A**. <u>Background</u>**

The subject application is for a Lot Line Adjustment (LLA) between two (2) existing legal lots of record approximately 4.6 acres (portion of Assessor's Parcel Number 103-061-015-000 – "Northerly Parcel" [Certificate of Compliance Document No. 2004079692]) and 4.3 acres (portion of Assessor's Parcel Number 103-061-015-000 – "Southerly Parcel" [Certificate Compliance Document No. 2004079684]) in area, resulting in two (2) reconfigured lots also 4.6 acres (westerly parcel, to be identified as Parcel A) and 4.3 acres (easterly parcel, to be identified as Parcel B) in area. The existing Northerly Parcel is presently developed with a single-family residence, while the existing Southerly Parcel is undeveloped. The subject LLA would result in the newly-reconfigured westerly Parcel A containing the existing residence and the easterly Parcel B remaining undeveloped. Neither of the existing parcels complies with the 5.1-acre minimum lot size requirements of the RDR/5.1 Zoning District. The LLA does not alter this situation, so they remain legal non-conforming as to size.

The subject LLA was initially considered by the Planning Commission at its November 13, 2013 meeting, but the hearing on the LLA was continued by the Planning Commission to its December 11, 2013 meeting in order to allow staff additional time to amend draft resolution so that it would better reflect the changed site characteristics and development potential of the proposed, reconfigured, undeveloped Parcel B. At its December 11 meeting, the Planning Commission voted unanimously (10-0-0) to adopt the Initial Study/Negative Declaration prepared for the subject LLA and to approve the LLA.

On January 2, 2014, Save Aguajito Forever, the Aguajito Property Owners Association, Frank Chiorazzi, Dr. Eric Del Piero and Theresa Del Piero (Appellants) filed a timely appeal of the Planning Commission's decision to approve the LLA to the Board of Supervisors.

B**. <u>Appeal (PLN130209) of the Lot Line Adjustment</u>**

The Appellants state several reasons for their appeal of the Planning Commission's approval of the subject LLA. The following discussion addresses the Appellants' points (summarized in italics) in the order in which they are raised in their Notice of Appeal **(Attachment E):**

Appellant's Contention: *<u>The Initial Study (IS) prepared by the County is inadequate. The Negative Declaration (ND) should have addressed future development of the two parcels and should not have been adopted by the Planning Commission. There are inconsistencies in the Planning Commission's adopted findings</u>.*

Staff Response: Sections 15300-15333 of the California Environmental Quality Act (CEQA) Guidelines addresses a range of land use and development projects which are often reviewed and approved by government agencies and that are generally determined not to have a potentially significant effect on the environment. These projects are classified as categorical exemptions. LLAs, such as the proposed project, are typically exempt from CEQA review per CEQA Guidelines Section 15305(a) [Minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density], which specifically addresses minor LLAs. However, given that much of the subject site has slopes in excess of 20%, the subject project was not considered by staff to be categorically exempt and an Initial Study(IS)/Negative

Declaration(ND) was prepared and circulated for public review. This IS/ND was adopted by the Planning Commission as part of its December 11, 2013 decision to approve the LLA.

The Appellant's contention is that the future physical development of the two reconfigured Parcels A and B should have been addressed in the IS/ND. While an LLA is sometimes part of a proposal to develop, or redevelop, a site, the subject proposal is solely a request for an LLA. The site presently consists of two (2) lots: one 4.6 acres in area and developed with a single-family residence; one 4.3 acres and undeveloped. The proposed LLA reorients the existing property line from an east-west orientation to a north-south orientation, resulting in a 4.6-acre lot (Parcel A) developed with a single-family residence and an undeveloped 4.3-acre lot (Parcel B).

The reconfiguration of the undeveloped Parcel B establishes a lot that is physically better suited to accommodate future development in that it has a larger, relatively-level area, rather than the uniformly steep slope of the existing Southerly Parcel, and less dense tree cover, but it does not mean that development of Parcel B and the redevelopment of Parcel A are part of the subject proposal requiring analysis at this time or that their development/redevelopment is imminent. The proposal to reorient the parcel configuration would not indirectly cause a new or potentially increase a significant effect on the environment. The proposed orientation allows for potentially less impact to forest and slope resources. Site development issues will be addressed when an application is submitted. Until that time, it is speculative to anticipate what will be developed on the site, and when that development will occur.

