

Attachment No. 1
Discussion

Gordon J. Steuck
PLN080454

Board of Supervisors
February 7, 2012

ATTACHMENT NO. 1 DISCUSSION

I. INTRODUCTION

On December 19, 2011, the Aguajito Property Owners Association and Eric and Teresa Del Piero (“Appellant’s”) filed a timely appeal of the Minor Subdivision Committee’s decision to Adopt a Negative Declaration and approve the application (Steuck/PLN080454) for a Lot Line Adjustment between two legal lots of record of approximately 4.6 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 2004079692 (the northerly parcel)] and 4.3 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 20040795684 (the southerly parcel)], resulting in two newly reconfigured lots of 4.6 acres (westerly Parcel A) and 4.3 acres (easterly Parcel B) respectively (See Attachment No. 3).

The appeal is brought on the basis that the decision was contrary to law, that findings 1, 2, 4, 5, and 6 are not supported by the evidence, that the decision violates the California Environmental Quality Act, and that the decision violates Monterey County Zoning Ordinance requirements with regard to restoration and the issuance of a permit where a violation exists.

Appellants object to:

- Finding 1-Consistency: the appellant contends that the project is not consistent with the Zoning Ordinance and the General Plan regarding zoning density of 5.1 acres per unit;
- Finding 2-Site Suitability: the appellant contends that the lot line adjustment will create a second building site in an area where density is restricted to one unit per 5.1 acres, without consideration of the rural and visually sensitive nature of the location;
- Finding 4-Violation: the appellant contends that violations remain on the property regarding undocumented fill with potentially hazardous material, and that the work is not completed;
- Finding 5-CEQA: appellant objects to the project’s CEQA determination that the proposed project will not result in significant environmental impacts associated with the proposed lot line adjustment, and contends that the environmental review was piecemealed.

II. ANALYSIS

A. Factual Background

On October 3, 2008, the applicant submitted an application to the County for the development of two new residences and for the current reconfiguration of the lots.

On November 10, 2008, a notice of violation was filed on the subject property. The property owner was required to obtain a grading-restoration permit. The permit (GP090013) was issued on February 11, 2009 to remove undocumented fill and restore the site to its pre-violation state.

The restoration-grading permit was granted final on April 2, 2009.

The application was revised at the applicant’s request on April 16, 2009 to only reflect the proposed lot line adjustment. The applicant revised the application to omit the two new residences. The only proposal that remains is to reconfigure the lots as demonstrated in the proposed sketch.

The Appellant appealed the building Official's decision to a grant final for a restoration-grading permit (GP090013) (restoration) on June 9, 2009.

Building Official Tim McCormick having considered an appeal, issued a Notice of Intent to the property owner to rescind, final inspection of grading permit GP090013 on November 18, 2009. On December 18, 2009, Tim McCormick revoked the Grading Permit GP090013.

The applicant corrected the deficiencies stated in the November 18, 2009 letter and was then allowed to complete the restoration.

Building Official Tim McCormick reviewed the grading permit and determined that the grading restoration was complete and the grading permit could be finalized. The grading permit was granted final on July 1, 2010, as indicated in a letter to Mr. Lombardo representing the appellant and Mr. Steuck, the property owner, dated September 14, 2010.

The Interim Building Official John Villalpando reviewed the Restoration grading permit confirmed that no further code enforcement issues were pending and that no further action was required as of April 11, 2011. This determination allowed the project to move forward and allowed to be set for hearing. (See attached letters Exhibit C)

The parcels are zoned "RDR/5.1-UR-S-D" [Rural Density Residential, 5.1 acres/unit with Urban Reserve, a Site Plan Review District and Design Control District Overlay]. The 1982 General Plan requires that the parcels under this zoning maintain a minimum building site of 5 acres, which is consistent with the density requirements of 1 unit per 5.1 acres as provided in the 1982 General Plan, Land Use Plan Map. The existing lots are less than 5 acres but were not subject to the size limitation when they were created

The County identified the Steuck lots as legal lots in unconditional Certificates of Compliance issued in 2004. At the time the subject parcels were created, there were no local or state statutes or ordinances in effect regulating the division of land into four or fewer parcels, and there was no zoning in effect requiring a minimum lot size.

The reconfiguration of the lots as proposed is consistent with both the 2010 General Plan and the Greater Monterey Peninsula Area Plan. The existing parcels are less than 5.1 acres, but remain consistent with the following General Plan (GP) policies:

LU-1.14 "Consistent with the provisions of the State Subdivision Map Act, lot line adjustments shall be between four or fewer existing adjoining parcels."

LU-1.15 "Where Lot Line adjustment may be configured to result in lots conforming to the policies and standards of this General Plan, that configuration is required. Lot Line Adjustments that may compromise the location of wells, on-site wastewater systems, or envelopes should not be approved." *The present proposal will not compromise the location of wells or on-site wastewater systems. No building envelopes are recorded on the subject parcels.*

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 policies, Zoning and Building Ordinances, and the lot line adjustment would produce a superior parcel configuration." *Based on review of department records for the Steuck property, it was determined that the lots are consistent with County codes and the site development standards per Section 21.16.060 of the Monterey County Title 21 Zoning*

Ordinance, regulating structures natural resources and site constraints; and General Plan Policies regarding residential development and visual sensitivity policies in the Greater Monterey Peninsula Area Plan.

LU-1.18 states "If the standards in this General Plan render a legal lot of record substandard in size, the substandard size of the parcel shall not by itself render the parcel a legal nonconforming use. Any proposed expansion, enlargement, extension, or intensification of uses on such a lot shall not be prohibited due to its substandard size unless there are overriding public health impacts."

C-3.6 states the County shall establish regulations for new development that would intensify the use of a private road or access easement. *The parcels are consistent with the intent of the policy because the lots are existing lots which since the time of the creation have had access to the road as described in the current legal description. For these reasons, the County finds the proposed lot line adjustment to be consistent with C-3.6.*

The reconfigured existing legal lots of record as identified under parcel number 103-061-015-000 and unconditional certificates of compliance numbers 2004079692 and 20040795684, better meet the objectives of the General Plan by reconfiguring the lots as proposed, thereby rendering a superior lot design to the newly reconfigured lot B. This would allow the lot to be developed without violating policies regarding 25% or the removal of protected vegetation.

Currently the property has a 30-foot wide access and utility easement created in 1937, which transects the mid-point of the parcel roughly going east to west dividing the two lots of record into a north lot and a south lot. The southerly property slopes downward to Aguajito Road with all slopes exceeding 25% in steepness. The reconfiguration of the property into parcel A and B will provide areas of less than 25% slopes that could potentially be developed in a manner consistent with the Monterey County General Plan.

The RDR zoning designation allows for residential uses in an area identified as urban reserve due to its proximity to the City of Monterey jurisdictional boundaries. [The Monterey County Code (MCC) Section 2.44.010 (Design Control District) and (MCC) Section 21.45.010 (Site Plan Review) overlays on the property provide the county discretion over development with site plan control to insure that development does not conflict with policies regarding slopes or natural resources]. The visual sensitive nature of the area and rural character are regulated through design control of structures. Consequently, if structures are proposed in the future the County would scrutinize the design and location to determine if such proposals were consistent with the General Plan, Area Plan, and Zoning Ordinance. The surrounding properties are of a rural residential nature and range in size from 4.8 acres to 6.43 acres, each with a single-family residence. The Steuck properties are consistent with this general size of properties in the immediate area and conform with the rural character of the area.

In regards to access, the County reviewed all the title documents and easements as described in the legal description of the property included grant deeds and a deed of trust as recorded in 1946 by Katherine Gentry describing the current road right of way (easement), across the Steuck properties. No restrictions were identified regarding the number of houses that may have access to the easement. The easement as described in the legal description reads as follows: "A right of way for construction, maintenance, and use of the roadway and of utility lines over a strip of land 30 feet wide, lying 15 feet on either side of the described centerline." The right of way has historically

provided access to the two exiting lots. Therefore, no additional easements will be required to access the newly reconfigured lots. . For these reasons, the County finds the proposed lot line adjustment to be consistent with the Road Highway Transportation policy C-3.6.

Presently, the property maintains an existing single-family residence and is served water through a connection to Cal-Am. There is also a domestic water well on the property that the owner developed for service to the proposed parcel B. During their initial review, Environmental Health Bureau (EHB) noted that the existing wastewater treatment system may be a cesspool or a very small leach field that crossed the proposed new lot line. Property owner Mr. Steuck responded to this issue and secured a Septic Replacement Permit for the existing septic system because it would not meet the setback requirements from the proposed lot line adjustment. The existing septic leach area crosses the proposed property line. This is not allowed under County Code, and therefore had to be moved. The EHB conditioned the project to move the septic leach area prior to the recordation of the record of survey. The owner opted to take care of it before the project went to hearing. The location and size of the septic system was approved by EHB, who issued a septic replacement permit on October 22, 2010.

