



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: RES 18-122, **Version:** 1

**PLN040529 - MARIA A VASQUEZ, FERMIN VASQUEZ, AND JUAN ANTONIO VASQUEZ
(CONTINUED FROM JULY 24, 2018 AND AUGUST 28, 2018)**

Public hearing to consider a Minor Subdivision Vesting Tentative Map to subdivide an approximately 9.26 acre parcel into three parcels of 3.086 acres each.

Proposed CEQA Action: Categorically Exempt pursuant to CEQA Guidelines Section 15305

Location: The project is located 2.7 miles east of the City of Soledad at 34735 Metz Road, Soledad, CA 93960.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Find that the project is a minor alteration in land use limitations in an area with an average slope of less than 20% which will not result in changes in land use or density and therefore qualifies for a Categorical Exemption under Section 15305 of the California Environmental Quality Act (CEQA) Guidelines.
- b. Approve a Minor Subdivision vesting tentative map to allow the subdivision of an approximately 9.26 acre parcel into three parcels as follows:
 - a. Parcel 1: One existing approximately 2,000 square foot single family dwelling on 3.086 acres served by an existing well (Well 1).
 - b. Parcel 2: One existing approximately 1,444 square foot single family dwelling on 3.086 acres served by an existing well (Well 2)
 - c. Parcel 3: One existing approximately 2,315 square foot single family dwelling and one approximately 900 square foot Accessory Dwelling Unit on 3.086 acres served by an existing well (Well 3)

A draft resolution, including findings and evidence and subject to 10 conditions, is attached for consideration (**Attachment A**). Staff recommends approval.

PROJECT INFORMATION:

Planning File Number: PLN040529

Owner: Maria A Vasquez, Fermin Vasquez, and Juan Antonio Vasquez

Project Location: 34735 Metz Road

APN: 257-121-019-000

Agent: Joel Panzer, Maureen Wruck Planning Consultant, LLC

Plan Area: Central Salinas Valley Area Plan

Flagged and Staked: No

CEQA Action: Categorical Exemption under Section 15305

SUMMARY:

The Vasquez family submitted an application for a minor subdivision Vesting Tentative Map to allow the subdivision of an approximately 9.26 acre parcel into three parcels of 3.086 acres each. The application requests Parcel 3 to be a remainder parcel. A parcel qualifies as a "remainder" only if it is not divided for the purpose of sale, lease, or financing. (Gov't Code sec. 66424.6.) Four existing dwelling units served by three

existing wells would be divided amongst the three parcels with one single family dwelling and one well located on each of the three proposed resulting parcels. Parcel 3 would also retain the fourth unit as an Accessory Dwelling Unit.

Minor Subdivisions are typically subject to consideration by the Planning Commission. However, after a previous hearing and denial of the initial project application by the Planning Commission in January 2014, the Board heard and acted upon the appeal of the denial in April 2014. A motion to allow the application to proceed with a proposed water quality treatment system failed on a tie vote, and the Board then voted 3-1 to deem the action a final action. That action was challenged in court. The court held the Board's action was invalid, and the County subsequently rescinded the project denial per court order. Therefore, consideration of this project is returning to the Board.

This item was scheduled for the July 24, 2018 Board of Supervisors hearing. Staff recommended approval as a 3-lot subdivision without a remainder parcel based on our reading of the Subdivision Map Act, as well as a desire to reduce cost, process, and restrictions that would be required if there is to be a remainder parcel. Discussions with the applicant's representative identified concerns with staff's recommendation due to how the conditions were worded. The applicant requested a continuance to allow time for discussions with the County regarding the recommended Conditions of Approval. All but one condition has been resolved to the satisfaction of all parties.

Since the conclusion of the litigation, the applicant submitted new information relative to the water conditions including evidence that water treatment systems have been installed and the treated water meets drinking water standards. In addition, since 2014, a change in state regulation has resulted in EHB accepting 'Point of Use' treatment systems to address water quality under some circumstances. Based on this new information, staff recommends two conditions that include deed restrictions to notify current and future property owners of the maintenance responsibilities associated with the water treatment systems.