Moreover, the subject LLA is consistent with the General Plan concerning the reconfiguration of existing nonconforming lots, such as these. Specifically, General Plan Land Use Element Policies LU-1.16(d) and (f) state:

> *(LU-1.16) Lot line adjustments between or among lots that do not conform to minimum parcel size standards may be allowed if the resultant lots are consistent with all other General Plan polices, zoning and building ordinances and the lot line adjustment would:*
>
> *….*
>
> *(d) produce a superior parcel configuration; or*
>
> *….*
>
> *(f) promote resource conservation, including open space and critical viewshed protection, without triggering eminent domain.*

Regarding the language inconsistencies in the Planning Commission's findings approving the LLA (**Attachment F**, Planning Commission Resolution 13-042), cited by the Appellant on pages 1 and 2 of the Notice of Appeal, "Finding 3, Evidence (b)" correctly states that the IS found that the LLA would not result in impacts to environmental resources. The subsequent language cited by the Appellant in "Finding 6," stating that, "there is no substantial evidence that the proposed project [the subject LLA] as designed, conditioned and mitigated, will have a significant effect on the

environment," should not have recited the words "as designed, conditioned and mitigated" since the project does not include any physical development or elements of design or have any impacts to mitigate. Inclusion of this phrase was an oversight on the part of staff, but the finding that there is no substantial evidence that the project will have a significant effect on the environment is warranted on the facts of this case.

The Appellant's remaining comment regarding inconsistent language in the Planning Commission's findings ("Finding 6, Evidence (h)") pertains to payment of State Department of Fish and Game (now California Department of Fish and Wildlife) fees. This language was included in the findings to inform the applicant, as stated, that, "All land development projects that are subject to environmental review [as the proposed LLA is] are subject to a State filing fee…unless the CDFG (California Department of Fish and Wildlife) determines that the project will have no effect on fish and wildlife resources upon which the wildlife depends." The language found in "Finding 6, Evidence (h)" does not address CEQA impacts but rather addresses CDFG's criteria for receipt of a filing fee for reviewing environmental documents. (Fish and Game Code, section 711.4.) The finding does not contradict any other findings made by the Planning Commission or imply that the subject LLA would result in any environmental impacts, but rather informs the applicant that appropriate fees would be payable to the California Department of Fish and Wildlife upon approval of the LLA and that the County is not the appropriate agency to determine whether the applicant would be eligible for a fee waiver.

Appellant's Contention: *A new lot is being created by the Lot Line Adjustment.*

Staff's Response: As previously described, the subject LLA involves the adjustment of two (2), existing legal lots of record, the Northerly Parcel, approximately 4.6 acres in area, (Certificate of Compliance Document No. 2004079692) and the Southerly Parcel, approximately 4.3 acres in area (Certificate of Compliance Document No. 2004079684), resulting in two (2) reconfigured lots of 4.6 acres (westerly parcel, to be identified as Parcel A) and 4.3 acres (easterly parcel, to be identified as Parcel B), respectively. In 2004, the County issued Certificates of Compliance (CoC), which are documents issued by the County confirming that the described parcels are officially recognized as legal lots. The CoC document numbers are referenced above. The issuance of said CoCs reflects the County's determination that the existing Northerly and Southerly Parcels are recognized as independent legal lots of record. On pages 2 and 3 of the Appellants' Notice of Appeal, the Appellants state that since the two (2) existing lots were sold a number of times over a period of years (1950-1986) but were always under single ownership that the overall site was intended to be a single lot, rather than two (2) lots. This argument has no legal basis. California Civil Code Section 1093 specifically states*, "Absent the express written statement of the grantor contained therein, the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds, mortgages, patents, deeds of trust, contracts of sale, or other instruments of conveyance, or security documents, into a subsequent single deed, mortgage, patent, deeds of trust, contract of sale, or other instrument of conveyance, or security document…does not operate in any manner to alter or affect the separate and distinct nature of the real property so described…."* The frequent sale of the adjacent lots, one of which (the Southerly Parcel) has been undeveloped and characterized by steeply sloping topography, shows that the lots have had numerous relatively short-term owners, with the exception of the current owners (the current owners, the Steucks, who have owned the lots since 1986, according

to the Appellant's document), over the years. It does not, however, negate the County's issuance of Certificates of Compliance in 2004, establishing two (2) legal lots of record, or demonstrate that the overall site is a single parcel.

Appellant's Contention: *The Lot Line Adjustment is inconsistent with General Plan Policy PS-3.1, related to proof of water.*

Staff's Response: Pages 3 and 4 of the Appellant's Notice of Appeal states that the subject LLA is inconsistent with General Plan Policy PS-3.1, which states that "new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development."

First, the subject LLA does not propose any new development that will require the use of water. Moreover, Chapter 10.0 (Glossary) of the General Plan defines development as, "…any activity that occurs on land or water that involves the placement of any structure, the discharge or disposal of any waste material, grading, dredging or mineral extraction, any change in density and/or intensity of use including the subdivision of land, construction of any structure, and the harvesting of major vegetation other than the growing and harvesting of agricultural crops." In other words, the subject LLA is not, by definition, considered "development" per the County's General Plan. Second, General Plan Policy PS-3.1, referenced by the Appellant, further states under sub-section PS-3.1(a) that "the first single family dwelling and non-habitable accessory uses on an existing lot of record" are exempt from the provisions of Policy PS-3.1, meaning that even if a single family house on the undeveloped parcel were reasonably foreseeable, a first single family dwelling on the existing 4.3-acre, undeveloped Southerly Parcel, which would be reconfigured as the 4.3-acre Parcel B, is exempt from provisions of Policy PS-3.1.

