

Attachment No. 5
Exhibit F
Comments Received
Public Review of
Environmental Document

Gordon J. Steuck
PLN080454

Board of Supervisors
February 7, 2012

EXHIBIT F

COMMENTS RECEIVED ON
INITIAL STUDY

Anthony L. Lombardo
Jeffery R. Gilles

Dennis C. Beougher
Patrick S.M. Casey
Amy Purchase Reid
Jason S. Ratterer
Paul A. Rovella
Bradley W. Sullivan
James W. Sullivan
Kelly McCarthy Sutherland

E. Soren Diaz
Of Counsel



ATTORNEYS AT LAW

October 28, 2011

L&G, LLP
318 Cayuga Street
P. O. Box 2119
Salinas, CA 93902-2119
TEL 831-754-2444
TOLL FREE 888-757-2444
FAX 831-754-2011
WEB www.lomgil.com

530 San Benito Street
Suite 202
Hollister, CA 95023
TEL 831-630-9444
FAX 831-630-5935

File No. 00143.003

Mr. Mike Novo
Monterey County Planning
168 W. Alisal Street, Second Floor
Salinas, CA 93901

Re: **Steuck Initial Study and Negative Declaration; PLN080454**

Dear Mike:

I have reviewed the Initial Study prepared by your staff. The Initial Study is so flawed and replete with material omission that it needs to be fully rewritten and recirculated. To proceed with a document that is so incomplete circumvents the purpose of CEQA and compromises the ability of the public and the County's decision makers to make a fully informed decision. In the *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council*, the Sixth District Court of Appeal recently confirmed that the "failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision making and informed public participation." The omissions in the Initial Study are substantial and prejudicial. The Initial Study is adequate for "informed decision making and informed public participation."

GENERAL COMMENTS

Project Description: The first omission is that of an accurate and complete project description. The Negative Declaration and the Initial Study describe the project as "a lot line adjustment between two legal lots of record of approximately 4.6 acres and 4.3 acres ... resulting in two newly reconfigured lots of 4.6 acres (westerly Parcel A) and 4.3 acres (easterly Parcel B)." The CEQA Guidelines defines "project" as "the whole of an action which has the potential for resulting in either a direct physical change in environment or reasonably perceivable indirect physical change in the environment." It has clearly been documented both in writing and in presentations to the Minor Subdivision Committee that this particular lot line adjustment is much more. The Steucks have shown in application materials submitted to both the Planning Department and the Environmental Health Department their intention to create a water system, install septic systems and ultimately to build houses. This is not speculation. They have demolished a garage and clearly intend to demolish the house. They have graded to create a building pad. The Steucks clearly have a plan for the development of this property. They intend to build a house on each lot. While there may not be a specific house design presented as part of

Mr. Mike Novo
Monterey County Planning
October 28, 2011
Page 2

this application, the Steucks have clearly shown in past applications their desire to build homes in excess of 10,000 square feet. Development has been piecemealed on this property from the late 1990s when the Steucks began to illegally grade the property through their demolition of the garage to their more recent bait and switch septic system. Because of all of the development that has occurred without CEQA review and the Steucks' clearly displayed intent to do more development, this CEQA document must fully and critically identify the full project, as defined by CEQA, and analyze it accordingly.

Reliance on Certificates of Compliance: The second critical error is the Initial Study's continuing reliance on certificates of compliance that are, at best, questionable. The County made its 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 and Mr. Von Saltza then sold the property to the Sweetmans in 1950. It is important to note that in the sale from Mr. Von Saltza to the Sweetmans, the property was no longer described as two parcels, but was described by a metes and bounds description as a single parcel. This is a clear indication that it was Mr. Von Saltza's intention to combine the parcels and transfer it as a single lot. Mr. Von Saltza was one of the early developers in the Aguajito area. He was very knowledgeable about real estate and real estate transactions and had he intended to transfer two lots that intention would have been clear in the deeds. Instead he clearly demonstrated his intention to combine the properties by describing them as a single lot.

