 acres and under the County's density provisions for one dwelling unit per 20 acres would be allowed to have six (6) residential dwelling units thereon.
4. The proposed development of the property would transfer the residential development density of the subject property to six residential parcels consisting of a total of 12 acres and thus maintain approximately 109 acres in long term agricultural uses consistent with the intended purpose of the Agricultural Preserve General Plan designation, and, therefore, the proposed amendment is consistent with General Plan.

## Rezoning

1. The rezoning to Agriculture Preserve District and Agricultural Preserve Residential District is consistent with the proposed Agricultural Preserve General Plan amendment designation for the subject property.
2. The proposed rezoning is consistent with the requirements of Section 1500-1216(a) and (b) of the Zoning Code in that:
  - a. The proposed rezoning would allow six residential parcels on approximately 121 acres in an area determined to have a density of one dwelling unit per 20 acres.
  - b. The subject property could be subdivided into six parcels of 20-acre each without the need for a variance.
  - c. The 109 acre parcel will be used for agricultural production and will not be allowed to have either a residence or any use thereon that requires a septic system.
  - d. The residential uses are clustered in one area of the subject property and will contain provisions for a residential exclusion area and vegetative buffer to protect the adjacent agricultural uses to the north of the residential uses.

- e. A development rights agreement will be required on the proposed project as required by Section 1500-1216(b)(6) of the Zoning Code.
- f. All proposed parcels have required minimum frontage on a County maintained road.

### **Tentative Subdivision Map**

1. Subject to the approval of a modification under section 1400-810 of the Subdivision Ordinance, the proposed subdivision conforms to the requirements of the Subdivision Ordinance.
2. Subject to the recommended conditions of approval, the proposed tentative subdivision map for Agriculture Preserve and Agricultural Preserve Residential parcels is consistent with the County's Zoning Code and General Plan designations for Agricultural and Agricultural Preserve uses.

### **Subdivision Modification**

1. The proposed subdivision has an existing P. G. and E. easement running through the property which creates an exceptional and extraordinary circumstance affecting the design and use of the property.
2. The proposed subdivision contains design innovation criteria in the conditions of approval pertaining to the residential driveways that will limit driveway access points to a 300-foot separation distance which meet and exceeds the functional standards of the zoning and subdivision regulations.
3. The modification is necessary in order to allow the property owner to subdivide the subject property at a density allowed by the Agricultural Preserve General Plan designation. Without the modification, the property owner would be required to reduce the number of residential parcels in the proposed subdivision due to the existing P. G. and E. easement in order to comply with the Subdivision Ordinance's design standards.
4. The modification would allow the property owner one additional residential parcel, but still maintain a density that conforms to the General Plan. The addition of one residence to the subject property will not create or cause a safety hazard, adversely affect the public welfare in any manner, or cause injury to any other property in the area.

### **Recommended Action**

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

1. "I move that the Planning Commission recommends the Board of Supervisors adopt the proposed mitigated negative declaration prepared in accordance with the California Environmental Quality Act and the Guidelines."
2. "I move that the Planning Commission recommends the Board of Supervisors approve of the General Plan amendment for the subject property to 'Agricultural Preserve' designation, approve the rezoning to AP (Agricultural Preserve) District of 109 acres and APR (Agricultural Preserve Residential) District of 12 acres, approves the subdivision modification, and approve the subdivision of approximately 121 acres into seven parcels, six Agricultural Preserve District parcels of two acres each and one Agricultural Preserve Residential District parcel of approximately 109 acres, based on the recommended findings and conditions contained in this staff report."

### **Attachments**

- A. Study Sketch
- B. Reduced size rezoning map showing subdivision
- C. Negative Declaration and Initial Study
- D. Subdivision Ordinance Modification Request
- E. Map Showing Shared Driveway Access Locations

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## Conditions of Approval

General Plan Amendment and Rezoning Applications #04-007  
And Subdivision Map SM #03-01

Subdivider - Richard Wilson

North side of South Butte Road, approximately 100 feet westerly  
of the intersection of South Butte Road and Wyncoop Road  
and approximately one mile easterly of the community of Sutter

1. General Plan amendment from Agriculture to Agriculture Preserve on 120.8 acres;
2. Rezoning of 120.8 acres from AG (General Agricultural) District to AP (Agricultural Preserve) District (approximately 109 acres) and APR (Agricultural Preserve Residential) District (approximately 12 acres);
3. Modification of the Subdivision Ordinance design requirements for lot width to depth ratio; and
4. Subdivision of 120.8 acres into six, two-acre Agricultural Preserve Residential District parcels and one, approximately 109-acre Agricultural Preserve District.

