



## Legislation Details (With Text)

**File #:** 2019-1460  
**Type:** Regular Calendar Item **Status:** Agenda Ready  
**File created:** 9/16/2019 **In control:** Permit and Resource Management  
**On agenda:** 10/7/2019 **Final action:**  
**Title:** 9:30 AM - MNS12-0004 Gardner Minor Subdivision Appeal  
**Sponsors:** Permit and Resource Management  
**Indexes:**

**Attachments:** 1. ATT 7. Neighborhood Context Map.pdf, 2. MNS12-0004 Summary Report.pdf, 3. ATT 1. Appeal 11-8-2018.pdf, 4. ATT 2. American Badger Habitat Map.pdf, 5. ATT 3. Biological Report WRA REVISED 8-14-2014.pdf, 6. ATT 4. Tentative Map 07-24-2019.pdf, 7. ATT 5. Section 25-43 Optimal design and improvement standards.pdf, 8. ATT 6. Sec. 25-42(b) Lots.pdf, 9. ATT 8. Sol Ecology Response to BOS with attachments.pdf, 10. ATT 9. PC Staff Report 11-1-2019.pdf, 11. ATT 10. Shute Letter Re MND 10-26-2018.PDF, 12. ATT 11. City of Petaluma Letter 1-24-2013.pdf, 13. ATT 12. Fitts-Am. Badger Survey for adjacent Open Space property 2004.pdf, 14. ATT 13. BOS Conditions of Approval.pdf, 15. ATT 14. BOS Resolution.pdf, 16. ATT 15. Public Comments.pdf, 17. ATT 16. Applicant's Evidence 2019-09-23\_DowneyBrand.pdf, 18. MNS12-0004 PowerPoint Presentation

Date	Ver.	Action By	Action	Result
10/7/2019	1	Board of Supervisors	Approved as recommended	Pass

**To:** Board of Supervisors  
**Department or Agency Name(s):** Permit Sonoma  
**Staff Name and Phone Number:** Georgia McDaniel (707) 565-4919  
**Vote Requirement:** Majority  
**Supervisory District(s):** Second

**Title:**  
9:30 AM - MNS12-0004 Gardner Minor Subdivision Appeal

### Recommended Action:

Conduct a public hearing and adopt a resolution:

- A) Adopting the Final Mitigated Negative Declaration and Mitigation Monitoring Program;
  - B) Denying the appeal;
  - C) Approving the Minor Subdivision with optional design standards pursuant to Section 25-43, as shown on the Tentative Map dated July, 24, 2019, and subject to the Conditions of Approval.
- (Second District)

### Executive Summary:

This is an appeal of the Planning Commission November 1, 2018 approval of a Minor Subdivision per the Tentative Map dated December 4, 2017, on a 6.60-acre parcel located at 245 Paula Lane in Petaluma (APN 019-080-003, the "project site"). The Planning Commission approved optional design and improvement standards for the map regarding the ratio of lot length to width pursuant to County Code section 25-43. The map and the approved optional design standards are collectively "the project." The project proposal requests subdivision of the site into two lots and a designated remainder. Lot 1, the northern parcel, is 1.53 ± acres and undeveloped.

Lot 2, the central parcel, is 1.53 ± acres and undeveloped. The designated remainder is 3.0 ± acres located on the southern half of the subject site and is developed with a single-family dwelling, a small storage shed, an arena, and horse paddocks. The site is adjacent on the north to the City of Petaluma Paula Lane Open Space Preserve.

A Mitigated Negative Declaration was prepared for the project (as revised, the “Final MND,” “On File” with Clerk of the Board); it includes additional project information relating to issues raised in the appeal (Attachment 1). New or more severe potential environmental impacts were not identified in the revised MND.

Major issues raised in public comments include potentially significant effects on biological resources-notably the American badger and burrowing owl; protected tree preservation; aesthetics; recreational use and access; and land use. The Appellant raised the following issues: inconsistency with the Petaluma General Plan and the Sonoma County General Plan; inadequate City of Petaluma and California Department of Fish and Wildlife (“CDFW”) input; insufficient consideration of the Appellant’s information; and degrading the values of the Conservation Easement on the Paula Lane Open Space Preserve Property.

