

**ATTACHMENT B
DRAFT BOARD RESOLUTION**

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. _____

Resolution by the Monterey County Board of)
Supervisors to:)
1. Deny the appeal by Maria A. Vasquez et al from)
the Planning Commission’s decision denying the)
application for a Minor Subdivision Vesting)
Tentative Map; and)
2. Deny the application for a Minor Subdivision)
Vesting Tentative Map to allow the division of an)
approximately 9.26 acre parcel into two parcels of)
3.086 and 3.086 acres and one remainder parcel of)
3.086 acres.)
(PLN040529/Maria Vasquez et al.))

The appeal by Maria Vasquez et al from the Planning Commission’s denial of the application for a Minor Subdivision Vesting Tentative Map (PLN040529) came on for public hearing before the Board of Supervisors of the County of Monterey on March 18, 2014 and April 8, 2014. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and all other evidence presented, the Board of Supervisors hereby finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Minor Subdivision Vesting Tentative Map to allow the division of an approximately 9.26 acre parcel into two parcels of 3.086 and 3.086 acres and one remainder parcel of 3.086 acres.
EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN040529.

2. **FINDING:** **SUBDIVISION** – Section 66474 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code (MCC) 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.

Substantial evidence supports several of these findings, and the subdivision must therefore be denied.

- EVIDENCE:** a) **Inconsistency.** The project, as designed, must be consistent with the 2010 Monterey County General Plan in order to be approved. The subdivision application is inconsistent with the General Plan because the applicant has not provided evidence of a Long Term Sustainable Water Supply in terms of yield and quality for any of the lots to be created through the subdivision. Policy PS 3.1 provides that "new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific evidence and supported by 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 subdivisions, upon advice from 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*). General Plan Policy PS-3.9 requires any proposed Vesting Tentative Map requires evidence of "long-term sustainable water supply in terms of yield and quality for all lots that are to be created through subdivision."
- b) The site has three existing wells which are drilled into hard rock (fractured rock), and the owner or hired consultant has not demonstrated that an adequate quantity of water can be produced by these wells. Two of the wells have no established capacity, and one well will produce 5.1 gallons per minute. Although the Planning Commission continued the hearing on the subdivision application to provide the applicant an opportunity to complete testing of the wells for water quantity, the applicant did not do the required testing. The four residences on the property require a minimum of 12 gallons per minute be produced from the wells.

Title 22 of the California Code of Regulations sets forth the Maximum Contaminant Level (MCL) for primary inorganics, deemed to be a danger to public health. It is considered a health risk if the following

inorganic thresholds are exceeded:

- Arsenic 10 ug/l (micrograms per liter)
- Nitrates 45 mg/l (milligrams per liter)
- Fluoride 2 mg/l

The three existing wells have been identified as exceeding the thresholds for these contaminants:

- Well No. 1: Water exceeds primary inorganic standards for arsenic (45 ug/l) and nitrates (60 mg/l). Water also exceeds secondary general mineral/physical standards for iron, manganese, chloride, color, TDS and conductivity.
 - Well No. 2: Water exceeds primary inorganic standards for fluoride (3.34 mg/l). Water also exceeds secondary general mineral/physical standards for iron, manganese, chloride, color, TDS and conductivity.
 - Well No. 3: Water exceeds primary inorganic standards for fluoride (3.4 mg/l). Water also exceeds secondary general mineral/physical standards for iron, chloride, color, TDS and conductivity.
- c) **Site Unsuitability.** This 9.24-acre parcel, located just outside the Soledad City limits, is designated LDR/2.5 [Low Density Residential, 2.5 acres per unit] and currently has three residential units plus one mobile home as a caretaker unit. The site is not physically suitable for the proposed subdivision because there is not a proven long-term sustainable water source to serve a 2-lot subdivision with a remainder parcel (*see evidence above and below*).
- d) The existing dwellings receive water under a “family” exemption that allows the site to obtain groundwater without meeting health and safety standards (Section 15.04.020 (g) of the Monterey County Code). Once the map is recorded the lots can be sold off individually to people outside the family. All subdivisions must be consistent with the requirements of the Subdivision Map Act (Title 19) and the 2010 General Plan. Since 2004, the applicant has not demonstrated that the existing wells have the capacity to yield water in terms of quality and quantity.
- e) **Public Health.** The Subdivision Ordinance Title 19 requires that proof of water quality and quantity be demonstrated prior to accepting a subdivision map as complete (Section 19.05.040.L.2, Vesting Tentative Map – Additional Data Requirements). As stated in evidence b, water data indicates that all existing wells exceed the Maximum Contaminant Level (MCL) for primary and secondary inorganics. The applicant provided a proposal for water treatment from Advanced Water Systems of Santa Cruz who produces a point of entry treatment system approved by the State for treating arsenic and fluoride that would be installed at each dwelling. The Environmental Health Bureau has determined that where

