

# Attachment M

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# NOTICE OF APPEAL

Monterey County Code  
Title 19 (Subdivisions)  
Title 20 (Zoning)  
Title 21 (Zoning)

RECEIVED  
MONTEREY COUNTY

MAY 17 2024

CLERK OF THE BOARD  
*Margarita Hernandez*  
MARGARITA HERNANDEZ

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before May 20, 2024 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: May 8, 2024 (Resolution Attached)

1. Appellant Name: Anthony Nicola

Address: Lombardo and Associates 144 West Gabilan Salinas CA 93901 ATTN: Dale Ellis

Telephone: 831-751-2330

2. Indicate your interest in the decision by placing a check mark below:

Applicant XX

Neighbor \_\_\_\_\_

Other (please state) \_\_\_\_\_

3. If you are not the applicant, please give the applicant's name:

4. Fill in the file number of the application that is the subject of this appeal below:

Type of Application Area

a) Planning Commission: PLN 200203

b) Zoning Administrator: PLN \_\_\_\_\_

c) Administrative Permit: PLN \_\_\_\_\_

## Notice of Appeal

5. What is the nature of your appeal?

a) Are you appealing the approval or denial of an application? Denial

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing \_\_\_\_\_  
The findings or decision or conditions are not supported by the evidence XX \_\_\_\_\_  
The decision was contrary to law XX \_\_\_\_\_

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

Attached.

8. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Chief of Planning). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

Attached

9. You must pay the required filing fee of \$3,716.10 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

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10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

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**The appeal and applicable filing fee must be delivered to the Clerk to the Board by the deadline. A mailed copy of the appeal and filing fee will be accepted only if it is received by Clerk of the Board by the deadline. The appeal and applicable filing fee should be mailed to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal and applicable filing fee are mailed and received by Clerk of the Board by the deadline.**

APPELLANT SIGNATURE *Dave D.* Date: 5/16/24

RECEIVED SIGNATURE \_\_\_\_\_ Date: \_\_\_\_\_

**APPEAL OF ANTHONY NICOLA TO THE DECISION OF THE PLANNING COMMISSION DENYING A COMBINED DEVELOPMENT PERMIT TO ALLOW A THIRTY-ONE UNIT FARM LABOR HOUSING FACILITY, THREE VERY LOW INCOME UNITS AND A SITE MANAGER'S UNIT/OFFICE**

**BACKGROUND:**

Anthony Nicola applied for a combined development permit multifamily affordable housing project including thirty-one units for H2-A housing (248 beds), three very low income year round units, a site manger unit/office, density bonus, project incentives for addition to height reduced parking. The project site is located at the end of Gonda Street in Pajaro. The project site adjoins the H2-A project currently under construction on the east.

The application was filed April 15, 2021 and was deemed complete March 2, 2022. An initial study recommending a mitigated negative declaration was prepared and publicly circulated from September 5, 2023 to October 5, 2023. The HCD staff prepared an extensive report on the project recommending approval with detailed findings, evidence and conditions. The applicant, Mr. Nicola, is in agreement with the final staff recommendations.

The Planning Commission's first public hearing, a special evening meeting, was held February 14, 2024. That hearing was continued to April 10, 2024. Only Commissioners Work, Mendoza, Roberts, Monsalve, Gonzalez and Chair Diehl were present at the April 10<sup>th</sup> meeting. At the conclusion of that hearing, a motion to approve the project ended in a tie vote. The motion to approve failed. After further discussion, the Commissioners concluded they would not be able break the tie to either approve or deny the project and refused to consider a continuing the matter to allow other Commissioners to participate. On May 8, 2024 the Planning Commission adopted a resolution (Exhibit A) finding there was an unbreakable tie and stating the reasons each of the six Commissioners voted to either approve or deny the application.

**THE FINDINGS OF THE PLANNING COMMISSION TO DENY THE APPLICATION ARE NOT SUPPORTED BY EVIDENCE.**

Commissioners Roberts, Monsalve and Diehl voted to deny the project. At the May 8, 2024 hearing the Planning Commission adopted a resolution stating the reasons for the respective votes. That resolution states:

- “**Commissioner Roberts** opined that it is not the right location for the Project due to the proximity to the levee and the dead-end street, [and that after the agricultural employee housing facility went in on Susan Street there is the sense that HCD-Planning has “worn the community out.”] *see 2*
- **Response:** There is no evidence in the record to support a conclusion that this is not a proper location for the proposed use.
- A traffic study was prepared by Keith Higgins. Mr. Higgins is a traffic engineer with substantial experience in Monterey County. The report found there were no

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significant traffic issues with the use of Gonda Street or the Gonda Street/San Juan Road intersection. HCD-Public Works reviewed and accepted the report.

