Attachment C

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NOTICE OF APPEAL

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

RECEIVED
MONTEREY COUNTY
2018 AUG 20 AM 8:27
CLERK OF THE BOARD
DEPUTY

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 8-20-18 ***(10 days after written notice of the decision has been mailed to the applicant). Date of decision*** 8-9-18.

1. Please give the following information:
   a) Your name Andres Czerwiak c/o John Bridges / Fenton & Keller
   b) Phone Number 831-373-1241
   c) Address PO Box 791 City Monterey Zip 93942
   d) Appellant's name (if different) Andres Czerwiak

2. Indicate the appellant's 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:
   Greer

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

		File Number	Type of Application	Area
a)	Planning Commission:			
b)	Zoning Administrator:	PLN170624	Coastal Admin. Permit & Design Review	Carmel Land Use Plan Area/CZ
c)	Subdivision Committee:			
d)	Administrative Permit:			

5. What is the nature of the appeal?

a) Is the appellant appealing the approval ☒ or the denial ☐ of an application? (Check appropriate box)

b) If the appellant is appealing one or more conditions of approval, list the condition number and *state the condition(s) being appealed. (Attach extra sheets if necessary).*

_____

_____

_____.

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for the 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 appeal that is stated in generalities, legal or otherwise. If the appellant is appealing specific conditions, you must list the number of each condition and the basis for the appeal. (Attach extra sheets if necessary).

See attached.

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_____

_____

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). In order to file a valid appeal, you must give specific reasons why the appellant disagrees with the findings made. (Attach extra sheets if necessary).

See attached.

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_____

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 will provide you with a mailing list.

9. Your appeal is accepted when the Clerk of the Board's Office accepts the appeal as complete on its face, receives the filing fee (Refer to the most current adopted Monterey County Land Use Fees document posted on the RMA Planning website at http://www.co.monterey.ca.us/planning/fees/fee_plan.htm) and stamped addressed envelopes.

APPELLANT SIGNATURE G. Andrés Zerwisk **DATE** 8/20/18

ACCEPTED _____ **DATE** _____

(Clerk to the Board)

March 2015

ATTACHMENT TO
NOTICE OF APPEAL
PLN170624
(Appellant: Andres Czerwiak)

The resolution ambiguously references the project as relating to a "connection" of the well to supply potable water to a future single-family dwelling. The ZA very clearly stated on the record several times that permit PLN170624 only allowed for the potential future use of the water for domestic purposes, subject to first obtaining a separate Coastal Administrative Permit required prior to any actual use or connection of the well for residential purposes per 20.14.040.J. Language in finding 1.c (which was written before the ZA made these express clarifications) could be misinterpreted as contrary to the ZA's statements at the hearing and if so, then finding 1.c does not accurately reflect the decision rendered. This is an important clarification/distinction because MCC section 15.04.040 requires proof of legal right to use the water prior to approval of any water system serving 14 or fewer connections and substantial evidence in the record shows the applicant did not present such proof and, in fact, does not have such right. The applicant only has the legal right to half the water from the well. The well tested at 4.98 gpm. Half of that amount is 2.495 gpm. A minimum of 3 gpm is required for a domestic connection. The project therefore cannot be found consistent with the MCC or the LCP.

The ZA also intimated several times that the project should come forward as a whole (namely, one comprehensive application for the well conversion, water system/connection, septic system, and single family dwelling should be "bundled" together). He characterized the separate application approach being pursued by the applicant as "inefficient." It is also illegal. CEQA requires the whole of a project be considered together. Approval of the application constituted a partial piecemeal approval which is prohibited under CEQA. Moreover, testimony from the Health Department confirmed that septic testing under current regulations has not been done and that the location of the well could result in non-conforming conditions. The applicant must show septic issues "can" be resolved, not "might" be at some later date. The ZA also noted concerns about potential tree impacts associated with future residential development of the lot with the well in its present location given the small size of the parcel and the necessary setback constraints between well, house, and septic. All of these potential impacts must be addressed comprehensively in a single application, not in the piecemeal fashion the ZA action has allowed.

The staff report was premised on the assumption that the parcel has "no association with the neighboring properties, other than common property boundaries," and the resolution says "no communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents." This is false. Evidence was introduced proving these statements erroneous. Namely, there is a recorded water rights agreement conferring right to half the water to the appellant's adjoining property. This is certainly a critical "association" between properties such that the application must be denied for lack of sufficient water under the code.

Contrary to finding 2.b there is no legal right to adequate water quantity to serve a residential use on the property. Moreover, if the connection for domestic use was (or is in the future) approved such would be absolutely detrimental and injurious to the welfare of neighboring properties and to the water rights owned by Mr. Czerwiak.

Because the CEQA categorical exemption was premised on the conclusion that there was adequate water for a single family unit (which as explained above is erroneous) the project is not categorically exempt and preparation of an Initial Study is required.

As noted by the ZA (and discussed above), because of the size of the lot and constraining setbacks related to property boundaries, well and septic systems, if the project were properly processed "as a whole" rather than piecemealed, potentially significant impacts to sensitive and/or landmark trees on the property exist. In addition to triggering CEQA review (discussed above) this potential impact (acknowledged by the ZA on the record) also calls into question the propriety of relying on a coastal administrative permit process. Additionally, a full Coastal Development Permit should have been required pursuant to MCC § 20.14.050.S as the proposed water facilities are clearly "Accessory structures and uses prior to establishment of main use or structure," and consequently the project should be appealable to the Coastal Commission per § 20.86.080.A.3.