### Prior to Recordation of the Map

1. All rights of way and easements, public or private, shall be shown on the final map along with the recording references. (PW)
2. 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 the final map. (PW)
3. 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:  

South Butte Road	30.0' R/W + 10.0' P.U.E. (PW)
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4. A deferred improvement agreement, secured by a bond or other security approved by the director of Public Works shall be entered into with Sutter County. This agreement shall run with the land and shall be binding on all successors in interest. The agreement shall provide for street paving, curbs, gutters and sidewalks along South Butte Road. (PW)

5. An agreement shall be entered into with Sutter County. This agreement shall run with the land and shall be binding on all successors in interest and shall provide for the following:

Participation in a zone of benefit, drainage district, agency, service area, or any other public entity for the financing of construction and maintenance of a drainage system. In addition to the special assessment district or public entity referred to immediately above, the agreement between the developer/owner and Sutter County shall contemplate the imposition by Sutter County of any legally available fee, assessment, or other financing mechanism to facilitate the construction and maintenance of a drainage system. (PW)

6. No grading or alteration of the existing terrain that would direct additional waters to the County road or from one lot to any adjacent lot shall be allowed without the approval of the Public Works Department. This condition shall be so stipulated on the final map. A grading and drainage plan shall be submitted to the Public Works Department for review and approval. (PW)
7. 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)
8. A note shall be recorded on or with the map stating the following:
  - a. All structures producing wastewater shall connect to the public sewer when it is available, per the Uniform Plumbing Code (UPC).
  - b. The water supply for all parcels 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).
  - 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."
  - d. A site evaluation to determine the suitability of the "Remainder" parcel for utilizing an on-site sewage system has not been conducted. No use that generates sewage or wastewater regulated by the Environmental Health Division or the Regional Water Quality Control Board shall be allowed on the Remainder parcel unless all requirements of Chapter 700 of the Sutter

County Ordinance Code, or any amendments thereto in effect at the time of development, are met. (EH)

9. 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 (MUSDA) 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. An individual plot plan (8-1/2" x 11" or 8-1/2" x 14") and soils testing or design package for each lot that includes all necessary design information for approval of the sewage system.
  - c. Additional soils testing information prepared by a qualified consultant indicating the basis for the sizing and design of the on-site sewage system. (EH)
10. If an alternative or community system is proposed, the following must be submitted to Environmental Health for review and approval:

Specific language must be recorded on the face of the map addressing the special design considerations and/or system design requirements for the proposed parcels. (EH)
11. The property owner shall provide a grant of development rights on the Remainder Parcel pursuant to Section 1500-1216(b)(6) of the Zoning Code. (P)
12. Parcels 1 and 2, Parcels 3 and 4, and Parcels 5 and 6 shall have common, shared driveway accesses to the public right-of-way. A note shall be recorded on or with the map restricting parcel access to the common, shared driveway encroachment and easements shall be provided for this purpose with the map. (P)
13. The project proponent shall pay all Planning Division costs for processing the project application that may be due. (P)
14. If required, the project proponent shall obtain approval of a Storm Water Pollution Prevention Permit from the Regional Water Quality Control Board and provide a copy to the Community Services Department. (P)
15. A 100-foot non-residential setback exclusion shall be shown on the recorded map. The residential exclusion shall be the northerly 100-foot of the residential parcels. (P)

## Ongoing

16. A Notice of Determination shall be filed in the Office of the County Clerk within five (5) days of the approval of the project by the Board. (P)
17. The property shall be developed, maintained, and used in substantial accord with the project description and the agenda report, except as may be amended by the conditions herein. (P)
18. (MM) If during construction any evidence of archeological resources is discovered, the property owner and/or contractor shall stop construction activities, notify the Sutter County Community Services Department of the discovery, shall be required to obtain an archeological consultant to evaluate the discovery, and, if necessary develop appropriate mitigation steps subject to review and approval by the Community Services Department. (P)
19. 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)
20. 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)
21. Any relocation or rearrangement of any existing PG&E facility to accommodate this project will be at the developers/applicants expense. There shall be no buildings or structures, including signs, or the storage of any materials allowed under or over any PG&E facility or inside any PG&E easements that exist within the subject property. (PG&E)
22. Building permits will be required for all buildings, electrical, mechanical or plumbing design and installation based upon the 2001 California Building Code. (BI)