Appellant's Contention: *The Lot Line Adjustment is inconsistent with General Plan Policy 3.6, related to proof of access.*

Staff's Response: Page 4 of the Appellant's Notice of Appeal states that "*General Plan Policy C-3.6 requires that the 'County shall establish regulations for new development that would intensify use of a private road or access easement. Proof of access shall be required as part of any development application when the proposed use is not identified in the provisions of the applicable agreement.' That proof of access does not exist with this [the subject LLA] application."* Similar to the Appellant's preceding statement regarding inconsistency with General Plan Policy PS-3.1, the subject LLA is not proposing any new development. And, since no new development is proposed by the subject LLA, the use of the existing private access easement will not be intensified or negatively impacted by the reorientation of the existing lot line. More importantly, the access that currently exists to/from both parcels will not be affected by the LLA.

Appellant's Point: *The Lot Line Adjustment is inconsistent with General Plan Policy OS-3.5(1)(d) regarding development on slopes over 25%.*

Staff's Response: Page 5 of the Appellant's Notice of Appeal states that, *"The majority of the property is over 25% slope. [General Plan] Policy OS-3.5 1 d states that it is the 'general policy of*

the County to require dedication of a scenic easement on slopes over 25%. However there is no requirement in this [the subject LLA] approval that the areas on slopes over 25% be placed in scenic easement. Nor is there an explanation as to why a scenic easement is [sic] not been required or any discussion as to how this application can be determined to be consistent with the general plan without a requirement for a scenic easement." As with the preceding General Plan-related points raised by the Appellant, dedication of a scenic easement was not required as part of the approval of the LLA due to the nature of the project, which is solely an LLA between two (2) existing lots. General Plan Policy OS-3.5(1), and all of its subsections, pertains to the development, or use and activity, on sites with slopes exceeding 25%. The subject LLA does not propose any development, use or activity relevant to General Plan Policy OS-3.5(1). Should future development be proposed on either of the two (2) lots that constitute the site, dedication of a scenic easement in accordance with the General Plan would be applicable.

Appellant's Point: *Non-compliance with the Zoning and Building Ordinances related to past onsite grading activities.*

Staff's Response: The Appellant states on pages 5 through 7 of the Notice of Appeal that unresolved grading and site disturbance issues remain on the site due to work performed by the property owner circa 1986-1987. Staff acknowledges that grading work, including the importation of fill material to the site, was done in the past without the appropriate County approvals. However, staff and the Planning Commission concluded that this issue has been addressed and that no current grading-related violations exist on the property. As stated on page 2 of the Initial Study prepared for the LLA:

> *Fill Areas Restored:*
> *Prior to (submittal of the application for) the subject Lot Line Adjustment there was fill placed on the property… The property owner was required to [obtain] a grading permit, GP090013, in order to restore the areas that were disturbed. After working closely with the Monterey County Building Department the property owner restored the fill areas by removing and redistributing fill in other areas that were impacted…. There are no unresolved issues with the restoration completed.*

Additionally, staff reviewed Monterey County RMA - Planning and Building Services records and is not aware of any other violations existing on the subject property. Staff also conducted a site inspection on March 23, 2013 and further researched County records to assess if any violation remains on the subject property. Again, there are no known current violations on the subject parcels.

More specifically, regarding the issue of onsite grading and imported fill raised by the Appellant, an Inter-Office Memorandum, dated March 11, 2011, to Leslie J. Girard, Assistant County Counsel, from John Huntley, Management Analyst, Building Services Department Re. "Enforcement Case Review and Chronology / Gordon & Sandra Steuck / Assessor's Parcel Number 103-061-015-000," the Building Services Department concluded:

Inspections were undertaken during and following the corrective work. All fill material originally placed on the east side of the property (slopes exceeding 30%) prior to May of 1988 was removed and that section of the property was returned to the original elevations and contours, reseeded and prepared for final inspection approval. On the west side of the property adjacent to the Del Piero property, un-compacted fill material was excavated, stockpiled and replaced in compacted lifts in accordance with the approved revised grading plan. Re-vegetation was undertaken, storm water runoff infrastructure was installed and the site was prepared for final inspection approval in compliance with the revised grading plan. Inspections were undertaken and final inspection on grading permit GP090013 was granted July 1, 2010.

The same memorandum from Mr. Huntley to Mr. Girard additionally states, "A letter confirming full compliance with requirements under grading permit GP090013 was sent to Dr. and Mrs. Steuck August 25, 2010. Enforcement Case CE090292 was closed that same day."

In summary, the majority of the points raised by the Appellant concerning the Planning Commission's approval of the subject LLA on December 11, 2013 focus on physical development, or redevelopment, occurring on the two (2) existing lots. As stated, the current project is solely an LLA, which does not involve any physical alteration to the lots or intensification of the use of the land. Should such development, redevelopment or intensification of use not presently at issue, be proposed in the future, the issues associated with that development or intensification will be addressed at that time, consistent with County planning and development policies and regulations. Based on this, staff recommends that the Board deny the appeal and approve the Lot Line Adjustment.