No new development of structures is currently proposed for each lot. However, as part of the evaluation of the lot line adjustment the Environmental Health Bureau (EHB) is responsible for determining if the resulting parcel configuration will have the capacity for wastewater disposal and have an adequate water supply. Consequently, EHB required the owner to replace the existing septic system to meet Health Department regulations and required setbacks for future property lines. Additionally, EHB required the owner to complete a pump test on the well, which demonstrated ample supply to serve the proposed vacant lot.

The project was referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review on June 3, 2009. The Committee recommended approval on a 3-0 vote. The LUAC noted that there were five areas of concern, and suggested four changes to address those concerns. (See attached minutes Exhibit D.)

Staff reviewed the concerns expressed by the LUAC and the comments and contentions made by the letter submitted to the LUAC and finds that the project description accurately reflects the application being considered by the Board of Supervisors and that the LUAC's concerns are similar to this appeal and have been addressed in the enclosed environmental document and staff report.

No development, with the exception of the demolition of the existing garage is proposed with this application. Therefore, the proposed lot line adjustment does not represent a piecemealed project. The demolition of the garage is necessary in order for the reconfigured lots to be consistent with the site development standards under Title 21, because the garage would be too close to the property line if it were to remain.

Staff's original environmental review of the Steuck Lot Line Adjustment proposal determined the project exempt under the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15305(a) categorically exempts minor lot line adjustments that do not result in the creation of a new parcel. The lot line adjustment will adjust the property lines between the two legal lots of record and reconfigure them in a manner that would provide parcel B with an area that could be developed in the future without impacting slopes in excess of 25%. In determining that an exemption from CEQA was appropriate, staff made the following conclusions regarding potential development on the reconfigured lots of record:

- The lot demonstrated the availability of water and potential septic sites as required by the Monterey County Environmental Health Bureau;
- A minimal amount of grading could occur in an area identified with less than 20% slopes;

- There would be no need to remove protected vegetation under the Greater Monterey Peninsula Area Plan or more than allowed by permit under the Zoning Ordinance, and that;
- There would be no impact to protected biological sensitive plants or animals as identified in the Greater Monterey Peninsula Area Plan and the California Native Plant and list.

Since this time and during the course of County review of the Steuck Lot Line Adjustment, a neighbor and his or her representative have contested the application and have questioned numerous items beyond the scope of the project at hand – the Lot Line Adjustment. In an abundance of caution, County staff has prepared an Initial Study (with concurrence from the applicant).

Environmental Review

Staff prepared and completed an Initial Study and concluded that there were no significant or potentially significant environmental impacts that would result from adjusting the lot lines between the applicant's two lots of record and that a Negative Declaration is appropriate. The Initial Study and recommended Negative Declaration are attached as (Exhibit E).

The public review period ran from October 13, 2011 to November 1, 2011. Staff received comments from the appellant see attached (Exhibit F). There are several themes that run through the comments, such as concern and questions for past activity on the parcels and whether the present proposal has been described properly. There is no development proposal on the table. Many of the concerns expressed are beyond the question at hand and are questions that have been addressed by the County of Monterey and resolved.

- The project is a lot line adjustment and no other development has been proposed. Preemptively the property owner secured permits to replace an existing antiquated septic system for the existing residence to meet County Code regarding setback from property. In anticipation of the lot line adjustment, the Monterey County Environmental Health Bureau reviewed and approved the replacement septic system, no variances were granted for slope over 25% or exceptions to County code regarding setbacks to protected vegetation (Oak trees). EHB issued a permit to drill a well and determined that the well met the county's requirements regarding quantity and quality finding it a viable source of water for the newly reconfigured lot B
- No issues remain unresolved regarding development on slopes in excess of 25%
- No issues remain unresolved with regard to easements or encroachment, because there are no restriction described in the current easement deed and because there has not been a change in the number of lots or intensification after the creation of said easement.
- The County has approved and issued two Certificates of Compliance.
- Questions of grading cut and fill quantities and the quality of soils on the site have been investigated and cleared by both the Monterey County Environmental Health Bureau and Building Services Department.
- There are no violations on the property. All violations have been resolved.
- Staff has reviewed each of the letters and comments and finds no new concerns or questions that have not been considered;

The County has reviewed the appellants General comments on the Initial study prepared for the Steuck project. The County exercised its independent judgment and analysis and determined that the issues identified in the comment were largely and appropriately addressed in the findings contained in the Initial study, Section IV. A.

The County determined that based on the project description the following environmental factors could potentially affect the environment as discussed in the environmental checklist Section VI. 1. of the attached Initial study:

Aesthetics: Would the proposed lot line adjustment substantially degrade the existing visual character or quality of the site or its surroundings? The County finds that the project as proposed would have a less than significant impact for the following reasons: “Presently, the southerly legal lot of record is sloped steeply and is without areas to develop that have slopes less than 25% in steepness. Development of this parcel in its present configuration would require the applicant to process and obtain Use Permits for impacts to steep slopes and likely for removal of protected trees. While no development is proposed, the adjustment of the lot line to the applicant’s desired configuration would include areas that are less steep and not needing Use Permits from the County. Approval of the project would serve to protect the existing visual character of Aguajito Road. Therefore, impacts to these resources are considered less than significant in that the applicant’s proposal presents a superior parcel configuration that will better protect the existing visual character and quality of the site”.

Land Use Planning: Does the proposed project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect: The land use plan designation for the subject property is Residential - Rural Density 5.1 AC/U. The zoning designation for the property is RDR/5.1-UR-D-S (Rural Density Residential, 5.1 acres per unit / Urban Reserve / Design Control District / Site Plan Review). The Monterey County General Plan includes several policies that address Lot Line adjustments:

LU-14 and provisions of the State Subdivision Map Act, lot line adjustments shall be between four or fewer existing adjoining parcels.

The Lot Line Adjustment is between two adjoining parcels. Therefore the subject lot line adjustment is consistent with General Plan policy.

LU-15. Where Lot Line adjustment may be configured to result in lots conforming to the policies and standards of this General Plan, that configuration is required. Lot Line Adjustments that may compromise the location of wells, on-site wastewater systems or envelopes should not be approved.

As both the 4.3-acre and 4.6 acre parcels are presently less than 5.1 acres in area, it is not possible to configure both to 5.1 acres. The present proposal will not compromise the location of wells or on-site wastewater systems. No building envelopes are recorded on the subject parcels.

LU-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 policies, zoning and building ordinances and the lot line adjustment would:

- a) Accommodate legally constructed improvements which extend over a property line; or*
- b) Facilitate the relocation of existing utilities, infrastructure, or public utility easements; or*
- c) Resolve a boundary issue between or among affected owners; or*
- d) Produce a superior parcel configuration; or*
- e) Reduce the non-conformity of existing legal lots of record; or*

- f) *Promote resource conservation, including open space and critical viewshed protection, without triggering eminent domain; or*
- g) *Better achieve the goals, policies and objectives of the General Plan; or*
- h) *Facilitate Routine and Ongoing Agricultural Activities.*

The Steuck lot line adjustment proposal is among lots that do not conform to minimum parcel size standards and may be allowed according to items d), f) and g) above. Approval of the proposal would provide for a superior parcel configuration in that both adjusted parcels would include potential development areas that include less steep areas away from protected slopes. By adjusting the southerly parcel in its proposed configuration, better opportunities for protecting the steep and visible hillside along Aguajito will exist. The proposal also serves to better achieve the goals and policies of the General Plan in that protection of slopes, avoiding development in the viewshed of slopes, and avoiding unnecessary erosion and control structures on slopes, all serve to retain the character and natural beauty of Monterey County as characterized by Goal OS-1 of the General Plan. Additionally, Policy OS-1.9 in the same Conservation and Open Space Goals and Policies section of the General Plan, states that, "Development that protects and enhances the County's scenic qualities shall be encouraged." This is such a project.

Drawing from the graphic prepared in the Project Description in Section II where the existing and proposed lot line configurations are superimposed over a Google Earth image of aerial photography and topographic relief, one can see how a reconfigured Parcel A and B would allow these steep slopes to be avoided should development be proposed.

