

County of Santa Clara

Department of Planning and Development
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STAFF REPORT
Zoning Administration
May 5, 2022

Continued Item No. 1

Staff Contact: Robert Salisbury, Senior Planner
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File: PLN20-018 (Malech Minor Subdivision) Tentative Parcel Map Approval for a Three-Lot Subdivision and Grading Approval for access improvements

Summary: Concurrent land use application for a three (3) lot Minor Subdivision and Grading Approval. Associated improvements include improvements to a private road that provides access. Grading consists of 5,458 cubic yards of cut and 4,032 cubic yards of fill for access improvements.

Owner: Ranea Limited Partnership
Applicant: Gloria Ballard/MH Engineering
Address: 0 Pacheco Pass Highway, Hollister
APN: 898-54-004
Supervisory District: 1

Gen. Plan Designation: Rural Residential
Zoning: AR-sr/AR-d-sr
Lot Size: 432 gross acres
Present Land Use: Vacant
HCP: N/A

RECOMMENDED ACTIONS

- A. Adopt a CEQA Mitigated Negative Declaration in Attachment A; and
- B. Grant a concurrent land use permit for a Vesting Tentative Parcel Map Approval and Grading Approval, subject to Conditions of Approval in Attachment B.

ATTACHMENTS INCLUDED

Attachment A – Initial Study/Mitigated Negative Declaration
Attachment B – Preliminary Conditions of Approval
Attachment C – Location and Vicinity Map
Attachment D – Tentative Parcel Map and Plans

PROJECT DESCRIPTION

The proposed project includes a request for a Tentative Parcel Map to subdivide a 432-gross-acre parcel into three lots (Parcels 1, 2, and 3) of approximately 20, 20, and 29.68-gross-acres respectively, with a 362.64-acre “remainder lot”.¹ The project also includes Grading Approval for 5,458 cubic yards of cut and 4,032 cubic yards of fill (totaling 9,490 cubic yards) to construct required access improvements.

The site is located in the Santa Clara Valley Habitat Plan Area, Area 1-Private Development Covered. Habitat Plan coverage is required for this project. Several "special status" wildlife and plant species are known to occur in the region and general vicinity of the project site. This includes sightings of the following wildlife and plant species:

- San Joaquin Kit Fox
- California Red-legged Frog
- California Tiger Salamander
- Foothill Yellow-legged Frog
- Western Pond Turtle
- Hall's Bush Mallow (plant species)
- and several bird species

The HCP land covers on the property are:

- Central California Sycamore Alluvial Woodland
- Mixed Riparian Forest and Woodland,
- California Annual Grassland
- Rock Outcrop
- Serpentine Rock Outcrop / Barrens
- Mixed Serpentine Chaparral.

Setting/Location Information

The 432-acre parcel is located on the south side of Pacheco Pass Highway (State Route 152), in the southeastern corner of Santa Clara County. The project site has frontage on Pacheco Pass Highway but obtains road access from a common private road which provides access to approximately six parcels and intersects with Pacheco Pass Highway across from Bell Station, a historic road stop. The project site is relatively steep (average slope of approximately 29.6%), and generally characterized by oak woodlands and non-native grasslands covering rolling hillsides. The most prominent natural feature on the project site is Lover's Leap, a dramatic mountainous rock outcropping located in the northeast portion of the property that is easily seen from Pacheco Pass Highway. Pacheco Creek is located along the northern border of the property, adjacent and roughly parallel to Pacheco Pass Highway. The Pacheco Conduit, a large pipeline that provides water supply from the San Luis Reservoir (in Merced County) to the Santa Clara Valley, bisects the site along the hillside facing Pacheco Pass Highway. There are several stock ponds and ranch roads in various locations on the project site.

¹ A “remainder lot” is an unimproved portion of land designated by the subdivider that is not intended for sale, lease, or financing. Remainder lots are typically encumbered with restrictive easements or similar instrument such that they cannot be developed and further subdivided. This specific subdivision, Preliminary Condition of Approval #20 requires the property owner to record an easement that disallows future development or subsequent subdivision of the proposed remainder lot.