- The project was subject to an extensive and detailed initial study which was publicly circulated. That initial study addressed hazards, including, flood, fire and earthquake. The initial study concluded that with implementation of the recommended mitigations the site was suitable for the project. Mitigations included but are not limited to elevation of the site above the flood plain, preparation of an emergency operations plan, meeting all local and state fire codes and construction codes and an agricultural buffer of about 260 feet, 60 feet greater than required by the County Code. There will also be an H2-A project (under construction) between the project and the nearest farmed land.
- After reviewing the portion of the video of the April 10, 2024 hearing wherein each of the Commissioners stated their reason for their vote the statement attributed to Commissioner Roberts “that HCD-Planning has “worn the community out” could not be found.

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- **“Commissioner Monsalve** explained her concerns for traffic safety [and negative impacts to quality of life for the Gonda Street residents.”] *see 4*

- Response: There is no evidence in the record to support a conclusion that there are adverse traffic impacts. A detailed traffic study was prepared for the project and further analyzed in the initial study. Both concluded the project presents not safety or other traffic impacts. The project has highly controlled and limited traffic. The majority of the residents will not have cars. Their transportation to and from work is provided by their employers and does not create a high level of in and out traffic or increase on-street parking demand throughout the day.

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- “Negative impacts to quality of life for the Gonda Street residents” is not a quantifiable, objective public health and safety finding which is necessary to deny a project. The initial study concludes that with the mitigation recommended and agreed to by the applicant there will be no significant adverse impacts for this project.

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- **“Commissioner Diehl** expressed reservations given that the levee is not fully repaired and the subject site is at the end of a dead-end street to the levee. [She opined that if this Project were proposed in other areas of the County there would be greater concern with its impact on the relevant community.] Finally, she expressed the need for a Community Planning Process prior to intensification of uses such as the proposed Project.” *see 6*

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- Response: This is essentially the same comment as Commissioner Roberts. Again, this project was subject to an extensive and detailed initial study concluded that with implementation of the recommended mitigations the site was suitable for the project. Mitigations included but are not limited to elevation of the

site above the flood plain, preparation of an emergency operations plan, meeting all local and state fire codes and construction codes and an agricultural buffer of 60 feet greater than required by the County Code. There will also be an H2-A project (under construction) between the project and the nearest farmed land.

- There is no substantial evidence in the record to support a conclusion this is not an appropriate site.
- There is also no evidence to support Commissioner Diehl's statement that "if this Project were proposed in other areas of the County there would be greater concern with its impact on the relevant community." To the contrary, the County has considered and approved every H2-A project it has considered regardless of location. Approvals of similar projects include Tanimura and Antle in Spreckles, at Davis Road and Rossi Street abutting the City of Salinas, Madison Lane in the Boronda area, Hitchcock Road and the end of Susan Street in Pajaro adjoining this site.
- Commissioner Diehl's statement for the "need for a Community Planning Process prior to intensification of uses such as the proposed Project" is a statement of planning policy, not evidence this is an inappropriate site for this project.
- Community Areas are a product of the 2010 General Plan. Despite Policy LU-2.23s statement that "Completion of Community Plans for all Community Areas designated in this Plan shall be actively supported as the County's primary planning priority with Pajaro and Chualar being the highest priorities," the Community Plans have not yet been adopted. Policy LU-2.25 is clear that affordable housing projects can proceed in Community Areas prior to adoption of a Community Plan.

### **THE DECISION WAS CONTRARY TO LAW**

The County's denial of this housing development project was not consistent with State Law, particularly the Housing Accountability Act.

The California Housing Element Law, establishes that "the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order" (Gov. Code, Section 65580). The County ostensibly seeks to comply with this directive from the State Legislature through policies adopted as part of the County's Housing Element. The County's 2015-2023 Housing Element commit to facilitate the development of housing for farmworkers through the implementation of a number of policies, including:

Policy H-2.1 Plan new residential development to ensure a range of housing types, prices, and sizes are available to meet the varied needs of Monterey County households, including housing for seniors, people with disabilities, homeless, large households, and farmworkers.

Policy H-2.11 Support private sector partnerships to increase the supply of farmworker housing.

Policy H-5.3 Provide equal access to housing and supportive services to meet the special needs of seniors, people with disabilities (including developmental disabilities), single parents, large households, farmworkers, and the homeless.

Farmworker Housing remains a critical need in Monterey County. The County's Housing Element provides at Page 21 that:

Assuming that all farm laborers who work over 150 days on one farm have adequate housing, and that all seasonal and migrant workers do not have housing, an estimated 16,713 workers would need housing during the peak farming season each year. There remains a serious need to provide housing for farmworkers, and oftentimes their families as well, during peak harvest seasons.

The Planning Commission's decision was inconsistent both with the State's directive to provide more farmworker housing through state housing element law, and with the County's own general plan policies to implement the State's directive. As demonstrated above, there is no evidence in the record to support a finding of consistency with any of the Housing Element policies listed above or with state law.

