



PLANNING COMMISSION STAFF REPORT

PLANNING COMMISSION HEARING JANUARY 21, 2004
Agenda Item #10

Request: Tentative subdivision map application to allow creation of a 2.0 acre homesite parcel and a 90.9 acre agricultural parcel from an existing 92.9 acre parcel. Variance application to allow creation of the two parcels without public road frontage.

Location: The site is located northwest of the intersection of Scheiber Road and Cornelius Avenue, approximately 1.75 miles northeast of the community of Nicolaus

APN: 28-180-030

Files: Tentative Subdivision Map #03-04 and Variance #03-07

Planner: Steve Geiger

Applicant	Property Owner
Shannon Butler 1564 Alicia Drive Yuba City, CA 95993	Lillian Scheiber Family Trust 3235 Highway 99 Nicolaus, CA 95659

Staff Recommendation

Recommend that the Planning Commission deny Tentative Subdivision Map #03-04 and Variance #03-07.

Project Description

The applicant requests tentative subdivision map approval to create a 2.0 acre homesite parcel and a 90.9 acre agricultural parcel from an existing 92.9 acre parcel. Since both parcels will not have public road frontage, a variance application is also required

Setting

The subject property is 92.9 acres in size and has historically been used agriculturally. Riparian habitat exists along Ping Slough that runs along the east property line and along the Reclamation District 1001 levee that runs along the west property line. Oak woodland exists along the northern portion of the site, along Ping Slough, and the levee along the western boundary of the property. Two small ponds are located near the northwest corner of the property. There are no dwellings or agricultural buildings located on the property.

	Land Use	Zoning Designation	General Designation	Plan
Site	Agricultural	AG	AG-20	
North	Agricultural, residences	AG and AG-FP	AG-20 and Open Space	
South	Agricultural, residences	AG	AG-20 and Open Space	
East	Agricultural, residences	AG	AG-20	
West	Agricultural, residences	AG-FP and Yuba County	Open Space and Yuba County	

Previous Actions

The property owner has received approval for two previous maps involving the current subject property. On April 4, 1990, the Planning Commission approved Tentative Map No. 838P and Variance No. 540 which created a 244.84 acre parcel (comprised of the subject property and property west of the levee) and a 4.23 acre homesite parcel (located east of proposed Parcel 1). On May 2, 2002, Tentative Parcel Map #02-03 and Variance #02-01 were approved to allow the division of the approximate 245 acre parcel into two parcels sized 93 acres (the parcel that is the subject of this current application) and 152 acres (located west of the levee). A subdivision map application is required for this project since this application represents the fifth and sixth parcels created from the original parent parcel.

Analysis

Tentative Subdivision Map

The owner is proposing to create a two acre homesite parcel for her daughter who wishes to construct a residence on the property and assist in the farming operations. County General Plan Policy 6.A-4 allows for creation of homesite parcels for sons or daughters provided he or she is involved in the family farming operation. According to this policy, divisions for this purpose shall provide for cluster housing and shall minimize acreage removed from farming. This policy also requires that development rights be granted to the County for the remaining agricultural lands.

The proposed homesite parcel will be clustered next to a previously created homesite parcel that is located adjacent to the northeast corner of the subject property. Based on this clustering and the intended use of the property by the owner's daughter, the proposed project is consistent with General Plan Policy 6.A-4.

Based on information contained in the staff reports from the previous map applications filed on the property, access to the proposed homesite parcel (proposed Parcel 1) can be made through use of either a private road located along the northeast corner of the parcel or from an existing access road that originates at the intersection of Scheiber and Cornelius Roads and extends west, then north through proposed Parcel 2 following along the west side of Ping Slough, along the eastern portion of the subject property. The distance of the road extending from the intersection of Scheiber and Cornelius

Roads to proposed Parcel 1 is approximately one mile. Both private roads have gravel/dirt surfacing.

While the project is consistent with the General Plan policies that address creation of homesite parcels, a variance is required due to the lack of public road frontage for the newly created parcels. In the discussion that follows, staff is recommending denial of the variance application. Without approval of the variance, the map does not meet Zoning Code requirements due to the lack of public road frontage and therefore, staff is also recommending denial of the map.

Variance

Section 1500-8412 of the Zoning Code specifies the standards that must be met in order to grant a variance, which are as follows:

1. That special circumstances apply to the property, including size, shape, topography, location or surroundings;

The applicant provided the following information in support of this finding:

“The property is 92.9 acres in size and does not have fee access to the County road in its present state. Much of the land is within the floodplain and will never have or require public road access. The subject parcel was created through the approval of Variance #02-01 in 2002.”

Staff Comment: In order for this finding to be met, a special circumstance with regard to the property’s size, shape, topography, location, or surroundings must be demonstrated. The existing subject property does not have public road frontage and was created through approval of a parcel map and variance in 2002 (see “Previous Actions” section above). According to the assessor’s map of the area, there appears to be at least one other parcel, 69 acres in size, located southwest of the subject parcel that also does not have public road frontage. Staff notes that there are numerous agricultural parcels throughout the County that do not have public road frontage. The fact that the existing 92.9 acre parcel does not have public road frontage does not constitute a special circumstance. The parcel is relatively flat in topography, similar to most other parcels within the County, and is located between Ping Slough and the Reclamation District 1001 levee. While the subject property has an irregular shape with a narrow strip of land extending south, then east towards Cornelius and Scheiber Roads, this shape resulted primarily from the approval of the previous parcel map and variance in 2002. Since the irregular shape of the parcel was “self-imposed”, staff does not believe that a special circumstance has been demonstrated and therefore, does not believe that this finding is met.