The zoning designation on the properties (RDR/5.1-UR-D-S {Rural Density Residential, 5.1 acres per unit / Urban Reserve / Design Control District / Site Plan Review}) requires discretionary permits from the County for any future development proposal and as such would be reviewed and publicly noticed as appropriate under the General Plan and Zoning Ordinance. The proposed Lot Line Adjustment is consistent with the General Plan in this manner and is consistent with the purposes of the plan to avoid or mitigate potential adverse environmental impacts, such as development on protected slope resources.

B. Staff Response to Appellant Contentions

The Appellant contends that the evidence did not support the Minor Subdivision Committee's decision and is contrary to law for the reasons outlined below. The appellants contentions are provided in *italics*:

Appellant's Contention No. 1:

- *Finding 1-Consistency: "Approval of the lot line adjustment will allow the applicant to build two very large homes on what was consistently transferred as a single lot. The maximum allowed density in this location is 5.1 acres per unit. Each of the surrounding properties has been developed consistent with this density designation. Allowing two building sites within the 8.9-acre parcel is clearly inconsistent with the zoning density and the rural character of this planning area. The project is therefore inconsistent with the zoning ordinance and the General Plan."*

Staff's Response No. 1:

The County issued two unconditional certificates of compliance finding two legal lots of record existed under APN 103-061-015-000. The research by the staff planner who determined the lots legality is quoted as follows: "At the time the subject parcels were created, there were no local or

state statutes or ordinances in effect regulating the division of land into four or fewer parcels and there was no zoning in effect.” Research pointed out that the lots predate the current zoning and land use designation of 5.1 units per acre. The current zoning for Assessor’s Parcel Number 103-061-015-000 requires a density of one unit per every 5.1 acres. However, the record indicates the existing parcels are less than the 5.1 acres. The County’s review of the proposed application finds it to be consistent with the following General Plan (GP) Policies:

- LU-1.14 “Consistent with the provisions of the State Subdivision Map Act, lot line adjustments shall be between four or fewer existing adjoining parcels.” The Lot Line Adjustment is between two adjoining parcels.
- LU-1.15 “Where Lot Line adjustment may be configured to result in lots conforming to the policies and standards of this General Plan, that configuration is required. Lot Line Adjustments that may compromise the location of wells, on-site wastewater systems, or envelopes should not be approved.” As both the 4.3 acre and 4.6 acre parcels are presently less than 5.1 acres in area, it is not possible to configure both to 5.1 acres. The present proposal will not compromise the location of wells or on-site wastewater systems. No building envelopes are recorded on the subject parcels.
- 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 policies, Zoning and Building Ordinances, and the lot line adjustment would produce a superior parcel configuration.” The Lot Line Adjustment would allow the second lot of record to be developed without violating the General Plan policies restricting development on slopes in excess of 25%, thereby rendering a superior lot configuration, which meets the zoning development standards.
- LU-1.18 states “If the standards in this General Plan render a legal lot of record substandard in size, the substandard size of the parcel shall not by itself render the parcel a legal nonconforming use. Any proposed expansion, enlargement, extension, or intensification of uses on such a lot shall not be prohibited due to its substandard size unless there are overriding public health impacts.” No such issues remain unresolved with regard to the proposed lot line adjustment. The surrounding properties are rural residential in nature and range in size from 4.8 acres to 6.43 acres, each with a single-family residence. The proposed reconfiguration of the Steuck property at 4.3 and 4.6 acres is consistent with the general size of the lots within the surrounding area.

The lots will remain their original size, which is consistent with the general size of the surrounding properties. Therefore, based on the aforementioned policies regulating lot line adjustment under the 2010 General Plan, the lot areas to be reconfigured remain consistent as provided under those policies.

Appellant’s Contention No. 2:

- ***Finding 2-Site Suitability:*** “*The project is not suitable for the location because it will allow the applicant to create a second building site on an 8.99 acre parcel where density is restricted to one unit per 5.1 acres. This area of the County is considered rural and visually sensitive. Crowding development into the location is neither acceptable nor appropriate*”

Staff’s Response No. 2:

The proposed reconfiguration of the two legal lots identified in unconditional certificates of compliance 2004079692 and 2004079684 fully meet the objectives of the General Plan, by rendering a superior lot design to provide newly reconfigured area (Lot B) that could be developed without violating policies regarding sloped areas of 25% or more and avoid removal of protected vegetation. The Monterey County Code (MCC) Chapter 21.44 (Design Control District) and Section 21.45.010 (Site Plan Review) design and site plan overlays on the

property. These County regulations allow discretion over development with regard to site control, visually sensitive areas on the property as well as the protection of the rural character of the area through the site and design control of structures. Therefore, because no development is proposed with the lot line adjustment the project is considered by the County to be consistent with Title 21 and The 2010 General Plan.

Appellant's Contention No. 3:

- ***Finding 4-Violations:*** “*The record illustrates that the Steuck’s deposited undocumented and potentially hazardous fill on the property which led to a notice of violation. In 2009 the Building Official issued and subsequently withdrew approval of a grading permit to correct the violation because he found that Mr. Steuck failed to complete the work as described in the permit and that the permit was based upon incorrect information. The incorrect information included the extent of the existing fill and the location of the existing natural grade.*”

A subsequent grading plan was prepared by H.D. Peters and the permit reissued. The permit was finalized but the property was not restored as required by Section 21.84.130 of the Zoning Ordinance.

Because the site was not completely restored as required, a violation of the ordinance still exists, and no further permits shall be issued on the property (21.84.120).

The Del Piero’s have appealed the grading final. Until that appeal is resolved either through the County process or the Courts this application should not be approved.

Staff's Response No. 3:

On November 10, 2008, a notice of violation was filed on the subject property. The property owner was required to obtain a grading-restoration permit. The permit (GP090013) was issued on February 11, 2009 to remove undocumented fill and restore the site to its pre-violation state.

The restoration-grading permit was granted a final on April 2, 2009.

On June 9, 2009, Mr. Lombardo, is the appellant’s representative, appealed the Building Official Tim McCormick’s decision granting final for GP090013.

On November 18, 2009, Tim McCormick issued a notice of intent to the property owner to rescind final inspection of grading permit GP090013. On December 18, 2009, Building Official Tim McCormick revoked the Grading Permit GP090013.

Owner Mr. Steuck corrected the deficiencies stated in the November 18, 2009 letter and was then allowed to complete the restoration.

On September 14, 2010, Building Official Tim McCormick rendered a final decision on the appeal filed June 9, 2009. The letter indicated that review of the grading permit determined that the grading restoration was complete and the grading permit could be finalized. The grading permit was granted final on July 1, 2010, as indicated in the above-mentioned letter to Mr. Lombardo, the appellant’s representative and Mr. Steuck, property owner.

The Interim Building Official John Villalpando reviewed the Restoration grading permit confirmed that no further code enforcement issues were pending and that no further action was required as of April 11, 2011. This determination allowed the project to move forward and allowed to be set for

hearing. Therefore, the County considers the violation to be abated and the restoration action found to be consistent with Title 21 Sections 21.84.120 & 21.84.130. (See attached letters Exhibit C)

Appellant's Contention No. 4:

- ***Finding 5-CEQA:*** *Please see the attached letter dated October 28, 2011. The proposal is clearly piecemeal attempt to provide building areas for two large homes. Clearly, the "whole" of the action was not analyzed as required.*

Staff's Response No.4:

Initially, the applicant submitted an application to the county for the development of two new residences and for the current reconfiguration of the existing legal lots of record; however, that application was revised at the applicant's request. The applicant revised the application to remove the proposal for the homes. The current lot line adjustment proposal is shown in the proposed sketch.

No development, with the exception of the demolition of the existing garage, is proposed with this application. Therefore, the proposed lot line adjustment does not represent a piecemealed project. The demolition of the garage is necessary in order for the reconfigured lots to be consistent with the site development standards under Title 21, because the garage would be too close to the property line if it were to remain.

Initially the proposed Lot Line adjustment was considered minor in nature and found to be exempt. CEQA Guidelines Section 15305(a) categorically exempts minor lot line adjustments that do not result in the creation of a new parcel. The lot line adjustment will adjust the property lines between the two legal lots of record to reconfigure them in a manner that would provide one parcel located all on slopes in excess of 25% with new areas on slopes of less than 20% thus allowing the property to be developed in the future without affecting slopes in excess of 25%. In determining, that an exemption from CEQA was appropriate, staff made the following conclusions regarding potential development on the reconfigured lots of record:

- The lot demonstrated the availability of water and potential septic sites as required by the Monterey County Environmental Health Bureau;
- A minimal amount of grading could occur in an area identified with less than 25% slopes;
- There would be no need to remove protected vegetation under the Greater Monterey Peninsula Area Plan or more than allowed by permit under the Zoning Ordinance; and that
- There would be no impact to protected biological sensitive plants or animals as identified under the Greater Monterey Peninsula Area Plan and the California Native Plant and animal list.

