



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Planning and Building



**Date:** October 15, 2012  
**Board Meeting Date:** October 23, 2012  
**Special Notice / Hearing:** 300 Feet  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Jim Eggemeyer, Community Development Director

**Subject:** Public hearing to consider an appeal of the Planning Commission's denial of a minor subdivision application regarding a parcel located at 290 Woodland Vista in the unincorporated La Honda area of San Mateo County.

County File Number: PLN 2011-00379 (Griffin)

**RECOMMENDATION:**

Public hearing to consider an appeal of the Planning Commission's denial of a minor subdivision application for a parcel located at 290 Woodland Vista in the unincorporated La Honda area of San Mateo County (Applicant/Appellant: Michael McCracken / Owner: Mark Griffin).

**BACKGROUND:**

Proposal: The applicant wishes to revisit a density analysis performed by the Planning and Building Department in 1977 (DEN 328-77) of a 24-acre parcel, which resulted in two density credits and, subsequently, a two-lot subdivision of this 24-acre parcel (SMN 79-27) into two "child"<sup>1</sup> parcels (one of 5.98 acres and the other of 18.95 acres) recorded on November 3, 1981. Specifically, the applicant requests that he be allowed to undertake a new density analysis of the 18.95-acre "child" parcel to allow a further two-lot subdivision of the parcel.

The subject 18.95-acre parcel is zoned Resource Management (RM), which requires a density analysis to determine the maximum density of development of a parcel (for purposes of dwelling units and/or subdivision). The applicant's surveyor asserts that newer, more accurate survey methods and data than were available when the original density analysis of the 24-acre parcel was analyzed would result in two density credits being available for the subject 18.95-acre child parcel. If allowed a new density

---

<sup>1</sup> A "child" parcel refers to a parcel that was created from a larger parcel.

analysis, the applicant would use the resulting density credits to apply for a new two-lot subdivision.

Planning Commission Action: On May 23, 2012, the Planning Commission voted (3-0) to deny the appeal by upholding the Community Development Director's determination that a density analysis cannot be challenged if its resulting credits have already been used toward development.

Report Prepared By: Summer Burlison, Project Planner, Telephone 650/363-1815

Applicant/Appellant: Michael McCracken

Owner: Mark Griffin

Location: 290 Woodland Vista, La Honda

APN: 083-310-120

Size: 18.95 acres

Parcel Legality: Parcel 1 of a two-lot subdivision, SMN 79-27, recorded on November 3, 1981 (result of density analysis, DEN 328-77, yielding two density credits).

Existing Zoning: RM (Resource Management)

General Plan Designation: Open Space

Existing Land Use: Single-family residence and second unit

Water Supply: Private well

Sewage Disposal: Septic system

Flood Zone: FEMA Flood Zone Map indicates the parcel is located in Zone C, area of minimal flooding, per Community Panel No. 060311 0334 B, effective July 5, 1984.

Setting: The 18.95-acre parcel is comprised of varied slopes. The existing single-family residence, detached second unit and miscellaneous accessory buildings are located in a relatively open area of the parcel with the south and east portions of the property more heavily vegetated.

Background: The County's rural Resource Management (RM) and Resource Management-Coastal Zone (RM-CZ) District regulations were adopted in 1973 and 1981, respectively. The regulations require that a density analysis be completed to determine the maximum number of density credits allocated to a specified parcel or parcels, based on the criteria stipulated in Sections 6317 and 6906, respectively, of the

San Mateo County Zoning Regulations, for calculating density credits (see Attachments H and I). Each resulting credit,<sup>2</sup> as calculated by the Planning Department, can be allocated toward a dwelling unit, a new parcel to a subdivision, or uses as allowed under Table 1.5 of the San Mateo County Local Coastal Program (for RM-CZ zoned land only).

Once a density analysis is completed by the Planning Department, an applicant may challenge the data to which the density calculations are based (e.g., reference maps), or the resulting calculations (e.g., mapped factors considered in an analysis, planimeter measurement of areas or mathematical calculations). Here, however, the applicant has offered no evidence that the original 1977 density analysis of the 24-acre parent parcel was erroneous. In fact, the applicant's argument is only that the 18.95-acre child parcel, if analyzed at this time, would itself yield two density credits. To accept the applicant's position would therefore allow him to double count land for purposes of establishing density credits.