REASONS FOR RECOMMENDATIONS

A. Environmental Review and Determination (CEQA)

The environmental impacts of the project have been evaluated in the Mitigated Negative Declaration (MND) prepared by Staff for the project (refer to Attachment A). The MND concluded that although the proposed project could have a significant effect on the environment, mitigation measures would be incorporated into the project to avoid or reduce impacts to a less-than-significant level. The mitigation measures are included in the preliminary conditions of approval for this project. As required by the California Environmental Quality Act (CEQA), a Notice of Intent to adopt the MND was posted on April 8, 2022. As of the preparation of this Staff Report, no comments have been received. Staff recommends approval of the MND as part of the project approval.

B. Project/Proposal

The project consists of a Tentative Parcel Map approval to subdivide an existing lot into three (3) parcels and Grading Approval for an access road to the proposed lots.

C. Subdivision Ordinance

The subdivision application has been reviewed in accordance with the required Findings in Section C12-122 of the County Ordinance Code (Subdivisions and Land Development Ordinance) and the State Subdivision Map Act. Pursuant to these standards, the Zoning Administration Hearing Officer shall deny approval of a tentative or final parcel map if any of the following seven (7) findings can be made. In the following discussion, the scope of review criteria is in **bold**, and an explanation of how the project does or does not meet the required standard follows in plain text below.

1. **That the proposed map is not consistent with applicable general and specific plans.**

The proposed Tentative Parcel Map would result in the division of an existing 432-gross-acre parcel into three lots (Parcels 1, 2, and 3) of approximately 20, 20, and 29.68-gross-acres respectively, with a designated 362.64 acres remainder lot. The subject property is currently undeveloped. No development of any of the new lots is proposed as part of this project. Any future residences would have a well and an on-site wastewater treatment system.

The General Plan designation for the property is Ranchlands. The density of development allowed for a subdivision with a Ranchlands General Plan designation is based on the slope density formula, with the maximum density of one residence per 20 acres. Based on the average slope of the project site, the minimum parcel size for the project site would be 29.6 acres. The existing parcel size is 432 acres in size, and the project will create two lots of 20 acres in size and one lot of 29.63 acres in size. The remaining 362.3 acres will be contained within a remainder parcel. As the calculated minimum lot size (based on the slope density formula) is 29.6 acres, two of the proposed parcels would be smaller than this minimum lot size. The Zoning Ordinance contains provisions for the Agricultural Ranchlands Zoning District which allows for the creation of lots that are smaller than the calculated minimum lot size, as long as the other lots created under the subdivision cannot be re-subdivided. The third lot created as part of

this subdivision is 29.63 acres in size. While this lot is larger than the calculated minimum lot size, it cannot be re-subdivided based on the 20-160-acre minimum lot size within the AR zoning district. The remaining 362 acres are contained within a remainder parcel. The owner is offering to dedicate the development rights on this parcel, which will be implemented per Condition No. 4 of the Conditions of Approval. By precluding future development of this parcel, the total number of lots created under the subdivision will be less than the maximum number allowed under the calculated slope density formula for the project site. As such, the subdivision will be in conformance with the General Plan density standards for Agricultural Ranchlands.

This project is in conformance with General Plan policies relating to Ranchlands (R-LU 40, 41 & 43). The project is a minor three-lot subdivision and will not change the rural character of the area and will comply with the density requirements of development for the area. Cumulative land division activity is limited to areas designated Ranchlands. The Ranchlands are separated into two geographic areas for the purpose of regulating the number of new lots created in a single calendar year. The subject property lies in Area B as it is located to the south of Henry Coe State Park. Lots created by the proposed subdivision will not exceed the limits set for the maximum number of new lots allowed in Area B, i.e., 10 parcels. The proposed subdivision is consistent with the County General Plan.

The proposed Tentative Map is found to be consistent with the requirements of the County's Solar Access for Subdivision Development ordinance, Division C12. Pursuant to Section C12-173.3(d), solar access easements are not required for lots equal to or greater than one acre. At 20, 20, and 29.6 gross-acres each respectively, the proposed lots have adequate solar access for any potential future development, and future development will not be detrimental to solar access of any neighboring properties.