## **Discussion:**

### **Project Description**

The project site is 6.06 acres located on the west side of Paula Lane, in an unincorporated area just outside Petaluma city limits. The proposal is to subdivide the property into two lots and a designated remainder. Lot 1 is the northernmost parcel, approximately 1.53 ± acres in size and undeveloped. Lot 2 is the central parcel, approximately 1.53 ± acres in size and undeveloped. The designated remainder is 3.0 ± acres located in the southern half of the subject site. It is developed with a single-family dwelling, a small storage shed, an arena, and horse paddocks. The site is adjacent on the north to the City of Petaluma Paula Lane Open Space Preserve.

A 6,380 square-foot building envelope is proposed on Lot 1 and a 6,520 square-foot building envelope is proposed on Lot 2. The building envelopes locate development to the center of the proposed lots to minimize visual impacts and maintain rural character. A 1-acre portion at the rear of Lots 1 and 2, designated as American Badger and Wildlife Habitat and shown on the American Badger Habitat-Expanded Protection Map (Attachment 2, will be preserved in perpetuity so no development can occur on the land. The habitat area adjoins and extends the conservation values of the Paula Lane Open Space Preserve badger and wildlife habitat. The restrictions and mitigation measures from the WRA Biological Resources Assessment Report (Attachment 4) have been incorporated into the project as mitigation measures and are recorded as Notes on the Tentative Map (Attachment 3). A 0.07-acre Common Area is proposed along the northern property line on Lot 1 within the American Badger and Wildlife Habitat Area for the future lot and designated remainder owners’ passive recreational use only. The common area was placed in this area to take advantage of elevated terrain and the associated views.

### **Application History**

The minor subdivision application was initially filed in 2012 and subsequently revised and updated in response to staff and public comment. In 2018, the applicant’s consultant, Hogan Land Services, applied for an exception to the standard depth to width ratio using optional design standards pursuant to Section 25-43 of the Subdivision Code of Sonoma County. (Attachment 5). This section allows the Planning Commission to consider certain deviations from lot configuration standards to accommodate development concepts such as

clustered site design that create permanent open space within the subdivision.

The project creates two elongated rectangular lots (1 and 2) that deviate from the 3 to 1 lot depth to width ratio required by Section 25-42(b) (Attachment 6), and includes a 1-acre American Badger and Wildlife Habitat Preserve at the rear of proposed lots to establish eligibility for modified lot standards under Section 25-43. As shown on the American Badger Habitat-Expanded Protection Map, this 1-acre proposed badger habitat adjoins existing preserved badger habitat and will be preserved in perpetuity.

Many properties in this unincorporated area of the County do not currently meet the depth to width ratios required by Section 25-42(b). As shown on the Neighborhood Context Map (Attachment 7), the proposed lot orientation is consistent with the prevailing development pattern in the area. The proposed building sites at the center of the new lots will maintain the rural character of the street, and retain symmetry (i.e. narrow frontages and deep lots) with adjacent parcels.

On November 1, 2018, the Planning Commission approved the project and on November 8, 2019, a timely appeal was submitted by the Paula Lane Action Network.

The Final MND incorporates additional information prepared by the project biologist Dana Riggs (Attachment 8) and expands the discussion of wildlife and habitat issues based on issues raised during Planning Commission review. The revised MND also provides additional detail on the project description, project site, and the surrounding area. Since the Planning Commission hearing, the tentative map was updated to include a Common Area at the rear of Lot 1. The Final MND was recirculated for a 30-day comment period to address the addition of the Common Area and access easement to the Common Area plus address the issues raised by the Appellant on August 23, 2019.

#### Issues Discussed by the Planning Commission and Raised in the Appeal and Comment Letters:

The appeal incorporates extensive material submitted shortly before the Planning Commission hearing (Attachment 10). Although the issues raised were discussed at the hearing on November 1, 2018, more detail is provided in the Final MND and this report. The Appellant contends:

1. The CEQA process was inadequate and an EIR is required because the project will have significant impacts on:
  - a. Biological resources - American badger
  - b. Other Species of Concern - burrowing owl
  - c. Protected trees
  - d. Aesthetics
  - e. Recreational uses
  - f. Land use
2. Consultations that occurred with the City of Petaluma and the California Department of Fish and Wildlife were inadequate;
3. The project is inconsistent with the Sonoma County General Plan and the City of Petaluma General Plan, however no specific policies were identified.
4. The Planning Commission failed to give serious consideration to the Appellant's information.
5. Development on the project site will negate the conservation values of the adjacent Paula Lane Open Space Preserve ("the Preserve"), a City of Petaluma facility; and the Applicant should pursue a

conservation easement from the Sonoma Agricultural Preservation and Open Space District (Open Space District) for the site instead of applying for development.

