August 25, 2025

Board of Supervisors
Humboldt County Courthouse, Room #111
825 Fifth Street
Eureka, CA 95501

RE: Appeal of Planning Commission denial of Subdivision and Variance, Case PLN-2025-19178

We, the Applicants, are appealing the referenced Planning Commission action because we believe the Planning Department, not the Planning Commission, acted outside the law and abused its discretion.

Our personal grievance is that we are being unfairly portrayed as wrongdoers, while we see ourselves as the victims.

Records and videos of the 2020 hearings on the Accessory Dwelling Unit (ADU) Ordinance highlight a Catch-22:

> County Plan policy requires that—only within the Jacoby Creek Community Plan (JCCP) area—new lots be buildable lots served with public water and sewer services, predicated on those services being provided by the City. However, the City will no longer provide these services, the policy cannot be met, and no new lots can be created even though they are buildable lots with private water and sewer.

Although the focus of the hearings was the ADU Ordinance, the County Planning Commission and Board of Supervisors clearly expressed intent that the Catch-22 be corrected. To this end, the Board directed that the Plan be updated appropriately.

Despite what we see as clear direction from the Board of Supervisors to correct the policy, to date it has not been done, leaving us in limbo.

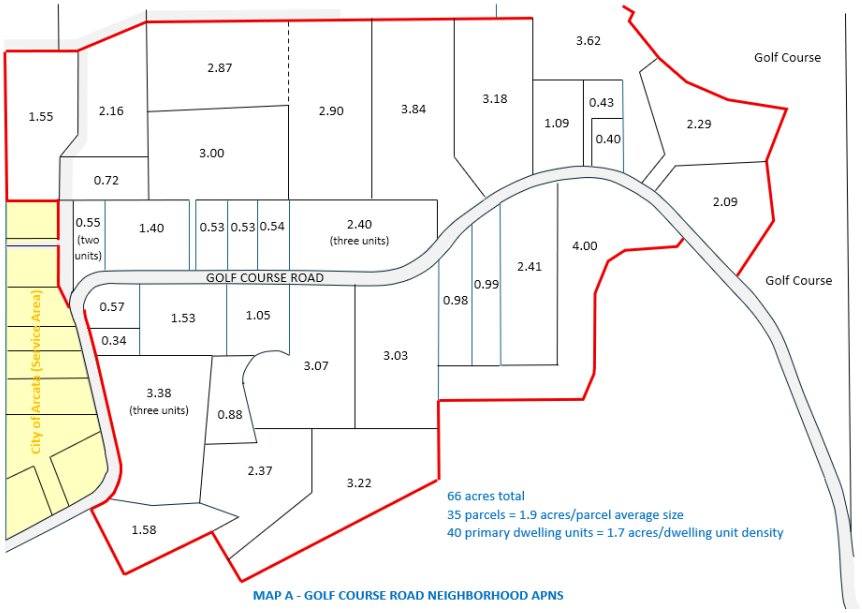
We, the Applicants, are victims, caught in this Catch 22. For five years, we have been waiting for some resolution so we can move forward with our plans. This ongoing inaction has not only stalled our subdivision efforts but also perpetuated an unfair situation where we, as property owners, are prevented from utilizing our land as commonsense says would be reasonable.

But when asked about the failure to act or seek clarification, the Planning Department responded that we misunderstand the situation. They said and continue to say that we are wrong, thinking that the JCCP needs to be updated and the Planning Commission can approve the subdivision before the Plan is updated. They add that if we want the Plan updated, we are the ones who need to initiate it.

We obviously disagree. The JCCP needs to be updated, and the County can lawfully approve the subdivision without waiting for the Plan to be updated. And, it is the responsibility of the County, not us, to make it happen.

The planning department has framed the debate to be "should the subdivision be approved?" when the real debate is “should it be denied?”

To illustrate, below is a map (Map A) showing existing Assessor’s Parcels in the Golf Course Road Neighborhood.



One of these parcels is the smaller, vacant lot of the proposed two-lot subdivision. All of the other parcels are developed with one or more residences.

The elephant-in-the-room question that remains unanswered by the Planning Department is how denying the proposed lot—approved for water and septic—serves the public interest when all the neighboring lots are developed, and they all have private water supply and wastewater disposal systems, and there are no documented problems with water or septic?

Enforcing conformance to the outdated, Catch-22 JCCP 5-acre residential density limitation is not a legitimate compelling governmental interest.

But protecting the public health and safety is. Hence, requiring public water and sewer service for new parcels smaller than 5 acres in order to protect public health and safety might be a legitimate decision—provided that is ***the least restrictive means*** of protecting public health and safety under the particular circumstances. That is not true for our case, as compliance with State onsite water supply and wastewater disposal will serve to protect public health and safety without the need for public water and sewer.

Instead, the Planning Department told the Commission that the proposed subdivision cannot be approved—that there is no choice but to deny—because it is inconsistent with the General Plan due to the subdivision's conflict with the unresolved Catch-22 policy.

This response is outside the law.

The Planning Department selectively applied Section 66473.5 of the Subdivision Map Act to lead Commissioners to believe that it had no choice other than to deny the proposed subdivision. Examples from the Hearing include:

- "The map act mandates that to approve the subdivision, it has to be consistent with the plan" [41:22 minutes].
- "Even with zoning compliance through the variance or a merger or lot line adjustment, the requirement to be consistent with the general plan would have to be met" [42:40 minutes].
- "The requirement is to find it consistent with the plan" [48:10 minutes].
- "If not fundamentally consistent with the community plan, you're outside the plan… can't approve" [49:01 minutes].
- "Design options wouldn't change findings of inconsistency with plan" [52:16 minutes].

The problem is that the Department never addressed that the test is "compatibility" rather than "consistency."

Although the subdivision conflicts with the outdated, Catch-22 JCCP 5-acre residential density limitation, it is clearly otherwise compatible with all other relevant General Plan provisions under the Common Sense Principle (G-P31). Pursuant to Section 66473.5, if the subdivision is compatible with the Plan, it is consistent with the Plan and may be approved.

The Department also told the Commission that there is no option other than to apply the Plan consistency test, even though Policy G-P9 (Errors in the Plan) clearly allows for approval. Examples from the Hearing include:

- "They can't do anything other than change the plan" [52:41 minutes].
- "The policy needs to be changed before the subdivision can be approved" [45:26 minutes].

Additionally, of particular insult to us, the Department told the Commission that approving the subdivision would set an undesirable precedent:

> Approval of the proposed (substandard) parcel would set precedent that a parcel could be subdivided below what the zoning allows. It could potentially open up the water, and once you start to make that exception to the zoning, it's unclear as to where it would stop [40:25 minutes].

