



County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING

File #: 22-786

Board Meeting Date: 10/18/2022

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Steve Monowitz, Community Development Director

Subject: Consideration of an appeal of a Planning Commission decision on a Minor Subdivision, a Resource Management Permit, and a Grading Permit, pursuant to Section 7101 of the 1992 San Mateo County Subdivision Regulations, Section 6313 of San Mateo County Zoning Regulations, and Section 9283 of the San Mateo County Grading Regulations, and the Revised Recirculated Initial Study/Mitigated Negative Declaration, pursuant to the California Environmental Quality Act, to subdivide a 60.3-acre parcel into 3 parcels, each approximately 0.7-acre in size, for future residential development, creating a 58.153±-acre remainder parcel (with approximately 48.88 acres of land to be protected by a conservation easement, and 9.27 acres of developable area including an existing single-family dwelling). The project involves an upgrade of a 203 linear foot portion of the Billy Goat Hill sewer line that is required to off-set system capacity for the project increase in service, grading including 455 cubic yards (cy) of earthwork (290 cy of cut and 165 cy of fill) for landslide repair and 30 cy of cut and 30 cy of fill for the sewer line upgrade, and no removal of protected trees. The project site is located at 1551 Crystal Springs Road, Unincorporated San Mateo County.

County File Number: PLN 2014-00410

RECOMMENDATION:

Recommendation to uphold the appeal of the Planning Commission's denial of a Minor Subdivision, Grading Permit, and Resource Management Permit for a proposed 3-lot subdivision, in the unincorporated Highlands area of San Mateo County. Three conditions related to fire safety have been added to the project to address Planning Commission's denial findings, and Planning staff recommends approval with the incorporation of the new conditions, and adoption of the Revised Recirculated Initial Study/Mitigated Negative Declaration.

BACKGROUND:

Board of Supervisors Meeting of July 12, 2022

The Board of Supervisors heard this appeal at its July 12, 2022 meeting. Planning staff gave a presentation of the project, provided a summary of the Planning Commission's action denying the project, and presented an analysis supporting the recommendation to uphold the appeal and

conditionally approve the project. The applicant's attorney, Matthew D. Francois, spoke on the merits of the appeal and legal concerns and the geotechnical consultant, John Stillman, provided technical testimony. This was followed by statements from the homeowners association and members of the public who expressed concerns about potential landslides and fire. After receiving public testimony, the Board continued the hearing on the project due to the volume of correspondence received and the need for time to consult with the County Attorney and staff regarding the comments received, including a letter in opposition to the project dated July 11, 2022 from Winter King, an attorney for Green Foothills.

After considering all comments received and the legal analysis offered both by the appellant and project opponents, staff continues to recommend that the Board uphold the appeal of the Planning Commission's decision to deny the subdivision and approve the project, based on the analysis, mitigation measures, and conditions of approval as provided at the July 12, 2022 Board of Supervisor's meeting.

Planning Commission Denial of the Project and Subsequent Appeal by the Applicant

The project to create three new parcels was presented to the Planning Commission on July 28, 2021. The subdivision proposal was reviewed by staff, consultants, and referral agencies for environmental impacts and consistency with County policies. The project's aesthetics, biological resources, geology and soils, and hazards and hazardous materials, hydrology and water, and public services were areas of focused environmental evaluation, and were most relevant with respect to consistency with the General Plan, Resource Management Zoning Regulations, and Development Review Criteria. The project is also subject to the Grading Ordinance and Subdivision Regulations.

At the hearing, County Planning staff presented the project and discussed the following significant aspects of the project: 1) the mapped resources and geological hazards; 2) environmental impacts identified from surveys and reports conducted by consultants; 3) how mitigation measures would reduce impacts to less than significant levels; and 4) the project's adherence to applicable County policies.

The applicant spoke at the hearing and stated that the project had been designed to be sensitive to the constraints of the parcel, previous County direction, and County development policies. John Stillman of Murray Engineers, one of the applicant's geotechnical consultants, spoke about the historical landslide activity, a proposed stitch pier wall to stabilize the hillside, and how the project design avoided placing development footprints in areas with previous landslide activity.

