

ATTACHMENT A

BACKGROUND:

The 9.24 acre parcel, located just outside of the Soledad City limits, is designated LDR/2.5 (Low Density Residential, 2.5 acres per unit). When the application was initially filed to subdivide the property, the site included one single family dwelling plus one mobile home approved as a caretaker unit (ZA4014, April 1980). In 2004, the owners, Tony and 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, August 2005), and Use Permit for a third unit (PLN040427, September 2005). The units are occupied and established for use by family members. 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 (Section 15.04.020 (g) of the Monterey County Code).

The subdivision application was deemed incomplete by the Environmental Health Bureau on September 4, 2004, because the Subdivision Ordinance requires that proof of water quality and quantity be demonstrated prior to accepting a subdivision map as complete. The existing well on the property was never tested for capacity. The water from this well exceeds primary inorganic standards for arsenic and nitrates. A second well was drilled in 2005. The well capacity tested at 5.1 gallons per minute (gpm). The water from this well also exceeds primary inorganic standards for fluoride. A third well was drilled in January 2008. The capacity tests were cancelled by the owner due to contaminants found in the water from this well. The water exceeds primary inorganic standards for fluoride. Due to the health and safety issues identified, the Environmental Health Bureau recommended denial of the project.

Between drilling the third well in 2008 and staff taking this application forward to the Planning Commission in 2011, no additional information was submitted indicating that either adequate water quality or quantity could be provided. Based upon this, the application was scheduled for consideration by the Planning Commission. On February 9, 2011, at a duly noticed Planning Commission hearing, staff recommended that the Planning Commission deny the three lot subdivision without prejudice until the applicant could provide proof of an adequate water supply. The Planning Commission continued the item to allow the applicant a period of time to provide additional information demonstrating adequate water quality and quantity.

On February 14, 2012, the owner submitted a revised vesting tentative map proposing a two lot subdivision and a remainder parcel. The revised application was deemed incomplete on March 13, 2012. The lots were reconfigured to provide one well for each property in an attempt to eliminate the requirement for a small water system permit; however, pursuant to the 2010 General Plan and Title 19, the applicant still must prove long-term sustainable water supply, both in quality and quantity, to serve the subdivision. The applicant submitted a letter from a hydrogeologist (**Attachment F**) addressing the wells, but the letter did not provide capacity (quantity) testing of the three wells, and still identified that all three wells have primary contaminants in excess of the legal thresholds. The project was deemed incomplete by the Environmental Health Bureau with the recommendation of denial due to failure to prove water quality and quantity (**Attachment G**). Due to the lack of water quality, staff recommended denial because the project is inconsistent with the water quality and quantity policies within the 2010 Monterey County General Plan and is likely to cause serious public health problems, both reasons requiring denial under the Subdivision Map Act and the County's subdivision ordinance (Title 19).

On October 30, 2013, at a duly noticed Planning Commission hearing, staff recommended that the Planning Commission deny the subdivision proposal. At the October 30th Planning Commission

hearing, the applicant testified that they had not completed the capacity testing (quantity) because they had not been able to resolve the water quality issues and requested that the Planning Commission consider an alternative treatment system that had not previously been allowed. The Planning Commission continued the hearing from October 30, 2013 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. The Environmental Health Bureau and RMA-Planning notified the applicant of the information required to demonstrate adequate water quality and quantity (**Attachment H**).

At the hearing 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 (**Attachment I**). The Environmental Health Bureau indicated that the proposed treatment system would treat the water for arsenic and fluoride. Point of entry treatment systems have been acceptable for a dwelling on an existing legal lot of record in accordance to General Plan Policy PS-2.5. However, 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 the 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 (**Attachment E**).

ANALYSIS:

In order to approve the Minor Subdivision Vesting Tentative Map, a finding of consistency with the 2010 Monterey County General Plan is required. Both the General Plan and Subdivision Ordinance (Title 19) require proof of a reliable long-term sustainable water supply (quantity and quality).

Water Quantity

There are three existing wells on the property which are drilled into hard rock (fractured rock). Water production from fractured rock is not reliable and tends to decline over time, generally making the water source unreliable as a sustainable water supply.

