

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

DEPT: Planning and Community Development AF

BOARD AGENDA # *D-1

Urgent Routine

AGENDA DATE April 17, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Vacate the Board of Supervisors' Decision, Dated March 24, 2009, to Deny the Appeal of the Planning Commissions' Denial of Vesting Tentative Map No 2006-06, Knights Ferry Overlook and to Direct Staff to Review and Prepare the Application for Reconsideration by the Board

STAFF RECOMMENDATIONS:

1. In compliance with the Writ of Mandate filed January 24, 2012, in the Stanislaus County Superior Court, vacate the Board's March 24, 2009, action denying the applicant's appeal of the Stanislaus County Planning Commission's denial of Vesting Tentative Map No. 2006-06, Knights Ferry Overlook.
2. Direct staff to review the application in light of the court's order and set a Public Hearing for May 15, 2012 at 6:35 p.m. to reconsider the applicant's appeal of the Stanislaus County Planning Commission's denial of Vesting Tentative Map No. 2006-06, Knights Ferry Overlook.

FISCAL IMPACT:

The fiscal impacts associated with the Board's decision to vacate the March 24, 2009 denial would be related to the staff time spent reviewing and evaluating the application in regards to the issues raised by the Stanislaus County Superior Court. Time spent by staff will not be accounted for with fees collected as part of the original application process. As such, any fiscal impacts incurred as a result would directly impact the General Fund. Impacts associated with this item will be evaluated and included in the subsequent report for the Public Hearing.

BOARD ACTION AS FOLLOWS:

No. 2012-168

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Vacate the Board of Supervisors' Decision, Dated March 24, 2009, to Deny the Appeal of the Stanislaus County Planning Commissions' Denial of Vesting Tentative Map No 2006-06, Knights Ferry Overlook and to Direct Staff to Review and Prepare the Application for Reconsideration by the Board

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DISCUSSION:

Background:

On February 5, 2009, the Stanislaus County Planning Commission (Planning Commission) conducted a hearing to consider Vesting Tentative Map (VTM) 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."

The Knights Ferry Community Services District (KFCSD) had rejected the applicant's request to serve four (4) one-acre parcels that are subject to County Code § 20.52.210, which requires parcels to obtain municipal water service and connect to water systems when available. The applicant sought an exception to County Code § 20.52.210 and requested that the parcels not be required to connect. If the exception had been approved, parcels 1-7 would have been served by septic systems and private wells. A single water connection from the KFCSD currently exists on parcel 8 and will continue to serve that parcel.

At the Stanislaus County Planning Commission meeting, several area residents spoke out against the creation of one-acre lots in the project area. Among other concerns, they raised questions about traffic safety, well water availability, contamination of ground water by the septic tanks and the desire to maintain the historical integrity of the area. The Stanislaus County Planning Commission voted (6-2) to deny the application and to deny the request for an exception to County Code § 20.52.210. The applicant appealed the Stanislaus County Planning Commission's decisions to the Board of Supervisors. A Public Hearing was held on March 24, 2009. Community members in attendance at the meeting raised some of the same concerns. The Board was concerned with the project site not being physically suitable for the proposed development and that the use of septic systems, close to an existing Oakdale Irrigation District (OID) canal and an existing pond, would result in a water quality problem. The Board also expressed concern that the project would create split zoning. The Board voted (5-0) to deny the appellant's appeal.

Legal Challenge:

The applicant challenged the Board's denial of the proposed VTM application; however, the applicant did not challenge the denial of the exception application. On June 15, 2009, the Stanislaus County Superior Court (Superior Court Case 642200) held that the County properly denied the application, the applicant appealed to the California Court of Appeals, Fifth District (Case No. F060788).

On November 14, 2011, the Fifth Appellate District issued its opinion (F042089) concluding that the County was required to comply with the requirements of Government Code §65589.5(j) in denying the project. For purposes of housing projects

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(which the Court found this project to be), Government Code § 65598.5 (j) requires the County adopt findings justifying the denial or density reduction in circumstances in which the project complies with “applicable, objective general plan and zoning standards and criteria, including design review standards.” When initially presented, the Board did not believe that Government Code § 65589.5(j) applied to the project. Therefore, the Board did not evaluate and/or consider the findings at that time.

On January 24, 2012, the Stanislaus County Superior Court, in accordance with the Fifth Appellate District's order, issued a Writ of Mandate ordering the Board of Supervisors to vacate and to reconsider its action denying the VTM application.

The Board's denial of the applicant's exception application was not contested. Therefore, the applicant must comply with County Code §20.52.210(A) which specifically requires:

“All lots of a subdivision shall be connected to a public water system and a sanitary sewer whenever available. Sanitary sewers and public water systems are considered as being available whenever a system is locate within two thousand six hundred forty feet of any part of the property being subdivided, and the proposed subdivision lies within a sanitary sewer or water service area adopted by the governing board of the system. Installation of sanitary sewers and water systems shall include all appurtenances and service lines to the boundary of very lot in the system. ...”

In light of the denial of the exception application, further analysis is required so that the Board can be provided with the information needed to reconsider whether the VTM application should be granted or denied.

In compliance with the Court order, staff recommends the Board of Supervisors vacate its prior decision and set the May 15, 2012 Public Hearing for the Vesting Tentative Map Application No. 2006-06, Knights Ferry Overlook for reconsideration and action consistent with the Court's opinion.

POLICY ISSUES:

The Board of Supervisors has been directed by the Court to vacate its March 24, 2009 denial of the applicant's appeal and reconsider the project. The Board should determine if the action to vacate its decisions and reconsider the project furthers the goals of A Well Planned Infrastructure System and Efficient Delivery of Public Services.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

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CONTACT PERSONS:

Angela Freitas, Interim Planning and Community Development Director.
Telephone: (209) 525-6330
John Doering, County Counsel. Telephone: (209) 525-6376

ATTACHMENTS:

- A. Vesting Tentative Subdivision Map Application No. 2006-06 and Exception Application No. 2008-02, Knights Ferry Overlook, March 24, 2009 Board of Supervisors Board Report.

(Including Attachments 1 and 2 only; all other attachments are available on-line at: <http://www.stancounty.com/bos/agenda/2009/20090324/PH915.pdf>)

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ATTACHMENTS AVAILABLE
FROM CLERK

**NOTICE OF PUBLIC HEARING TO
RECONSIDER THE APPEAL OF THE PLANNING COMMISSION'S
FEBRUARY 5, 2009 DECISION TO DENY VESTING TENTATIVE
SUBDIVISION MAP APPLICATION NO. 2006-06 - KNIGHTS FERRY
OVERLOOK**

NOTICE IS HEREBY GIVEN that on May 15, 2012, at 6:35 p.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, Lower Level, 1010 10th St., Modesto, CA, to reconsider 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." The property is split zoned, consisting of both A-2-5 (General Agriculture) and H-S (Historical Site District). The property is located at the southeast corner of Cemetery and Frymire Roads, in the Community of Knights Ferry. The property is further identified as Assessor's Parcel No. 002-044-003 & 002-044-004. The Board of Supervisors will also consider approval of a Mitigated Negative Declaration for this item.

NOTICE IS FURTHER GIVEN that at the said time and place, interested persons will be given the opportunity to be heard. Material submitted to the Board for consideration (i.e. photos, petitions, etc.) will be retained by the County. If a challenge to the above application is made in court, persons may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board. For further information call (209) 525-6330.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: April 17, 2012

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk of
the Board of Supervisors
of the County of Stanislaus,
State of California

BY: 
Elizabeth A. King, Assistant Clerk

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of **THE MODESTO BEE**, printed in the City of **MODESTO**, County of **STANISLAUS**, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of **STANISLAUS**, State of California, Under the date of **February 25, 1951, Action No. 46453**; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

May 05, 2012

NOTICE OF PUBLIC HEARING TO RECONSIDER THE APPEAL OF THE PLANNING COMMISSION'S FEBRUARY 5, 2009 DECISION TO DENY VESTING TENTATIVE SUBDIVISION MAP APPLICATION NO. 2006-06 - KNIGHTS FERRY OVERLOOK

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I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

May 7th, 2012

(By Electronic Facsimile Signature)

Marie Hickman