The Planning and Building Department's Policy Regarding Incorrect Density Analyses, dated July 8, 1991, and Memorandum on Challenging Density Analysis Results, dated September 27, 1993, are included as Attachments J and K. Under the 1991 Department Policy, an existing density analysis subsequently determined to be incorrect will continue to be applied if "the owner or other parties have made substantial reliance<sup>3</sup> on those results." The County's interpretation and implementation of this Policy has been, and continues to be, that the use of density credits for development in an approved and recorded subdivision eliminates the power to challenge the applicable density analysis.

Thus, the position of County Planning staff continues to be that further density analyses are not allowed on a parcel, such as the subject parcel, when that parcel was derived from the results of a previously performed density analysis, as this type of allowance would conflict with the goals and intent of rural zoning affecting the density of development in rural zoned areas and would affect finality and predictability in land use decisions.

The County's position prevents the potential for continued increased development on rural (RM and RM-CZ) parcels beyond what any existing parcel would otherwise allow. Section C of this staff report discusses the implications of the Board of Supervisors' decision on the subject project.

---

<sup>2</sup> Fractions of 0.5 or greater are rounded up to the next whole number, while fractions less than 0.5 are deleted.

<sup>3</sup> Substantial reliance is defined as buying or selling the property or incurring significant costs in planning a development based on those density credits, per the County's Policy Regarding Incorrect Density Analyses dated July 8, 1991.

## Chronology:

<u>Date</u>	<u>Action</u>
September 16, 1977	- Density analysis (DEN 328-77) results concluded two density credits available on a 24-acre parcel, APN 083-310-090 (see Attachment C).
November 3, 1981	- Minor subdivision (SMN 79-27) recorded for a two-lot subdivision of the 24-acre parcel, APN 083-310-090, by use of the two density credits allocated to the parcel under density analysis (DEN 328-77) (see Attachment D).
February 21, 1991	- Density analysis (DEN 91-0003) application received for APN 083-310-120 (subject 18.95-acre parcel).
March 7, 1991	- Density analysis (DEN 91-0003) closed and fees refunded upon County finding that the parcel was derived from previous density analysis (DEN 328-77), which resulted in two density credits on parent (24-acre) parcel used toward a two-lot subdivision that created the child parcel to which the new density analysis (DEN 91-0003) was being requested. The County indicated that since the original two density credits had already been used up by the two-lot subdivision, it was improper to proceed with this density application.
January 3, 1995	- Request for information from Mark Griffin for original density analysis study. County notes indicated the analysis did not show landslide susceptibility and thus is a slope only study, and that there appeared to be a calculation error of the slope as 50% + slope was not added into the totals, which would have lowered the resulting density credits; further study noted to be useless with present information.
July 21, 1995	- Request for information from Mark Griffin whether a challenge to topographic and/or landslide calculations of original density analysis (DEN 328-77) could yield him 1.5 density credits (which would be rounded up to 2) on his subdivided 18.95-acre parcel. County notes indicated that it was okay to apply for a challenge on his 18.95-acre parcel as slopes and maps were not as accurate when original density analysis on 24-acre parcel was completed in 1977. (In light of the matters discussed in this report, County Planning staff believes that this 1995 note is erroneous. No action was taken on it at the time.)