Not. If the variance is granted, the subdivision is then allowed by the zoning. It is not an "exception."

We ask, is it undesirable to always do the right thing and grant a variance that meets the mandatory tests and is deserving of approval?

To point, in contrast to what the Department told the Commission, the County in fact has the choice to lawfully approve the subdivision.

The second part of our complaint is that the Planning Department's presentation of the subdivision, and of our case for the subdivision, did not accurately reflect the facts. Their arguments are entirely subjective and lack supporting objective evidence.

Our response to the Department's arguments is straightforward and objective, though it requires specific and thorough explanations. They are attached.

Respectfully,

Larry and Eileen Henderson

Attachments:
A – Project Setting
B – Regulatory Setting
C – Plan Setting
D – Plan Consistency
E – Plan Error
F – Plan Amendment
G – Public Interest

ATTACHMENT A
PROJECT SETTING

Following is what the Applicants believe is a clear, shared description of the project setting. The purpose is to help prevent confusion and misinterpretation from differing viewpoints, like disagreeing if a number is 6 or 9.

The setting consists of the following components:

- The subject parcel
- The parent property
- The Golf Course Road neighborhood.
- The Golf Course Road sub-community RS-B5 zoned district.
- The Jacoby Creek Community Plan urban development area (UDA)

The Subject Parcel

The subject parcel (the Henderson parcel) is 4.6 acres in size. It is developed with one single-family residence and fronts onto Golf Course Road, an improved county road.

The proposed subdivision would split the subject parcel into two lots, one of 1.4 net acres (the proposed Lot #1) and the other of 3.2 acres (the proposed Lot #2).

The larger 3.2- acre lot contains the existing residence served by private water supply and wastewater disposal systems.

The smaller 1.4-acre lot is vacant but approved for a homesite with private water and wastewater systems. It was a separate legal parcel (the Guthridge property) from before 1959 until its merger with the adjacent northern parcel in 1975. A residence could have been built on the lot before the merger.

The two proposed lots are curently two separate Assessor's parcels. This is not reflective of their legal status, but rather of their location in two separate taxing agencies.

The Parent Parcel

The proposed Guthridge property was merged with adjacent land to create a larger parent property (the McHugh property). This consists of the subject 4.6-acre Henderson parcel and its adjacent 6.6-acre parcel (the Marth property); a combined total of 11.2 acres. It is referred to as the parent property because Co-Applicant Eileen Henderson and her brother inherited the property from their parents.

This parent property is pertinent because the need for a zoning variance arises from its history of reconfiguration and ownership.

The Golf Course Road Neighborhood.

The subject Henderson property is part of the Golf Course Road neighborhood. The neighborhood consists of the developed, unincorporated properties between the City of Arcata and the Baywood Golf Course, served by Golf Course Road.

The neighborhood is within the City of Arcata's sphere of influence but is outside the City's Service Area to where the City plans to extend and provide water and sewer services.

The neighborhood is fully built out, except for the subject Henderson proposed Lot #1. All parcels within the neighborhood are served with private water supply and septic disposal systems permitted by the County, with no waivers granted.

The neighborhood totals over 66 acres (see maps below). The average size of the neighborhood's 35 Assessor Parcels is 1.9 acres, and the developed density of the neighborhood's 40 primary dwelling units (not including accessory dwelling units) is 1.7 acres per unit.

The Golf Course Road Sub-Community RS-B5 Zoned District.

The Golf Course Road neighborhood is included within a designated Suburban Residential (RS-B5) zoning district, which has a minimum parcel size of 2.5 acres.

The neighborhood covers a third of the RS-B5 district but is the only portion of the district that is not within the City's service area.

In contrast with the neighborhood, the remaining area within the RS-B5 district is within the City's service area and contains several parcels of subdividable size that can be further developed under the current zoning classification. Only one or two of the subdividable parcels, however, appear to be sized for development if the required services were available—which they are not.

The Golf Course Road sub-community is the area of Jacoby Creek Community accessed via Golf Course Road, distinct from the sub-communities accessed by Jacoby Creek Road or Buttermilk Lane.

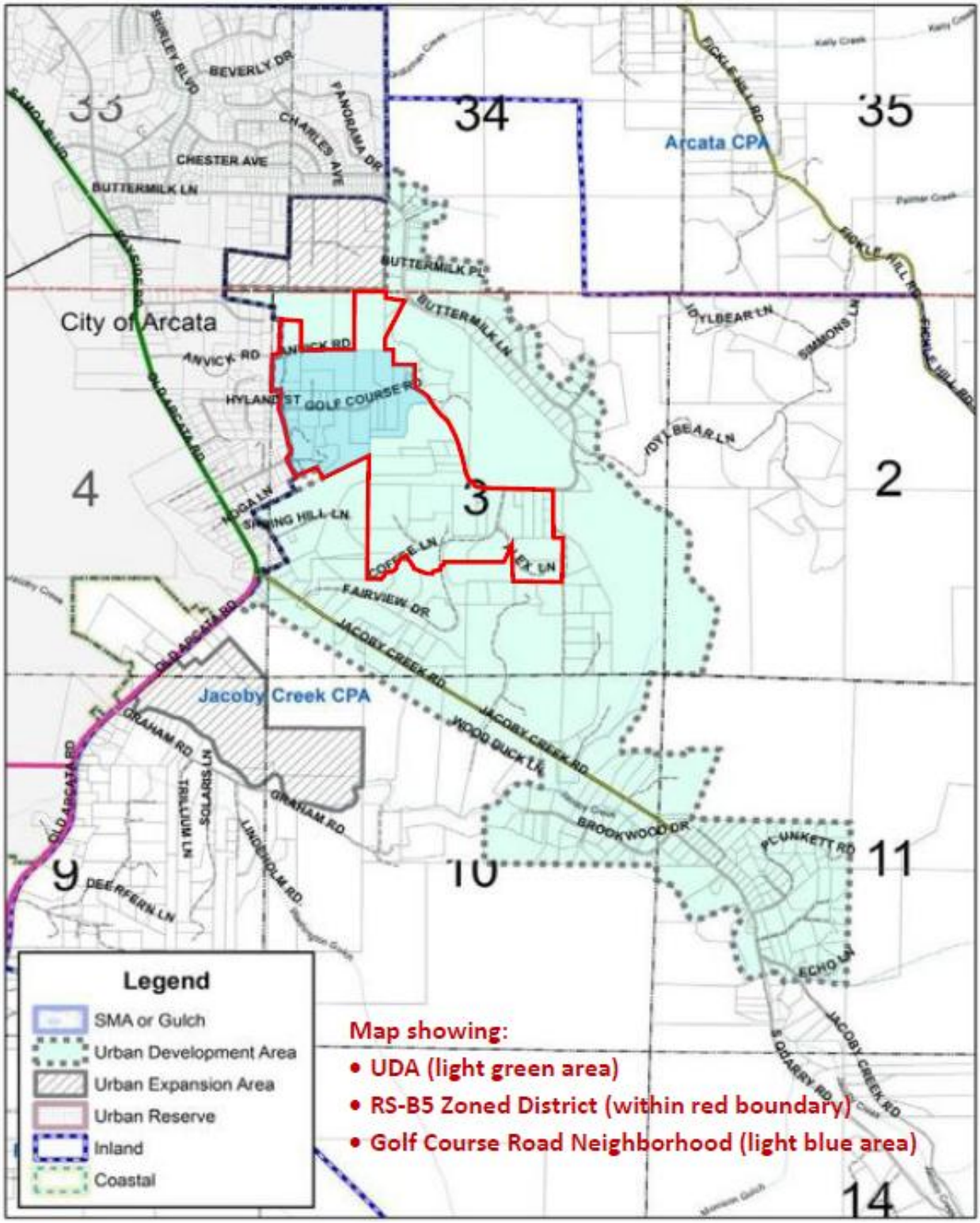
The Jacoby Creek Community Plan Urban Development Area (UDA)