Additional background on the project, project site, and issues is provided in the Planning Commission Staff Report (November 1, 2018, Attachment 9) and the Final Mitigated Negative Declaration. Public comments received for the PRAC and Planning Commission hearings plus public comments received in 2019 up to the date of this Summary Report are provided in Attachment 15. The public comment period for the MND ends on September 28, 2019.

### **Biological Resources - American Badger**

In March 2014, Adam McKannay of the California Department of Fish and Wildlife (“CDFW”) walked the site with project biologist Dana Riggs. Badgers were confirmed to be present in the northwestern corner of the property. Fourteen Draft mitigation measures were incorporated into an MND for the project to ensure the project has a less-than-significant impact biological resources, including the American Badger. These measures were approved by CDFW and an additional four were added at the agency’s request. In addition, a 1-acre American Badger and Wildlife Habitat Area has been designated in the northeast corner of the property and will be reserved as open space in perpetuity.

The applicant and staff considered the statewide biological resource database, museum records, and reports prepared following a site evaluation by licensed qualified biologists in determining that there is no evidence that badgers reproduce on the project site. There are no entries in the California Natural Diversity Database citing evidence of natal activity or of any activity anywhere on the project site other than the northwest corner, and no documented occurrences anywhere in the vicinity in the last 10 years. Should an active den be discovered in the future, Mitigation Measure BIO-4 in the MND will ensure that any impacts to badgers are less than significant by providing adequate setbacks from noise and other temporary disturbances associated with construction during the breeding/pupping/rearing season.

### **Other Species of Concern - Burrowing Owl**

In 2012, CDFW conducted a site visit and found no evidence of use by burrowing owls. In addition, as recommended by CDFW, in 2014 a habitat assessment conducted by project biologist Dana Riggs found that the project site does not provide habitat for burrowing owls and no burrowing owls were present. Nevertheless, four mitigation measures are incorporated into the project MND to ensure that any impacts to burrowing owl are less-than-significant.

- Mitigation Measure BIO-7 requires a pre-construction burrowing owl survey to determine if the species is present.
- Mitigation Measure BIO-8 establishes protocols (e.g. setbacks, CDFW coordination) to minimize impacts on burrowing owls if the species is identified on-site during the breeding season.
- Mitigation Measure BIO-9 requires that a qualified biologist monitor any burrowing owl species during construction if the species is located in pre-construction surveys.
- Mitigation Measure BIO-10 establishes protocols if burrowing owls are identified on site during the non-breeding season.

### **Protected Trees**

There is no evidence that significant impacts to protected trees has occurred on the site. There is no change in the canopy cover since July, 2011 with the exception of trees growing immediately adjacent to the existing residence. A few trees adjacent to the residence had to be removed for fire safety and because they were

growing into the residence. When the grading of entries for access to Lots 1 and 2 was permitted by Permit Sonoma per Encroachment Permit ENC16-0127, recommendations by Sherby Sanborn, arborist for the Paula Lane Open Space Preserve, to protect the frontage trees were incorporated as encroachment permit conditions so no significant impacts to protected trees occurred. The recommended protective measures incorporated are:

- Install fencing around the trees to prevent vehicle traffic within the tree protection zone, with the exception of the driveways.
- Prohibit the dumping of chemicals including cement, fuels, and other debris within the tree protection zone.
- Apply 2-3 inches of course chipped mulch within the tree protection zone.
- Strictly limit pruning and require that the work be done by an ISA certified arborist or tree worker.
- Utilize the main driveway entrance to the house to bring heavy equipment onto the property.

The following mitigation measure will ensure the project is consistent with the tree protection ordinance and any impacts are less-than-significant.

Mitigation Measure BIO-14 requires a note on plans and map that states that all development on the subject site is subject to the Sonoma County Tree Protection and Replacement Ordinance. Trees that are proposed to be removed or are damaged during construction activities must be replaced in accordance with the Tree Protection ordinance.

### **Aesthetics**

The project site is outside of the Scenic Corridor setback for Bodega Avenue. In terms of visual impact for CEQA purposes, only a small portion of the top floor of the existing residence on the designated remainder can be seen from Bodega Avenue, behind more substantial views of other existing buildings. The new residences are limited by zoning standards to a maximum height of 35 feet, and will be subject to design review, as part of the project conditions of approval. Therefore, the new residences are expected to have a similar minimal visibility from Bodega Avenue.

Views of the new residences from the Preserve are screened in large part by a ridge between the building envelopes and the Preserve. The building envelopes are placed strategically to cluster the development within the center of the lots to minimize visual impacts and maintain the rural character. To the extent the new residences will be visible to public users of the Preserve, the views will be similar or less than the visibility of other residential development adjacent to and across Paula Lane from the Preserve's public areas. The Preserve is not in an isolated rural area, but amid existing residential with nearby commercial development at the intersection of Bodega Avenue and Paula Lane.

### **Recreational Uses**

A common area is designated in the northwestern corner of Lot 1 within the project's American Badger and Wildlife Habitat Area ("the Common Area"). The Common Area will be used only for passive recreational enjoyment of natural features and views by the owners of Lots 1, 2, and the Designated Remainder.

A conservation easement between the City of Petaluma and the County Agricultural and Open Space District currently affects only the adjacent property to the north (APNs 019-080-009 and 019-080-010), not the project site. Section 2.3 of the Conservation Easement outlines allowed uses within the Preserve. These uses are similar to but more restrictive than those allowed in the proposed Common Area. The Conservation Easement

allows agricultural, residential, and recreational use along with habitat preservation. The Common Area allows passive, non-motorized recreational enjoyment of the natural features and views and experiencing the relationship and interdependence of plant life, animal life and human life by the owners and/or occupants of Lots 1 and 2 and the Designated Remainder. Biological mitigation measures BIO-1 through BIO-14 for the project ensure that any impact to recreational uses on the Preserve are reduced to a less-than significant level.

#### **Land Use - General Plan Consistency**

The City of Petaluma January 24, 2013 letter from Planning Manager Heather Hines (Attachment 11) requests that the environmental review for the project consider potential impacts on the Paula Lane Open Space Preserve, encloses City policy on extension of City water services and notes that the project lots may be slightly smaller than the City of Petaluma General Plan 2025 land use designation for the project site, which is outside of the Petaluma city limits.

In 2017, the City requested information about biological and habitat issues related to the project and the City Preserve, which was provided along with the proposed tentative map and the mitigation measures identified in the MND. The City acknowledged receipt of the information, expressed that the City "...was glad to hear of the biology work and Agency consultation work done...." and indicated that additional inquiry would be made if other questions arose. No further communications were received.

The American Badger and Wildlife Habitat Area and the project mitigation measures, developed with CDFW, are listed on the Tentative Map. These measures address the City's concerns regarding habitat preservation and the Preserve. Furthermore, the proposed American Badger and Wildlife Habitat Area could physically accommodate the City's planned Urban Separator Pathway if in the future, the City sought to annex the property and/or fund trail acquisition and construction.

Although the project site is within the Urban Service Area of the City of Petaluma, it will be served by private well and septic, and does not require City water or wastewater services.

The County General Plan and zoning govern development on the site, not the City of Petaluma General Plan 2025.

With regard to the County General Plan, relevant policies state:

<b>Objective LU-19.1:</b>	Avoid extension of Petaluma's Urban Service Boundary and limit urban residential development to the Urban Service Area when annexed by the City.
---------------------------	--

#### **The following policies shall be used to achieve these objectives:**

**Policy LU-19a:** Use zoning to avoid new urban uses within the Petaluma Urban Service Area prior to annexation by Petaluma.

**Policy LU-19b:** Refer to the City of Petaluma for review and comment any application for discretionary projects within one mile of the Urban Service Boundary.

The General Plan Glossary defines "urban" and "urban development" as follows:

**Urban:** Contrasting with rural, pertaining to uses of land typically occurring within cities, such as high density residential, commercial, and industrial uses.

**Urban Development:** Development occurring within urban land use categories (urban residential, commercial, industrial and public/quasi public categories within Urban Service Areas).

The project is designated Rural Residential in the County General Plan and is zoned Agricultural Residential. It is not high density urban residential and is not a “new urban use”.

### **Inadequate Consideration of the Appellant’s Information**

The Planning Commission considered all material in the record on the project in approving the project. Correspondence from Susan Kirks was included in the Planning Commission staff report package. Ms. Kirk provided information based on personal observation that badgers were active on the project site. Ms. Kirks has claimed that a burrowing complex observed at the west property edge reflected a female badger in residence and potentially birthing and raising her young. Ms. Kirks’ observations have not been documented using standardized guidelines and have not been peer-reviewed and verified by the scientific community.

The Appellant’s biologist Kim Fitts prepared a biological assessment on the Preserve in 2004 (Attachment 12). Fitts also observed five burrows on the project site in 2012 at the northwestern area of the project site. CDFW observed five burrows near the ridgeline at the rear of Lot 1 during a March 2014 site visit. Presumably, Ms. Fitts and CDFW mapped the same burrows in the northwestern portion of the property.

The 2014 WRA Report followed standardized, scientific protocols, as recommended by CDFW, for evaluating habitats for special status species. The findings of the project biologist Dana Riggs have been affirmed by CDFW, the state agency tasked with oversight of all issues related to protected species and their habitat. The conclusion that the current badger range is limited to the northeast portion of the property is supported by direct evidence, and CDFW has accepted all proposed mitigation measures. The professional reports do not confirm badger nesting activity outside of the proposed American Badger and Wildlife Habitat Area at the rear of the project site. As mitigated, the project includes adequate protections for the badger species.

### **Impact on the Conservation Easement on the Preserve**

Project development will not negate or affect the integrity of the Conservation Easement. The biological mitigation measures in the MND will reduce any impacts to a less-than-significant level. Although the conditions of the Conservation Easement do not apply to the non-Preserve project site, project mitigation measures ensure that the project will be consistent with the intent of the Conservation Easement and will reduce any edge effects resulting from the project to less than significant levels.

The Conservation Easement Policy states: “Use of the Property [the Preserve] is restricted solely to natural resource protection, habitat restoration and enhancement, recreational and educational, agricultural and residential uses as defined in this Section 5.2.”

There are two residences and parking currently located on the eastern portion of the Preserve. Similar to the Preserve layout, the two planned residences on the project site are in line with these Preserve structures along the eastern portion of the property line, allowing for unrestricted wildlife movement between the Preserve and the proposed American Badger and Wildlife Habitat Area on the project site. Furthermore, project conditions require any fencing to be wildlife-friendly and consistent with the requirements of the

Preserve's Conservation Easement, as requested by the City of Petaluma in 2013.

The Conservation Easement does not restrict development on neighboring sites. The project is consistent with the uses allowed on the Preserve and surrounding development. The proposed development is also lower density than existing neighborhoods adjacent to the Preserve.

All impacts on the Preserve were considered in the MND and the project will have no significant impacts on the Preserve.

**Prior Board Actions:**

None

**FISCAL SUMMARY**

**Narrative Explanation of Fiscal Impacts:**

N/A

**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

- ATT 1. Appeal 11-8-2018
- ATT 2. American Badger Habitat Map
- ATT 3. Biological Report WRA REVISED 8-14-2014
- ATT 4. Tentative Map 7-24-2019
- ATT 5. Section 25-43 Optimal design and improvement standards
- ATT 6. Section 25-42(b) Lots
- ATT 7. Neighborhood Context Map
- ATT 8. Sol Ecology Response to BOS with attachments
- ATT 9. PC Staff Report 11-1-2019
- ATT 10. Shute Letter Re MND 10-26-2018
- ATT 11. City of Petaluma Letter 1-24-2013
- ATT 12. Fitts-Am. Badger Survey for adjacent Open Space property 2004
- ATT 13. BOS Conditions of Approval
- ATT 14. BOS Resolution
- ATT 15. Public Comments
- ATT 16. Applicant's Evidence 2019-09-23\_DowneyBrand

**Related Items "On File" with the Clerk of the Board:**

MNS12-0004 Final MND 2019