Initial Study

Following the Minor Subdivision Committee's continuance of the project on June 9, 2011, the applicant consulted with staff and requested that a more thorough environmental review be engaged by the County to allay uncertainty. Staff prepared and completed an Initial Study and concluded that there were no significant or potentially significant environmental impacts that would result from adjusting the lot lines between the applicant's two lots of record and that a Negative Declaration is appropriate. The Initial Study and recommended Negative Declaration are attached as Exhibit E.

Initial Study Comments

During the public review period for the Initial Study and recommended Negative Declaration that ran from October 13, 2011 to November 1, 2011, staff received comments from several sources. These are attached as Exhibit F.

There are several themes that run through the comments, such as concern and questions for past activity on the parcels and whether the present proposal has been described properly. There is no development proposal on the table. Many of the concerns expressed are beyond the question at hand and are questions that have been addressed by the County of Monterey and resolved.

- The project is a lot line adjustment and no other development has been proposed. Preemptively the property owner secured permits to replace an existing antiquated septic system for the existing residence to meet County Code regarding setback from property. In anticipation of the lot line adjustment, the Monterey County Environmental Health Bureau reviewed and approved the replacement septic system. No variances were granted for slope over 25% or exceptions to County code regarding setbacks to protected vegetation (Oak trees). EHB issued a permit to drill a well and determined that the well met the county's requirements regarding quantity and quality, finding it a viable source of water for the newly reconfigured lot B.
- No issues remain unresolved regarding development on slopes in excess of 25%
- No issues remain unresolved with regard to easements or encroachment; because there are no restrictions described in the current easement deed and because there has not been a change in the number of lots or intensification after the creation of said easement.
- The County has approved and issued two Certificates of Compliance.
- Questions of grading cut and fill quantities and the quality of soils on the site have been investigated and cleared by both the Monterey County Environmental Health Bureau and Building Services Department.
- There are no violations on the property.

Staff has reviewed each of the letters and comments and finds no new concerns or questions that have not been considered. The County has exercised its independent judgment and analysis and determined that the issues identified in the comment were largely and appropriately addressed in the findings contained in the Initial study, Section IV. A.

The County determined that based on the project description the following environmental factors could potentially affect the environment as discussed in the environmental checklist Section VI 1 of the attached Initial study:

Aesthetics: Would the proposed lot line adjustment substantially degrade the existing visual character or quality of the site or its surroundings? The County finds that the project as proposed would have a less than significant impact for the following reasons: "Presently, the southerly legal lot of record is sloped steeply and is without areas to develop that have slopes less than 25% in steepness. Development of this parcel in its present configuration would require the applicant to process and obtain Use Permits for impacts to steep slopes and likely for removal of protected trees. While no development is proposed, the adjustment of the lot line to the applicant's desired configuration would include areas that are less steep and not needing Use Permits from the County. Approval of the project would serve to protect the existing visual character of Aguajito Road. Therefore, impacts to these resources are considered less than significant in that the applicant's proposal presents a superior parcel configuration that will better protect the existing visual character and quality of the site".

Land Use Planning: Does the proposed project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not

limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect: The land use plan designation for the subject property is Residential - Rural Density 5.1 AC/U. The zoning designation for the property is RDR/5.1-UR-D-S (Rural Density Residential, 5.1 acres per unit / Urban Reserve / Design Control District / Site Plan Review). The Monterey County General Plan includes several policies that address Lot Line adjustments:

LU-14 and provisions of the State Subdivision Map Act, lot line adjustments shall be between four or fewer existing adjoining parcels.

The Lot Line Adjustment is between two adjoining parcels. Therefore, the subject lot line adjustment is consistent with General Plan policy.

LU-15. Where Lot Line adjustment may be configured to result in lots conforming to the policies and standards of this General Plan, that configuration is required. Lot Line Adjustments that may compromise the location of wells, on-site wastewater systems or envelopes should not be approved.

As both the 4.3-acre and 4.6 acre parcels are presently less than 5.1 acres in area, it is not possible to configure both to 5.1 acres. The present proposal will not compromise the location of wells or on-site wastewater systems. No building envelopes are recorded on the subject parcels.

LU-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 policies, zoning and building ordinances and the lot line adjustment would:

- i) Accommodate legally constructed improvements which extend over a property line; or*
- j) Facilitate the relocation of existing utilities, infrastructure, or public utility easements; or*
- k) Resolve a boundary issue between or among affected owners; or*
- l) Produce a superior parcel configuration; or*
- m) Reduce the non-conformity of existing legal lots of record; or*
- n) Promote resource conservation, including open space and critical viewshed protection, without triggering eminent domain; or*
- o) Better achieve the goals, policies and objectives of the General Plan; or*
- p) Facilitate Routine and Ongoing Agricultural Activities.*

The Steuck lot line adjustment proposal is among lots that do not conform to minimum parcel size standards and may be allowed according to items d), f) and g) above. Approval of the proposal would provide for a superior parcel configuration in that both adjusted parcels would include potential development areas that include less steep areas away from protected slopes. By adjusting the southerly parcel in its proposed configuration, better opportunities for protecting the steep and visible hillside along Aguajito will exist. The proposal also serves to better achieve the goals and policies of the General Plan in that protection of slopes, avoiding development in the viewshed of slopes, and avoiding unnecessary erosion and control structures on slopes, all serve to retain the character and natural beauty of Monterey County as characterized by Goal OS-1 of the General Plan. Additionally, Policy OS-1.9 in the same Conservation and Open Space Goals and Policies section of the General Plan, states that, "Development that protects and enhances the County's scenic qualities shall be encouraged." This is such a project.

Drawing from the graphic prepared in the Project Description in Section II where the existing and proposed lot line configurations are superimposed over a Google Earth image of aerial photography and topographic relief, one can see how a reconfigured Parcel A and B would allow these steep slopes to be avoided should development be proposed.

The zoning designation on the properties [RDR/5.1-UR-D-S (Rural Density Residential, 5.1 acres per unit / Urban Reserve / Design Control District / Site Plan Review)] requires discretionary permits from the County for any future development proposal and as such would be reviewed and publicly noticed as appropriate under the General Plan and Zoning Ordinance. The proposed Lot Line Adjustment is consistent with the General Plan in this manner and is consistent with the purposes of the plan to avoid or mitigate potential adverse environmental impacts, such as development on protected slope resources.

Additionally, the applicant's engineer R. Wayne Johnson has prepared a rebuttal to the concerns raised in the October 28, 2011 letter from Lombardo and Gilles. These are attached as **Exhibit G**. Aaron Johnson, of Johnson and Moncrief, has also prepared a rebuttal to the concerns raised in the October 28, 2011 letter from Lombardo and Gilles. These are attached as **Exhibit H**.

Appellant's Contention No. 5:

Finding 6- Lot Line Adjustment: "Evidence contained in finding six relies completely upon the assertion that the parcels are in fact two separate legal lots of record. The County made the determination that the property was entitled to two certificates of compliance based on the property being described in two separate 1945 deeds. However, after 1945, both parcels were acquired by Mr. Carl Von Saltza who subsequently sold the property to the Sweetman's in 1950. In this transaction, the property was described by a metes and bounds description as a single parcel. There were eight subsequent sales of this property starting in 1957. In each of these sales the lot was described by metes and bounds as a single parcel without any reference to the parcels that may have existed in 1945; including the sale from Fox to Steuck. While certificates of compliance were issued in error, this property is a single parcel and cannot qualify for a lot line adjustment."

Staff's Response No.4:

On 2004 the County determined that the subject parcels are separate legal lots of record pursuant to Sections 19.14.050 A.3.b, and 19.14.050 (A.1.a) of Title 19 (Subdivision Ordinance) Monterey County Code. (file number PD040230). At the time the subject parcels were created, there were no local or state statutes or ordinances in effect regulating the division of land into four or fewer parcels and there was no zoning in effect. The County issued two unconditional Certificates of Compliance (CC) recorded under document numbers, No. 2004079692, identifying the northerly portion of the properties as a 4.6-acre parcel and the southerly portion of the properties as a 4.6-acre parcel recorded under document No. 2004079684. The issue of lot legality was resolved when the County granted the Certificates of Compliance. That determination was made by the County in 2004 and is not currently subject to appeal. The County does not question the validity of the issued unconditional Certificates of Compliance and maintains that they remain in force. Moreover, the appeal of the Lot Line adjustment application is not the proper forum for challenging the issuance of the Certificates of Compliance.