treatment for primary contaminants is required, present and future owners of water sources that are proposed to serve 1-14 connections for proposed subdivisions do not have the technical, managerial and financial (TMF) resources to deliver pure, wholesome, and potable water at all times. The point of entry treatment system relies on the present and future owners to maintain and support the treatment system. Many owners do not have the financial resources or technical understanding to maintain such a system. In a situation where the system is not maintained, for any reason, the water quality is not maintained. PS-3.9 requires proof of a long-term sustainable water supply, in which the consistent delivery of potable water (quality) is one component, when new lots are to be created.

- f) 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:** **CEQA (Exempt):** - Denial of the project is statutorily exempt from environmental review.

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.

4. **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with Chapter 19.05 for a Minor Subdivision Vesting Tentative Map.

- EVIDENCE:**
- a) In 2004, the owners, Tony and Fermin Vasquez, filed an application to subdivide the parcel into three parcels (PLN040529).
 - b) The project was deemed incomplete by the Environmental Health Bureau on September 4, 2004, due to lack of water quality and quantity data required as part of an application submittal package demonstrating that an adequate water supply exists. (Section 19.05.040.L.2, Vesting Tentative Map – Additional Data Requirements).
 - c) On February 9, 2011, at a duly noticed Planning Commission hearing, the Planning Commission tabled the application to allow the applicant a period of time to provide proof of adequate water quality and quantity.
 - d) On February 14, 2012, the owner submitted a revised vesting tentative map proposing a two lot subdivision and a remainder parcel. The lots were also reconfigured to provide one well for each proposed lot, thus avoiding the requirements for a small water system. Also, a hydrogeological report was submitted that did not provide capacity testing of the three wells, and identified that all three wells have primary contaminants exceeding allowable thresholds. The project was deemed incomplete on March 13, 2012 by the Environmental Health Bureau with the recommendation of denial due to water quality and quantity issues.
 - e) The Planning Commission held a duly noticed public hearing on the revised application on October 30, 2013. Following the hearing on October 30, 2013, the Planning Commission continued the hearing to

January 8, 2014 to allow the applicant to pursue the additional analysis needed to demonstrate that there is adequate water quality and quantity available to the proposed lots. On November 13, 2013, a letter was sent to the owner, from the Environmental Health Bureau and RMA – Planning Department, explaining what information is required in order to demonstrate that a Long Term Sustainable Water Supply exists for the site. The applicant has not provided this information.

- f) On January 8, 2014, the applicant provided a proposal by Advanced Water Systems of Santa Cruz for a point of entry treatment system that is approved by the State for treating arsenic and fluoride. The Environmental Health Bureau indicated that the proposed treatment system would treat the water for arsenic and fluoride; however, as indicated in previous findings, EHB’s determination is that owners of small water systems with 1-14 connections do not have the technical, managerial, financial resources to provide a reliable method of treatment for water quality exceedances that are a danger to public health and thus approving a small water system is not justified trying to solve a poor water quality problem for creation of new lots. The proposed project is for a subdivision and must conform to General Plan policies specifically PS-3.3 and PS-3.9 and Monterey County’s Subdivision Ordinance Title 19. The well capacity testing requested by Planning Commission during the October 30, 2013, and agreed by the applicant to be conducted, never occurred. With a 7-2 vote, the Planning Commission denied the Minor Subdivision (PC Resolution No. 14-003).
- g) An appeal from the Planning Commission decision was timely filed by Tony Vasquez on behalf of Maria A Vasquez, the property owner (“appellant”), on January 27, 2014.
- h) The appeal was scheduled and legally noticed for a public hearing before the Board of Supervisors on March 18, 2014. The project applicant contended that the owner and representative did not receive notification of the hearing in a timely matter and requested a continuance. According to County records, at least 10 days prior to the public hearing, notices of the public hearing before the Board of Supervisors were published and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties (including the project applicant.) The Board continued the hearing to April 8, 2014.
- i) Staff report, minutes and video transcripts of the Board of Supervisors and Planning Commission, information and documents in Planning file PLN040529.

