



**Contra
Costa
County**

To: Board of Supervisors
From: Catherine Kutsuris, Conservation & Development Director
Date: February 3, 2009

Subject: 1:00 P.M. Hearing on Proposed Madden-Paulus General Plan Amendment, Rezoning & Final Development Plan, and an Appeal of related Subdivision Approvals

RECOMMENDATION(S):

After accepting any public testimony, and closing of the public hearing:

A. As recommended by the San Ramon Valley Regional Planning Commission:

1. For purposes of compliance with the California Environmental Quality Act (CEQA):

- a. FIND on the basis of the whole record before the Board that there is no substantial evidence that the project will have a significant effect on the environment, and that the Mitigated Negative Declaration reflects the County's independent judgment and analysis;
- b. ADOPT the Mitigated Negative Declaration as adequate; and
- c. ADOPT the Mitigation Monitoring Program.

2. ADOPT the proposed General Plan Amendment of the site from Agricultural Lands (AL) to Single Family Residential - Very Low Density (SV) except that the area of the proposed Remainder shall be designated Agricultural Lands (AL), as the First Consolidated General Plan Amendment for Calendar Year 2009 (County File #GP07-0004).

3. ADOPT the proposed rezoning of the site from General Agricultural (A-2) to

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **02/03/2009** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I
Supervisor
Gayle B. Uilkema, District II
Supervisor
Mary N. Piepho, District III
Supervisor
Susan A. Bonilla, District IV
Supervisor
Federal D. Glover, District V
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 3, 2009

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact:

Planned Unit (P-1) district except that the proposed Remainder shall remain zoned A-2 (County File #RZ07-3194).

RECOMMENDATION(S): (CONT'D)

4. APPROVE the Preliminary and Final Development Plan application, subject to conditions (County File #DP07-3062).

5. ADOPT the findings contained in San Ramon Valley Regional Planning Commission Resolution No. 8-2009 as the basis for approving this project.

B. ADOPT Board Resolution No. 2009/38 as the basis for approving this project.

C. GRANT the appeal of Palmer Madden and Susan Paulus. Add the requested condition on biotic mitigations, and an additional condition to require display of the trail easement conveyed by the applicants to East Bay Regional Park District on the final subdivision map to the project conditions of approval as described below.

D. APPROVE the two subdivision applications, Subdivision 9210, and File #MS04-0008, as approved initially by the Planning Commission, subject to the revision to the conditions made on appeal.

E. ADOPT Ordinance No. 2009-03 giving effect to said rezoning, waive reading and adopt the same.

F. DIRECT staff to file a Notice of Determination with the County Clerk.

FISCAL IMPACT:

None. The developer is responsible for the cost of processing the development permit request.

BACKGROUND:

This hearing is to consider a proposed five-lot and remainder residential subdivision project located in the hills west of Alamo business district. The site consists of a south-facing hillside and lower ridgeline. The surrounding area consists of low density residential development. Open space deed restricted properties abut the west and north sides of the site. The applicants propose to subdivide three parcels containing a total of 15.8+/- acres into 5 residential lots varying in size from 1.5 acres to 2.4 acres, each lot to be developed with a detached single family home. As permitted by the Subdivision Map Act, the applicants are proposing a 5-acre remainder in the middle of the project that contains their existing single family residence.

The applicants previously obtained County approval in 2005 for a Planned Unit District, three-parcel subdivision (MS040008) affecting an adjoining ridgeline property. That approval allows for parcels varying in size from 1.3 to 2.47 acres. The combination of the approved and proposed projects would result in 9 houses on 21.6 acres, when the two similar and adjoining projects are completed. Approximately 2200 feet of new private road is proposed to serve the future houses.

Exceptions to the Subdivision Ordinance creek structure setback requirements are proposed for Lots 2 & 3.

General Plan and Zoning Considerations

The General Plan provides two contrasting designations for the site. The western portion of the site is designated Agricultural Lands (min. 5-acre parcel size required). The eastern portion of the site is designated Single Family Residential – Very Low Density (0.2 – 0.9 units per net acre). The site is located within the Urban Limit Line, and the area is served by both the Central Sanitary District and the East Bay Municipal Utility District. The site is zoned General Agricultural, A-2 (5-acre min. parcel size).

The applicant has proposed:

- To amend the General Plan designation so that all 15.8 acres are re-designated Single Family Residential – Very Low Density;
- To rezone the property to the Planned Unit District;
- Approval of a Final Development Plan for the project;
- Approval of a Tentative Map (Subdivision 9210) for the 5-lot and 5-acre remainder project; and
- Modification of the previously approved Minor Subdivision application on the adjoining property to accommodate a modified road design.

Environmental Review

For purposes of compliance with the California Environmental Quality Act, the County conducted an initial study on the project. It was determined that the site may contain critical habitat for a threatened snake species, the Alameda Whipsnake. The site may also contain nesting sites for certain threatened bird species. A soils report also documented unstable soil conditions. The staff review determined that the project had the potential to create several significant adverse effects on the environment. However, the staff review also identified measures that would mitigate those impacts to a less than significant level. Those measures include significant land use restrictions on much of the area of the project including the Remainder and also within the area of the adjoining 2005 minor subdivision.

The applicant has agreed to implement those measures. As a result, staff is proposing that the County adopt a Mitigated Negative Declaration for the project. Notice of this proposed determination was issued, and public comments on it have been limited.

Hearing and Action of the San Ramon Valley Regional Planning Commission

The application was submitted on August 8, 2007 and deemed complete on December 27, 2007. The applicants worked extensively with the Alamo Improvement Association (AIA) during 2007 and 2008. The principal issues from the community's perspective have been residential design/visibility issues because of the large home sizes and that the site is on a major ridge potentially visible to developed areas of Alamo as well as to nearby properties, and concern with piece-meal development. The applicants had presented their house size and design ideas to the AIA in the form of schematic site plans and proposed maximum house sizes and building heights. The applicants had erected

temporary story poles in spring 2008 representing the building heights to aid the public in assessing the visual impacts of the project. After some review and modification in September 2008, the AIA was willing to conditionally recommend in favor of the general design and the project.

The San Ramon Valley Regional Planning Commission conducted a hearing on this project on January 7, 2009. At that time, staff recommended approval of the project subject to conditions including provision for design guidelines to restrict the size and appearance of residential development.

During the hearing, testimony was limited to the applicant, a representative of the Alamo Improvement Association, and a couple of neighbors. The applicant had proposed modification to the recommended condition on phasing of the project (COA #26). He also asked for clarification to the conditions to recognize that the mitigation measures may eliminate conflicting mitigation measures that could be required at a later date from Federal or State resource agencies.

The Alamo Improvement Association expressed concern that someone in the future might try to subdivide the proposed 5-acre Remainder property, and that given the physical and legal constraints proposed, such division should not be barred by requiring the applicant to dedicate development rights to the County that would prohibit future subdivision of it.

Concern was expressed by some neighbors that the project might result in significant damage to Las Trampas Road, a privately maintained road.

During the deliberation, the Commission raised other concerns with the project and staff recommendation concerning:

- The potential for future subdivision of the 5-acre Remainder;
- The maximum allowed building heights for two visible ridgeline lots, and the maximum size (aggregate floor area) for residential development on each proposed lot;
- The appearance of proposed retaining walls that may be visible from Las Trampas Road;
- The staff recommended that the Alamo Improvement Association be provided the opportunity to comment on residential designs. However, if a City/Town of Alamo should become incorporated that would include this site, to whom might that function be reassigned; and
- The minimum yard standards that must be observed around the periphery of the project.

After completing the public testimony, the Planning Commission unanimously voted to recommend that the Board of Supervisors approve the proposed General Plan Amendment, P-1 rezoning, and Final Development Plan (FDP); and to approve the proposed Vesting Tentative Subdivision Map (SUB 9210) and to approve the proposed

modifications to the adjoining approved subdivision, File #MS04-0008, as generally recommended by staff subject to the modifications including the following (5 – 0; Mulvihill and Couture absent):

- To preclude the potential for future subdivision of the proposed 5-acre Remainder, the Commission is recommending that the whole of the Remainder be designated Agricultural Lands on the General Plan, and remain zoned General Agricultural, A-2 (both, minimum 5-acre parcel size);

The conditions of the FDP and Subdivision were modified to:

- Allow for a construction damage mitigation program for Las Trampas Road (refer to COA 28);
- Reduce the maximum allowed height of the residences on two ridgeline lots from 35 feet to 28 feet (Refer to COA 10.E);
- Adjust the definition of size limits for future residential development to include garages and storage spaces (refer to COA 10.Q.);
- Require that retaining walls that are visible from Las Trampas Road use simulated natural rock surfaces or other high quality materials to blend their appearance with the natural surroundings (refer to COA 10.I.);
- Should the property be included in a future incorporation of the City/Town of Alamo, the project would allow the City/Town Council the authority to reassign the responsibilities for review of future proposed residences to another entity (refer to COA 10);
- Clarify the minimum yard requirements that would apply to each lot, while allowing for relaxed standards adjacent to deed-restricted open space properties to the west (T. Seenon) and the north (common area of the Jones Ranch residential project) (refer to COA 11).

The Commission did not elect to make two changes that the applicant had requested:

- The change in the project phasing condition that was in the staff report to the Commission; and
- Additional language to indicate that Federal or State resource agencies may be authorized to eliminate conflicting mitigation measures from those approved by the County for this project.

APPLICANTS' APPEAL OF PLANNING COMMISSION DECISION

Following the Planning Commission hearing, in a letter dated January 13, 2009, the applicants filed an appeal of the Commission's decision on the subdivision approvals. The applicants are seeking an additional condition intended to clarify that the mitigation measures required by the County could ultimately be eliminated by Federal or State resource agencies who may substitute their own mitigations. However, the applicants' are not seeking modification of the Commission's decision on project phasing.

RECENT REQUEST FROM THE EAST BAY REGIONAL PARK DISTRICT

CONCERNING NEW TRAIL EASEMENT

In December 2007, the applicants conveyed a grant deed to the East Bay Regional Park District for a trail easement on the applicants' property adjacent to Las Trampas Road. In an email message dated January 14, 2009 from John Bouyea of the District, the District has requested that the County require the applicant's tentative map to be revised to reflect the recent trail conveyance to the District.

DISCUSSION

Review of Concern Raised in Applicant's Appeal

The appellants have raised a concern regarding any potential conflict between the biological mitigation measures provided in great detail in Condition 13 and a possible different set of mitigation measures that might come from resource agencies such as the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, California Department of Fish and Game or the Regional Water Quality Control Board. The applicants' proposed addition would read as follows:

13-Y. Any conditions stipulated by the Federal and State Resource Agencies that are in conflict with the Contra Costa County's conditions of project approval shall take precedence over the County's conditions.

Staff Response: Staff has no objection to the proposed addition considering that staff believes the applicable agencies would have jurisdiction regardless. The applicants are concerned that a future determination by a federal or State resource agency on appropriate environmental mitigation measures for this project might be misinterpreted to invalidate a County approval of the project. Because the subject property has been identified as probable habitat for the threatened Alameda Whipsnake, staff's principal concern is that there is no weakening of the mitigation measures. Therefore, staff supports the addition of the condition that is requested in the applicants' appeal.

Display of Recently Conveyed Trail Easement

At this time in the review of the project, it would not be appropriate to require the applicant to revise the tentative map to show the trail easement that was conveyed to EBRPD last year. However, staff recommends that the following condition be added at the end of Condition #1 to require that the trail easement be included on the Final Map for the subdivision. The applicant has indicated that he has no objections to this addition.

The Final Map Shall Delineate the Trail Easement Conveyed to EBRPD Along Las

Trampas Road– The final map shall include the trail easement that the applicants conveyed to the East Bay Regional Park District in December 2007, subject to review and approval by the Zoning Administrator.

CONCLUSION

With the siting and design restrictions that have been imposed on this project, both staff and the San Ramon Valley Regional Planning Commission have determined that the added development density that is permitted by this project will be compatible with the surrounding neighborhood, and will avoid significant effects on any protected biotic resources. The changes sought by the applicant and EBRPD are minor and do not affect the integrity of the Commission's action.

ATTACHMENTS

Signed Ordinance 2009-03

Resolution No. 2009/38

Planning Commission Resolution

Conditions of Approval

Appeal Letter

Pertinent Staff Report

Pertinent Correspondence

CEQA Determination

Notification List

Reduced Scale Maps

EBRPD Request to Show Trail Easement