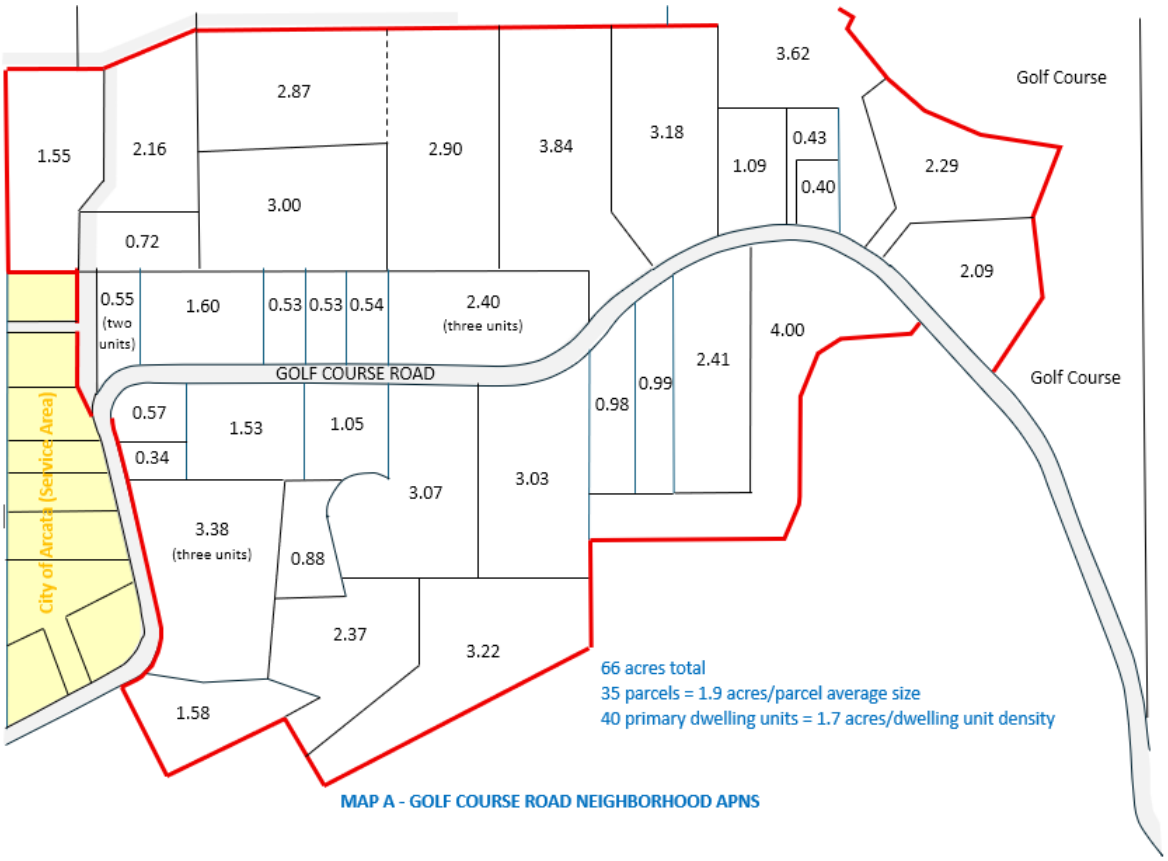
All the lands within the golf course road sub-community RS-B5 zoned district are included in the Jacoby Creek Community Plan Urban Development Area (UDA).
The UDA encompasses the Plan's designated suburban residential areas, which are distinct from urban residential areas within urban service areas, as well as rural, agricultural, and timber areas that will not be served with public services.

Maps

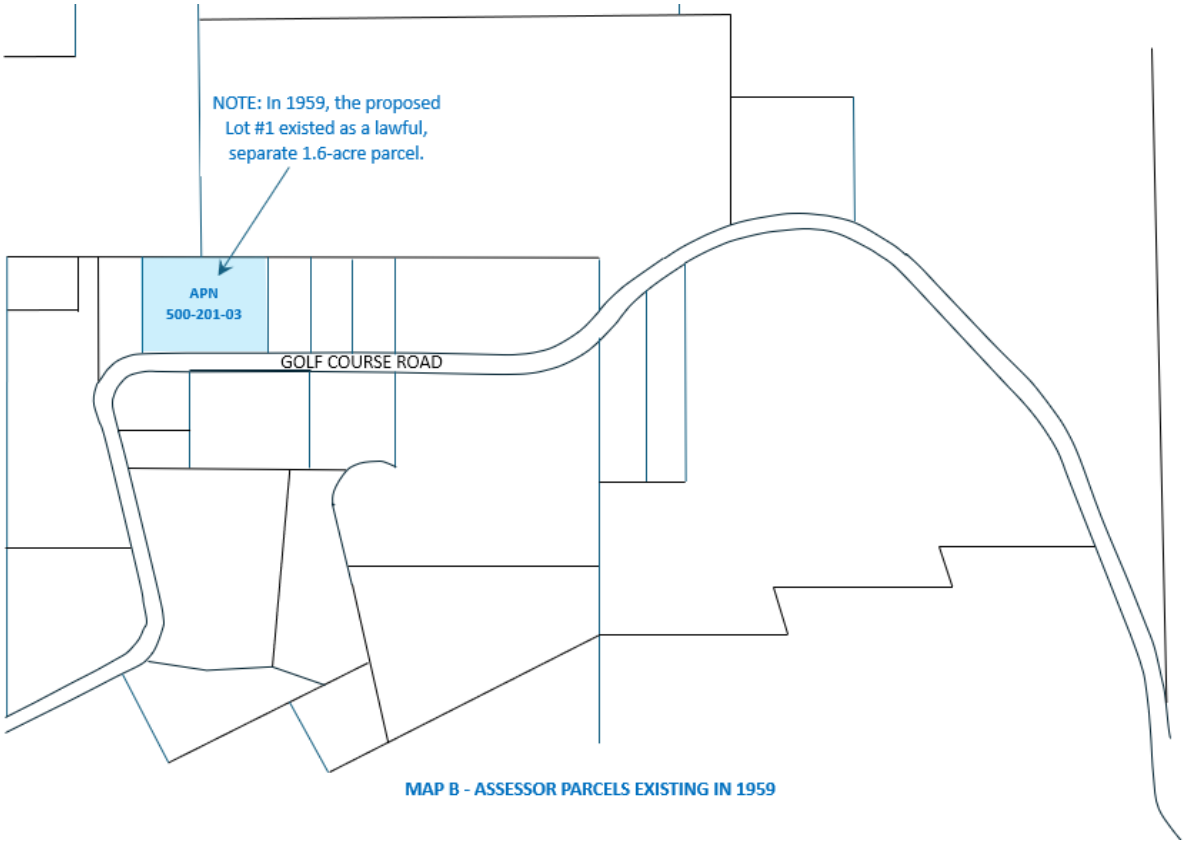
Map of Study Area
Map A – Golf Course Road Neighborhood APNs
Map B – APNs Existing in 1959
Map C – Subdivisions Since 1959

