Attachment D
Notice of Appeal

PLN130209

This page intentionally left blank.

NOTICE OF APPEAL

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

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before 1/2/14 *(10 days after written notice of the decision has been mailed to the applicant).*
Date of decision 12/11/13

1. Please give the following information:
   a) Your name Save Aguajito Forever, et al.
   b) Address c/o Anthony Lombardo & Associates 450 Lincoln Ave, Ste 101 City Salinas Zip 93901
   c) Phone Number (831) 751-2330

2. Indicate your interest in the decision by checking the appropriate box:
   ☐ Applicant
   ☐ Neighbor
   ☒ Other (please state) Appellants

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

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

5.

	File Number	Type of Application	Area
a) Planning Commission:	PLN 130209	Lot Line Adj.	Aguajito
b) Zoning Administrator:			
c) Subdivision Committee:			
d) Administrative Permit:			

5. What is the nature of your appeal?

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

b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

☐ There was a lack of fair or impartial hearing; or

☒ The findings or decision or conditions are not supported by the evidence; or

☒ The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will ***not*** accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

See attached points of appeal

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

See attached points of appeal

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee $1,565.91 and stamped addressed envelopes.

APPELLANT SIGNATURE [signature] (agent) DATE 1/2/14

ACCEPTED [signature] 1/2/14 DATE _____

(Clerk to the Board)

POINTS OF APPEAL

This is the appeal of SAVE THE AGUAJITO FOREVER (SAFE), AGUAJITO PROPERTY OWNERS ASSOCIATION (APOA), Frank Chiorazzi, Dr. Eric Del Piero, and Teresa Del Piero from the decision of the Planning Commission approving a lot line adjustment (PLN 130209) for Gordon and Sandra Steuck. Our office and many others have provided a substantial amount of information on this and previous applications as well as the illegal grading activities on the property. All of that information is hereby incorporated by reference.

The Planning Commission erred in its decision for several reasons:

CEQA

The Initial Study (IS) prepared by the County is inadequate. The Negative Declaration (ND) should not have been adopted.

The County prepared an IS on the LLA and based on that IS recommended that a ND be adopted. The conclusions of the IS were based entirely on the assertion that no development beyond the lot line adjustment itself was reasonably foreseeable. The initial study was circulated for public review from September 17, 2013 through October 17, 2013. During that review period the County received several letters addressing the deficiencies of the initial study. A copy of the comment letter prepared by Anthony Lombardo and Associates detailing those deficiencies is attached (Attachment A).

The initial study, despite multiple applications and statements on record by the applicant, erroneously concluded that no development beyond the lot line adjustment was foreseeable. During the course of public hearings the project proponent and the staff spoke at length in an effort to convince the Planning Commission that there was no reasonably foreseeable development. At the conclusion of the first Planning Commission hearing several Commissioners concluded that the future development of the two lots with single family homes was clearly foreseeable and should be addressed in this application and the IS. The Planning Commission continued its hearing to allow the staff time to revise their recommended findings to address the Commission's determination that the future development of the proposed lots was foreseeable. Nonetheless the IS was not revised to address the impact of the construction of two homes on the Steuck property on water, roads, oak resources or other potential impacts. Without those revisions, and recirculation of the initial study, the potential impacts of the project were not fully identified, analyzed or mitigated. An ND could not have been properly adopted.

There are also numerous inconsistencies within the Planning Commission's the adopted findings. For example under Findings 3, Evidence b, it is stated that "an initial study was prepared for the LLA and no impacts were found to impact resources (see finding number six below)." However in Finding 6 it is stated that there is no evidence that the project as "designed, condition and

mitigated will have a significant effect on the environment." But if there are no impacts as stated in Finding 3, why are conditions and mitigations required to minimize impacts? Later in Finding 6 in evidence h it is stated that " staff analysis contained in the initial study and the record as a whole indicate the project could result in changes to the resources listed in section 753.5 (D) of. the California Department of Fish and game regulations..." and that that "... The project may have a significant adverse effect on fish and wildlife resources upon which the wildlife depends." The finding also indicates, and is conditioned accordingly, that the project does not qualify for a de minimus waiver and will be required to pay the State Fish and Game fees.

In conclusion the initial study does not adequately identify or discuss the potential impacts of the Planning Commission has determined to be the reasonably foreseeable development of the property. The findings adopted by the Planning Commission are internally inconsistent and are not supported by evidence.

SUBDIVISION MAP ACT

Lot line adjustments are governed by the Subdivision Map Act. Pursuant to Government Code Section 66412(d) a lot line adjustment among four or fewer lots is not considered to be a subdivision but a LLA is required to meet four tests:

- No new lots are created
- Consistency with the general plan
- Compliance with the zoning ordinance
- Compliance with building ordinances

The proposed lot line adjustment on adjustment fails each of these tests.

A New Lot is Being Created:

The County's determination that there are two existing legal lots of record is based on certificates of compliance that were issued in 2004. The certificates were issued based on the submittal of deeds showing the property being described as two separate parcels in 1945. It is not clear in the record if the County looked beyond the 1945 deeds.

Based solely on the 1945 deeds it is understandable how certificates of compliance were issued. However when the whole of the record is examined it is clear that it was a subsequent owner's intention to combine the two lots into a single lot. The "1945 lots" were acquired by Mr. Carl Von Saltza and were then sold as a single described parcel in 1950 to the Sweetmans. The lot has been sold eight times since for a total of 9 separate sales. In each of those 9 sales the property was described as a single lot with no reference to the "1945 lots":

1. Sweetman to Garlick (10/1/1957)
2. Garlick to Meyers (2/7/1958)
3. Meyers to Kay (5/17/1965)

4. Kay to Thompson (9/16/1968)
5. Thompson to Knode (11/19/1971)
6. Knode to Moncrief (11/22/77)
7. Moncrief to Fox (8/1/84)
8. Fox to Steuck (9/15/1986)

From an historical perspective it is important to recognize that Mr. Von Saltza was one of the early developers in the Aguajito area. He was very experienced in the buying and selling of properties in the Aguajito area. When the property is viewed as a whole it is clearly understandable why Mr. Von Saltza would have taken the largely unusable lot between Gentry Hill Road and Aguajito Road and combined it with the lot north of Gentry Hill Road as a single lot. The record is clear Mr. Von Saltza took two lots that were described separately and intentionally merged them by changing the legal description to a single described the lot. The grant deed to each of the purchasers of the property from Sweetman through Steuck in 1986 described the property as a single lot.

Approval of a lot line adjustment based on lots described in 1945 deeds when the record is so clear of the multiple owners' intention and understanding that this property is a single lot is a subdivision, not a lot line adjustment. A new lot is being created.

Consistency with the General Plan:

The staff focuses its entire consistency discussion on Policy LU-1.16 which addresses the ability to adjust lot lines between lots that do not conform to minimum parcel size requirements. That is not the issue. There are other General Plan policy issues that make approval of this application inconsistent with the Monterey County General Plan.

Proof of Water: Policy PS-3.1 requires that new development provide evidence of a long-term sustainable water supply. The LLA may not include specific home designs but the Planning Commission has determined that the development of homes on the reconfigured lots is reasonably foreseeable development. As such, the approval must address the General Plan's proof of water policy. The applicant indicates that water for the future homes will be provided by an existing California American Water Company connection and a private well. There is no evidence that either source will provide a long-term water supply for either lot.

The existing Cal Am water connection provides water service to a small house. There is no evidence in the record to indicate how many water fixture units are included in that house nor can it be determined if those fixture units would be sufficient to provide water to a larger home.

It should be noted that the home sizes in the area range from 4,500 to 10,000 SF. [1] it is highly unlikely that the water credits that would be accrued from the existing house would be sufficient for a new home consistent with the size of homes in the area. No new Cal Am connections are available.

The applicant also proposes to provide water to one of the lots through use of an existing well. There is no evidence that the well will provide a sustainable long-term water supply. In fact the ability of this well to supply long-term water is so questionable that the Health Department has required that a deed restriction be recorded that would read "Well yields in fractured rock aquifer systems have been shown to decline significantly over time due to meager ability of fractured rock to store and transmit water. Therefore, with the intrinsic uncertainties regarding the long-term sustainability of an on-site well proposed to provide a source of domestic water on this parcel, the present and any future owners of this property are hereby given notice that additional water sources may be required in the future."

Additional evidence has been provided to the County that indicates other private wells in the area are under substantial stress. The Los Ranchitos de Aguajito water company is a private water company that provides water to 11 lots along Gentry Hill. Their well production, which has the same fractured rock structure as the Steuck's well, was 32 gallons per minute but has now declined to only 5 gallons per minute. They are now on a self-imposed water conservation program. That well is also showing evidence of coliform contamination which is possibly connected to reduced water flow in the well (Attachment C).

Proof of Access:

General Plan policy C-3.6 requires that the "The County shall establish regulations for new development that would intensify use of a private road or access easement. Proof of access shall be required as part of any development application when the proposed use is not identified in the provisions of the applicable agreement." That proof of access does not exist with this application.

Access to this property is provided via Gentry Hill Road, a private 30 foot right-of-way. There is no evidence in the record that this right-of-way granted with the deed to this property is intended to provide Steuck's access to more than one individual lot. Finding 7, Evidence (i) states the existing access easement is adequate for both lots since "no restrictions were identified regarding the number of houses that may have access to the easement." That however is not the same as saying that the easements allow that access. The test of the general plan policy is to determine that proof of access exists. Determining that the current documents do not prohibit the access is not the same as proof that there is access.

---

[1] It should be anticipated that the homes that would be constructed on either lot would be consistent with those size homes. In fact the applicant has previously submitted plans to the County proposing a 10,000 ft.^{2} home on each of the proposed lots.

The Planning Commission has recently recommended to the Board of Supervisors via a proposed ordinance a series of tests that would determine whether or not a private road provided adequate access for a proposed development:

- Written concurrence of the parties having rights to the easement
- A final settlement of judgment regarding the rights to use the easement
- Existence of a private road agreement clearly showing the right to use the easement for the intended use.

Bases on the information in the record, this LLA would not meet any of the recommended tests.

Development on Slopes over 25%:

The majority of the subject property is over 25% slope. Policy OS-3.5 1 d states that it is the "general policy" of the County to require dedication of a scenic easement on slopes over 25%. However there is no requirement in this approval that the areas on slopes over 25% be placed in scenic easement. Nor is there an explanation as to why a scenic easement is not been required or any discussion as to how this application can be determined to be consistent with the general plan without a requirement for a scenic easement.

Without requiring a scenic easement this project is not consistent with policy OS-3.5.

Compliance with the Zoning and Building (Grading) Ordinances:

The history of grading violations on this property are well known and equally well documented. The property owner brought thousands of yards of material onto the property in the 1986-7 timeframe. No grading permits were secured. Grading was done on slopes that were greater than 30%. Oak trees were removed. Attachment B is a previous appeal that was filed with the Building Official (which was never heard by the Board of Appeals) detailing the history of the grading and the actions of the Building Official. However, these are some key points:

- The County has in its possession and it has been included in the record a topographic map from 1984. When the topography from that map is compared to the existing topography it is clearly evident that the property has not been restored.
- There are a series of aerial photographs in the County record, and they are readily available on Google Earth, showing the amount of vegetation that has been removed on the property over the past several years. Again the evidence is clear that the site has not been restored to its pre-violation state.
- The County's records indicate that based on reports submitted to them at different times that there were well in excess of a thousand cubic yards of undocumented (meaning

unsuitable material) brought to the property. Later records indicated only about 300 cubic yards were removed.

- The 2009 CTI report to the County stated the amount of uncontrolled fill was significantly larger than was detailed by H.D. Peters Co. or Earth Systems, Inc. The CTI report also indicates that all of the dirty fill was not removed but was re-compacted into the building pad.
- In 2005 Faris Speirs, a County Code Enforcement Officer documented all of the violations, including photographs. During this process however, Ms. Speirs files have gone missing.

Under Section 21.84.130 "No application for a discretionary land use permit under the authority of the Director of Planning, the Zoning Administrator, the Planning Commission or the Board of Supervisors shall be deemed complete if there is a violation on said property of a County ordinance which regulates grading, vegetation removal or tree removal until that property has been restored to its pre-violation state. *"Restoration" of the property shall include, but not be limited to, the revegetation of native plants and trees and the reconstruction of natural features of the land which have been removed or changed in violation of County ordinances regulating grading, vegetation removal or tree removal. Alternatives to restoration of the property shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the co of the applicant or the property owner.*"

The property was not restored to its pre-violation condition. There is no evidence that the Director of Planning has at any time made a determination that restoration was not feasible or that it would somehow endanger the public health or safety. Failure to restore is an ongoing violation of the zoning ordinance. Because the grading ordinance and the ability to issue grading permits is tied to the zoning ordinance any action to issue and subsequently approved grading permits and grading work without first requiring restoration is a violation. Property is not in compliance with zoning building ordinances. A lot line adjustment cannot be approved.

It is apparently the County's position that the grading permit that was approved corrected the violations. After years of ignoring the County's permit requirements the property owner chose to secure permits for the grading only when forced to do so to allow his other projects to move forward. The first grading permit was rescinded by the building official when it was determined

that the information upon which the permit was issued was erroneous and that the owner had not performed the work as required in the permit. A subsequent grading permit was issued and that work was completed. The end result is a graded building pad that was expanded well to the west toward the Del Piero property. The Building Official chose to close the enforcement action based on a final inspection on the grading permit. That is not however the same as restoration of the property.

CONCLUSION

The LLA cannot be approved:

- There was inadequate CEQA review.
- A new lot is being created.
- There are numerous inconsistencies with the Monterey County General Plan.
- There are current violations of the Zoning and Building Codes due to the past grading violations and failure to require full restoration of the site.

For these reasons, the appeal should be granted and the LLA denied.

ANTHONY LOMBARDO & ASSOCIATES
A PROFESSIONAL CORPORATION

ANTHONY L. LOMBARDO
KELLY MCCARTHY SUTHERLAND
DEBRA GEMGNANI TIPTON
DONNA L. ROVELLA

450 LINCOLN AVENUE, SUITE 101
SALINAS, CA 93901
(831) 751-2330
FAX (831) 751-2331

September 24, 2013

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; PLN130209**

Dear Mike:

This project is a re-do of the lot line adjustment ("LLA") proposed in PLN080209. There is a great deal of information from our office in that file that is not included in the Initial Study. That information is incorporated herein by reference.

The Initial Study contains many of the flaws and omissions of the last Initial Study, again circumvents the purpose of CEQA and compromises the ability of the public and the County's decision makers to make fully informed decisions. In *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 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 inadequate 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 Initial Study describe the project as "a lot line adjustment between two legal lots of record 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 perceive indirect physical change in the environment." It has clearly been documented both in writing and in prior hearings that this is not just a lot line adjustment. It is the next step in the Steuck's plans to build houses on each lot. This is not speculation. The Steucks have shown in their previous application materials submitted to both the Planning Department and the Environmental Health Department their intention to create a water system, install septic systems and to ultimately build houses. They have demolished a garage and clearly intend to demolish the house. They illegally 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. The whole of the project must be fully described and analyzed.

ATTACHMENT A

Reliance on Certificates of Compliance: The Initial Study continues to rely on certificates of compliance that are questionable at best. 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. Mr. Von Saltza then sold the property (described by a metes and bounds description as a single parcel) to the Sweetmans in 1950. This is a clear indication that it was Mr. Von Saltza's intent to combine the parcels and transfer them as a single lot. One only has to look at the "lot" lying between Aguajito Road and Gentry Hill to understand why. Had he intended to transfer two lots, that intention would have been clear in the deed. Instead, he clearly demonstrated his intention to combine the properties by describing them as a single lot.

As we have noted before, 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: The Initial Study is essentially silent on the large body of history of illegal grading on the property. These facts are well documented and are fully disclosed in our previous correspondence to the County regarding this property. The history of the illegal grading and dumping of potentially toxic materials was fully documented, including photographs by CEO Faris Speirs in 2005. The County has this somewhere in its records. 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 2 — In the paragraph "Fill Areas Restored", it states "There are no unresolved issues with restoration completed." While it may be true that the County has decided it has done all it is going to do and closed its file, it is not correct to say the property has been restored to its pre-violation condition. The current condition is an engineered building pad, not a restored site.

Page 3 — Regarding the well proposed on Parcel B, the Initial Study states that "... the owner intends to keep available for service to Parcel B." The owner had previously applied for a water system. Again, although the project description states the project is an LLA only, it is clear construction of homes is the intended use, is reasonably foreseeable and must be analyzed.

Page 4 — The Initial Study finds the LLA to be consistent with the 2010 General Plan.

As will be discussed later, there is significant information that is not disclosed in the Initial Study that leads to a different conclusion.

Page 5

Aesthetics: This section finds no impact. This is based, apparently, on alleged visual impact to Aguajito Road being avoided if the portion of the property between Aguajito Road and Gentry Hill were developed. There is no evidence to support this assertion. To my knowledge, there has been no siting or staking of a potential house site upon which to base that conclusion.

There is no evidence that the potential sites for new homes have been evaluated for their visual impact. These would be highly constrained sites due to the location of the road, the existing well, potential sites for septic systems off 25% slopes, mature oaks and slopes in excess of 25%. It is reasonable to expect that subsequent proposals will be for multi-story structures. Nonetheless, there is no assessment of how that would impact the area's aesthetics. There have been no staking or story poles erected to assess potential visual impacts, nor are there mitigations such as building envelopes proposed in the Initial Study.

The County is relying on subsequent permit processes which are, in effect, deferred studies and mitigations to be a means of assessing the impacts that should be addressed in this Initial Study. A conclusion of no impact and no needed mitigation is incorrect and internally inconsistent.

Page 6

Biological Resources: The Initial Study again relies on the assertion that the LLA is all there is to the project and nothing else is reasonably foreseeable. It is clear that the owner's express intent is to build two houses and accessory structures, yet there is no evidence in the record or a discussion of how or where those houses could be sited where there is no impact to the oak habitat or to assess the potential impact of oak tree removal.

Page 6

Greenhouse Gas ("GHG"): The Initial Study should assess the impact of two new homes on GHG. While there may not be specific plans for those houses included in this application, they have been included in previous applications. They are also clearly foreseeable and as such should be evaluated for GHG.

Page 9

Hydrology/Water Quality: Again, the reasonably foreseeable impact of two houses and accessory uses must be analyzed.

The Initial Study (on page 3) states the existing small house on proposed Parcel A is served by Cal-Am. It can be reasonably foreseen that since that

proposed Parcel is the larger and more usable of the proposed lots, it will be used for a substantially sized home. There is no discussion of the existing water use or fixture credits that can be generated by demolition of the house or how the increased water from a larger home would be addressed. The Initial Study (page 3) also states the existing well will be the water source for the other lot, but there is no assessment of that well as a water source.

The well was pump tested in September, 2010. At that time, the owners had applied for a three-connection water system. EHB found enough water to serve two connections so, again, the development of each of the proposed lots is clearly foreseeable and must be assessed.

This application was applied for in May, 2013. It is subject to the policies of the 2010 General Plan which requires proof of long term water (2010 General Plan Policies PS-3.1, 3.2, 3.3 and 3.34). There is no discussion in the Initial Study of any analysis of a sustainable long term supply. It is recognized that EHB's source capacity test is an indicator that the well will pump water at a particular rate; such tests have not been accepted as a determinant of a long term water supply.

The source capacity test was performed in September, 2010. The tests should be repeated to assess current well capacity and its impact on neighboring wells. It has been reported that local wells are showing diminished capacity. This is a further indicator of the need for a long term sustained water supply to be assured.

Page 7

Land Use: Policy LU-1.16 of the 2010 General Plan Update states that an LLA may be approved between nonconforming lots subject to certain criteria and if "... the resultant lots are consistent with all other General Plan policies ...". This overall finding of consistency cannot be made. Most of the property is over 25% slope. There is no evidence in the record that demonstrates consistency with Policy OS 3-5. The essence of that policy is that development on slopes over 25% is not allowed unless specific findings can be made. There is no evidence that shows the proposed lots can be developed including location of structures, septic and water facilities, access, grading and drainage improvements entirely on slopes under 25% or that the findings required in Policy OS-3.5a(1) and (2) can be made.

Unless that analysis is done first, approval of the LLA will result in the County subsequently being forced to approve exceptions for the lots they are creating.

There is also no evidence to show that Policy GMP 3-5, which discourages the removal of healthy oaks, can be met. Building areas (including grading and septic system areas) on the proposed lots are not identified, making it impossible to assess the impact of the foreseeable development on the property's oaks.

Page 8

Transportation/Traffic: The parcel(s) are served by a private road known as Gentry Hill. There is no evidence, as required by 2010 General Plan Policy C-3.6, that the owner has rights to use that private road for more than one house.

In 1950 when Mr. Von Saltza sold to the Sweetmans, the deed described the property by metes and bounds as a single parcel and the easement accompanying that deed, and every deed since, was for access to that single described parcel.

The "lot" lying between Gentry Hill and Aguajito Road has not proved it has legal access from either Gentry Hill or Aguajito Road.

The balance of the Initial Study is a checklist referring back to the section just discussed. No comment, then, is needed for the balance of the Initial Study.

CONCLUSION

In conclusion, this Initial Study fails to assess in any way the reasonably foreseeable impacts of building two new single family dwellings and accessory structures on the two lots despite clear indication from the owner of their intent. House plans have been submitted and are in the County's records. Applications for water systems have been submitted. Plans for new septic systems well beyond that which is required to serve the existing house have been submitted, approved and built. Clearly, the ultimate development of this property is reasonably foreseeable. The Initial Study needs to be rewritten accordingly and re-circulated.

Sincerely,

Dale Ellis
Director of Planning and Permit Services

DLE:mcs
cc: Dr. and Mrs. Eric Del Piero

APPEAL OF DR. AND MRS. ERIC DEL PIERO TO THE DECISION OF THE BUILDING OFFICIAL TO ISSUE AND APPROVE A FINAL INSPECTION FOR GP090013 (STEUCK)

Background:

In the mid-to late 1980s Dr. Gordon Steuck acquired the property known as 570 Aguajito Road (APN 103-061-015-000). Shortly thereafter Dr Steuck placed a significant amount of fill material, including potentially hazardous materials, on the property without a grading permit or use permit in violation of the County's Grading and Zoning Ordinances. From November 1987 through March of 1990 the County sought correction of the violations. Dr. Steuck did not correct the violations. The matter was referred to the District Attorney.

In May, 1991 Dr. Steuck applied for a grading permit (91-G28) for "restoration and landscaping." A grading permit (No. 46619) to correct the grading violation was issued in August, 1992 and reissued in April, 1998. The work approved by those permits was not done. ." In the County's file on the 1991 and 1998 permits is a letter dated June 14, 1994 from David Messmer of Messmer and Associates stating that "...import fill will be required to complete the grading ...because of the high percentage of rubble and unusable soil in the in the existing fill."

In 2005 Dr. Steuck applied for a lot line adjustment and two 10,000 SF homes on the subject property. Part of the application materials included a geotechnical engineering report prepared by Earth Systems Pacific. That report identified the large areas of "undocumented fill." That report recommended further exploration to identify the full extent of the undocumented fill and that the undocumented fill material be removed from the property. When the content of the Earth Systems Pacific report was found, there was a meeting with Tim McCormick the Director of Building Services and Mike Novo the Director of Planning for Monterey County. The result of that meeting was an agreement that, among other things, Dr. Steuck would be required to retain a registered civil engineer to determine the full extent of undocumented fill and prepare a plan for the removal of that undocumented fill.

Subsequently, the County reviewed, approved and issued a grading permit, GP090013, to "remove existing fill and restore site back to original grades." The grading permit was issued February 17, 2009. The grading plan specifically states "369 cubic yards of new slope fill (to be removed)." The plan also included various cross sections indicating undocumented fill in relation to "topo taken in 2005." After reviewing the permit our attorneys wrote to the Building Official objecting to a grading plan that relied on 2005 contours and not the pre-violation contours. The permit did not include requirements for testing to determine the actual extent or removal of all the undocumented fill or require that the illegal fill be removed. Despite the objections, work was allowed to proceed with the County's assurances that as a result of regular inspections all of the undocumented fill would be removed from the property. That did not happen. The grading permit passed final inspection.

On June 9, 2009 an appeal of the Building Official's decision to final GP090013 was filed. A copy of that appeal is attached (Exhibit A). No appeal hearing was or ever has

been scheduled. No written response to that appeal was received until September 16, 2010 (Exhibit B).

As a result of filing the June 2009 appeal the Building Official did further investigation and by letter of November 18, 2009 (Exhibit C) to Dr. Steuck stated his intention to rescind GP090013 "...because you have failed to complete the work as described in your permit and the permit was based on incorrect information supplied. This incorrect information included the extent of existing fill and the location of existing natural grade elevations." The Building Official's letter goes on to discuss GP46619 that was issued in August 1992 to correct the grading violations and further noted that work was not done. The grading plans for that permit were prepared by David Messmer and according to the Building Official's letter the Messmer plan "...showed the amounts of existing fill to be removed were 1,410 cubic yards. They also show that some fill was placed on slopes that exceed 30%." The letter goes on to note that "...considerable fill continues to exist on the site, that some of the fill is located on slopes exceeding 30 percent slopes and that placement of this fill has altered the natural drainage ..." and that there are "...remaining concerns about the placement of fill near protected oak trees."

Dr. Steuck then had another grading plan prepared by H.D. Peters. GP090013 was reissued to..." TO CLEAR CE080413: and correct the description of the scope of work of Grading Permit No 46619 issued on August 20, 1992; remove existing fill restore site back to original grades and place fill on slopes not greater than 30%, as per grading plan drawn by H.D. Peters Co. date, April 19, 2010" (Source: Monterey County Building Department Website). That permit has now received its final inspection. It is that permit and action that is the subject of this appeal.

On September 14, 2010 the Building Official wrote to Mr. Lombardo (Exhibit B). In that letter the Building Official states "Subsequently Steuck's engineer submitted revised plans that showed the removal of all fill placed on slopes exceeding percent, removal and recompaction (addition) of new fill on locations not exceeding thirty percent slope and revised drainage devices to divert surface runoff from the adjacent property (your client). These plans were approved and the work was performed. We also sent a licensed arborist (Erin Nickerson) to the site to verify the maintenance and health of the protected oak trees. She found no violations related to the removal or damage to the protected oak trees. We gave final inspection of the corrected work on July 1, 2010."

GP090013 is now final and is the subject of this appeal. The Building Official did not require, as repeatedly promised and as required by the County Code that the illegal fill be removed and the site be restored to its pre-violation state. The result is an engineered fill for a building pad approved and inspected by the County in violation of a number of its own ordinances, CEQA and without public review.

POINTS OF APPEAL

1. THERE WAS A PREJUDICIAL ERROR OR ABUSE OF DISCRETION

The decision of the Building Official to issue and then final GP090013 was contrary to the provisions of the Grading Ordinance, the Zoning Ordinance, the Monterey County General Plan, the Monterey County Environmental Act Guidelines and the California Environmental Quality Act and was therefore an error and an abuse of discretion.

a. The placement of the illegal fill was a violation of the Grading Ordinance.

Grading without a permit is a violation of the County Grading Ordinance. Grading is defined as "...any excavating or filling or combination thereof." (MCC 16.08.030 (18)). The Grading Ordinance states "No person shall do, cause, permit, aid, abet, suffer, or furnish equipment or labor for any grading without first obtaining a grading permit from the Building Official..." (MCC 16.08.040). Although there are certain exceptions to the requirement for a grading permit, none of those exceptions apply in this case. No grading permit was issued prior to the work being done.

b. The illegal grading was a violation of the General Plan and Zoning Ordinance.

Development on slopes in excess of 30% without a use permit is a violation of the General Plan and Zoning Ordinance. Development is defined by the General Plan (1982) as "...any activity which occurs on land or water that involves the placement of any structure, the discharge or disposal of any waste material, *grading*, dredging or mineral extraction. This definition includes any change in density and/or intensity of use including the subdivision of land, construction of any structure, and the harvesting of major vegetation other than for agricultural purposes" That definition is repeated in the Zoning Ordinance (Section 21.06.310).

It is the policy of the County (1982 Monterey County General Plan, policy 26.1.10) to prohibit development on slopes over 30% unless the Planning Commission makes certain findings. The Zoning Ordinance which is an implementing tool of the General Plan requires a use permit (21.64.230) for development on slopes over 30%.

No use permit was approved or even applied for to allow grading on slopes in excess of 30%. There was no hearing by the Planning. The grading was done in violation of the General Plan and Zoning Ordinance.

c. The removal of oak trees without a permit was a violation of the Zoning Ordinance.

MCC Section 21.64.260 D 1 states "No person shall do, cause, permit, aid, abet, suffer or furnish equipment or labor to remove, cut down or trim more than one-third of the green foliage of, poison or otherwise kill or destroy any tree as specified in this Section until a tree removal permit for the project has first been obtained." Removal of three or more protected trees requires a use permit from the Planning Commission; removal of two or fewer oak trees can be approved by the Director of Planning. No permit for the removal oaks exists.

H.D. Peters prepared three different maps (January 2009, March 2009 and April 2010) for this property. Each of those maps locates numerous oak trees on the property. The maps are not consistent in their location of trees however the last map prepared does not show all of the tree previously shown. The conclusion has to be that those trees not shown on the 2010 map were removed.

Further, it is well known that piling dirt within the drip line and above the crown of oaks trees damages and can kill oaks. It is also well known and documented that significant illegal fill was placed on the property around many of the trees. The Building Official does state that he sent a "licensed arborist" to the property who found "... no violations related to or damage to the protected oak tress." However, the issue is the long term damage that would have been done and the trees that might have been lost due to the illegal fill. That issue was not addressed.

d. Under the terms of the Zoning Ordinance the property had to be restored to its pre-violation state prior to the issuance of additional permits.

Monterey County Code Section 21.84.130 states:

"No application for a discretionary land use permit under the authority of the Director of Planning and Building Inspection, the Zoning Administrator, the Minor Subdivision Committee, the Planning Commission or the Board of Supervisors shall be deemed complete if there is a violation on said property of a County ordinance which regulates grading, vegetation removal or tree removal until that property has been restored to its pre- violation state.

"Restoration" of the property shall include, but not be limited to, the revegetation of native plants and trees and the reconstruction of natural features of the land which have been removed or changed in violation of County ordinances regulating grading, vegetation removal or tree removal. Alternatives to restoration of the property shall not be considered unless the applicant can show that restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner.

Plans for restoration shall be submitted to and approved by the Director of Planning and Building Inspection prior to the commencement of restoration and the plan shall include a time period to ensure reestablishment of the soil or vegetation."

Development on slopes over 30% as previously explained requires a use permit. A use permit is a discretionary permit. Under this code section the application for a use permit, had there been one as required by the General Plan and Zoning Ordinance, could not have been deemed complete until there was full restoration of the property to its pre-violation condition. Restoration was not required nor is there any evidence in the record that indicates that "... restoration would endanger the public health or safety, or that restoration is unfeasible due to circumstances beyond the control of the applicant or the property owner."

e. The grading permit was issued in violation of MCC Sections 16.08.060 B and D and MCC Section 16.08.130

As previously discussed the illegal grading and then the work authorized by GP090013 was development on slopes over 30% and as such required approval and specific findings by the Planning Commission. No such approval exists.

MCC Section 16.08.060 B states:

"A grading permit will not be issued for development of any building site or roadway where it has been shown that grading activity will permanently alter existing material on slopes greater than or equal to thirty (30) percent (in excess of twenty-five (25) percent for development in North County Area Plans). Upon application, an exception to allow development on slopes of thirty (30) percent or greater may be granted at a noticed public hearing by the Planning Commission. The exception may be granted if one or both of the following findings are made, based upon substantial evidence.

1.There is no alternative which would allow development to occur on slopes of less than thirty (30) percent North County LUP); or

2. The proposed development better achieves the resource protection objectives and policies contained in the Monterey County General Plan, accompanying Area Plans and Land Use Plans, and all applicable master plans."

Section 16.08.060 D states:

"A grading permit will not be issued if the proposed grading plan for the development contemplated does not comply with the requirements of the zoning ordinance."

Section 16.08.130 states:

"The application, plans and specifications filed by an applicant for a permit shall be checked by the Building Official within thirty (30) days after receipt of all information required for issuance of the permit. The Building Official shall approve an application for permit if the plans filed therewith conform to the requirements of this Chapter, zoning ordinances, use permit and design review conditions and other applicable laws."

There was no hearing by the Planning Commission. No findings as required by the Section 16.08.060 B and D were made. The issuance of the grading permit was contrary to Section 16.08.130 in that it did not comply with the Zoning Ordinance requirements for a use permit and full restoration of the site.

f. The illegal grading and issuance of subsequent grading permits violated the Monterey County Environmental Act Guidelines (Chapter 16.70 MCC) and the California Environmental Quality Act.

Essentially the Monterey County Environmental Act Guidelines directs that the County use the most recent version of the CEQA guidelines as its standard for environmental review. This is a project under CEQA (PRC 15378 (a)(3)). While some minor grading activity may be exempted under PRC 15304, none of those activities are in any way equivalent to the illegal grading that was done. An initial study should have been required to analyze all potential effects of the grading work, identify mitigations and to allow public review of that document.

Failure to require full and proper CEQA review is a violation of CEQA and Chapter 16.70 of the Monterey County Code.

2. THERE WAS A LACK OF A FAIR AND IMPARTIAL HEARING.

The June 2009 appeal should have been heard by the Board of Appeals in a timely manner. The grading on slopes over 30% and oak tree removal required a use permit and public hearing by the Planning Commission. Failure to schedule the appeal hearing before the Board of Appeals or require a use permit and environmental review deprived the appellants of due process and as such there was a complete lack of a fair or impartial hearing.

An appeal to the Building Official's 2009 decision to final the permit was filed in June 2009 (Exhibit A). Despite the written appeal and numerous inquiries on the status of appeal the Building Official did not schedule an appeal hearing before the Board of Appeals. No written response to the April 2009 appeal was received until September 2010, some sixteen months after filing the appeal. In that letter (Exhibit B) the Building Official states "We consider these actions to be a granting of your appeal."

The provisions (16.08.460 B) of the Grading Ordinance are clear. The Board of Appeals hears appeals to the decision of the Building Official. The Building Official cannot hear appeals of its own decision. Failure to schedule the appeal before the Board of Appeals and for the Building Official to be his own appeal board denies Dr. and Mrs. Del Piero, as well as other interested parties, their right to due process and a fair, impartial hearing.

The provisions of the Zoning Ordinance are also clear. A Use Permit was required for grading on slopes over 30% and for the removal of oak trees. That permit could only have been considered and approved by the Planning Commission at a public hearing. Failure to require a Use Permit and as a result no public hearing was also a denial of due process and violates the public right to participate.

For these reasons, based on the evidence presented in this appeal, Dr. and Mrs. Del Piero believe the decision of the Building Official to issue and approve a final inspection for GP090013 was in direct violation of multiple provisions of the Monterey County Code and is an error and an abuse of discretion. Failure to schedule the June 2009 appeal for a hearing before the Board of Appeals was also and abuse of discretion and resulted in the lack of a fair and impartial hearing.

Dr. and Mrs. Del Piero ask that Board of Appeals grant this appeal and rescind the approval and final inspection of GP090013.

DEPARTMENT OF HEALTH Ray Bullick, Director

ANIMAL SERVICES
BEHAVIORAL HEALTH
CLINIC SERVICES
EMERGENCY MEDICAL SERVICES
ENVIRONMENTAL HEALTH
PUBLIC HEALTH
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

December 12, 2013

To: AGUAJITO RD WS LPA ID: 2702393
Re: Repeat Water System Sampling

A routine water sample collected for the water system noted above showed the presence of coliform bacteria. Instructions have been provided to both eliminate the current bacteriological contamination, and to help safeguard the system from future contamination. Part of the process to ensure that the bacteria recently found has been effectively removed from the system, is the collection of a repeat water sample after the disinfection procedure has been completed.

This is a voucher that entitles the above-mentioned water system to one (1) free-of-charge repeat water sample analysis for coliform bacteria. To be valid, the original voucher must accompany a repeat water sample, collected in an approved sample container, and be presented to the **Monterey County Health Department Consolidated Chemistry Laboratory** within **30 days of the voucher date**. A website link to a list of other laboratories was included with the attached inspection report, and all are capable of analyzing a repeat water sample, **but other laboratories will not accept this voucher**. If you have any questions, please call SANDY AYALAat 755-4507.

REHS: CHERYL SANDOVAL

MONTEREY COUNTY HEALTH DEPARTMENT
Consolidated Chemistry Laboratory
1270 Natividad Road Salinas, CA 93906
Phone (831)755-4516 Fax (831) 755-4652
ELAP Certification Number: 1395

Monterey County
Environmental Health-Resource
1270 Natividad Rd.
Salinas, Ca. 93906

Friday, December 06, 2013

Lab Number: AB63879 **Client code:** EH-SAL-R

Sample Site:	AGUAJITO RD WS - 565 BY GATE	Collection Date/Time:	12/2/2013	11:40
Source Code :		Submittal Date/Time:	12/2/2013	12:30
Other ID:	2702393	Sample Collector:	DEWITT B	

Sample Comments: Routine Drinking Water. Receiving temperature blank 8.4 °C.

Analyte	Method	Unit	Result	DLR	MCL	PQL	Date Analyzed
Coliforms; E. coli	SM9223	#/100 mL	ABSENT	N/A	1/100 ML	1	12/2/2013
Coliforms; total	SM9223	#/100 mL	PRESENT	N/A	1/100 ML	1	12/2/2013

Report Approved by:

G. R. Guibert, M.S., P.H.M.
Laboratory Director

mg/L : Milligrams per liter (=ppm) ug/L : Micrograms per liter (=ppb) * : Primary Standards
PQL : Practical Quantitation Limit MCL : Maximum Contaminant Level ** : Secondary Standards
DLR : Detection Limit for Reporting ND : Not Detected N/A : Not Applicable *** : Action Level