



**PLANNING AND COMMUNITY  
DEVELOPMENT DEPARTMENT**

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**MEMORANDUM**

**DATE:** February 24, 2010  
**TO:** Planning Commission  
**FROM:** Dave Gilbert, Senior Planner  
**SUBJECT:** Consideration to Cure & Correct Alleged Violation of the Ralph M. Brown Act for Minor Subdivision Application No. MS09-014: Pacheco LLC

**A. Background/History/Analysis**

On January 13, 2010, the Planning Commission approved Minor Subdivision Application No. MS09-014 for Pacheco LLC that included exempting the project from CEQA review under Section 15315 – “Minor Land Divisions”. The project description and newspaper legal notice for the application requested that the Planning Commission make an environmental determination as well as approve, disapprove, or modify the application.

On January 25, 2010, Marsha Burch an attorney representing San Joaquin Raptor Rescue Center and Protect Our Water submitted a letter stating that the Planning Commission violated the Brown Act by not including the consideration of a CEQA exemption in the January 13, 2010 Planning Commission agenda and the newspaper legal notice for MS09-014 and demanded that the Planning Commission cure and correct the illegal action.

On January 26, 2010, the Board of Supervisors gave the Planning Commission a policy directive to revise its agenda descriptions to be consistent with the Board of Supervisor’s Agenda, by including the type of CEQA document, if any, under consideration. Although there was no violation of the Ralph M. Brown Act in the form and content of the agenda and legal notices, the Board of Supervisors desires as a matter of sound public policy to give the most complete description of an action item as reasonable.

**B. Required Action**

Staff recommends that the Planning Commission respond to the request to cure and correct an alleged violation of the Ralph M. Brown Act (Government Code Section 54954.2) for the January 13, 2010 agenda item: “Public Hearing Item A – Minor Subdivision Application No. MS09-014, Pacheco LLC” by making the following motions:

**MOTION 1:** Follow the January 26, 2010, Board of Supervisor’s policy directive to the Planning Commission to revise its agenda descriptions, as a matter of sound public policy, to conform to the agenda format used by the Board of Supervisors, specifically including the type of CEQA document, if any, under consideration, and;

**MOTION 2:** Re-advertise the application pursuant to state planning and zoning law and place it on the March 10, 2010 Planning Commission Agenda with the new agenda format description.