Additionally, there were eight subsequent sales of this property starting in 1957 (Sweetman to Garlick) through 1986 (Fox to Steuck). In each of these sales, the lot was described by metes and bounds as a single parcel without reference to the parcels that may have existed in 1945. The sellers' and buyers' intentions dating back to 1950 were clear. The property was combined by Mr. Von Saltza into a single lot and was sold as a single lot nine times.

History of Development on the Property: Initial Study is silent on the large body of history of illegal grading on the property or the County's extensive enforcement files for the property, or the County's history of issuing grading permits after the fact without requiring restoration as required by both the County Zoning Ordinance and the County Grading Ordinance. These facts are well documented and are fully disclosed in our previous correspondence to the County regarding this property. The Initial Study fails to acknowledge, disclose or discuss these issues or the specific effects of the significant grading that was done on the property in its environmental review.

SPECIFIC COMMENTS

Page 4: The Initial Study indicates that the property is in an "Urban Reserve" zoning district. Pursuant to Section 21.50.030(c), the project application should have been referred to

Mr. Mike Novo
Monterey County Planning
October 28, 2011
Page 3

the City of Monterey and the City of Carmel for "review and recommendation," however, there is no evidence in the record that the application has been referred to either City. The Initial Study distribution does indicate that the Initial Study was referred to the City of Monterey, however, that is inadequate based on the County's Ordinance. Given the gross deficiencies of the project description and the Initial Study, referral of the Initial Study is inadequate for either City to make an informed decision.

Page 4: The Initial Study states that "there is also a domestic water well on the property that the owner intends to keep available for service to Parcel B, should he wish to develop it in the future." There is no "should" here. The Steucks' intentions are clear, they do propose to develop Parcel B. Plans submitted to the County clearly identify building areas and the location of a proposed septic system on Parcel A and Parcel B, however, the Initial Study fails to disclose this and provides no analysis of its potential effect. Further, the Steucks applied to the County Environmental Health Bureau for a water system for up to three connections. Testing by the Health Department has determined that there is water pursuant to their regulations for a two-connection water system. Again, the Initial Study fails to disclose or analyze these facts.

Page 5: The Initial Study indicates that during the course of the review of the lot line adjustment, the Environmental Health Bureau identified that the septic system which serves the existing house "must be demolished and a new system installed prior to recording the lot line adjustment." The Initial Study fails to disclose and does not then analyze the effect of the installation of new septic systems on the property, although the planned locations for the systems are clearly shown on plans in the possession of the County. Those plans show septic systems to be installed on slopes over 25% among numerous oak and pine trees. The Initial Study also does not disclose that the septic system that would serve Parcel A has already been installed under the guise of a repair system for the existing house. As has been clearly documented, the Steucks applied for a repair system for the house that was to be located immediately adjacent to the house and be of a size to serve only that house. However, the system that was installed (apparently with the full approval of Environmental Health) is not the system for which the permit was applied and issued. It is in an entirely different location in the midst of oak trees on slopes in excess of 25% and sized for a large home. The Initial Study fails to disclose or analyze these facts.

Page 6: The Initial Study states that "the Greater Monterey Peninsula Area Plan ('GMP-AP') designates the site as 'RDR/5.1-UR-D-S' or Rural Density Residential, 5.1 acres per unit/urban reserve/design control district/site plan review." That is how the property is zoned, not its General Plan designation. The Greater Monterey Peninsula Area Plan designates the property as Residential-Rural Density, 5 acres +/-unit with an urban reserve overlay. It should also be noted that the Greater Monterey Peninsula Area Plan also identifies the property as "highly sensitive" on the Visual Sensitivity Map (Figure 14) of the Plan.

Mr. Mike Novo
Monterey County Planning
October 28, 2011
Page 4

Further, the Initial Study states "as there is no development proposed and no intensification of use with the proposal, the proposal is consistent with understood and mapped rural residential land uses of which the Air Quality Management Plan and Airport Land Use Plan are constructed." The Initial Study fails to disclose and identify the extent of development that has been applied for here, including grading, installation of septic systems, establishment of a water system and ultimately the construction of homes.