5. **FINDING: APPEAL AND APPLICANT CONTENTIONS**

The appeal alleges the findings or decision or conditions are not supported by the evidence, the decision is contrary to law and disagrees with the Findings made. The contentions are contained in the notice of appeal (**Attachment D**) and listed below with responses

from staff. The Board of Supervisors makes the following findings regarding the appellant's contentions:

Contention 1 – Findings and Decision Not Supported by the Evidence

The appellant contends that the following are examples Findings and Decision not supported by the evidence:

- 1) *The proposed map is consistent with the 2010 General Plan. Physical development on the property previously approved by the Monterey County includes one single family residence and a caretaker unit (ZA4014, April 1980), Administrative permit for a 2nd residential unit (PLN040503, August 2005) and a Use Permit for a 3rd residential unit (PLN040427, September 2005). Findings and Evidence to support the build-out of the property were made by County hearing bodies and include similar evaluations on water supply, water quality, health and safety.*

Response: Pursuant to Section 15.04020(g) of the Monterey County Code, 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. Under this provision, the property has been approved for four dwellings, which is the maximum number of dwellings for the property. The owners have not been denied the right to develop and enjoy the property. A subdivision is a privilege only granted if the proposed subdivision meets all applicable policies and regulations. The requirements to create new lots through subdivision are not the same as the standards applied to the approval of the dwelling units on an existing lot of record, and this subdivision application does not meet the subdivision standards.

The proposed subdivision is consistent with Inclusionary Housing Element policies intended to protect affordable housing (H-1.7) and to accommodate the needs of individuals with disabilities with flexibility in rules and regulations (H-4.5).

Response: It is not clear how this contention is relevant. The project is not an affordable housing project, and there are no restrictions on the property which require it to be maintained as affordable housing. The County's certified Housing Element also does not rely on minor subdivisions such as the proposed subdivision to meet County's Regional Housing Needs Allocation. Therefore, denial of this project is in no way inconsistent with the Housing Element. As previously stated, the property has been approved with four dwellings, which is the maximum number of dwellings for the property. These four units contribute to the housing stock available to the residents of the County. In order for the units to be sold individually, they need to have an adequate source of water. Calling for affordable housing as a reason to not comply with water quality and water quantity standards is not a good rationale.

- 2) *The design and improvement is consistent with the 2010 General Plan and specific plan. The proposed subdivision has been configured to allow each of the three owners to retain the residences that they have constructed and live in. Water is to be supplied by individual domestic supply wells located on each property. The Monterey County Subdivision Ordinance allows two options to provide water: individual wells (19.03.015.L.2.A) or a two to four connection small water system (19.03.015.L.2.B). The*

2010 General Plan, the Subdivision ordinance and the Monterey County Code Title 15.20 do not prohibit water quality treatment for individual wells.

Response: The applicant provided a proposal for water treatment from Advanced Water Systems of Santa Cruz who produces a point of entry treatment system approved by the State for treating arsenic and fluoride that would be installed at each dwelling. The Environmental Health Bureau indicated that the point of entry treatment would be acceptable for an individual domestic well on a single lot of record, which is in conformance with General Plan Policy PS-2.5.

Small water systems struggle across the nation to provide safe drinking water due to lack of financial resources, aging infrastructure, cost of scale, management limitations, lack of long-term planning and difficulty understanding current and future regulations. These issues have been referred to in a study released by the US Environmental Protection Agency dated July 2011. These issues reflect the same struggle that has long been the experience statewide and locally. Due to these issues, the Environmental Health Bureau has determined that where treatment for primary contaminants is required, present and future owners of water sources that are proposed to serve 1-14 connections for proposed subdivisions do not have the technical, managerial and financial (TMF) resources to deliver pure, wholesome, and potable water at all times. PS-3.9 requires proof of a long-term sustainable water supply in which the consistent delivery of potable water (quality) is one component.

- 3) *The site is physically suited for the proposed type of development. As previously stated, the property is currently built-out with three residences and a caretakers unit. The subdivision would simply place those approved improvements on individual parcels that could be owned by the individual members of the Vasquez family. Seven years of using the wells for domestic use for four residential units represents more evidence of a long-term water supply than a 72-hour pump test. The Environmental Health Bureau has confirmed that a total of 12 gallons per minute would be required for the project. The applicant has formally and informally documented the ability to deliver 11.6gpm.*

Response: Pursuant to Section 15.04 of the Monterey County Code, 3 gallons per minute (gpm) per connection is required. The proposed minor subdivision map shows a lot configuration with one well per lot. The two parcels with only one single family dwelling on each lot will require a capacity of 3 gpm each. The parcel with an existing single family dwelling and caretaker unit requires a capacity of 6 gpm. A total of 12 gpm is required. A hydrogeologic letter was submitted, prepared by Bierman Hydrogeologic, dated September 18, 2012, estimating the capacity of each well. On November 13, 2013, a letter was sent to the owner, from the Environmental health Bureau and RMA – Planning Department, requiring a 72-hour source capacity test to be done on all three wells, simultaneously. To date, in spite of clear direction from staff and the Planning Commission, the applicant has not submitted the required information.

Based on well information submitted to date, the existing well on the property was never tested for capacity. The water exceeds primary inorganic standards for arsenic and

nitrate. A second well was allowed to be drilled in 2005. The capacity tested at 5.1 gallons per minute (gpm). The water exceeds primary inorganic standards for fluoride. A third well drilled in January 2008. The capacity tests were cancelled by the owner due to contaminants. The water exceeds primary inorganic standards for fluoride.

- 4) *That the site is physically suitable for the proposed density of development. The density is consistent with the 2010 General Plan land use designation and currently has four approved residential units that have been continuously occupied for seven years.*

Response: (See previous responses)

- 5) *That the design of the subdivision is not likely to cause substantial environmental damage or substantially injure fish and wildlife. There is no physical development proposed.*

Response: The Planning Commission's denial was not based on impact to biological resources. The Subdivision Map Act requires denial if "any one" of the enumerated findings can be made (Government Code section 66474); not all of the enumerated findings must be made for denial. The Planning Commission made several of the enumerated findings for denial. The impact to hydrologic resources would be evaluated if environmental review is prepared.

- 6) *That the design of the subdivision is not likely to cause serious public health problems. The applicant has submitted five different/affordable water treatment options that are acceptable by the State of California's Department of Public Health, Drinking Water Program.*

Response: (See previous responses)

Contention 2 – The Decision is Contrary to Law

The appellant contends that the following are examples of the decision being contrary to law:

- 1) *Consistency (Evidence #3.a, PC Resolution No. 14-003). General Plan policies related to Long-Term Sustainable Water Supply are in litigation, and are inappropriate to use until a Well Ordinance is adopted.*

Response: The 2010 Monterey County General Plan was adopted and in effect as of October 26, 2010. The court did not place a stay on the policies due to litigation, so the policies do apply to this project. The settlement of two of the lawsuits on the General Plan, and ensuing amendment to Policy PS 3.1., do not affect the conclusions that the particular water source for the proposed project fails to meet water quality standards and that applicant has refused to provide evidence that the wells have sufficient pumping capacity. As stated by the appellant, a well ordinance has not been adopted, but projects are still required to be consistent with the 2010 General Plan policies.

- 2) *Consistency (Evidence #3.a, PC Resolution No. 14-003). "Advice" from the Director of Environmental Health does not substitute or override the Environmental Health Bureau's*

requirement to follow adopted regulations in the Monterey County Code (Title 19 & Title 15.04).

Response: Environmental Health based its recommendation and the Planning Commission made a decision based on adopted regulation, including the 2010 General Plan and Title 19, both of which require proof of water quality and quantity as discussed above.

- 3) *Health & Safety (Evidence #3.c, PC Resolution No. 14.003). Section 64431 of the California Code of Regulations applies to public water systems, not individual domestic wells.*

Response: Policy PS-3.9 of the 2010 General Plan states: “A tentative subdivision map and/or vesting tentative subdivision map application for either a standard or minor subdivision shall not be approved until the applicant provides evidence of a long-term sustainable water supply in terms of yield and quality for all lots that are to be created through subdivision.” This policy applies to proposed subdivisions on public water systems or domestic wells.

- 4) *Water Supply (Evidence #3.d, PC Resolution No. 14-003). The applicant has provided several available and conventional water treatment options. There is no prohibition on water treatment for domestic water wells in the Monterey County Code or State of California Codes. In fact, the State of California recognizes feasible and affordable technology (Health and Safety Code Section 116270(b)). Pursuant to Assembly Bill AB119, the Department of Public Health registers water treatment devices suited to reduce and/or remove water quality constituents. If devices are accepted by the State of California, Monterey County must cite a regulatory rationale to deny use of such devices for individual water wells proposed for the project.*

Response: On October 30, 2013, at a duly noticed Planning Commission hearing, staff recommended that the Planning Commission deny the subdivision proposal. The item was continued from the October 30, 2013 date to January 8, 2014 by the Planning Commission to allow the applicant to pursue the additional analysis needed to demonstrate that there is adequate water quality and quantity available to the proposed lots. The Planning Commission wanted to give the applicant the opportunity to propose a treatment method to achieve adequate quality that may be acceptable by the Environmental Health Bureau. At the request of the Planning Commission, on November 13, 2013, a letter was sent to the owner, from the Environmental Health Bureau and RMA – Planning Department, requiring a point of entry treatment system proposal.

The applicant provided a proposal for water treatment from Advanced Water Systems of Santa Cruz who produces a point of entry treatment system approved by the State for treating arsenic and fluoride that would be installed at each dwelling. The Environmental Health Bureau indicated that the point of entry treatment would be acceptable for an individual domestic well on a single lot of record, which is in conformance with General Plan Policy PS-2.5.

Small water systems struggle across the nation to provide safe drinking water due to lack of financial resources, aging infrastructure, cost of scale, management limitations, lack of long-term planning and difficulty understanding current and future regulations. These issues have been referred to in a study released by the US Environmental Protection Agency dated July 2011. These issues reflect the same struggle that has long been the experience statewide and locally. Due to these issues, the Environmental Health Bureau has determined that where treatment for primary contaminants is required, present and future owners of water sources that are proposed to serve 1-14 connections for proposed subdivisions do not have the technical, managerial and financial (TMF) resources to deliver pure, wholesome, and potable water at all times. PS-3.9 requires proof of a long-term sustainable water supply in which the consistent delivery of potable water (quality) is one component.

Contention 3 – Disagree with the Findings Made

Contentions No. 1 and 2 provided specific reasons as to why the appellant disagrees with the Findings made by the Planning Commission.

Response: Refer to responses from staff within Contention No. 1 and 2

II. DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, that the Board of Supervisors does hereby:

1. Deny the appeal by Maria A. Vasquez et al from the Planning Commission’s decision denying the application for a Minor Subdivision Vesting Tentative Map; and
2. Deny the application (Vasquez PLN040529) for a Minor Subdivision Vesting Tentative Map which proposed to subdivide an approximately 9.26 acre parcel into two parcels of 3.086 and 3.086 acres and one remainder parcel of 3.086 acres.

PASSED AND ADOPTED on this 8th day of April, 2014, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy