SUBJECT:

STAFF RECOMMENDATIONS:

FISCAL IMPACT:
There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

On motion of Supervisor Paul, Seconded by Supervisor Simon, and approved by the following vote,
Ayes: Supervisors: Paul, Mayfield, Grover, Simon, and Chairman Caruso
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

1) X Approved as recommended
2) ___ Denied
3) ___ Approved as amended
4) ___ Other:

MOTION:

Christine Ferraro TALLMAN, Clerk

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
November 24, 2004

Board of Supervisors  
County of Stanislaus  
1010 Tenth Street, Suite 6500  
Modesto, CA  95354

Re: Parcel Map Application No. 2004-15  
Variance Application No. 2004-01  
Exception Application No. 2004-03  
APN 062-009-031

Ladies and Gentlemen:

This office represents Gary and DeAnn Autrey. On November 18, the Stanislaus County Planning Commission denied the Autreys’ applications as referenced above. On behalf of the Autreys, we are appealing that denial and ask that you approve the referenced parcel map, variance and exception applications.

We believe that the Planning Commission erroneously determined that the Autreys did not qualify for a zoning variance. The Autreys do qualify for a variance under Ord. §21.84.020 for the following reasons:

1. Because of special circumstances applicable to the Autreys’ property, the strict application of the zoning ordinance would deprive them of a privilege enjoyed by other properties in their vicinity and zoning classification.

   a. The fact that the Autreys’ property is bracketed by smaller parcels created in part by an earlier variance is a special circumstance. The Autreys’ property is located in a physically separated triangle created by Adams Gravel Plant Road and Highway 108. The western half of this triangle consists of ten one-acre estate lots which are not in agricultural use. The property is separated from larger, sustainable agricultural parcels
Board of Supervisors  
November 24, 2004  
Page Two

on the north by Adams Gravel Plant Road; it is separated by Highway 108 from 1-3 acre ranchette parcels on the southeast. The Autreys' property was originally part of a 10-acre piece which was split. The western half, which has identical zoning, was granted a variance in 1991 and rezoned to rural residential. Four estate lots were created from the western half. Six other one acre lots are located directly south of the property.

b. The existence of significant barriers to agricultural use of the Autreys' property is a special circumstance. The OID line to the Autreys' property leaks severely and must be replaced; the Autreys will be required to pay for the replacement of this line. Even if the OID line were functional, irrigation is not feasible because the water runs onto adjoining estate lot properties. The Autreys cannot run cattle on their property because the cattle destroy fences to get into neighbors' landscaped yards; electric fencing is too dangerous because of the number of small children in the adjoining estate lots. Orchard use is not practical because of irrigation problems and the inability to use airplane spraying.

c. Because of these special circumstances, the Autreys are entitled to a variance and would be denied privileges granted others in their vicinity and zoning if a variance were withheld. There are already ten one-acre lots to the west and south of the Autreys, all located in the vicinity and all under A-2-40 zoning. All are located in the physically distinct Adams Gravel Plant Road triangle. Four of these lots were created in 1991 when a variance was granted to the owner of the property immediately adjacent to the Autreys. This parcel and the Autreys' parcel were originally under common ownership. In addition to the ten small lots within the Adams Gravel Plant triangle, there are four one-acre parcels and one two-acre parcel immediately west of Adams Gravel Plant Road.

2. Granting of the application is necessary for the preservation and enjoyment of substantial property rights and will not constitute grant of a special privilege inconsistent with limitations on other properties in the vicinity and zone in which the property is located. Because special circumstances exist and the County would be denying the Autreys a privilege granted to others, this finding can and should be made.

Because the Autreys qualify for a variance, and because they met the requirements for
approval of their parcel map and exception, as set forth in the Planning Staff’s Staff Report dated November 18, 2004, all three of these applications should be granted.

Very truly yours,

PETRULAKIS JENSEN & FRIEDRICH, LLP

By Barbara J. Savery

cc: Client
November 19, 2004

Keith Spencer, Benchmark Engineering Inc.
231 South Sierra Avenue
Oakdale, CA  95361

APN: 062-009-031

Dear Applicant:

The Stanislaus County Planning Commission, at its regular meeting on Thursday, November 18, 2004, completed its consideration of your application and has denied your request.

The Commission’s decision and all conditions attached hereto may be appealed to the Board of Supervisors, in writing, within 10 days from the date of the hearing. The appeal letter must be addressed to the Board of Supervisors, and must state reasons why the appeal should be granted. If you wish to appeal the Commission’s decision a filing fee of $485.00, payable to Stanislaus County Planning & Community Development, should be delivered to the Planning Department, along with a copy of the letter. The appeal period expires November 29, 2004.

If you have any questions regarding this matter, please contact this office at (209) 525-6330.