Map D – Golf Course Road Neighborhood APNs

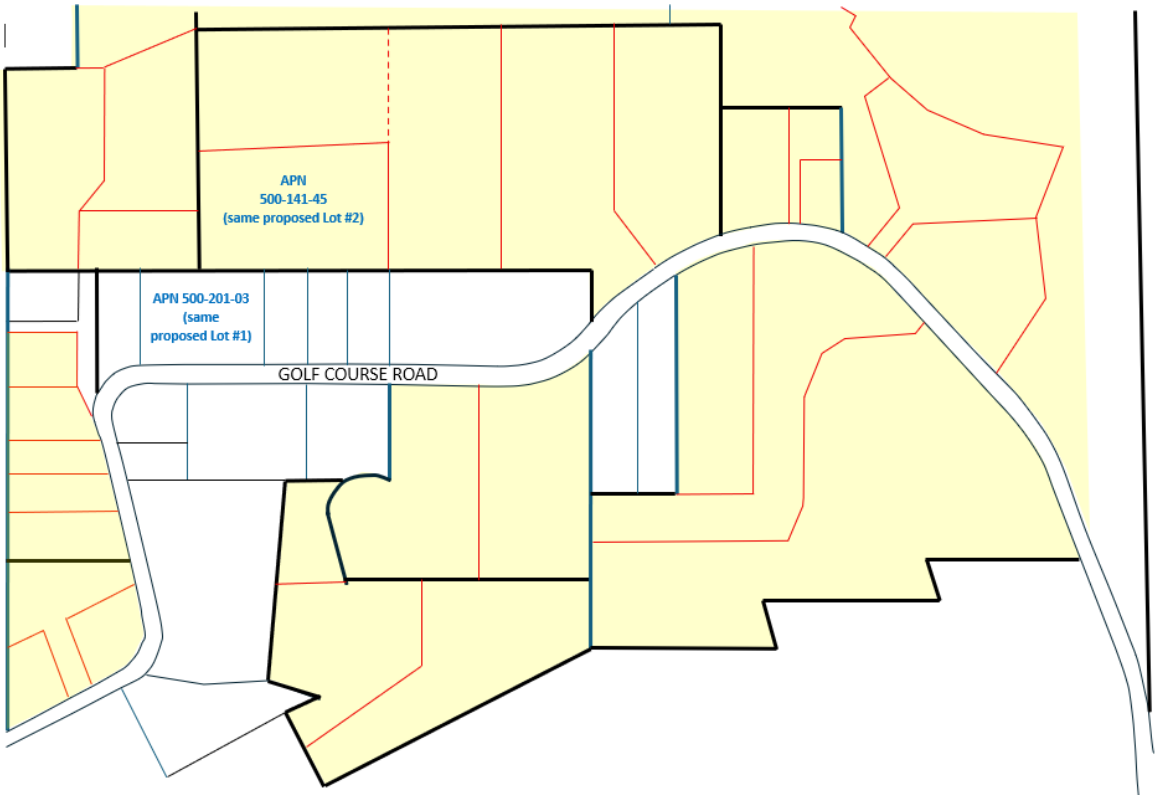




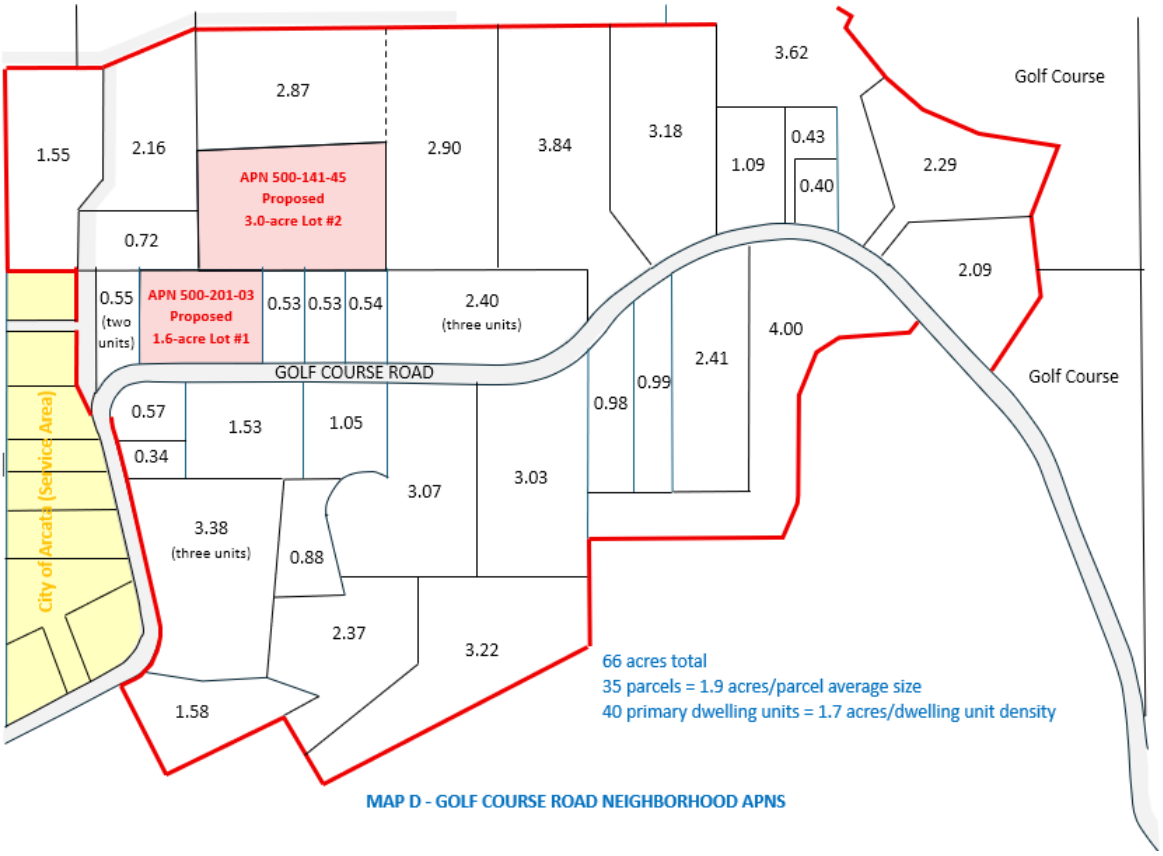
MAP A - GOLF COURSE ROAD NEIGHBORHOOD APNS