Conclusion

The proposed lot line adjustment is found to be consistent with the Monterey County 2010 General Plan, Greater Monterey Peninsula Area Plan, and the development regulations in Title 21. Based on the findings and evidence presented within this report, and the analysis and conclusions of the Initial Study and proposed Negative Declaration, staff recommends that the Board of Supervisors adopt the Negative Declaration and approve the Steuck Lot Line Adjustment application based on the recommended findings evidence and subject to the conditions of approval.

ATTACHMENT NO. 2

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No.

Resolution by the Monterey County Board of Supervisors:)

- 1. Denial of the appeal by the Aguajito Property Owners Association; Eric and Teresa Del Piero from the Minor Subdivision Committee's approval of a Lot Line adjustment between two legal lots of record; and)
2. Approval of the application of a Lot Line Adjustment between two legal lots of record of approximately 4.6 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 2004079692 (the northerly parcel)] and 4.3 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 20040795684 (the southerly parcel)], resulting in two newly reconfigured lots of 4.6 acres (westerly Parcel A) and 4.3 acres (easterly Parcel B) respectively.

[Appeal of Lot Line Adjustment Permit – PLN080454, 570 and 570-a, Aguajito Road, Greater Monterey Peninsula Area Plan]

The Appeal from the Minor Subdivision Committee's approval of a Lot Line adjustment application (PLN0980454) came on for public hearing before the Monterey County Board of Supervisors on February 7, 2012. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

- 1. FINDING: PROCESS – The subject Lot Line Adjustment (PLN080454/Steuck) complies with all applicable procedural requirements.
EVIDENCE: a) On April 16, 2009, the applicant filed an application for a Lot Line Adjustment between two legal lots of record of approximately 4.6 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 2004079692 (the northerly parcel)] and 4.3 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 20040795684 (the southerly parcel)], resulting in two newly reconfigured lots of 4.6 acres (westerly Parcel A) and 4.3 acres (easterly Parcel B) respectively.
b) The project was approved by the Monterey County Minor Subdivision Committee on December 8, 2011.

- c) On December 19, 2011, Aguajito Property Owners Association and Eric and Teresa Del Piero (“Appellant”) filed a timely appeal of the Minor Subdivision Committee’s approval of the Lot Line Adjustment to reconfigure two contiguous legal lots of record. The appeal is brought on the basis that the decision is not supported by the evidence and is contrary to law. The appeal is attached as Attachment No. 3 to the February 7, 2012 staff report.
- d) The public hearing was duly noticed for February 7, 2012
- e) Public notices for the appeal were published in *The Herald*, mailed to neighbors within 300 feet, and posted in three different public places pursuant to Monterey County Code Chapter 20.84.

2. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies, which designate this area as appropriate for development.

EVIDENCE:a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

- The 2010 Monterey County General Plan;
- The Greater Monterey Peninsula Area Plan;
- Monterey County Zoning Ordinance (Title 21); and
- Monterey County Subdivision Ordinance (Title 19)

Communications were received during the course of review of the project. (See Finding Number 5)

- b) The properties are located at 570 and 570-a, Aguajito Road Greater Monterey Peninsula Area. The parcels are zoned: “RDR/5.1-UR-D-S” or [Rural Density Residential, 5.1 acres/unit Urban Reserve, Site Plan Review and Design Control District Overlays], which allows for lot line adjustments. The project site is zoned for residential land uses.
- c) The current zoning for Assessor’s Parcel Number 103-061-015-000 requires a density of one unit per every 5.1 acres. The existing parcels are less than the 5.1 acres each but remain consistent with the following General Plan (GP) Policies:
 - LU-1.14 “Consistent with the provisions of the State Subdivision Map Act, lot line adjustments shall be between four or fewer existing adjoining parcels.” *The Lot Line Adjustment is between two adjoining parcels.*
 - LU-1.15 “Where Lot Line adjustment may be configured to result in lots conforming to the policies and standards of this General Plan, that configuration is required. Lot Line Adjustments that may compromise the location of wells, on-site wastewater systems or envelopes should not be approved.” *As both the 4.3 acre and 4.6 acre parcels are presently less than 5.1 acres in area, it is not possible to configure both to 5.1 acres. The present proposal will not compromise the location of wells or on-site wastewater systems. No building envelopes are recorded on the subject parcels.*
 - 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 policies, Zoning and Building Ordinances, and the lot line adjustment would produce a superior parcel configuration.” *The Lot Line Adjustment*

would allow the second lot of record to be developed without violating the General Plan policies restricting development on slopes in excess of 25%, thereby rendering a superior lot configuration which meets the zoning development standards.

- LU-1.18 states “If the standards in this General Plan render a legal lot of record substandard in size, the substandard Size of the parcel shall not by itself render the parcel a legal nonconforming use. Any proposed expansion, enlargement, extension, or intensification of uses on such a lot shall not be prohibited due to its substandard size unless there are overriding public health impacts.” *No such issues remain unresolved with regard to the proposed lot line adjustment.*
 - C-3.6 states the County shall establish regulations for new development that would intensify the use of a private road or access easement. The parcels are consistent with the intent of the policy because the lots are existing lots which since the time of the creation have had access to the road as described in the current legal description. For these reasons the County finds the proposed lot line adjustment to be consistent with the General Plan Policy C-3.6.
- d) The project was referred to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) for review on June 3, 2009. The LUAC recommended approval of the Steuck Lot Line Adjustment application by a vote of 3-0. Staff reviewed the concerns and suggested changes made by the LUAC. The LUAC minutes and public comments taken are reflected within the minutes contained in **Exhibit D** to the February 7, 2012 staff report.
- e) The project was referred to the City of Monterey for comment. The City of Monterey Planning Department commented in an email dated March 15, 2011 that the City of Monterey does not have any opposition to the proposal for the Steuck Lot Line Adjustment.
- f) The project planner conducted a site inspection on May 12, 2009 to verify that the project on the subject parcel conforms to the plans listed above
- g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN080454.

3. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

EVIDENCE: a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Cypress Fire Protection District, Public Works, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended by the Public Works Department, Environmental Health Bureau and Planning Department have been incorporated.

b) Through staff’s review of the proposed project and resource material (Greater Monterey Peninsula Area Plan and the Monterey County Geographic Information System), no potential impacts from the project were identified. In addition, an Initial Study was prepared for the project and found that there were no significant environmental issues (See Finding

No. 6).

- c) Staff conducted a site inspection on May 12, 2009 to verify that the site is suitable for this use.
- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN080454.

4. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by the Cypress Fire Protection District, Public Works Department, the Environmental Health Bureau, and the Water Resources Agency. The respective departments/agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) Water and septic systems already exist on the property; therefore the necessary public facilities exist on the project site. No additional facilities are required for the project.

5. **FINDING:** **NO VIOLATIONS** - The subject property complies with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's Zoning Ordinance. No violations exist on the property as determined with zoning and building records.

EVIDENCE: Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any violations existing on subject property.

- c) Staff conducted a site inspection on May 12, 2009 and researched County records to assess if any violation exists on the subject property.
- d) The code violation for grading has been resolved to the satisfaction of the County RMA-Planning and Building Services Departments. On November 10, 2008, a notice of violation was filed on the subject property. The property owner was required to obtain a grading-restoration permit. On November 10, 2008, a notice of violation was filed on the subject property. The property owner was required to obtain a grading-restoration permit. The permit (GP090013) was issued on (February 11, 2009 to remove undocumented fill and restore the site to its pre-violation state.

The restoration-grading permit was granted a final on April 2, 2009.

On June 6, 2009, Mr. Lombardo the appellant representative appealed the Building Official Tim McCormick, decision granting final for GP090013.

On November 18, 2009 in a letter from the Building Official Tim McCormick, having considered an appeal issued a notice of intent to the

property owner to rescind, final inspection of grading permit GP090013. On December 18, 2009, the Building Official Tim McCormick revoked the Grading Permit GP090013.

The Owner Mr. Steuck corrected the deficiencies stated in the November 18, 2009 letter and was then allowed to complete the restoration.

On September 14 2010, the Building Official Tim McCormick rendered a final decision on the appeal filed June 9, 2009. The letter indicated that review of the grading permit determined that the grading restoration was complete and the grading permit could be finalized. The grading permit was granted final on July 1, 2010, and the associated code enforcement case (CE090292) was closed as indicated in the above-mentioned letter to Mr. Lombardo, the appellant's representative and Mr. Steuck, property owner. Therefore, the County considers the violation to be abated and the restoration action found to be consistent with Title 21 Sections 21.84.120 & 21.84.130. (See attached letters Exhibit C).