Page 7: Under Biological Resources, the Initial Study states that the "site is vegetated with numerous oak trees" and that again states that "no development is proposed at this time. Therefore, there will be no impacted biological resources." The Initial Study fails to disclose or analyze the fact that the Steucks have shown on their plans the location of septic systems (and already installed one new system) on slopes over 25% in the midst of an oak grove. There is no discussion or analysis of the effect of the installation of large scale septic systems in the oaks or the long term effect of increased watering of the oak trees due to septic discharge. There is no disclosure or analysis of the effect of the prior illegal grading on the oak resources.

Page 8: The Initial Study indicates that there is no issue with hazardous materials. That is not the case. The neighborhood concerns over the dumping of potentially hazardous materials on the Steuck property are well documented. When the property was illegally graded, there were numerous reports of concrete rubble and similar material being brought to the site and buried in the fill. There are documented reports of yellow, viscous, fowl smelling runoff after that dumping. This was proven in the last two years when the site was regraded and a significant amount of "undocumented fill" was removed from the property. However, there has been no testing, that we are aware of, of the material that was removed or the material that remains to determine what, if any, toxic content there might be. That both the Environmental Health Bureau and the Regional Water Quality Control Board has reviewed this issue does not excuse the Initial Study from disclosing and addressing this issue.

Page 9: The discussion under Hydrology and Water Quality, again, is inadequate in that it fails to disclose or discuss the potential for the water system for which the Steucks have already applied or the septic systems that are clearly shown on their project plans that are on file with the County.

The Initial Study also indicates that the project will not "substantially alter the existing drainage pattern of the site" but it fails to disclose or discuss the fact that the drainage pattern for the Steuck property has already been substantially altered by the amount of illegal grading that was done on the property, subsequent grading work that was allowed by the County without first requiring full restoration of the site or environmental review and the potential for further grading, particularly on slopes over 25% as the property is further developed.

Mr. Mike Novo
Monterey County Planning
October 28, 2011
Page 5

Page 10: In the Transportation/Traffic Section, the Initial Study indicates that the parcels will have continued access from an easement (Gentry Hill Road) from Aguajito Road. There is, however, no evidence in the record that establishes that the Steuck property has legal right of access for more than one lot. As has been previously discussed, the Steuck property was combined as a single parcel in 1950 and has been sold as a single parcel nine times since 1950. Each of those grant deeds indicates that the described parcel has an easement to Aguajito Road. At no time since 1950 has there been any indication or evidence that that easement is intended to provide access for more than one lot. Monterey County General Plan 2010 Policy C-3.6 states in part "Proof of access shall be required as part of any development application when the proposed use is not identified in the provisions of the applicable agreement." There is no "applicable agreement" or other proof of access. The Initial Study does not disclose or address these facts.

Page 11: Under the section of Mandatory Findings and Significance, the Initial Study again states that "No development is proposed at this time." As has been stated previously, that is not the case. The materials submitted by the Steucks clearly indicate their intention to apply for a water system, install septic systems and to build homes. This is not idle speculation, but fact based on the application materials submitted by the Steucks contained in the County's own files. The Initial Study continues to fail to disclose these facts and analyze the impacts. The public and decision makers cannot make an informed decision based on the content of the Initial Study.

Page 13: Mr. Kinison-Brown, the planner who prepared the Initial Study, has found that the project "could not have a significant effect on the environment and a negative declaration will be prepared." This finding is based on an inadequate project description and an Initial Study that fails to disclose known facts about the intended development of the property, nor does it analyze the potential effects of that intended development.

Page 16: The discussion of the project's potential effects on aesthetics is incomplete. The Initial Study fails to disclose that the Greater Monterey Peninsula Area Plan identifies this area of Aguajito Road as being visually "highly sensitive."

The Initial Study also assumes, without any evidence in the record, that the proposed lot configuration will reduce the potential for visual impacts if the parcel between Gentry Hill Road and Aguajito Road were to be developed. The Initial Study speculates that use permits would be required to develop that parcel due to its steep slopes and likelihood for removal of protected trees. There is no evidence in the records which indicates that any significant evaluation has been made of that parcel and its potential for development.