MAP B - ASSESSOR PARCELS EXISTING IN 1959



MAP C - SUBDIVISIONS SINCE 1959 (YELLOW SHADED)



MAP D - GOLF COURSE ROAD NEIGHBORHOOD APNS

ATTACHMENT B
REGULATORY SETTING

Following is the Applicants' opinion of what "right" looks like regarding local government regulation of land use and development.

The Applicants believe it appropriate to offer this opinion, noting Mr. Henderson's master's degree in community development and regulatory policy, his former role as the County's zoning and permitting administrator, his experience as a local-governance subject matter expert for the State and Defense Departments, and his recent position as an instructor on the topic at the National Training Center.

In summary, the consideration of the Henderson proposed subdivision is a discretionary matter rather than a legal one. This is not the case of the law saying the applicant cannot subdivide. To the contrary, the law says the applicant ***may*** subdivide… at the Planning Commission's discretion… using common sense.

Overview

The proposed subdivision complies with all applicable County subdivision regulations, including approval of suitability for private water supply and wastewater disposal systems—with one exception. A zoning variance is required for the proposed lot that falls below the 2.5-acre minimum size for this zone. If the variance is granted, the subdivision may be approved, subject to the State mandate that it cannot be approved without a finding that it is consistent with the general plan.

The Commission has the choice whether to approve it or not, subject only to the constitutional test that the decision is consistent, fair, and only as restrictive as needed to advance the government's interest.

Zoning Variance Test

The test for granting the variance is HCC Section 312-3.2 (Variances):

- The variance may be granted only when strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification, because of special circumstances applicable to the property (including size, shape, topography, location or surroundings).
- The variance cannot constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.
- The variance cannot be granted if it authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

Plan Consistency Test

Map Act Section 66473.5 prohibits approval of the subdivision unless it is consistent with the General Plan.

But Section 66473.5 further provides that ***a subdivision is consistent when it is compatible*** with the Plan. If the subdivision is compatible with the Plan, it is consistent with the Plan and may be approved. This clarification is important, as it shows that strict conformity with ***all*** plan policies is not a mandate for consistency.

The Plan lacks clear criteria for compatibility, so deciding what is and is not compatible requires "interpretation" of the Plan. The County's General Plan addresses how it is to be interpreted with the following policy:

> *"The General Plan should be interpreted in a commonsense manner to encourage reasonable development which can meet the needs of the community with minimal impacts on the environment and demands on public services. Taking a comprehensive view of all relevant plan policies, the result must balance the intent of these policies, in a practical, workable, and sound manner."* [HCGP Policy G-P31, Common Sense Principle]

In this context, the commonsense test involves:

- Ensuring the development is reasonable and beneficial to the community.
- Minimizing negative impacts on the environment and public services.
- Balancing the intent of relevant policies in a practical and workable manner.

This approach helps ensure that the development aligns with the overall goals and principles of the General Plan.

Subdivision Disapproval Test

Although granting the variance and determining Plan consistency are discretionary, the final outcome remains a regulatory action. If that action is the disapproval of the subdivision, it becomes a legal matter, subject to the most demanding test that the denial serves (or furthers) a compelling governmental interest and is the least restrictive means of achieving that interest.

This necessitates a transparent disclosure and consideration of the respective compelling governmental interest. Additionally, it requires consideration of alternative methods to serve that interest, along with justification as to why the chosen course of action is the least restrictive option available.

ATTACHMENT C
GENERAL PLAN SETTING

The subject parcel is designated by the Jacoby Creek Community Plan (JCCP) for Residential Estate land use and is located within a mapped JCCP Urban Development Area (UDA). The proposed subdivision would create two parcels averaging 2.3 acres, with private water and sewage systems instead of public water and sewer.

The General Plan issues are (1) the density and (2) the lack of public services.

Relevant JCCP Policies

The JCCP policies relevant to density and public services for new Residential Estate parcels:

- JCCP Policy 26 (Residential Densities): Residential development at one dwelling unit per *five or more acres* may be permitted within the UDA (under specified conditions, including water or sewer services are not "presently available" to serve the development). The use of private water sources within the UDA is permitted only for residential development at densities of one dwelling unit per *five or more acres*.
- JCCP Policy 27 (Development within the UDA): Development within the UDA should occur at designated plan densities only when public water and public sewage disposal systems are available.
- JCCP Policy 39 (Subdivision of Land Designated Residential Estates): No new subdivision or minor subdivision which creates parcels of less than *five acres* shall be approved on lands designated as Residential Estates until a public water system is available to such lands.

Policies P26, P27, and P39 are collectively referred to as the JCCP 5-acre limitation policies.

Additionally, the JCCP's designated density for Residential Estates is between 2.5 and 5 acres, contingent on the provision of public services.

Other Relevant General Plan Provisions

Under the General Plan Land Use Element, the minimum density for areas not served by public water and sewer systems is 2.5 acres (a greater density than the 5 acres prescribed by the JCCP).

The Land Use Element's minimum density for areas served by public water but not sewer systems is one (1) acre.