Pursuant to Section 15.04 of the Monterey County Code, 3 gallons per minute must be provided for each connection. Based on well tests so far, one well, in 2005, demonstrated a capacity of 5.1 gpm. The other two well capacities are unknown. At the Planning Commission direction to allow the applicant the opportunity to demonstrate an adequate treatment system for water quality and adequate water supply, Environmental Health and RMA-Planning sent a letter to the owner on November 13, 2013 detailing the requirements for a 72-hour source capacity test on all three wells simultaneously (**Attachment H**). The applicant did not submit that information to the Planning Commission at its subsequent January 8, 2014 hearing and has not submitted that information to date.

Although the project is located within Zone 2C, which according to the 2010 General Plan has a rebuttable presumption of a Long Term Sustainable Water Supply, the applicant must still demonstrate that the water source on which the project proposes to rely has sufficient water quantity. In this particular case the applicant has not demonstrated that they can pump sufficient water to meet the demand of the site and has not done the pump tests required, so a finding of a Long Term Sustainable Water Supply as to water quantity cannot be made.

Water Quality

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.

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. However, treatment to solve a water quality problem on an existing lot is different than creating new lots that have known water quality problems and lack the technical, managerial, financial resources to maintain the treatment system in a consistent manner to supply safe, potable drinking water.

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.

2010 General Plan Consistency

To approve the Vesting Tentative Map, the project must be consistent with the 2010 Monterey County General Plan. 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." To date, in spite of clear direction from staff and the Planning Commission, the applicant has not submitted the required

proof of adequate water quality and quantity. Therefore, the project is inconsistent with the 2010 Monterey County General Plan.

Subdivision Ordinance (Title 19) Consistency

Pursuant to Section 19.05.040.L.2, Vesting Tentative Map – Additional Data Requirements, water quality and quantity information is required as part of the project application submittal package to evaluate the existing wells for potential public health and safety impacts. The application was submitted in 2004 and since that time sufficient information to demonstrate an adequate water supply has been requested, but has not been provided. Due to this, the project was deemed incomplete and cannot be considered a complete application until this information is received. As such the project cannot be approved until sufficient information is provided to deem the application complete.

The Subdivision Map Act and County's Subdivision Ordinance require denial of a tentative or parcel map be denied if the proposed subdivision is likely to cause serious health problems (Section 19.05.055.B (1)(8)). In staff's opinion, the proposed water supply is likely to cause serious public health problems for all of the reasons described in the staff report.

Additionally, the proposed map refers to one of the parcels to be created as a "Remainder Parcel". Pursuant to the Subdivision Map Act, a remainder parcel is a parcel "not divided for purpose of sale, lease or financing" (Government Code Section 66424.6). The parcel map proposes a "remainder" lot, but the applicant testified at the Planning Commission that the purpose of the subdivision was for refinancing and eventual sale or lease of the subdivided lot. Therefore, legally, it does not qualify as a remainder lot. If consideration is given to granting the appeal and allowing the processing of this minor subdivision application, it should be converted to a regular three lot map.

APPEAL:

On January 8, 2014, the Planning Commission denied the Vasquez Minor Subdivision, by a 7-2 vote, with 1 member absent. An appeal was timely filed on January 27, 2014. The appellant requests that the Board grant the appeal. The appellant alleges that the findings and decision are not supported by the evidence, and the decision is contrary to law. The contentions are contained in the notice of appeal (**Attachment D**). Responses to appellant's contentions are found within the draft board resolution (**Attachment B**). The appellant contends that the property is built-out, and the water quality and quantity requirements should not be required for four dwellings that have been in use for almost seven years on the property without any issues. These dwellings were constructed on a single lot, which did not require proof of a Long Term Sustainable Water Supply. The existing dwellings receive water under a "family" exemption that allows the site to obtain groundwater without meeting health and safety standards. Once the map is recorded the lots can be sold off individually to people outside the family. As stated in the analysis above, 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.

RECOMMENDATION:

Staff recommends that the Board of Supervisors deny the appeal based on information provided in the resolution, and in and attached to this Board Report. If the appeal is granted, the Board of Supervisors cannot approve the Vesting Tentative Map at this time. The application requires additional information, including environmental review pursuant to CEQA.