As such, the proposed subdivision is consistent with the General Plan and staff cannot make this finding, and therefore, recommends approval of the proposed three-lot Vesting Tentative Parcel Map.

2. That the design or improvements of the proposed subdivision is not consistent with applicable general and specific plans.

The design and improvement of the proposed subdivision, in accordance with the Conditions listed in Attachment B, will ensure that the development is consistent with the County General Plan policies for Ranchlands areas.

The project is consistent with lot design criteria for subdivisions outlined in Section C12-21 of the County Ordinance Code and demonstrates adequate size and shape characteristics to support single-family residential uses. The three non-remainder lots will obtain access from a new common access road to be built to County Fire Marshal and California Department of Forestry access road standards (24-foot roadbed). This road will be located along the alignment of the Pacheco Pass water conduit and will connect with an existing access road that intersects with Pacheco Pass Highway (Highway 152) opposite Bell Station. Approximate grading quantities associated with subdivision

improvements consist of 5,458 cubic yards of cut and 4,032 cubic yards of fill. The improvements proposed are the minimum necessary to provide adequate access to the proposed lots and the grading quantities are the minimum necessary to construct the required access road. As such, the design and improvements of the proposed subdivision is consistent with applicable general and specific plans, and Staff therefore cannot make this finding.

3. That the site is not physically suitable for the type of development.

Other than mandatory access improvements, no development of the three non-remainder lots is proposed. However, the site is physically suitable for potential future development of single-family dwellings on each of the three non-remainder lots. No development may occur unless there is full compliance with the Conditions listed in Attachment B, which pertain to, among other things water supply, sewage disposal, and emergency access.

On-site Conditions

Overall, the topography of the project site is fairly steep. However, the project site contains sufficient area for the creation of three (3) parcels, which meet the minimum required lot size of 20 gross acres per County Zoning Ordinance requirements, as explained above. The proposed parcels have been designed such that suitable building envelopes, driveway access, septic system, well, and drainage systems would be required on each lot should development of the three non-remainder lots occur in the future. Buildable areas for single-family residences would meet the setbacks required by the Zoning Ordinance. (driveway access, septic systems, wells, etc.) for this subdivision.

Geology

A geologic report was prepared for the project and the report was reviewed and approved by the County geologist. The geologic report found no evidence of slope instability, and the report concluded that the potential for earthquake-induced landsliding to affect the building sites is low. The geologic report also determined that the project site is located in an area where the liquefaction potential is very low. The report concluded that the primary hazard would be seismic ground shaking and the presence of expansive soils which could cause damage to the foundation. It recommends that the foundation of a future residence should be designed for seismic shaking, including horizontal and vertical accelerations, and the presence of expansive soils as required by the California Building Code. Future construction of a residence would require a Plan Review Letter that confirms compliance with recommendations presented in the approved report. Compliance with this condition would ensure the construction would not create or increase the risk of damage to be caused by a geologic hazard.

Utilities & Water

Potential future residences would each have a well, an on-site wastewater treatment system, and water storage tanks for wharf hydrants, domestic water, and sprinkler systems. Electricity and gas would be provided by PG&E.

The Department of Environmental Health (DEH) has reviewed the application and percolation tests and septic system feasibility tests have been conducted revealing that septic systems can be developed on each of the three non-remainder lots.

The project has also been reviewed by the County Fire Marshal and satisfies current standards for fire flow (water required for the wharf hydrants) and access, and future development has been conditioned to require adherence to building and fire code requirements for properties within the Wildland Urban Interface (WUI).

Access

A new access road has been proposed that will provide access to the three non-remainder lots. The County Roads and Airports Department has conditioned the project to remove of all vegetation and other obstructions necessary to provide adequate line-of-sight at the driveway approach locations. The subdivision and driveway design has also been reviewed by the Fire Marshal's Office and provides adequate emergency access to both lots.

For the reasons stated above, the site is physically suitable for the proposed residential subdivision. As such, staff cannot make this finding.