- e) There are currently no known violations on the subject parcel.
- f) The application plans, and supporting materials submitted by the project applicant to the Monterey County RMA-Planning Department for the proposed Lot Line Adjustment are found in Project File PLN080454.

6. FINDING: CEQA (Negative Declaration) - On the basis of the whole record before the Monterey County Board of Supervisors, there is no substantial evidence that the proposed project as designed and conditioned, will have a significant effect on the environment. The Negative Declaration reflects the independent judgment and analysis of the County.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15305(a) Categorically Exempts minor lot line adjustments that do not result in the creation of a new parcel. The applicant consulted with staff and voluntarily requested that a more thorough environmental review be conducted by the County to allay uncertainty.
 - b) The Monterey County Planning Department prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of the Planning Department and is hereby incorporated by reference (PLN080454).
 - c) The Initial Study provides substantial evidence based upon the record as a whole, that the project would not have a significant effect on the environment. Staff accordingly prepared a Negative Declaration.
 - d) The Draft Negative Declaration ("ND") for PLN080454 was prepared in accordance with CEQA and circulated for public review from October 13, 2011 through November 1, 2011.
 - e) Evidence that has been received and considered includes:
 - Interdepartmental Review Comments from Monterey County Land Use Agencies.
 - Letter from the California Regional Water Quality Control Board, Central Coast Region to Anthony Lombardo, Dated August 23, 2011.
 - Letter from the Monterey County Department of Health; Environmental Health Bureau to Anthony Lombardo, dated August 1,

2011 (Revised).

- Letter from the Monterey County Department of Health; Environmental Health Bureau to Los Ranchitos de Aguajito Mutual Water Company, dated August 31, 2011.
- Geotechnical, Soils and Percolation Investigation for Allan Fox for Assessor's Parcel Number 103-061-015-000, by Pacific Land Services, Inc., dated July 11, 1984.
- Geotechnical Engineering Report Steuck Residences 596-A Aguajito Road, Carmel by Earth Systems Pacific, dated May 20, 2008.
- Phase I Historic Review of the residential property located at 570 Aguajito Road, Monterey. Letter Report from Kent L. Seavey to Aaron Johnson, dated July 8, 2011.
- Preliminary Cultural Resources Reconnaissance of Assessor's Parcel Number 103-061-015-000 in an unincorporated area of Monterey County, California." Prepared by Susan Morley, dated May 2008.
- Monterey County Geographical Information Systems (GIS) database.

These documents are on file in the RMA-Planning Department (PLN080454) and are hereby incorporated herein by reference.

- f) Issues that were analyzed in the Negative Declaration include: aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, population/housing, public services, recreation, transportation/traffic, and utility/service systems.
- g) The County has considered the comments received during the public review period, and they do not alter the conclusions in the Initial Study and Negative Declaration. The whole of the action has been analyzed; the applicant eliminated his proposal for two new residences from his application. The Planning Department has no current application for new homes on the site therefore; it would be speculative to attempt to address impacts for development not under consideration in the current application.
- h) Staff analysis contained in the Initial Study and the record as a whole indicate the project would not result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game (DFG) regulations. All land development projects that are subject to environmental review are subject to a State filing fee plus the County recording fee, unless the Department of Fish and Game determines that the project will have no effect on fish and wildlife resources.
- i) No adverse environmental effects were identified during staff review of the development application during a site visit on May 12, 2009.
- j) The Monterey County Planning Department, located at 168 W. Alisal, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based.
- k) See preceding and following findings and supporting evidence.

7. **FINDING:** **LOT LINE ADJUSTMENT** – Section 66412 of the California Government Code (Subdivision Map Act) and Title 19 (Subdivision Ordinance) of the Monterey County Code states that lot line adjustments may be granted based upon the following findings:

1. The lot line adjustment is between four (or fewer) existing adjoining parcels;
2. A greater number of parcels than originally existed will not be created as a result of the lot line adjustment;
3. The parcels resulting from the lot line adjustment conforms to the County’s general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.

- EVIDENCE:**
- a) The parcel is zoned: “RDR/5.1-UR-D-S” or (Rural Density Residential, 5.1 acres/unit within Urban Reserve, Site Plan Review, and Design Control District Overlays).
 - b) The subject parcels have a total area of 8.9 acres and the proposed adjustments will not adjust the current acreage. The adjustment would result in two parcels of: 4.3 acres (Parcel A), 4.6 acres (Parcel B), respectively.
 - c) Pursuant to Government Code Section 66412 (Subdivision Map Act) and Monterey County Subdivision Ordinance (Section 19.09.025.B.1) the lot line adjustment is between four or fewer existing adjacent parcels.
 - d) Pursuant to Government Code Section 66412 (Subdivision Map Act) and Monterey County Subdivision Ordinance (Section 19.09.025.B.2) a greater number of parcels than originally existed will not be created because of the lot line adjustment.
 - e) The proposed lots are consistent with the Monterey County Zoning Ordinance (Title 21) regarding site development standards and uses allowed. Staff verified that the subject property complies with all rules and regulations pertaining to the use of the property and that no open violations exist on the property. The lots are nonconforming to the minimum building site however, General Plan Policy LU-1.16 provides that 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 policies, Zoning and Building Ordinances and the lot line adjustment would produce a superior parcel configuration. The existing residence meets the site development standards under Section 21.16.060. Additionally General Plan (GP) Policies LU-1.18 states “If the standards in this General Plan render a legal lot of record substandard in size, the substandard Size of the parcel shall not by itself render the parcel a legal nonconforming use. Any proposed expansion, enlargement, extension, or intensification of uses on such a lot shall not be prohibited due to its substandard size unless there are overriding public health impacts.” No such issues remain unresolved with regard to the proposed lot line adjustment.
 - f) The proposed lot line adjustment complies with health and safety standards for septic system requirements. To insure that the newly reconfigured lots would have individual water sources, the Environmental Health Bureau required a deed notice to be recorded on the property with the existing approved well as a condition of approval. The notice states that well yields in fractured rock aquifer systems over time may not be sustainable, thereby putting the current and future property owners on notice that additional water sources may be required in the future.

- g) The County reviewed all the title documents including descriptions in the grant deeds and each deed of trust for the current road right of way (easement), across the Steuck properties. No restrictions were identified regarding the number of houses that may have access to the right of way. Since the time of creation of the lots, they have had access to the road as determined in the current legal description. Therefore, the newly reconfigured lots does not intensify use of the right of way.
- h) There are no recorded easements located within the area to be adjusted, nor will the lot line adjustment affect existing recorded easements.
- i) No tentative map, parcel map, or final map is necessary to record for a Lot Line Adjustment. Instead, the lot line adjustment shall be reflected in a deed or record of survey. To appropriately document the boundary changes, a Certificate of Compliance for each new lot will be required (**Condition 5**).
- j) The project planner conducted a site inspection on May 12, 2009 to verify that the project would not conflict with zoning or building ordinances.
- k) The lot line adjustment is between more than one and less than four existing adjacent parcels. The two parcels maintain contiguous property lines, consisting of two legal lots of record of approximately 4.6 acres (Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Number 2004079684) and 4.3 acres (Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Number 20040790692).
- l) The lot line adjustment will not create a greater number of parcels than originally existed. Two contiguous separate legal parcels of record will be adjusted and two contiguous separate legal parcels of record will result from the adjustment.
- m) Per Government Code Section 66412 (d), the County must limit its review of the lot line adjustment to determination of whether the parcels will conform to the general plan and zoning and building ordinances. The Steuck lot line adjustment conforms to the general plan and zoning, as described above.
- n) The applications, plans, and supporting materials submitted by the project applicant to the Monterey County Planning Department for the proposed development are found in Project File PLN080454.