Sincerely,

Sara Lylte-Pinhey
Assistant Planner

cc: Gary & Deann Autrey
Dennis Wister, Department of Public Works
Ron Cherrier, Department of Public Works
Hamm Intavong, Department of Public Works
Paul Saini, Department of Public Works
Shirley Koelmans, Consolidated Fire Protection
November 29, 2004

Pertrulakis, Jensen & Friedrich, LLP
Attn: Barbara J. Savery
PO Box 92
Modesto, CA 95353-0092


Dear Ms. Savery:

We received your Letter of Appeal, on behalf of your clients Gary and DeAnn Autrey, regarding the Planning Commission's denial of Parcel Map Application No. 2004-15, Variance Application No. 2004-01, and Exception Application No. 2004-03. An item requesting the Board of Supervisors schedule a public hearing on Tuesday, December 21, 2004 at 6:50 p.m., to consider this appeal, will be on the Board of Supervisors' December 7, 2004, agenda.

For further information, please call the Planning and Community Development Department at 525-6330 or the Board of Supervisors at 525-6415.

Sincerely,

Elizabeth A. King
Assistant Clerk of the
Board of Supervisors

cc: Supervisor Pat Paul, District 1
Planning & Community Development Department
Gary & DeAnn Autrey
Benchmark Engineering Inc.
NOTICE OF PUBLIC HEARING FOR

NOTICE IS HEREBY GIVEN that on December 21, 2004 at 6:50 p.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, Lower Level, 1010 10th St., Modesto, CA, to consider an Appeal of the Planning Commission’s denial of Parcel Map Application No. 2004-15, Variance Application No. 2004-01, and Exception Application No. 2004-03 – Gary & DeAnn Autrey, a request to create parcels of 1.08, 1.51, 1.11, and 1.10 acres in the A-2-40 (General Agriculture) zoning district located at 4336 Adams Gravel Plant Road, northeast of the City of Riverbank. Application includes a variance for parcels smaller than 40 acres and an exception for two parcels, which would not have a direct frontage on a County Road. A Negative Declaration will be considered. APN: 062-009-031

NOTICE IS FURTHER GIVEN that at the said time and place, interested persons will be given the opportunity to be heard. Material submitted to the Board for consideration (i.e. photos, petitions, etc.) will be retained by the County. If a challenge to the above application is made in court, persons may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board. For further information call (209) 525-6330.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: December 7, 2004

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk of the Board of Supervisors of the County of Stanislaus, State of California.

Elizabeth A. King, Assistant Clerk
DECLARATION OF MAILING


I, Elizabeth A. King, declare that I am a citizen of the United States, over 18 years of age, a resident of Stanislaus County, and not a part to the within action; that my business address is 1010 10TH St., Ste. 6700, Modesto, California; that I served a copy of the attached notice by placing said copy in an envelope addressed to the following:

<table>
<thead>
<tr>
<th>KEITH SPENCER</th>
<th>GARY &amp; DEANN AUTREY</th>
</tr>
</thead>
<tbody>
<tr>
<td>BENCHMARK ENGINEERING INC.</td>
<td>4336 ADAMS GRAVEL PLANT RD</td>
</tr>
<tr>
<td>231 SOUTH SIERRA AVE</td>
<td>OAKDALE CA 95361</td>
</tr>
<tr>
<td>OAKDALE CA 95361</td>
<td></td>
</tr>
</tbody>
</table>

| BARBARA J. SAVERY | |
| PETRULAKIS JENSEN & FRIEDRICH | |
| 1130 12TH STREET, STE B | |
| MODESTO CA 95354 | |

which envelope was then sealed and postage fully prepaid thereon and thereafter, on December 8, 2004, deposited in the United States Mail at Modesto, California; that there is delivery service by United States Mail at the place so addressed or regular communication by United States Mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

[Signature]

Elizabeth A. King
PROOF OF SERVICE BY MAIL - CCP 1013a, 2015.5

I declare that: I am employed in the County of Stanislaus, California. (County where mailing occurred)

I am over the age of eighteen years and not a party to the within entitled cause; my business address is:

Stanislaus County Administration Building
Department of Planning & Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354

On December 10, 2004, I served the attached Notice of Public Hearing (Date)

PARCEL MAP APPLICATION NO. 2004-15, VARIANCE NO. 2004-01, EXCEPTION NO. 2004-03 - GARY & DEANN AUTREY on the parties listed below in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Modesto, California, addressed as follows:

SEE ATTACHED LIST

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 10, 2004, at Modesto, California. (Date)

Crystal D. Rein (Type or print name)  
Signature
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT the Stanislaus County Board of Supervisors will hold a public hearing on Tuesday, December 21, 2004, starting at 6:50 P.M. in the Joint Chambers, 1010 10th Street, Basement Level, Modesto, California, to consider the following:

PARCEL MAP APPLICATION NO. 2004-15, VARIANCE NO. 2004-01, EXCEPTION NO. 2004-03 - GARY & DEANN AUTREY - Request to create parcels of 1.08, 1.51, 1.11, and 1.10 acres in the A-2-40 (General Agriculture) zoning district located at 4336 Adams Gravel Plant Road, northeast of the City of Riverbank. Application includes a variance for parcels smaller than 40 acres and an exception for 2 parcels which would not have direct frontage on a County Road.

The property is further identified as Assessor Parcel Number: 062-009-031.

The Board of Supervisors will also consider a Negative Declaration for this item.

At the above noticed time and place, all interested persons will be given an opportunity to speak.

Materials submitted to the Board of Supervisors for consideration (i.e., photos, slides, petitions, letters, etc.) will be retained by the County and cannot be returned.

If you challenge the above item in court, you may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors, at or prior to, the public hearing.

For further information, please call (209) 525-6330, or email:planning@mail.co.stanislaus.ca.us.

### Attachment A

#### Distribution List

| X | AGRICULTURE COMMISSIONER | X | PG&E |
|  | CA DEPT OF FORESTRY       | X | PUBLIC WORKS - RON CHERRIER, DAVE MEYERS MORGAN RD TRAFFIC, PAUL SAINI, DRAINAGE |
| X | CALTRANS District 10 - EMAILED EARLY CONSULTATION TO TOM DUMAS ONLY ON 6-23-04 (rh) | X | REDEVELOPMENT |
| X | CITY OF RIVERBANK         | X | REGIONAL WATER QUALITY |
|  | COMMUNITY SERVICES/SANITARY DIST |  | RISK MANAGEMENT |
|  | DEPT OF CONSERVATION (certified mail) | X | StanCOG |
| X | COUNTY COUNSEL           | X | SCHOOL DIST 1: RIVERBANK UNIFIED |
| X | DEVELOPMENT SERVICES - DENNIS WISTER |  | SCHOOL DIST 2: |
| X | ENVIRONMENTAL RESOURCES  | X | SHERIFF |
| X | FIRE PROTECTION DIST:     | X | STANISLAUS COUNTY FARM BUREAU |
| X | CONSOLIDATED FIRE PROTECTION DIST | X | STANISLAUS ERC |
| X | FISH AND GAME             |  | STATE CLEARINGHOUSE |
| X | HOSPITAL DIST:            |  | STATE LANDS BOARD |
| X | IRRIGATION DIST: OAKDALE | X | SUPERVISOR DIST 1: PAUL |
| X | LAFCO                     | X | TELEPHONE COMPANY: SBC |
| X | MOSQUITO DIST:            |  | TUOLUMNE RIVER TRUST |
| X | MOUNTAIN VALLEY EMERGENCY SERVICES | X | US FISH AND WILDLIFE |
|  | MUNICIPAL ADVISORY COUNCIL | X | VALLEY AIR DIST |
| X | PARKS AND FACILITIES      |  | WATER DIST: |
| X | PUBLIC WORKS - TRANSPORTATION |  |  |
DECLARATION OF PUBLICATION
(C.C.P. S2015.5)

COUNTY OF STANISLAUS
STATE OF CALIFORNIA

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am the printer And Principal clerk of the publisher of THE MODESTO BEE, printed and Published in the City of MODESTO, County Of STANISLAUS, State of California, daily, For which said newspaper has been adjudged a Newspaper of general circulation by the Superior Court of the County of STANISLAUS, State of California, under the date of February 25, 1951, Action No. 46453; that the notice of which the annexed is a printed copy, has been published in each issue thereof on the following dates, to wit:

DECEMBER 11, 2004

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at MODESTO, California on

DECEMBER 11, 2004

[Signature]


GARY & DEAN AUBREY

NOTICE IS HEREBY GIVEN that on December 21, 2004 at 6:00 p.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, Lower Level, 1010 10th St., Modesto, CA, to consider an appeal of the Planning Commission's denial of Parcel Map Application No. 2004-15, Variance Application No. 2004-01, and Exception Application No. 2004-03, Gary & Dean Aubrey, a request to create parcels of 1.08, 1.1, 1.11, and 1.10 acres in the A-2-40 (General Agriculture) zoning district located at 4256 Adams Gravel Plant Road, northeast of the City of Riverbank. Application Includes a variance for parcels smaller than 40 acres and an exception for two parcels, which would not have a direct frontage on a County Road. A Negative Declaration will be considered. APN: 062-009-031

NOTICE IS FURTHER GIVEN that the Board for consideration (I.e., photos, petitions, etc.) will be retained by the County. If a challenge to the above application is made in court, persons may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board. For further information call (209) 525-6330.

BY ORDER OF THE BOARD OF SUPERVISORS
DATED: December 7, 2004
ATTEST: CHRISTINE FERRARO TALLMAN, Clerk of the Board of Supervisors of the County of Stanislaus, State of California
BY: /s/ Elizabeth A. King
Elizabeth A. King, Assistant Clerk
December 11, 2004

12-7-04 *A-4