2. & 3. That the strict application of the Zoning Ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification; and that the granting of the variance will not constitute a grant of

special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is located.

The applicant stated the following with regard to these findings:

“Approval of this variance should be granted out of necessity due to the lack of public road frontage and previous variance approval. Denying this variance request would deprive the owner of her right to pass the property down to her family members. Other variances for homesites on agricultural land which do not have County road frontage have been granted.”

Staff Comment: As noted above, the property owner has received two previous variance approvals in 1990 and in 2002 to create parcels without public road frontage from the original subject property. Staff found no record of other variances approved for the same purpose for other parcels in the area. Approval of previous variances is not adequate justification for the approval of subsequent variance applications as each request is viewed individually on its own merits.

Through approval of the previous variance in 2002, the owner is currently permitted to construct four residences on the subject parcel. While granting of the variance would not constitute a grant of special privilege, staff believes that the use of a variance to create this homesite parcel and possibly future homesite parcels for other family members is not an appropriate use of the variance process.

4. That the variance from the strict interpretation of this code represents the minimum deviation possible to enable reasonable development of the property.

The applicant noted the following with regard to this finding:

“Our request is the minimum deviation possible to develop the property. Our request is to provide access by private easement along existing farm roads which have historically served the property”.

Staff Comment: Through approval of the previous variance in 2002, the owner is currently authorized to construct up to four residences on the single, subject 92.9 acre parcel (1 per 20 acres). While these residences are not permitted on separate parcels, as the owner would most likely want to have in order to give individual parcels to family members, staff believes that reasonable development of the property is provided for under the existing variance approval.

Based on the above discussion, staff does not believe the proposal meets the criteria required for variance approval and therefore is recommending denial of both the tentative subdivision map and variance.

If the Planning Commission believes that the required criteria are met and wishes to approve the project, staff will have recommended conditions of approval available at the public hearing for the Commission to consider along with the approval.

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, 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.

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 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.
2. The Planning Commission has independently reviewed, analyzed, and considered the Initial Study and Negative Declaration prior to making its recommendation on the project and finds that the Negative Declaration reflects the independent judgment of the County of Sutter.

Tentative Subdivision Map

3. The proposed map does not provide for public road frontage for the proposed parcels and therefore does not comply with the requirements of the Sutter County Subdivision Ordinance and the Sutter County Zoning Code.

Variance

4. Special circumstances, including size, shape, topography, location or surroundings, do not apply to the subject property.
5. 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.
6. The granting of the variance could constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and district in which the property is located.

7. Reasonable development of the property is provided by the previously approved variance.

Recommended Action

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

1. "The Planning Commission finds the proposed negative declaration was prepared in accordance with the California Environmental Quality Act and the Guidelines."
2. "The Planning Commission denies Tentative Subdivision Map #03-04 and Variance #03-07, based on the recommended findings and information contained in this staff report."

Attachments

- A. Study Sketch
- B. Reduced tentative subdivision map
- C. Proposed Negative Declaration and Initial Study

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Conditions of Approval
Tentative Subdivision Map #03-04
Variance #03-07
Shannon Butler
Property located northwest of the
intersection of Scheiber and Cornelius Avenues

1. Approval of this parcel map allows the creation of a 2.0 acre homesite parcel and a 90.9 acre agricultural parcel from an existing 92.9 acre parcel. (P)

At end of 10 day appeal period

2. 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)
3. The applicant shall pay any outstanding balance for processing the application within thirty (30) days of receiving a final invoice from the Community Services Department. (P)

Prior to recording of the map

4. All rights of way and easements, public or private, shall be shown on the final map along with the recording references. (PW)
5. 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)
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. The following statement shall be placed on the final 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)

8. Prior to the recordation of the map, the subdivider shall provide to Environmental Health a map which clearly shows the exact location of the Minimum Useable Sewage Disposal Area (MUSDA) for each parcel. The MUSDA delineation shall comply with Sutter County Environmental Health regulations. (EH)
9. 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)
10. 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). (EH)
11. A note must be recorded on the map stating that water supply 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). (EH)
12. 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)
13. Prior to the recordation of the map, 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 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. (EH)
14. Prior to recording of the map, the Sutter County Fire Services Manager shall inspect the existing private road providing access to the proposed parcels to confirm that adequate emergency access can be provided. Prior to issuance of a building permit for a residence on the proposed homesite parcel, the property owner shall provide proof of legal access to the site. The Fire Services Manager shall review the plot plan to ensure compliance with Sutter County Fire Department access requirements. The Fire Services Manager shall verify that adequate access has been provided prior to issuance of a certificate of occupancy for the proposed residence. (FS)

15. Prior to recordation of the map, the landowner shall execute an open space easement and development rights agreement with the County of Sutter limiting future residential development on Parcel 2 to three residences. (P)

Ongoing

16. 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. 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)
17. 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)
18. 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)
19. Any relocation or rearrangement of any existing PG&E facilities to accommodate this project will be at the developer's expense. There shall be no building of structures or the storage of any materials allowed under or over any PG&E facilities or inside any PG&E easements that exist within the project site. (PG&E)
20. The final map shall be recorded within 36 months of the approval date or the applicant shall submit a request for and receive approval of a time extension in accordance with the Sutter County Subdivision Ordinance. (P, PW)