8. FINDING:

APPEAL – The Appellant contends that the Minor Subdivision’s decision was not supported by the evidence and is contrary to law. Upon consideration of the documentary information in the files, the staff reports, the oral and written testimony, and all other evidence presented before the Board of Supervisors, the Board responds, as follows, to the Appellant’s contentions:

EVIDENCE: a) ***Appellant’s Contention No. 1:***

- *Finding 1-Consistency: “Approval of the lot line adjustment will allow the applicant to build two very large homes on what was consistently transferred as a single lot. The maximum allowed density in this location is 5.1 acres per unit. Each of the surrounding properties has been developed consistent with this density designation. Allowing two building sites within the 8.9-acre parcel is clearly inconsistent with the zoning density and the rural character of this planning area. The project is therefore inconsistent with the zoning ordinance and the General Plan.”*
-

Staff's Response No. 1:

The County issued two unconditional certificates of compliance finding two legal lots of record existed under APN 103-061-015-000. The research by the staff planner who determined the lots legality is quoted as follows: "At the time the subject parcels were created, there were no local or state statutes or ordinances in effect regulating the division of land into four or fewer parcels and there was no zoning in effect." Research pointed out that the lots predate the current zoning and land use designation of 5.1 units per acre. The current zoning for Assessor's Parcel Number 103-061-015-000 requires a density of one unit per every 5.1 acres. However, the record indicates the existing parcels are less than the 5.1 acres. The County's review of the proposed application finds it to be consistent with the following General Plan (GP) Policies:

- LU-1.14 "Consistent with the provisions of the State Subdivision Map Act, lot line adjustments shall be between four or fewer existing adjoining parcels." The Lot Line Adjustment is between two adjoining parcels.
- LU-1.15 "Where Lot Line adjustment may be configured to result in lots conforming to the policies and standards of this General Plan, that configuration is required. Lot Line Adjustments that may compromise the location of wells, on-site wastewater systems, or envelopes should not be approved." As both the 4.3-acre and 4.6 acre parcels are presently less than 5.1 acres in area, it is not possible to configure both to 5.1 acres. The present proposal will not compromise the location of wells or on-site wastewater systems. No building envelopes are recorded on the subject parcels.
- 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 policies, Zoning and Building Ordinances, and the lot line adjustment would produce a superior parcel configuration." The Lot Line Adjustment would allow the second lot of record to be developed without violating the General Plan policies restricting development on slopes in excess of 25% thereby rendering a superior lot configuration, which meets the zoning development standards.
- LU-1.18 states "If the standards in this General Plan render a legal lot of record substandard in size, the substandard Size of the parcel shall not by itself render the parcel a legal nonconforming use. Any proposed expansion, enlargement, extension, or intensification of uses on such a lot shall not be prohibited due to its substandard size unless there are overriding public health impacts." No such issues remain unresolved with regard to the proposed lot line adjustment. The surrounding properties are rural residential in nature and range in size from 4.8 acres to 6.43 acres, each with a single-family residence. The proposed reconfiguration of the Steuck property at 4.3 and 4.6 acres is consistent with the general size of the lots within the surrounding area.

The lots will remain their original size, which is consistent with the general size of the surrounding properties. Therefore, based on the aforementioned policies regulating lot line adjustment under the 2010

General Plan, the lot areas to be reconfigured remain consistent as provided under those policies.

b) ***Appellant's Contention No. 2:***

- ***Finding 2-Site Suitability:*** *"The project is not suitable for the location because it will allow the applicant to create a second building site on an 8.99 acre parcel where density is restricted to one unit per 5.1 acres. This area of the County is considered rural and visually sensitive. Crowding development into the location is neither acceptable nor appropriate"*

Staff's Response No. 2:

The proposed reconfiguration of the two legal lots identified in unconditional certificates of compliance 2004079692 and 2004079684 fully meet the objectives of the General Plan, by rendering a superior lot design to provide newly reconfigured area (Lot B) that could be developed without violating policies regarding sloped areas of 25% or more and avoid removal of protected vegetation. The Monterey County Code (MCC) Chapter 21.44 (Design Control District) and Section 21.45.010 (Site Plan Review) design and site plan overlays on the property. These County regulations allow discretion over development with regard to site control, visually sensitive areas on the property as well as the protection of the rural character of the area through the site and design control of structures. Therefore, because no development is proposed with the lot line adjustment the project is considered by the County to be consistent with Title 21 and The 2010 General Plan.

c) ***Appellant's Contention No. 3:***

- ***Finding 4-Violations:*** *"The record illustrates that the Steuck's deposited undocumented and potentially hazardous fill on the property which led to a notice of violation. In 2009 the Building Official issued and subsequently withdrew approval of a grading permit to correct the violation because he found that Mr. Steuck failed to complete the work as described in the permit and that the permit was Based upon incorrect information. The incorrect information included the extent of the existing fill and the location of the existing natural grade."*

A subsequent grading plan was prepared by H.D. Peters and the permit reissued. The permit was finalized but the property was not restored as required by Section 21.84.130 of the Zoning Ordinance.

Because the site was not completely restored as required, a violation of the Ordinance still exists, and no further permits shall be issued on the property (21.84.120).

The Del Piero's have appealed the grading final. Until that appeal is resolved either through the County process or the Courts this application should not be approved.

Staff's Response No. 3:

On November 10, 2008, a notice of violation was filed on the subject property. The property owner was required to obtain a grading-restoration permit. The permit (GP090013) was issued on February 11, 2009 to remove undocumented fill and restore the site to its pre-violation state.

The restoration-grading permit was granted a final on April 2, 2009.

On June 9, 2009, Mr. Lombardo, is the appellant's representative, appealed the Building Official Tim McCormick's decision granting final for GP090013.

On November 18, 2009, Tim McCormick issued a notice of intent to the property owner to rescind final inspection of grading permit GP090013. On December 18, 2009, Building Official Tim McCormick revoked the Grading Permit GP090013.

Owner Mr. Steuck corrected the deficiencies stated in the November 18, 2009 letter and was then allowed to complete the restoration.

On September 14, 2010, Building Official Tim McCormick rendered a final decision on the appeal filed June 9, 2009. The letter indicated that review of the grading permit determined that the grading restoration was complete and the grading permit could be finalized. The grading permit was granted final on July 1, 2010, as indicated in the above-mentioned letter to Mr. Lombardo, the appellant's representative and Mr. Steuck, property owner.

The Interim Building Official John Villalpando reviewed the Restoration grading permit confirmed that no further code enforcement issues were pending and that no further action was required as of April 11, 2011. This determination allowed the project to move forward and allowed to be set for hearing. Therefore, the County considers the violation to be abated and the restoration action found to be consistent with Title 21 Sections 21.84.120 & 21.84.130. (See attached letters Exhibit C)

d) ***Appellant's Contention No. 4:***

- ***Finding 5-CEQA:*** *Please see the attached letter dated October 28, 2011. The proposal is clearly piecemeal attempt to provide building areas for two large homes. Clearly, the "whole" of the action was not analyzed as required.*

Staff's Response No.4:

Initially the applicant submitted an application to the county for the development of two new residences and for the current reconfiguration of the existing legal lots of record; however, that application was revised at the applicant's request. The applicant revised the application to remove the proposal for the homes. The current lot line adjustment proposal is shown in the proposed sketch.

No development, with the exception of the demolition of the existing garage, is proposed with this application. Therefore, the proposed lot line adjustment does not represent a piecemealed project. The demolition of the garage is necessary in order for the reconfigured lots to be consistent with the site development standards under Title 21, because the garage would be too close to the property line if it were to remain.

Initially the proposed Lot Line adjustment was considered minor in nature and found to be categorically exempt. CEQA Guidelines Section 15305(a) categorically exempts minor lot line adjustments that do not result in the creation of a new parcel. The lot line adjustment will adjust the property lines between the two legal lots of record to reconfigure them in a manner that would provide one parcel currently located on slopes in excess of 25% an area that could be developed in the future without impacting slopes in excess of 25%. In determining, that an exemption from CEQA was appropriate, staff made the following conclusions regarding potential development on the reconfigured lots of record:

- The lot demonstrated the availability of water and potential septic sites as required by the Monterey County Environmental Health Bureau;
- A minimal amount of grading could occur in an area identified with less than 25% slopes,
- There would be no need to remove protected vegetation under the Greater Monterey Peninsula Area Plan or more than allowed by permit under the Zoning Ordinance, and that
- There would be no impact to protected biological sensitive plants or animals as identified under the Greater Monterey Peninsula Area Plan and the California Native Plant and animal list.

Initial Study

Following the Minor Subdivision Committee's continuance of the project on June 9, 2011, the applicant consulted with staff and requested that a more thorough environmental review be engaged by the County to allay uncertainty. Staff prepared and completed an Initial Study and concluded that there were no significant or potentially significant environmental impacts that would result from adjusting the lot lines between the applicant's two lots of record and that a Negative Declaration is appropriate. The Initial Study and recommended Negative Declaration are attached as Exhibit E.

Initial Study Comments

During the public review period for the Initial Study and recommended Negative Declaration that ran from October 13, 2011 to November 1, 2011, staff received comments from several sources. These are attached as Exhibit F.