- September 18, 2005 - Minor assignment (MNA 2005-00013) to document request from Mark Griffin, owner of Parcel 2 (SMN 79-27) to challenge the slide/stability criteria used in the original density analysis with new geotechnical data.
- December 1, 2005 - Determination from (former) Community Development Director that the challenge of a previous density analysis for which the resulting credits have already been used (i.e., recorded subdivision) is not allowed as it is counter to the County's interpretation of the Resource Management zoning regulations and the public's expectations of such zoning to control development at the time original applications are reviewed; density analysis challenges must occur prior to the use of the resulting credits.
- October 10, 2010 - Second request submitted by Mark Griffin to challenge the original density analysis (DEN 328-77) for his subdivided 18.95-acre parcel. Community Development Director denied the challenge request since the resulting (2) density credits from the original density analysis had already been used toward a two-lot subdivision (SMN 79-27) that created Mr. Griffin's 18.95-acre parcel (i.e., the credits being challenged had already been used toward development).
- October 27, 2010 - Letter and documentation received from Rick Skierka, Licensed Land Surveyor, indicating a recalculation of density credits on Mark Griffin's 18.95-acre parcel would result in two density credits (1.56 credits, rounded up to 2), and describing an updated and more accurate methodology for calculation than previously used in 1977 (see Attachment E) for the original 24-acre parcel.
- November 23, 2010 - Letter to County from Michael McCracken of McCracken, Byers and Richardson, LLP (Mark Griffin's attorney), requesting recalculation of density credits, per request made on October 10, 2010 (see Attachment F).
- August 17, 2011 - Letter from County to Michael McCracken, in response to Mr. McCracken's November 23, 2010, request for recalculation of density credits on Mark Griffin's 18.95-acre parcel, restating the County's position to deny the request as previously calculated credits had already been used toward development, but that the Community Development Director's denial could be appealed to the Planning Commission (see Attachment G).

- August 31, 2011        -    Appeal filed to Planning Commission of County's denial of a density analysis challenge, filed in the form of a proposed two-lot subdivision of APN 083-310-120 (Griffin/18.95 acres).
- May 23, 2012         -    Planning Commission hearing to consider an appeal of the Community Development Director's denial of a minor subdivision by determining that a density analysis cannot be challenged if its resulting credits have already been used toward development.
- June 7, 2012         -    Appeal filed to Board of Supervisors of Planning Commission's denial.
- October 23, 2012     -    Board of Supervisors hearing to consider an appeal of the Planning Commission's decision.

## **DISCUSSION:**

### **A.    KEY ISSUES OF THE APPEAL**

On June 7, 2012, the project applicant filed an appeal of the Planning Commission's decision (see Attachment N). The issues of the appeal are provided below (in italicized text), with staff's response following each point.

1.    *The Planning Commission and staff misinterpreted and misapplied the governing density calculation ordinance of the County of San Mateo.*

Staff's Response: A density analysis (DEN 328-77) for the original 24-acre parcel was completed on September 16, 1977, pursuant to Section 6317 of the applicable RM Zoning District Regulations for determining the maximum density of development of a parcel using the most accurate maps and information available at the time. Furthermore, the Planning Commission's decision supports the Planning Department's long-standing interpretation and implementation of the Department's Policy Regarding Incorrect Density Analyses, dated July 8, 1991 and Memorandum on Challenging Density Analysis Results, dated September 27, 1993, which allow a density analysis to be challenged only if substantial reliance has not already been made on the results.

2.    *The Planning Commission and staff failed to acknowledge relevant evidence in the County files.*

Staff's Response: It is unclear what relevant evidence the Planning Commission and staff has failed to acknowledge.

As cited in the Chronology Section of this report, in 1991 the owner of the resulting subdivided Parcel 2 (subject parcel) applied to challenge the original density analysis that created his parcel. At that time, the County determined that since the original two density credits had already been used for a two-lot subdivision, there was no point to proceed with the density challenge application; the case was closed.

Later in 1995, Planning staff noted that the original density analysis did not show landslide susceptibility and thus is a slope only study, and that there appeared to be a calculation error of the slope as 50% + slope was not added into the totals, which would have lowered the resulting density credits. Planning staff also noted in 1995 that it was okay for the owner to apply for a challenge on his 18.95-acre parcel as slopes and maps were not as accurate as when the original density analysis on the 24-acre parcel was completed in 1977; the owner did not pursue a challenge at that time.

In 2005, the owner submitted an application for a density analysis challenge in which, consistent with the Planning Department's determination from 1991, the Community Development Director (at the time) determined that a challenge to a previous density analysis for which the resulting credits had already been used (i.e., recorded subdivision) was not allowed as it would be counter to the County's interpretation of the Resource Management zoning regulations and the public's expectations of such zoning to control development at the time original applications are reviewed.

