

ATTACHMENT D  
NOTICE OF APPEAL (JANUARY 27, 2014)

PLN040529

This page intentionally left blank.



# NOTICE OF APPEAL

RECEIVED  
MONTEREY COUNTY

2014 JAN 27 PM 3: 32

CLERK OF THE BOARD

 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 \* (10 days after written notice of the decision has been mailed to the applicant). Date of decision \*.*

1. Please give the following information:

- a) Your name Tony Vasquez
- b) Address Post Office Box 266 City Soledad Zip 93960
- c) Phone Number (831) 214-4942

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

- Applicant
- Neighbor
- Other (please state) 1/3 owner of property proposed for subdivision.

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

Maria A. Vasquez et. al

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

5.

	File Number	Type of Application	Area
--	-------------	---------------------	------

- a) Planning Commission: PLN040529 Minor Subdivision VTM Metz Road, Soledad
- 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 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 attached.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 attached.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 \$ \_\_\_\_\_ and stamped addressed envelopes.

APPELLANT SIGNATURE *Juan a Vasquez* DATE 1-27-17

ACCEPTED \_\_\_\_\_ DATE \_\_\_\_\_

(Clerk to the Board)



MAUREEN WRUCK  
PLANNING CONSULTANTS, L.L.C.

*Development Consultants*

*Planning ∞ Land Use & Permitting ∞ Subdivisions ∞ Mitigation Monitoring ∞ Permit Compliance ∞ Certificates of Compliance*

January 27, 2014

Monterey County Board of Supervisors  
c/o Monterey County Clerk of the Board  
168 West Alisal Street, First Floor  
Salinas, CA 93901

Vasquez Minor Subdivision: Appeal of Planning Commission Denial (PLN040529)

Dear Clerk of the Board:

Maureen Wruck Planning Consultant, LLC is representing Mr. Tony Vasquez in this appeal of the Planning Commission denial of a minor subdivision to the Board of Supervisors.

As required in the appeal form, this letter provides supplemental information indicated in Items #6 and #7, as follows:

**Appeal Form Item #6 - The Findings or Decision... are not supported by the Evidence**

A. **Finding #2** lists 7 items in the Finding and lists five (5) sets of Evidence as # 3. The appellant's statement that the decision of subdivision denial is not supported by evidence in the record is as follows:

1. *The proposed map is consistent with the 2010 General Plan.* The 9.24 acre property is designated as "Low Density Residential/2.5 acres per unit" in the Central Salinas Valley Area Plan (10/31/2013 Planning Commission staff report). Physical development on the property previously approved by Monterey County includes 1 single family residence and a caretaker unit (ZA4014, April 1980), Administrative Permit for a 2<sup>nd</sup> residential unit (PLN040503, August 2005) and a Use Permit for a 3<sup>rd</sup> residential unit (PLN04027, September 2005). Findings and Evidence to support this long-term use and build-out of the property were made by County hearing bodies and included similar evaluations on water supply, water quality, health and safety.

Appeal to Board of Supervisors, Supplemental Statements (Vasquez PLN040529)

The proposed subdivision is consistent with Inclusionary Housing Element policies and that are intended to protect affordable housing (H-1.7) and to accommodate the needs of individuals with disabilities with flexibility in rules and regulations (H-4.5).