Page 19: Biological Resources – The Initial Study indicates that the project would have no impact related to a "conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance." That is clearly not the case. As has been shown on plans submitted by the Steucks, it is their intention to construct septic systems on steep slopes

Mr. Mike Novo
Monterey County Planning
October 28, 2011
Page 6

and areas covered with oak and pine trees. The Initial Study fails to disclose this fact, nor does it provide any analysis to support the conclusion that the oak or pine resources would not be adversely affected by either the physical construction of the septic systems or the long term impact to the oak and pine habitat due to waste discharge and the potential for over watering of the oak trees. No mitigations for those effects are identified. Additionally, the Initial Study does not disclose nor discuss the impact to the oak and pine habitat of the long term grading violations on the property.

Page 23: The Initial Study is completely inadequate in its discussion of the project's consistency with the Monterey County General Plan 2010. The Initial Study only discusses the policies in the General Plan (LU-14, 15 and 16) related to lot line adjustments. This section does not even mention, much less discuss, the project's consistency with General Plan 2010 Policy C-3.6 regarding proof of access, consistency with Policy OS-3.5(1)(D) and the "general policy" to require dedication of the scenic easement on slopes over 25%, the potential for future development of the property should the areas over 25% be placed in a scenic easement or the project's consistency with Greater Monterey Peninsula Area Plan Policy 3.5 regarding the protection of oak and pine trees.

Page 24: The Initial Study seems to rely on future discretionary permits for development of the project that would presumably address issues such as development on 25% + slopes and tree removal. That deferred analysis is inappropriate given the clear intent of the Steucks to develop the property.

In conclusion, the Initial Study that has been prepared and is in circulation is inadequate. The Initial Study fails to properly describe the project. The Initial Study fails to disclose facts about the proposed development of the property that are well known and documented in the County's own files. The Initial Study fails to address the history of illegal development and grading on the property, major general plan issues including development on slopes over 25% and impacts to forest resources. The Initial Study will not adequately inform the public of the full project and the potential effects of that project. The Initial Study should be completely rewritten and recirculated.

Sincerely,

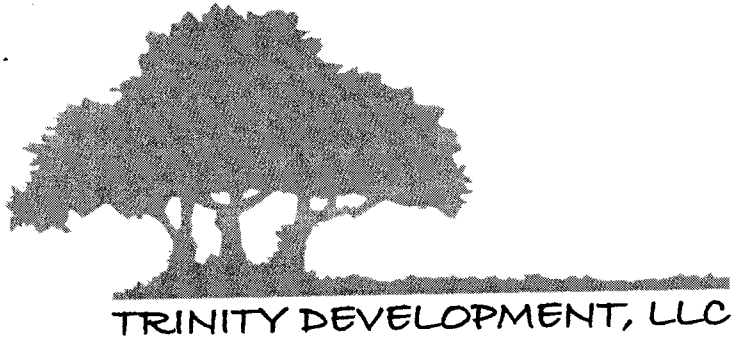
Lombardo & Gilles, LLP



Anthony L. Lombardo
ALL:DLE:ncs

Mr. Mike Novo
Monterey County Planning
October 28, 2011
Page 7

cc: Supervisor Dave Potter
Les Girard, Esq.
Dr. Lew Bauman
Mr. Taven Kinison Brown
Dr. and Mrs. Eric Del Piero



**14 Spreckels Lane #210
Salinas, CA 93908**

**(831) 455-8795 office
(831) 455-8757 fax**

May 6, 2009

REF: Project File #PLN050209
Gordon and Sandra Steuck
570 Aguajito Rd.
Carmel, CA 93923

APN: 103-061-15

ATTN: Ramon Mantano - Planner

Dear Ramon:

Our clients would formally like to request that their application #PLN050209 be withdrawn.

As you are aware, on 4/16/09 they submitted a new application for a lot line adjustment only - on this parcel.

In our last visit with you on 5/4/09 we determined there might be a problem with the location of the existing septic system and leach lines. We have hired Grice Engineering to redesign and relocate a new septic system and those drawings should be complete very soon. Also, we determined the location of the existing garage to be inside the new lot line and demolition of it will also be another condition of approval.

We have also done on site investigation of the existing house in relation to the new lot line. We found that it exists well outside the set back requirements for the new lot line location and won't be a problem where it sits.

Thank you for your time on our client's property. If there is anything else I Can provide you to help this process along – feel free to call me anytime @ 831-601-5308.

Sincerely,

Eric Barstad