3. *The Planning Commission, in reaching its decision, did not proceed in a manner required by law.*

Staff's Response: It is unclear how the Planning Commission did not proceed in a manner required by law. The applicant submitted a tentative minor (two-lot) subdivision application for the 18.95-acre parcel with a request to challenge the previous density analysis which resulted in a recorded two-lot subdivision. The Community Development Director determined that a density analysis cannot be challenged if its resulting credits have already been used toward development. The applicant appealed the Community Development Director's denial to the Planning Commission. Based on information provided by staff and evidence presented at the hearing, the Planning Commission rendered, on a 3-0 vote, to deny the applicant's appeal.

## B. PROPOSED TWO-LOT SUBDIVISION

A proposed two-lot subdivision map of the subject parcel owned by Mark Griffin, APN 083-310-120, is included as Attachment B. The map shows the proposed subdivision of the 18.95-acre parcel, should the Board of Supervisors reverse the Planning Commission's determination that a previous density analysis cannot be

challenged when its resulting credits have already been used, thereby supporting the applicant's appeal and request for a new density analysis on the subject parcel that would result in two (2) density credits for use toward the proposed two-lot subdivision. Existing development on-site includes a single-family residence, a detached second unit, and miscellaneous accessory buildings. Aside from the density credit issue, the proposed subdivision could otherwise comply with the County's General Plan, Zoning Regulations, and Subdivision Regulations. A complete two-lot subdivision application would need to be submitted for the County's review and processing should the Board of Supervisors allow a new density analysis on the child parcel owned by Mark Griffin.

### C. DECISION IMPLICATIONS

The following section discusses the implications of the Board of Supervisors decision of this appeal.

#### 1. Deny the applicant's appeal by upholding the Planning Commission's decision

The Board of Supervisors decision to deny the applicant's appeal and uphold the Planning Commission's decision would be consistent with the Planning Department's long-standing interpretation and implementation of the zoning standards for regulating development on rural parcels zoned Resource Management (RM) and Resource Management-Coastal Zone (RM-CZ). When resulting density credits are used for development or subdivision (which, at a minimum, would require public notification), the expectation is that the parcel's maximum density of development has been exhausted, and no further development or subdivision of the original parcel will occur. In addition, the criteria for determining the maximum density of development in the RM and RM-CZ zones, which under the least conservative criteria, Sections 6317 and 3906 of the Zoning Regulations, is one density credit per 5 acres or one density credit per 40 acres, respectively, further supports the intent of the RM and RM-CZ Zoning Districts as being designated for lower development use.

Denial of the applicant's appeal to allow further density calculation and subdivision of a child parcel would be consistent with the priorities of the General Plan relative to Policy 7.9 (*Definition of Rural Development*), Policy 7.19 (*Appropriate Land Use Designations for Rural Area*), Policy 9.12 and Table 9.1P (*Land Use Designations and Locational Criteria for the Rural Areas*), and the General Open Space Policies of Chapter 9, which cumulatively seek to preserve rural parcels for lower density/intensity land uses, support densities between one density credit per 5 acres to one density credit per 160 acres as determined to be consistent with the protection of open space, and minimize development impacts on land designated General Open Space.



Furthermore, such a decision would be consistent with the intent of the Local Coastal Program (for RM-CZ zoned parcels) with regard to an appropriate development density for parcels designated as open space. Specifically, Table 1.2(17) and Table 1.3 of the Local Coastal Program identify a range of development density for lands designated open space (consistent with the RM-CZ zoning designation), as one density credit per 40 acres to one density credit per 160 acres, to preserve and protect the integrity and character of rurally designated areas of the County by preventing inappropriate intensities of development.

2. Uphold the applicant's appeal by denying the Planning Commission's decision

The Board of Supervisors decision to uphold the applicant's appeal and deny the Planning Commission's decision would allow the applicant to proceed in submitting a formal two-lot subdivision of the 18.95-acre child parcel, under a recalculated density analysis of the parcel which would yield two (2) density credits. Several factors contribute to the minimum parcel size required to accommodate rural development, including, but not limited to, zoning setbacks, locating a septic system (which must be located on the parcel it serves), a well (can either be individual or shared), and access. Under the best of site conditions, a parcel under one (1) acre could potentially support a rural residential development. However, topographic and geological constraints would likely increase the minimum parcel size needed to accommodate rural development.

Relying solely on mathematics, a parcel's size alone could rule out the opportunity for a density analysis to produce more than one (1) density credit. In the RM zone, using a best-case scenario of site conditions, the minimum size of an existing parcel that could yield 1.5 density credits (rounded up to 2) would be 7.48 acres. Likewise, in the RM-CZ zone, using a best-case scenario of site conditions, the minimum size of an existing parcel that would yield 1.5 density credits (rounded up to 2) would be 59.8 acres.

Applying the above mathematics to the resulting parcel sizes of the applicant's proposed two-lot subdivision under RM zoning, proposed Parcel A at 5.4 acres would not be of a size that could allow further density analyses. However, proposed Parcel B of 13.5 acres could entertain further density analyses and has the potential to produce two (2) additional density credits for development or subdivision.

Countywide, there are a total of 1,596 parcels zoned Resource Management with 588 of those parcels able to yield two (2) density credits under the best-case scenario of site conditions. Likewise, there are 557 parcels zoned

Resource Management-Coastal Zone with 51 of those parcels able to yield two (2) density credits under the best-case scenario of site conditions. Additionally, allowing challenges to density analyses where the resulting credits have already been used toward development in the RM and RM-CZ Zoning Districts would open the door to density analysis of a number of parcels that were created by use of previously calculated density credits. Besides potentially allowing development density beyond the expected limits set by the density analysis process, some of this increased development could occur in rural areas where present development densities either already pose problems (i.e., access, fire suppression, visual and other resource impacts) or additional density may exacerbate such problems.

Should the Board of Supervisors decide to allow challenges to previously used density analyses, staff would update the County's Policy Regarding Incorrect Density Analyses, dated July 8, 1991, and Memorandum on Challenging Density Analysis Results, dated September 27, 1993, accordingly.

D. ALTERNATIVE

In recognizing that the original density analysis was for a 24-acre parcel, staff would only consider allowing a challenge to the analysis under the condition that the two resulting child parcels of the 1979 subdivision be merged together to recreate the boundaries of the original 24-acre parcel. Subsequently, a new density analysis could be completed using the most current maps and methods for calculating density credits on the original parcel. The resulting credits can then be applied to single-family residential development (existing and proposed) and/or subdivision. However, it is assumed that the approximate 1.5-acre error in total parcel size for the applicant's resulting parcel, as identified by the applicant's surveyor, would not be enough additional land area under a density analysis recalculation for the original parent parcel to increase the resulting density credits (which initially yielded 2.03 credits) beyond the two credits that were granted under the original density analysis.

County Counsel has reviewed and approved the materials as to form.

Denial of the applicant's appeal of the minor subdivision application in which the Planning Commission determined that a density analysis cannot be challenged if its resulting credits have already been used toward development contributes to the 2025 Shared Vision outcome of a Livable Community by upholding the Planning Department's Policies and historical interpretation and implementation of density analysis challenges with regard to zoning regulations, General Plan Policies and Local Coastal Program Policies regulating appropriate maximum development densities for rural zoned (Resource Management and Resource Management-Coastal Zone) parcels.

**FISCAL IMPACT:**

No fiscal impact.

**ATTACHMENTS:**

- A. Vicinity/Zoning Map
- B. Proposed Subdivision Map, dated February 3, 2012
- C. Density Analysis DEN 328-77, dated September 16, 1977
- D. Minor Subdivision SMN 79-27, dated November 3, 1981
- E. Letter and Exhibits (1-6) from Rick Skierka, dated October 27, 2010
- F. Letter to County from Michael McCracken, dated November 23, 2010
- G. Response Letter from County to Michael McCracken, dated August 17, 2011
- H. Resource Management Zoning Regulations
- I. Resource Management-Coastal Zone Regulations
- J. County Policy Regarding Incorrect Density Analyses, dated July 8, 1991
- K. County Memorandum on Challenging Density Analysis Results, dated September 27, 1993
- L. Planning Commission Staff Report, dated May 23, 2012
- M. Planning Commission Decision Letter, dated May 29, 2012
- N. Applicant's Appeal, dated June 7, 2012