Staff recommends approving the map without a remainder parcel because we interpret law to allow remainders where there are no improvements and this parcel is fully improved/developed with infrastructure and two units. If the Board allows the applicant's request for a remainder parcel, staff recommends adding conditions that require recording a deed restriction on Parcel 3 such that it cannot be sold, leased or financed and there is no expansion of use until/unless a Conditional Certificate of Compliance is approved and recorded. Staff finds that this would add restriction as well as burden of process and cost to the applicant without any real benefit because the water condition applies whether Parcel 3 is a remainder or not since it is fully developed with two units.

DISCUSSION:

Site Setting

The Vasquez property is a 9.26 acre parcel zoned Low Density Residential located approximately 1.5 miles east of the City of Soledad. The parcel slopes gradually upward from the southwest to the northeast with all existing development on level ground. There are four existing dwelling units on the property served by three existing wells. The parcel is accessed off Metz Road, and a proposed road and utility easement will provide access to Parcel 2 and Parcel 3. The property is bordered by other developed Low Density Residential parcels that are surrounded by farmland.

Procedural Background

In 2004, the property owners applied for a Minor Subdivision to subdivide an approximately 9.26 acre parcel into three parcels. The application remained incomplete due to lack of water quality and quantity data. On February 14, 2012, the applicants submitted a revised vesting tentative map to divide the property into two parcels of 3.086 and 3.086 acres and one remainder parcel of 3.086 acres. That application was deemed incomplete on March 13, 2012 with a recommendation for denial due to issues with water quality and quantity, including that the water quality in the wells which would serve the subdivision exceeded the state's Maximum Contaminant Levels (MCL) for arsenic, nitrates, or fluoride, respectively. The project went to hearing before the Planning Commission on October 30, 2013 and was continued by the Planning Commission to allow the applicant the opportunity to demonstrate sufficient water quantity and to propose a treatment method that may be acceptable to the Environmental Health Bureau (EHB) to address the water quality issues. The applicant then submitted a plan for a Point of Entry treatment system. At the time, staff recommended denial of the application due to the lack of demonstrated technical, managerial and financial ability of the current and future lot owners to maintain the system and because the method of treatment was a departure from acceptable practice at the time for creation of new lots. Additionally, pending resolution of the water quality issues, the applicant had not conducted the water quantity testing requested by EHB. On January 8, 2014, the Planning Commission denied the application due to absence of information indicating availability of a long-term water supply.

The applicant, Maria Vasquez et al, appealed the Planning Commission denial to the Board of Supervisors, and the Board conducted a public hearing on the project on April 8, 2014. On April 8, 2014, on the appeal by Maria Vasquez et al from the Planning Commission's decision to deny the application for a Minor Subdivision Vesting Tentative Map (Vasquez/ PLN040529), a motion was made to allow the subdivision application to proceed with a proposed water quality treatment system. The motion failed on a tie vote. The Board then voted 3 to 1 to deem the action a final action on the appeal, effectively denying the appeal and the subdivision. Applicants brought suit against the County to challenge that action, and the Superior Court ruled in a manner that required the County to rescind its denial and allow the applicant to submit new water information using the 2004 application; no new fees were collected. (Vasquez et al v. County of Monterey, et al (Superior Court Case No. M128437)). On August 23, 2016, pursuant to the Judgment Granting Peremptory Writ of Mandate (filed Feb. 3, 2016), the County rescinded the Board's 2014 action (Resolution No. 16-228). Since that time, the applicant has supplied water quality and quantity data to the County and proposed Point of Use and Point of Entry treatment systems, as described further below.

Following the processing of the application based on the new information, staff scheduled a public hearing on the application for the July 24, 2018 Board of Supervisors meeting. Upon request from the applicant, the Board continued the hearing to August 28, 2018 to allow time for applicant to have discussions with County staff regarding the recommended Conditions of Approval. Subsequently, the applicant submitted additional information, including verification that the proposed treatment systems had been installed and water quality test results following installation of those systems. Since some of the information was received after the staff report deadline, staff requested a continuance to allow time to evaluate the new information and update the recommended conditions of approval accordingly. On August 28, 2018, at staff's request which was acceptable to applicant, the Board continued the hearing to September 11, 2018. Additional information submitted by the applicant since July 24, 2018 is reflected in the recommended Conditions of Approval.

New Information Submitted

Following the court decision, the applicant worked with the Environmental Health Bureau (EHB) to conduct Source Capacity Tests for the three on-site wells and to discuss possible Point of Entry and Point of Use treatment systems. Point of Use treats the water directly at the sink while Point of Entry treats the water before it enters the house. The applicants proposed Point of Use Treatment systems on Parcel 1 and Parcel 2.

Previously, Point of Use systems were not preferred for single family dwellings; however, EHB received new guidance from the State Water Resources Control Board (SWRCB) stating that Point of Use systems can be acceptable and even preferable in some situations. Based on the recent information from SWRCB, EHB determined that the proposed treatment systems, submitted in November 2017, and installed in March of 2018 are sufficient to ensure that the water for Parcel 1 and Parcel 2 meets drinking water standards. Well 1 (to serve parcel 1) is being treated for high nitrates and arsenic. Well 2 (to serve Parcel 2) is being treated for high Fluoride.

A Reverse Osmosis Point of Entry treatment system has been installed to treat the water from Well 3 (to serve Parcel 3) for high Fluoride. This well serves both the main house and the Accessory Dwelling Unit. A recommended Condition of Approval has been added to notify all current and future property owners of maintenance requirements associated with this system and to require owner to obtain a water system permit if either dwelling unit is ever occupied by non-family members in the future.

In August of 2018 the applicant submitted water quality test results indicating that the water quality on all parcels meets drinking water standards with the installed required treatment systems. Conditions of Approval have been revised to remove conditions that required installation of treatment systems and submittal of water quality information since this information has already been received.

Existing Development

The three resulting residential parcels are fully built out. The proposed Parcel 3 contains a single family dwelling and an accessory dwelling unit. Since the minimum density per unit within the parcel's zoning designation is 2.5 acres, the three-acre parcel will not be able to accommodate any additional units. Parcel 1 and Parcel 2 both have an existing single family dwelling. Since these parcels are also each 3 acres, no further units would be allowed on the properties since additional units would exceed maximum density; however, accessory dwelling units may be exempted from density requirements. Currently, no additional structures are proposed to be developed on the property. Accessory Dwelling Units are a Use Allowed in the Low Density Residential zoning designation; however, health and safety requirements, including adequate water and wastewater services, would need to be demonstrated before a building permit could be issued for an Accessory Dwelling Unit on either parcel. Currently, Monterey County's local regulations related to Point of Use and Point of Entry water treatment systems are under review. If owner were to request additional Accessory Dwelling Units, requirements in place at the time would be used to evaluate whether an Accessory Dwelling Unit could be allowed on Parcel 1 or Parcel 2.

Remainder Parcel

The applicant has requested that Parcel 3 be considered a remainder parcel, which would result in the creation of two 3.086 acre parcels, each with one dwelling unit, and one 3.086 acre remainder parcel, with one dwelling unit and an Accessory Dwelling Unit. Remainder lots are legal lots, but pursuant to Monterey County Code Section 19.01.080, "when a subdivision is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder that portion which is *not divided for the purpose of sale, lease, or financing.*" A remainder parcel is not counted as a parcel for purposes of determining whether a final map (five or more parcels) or parcel map is required, and the fulfillment of construction requirements for offsite improvements may be delayed until a permit or other grant of approval for development is issued on the

omitted parcel. In this particular case, staff finds that Parcel 3 should be considered a legal lot as part of the minor subdivision and not a remainder parcel because it is already fully developed with dwelling units. Section 66419 of the Subdivision Map Act defines “improvement” as “...street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for the public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof...” This definition refers to infrastructure improvements (specifically roads and utilities) and does not include development, such as dwelling units, which already exist on Parcel 3. Section 66426 of the Subdivision Map Act states that a tentative and final map shall be required for all subdivisions creating five or more parcels, thus only a parcel map would be required in either case.

When the original application was filed in 2004, the application stated that the purpose of the subdivision was for financing for a new home. In 2012, the applicant submitted a revised map to reflect a change from a three-lot minor subdivision to a Vesting Tentative Map for a two-lot minor subdivision with a remainder parcel. In a letter submitted with the revised subdivision map, the applicant stated that the minor subdivision was being proposed so that the current property owners/residents may take title to their own lot and that individual lot ownership is particularly needed in the case of one of the applicants in order to secure financing for handicap accessible improvements to the residence. County Counsel raised concerns at the Planning Commission hearing about whether the proposed remainder parcel qualified as a “remainder” when one of the property owners stated in public testimony that approval of the minor subdivision was needed in order to obtain financing. The applicant contends that Juan Antonio’s stated intent to secure financing to obtain a VA loan should have no bearing on their ability to designate a Remainder Parcel because Juan Antonio is the intended owner of Parcel 1, and the needed financing is for his house only, not for the requested remainder parcel (Parcel 3). In correspondence received on January 26, 2018 (Attachment E), Fermin Vasquez asserted that he is the subdivider listed on the subdivision application and that the purpose of the subdivision is no longer to secure financing. In a subsequent letter dated March 28, 2018 (Attachment F) Fermin Vasquez stated that he intends to retain the Remainder parcel for his family use and that it is not being created for the purpose of sale, lease, or finance. Despite the property owner’s assertions, Parcel 3 should not be considered a remainder parcel because it is already developed with a single family dwelling and an accessory dwelling unit, and because there is evidence in the record that one of the current owners might rely upon the subdivision to sell, lease or finance Parcel 3.

Staff finds that creating a parcel (no remainder) has no effect on the Parcel Map designation, and the owner would be required to record deed restrictions disclosing water system maintenance requirements in either case. On the other hand, designation of Parcel 3 as a remainder parcel is inconsistent with the definition of a remainder Parcel in Monterey County Code Section 19.01.080 and creates unnecessary procedural processes related to water treatment requirements, deed restrictions, and a Certificate of Compliance should the property ever be sold in the future (see Alternative Conditions discussion).

Alternative Conditions

Staff recommends Parcel 3 be designated a lot as part of the Parcel Map for the minor subdivision, rather than a remainder parcel, because the parcel is already developed and can logically be assumed to transfer ownership in the future. Should the Board decide to grant the applicant’s request to designate Parcel 3 as a remainder parcel, staff recommends that additional Conditions of Approval be added to require that:

- The owner File a Conditional Certificate of Compliance (CCOC) before the lot is considered a legal lot for purposes of sale, lease or financing; and
- The owner records a Deed Restriction preventing sale, lease and/or finance until the CCOC is filed.

Staff recommends these alternative Conditions of Approval if the Board chooses to grant the applicant’s request

for a remainder parcel, as discussed in more detail below:

Water Treatment Requirement for Remainder Parcel

Water quality tests for Well 3, the well proposed to serve Parcel 3, indicated the water was high in Fluoride. A treatment system was installed to treat the water, and test results submitted in August 2018 indicate the treated water meets primary drinking water standards; however, the installed system disposes of wastewater through the existing septic system. The Regional Water Quality Control Board is currently evaluating requirements for wastewater disposal on these types of systems. Staff recommends a condition of approval be added to require verification that the system meets RQWCB requirements.

Should the Board wish to grant the applicant's request to designate Parcel 3 as a remainder parcel, staff recommends recordation of a deed restriction notifying current and future property owners of the maintenance requirements and restrictions associated with the water treatment system be required. Even if Parcel 3 is called a remainder parcel, the imposition of this deed restriction is permissible under Government Code Section 66424.6, which allows a local agency to require fulfillment of the construction requirements for a remainder parcel within a reasonable time following approval of the parcel map and prior to the issuance of a permit or other grant of approval for the development upon a finding that fulfillment of the construction requirements is necessary for public health and safety. In this case, Well 3 exceeds the maximum contaminant levels for fluoride set by the State of California if the water is not treated. It is essential for all current and future property owners to understand the ongoing treatment system and associated wastewater disposal system maintenance requirements in order to continue to protect occupants' health and safety. A Condition of Approval would require the deed restriction be recorded prior to filing the parcel map. As such, there would be no practical benefit for the applicant to classify this parcel as a remainder.

Deed Restriction/Certificate of Compliance for Remainder Parcel

Because the remainder parcel would be a legal lot of record but would be predicated on owner's assertion of no present intent to sell, lease or finance the lot, staff would also recommend pursuant to the Subdivision Map Act requiring a Conditional Certificate of Compliance (CCOC) prior to sale, lease or finance. In conjunction with the Condition for the CCOC, staff recommends that a condition requiring the property owner to record a deed restriction on the remainder parcel stating that the property cannot be sold, leased, or financed until such a time that the CCOC was filed. This is recommended so that lending institutions are fully aware of this restriction. The combination of these two conditions assures the County that the parcel designated as a remainder would not be able to be sold, leased, or financed without the knowledge of the County. Essentially, this ensures that the legal lot is memorialized for the record, prevents avoidance of the requirements of the Subdivision Map Act, and ensures future owners are aware of the water quality treatment requirements.

Although implementation of the above conditions would mitigate the health concerns associated with designating Parcel 3 as a remainder, this action would not meet the intent of Monterey County Code Section 19.01.080, and would require unnecessary additional time and procedural requirements for County staff and property owners. Creating a remainder parcel would require subsequent County actions to: 1) process a certificate of compliance application, and 2) process the deed restriction.

Subdivision Findings

The parcels resulting from the proposed minor subdivision will meet all Monterey County Code requirements for Low Density Residential/2.5 acre per unit parcels. The resulting parcels will be 3.086 acres and will meet all minimum dimensions. The existing dwellings will meet all setback requirements. Since the resulting parcels are already developed, no change in density or intensity of development will occur and the site will continue to be suitable for the existing uses. With implementation of the required Conditions of Approval, the minor

subdivision will not be detrimental to public health or safety.

Long Term Sustainable Water Supply

The minor subdivision is consistent with the Public Services Element General Plan Policies PS-3.1 and PS-3.2 for Long Term Sustainable Water Supply. The property is located within Zone 2C of the Salinas Valley Groundwater Basin. Within this zone there is a rebuttable presumption of a long-term sustainable water supply and there is no substantial evidence to rebut the presumption of a long-term sustainable water supply for this project. Additionally, all three resulting parcels are already built out to the maximum density for the LDR/2.5 zoning district.

CEQA

Section 15305 of the California Environmental Quality Act Categorically exempts minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any change in land use or density. The project will not result in changes in land use density or intensity because the resulting parcels are already developed to the maximum allowable density. An Accessory Dwelling Unit is not counted toward density requirements and is a use allowed in the LDR Zoning designation. Any future proposal to add an accessory dwelling unit would be subject to the health and safety requirements in place at the time of application and would be required to demonstrate adequate water and wastewater services. Parcel 3 already has an accessory dwelling unit and cannot accommodate any further development.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- RMA-Public Works
- Water Resources Agency
- Mission Soledad Rural Fire Protection Department
- Office of County Counsel

The proposed project was not reviewed by a Land Use Advisory Committee because there is no Land Use Advisory Committee (LUAC) established for the Central Salinas Valley Area.

FINANCING:

Funding for staff time associated with this project is included in the FY2018-19 Adopted Budget within RMA-Planning's General Fund 001, Appropriation Unit RMA001.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources, as well as the protection of human life and health.

Check the related Board of Supervisors Strategic Initiatives:

- ☐ Economic Development
- ☒ Administration
- ☒ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared by: Cheryl Ku, Senior Planner, 796-6049

Reviewed by: Brandon Swanson, RMA-Planning Services Manager

Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and
Development Services

The following attachments are on file with the Clerk of the Board:

Attachment A - Draft Resolution with conditions and Proposed Vesting Tentative Map

Attachment B - Project Data Sheet

Attachment C - BOS Resolution 16-228

Attachment D - January 26, 2018 Letter from Property Owner

Attachment E - March 28, 2018 Letter from Property Owner

Attachment F - Vicinity Map

cc: Front Counter Copy; Brandon Swanson, RMA Services Manager; Tony Vasquez, Property Owner, Joel Panzer, Agent; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; Project File PLN040529.