A density of 2.5 acres or larger, not served with public services, is permitted under the Land Use Element if:

A. Services are not reasonably available in a timely manner, or the extension of services is physically infeasible; and

B. There is adequate water supply for domestic use, and suitable conditions and measures for sewage disposal, in compliance with health and safety standards without waivers.

The description of Residential Estates (RE) as provided in the General Plan Land Use Element:

> *This designation is used for lands adjacent to urban areas or rural communities with limited public services but suitable for single-family residential use. It is also intended as a **transition** from urban development to rural lands.*

Other relevant General Plan guiding principles and land use policies—notably JCCP Policy 22—encourage a variety of housing types and densities to be located within the Jacoby Creek Area UDA.

ATTACHMENT D
GENERAL PLAN CONSISTENCY

Planning says the proposed subdivision's density and lack of public services conflicts with General Plan density policies, making it inconsistent with the General Plan and therefore not approvable.

However, this assertion does not accurately reflect the facts.

Conflict with the Jacoby Creek Community Plan (JCCP)

The conflict with the General Plan is the subdivision's noncompliance with the JCCP 5-acre limitation policies (Policies P26, P27, and P39) directing that public services be provided for new Residential Estate parcels smaller than 5 acres within the UDA.

The conflict is simply that the proposed subdivision—as well as all the other parcels in the Golf Course Road neighborhood—will not be served by public water or sewer services.

Additionally, there is also conflict with the proposed average parcel size of 2.3 acres for the two new parcels, which is slightly greater than the prescribed Residential Estate density range of 2.5 to 5 acres.

Conflict with the General Plan Guiding Principles and Policies

No other conflicts exist with any other General Plan provision or policy—particularly the Plan's Land Use Element—related to density or any other matters.

Plan Compatibility Despite Conflict

Despite these conflicts with the JCCP, the subdivision is compatible with the General Plan.

Not including the proposed subdivision, the Golf Course Road neighborhood's current average parcel size is 1.9 acres, and its density (not counting ADUs) is 1.7 acres per unit, significantly greater than the JCCP planned density range of 2.5 to 5 acres per unit. Over half of the parcels existing in the neighborhood are smaller than the proposed 1.4-acre lot, and none of the other parcels are subdividable under the zoning's 2.5-acre minimum parcel size limit. The subdivision—with its average parcel size of 2.3 acres—constitutes infill.

In this context, the subdivision is compatible with the established community neighborhood. Importantly, it, on its own, does not create or worsen the conflict.

Under the General Plan Land Use Element, a density of 2.5 acres or larger, not served with public services, is permitted under the Land Use Element if:

A. Services are not reasonably available in a timely manner, or the extension of services is physically infeasible; and

B. There is adequate water supply for domestic use, and suitable conditions and measures for sewage disposal, in compliance with health and safety standards without waivers.

Although having a density greater than that prescribed, the proposed subdivision, along with its related neighborhood, is compatible with this criteria—the primary considerations being that "services are not available in a timely manner" and "health and safety standards are met without waivers."

Furthermore, the proposed subdivision, along with its related neighborhood, is compatible with the description of Residential Estates (RE) as provided in the General Plan Land Use Element:

> *This designation is used for lands adjacent to urban areas or rural communities with limited public services but suitable for single-family residential use. It is also intended as a **transition** from urban development to rural lands.*

Compatibility with the Land Use Element's RE provisions is evident because urban-to-rural transition areas may be either underdeveloped lands awaiting services or fully developed lands that will never receive public services. The latter describes this case, and the neighborhood's established density of 1.7 acres conforms to the General Plan's Land Use Element range for Residential Estate densities from 1 to 5 acres per unit.

Compliance with Plan Consistency Mandate

Although there is conflict with policies directing public water and sewer services for new parcels under 5 acres in the Jacoby Creek Community, the subdivision and its related neighborhood are otherwise compatible with the General Plan and JCCP policies.

This comprehensive view provides a sound and responsible basis for concluding that the subdivision is compatible with the General Plan. Accordingly, pursuant to Map Act Section 66473.5, which provides that ***a subdivision is consistent when it is compatible*** with the Plan, it is both permissible and proper to find the proposed subdivision consistent with the General Plan.

Contrary to Planning's assertion, the County has the choice to approve or disapprove the subdivision; disapproval is not required.

ATTACHMENT E
GENERAL PLAN ERROR

General Plan Guiding Policy P9 allows approval of a project where there is an ***obvious error*** in the Plan that would prevent the project, provided it is otherwise consistent with the Plan.

The issue is that there has been a change of circumstances since the adoption of the JCCP in 1984.

The Planning Department says that the changed circumstances are not considered an "obvious error" in the Plan, since—in summary—they do not affect its foundation, logic, or applicability.

On the contrary, the changed circumstances in fact invalidated the Plan's foundation, flawed its logic, and undermined its application. But, more importantly, when the County had its chance to update the Plan accordingly, it failed to do so, resulting clearly in an obvious error.

Change in Circumstances

The JCCP 5-acre limitation policies were put into place In 1984, with the adoption of the Plan. At that time, the City of Arcata actively pursued annexation and expansion of water and sewer services to encourage growth. The policies were deliberate—to support the city's goals and plans as adopted and documented in the City's General Plan effective at that time.

With the adoption in 2000 of its updated "General Plan 2020", this changed. The City modified its Urban Services Boundary (USA) to limit the extension of City services and outward growth of the City, with the expectation that there will be increased use of vacant and underdeveloped parcels within City limits as opposed to outward expansion. The City's updated Plan's Land Use Element specified that use of its existing infrastructure will have priority for development over vacant sites that are located outside the urban services boundary, which require investment in extension of infrastructure and services (LU-1F, Promotion of Infill Development).

Meaning, as of 2000, public water and sewer services were no longer available to any lands outside the City's modified USA, with no plans or intention for future availability.

Plan's Foundation Invalidated with Change in Circumstances

The JCCP 5-acre limitation policies were predicated by JCCP Policy 25 (Provision of Urban Services) on the intent that Arcata will be the provider of the required services within the Urban Development Area.

Within the findings (Finding #5) representing the Planning Commission's decision on the proposed subdivision, the Planning Department explains its rationale of 'predicated provision of services' as follows:

> "In adopting the Jacoby Creek Community Plan, the Board of Supervisors intentionally established (the 5-acre limitation policies). There was no immediate plan to annex or provide these parcels with public services at the time of adoption of these policies,

rather it was understood that it might happen at some point in the future - not that it absolutely would happen."

This is noteworthy, because during the Planning Commission consideration of the Accessory Dwelling Ordinance--when specifically discussing the consequences of Arcata changing its commitment to provide services when the JCCP was predicated on the City providing the services—Planning Director Ford informed the Commission that he had "looked further" into the matter, and "found no study on record to provide relevant context."

Planning's explanation seems intended solely to support these arguments:

- "The fact that annexation and/or provision of services has not yet happened and is not currently proposed does not make this an "obvious error" by the Board in adopting these policies."
- "Lack of sewer and water connections does not invalidate the policies."
- "It is not unreasonable to expect that these services will foreseeably be available at some point in the future even if there are no current plans for this."

This completely misrepresents the premise of the Plan—what it's really all about. Planning has it backwards in that the obligation for "predication" lies with the service provider, not the landowner or developer.

Policy 25 reflects a commitment by the City to ensure the provision of the services. This commitment was a foundational assumption that influenced the original JCCP.

With the adoption in 2000 of its updated "General Plan 2020" the City of Arcata changed its commitment to provide the required services. This clearly invalidated the Plan's foundation.

It truly is not responsible to suggest that the County can direct when and how the City provides services.

Plan's Logic Flawed with Change in Circumstances

The Planning Department's explanation of the logic behind the JCCP 5-acre limitation policies is fairly accurate.

When adopted in 1984, the plan was developed to cover a 20-year planning period. For whatever reasons, the JCCP envisioned a 20-year transition of the lands within its mapped Urban Development Area (UDA) from status quo rural lands to urban lands served with public water and sewer services. Although opinions vary on whether the Plan's vision was a reasonable 20-year projection, the scenario was logical—if the necessary services were provided.

That logic was carried over with the "re-adoption" of the JCCP with the County General Plan update in 2017. This extended the vision of a transitioning UDA through 2040.

However, with the prior adoption in 2000 of its updated "General Plan 2020" the City of Arcata had reversed its commitment to provide the required services. Consequently, the logic was flawed due to the necessary services were neither available nor planned to be provided.

The transition of the JCCP UDA to urban from rural and suburban will not be happening by 2040.

The point being, the Plan is now flawed because the JCCP's UDA no longer meets the requirements of the General Plan's Land Use Element: namely, that UDAs (1) "can be developed to a density of one or more dwelling units per acre" and (2) "can be serviced with public water and sewer in the near term."

This is particularly applicable to the Golf Course Road Neighborhood. The neighborhood cannot be developed to a greater density than it is now, due primarily to the "substandard" condition of the access road. Nor can the neighborhood be served with City services in the near term.

Most importantly, the neighborhood property owners do not want or need a greater density or public services. This is evident from the two anonymous letters sent to the Planning Commission opposing a new home in the neighborhood, even though the Health Department approved it for water and septic use.

Plan's Application Undermined with Change in Circumstances

The impact on the Jacoby Creek Community ADU due to the absence of the City's services on land use should be obvious: a moratorium.

For example, in the RS-B5 zoned district referenced by the Planning Department as it's study area, only one parcel (out of over 60 parcels) might be able to be subdivided under the JCCP 5-acre limitation policies, if the required services were available. Without the enforcement of the 5-acre limitation policies, ten properties—with only the adjacent Marth property located within the Golf Course Road Neighborhood—would be eligible for subdivision under current RS-B5 zoning regulations.

Meaning, the district is undevelopable and remains unchanged.

Ultimately, without the City's services, the growth and new development anticipated under the JCCP will not be achievable. This directly contradicts the fundamental General Plan purpose of providing affordable housing for all income levels.

Failure to correct for Change in Circumstances

The General Plan Guiding Standards (IS-S2) explicitly provides that when the County is notified by a service provider of newly identified capacity limitations within Urban Development Areas "that have the potential to result in a development moratorium or other limitation of development otherwise allowed by this Plan," the County shall "take appropriate actions as necessary to reflect new capacity limitations in land use and permitting decisions."

When the County updated its General Plan in 2017, the City had—with the City's adoption of its updated Plan in 2000-- notified the County that the public services and infrastructure expected to support the JCCP UDA would not be provided. Despite this change, the County re-adopted the JCCP without taking appropriate action to reflect the altered conditions.

Failure to update when the County had its chance constitutes obvious error.

This fits the Planning Department's definition of "obvious errors" as facial errors that (1) are immediately apparent and (2) do not require further examination of facts or changes in circumstances.

ATTACHMENT F
PLAN AMENDMENT

The central issue in this matter, akin to "the elephant in the room," is what the County should do when:

- A County community plan prescribes that subdivisions in an existing 66-acre neighborhood consisting of 35 parcels should not be permitted without public water and sewer services.
- The plan was predicated on the intent that the neighboring City will provide the services.
- Circumstances changed in that the City will no longer provide the services.

One action the County could take is to provide the services directly, particularly if there is a demonstrated community need for the services. But this is not happening.

There are two viable options: Do nothing or amend the plan.

Planning Department Recommendation

The Planning Department's recommendation is for the County to do nothing.

While the Planning Department says that the process for dealing with changes in circumstances is a plan amendment, it told the Planning Commission—and is telling the Board of Supervisors—that the responsibility to initiate it is the Applicant's rather than the County's.

In its representation of the Planning Commission's decision to deny the proposed subdivision, the Planning Department wrote (Finding #7):

> "The applicant may initiate a petition to the Board of Supervisors to rezone the property and amend the general plan land use designation, and the applicant has been advised of this option. The current designation was adopted through public hearings, supported by environmental review, and included in regional planning documents. As such, it carries a presumption of validity only changeable through further public process such as an amendment to the plan. As the applicant alleges the standards applied to the property by the zone designation, General Plan, and Community Plan are inappropriate and as the policies do not constitute an obvious error, the appropriate action by the applicant is to petition the Board of Supervisors to consider a plan amendment and a zone reclassification."

Planning Commission Recommendation

The Planning Commission recommended that the County amend the Plan.

This recommendation was included in the Commission's approval of the Accessory Dwelling Unit (ADU) Ordinance in 2020.

That ordinance allows ADUs to be permitted on all parcels in all areas when standards for public health and safety are met. The original draft of the proposed ordinance specifically excluded

the Jacoby Creek Area, requiring instead that the parcels "*comply with the 5-acre minimum density limit as provided in the Jacoby Creek Community Plan*." The Commission approved the draft ordinance after removing that JCCP exclusion.

The Commission found its action to remove the JCCP exclusion to be consistent with the General Plan. Additionally, the Commission recommended the following:

> "WHEREAS, the Planning Commission, in response to public comments and ***as a result of its review*** recommends the Board of Supervisors direct the Planning Department to update the Jacoby Creek Community Plan to refine the residential density limitations while also protecting water quality in the area." (emphasis added)

The Commission's "review" included much testimony related not only to ADUs, but also to subdivisions and other development-related problems associated with the enforcement of the JCCP 5-acre restriction. The video of the Commission's hearings on the ADU ordinance shows:

- Planning staff talked about the 5-acre minimum density limitation's application both to ADUs and to subdivisions and not applied elsewhere in the County other than the JCCP.
- Planning staff recommended the Commission's action include an initiative to update the JCCP, noting that the 5-acre density limitation "can be compared to using a hammer where a scalpel was more appropriate" and "updating the JCCP would allow the use of the scalpel to address specific areas with specific issues."
- Planning staff stated that "the present-day Environmental Health Department's permitting process would be sufficient in determining site suitability."
- One of the Commissioners, who is a current Commissioner, said "the same standards meeting DEH requirements should be consistent throughout the county" and "we should not be relying on standards set in a 40-year-old study that is no longer even available for reference and review."
- The Commissioners agreed "that a JCCP update should be recommended to the BOS."

It is reasonable to conclude that amendment of the JCCP was seen by the Commission to be necessary.

Board of Supervisors Position

The Board of Supervisors agreed with the Planning Commission that amendment of the JCCP is necessary.

In its action to adopt the ADU Ordinance, the Board accepted all the Planning Commission's recommendations, including directing the Planning Department to update the JCCP.

Applicants' Position

Contrary to what the Planning Department says, the responsibility to initiate the plan update is not the Applicant's, but rather the Department's.

To date, the Plan has not been updated as directed.

In reply to the question of why, the Planning Department replied (by email dated March 17, 2025) that it did not update the JCCP because it "will not solve the problem." When asked for clarification, the Department replied (by email dated July 21,2025) that the directive was specifically related to ADU's and not to subdivisions, and there are JCCP policies other than just one that present problems for (the) proposed subdivision.

In the Applicant's view, that explanation neither answers the question nor justifies the Department's failure to update the JCCP or even seek a resolution or clarification of intent from the Board.

Updating the JCCP as directed to refine the plan's density limitations would resolve the conflict—not only for the Applicants, but also for the community.

The 5-year delay—despite knowing and admitting there was a problem to be solved—has impeded this project. If the Plan was updated as directed, the subdivision proposal would clearly be consistent with the General Plan. This issue would also be irrelevant if Policy G-P9 had been applied. Today, the parcel split would have been completed with considerably less time and money.

ATTACHMENT G
PUBLIC INTEREST

The Planning Department says that denial of the subdivision would best serve the County's interest.

However, the Department has not explained what that County interest is, other than upholding policies that are outdated, cannot be fulfilled, and conflict with more vital public interests. It's like refusing to stop riding a dead horse.

Thorough review of the findings and explanations for the Planning Commission's denial of the proposed subdivision does not disclose the underlying problem justifying the 5-acre density limits or the variance denial. Nor is there disclosure of how upholding the 5-acre density limits and denying the variance are the least restrictive solutions.

Purpose for Upholding JCCP 5-acre Density Limits

The pertinent question is: why is the 5-acre density limit applied exclusively to the JCCP, and not to other community plans within the County?

Of interesting note, Planning Director Ford told the Planning Commission during its July 9, 2020, hearing on the ADU Ordinance (1:20:30 of video) that "no study was found on record to provide context" to why the inclusion of the 5-acre density limitations in the JCCP.

However, the Planning Department did note (in Finding #4B) that the original JCCP made the following findings for the inclusion of the 5-acre requirement for development on lots without public water and sewer:

- Existing development within the urban portion of the Planning Area has reached maximum capacity in some neighborhoods.
- Domestic water is provided to the Planning Area by both the City and the District.
- Failing septic systems and surface water contamination have been documented in portions of the Planning Area.

These finding have some truth, but they do not explain why the requirement.

In the available record, it appears that the only relevant information is references in the original CEQA document to a 1978 Scientific Study associated with a Waiver Prohibition directive issued by the North Coast Regional Water Quality Control Board (Resolution No. 79-7) in 1979.

The Jacoby Creek Community planning area—along with other areas around the Humboldt Bay region—had a history of some areas with unsuitable soils for onsite wastewater disposal systems and with the installation of improper systems. Consequently, the Waiver Prohibition directive was given, prohibiting the waiver of state and local standards for onsite disposal systems.

This directive did not require or mention parcel size limitations. Additionally, the waiver prohibition applied not only to the Jacoby Creek Community, but to other county areas experiencing similar conditions.

The waiver prohibition applies to those areas as well as the JCCP area. However, the 5-acre density requirement—imposed by the County, not the State—is exclusive to the Jacoby Creek Community Planning Area and does not apply elsewhere in the County.

The referenced 1978 study has not been located for review. However, it is important to note that within the Jacoby Creek Community Planning Area, instances of wastewater disposal system failures were documented only in the Jacoby Creek Road sub-community. Relevant to the proposed subdivision, there appear to be no documented failures within the Golf Course Road sub-community RS-B5 zoned district, which was used as the study area by the Planning Department.

It is also noteworthy that the JCCP's CEQA document states that enforcing current standards without waivers would both prevent future failures and improve existing systems by requiring upgrades.

This supports the theory that the 5-acre density limitations were politically motivated, using the Waiver Prohibition Directive to further the City of Arcata's aggressive annexation plans during that period.

No other reasonable explanation has been found or provided as to what public interest might exist that could override the interests of impacted property owners.

As long as current state and local standards for water supply and sewer disposal can be met, there is no valid nexus between the 5-acre minimum density restriction and the health and public safety of the Jacoby Creek Community.

Public Interest related to the Variance

In addition to granting the variance, the proposed subdivision could comply with zoning by either merging with the adjacent 6.6-acre parcel or by adjusting the lot line between them.

The parcel configuration currently proposed would be permissible with the merger, as it would eliminate the need for a variance to subdivide the combined 11.2-acre property into four parcels averaging 2.8 acres each.

A lot line adjustment would also eliminate the need for a variance. Adding at least 0.4 acres would satisfy the 5.0-acre requirement.

The only differences between the options are parcel size, shape, and ownership.

Each option provides parcels with approved water sources and soils for onsite wastewater disposal, requiring no waivers. Because this remains unchanged regardless of whether the subdivision is approved through merger, lot line adjustment, or variance, there is no rational reason for requiring merger or lot line adjustment.

Within this framework of argument, the only conceivable reason for not granting the variance is for strict adherence to ownership requirements in subdivisions. In this sense, the owner of both properties is able to subdivide the land, whereas the owner of only the ‘sub-standard’ property cannot, unless the owner of the other property cooperated in a lot line adjustment.

No other significant problems with granting the variance have been reported, so denying this variance based solely on ownership serves no public benefit. The test should be on whether the restriction is necessary, not on who owns the property.