2. *The design and improvement is consistent with the 2010 General Plan and specific plan.* The applicant has proposed a design that would allow each of the existing three owners to retain the residences that they have constructed and live in. Water is to be supplied by individual domestic supply wells located on each property. The Monterey County Subdivision Ordinance allows two options to provide water: individual wells (19.03.015.L.2.A) or a two to four connection small water system (19.03.015.L.2.B). The 2010 General Plan, the Subdivision Ordinance and Monterey County Code Title 15.20 do not prohibit water quality treatment for individual wells.
3. *The site is physically suited for the proposed type of development.* As noted in item #1, Monterey County has already permitted development of four residential units, including associated driveway access, septic disposal and water supply. The subdivision would simply place those approved improvements on individual parcels that could be owned by the individual members of Vasquez family. The owners have been utilizing water for the full-buildout of the property since late 2006. Seven (7) years of actually using the wells for domestic water use for four residential units represents more evidence of a long-term water supply than a 72 hour pump test. The EHB has confirmed that 12 gallons per minute (GPM) would be required for the project. The applicant has formally and informally documented the ability to deliver 11.6 GPM. None-the-less, all of the development (4 residential units) approved by the County noted in PLN040427 were served by this well, an equivalent of 12 GPM.
4. *That the site is physically suitable for the proposed density of development.* As noted above, the density is consistent with the 2010 General Plan land use designation and the four residential units approved for construction on the property, including BP020474, BP052190 & BP052636. These four residential units have been inhabited and the subject property has been continuously and occupied for seven (7) years.
5. *That the design of the subdivision is not likely to cause substantial environmental damage or substantially injure fish and wildlife.* There is no physical development proposed. As noted above, the property was initially developed in 1980 with two residential units and all four existing residential units have been fully occupied since late 2006. No evidence has been put in the record by staff indicating fish or wildlife will be harmed.

6. *That the design of the subdivision is likely to cause serious public health problems.* The property is fully developed and subdivision would not cause serious issues above and beyond current conditions. There is no regulatory prohibition for water treatment options for individual wells. The applicant has provided five different/affordable options ranging from a Culligan water system to more advanced systems certified/registered with the State of California's Department of Public Health, Drinking Water Program.
7. *That the design of the subdivision or improvements does not conflict with public easements.* There is not a single public access easement that has been identified by County staff that the proposed subdivision conflicts with.

## **B. The Decision is Contrary to Law**

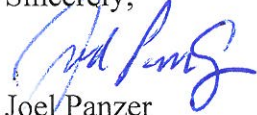
- a. *Consistency (Evidence #3.a).* Monterey County was sued and entered a Settlement Agreement over 2010 General Plan EIR and General Plan Policies PS-3.1 and PS-3.2 relating to "Long-Term Sustainable Water Supply" (REF120022). Until the required well ordinance is formally adopted via the public hearing process, it is inappropriate to cite these policies as a legal basis for project denial. It is inconsistent for EHB to suggest that the definition of a "long-term sustainable water supply" in Policy PS-3.9 has a different meaning, with different authority than the determination of a "long-term sustainable water supply" cited in Policies PS-3.1 and PS-3.2 that were subject to the lawsuit.
- b. *Consistency (Evidence #3.a).* "Advice" from the Director of Environmental Health does not substitute or override EHB's requirement to follow adopted regulations in the Monterey County Code and (MCC Title 19 & MCC Title 15.04).
- c. *Health & Safety (Evidence #3.c).* Section 64431 of the California Code of Regulations applies to public water systems not individual domestic wells. Using this citation to deny use of a domestic well inappropriate without a basis in Monterey County Code (i.e. Title 15.04). The applicant is not proposing to sell water to any person or user and is also exempt from Health and Safety Code Regulations, pursuant to Section 116280(c).
- d. *Water Supply Evidence #3.d).* The applicant has proposed several readily available & conventional water treatment options. There is no prohibition on water treatment for individual domestic water wells in the Monterey County Code or in the State of California Codes. In fact, the State of California recognizes feasible and affordable technology (Health and Safety Code Section 116270 (b)) Pursuant to Assembly Bill AB119, effective January 1, 2014, the California

Department of Public Health registers water treatment devices suited to reduce and/or remove water quality constituents. If devices are accepted by the State of California, Monterey County must cite a regulatory rationale to deny use of such devices for individual water wells proposed for the Vasquez project.

**Appeal Form Item #7 Specific Reasons why we disagree with the Findings Made.**

The discussion above provides specific reasons as to why the appellant disagrees with the Findings made by the decision making body (Planning Commission). Rather than repeat the specific reasons again in this section, we would refer the Clerk of the Board back to the first three pages of this transmittal in support of this appeal to the Board of Supervisors.

Sincerely,



Joel Panzer

JP/Attachment: Notice of Appeal form & filing fee.