

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> February 9, 2011 Time: 9:00 A.M.	<b>Agenda Item No.:</b> 1
<b>Project Description:</b> Consider denial of a Minor Subdivision Tentative Map to allow the division of an approximately 9.25 acre parcel into three parcels of 3.08 acres (parcel 1); 3.08 acres (parcel 2); and 3.08 acres (parcel 3), respectively. A total of four residences exist on the property (three single family dwellings and one Caretaker's Unit (mobile home)). The property is located at 34735 Metz Road, Soledad (Assessor's Parcel Number 257-121-019-000), Central Salinas Valley Area Plan.	
<b>Project Location:</b> 34735 Metz Road	<b>APN:</b> 257-121-019-000
<b>Planning File Number:</b> PLN040529	<b>Owner:</b> Fermin Vasquez <b>Agent:</b> Joel Panzer
<b>Planning Area:</b> Central Salinas Valley Area Plan	<b>Flagged and staked:</b> N/A
<b>Zoning Designation:</b> : Low Density Residential, 2.5 acres per unit (LDR/2.5)	
<b>CEQA Action:</b> Statutorily Exempt from CEQA. (Public Resources Code Section 21080(b) (5); CEQA Guidelines Section 15061(b)(4)).	
<b>Department:</b> RMA - Planning Department	

### RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution (**Exhibit A**) to:

- 1) Statutorily Exempt from CEQA (Public Resources Code Section 21080(b) (5); CEQA Guidelines Section 15061(b)(4)).
- 2) Deny, without prejudice, PLN040529, based on the findings and evidence.

### PROJECT OVERVIEW:

A 9.24-acre parcel is located just outside of the Soledad City limits that is designated LDR/2.5. When the application was filed to subdivide the property, the site included one single family home plus one mobile home approved as a caretaker unit (ZA4014, 04/1980). In 2004, the owner, Fermin Vasquez, filed an application to subdivide the parcel into three parcels (PLN040529). Since that time the owner has received approval for two additional units: Administrative Permit for a second residential unit (PLN040503, 08/2005), and Use Permit for a third unit (PLN040427, 09/2005). A water system permit is not required for multiple residential units on a single parcel as long as all occupants of all units are related to each other.

Subdivisions are required to provide proof of an adequate water supply in order to proceed. Three wells have been drilled that do not meet water standards:

Well #1 (existing well): Capacity unknown. Exceeds acceptable quality levels.

Well #2 (drilled April 2005): Capacity inadequate for 4 connections. Water quality unknown.

Well #3 (drilled January 2008): Capacity unknown. Exceeds acceptable quality levels.

Based on the information available, staff cannot make the required health and safety finding for the proposed subdivision. As such, staff recommends denial of the application until/unless the owner is able to provide proof of an adequate water supply.

That application remained incomplete for many years because the applicant has not been able to prove there is an adequate water supply. If processed for approval, the map would be subject to a consistency analysis with the 2010 General Plan. Staff's focus of review has been limited to water and this project is not consistent with policies to ensure a long-term sustainable water supply (Goal PS-3).

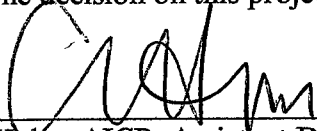
Typically a minor subdivision would first be presented to the Minor Subdivision Committee. However, staff determined that the application is inconsistent with the 2010 General Plan, and

without proof of a long-term water supply the application remains incomplete. The Planning Commission is the appropriate authority to hear challenges to interpretations by the Planning Director or the Health Officer (Environmental Health). Therefore, staff is recommending that the Planning Commission uphold staff's interpretation that there is not a long-term water supply and deny the project without prejudice. An action to deny without prejudice would afford the applicant the ability to resubmit the same application once an adequate water supply is established rather than having to wait a year or substantially change the application.

**OTHER AGENCY INVOLVEMENT:** The following agencies and departments reviewed this project:

- √ RMA - Public Works Department
- √ Environmental Health Bureau
- √ Water Resources Agency
- √ Mission Soledad Rural Fire Department
- √ Parks Department

Note: The decision on this project is appealable to the Board of Supervisors.



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Carl P. Holm, AICP, Assistant Director of Planning  
(831) 755-5103, [holmcp@co.monterey.ca.us](mailto:holmcp@co.monterey.ca.us)  
January 26, 2011

cc: Front Counter Copy; Planning Commission; Mission Soledad Rural Fire Department; Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; City of Soledad; Carl Holm, Assistant Director of Planning, Jacqueline Onciano, Planning Services Manager; Nadia Amador, Project Planner, Carol Allen, Senior Secretary; Fermin Vasquez, Owner; Joel Panzer, Agent; Derinda Messenger, Agent; Planning File PLN040529

Attachments:    Exhibit A            Draft Resolution  
                      Exhibit B            Vicinity Map

**EXHIBIT A  
DRAFT RESOLUTION**

**Before the Planning Commission in and for the  
County of Monterey, State of California**

In the matter of the application of:

**VASQUEZ (PLN040529)**

**RESOLUTION NO. ----**

Resolution by the Monterey County Planning  
Commission:

- 1) Finding that the project is Statutorily Exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15061(b)(4).
- 2) Denying, without prejudice, an application for a Minor Subdivision Tentative Map requesting to divide one parcel of approximately 9.25 acres into three parcels of 3.08 acres (parcel 1); 3.08 acres (parcel 2); and 3.08 acres (parcel 3), respectively.

**(PLN040529, Vasquez, 34735 Metz Road, Central Salinas Valley Area Plan (APN: 257-121-019-000))**

**The Vasquez Subdivision application (PLN040529) came on for public hearing before the Monterey County Planning Commission on January 12 and February 9, 2011. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission finds and decides as follows:**

**FINDINGS**

1.     **FINDING:**        **CEQA (Exempt):** - The project is statutorily exempt from environmental review because the County is denying the application.  
      **EVIDENCE:**        A project that will be disapproved by the lead agency is statutorily exempt from CEQA. (Public Resources Code Section 21080(b) (5); CEQA Guidelines Section 15061(b)(4)). The project is exempt from CEQA because the County is disapproving the project.
  
2.     **FINDING:**        **SUBDIVISION** – Section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code requires that a request for subdivision be denied if any of the following findings are made:
  1.    That the proposed map is not consistent with the applicable general plan and specific plans.
  2.    That the design or improvement of the proposed subdivision is not consistent with the applicable general plan and specific plans.
  3.    That the site is not physically suitable for the type of development.
  4.    That the site is not physically suitable for the proposed density of development.

5. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
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.

- EVIDENCE:** a) Consistency. The subject application was filed August 24, 2004, and deemed incomplete September 22, 2004 and has remained incomplete. Subdivision maps deemed complete prior to October 16, 2007 are subject to the 1982 General Plan; all others are subject to the 2010 General Plan. The project as designed must be consistent with the 2010 Monterey County General Plan including the Central Salinas Valley Area Plan. The application has not provided sufficient information to prove that there is an adequate water supply for a four connection water system. New development shall be prohibited without proof based on specific evidence that there is a long-term sustainable water supply, both in water quality and quantity to serve the development (2010 General Plan Policy PS-3.1). General Plan Policy PS-3.2 establishes specific criteria for new development, including residential subdivision, upon advice from the General Manager of the Water Resources Agency and the Director of the Environmental Health Bureau (*see evidence below*). General Plan Policy PS-3.3 includes criteria to determine the adequacy of new domestic wells including water quality, production capability, and capability for maintaining the system (*see evidence below*).
- b) Site Suitability. This 9.24-acre parcel is located just outside of the City limits of the City of Soledad, is designated LDR/2.5 and currently has three residential units plus one mobile home as a caretaker unit. The site is not physically suitable for the proposed project because there is not a proven long-term sustainable water source to serve a 3-lot subdivision including a water system with four connections (*see evidence below*).
- c) Health and Safety. The proposed project would be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood or to the general welfare of the County. Water data for the subject site indicates multiple water quality standards that are not met (Section 64431 of the California Code of Regulations); and therefore, would require treatment. Smaller water systems are severely challenged to maintain the necessary Technical, Managerial, and Financial (TMF) capabilities to operate and maintain a water system. Without TMF capabilities, the health and safety of any person purchasing the newly created lots could be at risk.
- d) Water Supply. Section 19.10.070 MCC requires that provisions shall be made for such domestic water supply as may be necessary to protect public health, safety, or welfare, that the source of supply is adequate and potable, and that there is proof of a long term water supply with the proposed project. Three wells have been drilled that do not meet water standards:
- Well #1 (existing well): Capacity unknown. Exceeds acceptable levels for arsenic, nitrates, iron & manganese. Water is also high in chloride,

color, TDS, conductivity and odor.

Well #2 (drilled April 2005): Capacity (5.1 gpm) is inadequate for 4 connections. No lab report on water quality provided.

Well #3 (drilled January 2008): Capacity unknown. Exceeds acceptable levels for fluoride and iron. It also exceeds short term limit for chloride conductivity and TDS.

Based on this evidence, upon recommendation of the Monterey County Environmental Health Bureau, there is not a long-term sustainable water supply for the proposed subdivision.

- e) The application, tentative map and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN040529.

3.     **FINDING:**     **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors.
- EVIDENCE:**     Section 19.16 and 21.80 Monterey County Zoning Ordinance (Board of Supervisors).

### DECISION

**NOW, THEREFORE**, based on the above findings and evidence, the Planning Commission does hereby:

- 1) Find that the project is Statutorily Exempt from CEQA pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15061(b)(4).
- 2) Deny, without prejudice, an application for a Minor Subdivision Tentative Map requesting to divide one parcel of approximately 9.25 acres into three parcels of 3.08 acres (Parcel 1); 3.08 acres (Parcel 2); and 3.08 acres (Parcel 3), respectively.

**PASSED AND ADOPTED** this 9<sup>th</sup> day of February, 2010 upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Secretary, Planning Commission

**COPY OF THIS DECISION MAILED TO APPLICANT ON**

**THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.**

**IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

**Holm, Carl P. x5103**

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**From:** Holm, Carl P. x5103  
**Sent:** Wednesday, February 02, 2011 10:12 AM  
**To:** 'derinda@messengerlawfirm.com'  
**Cc:** Girard, Leslie J.; Novo, Mike x5192; Amador, Nadia x5114; LeWarne, Richard x4544; Strimling, Wendy  
**Subject:** RE: Vasquez Matter before the Planning Commission

Derinda-

In our phone conversation Tuesday, January 31, 2011 you requested additional under what authority this is being presented to the Planning Commission. You stated in our conversation that you feel this is not a fair hearing and you are not contesting the County's interpretation, but your contention appears to be more about wanting more time to find/create water.

Normally a minor subdivision application would be reviewed by the Minor Subdivision Committee; however, their authority is limited to acting in a technical capacity. Staff interprets Monterey County Codes (MCC) to set matters for hearing before the Planning Commission where there are significant policy issues. Staff received a referral from the Board of Supervisors to examine options for adopting an ordinance which would establish a deadline of three years for acting on discretionary permit applications, including subdivisions (attached). Letters have been provided identifying deficiency of an adequate water supply, and as a result this application has remained incomplete for seven years. This is a significant policy matter that is not within the authority of the Minor Subdivision Committee.

Based on Code excerpt noted below (black text) and considering we are in transition from a newly adopted General Plan with new water policy, staff interprets that the Planning Commission is the appropriate authority to address matters that include significant policy issues like what we are dealing with on this application. Authority to create and interpret policy is directed to the Planning Commission with ultimate authority resting with the Board of Supervisors. Our review of the Codes determined that the Minor Subdivision Committee is specifically not given authority to decide policy matters, which is why the Board of Supervisors provided staff direction (Referral #: 2009-03) to report on the adequacy of the Minor Subdivision Committee process. This referral has developed into an amendment to Title 19 that will delete the Subdivision Committee (Planning File #: REF100014). While this ordinance has not been adopted, staff finds that referring this matter to the PC is consistent with how the Monterey County Codes (MCC) handle significant policy issues.

The Minor Subdivision Committee shall be charged to serve in a technical capacity to the Board of Supervisors and the Planning Commission and make recommendations on the design, improvements, and standards of this Title pertaining to subdivisions. [19.01.025 MCC]

If at any point in the consideration of the permit application the Director of Planning or the Zoning Administrator finds that an application before the Zoning Administrator involves: 1) Significant public policy issues; 2) Unmitigable

significant adverse environmental impacts; 3) Significant changes in the nature of a community; or 4) Establishment of precedents or standards by which other projects will be measured, the Zoning Administrator shall refer the application to the Planning Commission. In such case, the Planning Commission shall become the Appropriate Authority. [21.04.030 MCC]

No building permit, grading permit, land use discretionary permit, or other permit relative to land use may be approved if it is found to be inconsistent with the Monterey County General Plan or an adopted Area Plan. If an application is found to be inconsistent when received, or during processing, or when before the Appropriate Authority, a written notice shall be given the applicant of inconsistency and the application shall be withdrawn or denied. [21.02.060 MCC]

Pursuant to section 65100 of the Government Code as may be periodically amended, the planning agency of the County of Monterey shall consist of the Board of Supervisors, the Planning Commission, the Planning Department, the Building Services Department, and such other hearing officers and bodies as are designated in County's zoning and subdivision ordinances as Appropriate Authorities. Each of such entities shall have all of the powers, duties, and functions established for them by State law and the plans, ordinances, rules, and regulations of the County. [2.29.010 MCC]

There is in each city and county a planning agency with the powers necessary to carry out the purposes of this title. The legislative body of each city and county shall by ordinance assign the functions of the planning agency to a planning department, one or more planning commissions, administrative bodies or hearing officers, the legislative body itself, or any combination thereof, as it deems appropriate and necessary. In the absence of an assignment, the legislative body shall carry out all the functions of the planning agency. [65100 CA Govt Code]

It shall be the function and duty of the Planning Commission to prepare and adopt a comprehensive, long-term, general plan for the physical development of the County. The Planning Commission shall have such other powers and duties as may be prescribed by law. [2.48.060 MCC]

The Planning Commission shall be charged with the duty of making recommendations to the Board of Supervisors to reduce, alter, or add to the provisions of this Title [ 19.01.035 MCC]

Of course any person aggrieved with the action may appeal the matter to the Board of Supervisors, which is the final authority regardless if the matter starts at the Minor Subdivision or Planning Commission.

Respectfully,

***Carl P. Holm, AICP***

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Monterey County Resource Management Agency  
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-----Original Message-----

**From:** Holm, Carl P. x5103

**Sent:** Tuesday, January 25, 2011 7:22 AM

**To:** 'derinda@messengerlawfirm.com'

**Cc:** Girard, Leslie J.; Novo, Mike x5192; Amador, Nadia x5114; LeWarne, Richard x4544

**Subject:** Vasquez Matter

Derinda-

I received phone messages from you on the subject matter questioning the authority to take this matter to the Planning Commission. I understand you also have been in contact with Mr. Novo and Mr. Girard on this matter. I am returning from being out of the office for various reasons, including illness so I am not aware of responses.

This application has not been deemed complete, so it is subject to the 2010 General Plan. Staff has reviewed the application and determined that it is not consistent with the General Plan policies requiring proof of a long term sustainable water supply, which also does not meet required health and safety findings. An administrative interpretation of the Director of Planning and Health Officer were provided to you in writing, and you have challenged that interpretation. Pursuant to Section 19.17.050, The Planning Commission shall consider such challenges.

This matter is set for hearing before the Planning Commission on February 9, 2011. The decision of the Planning Commission may be appealed to the Board of Supervisors pursuant to Chapter 19.16.

***Carl P. Holm, AICP***

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Monterey County Resource Management Agency  
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**Monterey County Board of Supervisors  
 Referral Submittal Form**

**To be completed by referring Board office and returned to CAO no later than noon on Thursday before next Board meeting:**

Referral Title: Deadline for Action on Discretionary Permit Applications

Referral Purpose: To establish a deadline for the County to act on an application for a discretionary permit.

Referral Description (30 words or less): Currently, the County Planning Commission and Board of Supervisors are being asked to vote on discretionary permit applications where the application was deemed complete 10 or 12 years prior to the vote. This creates procedural complexities and policy issues because the voting body applies the rules and regulations in existence at the time the application was deemed complete. Staff is requested to examine options for adopting an ordinance which would establish a deadline of three years for acting on discretionary permit applications, and provide information to the Board regarding the implications of such a rule.

Attach additional sheet as required

Classification - Implication	Mode of Response
<input type="checkbox"/> Ministerial / Minor <input checked="" type="checkbox"/> Land Use Policy <input type="checkbox"/> Social Policy <input type="checkbox"/> Budget Policy Other: <u>Health/Other</u>	Memo <input type="checkbox"/> Board Report <input checked="" type="checkbox"/> Presentation
	Requested Response Timeline
	<input type="checkbox"/> 2 weeks <input type="checkbox"/> 1 month <input checked="" type="checkbox"/> 6 weeks <input type="checkbox"/> Status reports until completed

Date: 12-01-10      Submitted By: Supervisor Jane Parker      District # : 4

**To be completed by CAO and copied to referring Board office:**

Assigned Department: Planning / County Counsel      Referral Lead: Mike Novo

**To be completed by Department:**

Department analysis of resources required/impact on existing department priorities to complete referral:

Referral Completed By: _____  Completion Date: _____	Recommended Response Timeline
	<input type="checkbox"/> 2 weeks <input type="checkbox"/> 1 month <input type="checkbox"/> 6 weeks <input type="checkbox"/> 6 months <input type="checkbox"/> 1 year <input type="checkbox"/> Other: _____ <input type="checkbox"/> Specific Date: _____

**To be completed by Clerk of the Board:**

Referral Completion Date: \_\_\_\_\_