

Attachment B
Notice of Appeal

PLN000696

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NOTICE OF APPEAL

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MONTEREY COUNTY

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CLERK OF THE BOARD

DK. DEPUTY

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

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before February 24, 2014 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision February 14, 2014

1. Please give the following information:

- a) Your name Michael D. Cling
- b) Address 313 S. Main St. Suite D City Salinas, CA Zip 93901
- c) Phone Number (831) 771-2040

2. Indicate your interest in the decision by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) _____

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

Harper Canyon Realty, LLC

4. Indicate the file number of the application that is the subject of the appeal and the decision making body. PLN000696

- 5.
- | | File Number | Type of Application | Area |
|---------------------------|------------------|------------------------------------|------------------|
| a) Planning Commission: | <u>PLN000696</u> | <u>Combined Development Permit</u> | <u>Toro Area</u> |
| b) Zoning Administrator: | _____ | _____ | _____ |
| c) Subdivision Committee: | _____ | _____ | _____ |
| d) Administrative Permit: | _____ | _____ | _____ |

5. What is the nature of your appeal?

a) Are you appealing the approval or the denial of an application? (Check appropriate box)

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 sheets if necessary)

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

There was a lack of fair or impartial hearing; or

The findings or decision or conditions are not supported by the evidence; or

The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will *not* accept an application for a 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).

See Attachment "A"

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

See Attachment "A"

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee \$1,565.91 and stamped addressed envelopes.

APPELLANT SIGNATURE Burton H. Harper, PRESIDENT DATE February 24, 2014
HARPER CANYON REALTY, LLC

ACCEPTED _____ DATE _____
(Clerk to the Board)

NOTICE OF APPEAL

ATTACHMENT "A"

7. Statement of Reasons for Appeal

a) Lack of Fair or Impartial Hearing

The Planning Commission (Commission) failed to consider all relevant evidence and to act as neutral and impartial decision-makers when acting on the project. In particular, the Commission acted arbitrarily and without consideration of proper planning criteria and with the seemingly sole and specific purpose of denying the development. As a result, the applicant was denied a fair and impartial hearing.

b) Findings, Decision or Conditions Not Supported by Evidence

In its resolution purporting to deny the project, the Commission found the project to be inconsistent with General Plan Goal 53, Objective 53.1 and Policy 53.1 as well as Toro Area Plan Policy 26.1.4.3. In general, those policies require applicants to provide evidence of an assured long-term water supply in connection with new development. The project site and project wells are located in Zone 2C and receive benefits of sustained groundwater levels attributable to the operation of the Nacimiento Reservoir and the San Antonio Reservoir as well as the Salinas Valley Water Project. In addition, the Monterey County Health Department, Environmental Health Bureau determined that there is an adequate long-term water supply for the project. County staff has similarly acknowledged that the project wells are in a location with good groundwater production and determined that the project thus has an adequate water supply. The evidence in the administrative record, including the Environmental Impact Report (EIR) prepared by the County's expert environmental consultant and opinions expressed by County staff and staff of the Monterey County Water Resources Agency, demonstrates that the project does indeed have an assured long-term water supply. *See, e.g.*, Staff Report to Commission on project dated December 20, 2013.

In contrast to this substantial evidence, the Commission purported to base its finding of denial on unsubstantiated testimony of project opponents that the subarea where the proposed project's wells will be located does not receive hydrological benefits from the Salinas Valley Water Project. The testimony of project opponents and/or their counsel is speculation not supported by expert opinion or fact. It is not evidence let alone substantial evidence as is required. Thus, the findings made by the County are not supported by the evidence.

The Commission similarly made cursory findings unsupported by the evidence purporting to justify its denial of the vesting tentative map. The Commission purported to find that the proposed map was not consistent with the General Plan, the design or improvements of the proposed subdivision were not consistent with the General Plan and the subdivision did not meet the requirements or conditions of the Subdivision Map Act and County Subdivision Ordinance. There is no evidence to support any of these findings. Instead, the Commission's resolution purporting to deny the project merely contends that the project is inconsistent with the aforementioned policies. For reasons similar to those outlined above, the Commission's findings in this regard are not supported by the evidence. The Commission's resolution also states that the subdivision does not meet the findings for approval as set forth in Government Code

§ 66474 and Monterey County Code § 19.05.055.B. Yet, those sections outline the grounds for *denial* of a subdivision map, and the purported grounds cited above are not supported by the evidence.

c) Decision Contrary to Law

The Commission failed to make the necessary findings to deny the project. The Commission did not find that the project was inconsistent with the General Plan as a whole, as required. Instead, it found the project to be inconsistent with certain select policies of the General Plan, and those findings are not supported by the evidence as explained in Section 7.b.

If allowed to stand, the Commission's action would result in a taking of the owners' property since it would deny all economically viable use of the property and/or frustrate the owners' distinct investment-backed expectations.

The Commission's denial of the project was arbitrary and irrational and not reasonably related to a legitimate government interest. It thereby deprives the owners of their constitutionally-protected right to due process.

The Commission's denial of the project failed to treat the owners in a manner comparable to that of other similarly situated property owners. Thus, the Commission's action deprived the owners of their right to equal protection under the law.

In contravention of existing law, the Commission's action fails to recognize the assessments the owners paid for the Salinas Valley Water Project in good faith reliance on the General Plan, the Zoning Ordinance and the site's location in Zone 2C.

8. Reasons for Disagreement with Findings Made

The reasons for the appellant's disagreement with the findings made by the Planning Commission are set forth in Section 7 above. In addition, because the EIR complies with the California Environmental Quality Act (CEQA), the Commission should have certified the EIR as adequate and complete under CEQA.

Appellant respectfully requests that the Board of Supervisors certify the EIR and approve the project in accordance with the original staff recommendation on the project.