After the staff presentation, members of the Highlands community stated their opposition to the project. Many of their concerns related to landslides and fire hazards. While the subdivision of the land itself does not increase landslide or fire incidence or severity, speakers stated that the subsequent site preparation and residential development would potentially pose a public safety hazard and therefore did not meet several County policies.

Following presentations and public comment, the Planning Commission raised concerns about the landslide activity that has occurred on the parcel, expressed concerns about residential development in a high fire hazard zone, and about the safety and welfare of the community. The Commission's unanimous decision to deny the project was based on the potential public safety concerns raised by the community and that the project did not comply with County policies found in the General Plan and Resource Management Zoning District due to hazards on the property. The Commission, therefore, directed staff to prepare findings for denial for consideration by the Commission, which findings were

adopted August 25, 2021 (Attachment B).

Appeal of Planning Commission Denial

The applicant appealed the Planning Commission decision on September 7, 2021. The appeal application (Attachment C) refers to specific portions of the staff report which supported approval of the project-specifically, the parcels' conformity with slope instability area criteria of the RM zoning, and the inclusion of mitigation measures to minimize impacts from the subdivision. The appeal also states that Cal-Fire review did not indicate that fire hazards in high fire severity zones could not be mitigated.

On January 27, 2022, the applicant submitted a supplemental appeal packet challenging the grounds for the Planning Commission's denial. The package included legal concerns from attorney, a statement from the geotechnical consultant, and analysis from David Shew, Wildfire Consultant (Attachment D).

On February 4, 2022, in response to the appeal documents, County staff met with Cal Fire staff, who were asked to review a fire hazards analysis from Urban Forestry and Associates and the letter from David Shew, Wildfire Consultant. Cal Fire stated that, in this instance, they performed a standard review for future development in state responsibility areas or very high fire hazard severity zones in the County, specifying that they will perform a more specific review when development is proposed. Cal Fire also noted that current fire protection measures on the site require a 100-foot vegetation buffer around the existing residence on Crystal Springs Road only - the rest of the site is woodland vegetation. Further, according to Cal Fire, new development along Parrott Drive would not increase the incidence of wildfire but would actually create new and larger areas of vegetation clearance and reduced wildfire risk along Parrott Drive.

DISCUSSION:

Imposition of New Conditions to Mitigate Hazard Concerns

To address the Planning Commission's concerns about fire hazard, staff recommended three conditions that supplement the conditions of approval previously presented to the Planning Commission, all three of which are acceptable to the applicant. The conditions would be applied to the subdivision and carried forward for the future development on the new lots, as the new residences will require Resource Management Permits that will be subject to further conditions of approval.

The three new proposed conditions of approval, with the rationale for each, are as follows:

- 1. *Proposed Condition:*** Building permit applications for residential development on Lots 1, 2, and 3 shall include an irrigation plan to regularly irrigate fuel (vegetated) areas downslope from the future homes (at least 100 feet below the closest part of the structure). The applicant shall demonstrate consultation with their landscape designer and geotechnical engineer on the irrigation plan, which plan shall be reviewed by Cal Fire and the County's Geotechnical Section and reviewed for Water Efficiency Landscape Ordinance (WELO) compliance. Installation of the approved irrigation system shall be verified prior to the issuance of a Certificate of Occupancy for each residence.

Rationale: Fires are known to burn more quickly uphill, and one of the factors that impacts

fire behavior and intensity is fuel moisture, which is the amount of water contained in surrounding plants. The higher the fuel moisture, the more effort flames must work to dry those fuels out, which reduces the speed and intensity by which fire spreads.

2. **Proposed Condition:** The Applicant shall record a Deed Restriction establishing a Non-Combustible Materials Zone including the area measuring five (5) feet around the full footprint of any structure(s) on the parcel. This zone shall be maintained free of combustible materials for the life of the project. The deed restriction (in a form approved by the County) shall be recorded at the time each lot is sold. The zone shall be shown on building plans and shall be verified prior to the issuance of Certificate of Occupancy for each residence.