Additionally, the Housing Accountability Act requires that decisionmakers make specific findings when denying a density bonus or incentives under Govt. Code Section 65915. Under the current zoning and general plan designations, (20 units per acre), this site is entitled to 26 base units. Per State housing law (CA Govt. Code Sections 65915-65918), and County Code (MCC Section 21.65.060), the inclusion of 3 permanent very low-income units (11% of the base units), entitle the Project to a 35% density bonus<sup>1</sup>. Additionally, the provision of three very low-income units, qualifies the Project for two incentives.<sup>2</sup> The incentives for this Project include an increase in maximum building height from 35 feet to 43 feet above average natural grade, and a reduction in parking from 78 to 56 parking spaces.

These incentives and the density bonus may not be disapproved unless the County makes specific written findings based on a preponderance of evidence in the record that the project will have a specific, adverse impact upon the public health and safety. A "specific adverse impact" is in turn defined in Govt Code Section 65589.5 as a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

As the MND clearly demonstrates, there are no significant, unavoidable impacts caused by this project. Moreover, the Planning Commission's findings for denial of the project lacked any

<sup>1</sup> Govt Code 65915(f)(2)

<sup>2</sup> 65915(d)(2)(F) two incentives or concessions for projects that include at least 11 percent of the units for very low income households.



references to “objective, identified written public health or safety standards, policies, or conditions”, and were instead based on vague statements and generalities as described above.

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**Before the Planning Commission in and for the  
County of Monterey, State of California**

**Resolution No. 24-011**

Resolution by the Monterey County Planning )  
Commission to state and issue a final )  
determination that the Planning Commission had )  
an unbreakable tie vote and neither approved nor )  
denied the following application: )

**ANTHONY NICOLA, INC. (PLN200203)**

Combined Development Permit consisting of:

- a. Administrative Permit to demolish an existing approximately 850 square foot single family dwelling, 400 square foot shed, and septic system;
- b. Use Permit to construct two three-story buildings for 34 two-bedroom units and one one-bedroom unit with office totaling 36,200 square feet for use as agricultural employee housing of up to 250 workers, a manager's suite, and three very low-income level inclusionary housing units; and
- c. Variance for less than 200-foot agricultural buffer.

Requiring CEQA action in the form of adoption of a Mitigated Negative Declaration (SCH#2023090035) and adoption of a Mitigation Monitoring and Reporting Plan.

[PLN200203, ANTHONY NICOLA, INC. 124 Gonda Street, Royal Oaks, North County Area Plan (APN: 117-361-017-000)]

**WHEREAS**, the County processed the subject Combined Development Permit application (Anthony Nicola, Inc., Planning File No. PLN200203) in compliance with all applicable procedural requirements; and

**WHEREAS**, the Anthony Nicola, Inc. application came on for a duly noticed public hearing at which all persons had the opportunity to be heard before the Monterey County Planning Commission at a special evening meeting on February 14, 2024; and

**WHEREAS**, the Commission heard oral testimony from staff, the agent for the applicant, and one neighbor as well as written comment from two other neighbors. After discussion, the Commissioners voted to continue the item to a date certain with request for additional information from staff and a draft Emergency Action Plan (pursuant to a proposed mitigation measure requirement) to be submitted by the applicant. These were prepared; and

**WHEREAS**, as set forth in rule 12, a majority vote is required for the Planning Commission to approve a project. Here, there was an unbreakable tie vote. Consequently, pursuant to rule 12, this is a final determination by the Planning Commission; and

**WHEREAS**, pursuant to Monterey County Code Section 21.80.040, the decision on this project may be appealed to the Board of Supervisors.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the County of Monterey does hereby:

1) Find that this decision on the Project is statutorily exempt from environmental review based on California Environmental Quality Act (CEQA) Guidelines section 15270, because the Planning Commission did not approve it; and

2) Adopt this resolution to state and issue a final determination that the Planning Commission had an unbreakable tie vote and neither approved nor denied the Anthony Nicola Inc. (PLN200203) Project, which as proposed would require a Combined Development Permit consisting of:

- a. Administrative Permit to demolish an existing approximately 850 square foot single family dwelling, 400 square foot shed, and septic system;
- b. Use Permit to construct two three-story buildings for 34 two-bedroom units and one one-bedroom unit with office totaling 36,200 square feet for use as agricultural employee housing of up to 250 workers, a manager's suite, and three very low-income level inclusionary housing units; and
- c. Variance for less than 200-foot agricultural buffer.

**PASSED AND ADOPTED** upon motion of Commissioner Monsalve, seconded by Commissioner Work, and carried this day of May 8, 2024 by the following vote:

AYES: Getzelman, Work, Mendoza, Diehl, Monsalve, Daniels, Gomez

NOES: None

ABSENT: Roberts Gonzalez, Shaw

ABSTAIN: None

Attest By

DocuSigned by:

Melanie Beretti

Melanie Beretti, AICP, Secretary to the Planning Commission

**COPY OF THIS DECISION MAILED TO APPLICANT ON 05/09/24**

**THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.**

**IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE 5/20/24**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

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