

Exhibit A
Discussion

Omni Resources, LLC
PLN110077

Board of Supervisors
February 7, 2012

DISCUSSION

SUMMARY:

This item comes before the Board of Supervisors on a continued hearing. At the July 12, 2011 hearing, the Board of Supervisors considered the latest proposal by the applicant and conducted a public hearing. The July 12 hearing was continued from the hearing of May 17, 2011 to allow the applicant to redesign the project to address the concerns associated with visual impacts. The consensus of the Board was that the project needed to be reduced in size to address these concerns.

For the July 12, 2011 hearing, the applicant had proposed an alternative design, which included the following characteristics

- Size reduced to 99,970 square feet
- Most buildings are single story – (One two story building)
- Landscape areas along Corral de Tierra increased
- Office building at southern end of site removed
- A Lot Line Adjustment to create a 9.86 acre parcel upon which the shopping center will be developed and leave a 1.12 acre vacant parcel at southern end of site.
- No change to the corner parcel.

At the hearing the applicant agreed to remove the gas station improvements on the corner parcel as part of the work on the proposed retail center. Based upon this information the Board adopted a Resolution of Intent to approve the project and continued the application to August 30, 2011 to allow staff to prepare an evaluation of the applicant's proposal and to prepare the necessary findings and evidence.

Prior to the August 30, 2011 Board hearing it was discovered that there was evidence of residual contamination from the removal of the underground gas tanks at the corner parcel. In an effort to determine the significance of the contamination, the hearing was continued to the meeting of October 4, 2011 to allow staff time to determine if approval of this project would in any way exacerbate the contaminants in the soil of the adjacent corner parcel.

This item was subsequently continued from October 4, 2011 to November 8, 2011 based on a request by Supervisor Armenta to continue the hearing to a date when the full Board of Supervisors would be present. The meeting was again continued to January 10, 2012, so that condition 67, addressing the situation with the contamination, could be reconsidered, based on the latest information, and rewritten by staff. The hearing was continued from January 10, 2012 to ensure that the full Board of Supervisors could consider the project. Staff is also recommending two new conditions of approval (Conditions 104 and 105) related to protecting and monitoring water quality associated with storm water runoff. These conditions provide further detail regarding the treatment system for stormwater runoff to ensure protection of the groundwater.

DISCUSSION

The applicant has submitted a revised site plan, landscape plan and architectural plans. The components of each of these plans will be addressed individually as follows:

Site Plan

The site plan reflects a reduction in the building area through two primary means. First is the reconfiguration of the two existing parcels on the site. The result of the Lot Line Adjustment will create 1.12 acre Parcel A, which is not proposed for development at this time and 9.86 acre Parcel B, which is the proposed location of the shopping center. Parcel A is located at the southern end of the site and will remain undeveloped until it has been demonstrated that there is sufficient water on site to support additional retail space, and would be subject to approval of a future discretionary permit and appropriate CEQA document.

The second means of reducing the size is through the overall reduction in building square footage on Parcel B. The original application had a Floor Area Ratio of 26.4%. The currently proposed FAR for Parcel B is 23.3%. This translates to a reduction of 13,315 square feet.

The changes to the site plan result in a better relationship between the buildings on the southern end of the site and the pedestrian village. These buildings now have a lower profile and are more in keeping with the neighborhood design concept.

There are three operation and design features of the site plan that will be modified by the proposed conditions of approval:

1. Delivery Vehicle Circulation. In order to minimize circulation conflicts with delivery vehicles the General Development Plan includes a provision to require delivery vehicles to enter the site from the southern driveway on Corral de Tierra. This will allow the vehicles to maintain the same direction of flow behind the buildings. The vehicles can exit from the most convenient driveway (directly onto Hwy 68 for east bound traffic, or the main driveway on Corral de Tierra for west bound traffic.) (See condition 31)
2. Reciprocal Access and Parking. In order for there to not be any new driveways onto Parcel A, and to use the driveways on Parcel B for circulation, reciprocal access should be required across these parcels for access and parking. Ideally this would also include access for the corner parcel, so that there would be secondary access to the corner parcel (gas station). This has been incorporated into the conditions of approval. (See condition 36)
3. Removal of Northern Driveway on Corral de Tierra Road. There is not sufficient space between the intersection of Corral de Tierra/Highway 68 and the main driveway on Corral de Tierra to allow three driveways. Since the corner parcel is off site and the applicant will not agree to combine driveways, the project cannot be conditioned to require a design that serves both the gas station and the center. Ideally the driveways serving the corner parcel and the center would be comprehensively planned so that the corner parcel could be designed to fit within the circulation pattern of the center. Without the ability to do this, the only option is to impose a condition that allows the applicant to either design a driveway that serves both the center and the corner parcel or simply to remove the northern driveway. This is a health and safety concern identified in the EIR and needs to be addressed in some manner. A condition has been recommended to give the applicant the ability to combine the driveways such that the center and corner parcel will be served by a single driveway. If the applicant decides to not pursue combining the driveways, then the northern driveway needs to be removed.

Landscape Plan

The Landscape Plan calls for Coast Live Oak Trees for screening and street trees. This will provide an evergreen, native, and drought tolerant street tree. On the interior of the site, London Plane trees are proposed as the parking lot shade trees. These are large canopy deciduous trees. California Sycamores will be used as accent trees near the location of the existing sycamore trees. The landscape plan also includes a combination of berming and the planting of drought tolerant shrubs to be used as screening along the street frontages. The landscape plan balances the need for screening and aesthetic concerns with the water constraints of the site by using native plant materials.

Building Design

The architectural theme of the buildings uses styles and designs reflective of western architecture of the late 1800's using a variety of materials, colors and styles. The overall scale and mass of the buildings is now a single story profile except building 5, which will be a two story building. Building 5 is located at the rear of the center and uses the hill to the southeast as a backdrop.

The largest tenant space and the building closest to Highway 68 is Building 1. Building 1 will maintain a maximum height of 25' to the top of the parapet, and the tops of the ridgelines. The buildings along Corral de Tierra (Buildings 8, 9, and 10) will have maximum heights ranging from 28' tall at the peak of the roof to 32' tall at the peak of the roof.

Lot Line Adjustment

The Lot Line Adjustment would reconfigure two existing parcels (5.6 and 5.38 acres) to two parcels of 9.86 acres and 1.12 acres. A B-8 Zoning overlay applies to the subject site. The B-8 regulations provide:

"The minimum building site shall be that which is recognized as an existing legal lot at the time the "B-8" Zoning District is imposed on the property, or lots that are created by minor or standard subdivision for which an application was received by the Monterey County Planning Department prior to the imposition of the "B-8" Zoning District on the property" (Monterey County Code, section 21.42.030.H.2.)

The question has been raised as to whether this language would prohibit the creation of a smaller lot than that which existed at the time that the B-8 Zoning was applied to the site. The proposed lot line adjustment would result in a lot being reduced in size from 5.38 acres to 1.12 acres. The purpose of the "B-8" Zoning District is "to restrict development and/or intensification of land use in areas where, due to water supply, water quality, sewage disposal capabilities, traffic impacts or similar measurable public-facility type constraints, additional development and/or intensification of land use if found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole." (MCC, section 21.42.030.H.1.) "Intensification" means "the change in the use of a building site which increases the demand on the constraint(s) which caused the "B-8" District to be applied over that use existing at that time the "B-8" district is applied to the property." (MCC, section 21.42.030.H.)

The Director of Planning interprets this to mean that no new parcels may be created in the B-8 zoning district, but does not interpret this to restrict the adjustment of lot lines where there is no intensification of the use. In this case the Center has been conditioned to maintain a water balance between the water used and the water diverted into the groundwater. The water balance considers the amount of water

used, and the amount of storm water, which will be diverted into the groundwater. The Center has been conditioned to maintain a maximum water use limit of 9 acre-feet per year. The condition applies to both parcels, regardless of their configuration. In addition the Lot Line Adjustment will not impact the amount of water directed into the ground water. This is a function of center design. The lot line adjustment would not result in an intensification of the use of ground water, and is thus consistent with the B-8 zoning overlay.

A separate technical concern which arises because of the proposed Lot Line Adjustment is to insure that access and parking is reciprocal between the parcels so that in the event that Parcel A is developed in the future, it will be served by the existing driveways and not require an additional driveway onto Corral de Tierra. This has been addressed in the conditions of approval (Condition 36).

Hydrology

There are several items to address related to water. Each will be addressed below.

1. Letter from Professional Geologist. A letter was submitted questioning the approach to the recharge system. This letter was prepared by a professional geologist who takes issue with:
 - a. The ability to calculate the amount of recharge, due to a lack of site specific data, and the inability to know precisely what happens to water when it enters the soil horizon.
 - b. The projected recharge is overly optimistic
 - c. Concern with the long term maintenance and operation of the retention/detention facility
 - d. Potential water quality impacts from parking lot pollutants
 - e. Groundwater contamination at the adjacent gas station site.

With the exception of the new information related to the gas station site, all of these ideas and issues have been previously discussed in the DEIR/FEIR or in the public record. There is disagreement between experts as to whether the retention system will work or not. Engineers and geologists from the Water Resources Agency have reviewed the proposed recharge system and find that it will work. Contrary to the claims being made, site-specific information has been taken into account to develop conservative figures to calculate the recharge. In addition the need to maintain the facility and provisions to protect groundwater quality are included in the mitigation measures and conditions of approval. The issue associated with the potential contamination from the gas station site will be addressed in more detail below.

2. Modified Project Description Impact on Water Recharge Calculations. Initially, the water balance considered in the EIR and presented to the Board of Supervisors placed a limit on the annual water consumption for the center of 9 acre feet. The calculations used the impervious surfaces of the 126,523 square foot shopping center. The increase in landscape area and reduction in impervious surfaces will reduce the amount of water directed to the infiltration chambers. The applicant submitted a revised water balance analysis showing that the project with its reduced size would recharge 9.53 acre-feet of water per year to the ground water basin. The larger center would have provided 10.92 acre-feet per year of water to the ground water basin. The reduced center size water recharge still provides over the 9 acre feet per year water cap previously proposed. The 9 acre-foot per year water cap continues to be an appropriate limit on the water usage.

3. Request to Modify Water Monitoring Mitigation Measure 4.7.8 required reporting for the first two years on a quarterly basis and provided that if the water cap were to be exceeded, that the County could impose measures up to and including holding tenant spaces vacant until the water cap of 9 acre feet per year is maintained. The applicant contends that this would pose such a restriction on the property that it would be hard to obtain financing for the center and attract tenants to the center. Applicant has submitted two letters in support of their contention (Exhibit F).

The applicant is not opposed to the cap itself, but they would like to remove the ability of the County to take measures that could result in tenant spaces being kept vacant. The cap would apply to both Parcels A and B. Initially only Parcel B will be developed. The applicant proposes as an alternative to not allow development on Parcel A until it has been demonstrated that the site is in compliance with the 9 AFY cap and can accommodate the additional development of Parcel A within the cap.

The cap on water use is important because it relates to achieving a water balance. Under Mitigation Measure 4.7.8, and with the smaller LEED project, the site will not use more groundwater than is directed back into the groundwater from surface water run off. If the amount of water used exceeds the amount of recharge then the balance is not maintained. The EIR found that the project, as originally proposed by the applicant, would have an unavoidable significant adverse impact in relation to depletion of groundwater resources in an already over drafted ground water basin. The EIR identified a reduced density LEED Alternative that through use of a recharge system and water conservation measures would achieve a water balance. This is the context for consideration of this project.

Originally proposed mitigation measure:

WATER USE LIMITATION.

1. Reporting

The applicant or shopping center owner shall provide quarterly reports to the Director of Planning of water consumption on the site. If any quarterly report suggests that annual consumption of the site will exceed the cap for the year, then the Planning Director shall have authority to impose measures to be taken to bring the site into compliance with the cap. These may include but are not limited to, limitation on specific consumptive uses within tenant spaces, holding certain spaces vacant, and restricting or eliminating the water usage for landscaping

2. Water Cap

The total amount of water that can be used on the site on an annual basis is 9 acre-feet per year. The owner/shopping center developer shall be responsible for developing a refined water use plan demonstrating that the 9 acre feet cap can be achieved. The water use plan shall include a mechanism to track all water consumption on the site. The water use plan shall be reviewed and approved by the Director of Planning and the General Manager of the Water Resources Agency prior to issuance of any permits.

3. Landscaping

The shopping center shall provide a separate meter for the water conveyed to the Landscape Irrigation system. The amount of water used in the landscaping shall be included in all quarterly reports.

There must be some accountability to the 9 AFY water use cap. As an alternative to requiring tenant spaces to remain vacant in the event the 9 AFY cap is exceeded, the Board could impose a fine for use of water over the 9 AFY cap. If the center were to exceed the 9 AFY cap in a calendar year, then the fine would be imposed. The money for the fine would be used to fund projects to improve ground water in the El Toro Primary Aquifer System. This would include a limitation on the development of Parcel A. The fine would need to be significant for two reasons: first, as a deterrent from exceeding the cap and secondly to mitigate the impacts if the cap is exceeded. The alternative mitigation would be:

Alternative Proposed by Staff

WATER USE LIMITATION.

1. Reporting

The applicant or shopping center owner shall provide annual reports to the Director of Planning and the General Manager of the Water Resources Agency of water consumption on the site.

2. Water Cap

The total amount of water which can be used on the site (both Parcels A and B) on an annual basis shall not exceed nine (9) acre feet per year [the "water use cap"]. If the annual reporting shows that the average annual water use for the three (3) most recent years [the "average annual water use"] exceeds the 9 acre feet per year water use cap, a fine of \$35,000 per acre foot of such exceedance shall be assessed against the project. If the average annual water use for the project exceeds the 9 acre feet per year water use cap for three (3) or more successive years, the amount of the fine shall be progressive for each year that the site exceeds the water cap. Starting with the third consecutive year that the average annual water use cap is exceeded, the fine will be multiplied by that number of consecutive years that the average annual water use exceeds 9 acre feet. All fines collected shall be paid to the Monterey County Water Resources Agency, and shall be used exclusively to improve water resources within the El Toro Primary Aquifer system.

3. Landscaping

The shopping center shall provide a separate meter for the water conveyed to the Landscape Irrigation system. The amount of water used in the landscaping shall be included in the annual reports.

4. Deed Restriction

Prior to the issuance of the first building permit for the shopping center, the applicant shall record a deed restriction on Parcel A. The deed restriction shall state that no development of Parcel A shall be authorized unless and until the annual reports of water for the project demonstrate to the satisfaction of the General Manager of the Water Resources Agency that water use has not exceeded 9 acre feet per year for five continuous years and will not exceed 9.0 acre feet per year with the addition of the proposed development of Parcel A. The form of the deed restriction shall be reviewed and approved by County Counsel and the Director of Planning.

This alternative language is equally as effective in mitigating the impact as the originally proposed mitigation measure because it requires accountability and provides enforcement.

4. Water Quality related to Gas Station underground tanks. Prior to the July 12, 2011 Board hearing an issue was raised related to whether soil contamination had been properly remediated at the old Phelps Exxon station on the corner parcel.

The hearing was continued with direction to conduct a Hazardous Materials investigation on the extent of contamination on the adjacent lot that had a gas station operating on the site and any impact it may have on the proposed project. Environmental Health staff followed up with the applicant within a couple of days of the hearing and indicated that a work plan must be submitted prior to work being performed.

On August 2, 2011 a work plan was submitted and a permit for the work was issued on August 8, 2011. The work was performed on August 16, 2011. On August 16, 2011 while observing the work being performed, Environmental Health staff observed 3 monitoring wells on the gas station site that Environmental Health had not previously been aware of nor had the Regional Water Quality Control Board been aware of.

On August 17, 2011, staff directed Mr. Phelps to have his consultant perform further tests including: a) sample the groundwater monitoring wells on the gas station site for MTBE, BTEX, and TPH gas; b) determine the direction of the groundwater flow; and c) sample the gas station drinking water well for the full panel of Volatile Organic Compounds as listed in Title 22 of the California Code of Regulations.

The applicant retained CapRock Geology Inc, to conduct a Soil and Groundwater Investigation. This report (Exhibit G) revealed that in one sampling point on site MTBE was found in the soil and in a ground water sample. The Monterey County Environmental Health Bureau has jurisdiction over the soil clean up and the California Regional Water Quality Control Board has jurisdiction over the protection of the ground water.

The soil contamination seems fairly localized based upon the fact that of the four sampling sites, MTBE was only found in one location at a depth of 16.5 feet and again at 21.5 feet, no soil contamination was detected at a depth of 26 feet. In order to remediate this, it is likely that the old gas station building will need to be removed. The applicant's intent is to remove the gas station, but would like to wait until the work program for the remediation has been completed or permits are ready for the center prior to removal of the gas station. The applicant would like to move ahead with the project application with a condition that remediation of the soil be completed prior to issuance of any permits for the shopping center site. Under the circumstances, this seems reasonable given that the point of contamination is in the middle of the gas station site, is not in close proximity to the location of the shopping center's recharge system, and with the added condition, that no construction can begin until remediation has occurred.

A work plan was submitted to Environmental Health on November 1, 2011, which was subsequently approved and RWQCB received the same work plan shortly thereafter. Jon Goni of the RWQCB, in a telephone conversation with Environmental Health staff on November 29,

2011, indicated he would be commenting on the work plan regarding any further requirements his agency might request for approval of the work plan. The samples taken from the ground water aquifers under the site have not resulted in any MTBE being present in the groundwater aquifer. A water sample taken from the sampling location that has shown MTBE in the soil also showed the presence of MTBE. This water does not seem to be associated with the aquifer and could be perched water. This is the reason that the RWQCB is asking for more delineation of the extent of the contamination to ground water.

The site will be cleaned and the contaminants will be addressed per EHB and RWQCB requirements. The issue before the Board is whether the Board believes that this must be completed prior to approval of the project, or whether it is acceptable to achieve the remediation after project approval but prior to approval of construction related permits. The result will be the same in that contamination will be removed from the site prior to project construction proceeding. The soil and water remediation will be completed regardless of the action taken on this application. The two actions are only related if it can be demonstrated that approval of this action would somehow be affected by the soil contamination, which will be cleaned up. Staff has recommended that the project be approved with a condition requiring the remediation to be completed prior to issuance of any construction permits.

CEQA

- A. Environmental Impact Report Preparation and Circulation. An Environmental Impact Report was prepared for the project as originally proposed by the applicant (126,523 square feet) in accordance with the California Environmental Quality Act. The public review period for the Draft EIR was from May 28, 2010 until July 16, 2010. Based upon the comments received on the DEIR, a Final EIR was released for public review on November 24, 2010.
- B. Significant Unavoidable Impacts. The EIR identified significant unavoidable adverse impacts related to long term groundwater supply and impacts to the intersections of Highway 68/Laureles Grade and Corral de Tierra/Highway 68.
- C. Significant Adverse Impacts. A potential significant adverse impact was identified related to land use. This impact was related to the removal of the B-8. As discussed below, it is not recommended that the B-8 district be removed.
- D. Less than Significant Impacts. Impacts that were found to be less than significant included: Aesthetic Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazard/Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Population, Employment and Housing, Public Services, Traffic and Transportation, Utilities and Energy, Global Climate Change.
- E. Alternatives. Three primary alternatives were considered in the Alternatives analysis (Chapter 6 of the DEIR) as follows:
 - 1. No Project
 - 2. LEED Silver. This alternative included all of the environmental conservation measures associated with a LEED Project including water-conserving fixtures. The alternative also

included recharge to the ground water of storm water captured from the hillside along the rear of the property and from the corner parcel. This alternative provided a positive water balance for the site.

3. **Reduced Density.** This alternative incorporates all of the components of the LEED alternative and in addition redesigned the site to incorporate the mitigation measures requiring expanded landscaping on Hwy 68, improved circulation around the driveways, a reduction in square footage, and additional landscaping along Corral de Tierra. This resulted in a positive water balance and is a Project that could be approved under the B-8. The Reduced Density Alternative mitigated the impacts to groundwater use.

F. **Environmentally Superior Alternative.** The Environmentally Superior Alternative is the Reduced Density alternative. This reduces the total building square footage on site by 8,600 square feet (reducing the size from 126,523 square feet to 117,923 square feet), and provides designs to address the mitigation measures contained in the EIR. The applicant's revised project consisting of a 99,970 square foot retail center is similar to and consistent with the Reduced Density LEED Alternative evaluated in the EIR and includes the following beneficial design elements: a reduction in building area and building mass, a corresponding reduction in area devoted to parking which allows additional landscaping along the frontages of Highway 68 and Corral de Tierra Road.

G. **The Project.** The project as revised by the applicant incorporates all of the mitigation measures of the Reduced Density LEED alternative and is similar to the Reduced Density LEED alternative analyzed in the EIR in terms of its environmental impacts. The project mitigates the potentially significant adverse groundwater impacts to a less than significant level through the use of the groundwater recharge system, which achieves a positive water balance. The impacts to the intersection of Corral de Tierra/Highway 68 and Laureles Grade/Highway 68 would remain significant and unavoidable. The reduction in size of the project will reduce the impacts to these intersections as identified in the EIR but not enough to mitigate the impacts to a less than significant level.

H. **Recirculation.** No new information has been submitted which identifies a new significant adverse impact which was not analyzed in the EIR or which results in a substantial increase in the severity of an impact identified in the EIR. The late discovery of contaminated soil and ground water on the adjacent gas station site will be remediated as part of a separate process independent of any action taken on this project. A condition of approval has been added to insure that this is accomplished prior to implementation of the project. The EIR has adequately identified all potentially significant adverse impacts and proposed mitigation to mitigate potentially adverse impacts to a less than significant level or to minimize the impacts to the extent feasible. Recirculation of the EIR is not necessary.

RECOMMENDATION

Staff recommends that the Board of Supervisors certify the EIR, adopt a statement of Overriding Considerations (Exhibit B), and approve the project as revised by applicant subject to the conditions of approval contained in Exhibit C. It is recommended that the Board not approve the request to remove the B-8 overlay zoning district by adopting the Resolution found in Exhibit D.