There are several themes that run through the comments, such as concern and questions for past activity on the parcels and whether the present proposal has been described properly. There is no development proposal on the table. Many of the concerns expressed are beyond the question at hand and are questions that have been addressed by the County of Monterey and resolved.

- The project is a lot line adjustment and no other development has been proposed. Preemptively the property owner secured permits to replace an existing antiquated septic system for the existing residence to meet County Code regarding setback from property. In anticipation of the lot line adjustment, the Monterey County Environmental Health Bureau reviewed and approved the replacement septic system. No variances were granted for slope over 25% or exceptions to County code regarding setbacks to protected vegetation (Oak trees). EHB issued a permit to drill a well and determined that the well met the county's requirements regarding quantity and quality, finding it a viable source of water for the newly reconfigured lot B.
- No issues remain unresolved regarding development on slopes in excess of 25%
- No issues remain unresolved with regard to easements or encroachment; because there are no restrictions described in the current easement deed and because there has not been a change in the number of lots or intensification after the creation of said easement.
- The County has approved and issued two Certificates of Compliance.
- Questions of grading cut and fill quantities and the quality of soils on the site have been investigated and cleared by both the Monterey County Environmental Health Bureau and Building Services Department.
- There are no violations on the property.

Staff has reviewed each of the letters and comments and finds no new concerns or questions that have not been considered. The County has exercised its independent judgment and analysis and determined that the issues identified in the comment were largely and appropriately addressed in the findings contained in the Initial study, Section IV. A.

The County determined that based on the project description the following environmental factors could potentially affect the environment as discussed in the environmental checklist Section VI 1 of the attached Initial study:

Aesthetics: Would the proposed lot line adjustment substantially degrade the existing visual character or quality of the site or its surroundings? The County finds that the project as proposed would have a less than significant impact for the following reasons: "Presently, the southerly legal lot of record is sloped steeply and is without areas to develop that have slopes less than 25% in steepness. Development of this parcel in its present configuration would require the applicant to process and obtain Use Permits for impacts to steep slopes and likely for removal of protected trees. While no development is proposed, the adjustment of the lot line to the applicant's desired configuration would include areas that are less steep and not needing Use Permits from the County. Approval of the project would serve to protect the existing visual character of Aguajito Road. Therefore, impacts to these resources are considered less than

significant in that the applicant's proposal presents a superior parcel configuration that will better protect the existing visual character and quality of the site."

Land Use Planning: Does the proposed project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect: The land use plan designation for the subject property is Residential - Rural Density 5.1 AC/U. The zoning designation for the property is RDR/5.1-UR-D-S (Rural Density Residential, 5.1 acres per unit / Urban Reserve / Design Control District / Site Plan Review). The Monterey County General Plan includes several policies that address Lot Line adjustments:

LU-14 and provisions of the State Subdivision Map Act, lot line adjustments shall be between four or fewer existing adjoining parcels.

The Lot Line Adjustment is between two adjoining parcels. Therefore, the subject lot line adjustment is consistent with General Plan policy.

LU-15. Where Lot Line adjustment may be configured to result in lots conforming to the policies and standards of this General Plan, that configuration is required. Lot Line Adjustments that may compromise the location of wells, on-site wastewater systems or envelopes should not be approved.

As both the 4.3-acre and 4.6 acre parcels are presently less than 5.1 acres in area, it is not possible to configure both to 5.1 acres. The present proposal will not compromise the location of wells or on-site wastewater systems. No building envelopes are recorded on the subject parcels.

LU-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 policies, zoning and building ordinances and the lot line adjustment would:

- q) Accommodate legally constructed improvements which extend over a property line; or*
- r) Facilitate the relocation of existing utilities, infrastructure, or public utility easements; or*
- s) Resolve a boundary issue between or among affected owners; or*
- t) Produce a superior parcel configuration; or*
- u) Reduce the non-conformity of existing legal lots of record; or*
- v) Promote resource conservation, including open space and critical viewshed protection, without triggering eminent domain; or*

- w) *Better achieve the goals, policies and objectives of the General Plan; or*
- x) *Facilitate Routine and Ongoing Agricultural Activities.*

The Steuck lot line adjustment proposal is among lots that do not conform to minimum parcel size standards and may be allowed according to items d), f), and g) above. Approval of the proposal would provide for a superior parcel configuration in that both adjusted parcels would include potential development areas that include less steep areas away from protected slopes. By adjusting the southerly parcel in its proposed configuration, better opportunities for protecting the steep and visible hillside along Aguajito will exist. The proposal also serves to better achieve the goals and policies of the General Plan in that protection of slopes, avoiding development in the viewshed of slopes, and avoiding unnecessary erosion and control structures on slopes, all serve to retain the character and natural beauty of Monterey County as characterized by Goal OS-1 of the General Plan. Additionally, Policy OS-1.9 in the same Conservation and Open Space Goals and Policies section of the General Plan, states that, "Development that protects and enhances the County's scenic qualities shall be encouraged." This is such a project.

Drawing from the graphic prepared in the Project Description in Section II where the existing and proposed lot line configurations are superimposed over a Google Earth image of aerial photography and topographic relief, one can see how a reconfigured Parcel A and B would allow these steep slopes to be avoided should development be proposed.

The zoning designation on the properties [RDR/5.1-UR-D-S (Rural Density Residential, 5.1 acres per unit / Urban Reserve / Design Control District / Site Plan Review)] requires discretionary permits from the County for any future development proposal and as such would be reviewed and publicly noticed as appropriate under the General Plan and Zoning Ordinance. The proposed Lot Line Adjustment is consistent with the General Plan in this manner and is consistent with the purposes of the plan to avoid or mitigate potential adverse environmental impacts, such as development on protected slope resources. Additionally, the applicant's engineer R. Wayne Johnson has prepared a rebuttal to the concerns raised in the October 28, 2011 letter from Lombardo and Gilles. These are attached as **Exhibit G**. Aaron Johnson, of Johnson and Moncrief, has also prepared a rebuttal to the concerns raised in the October 28, 2011 letter from Lombardo and Gilles. These are attached as **Exhibit H**.

e) ***Appellant's Contention No. 5:***

Finding 6- Lot Line Adjustment: "Evidence contained in finding six relies completely upon the assertion that the parcels are in fact two separate legal lots of record. The County made the determination that the property was entitled to two certificates of compliance based on the property being described in two separate 1945 deeds. However, after 1945, both parcels were acquired by Mr. Carl Von Saltza who subsequently sold the property to the Sweetman's in 1950. In this transaction, the property was described by a

metes and bounds description as a single parcel. There were eight subsequent sales of this property starting in 1957. In each of these sales the lot was described by metes and bounds as a single parcel without any reference to the parcels that may have existed in 1945; including the sale from Fox to Steuck. While certificates of compliance were issued in error, this property is a single parcel and cannot qualify for a lot line adjustment.”

Staff’s Response No.4:

On 2004, the County determined that the subject parcels are separate legal lots of record pursuant to Sections 19.14.050 A.3.b, and 19.14.050 (A.1.a) of Title 19 (Subdivision Ordinance) Monterey County Code. (file number PD040230).At the time the subject parcels were created, there were no local or state statutes or ordinances in effect regulating the division of land into four or fewer parcels and there was no zoning in effect.

The County issued two unconditional Certificates of Compliance (CC) recorded under document numbers, No. 2004079692, identifying the northerly portion of the properties as a 4.6-acre parcel and the southerly portion of the properties as a 4.6-acre parcel recorded under document No. 2004079684. The issue of lot legality was resolved when the County granted the Certificates of Compliance. That determination was made by the County in 2004 and is not currently subject to appeal. The County does not question the validity of the issued unconditional Certificates of Compliance and maintains that they remain in force. Moreover, the appeal of the Lot Line adjustment application is not the proper forum for challenging the issuance of the Certificates of Compliance.

DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a. Deny the appeal by the Aguajito Property Owners Association and Eric and Teresa Del Piero from the Minor Subdivision Committee’s approval of a Lot Line adjustment between two legal lots of record; and
- b. Adopt a Negative Declaration: and
- c. Approve a Lot Line Adjustment between two legal lots of record of approximately 4.6 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 2004079692 (the northerly parcel)] and 4.3 acres [portion of Assessor's Parcel Number 103-061-015-000 Certificate of Compliance Document No. 20040795684 (the southerly parcel)], resulting in two newly reconfigured lots of 4.6 acres (westerly Parcel A) and 4.3 acres (easterly Parcel B) respectively, in general conformance with the attached sketch (**Exhibit B**) and subject to the conditions (**Exhibit A**) both being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED on this _____, by the following vote, to-wit:

AYES:
NOES:
ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book _____ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy