

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development

BOARD AGENDA # 9:15 a.m.

Urgent Routine

AGENDA DATE March 24, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Public Hearing to Consider Appeal of Planning Commission Decision for Vesting Tentative Subdivision Map Application No. 2006-06 and Exception Application No. 2008-02, Knights Ferry Overlook. A Request to Divide a 33.70-Acre Parcel to Create 8 Parcels Ranging in Size from 0.50 to 5.00 Acres with a 12.03-Acre "Remainder." An Exception Is Requested on the Four 1.00-Acre Parcels Which Would Not
(Continued on page 2)

STAFF RECOMMENDATIONS:

After conducting a public hearing at its regular meeting of February 5, 2009, the Planning Commission on a 6-2 (Layman, DeLaMare) vote, denied the approval of this proposed project.

However, if the Board decides to approve the project, the Board should:

1. Adopt the Mitigated Negative Declaration pursuant to CEQA Guidelines Section 15074(b), by finding that on the basis of the whole record, including the Initial Study and any comments received, that there
(Continued on page 2)

FISCAL IMPACT:

There are no fiscal impacts associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2009-179

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION: Based upon the staff report, presentations by staff, including PowerPoint presentations, all comments and testimony received during the public hearing, and all materials that were supplied to the Board and were taken into consideration in making the decision, the Board denied the appeal and upheld the Planning Commission's decision of denial of Vesting Tentative Subdivision Map Application #2006-06 and Exception Application #2008-02, Knights Ferry Overlook; the Board finds and determines the following: (a) pursuant to Stanislaus County Code §20.12.140 that the project site is not physically suitable for the proposed development in that the project would create split zoning, and that the project would result in septic systems that are close to an existing OID canal and an existing pond, which would result in water quality problems; and, (b) finds pursuant to Stanislaus County Code §20.64.030 that the \$100,000 expense of extending OID water to the site is not a special circumstance or condition that warrants granting an exception

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

SUBJECT: (Continued)

Have Municipal Water Service/Connection from Knights Ferry Community Services District (As Required by 20.52.210 of the Stanislaus County Subdivision Ordinance). The Site, Designated as Both A-2-5 (General Agriculture) and H-S (Historical Site District) Is Located at the Southeast Corner of Cemetery and Frymire Roads, in the Knights Ferry Area.

PLANNING COMMISSION RECOMMENDATION CONTINUED:

is no substantial evidence the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects Stanislaus County's independent judgement and analysis.

2. Find That:

- (a) The substitute language (Mitigation Measures No. 1-10) is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment

3. Adopt the Mitigation Monitoring Plan, with the substitute language for Mitigation Measures No. 1-10, pursuant to CEQA Guidelines Section 15074(d).

4. Order the filing of a Notice of Determination with the Stanislaus County Clerk-Recorders Office pursuant to Public Resources Code Section 21152 and CEQA Guidelines Section 15075.

5. Find that:

- (a) The proposed map is consistent with applicable general and specific plans as specified in Section 65451.
- (b) The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
- (c) The site is physically suitable for the type of development.
- (d) The site is physically suitable for the proposed density of development.
- (e) The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) The design of the subdivision or type of improvements are not likely to cause serious public health problems.

- (g) The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to ones previously acquired by the public.
 - (h) The project will increase activities in and around the project area, and increase demands for roads and services, thereby requiring dedication and improvements.
 - (i) There are special circumstances or conditions applying to the property being divided.
 - (j) The Exception is necessary for the preservation and enjoyment of a substantial property right of the owner.
 - (k) The granting of the Exception will not be detrimental to the public welfare, injurious to other property in the neighborhood of the subdivision, and that it will not constitute a special privilege not enjoyed by others under similar circumstances.
 - (l) The granting of the Exception will not be in conflict with the purposes and objectives of the General Plan or any element thereof or any specific plan.
6. Approve Vesting Tentative Subdivision Map Application No. 2006-06 and Exception Application No. 2008-02 - Knights Ferry Overlook, subject to the attached Conditions of Approval/Mitigation Measures (Attachment "2" - Planning Commission Staff Report).

DISCUSSION:

This is an appeal by Nicholas Honchariw, the applicant, of the Planning Commission's decision to deny a Vesting Tentative Subdivision Map Application and Exception Application, a request to divide a 33.70 acre parcel to create 8 parcels ranging in size from 0.50 to 5.00 acres with a 12.03-acre "remainder." Mr. Honchariw's appeal letter and analysis of the decision by the Planning Commission is included as an attachment to this report (Attachment "1").

The site is designated both "Agriculture" (Lots 1-3) and "Historical" (Lots 4-8) on the Land Use Element of the General Plan. It is also split-zoned with half designated as A-2-5 (General Agriculture), which requires a minimum lot size of 5 acres for the creation of new parcels, and H-S (Historical Site District), which allows minimum lot sizes based on the availability of municipal services. In this particular case, the applicant is proposing four

1.00-acre parcels, which is the minimum parcel size that would allow a private well and septic tank in the Historic zoning district. There is also a 0.50-acre parcel (Lot 8) being proposed in the Historic zoning district, that currently has a dwelling with municipal water service and a septic tank. The General Plan designation of "Historical" allows for residential building intensity of 1 to 7 units per net acre with population density of 2 to 25 persons per net acre.

Exception

An Exception is being requested due to the fact that the four (4) proposed 1.00-acre parcels, located within the area zoned H-S (Historical Site District), will not be served with municipal water service from the Knights Ferry Community Services District (KFCSD). Stanislaus County Subdivision Ordinance Section 20.52.210(A) specifically states that, "Proposed subdivisions of five or more parcels, all of which are located more than two thousand six hundred forty feet (2,640 ft.) from an existing sewer or water line, but within an officially adopted sanitary sewer or public water service area, shall either extend the existing sanitary sewers and water lines to the subdivision and each of its lots or parcels, or shall install dry sewers and water lines, complete with service laterals, to the boundary of every lot or parcel."

In order for the Community Services District to provide water, the applicant would have to upgrade the existing water system and provide the necessary infrastructure to pump the water a vertical distance of approximately 120± feet uphill to the proposed parcels (Parcels 4-7). As a condition of approval, the applicant would be required to install the necessary plumbing so that the 1-acre lots could be connected to the KFCSD water lines if they should become available at a later date. A Findings Statement was submitted on the behalf of the property owner which has been provided (see attachment in the Planning Commission Staff Report). None of the agencies to which this application was referred, including the Department of Environmental Resources, offered any objections to the allowance of this Exception. A complete discussion on the Exception request is included in the Planning Commission Staff Report (see Attachment "2").

Knights Ferry Municipal Advisory Council

A CEQA referral response letter was received from the Knights Ferry Municipal Advisory Council (MAC), which stated various concerns regarding this project (see Attachment "2" - Planning Commission Staff Report). Both Public Works and the Department of Environmental Resources were provided with copies of the Knights Ferry MAC comments and both agencies are satisfied that the Conditions of Approval placed on this project are adequate to address the issues raised by the MAC.

Planning Commission Hearing

The Planning Commission held a public hearing on this project at its regular meeting of February 5, 2009. Staff believed that this request did meet the necessary findings for approval for both the Exception and Subdivision Map. Staff's recommendation was to approve the project as proposed.

Following staff's recommendation for approval, Chair Layman opened the public hearing. Multiple residents of Knights Ferry spoke in opposition to the project expressing a general concern regarding the impact that the 1-acre lots would have to the Knights Ferry area. The general theme that those in opposition spoke about was related to the impacts of additional wells and septic systems. Also, noted was the impact of additional driveways along Cemetery Road. Most of those who spoke stated that they had no significant issues with the lots located in the A-2-5 zoned area (5 acre lots). A complete list of those who spoke in opposition of the project are contained within the attached Planning Commission Minutes (see Attachment "3"). Prior to the Planning Commission meeting, Staff also received two letters of opposition that were provided to the Planning Commission the night of the meeting. These letters are attached to this report (see Attachment "4").

Following the closing of the hearing, the Commission discussed the project indicating positions both against and in favor of the project. The Commission discussion focused primarily on the topics related to the same issues raised by those in opposition to the project. Many of the Commissioners struggled with the specific Subdivision Map findings and in the end felt that they could make some, but not all of the findings necessary for approval. The specific findings that the Commissioners struggled with were the Subdivision Map Findings, noted as being Finding No. 5 (C, D, E, & F). Commissioner Souza stated that with Cemetery Road being 13-foot wide, the additional driveways resulting from Lots 6 and 7 would present an overwhelming safety issue. Commissioner Navarro cited that the 1 acre lots may not be physically suitable for a septic system, private well, and a single-family dwelling. No comments were made on the Exception findings not being able to be made. On a motion by Commissioner Navarro and seconded by Commissioner Poore, the Commission voted 6-2 (Layman, DeLaMare) to deny the proposed project.

The applicant has submitted additional information that addresses some of the questions or concerns raised by the Planning Commissioners. As stated in the appeal letter, the applicant's impression is that the Planning Commission's decision was partially based off a false claim, that Cemetery Road is only 13-foot wide, made by a resident of Knights Ferry. The information provided shows the true width of Cemetery Road as being between 22- and 25-feet wide, not 13-feet as stated at the Planning Commission meeting. A conceptual site plan has also been provided that illustrates how the 1 acre lots might be developed, containing a septic system, well, and a single-family dwelling. This information is available as an attachment to this report (see Attachment "5").

POLICY ISSUES:

None.

STAFFING IMPACT:

None.

ATTACHMENTS:

1: Appeal Letter, dated February 13, 2009, from Nicholas Honchariw

2: Planning Commission Staff Report dated February 5, 2009

3: Planning Commission Minutes dated February 5, 2009

4: Letters of Opposition Submitted to Planning Commission on February 5, 2009

5: Supplemental Information Submitted by Applicant

6: Letter(s) of Opposition Submitted to Board of Supervisors

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Applicant PowerPoint

Department PowerPoint

Photos received from Opponent of Appeal