Rationale: A non-combustible zone has been identified as a major contributor in reducing ignitions of structures during wildfire events. Incorporating recommended distances and separation of trees, shrubs, and other flammable vegetation minimizes fire spread toward a structure into landscaping and the ability for a fire to spread to other structures is reduced.

3. **Proposed Condition:** As required by the California Government Code Title 5, Division 1, Chapter 6.8, Section 51182, individual property owners for Lots 1-3 shall be responsible for maintaining a fuel break by removing all hazardous flammable materials or growth from the ground around each home for a distance of up to 100 feet from its exterior circumference, for the life of the project. Open space easements between structures on Lots 1, 2, and the remainder parcel and between Lots 2 and 3 shall be established to extend defensible space maintenance beyond property lines. Property owners of lots listed above shall arrange with the appropriate property owner of the remainder parcel when required to obtain access to the open space easement for the purpose of vegetation clearance. This would not constitute an authorization of tree removal for trees protected by the RM zoning regulations or “major removal” of vegetation requiring an RM Permit; projects of that scope may be proposed and would be subject to permitting requirements. This requirement shall be recorded (in a form approved by the County) as a deed restriction on Lots 1 through 3 at the time each lot is sold.

Rationale: The creation of the open space easements can extend the defensible space beyond a property line, offering a protection level greater than what is currently required by law.

The proposed conditions are included in Attachment A as Conditions 94 through 96.

The project has been evaluated by several geotechnical consultants and peer reviewed by the County. Guided by geotechnical studies, the applicant redesigned the project in a manner that places the area with the greatest landslide activity on the remainder parcel, where no development will occur in the future, and will install stitch pier walls to stabilize the hillside and potentially further stabilize Parrott Drive. In Attachment A, Conditions 40-57 (Mitigation Measures 26-43) address construction near areas with mapped landslide activity. To date, no geotechnical evaluation has been presented to the County which contradicts the submitted geotechnical evaluations that demonstrate hillside stability as it pertains to creation of new parcels for future development. Therefore, no new conditions related to geotechnical aspects of the project are needed.

Applicability of Housing Accountability Act

The attorney for project opponent Green Foothills presented a legal argument that the applicant's reliance upon a state housing law, the Housing Accountability Act (HAA), was misplaced. The

attorney's argument boils down to the assertion that because the present proposal is for a residential subdivision, not building permits or discretionary planning permits for houses, the HAA does not apply. Staff believes this distinction is erroneous. A significant published decision interpreting the Housing Accountability Act, *Honchariw v. County of Stanislaus*, 200 Cal. App. 4th 1066 (2011), was a proposal to subdivide a 33.7 acre parcel. The Court of Appeal found that the proposal "envision[ed]" a single family dwelling on each of the created parcels. In a subsequent appeal of the *Honchariw* case, the Court of Appeal analyzed whether a statutory provision awarding attorneys' fees to a successful petitioner would apply, and concluded that such fees were only available when a proposal included affordable housing - an analysis that would have been unnecessary if the Court of Appeal took the broader view urged by Green Foothills that subdivisions are never subject to the HAA, whether they involve affordable housing or not. *See Honchariw v. County of Stanislaus*, 218 Cal.App.4th 1019 (2013). Here, also, the applicant proposes a subdivision for the purpose of creating subsequent residential units - a fact acknowledged throughout by the Green Foothills letter. Furthermore, Green Foothills' arguments about the inability to mitigate the risks are simply not shared by staff, who have proposed mitigation measures that amply mitigate the identified hazards.

FISCAL IMPACT:

The minor subdivision increases the number of potential home sites, which would increase the tax base and provide additional housing within the County of San Mateo.

ATTACHMENTS:

- A. Recommended Conditions and Findings
- B. Planning Commission Letter of Decision dated September 3, 2021, and Staff Report, dated August 25, 2021.
- C. Appeal application dated September 7, 2021.
- D. Appeal package from Matthew D. Francois, dated January 5, 2022.
- E. Letter from David Shew, Wildfire Defense Works, dated June 2, 2022.
- F. Staff report and supporting documents Planning Commission hearing, July 28, 2021.
- G. Correspondence from July 12, 2022, Board of Supervisors hearing, including July 11, 2022 letter from Winter King