4. That the site is not physically suitable for the proposed density of development.

The site is physically suitable for the proposed density of development, which will consist of one single-family dwelling per five gross- acres. The subject property is flat and does not contain any natural hazards that would present a constraint to the proposed residential density of development, which is consistent with the General Plan.

The site is physically suitable for the proposed subdivision of agricultural grazing land, and development is not applicable. As such, staff cannot make this finding.

5. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

The subject property is located in the Santa Clara Valley Habitat Plan (Habitat Plan), area and is designated as Private Development Covered. Under the Habitat Plan, the project site's land cover consists of a mix of Mixed Oak Woodland and Forest, Blue Oak Woodland, California Annual Grassland, Central California Sycamore Alluvial Woodland, Mixed Serpentine Chaparral, and Mixed Riparian Forest and Woodland. The California Sycamore Alluvial Woodland, Mixed Serpentine Chaparral, and Mixed Riparian Forest and Woodland land covers are considered sensitive land covers under the Habitat Plan. Pacheco Creek, a Class 1 creek, is located on the project site. The proposed access road and building envelopes are more than 150 ft. from Pacheco Creek's top-of-bank.

The project has been conditioned to require Habitat Plan coverage to ensure the appropriate avoidance measures, and disturbance fees are paid prior to construction of the subdivision improvements. In addition, any future development of the three non-remainder lots would also require a Habitat Plan application, avoidance measures, and payment of Habitat Plan fees. The project has been conditioned to require establishment of a conservation easement covering the riparian area and submittal and approval of a stream and riparian restoration plan prior to any grading activities are permitted.

As such, the proposed subdivision is not likely to cause substantial environmental impacts or injure fish, wildlife, or their habitat, and staff therefore cannot make this finding.

6. That the design of the subdivision or the type of improvements is likely to cause serious public health problems.

The project has been reviewed by LDE, the DEH, Fire Marshal's Office, and the Planning Division, and is conditioned to meet all public health and safety requirements.

The County Fire Marshal's Office has reviewed the subdivision emergency vehicle access for fire protection and fire prevention. Furthermore, the subject property is not located within the Wildland Urban Interface (WUI). Also, the subject property is not located in a mapped flood hazard zone.

Future development of the three non-remainder lots would require (prior to issuance of a building permit) construction of a new septic system to treat wastewater; septic system design would be reviewed by the DEH to ensure that they do not permit effluent to surface, degrade water quality, affect soil stability, present a threat to public health or safety, or create a public nuisance. Water would be provided to each parcel by a well.

The construction and installation of access improvements would not create significant, long-term traffic, noise, or air quality impacts. The project will result in short-term impacts related to construction activities, however, due to their temporary nature, construction-related impacts would not cause serious or long-term public health problems.

As such, neither the design of the subdivision nor the types of improvements (none proposed or required) are likely to cause serious public health problems, and staff therefore cannot make this finding.

7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through, or use of, property within the proposed subdivision.

Ten easements currently exist in the subdivision area: an approximately 60 ft. wide non-exclusive easement for maintenance of the Pacheco Conduit (100 ft. wide), a 40 ft. wide access and utility easement, and a 100 ft. wide U.S.A. (Pacheco tunnel) easement. A review of all available maps and the submitted Tentative Map by staff confirms that the design of the subdivision will not conflict with the existing easements on the property. Access to the proposed parcels will be from a new access road off of an existing private road. As such, the proposed subdivision will not conflict with easements, acquired by the public at large, for access through, or use of property within the proposed subdivision. Therefore, for the reasons stated above, staff cannot make this finding.

As noted in the above findings, staff cannot make any of the seven subdivision findings that, if made, would require the Zoning Administrator to deny the proposed subdivision.

Therefore, staff recommends that the Zoning Administrator approve the proposed subdivision, subject to the Grading findings below.

D. Grading Findings:

Pursuant to Section C12-433, all Grading Approvals are subject to specific findings. In the following discussion, the scope of review findings are listed in **bold**, and an explanation of how the project meets the required standard is in plain text below.

1. The amount, design, location, and nature of any proposed grading is necessary to establish or maintain a use presently permitted by law on the property.

The proposed project consists of a three-lot subdivision and grading approval for a new access road. The base zoning district is Agricultural Ranchlands (AR), and the proposed use, single-family residential, is allowed by right in this zoning district. The site features steep slopes and has a calculated average slope of 24.9%.

As mentioned, the three (3) proposed lots are located at the northern portion of the 432-acre property, adjacent to Pacheco Pass Highway, where Pacheco Creek flows along the highway to the north of the proposed building sites.

The grading quantities for the project include 5,458 cubic yards of cut and 4,032 cubic yards of fill (9,490 cubic yards total) for required subdivision improvements, including the stormwater treatment system and a shared access road serving the three (3) non-remainder lots. The three (3) proposed building envelopes are clustered at the northwestern flatter portion of the property, adjacent to the required 150-foot riparian setback. Access to the three non-remainder lots follows an existing access road (easement) for the nearby Pacheco conduit, thereby minimizing the grading required for access improvements. The maximum vertical cut is thirteen (13) feet to create a cul-de-sac that meets the minimal fire truck turnaround standards. If and when the three non-remainder lots are proposed for development, additional grading will be required for driveways and building pads; exact quantities are unknown at this time. However, the clustering of the three-building envelopes and the location of the proposed access road all serve to minimize both the grading required for subdivision improvements and minimize the grading needed for possible future development of each lot.

As such, the amount, design, location, and nature of the proposed grading are appropriate to establish the proposed subdivision, and, therefore, this finding can be made.

2. The grading will not endanger public and/or private property, endanger public health and safety, will not result in excessive deposition of debris or soil sediments on any public right-of-way, or impair any spring or existing watercourse.

No excessive material will be deposited on site. All excess grading will be hauled to a County-approved disposal site. The applicant is required to apply for a Grading Permit subsequent to the Grading Approval, which is a component of this application. The Grading Permit will be reviewed by LDE to ensure all grading is appropriately using Best Management Practices. Standard Conditions of Approval and requirements of final

grading plans will ensure that grading around the building pad will not result in slope instability or erosion.

Pacheco Creek traverses all three (3) proposed lots at the northern edge, requiring a 150-foot riparian setback of Category I Stream (HCP), measured from the top-of-bank. All three (3) building envelopes are proposed outside the required riparian setbacks; the proposed septic system of Parcel 2 is located approximately 140 feet from the top-of-bank.

As a result, the grading will not endanger the public and/or private property, public health, and safety, nor result in excessive deposition of debris or soil sediments on any public right-of-way, or impair any spring or existing watercourse, and this finding can be made.

3. Grading will minimize impacts to the natural landscape, scenic, biological and aquatic resources, and minimize erosion impacts.

As discussed in Grading Finding No. 1, the proposed three (3)-lot subdivision area occupies are clustered in the northern portion of the lot, leaving the majority of the land undisturbed. The proposed shared access road, septic systems, and building envelopes are located outside of areas with mapped sensitive land covers.

The property is located within the State-designated Oak Woodland (HCP and FRAP), and future development of the three non-remainder lots may result in the removal of more than ½ acre of oak woodland canopy. As a result, a condition of approval (Attachment B; Condition No. 40), requiring tree replacement at the ratios specified in the [County's Tree Protection and Replacement Guidelines for Land Use Projects](#). In addition, the Initial Study and Mitigated Negative Declaration for the project (Attachment A) includes mitigation measures to minimize potentially significant impacts on biological resources. These measures include pre-construction surveys for San Joaquin Kit Fox, California Red-Legged Frogs, California Tiger Salamander, Burrowing Owl, and Horned Lark. These mitigation measures have all been included as part of the project Conditions of Approval.

In addition, future residential development would be a Habitat Plan covered project. Therefore, Habitat Plan Impact Fees of Landcover Fee Zone Fee, Wetland Mitigation Fee, and Nitrogen Deposition Fee would be required prior to issuance of any permits, as included in a Condition of Approval (Attachment B; Condition No. 49). As identified within Santa Clara Valley Habitat Plan, future development would also be subject to Conditions No. 1, 3,4,7, and 11.

As a result, the proposed grading will minimize impacts on the natural landscape and resources and minimize erosion impacts, and this finding can be made.

4. For grading associated with a new building or development site, the subject site shall be one that minimizes grading in comparison with other available development sites, taking into consideration other development constraints and regulations applicable to the project.

The proposed grading associated with the project is for a new access road. The access road follows the alignment of an existing easement, and building envelopes have been selected on the northern flatter portion of the property, both of which serve to minimize the grading required for the project. In addition, the access road has been designed to meet minimum Fire Marshal access requirements, and the building envelopes have been situated in close proximity to each other which serves to minimize the length of the proposed access road. Overall, the subdivision design, including the proposed building sites, minimize grading in comparison with other available development sites, and this finding can be made.

5. Grading and associated improvements will conform with the natural terrain and existing topography of the site as much as possible, and should not create a significant visual scar.

As stated above, the topography of the site proposed for development is fairly steep, with an average of approximately 29.6%. Building envelopes and required subdivision improvements have been clustered on the northern flatter portions of the project property. Access to the three non-remainder lots is from a proposed access road that follows the alignment of an existing access road (easement) associated with the nearby Pacheco Conduit. By clustering building envelopes and following existing road alignment for the proposed access road, the subdivision improvements have been designed and located to conform with the natural terrain and existing topography to the maximum extent feasible. In addition, due to their nature and design, subdivision improvements will not create a significant visual scar.

Future residential development of each non-remainder lot will require Design Review approval, and the grading and location of future residential improvements will be reviewed for conformance to County guidelines and standards.

As such, the proposed grading meets this finding.

6. Grading conforms with any applicable general plan or specific plan policies; and

The proposed grading is in conformance with specific findings and policies identified in the County General Plan. By clustering building envelopes, locating building envelopes on the flatter northern locating the access road close to an existing access road, and designing the road to meet minimum access requirements, the project has been designed to minimize grading quantities to the maximum extent feasible. This is in keeping with General Plan policy R-GD 22, stated below:

R-GD 22 The amount, design, location, and the nature of any proposed grading may be approved only if determined to be:

- a. appropriate, justifiable, and reasonably necessary for the establishment of a allowable use;*
- b. the minimum necessary given the various site characteristics, constraints, and potential environmental impacts that may be involved, and,*

- c. that which causes minimum disturbance to the natural environment, slopes, and other natural features of the land.*

The proposed subdivision is consistent with the County General Plan. This finding can be made.

7. Grading substantially conforms with the adopted "*Guidelines for Grading and Hillside Development*" and other applicable guidelines adopted by the County.

The property is zoned AR-s-d, which is a rural base zoning district of Agricultural Ranchlands (AR) with a Scenic Road combining district (-s) and a Design Review. This finding does not apply to the site.

BACKGROUND

On January 24, 2020, an application for a three-lot Tentative Parcel Map was submitted, which was subsequently deemed complete on February 21, 2021.

In accordance with the California Environmental Quality Act (CEQA), an Initial Study, and subsequent Mitigated Negative Declaration were prepared and posted on March 5, 2021. Minor changes to the setting and analysis of the Hazard/Hazardous Materials and Noise sections related to the proximity of the San Martin Airport were incorporated into an amended MND. These changes did not trigger the need to re-circulate the document pursuant to CEQA, as the impact conclusions remained the same.

Staff received no comments as a result of the publication of the Initial Study/Mitigated Negative Declaration.

A public notice for the public hearing before the Zoning Administration Hearing Officer was mailed to all property owners within a 300-foot radius of the subject property on April 22, 2022, and published in the Post Record on April 22, 2022.

STAFF REPORT REVIEW

Prepared by: Robert Salisbury, Senior Planner

Reviewed by: Samuel Gutierrez, Principal Planner

Attachment A

Mitigated Negative Declaration

Attachment B

Preliminary Conditions of Approval for Tentative Parcel Map and Grading Approval

Attachment C

Location and Vicinity Map

Attachment D

Tentative Parcel Map and Other Plans

